

SUBSTITUTE FOR
HOUSE BILL NO. 4260

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 174a (MCL 750.174a), as added by 2000 PA
222.

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,
3 misrepresentation, **coercion**, or unjust enrichment obtain or use
4 or attempt to obtain or use ~~the~~ a vulnerable adult's money or
5 property to directly or indirectly 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~~ **The** person violates subsection (3)(a) and has 1 or
23 more 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).

27 (5) If any of the following apply, the person is guilty of a

1 felony punishable by imprisonment for not more than 10 years or a
2 fine of not more than \$15,000.00 or 3 times the value of the
3 money or property used or obtained or attempted to be used or
4 obtained, whichever is greater, or both imprisonment and a fine:

5 (a) The money or property used or obtained, or attempted to
6 be used or obtained, has a value of \$20,000.00 or more.

7 (b) The person violates subsection (4)(a) and has 2 or more
8 prior convictions for committing or attempting to commit an
9 offense under this section. For purposes of this subdivision,
10 however, a prior conviction does not include a conviction for a
11 violation or attempted violation of subsection (2) or (3)(b).

12 (6) Except as otherwise provided in this subsection, the
13 values of money or property used or obtained or attempted to be
14 used or obtained in separate incidents pursuant to a scheme or
15 course of conduct within any 12-month period may be aggregated to
16 determine the total value of money or personal property used or
17 obtained or attempted to be used or obtained. If the scheme or
18 course of conduct is directed against only 1 person, no time
19 limit applies to aggregation under this subsection.

20 (7) If the prosecuting attorney intends to seek an enhanced
21 sentence based upon the defendant having 1 or more prior
22 convictions, the prosecuting attorney shall include on the
23 complaint and information a statement listing the prior
24 conviction or convictions. The existence of the defendant's
25 prior conviction or convictions shall be determined by the court,
26 without a jury, at sentencing or at a separate hearing for that
27 purpose before sentencing. The existence of a prior conviction

1 may be established by any evidence relevant for that purpose,
2 including, but not limited to, 1 or more of the following:

3 (a) A copy of the judgment of conviction.

4 (b) A transcript of a prior trial, plea-taking, or
5 sentencing.

6 (c) Information contained in a presentence report.

7 (d) The defendant's statement.

8 (8) If the sentence for a conviction under this section is
9 enhanced by 1 or more prior convictions, those prior convictions
10 shall not be used to further enhance the sentence for the
11 conviction under section 10, 11, or 12 of chapter IX of the code
12 of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and
13 769.12.

14 (9) A financial institution or a broker or a director,
15 officer, employee, or agent of a financial institution or broker
16 is not in violation of this section while performing duties in
17 the normal course of business of a financial institution or
18 broker or a director, officer, employee, or agent of a financial
19 institution 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,~~
5 ~~household member, court appointed fiduciary, or other person who~~
6 ~~is entrusted with or has assumed responsibility for the~~
7 ~~management of the vulnerable adult's money or property.~~

8 (c) ~~(d)~~ "Vulnerable adult" means an individual age 18 or
9 over who, because of age, developmental disability, mental
10 illness, or **any other physical or mental disability or illness,**
11 whether or not determined by a court to be an incapacitated
12 individual in need of protection, lacks the cognitive skills,
13 **interest, or ability** required to manage **some or all of** his or her
14 property.

15 (12) If the office of services to the aging becomes aware of
16 a violation of this section, the office of services to the aging
17 shall promptly report the violation to the family independence
18 agency.

19 Enacting section 1. This amendatory act takes effect July
20 1, 2004.