

By: Representative Mims

To: Judiciary B

HOUSE BILL NO. 608

1 AN ACT TO AMEND SECTION 43-47-5, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF EXPLOITATION IN THE PROVISION OF LAW THAT
3 REGULATE THE VULNERABLE PERSONS ACT; TO AMEND SECTION 43-47-19,
4 MISSISSIPPI CODE OF 1972, TO REVISE THE PENALTIES FOR EXPLOITATION
5 OF A VULNERABLE PERSON; AND FOR RELATED PURPOSES.

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

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 commission of a willful act, or
13 the willful omission of the performance of a duty, which act or
14 omission contributes, tends to contribute to, or results in the
15 infliction of physical pain, injury or mental anguish on or to a
16 vulnerable person, the unreasonable confinement of a vulnerable
17 person, or the willful deprivation by a caretaker of services
18 which are necessary to maintain the mental or physical health of a
19 vulnerable person. "Abuse" includes the sexual abuse delineated



20 in Section 43-47-18. "Abuse" does not mean conduct that is a part
21 of the treatment and care of, and in furtherance of the health and
22 safety of, a patient or resident of a care facility, nor shall it
23 mean a normal caregiving action or appropriate display of
24 affection. "Abuse" includes, but is not limited to, a single
25 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.;

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

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

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.;

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 person, 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 person 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 person is in substantial danger
61 of serious harm, death or irreparable harm if protective services
62 are not provided immediately;

63 (ii) The vulnerable person 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 person's vital functions and without
71 which there is reasonable belief that the vulnerable person would
72 suffer irreparable harm or death, and may include taking physical
73 custody of the person.

74 (h) "Essential services" means those social work,
75 medical, psychiatric or legal services necessary to safeguard a
76 vulnerable person'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 person
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) (i) "Exploitation" means * * *:

88 1. Causing or requiring a vulnerable person
89 to engage in activity or labor which is improper, unlawful, or
90 against the reasonable and rational wishes of the vulnerable
91 person, but shall not include requiring a vulnerable person to
92 participate in an activity or labor which is a part of a written



93 plan of care or which is prescribed or authorized by a licensed
94 physician attending the patient;

95 2. An improper, unlawful, or unauthorized use
96 of the funds, assets, property, power of attorney, guardianship;
97 or

98 3. Causing a vulnerable person to purchase
99 goods or services for the profit or advantage of the seller or
100 another person through: a. undue influence, b. harassment, c.
101 duress, d. force, e. coercion, or f. swindling by overreaching,
102 cheating, or defrauding the vulnerable person through cunning arts
103 or devices that delude the vulnerable person and cause the
104 vulnerable person to lose money or other property.

105 (ii) "Exploitation" includes, but is not limited
106 to, a single incident, and may include actions taken pursuant to a
107 power of attorney.

108 (j) "Illegal use" means any action defined under
109 Mississippi law as a criminal act.

110 (k) "Improper use" means any use without the consent of
111 the vulnerable person, any use with the consent of the vulnerable
112 person if the consent is obtained by undue means, or any use that
113 deprives the vulnerable person of his ability to obtain essential
114 services or a lifestyle to which the vulnerable person has become
115 accustomed and could have otherwise afforded.

116 (l) "Lacks the capacity to consent" means that a
117 vulnerable person, because of physical or mental incapacity, lacks



118 sufficient understanding or capacity to make or communicate
119 responsible decisions concerning his person, including, but not
120 limited to, provisions for health care, food, clothing or shelter.
121 This may be reasonably determined by the department in emergency
122 situations; in all other instances, the court shall make the
123 determination following the procedures in Sections 43-47-13 and
124 43-47-15 or as otherwise provided by the general laws of the
125 state.

126 (m) "Neglect" means either the inability of a
127 vulnerable person who is living alone to provide for himself the
128 food, clothing, shelter, health care or other services which are
129 necessary to maintain his mental or physical health, or failure of
130 a caretaker to supply the vulnerable person with the food,
131 clothing, shelter, health care, supervision or other services
132 which a reasonably prudent person would do to maintain the
133 vulnerable person's mental and physical health. "Neglect"
134 includes, but is not limited to, a single incident.

135 (n) "Protective services" means services provided by
136 the state or other government or private organizations, agencies
137 or individuals which are necessary to protect a vulnerable person
138 from abuse, neglect or exploitation. They shall include, but not
139 be limited to, investigation, evaluation of the need for services
140 and provision of essential services on behalf of a vulnerable
141 person.



142 (o) "Sexual penetration" shall have the meaning
143 ascribed in Section 97-3-97.

144 (p) "Undue means" means the use of deceit, power, or
145 persuasion over a vulnerable person resulting in the vulnerable
146 person being influenced to act otherwise than by his own free will
147 or without adequate attention to the consequences.

148 (q) "Vulnerable person" means a person, whether a minor
149 or adult, whose ability to perform the normal activities of daily
150 living or to provide for his or her own care or protection from
151 abuse, neglect, exploitation or improper sexual contact is
152 impaired due to a mental, emotional, physical or developmental
153 disability or dysfunction, or brain damage or the infirmities of
154 aging. The term "vulnerable person" also includes all residents
155 or patients, regardless of age, in a care facility. The
156 department shall not be prohibited from investigating, and shall
157 have the authority and responsibility to fully investigate, in
158 accordance with the provisions of this chapter, any allegation of
159 abuse, neglect or exploitation regarding a patient in a care
160 facility, if the alleged abuse, neglect or exploitation occurred
161 at a private residence.

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

164 43-47-19. (1) It shall be unlawful for any person to abuse,
165 neglect or exploit any vulnerable person.



166 (2) (a) Any person who willfully commits an act or
167 willfully omits the performance of any duty, which act or omission
168 contributes to, tends to contribute to, or results in neglect,
169 physical pain, injury, mental anguish, unreasonable confinement or
170 deprivation of services which are necessary to maintain the mental
171 or physical health of a vulnerable person, shall be guilty of a
172 misdemeanor and, upon conviction thereof, shall be punished by a
173 fine not to exceed One Thousand Dollars (\$1,000.00) or by
174 imprisonment not to exceed one (1) year in the county jail, or by
175 both such fine and imprisonment. Any accepted medical procedure
176 performed in the usual scope of practice shall not be a violation
177 of this subsection.

178 (b) Any person who willfully exploits a vulnerable
179 person, where the value of the exploitation is less than Two
180 Hundred Fifty Dollars (\$250.00), shall be guilty of a misdemeanor
181 and, upon conviction thereof, shall be punished by a fine not to
182 exceed Five Thousand Dollars (\$5,000.00) or by imprisonment not to
183 exceed one (1) year in the county jail, or by both such fine and
184 imprisonment; where the value of the exploitation is Two Hundred
185 Fifty Dollars (\$250.00) or more, the person who exploits a
186 vulnerable person shall be guilty of a felony and, upon conviction
187 thereof, shall be punished by imprisonment in the custody of the
188 Department of Corrections for not more than ten (10) years.

189 (c) Any person who willfully exploits a vulnerable
190 person by (i) an improper, unlawful, or unauthorized use of such



191 person's funds, assets, property, power of attorney, guardianship;
192 or (ii) by causing a vulnerable person to purchase goods or
193 services for the profit or advantage of the seller or another
194 person through: 1. undue influence, 2. harassment, 3. duress, 4.
195 force, 5. coercion, or 6. swindling by overreaching, cheating, or
196 defrauding the vulnerable person through cunning arts or devices
197 that delude the vulnerable person and cause such person to lose
198 money or other property shall return to the vulnerable person, or
199 to the family of the vulnerable person if such person is deceased,
200 all monies, goods, assets and/or the monetary value of any
201 services or other things of value derived by such unlawful acts.

202 (3) Any person who willfully inflicts physical pain or
203 injury upon a vulnerable person shall be guilty of felonious abuse
204 or battery, or both, of a vulnerable person and, upon conviction
205 thereof, may be punished by imprisonment in the State Penitentiary
206 for not more than twenty (20) years.

207 (4) For any third or subsequent misdemeanor conviction of
208 any person violating any part of this section, the offenses being
209 committed within a period of five (5) years, such person shall be
210 guilty of a felony and shall be sentenced to not less than one (1)
211 year nor more than five (5) years in the custody of the Department
212 of Corrections and shall be fined not less than Two Thousand
213 Dollars (\$2,000.00) nor more than Five Thousand Dollars
214 (\$5,000.00).



215 (5) Nothing contained in this section shall prevent
216 proceedings against a person under any statute of this state or
217 municipal ordinance defining any act as a crime or misdemeanor.

218 **SECTION 3.** This act shall take effect and be in force from
219 and after July 1, 2016.

