

SENATE BILL No. 459

June 15, 2011, Introduced by Senators EMMONS, SCHUITMAKER, COLBECK, BIEDA, ROCCA, YOUNG, NOFS, JONES, HANSEN, HILDENBRAND, PROOS, KAHN and MARLEAU and referred to the Committee on Families, Seniors and Human Services.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending sections 159g, 174a, and 273 (MCL 750.159g, 750.174a, and 750.273), section 159g as amended by 2010 PA 362 and section 174a as amended by 2004 PA 255.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 159g. As used in this chapter, "racketeering" means
2 committing, attempting to commit, conspiring to commit, or aiding
3 or abetting, soliciting, coercing, or intimidating a person to
4 commit an offense for financial gain, involving any of the
5 following:

6 (a) A felony violation of section 8 of the tobacco products

1 tax act, 1993 PA 327, MCL 205.428, concerning tobacco product
2 taxes, or section 9 of former 1947 PA 265, concerning cigarette
3 taxes.

4 (b) A violation of section 11151(3) of the natural resources
5 and environmental protection act, 1994 PA 451, MCL 324.11151, or
6 section 48(3) of former 1979 PA 64, concerning felonious disposal
7 of hazardous waste.

8 (c) A felony violation of part 74 of the public health code,
9 1978 PA 368, MCL 333.7401 to 333.7461, concerning controlled
10 substances.

11 (d) A felony violation of section 60 of the social welfare
12 act, 1939 PA 280, MCL 400.60, concerning welfare fraud.

13 (e) A violation of section 4, 5, or 7 of the medicaid false
14 claim act, 1977 PA 72, MCL 400.604, 400.605, and 400.607,
15 concerning medicaid fraud.

16 (f) A felony violation of section 18 of the Michigan gaming
17 control and revenue act, 1996 IL 1, MCL 432.218, concerning the
18 business of gaming.

19 (g) A violation of section 508 of the uniform securities act
20 (2002), 2008 PA 551, MCL 451.2508, concerning ~~securities~~ fraud.

21 (h) A violation of section 5 or 7 of 1978 PA 33, MCL 722.675
22 and 722.677, concerning the display or dissemination of obscene
23 matter to minors.

24 (i) A felony violation of section 72, 73, 74, 75, or 77,
25 concerning arson.

26 (j) A violation of section 93, 94, 95, or 96, concerning bank
27 bonds, bills, notes, and property.

1 (k) A violation of section 110 or 110a, concerning breaking
2 and entering or home invasion.

3 (l) A violation of section 117, 118, 119, 120, 121, or 124,
4 concerning bribery.

5 (m) A violation of section 120a, concerning jury tampering.

6 (n) A violation of section 145c, concerning child sexually
7 abusive activity or material.

8 (o) A violation of section 145d, concerning internet or
9 computer crimes.

10 (p) A felony violation of section 157n, 157p, 157q, 157r,
11 157s, 157t, or 157u, concerning credit cards or financial
12 transaction devices.

13 (q) A felony violation of section 174, 175, 176, 180, 181, or
14 182, concerning embezzlement.

15 (r) A felony violation of chapter XXXIII, concerning
16 explosives and bombs.

17 (s) A violation of section 213, concerning extortion.

18 (t) A felony violation of section 218, concerning false
19 pretenses.

20 (u) A felony violation of section 223(2), 224(1)(a), (b), or
21 (c), 224b, 224c, 224e(1), 226, 227, 234a, 234b, or 237a, concerning
22 firearms or dangerous weapons.

23 (v) A felony violation of chapter XLI, concerning forgery and
24 counterfeiting.

25 (w) A violation of section 271, 272, 273, or 274, concerning
26 securities fraud.

27 (x) A violation of section 300a, concerning food stamps or

1 coupons or access devices.

2 (y) A violation of section 301, 302, 303, 304, 305, 305a, or
3 313, concerning gambling.

4 (z) A violation of section 316 or 317, concerning murder.

5 (aa) A violation of section 330, 331, or 332, concerning horse
6 racing.

7 (bb) A violation of section 349, 349a, or 350, concerning
8 kidnapping.

9 (cc) A felony violation of chapter LII, concerning larceny.

10 (dd) A violation of section 411k, concerning money laundering.

11 (ee) A violation of section 422, 423, 424, or 425, concerning
12 perjury or subornation of perjury.

13 (ff) A violation of section 452, 455, 457, 458, or 459,
14 concerning prostitution.

15 (gg) A violation of chapter LXVIIA, concerning human
16 trafficking.

17 (hh) A violation of section 529, 529a, 530, or 531, concerning
18 robbery.

19 (ii) A felony violation of section 535 or 535a, concerning
20 stolen, embezzled, or converted property.

21 (jj) A violation of chapter LXXXIII-A, concerning terrorism.

22 (kk) A violation of section 5 of 1984 PA 343, MCL 752.365,
23 concerning obscenity.

24 (ll) A felony violation of the identity theft protection act,
25 2004 PA 452, MCL 445.61 to 445.77.

26 (mm) An offense committed within this state or another state
27 that constitutes racketeering activity as defined in 18 USC

1 1961(1).

2 (nn) An offense committed within this state or another state
3 in violation of a law of the United States that is substantially
4 similar to a violation listed in subdivisions (a) through (mm).

5 (oo) An offense committed in another state in violation of a
6 statute of that state that is substantially similar to a violation
7 listed in subdivisions (a) through (mm).

8 (pp) A felony violation of section 909(4) of the Michigan
9 liquor control code of 1998, 1998 PA 58, MCL 436.1909, concerning
10 the illegal sale, delivery, or importation of spirits.

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

16 (2) If the money or property used or obtained, or attempted to
17 be used or obtained, has a value of less than \$200.00, the person
18 is guilty of a misdemeanor punishable by imprisonment for not more
19 than 93 days or a fine of not more than \$500.00 or 3 times the
20 value of the money or property used or obtained or attempted to be
21 used or obtained, whichever is greater, or both imprisonment and a
22 fine.

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

1 (a) The money or property used or obtained, or attempted to be
2 used or obtained, has a value of \$200.00 or more but less than
3 \$1,000.00.

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

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

12 (a) The money or property used or obtained, or attempted to be
13 used or obtained, has a value of \$1,000.00 or more but less than
14 \$20,000.00.

15 (b) The person violates subsection (3)(a) and has 1 or more
16 prior convictions for committing or attempting to commit an offense
17 under this section. For purposes of this subdivision, however, a
18 prior conviction does not include a conviction for a violation or
19 attempted violation of subsection (2) or (3)(b).

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

25 (a) The money or property used or obtained, or attempted to be
26 used or obtained, has a value of \$20,000.00 or more **BUT LESS THAN**
27 **\$50,000.00.**

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

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

11 (A) THE MONEY OR PROPERTY USED OR OBTAINED, OR ATTEMPTED TO BE
12 USED OR OBTAINED, HAS A VALUE OF \$50,000.00 OR MORE BUT LESS THAN
13 \$100,000.00.

14 (B) THE PERSON VIOLATES SUBSECTION (5) (A) AND HAS 2 OR MORE
15 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE
16 UNDER THIS SECTION. FOR PURPOSES OF THIS SUBDIVISION, HOWEVER, A
17 PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A VIOLATION OR
18 ATTEMPTED VIOLATION OF SUBSECTION (2) OR (3) (B).

19 (7) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
20 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 20 YEARS OR A
21 FINE OF NOT MORE THAN \$50,000.00 OR 3 TIMES THE VALUE OF THE MONEY
22 OR PROPERTY USED OR OBTAINED OR ATTEMPTED TO BE USED OR OBTAINED,
23 WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

24 (A) THE MONEY OR PROPERTY USED OR OBTAINED, OR ATTEMPTED TO BE
25 USED OR OBTAINED, HAS A VALUE OF \$100,000.00 OR MORE.

26 (B) THE PERSON VIOLATES SUBSECTION (6) (A) AND HAS 2 OR MORE
27 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE

1 UNDER THIS SECTION. FOR PURPOSES OF THIS SUBDIVISION, HOWEVER, A
2 PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A VIOLATION OR
3 ATTEMPTED VIOLATION OF SUBSECTION (2) OR (3) (B).

4 (8) ~~(6)~~—Except as otherwise provided in this subsection, the
5 values of money or property used or obtained or attempted to be
6 used or obtained in separate incidents pursuant to a scheme or
7 course of conduct within any 12-month period may be aggregated to
8 determine the total value of money or personal property used or
9 obtained or attempted to be used or obtained. If the scheme or
10 course of conduct is directed against only 1 person, no time limit
11 applies to aggregation under this subsection.

12 (9) ~~(7)~~—If the prosecuting attorney intends to seek an
13 enhanced sentence based upon the defendant having 1 or more prior
14 convictions, the prosecuting attorney shall include on the
15 complaint and information a statement listing the prior conviction
16 or convictions. The existence of the defendant's prior conviction
17 or convictions shall be determined by the court, without a jury, at
18 sentencing or at a separate hearing for that purpose before
19 sentencing. The existence of a prior conviction may be established
20 by any evidence relevant for that purpose, including, but not
21 limited to, 1 or more of the following:

- 22 (a) A copy of the judgment of conviction.
23 (b) A transcript of a prior trial, plea-taking, or sentencing.
24 (c) Information contained in a presentence report.
25 (d) The defendant's statement.

26 (10) ~~(8)~~—If the sentence for a conviction under this section
27 is enhanced by 1 or more prior convictions, those prior convictions

1 shall not be used to further enhance the sentence for the
2 conviction under section 10, 11, or 12 of chapter IX of the code of
3 criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

4 (11) ~~(9)~~—A financial institution or a broker or a director,
5 officer, employee, or agent of a financial institution or broker is
6 not in violation of this section while performing duties in the
7 normal course of business of a financial institution or broker or a
8 director, officer, employee, or agent of a financial institution or
9 broker.

10 (12) ~~(10)~~—This section does not prohibit a person from being
11 charged with, convicted of, or punished for any other violation of
12 law the person commits while violating this section.

13 (13) ~~(11)~~—As used in this section:

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

16 (b) "Financial institution" means a bank, credit union, saving
17 bank, or a savings and loan chartered under state or federal law or
18 an affiliate of a bank, credit union, saving bank, or savings and
19 loan chartered under state or federal law.

20 (c) "Vulnerable adult" means that term as defined in section
21 145m, whether or not the individual has been determined by the
22 court to be incapacitated.

23 (14) ~~(12)~~—If the office of services to the aging becomes aware
24 of a violation of this section, the office of services to the aging
25 shall promptly report the violation to the ~~family independence~~
26 ~~agency~~ **DEPARTMENT OF HUMAN SERVICES**.

27 Sec. 273. ~~Fraudulently obtaining signature to note, etc. Any A~~

1 person who shall, ~~by representing that he is the agent of any~~
2 ~~person, company, firm or corporation, or by any other means,~~
3 fraudulently ~~obtain~~**OBTAINS** the signature of any person with the
4 intent to cheat and defraud ~~such~~**THAT** person, ~~to any promissory~~
5 ~~note, bill of exchange, due bill, order, contract or any paper~~
6 ~~writing whatever, shall be~~**IS** guilty of **A** felony, ~~punishable by~~
7 imprisonment ~~in the state prison~~**FOR** not more than 10 years or ~~by~~**A**
8 fine of not more than ~~5,000 dollars~~**\$5,000.00, OR BOTH.**