

By: Senator(s) Huggins

To: Public Health and Welfare

SENATE BILL NO. 2191

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,  
 2 TO DEFINE THOSE LICENSED HEALTH CARE FACILITIES AND EMPLOYEES  
 3 SUBJECT TO THE CRIMINAL RECORD BACKGROUND CHECK REQUIREMENTS, TO  
 4 PROVIDE A TIMETABLE FOR COMPLETING SUCH CRIMINAL RECORD BACKGROUND  
 5 CHECKS, TO PRESCRIBE THOSE FELONIES WHICH DISQUALIFY INDIVIDUALS  
 6 FOR EMPLOYMENT AT SUCH LICENSED FACILITIES, TO DELETE THE  
 7 AUTHORITY FOR CHARGING A FEE FOR CONDUCTING THE CRIMINAL RECORD  
 8 BACKGROUND CHECK, TO PROVIDE THAT PROVIDER COSTS SHALL BE FULLY  
 9 REIMBURSABLE UNDER THE MEDICAID PROGRAM AND TO PROVIDE CIVIL  
 10 IMMUNITY FOR CONDUCTING SUCH BACKGROUND CHECKS; AND FOR RELATED  
 11 PURPOSES.

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

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

15 43-11-13. (1) The licensing agency shall adopt, amend,  
 16 promulgate and enforce such rules, regulations and standards,  
 17 including classifications, with respect to all institutions for  
 18 the aged or infirm to be licensed under this chapter as may be  
 19 designed to further the accomplishment of the purpose of this  
 20 chapter in promoting adequate care of individuals in such  
 21 institutions in the interest of public health, safety and welfare.  
 22 Such rules, regulations and standards shall be adopted and  
 23 promulgated by the licensing agency and shall be recorded and  
 24 indexed in a book to be maintained by the licensing agency in its  
 25 main office in the State of Mississippi, entitled "Rules,  
 26 Regulations and Minimum Standards for Institutions for the Aged or  
 27 Infirm" and the book shall be open and available to all  
 28 institutions for the aged or infirm and the public generally at  
 29 all reasonable times. Upon the adoption of such rules,  
 30 regulations and standards, the licensing agency shall mail copies  
 31 thereof to all such institutions in the state which have filed



32 with the agency their names and addresses for this purpose, but  
33 the failure to mail the same or the failure of the institutions to  
34 receive the same shall in no way affect the validity thereof. The  
35 rules, regulations and standards may be amended by the licensing  
36 agency, from time to time, as necessary to promote the health,  
37 safety and welfare of persons living in those institutions.

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

48 (3) The State Board of Health shall promulgate rules and  
49 regulations restricting the storage, quantity and classes of drugs  
50 allowed in personal care homes. Residents requiring  
51 administration of Schedule II Narcotics as defined in the Uniform  
52 Controlled Substances Law may be admitted to a personal care home.  
53 Schedule drugs may only be allowed in a personal care home if they  
54 are administered or stored utilizing proper procedures under the  
55 direct supervision of a licensed 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. Provided, however, that no personal care home  
63 shall allow more than two (2) residents, or ten percent (10%) of  
64 the total number of residents in the facility, whichever is



65 greater, to remain in the personal care home under the provisions  
66 of this subsection (4). This consent shall be deemed to be  
67 appropriately informed consent as described in the regulations  
68 promulgated by the licensing agency. After that written consent  
69 has been obtained, the resident shall have the right to continue  
70 to reside in the personal care home for as long as the resident  
71 meets the other conditions for residing in the personal care home.  
72 A copy of the written consent and the physician's approval shall  
73 be 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 patient in any personal care home,  
79 and any funds otherwise received and held from, for or on behalf  
80 of any such resident, shall be deposited by the director or other  
81 proper officer of the personal care home to the credit of that  
82 patient in an account which shall be known as the Resident's  
83 Personal Deposit Fund. No more than one (1) month charge for the  
84 care, support, maintenance and medical attention of the patient  
85 shall be applied from such account at any one (1) time. After the  
86 death, discharge or transfer of any resident for whose benefit any  
87 such fund has been provided, any unexpended balance remaining in  
88 his personal deposit fund shall be applied for the payment of  
89 care, cost of support, maintenance and medical attention which is  
90 accrued. In the event any unexpended balance remains in that  
91 resident's personal deposit fund after complete reimbursement has  
92 been made for payment of care, support, maintenance and medical  
93 attention, and the director or other proper officer of the  
94 personal care home has been or shall be unable to locate the  
95 person or persons entitled to such unexpended balance, the  
96 director or other proper officer may, after the lapse of one (1)  
97 year from the date of such death, discharge or transfer, deposit



98 the unexpended balance to the credit of the personal care home's  
99 operating fund.

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

107 (d) The State Board of Health shall evaluate the  
108 effects of this section as it promotes adequate care of  
109 individuals in personal care homes in the interest of public  
110 health, safety and welfare. It shall report its findings to the  
111 Chairmen of the Public Health and Welfare Committees of the House  
112 and Senate by January 1, 2003. This subsection (4) shall stand  
113 repealed June 30, 2003.

114 (5) (a) For the purposes of this section, the term  
115 "licensed entity" shall include hospitals, nursing homes, personal  
116 care homes, home health agencies and hospices. For the purposes  
117 of this section, the term "employee" shall mean any person  
118 employed by the licensed entity either directly, or if on a  
119 contractual basis, those individuals which provide direct patient  
120 care to such individuals being served by the licensed entity.

121 (b) Pursuant to regulations promulgated by the State  
122 Department of Health, the licensing agency shall require to be  
123 performed a criminal history record check on every \* \* \* employee  
124 of a licensed entity \* \* \*. Except as otherwise provided, no such  
125 new employee hired after July 1, 2002, shall be permitted to  
126 provide direct patient care \* \* \* until the results of the  
127 criminal history record check have revealed no disqualifying  
128 record. All existing employees of licensed entities shall have a  
129 criminal history record check completed on or before December 31,  
130 2002. If such criminal history record check discloses a felony



131 conviction, guilty plea or plea of nolo contendere to a felony of  
132 possession or sale of drugs, murder, manslaughter, armed robbery,  
133 rape, sexual battery, sex offense listed in Section 45-31-3(i),  
134 child abuse, arson, grand larceny, burglary, gratification of lust  
135 or aggravated assault, or felonious abuse and/or battery of a  
136 vulnerable adult which has not been reversed on appeal or for  
137 which a pardon has not been granted, the employee shall not be  
138 eligible to be employed at such licensed entity.

139 \* \* \*

140 (c) All fees incurred in compliance with this section  
141 shall be borne by the licensed entity requesting the criminal  
142 history record check. \* \* \* Costs incurred by a licensed entity  
143 implementing this section shall be fully reimbursed as a  
144 pass-through cost under the state Medicaid program for  
145 participating providers.

146 (d) The licensing agency, the licensed entity, and  
147 their agents, officers, employees, attorneys and representatives,  
148 shall be presumed to be acting in good faith for any employment  
149 decision or action taken under paragraphs (a) and (b) of this  
150 subsection. The presumption of good faith may be overcome by a  
151 preponderance of the evidence in any civil action. No licensing  
152 agency, licensed entity, nor their agents, officers, employees,  
153 attorneys and representatives shall be held liable in any  
154 employment discrimination suit in which an allegation of  
155 discrimination is made regarding an employment decision authorized  
156 under this section.

157 (e) The licensing agency shall promulgate regulations  
158 to implement this subsection (5).

159 **SECTION 2.** This act shall take effect and be in force from  
160 and after its passage.

