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Original sponsors: Josephson and V.Fischer

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

CS FOR SENATE BILL NO. 122 (Judiciary)

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 eco-
9 nomic and physical harm and to assist elderly persons who are unable to
10 protect or care for themselves, the legislature requires the reporting to
11 the state by health professionals and others of cases involving elderly
12 persons who have been or are being harmed. It is the intent of the legis-
13 lature that these reports of harm be investigated and that appropriate
14 protective services be offered in an effort to prevent or alleviate harm to
15 the elderly persons of the state. It is further the intent of the legisla-
16 ture to provide immunity from civil or criminal liability to persons making
17 good faith reports of economic, physical or other harm to an elderly per-
18 son.

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 harm shall, not
24 later than 24 hours after first having cause for the belief, report
25 the harm to the Department of Health and Social Services:

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

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

29 (3) a pharmacist;

1 (4) an administrator of a nursing home, residential care or
2 health care facility;

3 (5) a guardian or conservator;

4 (6) a police officer;

5 (7) a village public safety officer;

6 (8) a village health aide;

7 (9) a social worker;

8 (10) a member of the clergy;

9 (11) a staff employee of a project funded by the Older
10 Alaskans Commission;

11 (12) an employee of a homemaker program or home health aide
12 program.

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

15 (1) the name and address of the elderly person;

16 (2) information relating to the nature and extent of the
17 harm;

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

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

23 (d) This section does not prohibit a person listed in (a) of
24 this section from reporting cases of economic or physical harm to an
25 elderly person that have come to the person's attention in a non-
26 professional capacity. This section does not prohibit any other person
27 from reporting economic harm to an elderly person that the person has
28 reasonable cause to believe is a result of theft, fraud, or coercion
29 by a caretaker of the elderly person, or physical harm to an elderly

1 person that the person has reasonable cause to believe is a result of
2 abuse, neglect, or abandonment by a caretaker of the elderly person.

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

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

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

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

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
29 AS 09.25.-110 - 09.25.125. However, in accordance with this chapter

1 and regulations adopted under this chapter, investigation reports may
2 be used by appropriate governmental agencies inside and outside the
3 state, in connection with investigations or judicial proceedings
4 involving harm to an elderly person.

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

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

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 or in-
27 jury, or the deprivation by a caretaker of services that are necessary
28 to maintain the physical and mental health of an elderly person;

29 (3) "caretaker" means a person who is responsible for the

1 care of an elderly person as a result of a family relationship, or who
2 has assumed responsibility for the care of an elderly person volun-
3 tarily, by contract, or by court order;

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

6 (5) "economic harm" means intentional economic exploitation
7 of an elderly person resulting from theft, fraud, or coercion by a
8 caretaker of the elderly person;

9 (6) "elderly person" means a resident of Alaska who is 60
10 years of age or older;

11 (7) "harm" means physical harm or economic harm;

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

17 (9) "neglect" means the failure by the caretaker of an
18 elderly person to provide services necessary to maintain the physical
19 and mental health of the elderly person;

20 (10) "physical harm" means injury to the person of an
21 elderly person resulting from abuse, neglect or abandonment by a
22 caretaker of the elderly person;

23 (11) "police officer" has the meaning given in AS 18.65.-
24 290(2);

25 (12) "protective services" means services intended to pre-
26 vent or alleviate harm resulting from abuse, neglect, exploitation, or
27 abandonment.