

SUBSTITUTE FOR
HOUSE BILL NO. 5193

A bill to amend 1939 PA 280, entitled
"The social welfare act,"
by amending section 11 (MCL 400.11), as amended by 1990 PA 122.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11. As used in this section and sections 11a to 11f:

2 (a) "Abuse" means harm or threatened harm to an adult's health
3 or welfare caused by another person. Abuse includes, but is not
4 limited to, nonaccidental physical or mental injury, sexual abuse,
5 **FINANCIAL EXPLOITATION**, or maltreatment.

6 (b) "Adult in need of protective services" or "adult" means a
7 vulnerable person not less than 18 years of age who is suspected of
8 being or believed to be abused, neglected, or exploited.

9 (c) **"DECEPTION" MEANS THAT A PERSON KNOWINGLY DOES 1 OR MORE**
10 **OF THE FOLLOWING TO AN INCAPACITATED OR VULNERABLE ADULT:**

1 (i) CREATING OR CONFIRMING A FALSE IMPRESSION IN AN
2 INCAPACITATED OR VULNERABLE ADULT'S MIND.

3 (ii) FAILING TO CORRECT A FALSE IMPRESSION THAT THE PERSON IS
4 RESPONSIBLE FOR CREATING OR CONFIRMING IN AN INCAPACITATED OR
5 VULNERABLE ADULT'S MIND.

6 (iii) MAKING A PROMISE TO AN INCAPACITATED OR VULNERABLE ADULT
7 THAT THE PERSON DOES NOT INTEND TO PERFORM OR THAT THE PERSON KNOWS
8 WILL NOT OR CANNOT BE PERFORMED. A PERSON'S FAILURE TO PERFORM A
9 PROMISE IS NOT BY ITSELF SUFFICIENT PROOF THAT THE PERSON DID NOT
10 INTEND TO PERFORM THE PROMISE.

11 (iv) MISREPRESENTING OR CONCEALING A MATERIAL FACT THAT RELATES
12 TO THE TERMS OF A CONTRACT OR AN AGREEMENT THAT THE PERSON ENTERS
13 INTO WITH THE INCAPACITATED OR VULNERABLE ADULT OR THAT RELATES TO
14 THE EXISTING OR PREEXISTING CONDITION OF ANY OF THE PROPERTY
15 INVOLVED IN A CONTRACT OR AN AGREEMENT.

16 (v) USING ANY MATERIAL MISREPRESENTATION, FALSE PRETENSE, OR
17 FALSE PROMISE TO INDUCE, ENCOURAGE, OR SOLICIT AN INCAPACITATED OR
18 VULNERABLE ADULT TO ENTER INTO A CONTRACT OR AGREEMENT.

19 (D) ~~(e)~~—"Exploitation" means an action that involves the
20 misuse of an adult's funds, property, ~~or~~ personal dignity, OR
21 FINANCIAL EXPLOITATION by another person.

22 (E) "FINANCIAL EXPLOITATION" MEANS THE ACTION OF A PERSON IN A
23 POSITION OF TRUST AND CONFIDENCE AND WHO BY INTIMIDATION OR
24 DECEPTION KNOWINGLY TAKES CONTROL, TITLE, USE, OR MANAGEMENT OF AN
25 INCAPACITATED OR VULNERABLE ADULT'S ASSETS OR PROPERTY WITH THE
26 INTENT TO PERMANENTLY DEPRIVE THAT INCAPACITATED OR VULNERABLE
27 ADULT OF HIS OR HER ASSET OR PROPERTY.

1 (F) "FINANCIAL INSTITUTION" MEANS A STATE OR NATIONALLY
2 CHARTERED BANK OR A STATE OR FEDERALLY CHARTERED SAVINGS AND LOAN
3 ASSOCIATION, SAVINGS BANK, CREDIT UNION, BROKERAGE FIRM, OR ANY
4 PERSON WHO PROVIDES FINANCIAL SERVICES THAT MAINTAINS A PRINCIPAL
5 OFFICE OR BRANCH IN THIS STATE. FOR THE PURPOSES OF THIS SECTION
6 AND SECTIONS 11A TO 11F, FINANCIAL INSTITUTION DOES NOT INCLUDE A
7 LIFE INSURANCE COMPANY.

8 (G) "INTIMIDATION" INCLUDES, BUT IS NOT LIMITED TO,
9 THREATENING TO DEPRIVE AN INCAPACITATED OR VULNERABLE ADULT OF
10 FOOD, NUTRITION, SHELTER, NECESSARY MEDICATION, OR MEDICAL
11 TREATMENT.

12 (H) ~~(d)~~—"Neglect" means harm to an adult's health or welfare
13 caused by the inability of the adult to respond to a harmful
14 situation or by the conduct of a person who assumes responsibility
15 for a significant aspect of the adult's health or welfare. Neglect
16 includes ~~the~~ failure to provide adequate food, clothing, shelter,
17 or medical care. A person shall not be considered to be abused,
18 neglected, or in need of emergency or protective services for the
19 sole reason that the person is receiving or relying upon treatment
20 by spiritual means through prayer alone in accordance with the
21 tenets and practices of a recognized church or religious
22 denomination, and this act shall not require any medical care or
23 treatment in contravention of the stated or implied objection of
24 that person.

25 (I) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION,
26 ASSOCIATION, GOVERNMENTAL ENTITY, OR OTHER LEGAL ENTITY.

27 (J) "POSITION OF TRUST" MEANS THAT A PERSON IS ANY OF THE

1 FOLLOWING:

2 (i) A PERSON WHO HAS ASSUMED A DUTY TO PROVIDE CARE TO AN
3 INCAPACITATED OR VULNERABLE ADULT.

4 (ii) A JOINT TENANT OR A TENANT IN COMMON WITH AN INCAPACITATED
5 OR VULNERABLE ADULT.

6 (iii) A PERSON WHO IS IN A FIDUCIARY RELATIONSHIP WITH AN
7 INCAPACITATED OR VULNERABLE ADULT INCLUDING A DE FACTO GUARDIAN OR
8 DE FACTO CONSERVATOR.

9 (K) ~~(e)~~—"Protective services" includes, but is not limited to,
10 remedial, social, legal, health, mental health, and referral
11 services provided in response to a report of alleged harm or
12 threatened harm because of abuse, neglect, ~~or~~ exploitation, OR
13 FINANCIAL EXPLOITATION.

14 (I) "SUSPECTED FINANCIAL EXPLOITATION" MEANS WHEN A PERSON WHO
15 IS REQUIRED TO REPORT FINANCIAL EXPLOITATION UNDER SECTION 11A
16 OBSERVES OR HAS KNOWLEDGE OF BEHAVIOR OR UNUSUAL CIRCUMSTANCES OR
17 TRANSACTIONS, OR A PATTERN OF BEHAVIOR OR UNUSUAL CIRCUMSTANCES OR
18 TRANSACTIONS, THAT WOULD LEAD A PERSON WITH SIMILAR TRAINING OR
19 EXPERIENCE, BASED ON THE SAME FACTS, TO FORM A REASONABLE BELIEF
20 THAT AN INCAPACITATED OR VULNERABLE ADULT IS THE VICTIM OF
21 FINANCIAL EXPLOITATION.

22 (M) ~~(f)~~—"Vulnerable" means a condition in which an adult is
23 unable to protect himself or herself from abuse, neglect, ~~or~~
24 exploitation, OR FINANCIAL EXPLOITATION because of a mental or
25 physical impairment or because of advanced age.