

By: Representative Upshaw

To: Public Health and Human Services; Judiciary A

HOUSE BILL NO. 316

1 AN ACT TO AMEND SECTION 43-47-7, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE ABSOLUTE IMMUNITY FOR PERSONS REPORTING ABUSE OF
3 VULNERABLE ADULTS ABSENT FRAUD; AND FOR RELATED PURPOSES.

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

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

7 43-47-7. (1) (a) Except as otherwise provided by Section
8 43-47-37 for vulnerable adults in care facilities, any person
9 including, but not limited to, the following, who knows or
10 suspects that a vulnerable adult has been or is being abused,
11 neglected or exploited shall immediately report such knowledge or
12 suspicion to the Department of Human Services or to the county
13 department of human services where the vulnerable adult is
14 located:

15 (i) Attorney, physician, osteopathic physician,
16 medical examiner, chiropractor or nurse engaged in the admission,
17 examination, care or treatment of vulnerable adults;

18 (ii) Health professional or mental health
19 professional other than one listed in subparagraph (i);

20 (iii) Practitioner who relies solely on spiritual
21 means for healing;

22 (iv) Social worker, child protection specialist or
23 other professional adult care, residential or institutional staff;

24 (v) State, county or municipal criminal justice
25 employee or law enforcement officer;

26 (vi) Human rights advocacy committee or long-term
27 care ombudsman council member; or

28 (vii) Accountant, stockbroker, financial advisor
29 or consultant, insurance agent or consultant, investment advisor
30 or consultant, financial planner, or any officer or employee of a
31 bank, savings and loan, credit union or any other financial
32 service provider.

33 (b) To the extent possible, a report made pursuant to
34 paragraph (a) must contain, but need not be limited to, the
35 following information:

36 (i) Name, age, race, sex, physical description and
37 location of each vulnerable adult alleged to have been abused,
38 neglected or exploited.

39 (ii) Names, addresses and telephone numbers of the
40 vulnerable adult's family members.

41 (iii) Name, address and telephone number of each
42 alleged perpetrator.

43 (iv) Name, address and telephone number of the
44 caregiver of the vulnerable adult, if different from the alleged
45 perpetrator.

46 (v) Description of the neglect, exploitation,
47 physical or psychological injuries sustained.

48 (vi) Actions taken by the reporter, if any, such
49 as notification of the criminal justice agency.

50 (vii) Any other information available to the
51 reporting person which may establish the cause of abuse, neglect
52 or exploitation that occurred or is occurring.

53 In addition to the above, any person or entity holding or
54 required to hold a license as specified in Title 73, Professions
55 and Vocations, Mississippi Code of 1972, shall be required to give
56 his, her or its name, address and telephone number in the report
57 of the alleged abuse, neglect or exploitation.

58 (c) The department, or its designees, shall report to
59 an appropriate criminal investigative or prosecutive authority any
60 person required by this section to report or who fails to comply

61 with this section. A person who fails to make a report as
62 required under this subsection or who, because of the
63 circumstances, should have known or suspected beyond a reasonable
64 doubt that a vulnerable adult suffers from exploitation, abuse,
65 neglect or self-neglect but who knowingly fails to comply with
66 this section shall, upon conviction, be guilty of a misdemeanor
67 and shall be punished by a fine not exceeding Five Thousand
68 Dollars (\$5,000.00), or by imprisonment in the county jail for not
69 more than six (6) months, or both such fine and imprisonment.
70 However, for purposes of this subsection (1), any recognized legal
71 financial transaction shall not be considered cause to report the
72 knowledge or suspicion of the financial exploitation of a
73 vulnerable adult. If a person convicted under this section is a
74 member of a profession or occupation that is licensed, certified
75 or regulated by the state, the court shall notify the appropriate
76 licensing, certifying or regulating entity of the conviction.

77 (2) Reports received by law enforcement authorities or other
78 agencies shall be forwarded immediately to the Department of Human
79 Services or the county department of human services. The
80 Department of Human Services shall investigate the reported abuse,
81 neglect or exploitation immediately and shall file a preliminary
82 report of its findings with the Office of the Attorney General
83 within forty-eight (48) hours, and shall make additional reports
84 as new information or evidence becomes available. The Department
85 of Human Services, upon request, shall forward a statement to the
86 person making the initial report required by this section as to
87 what action is being taken, if any.

88 (3) The report may be made orally or in writing, but where
89 made orally, it shall be followed up by a written report. A
90 person who fails to report or to otherwise comply with this
91 section, as provided herein, shall have no civil or criminal
92 liability, other than that expressly provided for in this section,

93 to any person or entity in connection with any failure to report
94 or to otherwise comply with the requirements of this section.

95 (4) Anyone who makes a report required by this section or
96 who testifies or participates in any judicial proceedings arising
97 from the report or who participates in a required investigation or
98 evaluation shall be presumed to be acting in good faith and in so
99 doing shall be absolutely immune from liability, civil or
100 criminal, that might otherwise be incurred or imposed absent fraud
101 in making such report. However, the immunity provided under this
102 subsection shall not apply to any suspect or perpetrator of any
103 abuse, neglect or exploitation.

104 (5) A person who intentionally makes a false report under
105 the provisions of this section may be found liable in a civil suit
106 for any actual damages suffered by the person or persons so
107 reported and for any punitive damages set by the court or jury.

108 (6) The Executive Director of Human Services shall establish
109 a statewide central register of reports made pursuant to this
110 section. The central register shall be capable of receiving
111 reports of vulnerable adults in need of protective services seven
112 (7) days a week, twenty-four (24) hours a day. To effectuate this
113 purpose, the executive director shall establish a single toll-free
114 statewide phone number that all persons may use to report
115 vulnerable adults in need of protective services, and that all
116 persons authorized by subsection (7) of this section may use for
117 determining the existence of prior reports in order to evaluate
118 the condition or circumstances of the vulnerable adult before
119 them. Such oral reports and evidence of previous reports shall be
120 transmitted to the appropriate county department of human
121 services. The central register shall include, but not be limited
122 to, the following information: the name and identifying
123 information of the individual reported, the county department of
124 human services responsible for the investigation of each such
125 report, the names, affiliations and purposes of any person

126 requesting or receiving information which the executive director
127 believes might be helpful in the furtherance of the purposes of
128 this chapter, the name, address, birth date, social security
129 number of the perpetrator of abuse, neglect and/or exploitation,
130 and the type of abuse, neglect and/or exploitation of which there
131 was substantial evidence upon investigation of the report. The
132 central register shall inform the person making reports required
133 under this section of his or her right to request statements from
134 the department as to what action is being taken, if any.

135 Each person, business, organization or other entity, whether
136 public or private, operated for profit, operated for nonprofit or
137 a voluntary unit of government not responsible for law enforcement
138 providing care, supervision or treatment of vulnerable adults
139 shall conduct criminal history records checks on each new employee
140 of the entity who provides, and/or would provide direct patient
141 care or services to adults or vulnerable persons, as provided in
142 Section 43-11-13.

143 The department shall not release data that would be harmful
144 or detrimental to the vulnerable adult or that would identify or
145 locate a person who, in good faith, made a report or cooperated in
146 a subsequent investigation unless ordered to do so by a court of
147 competent jurisdiction.

148 (7) Reports made pursuant to this section, reports written
149 or photographs taken concerning such reports in the possession of
150 the Department of Human Services or the county department of human
151 services shall be confidential and shall only be made available
152 to:

153 (a) A physician who has before him a vulnerable adult
154 whom he reasonably suspects may be abused, neglected or exploited,
155 as defined in Section 43-47-5;

156 (b) A duly authorized agency having the responsibility
157 for the care or supervision of a subject of the report;

158 (c) A grand jury or a court of competent jurisdiction,
159 upon finding that the information in the record is necessary for
160 the determination of charges before the grand jury;

161 (d) A district attorney or other law enforcement
162 official.

163 Notwithstanding the provisions of paragraph (b) of this
164 subsection, the department may not disclose a report of the
165 abandonment, exploitation, abuse, neglect or self-neglect of a
166 vulnerable adult to the vulnerable adult's guardian,
167 attorney-in-fact, surrogate decision maker, or caregiver who is a
168 perpetrator or alleged perpetrator of the abandonment,
169 exploitation, abuse or neglect of the vulnerable adult.

170 Any person given access to the names or other information
171 identifying the subject of the report, except the subject of the
172 report, shall not divulge or make public such identifying
173 information unless he is a district attorney or other law
174 enforcement official and the purpose is to initiate court action.
175 Any person who willfully permits the release of any data or
176 information obtained pursuant to this section to persons or
177 agencies not permitted to such access by this section shall be
178 guilty of a misdemeanor.

179 (8) Upon reasonable cause to believe that a caretaker or
180 other person has abused, neglected or exploited a vulnerable
181 adult, the department shall promptly notify the district attorney
182 of the county in which the vulnerable adult is located and the
183 Office of the Attorney General, except as provided in Section
184 43-47-37(2).

185 **SECTION 2.** This act shall take effect and be in force from
186 and after July 1, 2005.