

By: Senator(s) Tollison

To: Public Health and Welfare

SENATE BILL NO. 2427
(As Sent to Governor)

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

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

11 **SECTION 1.** Section 43-47-5, Mississippi Code of 1972, is
12 amended as follows:

13 43-47-5. For the purposes of this chapter, the following
14 words shall have the meanings ascribed herein unless the context
15 otherwise requires:

16 (a) "Abuse" means the willful or nonaccidental
17 infliction of physical pain, injury or mental anguish on a
18 vulnerable adult, the unreasonable confinement of a vulnerable
19 adult, or the willful deprivation by a caretaker of services which
20 are necessary to maintain the mental and physical health of a
21 vulnerable adult. "Abuse" includes sexual abuse. "Abuse" shall
22 not mean conduct which is a part of the treatment and care of, and
23 in furtherance of the health and safety of a patient or resident
24 of a care facility. "Abuse" includes, but is not limited to, a
25 single incident.

26 (b) "Care facility" means:

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



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

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

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

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

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

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

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

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

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

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



63 (ii) The vulnerable adult is unable to consent to
64 services;

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

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

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

74 (h) "Essential services" means those social work,
75 medical, psychiatric or legal services necessary to safeguard a
76 vulnerable adult's rights and resources and to maintain the
77 physical or mental well-being of the person. These services shall
78 include, but not be limited to, the provision of medical care for
79 physical and mental health needs, assistance in personal hygiene,
80 food, clothing, adequately heated and ventilated shelter,
81 protection from health and safety hazards, protection from
82 physical mistreatment and protection from exploitation. The words
83 "essential services" shall not include taking a vulnerable adult
84 into physical custody without his consent except as provided for
85 in Section 43-47-15 and as otherwise provided by the general laws
86 of the state.

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

92 (j) "Lacks the capacity to consent" means that a
93 vulnerable adult, because of physical or mental incapacity, lacks
94 sufficient understanding or capacity to make or communicate
95 responsible decisions concerning his person, including, but not



96 limited to, provisions for health care, food, clothing or shelter.
97 This may be reasonably determined by the department in emergency
98 situations; in all other instances, the court shall make the
99 determination following the procedures in Sections 43-47-13 and
100 43-47-15 or as otherwise provided by the general laws of the
101 state.

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

111 (l) "Protective services" means services provided by
112 the state or other government or private organizations, agencies
113 or individuals which are necessary to protect a vulnerable adult
114 from abuse, neglect or exploitation. They shall include, but not
115 be limited to, investigation, evaluation of the need for services
116 and provision of essential services on behalf of a vulnerable
117 adult.

118 (m) "Vulnerable adult" means a person eighteen (18)
119 years of age or older or any minor whose ability to perform the
120 normal activities of daily living or to provide for his or her own
121 care or protection is impaired due to a mental, emotional,
122 physical or developmental disability or dysfunction, or brain
123 damage or the infirmities of aging. The term "vulnerable
124 adult" * * * also includes all residents or patients, regardless
125 of age, in a care facility for the purposes of Sections 43-47-19
126 and 43-47-37 only. The department shall not be prohibited from
127 investigating, and shall have the authority and responsibility to
128 fully investigate, in accordance with the provisions of this



129 chapter, any allegation of abuse, neglect, or exploitation
130 regarding a patient in a care facility, if the alleged abuse,
131 neglect or exploitation occurred at a private residence.

132 **SECTION 2.** Section 43-47-19, Mississippi Code of 1972, is
133 amended as follows:

134 43-47-19. (1) It shall be unlawful for any person to abuse,
135 neglect or exploit any vulnerable adult.

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

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

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



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

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

167 **SECTION 3.** The following shall be codified as Section
168 43-47-8, Mississippi Code of 1972:

169 43-47-8. (1) Any person employed by a care facility or
170 having a professional relationship with a care facility who
171 receives or accepts a gift, money or thing of value in excess of
172 Twenty-five Dollars (\$25.00) from a patient or resident of the
173 care facility shall make a written report of the acceptance or
174 receipt of the gift, money or thing of value to the administrator,
175 director or other named highest ranking management employee at the
176 care facility. The report shall be delivered within twenty-four
177 (24) hours of the receipt or acceptance and shall contain the
178 following information:

179 (a) Name of the person receiving or accepting the
180 money, gift or thing of value;

181 (b) Name of the patient or resident who gave the money,
182 gift or thing of value;

183 (c) A detailed description of the gift or thing of
184 value or the amount of money accepted or received; and

185 (d) Any other information required by the care
186 facility.

187 (2) The written report shall be maintained by the care
188 facility as part of the permanent record of the patient or
189 resident, and a copy of the report shall be delivered by the
190 administrator, director or other named highest ranking management
191 employee to the patient's or resident's responsible party, or to
192 the next of kin or other contact person identified in the
193 patient's or resident's file if no responsible party has been
194 designated.



195 (3) Any person who fails to make or deliver a report as
196 required under subsection (1) of this section; or fails to retain
197 a report as part of the patient's or resident's permanent record
198 as required by subsection (2) of this section; or fails to deliver
199 a copy of the report to the patient's or resident's responsible
200 party or other person as required by subsection (2) of this
201 section shall be guilty of a misdemeanor and, upon conviction
202 thereof, shall be punished by a fine not to exceed Five Hundred
203 Dollars (\$500.00) or by imprisonment in the county jail not to
204 exceed six (6) months, or by both such fine and imprisonment.

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

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

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

