

# HOUSE BILL No. 6111

December 8, 2016, Introduced by Reps. Lauren Plawecki, Lane, Liberati, Cochran, Brunner, Clemente, Driskell and Singh and referred to the Committee on Criminal Justice.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending section 174a (MCL 750.174a), as amended by 2013 PA 34.

## 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, **OR WITHOUT**  
3       **CONSENT** obtain or use or attempt to obtain or use a vulnerable  
4       adult's money or property to directly or indirectly benefit that  
5       person knowing or having reason to know the vulnerable adult is a  
6       vulnerable adult.

7       (2) If the money or property used or obtained, or attempted to  
8       be used or obtained, has a value of less than \$200.00, the person  
9       is guilty of a misdemeanor punishable by imprisonment for not more  
10      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 years or a  
3 fine of not more than \$15,000.00 or 3 times the value of the money  
4 or property used or obtained or attempted to be used or obtained,  
5 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 but less than  
8 \$50,000.00.

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

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

19           (a) The money or property used or obtained, or attempted to be  
20 used or obtained, has a value of \$50,000.00 or more but less than  
21 \$100,000.00.

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

27           (7) If any of the following apply, the person is guilty of a

1 felony punishable by imprisonment for not more than 20 years or a  
2 fine of not more than \$50,000.00 or 3 times the value of the money  
3 or property used or obtained or attempted to be used or obtained,  
4 whichever is greater, or both imprisonment and a fine:

5 (a) The money or property used or obtained, or attempted to be  
6 used or obtained, has a value of \$100,000.00 or more.

7 (b) The person violates subsection (6) (a) and has 2 or more  
8 prior convictions for committing or attempting to commit an offense  
9 under this section. For purposes of this subdivision, however, a  
10 prior conviction does not include a conviction for a violation or  
11 attempted violation of subsection (2) or (3) (b).

12 (8) Except as otherwise provided in this subsection, the  
13 values of money or property used or obtained or attempted to be  
14 used or obtained in separate incidents pursuant to a scheme or  
15 course of conduct within any 12-month period may be aggregated to  
16 determine the total value of money or personal property used or  
17 obtained or attempted to be used or obtained. If the scheme or  
18 course of conduct is directed against only 1 person, no time limit  
19 applies to aggregation under this subsection.

20 (9) If the prosecuting attorney intends to seek an enhanced  
21 sentence based upon the defendant having 1 or more prior  
22 convictions, the prosecuting attorney shall include on the  
23 complaint and information a statement listing the prior conviction  
24 or convictions. The existence of the defendant's prior conviction  
25 or convictions shall be determined by the court, without a jury, at  
26 sentencing or at a separate hearing for that purpose before  
27 sentencing. The existence of a prior conviction may be established

1 by any evidence relevant for that purpose, including, but not  
2 limited to, 1 or more of the following:

3 (a) A copy of the judgment of conviction.

4 (b) A transcript of a prior trial, plea-taking, or sentencing.

5 (c) Information contained in a presentence report.

6 (d) The defendant's statement.

7 (10) If the sentence for a conviction under this section is  
8 enhanced by 1 or more prior convictions, those prior convictions  
9 shall not be used to further enhance the sentence for the  
10 conviction under section 10, 11, or 12 of chapter IX of the code of  
11 criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

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

18 **(12)** ~~(13)~~—The court may order a sentence imposed for a  
19 violation of subsection (4), (5), (6), or (7) to be served  
20 consecutively to any other sentence imposed for a violation of this  
21 section.

22 **(13)** ~~(14)~~—This section does not prohibit a person from being  
23 charged with, convicted of, or punished for any other violation of  
24 law the person commits while violating this section.

25 **(14)** ~~(15)~~—As used in this section:

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

(B) "CONSENT" MEANS AN INFORMED DECISION-MAKING CONSENT, WHICH INCLUDES THE ABILITY TO COMMUNICATE ALL OF THE FOLLOWING:

(i) THE CHOICE TO ENGAGE IN THE DECISION OR TRANSACTION.

(ii) THE COGNITIVE ABILITY TO REALIZE PROBABLE CONSEQUENCES AND TO WEIGH THEM AND THE EXPENDITURE OF APPROPRIATE MENTAL EFFORT IN DOING SO.

(iii) AN APPRECIATION OF THE NATURE AND EFFECT OF THAT CHOICE.

(iv) FREEDOM FROM DURESS AND UNDUE INFLUENCE.

(v) A RATIONALE FOR THE CHOICE AND REASONING AROUND THE DECISION OR TRANSACTION.

(C) ~~(b)~~—"Financial institution" means a bank, credit union, saving bank, or a savings and loan chartered under state or federal law or an affiliate of a bank, credit union, saving bank, or savings and loan chartered under state or federal law.

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

(15) ~~(16)~~—If the office of services to the aging becomes aware of a violation of this section, the office of services to the aging shall promptly report the violation to the department of human services.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.