

By: Senator(s) Johnson (19th)

To: Public Health and Welfare

SENATE BILL NO. 2187

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,  
2 TO PRESCRIBE AND CLARIFY PROCEDURES FOR CONDUCTING CRIMINAL  
3 HISTORY BACKGROUND CHECKS FOR PROSPECTIVE NURSING FACILITY  
4 EMPLOYEES PROVIDING DIRECT PATIENT CARE; 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 such  
14 institutions in the interest of public health, safety and welfare.  
15 Such 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 such rules,  
23 regulations and standards, the licensing agency shall mail copies  
24 thereof to all such institutions in the state which 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.

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

41 (3) The State Board of Health shall promulgate rules and  
42 regulations restricting the storage, quantity and classes of drugs  
43 allowed in personal care homes. Residents requiring  
44 administration of Schedule II Narcotics as defined in the Uniform  
45 Controlled Substances Law may be admitted to a personal care home.  
46 Schedule drugs may only be allowed in a personal care home if they  
47 are administered or stored utilizing proper procedures under the  
48 direct supervision of a licensed physician or nurse.

49 (4) (a) Notwithstanding any determination by the licensing  
50 agency that skilled nursing services would be appropriate for a  
51 resident of a personal care home, that resident, the resident's  
52 guardian or the legally recognized responsible party for the  
53 resident may consent in writing for the resident to continue to  
54 reside in the personal care home, if approved in writing by a  
55 licensed physician. Provided, however, that no personal care home  
56 shall allow more than two (2) residents, or ten percent (10%) of  
57 the total number of residents in the facility, whichever is  
58 greater, to remain in the personal care home under the provisions  
59 of this subsection (4). This consent shall be deemed to be  
60 appropriately informed consent as described in the regulations  
61 promulgated by the licensing agency. After that written consent



62 has been obtained, the resident shall have the right to continue  
63 to reside in the personal care home for as long as the resident  
64 meets the other conditions for residing in the personal care home.  
65 A copy of the written consent and the physician's approval shall  
66 be forwarded by the personal care home to the licensing agency.

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

93 (c) The State Board of Health shall promulgate rules  
94 and regulations requiring personal care homes to maintain records



95 relating to health condition, medicine dispensed and administered,  
96 and any reaction to such medicine. The director of the personal  
97 care home shall be responsible for explaining the availability of  
98 such records to the family of the resident at any time upon  
99 reasonable request.

100 (d) The State Board of Health shall evaluate the  
101 effects of this section as it promotes adequate care of  
102 individuals in personal care homes in the interest of public  
103 health, safety and welfare. It shall report its findings to the  
104 Chairmen of the Public Health and Welfare Committees of the House  
105 and Senate by January 1, 2003. This subsection (4) shall stand  
106 repealed June 30, 2003.

107 (5) (a) Pursuant to regulations promulgated by the State  
108 Department of Health, the licensing agency shall require to be  
109 performed a criminal history record check on every new employee of  
110 a licensed institution for the aged or infirm or care facility who  
111 provides direct patient care or services and who is employed after  
112 July 1, 2001. Except as otherwise provided, no such new employee  
113 shall be permitted to provide direct patient care or services  
114 until the results of the criminal history record check have  
115 revealed no disqualifying record. The procedure for the criminal  
116 history record check on prospective new employees shall be as  
117 follows:

118 (i) Every such new employee shall provide a valid  
119 current social security number and/or driver's license number  
120 which shall be furnished to the licensing agency or to the private  
121 entity designated by the licensing agency to conduct the criminal  
122 history record check.

123 (ii) The employer institution shall make a  
124 preliminary criminal history record check with the local municipal  
125 and/or county law enforcement agency(ies) in which the institution  
126 is located to determine the existence of a disqualifying criminal  
127 misdemeanor or felony record.



128                   (iii) If no disqualifying criminal misdemeanor or  
129 felony information is found at the local or county level, the law  
130 enforcement agency shall proceed to check the National Criminal  
131 Information Center database to determine the existence of a  
132 disqualifying criminal felony record.

133                   (iv) If no disqualifying criminal record history  
134 information is found under subparagraph (ii) or (iii), the  
135 employing institution may make an offer of temporary employment to  
136 a prospective employee pending the results of the state and  
137 Federal Bureau of Investigation criminal history record check on  
138 the person required under subparagraph (v). In such instances,  
139 the licensed institution shall provide to the licensing agency or  
140 to the designated private entity, the name and relevant  
141 information relating to the person within seventy-two (72) hours  
142 after the date the person accepts temporary employment.

143                   (v) \* \* \* In order to further determine the  
144 applicant's suitability for employment, the applicant shall be  
145 fingerprinted. If no disqualifying record is identified at the  
146 local, county or state level, the fingerprints shall be forwarded  
147 by the Department of Public Safety to the Federal Bureau of  
148 Investigation for a national criminal history record check.

149       \* \* \*

150                   (vi) All fees incurred in compliance with this  
151 subsection (5) shall be borne by the institution or facility  
152 requesting the criminal history record check. The licensing  
153 agency, or the designated private entity, is authorized to charge  
154 the institution for the aged or infirm or care facility a fee for  
155 complying with the requirements of subparagraph (v), which shall  
156 include the amount required by the Mississippi Department of  
157 Public Safety, the Federal Bureau of Investigation or any other  
158 agency designated by the licensing agency for the national  
159 criminal history record check in addition to any necessary costs  
160 incurred by the licensing agency or the designated private entity



161 for the handling and administration of the criminal history record  
162 checks. Costs incurred by a nursing home provider implementing  
163 this act shall be reimbursed as an allowable cost under Section  
164 43-13-116.

165 (viii) In order to be current for purposes of this  
166 subsection (5), criminal history record checks shall be conducted  
167 at least every five (5) years from the date of the initial or any  
168 previously conducted criminal history record check.

169 (b) The licensing agency, care facility, and their  
170 agents, officers, employees, attorneys and representatives shall  
171 be presumed to be acting in good faith for any employment decision  
172 or action taken under paragraphs (a) and (b) of this subsection.  
173 The presumption of good faith may be overcome by a preponderance  
174 of the evidence in any civil action.

175 (c) The licensing agency shall promulgate regulations  
176 to implement this subsection (5).

177 **SECTION 2.** This act shall take effect and be in force from  
178 and after July 1, 2002.

