

By: Senator(s) Nunnelee

To: Public Health and Welfare

SENATE BILL NO. 2434

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO EXTEND 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. This subsection (4) shall stand
104 repealed June 30, 2006.

105 (5) (a) For the purposes of this subsection (5), the term
106 "licensed entity" means a hospital, nursing home, personal care
107 home, home health agency or hospice. For the purposes of this
108 subsection (5), the term "employee" means any individual employed
109 by a licensed entity. The term "employee" also includes any
110 individual who by contract provides to the patients, residents or
111 clients being served by the licensed entity direct, hands-on,
112 medical patient care in a patient's, resident's or client's room
113 or in treatment or recovery rooms.

114 (b) Under regulations promulgated by the State Board of
115 Health, the licensing agency shall require to be performed a
116 criminal history record check on (i) every new employee of a
117 licensed entity who provides direct patient care or services and
118 who is employed on or after July 1, 2003, and (ii) every employee
119 of a licensed entity employed before July 1, 2003, who has a
120 documented disciplinary action by his or her present employer.

121 Except as otherwise provided in paragraph (c) of this
122 subsection (5), no such employee hired on or after July 1, 2003,
123 shall be permitted to provide direct patient care until the
124 results of the criminal history record check have revealed no
125 disqualifying record or the employee has been granted a waiver.
126 In order to determine the employee applicant's suitability for

127 employment, the applicant shall be fingerprinted. Fingerprints
128 shall be submitted to the licensing agency from scanning, with the
129 results processed through the Department of Public Safety's
130 Criminal Information Center. If no disqualifying record is
131 identified at the state level, the fingerprints shall be forwarded
132 by the Department of Public Safety to the Federal Bureau of
133 Investigation for a national criminal history record check. The
134 licensing agency shall notify the licensed entity of the results
135 of an employee applicant's criminal history record check. If the
136 criminal history record check discloses a felony conviction,
137 guilty plea or plea of nolo contendere to a felony of possession
138 or sale of drugs, murder, manslaughter, armed robbery, rape,
139 sexual battery, sex offense listed in Section 45-33-23(f), child
140 abuse, arson, grand larceny, burglary, gratification of lust or
141 aggravated assault, or felonious abuse and/or battery of a
142 vulnerable adult that has not been reversed on appeal or for which
143 a pardon has not been granted, the employee applicant shall not be
144 eligible to be employed at the licensed entity.

145 (c) Any such new employee applicant may, however, be
146 employed on a temporary basis pending the results of the criminal
147 history record check, but any employment contract with the new
148 employee shall be voidable if the new employee receives a
149 disqualifying criminal record check and no waiver is granted as
150 provided in this subsection (5).

151 (d) Under regulations promulgated by the State Board of
152 Health, the licensing agency shall require every employee of a
153 licensed entity employed before July 1, 2003, to sign an affidavit
154 stating that he or she has not been convicted of or pleaded guilty
155 or nolo contendere to a felony of possession or sale of drugs,
156 murder, manslaughter, armed robbery, rape, sexual battery, any sex
157 offense listed in Section 45-33-23(f), child abuse, arson, grand
158 larceny, burglary, gratification of lust, aggravated assault, or
159 felonious abuse and/or battery of a vulnerable adult, or that any

160 such conviction or plea was reversed on appeal or a pardon was
161 granted for the conviction or plea. No such employee of a
162 licensed entity hired before July 1, 2003, shall be permitted to
163 provide direct patient care until the employee has signed the
164 affidavit required by this paragraph (d). All such existing
165 employees of licensed entities must sign the affidavit required by
166 this paragraph (d) within six (6) months of the final adoption of
167 the regulations promulgated by the State Board of Health. If a
168 person signs the affidavit required by this paragraph (d), and it
169 is later determined that the person actually had been convicted of
170 or pleaded guilty or nolo contendere to any of the offenses listed
171 in this paragraph (d) and the conviction or plea has not been
172 reversed on appeal or a pardon has not been granted for the
173 conviction or plea, the person is guilty of perjury. If the
174 offense that the person was convicted of or pleaded guilty or nolo
175 contendere to was a violent offense, the person, upon a conviction
176 of perjury under this paragraph, shall be punished as provided in
177 Section 97-9-61. If the offense that the person was convicted of
178 or pleaded guilty or nolo contendere to was a nonviolent offense,
179 the person, upon a conviction of perjury under this paragraph,
180 shall be punished by a fine of not more than Five Hundred Dollars
181 (\$500.00), or by imprisonment in the county jail for not more than
182 six (6) months, or by both such fine and imprisonment.

183 (e) The licensed entity may, in its discretion, allow
184 any employee who is unable to sign the affidavit required by
185 paragraph (d) of this subsection (5) or any employee applicant
186 aggrieved by the employment decision under this subsection (5) to
187 appear before the licensed entity's hiring officer, or his or her
188 designee, to show mitigating circumstances that may exist and
189 allow the employee or employee applicant to be employed at the
190 licensed entity. The licensed entity, upon report and
191 recommendation of the hiring officer, may grant waivers for those
192 mitigating circumstances, which shall include, but not be limited

193 to: (i) age at which the crime was committed; (ii) circumstances
194 surrounding the crime; (iii) length of time since the conviction
195 and criminal history since the conviction; (iv) work history; (v)
196 current employment and character references; and (vi) other
197 evidence demonstrating the ability of the individual to perform
198 the employment responsibilities competently and that the
199 individual does not pose a threat to the health or safety of the
200 patients in the licensed entity.

201 (f) The licensing agency may charge the licensed entity
202 submitting the fingerprints a fee not to exceed Fifty Dollars
203 (\$50.00), which licensed entity may, in its discretion, charge the
204 same fee, or a portion thereof, to the employee applicant. Any
205 costs incurred by a licensed entity implementing this subsection
206 (5) shall be reimbursed as an allowable cost under Section
207 43-13-116.

208 (g) If the results of an employee applicant's criminal
209 history record check reveals no disqualifying event, then the
210 licensed entity shall, within two (2) weeks of the notification of
211 no disqualifying event, provide the employee applicant with a
212 notarized letter signed by the chief executive officer of the
213 licensed entity, or his or her authorized designee, confirming the
214 employee applicant's suitability for employment based on his or
215 her criminal history record check. An employee applicant may use
216 that letter for a period of two (2) years from the date of the
217 letter to seek employment at any licensed entity without the
218 necessity of an additional criminal record check. Any licensed
219 entity presented with the letter may rely on the letter with
220 respect to an employee applicant's criminal background and is not
221 required for a period of two (2) years from the date of the letter
222 to conduct or have conducted a criminal history record check as
223 required in this subsection (5).

224 (h) The licensing agency, the licensed entity, and
225 their agents, officers, employees, attorneys and representatives,

226 shall be presumed to be acting in good faith for any employment
227 decision or action taken under this subsection (5). The
228 presumption of good faith may be overcome by a preponderance of
229 the evidence in any civil action. No licensing agency, licensed
230 entity, nor their agents, officers, employees, attorneys and
231 representatives shall be held liable in any employment decision or
232 action based in whole or in part on compliance with or attempts to
233 comply with the requirements of this subsection (5).

234 (i) The licensing agency shall promulgate regulations
235 to implement this subsection (5).

236 **SECTION 2.** This act shall take effect and be in force from
237 and after June 30, 2004.