MISSISSIPPI LEGISLATURE REGULAR SESSION 2007

By: Representatives Holland, Clark, Scott

To: Judiciary A

HOUSE BILL NO. 1271

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

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

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

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

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

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

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

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

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

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

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

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

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