

# HOUSE BILL No. 5728

February 13, 2008, Introduced by Reps. Meadows, Miller, Robert Jones, Constan, LeBlanc, Moss, Vagnozzi, Alma Smith, Melton, Hammel, Polidori, Brown, Young, Ebli, Valentine, Bauer, Leland, Johnson, Sak, Hopgood, Corriveau, Angerer, Warren, Bennett, Griffin, Shaffer, Clemente, Jackson, Hammon, Tobocman, Espinoza, Mayes, Spade, Gonzales, Meisner, Lemmons, Wojno, Dean, Bieda, Byrnes, Byrum, McDowell, Lahti, Sheltroun, Condino, Kathleen Law, Donigan, Rick Jones, Brandenburg, Wenke, Emmons, Caul and Huizenga and referred to the Committee on Senior Health, Security, and Retirement.

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.

1 (C) "DECEPTION" MEANS THAT A PERSON KNOWINGLY DOES 1 OR MORE  
2 OF THE FOLLOWING TO AN INCAPACITATED OR VULNERABLE ADULT:

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

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

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

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

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

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

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

1 INTENT TO PERMANENTLY DEPRIVE THAT INCAPACITATED OR VULNERABLE  
2 ADULT OF HIS OR HER ASSET OR PROPERTY.

3 (F) "FINANCIAL INSTITUTION" MEANS A STATE OR NATIONALLY  
4 CHARTERED BANK OR A STATE OR FEDERALLY CHARTERED SAVINGS AND LOAN  
5 ASSOCIATION, SAVINGS BANK, OR CREDIT UNION THAT MAINTAINS A  
6 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) "POSITION OF TRUST" MEANS THAT A PERSON IS ANY OF THE  
25 FOLLOWING:

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

1           (ii) A JOINT TENANT OR A TENANT IN COMMON WITH AN INCAPACITATED  
2 OR VULNERABLE ADULT.

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

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

11           (K) ~~(f)~~—"Vulnerable" means a condition in which an adult is  
12 unable to protect himself or herself from abuse, neglect, ~~or~~  
13 exploitation, **OR FINANCIAL EXPLOITATION** because of a mental or  
14 physical impairment or because of advanced age.