

HOUSE BILL No. 6190

June 13, 2006, Introduced by Reps. Bieda, Rocca, Brandenburg, Donigan, Drolet and
Condino and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 174a (MCL 750.174a), as amended by 2004 PA 255.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 174a. (1) A person shall not through fraud, deceit,
2 misrepresentation, coercion, or unjust enrichment obtain or use or
3 attempt to obtain or use a vulnerable adult's money or property to
4 directly or indirectly benefit that person knowing or having reason
5 to know the vulnerable adult is a vulnerable adult.

6 (2) If the money or property used or obtained, or attempted to
7 be used or obtained, has a value of less than \$200.00, the person
8 is guilty of a misdemeanor punishable by imprisonment for not more
9 than 93 days or a fine of not more than \$500.00 or 3 times the

1 value of the money or property used or obtained or attempted to be
2 used or obtained, whichever is greater, or both imprisonment and a
3 fine.

4 (3) If any of the following apply, the person is guilty of a
5 misdemeanor punishable by imprisonment for not more than 1 year or
6 a fine of not more than \$2,000.00 or 3 times the value of the money
7 or property used or obtained or attempted to be used or obtained,
8 whichever is greater, or both imprisonment and a fine:

9 (a) The money or property used or obtained, or attempted to be
10 used or obtained, has a value of \$200.00 or more but less than
11 \$1,000.00.

12 (b) The person violates subsection (2) and has 1 or more prior
13 convictions for committing or attempting to commit an offense under
14 this section.

15 (4) If any of the following apply, the person is guilty of a
16 felony punishable by imprisonment for not more than 5 years or a
17 fine of not more than \$10,000.00 or 3 times the value of the money
18 or property used or obtained or attempted to be used or obtained,
19 whichever is greater, or both imprisonment and a fine:

20 (a) The money or property used or obtained, or attempted to be
21 used or obtained, has a value of \$1,000.00 or more but less than
22 \$20,000.00.

23 (b) The person violates subsection (3)(a) and has 1 or more
24 prior convictions for committing or attempting to commit an offense
25 under this section. For purposes of this subdivision, however, a
26 prior conviction does not include a conviction for a violation or
27 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~~ 20 years
3 or a 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 be
7 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 offense
10 under this section. For purposes of this subdivision, however, a
11 prior conviction does not include a conviction for a violation or
12 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 limit
20 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
23 convictions, the prosecuting attorney shall include on the
24 complaint and information a statement listing the prior conviction
25 or convictions. The existence of the defendant's prior conviction
26 or convictions shall be determined by the court, without a jury, at
27 sentencing or at a separate hearing for that purpose before

1 sentencing. The existence of a prior conviction may be established
2 by any evidence relevant for that purpose, including, but not
3 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 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 of
12 criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

13 (9) A financial institution or a broker or a director,
14 officer, employee, or agent of a financial institution or broker is
15 not in violation of this section while performing duties in the
16 normal course of business of a financial institution or broker or a
17 director, officer, employee, or agent of a financial institution or
18 broker.

19 (10) This section does not prohibit a person from being
20 charged with, convicted of, or punished for any other violation of
21 law the person commits while violating this section.

22 (11) As used in this section:

23 (a) "Broker" means that term as defined in section 8102 of the
24 uniform commercial code, 1962 PA 174, MCL 440.8102.

25 (b) "Financial institution" means a bank, credit union, saving
26 bank, or a savings and loan chartered under state or federal law or
27 an affiliate of a bank, credit union, saving bank, or savings and

1 loan chartered under state or federal law.

2 (c) "Vulnerable adult" means that term as defined in section
3 145m, whether or not the individual has been determined by the
4 court to be incapacitated.

5 (12) If the office of services to the aging becomes aware of a
6 violation of this section, the office of services to the aging
7 shall promptly report the violation to the ~~family independence~~
8 ~~agency~~ **DEPARTMENT OF HUMAN SERVICES.**