I. MISSISSIPPI VULNERABLE PERSONS ACT OF 1986

A. Purpose and Intent

The purpose of the Act is to provide for protective services for vulnerable persons in Mississippi who are abused, neglected, or exploited. Mississippi Code of 1972, Title 43. Public Welfare, Chapter 47. Mississippi Vulnerable Persons Act, §43-47-1 et seq.

B. Significant Definitions:

1. “Abuse”- 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 sexual abuse, and can be fulfilled by a single act. MS Code §43-47-5 (a).

2. “Exploitation”- the illegal or improper use of a vulnerable person or his resources for another’s profit, advantage or unjust enrichment, with or without the consent of the vulnerable person, and may include actions taken pursuant to a power of attorney. “Exploitation,” like “abuse,” can include a single incident. MS Code §43-47-5(i).

3. “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” can also include a single act. MS Code §43-47-5 (m).
4. **“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 of Human Services shall not be prohibited from investigating, and shall have the authority and responsibility to fully investigate any allegation of abuse whether it occur in a patient care facility or a private residence. MS Code §43-47-5 (q).

C. **Reporting requirements**

1. **Mandatory Reporting Requirements:** Any person who knows or suspects that a vulnerable person has been or is being abused, neglected or exploited shall immediately report such knowledge or suspicion to the Department of Human Services or other human services department in the location of the county where the vulnerable person may reside. The category of persons required to report is expansive and includes attorneys, physicians and any other healthcare providers, mental health professionals, spiritual healers, social workers, criminal justice employees, accountants, financial advisors, insurance agents, etc. MS Code §43-47-7 (1)(a)(i-vii). Employees of a home health agency must report orally or telephonically within twenty-four (24) hours of discovery excluding Saturdays and legal holidays. MS Code §43-47-37 (2)(a). A home health agency must report in writing within seventy-two (72) hours of discovery to the Medicaid Fraud Control Unit. MS Code §43-47-37 (2)(b). All other care facilities must report within twenty-four (24) hours of discovery, orally or telephonically, and in writing within seventy-two (72) hours.

2. **Contents of Report:** Reports must contain, but need not be limited to:

   a. Name, age, race, sex, physical description and location of the vulnerable person neglected or abused.

   b. Names, addresses and phone numbers of family members of the vulnerable person.
c.  Name, address, and telephone number of each alleged perpetrator.

d.  Name, address, and telephone number of the caregiver of the vulnerable person.

e.  Description of the neglect, exploitation, physical or psychological injuries sustained.

f.  Actions taken by the reporting person.

g.  Any other information that establishes the cause of the abuse, neglect or exploitation. MS Code §43-47-7 (1)(b)(i-vii).

3.  **Limited Immunity:** Anyone making a report under this Act or who testifies or participates in any judicial proceedings arising from the report or who participates in a required investigation or evaluation shall be presumed to be acting in good faith, and shall be immune from criminal or civil liability. Officers or other employees of the Department of Human Services are not liable civilly if they are in “good faith” in the performance of their duties. MS Code §43-47-25. Immunity does not extend to any suspect or perpetrator of any neglect, exploitation or abuse. MS Code §43-47-7 (4). Further, this immunity does not extend to persons found intentionally filing false reports under this Act, who are subject to civil liability for actual damages sustained. MS Code §43-47-7 (5).

4.  **Penalties for Failing to Report:**

a.  Any person who knowingly fails to make a report as required or attempts to induce another, by threat or otherwise, to fail to make a report shall be guilty of a misdemeanor and punished by a fine not exceeding $500.00 or imprisoned not more than six (6) months. MS Code §43-47-37 (7).

b.  Any category of persons set forth by MS Code §43-47-7 (1)(a)(i-vii) [Attorneys, physicians, healthcare professionals, social workers, etc.] who fail to comply with the reporting requirements or if the circumstances dictate that a person should have known or “suspected beyond a reasonable doubt” that a vulnerable person suffered from exploitation, abuse, neglect or self-neglect will be guilty of a
misdemeanor punishable by a fine up to $5,000.00 or by imprisonment in county jail for not more than six (6) months. MS Code §43-47-7 (1)(c). However, anyone failing to report under this Act has no additional criminal or civil liability to any person or entity in connection with that failure to report. MS Code §43-47-7 (3).

II. CRIMINAL VIOLATIONS FOR MISTREATMENT OF “VULNERABLE PERSONS”

A. Additional Pertinent Definitions

1. “Illegal Use” means any action defined under the Mississippi law as a criminal act. MS Code §43-47-5 (j).

2. “Sexual Penetration” shall have the meaning as that contained in MS Code 97-3-97, as set forth in the criminal code to include any penetration of the genital or anal openings of another person’s body by any part of a person's body, and insertion of any object into the genital or anal openings of another person's body. MS Code §43-47-5 (o).

3. “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. MS Code §43-47-7 (p).

B. Law Against Abuse, Neglect or Exploitation

1. Prohibition against abuse, neglect, or exploitation- It shall be unlawful for any person to abuse (commit a willful act or omission of a duty resulting in the physical pain, injury or mental anguish of a vulnerable person), neglect (fail to supply a vulnerable person with food, clothing, shelter, healthcare, supervision necessary for physical or mental health), or exploit (illegally use a vulnerable person’s resources for profit) any vulnerable person (person impaired due to mental, emotional, physical or developmental disability or dysfunction or brain damage or due to the infirmities of aging). MS Code §43-47-19 (1).

2. Penalties

   a. Any person who willfully commits an act or willfully omits the performance of any duty which act contributes to or results in neglect, physical
pain, injury, mental anguish, unreasonable confinement or deprivation of services of a vulnerable person shall be punishable by a misdemeanor including a fine of $1,000.00 or imprisonment of one (1) year in county jail, or by both. §43-47-19 (2)(a)

b. Any person who exploits a vulnerable person in an amount less than $250.00 shall be guilty of a misdemeanor punishable by up to $5,000.00 fine and one (1) year in county jail. Where the value of the exploitation is in excess of $250.00, the person shall be guilty of a felony, punishable by up to ten (10) years in the custody of the Department of Corrections. §43-47-19 (2)(b)

c. Any person willingly inflicting physical pain or injury upon a vulnerable person shall be guilty of felonious abuse or battery, or both, and upon conviction can be sentenced up to twenty (20) years in the State Penitentiary. §43-47-19 (3)

d. For any third or subsequent misdemeanor violation of this Act, and if the offenses are committed within a period of five years, such person is then guilty of a felony punishable between one (1) and five (5) years in the custody of the Department of Corrections and shall be fined not less than $2,000.00 nor more than $5,000.00. MS Code §43-47-19 (4).

C. Sexual Battery of the Infirm By Healthcare Employee or Person in Position of Trust or Authority

1. A person who handles, touches, rubs with hands or any part of any vulnerable person’s body for the purposes of gratifying the individual’s “lust” or indulge “depraved licentious sexual desires” or who engages in sexual penetration with a vulnerable person is guilty of sexual battery, if the person is a volunteer at, or an employee of, or contracted to work for, a health care facility in which the vulnerable person is a patient or resident. MS Code §43-47-18 (1)(a) and (2)(a).

2. Persons who also share a position of trust or authority over the vulnerable person are also guilty, and include a teacher, counselor, physician, psychiatrist, psychologist, nurse, minister, priest,
physical therapist, chiropractor, legal guardian, parent, etc. MS Code §43-47-18 (1)(b) and (2)(b).

3. **Penalties**

   a. Persons guilty of lustful and depraved sexual touching shall be guilty of a felony punishable by a fine of $1,000.00 to $5,000.00 and/or be committed to the Department of Corrections from two (2) to fifteen (15) years. MS Code §43-47-18 (2)(a).

   b. Persons guilty of sexual battery (sexual penetration) shall be imprisoned in the custody of the State Department of Corrections for a period of not more than thirty (30) years. A second conviction is punishable for a period of up to forty (40) years. MS Code §43-47-18 (1)(c).

D. **General Crimes’ Enhancement**

   In the case of a misdemeanor or felony which involves a crime of violence, burglary, or breaking and entering the dwelling of another, if the crime is committed against a victim who is sixty-five (65) years of age or older or who is disabled as defined by U.S.C.S. 12102, the sentence or fine may be enhanced by up to twice that authorized by law for the offense committed. MS Code §99-19-351-357.

III. **NURSING HOME OVERSIGHT**

   Nursing homes are regulated by the Mississippi State Department of Health, pursuant to MS Code §43-11-1 through MS Code §43-11-17. Mississippi does not appear to have a Resident’s Bill of Rights separate and apart from that of the Federal Nursing Home Reform Act of 1987. Reporting of abuse is made to the Department of Human Services or to the Medicaid Fraud Control Unit of the Mississippi Attorney General’s Office. MS Code §43-47-37.

IV. **RIGHTS AND REMEDIES**

   A. **Private Right of Action**

      The Vulnerable Persons Act of 1986 does not appear to grant any additional civil remedies not already present and available under general Mississippi tort law, although it does impose additional legal duties upon individuals and persons in authority to report any negligence, abuse or exploitation of vulnerable persons.

   B. **Civil Remedies/Penalties**
Only general civil liability for negligence appears available for the elderly or “vulnerable” persons, other than the criminal prosecution that is available to the state. Exemplary damages or punitive damages are not available to individuals for violations of the Act. Attorney’s fees, costs, etc. are not recoverable.

V. PREDATORY LENDING PRACTICES

Mississippi does not have laws specifically protecting the elderly or infirm as it pertains to predatory lending practices. Fraud against the elderly or the general public would be regulated in the same manner, for example as set forth in the consumer protection laws in MS Code §75-24-1, et seq.

VI. LEGISLATION AFFECTING STATUTES

A. Pending: None

B. Anticipated: None known