

By: Representatives Rushing, Miles,  
Reynolds, Hughes, Sykes

To: Judiciary B

HOUSE BILL NO. 753  
(As Passed the House)

1 AN ACT TO AMEND SECTION 43-47-9, MISSISSIPPI CODE OF 1972, TO  
 2 CREATE "NANCY'S LAW," WHICH AUTHORIZES THE DEPARTMENT OF HUMAN  
 3 SERVICES TO RELOCATE OR PROVIDE NEW CARETAKERS FOR VULNERABLE  
 4 PERSONS DURING ANY EVALUATION OR INVESTIGATION REGARDING ABUSE OF  
 5 A VULNERABLE PERSON; TO BRING FORWARD SECTIONS 43-47-11, 43-47-13  
 6 AND 43-47-15, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE  
 7 PROTECTIVE SERVICES PLANS OF VULNERABLE ADULTS WHO HAVE BEEN  
 8 ABUSED OR EXPLOITED; TO AUTHORIZE THE MISSISSIPPI DEPARTMENT OF  
 9 CHILD PROTECTIVE SERVICES TO REQUEST THAT A CRIMINAL JUSTICE  
 10 AGENCY PERFORM A FEDERAL NAME-BASED CRIMINAL HISTORY RECORDS CHECK  
 11 OF EACH ADULT RESIDING IN THE HOME DURING AN EMERGENCY PLACEMENT  
 12 SITUATION WHEN A CHILD MUST BE PLACED IN HOME CARE DUE TO THE  
 13 ABSENCE OF PARENTS OR CUSTODIANS; TO PROVIDE THAT NAME-BASED CHECK  
 14 RESULTS MAY BE PROVIDED TO THE MISSISSIPPI CRIMINAL INFORMATION  
 15 CENTER (MCIC) OF THE DEPARTMENT OF PUBLIC SAFETY, WHICH SHALL THEN  
 16 PROVIDE A COMPLETE SET OF EACH ADULT RESIDENT'S FINGERPRINTS TO  
 17 THE MCIC CENTRAL REPOSITORY FOR THE IMMEDIATE SUBMISSION TO THE  
 18 FBI WITHIN FOURTEEN CALENDAR DAYS FROM THE DATE THE NAME SEARCH  
 19 WAS CONDUCTED; TO PROVIDE THAT THE CENTRAL REPOSITORY SHALL EITHER  
 20 POSITIVELY IDENTIFY THE FINGERPRINT SUBJECT OR FORWARD THE  
 21 FINGERPRINTS TO THE FBI WITHIN FOURTEEN CALENDAR DAYS FROM THE  
 22 DATE THE NAME SEARCH WAS CONDUCTED; AND FOR RELATED PURPOSES.

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

24 **SECTION 1.** Section 43-47-9, Mississippi Code of 1972, is  
 25 amended as follows:

26 43-47-9. (1) (a) Upon receipt of a report pursuant to  
 27 Section 43-47-7 that a vulnerable person is in need of protective  
 28 services, the department shall initiate an investigation and/or



29 evaluation within forty-eight (48) hours if immediate attention is  
30 needed, or within seventy-two (72) hours if the vulnerable person  
31 is not in immediate danger, to determine whether the vulnerable  
32 person is in need of protective services and what services are  
33 needed. The evaluation shall include any necessary visits and  
34 interviews with the person, and if appropriate, with the alleged  
35 perpetrator of the vulnerable person abuse and with any person  
36 believed to have knowledge of the circumstances of the case. \* \* \*

37 (b) When a caretaker of a vulnerable person refuses to allow  
38 the department reasonable access to conduct an investigation to  
39 determine if the vulnerable person is in need of protective  
40 services, the department may petition the court for an emergency  
41 order for injunctive relief to (i) relocate the vulnerable person  
42 to an appropriate care facility if funding exists and prohibit the  
43 alleged perpetrator from having access to the vulnerable person,  
44 or (ii) remove the caretaker, replace such with a new caretaker  
45 that is recommended by the department, and prohibit the alleged  
46 perpetrator from having access to the vulnerable person. This  
47 paragraph (b) shall be known and may be cited as "Nancy's Law."

48 (2) The staff and physicians of local health departments,  
49 mental health clinics and other public or private agencies,  
50 including law enforcement agencies, shall cooperate fully with the  
51 department in the performance of its duties. These duties include  
52 immediate, in-residence evaluations and medical examinations and  
53 treatment where the department deems it necessary. However, upon



54 receipt of a report of abuse, neglect or exploitation of a  
55 vulnerable person confined in a licensed hospital or licensed  
56 nursing home facility in the state, the department shall  
57 immediately refer this report to the proper authority at the State  
58 Department of Health for investigation under Section 43-47-37.

59       Upon a showing of probable cause that a vulnerable person has  
60 been abused, a court may authorize a qualified third party to make  
61 an evaluation to enter the residence of, and to examine the  
62 vulnerable person. Upon a showing of probable cause that a  
63 vulnerable person has been financially exploited, a court may  
64 authorize a qualified third party, also authorized by the  
65 department, to make an evaluation, and to gain access to the  
66 financial records of the vulnerable person.

67       (3) The department may contract with an agency or private  
68 physician for the purpose of providing immediate, accessible  
69 evaluations in the location that the department deems most  
70 appropriate.

71       **SECTION 2.** Section 43-47-11, Mississippi Code of 1972, is  
72 brought forward as follows:

73       43-47-11. (1) If, pursuant to an investigation instituted  
74 pursuant to Section 43-47-7, the department determines that a  
75 vulnerable person is in need of protective services, it shall  
76 prepare a plan of services, reviewing that plan with the  
77 vulnerable person and obtaining his consent in writing.



78 (2) When a caretaker of a vulnerable person who consents to  
79 the receipt of protective services refuses to allow the provision  
80 of such services to the vulnerable person, the department may  
81 petition the court for an order for injunctive relief enjoining  
82 the caretaker from interfering with the provision of protective  
83 services to the vulnerable person.

84 (3) If a vulnerable person does not consent to the receipt  
85 of protective services, or if he withdraws his consent, the  
86 services shall not be provided, except as indicated in Section  
87 43-47-13.

88 **SECTION 3.** Section 43-47-13, Mississippi Code of 1972, is  
89 brought forward as follows:

90 43-47-13. (1) Every reasonable effort shall be made to  
91 secure the consent and participation of the vulnerable person in  
92 an evaluation and resolution of the need for protective services.  
93 If those efforts fail and if the department has reasonable cause  
94 to believe that a vulnerable person is being abused, neglected or  
95 exploited and lacks the capacity to consent to protective  
96 services, then the department may petition the court for an order  
97 for injunctive relief authorizing the provision of protective  
98 services. The petition must allege specific facts sufficient to  
99 show that the vulnerable person is in need of protective services  
100 and lacks the capacity to consent to them.

101 (2) The court shall set the case for hearing within fourteen  
102 (14) days after the filing of the petition. The vulnerable person



103 must receive at least five (5) days' notice of the hearing. Where  
104 good cause is shown, the court may direct that a shorter notice be  
105 given. The vulnerable person has the right to be present and  
106 represented by counsel at the hearing. If the person, in the  
107 determination of the court, lacks the capacity to waive the right  
108 to counsel, then the court shall appoint a guardian ad litem. If  
109 the person is indigent, the cost of representation shall be borne  
110 by the department or by the court.

111 (3) If, at the hearing, the court finds by clear and  
112 convincing evidence that the vulnerable person is in need of  
113 protective services and lacks the capacity to consent to those  
114 services, the court may issue an order relative thereto. This  
115 order may include the designation of an individual, organization  
116 or agency to be responsible for the performing or obtaining of  
117 essential services on behalf of the vulnerable person or otherwise  
118 consenting to protective services in his behalf. The order may  
119 provide for protective services for a period not to exceed  
120 eighteen (18) months, at which time the vulnerable person's need  
121 for protective services may be reviewed by the department filing a  
122 petition requesting such review with the court. Should the court  
123 determine that the vulnerable person is in further need of  
124 protective services, it may order the provision of such protective  
125 services as provided herein.

126 (4) The court may appoint a guardian or conservator for the  
127 vulnerable person, but the court shall not appoint the department



128 as a guardian of the vulnerable person. No vulnerable person may  
129 be committed to a mental health facility under this chapter.  
130 However, nothing contained herein shall prohibit the filing of  
131 petitions under other applicable provisions of the laws of this  
132 state.

133 **SECTION 4.** Section 43-47-15, Mississippi Code of 1972, is  
134 brought forward as follows:

135 43-47-15. (1) The department shall have the authority to  
136 provide immediate medical care, food, clothing, heat, shelter,  
137 supervision or other essential services in the absence of consent  
138 if it is determined that:

139 (a) The vulnerable person is in imminent danger of  
140 death or irreparable harm;

141 (b) Provision of emergency and/or protective services  
142 will alleviate the endangerment; and

143 (c) No other statutory or otherwise appropriate remedy  
144 is immediately available.

145 (2) Within forty-eight (48) hours, excluding Saturdays,  
146 Sundays and legal holidays, the department shall petition the  
147 court for an order for injunctive relief authorizing the provision  
148 of emergency services.

149 (3) Upon petition of the Commissioner of Public Welfare, the  
150 court may order the provision of emergency services to a  
151 vulnerable person after finding that there is reasonable cause to  
152 believe that:



153           (a) The vulnerable person lacks the capacity to consent  
154 and that he is in need of protective services;

155           (b) An emergency exists; and

156           (c) No other person authorized by law or order to give  
157 consent is available and willing to arrange for emergency  
158 services.

159           If there is reasonable cause to believe that the conditions  
160 listed above exist and no other custodian is available, then upon  
161 a written petition for emergency services filed by the department,  
162 the court may issue an order for injunctive relief for the  
163 department to provide emergency services to a vulnerable person.

164           (4) The petition for emergency services shall set forth the  
165 name, address and authority of the petitioners; the name, age and  
166 residence of the vulnerable person; the nature of the emergency;  
167 the proposed emergency services; the petitioner's reasonable  
168 belief as to the existence of the conditions set forth in  
169 subsection (1) of this section; and facts showing petitioner's  
170 attempts to obtain the vulnerable person's consent to the  
171 services.

172           (5) If the provision of emergency and/or protective services  
173 alleviates the imminent danger of death or irreparable harm and  
174 the department has reasonable cause to believe that the vulnerable  
175 person remains in need of protective services, the department  
176 shall proceed according to Sections 43-47-11 and 43-47-13.



177 (6) Where it is necessary to enter a premises without the  
178 vulnerable person's consent after obtaining a court order in  
179 compliance with subsection (3) of this section, the representative  
180 of the petitioner shall do so.

181 (7) No petitioner shall be held liable in any action brought  
182 by the vulnerable person if the petitioner acted in good faith.

183 **SECTION 5.** (1) As used in this section, "emergency  
184 placement" means those limited instances when the Mississippi  
185 Department of Child Protective Services is placing a child in the  
186 home of private individuals, including neighbors or friends, as a  
187 result of a sudden unavailability of the child's primary  
188 caretaker.

189 (2) During an emergency placement situation when a child  
190 must be placed in home care due to the absence of parents or  
191 custodians, the Mississippi Department of Child Protective  
192 Services (MDCPS) may request that a criminal justice agency  
193 perform a federal name-based criminal history records check of  
194 each adult residing in the home. Name-based check results may be  
195 provided to the Mississippi Criminal Information Center (MCIC) of  
196 the Mississippi Department of Public Safety, which shall then  
197 provide a complete set of each adult resident's fingerprints to  
198 the MCIC central repository for the immediate submission to the  
199 Federal Bureau of Investigation (FBI) within fourteen (14)  
200 calendar days from the date the name search was conducted. The  
201 central repository shall either positively identify the





202 fingerprint subject or forward the fingerprints to the FBI within  
203 fourteen (14) calendar days from the date the name search was  
204 conducted. The child shall be removed from the home immediately  
205 if any adult resident fails to provide their fingerprints and  
206 written permission to perform a federal criminal history records  
207 check when requested.

208 (3) When placement of a child in a home is denied as a  
209 result of a name-based criminal history records check of a  
210 resident, and the resident contests that denial, each such  
211 resident shall, within fourteen (14) calendar days, submit to  
212 MDCPS a complete set of the resident's fingerprints with written  
213 permission allowing MCIC to forward the fingerprints to the MCIC  
214 criminal history records repository for submission to the FBI.

215 **SECTION 6.** Section 6 and 7 of this act shall be known and  
216 cited as "Noah's Law."

217 **SECTION 7.** (1) As used in this section, "pure powdered  
218 caffeine product" means a product that consists solely of pure  
219 caffeine, or is sold or marketed as pure caffeine or pure powdered  
220 caffeine, and is manufactured into a crystalline or powdered form.  
221 A "pure powdered caffeine product" does not include products that  
222 contain caffeine and are formulated, manufactured, and labeled in  
223 accordance with the laws and regulations enforced by the United  
224 States Food and Drug Administration.

225 (2) Except as provided in subsection (3) of this section, no  
226 person, firm, corporation or other entity shall knowingly sell or



227 offer for sale, barter, or give away a pure powdered caffeine  
228 product for human consumption.

229 (3) Subsection (2) of this section shall not prohibit a  
230 person, firm, corporation or other entity from selling or offering  
231 for sale, bartering, giving away, distributing, or delivering  
232 either of the following:

233 (a) A pure powdered caffeine product used in any lawful  
234 manufacturing process of another lawful product, in any lawful  
235 research, or in any lawful prescription drug; or

236 (b) Any product that receives explicit approval as safe  
237 and effective for its intended use under the Federal Food, Drug  
238 and Cosmetic Act or is lawfully marketed under an over-the-counter  
239 monograph issued by the United States Food and Drug  
240 Administration.

241 (4) Any person, firm, corporation or other entity who  
242 violates this section shall be liable as follows: For a first  
243 conviction, a fine of not more than One Hundred Fifty Dollars  
244 (\$150.00); and for all subsequent convictions, a fine of not more  
245 than One Thousand Dollars (\$1,000.00).

246 (5) The provisions of this section shall supersede any  
247 existing or subsequently enacted law, ordinance, rule or  
248 regulation of any local government or political subdivision which  
249 relates to the sale, purchase, promotion, possession, manufacture,  
250 or distribution of a pure powdered caffeine product, of any lawful  
251 product containing caffeine, and of any lawful product included in



252 subsection (2) of this section. No local government or political  
253 subdivision shall adopt any law, ordinance, rule or regulation  
254 that is more restrictive than the provisions of this section.

255 **SECTION 8.** This act shall take effect and be in force from  
256 and after July 1, 2017.

