

By: Representatives Baria, Broomfield

To: Public Health and Human Services; Insurance

HOUSE BILL NO. 1055

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT THE STATE BOARD OF HEALTH SHALL REQUIRE NURSING  
3 FACILITIES TO CARRY AT LEAST \$500,000.00 IN LIABILITY INSURANCE AS  
4 A CONDITION OF LICENSURE; AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 **SECTION 1.** Section 43-11-13, Mississippi Code of 1972, is  
7 amended as follows:

8 43-11-13. (1) The licensing agency shall adopt, amend,  
9 promulgate and enforce such rules, regulations and standards,  
10 including classifications, with respect to all institutions for  
11 the aged or infirm to be licensed under this chapter as may be  
12 designed to further the accomplishment of the purpose of this  
13 chapter in promoting adequate care of individuals in those  
14 institutions in the interest of public health, safety and welfare.  
15 Those rules, regulations and standards shall be adopted and  
16 promulgated by the licensing agency and shall be recorded and  
17 indexed in a book to be maintained by the licensing agency in its  
18 main office in the State of Mississippi, entitled "Rules,  
19 Regulations and Minimum Standards for Institutions for the Aged or  
20 Infirm" and the book shall be open and available to all  
21 institutions for the aged or infirm and the public generally at  
22 all reasonable times. Upon the adoption of those rules,  
23 regulations and standards, the licensing agency shall mail copies  
24 thereof to all those institutions in the state that have filed  
25 with the agency their names and addresses for this purpose, but  
26 the failure to mail the same or the failure of the institutions to  
27 receive the same shall in no way affect the validity thereof. The  
28 rules, regulations and standards may be amended by the licensing



29 agency, from time to time, as necessary to promote the health,  
30 safety and welfare of persons living in those institutions. Those  
31 rules, regulations and standards shall include a requirement that  
32 all licensed institutions shall maintain blanket liability  
33 coverage in the minimum amount of Five Hundred Thousand Dollars  
34 (\$500,000.00) to be certified by the Mississippi Department of  
35 Insurance as a condition for the original license or renewal  
36 license of the institution.

37 (2) The licensee shall keep posted in a conspicuous place on  
38 the licensed premises all current rules, regulations and minimum  
39 standards applicable to fire protection measures as adopted by the  
40 licensing agency. The licensee shall furnish to the licensing  
41 agency at least once each six (6) months a certificate of approval  
42 and inspection by state or local fire authorities. Failure to  
43 comply with state laws and/or municipal ordinances and current  
44 rules, regulations and minimum standards as adopted by the  
45 licensing agency, relative to fire prevention measures, shall be  
46 prima facie evidence for revocation of license.

47 (3) The State Board of Health shall promulgate rules and  
48 regulations restricting the storage, quantity and classes of drugs  
49 allowed in personal care homes and adult foster care facilities.  
50 Residents requiring administration of Schedule II Narcotics as  
51 defined in the Uniform Controlled Substances Law may be admitted  
52 to a personal care home. Schedule drugs may only be allowed in a  
53 personal care home if they are administered or stored utilizing  
54 proper procedures under the direct supervision of a licensed  
55 physician or nurse.

56 (4) (a) Notwithstanding any determination by the licensing  
57 agency that skilled nursing services would be appropriate for a  
58 resident of a personal care home, that resident, the resident's  
59 guardian or the legally recognized responsible party for the  
60 resident may consent in writing for the resident to continue to  
61 reside in the personal care home, if approved in writing by a



62 licensed physician. However, no personal care home shall allow  
63 more than two (2) residents, or ten percent (10%) of the total  
64 number of residents in the facility, whichever is greater, to  
65 remain in the personal care home under the provisions of this  
66 subsection (4). This consent shall be deemed to be appropriately  
67 informed consent as described in the regulations promulgated by  
68 the licensing agency. After that written consent has been  
69 obtained, the resident shall have the right to continue to reside  
70 in the personal care home for as long as the resident meets the  
71 other conditions for residing in the personal care home. A copy  
72 of the written consent and the physician's approval shall be  
73 forwarded by the personal care home to the licensing agency.

74 (b) The State Board of Health shall promulgate rules  
75 and regulations restricting the handling of a resident's personal  
76 deposits by the director of a personal care home. Any funds given  
77 or provided for the purpose of supplying extra comforts,  
78 conveniences or services to any resident in any personal care  
79 home, and any funds otherwise received and held from, for or on  
80 behalf of any such resident, shall be deposited by the director or  
81 other proper officer of the personal care home to the credit of  
82 that resident in an account that shall be known as the Resident's  
83 Personal Deposit Fund. No more than one (1) month's charge for  
84 the care, support, maintenance and medical attention of the  
85 resident shall be applied from the account at any one time. After  
86 the death, discharge or transfer of any resident for whose benefit  
87 any such fund has been provided, any unexpended balance remaining  
88 in his personal deposit fund shall be applied for the payment of  
89 care, cost of support, maintenance and medical attention that is  
90 accrued. If any unexpended balance remains in that resident's  
91 personal deposit fund after complete reimbursement has been made  
92 for payment of care, support, maintenance and medical attention,  
93 and the director or other proper officer of the personal care home  
94 has been or shall be unable to locate the person or persons



95 entitled to the unexpended balance, the director or other proper  
96 officer may, after the lapse of one (1) year from the date of that  
97 death, discharge or transfer, deposit the unexpended balance to  
98 the credit of the personal care home's operating fund.

99 (c) The State Board of Health shall promulgate rules  
100 and regulations requiring personal care homes to maintain records  
101 relating to health condition, medicine dispensed and administered,  
102 and any reaction to that medicine. The director of the personal  
103 care home shall be responsible for explaining the availability of  
104 those records to the family of the resident at any time upon  
105 reasonable request.

106 (d) This subsection (4) shall stand repealed on June  
107 30, 2014.

108 (5) (a) For the purposes of this subsection (5):

109 (i) "Licensed entity" means a hospital, nursing  
110 home, personal care home, home health agency, hospice or adult  
111 foster care facility;

112 (ii) "Covered entity" means a licensed entity or a  
113 health care professional staffing agency;

114 (iii) "Employee" means any individual employed by  
115 a covered entity, and also includes any individual who by contract  
116 provides to the patients, residents or clients being served by the  
117 covered entity direct, hands-on, medical patient care in a  
118 patient's, resident's or client's room or in treatment or recovery  
119 rooms. The term "employee" does not include health care  
120 professional/vocational technical students, as defined in Section  
121 37-29-232, performing clinical training in a licensed entity under  
122 contracts between their schools and the licensed entity, and does  
123 not include students at high schools located in Mississippi who  
124 observe the treatment and care of patients in a licensed entity as  
125 part of the requirements of an allied-health course taught in the  
126 high school, if:



127                   1. The student is under the supervision of a  
128 licensed health care provider; and

129                   2. The student has signed an affidavit that  
130 is on file at the student's school stating that he or she has not  
131 been convicted of or pleaded guilty or nolo contendere to a felony  
132 listed in paragraph (d) of this subsection (5), or that any such  
133 conviction or plea was reversed on appeal or a pardon was granted  
134 for the conviction or plea. Before any student may sign such an  
135 affidavit, the student's school shall provide information to the  
136 student explaining what a felony is and the nature of the felonies  
137 listed in paragraph (d) of this subsection (5).

138           However, the health care professional/vocational technical  
139 academic program in which the student is enrolled may require the  
140 student to obtain criminal history record checks under the  
141 provisions of Section 37-29-232.

142           (b) Under regulations promulgated by the State Board of  
143 Health, the licensing agency shall require to be performed a  
144 criminal history record check on (i) every new employee of a  
145 covered entity who provides direct patient care or services and  
146 who is employed on or after July 1, 2003, and (ii) every employee  
147 of a covered entity employed before July 1, 2003, who has a  
148 documented disciplinary action by his or her present employer. In  
149 addition, the licensing agency shall require the covered entity to  
150 perform a disciplinary check with the professional licensing  
151 agency of each employee, if any, to determine if any disciplinary  
152 action has been taken against the employee by that agency.

153           Except as otherwise provided in paragraph (c) of this  
154 subsection (5), no such employee hired on or after July 1, 2003,  
155 shall be permitted to provide direct patient care until the  
156 results of the criminal history record check have revealed no  
157 disqualifying record or the employee has been granted a waiver.  
158 In order to determine the employee applicant's suitability for  
159 employment, the applicant shall be fingerprinted. Fingerprints



160 shall be submitted to the licensing agency from scanning, with the  
161 results processed through the Department of Public Safety's  
162 Criminal Information Center. If no disqualifying record is  
163 identified at the state level, the fingerprints shall be forwarded  
164 by the Department of Public Safety to the Federal Bureau of  
165 Investigation for a national criminal history record check. The  
166 licensing agency shall notify the covered entity of the results of  
167 an employee applicant's criminal history record check. If the  
168 criminal history record check discloses a felony conviction,  
169 guilty plea or plea of nolo contendere to a felony of possession  
170 or sale of drugs, murder, manslaughter, armed robbery, rape,  
171 sexual battery, sex offense listed in Section 45-33-23(g), child  
172 abuse, arson, grand larceny, burglary, gratification of lust or  
173 aggravated assault, or felonious abuse and/or battery of a  
174 vulnerable adult that has not been reversed on appeal or for which  
175 a pardon has not been granted, the employee applicant shall not be  
176 eligible to be employed by the covered entity.

177 (c) Any such new employee applicant may, however, be  
178 employed on a temporary basis pending the results of the criminal  
179 history record check, but any employment contract with the new  
180 employee shall be voidable if the new employee receives a  
181 disqualifying criminal history record check and no waiver is  
182 granted as provided in this subsection (5).

183 (d) Under regulations promulgated by the State Board of  
184 Health, the licensing agency shall require every employee of a  
185 covered entity employed before July 1, 2003, to sign an affidavit  
186 stating that he or she has not been convicted of or pleaded guilty  
187 or nolo contendere to a felony of possession or sale of drugs,  
188 murder, manslaughter, armed robbery, rape, sexual battery, any sex  
189 offense listed in Section 45-33-23(g), child abuse, arson, grand  
190 larceny, burglary, gratification of lust, aggravated assault, or  
191 felonious abuse and/or battery of a vulnerable adult, or that any  
192 such conviction or plea was reversed on appeal or a pardon was



193 granted for the conviction or plea. No such employee of a covered  
194 entity hired before July 1, 2003, shall be permitted to provide  
195 direct patient care until the employee has signed the affidavit  
196 required by this paragraph (d). All such existing employees of  
197 covered entities must sign the affidavit required by this  
198 paragraph (d) within six (6) months of the final adoption of the  
199 regulations promulgated by the State Board of Health. If a person  
200 signs the affidavit required by this paragraph (d), and it is  
201 later determined that the person actually had been convicted of or  
202 pleaded guilty or nolo contendere to any of the offenses listed in  
203 this paragraph (d) and the conviction or plea has not been  
204 reversed on appeal or a pardon has not been granted for the  
205 conviction or plea, the person is guilty of perjury. If the  
206 offense that the person was convicted of or pleaded guilty or nolo  
207 contendere to was a violent offense, the person, upon a conviction  
208 of perjury under this paragraph, shall be punished as provided in  
209 Section 97-9-61. If the offense that the person was convicted of  
210 or pleaded guilty or nolo contendere to was a nonviolent offense,  
211 the person, upon a conviction of perjury under this paragraph,  
212 shall be punished by a fine of not more than Five Hundred Dollars  
213 (\$500.00), or by imprisonment in the county jail for not more than  
214 six (6) months, or by both such fine and imprisonment.

215 (e) The covered entity may, in its discretion, allow  
216 any employee who is unable to sign the affidavit required by  
217 paragraph (d) of this subsection (5) or any employee applicant  
218 aggrieved by an employment decision under this subsection (5) to  
219 appear before the covered entity's hiring officer, or his or her  
220 designee, to show mitigating circumstances that may exist and  
221 allow the employee or employee applicant to be employed by the  
222 covered entity. The covered entity, upon report and  
223 recommendation of the hiring officer, may grant waivers for those  
224 mitigating circumstances, which shall include, but not be limited  
225 to: (i) age at which the crime was committed; (ii) circumstances



226 surrounding the crime; (iii) length of time since the conviction  
227 and criminal history since the conviction; (iv) work history; (v)  
228 current employment and character references; and (vi) other  
229 evidence demonstrating the ability of the individual to perform  
230 the employment responsibilities competently and that the  
231 individual does not pose a threat to the health or safety of the  
232 patients of the covered entity.

233 (f) The licensing agency may charge the covered entity  
234 submitting the fingerprints a fee not to exceed Fifty Dollars  
235 (\$50.00), which covered entity may, in its discretion, charge the  
236 same fee, or a portion thereof, to the employee applicant. Any  
237 costs incurred by a covered entity implementing this subsection  
238 (5) shall be reimbursed as an allowable cost under Section  
239 43-13-116.

240 (g) If the results of an employee applicant's criminal  
241 history record check reveals no disqualifying event, then the  
242 covered entity shall, within two (2) weeks of the notification of  
243 no disqualifying event, provide the employee applicant with a  
244 notarized letter signed by the chief executive officer of the  
245 covered entity, or his or her authorized designee, confirming the  
246 employee applicant's suitability for employment based on his or  
247 her criminal history record check. An employee applicant may use  
248 that letter for a period of two (2) years from the date of the  
249 letter to seek employment with any covered entity without the  
250 necessity of an additional criminal history record check. Any  
251 covered entity presented with the letter may rely on the letter  
252 with respect to an employee applicant's criminal background and is  
253 not required for a period of two (2) years from the date of the  
254 letter to conduct or have conducted a criminal history record  
255 check as required in this subsection (5).

256 (h) The licensing agency, the covered entity, and their  
257 agents, officers, employees, attorneys and representatives, shall  
258 be presumed to be acting in good faith for any employment decision





259 or action taken under this subsection (5). The presumption of  
260 good faith may be overcome by a preponderance of the evidence in  
261 any civil action. No licensing agency, covered entity, nor their  
262 agents, officers, employees, attorneys and representatives shall  
263 be held liable in any employment decision or action based in whole  
264 or in part on compliance with or attempts to comply with the  
265 requirements of this subsection (5).

266 (i) The licensing agency shall promulgate regulations  
267 to implement this subsection (5).

268 (j) The provisions of this subsection (5) shall not  
269 apply to:

270 (i) Applicants and employees of the University of  
271 Mississippi Medical Center for whom criminal history record checks  
272 and fingerprinting are obtained in accordance with Section  
273 37-115-41; or

274 (ii) Health care professional/vocational technical  
275 students for whom criminal history record checks and  
276 fingerprinting are obtained in accordance with Section 37-29-232.

277 (6) The State Board of Health shall promulgate rules,  
278 regulations and standards regarding the operation of adult foster  
279 care facilities.

280 **SECTION 2.** This act shall take effect and be in force from  
281 and after July 1, 2012.

