

By: Little, Burton

To: Public Health and  
WelfareSENATE BILL NO. 2736  
(As Passed the Senate)

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; TO ENACT STANDARDS FOR ENTRIES  
23 IN PATIENT MEDICAL RECORDS OR CHARTS; TO ENACT PENALTIES FOR  
24 VIOLATION OF THE STANDARDS; AND FOR RELATED PURPOSES.

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

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

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

35 (i) Attorney, physician, osteopathic physician,  
36 medical examiner, chiropractor or nurse engaged in the admission,  
37 examination, care or treatment of vulnerable adults;

- 38                    (ii) Health professional or mental health  
39 professional other than one listed in subparagraph (i);  
40                    (iii) Practitioner who relies solely on spiritual  
41 means for healing;  
42                    (iv) Social worker or other professional adult  
43 care, residential or institutional staff;  
44                    (v) State, county or municipal criminal justice  
45 employee or law enforcement officer;  
46                    (vi) Human rights advocacy committee or long-term  
47 care ombudsman council member; or  
48                    (vii) Bank, savings and loan or credit union  
49 officer, trustee or employee.

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

- 53                    (i) Name, age, race, sex, physical description and  
54 location of each vulnerable adult alleged to have been abused,  
55 neglected or exploited.  
56                    (ii) Names, addresses and telephone numbers of the  
57 vulnerable adult's family members.  
58                    (iii) Name, address and telephone number of each  
59 alleged perpetrator.  
60                    (iv) Name address and telephone number of the  
61 caregiver of the vulnerable adult, if different from the alleged  
62 perpetrator.  
63                    (v) Description of the physical or psychological  
64 injuries sustained.  
65                    (vi) Actions taken by the reporter; if any, such  
66 as notification of the criminal justice agency.  
67                    (vii) Any other information available to the  
68 reporting person which may establish the cause of abuse, neglect  
69 or exploitation that occurred or is occurring.

70                    In addition to above, any person or entity holding or

71 required to hold a license as specified in Title 73, Professions  
72 and Vocations, of the Mississippi Code of 1972, shall be required  
73 to give his, her or its name, address and telephone number in the  
74 report of the alleged abuse, neglect or exploitation.

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

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

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

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

102 (5) A person who intentionally makes a false report under  
103 the provisions of this section may be found liable in a civil suit

104 for any actual damages suffered by the person or persons so  
105 reported and for any punitive damages set by the court or jury.

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

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

134 The department shall not release data that would be harmful  
135 or detrimental to the vulnerable adult or that would identify or  
136 locate a person who, in good faith, made a report or cooperated in

137 a subsequent investigation unless ordered to do so by a court of  
138 competent jurisdiction.

139 (7) Reports made pursuant to this section, reports written  
140 or photographs taken concerning such reports in the possession of  
141 the Department of Human Services or the county welfare department  
142 shall be confidential and shall only be made available to:

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

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

148 \* \* \*

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

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

154 Notwithstanding subsection 7(b) hereof, the department may  
155 not disclose a report of the abandonment, exploitation, abuse,  
156 neglect or self-neglect of a vulnerable adult to the vulnerable  
157 adult's guardian, attorney-in-fact, surrogate decision maker, or  
158 care giver who is a perpetrator or alleged perpetrator of the  
159 abandonment, exploitation, abuse or neglect of the vulnerable  
160 adult.

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

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

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

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

177 43-47-9. (1) Upon receipt of a report pursuant to Section  
178 43-47-7 that a vulnerable adult is in need of protective services,  
179 the department shall initiate an investigation and/or evaluation  
180 within forty-eight (48) hours to determine whether the vulnerable  
181 adult is in need of protective services and what services are  
182 needed. The evaluation shall include any necessary visits and  
183 interviews with the adult, and if appropriate, with the alleged  
184 perpetrator of the vulnerable adult abuse and with any person  
185 believed to have knowledge of the circumstances of the case. When  
186 a caretaker of a vulnerable adult refuses to allow the department  
187 reasonable access to conduct an investigation to determine if the  
188 vulnerable adult is in need of protective services, the department  
189 may petition the court for an order for injunctive relief  
190 enjoining the caretaker from interfering with the investigation.

191 (2) The staff and physicians of local health departments,  
192 mental health clinics and other public or private agencies,  
193 including law enforcement agencies, shall cooperate fully with the  
194 department in the performance of its duties. These duties include  
195 immediate, in-residence evaluations and medical examinations and  
196 treatment where the department deems it necessary. Provided,  
197 however, that upon receipt of a report of abuse, neglect or  
198 exploitation of a vulnerable adult confined in a licensed hospital  
199 or licensed nursing home facility in the state, the department  
200 shall immediately refer this report to the proper authority at the  
201 State Department of Health for investigation under Section  
202 43-47-37.

203       Upon a showing of probable cause that a vulnerable adult has  
204 been abused, a court may authorize a qualified third party to make  
205 an evaluation, to enter the residence of, and to examine the  
206 vulnerable adult. Upon a showing of probable cause that a  
207 vulnerable adult has been financially exploited, a court may  
208 authorize a qualified third party, also authorized by the  
209 department, to make an evaluation, and to gain access to the  
210 financial records of the vulnerable adult.

211       (3) The department may contract with an agency or private  
212 physician for the purpose of providing immediate, accessible  
213 evaluations in the location that the department deems most  
214 appropriate.

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

217       43-11-13. (1) The licensing agency shall adopt, amend,  
218 promulgate and enforce such rules, regulations and standards,  
219 including classifications, with respect to all institutions for  
220 the aged or infirm to be licensed hereunder as may be designed to  
221 further the accomplishment of the purpose of this chapter in  
222 promoting adequate care of individuals in such institutions in the  
223 interest of public health, safety and welfare. Such rules,  
224 regulations and standards shall be adopted and promulgated by the  
225 licensing agency and shall be recorded and indexed in a book to be  
226 maintained by the licensing agency in its main office in the State  
227 of Mississippi, entitled "Rules, Regulations and Minimum Standards  
228 for Institutions for the Aged or Infirm" and said book shall be  
229 open and available to all institutions for the aged or infirm and  
230 the public generally at all reasonable times. Upon the adoption  
231 of such rules, regulations and standards, the licensing agency  
232 shall mail copies thereof to all such institutions in the state  
233 which have filed with said agency their names and addresses for  
234 this purpose, but the failure to mail the same or the failure of  
235 the institutions to receive the same shall in nowise affect the

236 validity thereof. Said rules, regulations and standards may be  
237 amended by the licensing agency from time to time as necessary to  
238 promote the health, safety and welfare of persons living in said  
239 institutions.

240 (2) The licensee shall keep posted in a conspicuous place on  
241 the licensed premises all current rules, regulations and minimum  
242 standards applicable to fire protection measures as adopted by the  
243 licensing agency. The licensee shall furnish to the licensing  
244 agency at least once each six (6) months a certificate of approval  
245 and inspection by state or local fire authorities. Failure to  
246 comply with state laws and/or municipal ordinances and current  
247 rules, regulations and minimum standards as adopted by the  
248 licensing agency, relative to fire prevention measures, shall be  
249 prima facie evidence for revocation of license.

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

258 (4) The licensing agency shall require that all licensees  
259 conduct criminal records background checks and adult central  
260 registry checks on each applicant for employment who provides  
261 and/or would provide direct personal care or services to any  
262 resident of an institution for the aged or infirm. The licensing  
263 agency shall develop regulations for the conduct of criminal  
264 records background checks by institutions for the aged or infirm.  
265 The Department of Public Safety shall assist in the  
266 implementation of a national criminal history record check. In  
267 order to conduct the criminal records background check, each new  
268 employee or prospective employee shall be fingerprinted. If no



269 disqualifying record is identified at the state level, the  
270 fingerprints shall be forwarded by the Department of Public Safety  
271 to the Federal Bureau of Investigation for a national criminal  
272 history record check.

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

277 (6) The licensing agency is hereby authorized to charge a  
278 fee which shall include the amount required by the Federal Bureau  
279 of Investigation for the national criminal history record check  
280 and any necessary costs incurred by the licensing agency for the  
281 handling and administration of the criminal history background  
282 checks. The Division of Medicaid shall reimburse fees for  
283 mandatory fingerprinting and criminal history background checks as  
284 allowable costs for Medicaid-certified facilities classified  
285 according to the employment responsibilities of the applicant.  
286 All fees incurred in compliance with this section which are not  
287 Medicaid reimbursable shall be borne by the institution for the  
288 aged or infirm.

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

291 43-47-19. (1) It shall be unlawful for any person to abuse,  
292 neglect or exploit any vulnerable adult.

293 (2) Any person who willfully commits an act or omits the  
294 performance of any duty, which act or omission contributes to,  
295 tends to contribute to or results in physical pain, injury, mental  
296 anguish, unreasonable confinement, or deprivation of services  
297 which are necessary to maintain the mental and physical health of  
298 a vulnerable adult, or neglect \* \* \* of any vulnerable adult shall  
299 be guilty of a misdemeanor and, upon conviction thereof, shall be  
300 punished by a fine not to exceed One Thousand Dollars (\$1,000.00)  
301 or by imprisonment not to exceed one (1) year in the county jail,

302 or by both such fine and imprisonment. Any accepted medical  
303 procedure performed in the usual scope of practice shall not be a  
304 violation of this subsection.

305 Any person who willfully exploits a vulnerable adult and the  
306 value of the resources is Two Hundred Fifty Dollars (\$250.00) or  
307 less shall be guilty of a misdemeanor and, upon conviction  
308 thereof, shall be punished by a fine not to exceed One Thousand  
309 Dollars (\$1,000.00) or by imprisonment not to exceed one (1) year  
310 in the county jail or by both such fine and imprisonment. Any  
311 person who willfully exploits a vulnerable adult and the value of  
312 the resources exceeds Two Hundred Fifty Dollars (\$250.00) shall be  
313 guilty of a felony and, upon conviction thereof, shall be punished  
314 by imprisonment in the State Penitentiary for not more than ten  
315 (10) years.

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

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

324 SECTION 5. (1) Except as otherwise provided in subsection  
325 (3), a person, knowing that the information is misleading or  
326 inaccurate, shall not intentionally, willfully or recklessly place  
327 or direct another to place in a patient's medical record or chart  
328 misleading or inaccurate information regarding the diagnosis,  
329 treatment or cause of a patient's condition. A violation of this  
330 subsection is punishable as follows: a person who intentionally  
331 or willfully or recklessly violates this subsection is guilty of a  
332 misdemeanor, punishable by imprisonment for not more than one (1)  
333 year, or a fine of not more then One Thousand Dollars (\$1,000.00),  
334 or both.

335           (2) Except as otherwise provided in subsection (3), a person  
336 shall not intentionally or willfully alter or destroy or direct  
337 another to alter or destroy a patient's medical records or charts  
338 for the purpose of concealing his or her responsibility for the  
339 patient's injury, sickness or death. A person who violates this  
340 subsection is guilty of a misdemeanor punishable by imprisonment  
341 for not more than one (1) year, or a fine of not more than One  
342 Thousand Dollars (\$1,000.00), or both.

343           (3) Subsections (1) and (2) do not apply to either of the  
344 following:

345                 (a) Destruction of a patient's original medical record  
346 or chart if all of the information contained in or on the medical  
347 record or chart is otherwise retained by means of mechanical or  
348 electronic recording, chemical reproduction, or other equivalent  
349 techniques that accurately reproduce all of the information  
350 contained in or on the original.

351                 (b) Supplementation of information or correction of an  
352 error in a patient's medical record or chart in a manner that  
353 reasonably discloses that the supplementation or correction was  
354 performed and that does not conceal or alter prior entries.

355           SECTION 6. This act shall take effect and be in force from  
356 and after July 1, 2000.