

*****Adopted***
AMENDMENT No. 1 PROPOSED TO**

Senate Bill NO. 2427

By Representative(s) Committee

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

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

9 43-47-5. For the purposes of this chapter, the following
10 words shall have the meanings ascribed herein unless the context
11 otherwise requires:

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

22 (b) "Care facility" means:

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

26 (ii) Any long-term care facility as defined in

27 Section 43-7-55; and

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

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

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

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

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

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

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

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

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

59 (ii) The vulnerable adult is unable to consent to
60 services;

61 (iii) No responsible, able or willing caretaker,

62 if any, is available to consent to emergency services; and

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

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

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

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

88 (j) "Lacks the capacity to consent" means that a
89 vulnerable adult, because of physical or mental incapacity, lacks
90 sufficient understanding or capacity to make or communicate
91 responsible decisions concerning his person, including, but not
92 limited to, provisions for health care, food, clothing or shelter.
93 This may be reasonably determined by the department in emergency
94 situations; in all other instances, the court shall make the
95 determination following the procedures in Sections 43-47-13 and
96 43-47-15 or as otherwise provided by the general laws of the

97 state.

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

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

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

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

130 43-47-19. (1) It shall be unlawful for any person to abuse,
131 neglect or exploit any vulnerable adult.

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

144 (b) Any person who willfully exploits a vulnerable
145 adult, where the value of the exploitation is less than Two
146 Hundred Fifty Dollars (\$250.00), shall be guilty of a misdemeanor
147 and, upon conviction thereof, shall be punished by a fine not to
148 exceed Five Hundred Dollars (\$500.00), or by imprisonment not to
149 exceed six (6) months in the county jail, or by both such fine and
150 imprisonment; where the value of the exploitation is Two Hundred
151 Fifty Dollars (\$250.00) or more, the person who exploits a
152 vulnerable adult shall be guilty of a misdemeanor and, upon
153 conviction thereof, shall be punished by a fine of not to exceed
154 Five Thousand Dollars (\$5,000.00), or by imprisonment not to
155 exceed one (1) year in the county jail, or by both such fine and
156 imprisonment.

157 (3) Any person who willfully inflicts physical pain or
158 injury upon a vulnerable adult shall be guilty of felonious abuse
159 or battery or both of a vulnerable adult and, upon conviction
160 thereof, may be punished by imprisonment in the State Penitentiary
161 for not more than twenty (20) years.

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

165 **SECTION 3.** This act shall take effect and be in force from
166 and after July 1, 2003.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 43-47-5, MISSISSIPPI CODE OF 1972, TO
2 REVERSE THE DEFINITION OF EXPLOITATION UNDER THE VULNERABLE ADULTS
3 ACT; TO AMEND SECTION 43-47-19, MISSISSIPPI CODE OF 1972, TO
4 REVERSE THE PENALTY FOR THE EXPLOITATION OF A VULNERABLE ADULT; AND
5 FOR RELATED PURPOSES.