

# SENATE BILL No. 895

October 14, 2009, Introduced by Senator WHITMER and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending section 174a (MCL 750.174a), as amended by 2004 PA 255.

**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 adult's money or property to  
4           directly or indirectly benefit that person knowing or having reason  
5           to know the vulnerable adult is a vulnerable adult.

6           (2) If the money or property used or obtained, or attempted to  
7           be used or obtained, has a value of less than \$200.00, the person  
8           is guilty of a misdemeanor punishable by imprisonment for not more  
9           than 93 days or a fine of not more than \$500.00 or 3 times the  
10          value of the money or property used or obtained or attempted to be

1 used or obtained, whichever is greater, or both imprisonment and a  
2 fine.

3 (3) If any of the following apply, the person is guilty of a  
4 misdemeanor punishable by imprisonment for not more than 1 year or  
5 a fine of not more than \$2,000.00 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 \$200.00 or more but less than  
10 \$1,000.00.

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

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

19 (a) The money or property used or obtained, or attempted to be  
20 used or obtained, has a value of \$1,000.00 or more but less than  
21 \$20,000.00.

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

27 (5) If any of the following apply, the person is guilty of a

1 felony punishable by imprisonment for not more than 10 years or a  
2 fine of not more than \$15,000.00 or 3 times the value of the money  
3 or property used or obtained or attempted to be used or obtained,  
4 whichever is greater, or both imprisonment and a fine:

5 (a) The money or property used or obtained, or attempted to be  
6 used or obtained, has a value of \$20,000.00 or more **BUT LESS THAN**  
7 **\$50,000.00.**

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

13 (6) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A  
14 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 15 YEARS OR A  
15 FINE OF NOT MORE THAN \$15,000.00 OR 3 TIMES THE VALUE OF THE MONEY  
16 OR PROPERTY USED OR OBTAINED OR ATTEMPTED TO BE USED OR OBTAINED,  
17 WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

18 (A) THE MONEY OR PROPERTY USED OR OBTAINED, OR ATTEMPTED TO BE  
19 USED OR OBTAINED, HAS A VALUE OF \$50,000.00 OR MORE BUT LESS THAN  
20 \$100,000.00.

21 (B) THE PERSON VIOLATES SUBSECTION (5)(A) AND HAS 2 OR MORE  
22 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE  
23 UNDER THIS SECTION. FOR PURPOSES OF THIS SUBDIVISION, HOWEVER, A  
24 PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A VIOLATION OR  
25 ATTEMPTED VIOLATION OF SUBSECTION (2) OR (3)(B).

26 (7) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A  
27 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 MORE THAN \$100,000.00.

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) ~~(6)~~—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) ~~(7)~~—If the prosecuting attorney intends to seek an  
20 enhanced sentence based upon the defendant having 1 or more prior  
21 convictions, the prosecuting attorney shall include on the  
22 complaint and information a statement listing the prior conviction  
23 or convictions. The existence of the defendant's prior conviction  
24 or convictions shall be determined by the court, without a jury, at  
25 sentencing or at a separate hearing for that purpose before  
26 sentencing. The existence of a prior conviction may be established  
27 by any evidence relevant for that purpose, including, but not

1 limited to, 1 or more of the following:

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

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

4 (c) Information contained in a presentence report.

5 (d) The defendant's statement.

6 (10) ~~(8)~~—If the sentence for a conviction under this section  
7 is enhanced by 1 or more prior convictions, those prior convictions  
8 shall not be used to further enhance the sentence for the  
9 conviction under section 10, 11, or 12 of chapter IX of the code of  
10 criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

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

17 (12) ~~(10)~~—This section does not prohibit a person from being  
18 charged with, convicted of, or punished for any other violation of  
19 law the person commits while violating this section.

20 (13) ~~(11)~~—As used in this section:

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

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

27 (c) "Vulnerable adult" means that term as defined in section

1 145m, whether or not the individual has been determined by the  
2 court to be incapacitated.

3 (14) ~~(12)~~—If the office of services to the aging becomes aware  
4 of a violation of this section, the office of services to the aging  
5 shall promptly report the violation to the ~~family independence~~  
6 ~~agency~~ **DEPARTMENT OF HUMAN SERVICES.**