

Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 378 (Substitute S-1 as reported by the Committee of the Whole)

Sponsor: Senator Joel D. Gougeon

Committee: Judiciary

CONTENT

The bill would amend the Michigan Penal Code to prescribe penalties for a “person in a relationship of trust” with a “vulnerable adult” who knowingly, by deception or intimidation, obtained or used or attempted to obtain or use the vulnerable adult’s money or property for the benefit of any person other than the vulnerable adult and with the intent to deprive the vulnerable adult, temporarily or permanently, of the use, benefit, or possession of that money or property. A violation would be a felony, punishable by up to 10 years’ imprisonment, a maximum fine of \$5,000, or both. The bill would not apply to a financial institution or its director, officer, employee, or agent unless that individual was acting outside his or her normal course of relationship with the financial institution. The bill would not prohibit a person from being charged with, convicted of, or punished for any other violation of law that the person committed while violating the bill. The Office of Services to the Aging promptly would have to report violations of the bill to the Family Independence Agency. The bill would take effect 90 days after its enactment.

“Person in a relationship of trust” would mean a person for whom both of the following were true: 1) he or she was a caregiver; relative by blood, marriage, or adoption; household member; or other person who was entrusted with or had assumed responsibility for the use or management of a vulnerable adult’s money or property; and 2) he or she had a relationship with a vulnerable adult based upon the vulnerable adult’s trust and confidence, regardless of the reasonableness of the vulnerable adult’s expectations or the existence of a formal agreement or court order, so that the person was, in equity and good conscience, bound to act in good faith and with due regard for the vulnerable adult’s interests.

“Vulnerable adult” would mean a person 18 years of age or older who, because of age, developmental disability, mental illness, or physical disability, whether or not determined by a court to be an incapacitated individual of protection, required supervision or personal care and lacked personal and cognitive skills required to live independently.

Proposed MCL 750.174a

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. There are no data available to indicate how many people could be convicted of embezzlement by a fiduciary. The proposed crime would carry a penalty similar to the penalty for embezzlement by an agent. In 1997, there were 49 people committed to State correctional facilities for that offense and, of those, 86% had minimum sentences of three years or less. Assuming that the number of offenders and the average minimum sentence imposed for the proposed crime would be equal to the 1997 data for the existing crime and that offenders would serve only the stated minimum sentence, given that an annual cost of incarceration is \$22,000, the cost for offenders convicted of this crime would be \$1,716,000.

Date Completed: 11-2-99

Fiscal Analyst: K. Firestone