

HOUSE BILL No. 4931

September 13, 2017, Introduced by Rep. Kosowski and referred to the Committee on Law and Justice.

A bill to impose civil liability on persons that financially exploit a vulnerable adult.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "financial exploitation liability act".

3 Sec. 2. As used in this act:

4 (a) "Deception" means all of the following:

5 (i) Knowingly doing any of the following:

6 (A) Creating or confirming another's impression that is false
7 and that the actor does not believe to be true.

8 (B) Failing to correct a false impression that the actor
9 previously has created or confirmed.

10 (C) Preventing another from acquiring information pertinent to
11 the disposition of the property involved.

1 (D) Selling or otherwise transferring or encumbering property
2 or failing to disclose a lien, adverse claim, or other legal
3 impediment to the enjoyment of the property, regardless of whether
4 the impediment is valid or is a matter of official record.

5 (E) Promising performance that the actor does not intend to
6 perform or knows will not be performed. Failure to perform alone is
7 not evidence that the actor did not intend to perform.

8 (ii) A misrepresentation or concealment of material fact
9 relating to the terms of a contract or agreement entered into with
10 the vulnerable adult or to the existing or preexisting condition of
11 any of the property involved in the contract or agreement.

12 (iii) The use or employment of a misrepresentation, false
13 pretense, or false promise to induce, encourage, or solicit the
14 vulnerable adult to enter into a contract or agreement.

15 (b) "Financially exploit" means to knowingly do either of the
16 following by deception or intimidation, if the actor stands in a
17 position of trust or confidence with the vulnerable adult:

18 (i) Obtain control over the property of the vulnerable adult.

19 (ii) Illegally use the assets or resources of the vulnerable
20 adult.

21 (c) "Illegally use" includes, but is not limited to,
22 misappropriate the assets or resources by undue influence, use the
23 assets or resources by breaching a fiduciary relationship, fraud,
24 deception, or extortion, or use the assets or resources contrary to
25 law.

26 (d) "Intimidation" means communicating any of the following to
27 the vulnerable adult:

1 (i) That the vulnerable adult will be deprived of food and
2 nutrition, shelter, prescribed medication, or medical care and
3 treatment.

4 (ii) A threat to do any of the following:

5 (A) Inflict physical harm on the vulnerable adult or any other
6 individual or on property.

7 (B) Subject an individual to physical confinement or
8 restraint.

9 (C) Commit a felony.

10 (D) Accuse an individual of an offense.

11 (E) Expose an individual to hatred, contempt, or ridicule.

12 (e) "Stands in a position of trust or confidence" means has
13 any of the following relationships to the vulnerable adult:

14 (i) Parent, spouse, adult child, or other relative by blood or
15 marriage.

16 (ii) Resident of the same household or living unit.

17 (iii) Fiduciary.

18 (iv) Financial planning or investment professional.

19 (v) Paid or unpaid caregiver.

20 (f) "Vulnerable adult" means that term as defined in section
21 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m.

22 Sec. 3. (1) A person that financially exploits a vulnerable
23 adult is liable to the vulnerable adult, or to the estate of the
24 vulnerable adult, for damages of 3 times the value of the property
25 obtained, reasonable attorney fees, and court costs.

26 (2) In an action under this section, the plaintiff has the
27 burden of proving that the defendant financially exploited the

1 vulnerable adult by a preponderance of the evidence, regardless of
2 whether the defendant has been charged with or convicted of a
3 criminal offense arising out of the conduct that constitutes
4 financially exploiting the vulnerable adult.

5 (3) This section does not limit or affect the right of a
6 person to bring an action or seek any other remedy available under
7 the common law or other applicable law for financially exploiting a
8 vulnerable adult.