

By: Senator(s) Nunnelee

To: Judiciary, Division A

SENATE BILL NO. 2389

1 AN ACT TO DEFINE "POSITION OF TRUST" AND TO TRIPLE THE
 2 DAMAGES AVAILABLE IN A CIVIL ACTION AGAINST A PERSON WHO USES HIS
 3 POSITION OF TRUST OR A FIDUCIARY OR CONFIDENTIAL RELATIONSHIP WITH
 4 AN OWNER TO CONVERT THE OWNER'S PROPERTY TO HIS OWN USE, OR TO
 5 DECEIVE, INTIMIDATE, EXPLOIT, OR UNDULY INFLUENCE THE OWNER SO AS
 6 TO OBTAIN CONTROL OVER PROPERTY WITH THE INTENT TO PERMANENTLY
 7 DEPRIVE THE OWNER OF THE OWNERSHIP, BENEFIT, OR POSSESSION
 8 THEREOF, OR WHO IS PROVEN BY CLEAR AND CONVINCING EVIDENCE TO HAVE
 9 EMBEZZLED, EXTORTED, STOLEN, OR TAKEN THE OWNER'S PROPERTY BY
 10 FRAUD OR FALSE PRETENSES WHILE HOLDING A POSITION OF TRUST OR
 11 BEING IN A FIDUCIARY OR CONFIDENTIAL RELATIONSHIP WITH THE OWNER;
 12 AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** (1) In any civil action against a person who
 15 held a position of trust or was in a fiduciary or confidential
 16 relationship and who is proven by a preponderance of the evidence
 17 to have used such position of trust or relationship with the owner
 18 to convert property of the owner to his own use, or to obtain
 19 control over or title to the money, assets, or property of the
 20 owner through deception, breach of fiduciary duty, intimidation,
 21 or undue influence with the intent to permanently deprive the
 22 owner of the ownership, benefit, or possession thereof, and in any
 23 action to recover property in which it is proven by clear and
 24 convincing evidence that a person took property of the owner by
 25 exploitation, as defined in Section 43-47-5, or by embezzlement,
 26 false pretenses, fraud, extortion or theft, or while such person
 27 held a position of trust or was in a fiduciary or confidential
 28 relationship with the owner, whether the action be to recover
 29 property or damages in lieu thereof, or both, damages shall be
 30 recoverable up to three (3) times the amount of the monetary
 31 damages or value of the property obtained, converted, or taken, in
 32 addition to any other damages.

33 (2) For the purposes of this section:

34 (a) "Position of trust" includes a person who:

35 (i) Has assumed a duty to provide care to the
36 owner of the property;

37 (ii) Is in a fiduciary relationship with the owner
38 of the property including a de facto guardian or de facto
39 conservator;

40 (iii) Is a joint tenant or tenant in common with
41 the owner; or

42 (iv) Is a financial planning or investment
43 professional consulted by the owner.

44 (b) "Undue influence" does not include the normal
45 influence that one member of a family has over another.

46 (3) Damages awarded under this section are remedial and not
47 punitive, and do not limit and are not limited by any criminal
48 action or any other provision of law. Any civil damages paid by
49 the civil defendant shall reduce the amount such defendant, upon
50 conviction, is ordered to pay in restitution, and any restitution
51 paid under a criminal penalty shall reduce any civil damages
52 owed. Civil remedies provided under this section shall be
53 supplemental and cumulative, and not exclusive of other remedies
54 afforded under any other law.

55 (4) The cause of action, the right to bring a cause of
56 action, or the right to seek treble damages pursuant to this
57 section shall not be limited or affected by the death of the
58 owner.

59 **SECTION 2.** This act shall take effect and be in force from
60 and after July 1, 2006.