

1 AN ACT relating to prevention of exploitation in brokerage-financial accounts.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO  
4 READ AS FOLLOWS:

5 *(1) As used in this section:*

6 *(a) "Cabinet" means the Cabinet for Health and Family Services;*

7 *(b) "Eligible adult" means:*

8 *1. A person sixty-five (65) years of age or older; or*

9 *2. An adult as defined in Section 2 of this Act;*

10 *(c) "Exploitation" has the same meaning as in KRS 209.020; and*

11 *(d) "Qualified individual" means any:*

12 *1. Agent;*

13 *2. Investment advisor representative; or*

14 *3. Other person who serves in a supervisory, compliance, or legal*  
15 *capacity for a broker-dealer or investment advisor.*

16 *(2) (a) If a qualified individual reasonably believes that exploitation of an eligible*  
17 *adult may have occurred, may have been attempted, or is being attempted,*  
18 *the qualified individual:*

19 *1. Shall immediately make a report to the cabinet and the commissioner*  
20 *that includes the information required by subsection (4) of Section 3*  
21 *of this Act; and*

22 *2. May notify any third party previously designated by the eligible adult,*  
23 *unless the third party is a party suspected of exploitation or other*  
24 *abuse of the eligible adult.*

25 *(b) A qualified individual shall not be required to notify his or her customer of*  
26 *a report made pursuant to this subsection.*

27 *(c) An individual making a report shall not be required to make an additional*

1 report of suspected exploitation of the eligible adult pursuant to KRS  
2 209.030 that is based on the same facts or circumstances disclosed in the  
3 report made pursuant to this subsection.

4 (3) (a) A broker-dealer or investment advisor may delay a disbursement from an  
5 account of an eligible adult or an account on which an eligible adult is a  
6 beneficiary if:

7 1. The broker-dealer, investment advisor, or qualified individual  
8 reasonably believes, after initiating an internal investigation, that the  
9 requested disbursement may result in exploitation of the eligible adult;  
10 and

11 2. The broker-dealer or investment advisor:

12 a. Immediately, but in no event more than two (2) business days  
13 after the requested disbursement, provides written notification of  
14 the delay and the reason for the delay to:

15 i. All parties authorized to transact business on the account,  
16 except for any party that is reasonably believed to have  
17 engaged in the suspected or attempted exploitation;

18 ii. The cabinet; and

19 iii. The commissioner; and

20 b. Continues its internal investigation of the suspected or attempted  
21 exploitation, as necessary, and reports the investigation's results  
22 to the cabinet and the commissioner within seven (7) business  
23 days after the requested disbursement.

24 (b) Unless otherwise provided in paragraph (c) or (d) of this subsection, a  
25 disbursement delay shall expire upon the earlier of:

26 1. A determination by the broker-dealer or investment advisor that the  
27 disbursement will not result in exploitation; or

1           2. Fifteen (15) business days after the date disbursement is delayed.

2           (c) Unless otherwise provided in paragraph (d) of this subsection, the  
3           expiration of a disbursement delay may be extended to no more than twenty-  
4           five (25) business days after the date disbursement is delayed if an extension  
5           is requested by the cabinet or the commissioner. A delay extended pursuant  
6           to this paragraph may be terminated at any time by the cabinet or the  
7           commissioner.

8           (d) At any time, a court of competent jurisdiction, upon petition filed by the  
9           cabinet, the commissioner, the broker-dealer or investment advisor that  
10           initiated the disbursement delay, or any other interested party, may enter an  
11           order:

12           1. Terminating a disbursement delay;

13           2. Extending a disbursement delay; or

14           3. Providing for other protective relief.

15           (4) A qualified individual, broker-dealer, or investment advisor shall be immune  
16           from any administrative, civil, or criminal liability that may arise as a result of  
17           compliance with this section if the person acted in good faith and exercised  
18           reasonable care.

19           (5) (a) A broker-dealer or investment advisor shall provide access to or copies of  
20           records that are relevant to each suspected or attempted exploitation to the  
21           following:

22           1. The cabinet;

23           2. The commissioner; and

24           3. Law enforcement officials.

25           (b) The access or copies shall be provided as part of a report made to, or upon  
26           request of, any entity referenced in paragraph (a) of this subsection.

27           (c) The records required by this subsection may include historical records as

1           well as records relating to the most recent transactions that may constitute  
2           exploitation.

3           (d) Any information provided pursuant to this subsection shall be confidential  
4           and shall not be subject to disclosure pursuant to the Kentucky Open  
5           Records Act, KRS 61.870 to 61.884.

6           (e) Nothing in this subsection shall limit or otherwise impede the authority of  
7           the commissioner to access or examine the records of a broker-dealer or  
8           investment advisor as otherwise provided by law.

9           ➔Section 2. KRS 209.020 is amended to read as follows:

10       As used in this chapter, unless the context otherwise requires:

11       (1) "Secretary" means the secretary of the Cabinet for Health and Family Services;

12       (2) "Cabinet" means the Cabinet for Health and Family Services;

13       (3) "Department" means the Department for Community Based Services of the Cabinet  
14       for Health and Family Services;

15       (4) "Adult" means a person eighteen (18) years of age or older who, because of mental  
16       or physical dysfunctioning, is unable to manage his or her own resources, carry out  
17       the activity of daily living, or protect himself or herself from neglect, exploitation,  
18       or a hazardous or abusive situation without assistance from others, and who may be  
19       in need of protective services;

20       (5) "Protective services" means agency services undertaken with or on behalf of an  
21       adult in need of protective services who is being abused, neglected, or exploited.  
22       These services may include but are not limited to conducting investigations of  
23       complaints of possible abuse, neglect, or exploitation to ascertain whether or not the  
24       situation and condition of the adult in need of protective services warrants further  
25       action; social services aimed at preventing and remedying abuse, neglect, and  
26       exploitation; and services directed toward seeking legal determination of whether or  
27       not the adult in need of protective services has been abused, neglected, or exploited

- 1 and to ensure that he or she obtains suitable care in or out of his or her home;
- 2 (6) "Caretaker" means an individual or institution who has been entrusted with or who  
3 has the responsibility for the care of the adult as a result of family relationship, or  
4 who has assumed the responsibility for the care of the adult person voluntarily or by  
5 contract, employment, legal duty, or agreement;
- 6 (7) "Deception" means but is not limited to:
- 7 (a) Creating or reinforcing a false impression, including a false impression as to  
8 law, value, intention, or other state of mind;
- 9 (b) Preventing another from acquiring information that would affect his or her  
10 judgment of a transaction; or
- 11 (c) Failing to correct a false impression that the deceiver previously created or  
12 reinforced, or that the deceiver knows to be influencing another to whom the  
13 person stands in a fiduciary or confidential relationship;
- 14 (8) "Abuse" means the infliction of injury, sexual abuse, unreasonable confinement,  
15 intimidation, or punishment that results in physical pain or injury, including mental  
16 injury;
- 17 (9) "Exploitation" means obtaining or using another person's resources, including but  
18 not limited to funds, assets, or property, by deception, intimidation, or similar  
19 means, with the intent to deprive the person of those resources;
- 20 (10) "Investigation" shall include but is not limited to:
- 21 (a) A personal interview with the individual reported to be abused, neglected, or  
22 exploited. When abuse or neglect is allegedly the cause of death, a coroner's or  
23 doctor's report shall be examined as part of the investigation;
- 24 (b) An assessment of individual and environmental risk and safety factors;
- 25 (c) Identification of the perpetrator, if possible; and
- 26 (d) Identification by the Office of Inspector General of instances of failure by an  
27 administrator or management personnel of a regulated or licensed facility to

1           adopt or enforce appropriate policies and procedures, if that failure  
2           contributed to or caused an adult under the facility's care to be abused,  
3           neglected, or exploited;

4 (11) "Emergency" means that an adult is living in conditions which present a substantial  
5       risk of death or immediate and serious physical harm to himself or herself or others;

6 (12) "Emergency protective services" are protective services furnished an adult in an  
7       emergency;

8 (13) "Protective placement" means the transfer of an adult from his or her present living  
9       arrangement to another;

10 (14) "Court" means the Circuit Court or the District Court if no judge of that Circuit  
11       Court is present in the county;

12 (15) "Records" means the medical, mental, health, and financial records of the adult that  
13       are in the possession of any hospital, firm, corporation, or other facility, if necessary  
14       to complete the investigation mandated in this chapter. These records shall not be  
15       disclosed for any purpose other than the purpose for which they have been obtained;

16 (16) "Neglect" means a situation in which an adult is unable to perform or obtain for  
17       himself or herself the goods or services that are necessary to maintain his or her  
18       health or welfare, or the deprivation of services by a caretaker that are necessary to  
19       maintain the health and welfare of an adult; and

20 (17) "Authorized agency" means:

21       (a) The Cabinet for Health and Family Services;

22       (b) A law enforcement agency or the Department of Kentucky State Police;

23       (c) The office of a Commonwealth's attorney or county attorney; ~~{or}~~

24       (d) The appropriate division of the Office of the Attorney General; **or**

25       **(e) The Department of Financial Institutions.**

26       ➔Section 3. KRS 209.030 is amended to read as follows:

27 (1) The secretary may promulgate administrative regulations in accordance with KRS

1 Chapter 13A to effect the purposes of this chapter. While the cabinet shall continue  
2 to have primary responsibility for investigation and the provision of protective  
3 services under this chapter, nothing in this chapter shall restrict the powers of  
4 another authorized agency to act under its statutory authority.

5 (2) Any person, including but not limited to physician, law enforcement officer, nurse,  
6 social worker, cabinet personnel, coroner, medical examiner, alternate care facility  
7 employee, or caretaker, having reasonable cause to suspect that an adult has  
8 suffered abuse, neglect, or exploitation, shall report or cause reports to be made in  
9 accordance with the provisions of this chapter. Death of the adult does not relieve  
10 one of the responsibility for reporting the circumstances surrounding the death.

11 (3) Except as otherwise provided in subsection (2) of Section 1 of this Act, an oral or  
12 written report shall be made immediately to the cabinet upon knowledge of  
13 suspected abuse, neglect, or exploitation of an adult.

14 (4) Any person making such a report shall provide the following information, if known:

15 (a) The name and address of the adult, or of any other person responsible for his  
16 or her care;

17 (b) The age of the adult;

18 (c) The nature and extent of the abuse, neglect, or exploitation, including any  
19 evidence of previous abuse, neglect, or exploitation;

20 (d) The identity of the perpetrator, if known;

21 (e) The identity of the complainant, if possible; and

22 (f) Any other information that the person believes might be helpful in  
23 establishing the cause of abuse, neglect, or exploitation.

24 (5) Upon receipt of the report, the cabinet shall conduct an initial assessment and take  
25 the following action:

26 (a) Notify within twenty-four (24) hours of the receipt of the report the  
27 appropriate law enforcement agency. If information is gained through

- 1 assessment or investigation relating to emergency circumstances or a potential  
2 crime, the cabinet shall immediately notify and document notification to the  
3 appropriate law enforcement agency;
- 4 (b) Notify each appropriate authorized agency. The cabinet shall develop  
5 standardized procedures for notifying each appropriate authorized agency  
6 when an investigation begins and when conditions justify notification during  
7 the pendency of an investigation;
- 8 (c) Initiate an investigation of the complaint; and
- 9 (d) Make a written report of the initial findings together with a recommendation  
10 for further action, if indicated.
- 11 (6) (a) The cabinet shall, to the extent practicable, coordinate its investigation with  
12 the appropriate law enforcement agency and, if indicated, any appropriate  
13 authorized agency or agencies.
- 14 (b) The cabinet shall, to the extent practicable, support specialized  
15 multidisciplinary teams to investigate reports made under this chapter. This  
16 team may include law enforcement officers, social workers, Commonwealth's  
17 attorneys and county attorneys, representatives from other authorized  
18 agencies, medical professionals, and other related professionals with  
19 investigative responsibilities, as necessary.
- 20 (7) Any representative of the cabinet may enter any health facility or health service  
21 licensed by the cabinet at any reasonable time to carry out the cabinet's  
22 responsibilities under this chapter. Any representative of the cabinet actively  
23 involved in the conduct of an abuse, neglect, or exploitation investigation under this  
24 chapter shall also be allowed access to financial records and the mental and physical  
25 health records of the adult which are in the possession of any hospital, firm,  
26 financial institution, corporation, or other facility if necessary to complete the  
27 investigation mandated by this chapter. These records shall not be disclosed for any



- 1           purpose other than the purpose for which they have been obtained.
- 2   (8) Any representative of the cabinet may with consent of the adult or caretaker enter  
3       any private premises where any adult alleged to be abused, neglected, or exploited is  
4       found in order to investigate the need for protective services for the purpose of  
5       carrying out the provisions of this chapter. If the adult or caretaker does not consent  
6       to the investigation, a search warrant may be issued upon a showing of probable  
7       cause that an adult is being abused, neglected, or exploited, to enable a  
8       representative of the cabinet to proceed with the investigation.
- 9   (9) If a determination has been made that protective services are necessary when  
10       indicated by the investigation, the cabinet shall provide such services within  
11       budgetary limitations, except in such cases where an adult chooses to refuse such  
12       services.
- 13   (10) In the event the adult elects to accept the protective services to be provided by the  
14       cabinet, the caretaker shall not interfere with the cabinet when rendering such  
15       services.
- 16   (11) The cabinet shall consult with local agencies and advocacy groups, including but  
17       not limited to long-term care ombudsmen, law enforcement agencies, bankers,  
18       attorneys, providers of nonemergency transportation services, and charitable and  
19       faith-based organizations, to encourage the sharing of information, provision of  
20       training, and promotion of awareness of adult abuse, neglect, and exploitation,  
21       crimes against the elderly, and adult protective services.
- 22   (12) (a) By November 1 of each year and in accordance with state and federal  
23       confidentiality and open records laws, each authorized agency that receives a  
24       report of adult abuse, neglect, or exploitation shall submit a written report to  
25       the cabinet that provides the current status or disposition of each case referred  
26       to that agency by the cabinet under this chapter during the preceding year. The  
27       Elder Abuse Committee established in KRS 209.005 may recommend

1 practices and procedures in its model protocol for reporting to the cabinet  
2 under this section.

3 (b) By December 30 of each year, the cabinet shall provide a written report to the  
4 Governor and the Legislative Research Commission that summarizes the  
5 status of and actions taken on all reports received from authorized agencies  
6 and specific departments within the cabinet under this subsection. The cabinet  
7 shall identify any report required under paragraph (a) of this subsection that is  
8 not received by the cabinet. Identifying information about individuals who are  
9 the subject of a report of suspected adult abuse, neglect, or exploitation shall  
10 not be included in the report under this paragraph. The report shall also  
11 include recommendations, as appropriate, to improve the coordination of  
12 investigations and the provision of protective services. The cabinet shall make  
13 the report available to community human services organizations and others  
14 upon request.