

HOUSE BILL NO. 376

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/14/94

Referred: Health, Education & Social Services, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to services for and protection of vulnerable adults; and
2 providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * Section 1. AS 47.24.010 is amended to read:

5 Sec. 47.24.010. PROTECTIVE REPORTS REGARDING VULNERABLE
6 ADULTS [REPORTS OF HARM]. (a) Except as provided in (e) and (f) of this
7 section, the [THE] following persons who, in the performance of their professional
8 duties, have reasonable cause to believe that a vulnerable adult suffers from
9 abandonment, exploitation, abuse, neglect, or self-neglect [AN ELDERLY PERSON
10 HAS SUFFERED HARM] shall, not later than 24 hours after first having cause for the
11 belief, report the belief to the department's central information and referral service
12 for vulnerable adults [HARM TO THE DEPARTMENT OF HEALTH AND SOCIAL
13 SERVICES]:

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

1 (2) a mental health professional as defined in AS 47.30.915(11) [AND
2 INCLUDING A MARITAL AND FAMILY THERAPIST LICENSED UNDER
3 AS 08.63];

4 (3) a pharmacist;

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

7 (5) a guardian or conservator;

8 (6) a police officer;

9 (7) a village public safety officer;

10 (8) a village health aide;

11 (9) a social worker;

12 (10) a member of the clergy;

13 (11) a staff employee of a project funded by the Department of
14 Administration for the provision of services to older Alaskans, the Department of
15 Health and Social Services, or the Council on Domestic Violence and Sexual
16 Assault [OLDER ALASKANS COMMISSION];

17 (12) an employee of a personal care [HOMEMAKER PROGRAM] or
18 home health aide program;

19 (13) an emergency medical technician or a mobile intensive care
20 paramedic;

21 (14) a caregiver of the vulnerable adult.

22 (b) A report [OF HARM] made under this section may include the name and
23 address of the reporting person [REPORTING THE HARM] and shall include

24 (1) the name and address of the vulnerable adult [ELDERLY
25 PERSON];

26 (2) information relating to the nature and extent of the abandonment,
27 exploitation, abuse, neglect, or self-neglect [HARM];

28 (3) other information that the reporting person [REPORTING THE
29 HARM] believes might be helpful in an investigation of the case or in providing
30 protection for the vulnerable adult [ELDERLY PERSON].

31 (c) The department or its designees shall report to the Department of Law

1 any person required by (a) of this section to report who fails to comply with this
2 section. A person listed in (a) of this section who, because of the circumstances,
3 should have had reasonable cause to believe that a vulnerable adult suffers from
4 abandonment, exploitation, abuse, neglect, or self-neglect but who fails to comply
5 with this section is guilty of a violation as defined in AS 11.81.900(b).

6 (d) This section does not prohibit a person listed in (a) of this section, or any
7 other person, from reporting cases of abandonment, exploitation, abuse, neglect, or
8 self-neglect of a vulnerable adult [ECONOMIC OR PHYSICAL HARM TO AN
9 ELDERLY PERSON] that have come to the person's attention [IN A
10 NONPROFESSIONAL CAPACITY. THIS SECTION DOES NOT PROHIBIT ANY
11 OTHER PERSON FROM REPORTING ECONOMIC HARM TO AN ELDERLY
12 PERSON THAT THE PERSON HAS REASONABLE CAUSE TO BELIEVE IS A
13 RESULT OF THEFT, FRAUD, OR COERCION BY A CARETAKER OF THE
14 ELDERLY PERSON, OR PHYSICAL HARM TO AN ELDERLY PERSON THAT
15 THE PERSON HAS REASONABLE CAUSE TO BELIEVE IS A RESULT OF
16 ABUSE, NEGLECT, OR ABANDONMENT].

17 (e) If a person making a report under this section believes that immediate
18 action is necessary to protect the vulnerable adult [ELDERLY PERSON] from
19 imminent risk due to abandonment, exploitation, abuse, neglect, or self-neglect and
20 the reporting person cannot immediately contact the department's central
21 information and referral service for vulnerable adults [HARM], the reporting
22 person may [SHALL] make the report [OF HARM] to a police officer or a village
23 public safety officer. The police officer or village public safety officer shall take
24 immediate action to protect the vulnerable adult [ELDERLY PERSON] and shall, at
25 the earliest opportunity, notify the department.

26 (f) A person listed in (a) of this section who reports to the long term care
27 ombudsman under AS 44.21.232, or to the Department of Health and Social
28 Services, that a vulnerable adult has been exploited, abused, or neglected in an
29 out-of-home care facility is considered to have met the duty to report under (a)
30 of this section. [A PERSON WHO, IN GOOD FAITH MAKES A REPORT OF
31 ECONOMIC OR PHYSICAL HARM TO AN ELDERLY PERSON UNDER

1 AS 47.24.010 - 47.24.100, OR WHO PARTICIPATES IN JUDICIAL PROCEEDINGS
2 RELATED TO THE SUBMISSION OF REPORTS UNDER AS 47.24.010 -
3 47.24.100, IS IMMUNE FROM ANY CIVIL OR CRIMINAL LIABILITY THAT
4 MIGHT OTHERWISE BE INCURRED OR IMPOSED.]

5 (g) [FAILURE TO MAKE A REPORT UNDER SUBSECTIONS (a) AND (d)
6 OF THIS SECTION IS NOT THE BASIS OF CIVIL LIABILITY UNLESS
7 OTHERWISE PROVIDED BY LAW.]

8 (h) [IF A PERSON MAKES A GOOD FAITH REPORT OF HARM UNDER
9 THIS SECTION, AN EMPLOYER OR SUPERVISOR OF THE PERSON, OR A
10 PUBLIC OR PRIVATE AGENCY OR ENTITY THAT PROVIDES BENEFITS,
11 SERVICES, OR HOUSING TO THE PERSON, MAY NOT DISCHARGE, DEMOTE,
12 TRANSFER, REDUCE THE PAY OR BENEFITS OR WORK PRIVILEGES OF,
13 PREPARE A NEGATIVE WORK PERFORMANCE EVALUATION OF, DENY OR
14 WITHHOLD BENEFITS OR SERVICES, EVICT, OR TAKE OTHER
15 DETRIMENTAL ACTION AGAINST THE PERSON BECAUSE OF THE REPORT.
16 THE PERSON MAKING THE REPORT MAY BRING A CIVIL ACTION FOR
17 COMPENSATORY AND PUNITIVE DAMAGES AGAINST AN EMPLOYER,
18 SUPERVISOR, AGENCY, OR ENTITY THAT VIOLATES THIS SUBSECTION.
19 IN THE CIVIL ACTION THERE IS A REBUTTABLE PRESUMPTION THAT THE
20 DETRIMENTAL ACTION WAS RETALIATORY IF IT WAS TAKEN WITHIN 90
21 DAYS AFTER THE REPORT OF HARM WAS MADE.]

22 * Sec. 2. AS 47.24 is amended by adding new sections to read:

23 Sec. 47.24.011. DUTIES OF THE DEPARTMENT REGARDING SERVICES
24 AND PROTECTION FOR VULNERABLE ADULTS. In order to facilitate the
25 provision of supportive and protective services for vulnerable adults, the department
26 shall

27 (1) compile information on available supportive and protective services
28 for vulnerable adults in the state;

29 (2) establish, publicize, and maintain a central information and referral
30 service for vulnerable adults;

31 (3) develop and coordinate a statewide system to serve vulnerable

1 adults who are in need of protective services;

2 (4) establish criteria and procedures for the authorization and
3 supervision of other state agencies or community-based service providers to serve as
4 designees of the department under AS 47.24;

5 (5) in accordance with this chapter, designate other state agencies or
6 community-based service providers to deliver supportive and protective services to
7 vulnerable adults who are in need of protective services;

8 (6) develop within the central information and referral service for
9 vulnerable adults a central registry for reports of vulnerable adults in need of protective
10 services;

11 (7) maintain confidentiality of records as provided for in AS 47.24.050;
12 and

13 (8) adopt regulations to carry out the purposes of this chapter.

14 Sec. 47.24.013. REPORTS OF ABANDONMENT, EXPLOITATION, ABUSE,
15 NEGLECT, OR SELF-NEGLECT OF VULNERABLE ADULTS IN OUT-OF-HOME
16 CARE FACILITIES. (a) If a report received under AS 47.24.010 regards the
17 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult who is
18 60 years of age or older that is alleged to have been committed by or to have resulted
19 from the negligence of the staff or a volunteer of an out-of-home care facility,
20 including a facility licensed under AS 18.20, in which the vulnerable adult resides, and
21 if the Department of Health and Social Services licenses that type of facility, the
22 Department of Administration shall transfer the report for investigation to the long
23 term care ombudsman under AS 44.21.232 and the Department of Health and Social
24 Services.

25 (b) The department shall transfer to the Department of Health and Social
26 Services, for investigation, a report received under AS 47.24.010 regarding the
27 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult who is
28 less than 60 years of age that is alleged to have been committed by or to have resulted
29 from the negligence of the staff or a volunteer of an out-of-home care facility in which
30 the vulnerable adult resides, if the Department of Health and Social Services licenses
31 that type of facility.

1 (c) Upon receipt of a report from the department under (a) or (b) of this
2 section, the long term care ombudsman and the Department of Health and Social
3 Services shall

4 (1) conduct an investigation as appropriate under AS 44.21.232 or
5 AS 47, respectively;

6 (2) coordinate and cooperate in their responses to and investigations of
7 the report if their jurisdictions overlap;

8 (3) provide the results of their actions or investigations to the central
9 information and referral service of the department within 60 days after the receipt of
10 the report.

11 (d) If the long term care ombudsman or the Department of Health and Social
12 Services receives directly a report regarding the abandonment, exploitation, abuse,
13 neglect, or self-neglect of a vulnerable adult in an out-of-home care facility, the
14 ombudsman or the Department of Health and Social Services shall provide the report,
15 and the results of their actions or investigations regarding the report, to the central
16 information and referral service of the Department of Administration. The Department
17 of Administration may investigate the report as described in AS 47.24.015 if the
18 department determines that action is appropriate.

19 (e) If the results of an investigation by the long term care ombudsman or the
20 Department of Health and Social Services are provided to the Department of
21 Administration under (c) or (d) of this section, the Department of Administration may
22 make a final determination as described in AS 47.24.015(b), based on the investigation
23 results provided, regarding services to be offered to the vulnerable adult.

24 Sec. 47.24.015. ACTION ON REPORTS. (a) Upon the department's receipt
25 of a report under AS 47.24.010 that is not transferred under AS 47.24.013, the
26 department, or its designee, shall promptly initiate an investigation to determine
27 whether the vulnerable adult who is the subject of the report suffers from
28 abandonment, exploitation, abuse, neglect, or self-neglect. The department, or its
29 designee, shall conduct a face-to-face interview with the subject of the report unless
30 that person is unconscious or the department, or its designee, has determined that a
31 face-to-face interview could further endanger the vulnerable adult.

1 (b) After the department conducts an investigation under (a) of this section,
2 the department shall prepare a written report of the investigation, including findings,
3 recommendations, and a determination of whether and what kind of supportive or
4 protective services are needed by and are to be offered to the vulnerable adult. After
5 the department's designee conducts an investigation under (a) of this section, the
6 designee shall prepare a written report of the investigation, including findings,
7 recommendations, and a proposed determination of whether and what kind of
8 supportive or protective services are to be offered to the vulnerable adult. The
9 department shall prepare, and attach to the designee's report, a final determination
10 regarding services to be offered to the vulnerable adult.

11 (c) The department, or its designee, shall immediately terminate an
12 investigation under this section upon the request of the vulnerable adult who is the
13 subject of the report made under AS 47.24.010. However, if the investigation to that
14 point has resulted in reasonable cause to believe that the vulnerable adult is in need
15 of protective services,

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

17 or

18 (2) the department or its designee may refer the report made to the
19 department under AS 47.24.010 to a police officer for criminal investigation.

20 (d) Upon request, a person who made a report to the department under
21 AS 47.24.010 regarding a vulnerable adult shall be notified of the status of the
22 investigation conducted under (a) of this section regarding that vulnerable adult.

23 **Sec. 47.24.016. SURROGATE DECISION MAKERS FOR VULNERABLE**
24 **ADULTS.** (a) If the department determines under AS 47.24.015 that a vulnerable
25 adult is in need of protective services, but the department cannot obtain the vulnerable
26 adult's consent to receive the services because the vulnerable adult is unable to consent
27 or lacks decision making capacity, and has no guardian or attorney in fact to serve as
28 the vulnerable adult's surrogate decision maker, the department may select from the
29 following list, in the order of priority listed, an individual who is willing to be the
30 vulnerable adult's surrogate decision maker for the purpose of deciding whether to
31 consent to the vulnerable adult's receipt of protective services:

- 1 (1) the vulnerable adult's spouse, unless
2 (A) the vulnerable adult and the spouse have separate domiciles;
3 or
4 (B) the vulnerable adult or the spouse have initiated divorce or
5 dissolution proceedings;
6 (2) an individual who lives with the vulnerable adult in a spousal
7 relationship or as a domestic partner and who is 18 years of age or older;
8 (3) a son or daughter of the vulnerable adult who is 18 years of age or
9 older;
10 (4) a parent of the vulnerable adult;
11 (5) a brother or sister of the vulnerable adult who is 18 years of age
12 or older; or
13 (6) a close friend or relative of the vulnerable adult who is 18 years of
14 age or older.

15 (b) An individual from the list in (a) of this section may not be selected as a
16 surrogate decision maker if

- 17 (1) the department determines that individual does not possess decision
18 making capacity; or
19 (2) there are allegations that individual is a perpetrator of the
20 abandonment, exploitation, abuse, or neglect of the vulnerable adult.

21 (c) If the department intends to select a surrogate decision maker from a
22 priority level in the list in (a) of this section and there is more than one individual at
23 that priority level who is willing to be the surrogate decision maker, those individuals

24 (1) may select from amongst themselves, by majority vote, an
25 individual to serve as the surrogate decision maker; or

26 (2) as a group may serve as the surrogate decision maker and reach
27 decisions by consensus.

28 **Sec. 47.24.017. DELIVERY OF PROTECTIVE SERVICES FOR**
29 **VULNERABLE ADULTS.** (a) If the department determines under AS 47.24.015 that
30 a vulnerable adult is in need of protective services and either the vulnerable adult, the
31 vulnerable adult's guardian or attorney in fact, or a surrogate decision maker selected

1 under AS 47.24.016 consents to receipt of the protective services, and to the extent
2 that resources are available, the department shall ensure that the protective services for
3 the vulnerable adult are provided by the department or its designee within 10 working
4 days after the department received the report under AS 47.24.010 regarding the
5 abandonment, exploitation, abuse, neglect, or self-neglect of the vulnerable adult.
6 However, if circumstances beyond the control of the department or the department's
7 designee make it impossible to provide the protective services within the 10 working
8 days, the department shall ensure that the services are provided as soon as possible
9 after that time.

10 (b) Notwithstanding (a) of this section, if the department determines that an
11 emergency situation exists that necessitates provision of protective services to a
12 vulnerable adult, the department may provide the necessary protective services in a
13 manner determined by the department to be the most appropriate in light of the
14 emergency situation, regardless of whether the vulnerable adult or any other person has
15 consented to receipt of the services.

16 (c) To the extent practicable, protective services provided under this section
17 shall be delivered in a culturally relevant manner that protects the vulnerable adult's
18 right to the least restrictive environment and maximizes that person's own decision
19 making capabilities.

20 Sec. 47.24.019. PETITIONING COURT FOR CERTAIN PROTECTIVE
21 SERVICES. (a) If, after investigation under AS 47.24.015, the department has
22 reasonable cause to believe that a vulnerable adult is in need of protective services and
23 is an incapacitated person, the department may petition the court under AS 13.26 for
24 appointment of a guardian or temporary guardian for the vulnerable adult for the
25 purpose of deciding whether to consent to the receipt of protective services for the
26 vulnerable adult.

27 (b) If, after an investigation under AS 47.24.015, the department has
28 reasonable cause to believe that a vulnerable adult is mentally ill and as a result either
29 is likely to cause serious harm to self or others or is gravely disabled, the department
30 may petition the court under AS 47.30.700 to initiate an involuntary commitment
31 proceeding.

1 (c) If a vulnerable adult who has consented to receive protective services, or
2 on whose behalf consent to receive protective services has been given, is prevented by
3 a caregiver from receiving those services, the department may assist the vulnerable
4 adult or the person who consented to the vulnerable adult's receipt of the services to
5 petition the superior court for an injunction restraining the caregiver from interfering
6 with the provision of protective services to the vulnerable adult.

7 * Sec. 3. AS 47.24.040 is repealed and reenacted to read:

8 Sec. 47.24.040. MONITORING. If ongoing protective services are provided
9 to a vulnerable adult under AS 47.24.017, the department shall monitor the adult's
10 situation, as the department considers appropriate, until the department determines that
11 the protective services are no longer needed.

12 * Sec. 4. AS 47.24.050 is amended to read:

13 Sec. 47.24.050. CONFIDENTIALITY OF REPORTS. (a) Investigation
14 reports and reports of the abandonment, exploitation, abuse, neglect, or self-neglect
15 of a vulnerable adult [HARM] filed under this chapter [AS 47.24.010 - 47.24.100]
16 are confidential and are not subject to public inspection and copying under
17 AS 09.25.110 - 09.25.125. However, in accordance with this chapter [AS 47.24.010 -
18 47.24.100] and regulations adopted under this chapter [AS 47.24.010 - 47.24.100],
19 investigation reports may be used by appropriate [GOVERNMENTAL] agencies or
20 individuals inside and outside the state, in connection with investigations or judicial
21 proceedings involving the abandonment, exploitation, abuse, neglect, or self-neglect
22 of a vulnerable adult [HARM TO AN ELDERLY PERSON].

23 (b) The department shall disclose a report of the abandonment, exploitation,
24 abuse, neglect, or self-neglect of a vulnerable adult [HARM] if the vulnerable adult
25 [ELDERLY PERSON] who is the subject of the report consents in writing. The
26 department shall, upon request, disclose the number of verified reports of
27 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult
28 [HARM] that occurred at an institution that provides [FOR] care for vulnerable
29 adults [OF THE ELDERLY].

30 * Sec. 5. AS 47.24.070 is repealed and reenacted to read:

31 Sec. 47.24.070. REGULATIONS. Before adoption by the department,

1 regulations to implement this chapter shall be provided to the Older Alaskans
2 Commission (AS 44.21.200) for review.

3 * Sec. 6. AS 47.24.120 is amended to read:

4 Sec. 47.24.120. IMMUNITY FROM LIABILITY; RETALIATION
5 PROHIBITED. (a) A person who in good faith makes a report under AS 47.24.010
6 [AS 47.24.110], regardless of whether the person is required to do so, is immune from
7 civil or criminal liability that might otherwise be incurred or imposed for making the
8 report.

9 (b) An employer or supervisor of a person who in good faith makes a report
10 under AS 47.24.010 [AS 47.24.110] may not discharge, demote, transfer, reduce pay
11 or benefits or work privileges of, prepare a negative work performance evaluation of,
12 or take other detrimental action against the person because the person made the report.
13 The person making the report may bring a civil action for compensatory and punitive
14 damages against an employer or supervisor who violates this subsection. In the civil
15 action there is a rebuttable presumption that the detrimental action by the employer or
16 supervisor was retaliatory if it was taken within 90 days after the report was made.

17 * Sec. 7. AS 47.24 is amended by adding a new section to read:

18 Sec. 47.24.900. DEFINITIONS. In this chapter,

19 (1) "abandonment" means desertion of a vulnerable adult by a
20 caregiver;

21 (2) "abuse" means

22 (A) the wilful, intentional, or reckless non-accidental, and non-
23 therapeutic infliction of physical pain, injury, or mental distress; or

24 (B) sexual assault under AS 11.41.410 or 11.41.420;

25 (3) "caregiver" means

26 (A) a person who is providing care to a vulnerable adult as a
27 result of a family relationship, or who has assumed responsibility for the care
28 of a vulnerable adult voluntarily, by contract, or by court order; or

29 (B) an employee of an out-of-home care facility who provides
30 care to one or more vulnerable adults;

31 (4) "decision making capacity" means the ability to understand and

1 appreciate the nature and consequences of 222a decision and the ability to reach and
2 communicate an informed decision;

3 (5) "department" means the Department of Administration;

4 (6) "designee" means another state agency or a community-based
5 program, individual, or provider of supportive services that has been licensed, or
6 authorized by agreement with the department, to provide one or more services to
7 vulnerable adults;

8 (7) "exploitation" means unjust or improper use of another person or
9 another person's resources for one's own profit or advantage;

10 (8) "incapacitated person" means a person whose ability to receive and
11 evaluate information or to communicate decisions is impaired to the extent that the
12 person lacks the ability to provide or arrange for the essential requirements for the
13 person's physical health or safety without court-ordered assistance;

14 (9) "neglect" means the intentional failure by a caregiver to provide
15 essential care or services necessary to maintain the physical and mental health of the
16 vulnerable adult;

17 (10) "police officer" has the meaning given in AS 18.65.290;

18 (11) "protective services" means services that are intended to prevent
19 or alleviate harm resulting from abandonment, exploitation, abuse, neglect, or self-
20 neglect and that are provided to a vulnerable adult in need of protection; "protective
21 services" includes protective placement;

22 (12) "self-neglect" means an act or omission by a vulnerable adult that
23 results, or could result in the deprivation of essential services necessary to maintain
24 minimal mental, emotional, or physical health and safety;

25 (13) "supportive services" means the range of services delivered by
26 public and private organizations and individuals that assist the elderly and vulnerable
27 adults with their social, health, educational, recreational, transportation, housing,
28 nutritional, financial, legal, or other needs;

29 (14) "unable to consent" means refusal to, or inability to, accept
30 services because

31 (A) the person is an incapacitated person or apparently is an

1 incapacitated person;

2 (B) of coercion by or fear of reprisal from the perpetrator of
3 abandonment, exploitation, abuse, or neglect;

4 (C) of dependency on the perpetrator of abandonment,
5 exploitation, abuse, or neglect for services, care, or support; or

6 (D) of an inability to perceive that refusal to consent results in
7 an imminent and substantial danger of death or irreparable harm to self or
8 others;

9 (16) "vulnerable adult" means a person 18 years of age or older who,
10 because of physical or mental impairment, is unable to meet the person's own needs
11 or to seek help without assistance.

12 * Sec. 8. AS 47.24.020, 47.24.030, 47.24.060, 47.24.075, 47.24.100, and 47.24.110 are
13 repealed.

14 * Sec. 9. TRANSITION. (a) Contracts, rights, liabilities, and obligations created by or
15 under a law repealed by this Act and in effect on June 30, 1994, remain in effect
16 notwithstanding this Act's taking effect. Records, equipment, appropriations, and other
17 property of agencies of the state whose functions are transferred under this Act shall be
18 transferred to implement the provisions of this Act.

19 (b) Litigation, hearings, investigations, and other proceedings pending under a law
20 repealed by this Act, or in connection with functions transferred by this Act, continue in effect
21 and may be continued and completed notwithstanding a transfer, amendment, or repeal
22 provided for in this Act.

23 (c) The Department of Administration may proceed to adopt regulations necessary to
24 implement the changes made by this Act. The regulations may not take effect before July 1,
25 1994.

26 * Sec. 10. Section 9(c) of this Act takes effect immediately under AS 01.10.070(c).

27 * Sec. 11. Sections 1 - 8, 9(a), and 9(b) of this Act take effect July 1, 1994.