

By: Senator(s) Huggins

To: Public Health and Welfare

SENATE BILL NO. 2295

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO DELETE THE AUTOMATIC REPEALER ON CERTAIN LICENSURE STANDARDS
3 FOR PERSONAL CARE HOMES; AND FOR RELATED PURPOSES.

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

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

7 43-11-13. (1) The licensing agency shall adopt, amend,
8 promulgate and enforce such rules, regulations and standards,
9 including classifications, with respect to all institutions for
10 the aged or infirm to be licensed under this chapter as may be
11 designed to further the accomplishment of the purpose of this
12 chapter in promoting adequate care of individuals in those
13 institutions in the interest of public health, safety and welfare.
14 Those rules, regulations and standards shall be adopted and
15 promulgated by the licensing agency and shall be recorded and
16 indexed in a book to be maintained by the licensing agency in its
17 main office in the State of Mississippi, entitled "Rules,
18 Regulations and Minimum Standards for Institutions for the Aged or
19 Infirm" and the book shall be open and available to all
20 institutions for the aged or infirm and the public generally at
21 all reasonable times. Upon the adoption of those rules,
22 regulations and standards, the licensing agency shall mail copies
23 thereof to all those institutions in the state that have filed
24 with the agency their names and addresses for this purpose, but
25 the failure to mail the same or the failure of the institutions to
26 receive the same shall in no way affect the validity thereof. The
27 rules, regulations and standards may be amended by the licensing



28 agency, from time to time, as necessary to promote the health,
29 safety and welfare of persons living in those institutions.

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

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

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



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

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

91 (c) The State Board of Health shall promulgate rules
92 and regulations requiring personal care homes to maintain records
93 relating to health condition, medicine dispensed and administered,



94 and any reaction to that medicine. The director of the personal
95 care home shall be responsible for explaining the availability of
96 those records to the family of the resident at any time upon
97 reasonable request.

98 (d) The State Board of Health shall evaluate the
99 effects of this section as it promotes adequate care of
100 individuals in personal care homes in the interest of public
101 health, safety and welfare. It shall report its findings to the
102 Chairmen of the Public Health and Welfare Committees of the House
103 and Senate by January 1, 2003. * * *

104 (5) (a) For the purposes of this subsection, the term
105 "licensed entity" means a hospital, nursing home, personal care
106 home, home health agency or hospice. For the purposes of this
107 subsection, the term "employee" means any person employed by a
108 licensed entity either directly, or if on a contractual basis,
109 those persons that provide direct patient care to the persons
110 being served by the licensed entity.

111 (b) Pursuant to regulations promulgated by the State
112 Department of Health, the licensing agency shall require to be
113 performed a criminal history record check on (i) every new
114 employee of a licensed entity who provides direct patient care or
115 services and who is employed after July 1, 2002, and (ii) every
116 employee of a licensed entity employed prior to July 1, 2002, who
117 has a documented disciplinary action by his or her present
118 employer. Except as otherwise provided, no such employee hired
119 after July 1, 2002, shall be permitted to provide direct patient
120 care until the results of the criminal history record check have
121 revealed no disqualifying record. In order to determine the
122 applicant's suitability for employment, the applicant shall be
123 fingerprinted. If no disqualifying record is identified at the
124 state level, the fingerprints shall be forwarded by the Department
125 of Public Safety to the Federal Bureau of Investigation for a
126 national criminal history record check. If such criminal history



127 record check discloses a felony conviction, guilty plea or plea of
128 nolo contendere to a felony of possession or sale of drugs,
129 murder, manslaughter, armed robbery, rape, sexual battery, sex
130 offense listed in Section 45-33-23(f), child abuse, arson, grand
131 larceny, burglary, gratification of lust or aggravated assault, or
132 felonious abuse and/or battery of a vulnerable adult which has not
133 been reversed on appeal or for which a pardon has not been
134 granted, the new employee shall not be eligible to be employed at
135 such licensed entity. Any such new employee may be employed on a
136 temporary basis pending the results of the criminal history record
137 check but any employment contract with such employee shall be
138 voidable if the new employee receives a disqualifying criminal
139 record check.

140 (c) Under regulations promulgated by the State Board of
141 Health, the licensing agency shall require every employee of a
142 licensed entity employed prior to July 1, 2002, to sign an
143 affidavit stating that he or she has not been convicted of or
144 pleaded guilty or nolo contendere to a felony of possession or
145 sale of drugs, murder, manslaughter, armed robbery, rape, sexual
146 battery, any sex offense listed in Section 45-33-23(f), child
147 abuse, arson, grand larceny, burglary, gratification of lust,
148 aggravated assault, or felonious abuse and/or battery of a
149 vulnerable adult, or that any such conviction or plea was reversed
150 on appeal or a pardon was granted for the conviction or plea. No
151 such employee of a licensed entity hired before July 1, 2002,
152 shall be permitted to provide direct patient care until the
153 employee has signed the affidavit required by this paragraph. All
154 such existing employees of licensed entities must sign the
155 affidavit required by this paragraph on or before December 31,
156 2002. If a person signs the affidavit required by paragraph (b)
157 of this subsection, and it is later determined that the person
158 actually had been convicted of or pleaded guilty or nolo
159 contendere to any of the offenses listed in this paragraph (c) of



160 this subsection and the conviction or plea has not been reversed
161 on appeal or a pardon has not been granted for the conviction or
162 plea, the person is guilty of perjury. If the offense that the
163 person was convicted of or pleaded guilty or nolo contendere to was
164 a violent offense, the person, upon a conviction of perjury under
165 this paragraph, shall be punished as provided in Section 97-9-61.
166 If the offense that the person was convicted of or pleaded guilty
167 or nolo contendere to was a nonviolent offense, the person, upon a
168 conviction of perjury under this paragraph, shall be punished by a
169 fine of not more than Five Hundred Dollars (\$500.00), or by
170 imprisonment in the county jail for not more than six (6) months,
171 or by both such fine and imprisonment.

172 (d) All fees incurred in compliance with this
173 subsection shall be borne by the licensed entity requesting the
174 criminal history record check. Costs incurred by a licensed
175 entity implementing this subsection shall be reimbursed as an
176 allowable cost under Section 43-13-116.

177 (e) The licensing agency, the licensed entity, and
178 their agents, officers, employees, attorneys and representatives,
179 shall be presumed to be acting in good faith for any employment
180 decision or action taken under this subsection. The presumption
181 of good faith may be overcome by a preponderance of the evidence
182 in any civil action. No licensing agency, licensed entity, nor
183 their agents, officers, employees, attorneys and representatives
184 shall be held liable in any employment discrimination suit in
185 which an allegation of discrimination is made regarding an
186 employment decision authorized under this section.

187 (f) The licensing agency shall promulgate regulations
188 to implement this subsection (5).

189 **SECTION 2.** This act shall take effect and be in force from
190 and after June 30, 2003.

