SENATE BILL NO. 2427
(As Sent to Governor)

AN ACT TO AMEND SECTION 43-47-5, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF EXPLOITATION UNDER THE VULNERABLE ADULTS ACT; TO AMEND SECTION 43-47-19, MISSISSIPPI CODE OF 1972, TO REVISE THE PENALTY FOR THE EXPLOITATION OF A VULNERABLE ADULT; TO CREATE SECTION 43-47-8, MISSISSIPPI CODE OF 1972, TO REQUIRE REPORTING OF THE RECEIPT OR ACCEPTANCE OF ANY MONEY, GIFT OR THING OF VALUE BY CARE FACILITY EMPLOYEES; TO REQUIRE THE CARE FACILITY ADMINISTRATOR TO ADHERE TO RECORD MAINTENANCE AND NOTICE PROVISIONS; AND FOR RELATED PURPOSES.

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

SECTION 1. 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 adult, the unreasonable confinement of a vulnerable adult, or the willful deprivation by a caretaker of services which are necessary to maintain the mental and physical health of a vulnerable adult. "Abuse" includes sexual abuse. "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. "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.; and
(ii) Any long-term care facility as defined in Section 43-7-55; and

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

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

(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 adult, 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 adult resides or is located.

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

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

(i) A vulnerable adult is in substantial danger of serious harm, death or irreparable harm if protective services are not provided immediately;
(ii) The vulnerable adult 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 adult's vital functions and without which there is reasonable belief that the vulnerable adult would suffer irreparable harm or death, and may include taking physical custody of the adult.

(h) "Essential services" means those social work, medical, psychiatric or legal services necessary to safeguard a vulnerable adult'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 adult 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 adult or his resources for another's profit or advantage, with or without the consent of the vulnerable adult, 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 adult, 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 adult 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 adult with the food, clothing, shelter, health care, supervision or other services which a reasonably prudent person would do to maintain the vulnerable adult'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 adult 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 adult.

(m) "Vulnerable adult" means a person eighteen (18) years of age or older or any minor whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, physical or developmental disability or dysfunction, or brain damage or the infirmities of aging. The term "vulnerable adult" 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 2. 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 adult.

(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 adult, 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 adult, 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 adult 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 adult shall be guilty of felonious abuse or battery, or both, of a vulnerable adult 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 3. The following shall be codified as Section
43-47-8, Mississippi Code of 1972:

43-47-8. (1) Any person employed by a care facility or
having a professional relationship with a care facility who
receives or accepts a gift, money or thing of value in excess of
Twenty-five Dollars ($25.00) from a patient or resident of the
care facility shall make a written report of the acceptance or
receipt of the gift, money or thing of value to the administrator,
director or other named highest ranking management employee at the
care facility. The report shall be delivered within twenty-four
(24) hours of the receipt or acceptance and shall contain the
following information:

(a) Name of the person receiving or accepting the
money, gift or thing of value;
(b) Name of the patient or resident who gave the money, gift or thing of value;
(c) A detailed description of the gift or thing of value or the amount of money accepted or received; and
(d) Any other information required by the care facility.

(2) The written report shall be maintained by the care facility as part of the permanent record of the patient or resident, and a copy of the report shall be delivered by the administrator, director or other named highest ranking management employee to the patient's or resident's responsible party, or to the next of kin or other contact person identified in the patient's or resident's file if no responsible party has been designated.
(3) Any person who fails to make or deliver a report as required under subsection (1) of this section; or fails to retain a report as part of the patient's or resident's permanent record as required by subsection (2) of this section; or fails to deliver a copy of the report to the patient's or resident's responsible party or other person as required by subsection (2) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed Five Hundred Dollars ($500.00) or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

(4) Nothing in this section shall preclude legal proceedings against any person who steals, embezzles or misappropriates the property of a patient or resident or who otherwise exploits such patient or resident.

(5) The care facility shall not be held civilly liable for an employee's failure to make or deliver a report of an incident as required by this section.

SECTION 4. This act shall take effect and be in force from and after July 1, 2003.