AN ACT relating to financial exploitation.

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

➔Section 1. KRS 209.990 is amended to read as follows:

(1) ***Any person who***~~[Anyone]~~ knowingly or wantonly ***violates***~~[violating the provisions of]~~ KRS 209.030(2) shall be guilty of a Class B misdemeanor~~[as designated in KRS 532.090]~~. Each violation shall constitute a separate offense.

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

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

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

(5) Any person who knowingly exploits an adult ***or a person sixty-five (65) years of age or older***, resulting in a total loss to the ***victim***~~[adult]~~ of more than ***one thousand dollars ($1,000)***~~[three hundred dollars ($300)]~~ in financial or other resources, or both, is guilty of a ***Class B***~~[Class C]~~ felony.

(6) Any person who wantonly or recklessly exploits an adult ***or a person sixty-five (65) years of age or older***, resulting in a total loss to the ***victim***~~[adult]~~ of more than ***one thousand dollars ($1,000)***~~[three hundred dollars ($300)]~~ in financial or other resources, or both, is guilty of a ***Class C***~~[Class D]~~ felony.

(7) Any person who knowingly, wantonly, or recklessly exploits an adult ***or a person sixty-five (65) years of age or older***, resulting in a total loss to the ***victim***~~[adult]~~ of ***one thousand dollars ($1,000)***~~[three hundred dollars ($300)]~~ or less in financial or other resources, or both, is guilty of a Class A misdemeanor.

(8) If a defendant is sentenced under subsection (5), (6), or (7) of this section and fails to return the victim's property as defined in KRS 218A.405 within thirty (30) days of an order by the sentencing court to ***return the property***~~[do so]~~, or is thirty (30) days or more delinquent in a court-ordered payment schedule, then the defendant

shall be civilly liable to the victim of the offense or the victim's estate for treble damages, plus reasonable ***attorney's***~~[attorney]~~ fees and court costs. Any interested person or entity, as defined in KRS 387.510, shall have standing to bring a civil action on the victim's behalf to enforce this section. The sentencing judge shall inform the defendant of the provisions of this subsection at sentencing.

(9) Notwithstanding KRS 440.200, the Attorney General may demand from the Governor of any other state the surrender of any person found in the other state who is charged in Kentucky with a crime under subsection (5), (6), or (7) of this section, even if the person was not in Kentucky at the time of the commission of the crime. The demand, oath, or any proceedings for extradition pursuant to this section are not required to state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in Kentucky or the other state.

➔Section 2. KRS 292.338 is amended to read as follows:

(1) As used in this section:

(a) "Approved IAR continuing education content" means the materials, written, oral, or otherwise:

1. That have been approved by NASAA or its designee; and

2. Which make up the educational program provided to an investment adviser representative under this section;

(b) "Authorized provider" means a person that NASAA or its designee has authorized to provide continuing education content required by this section;

(c) "Credit" means a unit that has been designated by NASAA or its designee as at least fifty (50) minutes of educational instruction;

(d) "Ethics and professional responsibility content" means approved IAR continuing education content that addresses an investment adviser representative's ethical and regulatory obligations;

(e) "FINRA" means the Financial Industry Regulatory Authority;

(f) "Home state" means a state, other than Kentucky, in which the investment adviser representative has his or her principal office and place of business;

(g) "NASAA" means the North American Securities Administrators Association or a committee designated by its board of directors;

(h) "Products and practice content" means approved IAR continuing education content that addresses an investment adviser representative's continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry; and

(i) 1. "Reporting period" means one (1) twelve (12) month period as determined by NASAA.

2. An investment adviser representative's initial reporting period commences the first day of the first full reporting period after the individual is registered, or required to be registered, under this chapter.

(2) Except as otherwise provided in this section, every registered investment adviser representative shall complete the following continuing education requirements each reporting period:

(a) Six (6) credits of ethics and professional responsibility content offered by an authorized provider, with at least three (3) hours covering the topic of ethics; and

(b) Six (6) credits of products and practice content offered by an authorized provider.

(3) An investment adviser representative shall be considered in compliance with subsection (2)(b) of this section for each applicable reporting period if:

(a) The investment adviser representative:

1. Is also registered as an agent of a FINRA-member broker-dealer; and

2 Complies with FINRA's continuing education requirements; and

(b) FINRA's continuing education content meets all of the following baseline criteria, as determined by NASAA:

1. The content focuses on compliance, regulatory, ethical, and sales practices standards;

2. The content is derived from:

a. State and federal investment advisory statutes, rules, and regulations;

b. Securities industry rules and regulations; or

c. Accepted standards and practices in the financial services industry; and

3. The content requires that its participants demonstrate proficiency in the subject matter of the educational materials.

(4) Continuing education credits completed by an investment adviser representative shall be considered to comply with subsection (2) of this section for each applicable reporting period if:

(a) The investment adviser representative:

1. Is not required to pass a written examination by administrative regulation or order promulgated pursuant to KRS 292.331(3);

2. Completes continuing education credits necessary for maintaining, and remaining in good standing to hold, a professional designation identified by the commissioner by administrative regulation or order; and

3. Is required to complete continuing education credits to maintain, and remain in good standing to hold, the professional designation identified by the commissioner by administrative regulation or order; and

(b) The continuing education content provided by the credentialing organization for the professional designation identified by the commissioner by administrative regulation or order is approved IAR continuing education

content.

(5) An investment adviser representative registered or required to be registered in Kentucky who is registered as an investment adviser representative in the individual's home state shall be considered in compliance with ***subsection (2) of*** this section if:

(a) The investment adviser representative's home state has continuing education requirements that are at least as stringent as the NASAA Model Rule on Investment Adviser Representative Continuing Education; and

(b) The investment adviser representative is in compliance with the home state's investment adviser representative continuing education requirements.

(6) ***(a) In addition to the requirements of subsection (2) of this section, a registered investment adviser representative shall complete at least three (3) hours of continuing education covering the topic of financial exploitation for each reporting period, which may include firm-specific policies and procedures.***

(b) The continuing education required under paragraph (a) of this subsection may be part of the twelve (12) hours required under subsection (2) of this section if the financial exploitation content:

1. Is approved IAR continuing education content offered by an authorized provider; or

2. Otherwise meets the requirements of subsection (3), (4), or (5) for compliance with subsection (2) of this section.

(7) Every investment adviser representative shall be responsible for ensuring that***:***

(a) The authorized provider reports the investment adviser representative's completion of the approved IAR continuing education content***; and***

(b) Any continuing education required under subsection (6) of this section that is not provided by an authorized provider is reported.

(8)~~[(7)]~~ An investment adviser representative who completes continuing education

credits in excess of the amount required for the reporting period may not carry forward excess credits to a subsequent reporting period.

(9) ~~[(8)]~~ (a) An investment adviser representative who fails to comply with this section by the end of a reporting period shall:

1. Be subject to registration renewal as "CE inactive" at the close of the calendar year in Kentucky; and
2. Remain "CE inactive" until the investment adviser representative completes and reports all required continuing education credits for all reporting periods as required by this section.

(b) An investment adviser representative who is "CE inactive" at the close of the next calendar year shall not be eligible for:

1. Investment adviser representative registration; or
2. Renewal of investment adviser representative registration.

(10) ~~[(9)]~~ A person who was previously registered under this chapter as an investment adviser representative and became unregistered shall complete ***all*** ~~[approved IAR]~~ continuing education content for all reporting periods that occurred between the time that the investment adviser representative became unregistered and the time the person became registered again under this chapter unless the investment adviser representative makes a subsequent application for registration and complies with any examination requirement under KRS 292.331(3).

(11) ~~[(10)]~~ The commissioner may, in his or her discretion, waive any requirements of this section ***except subsection (6) of this section***.

➔Section 3. KRS 365.245 is amended to read as follows:

(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 ***money, assets, or property***~~[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) ***Subject to subsection (5) of this section,*** 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~~[,]~~ ***the qualified person:***

a. Provides oral or written notification, which may be electronic, of the temporary hold and the reason for the temporary hold~~[is made]~~ to:

i.~~[a.]~~ All parties authorized to transact business on the account; and

ii.~~[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***; and***

b. Creates and maintains, for at least five (5) years from the date the temporary hold was first placed, a written or electronic record of the temporary hold that, at a minimum, includes the following information:

i. The date the temporary hold was first placed;

ii. The name and address of the specified adult;

iii. The business location of the qualified person;

iv. The name and title of the employee who placed the temporary hold; and

v. The facts and circumstances that caused the employee to place the temporary hold.

(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) ***Before placing a temporary hold on a transaction or disbursement under this section, a qualified person shall:***

(a) Develop training policies or programs reasonably designed to educate employees who perform or approve transactions or disbursements on behalf of customers on issues pertaining to the financial exploitation of specified adults;

(b) Conduct the training required under paragraph (a) of this subsection:

1. For employees who became employed by the qualified person before the effective date of this Act, as soon as reasonably practicable; and

2. For employees who become employed by the qualified person on or after the effective date of this Act, as soon as reasonably practicable but not later than one (1) year after the date the employee became employed by the qualified person; and

(c) Develop, maintain, and enforce written procedures regarding the manner in which suspected financial exploitation is reviewed internally, including, if applicable, the manner in which the suspected financial exploitation is required to be reported to supervisory personnel.

(6) (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**:**

1. As part of a referral to the agency or~~[to]~~ law enforcement**;**~~[,]~~ or

2. Upon request of the agency or law enforcement pursuant to an investigation.

(b) The records ***that are provided to agencies or law enforcement pursuant to this subsection*** may include***:***

1. Historical records***; and*** ~~[as well as]~~

2. Records relating to***:***

a. The most recent disbursements***;*** or

b. 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 ***not*** 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.

(7) ~~[(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.

(8) ~~[(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.

(9) ~~[(8)]~~ ***This section shall not be construed to expand any of the requirements of KRS 209.030.***

(10) This section may be cited as the "Protection from Financial Exploitation Act."