

- Class A misdemeanor for recklessly abusing or neglecting an adult,
- Class C felony for knowingly exploiting an adult with a total loss of more than \$300,
- Class D felony for wantonly or recklessly exploiting an adult resulting in total loss of more than \$300, and
- Class A misdemeanor for knowingly, wantonly, or recklessly exploiting an adult resulting in total loss of \$300 or less.

For purposes of protecting certain vulnerable adults, KRS 209.020 defines “adult” as a person 18 or older who “because of mental or physical dysfunctioning, is unable to manage his or her own resources, carry out the activity of daily living, or protect himself or herself from neglect, exploitation, or a hazardous or abusive situation without assistance from others, and who may be in need of protective services.”

Sections 4 and 5 of SB 268 would allow any *transfer of real property or major transfer of personal property or money* by this defined “adult” to be *avoided* if the transfer is *less than full consideration* or guaranty to any other person. The transfer would be presumed to be the result of undue influence unless the “adult” had been represented by “independent counsel,” which is defined as “an attorney retained by the adult to represent only the adult’s interests in the transfer.” After a transfer, the “adult” or agent or representative could file a civil action requesting the court to avoid the transfer. The bill requires the judge to grant “appropriate relief” if the transfer was for less than full consideration and the transferee fails to rebut the presumption of undue influence by a preponderance of evidence. The bill would also protect the “adult” in any suit by a transferee to enforce a transfer or guaranty.

The bill would have an indeterminate to moderate negative fiscal impact depending on the city or county and size of its budget. The Kentucky League of Cities reported that the bill could have a “minimal negative financial impact on cities,” noting that a problem could arise with the purchase of permanent easements and in eminent domain proceedings because of **Sections 4 and 5** and the presumption of undue influence. Cities do not often use eminent domain because the process is slow and often more costly, and property must serve a public use rather than a public purpose.

HB 268 would likely increase adjudication, which would increase costs. City officials try to negotiate with property owners on a reasonable payment to avoid the court process, especially with permanent easements. The fair market value of a small piece of land adjacent to a city street can be difficult to calculate, with most owners believing they should have been offered more, even with use of an appraiser.

Also, it may be difficult for city officials to know if a person qualifies as mentally or physically deficient so as to meet the definition of “adult” (in KRS 209.020), which would then trigger the possible presumption of undue influence under the bill. Many times people with a disability may be represented by another adult, a court-appointed guardian, or personal representative under a power of attorney, but these persons may not be attorneys as required by the bill. It may be unlikely that many adults with such a disability—the presence of which would not be known to the city—would actually hire an attorney for

legal representation in the process. Since the bill does not reference a specific statute of limitations, the sales to cities (or counties) could be challenged many years later. (Under current law, KRS 413.020 and 413.030 effectively extend the statute of limitations for the recovery of real property to as much as 30 years for a person with a disability--3 years after disability expires, but no more than 30 years.) These concerns may be greater for counties that use eminent domain or condemnation more frequently. The Kentucky Magistrates and Commissioners Association also noted problems with the bill.

The bill could impact any eminent domain/condemnation/collections/land bank proceedings initiated by a local government.

The Fayette County Clerk reported that the bill does not have a fiscal impact on county clerks but that there is a logistical question as to the manner of transferring the property back to the original owner if a court agrees that property was transferred as a result of undue influence.

There could be a question as to the valuation of property since any transfer of real property that is less than “full consideration” by a vulnerable “adult” could be avoided. The Kentucky PVA Association reported that the bill would not change PVA duties and does not have a fiscal impact on the county PVA offices.

The bill does not create new crimes but instead clarifies existing ones. Any training of law enforcement would be minimal. There should no change in the number of criminal prosecutions and thus no impact on jails.

There could be minimal expense associated with educating local government staff about the bill’s protection of vulnerable adults. There may be increased service of process (by sheriffs and constables) as a result of more civil actions via verified petition that a trespass is occurring or via complaint to avoid property transfer. Service of process is an existing duty for those offices, thus the impact in this regard would be minimal.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II, above, refers to the bill as introduced.

Data Source(s): LRC Staff; Kentucky League of Cities; Fayette County Clerk; Kentucky PVA Association; Kentucky Magistrates and Commissioners Association

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