

HOUSE BILL NO. 4260

February 26, 2019, Introduced by Reps. Anthony, Guerra, Wozniak, Pagan, Bolden, Hope, Markkanen, Elder, Liberati, Manoogian, Shannon, Ellison, Clemente, Gay-Dagnogo, Crawford, Sabo, Sneller, Yancey, Kuppa, Hood, Sowerby, Stone, Cynthia Johnson, Chirkun, Farrington, Lasinski, Yaroach, Whitsett, Calley, Filler, Vaupel, Cherry and Coleman and referred to the Committee on Families, Children, and Seniors.

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 obtain or use or
3 attempt to obtain or use a vulnerable **or elder** adult's money or
4 property to directly or indirectly benefit that person knowing or
5 having reason to know the ~~vulnerable adult is a vulnerable~~
6 ~~adult.~~ **individual whose money or property the person is attempting**



1 to obtain or use or has obtained or used is an elder adult or
2 vulnerable adult.

3 (2) If the money or property used or obtained, or attempted to
4 be used or obtained, has a value of less than \$200.00, the person
5 is guilty of a misdemeanor punishable by imprisonment for not more
6 than 93 days or a fine of not more than \$500.00 or 3 times the
7 value of the money or property used or obtained or attempted to be
8 used or obtained, whichever is greater, or both imprisonment and a
9 fine.

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

15 (a) The money or property used or obtained, or attempted to be
16 used or obtained, has a value of \$200.00 or more but less than
17 \$1,000.00.

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

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

26 (a) The money or property used or obtained, or attempted to be
27 used or obtained, has a value of \$1,000.00 or more but less than
28 \$20,000.00.

29 (b) The person violates subsection (3) (a) and has 1 or more



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

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

10 (a) The money or property used or obtained, or attempted to be
11 used or obtained, has a value of \$20,000.00 or more but less than
12 \$50,000.00.

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

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

23 (a) The money or property used or obtained, or attempted to be
24 used or obtained, has a value of \$50,000.00 or more but less than
25 \$100,000.00.

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

1 attempted violation of subsection (2) or (3)(b).

2 (7) If any of the following apply, the person is guilty of a
3 felony punishable by imprisonment for not more than 20 years or a
4 fine of not more than \$50,000.00 or 3 times the value of the money
5 or property used or obtained or attempted to be used or obtained,
6 whichever is greater, or both imprisonment and a fine:

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

9 (b) The person violates subsection (6)(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 (8) Except as otherwise provided in this subsection, the
15 values of money or property used or obtained or attempted to be
16 used or obtained in separate incidents pursuant to a scheme or
17 course of conduct within any 12-month period may be aggregated to
18 determine the total value of money or personal property used or
19 obtained or attempted to be used or obtained. If the scheme or
20 course of conduct is directed against only 1 person, no time limit
21 applies to aggregation under this subsection.

22 (9) **The transfer of money or property valued in excess of**
23 **\$10,000.00 at the time of the transfer, whether in a single**
24 **transaction or multiple transactions, by an elder adult or**
25 **vulnerable adult to a nonrelative whom the elder adult or**
26 **vulnerable adult knew for fewer than 2 years before the first**
27 **transfer and for which the elder adult or vulnerable adult did not**
28 **receive the reasonably equivalent financial value in goods or**
29 **services creates a rebuttable presumption that the transfer was the**

1 result of fraud, deceit, misrepresentation, coercion, or unjust
2 enrichment. This subsection applies whether or not the transfer or
3 transfers are denoted by the elder adult or vulnerable adult and
4 nonrelative as a gift or a loan, except that it does not apply to a
5 valid loan evidenced in writing that includes definite repayment
6 dates. However, if repayment of such a loan is in default, in whole
7 or in part, for more than 65 days, the rebuttable presumption
8 created in this subsection applies. This subsection does not apply
9 to any of the following:

10 (a) A person in the business of making loans.

11 (b) Charitable donations to nonprofit organizations organized
12 exclusively for 1 or more charitable purposes, including nonprofit
13 organizations that qualify for tax-exempt status under section
14 501(c)(3) of the internal revenue code, 26 USC 501.

15 (10) ~~(9)~~—If the prosecuting attorney intends to seek an
16 enhanced sentence based upon the defendant having 1 or more prior
17 convictions, the prosecuting attorney shall include on the
18 complaint and information a statement listing the prior conviction
19 or convictions. The existence of the defendant's prior conviction
20 or convictions ~~shall~~**must** be determined by the court, without a
21 jury, at sentencing or at a separate hearing for that purpose
22 before sentencing. The existence of a prior conviction may be
23 established by any evidence relevant for that purpose, including,
24 but not limited to, 1 or more of the following:

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

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

27 (c) Information contained in a presentence report.

28 (d) The defendant's statement.

29 (11) ~~(10)~~—If the sentence for a conviction under this section

1 is enhanced by 1 or more prior convictions, those prior convictions
 2 ~~shall~~**must** not be used to further enhance the sentence for the
 3 conviction under section 10, 11, or 12 of chapter IX of the code of
 4 criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

5 **(12)** ~~(11)~~—A financial institution or a broker or a director,
 6 officer, employee, or agent of a financial institution or broker is
 7 not in violation of this section while performing duties in the
 8 normal course of business of a financial institution or broker or a
 9 director, officer, employee, or agent of a financial institution or
 10 broker.

11 (13) The court may order a ~~sentence imposed for a violation of~~
 12 ~~subsection (4), (5), (6), or (7) to be served consecutively to any~~
 13 ~~other sentence imposed for a violation of this section.~~**term of**
 14 **imprisonment imposed for a violation of this section to be served**
 15 **consecutively to a term of imprisonment imposed for any other**
 16 **crime, including any other violation of law arising out of the same**
 17 **transaction as the violation of this section.**

18 (14) This section does not prohibit a person from being
 19 charged with, convicted of, or punished for any other violation of
 20 law the person commits while violating this section.

21 (15) As used in this section:

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

24 **(b) "Elder adult" means a person who is 65 years of age or**
 25 **older.**

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



1 (d) ~~(e)~~ "Vulnerable adult" means that term as defined in
2 section 145m, whether or not the individual has been determined by
3 the court to be incapacitated.

4 (16) If ~~the office of services to the~~ **a local area agency on**
5 aging becomes aware of a violation of this section, the ~~office of~~
6 ~~services to the~~ **local area agency on** aging shall promptly report
7 the violation to the department of **health and** human services **and to**
8 **a local law enforcement agency.**

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

