

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

**Introduced by Senators Emmons, Schuitmaker, Colbeck, Bieda, Rocca, Young, Nofs, Jones, Hansen,
Hildenbrand, Proos, Kahn and Marleau**

ENROLLED SENATE BILL No. 459

AN ACT to amend 1931 PA 328, entitled “An act to revise, consolidate, codify, and add to the statutes relating to crimes; to define crimes and prescribe the penalties and remedies; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at criminal trials; to provide for liability for damages; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act,” 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:

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

(a) A felony violation of section 8 of the tobacco products tax act, 1993 PA 327, MCL 205.428, concerning tobacco product taxes, or section 9 of former 1947 PA 265, concerning cigarette taxes.

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

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

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

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

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

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

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

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

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

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

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

- (m) A violation of section 120a, concerning jury tampering.
- (n) A violation of section 145c, concerning child sexually abusive activity or material.
- (o) A violation of section 145d, concerning internet or computer crimes.
- (p) A felony violation of section 157n, 157p, 157q, 157r, 157s, 157t, or 157u, concerning credit cards or financial transaction devices.
- (q) A felony violation of section 174, 175, 176, 180, 181, or 182, concerning embezzlement.
- (r) A felony violation of chapter XXXIII, concerning explosives and bombs.
- (s) A violation of section 213, concerning extortion.
- (t) A felony violation of section 218, concerning false pretenses.
- (u) A felony violation of section 223(2), 224(1)(a), (b), or (c), 224b, 224c, 224e(1), 226, 227, 234a, 234b, or 237a, concerning firearms or dangerous weapons.
- (v) A felony violation of chapter XLI, concerning forgery and counterfeiting.
- (w) A violation of section 271, 272, 273, or 274, concerning securities fraud.
- (x) A violation of section 300a, concerning food stamps or coupons or access devices.
- (y) A violation of section 301, 302, 303, 304, 305, 305a, or 313, concerning gambling.
- (z) A violation of section 316 or 317, concerning murder.
- (aa) A violation of section 330, 331, or 332, concerning horse racing.
- (bb) A violation of section 349, 349a, or 350, concerning kidnapping.
- (cc) A felony violation of chapter LII, concerning larceny.
- (dd) A violation of section 411k, concerning money laundering.
- (ee) A violation of section 422, 423, 424, or 425, concerning perjury or subornation of perjury.
- (ff) A violation of section 452, 455, 457, 458, or 459, concerning prostitution.
- (gg) A violation of chapter LXVIIA, concerning human trafficking.
- (hh) A violation of section 529, 529a, 530, or 531, concerning robbery.
- (ii) A felony violation of section 535 or 535a, concerning stolen, embezzled, or converted property.
- (jj) A violation of chapter LXXXIII-A, concerning terrorism.
- (kk) A violation of section 5 of 1984 PA 343, MCL 752.365, concerning obscenity.
- (ll) A felony violation of the identity theft protection act, 2004 PA 452, MCL 445.61 to 445.77.
- (mm) An offense committed within this state or another state that constitutes racketeering activity as defined in 18 USC 1961(1).
- (nn) An offense committed within this state or another state in violation of a law of the United States that is substantially similar to a violation listed in subdivisions (a) through (mm).
- (oo) An offense committed in another state in violation of a statute of that state that is substantially similar to a violation listed in subdivisions (a) through (mm).
- (pp) A felony violation of section 909(4) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1909, concerning the illegal sale, delivery, or importation of spirits.

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

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

(5) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00 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 \$20,000.00 or more but less than \$50,000.00.

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

(6) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$15,000.00 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 \$50,000.00 or more but less than \$100,000.00.

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

(7) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$50,000.00 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 \$100,000.00 or more.

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

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

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

(a) A copy of the judgment of conviction.

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

(c) Information contained in a presentence report.

(d) The defendant's statement.

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

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

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

(13) As used in this section:

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

(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.

(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.

(14) 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.

Sec. 273. A person who fraudulently obtains the signature of any person with the intent to cheat and defraud that person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Sam E. Randall

Clerk of the House of Representatives

Approved

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Governor