

SUBSTITUTE FOR
SENATE BILL NO. 463

A bill to amend 1939 PA 280, entitled
"The social welfare act,"
by amending sections 11 and 11a (MCL 400.11 and 400.11a), as
amended by 1990 PA 122.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11. As used in this section and sections 11a to 11f:

2 (a) "Abuse" means harm or threatened harm to an adult's health
3 or welfare caused by another person. Abuse includes, but is not
4 limited to, nonaccidental physical or mental injury, sexual abuse,
5 **EXPLOITATION**, or maltreatment.

6 (b) "Adult in need of protective services" or "adult" means a
7 vulnerable person not less than 18 years of age who is suspected of
8 being or believed to be abused, neglected, or exploited.

9 (c) **"DECEPTION" MEANS THAT A PERSON KNOWINGLY DOES 1 OR MORE**

1 OF THE FOLLOWING TO AN INCAPACITATED OR VULNERABLE ADULT:

2 (i) CREATING OR CONFIRMING A FALSE IMPRESSION IN AN
3 INCAPACITATED OR VULNERABLE ADULT'S MIND.

4 (ii) FAILING TO CORRECT A FALSE IMPRESSION THAT THE PERSON IS
5 RESPONSIBLE FOR CREATING OR CONFIRMING IN AN INCAPACITATED OR
6 VULNERABLE ADULT'S MIND.

7 (iii) MAKING A PROMISE TO AN INCAPACITATED OR VULNERABLE ADULT
8 THAT THE PERSON DOES NOT INTEND TO PERFORM OR THAT THE PERSON KNOWS
9 WILL NOT OR CANNOT BE PERFORMED. A PERSON'S FAILURE TO PERFORM A
10 PROMISE IS NOT BY ITSELF SUFFICIENT PROOF THAT THE PERSON DID NOT
11 INTEND TO PERFORM THE PROMISE.

12 (iv) MISREPRESENTING OR CONCEALING A MATERIAL FACT THAT RELATES
13 TO THE TERMS OF A CONTRACT OR AN AGREEMENT THAT THE PERSON ENTERS
14 INTO WITH THE INCAPACITATED OR VULNERABLE ADULT OR THAT RELATES TO
15 THE EXISTING OR PREEXISTING CONDITION OF ANY OF THE PROPERTY
16 INVOLVED IN A CONTRACT OR AN AGREEMENT THAT THE PERSON ENTERS INTO
17 WITH THE INCAPACITATED OR VULNERABLE ADULT.

18 (v) USING ANY MATERIAL MISREPRESENTATION, FALSE PRETENSE, OR
19 FALSE PROMISE TO INDUCE, ENCOURAGE, OR SOLICIT AN INCAPACITATED OR
20 VULNERABLE ADULT TO ENTER INTO A CONTRACT OR AGREEMENT.

21 (D) ~~(e)~~—"Exploitation" means an action that involves the
22 misuse BY ANOTHER PERSON of an adult's funds, property, or personal
23 dignity, OR FINANCIAL EXPLOITATION by another person.

24 (E) "FINANCIAL EXPLOITATION" MEANS THE ACTION OF A PERSON WHO
25 BY INTIMIDATION OR DECEPTION KNOWINGLY TAKES CONTROL, TITLE, USE,
26 OR MANAGEMENT OF AN INCAPACITATED OR VULNERABLE ADULT'S ASSETS OR
27 PROPERTY WITH THE INTENT TO PERMANENTLY DEPRIVE THAT INCAPACITATED

1 OR VULNERABLE ADULT OF HIS OR HER ASSETS OR PROPERTY.

2 (F) "FINANCIAL INSTITUTION" MEANS A STATE OR NATIONALLY
3 CHARTERED BANK OR A STATE OR FEDERALLY CHARTERED SAVINGS AND LOAN
4 ASSOCIATION, SAVINGS BANK, CREDIT UNION, BROKERAGE FIRM, PAYDAY
5 LENDERS, OR ANY PERSON WHO PROVIDES FINANCIAL SERVICES THAT
6 MAINTAINS A PRINCIPAL OFFICE OR BRANCH IN THIS STATE. FOR THE
7 PURPOSES OF THIS SECTION AND SECTIONS 11A TO 11F, FINANCIAL
8 INSTITUTION DOES NOT INCLUDE AN INSURANCE COMPANY OR A PERSON WHO
9 SELLS INSURANCE PRODUCTS OR SERVICES ONLY.

10 (G) "INCAPACITATED ADULT" MEANS AN ADULT WHO IS AN
11 INCAPACITATED INDIVIDUAL AS THAT TERM IS DEFINED IN SECTION 1105 OF
12 THE ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL
13 700.1105.

14 (H) "INSURANCE PRODUCT OR SERVICE" MEANS THAT PHRASE AS
15 DEFINED IN SECTION 503 OF THE INSURANCE CODE OF 1956, 1956 PA 218,
16 MCL 500.503.

17 (I) "INTIMIDATION" INCLUDES, BUT IS NOT LIMITED TO,
18 THREATENING TO DEPRIVE AN INCAPACITATED OR VULNERABLE ADULT OF
19 FOOD, NUTRITION, SHELTER, NECESSARY MEDICATION, OR MEDICAL
20 TREATMENT.

21 (J) ~~(d)~~—"Neglect" means harm to an adult's health or welfare
22 caused by the inability of the adult to respond to a harmful
23 situation or by the conduct of a person who assumes responsibility
24 for a significant aspect of the adult's health or welfare. Neglect
25 includes ~~the~~ failure to provide adequate food, clothing, shelter,
26 or medical care. A person shall not be considered to be abused,
27 neglected, or in need of emergency or protective services for the

1 sole reason that the person is receiving or relying upon treatment
2 by spiritual means through prayer alone in accordance with the
3 tenets and practices of a recognized church or religious
4 denomination, and this act ~~shall~~**DOES** not require any medical care
5 or treatment in contravention of the stated or implied objection of
6 that person.

7 (K) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION,
8 ASSOCIATION, GOVERNMENTAL ENTITY, OR OTHER LEGAL ENTITY.

9 (I) "PAYDAY LENDER" MEANS A BUSINESS REQUIRED TO BE LICENSED
10 UNDER THE DEFERRED PRESENTMENT SERVICE TRANSACTIONS ACT, 2005 PA
11 244, MCL 487.2121 TO 487.2173.

12 (M) ~~(e)~~—"Protective services" includes, but is not limited to,
13 remedial, social, legal, health, mental health, and referral
14 services provided in response to a report of alleged harm or
15 threatened harm because of abuse, neglect, or exploitation.

16 (N) "SUSPECTED FINANCIAL EXPLOITATION" MEANS A PERSON REQUIRED
17 TO REPORT FINANCIAL EXPLOITATION UNDER SECTION 11A OBSERVES OR HAS
18 KNOWLEDGE OF BEHAVIOR OR UNUSUAL CIRCUMSTANCES OR TRANSACTIONS, OR
19 A PATTERN OF BEHAVIOR OR UNUSUAL CIRCUMSTANCES OR TRANSACTIONS,
20 THAT WOULD LEAD A PERSON WITH SIMILAR TRAINING OR EXPERIENCE, BASED
21 ON THE SAME FACTS, TO FORM A REASONABLE BELIEF THAT AN
22 INCAPACITATED OR VULNERABLE ADULT IS THE VICTIM OF FINANCIAL
23 EXPLOITATION.

24 (O) ~~(f)~~—"Vulnerable" means a condition in which an adult is
25 unable to protect himself or herself from abuse, neglect, or
26 exploitation because of a mental or physical impairment or because
27 of advanced age.

1 Sec. 11a. (1) ~~A-EXCEPT AS OTHERWISE PROVIDED IN THIS~~
2 **SUBSECTION, A** person who is employed, licensed, registered, or
3 certified to provide health care, educational, social welfare,
4 mental health, or other human services; an employee of an agency
5 licensed to provide health care, educational, social welfare,
6 mental health, or other human services; a law enforcement officer;
7 or an employee of the office of the county medical examiner who
8 suspects or has reasonable cause to believe that an adult has been
9 abused, neglected, or exploited shall make immediately, by
10 telephone or otherwise, an oral report to the county department ~~of~~
11 ~~social services~~ of the county in which the abuse, neglect, or
12 exploitation is suspected of having or believed to have occurred.
13 After making the oral report, the reporting person may file a
14 written report with the county department. A person described in
15 this subsection who is also required to make a report ~~pursuant to~~
16 **UNDER** section 21771 of the public health code, ~~Act No. 368 of the~~
17 ~~Public Acts of 1978, as amended, being section 333.21771 of the~~
18 ~~Michigan Compiled Laws 1978 PA 368, MCL 333.21771,~~ and who makes
19 that report is not required to make a duplicate report to the
20 county department ~~of social services~~ under this section.

21 (2) A report made by a physician or other licensed health
22 professional ~~pursuant to~~ **UNDER** subsection (1) shall not be
23 considered a violation of any legally recognized privileged
24 communication or a violation of article 15 of the public health
25 code, ~~Act No. 368 of the Public Acts of 1978, being sections~~
26 ~~333.16101 to 333.18838 of the Michigan Compiled Laws 1978 PA 368,~~
27 **MCL 333.16101 TO 333.18838.**

1 (3) In addition to those persons required to make an oral
2 report under subsection (1), any person who suspects that an adult
3 has been abused, neglected, or exploited may make a report to the
4 county department ~~of social services~~ of the county in which the
5 abuse, neglect, or exploitation is suspected of having occurred.

6 (4) A report made under this section shall contain the name of
7 the adult and a description of the abuse, neglect, or exploitation.
8 If possible, the report shall contain the adult's age and the names
9 and addresses of the adult's guardian or next of kin, and of the
10 persons with whom the adult resides, including their relationship
11 to the adult. The report shall contain other information available
12 to the reporting person that may establish the cause of the abuse,
13 neglect, or exploitation and the manner in which the abuse,
14 neglect, or exploitation occurred or is occurring. The county
15 department shall reduce to writing the information provided in an
16 oral report received ~~pursuant to~~ **UNDER** this section.

17 (5) The county department shall report to a police agency any
18 criminal activity that it believes to be occurring, upon receipt of
19 the oral report.

20 (6) This section shall not be construed as limiting the
21 responsibilities of the police agency of a local unit of government
22 to enforce the laws of this state or as precluding the police
23 agency from reporting and investigating, as appropriate, alleged
24 criminal conduct.

25 **(7) BEGINNING AFTER SEPTEMBER 1, 2012, A FINANCIAL INSTITUTION**
26 **SHALL PROVIDE TO ITS EMPLOYEES WHO PERFORM FINANCIAL SERVICES**
27 **TRAINING ON HOW TO IDENTIFY SUSPECTED FINANCIAL EXPLOITATION. THE**

1 TRAINING SHALL INCLUDE, BUT IS NOT LIMITED TO, WHERE AND HOW TO
2 REPORT SUSPECTED FINANCIAL EXPLOITATION, IDENTIFYING UNUSUAL
3 BANKING OR FINANCIAL ACTIVITY THAT MAY BE FINANCIAL EXPLOITATION,
4 AND IDENTIFYING BEHAVIOR EXHIBITED BY AN INCAPACITATED OR
5 VULNERABLE ADULT THAT MAY INDICATE HE OR SHE IS THE VICTIM OF
6 FINANCIAL EXPLOITATION.

7 (8) IN ADDITION TO IMMUNITY PROVIDED UNDER SECTION 11C, A
8 PERSON ACTING IN GOOD FAITH WHO MAKES A REPORT OR WHO ASSISTS IN
9 THE IMPLEMENTATION OF THIS SECTION AS IT RELATES TO FINANCIAL
10 EXPLOITATION IS IMMUNE FROM CIVIL LIABILITY THAT MIGHT OTHERWISE BE
11 INCURRED BY MAKING THE REPORT OR BY ASSISTING IN THE MAKING OF THE
12 REPORT.