Introduced: 2/11/83
Referred: Health, Education &
Social Services and Finance

1 IN THE HOUSE BY CLOCKSIN

2 HOUSE BILL NO. 192

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to protection of the elderly."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. PURPOSE. In order to protect elderly persons from physi-
9 cal harm resulting from abuse, neglect, and abandonment and to assist
10 elderly persons who are unable to protect or care for themselves, the
11 legislature requires the reporting to the state by health professionals and
12 others of cases involving elderly persons who have been or are being phys-
13 ically harmed. It is the intent of the legislature that these reports of
14 harm be investigated and that appropriate protective services be offered in
15 an effort to prevent or alleviate physical harm to the elderly persons of
16 the state. It is further the intent of the legislature to provide immunity
17 from civil or criminal liability to persons making good faith reports of
18 physical or other harm to an elderly person.

19 * Sec. 2. AS 47 is amended by adding a new chapter to read:

20 CHAPTER 24. PROTECTION OF THE ELDERLY.

21 Sec. 47.24.010. REPORTS OF HARM. (a) The following persons
22 who, in the performance of their professional duties, have reasonable
23 cause to believe that an elderly person has suffered physical harm as
24 a result of abuse, neglect, or abandonment shall, not later than 24
25 hours after first having cause for the belief, report the harm to the
26 Department of Health and Social Services:

27 (1) a physician or other licensed health care provider;

28 (2) a mental health professional as defined in AS 47.30.-
29 915(11);

1 (3) a pharmacist;
2 (4) an administrator or employee of a nursing home, res-
3 idential care or health care facility;
4 (5) a guardian or conservator;
5 (6) a police officer as defined in AS 18.65.290(2);
6 (7) a village health aide;
7 (8) a social worker;
8 (9) a member of the clergy;
9 (10) a staff employee of a project funded by the Older
10 Alaskans Commission.
11 (b) A report of harm made under this section may include the
12 name and address of the person reporting the harm and shall include
13 (1) the name and address of the elderly person;
14 (2) information relating to the nature and extent of the
15 abuse, neglect, or abandonment;
16 (3) other information that the person reporting the harm
17 believes might be helpful in an investigation of the case or in pro-
18 viding protection for the elderly person.
19 (c) A person who fails to comply with this section is guilty of
20 a violation as defined in AS 11.81.900(55).
21 (d) This section does not prohibit a person listed in (a) of
22 this section from reporting cases of physical or other harm to an
23 elderly person that have come to the person's attention in a non-
24 professional capacity, nor does it prohibit any other person from
25 reporting physical or other harm to an elderly person that the person
26 has reasonable cause to believe is a result of abuse, neglect, or
27 abandonment.
28 (e) If immediate action is necessary to protect the elderly
29 person from imminent physical harm, the person shall make the report

1 of harm to a police officer as defined in AS 18.65.290(2). The police
2 officer shall take immediate action to protect the elderly person and
3 shall, at the earliest opportunity, notify the department.
4 (f) A person who, in good faith, makes a report of physical or
5 other harm to an elderly person under this chapter, or who partici-
6 pates in judicial proceedings related to the submission of reports
7 under this chapter, is immune from any civil or criminal liability
8 that might otherwise be incurred or imposed.
9 Sec. 47.24.020. ACTION ON REPORTS. (a) Upon receiving a report
10 of physical harm, the department shall promptly initiate an investiga-
11 tion to determine the physical condition of the elderly person named
12 in the report and whether action or services are needed for the pro-
13 tection of the elderly person. The department shall make a reasonable
14 effort to personally interview the elderly person during the investi-
15 gation.
16 (b) The department shall prepare a written report of the inves-
17 tigation, including findings, recommendations, and a determination of
18 whether and what kind of protective services are to be offered to the
19 elderly person. Upon request, the person who reported harm to the
20 elderly person shall be notified of the status of the investigation.
21 (c) The department shall immediately terminate an investigation
22 under this section upon the request of an elderly person who is the
23 subject of a report of harm. However, if the department has reason-
24 able cause to believe that the elderly person is incapacitated, the
25 department may petition the superior court under AS 13.26 for appoint-
26 ment of a guardian or temporary guardian for the elderly person for
27 the purpose of obtaining consent to continue the investigation.
28 Sec. 47.24.030. PROTECTIVE SERVICES. (a) The department shall
29 provide available protective services to a harmed elderly person if

1 and to the extent to which the elderly person consents. If the de-
2 partment has reasonable cause to believe that the elderly person lacks
3 the capacity to consent to receiving protective services, it may
4 petition the superior court under AS 13.26 for appointment of a guard-
5 ian or temporary guardian for the elderly person for the purpose of
6 obtaining consent.
7 (b) If an elderly person who has consented to receiving protec-
8 tive services is prevented by a caretaker from receiving the services,
9 the department may assist the elderly person to petition the superior
10 court for an injunction restraining the caretaker from interfering
11 with the provision of protective services to the elderly person.
12 Sec. 47.24.040. REVIEW AND REFERRAL. The department shall, not
13 later than 90 days after initiating the provision of protective ser-
14 vices to an elderly person, initiate a review of the case to determine
15 whether continuation or modification of protective services that are
16 being provided is warranted. The department shall reevaluate the case
17 every 90 days thereafter until the case is closed.
18 Sec. 47.24.050. CONFIDENTIALITY OF REPORTS. (a) Investigation
19 reports and reports of harm filed under this chapter are confidential
20 and are not subject to public inspection and copying under AS 09.25.-
21 110 - 09.25.125. However, in accordance with this chapter and depart-
22 ment regulations issued under this chapter, investigation reports may
23 be used by appropriate governmental agencies inside and outside the
24 state, in connection with investigations or judicial proceedings
25 involving abuse, neglect, or abandonment of an elderly person.
26 (b) The department shall disclose a report of harm if the elder-
27 ly person who is the subject of the report consents in writing. The
28 department shall, upon request, disclose the number of verified re-
29 ports of harm that occurred at an institution for care of the elderly

1 that is certified by the state.

2 Sec. 47.24.060. AUTHORITY OF THE DEPARTMENT. In performing its
3 duties under this chapter, the department may, subject to the person's
4 consent, initiate actions necessary to assure the health, safety and
5 welfare of an elderly person, including the transfer of the elderly
6 person from a nursing home, residential care or health care facility.

7 Sec. 47.24.070. REGULATIONS. Regulations to implement this
8 chapter shall be approved by the Older Alaskans Commission (AS 44.21.-
9 200) before adoption by the department.

10 Sec. 47.24.075. EVIDENCE NOT PRIVILEGED. Neither the physician-
11 patient nor the husband-wife privilege is a ground for excluding evi-
12 dence regarding an elderly person's harm, or its cause, in a judicial
13 proceeding related to a report made under this chapter.

14 Sec. 47.24.080. QUARTERLY REPORT. The department shall submit
15 to the Older Alaskans Commission each quarter a statistical report of
16 the department's activities related to the protection of elderly
17 persons in the state. The report may not disclose the identity of
18 victims or perpetrators of the abuse, neglect, or abandonment.

19 Sec. 47.24.100. DEFINITIONS. In this chapter

20 (1) "abandonment" means desertion of an elderly person by a
21 caretaker;

22 (2) "abuse" means the infliction of physical pain, injury,
23 or mental anguish, or the deprivation by a caretaker of services that
24 are necessary to maintain the physical and mental health of an elderly
25 person;

26 (3) "caretaker" means a person who is responsible for the
27 care of an elderly person as a result of family relationship, or who
28 has assumed responsibility for the care of an elderly person volun-
29 tarily, by contract, or by court order;

1 (4) "department" means the Department of Health and Social
2 Services;
3 (5) "elderly person" means a resident of Alaska who is 60
4 years of age or older;
5 (6) "incapacitated" means a person's ability to receive and
6 evaluate information or to communicate decisions is impaired for
7 reasons other than minority to the extent that the person lacks the
8 ability to obtain the essential requirements for physical health or
9 safety without court-ordered assistance;
10 (7) "neglect" means the failure by an elderly person or a
11 caretaker to provide services necessary to maintain the physical and
12 mental health of the elderly person;
13 (8) "protective services" means services intended to pre-
14 vent or alleviate harm resulting from abuse, neglect, exploitation, or
15 abandonment.