

SUBSTITUTE FOR
HOUSE BILL NO. 5728

A bill to amend 1939 PA 280, entitled
"The social welfare act,"
by amending section 11 (MCL 400.11), as amended by 1990 PA 122.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11. As used in this section and sections 11a to 11f:

2 (a) "Abuse" means harm or threatened harm to an adult's health
3 or welfare caused by another person. Abuse includes, but is not
4 limited to, nonaccidental physical or mental injury, sexual abuse,
5 **FINANCIAL EXPLOITATION**, or maltreatment.

6 (b) "Adult in need of protective services" or "adult" means a
7 vulnerable person not less than 18 years of age who is suspected of
8 being or believed to be abused, neglected, or exploited.

9 (c) **"DECEPTION" MEANS THAT A PERSON KNOWINGLY DOES 1 OR MORE**

1 OF THE FOLLOWING TO AN INCAPACITATED OR VULNERABLE ADULT:

2 (i) CREATING OR CONFIRMING A FALSE IMPRESSION IN AN
3 INCAPACITATED OR VULNERABLE ADULT'S MIND.

4 (ii) FAILING TO CORRECT A FALSE IMPRESSION THAT THE PERSON IS
5 RESPONSIBLE FOR CREATING OR CONFIRMING IN AN INCAPACITATED OR
6 VULNERABLE ADULT'S MIND.

7 (iii) MAKING A PROMISE TO AN INCAPACITATED OR VULNERABLE ADULT
8 THAT THE PERSON DOES NOT INTEND TO PERFORM OR THAT THE PERSON KNOWS
9 WILL NOT OR CANNOT BE PERFORMED. A PERSON'S FAILURE TO PERFORM A
10 PROMISE IS NOT BY ITSELF SUFFICIENT PROOF THAT THE PERSON DID NOT
11 INTEND TO PERFORM THE PROMISE.

12 (iv) MISREPRESENTING OR CONCEALING A MATERIAL FACT THAT RELATES
13 TO THE TERMS OF A CONTRACT OR AN AGREEMENT THAT THE PERSON ENTERS
14 INTO WITH THE INCAPACITATED OR VULNERABLE ADULT OR THAT RELATES TO
15 THE EXISTING OR PREEXISTING CONDITION OF ANY OF THE PROPERTY
16 INVOLVED IN A CONTRACT OR AN AGREEMENT.

17 (v) USING ANY MATERIAL MISREPRESENTATION, FALSE PRETENSE, OR
18 FALSE PROMISE TO INDUCE, ENCOURAGE, OR SOLICIT AN INCAPACITATED OR
19 VULNERABLE ADULT TO ENTER INTO A CONTRACT OR AGREEMENT.

20 (D) ~~(e)~~ "Exploitation" means an action that involves the
21 misuse of an adult's funds, property, ~~or~~ personal dignity, OR
22 FINANCIAL EXPLOITATION by another person.

23 (E) "FINANCIAL EXPLOITATION" MEANS THE ACTION OF A PERSON IN A
24 POSITION OF TRUST AND CONFIDENCE AND WHO BY INTIMIDATION OR
25 DECEPTION KNOWINGLY TAKES CONTROL, TITLE, USE, OR MANAGEMENT OF AN
26 INCAPACITATED OR VULNERABLE ADULT'S ASSETS OR PROPERTY WITH THE
27 INTENT TO PERMANENTLY DEPRIVE THAT INCAPACITATED OR VULNERABLE

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1 ADULT OF HIS OR HER ASSET OR PROPERTY.

2 (F) "FINANCIAL INSTITUTION" MEANS A STATE OR NATIONALLY
3 CHARTERED BANK OR A STATE OR FEDERALLY CHARTERED SAVINGS AND LOAN
4 ASSOCIATION, SAVINGS BANK, CREDIT UNION, BROKERAGE FIRM, [LIFE] INSURANCE
5 COMPANY, OR ANY PERSON WHO PROVIDES FINANCIAL SERVICES THAT
6 MAINTAINS A PRINCIPAL OFFICE OR BRANCH IN THIS STATE.

7 (G) "INTIMIDATION" INCLUDES, BUT IS NOT LIMITED TO,
8 THREATENING TO DEPRIVE AN INCAPACITATED OR VULNERABLE ADULT OF
9 FOOD, NUTRITION, SHELTER, NECESSARY MEDICATION, OR MEDICAL
10 TREATMENT.

11 (H) ~~(d)~~ "Neglect" means harm to an adult's health or welfare
12 caused by the inability of the adult to respond to a harmful
13 situation or by the conduct of a person who assumes responsibility
14 for a significant aspect of the adult's health or welfare. Neglect
15 includes ~~the~~ failure to provide adequate food, clothing, shelter,
16 or medical care. A person shall not be considered to be abused,
17 neglected, or in need of emergency or protective services for the
18 sole reason that the person is receiving or relying upon treatment
19 by spiritual means through prayer alone in accordance with the
20 tenets and practices of a recognized church or religious
21 denomination, and this act shall not require any medical care or
22 treatment in contravention of the stated or implied objection of
23 that person.

24 (I) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION,
25 ASSOCIATION, GOVERNMENTAL ENTITY, OR OTHER LEGAL ENTITY.

26 (J) "POSITION OF TRUST" MEANS THAT A PERSON IS ANY OF THE
27 FOLLOWING:

1 (i) A PERSON WHO HAS ASSUMED A DUTY TO PROVIDE CARE TO AN
2 INCAPACITATED OR VULNERABLE ADULT.

3 (ii) A JOINT TENANT OR A TENANT IN COMMON WITH AN INCAPACITATED
4 OR VULNERABLE ADULT.

5 (iii) A PERSON WHO IS IN A FIDUCIARY RELATIONSHIP WITH AN
6 INCAPACITATED OR VULNERABLE ADULT INCLUDING A DE FACTO GUARDIAN OR
7 DE FACTO CONSERVATOR.

8 (K) ~~(e)~~—"Protective services" includes, but is not limited to,
9 remedial, social, legal, health, mental health, and referral
10 services provided in response to a report of alleged harm or
11 threatened harm because of abuse, neglect, ~~or~~ exploitation, OR
12 FINANCIAL EXPLOITATION.

13 (l) "SUSPECTED FINANCIAL EXPLOITATION" MEANS WHEN A PERSON WHO
14 IS REQUIRED TO REPORT FINANCIAL EXPLOITATION UNDER SECTION 11A
15 OBSERVES OR HAS KNOWLEDGE OF BEHAVIOR OR UNUSUAL CIRCUMSTANCES OR
16 TRANSACTIONS, OR A PATTERN OF BEHAVIOR OR UNUSUAL CIRCUMSTANCES OR
17 TRANSACTIONS, THAT WOULD LEAD A PERSON WITH SIMILAR TRAINING OR
18 EXPERIENCE, BASED ON THE SAME FACTS, TO FORM A REASONABLE BELIEF
19 THAT AN INCAPACITATED OR VULNERABLE ADULT IS THE VICTIM OF
20 FINANCIAL EXPLOITATION.

21 (M) ~~(f)~~—"Vulnerable" means a condition in which an adult is
22 unable to protect himself or herself from abuse, neglect, ~~or~~
23 exploitation, OR FINANCIAL EXPLOITATION because of a mental or
24 physical impairment or because of advanced age.