

**CS FOR HOUSE BILL NO. 399(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

**BY THE HOUSE FINANCE COMMITTEE**

**Offered: 4/20/06**

**Referred: Rules**

**Sponsor(s): REPRESENTATIVES CHENAULT, Lynn, Dahlstrom, Thomas, Croft, Ramras, Moses, Holm, Meyer, McGuire, Salmon, Guttenberg, Wilson, Kerttula, Elkins, Foster, Kapsner, LeDoux, Neuman, Gara, Seaton, Gardner, Anderson**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act establishing the office of elder fraud and assistance; and relating to fraud**  
2 **involving older Alaskans."**

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

4 **\* Section 1.** AS 44.21.410(a) is amended to read:

5 (a) The office of public advocacy shall

6 (1) perform the duties of the public guardian under AS 13.26.360 -  
7 13.26.410;

8 (2) provide visitors and experts in guardianship proceedings under  
9 AS 13.26.131;

10 (3) provide guardian ad litem services to children in child protection  
11 actions under AS 47.17.030(e) and to wards and respondents in guardianship  
12 proceedings who will suffer financial hardship or become dependent upon a  
13 government agency or a private person or agency if the services are not provided at  
14 state expense under AS 13.26.025;

1                   (4) provide legal representation in cases involving judicial bypass  
2 procedures for minors seeking abortions under AS 18.16.030, in guardianship  
3 proceedings to respondents who are financially unable to employ attorneys under  
4 AS 13.26.106(b), to indigent parties in cases involving child custody in which the  
5 opposing party is represented by counsel provided by a public agency, to indigent  
6 parents or guardians of a minor respondent in a commitment proceeding concerning  
7 the minor under AS 47.30.775;

8                   (5) provide legal representation and guardian ad litem services under  
9 AS 25.24.310; in cases arising under AS 47.15 (Uniform Interstate Compact on  
10 Juveniles); in cases involving petitions to adopt a minor under AS 25.23.125(b) or  
11 petitions for the termination of parental rights on grounds set out in  
12 AS 25.23.180(c)(3); in cases involving petitions to remove the disabilities of a minor  
13 under AS 09.55.590; in children's proceedings under AS 47.10.050(a) or under  
14 AS 47.12.090; in cases involving appointments under AS 18.66.100(a) in petitions for  
15 protective orders on behalf of a minor; and in cases involving indigent persons who  
16 are entitled to representation under AS 18.85.100 and who cannot be represented by  
17 the public defender agency because of a conflict of interests;

18                   (6) develop and coordinate a program to recruit, select, train, assign,  
19 and supervise volunteer guardians ad litem from local communities to aid in delivering  
20 services in cases in which the office of public advocacy is appointed as guardian ad  
21 litem;

22                   (7) provide guardian ad litem services in proceedings under  
23 AS 12.45.046 or AS 18.15.355 - 18.15.395;

24                   (8) establish a fee schedule and collect fees for services provided by  
25 the office, except as provided in AS 18.85.120 or when imposition or collection of a  
26 fee is not in the public interest as defined under regulations adopted by the  
27 commissioner of administration;

28                   (9) provide visitors and guardians ad litem in proceedings under  
29 AS 47.30.839;

30                   (10) provide legal representation to an indigent parent of a child with a  
31 disability; in this paragraph, "child with a disability" has the meaning given in

1 AS 14.30.350;

2 (11) investigate complaints and bring civil actions under  
 3 AS 44.21.415(a) involving fraud committed against residents of the state who are  
 4 60 years of age or older; in this paragraph, "fraud" has the meaning given in  
 5 AS 44.21.415.

6 \* **Sec. 2.** AS 44.21 is amended by adding a new section to read:

7 **Sec. 44.21.415. Office of elder fraud and assistance.** (a) The office of elder  
 8 fraud and assistance is established in the office of public advocacy to investigate  
 9 complaints involving fraud committed against older Alaskans who are not otherwise  
 10 able to bring a complaint without assistance, as defined in regulation, and to provide  
 11 assistance to older Alaskans who are victims of fraud. The office shall work with  
 12 local, state, and national law enforcement and social service agencies through  
 13 cooperative agreements and may bring civil enforcement actions for injunctive and  
 14 other relief for fraud committed against older Alaskans.

15 (b) In conducting an investigation under this section, the office of elder fraud  
 16 and assistance may issue subpoenas, conduct interviews, and examine the business  
 17 records, advances, transactions, and relevant records associated with the alleged fraud  
 18 committed against an older Alaskan. The office may enter into contracts with  
 19 attorneys and seek a court order to enforce a subpoena.

20 (c) In addition to the functions described under (a) and (b) of this section, the  
 21 office of elder fraud and assistance shall provide information, referrals, and other  
 22 assistance to older Alaskans who are victims of fraud and make recommendations to  
 23 the commissioner for regulations on eligibility for assistance needed to implement this  
 24 section.

25 (d) A cooperative agreement under (a) of this section must include a  
 26 description of office operations and investigation protocols.

27 (e) Subject to the discretion of the court and standards established in  
 28 regulation adopted by the commissioner of administration and taking into  
 29 consideration the financial condition of the parties to a civil suit brought under this  
 30 section, the office of public advocacy may seek recovery of all or part of litigation  
 31 costs and fees from any party, including costs incurred during the investigation of the

1 case, when the office of public advocacy is found to be a prevailing party after trial or  
 2 settlement negotiation. The office of public advocacy shall enter into a fee agreement  
 3 with a client that is consistent with this section, the Alaska Rules of Court, and the  
 4 Alaska Rules of Professional Conduct.

5 (f) In this section,

6 (1) "fraud" means

7 (A) robbery, extortion, and coercion under AS 11.41.500 -  
 8 11.41.530;

9 (B) theft and related offenses under AS 11.46.100 - 11.46.740;  
 10 or

11 (C) exploitation of another person or another person's resources  
 12 for personal profit or advantage with no significant benefit accruing to the  
 13 person who is exploited;

14 (2) "older Alaskan" means a person residing in the state who is 60  
 15 years of age or older.

16 \* **Sec. 3.** AS 47.24.015(c) is amended to read:

17 (c) The department, or its designee, shall immediately terminate an  
 18 investigation under this section upon the request of the vulnerable adult who is the  
 19 subject of the report made under AS 47.24.010. However, the department or its  
 20 designee may not terminate the investigation if the investigation to that point has  
 21 resulted in probable cause to believe that the vulnerable adult is in need of protective  
 22 services and the request is made personally by the vulnerable adult and the vulnerable  
 23 adult is not competent to make the request on the adult's own behalf, or the request is  
 24 made by the vulnerable adult's guardian, attorney-in-fact, or surrogate decision maker  
 25 and that person is the alleged perpetrator of the abandonment, exploitation, abuse, or  
 26 neglect of the vulnerable adult and is being investigated under this chapter. If the  
 27 department has probable cause to believe that the vulnerable adult is in need of  
 28 protective services,

29 (1) the department may petition the court as set out in AS 47.24.019;

30 [OR]

31 (2) the department or its designee may refer the report made to the

1 department under AS 47.24.010 to a police officer for criminal investigation; or  
2 (3) in cases involving fraud, the department or its designee may  
3 refer the report made to the department under AS 47.24.010 to the office of  
4 public advocacy for investigation; in this paragraph, "fraud" has the meaning  
5 given in AS 44.21.415.