

SENATE BILL No. 463

June 15, 2011, Introduced by Senator YOUNG and referred to the Committee on Families, Seniors and Human Services.

A bill to amend 1939 PA 280, entitled "The social welfare act," by amending sections 11 and 11a (MCL 400.11 and 400.11a), 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

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, OR ANY
5 PERSON WHO PROVIDES FINANCIAL SERVICES THAT MAINTAINS A PRINCIPAL
6 OFFICE OR BRANCH IN THIS STATE. FOR THE PURPOSES OF THIS SECTION
7 AND SECTIONS 11A TO 11F, FINANCIAL INSTITUTION DOES NOT INCLUDE A
8 LIFE INSURANCE COMPANY.

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

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

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

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

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

5 (ii) A JOINT TENANT OR A TENANT IN COMMON WITH AN INCAPACITATED
6 OR VULNERABLE ADULT.

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

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

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

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

27 Sec. 11a. (1) ~~A~~ EXCEPT AS OTHERWISE PROVIDED IN THIS

1 **SUBSECTION**, A person who is employed, licensed, registered, or
2 certified to provide health care, educational, social welfare,
3 mental health, ~~or~~ other human services; an employee of an agency
4 licensed to provide health care, educational, social welfare,
5 mental health, or other human services; a law enforcement officer;
6 or an employee of the office of the county medical examiner who
7 suspects or has reasonable cause to believe that an adult has been
8 abused, neglected, ~~or~~ exploited, **OR FINANCIALLY EXPLOITED** shall
9 make immediately, by telephone or otherwise, an oral report to the
10 county department ~~of social services~~ of the county in which the
11 abuse, neglect, or exploitation is suspected of having or believed
12 to have occurred. After making the oral report, the reporting
13 person may file a written report with the county department. A
14 person described in this subsection who is also required to make a
15 report ~~pursuant to~~ **UNDER** section 21771 of the public health code,
16 ~~Act No. 368 of the Public Acts of 1978, as amended, being section~~
17 ~~333.21771 of the Michigan Compiled Laws 1978 PA 368, MCL 333.21771,~~
18 and who makes that report is not required to make a duplicate
19 report to the county department ~~of social services~~ under this
20 section.

21 (2) A report made by a physician or other licensed health
22 professional ~~pursuant to~~ **UNDER** subsection (1) shall not be
23 considered a violation of any legally recognized privileged
24 communication or a violation of article 15 of the public health
25 code, ~~Act No. 368 of the Public Acts of 1978, being sections~~
26 ~~333.16101 to 333.18838 of the Michigan Compiled Laws 1978 PA 368,~~
27 **MCL 333.16101 TO 333.18838.**

1 (3) In addition to those persons required to make an oral
2 report under subsection (1), any person who suspects that an adult
3 has been abused, neglected, ~~or exploited~~, **OR FINANCIALLY EXPLOITED**
4 may make a report to the county department ~~of social services~~ of
5 the county in which the abuse, neglect, or exploitation is
6 suspected of having occurred.

7 (4) A report made under this section shall contain the name of
8 the adult and a description of the abuse, neglect, or exploitation.
9 If possible, the report shall contain the adult's age and the names
10 and addresses of the adult's guardian or next of kin, and of the
11 persons with whom the adult resides, including their relationship
12 to the adult. The report shall contain other information available
13 to the reporting person that may establish the cause of the abuse,
14 neglect, or exploitation and the manner in which the abuse,
15 neglect, or exploitation occurred or is occurring. The county
16 department shall reduce to writing the information provided in an
17 oral report received ~~pursuant to~~ **UNDER** this section.

18 (5) The county department shall report to a police agency any
19 criminal activity that it believes to be occurring, upon receipt of
20 the oral report.

21 (6) This section shall not be construed as limiting the
22 responsibilities of the police agency of a local unit of government
23 to enforce the laws of this state or as precluding the police
24 agency from reporting and investigating, as appropriate, alleged
25 criminal conduct.

26 **(7) A FINANCIAL INSTITUTION SHALL PROVIDE TO ITS EMPLOYEES WHO**
27 **PERFORM FINANCIAL SERVICES TRAINING ON HOW TO IDENTIFY SUSPECTED**

1 FINANCIAL EXPLOITATION. THE TRAINING SHALL INCLUDE, BUT IS NOT
2 LIMITED TO, WHERE AND HOW TO REPORT SUSPECTED FINANCIAL
3 EXPLOITATION, IDENTIFYING UNUSUAL BANKING OR FINANCIAL ACTIVITY
4 THAT MAY BE FINANCIAL EXPLOITATION, AND IDENTIFYING BEHAVIOR
5 EXHIBITED BY A VULNERABLE ADULT THAT MAY INDICATE HE OR SHE IS THE
6 VICTIM OF FINANCIAL EXPLOITATION.

7 (8) IN ADDITION TO IMMUNITY PROVIDED UNDER SECTION 11C, A
8 PERSON ACTING IN GOOD FAITH WHO MAKES A REPORT OR WHO ASSISTS IN
9 THE IMPLEMENTATION OF THIS SECTION AS IT RELATES TO FINANCIAL
10 EXPLOITATION IS IMMUNE FROM CIVIL LIABILITY THAT MIGHT OTHERWISE BE
11 INCURRED BY MAKING THE REPORT OR BY ASSISTING IN THE MAKING OF THE
12 REPORT. A PERSON MAKING A REPORT OR ASSISTING IN THE IMPLEMENTATION
13 OF THIS SECTION AS IT RELATES TO FINANCIAL EXPLOITATION IS PRESUMED
14 TO HAVE ACTED IN GOOD FAITH. THE IMMUNITY FROM CIVIL LIABILITY AS
15 IT RELATES TO FINANCIAL EXPLOITATION EXTENDS ONLY TO AN ACT
16 PERFORMED UNDER THIS SECTION AND DOES NOT EXTEND TO A NEGLIGENT ACT
17 THAT CAUSES PERSONAL INJURY OR DEATH.