

SB

86

<TARGET><BILL>SB 86</BILL><SUBJECT>SB
86</SUBJECT><COMM>HFIN27</COMM></TARGET>

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version CSSB 86(JUD)
 Fiscal Note Number 15
 (S) Publish Date 2/3/12

Identifier (file name) 12 CSSB86(JUD)-ACS-TRC-1-14-12 Dept. Affected _____
 Title _____ Appropriation Alaska Court System
 Allocation Trial Courts
 Sponsor Senate Rules Committee
 Requester Governor OMB Component Number 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated **SUPPLEMENTAL (FY12) operating costs** _____ (separate supplemental appropriation required;
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

This note is updated to reflect a new fiscal year and changed section citations.

Prepared by Doug Wooliver, Deputy Administrative Director
 Division Alaska Court System
 Approved by Doug Wooliver for Christine Johnson, Administrative Director
Alaska Court System

Phone 907-463-4750
 Date/Time 1-14-12 @ 11:00 am
 Date 1/14/2012

FISCAL NOTE #15

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. CSSB 86(JUD)

Analysis

Committee Substitute for Senate Bill 86 (JUD) makes several changes to the statutes that govern protective proceedings. Two of those changes will likely impact the court system, though the extent of the impact is too speculative to support a fiscal note and, in any event, may not be felt immediately.

Sections 8 and 10 allow for temporary conservators to be appointed within 72 hours of the filing of the petition and section 10 further allows for ex parte protective orders when a person believes that an order is necessary to protect a vulnerable person from fraud.

The court's experience with temporary guardianships (AS 13.26.140) and ex parte protective orders in other contexts suggests that passage of this bill will result in more cases being filed that must be heard on short notice. If that increase becomes significant, and it likely will in the future, the court system may need to return to the legislature for additional funding. At this point, however, the number of conservatorship petitions filed each year is not great enough to warrant a fiscal note.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version CSSB 86(JUD)
Fiscal Note Number 14
(S) Publish Date 2/3/12

Identifier (file name) CSSB086(JUD)-DOC-OC-12-22-2011 Dept. Affected DOC
Title "An Act relating to the protection of property of persons Appropriation Admin & Support
under disability and minors; relating to the crime of violating Allocation Commissioner's Office
Sponsor Rules Committee by Request of the Governor
Requester Senate Finance Committee OMB Component Number 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY12) operating costs 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Several technical amendments were made to the bill. Updated to reflect current fiscal year.

Prepared by Leslie Houston, Director
Division Department of Corrections - Administrative Services
Approved by Joseph D. Schmidt, Commissioner
Department of Corrections

Phone 907-465-3339
Date/Time 12/22/11 3:45 PM
Date 12/22/2011

FISCAL NOTE #14

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. CSSB 86(JUD)

Analysis

This legislation creates a crime of violating protective orders of victims 65 years or older. Violation of this law does not require a mandatory arrest and therefore would have little to no impact on the Department of Corrections.

There is no anticipated fiscal impact to the Department of Corrections.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version CSSB 86(JUD)
 Fiscal Note Number 13
 (S) Publish Date 2/3/12

Identifier (file name) SB086CS(JUD)-DPS-DET-12-30-11 Dept. Affected Public Safety
 Title "An Act relating to the protection of property of persons under disability and minors; vulnerable adults..." Appropriation Alaska State Troopers
 Allocation AST Detachments
 Sponsor Senate Rules by Request of the Governor
 Requester (S) FIN OMB Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES

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Estimated **SUPPLEMENTAL (FY12) operating costs** _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Updated on new fiscal note form.

Prepared by Kelly Howell
 Division Office of the Commissioner
 Approved by Joe Masters, Commissioner
Department of Public Safety

Phone (907) 269-5591
 Date/Time 12/30/11 8:33 AM
 Date 12/15/2011

FISCAL NOTE #13

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. CSSB 86(JUD)

Analysis

This bill makes several changes to AS 13.26 and AS 47.24 concerning vulnerable adults. It adds fraud as a reason that might necessitate a conservatorship, and as a basis for seeking an ex parte financial protective order. This bill also adds the concept of undue influence to the list of reportable harms and adds certain individuals as mandatory reporters of harm to vulnerable adults. Finally, this bill expands the investigatory authority of the Adult Protective Services Office.

Passage of this legislation will have no fiscal impact on the division.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version CSSB 86(JUD)
 Fiscal Note Number 12
 (S) Publish Date 2/3/12

Identifier (file name) SB086CS(JUD)-DPS-DSS-12-30-11 Dept. Affected Public Safety
 Title "An Act relating to the protection of property of persons under disability and minors; vulnerable adults..." Appropriation Statewide Support
 Allocation Records & Identification
 Sponsor Senate Rules by Request of the Governor
 Requester (S) FIN OMB Component Number 1190

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13					
Personal Services							
Travel	16.0						
Services	32.0						
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	48.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002	Federal Receipts						
1003	GF Match						
1004	GF	48.0					
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		48.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES

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Estimated **SUPPLEMENTAL (FY12) operating costs** _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Updated on new fiscal note form.

Prepared by Kelly Howell
 Division Office of the Commissioner
 Approved by Joe Masters, Commissioner
Department of Public Safety

Phone (907) 269-5591
 Date/Time 12/30/11 8:31 AM
 Date 12/15/2011

FISCAL NOTE #12

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. CSSB 86(JUD)

Analysis

This bill treats AS 13 protective orders in the same manner as stalking, sexual assault, and domestic violence protective orders under AS 18 and will require the development of new protective order forms with substantial collaboration between DPS, the Alaska Court System, DHSS, the Office of Public Advocacy, and the Department of Revenue. The findings and orders for these new AS 13 protective orders will differ from the AS 18 orders in the existing protection order registry, which address violence and domestic violence situations.

Once the forms are developed, APSIN programming changes will be required to accommodate new fields and types of information required. A separate version of the APSIN central registry must be developed to accommodate these new orders. Note: these new orders do not meet the necessary criteria for entry into the national registry of protection, stalking and sexual assault orders (NCIC) because they do not necessarily involve physical violence.

Programming and analysis for APSIN changes will require 280 hours of contractual work @ \$100/hr to evaluate and make recommendations regarding statewide implementation of new processes and procedures for entering and maintaining these new orders into existing APSIN. Additionally, 40 hours of contractual work (at \$100/hr) will be required to integrate these new orders into APSIN.

Statewide training will then be required on the new forms and APSIN procedures. Statewide training costs are included.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version CSSB 86(JUD)
Fiscal Note Number 11
(S) Publish Date 2/3/12

Identifier (file name) SB086CS(JUD)-LAW-CIV-12-02-11 Dept. Affected Law
Title An Act relating to property of persons; crime of violating Appropriation Civil
order; aggravating factors at sentencing; protection... Allocation Human Services
Sponsor (S) RLS by Request of the Governor
Requester (S) FIN OMB Component Number 2962

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES

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Estimated SUPPLEMENTAL (FY12) operating costs _____ (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Updated for new fiscal year form.

Prepared by Eileen Donahue, Division Operations Manager
Division Administrative Services
Approved by John J. Burns, Attorney General
Department of Law

Phone 465-5427
Date/Time 12/02/11 10:00AM
Date 12/2/2011

FISCAL NOTE #11

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. CSSB 86(JUD)

Analysis

This bill adopts 20-day and six-month protective orders for vulnerable adults who are victims of a financial fraud, and a temporary conservatorship process when the need exists during the pendency of a regular petition for conservatorship. The bill also expands the list of mandatory reporters of harm to a vulnerable adult, adds the harm of undue influence, and expands the investigative powers of the Office of Adult Protective Services, including the authority to issue subpoenas, conduct interviews and examine financial and health care records. The bill also amends the crime of violating a protective order by adding the crime of violating a protective order issued to protect a vulnerable adult under AS 13.26.180 or 13.26.209. Violating a protective order is a class A misdemeanor.

There is no anticipated fiscal impact to Department of Law.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version CSSB 86(JUD)
 Fiscal Note Number 10
 (S) Publish Date 2/3/12

Identifier (file name) SB086-DOA-OPA-12-12-2011 Dept. Affected Administration
 Title Protection of Vulnerable Adults/Minors Appropriation Legal and Advocacy Services
 Allocation Office of Public Advocacy
 Sponsor Rules by Request of the Governor
 Requester Senate Finance OMB Component Number 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated **SUPPLEMENTAL (FY12) operating costs** _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Update for session.

Prepared by Richard Allen, Director
 Division Office of Public Advocacy
 Approved by John Cramer, Deputy Commissioner
Department of Administration

Phone 907-269-3504
 Date/Time 11/28/2011 2:24 p.m.
 Date 12/12/2011

FISCAL NOTE #10

**STATE OF ALASKA
2012 LEGISLATIVE SESSION**

BILL NO. CSSB 86(JUD)

Analysis

This bill will enhance the legal protections against fraud and financial abuse available to elders and vulnerable adults. The Office of Public Advocacy wishes to highlight two portions of the bill that will provide new emergency procedures to protect vulnerable adults who may be served by the agency's Elder Fraud or Probate practices.

In Section 7, the bill creates two emergency judicial proceedings to stop and prevent financial exploitation of vulnerable adults. The first is a process for the appointment of temporary conservators. This will allow the court to impose emergency conservatorships to assist vulnerable individuals with their financial affairs to prevent imminent waste or fraudulent dissipation of their estates.

The second creates a process for the imposition of financial protective orders. Individual victims or other concerned parties will be able to apply for the protections of 20 day ex parte protective orders to stop or prevent financial exploitation. The initial ex parte order may be extended for up to six months after notice and a hearing at which the respondent may be heard.

This bill also provides for expanded reporting of financial abuse and enhanced penalties in criminal cases when there is an elderly victim. Additionally, the bill criminalizes violations of the financial protective orders.

The agency does not believe that this will result in significant cost increases to the agency. Accordingly, the Agency is submitting a zero impact fiscal note.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version CSSB 86(JUD)
 Fiscal Note Number 9
 (S) Publish Date 2/3/12

Identifier (file name) SB086CS(JUD)-DHSS-SDSA-12-30-11 Dept. Affected Health and Social Services
 Title Protection of Vulnerable Adults/Minors Appropriation Senior and Disabilities Services
 Allocation Sr. and Disabilities Services Admin
 Sponsor Rules by Request of the Governor
 Requester Senate Finance Committee OMB Component Number 2663

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated **SUPPLEMENTAL (FY12) operating costs** _____ (separate supplemental appropriation required);
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** _____ (separate capital appropriation required);
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Updated fiscal note to reflect the current fiscal year.

Prepared by Duane Mayes, Director Phone 269-2083
 Division Senior and Disabilities Services Date/Time 12/30/11 4:00 PM
 Approved by Nancy Rolfzen, Assistant Commissioner Date 12/30/2011
DHSS Finance & Management Services

(Revised 11/18/2011 OMB)

FISCAL NOTE #9

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. CSSB 86(JUD)

Analysis

This legislation provides additional protections to seniors and other vulnerable adults. The proposed changes in the vulnerable adult statutes add the concept of undue influence as a potential harm. This bill provides additional legal and investigatory tools to the department in order to respond to reports of harm and establish protective services to individuals who need them. There is no fiscal impact anticipated.

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES
DIVISION OF SENIOR AND DISABILITIES SERVICES

SEAN PARNELL, GOVERNOR

P.O. BOX 110680
JUNEAU, ALASKA 99811-0680
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Sectional Analysis

CSSB 86 (JUD) (efd am), "An Act relating to the protection of property of persons under disability and minors; relating to the crime of violating a protective order concerning certain vulnerable persons; relating to aggravating factors at sentencing for offenses concerning a victim 65 years or older; relating to the protection of vulnerable adults; making conforming amendments; amending Rules 12(h) and 45(a), Alaska Rules of Criminal Procedure, Rule 77, Alaska Rules of Civil Procedure, Rule 17, Alaska Rules of Probate Procedure, and Rule 9, Alaska Rules of Administration; and providing for an effective date."

Section 1 inserts "vulnerable adult" in place of "elder or disabled adult" in AS 08.29.200(b) concerning reporting of harm required by licensed professional counselors. This change will make the statute consistent with similar definitional changes made by the bill. The term "vulnerable adult" more accurately defines and describes the citizens subject to protection.

Section 2 inserts "vulnerable adult" in place of "elder or disabled adult" in AS 08.63.200(b) concerning reporting of harm required by marriage and family therapists. This change will make the statute consistent with similar definitional changes made by the bill. The term "vulnerable adult" more accurately defines and describes the citizens subject to protection.

Section 3 makes the knowing violation or attempted violation of a financial protective order (introduced in section 10 of this legislation to protect vulnerable adults and elders) a crime.

Section 4 amends AS 11.56.740(c), which defines "protective orders," by including financial protective orders issued under AS 13.26.207-13.26.209 to that definition. This change brings financial protective orders within the class of protective orders subject to sanction under the criminal code.

Section 5

amends AS 12.55.155(c) by adding a new paragraph (35) which makes the fact that a defendant knowingly directed criminal conduct at a person 65 years of age or older an aggravating factor at sentencing.

Section 6

amends AS 13.26.165(1) by substantively adding several new paragraphs and changes or additions in definitions to enhance protection of vulnerable persons in conservatorship proceedings as follows:

- amends AS 13.26.165 by deleting the words “make another” and inserting the words “issue another” regarding the authority of the court to issue a protection order for a protected person in conservatorship proceedings;
- creates new paragraph (A) to authorize the court to issue orders protecting a minor with money or property that needs protection or who otherwise needs protection and substitutes the word “that” for the word “which” in the authorizing language;
- creates a new paragraph (B) specifying that the authority of the court to issue protective orders extends to minors with business affairs that may be in jeopardy and substitutes the word “that” for the word “which” in the authorizing language;
- creates a new paragraph (C) ensuring that protection extends to any need to protect a minor’s funds or obtain funds for a minor and deletes the unnecessary use of the word “that” twice in the authorizing language;
- amends AS 13.26.165(2)(A) by adding the word “fraud” to the illustrative list of reasons why a person may be found to be unable to effectively manage their own affairs and therefore may be in need of a conservator.

Section 7

amends AS 13.16.180(a) by adding “a person’s attorney or other legal representative.” to the list of persons who may petition for a conservatorship and further adds “or caregiver, the Department of Health and Social Services” to that list. This change is necessary to broaden the list of specific persons authorized to petition for a conservatorship in aid of a vulnerable adult and specifically to ensure that the Department of Health and Social Services is authorized to do so when necessary.

Section 8

amends AS 13.26.180 by adding a new sub-section (c) to specifically authorize petitioners to request orders for temporary conservatorships upon showing that the person's money or property will be wasted or dissipated during the pendency of normal conservatorship proceedings. This change is necessary to ensure that the courts have express statutory authority to entertain and grant temporary conservatorships in urgent cases involving financial exploitation.

Section 9

amends AS 13.26.185 to provide that that section does not apply to a petition or order for an ex parte protective order filed under AS 13.26.207 or a temporary protective order filed under AS 13.26.208

Section 10

adds four new sections:

- New section AS 13.26.206 authorizes temporary conservatorships to provide immediate protection from imminent waste or dissipation of the person's money or property while the normal conservatorship proceedings are underway. The court is required to impose only the least restrictive orders necessary to protect the money or property from waste or dissipation. The temporary conservatorship expires as a matter of law when the full conservatorship is ordered or when the petition for conservatorship is dismissed.
- New section AS 13.26.207 authorizes a person to apply for an ex parte protection order against financial exploitation without the need for a lawyer, very similar to the authority and procedure presently authorized for domestic violence, sexual assault and stalking protection orders. The new section authorizes a third-party to file a petition on behalf of another where, for example, the vulnerable adult is incapacitated and unable to file for her or himself. The new section requires that notice of the proceedings be provided to the vulnerable adult and for service of any order issued to third-parties, such as financial institutions, at the nearest place of business, or by registering the order with the Department of Public Safety. The new section also requires the Alaska Court System to create appropriate forms for use by the public in filing for such orders and exempts such applications from court filing fees.
- New section AS 13.26.208 specifies that a party may apply and the court may convert a protective order to a temporary order effective for up to six months upon proper application, notice and hearing. That section further provides that if the court finds by a preponderance of

the evidence that the respondent has committed fraud against the victim that the court may convert the ex parte protective order to temporary protective order effective for up to six months.

- New section AS 13.26.209 specifies legal authority and procedures for applying to the court to modify an ex parte protective order issued under AS 13.26.207 or a protective order issued under AS 13.26.185 or a temporary protective order issued under AS 13.26.208.

Section 11 adds and defines “fraud” to the list of terms defined in AS 13.26.324. The definition used is taken from that currently in statute at AS 44.21.415.

Section 12 excludes the crime of violating a protective order from the list of crimes subject to warrantless arrest in AS 18.65.530(a).

Section 13 adds financial protective orders to registry of protective orders maintained by Public Safety in AS 18.65.540(a).

Section 14 adds financial protective orders to AS 18.65.540(b), which requires peace officers to take reasonable steps to ensure that a protective order is entered into to the registry within 24 hours after receipt.

Section 15 changes “theft and related offenses” to “offenses against property” in AS 44.21.415(g)(1)(B), which is part of the definition of “fraud” in the statutes governing the Office of Elder Fraud.

Section 16 adds undue influence to the list of reportable harms to a vulnerable adult. Employees of nursing homes, residential care or health care facilities and the staff of educational institutions are added to the list of mandated reporters in AS 47.24.010(a).

Section 17 requires a reporter to include the contact info of the vulnerable adult in AS 47.24.010(b).

Section 18 adds undue influence to the statute making a mandatory reporter who knowingly fails to report guilty of a class B misdemeanor (AS 47.24.010(c)).

- Section 19 adds undue influence to the list of reportable harms and amends AS 47.24.010(d) to permit anyone to make a report of harm, including a mandatory reporter in the reporter's nonoccupational capacity.
- Section 20 add undue influence to the list of harms and amends AS 47.24.010(e) to require a public safety officer to report to APS w/in 24 hours of receiving a report of harm involving imminent risk of serious physical harm.
- Section 21 adds undue influence and abandonment to the list of harms in AS 47.24.010(f), which states that a mandatory reporter's report of harm to the long-term care ombudsman or the department regarding an adult in an out-of-home care facility satisfies that reporter's duty to report under AS 47.24.010(a).
- Section 22 adds two new subsections to AS 47.24.010: first, a mandatory reporter is not relieved of duty to report by reporting to supervisor. Second, if someone makes a reckless false report, that person is liable for actual damages suffered by the subject of the report.
- Section 23 adds undue influence to AS 47.24.013(a), which requires the department to transfer a report of harm to the long-term care ombudsman if it involves a vulnerable adult aged 60 or older who has been allegedly harmed by a staff member or volunteer of an out-of-home care facility where the adult resides.
- Section 24 adds undue influence to AS 47.24.013(b), which requires the department to investigate a report of harm involving a vulnerable adult who is younger than 60 years of age when the harm is alleged to have been committed by a staff member or volunteer of an out-of-home facility where the adult resides.
- Section 25 changes the reference to "department" to "office of the department that handles adult protective services" in AS 47.24.013(c), which states what the long-term care ombudsman and the department must do when they receive a report of harm.
- Section 26 adds undue influence to AS 47.24.013(d), which requires the long-term care ombudsman to give a report of harm and the result of the ombudsman's investigation to the department's central information and referral service when the report of harm involves an adult who resides in an out-of-home care facility.

- Section 27 adds undue influence to the statute that requires the department to start an investigation once it receives a report of harm that is not transferred from the long-term care ombudsman's office (AS 47.13.015(a)).
- Section 28 adds undue influence to AS 47.24.015(c), which describes situations when the department must or must not terminate an investigation following a report of harm. Section 27 also changes the cross reference for the definition of fraud from AS 44.21.415 to AS 13.26.324.
- Section 29 adds six new subsections to AS 47.24.015, which governs APS's investigatory power:
- (h) gives the department subpoena power to support its investigative authority, including the power to conduct interviews and examine any health care or financial records related to a vulnerable adult.
 - (i) prohibits individuals from interfering with APS's investigation.
 - (j) gives APS access to relevant records maintained by another division in DHSS.
 - (k) allows APS to audio- or videotape an interview with a vulnerable adult if the adult has capacity and consents.
 - (l) requires APS to train investigators of reports of harm.
 - (m) defines "financial records."
- Section 30 updates AS 47.24.016(a) regarding surrogate decision makers by adding new fiduciaries who may serve in that capacity – specifically, conservator, trustee, and surrogate for health care decisions under AS 13.52. It also deletes the requirement that in order for a spouse to be a surrogate decision maker, the spouse and vulnerable adult may not be living in separate domiciles. Section 29 also adds legal separation as a factor that would prohibit a spouse from being a surrogate decision maker for that spouse's vulnerable adult spouse.
- Section 31 adds undue influence to the statute that sets out the exceptions to when a person listed in AS 47.24.016(a) may serve as a surrogate decision maker (AS 47.24.016(b)).

- Section 32 adds a surrogate decision maker serving under AS 13.52.030 to AS 47.24.016(d), which describes when the department must cease providing protective service based on the consent of the surrogate decision maker.
- Section 33 adds conservator, trustee, and surrogate for health care decisions under AS 13.52.030 as individuals who may consent to the provision of protective services to a vulnerable adult and adds undue influence to the list of potential reports of harm.
- Section 34 allows the department under AS 47.24.019(c) to petition the superior court for an injunction restraining any person from interfering with the provision of protective services to a vulnerable adult.
- Section 35 amends AS 47.24.050 to add “undue influence” to the types of harm contained in confidential reports. Trustee and conservator are added to the list of individuals who may consent to release a confidential report and they are also added to the list of individuals who may not receive copies of a report if they are the alleged perpetrator. “Undue influence” is also added to the list of harms that are contained in reports of verified harms that occur in an institution that cares for vulnerable adults or that were the result of actions or inactions of a public home care provider.
- Section 36 clarifies that a person is not considered to be unduly influenced if they choose to consent to treatment by spiritual means only under AS 47.24.130.
- Section 37 redefines “abuse” in AS 47.24.900(2) to include the knowing infliction of emotional distress or fear, including coercion and intimidation.
- Section 38 redefines “caregiver” in AS 47.24.900(3) to include someone who provides some or all responsibility for the care of a vulnerable adult either voluntarily, by contract, by court order or as an employee of a business that provides care in an adult’s home.
- Section 39 defines “informed decision” as a decision made free from undue influence within the definition of “decision making capacity” in AS 47.24.900(4).

- Section 40 redefines “exploitation” in AS 47.24.900(7) to include acts by a person in a position of trust with a vulnerable adult who obtains profit or advantage through undue influence, deception, fraud, intimidation or breach of fiduciary duty.
- Section 41 redefines neglect in AS 47.24.900(9) to include the knowing or reckless failure by a caregiver to provide access to services or to carry out a treatment plan necessary to the health of a recipient. “Essential care or services include food, clothing, shelter, medical care and supervision.
- Section 42 expands the definition of protective services in AS 47.24.900(11) to include services that obtain basic health care needs, financial assistance services, and protection from abuse, obtaining basic food, shelter and clothing, among others. Undue influence is added to the list of types of harm that may result in the provision of these services.
- Section 43 amends the definition of “unable to consent” in AS 47.24.900(15) by adding the concept of “undue influence” and that the inability to consent includes a person’s inability to perceive a loss of income or assets, eviction, and physical or mental harm.
- Section 44 amends the definition of a vulnerable adult in AS 47.24.900(16) by more clearly defining what constitutes a physical or mental impairment.
- Section 45 amends AS 47.24.900 by adding new paragraphs which contain definitions for the following terms:
- Deception
 - Fiduciary duty
 - Financial institution
 - Person who stands in a position of trust or confidence
 - Undue influence
- Section 46 amends the uncodified law, Rule 12(h), Alaska Rules of Criminal Procedure. The court, when considering a motion for continuance of a

trial date, shall consider the victim's circumstances and the effect of a continuance on the victim, particularly a victim of advanced age or extreme youth. The court's findings will be placed on the record.

Section 47

amends the uncodified law, Rule 45(a), Alaska Rules of Criminal Procedure. The courts, when considering a trial date, shall consider the victim's circumstances, particularly a victim of advanced age or extreme youth, in setting the trial date.

Section 48

amends the uncodified law by making five indirect court rule amendments enacted by Section 10 of the bill:

- amending Rule 17, Alaska Rules of Probate Procedure, to allow ex parte orders to be issued to protect persons subject to protective proceedings from financial exploitation.
- amending Rule 9, Alaska Rules of Administration, by not requiring filing fees for an ex parte protective order.
- amending Rule 77, Alaska Rules of Civil Procedure, by requiring a hearing within 72 hours of the filing of a petition for the appointment of a temporary conservator.
- amending Rule 77, Alaska Rules of Civil Procedure, by providing for a hearing on an application for a temporary protective order on 10 days notice.
- amending Rule 77, Alaska Rules of Civil Procedure, by providing for a hearing on a request for modification of a protective order on 20 days notice and for modification of an ex parte protective order on 3 days notice.

Section 49

amends the uncodified law by indicating that Sections 3-5, 46, and 47 of the bill apply to offenses committed on or after the effective date.

Section 50

amends the uncodified law by adding revisor's instructions to change the catch lines of AS 47.24.010 and AS 47.24.013.

Section 51 amends the uncodified law by adding a new section which indicates that the enactment of portions of Section 10 of the bill, having to do with ex parte orders, are contingent upon a two-thirds vote of each house on Section 48 of the bill, referencing court rule amendments.

Section 52 provides for an effective date of September 1, 2012 for sections 16 and 20 of the bill, the two sections that address mandatory reporters and the obligation of peace officers to report to the department within 24 hours.

Section 53 provides for an effective date of July1, 2012.

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Governor Sean Parnell
STATE OF ALASKA

February 8, 2011

The Honorable Gary Stevens
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Stevens,

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill relating to the protection of property of persons under disability; relating to the crime of violating a protective order concerning certain vulnerable persons; relating to aggravating factors at sentencing for offenses concerning a victim 65 years or older; and relating to the protection of vulnerable adults.

Financial exploitation of the elderly and other vulnerable adults is a growing problem. Victims of financial exploitation may not need a guardian, but may need assistance stopping immediate misuse or theft of their money. These victims find it difficult to access the courts and obtain prompt and inexpensive relief. With a temporary conservator, the vulnerable victim retains autonomy while receiving assistance. The ex parte relief from fraud procedure is similar to the existing domestic violence protection law, providing a means for vulnerable adults to independently obtain straightforward, expedited relief from immediate financial exploitation.

I am committed to protecting our seniors and other vulnerable adults. This legislation strengthens the laws against financial exploitation and enhances the ability to obtain emergency protection orders for seniors. It improves the ability of those investigating reports of harm to obtain vital information in a timely manner, and will lead to better services and safety for vulnerable adults who are abused, neglected, or exploited and unable to protect their own interests.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in cursive script that reads "Sean Parnell".

Sean Parnell
Governor

Enclosure

Prepared by the Department of Health & Social Services

Talking Points for SB 86 – Protection of Vulnerable Adults
Rules by Request of the Governor

- Financial exploitation of the elderly and other vulnerable adults is a growing problem.
- Victims of financial exploitation may not need a guardian, but may need assistance stopping immediate misuse or theft of their money.
- These victims find it difficult to access the courts and obtain prompt and inexpensive relief.
- With a temporary conservator, the vulnerable victim retains autonomy while receiving assistance.
- The ex parte relief from fraud procedure is similar to the existing domestic violence protection law, providing a means for vulnerable adults to independently obtain straightforward, expedited relief from immediate financial exploitation.
- SB 86 strengthens the laws against financial exploitation and enhances the ability to obtain emergency protection orders for seniors.
- The bill also improves the ability of those investigating reports of harm to obtain vital information in a timely manner, and will lead to better services and safety for vulnerable adults who are abused, neglected, or exploited and unable to protect their own interests.

Prepared by the Department of Health and Social Services 3-1-2012

DIFFERENCES BETWEEN CSHB 150 (JUD) AND CSSB 86 (JUD) (efd) (am)

- 1) CSHB 150 sec. 3(a)(3), p. 2, line 18: Makes AS 11.56.740(a) applicable to protective orders issued under AS 13.26.180, which applies to already-existing conservatorship statutes, in addition to the new ex parte and six-month financial protective orders (FPO). CSSB 86 sec. 3(a)(3) only makes AS 11.56.740(a) applicable to the new ex parte and six-month (temporary) FPOs.
- 2) CSHB 150 sec. 4, p. 2, line 23: As above, this section makes the definition of “protective order” in AS 11.56.740(c) apply to protective orders issued under AS 13.26.180 as well as the new ex parte and six-month FPOs. CSSB 86 sec. 4(c) only makes AS 11.56.740(c) applicable to the new FPOs.
- 3) CSSB 86 sec. 9, p. 4, lines 6-9 (AS 13.26.185(c)): This section states that the general notice provision in the existing conservatorship statutes does not apply to the new FPOs. CSHB 150 does not include this section.
- 4) CSSB 86 sec. 10, p. 4, lines 22-23: This requires the court to appoint an attorney for a respondent at a temporary conservatorship hearing. This language does not exist in CSHB 150 sec. 9, p. 4.
- 5) CSSB 86 sec. 10, p. 5-7/CSHB 150 sec. 9 p. 4-6: The Senate CS breaks the CSHB 150 ex parte and six-month FPO section (AS 13.26.209) out into three separate sections: AS 13.26.207 – 13.26.209, dealing with ex parte (20-day) protective orders, temporary protective orders (six month) and conversions, and general provisions, respectively. The House CS still has all of those provisions in one section – AS 13.26.209.
- 6) CSSB 86 sec. 10, p. 5, lines 25-28 (AS 13.26.207(c)): this limits the expiration of an ex parte FPO to 20 days unless dissolved earlier by a court at the request of the petitioner or respondent and after notice and hearing (if a hearing is requested), or on the earlier appointment of a temp. or permanent conservator. CSHB 150 sec. 9, p. 5, lines 22-25 includes the option of expiring at the end of a six-month extension, but does not include the option of dissolution by the court. This difference is explained by the Senate CS’s separation of the FPO types into different section.
- 7) CSSB 86 sec. 10, p. 5 (AS 13.26.208): The new separate section for six-month FPOs changed the name of the FPO to a “temporary protective order.” Also, because it is a separate order from the 20-day ex parte FPO, the transition from ex parte to temporary is now referred to as a “conversion” in the Senate CS as opposed to an “extension.” CSHB 150 sec. 9, p. 5-6 (AS

13.26.209(d)) does not give the six-month FPO a separate name, and refers to the transition as an “extension” of the ex parte FPO.

- 8) CSSB 86 sec. 10, p. 6, line 8 – p. 7, line 24 (AS 13.26.209): This makes the general provisions applicable to ex parte and temporary FPOs a new separate section. A subpart of the new AS 13.26.209 are new provisions on modifying ex parte and temporary FPOs (subsections (a) – (c)). Subsection (a) states that a petitioner, respondent or protected person may request a modification of an ex parte or temporary FPO. If it’s an ex parte FPO, the court must schedule the hearing within three days. If it’s a temporary FPO, the court must schedule the hearing within 20 days of the request unless the court finds that the request is meritless on its face. Subsection (b) gives the court the authority to give the petitioner time to respond to the respondent if the respondent raises an issue not raised by the petitioner. Subsection (c) requires the court to make reasonable efforts to ensure that a modified protective order is understood by the petitioner, respondent and protected person who are present at the hearing.

Subsection (f) removes the option of achieving notice on a third party by registering an FPO with the Dept. of Public Safety.

CSHB 150 sec. 9, p. 4, line 28 – p. 6, line 27 (AS 13.26.209) includes the same general provisions except the modification language. It also includes language at p. 6, lines 12-15 that makes registering a protective order with the Dept. of Public Safety a way to achieve actual or legal notice on a third party.

- 9) CSSB 86 sec. 13, p. 8, lines 15-16: This includes ex parte and temporary FPOs as protective orders that the Dept. of Public Safety must put in its central registry of protective orders under AS 18.65.540(a). CSHB 150 sec. 12, p. 7, line 18 includes existing conservatorship protective orders under AS 13.26.180 with the new FPOs as orders that the Dept. of Public Safety must put in its central registry.
- 10) CSSB 86 sec. 14, p. 8, lines 22 – 23: This includes ex parte and temporary FPOs in statute requiring peace officers to ensure that protective orders are entered into the Public Safety registry within 24 hours after receiving them (AS 18.65.540(b)). CSHB 150 sec. 13, p. 7, line 25 includes existing conservatorship protective orders under AS 13.26.180 with the new FPOs as orders a peace officer must register within 24 hours of receiving them.
- 11) CSSB 86 sec. 20, p. 11, lines 10-11 (AS 47.24.010(e)): This section requires a peace officer to notify APS within 24 hours of receiving a report of harm. CSHB 150 sec. 19, p. 10, lines 13-14 add the requirement that the peace officer make that report at the earliest opportunity within that same 24-hour window.

- 12) CSSB 86 sec. 42, p. 19, lines 17-18 (AS 47.24.900(11)(E)): In the definition of “protective services” under the APS statutes, petitioning for any protective order under the conservatorship statutes is permitted (AS 13.26.165 – 13.26.209). CSHB 150 sec. 41, p. 18, line 21 only includes petitioning for a protective order under AS 13.26.209, which involves the ex parte protective order and its six-month extension.

- 13) CSSB 86 sec. 48, p. 22, line 10 – p. 23, line 1: The indirect court rule amendments have been changed to conform to the now-separate statutory sections on ex parte and temporary protective orders (AS 13.26.207 – 13.26.209). CSHB 150 sec. 47, p. 21, lines 13-25: reflect the indirect court rule amendments needed for just one section – AS 13.26.209 – since both FPO types are included in that one section.

- 14) CSSB 86 sec. 51, p. 23, line 16 – p. 24, line 1: The conditional effect provisions are broken out by section and subsection to conform to the now-separate statutory sections on ex parte and temporary protective orders (AS 13.26.207 – 13.26.209). CSHB 150 sec. 50, p. 22, lines 11-16 reflect the inclusion of all FPO provisions in one section (AS 13.26.209).

- 15) CSSB86 (JUD) (efd am), sec. 52: provides that Sections 16 and 20 of the Act take effect September 1, 2012; CSHB 150 still uses a September 1, 2011 effective date;

- 16) CSSB86(JUD)(efd am), sec. 53: provides that all other sections of the Act take effect July 1, 2012; CSHB 150 still uses a July 1, 2011 effective date.



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February 28, 2012

The Honorable Bill Stoltze, Co-Chair
House Finance Committee
Alaska Capitol, Room 515
Juneau, AK 99801-1182

The Honorable Bill Thomas, Co-Chair
House Finance Committee
Alaska Capitol, Room 505
Juneau, AK 99801-1182

RE: SB 86 (Governor Parnell)--Support

Dear Co-Chairs Stoltze and Thomas:

On behalf of the members of AARP in Alaska, we encourage you and your colleagues on the House Finance Committee to support SB 86, sponsored by the Senate Rules Committee at the request of Governor Parnell.

The aging of Alaska's population, particularly the growth in the numbers of our citizens over age 75, presents unique challenges for our criminal justice system.

The National Center on Elder Abuse indicates that 23.4% of substantiated reports of mistreatment of older adults were financial exploitation, another 17% was physical abuse, and 32.5% was caregiver neglect. Emotional/verbal/psychological abuse accounted for 23.6% of the substantiated reports and sexual abuse/other accounted for 3.6%.

Elder abuse occurs without reference to race, religion, income, education, place of residence, or living arrangement. It is real and, unfortunately, all too common.

Detecting and preventing elder abuse involves increasing awareness among the general public and professionals.

Although SB 86 addresses the problems of abuse and exploitation on minors, we will focus on the benefits that we perceive will help older Alaskans.

The bill identifies "mandated reporters." This is very significant and will undoubtedly stop people from "looking the other way" and will also protect them from reporting incidents that might involve supervisory staff over them.

SB 86 also creates vehicles for new emergency procedures to allow courts to immediately protect individuals from financial abuse with temporary conservators and financial protective orders.

Unfortunately there are incidents of trusted advisors like guardians, agents under durable power of attorney, and other fiduciaries who have also committed elder abuse. Adding the concept of "undue influence" should help address this issue.

SB 86 also requires cooperation with Adult Protective Services, DHSS training of investigators, and mandates release of relevant financial and health records necessary for an investigation.

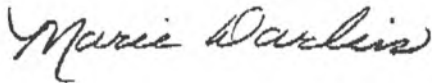
Will SB 86 prevent all elder abuse? No. But it will go a long way in preventing it and punishing those who commit it. It's a strong bill that will help vulnerable older Alaskans, younger Alaskans with disabilities, and minors.

AARP requests an "AYE" vote on SB 86.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,



Marie Darlin, Coordinator
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CC: Vice-Chair Fairclough
Representative Costello
Representative Edgmon
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Representative Neuman
Representative T. Wilson
Representative Doogan
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Representative Guttenberg
Governor Sean Parnell