

Chapter No. 357
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HOUSE BILL NO. 640

Originated in House Don Richardson Clerk

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AN ACT TO AMEND SECTIONS 43-47-1, 43-47-3, 43-47-5, 43-47-7, 43-47-9, 43-47-11, 43-47-13, 43-47-15, 43-47-17, 43-47-18, 43-47-19, 43-47-21, 43-47-23, 43-47-25, 43-47-29, 43-47-31, 43-47-33, 43-47-35, 43-47-37 AND 43-47-39, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE VULNERABLE ADULTS ACT SHALL BE THE VULNERABLE PERSONS ACT; TO FURTHER AMEND SECTION 43-47-9, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE DEPARTMENT OF HUMAN SERVICES SHALL INITIATE A VULNERABLE PERSON ABUSE OR NEGLECT INVESTIGATION WITHIN 48 HOURS IF IMMEDIATE ATTENTION IS NEEDED OR WITHIN 72 HOURS IF THE VULNERABLE PERSON IS NOT IN IMMEDIATE DANGER, TO CONFORM TO THE NEW REPORTING REQUIREMENTS IN SECTION 43-47-7, MISSISSIPPI CODE OF 1972; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 43-47-1, Mississippi Code of 1972, is amended as follows:

43-47-1. This chapter shall be known and may be cited as the "Mississippi Vulnerable Persons Act of 1986."

SECTION 2. Section 43-47-3, Mississippi Code of 1972, is amended as follows:

43-47-3. The purpose of this chapter is to provide for protective services for vulnerable persons in Mississippi who are abused, neglected or exploited.

SECTION 3. Section 43-47-5, Mississippi Code of 1972, is amended as follows:

43-47-5. For the purposes of this chapter, the following words shall have the meanings ascribed herein unless the context otherwise requires:

(a) "Abuse" means the willful or nonaccidental infliction of physical pain, injury or mental anguish on a vulnerable person, the unreasonable confinement of a vulnerable person, or the willful deprivation by a caretaker of services

which are necessary to maintain the mental and physical health of a vulnerable person. "Abuse" includes the sexual abuse delineated in Section 43-47-18. "Abuse" shall not mean conduct which is a part of the treatment and care of, and in furtherance of the health and safety of, a patient or resident of a care facility, nor shall it mean a normal caregiving action or appropriate display of affection. "Abuse" includes, but is not limited to, a single incident.

(b) "Care facility" means:

(i) Any institution or place for the aged or infirm as defined in, and required to be licensed under, the provisions of Section 43-11-1 et seq.;

(ii) Any long-term care facility as defined in Section 43-7-55;

(iii) Any hospital as defined in, and required to be licensed under, the provisions of Section 41-9-1 et seq.;

(iv) Any home health agency as defined in, and required to be licensed under, the provisions of Section 41-71-1 et seq.;

(v) Any hospice as defined in, and required to be licensed under, the provisions of Chapter 85 of Title 41; and

(vi) Any adult day services facility, which means a community-based group program for adults designed to meet the needs of adults with impairments through individual plans of care, which are structured, comprehensive, planned, nonresidential programs providing a variety of health, social and related support services in a protective setting, enabling participants to live in the community. Exempted from this definition shall be any program licensed and certified by the Mississippi Department of Mental Health and any adult day services program provided to ten (10) or fewer individuals by a licensed institution for the aged or infirm.

(c) "Caretaker" means an individual, corporation, partnership or other organization which has assumed the responsibility for the care of a vulnerable person, but shall not include the Division of Medicaid, a licensed hospital, or a licensed nursing home within the state.

(d) "Court" means the chancery court of the county in which the vulnerable person resides or is located.

(e) "Department" means the Department of Human Services.

(f) "Emergency" means a situation in which:

(i) A vulnerable person is in substantial danger of serious harm, death or irreparable harm if protective services are not provided immediately;

(ii) The vulnerable person is unable to consent to services;

(iii) No responsible, able or willing caretaker, if any, is available to consent to emergency services; and

(iv) There is insufficient time to utilize the procedure provided in Section 43-47-13.

(g) "Emergency services" means those services necessary to maintain a vulnerable person's vital functions and without which there is reasonable belief that the vulnerable person would suffer irreparable harm or death, and may include taking physical custody of the person.

(h) "Essential services" means those social work, medical, psychiatric or legal services necessary to safeguard a vulnerable person's rights and resources and to maintain the physical or mental well-being of the person. These services shall include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment and protection from exploitation. The words

"essential services" shall not include taking a vulnerable person into physical custody without his consent, except as provided for in Section 43-47-15 and as otherwise provided by the general laws of the state.

(i) "Exploitation" means the illegal or improper use of a vulnerable person or his resources for another's profit or advantage, with or without the consent of the vulnerable person, and includes acts committed pursuant to a power of attorney. "Exploitation" includes, but is not limited to, a single incident.

(j) "Lacks the capacity to consent" means that a vulnerable person, because of physical or mental incapacity, lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including, but not limited to, provisions for health care, food, clothing or shelter. This may be reasonably determined by the department in emergency situations; in all other instances, the court shall make the determination following the procedures in Sections 43-47-13 and 43-47-15 or as otherwise provided by the general laws of the state.

(k) "Neglect" means either the inability of a vulnerable person who is living alone to provide for himself the food, clothing, shelter, health care or other services which are necessary to maintain his mental and physical health, or failure of a caretaker to supply the vulnerable person with the food, clothing, shelter, health care, supervision or other services which a reasonably prudent person would do to maintain the vulnerable person's mental and physical health. "Neglect" includes, but is not limited to, a single incident.

(l) "Protective services" means services provided by the state or other government or private organizations, agencies or individuals which are necessary to protect a vulnerable person from abuse, neglect or exploitation. They shall include, but not be limited to, investigation, evaluation of the need for services

and provision of essential services on behalf of a vulnerable person.

(m) "Sexual penetration" shall have the meaning ascribed in Section 97-3-97.

(n) "Vulnerable person" means a person, whether a minor or adult, whose ability to perform the normal activities of daily living or to provide for his or her own care or protection from abuse, neglect, exploitation or improper sexual contact is impaired due to a mental, emotional, physical or developmental disability or dysfunction, or brain damage or the infirmities of aging. The term "vulnerable person" also includes all residents or patients, regardless of age, in a care facility for the purposes of Sections 43-47-19 and 43-47-37 only. The department shall not be prohibited from investigating, and shall have the authority and responsibility to fully investigate, in accordance with the provisions of this chapter, any allegation of abuse, neglect or exploitation regarding a patient in a care facility, if the alleged abuse, neglect or exploitation occurred at a private residence.

SECTION 4. Section 43-47-7, Mississippi Code of 1972, is amended as follows:

43-47-7. (1) (a) Except as otherwise provided by Section 43-47-37 for vulnerable persons in care facilities, any person including, but not limited to, the following, who knows or suspects that a vulnerable person has been or is being abused, neglected or exploited shall immediately report such knowledge or suspicion to the Department of Human Services or to the county department of human services where the vulnerable person is located:

(i) Attorney, physician, osteopathic physician, medical examiner, chiropractor or nurse engaged in the admission, examination, care or treatment of vulnerable persons;

(ii) Health professional or mental health professional other than one listed in subparagraph (i);

(iii) Practitioner who relies solely on spiritual means for healing;

(iv) Social worker, family protection worker, family protection specialist or other professional * * * care, residential or institutional staff;

(v) State, county or municipal criminal justice employee or law enforcement officer;

(vi) Human rights advocacy committee or long-term care ombudsman council member; or

(vii) Accountant, stockbroker, financial advisor or consultant, insurance agent or consultant, investment advisor or consultant, financial planner, or any officer or employee of a bank, savings and loan, credit union or any other financial service provider.

(b) To the extent possible, a report made pursuant to paragraph (a) must contain, but need not be limited to, the following information:

(i) Name, age, race, sex, physical description and location of each vulnerable person alleged to have been abused, neglected or exploited.

(ii) Names, addresses and telephone numbers of the vulnerable person's family members.

(iii) Name, address and telephone number of each alleged perpetrator.

(iv) Name, address and telephone number of the caregiver of the vulnerable person, if different from the alleged perpetrator.

(v) Description of the neglect, exploitation, physical or psychological injuries sustained.

(vi) Actions taken by the reporter, if any, such as notification of the criminal justice agency.

(vii) Any other information available to the reporting person which may establish the cause of abuse, neglect or exploitation that occurred or is occurring.

In addition to the above, any person or entity holding or required to hold a license as specified in Title 73, Professions and Vocations, Mississippi Code of 1972, shall be required to give his, her or its name, address and telephone number in the report of the alleged abuse, neglect or exploitation.

(c) The department, or its designees, shall report to an appropriate criminal investigative or prosecutive authority any person required by this section to report or who fails to comply with this section. A person who fails to make a report as required under this subsection or who, because of the circumstances, should have known or suspected beyond a reasonable doubt that a vulnerable person suffers from exploitation, abuse, neglect or self-neglect but who knowingly fails to comply with this section shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by imprisonment in the county jail for not more than six (6) months, or both such fine and imprisonment. However, for purposes of this subsection (1), any recognized legal financial transaction shall not be considered cause to report the knowledge or suspicion of the financial exploitation of a vulnerable person. If a person convicted under this section is a member of a profession or occupation that is licensed, certified or regulated by the state, the court shall notify the appropriate licensing, certifying or regulating entity of the conviction.

(2) Reports received by law enforcement authorities or other agencies shall be forwarded immediately to the Department of Human Services or the county department of human services. The Department of Human Services shall investigate the reported abuse, neglect or exploitation immediately and shall file a preliminary report of its findings with the Office of the Attorney General

within forty-eight (48) hours if immediate attention is needed, or seventy-two (72) hours if the vulnerable person is not in immediate danger and shall make additional reports as new information or evidence becomes available. The Department of Human Services, upon request, shall forward a statement to the person making the initial report required by this section as to what action is being taken, if any.

(3) The report may be made orally or in writing, but where made orally, it shall be followed up by a written report. A person who fails to report or to otherwise comply with this section, as provided herein, shall have no civil or criminal liability, other than that expressly provided for in this section, to any person or entity in connection with any failure to report or to otherwise comply with the requirements of this section.

(4) Anyone who makes a report required by this section or who testifies or participates in any judicial proceedings arising from the report or who participates in a required investigation or evaluation shall be presumed to be acting in good faith and in so doing shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed. However, the immunity provided under this subsection shall not apply to any suspect or perpetrator of any abuse, neglect or exploitation.

(5) A person who intentionally makes a false report under the provisions of this section may be found liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury.

(6) The Executive Director of the Department of Human Services shall establish a statewide central register of reports made pursuant to this section. The central register shall be capable of receiving reports of vulnerable persons in need of protective services seven (7) days a week, twenty-four (24) hours a day. To effectuate this purpose, the executive director shall establish a single toll-free statewide phone number that all

persons may use to report vulnerable persons in need of protective services, and that all persons authorized by subsection (7) of this section may use for determining the existence of prior reports in order to evaluate the condition or circumstances of the vulnerable person before them. Such oral reports and evidence of previous reports shall be transmitted to the appropriate county department of human services. The central register shall include, but not be limited to, the following information: the name and identifying information of the individual reported, the county department of human services responsible for the investigation of each such report, the names, affiliations and purposes of any person requesting or receiving information which the executive director believes might be helpful in the furtherance of the purposes of this chapter, the name, address, birth date, social security number of the perpetrator of abuse, neglect and/or exploitation, and the type of abuse, neglect and/or exploitation of which there was substantial evidence upon investigation of the report. The central register shall inform the person making reports required under this section of his or her right to request statements from the department as to what action is being taken, if any.

Each person, business, organization or other entity, whether public or private, operated for profit, operated for nonprofit or a voluntary unit of government not responsible for law enforcement providing care, supervision or treatment of vulnerable persons shall conduct criminal history records checks on each new employee of the entity who provides, and/or would provide direct patient care or services to adults or vulnerable persons, as provided in Section 43-11-13.

The department shall not release data that would be harmful or detrimental to the vulnerable person or that would identify or locate a person who, in good faith, made a report or cooperated in

a subsequent investigation unless ordered to do so by a court of competent jurisdiction.

(7) Reports made pursuant to this section, reports written or photographs taken concerning such reports in the possession of the Department of Human Services or the county department of human services shall be confidential and shall only be made available to:

(a) A physician who has before him a vulnerable person whom he reasonably suspects may be abused, neglected or exploited, as defined in Section 43-47-5;

(b) A duly authorized agency having the responsibility for the care or supervision of a subject of the report;

(c) A grand jury or a court of competent jurisdiction, upon finding that the information in the record is necessary for the determination of charges before the grand jury;

(d) A district attorney or other law enforcement official.

Notwithstanding the provisions of paragraph (b) of this subsection, the department may not disclose a report of the abandonment, exploitation, abuse, neglect or self-neglect of a vulnerable person to the vulnerable person's guardian, attorney-in-fact, surrogate decision maker, or caregiver who is a perpetrator or alleged perpetrator of the abandonment, exploitation, abuse or neglect of the vulnerable person.

Any person given access to the names or other information identifying the subject of the report, except the subject of the report, shall not divulge or make public such identifying information unless he is a district attorney or other law enforcement official and the purpose is to initiate court action. Any person who willfully permits the release of any data or information obtained pursuant to this section to persons or agencies not permitted to such access by this section shall be guilty of a misdemeanor.

(8) Upon reasonable cause to believe that a caretaker or other person has abused, neglected or exploited a vulnerable person, the department shall promptly notify the district attorney of the county in which the vulnerable person is located and the Office of the Attorney General, except as provided in Section 43-47-37(2).

SECTION 5. Section 43-47-9, Mississippi Code of 1972, is amended as follows:

43-47-9. (1) Upon receipt of a report pursuant to Section 43-47-7 that a vulnerable person is in need of protective services, the department shall initiate an investigation and/or evaluation within forty-eight (48) hours if immediate attention is needed, or within seventy-two (72) hours if the vulnerable person is not in immediate danger, to determine whether the vulnerable person is in need of protective services and what services are needed. The evaluation shall include any necessary visits and interviews with the person, and if appropriate, with the alleged perpetrator of the vulnerable person abuse and with any person believed to have knowledge of the circumstances of the case. When a caretaker of a vulnerable person refuses to allow the department reasonable access to conduct an investigation to determine if the vulnerable person is in need of protective services, the department may petition the court for an order for injunctive relief enjoining the caretaker from interfering with the investigation.

(2) The staff and physicians of local health departments, mental health clinics and other public or private agencies, including law enforcement agencies, shall cooperate fully with the department in the performance of its duties. These duties include immediate, in-residence evaluations and medical examinations and treatment where the department deems it necessary. However, upon receipt of a report of abuse, neglect or exploitation of a vulnerable person confined in a licensed hospital or licensed

nursing home facility in the state, the department shall immediately refer this report to the proper authority at the State Department of Health for investigation under Section 43-47-37.

Upon a showing of probable cause that a vulnerable person has been abused, a court may authorize a qualified third party to make an evaluation to enter the residence of, and to examine the vulnerable person. Upon a showing of probable cause that a vulnerable person has been financially exploited, a court may authorize a qualified third party, also authorized by the department, to make an evaluation, and to gain access to the financial records of the vulnerable person.

(3) The department may contract with an agency or private physician for the purpose of providing immediate, accessible evaluations in the location that the department deems most appropriate.

SECTION 6. Section 43-47-11, Mississippi Code of 1972, is amended as follows:

43-47-11. (1) If, pursuant to an investigation instituted pursuant to Section 43-47-7, the department determines that a vulnerable person is in need of protective services, it shall prepare a plan of services, reviewing that plan with the vulnerable person and obtaining his consent in writing.

(2) When a caretaker of a vulnerable person who consents to the receipt of protective services refuses to allow the provision of such services to the vulnerable person, the department may petition the court for an order for injunctive relief enjoining the caretaker from interfering with the provision of protective services to the vulnerable person.

(3) If a vulnerable person does not consent to the receipt of protective services, or if he withdraws his consent, the services shall not be provided, except as indicated in Section 43-47-13.

SECTION 7. Section 43-47-13, Mississippi Code of 1972, is amended as follows:

43-47-13. (1) Every reasonable effort shall be made to secure the consent and participation of the vulnerable person in an evaluation and resolution of the need for protective services. If those efforts fail and if the department has reasonable cause to believe that a vulnerable person is being abused, neglected or exploited and lacks the capacity to consent to protective services, then the department may petition the court for an order for injunctive relief authorizing the provision of protective services. The petition must allege specific facts sufficient to show that the vulnerable person is in need of protective services and lacks the capacity to consent to them.

(2) The court shall set the case for hearing within fourteen (14) days after the filing of the petition. The vulnerable person must receive at least five (5) days notice of the hearing. Where good cause is shown, the court may direct that a shorter notice be given. The vulnerable person has the right to be present and represented by counsel at the hearing. If the person, in the determination of the court, lacks the capacity to waive the right to counsel, then the court shall appoint a guardian ad litem. If the person is indigent, the cost of representation shall be borne by the department or by the court.

(3) If, at the hearing, the court finds by clear and convincing evidence that the vulnerable person is in need of protective services and lacks the capacity to consent to those services, the court may issue an order relative thereto. This order may include the designation of an individual, organization or agency to be responsible for the performing or obtaining of essential services on behalf of the vulnerable person or otherwise consenting to protective services in his behalf. The order may provide for protective services for a period not to exceed eighteen (18) months, at which time the vulnerable person's need

for protective services may be reviewed by the department filing a petition requesting such review with the court. Should the court determine that the vulnerable person is in further need of protective services, it may order the provision of such protective services as provided herein.

(4) The court may appoint a guardian or conservator for the vulnerable person, but the court shall not appoint the department as a guardian of the vulnerable person. No vulnerable person may be committed to a mental health facility under this chapter. However, nothing contained herein shall prohibit the filing of petitions under other applicable provisions of the laws of this state.

SECTION 8. Section 43-47-15, Mississippi Code of 1972, is amended as follows:

43-47-15. (1) The department shall have the authority to provide immediate medical care, food, clothing, heat, shelter, supervision or other essential services in the absence of consent if it is determined that:

(a) The vulnerable person is in imminent danger of death or irreparable harm;

(b) Provision of emergency and/or protective services will alleviate the endangerment; and

(c) No other statutory or otherwise appropriate remedy is immediately available.

(2) Within forty-eight (48) hours, excluding Saturdays, Sundays and legal holidays, the department shall petition the court for an order for injunctive relief authorizing the provision of emergency services.

(3) Upon petition of the Commissioner of Public Welfare, the court may order the provision of emergency services to a vulnerable person after finding that there is reasonable cause to believe that:

(a) The vulnerable person lacks the capacity to consent and that he is in need of protective services;

(b) An emergency exists; and

(c) No other person authorized by law or order to give consent is available and willing to arrange for emergency services.

If there is reasonable cause to believe that the conditions listed above exist and no other custodian is available, then upon a written petition for emergency services filed by the department, the court may issue an order for injunctive relief for the department to provide emergency services to a vulnerable person.

(4) The petition for emergency services shall set forth the name, address and authority of the petitioners; the name, age and residence of the vulnerable person; the nature of the emergency; the proposed emergency services; the petitioner's reasonable belief as to the existence of the conditions set forth in subsection (1) of this section; and facts showing petitioner's attempts to obtain the vulnerable person's consent to the services.

(5) If the provision of emergency and/or protective services alleviates the imminent danger of death or irreparable harm and the department has reasonable cause to believe that the vulnerable person remains in need of protective services, the department shall proceed according to Sections 43-47-11 and 43-47-13.

(6) Where it is necessary to enter a premises without the vulnerable person's consent after obtaining a court order in compliance with subsection (3) of this section, the representative of the petitioner shall do so.

(7) No petitioner shall be held liable in any action brought by the vulnerable person if the petitioner acted in good faith.

SECTION 9. Section 43-47-17, Mississippi Code of 1972, is amended as follows:

43-47-17. Notwithstanding any finding by the court of lack of capacity of the vulnerable person to consent, the vulnerable person or the individual, organization or agency designated to be responsible for the vulnerable person, if any, or the State Department of Public Welfare or the county welfare department, shall have the right to bring a motion in the cause for review of any order pursuant to this chapter.

SECTION 10. Section 43-47-18, Mississippi Code of 1972, is amended as follows:

43-47-18. (1) (a) A person who engages in sexual penetration with a vulnerable person is guilty of sexual battery if the person is a volunteer at, or an employee of, or contracted to work for, a health care facility in which the vulnerable person is a patient or resident.

(b) A person who engages in sexual penetration with a vulnerable person is guilty of sexual battery if the person is in a position of trust or authority over the vulnerable person, including, without limitation, the vulnerable person's teacher, counselor, physician, psychiatrist, psychologist, nurse, certified nursing assistant, direct care worker, technical assistant, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, other relative, caretaker or conservator.

(c) Every person who is convicted of sexual battery under this subsection (1) shall be imprisoned in the custody of the State Department of Corrections for a period of not more than thirty (30) years, and for a second or subsequent such offense shall be imprisoned in the custody of the State Department of Corrections for a period of not more than forty (40) years.

(2) (a) Any person who, for the purpose of gratifying the person's lust, or indulging the person's depraved licentious sexual desires, shall handle, touch or rub with hands or any part of the person's body or any member thereof, any vulnerable person,

with or without the vulnerable person's consent, when the person is a volunteer at, or an employee of, or contracted to work for, a health care facility in which the vulnerable person is a patient or resident, shall be guilty of a felony and, upon conviction thereof, shall be fined in a sum not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or be committed to the custody of the Department of Corrections not less than two (2) nor more than fifteen (15) years, or be punished by both fine and imprisonment, at the discretion of the court.

(b) Any person who, for the purpose of gratifying the person's lust, or indulging the person's depraved licentious sexual desires, shall handle, touch or rub with hands or any part of the person's body or any member thereof, any vulnerable person, with or without the vulnerable person's consent, when the person occupies a position of trust or authority over the vulnerable person, shall be guilty of a felony and, upon conviction thereof, shall be fined in a sum not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or be committed to the custody of the Department of Corrections not less than two (2) nor more than fifteen (15) years, or be punished by both fine and imprisonment, at the discretion of the court. A person in a position of trust or authority over a vulnerable person includes, without limitation, the vulnerable person's teacher, counselor, physician, psychiatrist, psychologist, nurse, certified nursing assistant, direct care worker, technical assistant, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, other relative, caretaker or conservator.

(3) A person is not guilty of any offense under this section if the alleged victim is that person's legal spouse; however, the legal spouse of the alleged victim may be found guilty of sexual

battery if the legal spouse engaged in forcible sexual penetration without the consent of the alleged victim.

SECTION 11. Section 43-47-19, Mississippi Code of 1972, is amended as follows:

43-47-19. (1) It shall be unlawful for any person to abuse, neglect or exploit any vulnerable person.

(2) (a) Any person who willfully commits an act or willfully omits the performance of any duty, which act or omission contributes to, tends to contribute to, or results in physical pain, injury, mental anguish, unreasonable confinement or deprivation of services which are necessary to maintain the mental and physical health of a vulnerable person, or neglect, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00) or by imprisonment not to exceed one (1) year in the county jail, or by both such fine and imprisonment. Any accepted medical procedure performed in the usual scope of practice shall not be a violation of this subsection.

(b) Any person who willfully exploits a vulnerable person, where the value of the exploitation is less than Two Hundred Fifty Dollars (\$250.00), shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00) or by imprisonment not to exceed one (1) year in the county jail, or by both such fine and imprisonment; where the value of the exploitation is Two Hundred Fifty Dollars (\$250.00) or more, the person who exploits a vulnerable person shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in the custody of the Department of Corrections for not more than ten (10) years.

(3) Any person who willfully inflicts physical pain or injury upon a vulnerable person shall be guilty of felonious abuse or battery, or both, of a vulnerable person and, upon conviction

thereof, may be punished by imprisonment in the State Penitentiary for not more than twenty (20) years.

(4) Nothing contained in this section shall prevent proceedings against a person under any statute of this state or municipal ordinance defining any act as a crime or misdemeanor.

SECTION 12. Section 43-47-21. Mississippi Code of 1972, is amended as follows:

43-47-21. At the time the department makes an evaluation of the case reported, in accordance with the provisions of Section 43-47-9, it shall be determined, according to the regulations set by the department, whether the vulnerable person is financially capable of paying for the essential services. If he is, he shall make reimbursement for the costs of providing the needed essential services. If it is determined that he is not financially capable of paying for such services, they shall be provided at no cost to the recipient of the services. The court may order the department or any public agency to provide for the custody, care and maintenance of such vulnerable person. Provided, however, that the care, custody and maintenance of any vulnerable person shall be within statutory authorization and budgetary means of such institution, facility, agency or department. Notwithstanding any provision to the contrary, it is not the intent of the Legislature through the adoption of this chapter to authorize any court exercising jurisdiction over a vulnerable person to enlarge or bring about the addition of new groups or categories of recipients or to increase the types of care and services for such persons under the Mississippi Medicaid Law, and any court exercising jurisdiction over a vulnerable person shall not, in any way, enter an order against the Division of Medicaid to provide for the custody, care, or maintenance of a vulnerable person who is not otherwise eligible for medical assistance under Section 43-13-115 or services under Section 43-13-117.

SECTION 13. Section 43-47-23, Mississippi Code of 1972, is amended as follows:

43-47-23. The department and the court are authorized to seek the cooperation of all public agencies, departments, societies, organizations or agencies having for their object the protection or aid of vulnerable persons. These agencies, departments, societies and organizations shall provide any such assistance as is necessary.

SECTION 14. Section 43-47-25, Mississippi Code of 1972, is amended as follows:

43-47-25. Any officer, agent or employee of the department in the good faith exercise of his duties under this chapter shall not be liable for any civil damages as a result of his acts or omissions in rendering assistance or aid to any vulnerable person.

SECTION 15. Section 43-47-29, Mississippi Code of 1972, is amended as follows:

43-47-29. In addition to the powers granted under the provisions of this chapter, the department is authorized to petition the court under the provisions of Section 93-13-251 for appointment of a conservator for any vulnerable person.

SECTION 16. Section 43-47-31, Mississippi Code of 1972, is amended as follows:

43-47-31. (1) Nothing in this chapter shall be construed to authorize, permit or require any emergency or protective services in contravention of the stated or implied objection of such person based upon his right of privacy, which is grounded in the federal courts and the courts of this state, except in a situation where the vulnerable person is in imminent danger of serious harm.

(2) Nothing in this chapter shall be construed to mean a person is neglected or in need of emergency or protective services for the sole reason he is being furnished or relies upon treatment by spiritual means through prayer alone in accordance with the

tenets and practices of a recognized church or religious denominations.

(3) Nothing in this chapter shall be construed to authorize, permit or require any medical care or treatment in contravention of the stated or implied objection of such person.

SECTION 17. Section 43-47-33, Mississippi Code of 1972, is amended as follows:

43-47-33. The department shall establish a comprehensive, aggressive program to educate the general public of (a) the existence and provisions of the Mississippi Vulnerable Persons Act of 1986; (b) the duty to report the abuse, neglect or exploitation of any and all vulnerable persons, and (c) criminal sanctions associated with violations of the Mississippi Vulnerable Persons Act.

SECTION 18. Section 43-47-35, Mississippi Code of 1972, is amended as follows:

43-47-35. It is the intent of the Legislature that the department shall implement the provisions of this chapter in the event federal funding is made available therefor under a social services block grant, or in the event any other federal or state funding is made available to provide for protective services for vulnerable persons.

SECTION 19. Section 43-47-37, Mississippi Code of 1972, is amended as follows:

43-47-37. (1) Any person who, within the scope of his employment at a care facility as defined in Section 43-47-5(b), or in his professional or personal capacity, has knowledge of or reasonable cause to believe that any patient or resident of a care facility has been the victim of abuse, neglect or exploitation shall report immediately the abuse, neglect or exploitation.

(2) The reporting of conduct as required by subsection (1) of this section shall be made:

(a) By any employee of any home health agency, orally or telephonically, within twenty-four (24) hours of discovery, excluding Saturdays, Sundays and legal holidays, to the department and the Medicaid Fraud Control Unit of the Attorney General's office.

(b) By a home health agency, in writing within seventy-two (72) hours of discovery to the department and the Medicaid Fraud Control Unit. Upon initial review, the Medicaid Fraud Control Unit shall make a determination whether or not the person suspected of committing the reported abuse, neglect or exploitation was an employee of the home health agency. If so, the Medicaid Fraud Control Unit shall determine whether there is substantial potential for criminal prosecution, and upon a positive determination, shall investigate and prosecute the complaint or refer it to an appropriate criminal investigative or prosecutive authority. If the alleged perpetrator is not an employee of the home health agency, the department shall investigate and process the complaint or refer it to an appropriate investigative or prosecutive authority.

(c) By all other care facilities, orally or telephonically, within twenty-four (24) hours of discovery, excluding Saturdays, Sundays and legal holidays, to the State Department of Health and the Medicaid Fraud Control Unit of the Attorney General's office.

(d) By all other care facilities, in writing, within seventy-two (72) hours of the discovery, to the State Department of Health and the Medicaid Fraud Control Unit. If, upon initial review by the State Department of Health and the Medicaid Fraud Control Unit, a determination is made that there is substantial potential for criminal prosecution, the unit will investigate and prosecute the complaint or refer it to an appropriate criminal investigative or prosecutive authority.

(3) The contents of the reports required by subsections (1) and (2) of this section shall contain the following information unless the information is unobtainable by the person reporting:

(a) The name, address, telephone number, occupation and employer's address and telephone number of the person reporting;

(b) The name and address of the patient or resident who is believed to be the victim of abuse or exploitation;

(c) The details, observations and beliefs concerning the incident;

(d) Any statements relating to incident made by the patient or resident;

(e) The date, time and place of the incident;

(f) The name of any individual(s) believed to have knowledge of the incident;

(g) The name of the individual(s) believed to be responsible for the incident and their connection to the patient or resident; and

(h) Such other information that may be required by the State Department of Health and/or the Medicaid Fraud Control Unit, as requested.

(4) Any other individual who has knowledge of or reasonable cause to believe that any patient or resident of a care facility has been the victim of abuse, exploitation or any other criminal offense may make a report to the State Department of Health and the Medicaid Fraud Control Unit.

(5) (a) Any individual who, in good faith, makes a report as provided in this section or who testifies in an official proceeding regarding matters arising out of this section shall be immune from all criminal and civil liability. The immunity granted under this subsection shall not apply to any suspect or perpetrator of abuse, neglect or exploitation of any vulnerable person, or of any other criminal act under any statute of this

state or municipal ordinance defining any act as a crime or misdemeanor.

(b) No person shall terminate from employment, demote, reject for promotion or otherwise sanction, punish or retaliate against any individual who, in good faith, makes a report as provided in this section or who testifies in any official proceeding regarding matters arising out of this section.

(6) Any care facility that complies in good faith with the requirements of this section to report the abuse or exploitation of a patient or resident in the care facility shall not be sanctioned by the State Department of Health for the occurrence of such abuse or exploitation if the care facility demonstrates that it adequately trained its employees and that the abuse or exploitation was caused by factors beyond the control of the care facility.

(7) Every person who knowingly fails to make the report as required by subsections (1), (2) and (3) of this section or attempts to induce another, by threat or otherwise, to fail to make a report as required by subsections (1), (2) and (3) of this section shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of not exceeding Five Hundred Dollars (\$500.00), or by imprisonment in the county jail for not more than six (6) months, or both such fine and imprisonment.

(8) Copies of Sections 43-47-7 and 43-47-37 shall be posted prominently in every health care facility.

(9) If, after initial inquiry or investigation, the Medicaid Fraud Control Unit determines that there is reasonable cause to believe that an employee of a home health agency has abused, neglected or exploited a vulnerable person, the unit shall notify the Mississippi State Department of Health of the alleged abuse, neglect or exploitation.

(10) Upon a judicial determination of evidence that an employee of a care facility has abused, neglected or exploited a

vulnerable person, the appropriate investigative agency shall immediately provide the following information to the central registry: name, address, birth date, social security number of perpetrator; type of abuse, neglect and or exploitation; name, address, birth date, social security number of victim; and date of incident and report.

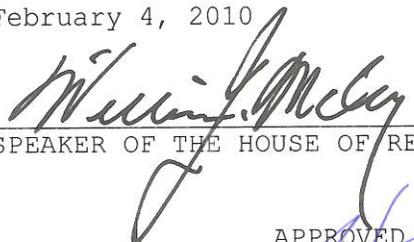
SECTION 20. Section 43-47-39, Mississippi Code of 1972, is amended as follows:

43-47-39. (1) There is created in the State Treasury a special fund to be known as the Vulnerable Persons Training, Investigation and Prosecution Trust Fund. The purpose of the fund shall be to provide funding for the Vulnerable Persons Unit in the Office of the Attorney General to assist in the training of law enforcement officers, judges, district attorneys, state agencies and investigators at the Department of Human Services with regard to issues arising under the Vulnerable Persons Act, and to provide funding for the Vulnerable Persons Unit in the Office of the Attorney General to assist in the investigation and prosecution of statewide offenders who abuse, neglect or exploit vulnerable persons. The fund shall be a continuing fund, not subject to fiscal-year limitations.

(2) Funding shall be provided by assessments collected from violations set out in Section 99-19-73.

SECTION 21. This act shall take effect and be in force from and after July 1, 2010.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 4, 2010



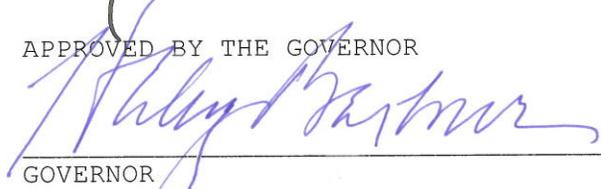
SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 4, 2010



PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR



GOVERNOR

3/15/10

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