

By: Representatives Holland, Clark, Scott

To: Judiciary A

HOUSE BILL NO. 1271
(As Sent to Governor)

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 CERTAIN PROPERTY OF A VULNERABLE ADULT; TO DEFINE THE TERM
5 "POSITION OF TRUST"; AND FOR RELATED PURPOSES.

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

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

9 11-7-165. (1) In a civil action where it is proven that a
10 person took property having a value of Two Hundred Fifty Dollars
11 (\$250.00) or more belonging to a vulnerable adult by conversion,
12 embezzlement, extortion, theft or fraud without the owner's
13 consent, or obtained the owner's consent by intimidation,
14 deception, undue influence or by misusing a position of trust or a
15 confidential relationship with the owner, then whether the action
16 is to recover the property or damages in lieu thereof, or both,
17 damages shall be recoverable up to three (3) times the amount of
18 the monetary damages or value of the property embezzled, converted
19 or otherwise stolen, in addition to any other damages.

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

22 (a) Is named the attorney-in-fact in a power of
23 attorney, whether executed before or after the adult became
24 vulnerable;

25 (b) Has assumed a duty to provide care to the
26 vulnerable adult;

27 (c) Is in a fiduciary relationship with the vulnerable
28 adult, including a de facto guardian or de facto conservator; or

29 (d) Is a joint tenant or tenant in common with the
30 vulnerable adult.

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

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

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

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