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SENATE CS FOR CS FOR HOUSE BILL NO. 399(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 5/3/06

Referred: Finance

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

SENATORS Ellis, Dyson, Stedman, Therriault, Gary Stevens, Davis, Wagoner

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) Nothing in this section prohibits the Department of Law from investigating
 6 or prosecuting a person for unfair methods of competition and unfair or deceptive acts
 7 or practices in the conduct of trade or commerce under AS 45.50.471 and 45.50.495.

8 (g) In this section,

9 (1) "fraud" means

10 (A) robbery, extortion, and coercion under AS 11.41.500 -
 11 11.41.530;

12 (B) theft and related offenses under AS 11.46.100 - 11.46.740;
 13 or

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

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

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

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

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

2 [OR]

3 (2) the department or its designee may refer the report made to the
4 department under AS 47.24.010 to a police officer for criminal investigation; **or**

5 **(3) in cases involving fraud, the department or its designee may**
6 **refer the report made to the department under AS 47.24.010 to the office of**
7 **public advocacy for investigation; in this paragraph, "fraud" has the meaning**
8 **given in AS 44.21.415.**