

## CHAPTER 43

## ( HB 52 )

AN ACT relating to elder and vulnerable adult abuse, neglect, and financial exploitation and making an appropriation therefor.

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

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

- (1) Anyone knowingly or wantonly 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, resulting in a total loss to the adult of more than three hundred dollars (\$300) in financial or other resources, or both, is guilty of a Class C felony.
- (6) Any person who wantonly or recklessly exploits an adult, resulting in a total loss to the adult of more than three hundred dollars (\$300) in financial or other resources, or both, is guilty of a Class D felony.
- (7) Any person who knowingly, wantonly, or recklessly exploits an adult, resulting in a total loss to the adult of 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 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 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.*

➔Section 2. KRS 381.280 is amended to read as follows:

- (1) If the husband, wife, heir-at-law, beneficiary under a will, joint tenant with the right of survivorship or the beneficiary under any insurance policy takes the life of the decedent **or victimizes the decedent by the commission of any felony under KRS Chapter 209** and **in either circumstance** is convicted therefor ~~or of a felony~~, the person so convicted forfeits all interest in and to the property of the decedent, including any interest he **or she** would receive as surviving joint tenant, and the property interest **or insurable interest** so forfeited descends to the decedent's other heirs-at-law, **beneficiaries, or joint tenants**, unless otherwise disposed of by the decedent. **A judge sentencing a person for a offense that triggers a forfeiture under this section shall inform the defendant of the provisions of this section at sentencing.**
- (2) **A forfeiture under subsection (1) of this section:**
  - (a) **Shall not apply in cases involving the commission of any felony under KRS Chapter 209 where the will, deed, or insurance policy was executed prior to the effective date of this Act;**
  - (b) **Shall not apply in cases where the decedent, with knowledge of the person's disqualification, reaffirmed the right of the husband, wife, heir-at-law, beneficiary under a will, joint tenant with the right of survivorship, or insurance policy beneficiary to receive the property by executing a new or modified will or codicil, insurance policy or policy modification, or deed; and**
  - (c) **Shall not apply in cases of a felony under KRS Chapter 209 committed prior to the effective date of this Act.**
- (3) **If, after the provisions of this section are applied, there are no other heirs-at-law, beneficiaries, or joint tenants of the decedent as to all or part of the interest forfeited, the forfeited interest shall escheat to the state under KRS Chapter 393. The Department of the Treasury shall, after liquidation of the interest, pay the proceeds into the elder and vulnerable adult victims trust fund established in Section 4 of this Act.**

- (4) *Legal, real estate and insurance professionals shall make reasonable efforts to advise their clients of the provisions of this section prior to the execution of documents affected by the provisions of this section.*

➔Section 3. KRS 381.280 is amended to read as follows:

- (1) If the husband, wife, heir-at-law, beneficiary under a will, joint tenant with the right of survivorship or the beneficiary under any insurance policy takes the life of the decedent and is convicted therefor of a felony, the person so convicted forfeits all interest in and to the property of the decedent, including any interest he would receive as surviving joint tenant, and the property interest so forfeited descends to the decedent's other heirs-at-law, unless otherwise disposed of by the decedent.
- (2) *Legal, real estate and insurance professionals shall make reasonable efforts to advise their clients of the provisions of Section 2 of this Act as effective January 1, 2012, prior to the execution of documents affected by the provisions of this section.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

- (1) *The elder and vulnerable victims trust fund is created as a separate revolving fund in the Office of the State Treasurer.*
- (2) *The moneys in the trust fund shall be expended only as provided in this section and are hereby appropriated for those purposes.*
- (3) *The State Treasurer shall credit to the trust fund all amounts received for this purpose, including appropriations, grants, gifts, and any amounts received under Section 2 of this Act.*
- (4) *The State Treasurer shall invest trust fund money in the same manner as surplus funds are invested. Earnings shall be credited to the trust fund.*
- (5) *Notwithstanding KRS 45.229, any moneys remaining in the trust fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in this section.*
- (6) *Money shall be disbursed from the trust fund only for the purpose of providing funding to one (1) or more public or private nonprofit organizations, including government organizations, in the development or operation of elder or vulnerable adult abuse, neglect, or financial exploitation prevention or intervention programs. An organization shall be eligible to receive funding only if:*
- (a) *The organization agrees to provide at least a twenty-five percent (25%) match of the total project amount requested, which may consist of monetary or in-kind contributions;*
  - (b) *The organization demonstrates a willingness and ability to provide program models and consultation to other organizations and communities regarding program development and maintenance; and*
  - (c) *The organization funds:*
    1. *Programs which provide advocacy, crisis counseling, financial guardianship, or other similar services to victims of elder or vulnerable adult abuse, neglect, or financial exploitation;*
    2. *Law enforcement, prosecution, or court-based programs that enhance case investigations, prosecutions, or victim assistance in criminal cases involving elder or vulnerable adult abuse, neglect, or financial exploitation;*
    3. *Programs which develop and implement public education and awareness campaigns on elder and vulnerable adult abuse, neglect, or financial exploitation by making use of electronic and print media to inform the public about the nature of these crimes and available resources such as victims rights, legal remedies, agency services, and prevention strategies; or*
    4. *Research initiatives that provide greater insight into the dynamics of elder and vulnerable adult abuse, neglect, or financial exploitation and guidance on best practices for intervention or prevention strategies.*
- (7) (a) *Fiscal, programmatic, and disbursement authority over trust fund money shall be provided by the Justice and Public Safety Cabinet, which shall develop a review panel system to award grants from the trust fund on an annual basis. Panel members shall be individuals with knowledge and operational experience in elder and vulnerable adult abuse, neglect, or financial exploitation and shall be drawn from the law enforcement, court, prosecution, and victim advocacy communities.*

- (b) *In disbursing money from the trust fund, the panel shall not disburse to any one (1) program more than twenty-five percent (25%) of the total funds available for disbursement and shall seek to distribute meaningful awards to as many programs as possible throughout the Commonwealth.*
- (8) *The Justice and Public Safety Cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section.*

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

- (1) *Any person convicted of a felony under this chapter shall be disqualified from being appointed or serving as a guardian, limited guardian, conservator, limited conservator, executor, administrator, fiduciary, personal representative, attorney-in-fact, or health care surrogate as to the victim of the offense or the victim's estate. The sentencing judge shall inform the defendant of the provisions of the section at sentencing.*
- (2) *Any interested person or entity, as that phrase is defined in KRS 387.510, shall have standing to contest the appointment or continued service of a person subject to the prohibition established in subsection (1) of this section.*
- (3) *Actions of a guardian, limited guardian, conservator, limited conservator, executor, administrator, fiduciary, personal representative, attorney-in-fact, or health care surrogate disqualified from acting in that capacity due to the provisions of subsection (1) of this section shall remain valid as to third parties acting in good faith and without knowledge of the person's disqualification.*

➔Section 6. Section 2 of this Act shall take effect on January 1, 2012.

**Signed by Governor March 16, 2011.**