I. Statute Protecting Dependent Adults or Elders from Neglect or Abuse: Michigan Compiled Laws 400.11 et seq.

A. Conduct

1. **Neglect**: Harm to an adult's health or welfare caused by the inability of the adult to respond to a harmful situation or by the conduct of a person who assumes responsibility for a significant aspect of the adult's health or welfare, which includes the failure to provide adequate food, clothing, shelter, or medical care.\(^2\)

2. **Abuse**: Harm or threatened harm to an adult's health or welfare caused by another person. Abuse includes, but is not limited to, nonaccidental physical or mental injury, sexual abuse, or maltreatment.\(^3\)

3. **Exploitation**: An action that involves the misuse of an adult's funds, property, or personal dignity by another person.\(^4\)

B. Endangered Adult\(^6\)

1. **Types of Impairment:**

   A “vulnerable adult” within the meaning of the Michigan statute is an individual who is unable to protect himself or herself from abuse, neglect, or exploitation because of a mental or physical impairment or because of advanced age and is a person not less than eighteen (18) years of age who is suspected of being or believed to be abused, neglected, or exploited.

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\(^1\) The authors gratefully acknowledge the assistance of Summer Associate, Mohammad Khaleelullah.

\(^2\) *MCL 400.11(d).*

\(^3\) *MCL 400.11(a).*

\(^4\) Exploitation will not be addressed in this compendium – instead, only the abuse and/or neglect portions of the statutes.

\(^5\) *MCL 400.11(c).*

\(^6\) *MCL 400.11(b) – (f).*
C. Persons Excluded From Statute

A person acting in good faith who makes a report or who assists in the implementation of this act shall be immune from civil liability which might otherwise be incurred by making the report or by assisting in the making of the report. This immunity shall not extend to a negligent act which causes personal injury or death. [emphasis added].\(^7\)

D. Mandatory Reporting Requirements - The statute does not provide specific notice and process requirements to the state for litigation.

E. Preclusion of Arbitration

A provision in a written contract to settle by arbitration in which it is agreed that a judgment of any circuit court may be rendered upon the award made pursuant to such agreement, shall be valid, enforceable and irrevocable save upon such grounds as exist at law. See MCL 600.5001. Where an arbitration agreement complies with the requirements of the law, that arbitration agreement precludes a civil cause of action. McKain v Moore, 172 Mich. App. 243, 431 N.W.2d 470 (1988). The Michigan statute protecting vulnerable adults does not expressly prohibit arbitration agreements.

F. Relationships to Medical Malpractice Actions

The Michigan statute protecting vulnerable adults does not expressly limit recovery by any other civil remedy including those available for medical malpractice actions.

G. Criminal Provision - Michigan’s criminal code governs the criminal provisions under the vulnerable adult program.\(^8\)

1. If a caregiver intentionally causes serious physical harm or serious mental harm to a vulnerable adult, the caregiver is guilty of vulnerable adult abuse in the **first degree** [emphasis added].

2. A caregiver or other person with authority over the vulnerable adult is guilty of vulnerable adult abuse in the **second degree** if their reckless act or reckless failure to act causes serious physical harm or serious mental harm to a vulnerable adult [emphasis added].

3. A caregiver is guilty of vulnerable adult abuse in the **third degree** if the caregiver intentionally causes physical harm to a vulnerable adult [emphasis added].

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\(^7\) MCL 400.11 (c) (1).

\(^8\) MCL 750.145n (1) – (4).
4. A caregiver or other person with authority over the vulnerable adult is guilty of vulnerable adult abuse in the fourth degree if their reckless act or reckless failure to act causes physical harm to a vulnerable adult [emphasis added].

H. Statute of Limitations:

An action for negligence must be brought within six years. See MCL 600.5813.

An action for medical malpractice must be commenced within two years after the cause of action accrues. See MCL 600.5805 (6).

A cause of action for assault or battery (i.e., abuse) must be brought within two years. See MCL 600.5805 (2).

I. Burden of Proof:

The burden of proof in Michigan for civil actions is based upon a preponderance of the evidence. The plaintiff must prove by a preponderance of the evidence that the defendant was guilty of negligence, and that negligence was a proximate cause of the injuries that she received. Knoper v Burton, 383 Mich. 62, 173 N.W.2d 202 (1970).

Any finding of guilt for a crime must be based upon proof beyond a reasonable doubt. People v Likine, 492 Mich. 367, 823 N.W.2d 50 (2012).

J. Can regulations establish a standard of care?

Yes. Historically, it has been “elementary law in this State that violation of a statute is evidence of negligence per se.” Hardaway v Consolidated Paper Co, 366 Mich 190, 196; 114 NW2d 236 (1962). Indeed, violation of a duty imposed by statute is negligence per se. Douglas v Edgewater Park Co., 369 Mich 320, 328; 119 NW2d 567 (1963).

II. DAMAGES

A. Damages Available

1. Actual Damages
2. Punitive Damages
3. Costs of Suit

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9 MCL 600.6305.
B. **Does Pain and Suffering of Decedent/Resident Survive Death:**

Yes. If a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action that survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued although the period of limitations has run.\(^{10}\)

C. **Attorney’s Fees available:** No

III. **LEGISLATION AFFECTING STATUTE**

A. **Pending:** None

B. **Anticipated:** None

\(^{10}\) MCL 600.5852(1).