

SECTIONAL ANALYSIS

HB 150, “An Act relating to the protection of property of persons under disability and minor; relating to the crime of violating a protective order concerning certain vulnerable persons; relating to aggravating factors at sentencing for offenses concerning a victim 65 years or older; relating to the protection of vulnerable adults; amending Rule 12(h), Alaska Rules of Criminal Procedure; amending Rule 45(a), Alaska Rules of Criminal Procedure; amending Rule 65, Alaska Rules of Civil Procedure; amending Rule 17, Alaska Rules of Probate Procedure; amending Rule 9, Alaska Rules of Administration; and providing for an effective date.”

Section 1 makes the knowing violation or attempted violation of a financial protective order (introduced in section 7 of this legislation to protect vulnerable adults and elders) a crime.

Section 2 amends the definition of protective orders found in AS 11.56.740 to include financial protective orders being introduced with this legislation to protect the financial security of vulnerable adults and elders.

Section 3 makes the fact that a defendant knowingly directed criminal conduct at a person 65 years of age or older an aggravating factor at sentencing.

Section 4 adds being a victim of fraud as a basis for appointing a conservator by amending AS 13.26.165(2)(a). This will allow courts to protect individuals who may not be suffering from any mental deficiency but are victims of financial abuse.

Section 5 adds attorneys, caregivers, and the Department of Health and Social Services as entities who may petition for conservatorship for an individual. These additions widen the net of

individuals who can help protect victims to include entities who likely have first-hand knowledge of the abuse.

Section 6 creates a procedure for requesting the appointment of a temporary conservator in a conservatorship petition by adding a new subsection to AS 13.26.180. Currently, there is no statutory basis for appointing a conservator on a temporary basis. Under this section, a temporary conservator may be requested if it appears that the respondent's property will be wasted or dissipated during the pendency of the conservatorship proceedings.

Section 7 adds two new statutes. The first provides the statutory basis for temporary conservators to protect the victims of fraud and financial abuse and to ensure that funds are obtained to meet the needs of the respondent and respondent's dependents. Procedurally, this proposed statute parallels the existing statute AS 13.26.140 which deals with temporary guardians. The second statute creates a process for obtaining financial protective orders to immediately stop suspected financial abuse of the elderly and vulnerable adults. An initial 20-day protective order may be obtained ex parte, without notice to the respondent. The protective order may be extended for up to six months, after notice and a hearing at which the respondent may be heard.

Section 8 adds a definition of fraud (which is already found in the statutes creating the Office of Elder Fraud and Assistance) to conservatorship statutes.

Section 9 excludes the crime of violating a financial protective order from the crimes subject to warrantless arrest.

Sections 10 and 11 add financial protective order to the registry of protective orders maintained by the Department of Public Safety and updated by law enforcement officers.

Section 12 adds the concept of undue influence to the list of reportable harms to a vulnerable adult. Employees of nursing homes, residential care or health care facilities and the staff of educational institutions are added to the list of mandated reporters.

Section 13 clarifies information that may be contained in a report of harm to include contact information regarding the vulnerable adult and information regarding any undue influence.

Section 14 adds “undue influence” to the list of reportable harms.

Section 15 adds “undue influence” to the list of reportable harms and clarifies that a mandatory reporter is not prohibited from reporting harm in their non-occupational capacity. It also clarifies that no person is prohibited from making a report of harm.

Section 16 requires mandated reporters to contact law enforcement in situations where they believe the vulnerable adult is at imminent risk of serious physical harm and it is not possible to contact the department. “Undue influence” is added as one of the reportable harms. Law enforcement is required to contact the department within 24 hours of receiving the report.

Section 17 adds “undue influence” and “abandonment” to the list of harms that can be reported regarding a vulnerable adult residing in an out-of-home care facility.

Section 18 adds two new subsections. The first subsection states that a mandatory reporter is not relieved of the obligation to report to the department by reporting to their supervisor or another employee. The second subsection makes an individual who willfully or recklessly makes a false report liable for civil damages.

Section 19 adds “undue influence” to the list of reportable harms regarding vulnerable adults 60 years of age or older residing in an out-of-home care facility. The department is required to transfer these reports to the long term care ombudsman.

Section 20 adds “undue influence” to the list of reportable harms the department is required to investigate regarding individuals under 60 years of age living in out-of-home facilities.

Section 21 clarifies that the department and the long term care ombudsman must provide the results of their actions or investigations to the office of the department that handles adult protective services.

Section 22 adds “undue influence” to the list of reportable harms included in the reports sent to the department by the long term care ombudsman. It is clarified that these reports are sent to the office of the department that handles adult protective services.

Section 23 adds “undue influence” to the list of reportable harms the department is required to investigate.

Section 24 adds “undue influence” to the list of reported harm that applies to an alleged perpetrator.

Section 25 adds seven new subsections. These subsections

- Require individuals and entities to provide the department access to health and financial records of a vulnerable adult as part of its investigation;
- Prohibit anyone from interfering in an investigation;
- Allow the department to file an ex parte order for access to records if necessary if no petition for guardianship or conservatorship has been filed;
- Allow adult protective services access to any departmental information necessary to assist in the case;
- Allow the department to audio or video tape an interview of a vulnerable adult with their consent;
- Require the department to provide training to investigators and
- Define “financial records”.

Section 26 adds an attorney-in-fact, a surrogate for health care decisions and a trustee as individuals who may serve as a surrogate decision maker for the purpose of consenting to the receipt of protective services for a vulnerable adult. It also deletes the requirement that in order for a spouse to be a surrogate decision maker, the spouse and vulnerable adult may not be living

in separate domiciles.

Section 27 adds an allegation of “undue influence” to the allegations that would disqualify an individual from being selected as a surrogate decision maker.

Section 28 requires the department to discontinue protective services if a vulnerable adult who has regained the cognitive ability to make their own decisions refuses services. Services may be continued only if the adult consents.

Section 29 adds attorney-in-fact, surrogate for health care decisions and a trustee as individuals who may consent to the provision of protective services to a vulnerable adult and adds undue influence to the list of potential reports of harm.

Section 30 adds family members, trustees and conservators to the list of individuals who may be restrained by a court injunction from interfering with the provision of protective services to a vulnerable adult.

Section 31 adds “undue influence” to the types of harm contained in confidential reports and adds trustee to the list of individuals who may consent to release a confidential report.

Section 32 clarifies that a person is not considered to be unduly influenced if they choose to consent to treatment by spiritual means only.

Section 33 redefines “abuse” to include the infliction of emotional distress or fear, including coercion and intimidation.

Section 34 redefines “caregiver” to include someone who is an employee of a business that provides care in an adult’s home.

Section 35 defines “informed decision” as a decision made free from undue influence.

Section 36 redefines “exploitation” to include acts by a person in a position of trust with a vulnerable adult who obtains profit or advantage through undue influence, deception, intimidation or breach of fiduciary duty.

Section 37 redefines neglect to include the willful or reckless failure by a caregiver to provide access to services or to carry out a treatment plan necessary to the health of a recipient.

“Essential care or services are defined as food, clothing, shelter, medical care and supervision.

Section 38 expands the definition of protective services to include services that obtain basic health care needs, financial assistance services, and protection from abuse, obtaining basic food, shelter and clothing, among others. Undue influence is added to the list of types of harm.

Section 39 amends the definition of “unable to consent” by adding the concept of “undue influence” and that the inability to consent includes a person’s inability to perceive a loss of income or assets, eviction, and physical or mental harm.

Section 40 amends the definition of a vulnerable adult by more clearly defining what constitutes a physical or mental impairment.

Section 41 adds definitions for the following terms:

- Deception
- Fiduciary duty
- Financial institution
- Person who stands in a position of trust or confidence
- Undue influence

Section 42 amends the uncodified law. Under Alaska Rules of Criminal Procedure, the court, when considering a motion for continuance of a trial date, will be required to consider whether the victim is vulnerable due to advanced age and what effect the delay would have on the victim. In addition, trials in which the victim is vulnerable due to advanced age will be added to cases that will be given preference for scheduling.

Section 43 amends Indirect Court Rules in three areas. First, amending Rule 17, Alaska Rules of Probate Procedure, to allow ex parte orders to be issued to protect persons from financial exploitation. Second, amending Rule 9, Alaska Rules of Administration, by not requiring filing fees for an ex parte protective order. Third, amending Rule 65, Alaska Rules of Civil Procedure, by allowing ex parte orders to be issued to access records related to the investigation of a report of harm.

Section 44 amends the uncodified law by indicating that Section 1, 2, 3, and 42 apply to offenses committed on or after the effective date of the Act.

Section 45 amends the uncodified law regarding the number of votes required to enact Sections 7 and 25 of this bill.

Section 46 amends the uncodified law by adding revisor's instructions.

Section 47 provides for an effective date.