

By: Senator(s) Nunnelee

To:

SENATE BILL NO. 2657

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

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

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

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

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

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

23 (ii) Lacks the capacity to consent;

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

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

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

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

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

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

48 (4) Damages shall include compensatory damages and costs
49 where it is proven by clear and convincing evidence that a
50 defendant is liable for abuse or neglect, sexual abuse or
51 exploitation as defined in this section or for theft of such
52 elderly person's or disabled adult's money or property whether by
53 fraud, deceit, coercion or otherwise. Costs shall include
54 reasonable expenses. As part of any judgment, the court may
55 declare void and unenforceable any marriage proven to have been
56 entered into as part of a scheme to commit abuse or neglect,
57 sexual abuse or exploitation as defined in this section or theft
58 of such elderly person's or disabled adult's money or property
59 whether by fraud, deceit, coercion or otherwise. In addition, if
60 it is proven upon clear and convincing evidence that abuse or
61 neglect, sexual abuse or exploitation or theft resulted from

62 intentional, fraudulent or malicious conduct by the defendant, a
63 claimant shall be entitled to recover reasonable attorney's fees.

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

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

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