

By: Representatives Holland, Clark, Scott

To: Judiciary A

HOUSE BILL NO. 1271

1 AN ACT TO CODIFY SECTION 11-7-165, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE RECOVERY OF TREBLE DAMAGES IN A CIVIL ACTION AGAINST
3 A PERSON WHO STEALS, EMBEZZLES, EXTORTS OR CONVERTS TO HIS OWN USE
4 THE PROPERTY OF A VULNERABLE ADULT OR ANY PERSON SIXTY-FIVE YEARS
5 OF AGE OR OLDER; TO DEFINE THE TERM "POSITION OF TRUST"; AND FOR
6 RELATED PURPOSES.

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

8 **SECTION 1.** The following shall be codified as Section
9 11-7-165, Mississippi Code of 1972:

10 11-7-165. (1) In a civil action where it is proven that a
11 person took the property of a vulnerable adult or any adult
12 sixty-five (65) years of age or older by conversion, embezzlement,
13 extortion, theft or fraud without the owner's consent, or obtained
14 the owner's consent by intimidation, deception, undue influence or
15 by misusing a position of trust or a confidential relationship
16 with the owner, then whether the action is to recover the property
17 or damages in lieu thereof, or both, damages shall be recoverable
18 up to three (3) times the amount of the monetary damages or value
19 of the property embezzled, converted or otherwise stolen, in
20 addition to any other damages.

21 (2) For purposes of this section, "position of trust" shall
22 include, but not be limited to, a person who:

23 (a) Is named the attorney-in-fact in a power of
24 attorney, whether executed before or after the adult became
25 vulnerable or reached the age of sixty-five (65) years;

26 (b) Has assumed a duty to provide care to the
27 vulnerable adult or person sixty-five (65) years or older;

28 (c) Is in a fiduciary relationship with the vulnerable
29 adult or person sixty-five (65) years or older, including a de
30 facto guardian or de facto conservator; or

31 (d) Is a joint tenant or tenant in common with the
32 vulnerable adult or person sixty-five (65) years or older.

33 (3) "Vulnerable adult" shall have the meaning defined in
34 Section 43-47-5, Mississippi Code of 1972.

35 (4) Civil remedies provided under this section shall be
36 supplemental and cumulative, and not exclusive of other remedies
37 afforded under any other law. Damages awarded under this section
38 are remedial and not punitive, and do not limit and are not
39 limited by any criminal action or any other provision of law. Any
40 civil damages paid by the civil defendant shall reduce the amount
41 such defendant, upon conviction, may be ordered to pay in
42 restitution, and any restitution paid under a criminal penalty
43 shall reduce any civil damages owed.

44 (5) The cause of action, the right to bring a cause of
45 action, or the right to seek treble damages pursuant to this
46 section shall not be limited or affected by the death of the
47 owner.

48 **SECTION 2.** This act shall take effect and be in force from
49 and after July 1, 2007.