

1 AN ACT relating to the protection of Kentucky's adults.

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

3 ➔Section 1. KRS 381.230 is amended to read as follows:

4 **(1)** The owner of land may maintain the appropriate action to recover damages for any
5 trespass or injury committed thereon, or to prevent or restrain any trespass or other
6 injury thereto or thereon, notwithstanding the owner may not have the actual
7 possession of the land at the time of the commission of the trespass.

8 **(2) (a) An owner or lessee of residential real property, including a condominium,**
9 **who actually resides on that property and who is either age fifty-five (55) or**
10 **older or qualifies as an adult as defined in KRS 209.020, may maintain an**
11 **action to prevent or restrain any trespass on the property without the**
12 **payment of court costs or fees or the posting of any bond.**

13 **(b) Upon a showing in a verified petition that a trespass is occurring or is likely**
14 **to occur, the court may issue an ex parte order to prevent or restrain the**
15 **trespass, which may be enforced by any peace officer.**

16 **(c) The Court of Justice is requested to issue rules implementing this**
17 **subsection that are designed to maximize access to the courts for persons**
18 **who are age fifty-five (55) or older or qualify as adults as defined in KRS**
19 **209.020. The Administrative Office of the Courts shall develop and**
20 **distribute to each circuit clerk's office a set of forms allowing these persons**
21 **to petition for the relief allowed under this subsection.**

22 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 209 IS CREATED TO
23 READ AS FOLLOWS:

24 **(1) (a) A person is guilty of abuse of an adult when he or she:**

25 **1. Causes physical injury to an adult;**

26 **2. Causes mental injury to an adult;**

27 **3. Commits sexual abuse, as set forth in KRS 510.110, 510.120, or**

1 510.130, of an adult; or

2 4. Causes unreasonable confinement, intimidation, or punishment of an
3 adult.

4 (b) Abuse of an adult is a Class C felony when it is committed knowingly.

5 (c) Abuse of an adult is a Class D felony when it is committed wantonly.

6 (d) Abuse of an adult is a Class A misdemeanor when it is committed
7 recklessly.

8 (2) (a) A person is guilty of exploitation of an adult when he or she by deception,
9 intimidation, or similar means:

10 1. Obtains or uses an adult's resources, including but not limited to
11 financial resources such as funds, assets, or property; and

12 2. Intends to deprive the person of those resources.

13 (b) Exploitation of an adult is a Class C felony when it is committed knowingly,
14 resulting in a sum total loss of resources to the adult in any combination or
15 aggregation of more than three hundred dollars (\$300).

16 (c) Exploitation of an adult is a Class D felony when it is committed wantonly
17 or recklessly, resulting in a sum total loss of resources to the adult in any
18 combination or aggregation of more than three hundred dollars (\$300).

19 (d) Exploitation of an adult is a Class A misdemeanor when it is committed
20 knowingly, wantonly, or recklessly, but results in a sum total loss of
21 resources to the adult in any combination or aggregation of three hundred
22 dollars (\$300) or less.

23 (3) (a) A person is guilty of neglect of an adult when he or she:

24 1. Deprives an adult of any goods, services, care, or treatment necessary
25 to maintain his or her health or welfare; or

26 2. Causes or permits someone else to deprive an adult of any goods,
27 services, care, or treatment necessary to maintain his or her health or

1 welfare.

2 (b) Neglect of an adult is a Class C felony when it is committed knowingly.

3 (c) Neglect of an adult is a Class D felony when it is committed wantonly.

4 (d) Neglect of an adult is a Class A misdemeanor when it is committed
5 recklessly.

6 ➔Section 3. KRS 209.990 is amended to read as follows:

7 (1) Anyone knowingly or wantonly violating the provisions of KRS 209.030(2) shall be
8 guilty of a Class B misdemeanor as designated in KRS 532.090. Each violation
9 shall constitute a separate offense.

10 ~~(2) Any person who knowingly abuses or neglects an adult is guilty of a Class C felony.~~

11 ~~(3) Any person who wantonly abuses or neglects an adult is guilty of a Class D felony.~~

12 ~~(4) Any person who recklessly abuses or neglects an adult is guilty of a Class A~~
13 ~~misdemeanor.~~

14 ~~(5) Any person who knowingly exploits an adult, resulting in a total loss to the adult of~~
15 ~~more than three hundred dollars (\$300) in financial or other resources, or both, is~~
16 ~~guilty of a Class C felony.~~

17 ~~(6) Any person who wantonly or recklessly exploits an adult, resulting in a total loss to~~
18 ~~the adult of more than three hundred dollars (\$300) in financial or other resources,~~
19 ~~or both, is guilty of a Class D felony.~~

20 ~~(7) Any person who knowingly, wantonly, or recklessly exploits an adult, resulting in a~~
21 ~~total loss to the adult of three hundred dollars (\$300) or less in financial or other~~
22 ~~resources, or both, is guilty of a Class A misdemeanor.~~

23 ~~(8)}~~ If a defendant is sentenced under Section 2 of this Act ~~[subsection (5), (6), or (7) of~~
24 ~~this section]~~ and fails to return the victim's property as defined in KRS 218A.405
25 within thirty (30) days of an order by the sentencing court to do so, or is thirty (30)
26 days or more delinquent in a court-ordered payment schedule, then the defendant
27 shall be civilly liable to the victim of the offense or the victim's estate for treble

1 damages, plus reasonable attorney fees and court costs. Any interested person or
2 entity, as defined in KRS 387.510, shall have standing to bring a civil action on the
3 victim's behalf to enforce this section. The sentencing judge shall inform the
4 defendant of the provisions of this subsection at sentencing.

5 ➔Section 4. KRS 209.020 is amended to read as follows:

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

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

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

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

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

16 (5) "Protective services" means agency services undertaken with or on behalf of an
17 adult in need of protective services who is being abused, neglected, or exploited.
18 These services may include but are not limited to conducting investigations of
19 complaints of possible abuse, neglect, or exploitation to ascertain whether or not the
20 situation and condition of the adult in need of protective services warrants further
21 action; social services aimed at preventing and remedying abuse, neglect, and
22 exploitation; and services directed toward seeking legal determination of whether or
23 not the adult in need of protective services has been abused, neglected, or exploited
24 and to ensure that he or she obtains suitable care in or out of his or her home;

25 (6) "Caretaker" means an individual or institution who has been entrusted with or who
26 has the responsibility for the care of the adult as a result of family relationship, or
27 who has assumed the responsibility for the care of the adult person voluntarily or by

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

- 1 risk of death or immediate and serious physical harm to himself or herself or others;
- 2 (12) "Emergency protective services" are protective services furnished an adult in an
- 3 emergency;
- 4 (13) "Protective placement" means the transfer of an adult from his or her present living
- 5 arrangement to another;
- 6 (14) "Court" means the Circuit Court or the District Court if no judge of that Circuit
- 7 Court is present in the county;
- 8 (15) "Records" means the medical, mental, health, and financial records of the adult that
- 9 are in the possession of any hospital, firm, corporation, or other facility, if necessary
- 10 to complete the investigation mandated in this chapter. These records shall not be
- 11 disclosed for any purpose other than the purpose for which they have been obtained;
- 12 (16) "Neglect" means a situation in which an adult is unable to perform or obtain for
- 13 himself or herself the goods or services that are necessary to maintain his or her
- 14 health or welfare, or the deprivation of services by a caretaker that are necessary to
- 15 maintain the health and welfare of an adult;~~and~~
- 16 (17) "Authorized agency" means:
- 17 (a) The Cabinet for Health and Family Services;
- 18 (b) A law enforcement agency or the Department of Kentucky State Police;
- 19 (c) The office of a Commonwealth's attorney or county attorney; or
- 20 (d) The appropriate division of the Office of the Attorney General;
- 21 **(18) "Independent counsel" means an attorney retained by the adult to represent only**
- 22 **the adult's interests in the transfer;**
- 23 **(19) "Less than full consideration" with respect to a transfer of property, means the**
- 24 **transferee pays less than fair market value for the property or the transfer is**
- 25 **supported by past consideration;**
- 26 **(20) "Major transfer of personal property or money" means a transfer of money or**
- 27 **items of personal property which represent ten percent (10%) or more of the**

1 adult's estate; and

2 (21) "Transfer" does not include testamentary transfers, which are outside the scope
3 of this chapter.

4 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 209 IS CREATED TO
5 READ AS FOLLOWS:

6 (1) In any transfer of real estate or major transfer of personal property or money by
7 an adult or his or her agent for less than full consideration or execution of a
8 guaranty by an adult to any person, it is presumed that the transfer or execution
9 was the result of undue influence, unless the adult was represented in the
10 transfer or execution by independent counsel. When the transferee or person who
11 benefits from the execution of a guaranty fails to rebut the presumption of undue
12 influence by a preponderance of the evidence, the adult or his or her agent shall
13 be entitled to avoid the transfer or execution and entitled to the relief set forth in
14 subsections (2), (3), and (5) of this section.

15 (2) A civil action may be brought to obtain relief under this chapter by an adult, his
16 or her agent, the adult's or the agent's legal representative, or the personal
17 representative of the estate of an adult person.

18 (3) When a court finds that a transfer of property or execution of a guaranty was the
19 result of undue influence, it shall grant appropriate relief enabling the adult to
20 avoid the transfer or execution, including the rescission or reformation of a deed
21 or other instrument, the imposition of a constructive trust on property or an order
22 enjoining use of or entry on property or commanding the return of property.
23 When the court finds that undue influence is a good and valid defense to a
24 transferee's suit on a contract to transfer the property or a suit of a person who
25 benefits from the execution of a guaranty on that guaranty, the court shall refuse
26 to enforce the transfer or guaranty. No relief obtained or granted under this
27 section may in any way affect or limit the right, title, and interest of good-faith

- 1 purchasers, mortgagees, holders of security interests, or other third parties who
2 obtain an interest in the transferred property for value after its transfer from the
3 adult. No relief obtained or granted under this section may affect any mortgage
4 deed to the extent of value given by the mortgagee.
- 5 (4) The limitations imposed by KRS 413.120 or other applicable statutes apply to civil
6 actions brought under this section.
- 7 (5) Nothing in this section may be construed to abrogate any other causes of action
8 or relief at law or equity to which an adult is entitled under other laws or at
9 common law.
- 10 (6) This chapter does not require that language showing compliance with this section
11 be included in a deed and does not require that evidence of compliance with this
12 chapter be recorded in the registry of deeds. Any attempt to record such evidence
13 is void and has no effect on title.