

By: Representative Warren

To: Public Health and Human
Services

HOUSE BILL NO. 368

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO EXTEND THE DATE OF THE REPEALER ON THE PROVISIONS THAT ALLOW
3 PERSONAL CARE HOME RESIDENTS TO CONTINUE TO RESIDE THERE EVEN IF
4 THEY ARE DETERMINED TO NEED SKILLED NURSING SERVICES, REGULATE THE
5 HANDLING OF RESIDENTS' PERSONAL DEPOSITS, AND REQUIRE CERTAIN
6 RECORDS TO BE MAINTAINED; AND FOR RELATED PURPOSES.

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

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

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

30 rules, regulations and standards may be amended by the licensing
31 agency, from time to time, as necessary to promote the health,
32 safety and welfare of persons living in those institutions.

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

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

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

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

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

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

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

101 (d) The State Board of Health shall evaluate the
102 effects of this section as it promotes adequate care of
103 individuals in personal care homes in the interest of public
104 health, safety and welfare. It shall report its findings to the
105 Chairmen of the Public Health and Welfare Committees of the House
106 and Senate by January 1, 2003. This subsection (4) shall stand
107 repealed on June 30, 2008.

108 (5) (a) For the purposes of this subsection (5):

109 (i) "Licensed entity" means a hospital, nursing
110 home, personal care home, home health agency or hospice;

111 (ii) "Covered entity" means a licensed entity or a
112 health care professional staffing agency;

113 (iii) "Employee" means any individual employed by
114 a covered entity, and also includes any individual who by contract
115 provides to the patients, residents or clients being served by the
116 covered entity direct, hands-on, medical patient care in a
117 patient's, resident's or client's room or in treatment or recovery
118 rooms. The term "employee" does not include health care
119 professional/vocational technical students, as defined in Section
120 37-29-232, performing clinical training in a licensed entity under
121 contracts between their schools and the licensed entity, and does
122 not include students at high schools located in Mississippi who
123 observe the treatment and care of patients in a licensed entity as
124 part of the requirements of an allied-health course taught in the
125 high school, if:

126 1. The student is under the supervision of a
127 licensed health care provider; and

128 2. The student has signed an affidavit that
129 is on file at the student's school stating that he or she has not
130 been convicted of or pleaded guilty or nolo contendere to a felony
131 listed in paragraph (d) of this subsection (5), or that any such
132 conviction or plea was reversed on appeal or a pardon was granted
133 for the conviction or plea. Before any student may sign such an
134 affidavit, the student's school shall provide information to the
135 student explaining what a felony is and the nature of the felonies
136 listed in paragraph (d) of this subsection (5).

137 However, the health care professional/vocational technical
138 academic program in which the student is enrolled may require the
139 student to obtain criminal history record checks under the
140 provisions of Section 37-29-232.

141 (b) Under regulations promulgated by the State Board of
142 Health, the licensing agency shall require to be performed a
143 criminal history record check on (i) every new employee of a
144 covered entity who provides direct patient care or services and
145 who is employed on or after July 1, 2003, and (ii) every employee
146 of a covered entity employed before July 1, 2003, who has a
147 documented disciplinary action by his or her present employer. In
148 addition, the licensing agency shall require the covered entity to
149 perform a disciplinary check with the professional licensing
150 agency of each employee, if any, to determine if any disciplinary
151 action has been taken against the employee by that agency.

152 Except as otherwise provided in paragraph (c) of this
153 subsection (5), no such employee hired on or after July 1, 2003,
154 shall be permitted to provide direct patient care until the
155 results of the criminal history record check have revealed no
156 disqualifying record or the employee has been granted a waiver.
157 In order to determine the employee applicant's suitability for
158 employment, the applicant shall be fingerprinted. Fingerprints
159 shall be submitted to the licensing agency from scanning, with the
160 results processed through the Department of Public Safety's

161 Criminal Information Center. If no disqualifying record is
162 identified at the state level, the fingerprints shall be forwarded
163 by the Department of Public Safety to the Federal Bureau of
164 Investigation for a national criminal history record check. The
165 licensing agency shall notify the covered entity of the results of
166 an employee applicant's criminal history record check. If the
167 criminal history record check discloses a felony conviction,
168 guilty plea or plea of nolo contendere to a felony of possession
169 or sale of drugs, murder, manslaughter, armed robbery, rape,
170 sexual battery, sex offense listed in Section 45-33-23(g), child
171 abuse, arson, grand larceny, burglary, gratification of lust or
172 aggravated assault, or felonious abuse and/or battery of a
173 vulnerable adult that has not been reversed on appeal or for which
174 a pardon has not been granted, the employee applicant shall not be
175 eligible to be employed by the covered entity.

176 (c) Any such new employee applicant may, however, be
177 employed on a temporary basis pending the results of the criminal
178 history record check, but any employment contract with the new
179 employee shall be voidable if the new employee receives a
180 disqualifying criminal history record check and no waiver is
181 granted as provided in this subsection (5).

182 (d) Under regulations promulgated by the State Board of
183 Health, the licensing agency shall require every employee of a
184 covered entity employed before July 1, 2003, to sign an affidavit
185 stating that he or she has not been convicted of or pleaded guilty
186 or nolo contendere to a felony of possession or sale of drugs,
187 murder, manslaughter, armed robbery, rape, sexual battery, any sex
188 offense listed in Section 45-33-23(g), child abuse, arson, grand
189 larceny, burglary, gratification of lust, aggravated assault, or
190 felonious abuse and/or battery of a vulnerable adult, or that any
191 such conviction or plea was reversed on appeal or a pardon was
192 granted for the conviction or plea. No such employee of a covered
193 entity hired before July 1, 2003, shall be permitted to provide

194 direct patient care until the employee has signed the affidavit
195 required by this paragraph (d). All such existing employees of
196 covered entities must sign the affidavit required by this
197 paragraph (d) within six (6) months of the final adoption of the
198 regulations promulgated by the State Board of Health. If a person
199 signs the affidavit required by this paragraph (d), and it is
200 later determined that the person actually had been convicted of or
201 pleaded guilty or nolo contendere to any of the offenses listed in
202 this paragraph (d) and the conviction or plea has not been
203 reversed on appeal or a pardon has not been granted for the
204 conviction or plea, the person is guilty of perjury. If the
205 offense that the person was convicted of or pleaded guilty or nolo
206 contendere to was a violent offense, the person, upon a conviction
207 of perjury under this paragraph, shall be punished as provided in
208 Section 97-9-61. If the offense that the person was convicted of
209 or pleaded guilty or nolo contendere to was a nonviolent offense,
210 the person, upon a conviction of perjury under this paragraph,
211 shall be punished by a fine of not more than Five Hundred Dollars
212 (\$500.00), or by imprisonment in the county jail for not more than
213 six (6) months, or by both such fine and imprisonment.

214 (e) The covered entity may, in its discretion, allow
215 any employee who is unable to sign the affidavit required by
216 paragraph (d) of this subsection (5) or any employee applicant
217 aggrieved by an employment decision under this subsection (5) to
218 appear before the covered entity's hiring officer, or his or her
219 designee, to show mitigating circumstances that may exist and
220 allow the employee or employee applicant to be employed by the
221 covered entity. The covered entity, upon report and
222 recommendation of the hiring officer, may grant waivers for those
223 mitigating circumstances, which shall include, but not be limited
224 to: (i) age at which the crime was committed; (ii) circumstances
225 surrounding the crime; (iii) length of time since the conviction
226 and criminal history since the conviction; (iv) work history; (v)

227 current employment and character references; and (vi) other
228 evidence demonstrating the ability of the individual to perform
229 the employment responsibilities competently and that the
230 individual does not pose a threat to the health or safety of the
231 patients of the covered entity.

232 (f) The licensing agency may charge the covered entity
233 submitting the fingerprints a fee not to exceed Fifty Dollars
234 (\$50.00), which covered entity may, in its discretion, charge the
235 same fee, or a portion thereof, to the employee applicant. Any
236 costs incurred by a covered entity implementing this subsection
237 (5) shall be reimbursed as an allowable cost under Section
238 43-13-116.

239 (g) If the results of an employee applicant's criminal
240 history record check reveals no disqualifying event, then the
241 covered entity shall, within two (2) weeks of the notification of
242 no disqualifying event, provide the employee applicant with a
243 notarized letter signed by the chief executive officer of the
244 covered entity, or his or her authorized designee, confirming the
245 employee applicant's suitability for employment based on his or
246 her criminal history record check. An employee applicant may use
247 that letter for a period of two (2) years from the date of the
248 letter to seek employment with any covered entity without the
249 necessity of an additional criminal history record check. Any
250 covered entity presented with the letter may rely on the letter
251 with respect to an employee applicant's criminal background and is
252 not required for a period of two (2) years from the date of the
253 letter to conduct or have conducted a criminal history record
254 check as required in this subsection (5).

255 (h) The licensing agency, the covered entity, and their
256 agents, officers, employees, attorneys and representatives, shall
257 be presumed to be acting in good faith for any employment decision
258 or action taken under this subsection (5). The presumption of
259 good faith may be overcome by a preponderance of the evidence in

260 any civil action. No licensing agency, covered entity, nor their
261 agents, officers, employees, attorneys and representatives shall
262 be held liable in any employment decision or action based in whole
263 or in part on compliance with or attempts to comply with the
264 requirements of this subsection (5).

265 (i) The licensing agency shall promulgate regulations
266 to implement this subsection (5).

267 (j) The provisions of this subsection (5) shall not
268 apply to:

269 (i) Applicants and employees of the University of
270 Mississippi Medical Center for whom criminal history record checks
271 and fingerprinting are obtained in accordance with Section
272 37-115-41; or

273 (ii) Health care professional/vocational technical
274 students for whom criminal history record checks and
275 fingerprinting are obtained in accordance with Section 37-29-232.

276 **SECTION 2.** This act shall take effect and be in force from
277 and after June 30, 2006.