

By: Senator(s) Nunnelee

To: Judiciary, Division A

SENATE BILL NO. 2670

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 OR CONVERTS TO HIS OWN USE THE PROPERTY OF AN  
4 INDIVIDUAL WHO IS SUSCEPTIBLE TO FINANCIAL EXPLOITATION BY REASON  
5 OF AGE, INFIRMITY OR LACK OF SOPHISTICATION, OR AGAINST A PERSON  
6 WHO OBTAINS TITLE TO, CONTROL OVER, OR CONVERTS TO HIS OWN USE ANY  
7 PROPERTY OF ANOTHER BY BREACHING HIS FIDUCIARY DUTY TO THE OTHER  
8 WITH THE INTENT TO PERMANENTLY DEPRIVE THE OTHER OF THE OWNERSHIP,  
9 BENEFIT OR POSSESSION THEREOF; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** The following shall be codified as Section  
12 11-7-165, Mississippi Code of 1972:

13 11-7-165. (1) In addition to any other damages, in any  
14 civil action to recover real or personal property or damages in  
15 lieu thereof, or both, damages shall be recoverable up to three  
16 (3) times the amount of the fair market value of the property  
17 obtained or converted, where it is proven:

18 (a) That a person through false pretenses, fraud,  
19 extortion, intimidation, theft, embezzlement, exploitation or  
20 other intentional wrongful act, obtained possession of, control  
21 over, title to, or converted to his own use the money, assets or  
22 real or personal property of a vulnerable adult or other  
23 individual who was gullible by reason of age, infirmity or lack of  
24 sophistication; or

25 (b) That a person obtained possession of, control over,  
26 title to, or converted to his own use any property of another with  
27 whom the person held a position of trust or was in a confidential  
28 relationship by breaching his fiduciary duty with the intent to  
29 permanently deprive the other of the ownership, benefit or  
30 possession thereof.

31 (2) As used in this section, "position of trust" means a  
32 person who:

33 (a) Has assumed a duty to provide care to the owner of  
34 the property;

35 (b) Is in a fiduciary relationship with the owner of  
36 the property, including a de facto guardian or de facto  
37 conservator;

38 (c) Is a joint tenant or tenant in common with the  
39 owner; or

40 (d) Is a financial planning or investment professional  
41 consulted by the owner.

42 (3) For purposes of this section, "exploitation" and  
43 "vulnerable adult" shall have the meanings described in Section  
44 43-47-5.

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

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

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