

HOUSE BILL NO. 4472

March 09, 2021, Introduced by Reps. Anthony, Tisdell, Witwer, Camilleri, Brixie, Garza, Manoogian, Bolden, Steckloff, Stone, Brenda Carter, Puri, Sneller, Aiyash, O'Neal, Kuppa, Yaroach, Pohutsky, Ellison, Scott, Breen, Neeley, Young, Brabec, Whitsett, Liberati, Clemente, Wakeman, Haadsma, Kahle, Bezotte, Lightner, Bellino, Jones, Coleman and Wozniak 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~~

~~adult.~~ **individual whose money or property the person is attempting to obtain or use or has obtained or used is an elder adult or vulnerable adult.**

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

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

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

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

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

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

1 (b) The person violates subsection (3)(a) and has 1 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 (5) If any of the following apply, the person is guilty of a
7 felony punishable by imprisonment for not more than 10 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 \$20,000.00 or more but less than
13 \$50,000.00.

14 (b) The person violates subsection (4)(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 (6) If any of the following apply, the person is guilty of a
20 felony punishable by imprisonment for not more than 15 years or a
21 fine of not more than \$15,000.00 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 \$50,000.00 or more but less than
26 \$100,000.00.

27 (b) The person violates subsection (5)(a) and has 2 or more
28 prior convictions for committing or attempting to commit an offense
29 under this section. For purposes of this subdivision, however, a

1 prior conviction does not include a conviction for a violation or
2 attempted violation of subsection (2) or (3)(b).

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

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

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

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

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

1 before sentencing. The existence of a prior conviction may be
2 established by any evidence relevant for that purpose, including,
3 but not limited to, 1 or more of the following:

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

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

6 (c) Information contained in a presentence report.

7 (d) The defendant's statement.

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

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

19 (12) ~~(13)~~The court may order a ~~sentence imposed for a~~
20 ~~violation of subsection (4), (5), (6), or (7) to be served~~
21 ~~consecutively to any other sentence imposed for a violation of this~~
22 ~~section.~~**term of imprisonment imposed for a violation of this**
23 **section to be served consecutively to a term of imprisonment**
24 **imposed for any other crime, including any other violation of law**
25 **arising out of the same transaction as the violation of this**
26 **section.**

27 (13) ~~(14)~~This section does not prohibit a person from being
28 charged with, convicted of, or punished for any other violation of
29 law the person commits while violating this section.

1 **(14)** ~~(15)~~ As used in this section:

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

4 **(b) "Elder adult" means a person who is 80 years of age or**
5 **older.**

6 **(c)** ~~(b)~~ "Financial institution" means a bank, credit union,
7 saving bank, or a savings and loan chartered under state or federal
8 law or an affiliate of a bank, credit union, saving bank, or
9 savings and loan chartered under state or federal law.

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

13 **(15)** ~~(16)~~ ~~If the office of services to the aging a person~~
14 **required to report abuse, neglect, or exploitation of an adult**
15 **under section 11a of the social welfare act, 1939 PA 280, MCL**
16 **400.11a,** becomes aware of a violation of this section, the ~~office~~
17 ~~of services to the aging person~~ shall promptly report the violation
18 ~~to the department of human services.~~ **as required under section 11a**
19 **of the social welfare act, 1939 PA 280, MCL 400.11a.**

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