

Senate Fiscal Agency
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SFA



BILL ANALYSIS

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Senate Bill 378 (as introduced 2-24-99)
Sponsor: Senator Joel D. Gougeon
Committee: Judiciary

Date Completed: 5-10-99

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 of the bill would be a felony, punishable by up to 10 years’ imprisonment, a maximum fine of \$5,000, or both. 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.

“Person in a relationship of trust” would mean a person for whom both of the following were true:

- He or she was a caregiver; relative by blood, marriage, or adoption; household member; or other person who was entrusted with or had assumed the use or management of a vulnerable adult’s money or property.
- 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 either of the following:

- A person 18 years of age or older who, because of age, developmental disability, mental illness, or physical handicap required supervision or personal care, lacked personal and social skills required to live independently, or had one or more physical or mental limitations that substantially restricted the ability to perform normal activities of daily living.
- A person 60 years of age or older who suffered from infirmities of aging manifested by physical, mental, or emotional dysfunctioning to the extent that his or her ability to provide adequately for his or her own care or protection or live independently was impaired.

“Deception” would mean a misrepresentation or concealment of a material fact. “Intimidation” would mean communication by word or act that the vulnerable adult would be deprived of food or nutrition, clothing, shelter, supervision, assistance, medication or medical services, financial support, or care or other support, or would suffer physical violence.

Proposed MCL 750.174a

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bill 378 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 (10 years maximum imprisonment and/or up to \$5,000 fine) similar to the penalty for embezzlement by an agent under MCL 750.174. In 1997, there were 49 people committed to State correctional facilities for violation of MCL 750.174 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.

Fiscal Analyst: K. Firestone

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.