

# Elder Law Legal Alert

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## New Michigan Laws Aim to Better Protect Seniors from Neglect and Abuse

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On June 19, 2012, Governor Snyder signed into law a series of bills designed to protect seniors and vulnerable adults from neglect and abuse. The bills modernize Michigan law by providing many of the same protections afforded to vulnerable youth.

Financial, emotional, and sexual abuse of seniors and vulnerable adults is a serious and common problem. It is often perpetrated by those in a position of trust and those closest to the victim. While the mental and emotional damages are incalculable, abuse and neglect may also result in major financial hardship. It's estimated that nearly 100,000 vulnerable adults are abused or neglected each year. Studies indicate that many seniors and vulnerable adults are forced to turn to social services as a result of financial exploitation, costing American taxpayers over \$2 billion annually. However, many cases of abuse and neglect are never reported because of the risk of embarrassment or shame at having been defrauded.

The bills signed by Governor Snyder codify protections for seniors and vulnerable adults by providing reporting requirements, establishing protocols for investigations into abuse and neglect, clarifying what constitutes abuse and neglect, and increasing penalties for defrauding and embezzling from vulnerable adults.

### What has Changed?

1. *Abusers can no longer inherit; additional protections in guardianship cases.*

Senate Bill (SB) 461 protects seniors and vulnerable adults from financial exploitation. Previously, a convicted perpetrator of abuse, neglect, or exploitation could still inherit from his victim if the abuse did not result in death. Only if the victim died was the abuser prevented from inheriting. This law is called Michigan's "slayer statute." SB 461 addresses this issue by requiring the victim's formal forgiveness before a convicted perpetrator can inherit from the victim.

In addition, the law requires that a person who is the subject of an adult guardianship case must be provided with additional information about his or her rights. The law also requires that probate courts pay additional attention to whether the person's financial situation would be better served by appointment of a conservator. SB 461 is now Public Act 173 of 2012.

2. *New protections from fraud.*

SB 459 increases criminal penalties for fraudulently obtaining a signature and clarifies

that fraud may occur through deceit, misrepresentation, coercion, or unjust enrichment. The reality is that a significant share of the financial abuse of senior citizens and vulnerable adults occurs because the senior has been tricked into signing away his or her rights to property or assets. SB 459 addresses this problem. SB 459 is now Public Act 172 of 2012.

3. *Mandatory reporting requirement for suspected abuse.*

SB 462 establishes a mandatory reporting requirement for nursing home employees when there is a reasonable suspicion that there has been abuse of a senior or vulnerable adult. Previously, some nursing home employees were only required to report abuse to supervisors, and many who took the voluntary step of reporting abuse feared retaliation by their employers. This discouraged state investigations into alleged abuse. SB 462 corrects these problems by requiring nursing home employees to report reasonably suspected abuse to state authorities within two hours if there is a suspicion of serious bodily injury and within 24 hours if there is not a suspicion of serious bodily injury. Furthermore, SB 462 protects whistle-blowers from harassment, dismissal, and other forms of retaliation. SB 462 is now Public Act 174 of 2012.

4. *New procedures for locating missing vulnerable adults.*

SB 466 – the Mozelle Alert Act – does for missing vulnerable adults what the Amber Alert system does for missing youth. Generally, an investigation for a missing person does not occur until a person has been missing for 24 hours. For missing vulnerable adults, 24 hours is too long. SB 466 permits law enforcement to take immediate action if there is a missing vulnerable adult. Law

enforcement is to prepare a report as soon as is practicable, send the report to other law enforcement agencies, and distribute the report to one or more media broadcasters. SB 466 seeks to ensure that missing vulnerable adults are located as quickly as possible. SB 466 is now Public Act 176 of 2012.

5. *A third party can file a criminal complaint on behalf of a vulnerable adult.*

SB 468 allows a person with an intimate relationship with a vulnerable adult to file a criminal complaint on that person's behalf. Oftentimes, a victimized vulnerable adult will not file a complaint because he has been intimidated or fears retaliation. This resulted in a reduced number of prosecutions for abuse because a magistrate could refuse to accept a complaint by a third party on the grounds that the complaint needed to be filed by the alleged victim in order for an investigation to proceed. SB 468 does away with this requirement and makes it more likely that an investigation will occur. SB 468 is now Public Act 177 of 2012.

6. *New requirements for financial powers of attorney.*

SB 92, which was not a part of this overall package of senior protection legislation, augments signature requirements for a durable power of attorney for financial matters. Powers of attorney serve as an important part of most estate plans and allow the person creating the power of attorney (principal) to appoint someone (agent) to manage the principal's financial and business affairs. The law requires that all powers of attorney signed after October 1, 2012, be either notarized or signed by two witnesses other than the appointed agents. The law also requires that, before acting, the agent must sign an acceptance and acknowledgement that outlines some of the primary duties the agent has to the principal and reminds the agent about criminal

penalties for wrongdoing. SB 92 is now Public Act 141 of 2012.

7. *Vulnerable adults receive protection during testimony.*

SB 454 protects vulnerable adults from directly testifying in court. Oftentimes, testifying in the presence of an abuser can be difficult for an alleged victim, especially when the abuser is a relative or person of trust. As a result, it can be difficult to hold abusers accountable. SB 454 aims to correct this problem by providing protections similar to those already provided for vulnerable youth. When a vulnerable adult is called to testify, courts must consider: (1) the age of the witness; (2) the nature of the offense; (3) the desire of the witness or the witness's custodian or family to have testimony taken in a room closed to public; and (4) the physical condition of the witness.

If the court determines that the witness needs protection, the courtroom may be rearranged so that the witness is seated as far away from the defendant as is reasonable. However, if the court determines that rearranging the courtroom would not provide enough protection, the court will allow the witness to testify outside the physical presence of the defendant by closed circuit television. Such testimony is to occur as if the witness were at the court proceeding, thereby insuring that the defendant's attorney has a fair opportunity to cross-examine the witness while the vulnerable adult is better protected.

*Other changes*

- SB 455 amends sentencing guidelines so that those convicted of fraudulently obtaining a signature or embezzling from a vulnerable adult face a greater likelihood of imprisonment. (Public Act 169 of 2012)

- SB 457 authorizes county medical examiners to establish review teams to investigate suspicious deaths of any elderly or vulnerable adult. (Public Act 171 of 2012)
- SB 464 establishes a protocol for county investigations when an adult in need of protective services has been abused, neglected, or exploited. (Public Act 170 of 2012)
- SB 465 increases penalties for embezzling from seniors. (Public Act 168 of 2012)

**Conclusion**

As advocates for seniors and their families, the elder law attorneys at Smith Haughey Rice & Roegge welcome these new protections. Educating seniors to avoid exploitation when possible, protecting seniors from abuse, advocating for proper health care, and giving seniors peace of mind through prudent planning lie at the core of our practice. If you or someone you know have questions or concerns about the impact of these new laws, or about any matter involving the care or protection of seniors and their families, please let us know.

*A Traverse City attorney, Greg focuses his practice on elder law and estate planning. In addition to estate planning, Greg's holistic approach to elder law focuses primarily on the legal and financial issues related to maintaining independence, long-term nursing home or home-based care, assisted living, Medicare, and Medicaid, but he is always mindful of the emotional impact of these decisions on seniors and their families.*

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