

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 378**

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
(MCL 750.1 to 750.568) by adding section 174a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 174A. (1) A PERSON IN A RELATIONSHIP OF TRUST WITH A
2 VULNERABLE ADULT SHALL NOT THROUGH FRAUD, DECEIT, MISREPRESENTA-
3 TION, OR UNJUST ENRICHMENT OBTAIN OR USE OR ATTEMPT TO OBTAIN OR
4 USE THE VULNERABLE ADULT'S MONEY OR PROPERTY TO DIRECTLY OR INDI-
5 RECTLY BENEFIT THAT PERSON.

6 (2) IF THE MONEY OR PROPERTY USED OR OBTAINED, OR ATTEMPTED
7 TO BE USED OR OBTAINED, HAS A VALUE OF LESS THAN \$200.00, THE
8 PERSON IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR
9 NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN \$500.00 OR 3
10 TIMES THE VALUE OF THE MONEY OR PROPERTY USED OR OBTAINED OR

1 ATTEMPTED TO BE USED OR OBTAINED, WHICHEVER IS GREATER, OR BOTH
2 IMPRISONMENT AND A FINE.

3 (3) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
4 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR
5 OR A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE VALUE OF THE
6 MONEY OR PROPERTY USED OR OBTAINED OR ATTEMPTED TO BE USED OR
7 OBTAINED, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

8 (A) THE MONEY OR PROPERTY USED OR OBTAINED, OR ATTEMPTED TO
9 BE USED OR OBTAINED, HAS A VALUE OF \$200.00 OR MORE BUT LESS THAN
10 \$1,000.00.

11 (B) THE PERSON VIOLATES SUBSECTION (2) AND HAS 1 OR MORE
12 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
13 OFFENSE UNDER THIS SECTION.

14 (4) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
15 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A
16 FINE OF NOT MORE THAN \$10,000.00 OR 3 TIMES THE VALUE OF THE
17 MONEY OR PROPERTY USED OR OBTAINED OR ATTEMPTED TO BE USED OR
18 OBTAINED, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

19 (A) THE MONEY OR PROPERTY USED OR OBTAINED, OR ATTEMPTED TO
20 BE USED OR OBTAINED, HAS A VALUE OF \$1,000.00 OR MORE BUT LESS
21 THAN \$20,000.00.

22 (B) THE PERSON VIOLATES SUBSECTION (3)(A) AND HAS 1 OR MORE
23 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
24 OFFENSE UNDER THIS SECTION. FOR PURPOSES OF THIS SUBDIVISION,
25 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A
26 VIOLATION OR ATTEMPTED VIOLATION OF SUBSECTION (2) OR (3)(B).

1 (5) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
2 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 10 YEARS OR A
3 FINE OF NOT MORE THAN \$15,000.00 OR 3 TIMES THE VALUE OF THE
4 MONEY OR PROPERTY USED OR OBTAINED OR ATTEMPTED TO BE USED OR
5 OBTAINED, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

6 (A) THE MONEY OR PROPERTY USED OR OBTAINED, OR ATTEMPTED TO
7 BE USED OR OBTAINED, HAS A VALUE OF \$20,000.00 OR MORE.

8 (B) THE PERSON VIOLATES SUBSECTION (4)(A) AND HAS 2 OR MORE
9 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
10 OFFENSE UNDER THIS SECTION. FOR PURPOSES OF THIS SUBDIVISION,
11 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A
12 VIOLATION OR ATTEMPTED VIOLATION OF SUBSECTION (2) OR (3)(B).

13 (6) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
14 VALUES OF MONEY OR PROPERTY USED OR OBTAINED OR ATTEMPTED TO BE
15 USED OR OBTAINED IN SEPARATE INCIDENTS PURSUANT TO A SCHEME OR
16 COURSE OF CONDUCT WITHIN ANY 12-MONTH PERIOD MAY BE AGGREGATED TO
17 DETERMINE THE TOTAL VALUE OF MONEY OR PERSONAL PROPERTY USED OR
18 OBTAINED OR ATTEMPTED TO BE USED OR OBTAINED. IF THE SCHEME OR
19 COURSE OF CONDUCT IS DIRECTED AGAINST ONLY 1 PERSON, NO TIME
20 LIMIT APPLIES TO AGGREGATION UNDER THIS SUBSECTION.

21 (7) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
22 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR CONVIC-
23 TIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE COMPLAINT
24 AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION OR
25 CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVICTION
26 OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A JURY,
27 AT SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE BEFORE

1 SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE
2 ESTABLISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING,
3 BUT NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

4 (A) A COPY OF THE JUDGMENT OF CONVICTION.

5 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR
6 SENTENCING.

7 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

8 (D) THE DEFENDANT'S STATEMENT.

9 (8) IF THE SENTENCE FOR A CONVICTION UNDER THIS SECTION IS
10 ENHANCED BY 1 OR MORE PRIOR CONVICTIONS, THOSE PRIOR CONVICTIONS
11 SHALL NOT BE USED TO FURTHER ENHANCE THE SENTENCE FOR THE CONVIC-
12 TION UNDER SECTION 10, 11, OR 12 OF CHAPTER IX OF THE CODE OF
13 CRIMINAL PROCEDURE, 1927 PA 175, MCL 769.10, 769.11, AND 769.12.

14 (9) A FINANCIAL INSTITUTION OR A BROKER OR A DIRECTOR, OFFI-
15 CER, EMPLOYEE, OR AGENT OF A FINANCIAL INSTITUTION OR BROKER IS
16 NOT IN VIOLATION OF THIS SECTION WHILE PERFORMING DUTIES IN THE
17 NORMAL COURSE OF BUSINESS OF A FINANCIAL INSTITUTION OR BROKER OR
18 A DIRECTOR, OFFICER, EMPLOYEE, OR AGENT OF A FINANCIAL INSTITU-
19 TION OR BROKER.

20 (10) THIS SECTION DOES NOT PROHIBIT A PERSON FROM BEING
21 CHARGED WITH, CONVICTED OF, OR PUNISHED FOR ANY OTHER VIOLATION
22 OF LAW THE PERSON COMMITS WHILE VIOLATING THIS SECTION.

23 (11) AS USED IN THIS SECTION:

24 (A) "BROKER" MEANS THAT TERM AS DEFINED IN SECTION 8102 OF
25 THE UNIFORM COMMERCIAL CODE, 1974 PA 1962, MCL 440.8102.

26 (B) "FINANCIAL INSTITUTION" MEANS A BANK, CREDIT UNION,
27 SAVING BANK, OR A SAVINGS AND LOAN CHARTERED UNDER STATE OR

1 FEDERAL LAW OR AN AFFILIATE OF A BANK, CREDIT UNION, SAVING BANK,
2 OR SAVINGS AND LOAN CHARTERED UNDER STATE OR FEDERAL LAW.

3 (C) "PERSON IN A RELATIONSHIP OF TRUST" MEANS A PERSON WHO
4 IS A CAREGIVER, RELATIVE BY BLOOD, MARRIAGE, OR ADOPTION, HOUSE-
5 HOLD MEMBER, COURT-APPOINTED FIDUCIARY, OR OTHER PERSON WHO IS
6 ENTRUSTED WITH OR HAS ASSUMED RESPONSIBILITY FOR THE MANAGEMENT
7 OF THE VULNERABLE ADULT'S MONEY OR PROPERTY.

8 (D) "VULNERABLE ADULT" MEANS AN INDIVIDUAL AGE 18 OR OVER
9 WHO, BECAUSE OF AGE, DEVELOPMENTAL DISABILITY, MENTAL ILLNESS, OR
10 DISABILITY, WHETHER OR NOT DETERMINED BY A COURT TO BE AN INCA-
11 PACITATED INDIVIDUAL IN NEED OF PROTECTION, LACKS THE COGNITIVE
12 SKILLS REQUIRED TO MANAGE HIS OR HER PROPERTY.

13 (12) IF THE OFFICE OF SERVICES TO THE AGING BECOMES AWARE OF
14 A VIOLATION OF THIS SECTION, THE OFFICE OF SERVICES TO THE AGING
15 SHALL PROMPTLY REPORT THE VIOLATION TO THE FAMILY INDEPENDENCE
16 AGENCY.

17 Enacting section 1. This amendatory act takes effect
18 July 1, 2000.