

Senate Amendments to House Bill No. 1271

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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 property having a value of Two Hundred Fifty Dollars
12 (\$250.00) or more belonging to a vulnerable adult or any adult
13 sixty-five (65) years of age or older by conversion, embezzlement,
14 extortion, theft or fraud without the owner's consent, or obtained
15 the owner's consent by intimidation, deception, undue influence or
16 by misusing a position of trust or a confidential relationship
17 with the owner, then whether the action is to recover the property
18 or damages in lieu thereof, or both, damages shall be recoverable
19 up to three (3) times the amount of the monetary damages or value
20 of the property embezzled, converted or otherwise stolen, in
21 addition to any other damages.

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

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

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

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

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

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

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

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

49 **SECTION 2.** This act shall take effect and be in force from
50 and after July 1, 2007, and shall stand repealed from and after
51 June 30, 2007.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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 65 YEARS OF AGE
5 OR OLDER; TO DEFINE THE TERM "POSITION OF TRUST"; AND FOR RELATED
6 PURPOSES.

SS26\HB1271PS.J

John O. Gilbert
Secretary of the Senate