

**Public Policy Position
HB 4260**

The Elder Law & Disability Section is a voluntary membership section of the State Bar of Michigan, comprised of 1,132 members. The Elder Law & Disability Section is not the State Bar of Michigan and the position expressed herein is that of the Elder Law & Disability Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Elder Law & Disability Section has a public policy decision-making body with 20 members. On November 2, 2019, the Section adopted its position after a discussion and vote at a scheduled meeting. 15 members voted in favor of the Section's position on HB 4260, 0 members voted against this position, 0 members abstained, 5 members did not vote due to absence.

Support with Recommended Amendments

Explanation:

The Elder Law & Disability Rights Section supports HB 4260 with agreed amendments to change the definition of "elder" to an individual 80 or older and to remove the entire paragraph regarding "Rebuttable presumption" concerning gifting and loans, as presented in the attached document.

This is a change from the previously adopted public policy position opposing HB 4260 (based on the definition of an "elder" at age 65 and the over-breadth of the "rebuttable presumption" of criminal actions regarding gifting/ loans) to "Support with Amendments" requiring amendments to change the definition of "elder" to an individual 80 or older and to remove the entire paragraph re: "Rebuttable presumption" concerning gifting and loans. (A compromise worked on with the Michigan Prosecuting Attorneys Association of Michigan and Michigan Elder Justice Initiative.)

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SUBSTITUTE FOR
HOUSE BILL NO. 4260

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**
7 **to obtain or use or has obtained or used is an elder adult or**
8 **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
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 (5) If any of the following apply, the person is guilty of a
3 felony punishable by imprisonment for not more than 10 years or a
4 fine of not more than \$15,000.00 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 \$20,000.00 or more but less than
9 \$50,000.00.

10 (b) The person violates subsection (4)(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 (6) If any of the following apply, the person is guilty of a
16 felony punishable by imprisonment for not more than 15 years or a
17 fine of not more than \$15,000.00 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 \$50,000.00 or more but less than
22 \$100,000.00.

23 (b) The person violates subsection (5)(a) and has 2 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).

28 (7) If any of the following apply, the person is guilty of a
29 felony punishable by imprisonment for not more than 20 years or a



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

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

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

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

19 ~~(9) The transfer of money or property valued in excess of~~
 20 ~~\$10,000.00 at the time of the transfer, whether in a single~~
 21 ~~transaction or multiple transactions, by a vulnerable adult who is~~
 22 ~~also an elder adult to any person for which the vulnerable adult~~
 23 ~~did not receive the reasonably equivalent financial value in goods~~
 24 ~~or services creates a rebuttable presumption that the transfer was~~
 25 ~~the result of fraud, deceit, misrepresentation, coercion, or unjust~~
 26 ~~enrichment. This subsection applies whether or not the transfer or~~
 27 ~~transfers are denoted by the vulnerable adult and other person as a~~
 28 ~~gift or a loan, except that it does not apply to a valid loan~~
 29 ~~evidenced in writing that includes definite repayment dates.~~

~~However, if repayment of such a loan is in default, in whole or in part, for more than 65 days, the rebuttable presumption created in this subsection applies. This subsection does not apply to any of the following.~~

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

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

(9) (10) (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 ~~must~~ 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) (11) (10) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall ~~must~~ 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) (12) (11) A financial institution or a broker or a director,



1 officer, employee, or agent of a financial institution or broker is
 2 not in violation of this section while performing duties in the
 3 normal course of business of a financial institution or broker or a
 4 director, officer, employee, or agent of a financial institution or
 5 broker.

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

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

16 (14) ~~(15)~~ As used in this section:

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

19 **For purposes of this Act,**
 20 (b) "Elder adult" means a person who is **80**
 21 **older.**

22 (c) ~~(b)~~ "Financial institution" means a bank, credit union,
 23 saving bank, or a savings and loan chartered under state or federal
 24 law or an affiliate of a bank, credit union, saving bank, or
 25 savings and loan chartered under state or federal law.

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

29 **A mandatory reporter required to report abuse, neglect, or exploitation under**

~~(15) (16) If the office of services to the a local area agency on
 aging becomes aware of a violation of this section, the office of~~

the Social Welfare Act shall report known violations of this section in accordance to that reporting statute [MCL 400.11(a)].



1 services to the ~~local area agency on aging~~ shall promptly report
2 the violation to the department of health and human services. A
3 ~~local area agency on aging that becomes aware of a violation of~~
4 ~~this section may report the violation to a local law enforcement~~
5 ~~agency.~~

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