

### **365.245 Protection from Financial Exploitation Act.**

- (1) As used in this section:
  - (a) "Authorized agencies" means the Cabinet for Health and Family Services and the Department of Financial Institutions;
  - (b) "Financial exploitation" means:
    1. The wrongful or unauthorized taking, withholding, appropriation, or use of a specified adult's funds or securities; or
    2. Any act or omission by a person, including through the use of a power of attorney, guardianship, or any other authority regarding a specified adult, to:
      - a. Obtain control, through deception, intimidation, or undue influence, over a specified adult's money, assets, or property; or
      - b. Convert a specified adult's money, assets, or property;
  - (c) "Financial institution" means any person doing business under the laws of any state or commonwealth or the United States relating to banks, bank holding companies, savings banks, savings and loan associations, trust companies, or credit unions;
  - (d) "Qualified person" means a:
    1. Broker-dealer as defined in KRS 292.310;
    2. Investment adviser as defined in KRS 292.310; or
    3. Financial institution; and
  - (e) "Specified adult" means:
    1. A natural person age sixty-five (65) or older; or
    2. A natural person age eighteen (18) or older who a qualified person reasonably believes has a mental or physical impairment that renders that natural person unable to protect his or her own interests. A qualified person's reasonable belief may be based on facts and circumstances observed in the qualified person's business relationship with the natural person.
- (2)
  - (a) If a qualified person reasonably believes that financial exploitation has occurred, is occurring, has been attempted, or will be attempted, the qualified person may notify the following:
    1. Authorized agencies; and
    2. Any third party that is:
      - a. Reasonably associated with the specified adult; or
      - b. Otherwise permitted by law.
  - (b) Any report or disclosure made to authorized agencies pursuant to this subsection shall be confidential and shall not be subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.870 to 61.884. The name of the notifying qualified person shall not be revealed to any person outside of the authorized agencies without the permission of the notifying qualified person.

- (3) (a) A qualified person may place a temporary hold on a transaction on or a disbursement from an account of a specified adult, or an account on which a specified adult is a beneficiary, if:
  1. The qualified person fulfills any reporting obligations under KRS 209.030. Nothing in this subsection shall be read to expand any of the requirements of KRS 209.030;
  2. The qualified person reasonably believes that financial exploitation of a specified adult has occurred, is occurring, has been attempted, or will be attempted; and
  3. Not later than two (2) business days after the date the temporary hold was first placed, oral or written notification, which may be electronic, of the temporary hold and the reason for the temporary hold is made to:
    - a. All parties authorized to transact business on the account; and
    - b. Any person age eighteen (18) or older authorized by the specified adult or their legal representative, in writing, to be contacted about the specified adult's account.
- (b)
  1. Unless otherwise provided in subparagraph 2. of this paragraph, any temporary hold authorized by this subsection shall expire upon the sooner of:
    - a. A determination by the qualified person that the disbursement or transaction will not result in financial exploitation of the specified adult; or
    - b. Not later than fifteen (15) business days after the date the qualified person first placed the temporary hold, unless the qualified person's internal review of the facts and circumstances supports its reasonable belief that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted, in which case the qualified person may extend the expiration to not later than twenty-five (25) business days after the date the qualified person first placed the temporary hold.
  2. At any time, an agency of competent jurisdiction, including but not limited to the authorized agencies, or a court of competent jurisdiction may terminate or extend a temporary hold authorized by this subsection.
- (4) Notwithstanding subsection (2) or (3) of this section, a notification permitted or required by this section shall not be made to any person who is suspected of financial exploitation or other abuse.
- (5) (a) A qualified person shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of a specified adult to agencies charged with administering state adult protective services laws and to law enforcement, either as part of a referral to the agency or to law enforcement, or upon request of the agency or law enforcement pursuant to an investigation.
- (b) The records may include historical records as well as records relating to the

most recent disbursements or disbursements that may comprise financial exploitation of a specified adult.

- (c) All records made available to agencies pursuant to this subsection shall be confidential and shall not be subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.870 to 61.884.
- (d) Nothing in this subsection shall limit or otherwise impede the authority of the commissioner of the Department of Financial Institutions to access or examine the books and records of a qualified person as otherwise provided by law.
- (6) Notwithstanding any provision of law to the contrary, the authorized agencies may disclose to any notifying qualified person the general status or final disposition of any investigation that arose from a report made by the qualified person.
- (7) A qualified person that exercises good faith in making disclosures, placing a temporary hold, or providing access to records pursuant to this section shall be immune from any administrative or civil liability that might otherwise arise from such activities.
- (8) This section may be cited as the "Protection from Financial Exploitation Act."

**Effective:** July 14, 2018

**History:** Created 2018 Ky. Acts ch. 127, sec. 1, effective July 14, 2018.