

By: Huggins

To: Public Health and
Welfare;
Appropriations

SENATE BILL NO. 2638

1 AN ACT TO AMEND SECTION 43-47-7, MISSISSIPPI CODE OF 1972, TO
2 ADD LICENSED MEDICAL PERSONNEL AND OTHER ENTITIES TO THE
3 ENUMERATION OF MANDATED REPORTERS OF ABUSE, NEGLECT AND
4 EXPLOITATION UNDER THE VULNERABLE ADULTS ACT AND TO PRESCRIBE
5 CRIMINAL PENALTIES FOR FAILING TO MAKE SUCH REQUIRED REPORTS, TO
6 PROVIDE THAT ADULT CENTRAL REGISTRY CRIMINAL BACKGROUND CHECKS
7 SHALL BE MANDATORY ON EMPLOYEES, PROSPECTIVE EMPLOYEES, VOLUNTEERS
8 AND PROSPECTIVE VOLUNTEERS OF ADULT CARE FACILITIES UNDER THE
9 VULNERABLE ADULTS ACT AND TO PROVIDE FOR THE CONFIDENTIALITY OF
10 SUCH REPORTS BY THE DEPARTMENT OF HUMAN SERVICES; TO AMEND SECTION
11 43-47-9, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A COURT MAY
12 AUTHORIZE THE EVALUATION OF AN ABUSED ADULT UPON SHOWING OF
13 PROBABLE CAUSE, INCLUDING AN EVALUATION OF THE FINANCIAL RECORDS
14 OF THE VULNERABLE ADULT; TO AMEND SECTION 43-11-13, MISSISSIPPI
15 CODE OF 1972, TO DIRECT THE STATE DEPARTMENT OF HEALTH TO REQUIRE
16 ALL LICENSED NURSING FACILITIES TO CONDUCT CRIMINAL RECORD
17 BACKGROUND CHECKS AND ADULT CENTRAL REGISTRY CHECKS ON EMPLOYEES,
18 PROSPECTIVE EMPLOYEES AND VOLUNTEERS, TO PROVIDE IMMUNITY AND TO
19 AUTHORIZE THE DEPARTMENT TO CHARGE THE LICENSEE A FEE FOR SUCH
20 CRIMINAL RECORD CHECKS; AND FOR RELATED PURPOSES.

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

22 SECTION 1. Section 43-47-7, Mississippi Code of 1972, is
23 amended as follows:[CRG1]

24 43-47-7. (1) (a) Except as otherwise provided by Section
25 43-47-37 for vulnerable adults in care facilities, any person
26 including, but not limited to, the following, who knows or
27 suspects that a vulnerable adult has been or is being abused,
28 neglected or exploited shall immediately report such knowledge or
29 suspicion to the Mississippi Department of Human Services * * *:

30 (i) Physician, osteopathic physician, medical
31 examiner, chiropractic physician, nurse or hospital personnel
32 engaged in the admission, examination, care or treatment of
33 disabled adults or elderly persons;

34 (ii) Health professional or mental health
35 professional other than one listed in subsection (1);

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

38 (iv) Nursing home staff, assisted living facility
39 staff, adult day care center staff, adult family-care home staff,
40 social worker or other professional adult care, residential or
41 institutional staff;

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

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

46 (vii) Bank, savings and loan or credit union
47 officer, trustee or employee.

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

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

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

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

58 (iv) Name address and telephone number of the
59 caregiver of the vulnerable adult, if different from the alleged
60 perpetrator.

61 (v) Description of the physical or psychological
62 injuries sustained.

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

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

68 In addition to above, any person or entity holding or

69 required to hold a license as specified in Title 73, Professions
70 and Vocations, of the Mississippi, shall be required to give his,
71 her or its name, address and telephone number in the report of the
72 alleged abuse, neglect or exploitation.

73 (c) The department or its designees shall report to an
74 appropriate criminal investigative or prosecutive authority any
75 person required by this section to report or who fails to comply
76 with this section. A person who fails to make a report as
77 required under this subsection or who, because of the
78 circumstances, should have known or suspected that a vulnerable
79 adult suffers from abandonment, exploitation, abuse, neglect or
80 self-neglect but who knowingly fails to comply with this section
81 shall, upon conviction, be guilty of a misdemeanor and shall be
82 punished by a fine of not exceeding Five Thousand Dollars
83 (\$5,000.00), or by imprisonment in the county jail for not more
84 than six (6) months, or both such fine and imprisonment. If a
85 person convicted under this section is a member of a profession or
86 occupation that is licensed, certified or regulated by the state,
87 the court shall notify the appropriate licensing, certifying or
88 regulating entity of the conviction.

89 (2) Reports received by law enforcement authorities or other
90 agencies shall be forwarded immediately to the Department of Human
91 Services or the county welfare department.

92 (3) The report may be made orally or in writing, but where
93 made orally, it shall be followed up by a written report.

94 (4) Anyone who makes a report pursuant to this section, who
95 testifies or participates in any judicial proceedings arising from
96 the report or who participates in a required investigation or
97 evaluation shall be presumed to be acting in good faith and in so
98 doing shall be immune from liability, civil or criminal, that
99 might otherwise be incurred or imposed.

100 (5) A person who intentionally makes a false report under
101 the provisions of this section may be found liable in a civil suit

102 for any actual damages suffered by the person or persons so
103 reported and for any punitive damages set by the court or jury.

104 (6) The Executive Director of the Department of Human
105 Services shall establish a statewide central register of reports
106 made pursuant to this section. The central register shall be
107 capable of receiving reports of vulnerable adults in need of
108 protective services seven (7) days a week, twenty-four (24) hours
109 a day. To effectuate this purpose the executive director shall
110 establish a single toll-free statewide phone number that all
111 persons may use to report vulnerable adults in need of protective
112 services, and that all persons authorized by subsection (7) of
113 this section may use for determining the existence of prior
114 reports in order to evaluate the condition or circumstances of the
115 vulnerable adult before them. Such oral reports and evidence of
116 previous reports shall be transmitted to the appropriate county
117 welfare department. The central register shall include, but not
118 be limited to, the following information: the name and identifying
119 information of the individual reported, the county welfare
120 department responsible for the investigation of each such report,
121 the names, affiliations and purposes of any person requesting or
122 receiving information which the executive director believes might
123 be helpful in the furtherance of the purposes of this chapter.

124 Upon request, a vulnerable adult who is the subject of a
125 report or, if the vulnerable adult is legally incapacitated, the
126 guardian or guardian ad litem of the vulnerable adult shall be
127 entitled to receive a copy of all information contained in the
128 registry pertaining to his or her case.

129 Each person, business, organization or other entity, whether
130 public or private, operated for profit, operated for nonprofit or
131 a voluntary unit of government not responsible for law enforcement
132 providing care, supervision or treatment of adults or vulnerable
133 persons shall conduct criminal records and adult central registry
134 checks on each employee, prospective employee, volunteer or

135 prospective volunteer of the entity who provides, and/or would
136 provide services to adults or vulnerable persons.

137 The department shall not release data that would be harmful
138 or detrimental to the vulnerable adult or that would identify or
139 locate a person who, in good faith, made a report or cooperated in
140 a subsequent investigation unless ordered to do so by a court of
141 competent jurisdiction.

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

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

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

151 (c) Any person who is the subject of the report;

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

155 (e) A district attorney or other law enforcement
156 official.

157 Notwithstanding subsection 7(b) hereof, the department may
158 not disclose a report of the abandonment, exploitation, abuse,
159 neglect or self-neglect of a vulnerable adult to the vulnerable
160 adult's guardian, attorney-in-fact, surrogate decision maker, or
161 care giver who is a perpetrator or alleged perpetrator of the
162 abandonment, exploitation, abuse or neglect of the vulnerable
163 adult.

164 Any person given access to the names or other information
165 identifying the subject of the report, except the subject of the
166 report, shall not divulge or make public such identifying
167 information unless he is a district attorney or other law

168 enforcement official and the purpose is to initiate court action.

169 Any person who willfully permits the release of any data or
170 information obtained pursuant to this section to persons or
171 agencies not permitted to such access by this section shall be
172 guilty of a misdemeanor.

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

178 SECTION 2. Section 43-47-9, Mississippi Code of 1972, is
179 amended as follows:[CRG2]

180 43-47-9. (1) Upon receipt of a report pursuant to Section
181 43-47-7 that a vulnerable adult is in need of protective services,
182 the department shall initiate an investigation and/or evaluation
183 within forty-eight (48) hours to determine whether the vulnerable
184 adult is in need of protective services and what services are
185 needed. The evaluation shall include any necessary visits and
186 interviews with the adult, and if appropriate, with the alleged
187 perpetrator of the dependent adult abuse and with any person
188 believed to have knowledge of the circumstances of the case. When
189 a caretaker of a vulnerable adult refuses to allow the department
190 reasonable access to conduct an investigation to determine if the
191 vulnerable adult is in need of protective services, the department
192 may petition the court for an order for injunctive relief
193 enjoining the caretaker from interfering with the investigation.
194 The department may provide necessary protective services and may
195 establish a sliding fee schedule for those persons able to pay a
196 portion of the protective services.

197 (2) The staff and physicians of local health departments,
198 mental health clinics and other public or private agencies,
199 including law enforcement agencies, shall cooperate fully with the
200 department in the performance of its duties. These duties include

201 immediate, in-residence evaluations and medical examinations and
202 treatment where the department deems it necessary. Provided,
203 however, that upon receipt of a report of abuse, neglect or
204 exploitation of a vulnerable adult confined in a licensed hospital
205 or licensed nursing home facility in the state, the department
206 shall immediately refer this report to the proper authority at the
207 State Department of Health for investigation under Section
208 43-47-37.

209 Upon a showing of probable cause that an adult has been
210 abused, a court may authorize a person, also authorized by the
211 department, to make an evaluation, to enter the residence of, and
212 to examine the dependent adult. Upon a showing of probable cause
213 that a dependent adult has been financially exploited, a court may
214 authorize a person, also authorized by the department, to make an
215 evaluation, and to gain access to the financial records of the
216 dependent adult.

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

221 SECTION 3. Section 43-11-13, Mississippi Code of 1972, is
222 amended as follows:[CRG3]

223 43-11-13. (1) The licensing agency shall adopt, amend,
224 promulgate and enforce such rules, regulations and standards,
225 including classifications, with respect to all institutions for
226 the aged or infirm to be licensed hereunder as may be designed to
227 further the accomplishment of the purpose of this chapter in
228 promoting adequate care of individuals in such institutions in the
229 interest of public health, safety and welfare. Such rules,
230 regulations and standards shall be adopted and promulgated by the
231 licensing agency and shall be recorded and indexed in a book to be
232 maintained by the licensing agency in its main office in the State
233 of Mississippi, entitled "Rules, Regulations and Minimum Standards

234 for Institutions for the Aged or Infirm" and said book shall be
235 open and available to all institutions for the aged or infirm and
236 the public generally at all reasonable times. Upon the adoption
237 of such rules, regulations and standards, the licensing agency
238 shall mail copies thereof to all such institutions in the state
239 which have filed with said agency their names and addresses for
240 this purpose, but the failure to mail the same or the failure of
241 the institutions to receive the same shall in nowise affect the
242 validity thereof. Said rules, regulations and standards may be
243 amended by the licensing agency from time to time as necessary to
244 promote the health, safety and welfare of persons living in said
245 institutions.

246 (2) The licensee shall keep posted in a conspicuous place on
247 the licensed premises all current rules, regulations and minimum
248 standards applicable to fire protection measures as adopted by the
249 licensing agency. The licensee shall furnish to the licensing
250 agency at least once each six (6) months a certificate of approval
251 and inspection by state or local fire authorities. Failure to
252 comply with state laws and/or municipal ordinances and current
253 rules, regulations and minimum standards as adopted by the
254 licensing agency, relative to fire prevention measures, shall be
255 prima facie evidence for revocation of license.

256 (3) The State Board of Health shall promulgate rules and
257 regulations restricting the storage, quantity and classes of drugs
258 allowed in personal care homes. Residents requiring
259 administration of Schedule II Narcotics as defined in the Uniform
260 Controlled Substances Law may be admitted to a personal care home.
261 Schedule drugs may only be allowed in a personal care home if
262 they are administered or stored utilizing proper procedures under
263 the direct supervision of a licensed physician or nurse.

264 (4) The licensing agency shall require that all licensees
265 conduct criminal records background checks and adult central
266 registry checks on each employee, prospective employee, volunteer

267 or prospective volunteer who provides or would provide personal
268 care or have personal contact with any resident of an institution
269 for the aged or infirm. In order to conduct the criminal records
270 background check, each employee, prospective employee, volunteer
271 or prospective volunteer shall be fingerprinted. If no
272 disqualifying record is identified at the state level, the
273 fingerprints shall be forwarded by the Department of Public Safety
274 to the Federal Bureau of Investigation for a national criminal
275 history record check.

276 (5) The licensing agency and its agents, officers,
277 employees, attorneys and representatives shall not be held civilly
278 liable for any findings, recommendation or actions taken pursuant
279 to this section.

280 (6) All fees incurred in compliance with this section shall
281 be borne by the institution for the aged or infirm. The licensing
282 agency is hereby authorized to charge a fee which shall include
283 the amount required by the Federal Bureau of Investigation for the
284 national criminal history record check and any necessary costs
285 incurred by the licensing agency for the handling and
286 administration of the criminal history background checks

287 SECTION 4. This act shall take effect and be in force from
288 and after July 1, 2000.