

HOUSE BILL No. 5338

October 19, 2005, Introduced by Reps. Lemmons, III, Lemmons, Jr., Cushingberry and Cheeks and referred to the Committee on Banking and Financial Services.

A bill to amend 1980 PA 307, entitled "Savings and loan act of 1980," (MCL 491.102 to 491.1202) by adding section 1136.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 1136. (1) IF ALL OF THE FOLLOWING ARE MET, AN OFFICER OR
2 EMPLOYEE OF AN ASSOCIATION SHALL REPORT ANY INCIDENCE OF KNOWN OR
3 SUSPECTED FINANCIAL ABUSE OF AN ELDER ADULT BY TELEPHONE
4 IMMEDIATELY, OR AS SOON AS PRACTICABLY POSSIBLE, AND BY WRITTEN
5 REPORT SENT WITHIN 2 WORKING DAYS TO THE SUPERVISOR AND THE
6 DEPARTMENT OF ATTORNEY 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 OFFICERS OR
17 EMPLOYEES OF AN ASSOCIATION JOINTLY KNOW, SHOULD KNOW, OR
18 REASONABLY SUSPECT THAT FINANCIAL ABUSE OF AN ELDER ADULT SUBJECT
19 TO THE REPORTING 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 AN ASSOCIATION IS NOT REQUIRED
6 TO MAKE 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 AN ASSOCIATION FAILS TO
18 REPORT FINANCIAL ABUSE OF AN ELDER ADULT UNDER THIS SECTION, THE
19 ATTORNEY GENERAL MAY BRING AN ACTION AGAINST THE ASSOCIATION TO
20 RECOVER A CIVIL FINE OF NOT MORE THAN \$1,000.00, OR A CIVIL FINE OF
21 NOT MORE THAN \$5,000.00 IF THE FAILURE TO REPORT IS WILLFUL. AN
22 ACTION UNDER THIS SECTION DOES NOT LIMIT, EXPAND, OR OTHERWISE
23 MODIFY ANY CIVIL LIABILITY OR REMEDY THAT MAY EXIST UNDER THIS ACT
24 OR ANY OTHER LAW.

25 (5) AS USED IN THIS SECTION:

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

1 (B) "FINANCIAL ABUSE" MEANS TO TAKE OR RETAIN REAL OR PERSONAL
2 PROPERTY OF AN ELDER ADULT FOR A WRONGFUL USE, WITH INTENT TO
3 DEFRAUD, OR IN BAD FAITH, OR TO ASSIST ANOTHER IN TAKING OR
4 RETAINING REAL OR PERSONAL PROPERTY OF AN ELDER ADULT FOR A
5 WRONGFUL USE, WITH INTENT TO DEFRAUD, OR IN BAD FAITH.

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