

By: Senator(s) Huggins

To: Public Health and Welfare

SENATE BILL NO. 2191
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO REQUIRE CURRENT EMPLOYEES AT LICENSED HEALTH CARE FACILITIES TO
3 SIGN AN AFFIDAVIT STATING THAT THEY HAVE NOT BEEN CONVICTED OF OR
4 PLEADED GUILTY TO CERTAIN SPECIFIED CRIMINAL OFFENSES; TO PROVIDE
5 THAT IF A PERSON HAS BEEN CONVICTED OF OR PLEADED GUILTY TO ANY OF
6 THE SPECIFIED OFFENSES, THE PERSON SHALL NOT BE EMPLOYED AT A
7 HEALTH CARE FACILITY; TO PROVIDE THAT IF A PERSON SIGNS THE
8 AFFIDAVIT AND IT IS LATER DETERMINED THAT THE PERSON ACTUALLY HAD
9 BEEN CONVICTED OF OR PLEADED GUILTY TO ANY OF THE SPECIFIED
10 OFFENSES, THE PERSON IS GUILTY OF PERJURY AND SHALL BE PUNISHED AS
11 PROVIDED IN THIS SECTION; TO PROVIDE CIVIL IMMUNITY TO HEALTH CARE
12 FACILITIES FOR MAKING EMPLOYMENT DECISIONS ALLOWED BY THIS ACT; TO
13 CLARIFY THE CRIMINAL RECORD CHECK REQUIREMENT FOR NEW EMPLOYEES AT
14 LICENSED HEALTH CARE FACILITIES; AND FOR RELATED PURPOSES.

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

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

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



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

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

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

59 (4) (a) Notwithstanding any determination by the licensing
60 agency that skilled nursing services would be appropriate for a
61 resident of a personal care home, that resident, the resident's
62 guardian or the legally recognized responsible party for the
63 resident may consent in writing for the resident to continue to
64 reside in the personal care home, if approved in writing by a
65 licensed physician. * * * However, * * * no personal care home
66 shall allow more than two (2) residents, or ten percent (10%) of



67 the total number of residents in the facility, whichever is
68 greater, to remain in the personal care home under the provisions
69 of this subsection (4). This consent shall be deemed to be
70 appropriately informed consent as described in the regulations
71 promulgated by the licensing agency. After that written consent
72 has been obtained, the resident shall have the right to continue
73 to reside in the personal care home for as long as the resident
74 meets the other conditions for residing in the personal care home.
75 A copy of the written consent and the physician's approval shall
76 be forwarded by the personal care home to the licensing agency.

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



100 death, discharge or transfer, deposit the unexpended balance to
101 the credit of the personal care home's operating fund.

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

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

116 (5) (a) For the purposes of this subsection, the term
117 "licensed entity" means a hospital, nursing home, personal care
118 home, home health agency or hospice. For the purposes of this
119 subsection, the term "employee" means any person employed by a
120 licensed entity either directly, or if on a contractual basis,
121 those persons that provide direct patient care to the persons
122 being served by the licensed entity.

123 (b) Pursuant to regulations promulgated by the State
124 Department of Health, the licensing agency shall require to be
125 performed a criminal history record check on (i) every new
126 employee of a licensed entity who provides direct patient care or
127 services and who is employed after July 1, 2002, and (ii) every
128 employee of a licensed entity employed prior to July 1, 2002, who
129 has a documented disciplinary action by his or her present
130 employer. Except as otherwise provided, no such * * * employee
131 hired after July 1, 2002, shall be permitted to provide direct
132 patient care * * * until the results of the criminal history



133 record check have revealed no disqualifying record. In order to
134 determine the applicant's suitability for employment, the
135 applicant shall be fingerprinted. If no disqualifying record is
136 identified at the state level, the fingerprints shall be forwarded
137 by the Department of Public Safety to the Federal Bureau of
138 Investigation for a national criminal history record check. If
139 such criminal history record check discloses a felony conviction,
140 guilty plea or plea of nolo contendere to a felony of possession
141 or sale of drugs, murder, manslaughter, armed robbery, rape,
142 sexual battery, sex offense listed in Section 45-33-23(f), child
143 abuse, arson, grand larceny, burglary, gratification of lust or
144 aggravated assault, or felonious abuse and/or battery of a
145 vulnerable adult which has not been reversed on appeal or for
146 which a pardon has not been granted, the new employee shall not be
147 eligible to be employed at such licensed entity. Any such new
148 employee may be employed on a temporary basis pending the results
149 of the criminal history record check but any employment contract
150 with such employee shall be voidable if the new employee receives
151 a disqualifying criminal record check.

152 * * *

153 (c) Under regulations promulgated by the State Board of
154 Health, the licensing agency shall require every employee of a
155 licensed entity employed prior to July 1, 2002, to sign an
156 affidavit stating that he or she has not been convicted of or
157 pleaded guilty or nolo contendere to a felony of possession or
158 sale of drugs, murder, manslaughter, armed robbery, rape, sexual
159 battery, any sex offense listed in Section 45-33-23(f), child
160 abuse, arson, grand larceny, burglary, gratification of lust,
161 aggravated assault, or felonious abuse and/or battery of a
162 vulnerable adult, or that any such conviction or plea was reversed
163 on appeal or a pardon was granted for the conviction or plea.

164 No * * * such employee of a licensed entity hired before July 1,
165 2002, shall be permitted to provide direct patient care until the



166 employee has signed the affidavit required by this paragraph. All
167 such existing employees of licensed entities must sign the
168 affidavit required by this paragraph on or before December 31,
169 2002. If a person signs the affidavit required by paragraph (b)
170 of this subsection, and it is later determined that the person
171 actually had been convicted of or pleaded guilty or nolo
172 contendere to any of the offenses listed in this paragraph (c) of
173 this subsection and the conviction or plea has not been reversed
174 on appeal or a pardon has not been granted for the conviction or
175 plea, the person is guilty of perjury. If the offense that the
176 person was convicted of or pleaded guilty or nolo contendere to was
177 a violent offense, the person, upon a conviction of perjury under
178 this paragraph, shall be punished as provided in Section 97-9-61.
179 If the offense that the person was convicted of or pleaded guilty
180 or nolo contendere to was a nonviolent offense, the person, upon a
181 conviction of perjury under this paragraph, shall be punished by a
182 fine of not more than Five Hundred Dollars (\$500.00), or by
183 imprisonment in the county jail for not more than six (6) months,
184 or by both such fine and imprisonment.

185 (d) All fees incurred in compliance with this
186 subsection shall be borne by the licensed entity requesting the
187 criminal history record check. * * * Costs incurred by a licensed
188 entity implementing this subsection shall be reimbursed as an
189 allowable cost under Section 43-13-116.

190 (e) The licensing agency, the licensed entity, and
191 their agents, officers, employees, attorneys and representatives,
192 shall be presumed to be acting in good faith for any employment
193 decision or action taken under * * * this subsection. The
194 presumption of good faith may be overcome by a preponderance of
195 the evidence in any civil action. No licensing agency, licensed
196 entity, nor their agents, officers, employees, attorneys and
197 representatives shall be held liable in any employment
198 discrimination suit in which an allegation of discrimination is



199 made regarding an employment decision authorized under this
200 section.

201 (f) The licensing agency shall promulgate regulations
202 to implement this subsection (5).

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

