SENATE BILL NO. 2657

AN ACT TO PROVIDE A CAUSE OF ACTION FOR ELDERLY PERSONS OR DISABLED ADULTS TO RECOVER FOR ABUSE OR NEGLECT, SEXUAL ABUSE OR EXPLOITATION OR THEFT; TO PROVIDE THAT THE BURDEN OF PROOF FOR SUCH ACTION SHALL BE BY CLEAR AND CONVINCING EVIDENCE; TO PROVIDE THAT ATTORNEYS' FEES SHALL BE RECOVERABLE ONLY IN CASES OF INTENTIONAL, FRAUDULENT OR MALICIOUS CONDUCT BY THE DEFENDANT; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) As used in this section, unless the context otherwise requires:

(a) "Capacity to consent" means the mental ability to make a rational decision, which includes the ability to perceive, appreciate all relevant facts and to reach a rational judgment upon such facts; or to make and carry out reasonable decisions concerning the person or the person's resources; or to protect the person from neglect, or hazardous or abusive situations without assistance;

(b) "Disabled adult" means a person who is eighteen (18) years of age or older and who meets one (1) of the following:

(i) Has some impairment of body or mind that makes the person unfit to work at any substantially remunerative employment;

(ii) Lacks the capacity to consent;

(iii) Has been certified as permanently and totally disabled by an agency of this state or the United States that has the function of so classifying persons; or

(iv) Has been found to be incompetent by a court of proper jurisdiction; and
(v) Has been found to be incompetent by a court of proper jurisdiction; and

(c) "Elderly person" or "elder" means a person who is sixty (60) years of age or older who has some mental or physical dysfunctioning, including any resulting from age.

(2) In addition to other remedies provided by law, an elderly person or disabled adult in that person's own right, or by conservator or next friend, shall have a right of recovery in a civil action for compensatory damages for abuse or neglect, sexual abuse or exploitation as defined in this section or for theft of such person's or adult's money or property whether by fraud, deceit, coercion or otherwise. Such right of action against a wrongdoer shall not abate or be extinguished by the death of the elderly person or disabled adult, but shall pass, unless the alleged wrongdoer is a family member, in which case the cause of action shall pass to the victim's personal representative.

(3) Jurisdiction for such action shall be in the circuit court where the elderly person or disabled adult may reside or where the actions occurred.

(4) Damages shall include compensatory damages and costs where it is proven by clear and convincing evidence that a defendant is liable for abuse or neglect, sexual abuse or exploitation as defined in this section or for theft of such elderly person's or disabled adult's money or property whether by fraud, deceit, coercion or otherwise. Costs shall include reasonable expenses. As part of any judgment, the court may declare void and unenforceable any marriage proven to have been entered into as part of a scheme to commit abuse or neglect, sexual abuse or exploitation as defined in this section or theft of such elderly person's or disabled adult's money or property whether by fraud, deceit, coercion or otherwise. In addition, if it is proven upon clear and convincing evidence that abuse or neglect, sexual abuse or exploitation or theft resulted from
intentional, fraudulent or malicious conduct by the defendant, a
claimant shall be entitled to recover reasonable attorney's fees.

(5) In addition to the damages described in (4), a defendant
may also be found liable for punitive damages in accordance with
applicable common law standards.

(6) Nothing in this section shall be construed as requiring
the Mississippi Department of Human Services to initiate any
proceedings pursuant to this section or to act on behalf of any
elderly person or disabled adult subject to this section.

SECTION 2. This act shall take effect and be in force from
and after July 1, 2001.