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1 IN THE SENATE BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 HOUSE CS FOR 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 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
13 legislature that required reports be made regardless of any evidentiary
14 privileges established by state law or by the Alaska Rules of Court. It is
15 the intent of the legislature that these reports of harm be investigated
16 and that appropriate protective services be offered in an effort to prevent
17 or alleviate harm to the elderly persons of the state. It is further the
18 intent of the legislature to provide immunity from civil or criminal
19 liability to persons making good faith reports of economic, physical or
20 other harm to an elderly person.

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

22 CHAPTER 24. PROTECTION OF THE ELDERLY.

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

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

29 (2) a mental health professional as defined in

1 AS 47.30.915(11);

2 (3) a pharmacist;

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

5 (5) a guardian or conservator;

6 (6) a police officer;

7 (7) a village public safety officer;

8 (8) a village health aide;

9 (9) a social worker;

10 (10) a member of the clergy;

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

13 (12) an employee of a homemaker program or home health aide
14 program;

15 (13) an emergency medical technician or a paramedic in the
16 mobile intensive care program.

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

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

20 (2) information relating to the nature and extent of the
21 harm;

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

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

27 (d) This section does not prohibit a person listed in (a) of
28 this section from reporting cases of economic or physical harm to an
29 elderly person that have come to the person's attention in a

1 nonprofessional capacity. This section does not prohibit any other
2 person from reporting economic harm to an elderly person that the
3 person has reasonable cause to believe is a result of theft, fraud, or
4 coercion by a caretaker of the elderly person, or physical harm to an
5 elderly person that the person has reasonable cause to believe is a
6 result of abuse, neglect, or abandonment.

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

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

18 (g) Failure to make a report under subsections (a) and (d) of
19 this section is not the basis of civil liability unless otherwise
20 provided by law.

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

29 (b) The department shall prepare a written report of the

1 investigation, including findings, recommendations, and a
2 determination of whether and what kind of protective services are to
3 be offered to the elderly person. Upon request, the person who
4 reported harm to the elderly person shall be notified of the status of
5 the investigation. The department shall provide to the Department of
6 Law a copy of each report of an investigation of harm to an elderly
7 person if the report of harm is confirmed to be true.

8 (c) The department shall immediately terminate an investigation
9 under this section upon the request of an elderly person who is the
10 subject of a report of harm. However, if the department has reason-
11 able cause to believe that the elderly person is incapacitated, the
12 department may petition the superior court under AS 13.26 for appoint-
13 ment of a guardian or temporary guardian for the elderly person for
14 the purpose of obtaining consent to continue the investigation.

15 Sec. 47.24.030. PROTECTIVE SERVICES. (a) The department shall
16 provide available protective services to a harmed elderly person if
17 and to the extent to which the elderly person consents. If the de-
18 partment has reasonable cause to believe that the elderly person lacks
19 the capacity to consent to receiving protective services, it may
20 petition the superior court under AS 13.26 for appointment of a guard-
21 ian or temporary guardian for the elderly person for the purpose of
22 obtaining consent.

23 (b) If an elderly person who has consented to receiving protec-
24 tive services is prevented by a caretaker from receiving the services,
25 the department may assist the elderly person to petition the superior
26 court for an injunction restraining the caretaker from interfering
27 with the provision of protective services to the elderly person.

28 Sec. 47.24.040. REVIEW AND REFERRAL. The department shall, not
29 later than 90 days after initiating the provision of protective

1 services to an elderly person, initiate a review of the case to deter-
2 mine whether continuation or modification of protective services that
3 are being provided is warranted. The department shall reevaluate the
4 case every 90 days thereafter until the case is closed.

5 Sec. 47.24.050. CONFIDENTIALITY OF REPORTS. (a) Investigation
6 reports and reports of harm filed under this chapter are confidential
7 and are not subject to public inspection and copying under
8 AS 09.25.-110 - 09.25.125. However, in accordance with this chapter
9 and regulations adopted under this chapter, investigation reports may
10 be used by appropriate governmental agencies inside and outside the
11 state, in connection with investigations or judicial proceedings
12 involving harm to an elderly person.

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

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

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

26 Sec. 47.24.075. QUARTERLY REPORT. The department shall submit
27 to the Older Alaskans Commission each quarter a statistical report of
28 the department's activities related to the protection of elderly
29 persons in the state. The report may not disclose the identity of

1 victims or perpetrators of the harm.

2 Sec. 47.24.100. DEFINITIONS. In this chapter

3 (1) "abandonment" means desertion of an elderly person by a
4 caretaker;

5 (2) "abuse" means the infliction of physical pain or in-
6 jury, the infliction of mental anguish that requires medical
7 attention, or the deprivation by a caretaker of services that are
8 necessary to maintain the physical and mental health of an elderly
9 person;

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

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

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

19 (6) "elderly person" means a resident of Alaska who is 65
20 years of age or older;

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

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

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

1 (10) "physical harm" means injury to the person of an
2 elderly person resulting from abuse, neglect or abandonment;

3 (11) "police officer" has the meaning given in AS 18.65.-
4 290(2);

5 (12) "protective services" means services intended to
6 prevent or alleviate harm resulting from abuse, neglect, exploitation,
7 or abandonment.