

# HOUSE BILL No. 5032

September 27, 2017, Introduced by Reps. Green, Farrington, Hertel, Schor, Sabo, Peterson, Yanez, Brann, Sowerby, Hughes, Lucido, Pagan, Maturen, Wittenberg, Ellison, Noble, Liberati, Chang, Yaroch, Lasinski, Geiss, Camilleri and Jones and referred to the Committee on Law and 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 **OR**  
 4           **ELDER** adult's money or property to directly or indirectly benefit  
 5           that person knowing or having reason to know the ~~vulnerable adult~~  
 6           ~~is a vulnerable adult.~~ **INDIVIDUAL WHOSE MONEY OR PROPERTY THE PERSON**  
 7           **IS ATTEMPTING TO OBTAIN OR USE OR HAS OBTAINED OR USED IS AN ELDER**  
 8           **ADULT OR VULNERABLE ADULT.**

9           (2) If the money or property used or obtained, or attempted to

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

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

12 (a) The money or property used or obtained, or attempted to be  
13 used or obtained, has a value of \$200.00 or more but less than  
14 \$1,000.00.

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

18 (4) If any of the following apply, the person is guilty of a  
19 felony punishable by imprisonment for not more than 5 years or a  
20 fine of not more than \$10,000.00 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 \$1,000.00 or more but less than  
25 \$20,000.00.

26 (b) The person violates subsection (3) (a) and has 1 or more  
27 prior convictions for committing or attempting to commit an offense

1 under this section. For purposes of this subdivision, however, a  
2 prior conviction does not include a conviction for a violation or  
3 attempted violation of subsection (2) or (3)(b).

4 (5) If any of the following apply, the person is guilty of a  
5 felony punishable by imprisonment for not more than 10 years or a  
6 fine of not more than \$15,000.00 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 \$20,000.00 or more but less than  
11 \$50,000.00.

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

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

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

25 (b) The person violates subsection (5)(a) and has 2 or more  
26 prior convictions for committing or attempting to commit an offense  
27 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) THE TRANSFER OF MONEY OR PROPERTY VALUED IN EXCESS OF**  
24 **\$10,000.00 AT THE TIME OF THE TRANSFER, WHETHER IN A SINGLE**  
25 **TRANSACTION OR MULTIPLE TRANSACTIONS, BY AN ELDER ADULT TO A**  
26 **NONRELATIVE WHOM THE ELDER ADULT KNEW FOR FEWER THAN 2 YEARS BEFORE**  
27 **THE FIRST TRANSFER AND FOR WHICH THE ELDER ADULT DID NOT RECEIVE**

1 THE REASONABLY EQUIVALENT FINANCIAL VALUE IN GOODS OR SERVICES  
2 CREATES A REBUTTABLE PRESUMPTION THAT THE TRANSFER WAS THE RESULT  
3 OF EXPLOITATION. THIS SUBSECTION APPLIES WHETHER OR NOT THE  
4 TRANSFER OR TRANSFERS ARE DENOTED BY THE ELDER ADULT AND  
5 NONRELATIVE AS GIFT OR A LOAN, EXCEPT THAT IT DOES NOT APPLY TO A  
6 VALID LOAN EVIDENCED IN WRITING THAT INCLUDES DEFINITE REPAYMENT  
7 DATES. HOWEVER, IF REPAYMENT OF SUCH A LOAN IS IN DEFAULT, IN WHOLE  
8 OR IN PART, FOR MORE THAN 65 DAYS, THE REBUTTABLE PRESUMPTION  
9 CREATED IN THIS SUBSECTION APPLIES. THIS SUBSECTION DOES NOT APPLY  
10 TO ANY OF THE FOLLOWING:

11 (A) A PERSON IN THE BUSINESS OF MAKING LOANS.

12 (B) BONA FIDE CHARITABLE DONATIONS TO NONPROFIT ORGANIZATIONS  
13 THAT QUALIFY FOR TAX-EXEMPT STATUS UNDER SECTION 501(C)(3) OF THE  
14 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.

1 (d) The defendant's statement.

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

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

13 (13) The court may order a ~~sentence imposed for a violation of~~  
14 ~~subsection (4), (5), (6), or (7) to be served consecutively to any~~  
15 ~~other sentence imposed for a violation of this section.~~ **TERM OF**  
16 **IMPRISONMENT IMPOSED FOR A VIOLATION OF THIS SECTION TO BE SERVED**  
17 **CONSECUTIVELY TO A TERM OF IMPRISONMENT IMPOSED FOR ANY OTHER**  
18 **CRIME, INCLUDING ANY OTHER VIOLATION OF LAW ARISING OUT OF THE SAME**  
19 **TRANSACTION AS THE VIOLATION OF THIS SECTION.**

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

23 (15) As used in this section:

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

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

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

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

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

6 (iv) FREEDOM FROM DURESS AND UNDUE INFLUENCE.

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

9 (C) "ELDER ADULT" MEANS A PERSON WHO IS 65 YEARS OF AGE OR  
10 OLDER.

11 (D) ~~(b)~~ "Financial institution" means a bank, credit union,  
12 saving bank, or a savings and loan chartered under state or federal  
13 law or an affiliate of a bank, credit union, saving bank, or  
14 savings and loan chartered under state or federal law.

15 (E) ~~(e)~~ "Vulnerable adult" means that term as defined in  
16 section 145m, whether or not the individual has been determined by  
17 the court to be incapacitated.

18 (16) If ~~the office of services to the~~ **A LOCAL AREA AGENCY ON**  
19 aging becomes aware of a violation of this section, the ~~office of~~  
20 ~~services to the~~ **LOCAL AREA AGENCY ON** aging shall promptly report  
21 the violation to the department of **HEALTH AND** human services.

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