

HOUSE BILL No. 5263

October 6, 2005, Introduced by Reps. Lemmons, III and Lemmons, Jr. and referred to the Committee on Banking and Financial Services.

A bill to amend 1999 PA 276, entitled
"Banking code of 1999,"
(MCL 487.11101 to 487.15105) by adding section 4406.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 4406. (1) IF ALL OF THE FOLLOWING ARE MET, AN OFFICER OR
2 EMPLOYEE OF A BANK SHALL REPORT ANY INCIDENCE OF KNOWN OR SUSPECTED
3 FINANCIAL ABUSE OF AN ELDER ADULT BY TELEPHONE IMMEDIATELY, OR AS
4 SOON AS PRACTICABLY POSSIBLE, AND BY WRITTEN REPORT SENT WITHIN 2
5 WORKING DAYS TO THE COMMISSIONER AND THE DEPARTMENT OF ATTORNEY
6 GENERAL:

7 (A) THE OFFICER OR EMPLOYEE HAS DIRECT CONTACT WITH AN ELDER
8 ADULT OR REVIEWS OR APPROVES AN ELDER ADULT'S FINANCIAL DOCUMENTS,
9 RECORDS, OR TRANSACTIONS IN CONNECTION WITH PROVIDING FINANCIAL

1 SERVICES CONCERNING THE ELDER ADULT.

2 (B) WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT OR PROFESSIONAL
3 PRACTICE, THE OFFICER OR EMPLOYEE OBSERVES, KNOWS, OR SHOULD HAVE
4 KNOWN ABOUT AN INCIDENT THAT IS DIRECTLY RELATED TO A TRANSACTION
5 OR MATTER THAT IS WITHIN THAT SCOPE OF EMPLOYMENT OR PROFESSIONAL
6 PRACTICE.

7 (C) ONE OF THE FOLLOWING APPLIES TO THE INCIDENT DESCRIBED IN
8 SUBDIVISION (B):

9 (i) THE INCIDENT REASONABLY APPEARS TO THE OFFICER OR EMPLOYEE
10 TO BE FINANCIAL ABUSE.

11 (ii) IF THE OFFICER OR EMPLOYEE DOES NOT HAVE DIRECT CONTACT
12 WITH THE ELDER ADULT, THE OFFICER OR EMPLOYEE REASONABLY SUSPECTS
13 FINANCIAL ABUSE HAS OCCURRED, BASED SOLELY ON THE INFORMATION
14 BEFORE HIM OR HER AT THE TIME OF REVIEWING OR APPROVING THE
15 DOCUMENT, RECORD, OR TRANSACTION.

16 (2) ALL OF THE FOLLOWING APPLY IF 2 OR MORE BANK OFFICERS OR
17 EMPLOYEES JOINTLY KNOW, SHOULD KNOW, OR REASONABLY SUSPECT THAT
18 FINANCIAL ABUSE OF AN ELDER ADULT SUBJECT TO THE REPORTING
19 REQUIREMENT OF SUBSECTION (1) HAS OCCURRED:

20 (A) THE OFFICERS OR EMPLOYEES MAY FORM A REPORTING TEAM BY
21 AGREEMENT.

22 (B) A MEMBER OF THE REPORTING TEAM SELECTED BY MUTUAL
23 AGREEMENT MAY MAKE THE TELEPHONE REPORT REQUIRED IN SUBSECTION (1)
24 ON BEHALF OF ALL MEMBERS OF THE REPORTING TEAM.

25 (C) A MEMBER OF THE REPORTING TEAM SELECTED BY MUTUAL
26 AGREEMENT MAY MAKE THE WRITTEN REPORT REQUIRED IN SUBSECTION (1) ON
27 BEHALF OF ALL MEMBERS OF THE REPORTING TEAM.

1 (D) IF A MEMBER OF THE REPORTING TEAM HAS KNOWLEDGE THAT THE
2 MEMBER DESIGNATED TO MAKE A TELEPHONE REPORT OR WRITTEN REPORT
3 REQUIRED IN SUBSECTION (1) HAS FAILED TO DO SO, THAT MEMBER SHALL
4 MAKE THAT REPORT.

5 (3) AN OFFICER OR EMPLOYEE OF A BANK IS NOT REQUIRED TO MAKE
6 THE REPORTS DESCRIBED IN SUBSECTION (1) BASED SOLELY ON AN
7 ALLEGATION BY THE ELDER ADULT OR ANY OTHER INDIVIDUAL THAT
8 FINANCIAL ABUSE OF AN ELDER ADULT HAS OCCURRED IF BOTH OF THE
9 FOLLOWING CONDITIONS ARE MET:

10 (A) THE OFFICER OR EMPLOYEE IS NOT AWARE OF ANY OTHER
11 CORROBORATING OR INDEPENDENT EVIDENCE OF THE ALLEGED FINANCIAL
12 ABUSE OF THE ELDER ADULT. THE OFFICER OR EMPLOYEE IS NOT REQUIRED
13 TO INVESTIGATE THE ALLEGATION.

14 (B) IN THE EXERCISE OF HIS OR HER PROFESSIONAL JUDGMENT, THE
15 OFFICER OR EMPLOYEE REASONABLY BELIEVES THAT FINANCIAL ABUSE OF THE
16 ELDER ADULT DID NOT OCCUR.

17 (4) IF AN OFFICER OR EMPLOYEE OF A BANK FAILS TO REPORT
18 FINANCIAL ABUSE OF AN ELDER ADULT UNDER THIS SECTION, THE ATTORNEY
19 GENERAL MAY BRING AN ACTION AGAINST THE BANK TO RECOVER A CIVIL
20 FINE OF NOT MORE THAN \$1,000.00, OR A CIVIL FINE OF NOT MORE THAN
21 \$5,000.00 IF THE FAILURE TO REPORT IS WILLFUL. AN ACTION UNDER
22 THIS SECTION DOES NOT LIMIT, EXPAND, OR OTHERWISE MODIFY ANY CIVIL
23 LIABILITY OR REMEDY THAT MAY EXIST UNDER THIS ACT OR ANY OTHER LAW.

24 (5) AS USED IN THIS SECTION:

25 (A) "ELDER ADULT" MEANS AN INDIVIDUAL 65 YEARS OF AGE OR
26 OLDER.

27 (B) "FINANCIAL ABUSE" MEANS TO TAKE OR RETAIN REAL OR PERSONAL

1 PROPERTY OF AN ELDER ADULT FOR A WRONGFUL USE, WITH INTENT TO
2 DEFRAUD, OR IN BAD FAITH, OR TO ASSIST ANOTHER IN TAKING OR
3 RETAINING REAL OR PERSONAL PROPERTY OF AN ELDER ADULT FOR A
4 WRONGFUL USE, WITH INTENT TO DEFRAUD, OR IN BAD FAITH.

5 (C) "REASONABLY SUSPECTS FINANCIAL ABUSE" MEANS THAT AN
6 INDIVIDUAL OBSERVES OR HAS KNOWLEDGE OF BEHAVIOR OR UNUSUAL
7 CIRCUMSTANCES OR TRANSACTIONS, OR A PATTERN OF BEHAVIOR OR UNUSUAL
8 CIRCUMSTANCES OR TRANSACTIONS, THAT WOULD LEAD AN INDIVIDUAL WITH
9 LIKE TRAINING OR EXPERIENCE, BASED ON THE SAME FACTS, TO FORM A
10 REASONABLE BELIEF THAT FINANCIAL ABUSE HAS OCCURRED.