

## CS FOR SENATE BILL NO. 248(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 2/18/94  
Referred: STA, FIN

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

## 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 08.86.200(b) is amended to read:

5 (b) Notwithstanding (a) of this section, a psychologist or psychological  
6 associate shall report to the appropriate authority incidents of child abuse or neglect  
7 as required by AS 47.17.020, incidents of [ELDER] abuse of a vulnerable adult as  
8 required by AS 47.24.010, and incidents of abuse of disabled persons disclosed to the  
9 psychologist or psychological associate by a client. In this subsection "disabled  
10 person" means a person who has a physical or mental disability or a physical or mental  
11 impairment, as defined in AS 18.80.300.

12 \* Sec. 2. AS 47.24.010(a) is amended to read:

13 (a) Except as provided in (e) and (f) of this section, the [THE] following  
14 persons who, in the performance of their professional duties, have reasonable cause to

1 believe that a vulnerable adult suffers from abandonment, exploitation, abuse,  
2 neglect, or self-neglect [AN ELDERLY PERSON HAS SUFFERED HARM] shall,  
3 not later than 24 hours after first having cause for the belief, report the belief to the  
4 department's central information and referral service for vulnerable adults  
5 [HARM TO THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES]:

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

7 (2) a mental health professional as defined in AS 47.30.915(11) and  
8 including a marital and family therapist licensed under AS 08.63;

9 (3) a pharmacist;

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

12 (5) a guardian or conservator;

13 (6) a police officer;

14 (7) a village public safety officer;

15 (8) a village health aide;

16 (9) a social worker;

17 (10) a member of the clergy;

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

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

24 (13) an emergency medical technician or a mobile intensive care  
25 paramedic;

26 (14) a caregiver of the vulnerable adult.

27 \* Sec. 3. AS 47.24.010(b) is amended to read:

28 (b) A report [OF HARM] made under this section may include the name and  
29 address of the reporting person [REPORTING THE HARM] and must [SHALL]  
30 include

31 (1) the name and address of the vulnerable adult [ELDERLY

1 PERSON];

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

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

7 \* Sec. 4. AS 47.24.010(c) is amended to read:

8 (c) The department or its designees shall report to the Department of Law  
9 any person required by (a) of this section to report who fails to comply with this  
10 section. A person listed in (a) of this section who, because of the circumstances,  
11 should have had reasonable cause to believe that a vulnerable adult suffers from  
12 abandonment, exploitation, abuse, neglect, or self-neglect but who fails to comply  
13 with this section is guilty of a violation as defined in AS 11.81.900(b).

14 \* Sec. 5. AS 47.24.010(d) is amended to read:

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

26 \* Sec. 6. AS 47.24.010(e) is amended to read:

27 (e) If a person making a report under this section believes that immediate  
28 action is necessary to protect the vulnerable adult [ELDERLY PERSON] from  
29 imminent risk of serious physical harm due to abandonment, exploitation, abuse,  
30 neglect, or self-neglect and the reporting person cannot immediately contact the  
31 department's central information and referral service for vulnerable adults

1 [HARM], the reporting person may [SHALL] make the report [OF HARM] to a  
2 police officer or a village public safety officer. The police officer or village public  
3 safety officer shall take immediate action to protect the vulnerable adult [ELDERLY  
4 PERSON] and shall, at the earliest opportunity, notify the department. A person may  
5 not bring an action for damages against a police officer, village public safety  
6 officer, the state, or a political subdivision of the state based on a decision under  
7 this subsection to take or not to take immediate action to protect a vulnerable  
8 adult. If a decision is made under this subsection to take immediate action to  
9 protect a vulnerable adult, a person may not bring an action for damages based  
10 on the protective actions taken unless the protective actions were performed with  
11 gross negligence or intentional misconduct; damages awarded in the action may  
12 include only direct economic compensatory damages for personal injury.

13 \* Sec. 7. AS 47.24.010(f) is repealed and reenacted to read:

14 (f) A person listed in (a) of this section who reports to the long term care  
15 ombudsman under AS 44.21.232, or to the Department of Health and Social Services,  
16 that a vulnerable adult has been exploited, abused, or neglected in an out-of-home care  
17 facility is considered to have met the duty to report under (a) of this section.

18 \* Sec. 8. AS 47.24 is amended by adding new sections to read:

19 Sec. 47.24.011. DUTIES OF THE DEPARTMENT REGARDING SERVICES  
20 AND PROTECTION FOR VULNERABLE ADULTS. In order to facilitate the  
21 provision of supportive and protective services for vulnerable adults, the department  
22 shall

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

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

27 (3) develop and coordinate a statewide system to serve vulnerable  
28 adults who are in need of protective services;

29 (4) establish criteria and procedures for the authorization and  
30 supervision of other state agencies or community-based service providers to serve as  
31 designees of the department under this chapter;

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

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

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

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

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

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

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

31 (1) conduct an investigation as appropriate under AS 44.21.232 or

1 AS 47, respectively;

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

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

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

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

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

28 (b) After the department conducts an investigation under (a) of this section,  
29 the department shall prepare a written report of the investigation, including findings,  
30 recommendations, and a determination of whether and what kind of supportive or  
31 protective services are needed by and are to be offered to the vulnerable adult. After

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

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

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

13 or

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

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

19 (e) A person may not bring an action for damages based on a decision under  
20 this section to offer or not to offer protective services to a vulnerable adult.

21 (f) A person may not bring an action for damages based on the provision of  
22 protective services under this section unless the action is based on gross negligence or  
23 intentional misconduct. The damages awarded in an action under this section may  
24 include only direct economic compensatory damages for personal injury.

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

1 vulnerable adult's surrogate decision maker for the purpose of deciding whether to  
2 consent to the vulnerable adult's receipt of protective services:

3 (1) the vulnerable adult's spouse, unless

4 (A) the vulnerable adult and the spouse have separate domiciles;

5 or

6 (B) the vulnerable adult or the spouse have initiated divorce or  
7 dissolution proceedings;

8 (2) an individual who lives with the vulnerable adult in a spousal  
9 relationship or as a domestic partner and who is 18 years of age or older;

10 (3) a son or daughter of the vulnerable adult who is 18 years of age or  
11 older;

12 (4) a parent of the vulnerable adult;

13 (5) a brother or sister of the vulnerable adult who is 18 years of age  
14 or older; or

15 (6) a close friend or relative of the vulnerable adult who is 18 years of  
16 age or older.

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

19 (1) the department determines that individual does not possess decision  
20 making capacity; or

21 (2) there are allegations that individual is a perpetrator of the  
22 abandonment, exploitation, abuse, or neglect of the vulnerable adult.

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

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

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

30 (d) The department may not continue to provide protective services to a  
31 vulnerable adult based on the consent of a surrogate decision maker serving under this

1 section if the department determines that the vulnerable adult has become able to  
2 consent or has regained decision making capacity since the surrogate's consent was  
3 given. The department may continue protective services to a vulnerable adult who has  
4 become able to consent or has regained decision making capacity only if the vulnerable  
5 adult consents.

6 Sec. 47.24.017. DELIVERY OF PROTECTIVE SERVICES FOR  
7 VULNERABLE ADULTS. (a) If the department determines under AS 47.24.015 that  
8 a vulnerable adult is in need of protective services and either the vulnerable adult, the  
9 vulnerable adult's guardian or attorney in fact, or a surrogate decision maker selected  
10 under AS 47.24.016 consents to receipt of the protective services, and to the extent  
11 that resources are available, the department shall ensure that the protective services for  
12 the vulnerable adult are provided by the department or its designee within 10 working  
13 days after the department received the report under AS 47.24.010 regarding the  
14 abandonment, exploitation, abuse, neglect, or self-neglect of the vulnerable adult.  
15 However, if circumstances beyond the control of the department or the department's  
16 designee make it impossible to provide the protective services within the 10 working  
17 days, the department shall ensure that the services are provided as soon as possible  
18 after that time.

19 (b) Notwithstanding (a) of this section, if the department determines that an  
20 emergency situation exists that necessitates provision of protective services to a  
21 vulnerable adult, the department may provide the necessary protective services in a  
22 manner determined by the department to be the most appropriate in light of the  
23 emergency situation, regardless of whether the vulnerable adult or any other person has  
24 consented to receipt of the services.

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

29 Sec. 47.24.019. PETITIONING COURT FOR CERTAIN PROTECTIVE  
30 SERVICES. (a) If, after investigation under AS 47.24.015, the department has  
31 reasonable cause to believe that a vulnerable adult is in need of protective services and

1 is an incapacitated person, the department may petition the court under AS 13.26 for  
2 appointment of a guardian or temporary guardian for the vulnerable adult for the  
3 purpose of deciding whether to consent to the receipt of protective services for the  
4 vulnerable adult.

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

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

16 \* Sec. 9. AS 47.24.040 is repealed and reenacted to read:

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

21 \* Sec. 10. AS 47.24.050 is amended to read:

22 Sec. 47.24.050. CONFIDENTIALITY OF REPORTS. (a) Investigation  
23 reports and reports of the abandonment, exploitation, abuse, neglect, or self-neglect  
24 of a vulnerable adult [HARM] filed under this chapter [AS 47.24.010 - 47.24.100]  
25 are confidential and are not subject to public inspection and copying under  
26 AS 09.25.110 - 09.25.125. However, in accordance with this chapter [AS 47.24.010  
27 - 47.24.100] and regulations adopted under this chapter [AS 47.24.010 - 47.24.100],  
28 investigation reports may be used by appropriate [GOVERNMENTAL] agencies or  
29 individuals inside and outside the state, in connection with investigations or judicial  
30 proceedings involving the abandonment, exploitation, abuse, neglect, or self-neglect  
31 of a vulnerable adult [HARM TO AN ELDERLY PERSON].

1 (b) The department shall disclose a report of the abandonment, exploitation,  
2 abuse, neglect, or self-neglect of a vulnerable adult [HARM] if the vulnerable adult  
3 [ELDERLY PERSON] who is the subject of the report consents in writing. The  
4 department shall, upon request, disclose the number of verified reports of  
5 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult  
6 [HARM] that occurred at an institution that provides [FOR] care for vulnerable  
7 adults [OF THE ELDERLY].

8 \* Sec. 11. AS 47.24.070 is repealed and reenacted to read:

9 Sec. 47.24.070. REGULATIONS. Before adoption by the department,  
10 regulations to implement this chapter shall be provided to the Older Alaskans  
11 Commission (AS 44.21.200) for review.

12 \* Sec. 12. AS 47.24.120 is amended to read:

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

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

26 \* Sec. 13. AS 47.24 is amended by adding a new section to read:

27 Sec. 47.24.900. DEFINITIONS. In this chapter,

28 (1) "abandonment" means desertion of a vulnerable adult by a  
29 caregiver;

30 (2) "abuse" means

31 (A) the wilful, intentional, or reckless nonaccidental, and

- 1 nontherapeutic infliction of physical pain, injury, or mental distress; or  
2 (B) sexual assault under AS 11.41.410 or 11.41.420;
- 3 (3) "caregiver" means  
4 (A) a person who is providing care to a vulnerable adult as a  
5 result of a family relationship, or who has assumed responsibility for the care  
6 of a vulnerable adult voluntarily, by contract, or by court order; or  
7 (B) an employee of an out-of-home care facility who provides  
8 care to one or more vulnerable adults;
- 9 (4) "decision making capacity" means the ability to understand and  
10 appreciate the nature and consequences of a decision and the ability to reach and  
11 communicate an informed decision;
- 12 (5) "department" means the Department of Administration;
- 13 (6) "designee" means another state agency or a community-based  
14 program, individual, or provider of supportive services that has been licensed, or  
15 authorized by agreement with the department, to provide one or more services to  
16 vulnerable adults;
- 17 (7) "exploitation" means unjust or improper use of another person or  
18 another person's resources for one's own profit or advantage;
- 19 (8) "incapacitated person" means a person whose ability to receive and  
20 evaluate information or to communicate decisions is impaired to the extent that the  
21 person lacks the ability to provide or arrange for the essential requirements for the  
22 person's physical health or safety without court-ordered assistance;
- 23 (9) "neglect" means the intentional failure by a caregiver to provide  
24 essential care or services necessary to maintain the physical and mental health of the  
25 vulnerable adult;
- 26 (10) "police officer" has the meaning given in AS 18.65.290;
- 27 (11) "protective services" means services that are intended to prevent  
28 or alleviate harm resulting from abandonment, exploitation, abuse, neglect, or self-  
29 neglect and that are provided to a vulnerable adult in need of protection; "protective  
30 services" includes protective placement;
- 31 (12) "self-neglect" means an act or omission by a vulnerable adult that

1 results, or could result in the deprivation of essential services necessary to maintain  
2 minimal mental, emotional, or physical health and safety;

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

7 (14) "unable to consent" means refusal to, or inability to, accept  
8 services because

9 (A) the person is an incapacitated person or apparently is an  
10 incapacitated person;

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

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

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

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

21 \* Sec. 14. AS 47.24.010(g), 47.24.010(h), 47.24.020, 47.24.030, 47.24.060, 47.24.075,  
22 47.24.100, and 47.24.110 are repealed.

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

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

1           (c) The Department of Administration may proceed to adopt regulations necessary to  
2 implement the changes made by this Act. The regulations may not take effect before July 1,  
3 1994.

4       \* Sec. 16. Section 15(c) of this Act takes effect immediately under AS 01.10.070(c).

5       \* Sec. 17. Sections 1 - 14, 15(a), and 15(b) of this Act take effect July 1, 1994.