

By: Little, Burton

To: Public Health and
Welfare

SENATE BILL NO. 2736

1 AN ACT TO AMEND SECTION 43-47-7, MISSISSIPPI CODE OF 1972, TO
2 ADD CERTAIN LICENSED MEDICAL PERSONNEL AND OTHER ENTITIES TO THE
3 ENUMERATION OF MANDATED REPORTERS OF ABUSE, NEGLECT AND
4 EXPLOITATION UNDER THE VULNERABLE ADULTS ACT AND TO PRESCRIBE
5 CRIMINAL PENALTIES FOR FAILING TO MAKE SUCH REQUIRED REPORTS, TO
6 PROVIDE THAT ADULT CENTRAL REGISTRY CRIMINAL BACKGROUND CHECKS
7 SHALL BE MANDATORY ON APPLICANTS FOR EMPLOYMENT AT ADULT CARE
8 FACILITIES UNDER THE VULNERABLE ADULTS ACT AND TO PROVIDE FOR THE
9 CONFIDENTIALITY OF SUCH REPORTS BY THE DEPARTMENT OF HUMAN
10 SERVICES; TO AMEND SECTION 43-47-9, MISSISSIPPI CODE OF 1972, TO
11 PROVIDE THAT A COURT MAY AUTHORIZE THE EVALUATION OF AN ABUSED
12 ADULT UPON SHOWING OF PROBABLE CAUSE, INCLUDING AN EVALUATION OF
13 THE FINANCIAL RECORDS OF THE VULNERABLE ADULT; TO AMEND SECTION
14 43-11-13, MISSISSIPPI CODE OF 1972, TO DIRECT THE STATE DEPARTMENT
15 OF HEALTH TO REQUIRE ALL LICENSED NURSING FACILITIES TO CONDUCT
16 CRIMINAL RECORD BACKGROUND CHECKS AND ADULT CENTRAL REGISTRY
17 CHECKS ON APPLICANTS FOR EMPLOYMENT AT NURSING FACILITIES, TO
18 PROVIDE IMMUNITY AND TO AUTHORIZE THE DEPARTMENT TO CHARGE THE
19 LICENSEE A FEE FOR SUCH CRIMINAL RECORD CHECKS; TO AMEND SECTION
20 43-47-19, MISSISSIPPI CODE OF 1972, TO CLARIFY AND INCREASE
21 CRIMINAL PENALTIES FOR THE ABUSE, NEGLECT OR FINANCIAL
22 EXPLOITATION OF VULNERABLE ADULTS; AND FOR RELATED PURPOSES.

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

24 SECTION 1. Section 43-47-7, Mississippi Code of 1972, is
25 amended as follows:[CRG1]

26 43-47-7. (1) (a) Except as otherwise provided by Section
27 43-47-37 for vulnerable adults in care facilities, any person
28 including, but not limited to, the following, who knows or
29 suspects that a vulnerable adult has been or is being abused,
30 neglected or exploited shall immediately report such knowledge or
31 suspicion to the Mississippi Department of Human Services * * *:

32 (i) Attorney, physician, osteopathic physician,
33 medical examiner, chiropractor or nurse engaged in the admission,
34 examination, care or treatment of vulnerable adults;

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

37 (iii) Practitioner who relies solely on spiritual
38 means for healing;

39 (iv) Social worker or other professional adult
40 care, residential or institutional staff;

41 (v) State, county or municipal criminal justice
42 employee or law enforcement officer;

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

45 (vii) Bank, savings and loan or credit union
46 officer, trustee or employee.

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

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

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

55 (iii) Name, address and telephone number of each
56 alleged perpetrator.

57 (iv) Name address and telephone number of the
58 caregiver of the vulnerable adult, if different from the alleged
59 perpetrator.

60 (v) Description of the physical or psychological
61 injuries sustained.

62 (vi) Actions taken by the reporter; if any, such
63 as notification of the criminal justice agency.

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

67 In addition to above, any person or entity holding or
68 required to hold a license as specified in Title 73, Professions
69 and Vocations, of the Mississippi Code of 1972, shall be required

70 to give his, her or its name, address and telephone number in the
71 report of the alleged abuse, neglect or exploitation.

72 (c) The department or its designees shall report to an
73 appropriate criminal investigative or prosecutive authority any
74 person required by this section to report or who fails to comply
75 with this section. A person who fails to make a report as
76 required under this subsection or who, because of the
77 circumstances, should have known or suspected that a vulnerable
78 adult suffers from exploitation, abuse, neglect or self-neglect
79 but who knowingly fails to comply with this section shall, upon
80 conviction, be guilty of a misdemeanor and shall be punished by a
81 fine of not exceeding Five Thousand Dollars (\$5,000.00), or by
82 imprisonment in the county jail for not more than six (6) months,
83 or both such fine and imprisonment. If a person convicted under
84 this section is a member of a profession or occupation that is
85 licensed, certified or regulated by the state, the court shall
86 notify the appropriate licensing, certifying or regulating entity
87 of the conviction.

88 (2) Reports received by law enforcement authorities or other
89 agencies shall be forwarded immediately to the Department of Human
90 Services or the county welfare department.

91 (3) The report may be made orally or in writing, but where
92 made orally, it shall be followed up by a written report.

93 (4) Anyone who makes a report pursuant to this section, who
94 testifies or participates in any judicial proceedings arising from
95 the report or who participates in a required investigation or
96 evaluation shall be presumed to be acting in good faith and in so
97 doing shall be immune from liability, civil or criminal, that
98 might otherwise be incurred or imposed.

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

(6) The Executive Director of the Department of Human Services shall establish a statewide central register of reports made pursuant to this section. The central register shall be capable of receiving reports of vulnerable adults in need of protective services seven (7) days a week, twenty-four (24) hours a day. To effectuate this purpose the executive director shall establish a single toll-free statewide phone number that all persons may use to report vulnerable adults in need of protective services, and that all persons authorized by subsection (7) of this section may use for determining the existence of prior reports in order to evaluate the condition or circumstances of the vulnerable adult before them. Such oral reports and evidence of previous reports shall be transmitted to the appropriate county welfare department. The central register shall include, but not be limited to, the following information: the name and identifying information of the individual reported, the county welfare department responsible for the investigation of each such report, the names, affiliations and purposes of any person requesting or receiving information which the executive director believes might be helpful in the furtherance of the purposes of this chapter.

Each person, business, organization or other entity, whether public or private, operated for profit, operated for nonprofit or a voluntary unit of government not responsible for law enforcement providing care, supervision or treatment of vulnerable adults shall conduct criminal records and adult central registry checks on each new employee of the entity who provides, and/or would provide services to adults or vulnerable persons.

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

(7) Reports made pursuant to this section, reports written

or photographs taken concerning such reports in the possession of the Department of Human Services or the county welfare department shall be confidential and shall only be made available to:

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

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

* * *

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

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

Any person given access to the names or other information identifying the subject of the report, except the subject of the report, shall not divulge or make public such identifying information unless he is a district attorney or other law enforcement official and the purpose is to initiate court action.

Any person who willfully permits the release of any data or information obtained pursuant to this section to persons or agencies not permitted to such access by this section shall be guilty of a misdemeanor.

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

SECTION 2. Section 43-47-9, Mississippi Code of 1972, is amended as follows:[CRG2]

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

169 within forty-eight (48) hours to determine whether the vulnerable
170 adult is in need of protective services and what services are
171 needed. The evaluation shall include any necessary visits and
172 interviews with the adult, and if appropriate, with the alleged
173 perpetrator of the vulnerable adult abuse and with any person
174 believed to have knowledge of the circumstances of the case. When
175 a caretaker of a vulnerable adult refuses to allow the department
176 reasonable access to conduct an investigation to determine if the
177 vulnerable adult is in need of protective services, the department
178 may petition the court for an order for injunctive relief
179 enjoining the caretaker from interfering with the investigation.

180 (2) The staff and physicians of local health departments,
181 mental health clinics and other public or private agencies,
182 including law enforcement agencies, shall cooperate fully with the
183 department in the performance of its duties. These duties include
184 immediate, in-residence evaluations and medical examinations and
185 treatment where the department deems it necessary. Provided,
186 however, that upon receipt of a report of abuse, neglect or
187 exploitation of a vulnerable adult confined in a licensed hospital
188 or licensed nursing home facility in the state, the department
189 shall immediately refer this report to the proper authority at the
190 State Department of Health for investigation under Section
191 43-47-37.

192 Upon a showing of probable cause that a vulnerable adult has
193 been abused, a court may authorize a person to make an evaluation,
194 to enter the residence of, and to examine the vulnerable adult.
195 Upon a showing of probable cause that a vulnerable adult has been
196 financially exploited, a court may authorize a person, also
197 authorized by the department, to make an evaluation, and to gain
198 access to the financial records of the vulnerable adult.

199 (3) The department may contract with an agency or private
200 physician for the purpose of providing immediate, accessible
201 evaluations in the location that the department deems most

202 appropriate.

203 SECTION 3. Section 43-11-13, Mississippi Code of 1972, is
204 amended as follows:[CRG3]

205 43-11-13. (1) The licensing agency shall adopt, amend,
206 promulgate and enforce such rules, regulations and standards,
207 including classifications, with respect to all institutions for
208 the aged or infirm to be licensed hereunder as may be designed to
209 further the accomplishment of the purpose of this chapter in
210 promoting adequate care of individuals in such institutions in the
211 interest of public health, safety and welfare. Such rules,
212 regulations and standards shall be adopted and promulgated by the
213 licensing agency and shall be recorded and indexed in a book to be
214 maintained by the licensing agency in its main office in the State
215 of Mississippi, entitled "Rules, Regulations and Minimum Standards
216 for Institutions for the Aged or Infirm" and said book shall be
217 open and available to all institutions for the aged or infirm and
218 the public generally at all reasonable times. Upon the adoption
219 of such rules, regulations and standards, the licensing agency
220 shall mail copies thereof to all such institutions in the state
221 which have filed with said agency their names and addresses for
222 this purpose, but the failure to mail the same or the failure of
223 the institutions to receive the same shall in nowise affect the
224 validity thereof. Said rules, regulations and standards may be
225 amended by the licensing agency from time to time as necessary to
226 promote the health, safety and welfare of persons living in said
227 institutions.

228 (2) The licensee shall keep posted in a conspicuous place on
229 the licensed premises all current rules, regulations and minimum
230 standards applicable to fire protection measures as adopted by the
231 licensing agency. The licensee shall furnish to the licensing
232 agency at least once each six (6) months a certificate of approval
233 and inspection by state or local fire authorities. Failure to
234 comply with state laws and/or municipal ordinances and current

rules, regulations and minimum standards as adopted by the licensing agency, relative to fire prevention measures, shall be prima facie evidence for revocation of license.

(3) The State Board of Health shall promulgate rules and regulations restricting the storage, quantity and classes of drugs allowed in personal care homes. Residents requiring administration of Schedule II Narcotics as defined in the Uniform Controlled Substances Law may be admitted to a personal care home. Schedule drugs may only be allowed in a personal care home if they are administered or stored utilizing proper procedures under the direct supervision of a licensed physician or nurse.

(4) The licensing agency shall require that all licensees conduct criminal records background checks and adult central registry checks on each applicant for employment who would provide personal care or have personal contact with any resident of an institution for the aged or infirm. The licensing agency shall develop regulations for the conduct of criminal records background checks by institutions for the aged or infirm. The Department of Public Safety shall assist in the implementation of a national criminal history record check. In order to conduct the criminal records background check, each new employee or prospective employee shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check.

(5) The licensing agency, the institution for the aged or infirm, and their agents, officers, employees, attorneys and representatives shall not be held civilly liable for any findings, recommendation or actions taken pursuant to this section.

(6) The licensing agency is hereby authorized to charge a fee which shall include the amount required by the Federal Bureau of Investigation for the national criminal history record check and any necessary costs incurred by the licensing agency for the

handling and administration of the criminal history background
checks. The Division of Medicaid shall reimburse fees for
mandatory fingerprinting and criminal history background checks as
allowable costs for Medicaid-certified facilities classified
according to the employment responsibilities of the applicant.
All fees incurred in compliance with this section which are not
Medicaid reimbursable shall be borne by the institution for the
aged or infirm.

SECTION 4. Section 43-47-19, Mississippi Code of 1972, is
amended as follows:[CRG4]

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

(2) Any person who willfully commits an act or omits the
performance of any duty, which act or omission contributes to,
tends to contribute to or results in physical pain, injury, mental
anguish, unreasonable confinement, or deprivation of services
which are necessary to maintain the mental and physical health of
a vulnerable adult, or neglect * * * of any vulnerable adult 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 person who exploits a vulnerable adult and the value of
the resources is Two Hundred Fifty Dollars (\$250.00) or less 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 person who exploits a
vulnerable adult and the value of the resources exceeds Two
Hundred Fifty Dollars (\$250.00) shall be guilty of a felony and,
upon conviction thereof, shall be punished by imprisonment in the
State Penitentiary for not more than ten (10) years.

(3) Any person who willfully inflicts physical pain or

301 injury upon a vulnerable adult shall be guilty of felonious abuse
302 and/or battery of a vulnerable adult and, upon conviction thereof,
303 may be punished by imprisonment in the State Penitentiary for not
304 more than twenty (20) years.

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

308 SECTION 5. This act shall take effect and be in force from
309 and after July 1, 2000.