

**CS FOR SENATE BILL NO. 57(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/29/99  
Referred: Finance

Sponsor(s): SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to vulnerable adults and to the functions of the office of the  
2 state long term care ombudsman on behalf of vulnerable adults and senior  
3 citizens; and providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 \* **Section 1.** AS 44.21.225 is amended to read:

6 **Sec. 44.21.225. Executive director.** The executive director of the commission  
7 shall

8 (1) formulate a comprehensive statewide plan that identifies the  
9 concerns and needs of older Alaskans and present that plan to the commission;

10 (2) administer, with the approval of the commissioner of administration,  
11 federal programs as provided under 42 U.S.C. 3001 - 3045i (Older Americans Act),  
12 as amended; in the administration of federal programs under this paragraph, the  
13 executive director shall

14 (A) contract with the office of the ombudsman established

1 under AS 24.55 to carry out the requirements relating to the state long  
 2 term care ombudsman program set out in 42 U.S.C. 3058g and  
 3 AS 44.21.231 - 44.21.239; and

4 (B) set out in the commission's program budget prepared  
 5 under AS 37.07 the amount that the commission has agreed to provide  
 6 under the contract with the office of the ombudsman for the state long  
 7 term care ombudsman program services; and

8 (3) administer, with the approval of the commissioner of administration,  
 9 state programs as provided under AS 47.65.

10 \* **Sec. 2.** AS 44.21.230(b) is amended to read:

11 (b) To accomplish its duties, the commission may

12 (1) review, evaluate, and comment on [UPON] state programs  
 13 concerned with the problems and the needs of older Alaskans;

14 (2) collect facts and statistics, and make studies of conditions and  
 15 problems pertaining to the employment, health, housing, financial security, social  
 16 welfare, and other concerns that bear upon the well-being of older Alaskans;

17 (3) provide information about public programs that would be of interest  
 18 or benefit to older Alaskans;

19 (4) appoint special committees, which may include persons who are not  
 20 members of the commission, to complete necessary studies;

21 (5) promote community education efforts regarding the problems and  
 22 concerns of older Alaskans;

23 (6) contract for necessary services;

24 (7) consult and cooperate with persons, organizations, and groups  
 25 interested in or concerned with programs of assistance to older Alaskans;

26 (8) advocate improved programs of benefit to older Alaskans;

27 (9) set standards for levels of services for older Alaskans for programs  
 28 administered by the commission; and

29 (10) adopt regulations necessary for the administration of AS 44.21.200  
 30 - 44.21.230 [AS 44.21.200 - 44.21.240] and to comply with federal law.

31 \* **Sec. 3.** AS 44.21.230(c) is amended to read:

1 (c) The commission may not investigate, review, or undertake any  
 2 responsibility for the longevity bonus program under AS 47.45 or [, EXCEPT FOR  
 3 ACTIVITIES OF THE OFFICE OF THE LONG TERM CARE OMBUDSMAN,] the  
 4 Alaska Pioneers' Homes under AS 47.55.

5 \* **Sec. 4.** AS 44.21.231(c) is amended to read:

6 (c) The ombudsman may not have a financial interest in a long term care  
 7 facility in the state. [THE COMMISSION SHALL ADOPT REGULATIONS TO  
 8 ENSURE THAT THE OMBUDSMAN, AND EMPLOYEES AND VOLUNTEERS OF  
 9 THE OFFICE, DO NOT HAVE A CONFLICT OF INTEREST OR AN  
 10 APPEARANCE OF A CONFLICT OF INTEREST.]

11 \* **Sec. 5.** AS 44.21.232(c) is amended to read:

12 (c) The ombudsman may  
 13 (1) subpoena witnesses, compel their attendance, require the production  
 14 of evidence, administer oaths, and examine any person under oath in connection with  
 15 a complaint described under (a) of this section **in the manner set out in AS 24.55;**  
 16 [THE POWERS DESCRIBED IN THIS PARAGRAPH SHALL BE ENFORCED BY  
 17 THE SUPERIOR COURT;]

18 (2) pursue administrative, legal, or other appropriate remedies on behalf  
 19 of an older Alaskan who resides in a long term care facility in the state.

20 \* **Sec. 6.** AS 44.21.238 is amended to read:

21 **Sec. 44.21.238. Legal counsel [FOR THE LONG TERM CARE**  
 22 **OMBUDSMAN].** The attorney general shall provide legal advice and representation  
 23 in connection with any matter relating to the powers, duties, and operation of the  
 24 **ombudsman as to a duty or power arising under AS 44.21.231 - 44.21.239**  
 25 [OFFICE,] and in any legal action brought against the ombudsman or an employee,  
 26 volunteer, or other representative of the **ombudsman as to a duty or power arising**  
 27 **under AS 44.21.231 - 44.21.239** [OFFICE]. If the attorney general cannot provide  
 28 legal advice or representation because of a conflict of interest, the ombudsman may  
 29 employ private legal counsel.

30 \* **Sec. 7.** AS 44.21.239 is amended to read:

31 **Sec. 44.21.239. Cooperative agreements.** The **ombudsman may**

1 [COMMISSION SHALL] enter into cooperative agreements concerning the **duties and**  
 2 **powers described in AS 44.21.232** [OPERATIONS OF THE OFFICE], including  
 3 protocols for investigations, with state and local agencies that have jurisdiction over  
 4 long term care facilities or over the abuse and neglect of older Alaskans.

5 \* **Sec. 8.** AS 44.21.240(3) is amended to read:

6 (3) "office" means the office of the [LONG TERM CARE]  
 7 ombudsman;

8 \* **Sec. 9.** AS 44.21.240(5) is amended to read:

9 (5) "ombudsman" means the [LONG TERM CARE] ombudsman  
 10 **appointed under AS 24.55.020** [HIRED UNDER AS 44.21.231];

11 \* **Sec. 10.** AS 47.24.010(f) is amended to read:

12 (f) A person listed in (a) of this section who reports to the [LONG TERM  
 13 CARE] ombudsman under AS 44.21.232, or to the Department of Health and Social  
 14 Services, that a vulnerable adult has been exploited, abused, or neglected in an out-of-  
 15 home care facility is considered to have met the duty to report under (a) of this  
 16 section.

17 \* **Sec. 11.** AS 47.24.013(a) is amended to read:

18 (a) If a report received under AS 47.24.010 regards the abandonment,  
 19 exploitation, abuse, neglect, or self-neglect of a vulnerable adult who is 60 years of  
 20 age or older that is alleged to have been committed by or to have resulted from the  
 21 negligence of the staff or a volunteer of an out-of-home care facility, including a  
 22 facility licensed under AS 18.20, in which the vulnerable adult resides, and, if the  
 23 Department of Health and Social Services licenses that type of facility, the Department  
 24 of Administration shall transfer the report for investigation to the [LONG TERM  
 25 CARE] ombudsman under AS 44.21.232 and the Department of Health and Social  
 26 Services.

27 \* **Sec. 12.** AS 47.24.013(c) is amended to read:

28 (c) Upon receipt of a report from the department under (a) or (b) of this  
 29 section, the [LONG TERM CARE] ombudsman and the Department of Health and  
 30 Social Services shall

31 (1) conduct an investigation as appropriate under AS 44.21.232 or this

1 title, respectively;

2 (2) coordinate and cooperate in their responses to and investigations of  
3 the report if their jurisdictions overlap;

4 (3) provide the results of their actions or investigations to the central  
5 information and referral service of the department within 60 days after the receipt of  
6 the report.

7 \* **Sec. 13.** AS 47.24.013(d) is amended to read:

8 (d) If the [LONG TERM CARE] ombudsman or the Department of Health and  
9 Social Services receives directly a report regarding the abandonment, exploitation,  
10 abuse, neglect, or self-neglect of a vulnerable adult in an out-of-home care facility, the  
11 ombudsman or the Department of Health and Social Services shall provide the report,  
12 and the results of their actions or investigations regarding the report, to the central  
13 information and referral service of the Department of Administration. The Department  
14 of Administration may investigate the report as described in AS 47.24.015 if the  
15 department determines that action is appropriate.

16 \* **Sec. 14.** AS 47.24.013(e) is amended to read:

17 (e) If the results of an investigation by the [LONG TERM CARE] ombudsman  
18 or the Department of Health and Social Services are provided to the Department of  
19 Administration under (c) or (d) of this section, the Department of Administration may  
20 make a final determination as described in AS 47.24.015(b), based on the investigation  
21 results provided, regarding services to be offered to the vulnerable adult.

22 \* **Sec. 15.** AS 47.24.015(c) is amended to read:

23 (c) The department, or its designee, shall immediately terminate an  
24 investigation under this section upon the request of the vulnerable adult who is the  
25 subject of the report made under AS 47.24.010 **unless** [. HOWEVER, IF] the  
26 investigation to that point has resulted in **probable** [REASONABLE] cause to believe  
27 that the vulnerable adult is in need of protective services, **the request is made**  
28 **personally by the vulnerable adult and the vulnerable adult is not competent to**  
29 **make the request on the adult's own behalf, or the request is made by the**  
30 **vulnerable adult's guardian, attorney-in-fact, or surrogate decision maker and**  
31 **that person is the alleged perpetrator of abuse and is being investigated under this**

1 **chapter. If the department has probable cause to believe that the vulnerable**  
 2 **adult is in need of protective services,**

3 (1) the department may petition the court as set out in AS 47.24.019;  
 4 or

5 (2) the department or its designee may refer the report made to the  
 6 department under AS 47.24.010 to a police officer for criminal investigation.

7 \* **Sec. 16.** AS 47.24.019(a) is amended to read:

8 (a) If, after investigation under AS 47.24.015, the department has reasonable  
 9 cause to believe that a vulnerable adult is in need of protective services and is an  
 10 incapacitated person, the department may petition the court under AS 13.26 for  
 11 appointment of a guardian or temporary guardian, **or for a change of guardian,** for  
 12 the vulnerable adult for the purpose of deciding whether to consent to the receipt of  
 13 protective services for the vulnerable adult.

14 \* **Sec. 17.** AS 47.24.019(c) is amended to read:

15 (c) If a vulnerable adult who has consented to receive protective services, or  
 16 on whose behalf consent to receive protective services has been given, is prevented by  
 17 a caregiver, **guardian, attorney-in-fact, or surrogate decision maker** from receiving  
 18 those services, the department may [ASSIST THE VULNERABLE ADULT OR THE  
 19 PERSON WHO CONSENTED TO THE VULNERABLE ADULT'S RECEIPT OF  
 20 THE SERVICES TO] petition the superior court for an injunction restraining the  
 21 caregiver, **guardian, attorney-in-fact, or surrogate decision maker** from interfering  
 22 with the provision of protective services to the vulnerable adult.

23 \* **Sec. 18.** AS 47.24.050(b) is amended to read:

24 (b) The department shall disclose a report of the abandonment, exploitation,  
 25 abuse, neglect, or self-neglect of a vulnerable adult if the vulnerable adult who is the  
 26 subject of the report **or the vulnerable adult's guardian, attorney-in-fact, or**  
 27 **surrogate decision maker** consents in writing. **The department may not disclose**  
 28 **a report of the abandonment, exploitation, abuse, neglect, or self-neglect of a**  
 29 **vulnerable adult to the vulnerable adult's guardian, attorney-in-fact, or surrogate**  
 30 **decision maker if that person is an alleged perpetrator of abuse and is being**  
 31 **investigated under this chapter.** The department shall, upon request, disclose the

1 number of verified reports of abandonment, exploitation, abuse, neglect, or self-neglect  
2 of a vulnerable adult that occurred at an institution that provides care for vulnerable  
3 adults or that were the result of actions or inactions of a public home care provider.

4 \* **Sec. 19.** AS 47.33.310(b) is amended to read:

5 (b) An assisted living home shall post in a prominent place in the home

6 (1) a copy of the rights set out in AS 47.33.300;

7 (2) the name, address, and phone number of the [LONG TERM CARE]  
8 ombudsman [HIRED UNDER AS 44.21.231] and, if relevant to residents, of the  
9 advocacy agency for persons with a developmental disability or mental illness;

10 (3) the telephone number of an information or referral service for  
11 vulnerable adults; and

12 (4) a copy of the grievance procedure established under AS 47.33.340.

13 \* **Sec. 20.** AS 44.21.231(a) and 44.21.231(b) are repealed.

14 \* **Sec. 21.** TRANSITION. A department affected by secs. 15 - 18 of this Act may proceed  
15 to adopt regulations necessary to implement secs. 15 - 18 of this Act. Regulations to  
16 implement a provision of secs. 15 - 18 of this Act take effect under AS 44.62 (Administrative  
17 Procedure Act), but not before the effective date of sec. 15 of this Act.

18 \* **Sec. 22.** Section 21 of this Act takes effect immediately under AS 01.10.070(c).

19 \* **Sec. 23.** Sections 1 - 14, 19, and 20 of this Act take effect July 1, 1999.