HOUSE BILL NO. 608

AN ACT TO AMEND SECTION 43-47-5, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF EXPLOITATION IN THE PROVISION OF LAW THAT REGULATE THE VULNERABLE PERSONS ACT; TO AMEND SECTION 43-47-19, MISSISSIPPI CODE OF 1972, TO REVISE THE PENALTIES FOR EXPLOITATION OF A VULNERABLE PERSON; 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 commission of a willful act, or the willful omission of the performance of a duty, which act or omission contributes, tends to contribute to, or results in the infliction of physical pain, injury or mental anguish on or to a vulnerable person, the unreasonable confinement of a vulnerable person, or the willful deprivation by a caretaker of services which are necessary to maintain the mental or physical health of a vulnerable person. "Abuse" includes the sexual abuse delineated
in Section 43-47-18. "Abuse" does not mean conduct that 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, nor shall it mean a normal caregiving action or appropriate display of affection. "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.;

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

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

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

(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 person, 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 person resides or is located.

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

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

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

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

(h) "Essential services" means those social work, medical, psychiatric or legal services necessary to safeguard a vulnerable person'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 person 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 * * *

1. Causing or requiring a vulnerable person to engage in activity or labor which is improper, unlawful, or against the reasonable and rational wishes of the vulnerable person, but shall not include requiring a vulnerable person to participate in an activity or labor which is a part of a written
plan of care or which is prescribed or authorized by a licensed physician attending the patient;

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

or

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

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

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

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

(l) "Lacks the capacity to consent" means that a vulnerable person, 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.

(m) "Neglect" means either the inability of a

vulnerable person who is living alone to provide for himself the
food, clothing, shelter, health care or other services which are
necessary to maintain his mental or physical health, or failure of
a caretaker to supply the vulnerable person with the food,
clothing, shelter, health care, supervision or other services
which a reasonably prudent person would do to maintain the
vulnerable person's mental and physical health. "Neglect"
includes, but is not limited to, a single incident.

(n) "Protective services" means services provided by

the state or other government or private organizations, agencies
or individuals which are necessary to protect a vulnerable person
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
person.
"Sexual penetration" shall have the meaning ascribed in Section 97-3-97.

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

"Vulnerable person" means a person, whether a minor or adult, whose ability to perform the normal activities of daily living or to provide for his or her own care or protection from abuse, neglect, exploitation or improper sexual contact is impaired due to a mental, emotional, physical or developmental disability or dysfunction, or brain damage or the infirmities of aging. The term "vulnerable person" also includes all residents or patients, regardless of age, in a care facility. 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 person.
(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 neglect,
physical pain, injury, mental anguish, unreasonable confinement or
deprivation of services which are necessary to maintain the mental
or physical health of a vulnerable person, 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
person, 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 person 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.

(c) Any person who willfully exploits a vulnerable
person by (i) an improper, unlawful, or unauthorized use of such
person's funds, assets, property, power of attorney, guardianship; or (ii) by causing a vulnerable person to purchase goods or services for the profit or advantage of the seller or another person through: 1. undue influence, 2. harassment, 3. duress, 4. force, 5. coercion, or 6. swindling by overreaching, cheating, or defrauding the vulnerable person through cunning arts or devices that delude the vulnerable person and cause such person to lose money or other property shall return to the vulnerable person, or to the family of the vulnerable person if such person is deceased, all monies, goods, assets and/or the monetary value of any services or other things of value derived by such unlawful acts.

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

(4) For any third or subsequent misdemeanor conviction of any person violating any part of this section, the offenses being committed within a period of five (5) years, such person shall be guilty of a felony and shall be sentenced to not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections and shall be fined not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00).
(5) 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. This act shall take effect and be in force from and after July 1, 2016.