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Original sponsors: Josephson and V.Fischer

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2

CS FOR SENATE BILL NO. 122 (HESS)

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 of a nursing home, residential care or  
3 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 public safety officer;  
7 (8) a village health aide;  
8 (9) a social worker;  
9 (10) a member of the clergy;  
10 (11) a staff employee of a project funded by the Older  
11 Alaskans Commission;  
12 (12) an employee of a homemaker program or home health aide  
13 program.

14 (b) A report of harm made under this section may include the  
15 name and address of the person reporting the harm and shall include

- 16 (1) the name and address of the elderly person;  
17 (2) information relating to the nature and extent of the  
18 abuse, neglect, or abandonment;

19 (3) other information that the person reporting the harm  
20 believes might be helpful in an investigation of the case or in pro-  
21 viding protection for the elderly person.

22 (c) A person who fails to comply with this section is guilty of  
23 a violation as defined in AS 11.81.900(55).

24 (d) This section does not prohibit a person listed in (a) of  
25 this section from reporting cases of physical or other harm to an  
26 elderly person that have come to the person's attention in a non-  
27 professional capacity, nor does it prohibit any other person from  
28 reporting physical or other harm to an elderly person that the person  
29 has reasonable cause to believe is a result of abuse, neglect, or

1 abandonment.

2 (e) If immediate action is necessary to protect the elderly  
3 person from imminent physical harm, the person shall make the report  
4 of harm to a police officer as defined in AS 18.65.290(2) or a village  
5 public safety officer. The police officer or village public safety  
6 officer shall take immediate action to protect the elderly person and  
7 shall, at the earliest opportunity, notify the department.

8 (f) A person who, in good faith, makes a report of physical or  
9 other harm to an elderly person under this chapter, or who partici-  
10 pates in judicial proceedings related to the submission of reports  
11 under this chapter, is immune from any civil or criminal liability  
12 that might otherwise be incurred or imposed.

13 Sec. 47.24.020. ACTION ON REPORTS. (a) Upon receiving a report  
14 of physical harm, the department shall promptly initiate an investiga-  
15 tion to determine the physical condition of the elderly person named  
16 in the report and whether action or services are needed for the pro-  
17 tection of the elderly person. The department shall personally inter-  
18 view the elderly person during the investigation, unless the person is  
19 unconscious or otherwise physically or mentally impaired to such an  
20 extent as to be unable to respond to questions.

21 (b) The department shall prepare a written report of the inves-  
22 tigation, including findings, recommendations, and a determination of  
23 whether and what kind of protective services are to be offered to the  
24 elderly person. Upon request, the person who reported harm to the  
25 elderly person shall be notified of the status of the investigation.  
26 The department shall provide to the Department of Law a copy of each  
27 report of an investigation of harm to an elderly person that resulted  
28 from abuse.

29 (c) The department shall immediately terminate an investigation

1 under this section upon the request of an elderly person who is the  
2 subject of a report of harm. However, if the department has reason-  
3 able cause to believe that the elderly person is incapacitated, the  
4 department may petition the superior court under AS 13.26 for appoint-  
5 ment of a guardian or temporary guardian for the elderly person for  
6 the purpose of obtaining consent to continue the investigation.

7 Sec. 47.24.030. PROTECTIVE SERVICES. (a) The department shall  
8 provide available protective services to a harmed elderly person if  
9 and to the extent to which the elderly person consents. If the de-  
10 partment has reasonable cause to believe that the elderly person lacks  
11 the capacity to consent to receiving protective services, it may  
12 petition the superior court under AS 13.26 for appointment of a guard-  
13 ian or temporary guardian for the elderly person for the purpose of  
14 obtaining consent.

15 (b) If an elderly person who has consented to receiving protec-  
16 tive services is prevented by a caretaker from receiving the services,  
17 the department may assist the elderly person to petition the superior  
18 court for an injunction restraining the caretaker from interfering  
19 with the provision of protective services to the elderly person.

20 Sec. 47.24.040. REVIEW AND REFERRAL. The department shall, not  
21 later than 90 days after initiating the provision of protective ser-  
22 vices to an elderly person, initiate a review of the case to determine  
23 whether continuation or modification of protective services that are  
24 being provided is warranted. The department shall reevaluate the case  
25 every 90 days thereafter until the case is closed.

26 Sec. 47.24.050. CONFIDENTIALITY OF REPORTS. (a) Investigation  
27 reports and reports of harm filed under this chapter are confidential  
28 and are not subject to public inspection and copying under AS 09.25.-  
29 110 - 09.25.125. However, in accordance with this chapter and

1 department regulations issued under this chapter, investigation re-  
2 ports may be used by appropriate governmental agencies inside and  
3 outside the state, in connection with investigations or judicial  
4 proceedings involving abuse, neglect, or abandonment of an elderly  
5 person.

6 (b) The department shall disclose a report of harm if the elder-  
7 ly person who is the subject of the report consents in writing. The  
8 department shall, upon request, disclose the number of verified re-  
9 ports of harm that occurred at an institution for care of the elderly.

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

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

18 Sec. 47.24.075. QUARTERLY REPORT. The department shall submit  
19 to the Older Alaskans Commission each quarter a statistical report of  
20 the department's activities related to the protection of elderly  
21 persons in the state. The report may not disclose the identity of  
22 victims or perpetrators of the abuse, neglect, or abandonment.

23 Sec. 47.24.100. DEFINITIONS. In this chapter

24 (1) "abandonment" means desertion of an elderly person by a  
25 caretaker;

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

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

5           (4) "department" means the Department of Health and Social  
6 Services;

7           (5) "elderly person" means a resident of Alaska who is 60  
8 years of age or older;

9           (6) "incapacitated" means a person's ability to receive and  
10 evaluate information or to communicate decisions is impaired for  
11 reasons other than minority to the extent that the person lacks the  
12 ability to obtain the essential requirements for physical health or  
13 safety without court-ordered assistance;

14           (7) "neglect" means the failure by the caretaker of an  
15 elderly person to provide services necessary to maintain the physical  
16 and mental health of the elderly person;

17           (8) "protective services" means services intended to pre-  
18 vent or alleviate harm resulting from abuse, neglect, exploitation, or  
19 abandonment.