

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 2933

adopted N/O

CONCEPTUAL AMENDMENT 1

OFFERED IN THE HOUSE
TO: CS HB 395 ()
Version 24-LS1550\F

BY REP. KEVIN MEYER

- 1 Page 1, line 1
- 2 After "An Act"
- 3 Delete "extending"
- 4 Insert "relating to"
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FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 395
(H) Publish Date: 2/8/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
Title An Act Extending the Period of the Fire Season PDU Statewide Fire Suppression Program
Component Fire Suppression Preparedness
Sponsor OLSON, Hawker, Seaton
Requester (H) RES Component No 2705

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	514.5	514.5	514.5	514.5	514.5	514.5
Travel						
Contractual	395.6	395.6	431.5	431.5	431.5	431.5
Supplies	12.0	12.0	12.0	12.0	12.0	12.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	922.1	922.1	958.0	958.0	958.0	958.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	922.1	922.1	958.0	958.0	958.0	958.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	922.1	922.1	958.0	958.0	958.0	958.0

Estimate of any current year (FY2006) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Fires are occurring in greater numbers and with a greater risk to life and property earlier in the year than they have historically. The Tracy Avenue Fire, which started in April 2005 and threatened the community of Homer, was the earliest large, complex fire in the State's history. The Division of Forestry is not currently staffed nor equipped to adequately respond to fires that occur this early. This legislation would change the start of the designated fire season and, if funded, would provide the Division of Forestry with the ability to adequately respond to these early fires threatening communities and the ability to regulate open burning through issuance of burn permits.

Prepared by: Chris Maisch, Director
Division: Forestry
Approved by: Michael Mengo, Commissioner
Agency: Natural Resources

Phone (907) 356-5850
Date/Time 2/3/2006
Date 2/3/2006

FISCAL NOTE #1

STATE OF ALASKA
2006 LEGISLATIVE SESSION

BILL NO. HB 395

ANALYSIS CONTINUATION

This bill provides for a one month earlier fire season. This will require extensions to permanent seasonal fire staff and extensions to helicopter and air tanker contracts.

Personal Services \$514.5

This provides an extension to permanent seasonal firefighters, prevention staff, and fire support staff which allows for fire response and fire prevention during the earlier fire season.

Contractual Services \$395.6

This provides for contract extensions for helicopters and an air tanker to cover the earlier fire season plus additional normal operating costs (utilities, lease space, phones, etc.) associated with a longer fire season. Higher contractual costs starting in FY 2009 are based on expected changes in the renegotiations to the next 5 year air tanker contract.

Supplies \$12.0

Routine operating supplies associated with a longer fire season.

ALASKA STATE LEGISLATURE

REPRESENTATIVE KURT OLSON

- Co-Chair, Community and Regional Affairs
- Member, Resources

Session: January – May
State Capitol
Juneau, AK 99801-1182
Phone: 907-465-2693
Fax: 907-465-3835



Interim: May – December
145 Main Street Loop, Ste 221
Kenai, AK 99611
Phone: 907-283-2690
Fax 907-283-2763

Official Business

SPONSOR STATEMENT

HB 395 FIRE SEASON START DATE

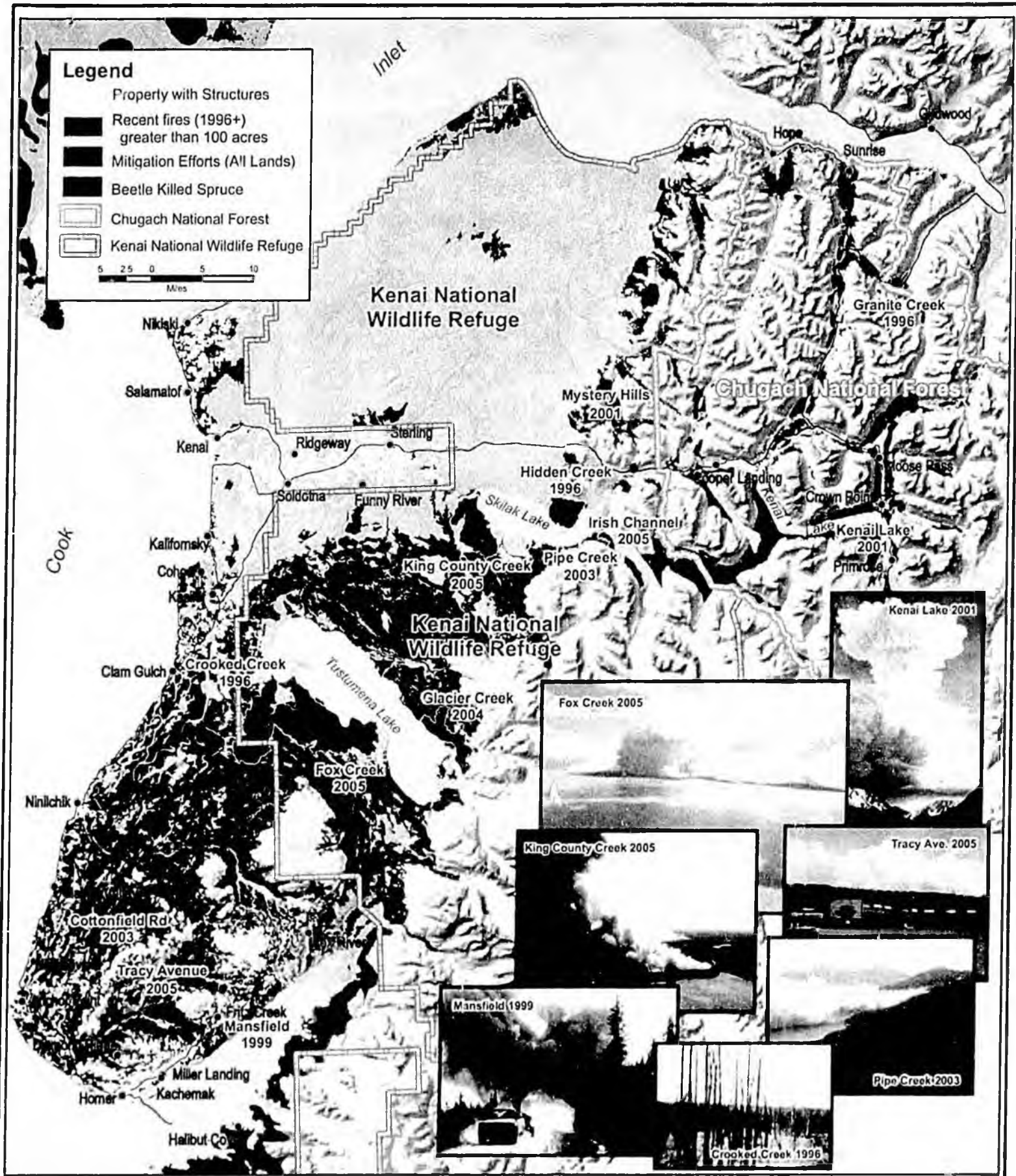
The spruce bark beetle kill on the Kenai Peninsula has created an enormous amount of dry grass and dead trees susceptible to lightning strikes and man made fires and the threat grows greater every year.

For the past several years the climate in our area has been gradually warming earlier in the year leaving wild areas dry and increasing the probability of a major wildfire.

The largest uncontained fire on the Southern Kenai Peninsula ever recorded, the Tracy Avenue fire, started prior to May 1, 2005, threatening residents and property. This fire might have been contained had the equipment and personnel been available the first day.

Moving the fire season start date to April 1 will allow the state to become actively involved in fire prevention and control earlier in the fire season and hopefully stop the progress of a disastrous pre-summer fire.

I respectfully ask for your support of this bill.



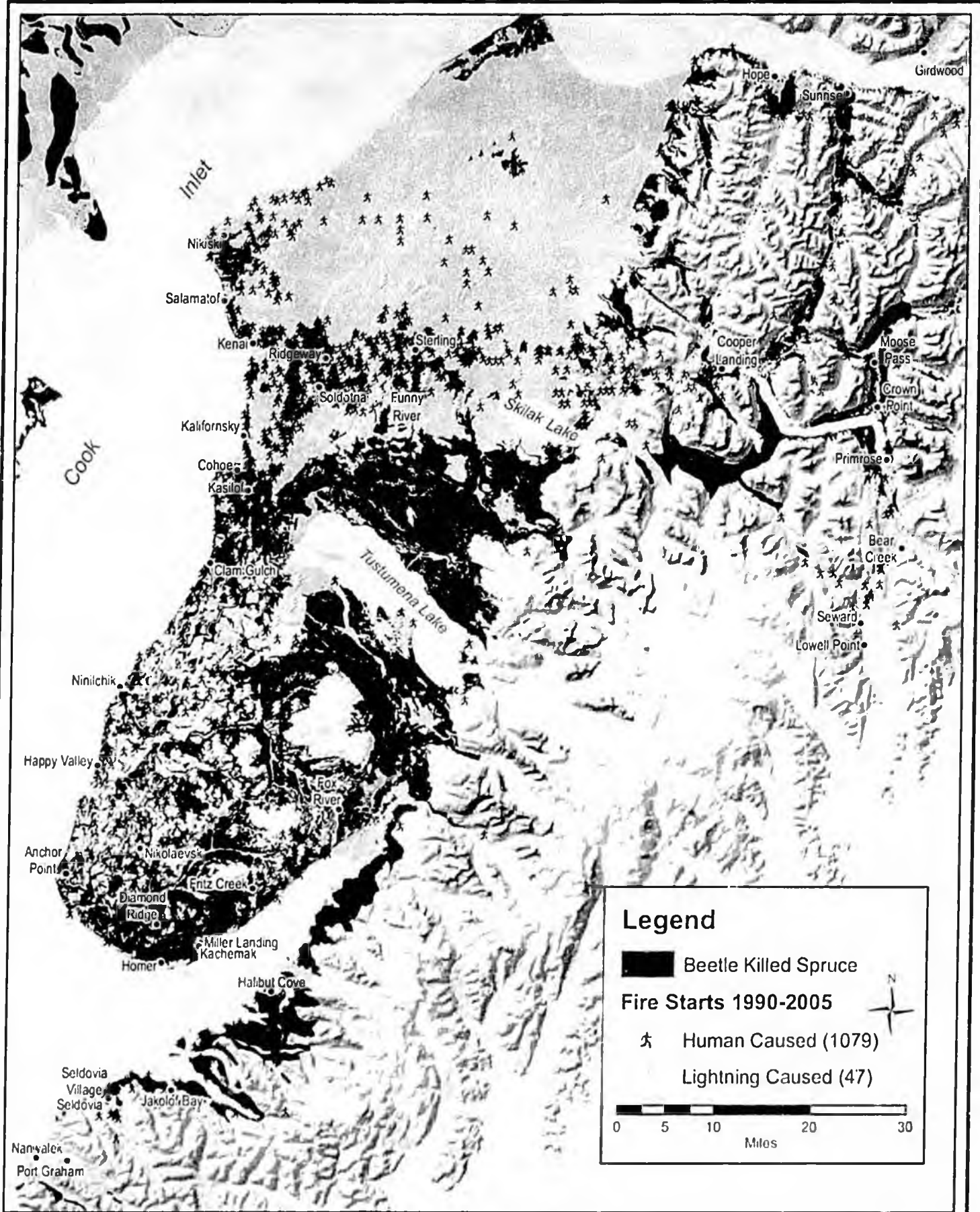
Major Kenai Peninsula Fires 1996+

Total area greater than 77,000 acres

Kenai Peninsula Borough, Alaska
 Prepared by the Kenai Peninsula Borough Fire Department
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 This map is not a warranty, representation, or endorsement of any product or service. The map is provided for informational purposes only and is not intended to be used as a basis for any legal action.

Map of Alaska
 By David A. Day and Mark H. Miller, 1995
 Digitized by Susan May 11/2005





Kenai Peninsula Fire Starts

Kenai Peninsula Borough (KPB) Spruce Bark Beetle Mitigation Program (SBBMP)
 This map is a representation of the data collected by the KPB SBBMP. It is not intended to be used for any other purpose. The KPB SBBMP is a project of the Kenai Peninsula Borough, Alaska Department of Natural Resources.
 This map is not a warranty, representation, or guarantee of any kind. It is provided for informational purposes only. It is not intended to be used for any other purpose.
 Map prepared by: KPB SBBMP, Alaska Department of Natural Resources, 1000 Seward St., Anchorage, AK 99511
 By: [Name] & [Name]



August 1, 2005

Introduced by: Martin
Date: 01/17/06
Action: Adopted
Vote: 8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2006-008**

**A RESOLUTION REQUESTING THE ALASKA STATE LEGISLATURE TO AMEND
ALASKA STATUTE 41.15.050 TO CHANGE THE FIRE SEASON START DATE FROM
MAY 1 TO APRIL 1 OF EACH YEAR**

WHEREAS, the Division of Forestry is the lead agency on the Southern Kenai Peninsula for wildland fire protection; and

WHEREAS, recent climate change on the Kenai Peninsula has resulted in warmer weather starting earlier in the year, which has dried out the wildland fuels earlier in the year, increased the length of the wildland fire threat, and raised the mean summer temperatures; and

WHEREAS, the spruce bark beetle infestation has left the Southern Kenai Peninsula with a continuous fuel bed of dead spruce and dry grass; and

WHEREAS, the population growth into the Southern Kenai Peninsula wildland urban interface is rapidly increasing; and

WHEREAS, lightning fires were a common occurrence on the Southern Kenai Peninsula in 2005; and

WHEREAS, the largest uncontained wildfire recorded on the Southern Kenai Peninsula, the Tracy Avenue fire, started before May 1, 2005, and threatened hundreds of residents; and

WHEREAS, the Tracy Avenue Fire could possibly have been contained the first day had equipment been available in the state; and

WHEREAS, the Tracey Avenue fire came at a time of relatively low and benign winds; and

WHEREAS, in the spring of 2005, fires were also burning in other areas of the state; and

WHEREAS, moving the fire season start date to April 1 will improve the state's ability to be prepared for fires earlier each year, potentially saving the state millions of dollars in firefighting costs;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. To reflect these changes in natural dynamics the Kenai Peninsula Borough Assembly requests the Alaska State Legislature to amend AS 41.15.050 to make the fire season effective April 1, rather than May 1, of each year, as well as the fire training season effective the same date.

SECTION 2. That copies of this resolution be forwarded to Michael Menge, Commissioner of Department of Natural Resources; Senators Albert Kookesh, Con Bunde, Tom Wagoner, and Gary Stevens; Representatives Mike Hawker, Woodie Salmon, Kurt Olson, Mike Chenault, and Paul Seaton.

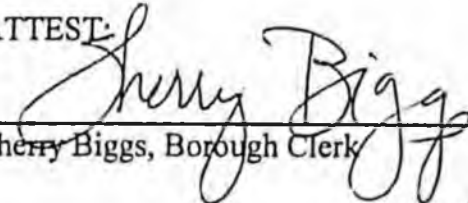
SECTION 3. That this resolution takes effect immediately upon its adoption

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 17TH DAY OF JANUARY, 2006.



Ron Long, Assembly President

ATTEST:



Sherry Biggs, Borough Clerk



HB

399

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 399
 (H) Publish Date: 2/27/06
 Dept. Affected: Health & Social Services

Revision Date/Time: (Note if correction):

Title ESTABLISHING THE OFFICE OF ELDER
FRAUD AND ASSISTANCE

RDU Senior and Disabilities Svcs

Component Senior/Disabilities Svcs Admin

Sponsor CHENAULT

Requester HOUSE (STA)

Component No. 2663

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (0)						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

HB399 will not impact (operational) expenses related to the Adult Protective Services Unit within the Division of Senior and Disability Services. The functional responsibility and authority proposed by HB 399 will be vested with The Office of Public Advocacy within the Department of Administration. DSDS is coordinating with OPA and other extensions of State Government that manage or respond to reports of elder abuse/fraud as appropriate to present an action model should the tenants of HB399 be passed as legislation to ensure all concerned entities operate accordingly within the bill provisions in a responsive manner.

Prepared by: Rod Moline, Director Phone 465-1605
 Division Senior and Disabilities Services Date/Time 02/09/2006
 Approved by: Karleen Jackson, Commissioner Date 02/09/2006
 Agency Department of Health and Social Services

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill version: HB399-DPS-AST-3-6-06
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
Title: "An Act establishing the office of elder fraud and assistance..." RDU: Alaska State Troopers
Sponsor: Representative Chenault Component: AST Detachments
Requester: House Finance Committee Component No.: 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

As written, this legislation will not have a fiscal impact on the Department of Public Safety.

Prepared by: Special Assistant Cliff Stone Phone 907-465-2649
Division: Office of the Commissioner Date/Time 3/6/06 1:39 PM
Approved by: Commissioner William Tandeske Date 3/6/2006
Agency: Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB399-LAW-C&FB-3-3-0
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title "An Act establishing the office of elder fraud and RDU Civil
assistance; and relating to fraud involving older Alaskans." Component Commercial and Fair Business
Sponsor Representative Chenault
Requester House Finance Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill adds the duty to investigate complaints involving fraud committed against Alaska's senior citizens to the Office of Public Advocacy's list of responsibilities in AS 44.21.410(a).

Passage of this legislation will not have fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhetea, Director Phone 465-3673
Division: Administrative Services Division Date/Time 3/6/06 8:22 AM
Approved by: Kathryn Daughhetea for David Marquez, Attorney General Date 3/6/2006
Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSF B 399 (FIN)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title An Act Relating to the Office of Elder Fraud... RDU Legal and Advocacy Services
Component Office of Public Advocacy

Sponsor Chenault
Requester Chenault Component No. 43

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	161.0					
Travel	10.0					
Contractual						
Supplies	8.0					
Equipment	10.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	189.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	189.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	189.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 100.0
Check this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would create the Office of Elder Fraud and Assistance within the Office of Public Advocacy. It would empower OPA to investigate complaints involving fraud committed against older residents of the State of Alaska who are 60 years of age and older.

This fiscal note is however smaller than that submitted by the Department of Administration in that it authorizes one Attorney III, a part time investigator and a part time paralegal. No national standards exist but elder fraud is becoming the number two crime against the elderly. To this date no known cases have been prosecuted in the State of Alaska.

Prepared by: Rep. Chenault

Phone 465-3779

Date 4/19/2006 2:15 p.m.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CS HB 399 (FIN)
() Publish Date: _____

Revision Date/Time (Note if correction): 3/6/06 / 3:10 p.m. Dept. Affected: Administration
Title: An act establishing the office of elder fraud and assistance, and relating to fraud... RDU: Legal and Advocacy Services
Sponsor: Representative Chenault Component: Office of Public Advocacy
Requester: (H) Finance Component No.: 43

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	450.1	450.1	450.1	450.1	450.1	450.1
Travel	15.0	15.0	15.0	15.0	15.0	15.0
Contractual	132.0	132.0	132.0	132.0	132.0	132.0
Supplies	8.0	8.0	8.0	8.0	8.0	8.0
Equipment	33.5	4.0	4.0	4.0	4.0	4.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	638.6	609.1	609.1	609.1	609.1	609.1

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	638.6	609.1	609.1	609.1	609.1	609.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	638.6	609.1	609.1	609.1	609.1	609.1

Estimate of any current year (FY2006) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	5	5	5	5	5	5
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would create the Office of Elder Fraud and Assistance within the Office of Public Advocacy. It would empower OPA to investigate complaints involving fraud committed against residents of the state who are sixty (60) years or older, and to bring civil actions on their behalf for injunctive and other relief. Other relief could include actions sounding in tort, unjust enrichment, property, contract, or small claims. (Continued on next page).

Prepared by: Joshua P. Fink, Director
Division: Office of Public Advocacy
Approved by: Michael Tibbles, Deputy Commissioner
Agency: Administration

Phone: (907) 269-3501
Date/Time: 3/6/06 / 3:10 p.m.
Date: 3/6/2006

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

BILL NO. CS HB 399 (FIN)

ANALYSIS CONTINUATION

In fiscal year 2005, Adult Protective Services (APS) received 500 complaints of financial abuse or exploitation (of the more than 1800 total complaints for abuse, neglect, and exploitation). A hand count of financial abuse cases from fiscal year 2004 indicated 397 financial exploitation cases reported. APS indicates that it has seen a "strong upward trend" in the number of financial abuse and fraud cases in the last five years.

Of the 500 cases investigated by APS in 2005, 87% of the cases were verified; approximately 65% of the 500 cases involved individuals over sixty (60). Based on the FY '05 numbers, and not factoring in the increasing trend, OPA would anticipate being referred at least 280 cases in its first year. These cases range from significant exploitation and misappropriate use of property and funds worth considerable sums, to smaller claims involving forged checks and misuse of credit cards. Fraud cases can be very complicated and involve significant civil discovery and auditing of paper trails. If significant sums are at issue, defendants often dig in and can increase costs.

It is difficult to project the costs necessary to establish this office. National organizations and numerous states have been contacted in an attempt to ascertain how many financial exploitation cases can be handled by an attorney in a calendar year. No national standards exist, and from the information OPA has obtained, its best estimation is that a single attorney can handle up to 65 cases a year with 3-5 of those 60 being complicated cases and the remaining less so.

Based upon that estimation, OPA anticipated it would need the following staff:

1 Attorney V	\$116.2
1 Attorney IV	\$109.2
1 Attorney III	\$ 96.7
1 Investigator II	\$ 63.6
1 Paralegal	\$ 59.4
	\$450.10
Leasing Costs	\$ 52.0
(General Services Est.)	

adopted 3/7/07 ⁶ am

24-LS1517F
Mischel
3/6/06

CS FOR HOUSE BILL NO. 399()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES CHENAULT, Lynn, Dahlstrom, Thomas, Croft, Ramras, Moses, Holm, Meyer, McGuire, Salmon, Guttenberg, Wilson, Keritula, Elkins, Foster, Kapsner, LeDoux

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the office of elder fraud and assistance; and relating to fraud
2 involving older Alaskans."

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

4 * Section 1. AS 44.21.410(a) is amended to read:

5 (a) The office of public advocacy shall

6 (1) perform the duties of the public guardian under AS 13.26.360 -
7 13.26.410;

8 (2) provide visitors and experts in guardianship proceedings under
9 AS 13.26.131;

10 (3) provide guardian ad litem services to children in child protection
11 actions under AS 47.17.030(e) and to wards and respondents in guardianship
12 proceedings who will suffer financial hardship or become dependent upon a
13 government agency or a private person or agency if the services are not provided at
14 state expense under AS 13.26.025;

1 (4) provide legal representation in cases involving judicial bypass
2 procedures for minors seeking abortions under AS 18.16.030, in guardianship
3 proceedings to respondents who are financially unable to employ attorneys under
4 AS 13.26.106(b), to indigent parties in cases involving child custody in which the
5 opposing party is represented by counsel provided by a public agency, to indigent
6 parents or guardians of a minor respondent in a commitment proceeding concerning
7 the minor under AS 47.30.775;

8 (5) provide legal representation and guardian ad litem services under
9 AS 25.24.310; in cases arising under AS 47.15 (Uniform Interstate Compact on
10 Juveniles); in cases involving petitions to adopt a minor under AS 25.23.125(b) or
11 petitions for the termination of parental rights on grounds set out in
12 AS 25.23.180(c)(3); in cases involving petitions to remove the disabilities of a minor
13 under AS 09.55.590; in children's proceedings under AS 47.10.050(a) or under
14 AS 47.12.090; in cases involving appointments under AS 18.66.100(a) in petitions for
15 protective orders on behalf of a minor; and in cases involving indigent persons who
16 are entitled to representation under AS 18.85.100 and who cannot be represented by
17 the public defender agency because of a conflict of interests;

18 (6) develop and coordinate a program to recruit, select, train, assign,
19 and supervise volunteer guardians ad litem from local communities to aid in delivering
20 services in cases in which the office of public advocacy is appointed as guardian ad
21 litem;

22 (7) provide guardian ad litem services in proceedings under
23 AS 12.45.046 or AS 18.15.355 - 18.15.395;

24 (8) establish a fee schedule and collect fees for services provided by
25 the office, except as provided in AS 18.85.120 or when imposition or collection of a
26 fee is not in the public interest as defined under regulations adopted by the
27 commissioner of administration;

28 (9) provide visitors and guardians ad litem in proceedings under
29 AS 47.30.839;

30 (10) provide legal representation to an indigent parent of a child with a
31 disability; in this paragraph, "child with a disability" has the meaning given in

1 AS 14.30.350;

2 (11) investigate complaints and bring civil actions under
3 AS 44.21.415(a) involving fraud committed against residents of the state who are
4 60 years of age or older; in this paragraph, "fraud" has the meaning given in
5 AS 44.21.415.

6 * Sec. 2. AS 44.21 is amended by adding a new section to read:

7 **Sec. 44.21.415. Office of elder fraud and assistance.** (a) The office of elder
8 fraud and assistance is established in the office of public advocacy to investigate
9 complaints involving fraud committed against older Alaskans who are not otherwise
10 able to bring a complaint without assistance, as defined in regulation, and to provide
11 assistance to older Alaskans who are victims of fraud. The office shall work with
12 local, state, and national law enforcement and social service agencies through
13 cooperative agreements and may bring civil enforcement actions for injunctive and
14 other relief for fraud committed against older Alaskans.

15 (b) In conducting an investigation under this section, the office of elder fraud
16 and assistance may issue subpoenas, conduct interviews, and examine the business
17 records, advances, transactions, and relevant records associated with the alleged fraud
18 committed against an older Alaskan. The office may enter into contracts with
19 attorneys and seek a court order to enforce a subpoena.

20 (c) In addition to the functions described under (a) and (b) of this section, the
21 office of elder fraud and assistance shall provide information, referrals, and other
22 assistance to older Alaskans who are victims of fraud and make recommendations to
23 the commissioner for regulations on eligibility for assistance needed to implement this
24 section.

25 (d) A cooperative agreement under (a) of this section must include a
26 description of office operations and investigation protocols.

27 (e) Subject to the discretion of the court and taking into consideration the
28 financial condition of the parties to a civil suit brought under this section, the office of
29 public advocacy may seek recovery of all or part of litigation costs and fees, including
30 costs incurred during the investigation of the case when the office of public advocacy
31 is found to be a prevailing party after trial or settlement negotiation.

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(f) In this section,

(1) "fraud" means

(A) robbery, extortion, and coercion under AS 11.41.500 - 11.41.530;

(B) theft and related offenses under AS 11.46.100 - 11.46.740;

or

(C) exploitation of another person or another person's resources for personal profit or advantage with no significant benefit accruing to the person who is exploited;

(2) "older Alaskan" means a person residing in the state who is 60 years of age or older.

* Sec. 3. AS 47.24.015(c) is amended to read:

(c) The department, or its designee, shall immediately terminate an investigation under this section upon the request of the vulnerable adult who is the subject of the report made under AS 47.24.010. However, the department or its designee may not terminate the investigation if the investigation to that point has resulted in probable cause to believe that the vulnerable adult is in need of protective services and the request is made personally by the vulnerable adult and the vulnerable adult is not competent to make the request on the adult's own behalf, or the request is made by the vulnerable adult's guardian, attorney-in-fact, or surrogate decision maker and that person is the alleged perpetrator of the abandonment, exploitation, abuse, or neglect of the vulnerable adult and is being investigated under this chapter. If the department has probable cause to believe that the vulnerable adult is in need of protective services,

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

[OR]

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

(3) in cases involving fraud, the department or its designee may refer the report made to the department under AS 47.24.010 to the office of public advocacy for investigation; in this paragraph, "fraud" has the meaning

I

given in AS 44.21.415.

CONCEPTUAL AMENDMENT 1

OFFERED IN THE HOUSE

BY REPRESENTATIVE MEYER

TO: CS HB 399 ()

Version 24-LS1517 *QF*

1 Page 4, lines ~~4~~ 5-6

2 Delete all material

3 Insert

4 (B) theft and related offenses under AS 11.46.100-11.46.210, AS 11.46.285,
5 AS 11.46.290, AS 11.46.300-11.46.310, AS 11.46.500-11.46.510, AS 11.46.540, AS
6 11.46.565-11.46.570, AS 11.46.600, AS 11.46.620, AS 11.46.720, and AS
7 11.46.740; or

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CS FOR HOUSE BILL NO. 399()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES CHENAULT, Lynn, Dahlstrom, Thomas, Croft, Ramras, Moses, Holm, Meyer, McGuire, Salmon, Guttenberg, Wilson, Kerttula, Elkins, Foster, Kapsner, LeDoux

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the office of elder fraud and assistance; and relating to fraud
2 involving older Alaskans."

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

4 * Section 1. AS 44.21.410(a) is amended to read:

5 (a) The office of public advocacy shall

6 (1) perform the duties of the public guardian under AS 13.26.360 -
7 13.26.410;

8 (2) provide visitors and experts in guardianship proceedings under
9 AS 13.26.131;

10 (3) provide guardian ad litem services to children in child protection
11 actions under AS 47.17.030(e) and to wards and respondents in guardianship
12 proceedings who will suffer financial hardship or become dependent upon a
13 government agency or a private person or agency if the services are not provided at
14 state expense under AS 13.26.025;

1 (4) provide legal representation in cases involving judicial bypass
2 procedures for minors seeking abortions under AS 18.16.030, in guardianship
3 proceedings to respondents who are financially unable to employ attorneys under
4 AS 13.26.106(b), to indigent parties in cases involving child custody in which the
5 opposing party is represented by counsel provided by a public agency, to indigent
6 parents or guardians of a minor respondent in a commitment proceeding concerning
7 the minor under AS 47.30.775;

8 (5) provide legal representation and guardian ad litem services under
9 AS 25.24.310; in cases arising under AS 47.15 (Uniform Interstate Compact on
10 Juveniles); in cases involving petitions to adopt a minor under AS 25.23.125(b) or
11 petitions for the termination of parental rights on grounds set out in
12 AS 25.23.180(c)(3); in cases involving petitions to remove the disabilities of a minor
13 under AS 09.55.590; in children's proceedings under AS 47.10.050(a) or under
14 AS 47.12.090; in cases involving appointments under AS 18.66.100(a) in petitions for
15 protective orders on behalf of a minor; and in cases involving indigent persons who
16 are entitled to representation under AS 18.85.100 and who cannot be represented by
17 the public defender agency because of a conflict of interests;

18 (6) develop and coordinate a program to recruit, select, train, assign,
19 and supervise volunteer guardians ad litem from local communities to aid in delivering
20 services in cases in which the office of public advocacy is appointed as guardian ad
21 litem;

22 (7) provide guardian ad litem services in proceedings under
23 AS 12.45.046 or AS 18.15.355 - 18.15.395;

24 (8) establish a fee schedule and collect fees for services provided by
25 the office, except as provided in AS 18.85.120 or when imposition or collection of a
26 fee is not in the public interest as defined under regulations adopted by the
27 commissioner of administration;

28 (9) provide visitors and guardians ad litem in proceedings under
29 AS 47.30.839;

30 (10) provide legal representation to an indigent parent of a child with a
31 disability; in this paragraph, "child with a disability" has the meaning given in

1 AS 14.30.350;

2 (11) investigate complaints and bring civil actions under
3 AS 44.21.415(a) involving fraud committed against residents of the state who are
4 60 years of age or older; in this paragraph. "fraud" has the meaning given in
5 AS 44.21.415.

6 * Sec. 2. AS 44.21 is amended by adding a new section to read:

7 **Sec. 44.21.415. Office of elder fraud and assistance.** (a) The office of elder
8 fraud and assistance is established in the office of public advocacy to investigate
9 complaints involving fraud committed against older Alaskans who are not otherwise
10 able to bring a complaint without assistance, as defined in regulation, and to provide
11 assistance to older Alaskans who are victims of fraud. The office shall work with
12 local, state, and national law enforcement agencies through cooperative agreements
13 and may bring civil enforcement actions for injunctive and other relief for fraud
14 committed against older Alaskans.

15 (b) In conducting an investigation under this section, the office of elder fraud
16 and assistance may issue subpoenas, conduct interviews, and examine the business
17 records, advances, transactions, and relevant records of a person accused of
18 committing fraud against an older Alaskan. The office may enter into contracts with
19 attorneys and seek a court order compelling the production of relevant evidence.

20 (c) In addition to the functions described under (a) and (b) of this section, the
21 office of elder fraud and assistance shall provide information, referrals, and other
22 assistance to older Alaskans who are victims of fraud and make recommendations to
23 the commissioner for regulations on eligibility for assistance needed to implement this
24 section.

25 (d) A cooperative agreement under (a) of this section must include a
26 description of office operations and investigation protocols.

27 (e) Subject to the discretion of the court and taking into consideration the
28 financial condition of the parties to a civil suit brought under this section, the office of
29 public advocacy may seek recovery of litigation costs and fees, including costs
30 incurred during the investigation of the case.

31 (f) In this section,

1 (1) "fraud" means

2 (A) robbery, extortion, and coercion under AS 11.41.500 -
3 11.41.530;

4 (B) theft and related offenses under AS 11.46.100 - 11.46.740;

5 or

6 (C) exploitation of another person or another person's resources
7 for personal profit or advantage with no significant benefit accruing to the
8 person who is exploited;

9 (2) "older Alaskan" means a person residing in the state who is 60
10 years of age or older.

11 * Sec. 3. AS 47.24.015(c) is amended to read:

12 (c) The department, or its designee, shall immediately terminate an
13 investigation under this section upon the request of the vulnerable adult who is the
14 subject of the report made under AS 47.24.010. However, the department or its
15 designee may not terminate the investigation if the investigation to that point has
16 resulted in probable cause to believe that the vulnerable adult is in need of protective
17 services and the request is made personally by the vulnerable adult and the vulnerable
18 adult is not competent to make the request on the adult's own behalf, or the request is
19 made by the vulnerable adult's guardian, attorney-in-fact, or surrogate decision maker
20 and that person is the alleged perpetrator of the abandonment, exploitation, abuse, or
21 neglect of the vulnerable adult and is being investigated under this chapter. If the
22 department has probable cause to believe that the vulnerable adult is in need of
23 protective services,

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

25 [OR]

26 (2) the department or its designee may refer the report made to the
27 department under AS 47.24.010 to a police officer for criminal investigation; or

28 (3) in cases involving fraud, the department or its designee may
29 refer the report made to the department under AS 47.24.010 to the office of
30 public advocacy for investigation; in this paragraph, "fraud" has the meaning
31 given in AS 44.21.15.

Conceptual
Amendment to CS HB 399 (FIN):

#

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Adopted
4/19
By Rep. Chenuault

Beginning at Page 3, line 27:

(e) Subject to the discretion of the court and regulations promulgated by the office of public advocacy, and taking into consideration the financial condition of the parties to a civil suit brought under this section, the office of public advocacy may seek recovery of partial or full litigation costs and fees from any party, including costs incurred during the investigation of the case, whether the office of public advocacy prevails or settles in the best interest of the client. The office of public advocacy shall enter a fee agreement with any party it represents in accordance with this section, the Alaska Rules of Court, and the Alaska Rules of Professional Responsibility.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 27, 2006

SUBJECT: Elder Fraud and Assistance (Work Order No. 24-LS1517A)

TO: Representative Mike Chenault
Attn: Sue Wright

FROM: Jean M. Mischel
Legislative Counsel



You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Adds to the duties of the office of public advocacy the investigation of complaints involving elder fraud as defined in sec. 2 of the bill.

Section 2. Establishes an office of elder fraud and assistance within the office of public advocacy to investigate complaints involving elder fraud and to provide assistance to older Alaskans. Specifies investigatory and assistance duties of the office and defines terms used.

Section 3. Authorizes the Department of Health and Social Services or its designee to refer cases involving elder fraud to the office established under sec. 2 of the bill.

JMM:ljw
06-039.ljw

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Proposed Federal Law

The Elder Justice Act S.333 and H.R. 2490

Although the number of older Americans is fast growing, the problem of elder abuse, neglect and exploitation has long been invisible and presents among the gravest issues facing millions of American families. The Elder Justice Act would provide federal resources to support State and community efforts on the front lines dedicated to fighting elder abuse with scarce resources and fragmented systems. From a social perspective, elder justice means assuring adequate public-private infrastructure and resources to prevent, detect, treat, understand, intervene in and, where appropriate, prosecute elder abuse, neglect and exploitation. From an individual perspective, elder justice is the right of every older person to be free of abuse, neglect and exploitation. The Elder Justice Act would promote both aspects of elder justice with the following provisions:

- **Elevate elder justice issues to a national attention.** Creation of (1) Offices of Elder Justice at the Departments of Health and Human Services and Justice to serve programmatic, grant-making, policy and technical assistance functions relating to elder justice, (2) a public-private and a Coordinating Council to coordinate activities of all relevant federal agencies, States, communities and private and not-for-profit entities, and (3) a consistent funding stream and national coordination for Adult Protective Services (APS).
- **Improving the quality, quantity and accessibility of information.** An Elder Justice Resource Center and Library will provide information for consumers, advocates, researchers, policy makers, providers, clinicians, regulators and law enforcement and prevent "re-inventing" the wheel. A national data repository also will be developed to increase the knowledge base and collect data about elder abuse, neglect and exploitation.
- **Increasing knowledge and supporting promising projects.** Given the paucity of research, Centers of Excellence will enhance research, clinical practice, training and dissemination of information relating to elder justice. Priorities include a national incidence and prevalence study, jump-starting intervention research, developing community strategies to make elders safer, and enhancing multi-disciplinary efforts.
- **Developing forensic capacity.** There is scant data to assist in the detection of elder abuse, neglect and exploitation. Creating new forensic expertise (similar to that in child abuse) will promote detection and increase expertise. New programs will train health professionals in *both* forensic pathology and geriatrics.
- **Victim assistance, "safe havens," and support for at-risk elders.** Elder victims' needs, which are rarely addressed, will be better met by supporting creation of "safe havens" for seniors who are not safe where they live and development of programs focusing on the special needs of at-risk elders and older victims.
- **Increasing prosecution.** Technical, investigative, coordination, and victim assistance resources will be provided to law enforcement to support elder justice cases. Preventive efforts will be enhanced by supporting community policing efforts to protect at-risk elders.
- **Training.** Training to combat elder abuse, neglect and exploitation is supported both within individual disciplines and in multi-disciplinary (such as public health-social service-law enforcement) settings.
- **Special programs to support underserved populations including rural, minority and Indian seniors.**
- **Model State Laws and Practices.** A study will review state practices and laws relating to elder justice.
- **Increasing Security, Collaboration, and Consumer Information in Long-Term Care.**
 - Improving prompt reporting of crimes in long-term care settings
 - Criminal background checks for long-term care workers
 - Enhancing long-term care staffing
 - Information about long-term care for consumers through a Long-Term Care Consumer Clearinghouse
 - Promoting accountability through a new federal law to prosecute abuse and neglect in nursing homes
- **Evaluations and accountability.** Provisions to determine "what works" and assure funds are properly spent.

Elder Justice Goals

- Elevate national *awareness* about elder abuse, neglect and exploitation
- Increase *knowledge* about elder abuse
- *Train* as many disciplines as possible
- *Prosecute*, where appropriate
- *Combat* elder abuse with new programs in LTC

Increase Knowledge about Elder Abuse, Neglect and Exploitation:

- National Incidence and Prevalence Study
- Resource Center and Library
- National Data Repository
- Underserved Populations
- Model State Laws
- Grants, Demonstration Projects and Studies

Increase Training about Elder Abuse, Neglect and Exploitation:

- Health professionals in forensic pathology and geriatrics
- Promising practices through demonstration grants
- All relevant professionals

Grants, Demonstration Projects and Studies:

- 5 Centers of Excellence
- Data development
- Safe Havens
- Multi-disciplinary and inter-disciplinary grants
- Training Grants
- Healthcare professionals with geriatric training
- Special Needs Grants
- Public Awareness
- Forensic Centers
- Nursing Career Ladders
- LTC facility management and training
- Study the role/response by government and government funded entities
- CDC study - public health prospective
- Geriatric forensic training
- Elder Justice Innovation Fund

Support Prosecutions of Elder Abuse, Neglect and Exploitation, as Appropriate:

- Technical, investigative, coordination, and victim assistance resources
- Prompt reporting of crimes in long-term settings

Require prompt reporting of crimes in long-term care settings

- LTC facilities - \$10,000
- Owner, operator, employee, agent, contractor
- Report "reasonable suspicion"
- To one or more LE
- 2 hrs - serious bodily injury
- 24 hrs - no serious bodily injury
- Penalty - up to \$200k and/or Medicare exclusion

Combat Elder Abuse, Neglect and Exploitation Through New LTC Programs

- Criminal Background Checks
- Long-Term Care Consumer Clearinghouse
- 60-Day Notice of LTC Closings
- Tax Incentives

Elevate Elder Abuse, Neglect and Exploitation to the National Stage

- Offices of Elder Justice at HHS & DOJ
- Public-Private Coordinating Council
- Federal Office for Adult Protective Services
- Reauthorization in 7 years



Stolen 'Golden Years'

States address the silent epidemic of elderly financial victimization

By Carrie Abner

As many as 5 million elderly Americans are victims of financial exploitation each year, although estimates suggest that victims report the crime in only one of 25 cases. States are beginning to recognize this growing trend and are working to stop the abuse.

In a March 2005 address announcing a new initiative to combat financial exploitation against the elderly in Illinois, Gov. Rod Blagojevich said, "Our seniors have worked hard, raised their families, and they deserve a peaceful and safe retirement." The governor created a special statewide unit of investigators to provide a variety of services to seniors, including investigation of financial abuse cases, advocacy and education. The need for such state-led initiatives is growing.

In Missouri, a 91-year-old woman lives in a nursing home. Although mentally competent, she was taken to the facility for a visit and left there. While in the nursing home, she learned that one of her farms and a number of her household items had

been sold. Someone she trusted had obtained power of attorney when she was extremely ill and hospitalized. She had no memory of signing the document and had no intention of selling any of her property.

In Oregon, an elderly woman was living alone. At the age of 90, she was deaf, partially blind and in a wheelchair. She hired a full-time caregiver, who bilked her out of \$56,000 between March and September 1999, draining her accounts completely. Sadly, the woman's family and public officials only became aware of the abuse following her death.

While these true-life cases, reported to state and local officials, may seem extreme, they unfortunately represent a growing crisis in the United States. Too many Americans find them

"golden years"—a time to relax and enjoy family and friends—stolen from them as a result of financial exploitation and abuse.

A Growing Crisis

The National Center on Elder Abuse (NCEA) defines elder financial exploitation as "the illegal or improper use of an elder's funds, property or assets." According to Paul Greenwood, the lead prosecutor on senior abuse cases in San Diego County, California, financial abuse takes many forms, including credit card fraud, real estate scams, identity theft and burglary.

And reports of elder financial exploitation, experts say, are on the rise.

Reported cases of elder financial exploitation have more than tripled in Oregon since 1993. Representatives of the Elder Safe Program in Washington County, Oregon, recently noted that senior citizens in that county lost almost \$2 million to financial exploitation and crime in 2004. And county officials estimate that actual losses may be even greater due to gross underreporting of such crimes. According to Joyce DeMonnin, coordinator for the program, "While the number is shockingly high, we know it is still a fraction of the amount of money seniors lost in Washington County last year." She adds that true losses to Washington County seniors could total \$10 million.

"Elder financial abuse is a crime of opportunity and it's on the rise," said Maine Attorney General Steven Rowe to participants at a May 2004 conference on elder abuse. "Seventy percent of the nation's net worth is owned by those aged 50 or older. This makes seniors a rich target. Forty percent of all reported elder abuse cases involve financial exploitation."

According to Rowe, Maine's Bureau of Elder and Adult Services referred substantiated cases totaling more than \$22 million to the Attorney General's Office between July 2001 and May 2004. The average victim reported losing \$39,000, Rowe said.

While reports of elder financial abuse are increasingly common, experts are unaware of the true scope of the crisis nationwide.

Like other forms of elder abuse, few cases of financial exploitation are reported to officials. A study conducted by NCEA in 1998 found that for every reported case of elder abuse, another five cases went unreported. And elders are less likely to report incidents of financial exploitation than any other category of abuse, according to a paper by The Archstone Foundation. NCEA recently cited estimates indicating that only 1 in 25 cases of elder financial abuse is reported to officials, suggesting that as many as 8 million seniors may be victims of financial exploitation each year.

And as the U.S. population ages, the incidence of elder financial abuse is likely to rise. In 2000, there were an estimated 35 million individuals age 65 or older in the United States, comprising nearly 13 percent of the total population. The Federal Interagency Forum on Aging-Related Statistics reports that the size of the older population is expected to double by 2030, growing to 70 million. This will create an even larger population of seniors vulnerable to financial exploitation.

According to a report issued in 2002 by the National Research Council, "The occurrence and severity of elder mistreatment are likely to increase markedly over the coming decades, as the population ages, caregiving responsibilities and

"The occurrence and severity of elder mistreatment are likely to increase markedly over the coming decades, as the population ages, caregiving responsibilities and relationships change, and increasing numbers of older persons require long-term care."

—The National Research Council



"Elder financial abuse is a crime of opportunity and it's on the rise."

—Maine Attorney General Steven Rowe

relationships change, and increasing numbers of older persons require long-term care."

The Cost of Abuse

While little is known about the exact costs associated with elder abuse, experts note they are likely significant. "When elder abuse victims lose their homes or financial resources through exploitation and end up in a nursing home on Medicaid or in government-subsidized housing, the taxpayers pick up those costs," noted Lori Stiegel of the American Bar Association's Commission on Law and Aging at a 2003 hearing of the U.S. Judiciary Committee. "When elder abuse victims need services from adult protection programs, long term care ombudsman programs, state regulatory agencies, law enforcement agencies, prosecutors,

public guardians or the resources of a court system to help protect them from further abuse, the taxpayers bear those costs." The cost to the elderly victims is equally troubling.

"Losing the fruits of a lifetime's labor through financial exploitation can be devastating," said a recent paper on elder financial crimes by NCEA and the Goldman Institute on Aging. "It may compromise victims' independence and security, destroy legacies and lead to depression, hopelessness or even suicide. Although financial crimes are committed against members of all age groups, the impact is particularly great on the elderly."

For seniors, victimization can mean the loss of lifelong savings and pension benefits. As a result, elder victims may find themselves suddenly dependent on public assistance programs or going without food, medication or other necessities.

At a 1999 hearing of the U.S. Senate Judiciary Committee, Susan Herman of the National Center for Victims of Crime noted that financial exploitation of the elderly can have serious, lifelong impacts for victims. "Generally, senior citizens do not have the time or opportunity for financial recovery: their prime earning years are behind them. At a time when one tries to conserve assets, a blow to financial security is often a permanent and life-threatening setback," she stated.

Challenges for State Officials

As state and local officials try to address the incredibly complex problem of elder financial abuse, they face a number of challenges.

Experts point out that seniors are uniquely vulnerable to financial exploitation. Many live independently and are isolat-

"When elder abuse victims lose their homes or financial resources through exploitation and end up in a nursing home on Medicaid or in government-subsidized housing, the taxpayers pick up those costs."

Lori Stiegel
ABA's Commission on Law and Aging

ed from the rest of the community. Elders tend to be home during the day, more trusting of strangers, less likely to report exploitation and increasingly dependent on others for daily tasks, such as home repairs. American seniors also hold a disproportionate percentage of the country's wealth and often have quick access to significant amounts of cash. Together, these factors render seniors at high risk of becoming victims of financial exploitation and fraud.

Yet, little is known about the extent of financial crimes against the elderly. While some research has been conducted on elderly victimization by telemarketing frauds, only limited information exists on other areas of elder financial abuse, including fraud and theft by family

members and domestic caregivers.

Further complicating the matter is the fact that few cases of elder financial abuse are reported to officials. According to experts, seniors may be reluctant to report such crimes against them out of shame or embarrassment. For other aging adults, financial matters remain a taboo subject—not one that is discussed openly. Some may fear being seen as incompetent, or worse, being deprived of their independence should they report having been defrauded. Elders who are victimized by family members, meanwhile, may be hesitant to report crimes against them, reluctant to get loved ones in trouble.

Experts also point out difficulties in regulating in-home care providers, one of the fastest-growing job segments in the country. Individual caregivers are rarely subjected to background checks, which poses a major risk to the well-being of elders. Greenwood reports, "The majority of cases I prosecute now are convicted felons... taking care of the elderly."

Another challenge for state leaders is the complexity of elder financial abuse and the need for interagency coordination at state and local levels. Like other forms of elder abuse, effective state responses to financial exploitation require collaboration by a range of state and local agencies, including law enforcement, adult protective services, victim service agencies and private partners. Without adequate mechanisms in place for interagency coordination, for example, incidents of elder fraud reported to APS may never be passed on to law enforcement officials, preventing prosecution of cases and restitution to elder victims. Yet, coordination remains a major challenge for states due to limited authority, mandates, finite resources, competing priorities and work force shortages.

Experts caution that the lack of coordination can be disastrous for elder victims. According to A. Ricker Hamilton, protective program administrator for Maine and past president of the National Adult Protection Services Association, the lack of interagency coordination means that "victims remain hidden. Elder abuse continues to be undetected and underreported. We need to develop a systemic response to elder abuse before we become victims."

States Respond

Despite these and other challenges, states are becoming increasingly aware of elder financial abuse and are taking steps to address the problem through legislative and programmatic initiatives.

For instance, in a 2003 survey by the National Association of Adult Protective Services Administrators, 29 out of the 35 responding states noted that they had a mandatory reporting statute that included financial exploitation. According to a recent study by the University of Iowa, state mandatory report-

"We must do everything we can to guard the elderly from fraud and abuse and afford them the respect and security they deserve."

—A. Ricker Hamilton

ing laws are linked to significantly higher investigation rates of elder abuse cases among states.

In Maine, the Improvident Transfers of Title law allows seniors who have transferred property as a result of undue influence to get court orders for its return. The law applies to both financial and real property that has been transferred to someone with a confidential or fiduciary relationship to the victim, including family members, accountants, brokers, financial advisors, health care providers, attorneys, caregivers and friends.

According to Arizona law, individuals in a position of trust who use deception or intimidation to gain permanent control of a senior's assets are considered guilty of theft. Individuals guilty of violating their duties to elders are further subject to damages in civil actions equal to three times the amount of monetary damages to the elder and forfeit their claims to an elder's estate.

State Initiatives: Getting Banks Involved

Some states are including banks in their efforts to combat elder financial abuse, recognizing the potential for frontline bank employees to detect suspected cases of financial exploitation of seniors on a daily basis.

The Oregon Elder Financial Exploitation Program is a partnership between the Oregon Department of Justice, local agencies serving the elderly, the Oregon Bankers Association and AARP. With funding from the U.S. Department of Justice's Office for the Victims of Crime, the program has developed training materials to educate bank personnel on recognizing the warning signs of elder financial exploitation and the appropriate mechanisms for reporting suspected cases. Oregon law grants immunity to banks and their staffs when reporting suspicions of elder financial abuse.

Meanwhile, the California Bankers Association is sponsoring AB 1664, the Elder Abuse Reporting Bill. Introduced by Assemblyman Mike Gordon, the bill authorizes the staff of financial institutions to report incidents of suspected financial abuse of an elder or dependent adult. The bill also authorizes APS officials to request and receive financial information of a bank client when investigating the financial abuse of an elder. The bill passed the House of Representatives and is currently under consideration in the Senate.



Continued on page 35

Stolen 'Golden Years'

—Continued from page 21

An Oregon law protects banks from liability when they report suspected cases of elder financial exploitation. While the law does not represent a mandatory reporting law for bank personnel, it provides protection for banking institutions and their employees when reporting suspicions of abuse.

States are also initiating programs to respond to elder financial abuse.

Illinois Gov. Rod Blagojevich's new program would enable investigators to develop liaisons with senior service providers, prosecutors, other law enforcement agencies and financial representatives to more effectively refer cases. In addition, the unit would provide educational programs for senior citizen groups and others throughout the state about the warning signs of financial abuse and fraud. Investigators would also provide support and guidance to elders throughout the investigation and prosecution process. Gov. Blagojevich said of the program and stopping elder financial abuse, "We must do everything we can to guard the elderly from fraud and abuse and afford them the respect and security they deserve."

Meanwhile, the primary force behind Florida's battle against elder fraud is the state's senior citizens themselves. As part of the Seniors vs. Crime Project, elders serve as volunteers to educate their peers on the dangers of consumer fraud and possible warning signs. The Senior Sleuths, as they are known, also assist the attorney general's office and other law enforcement agencies to detect fraud in their communities. With the help of more than 2,000 Senior Sleuths performing such tasks as checking to ensure that prescriptions are accurately filled and conducting undercover sting operations to detect businesses using false or deceptive practices, the attorney general's office has been successful in handling more than 2,000 complaints, prosecuting over 40 cases and recovering more than \$3 million since the program's inception.

For many states, becoming more aware of the threat of elder financial abuse represents the first step in developing innovative state responses. While limited information exists on the exact scope of the problem at the national level, individual cases like those of the abused women in Missouri and Oregon underscore the serious threats seniors face in protecting the assets on which they depend.

As the U.S. population ages, states will continue to face the challenges of elder financial abuse and exploitation. While states have already taken important steps to address this growing problem, much more remains to be done.

Carrie Abner is a public safety and justice policy analyst at The Council of State Governments.

Fact File

- Nearly 33 percent of the complaints for telemarketing frauds in 2004 were made by individuals age 60 and older, up from 27 percent in 2002.
- The proportion of individuals losing \$5,000 or more through Internet fraud is higher for victims 60 years and older than for any other age group.
- From 1992 to 1997, seniors were the victims of 2.7 million property and violent crimes; 2.5 million burglaries, motor vehicle thefts and household thefts; 46,000 purse snatchings and pocket-pickings; and 165,000 non-lethal violent crimes including rape, robbery and aggravated and simple assault.
- Estimates indicate that only 1 in 25 cases of elder financial abuse is reported. There may be as many as 5 million elders victimized by financial exploitation each year.

Sources: National Fraud Information Center, "Old and Wise" Fall 2005; Bureau of the Census, "Department of Justice, Bureau of Justice Statistics, 2004 Crime Survey," 2005.



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Anchorage Daily News

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Couple indicted on fraud charges

GUARDIANS: Elderly father was target of alleged crimes.

By LISA DEMER

Anchorage Daily News

(Published: January 20, 2006)

A federal grand jury says a Chugiak couple used their position as legal guardians to bilk the woman's aged father out of nearly \$500,000.

An indictment returned this week charges Frank and Phyllis Talas with conspiracy and misappropriation of funds by a fiduciary, or person entrusted with another's property or money. In addition, Frank Talas is charged with three counts of wire fraud.

According to the charges, it all began back in July 2001, when Frank R. Talas Jr. petitioned in state Superior Court for temporary guardianship of his father-in-law, Donald Mitchell, and was approved. On April 18, 2002, Talas and his wife, Phyllis, became full guardians for her father, the indictment says.

This isn't an isolated situation. The problem of vulnerable people being taken advantage of appears to be increasing in Alaska, says the state's public advocate.

Guardians manage their wards' money and property and make medical and other key life decisions "to promote and protect the well-being of the person," Alaska law says.

The Talases weren't supposed to accept money from Mitchell without prior court approval. According to his family, he is in his 70s and has Alzheimer's disease.

But, the charges say, they illegally siphoned \$495,010 and spent some of it creating a business that failed. The money also went to travel and other personal expenses, the indictment said.

The situation came to light when they failed to pay Mitchell's bill at the Chugiak Senior Center, an assisted living home where he lived, said Lisa Stanley, a court investigator appointed to review the case when matters started falling apart a couple of years ago. Mitchell since has been moved to a different home.

"I am glad to hear this was followed through on," Stanley said Friday.

Allegations of guardians preying on people are hard to prove, especially when it's all in the family or among supposed friends. If the victim has Alzheimer's or otherwise can't communicate well, it's even tougher, she said.

There is a tendency to think: "Oh, they are family. They are not going to hurt this person. But that is not always the case," Stanley said.

Frank Talas said Friday he didn't want to talk about the matter in detail until he had spoken with an attorney. He didn't even know he and his wife had been indicted, he said. The matter seemed to have blown over in 2003 when questions about the spending arose at the senior center and responsibility was transferred to a state public guardian, he said.

"Things happened," Talas, 52, said. But there was no big plan to go after Mitchell's money, he said.

The case was investigated by the inspector general's office in the U.S. Department of Veterans Affairs, and the U.S. Postal Inspection Service, officials said. Mitchell is retired from the Air Force, and his veterans benefits were

among the assets wrongly taken, according to the indictment.

Guardians appointed by judges hold tremendous power over the lives and property of adults who cannot make decisions for themselves because of incapacity or disability.

Most guardians are relatives or friends willing to serve for free. But not everyone has someone close to them able and willing to do the job. The state employs public guardians for people with low income. In other cases, professional guardians take on the job for a fee.

Around the state, there appears to be a growing problem of elderly and vulnerable individuals being exploited, said Josh Fink, director of the state Office of Public Advocacy, where public guardians work.

"There are charlatans out there that are really taking advantage of people," Fink said.

Family members or friends who serve as guardians get very little training and face little oversight.

Sometimes, cases of vulnerable people being ripped off are discovered only when guardianships are transferred from private guardians to the public guardians in his office, Fink said. Other times, shady characters take advantage of the individual, even moving into the ward's home, and it's up to the guardian to kick them out, he said.

Cases have popped up recently in Juneau, Fairbanks and on the Kenai Peninsula, Fink said.

His office can try to recover small amounts of money and property through Small Claims Court or can ask a private attorney to take complex cases on a contingency basis, if there's enough at stake. But other financial exploitation cases fall in between. The state hasn't put enough resources into this area, either to pursue them criminally or through civil avenues, Fink said.

Oversight comes mainly from judges. Guardians are supposed to make detailed annual reports to the courts. But in the case of the Talases, they had not even completed their first year as full guardians when the problems emerged, Stanley said.

At the time the Talases became his guardians, Mitchell had various assets worth more than \$300,000 and a steady retirement income: \$39,108 annually from the Air Force, \$6,096 from the civil service, and \$6,486 from Social Security, the indictment said.

On March 13, 2002, Frank Talas had \$58,290 belonging to Mitchell wired to an account in the Mat-Su that the couple controlled, the indictment said. The next day, he had \$144,391 transferred, the document said. Then, that same day, he opened a credit union account for Silver Wolf and Cub Enterprises, which Talas said was a handyman venture. About \$60,000 of Mitchell's money went into the failed business, the indictment said.

If convicted, the couple faces the possibility of prison time and hefty fines, according to the U.S. Attorney's Office.

Daily News reporter Lisa Demer can be reached at ldemer@adn.com and 257-4390.

Types of guardians in Alaska

There are three types of guardians in Alaska. All must be appointed by a judge. They are:

- **FAMILY OR FRIENDS:** They must first take one hour of training.

- PAID, PROFESSIONAL GUARDIANS. Under reforms that took effect last year, they must be licensed by the state, pass criminal background checks, be certified by a national organization, and be able to prove they can be bonded and insured.
- PUBLIC GUARDIANS. They are state employees and usually serve as guardians for low- income people.

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Laws can shield seniors from fraud

By REP. TOM ANDERSON

(Published: February 11, 2006)

Elders in Alaska are to be valued. With their lifelong contributions they have great experience and wisdom to share. Whether remarkable or not, they are the parental figures of our community; they are the ones who fought for us and brought us to where we are in the world today. They ought to be cherished.

One way we can do that is to give them more protection in the law. Too often these days, seniors in Alaska are vulnerable to fraud and manipulation. Though living longer, they often live alone and without immediate family, thus, being easy targets for schemers. Our laws constantly need to be fine-tuned to address the protection of disabled and incapacitated seniors.

Alaskans report fraud at the second highest rate in the nation. This type of crime includes identity theft, credit card heisting and defrauding citizens of their assets. These crimes can hit senior citizens the hardest. This newspaper recently reported about a couple from Chugiak who were indicted by a grand jury for bilking nearly \$500,000 out of an elderly man, whom they were serving as legal guardians.

They were acting through the guardianship program of the state run by the Office of Public Advocacy. This office oversees approximately 2,500 guardians and conservators in Alaska, monitoring them annually. Many guardians are either family or friends, others are professional guardians, while still others are public guardians appointed by the state.

Josh Fink, director of the state Office of Public Advocacy, sees a lot of abuse of the elderly. He has heard of numerous cases of scams and identity theft in Alaska. He says that those who face the greatest difficulties of managing life, amidst rapidly changing technologies, are the aged.

The OPA now requires licensing standards for guardians and conservators. In 2001, when the Chugiak couple had been involved in their alleged deceptions, there was no licensing requirement for guardians. No specific set of qualifications was necessary at that time to certify guardians in Alaska. This gap in the law left wide open the possibility for shysters to abuse their role as guardians.

Since then, the Legislature closed the gap, enacting a law that requires guardians and conservators to fulfill clear licensing standards. That law, HB 427 which passed in 2004, addressed the need for regulatory enforcement of private professional guardians. Several organizations, including the Alaska State Association for Guardianship and Advocacy, the Senior Advocacy Coalition and the Long-term Care Ombudsman's office, helped me in drafting and moving that legislation. It is one more tool to help protect vulnerable and incapacitated adults to receive the care they deserve.

Another law now being discussed in Juneau is HB 132; it increases the penalties for crimes committed against the elderly. It adds weight to the criminality of actions perpetrated against our longest cherished citizens. For example, it will change a class-A misdemeanor into a class-C felony when that same violation is committed against a senior citizen. This is another way we as Alaskans can honor and protect our elders.

The population of older citizens in Alaska is growing rapidly, as are the crimes that affect them. The physical, emotional and financial harm of a crime against an elderly person can be devastating. We have every reason to consider increasing our protections for them in law.

HB

399

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
 MAY 05 2006
 SENATE FINANCE COMMITTEE

DATE: 5/3/06

FURTHER:

DATE TURNED IN TO OFFICE: 5 May 2006

Finance Committee considered CS FOR HOUSE BILL NO. 399(FIN)

HB 399 ELDER FRAUD AND ASSISTANCE/OPA

"An Act establishing the office of elder fraud and assistance; and relating to fraud involving older Alaskans."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous 5 CS CS 399 (STF)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#
H&SS	2/9/06			✓	#1
Law	3/10/06			✓	#2
DPS	3/10/06			✓	#3
Admin	4/19/06	189.0			#4

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>				

FISCAL NOTE

REPORTED OUT
MAY 05 2006
 SENATE FINANCE COMMITTEE

STATE OF ALASKA
 2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 399
 (H) Publish Date: 2/27/06
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title ESTABLISHING THE OFFICE OF ELDER
 FRAUD AND ASSISTANCE

RDU Senior and Disabilities Svcs
 Component Senior/Disabilities Svcs Admin

Sponsor CHENAULT
 Requester HOUSE (STA)

Component No. 2663

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (0)						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB399 will not impact (operational) expenses related to the Adult Protective Services Unit within the Division of Senior and Disability Services. The functional responsibility and authority proposed by HB 399 will be vested with The Office of Public Advocacy within the Department of Administration. DSADS is coordinating with OPA and other extensions of State Government that manage or respond to reports of elder abuse/fraud as appropriate to present an action model should the tenants of HB399 be passed as legislation to ensure all concerned entities operate accordingly within the bill provisions in a responsive manner.

Prepared by: Rod Moline, Director
 Division: Senior and Disabilities Services
 Approved by: Karleen Jackson, Commissioner
 Agency: Department of Health and Social Services

Phone: 465-1605
 Date/Time: 02/09/2006
 Date: 02/09/2006

COMMITTEE COPY

REPORTED OUT
MAY 05 2006
SENATE FINANCE COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 399(FIN)
(H) Publish Date: 4/20/06

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title "An Act establishing the office of elder fraud and RDU Civil
assistance; and relating to fraud involving older Alaskans." Component Commercial and Fair Business
Sponsor Representative Chenault
Requester House Finance Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill adds the duty to investigate complaints involving fraud committed against Alaska's senior citizens to the Office of Public Advocacy's list of responsibilities in AS 44.21.410(a).

Passage of this legislation will not have fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director
Division: Administrative Services Division
Approved by: Kathryn Daughhete for David Marquez, Attorney General
Agency: Department of Law

Phone: 465-3673
Date/Time: 3/6/06 8:22 AM
Date: 3/6/2006

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FISCAL NOTE

REPORTED OUT
MAY 05 2006
SENATE FINANCE COMMITTEE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSHB 399(FIN)
(H) Publish Date: 4/20/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
Title "An Act establishing the office of elder fraud and assistance..." RDU Alaska State Troopers
Sponsor Representative Chenault Component AST Detachments
Requester House Finance Committee Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
*005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
As written, this legislation will not have a fiscal impact on the Department of Public Safety.

Prepared by: Special Assistant Cliff Stone Phone 907-465-2649
Division: Office of the Commissioner Date/Time 3/6/06 1:39 PM
Approved by: Commissioner William Tandeske Date 3/6/2006
Agency: Department of Public Safety

COMMITTEE COPY

FISCAL NOTE

REPORTED OUT
 MAY 05 2006
 SENATE FINANCE COMMITTEE

STATE OF ALASKA
 2006 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: CSHE 399(FIN)
 (H) Publish Date: 4/20/2006

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act Relating to the Office of Elder Fraud... RDU Legal and Advocacy Services
 Component Office of Public Advocacy
 Sponsor Chenault
 Requester Chenault Component No. 43

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	161.0					
Travel	10.0					
Contractual						
Supplies	8.0					
Equipment	10.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	189.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	189.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	189.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 100.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This legislation would create the Office of Elder Fraud and Assistance within the Office of Public Advocacy. It would empower OPA to investigate complaints involving fraud committed against older residents of the State of Alaska who are 60 years of age and older.

This fiscal note is however smaller than that submitted by the Department of Administration in that it authorizes one Attorney III, a part time investigator and a part time paralegal. No national standards exist but elder fraud is becoming the number two crime against the elderly. To this date no known cases have been prosecuted in the State of Alaska.

Prepared by: Rep. Chenault Phone 465-3779
 Date 4/19/2006 2:15 p.m.

Alaska State Legislature

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Juneau, AK 99801-1182
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Toll Free: (800) 469-3779

Representative Mike Chenault
District 34

Sponsor Statement **HB 399**

Title: "An Act establishing the office of elder fraud and assistance; and relating to fraud involving older Alaskans."

Elder financial abuse is a crime that is on the rise and is a growing problem in Alaska. Financial abuse takes many forms, including credit card fraud, real estate scams, identity theft and burglary. Even though reports of elder financial abuse are growing, estimates indicate that only 1 in 25 of these cases are reported. A study conducted by The National Center on Elder Abuse (NCEA) found that for every reported case of elder abuse, another five cases went unreported.

Elderly victims of financial abuse can suffer declining physical and emotional well being, depression, reliance on public benefits and even death. A possible reason why elders are targeted is because seventy percent of the nation's net worth is owned by those aged 50 and older. Other explanations include the fact that older people are more trusting, that they may not realize the value of their assets, and that they are easily identifiable as victims. In addition, they are more likely to have conditions or disabilities that make them easy targets. They are also less likely to take action against their abusers, especially if the abuser is a family member. Abusers may also recognize that older people who are in extremely poor health may not survive long enough to follow through legally.

To combat fraud against elders, effective state responses require collaboration by a range of state and local agencies, including law enforcement, adult protective services, victim service agencies and private partners. However, coordination remains a major challenge and the lack of interagency coordination means that victims remain hidden. This bill would help ensure the necessary coordination among agencies to address this problem.

HB 399 establishes an office of elder fraud and assistance within the Office of Public Advocacy (OPA) to investigate complaints of fraud committed against elder residents of Alaska. This bill authorizes OPA to bring civil enforcement actions for injunctive and other relief for fraud committed against older Alaskans.



Stolen 'Golden Years'

States address the silent epidemic of elderly financial victimization

By Carrie Abner

As many as 5 million elderly Americans are victims of financial exploitation each year, although estimates suggest that victims report the crime in only one of 25 cases. States are beginning to recognize this growing trend and are working to stop the abuse.

In a March 2005 address announcing a new initiative to combat financial exploitation against the elderly in Illinois, Gov. Rod Blagojevich said, "Our seniors have worked hard, raised their families and they deserve a peaceful and safe retirement." The governor created a special statewide unit of investigators to provide a variety of services to seniors, including investigation of financial abuse cases, advocacy and education. The need for such state-led initiatives is growing.

In Missouri, a 91-year-old woman lives in a nursing home. Although mentally competent, she was taken to the facility for a visit and left there. While in the nursing home, she learned that one of her farms and a number of her household items had

been sold. Someone she trusted had obtained power of attorney when she was extremely ill and hospitalized. She had no memory of signing the document and had no intention of selling any of her property.

In Oregon, an elderly woman was living alone. At the age of 90, she was deaf, partially blind and in a wheelchair. She hired a full-time caregiver, who bilked her out of \$86,000 between March and September 1999, draining her accounts completely. Sadly, the woman's family and public officials only became aware of the abuse following her death.

While these true-life cases, reported to state and local officials, may seem extreme, they unfortunately represent a growing crisis in the United States. Too many Americans find their

"golden years" — a time to relax and enjoy family and friends—
stolen from them as a result of financial exploitation and abuse.

A Growing Crisis

The National Center on Elder Abuse (NCEA) defines elder financial exploitation as "the illegal or improper use of an elder's funds, property or assets." According to Paul Greenwood, the lead prosecutor on senior abuse cases in San Diego County, California, financial abuse takes many forms, including credit card fraud, real estate scams, identity theft and burglary.

And reports of elder financial exploitation, experts say, are on the rise.

Reported cases of elder financial exploitation have more than tripled in Oregon since 1993. Representatives of the Elder Safe Program in Washington County, Oregon, recently noted that senior citizens in that county lost almost \$2 million to financial exploitation and crime in 2004. And county officials estimate that actual losses may be even greater due to gross underreporting of such crimes. According to Joyce DeMomin, coordinator for the program, "While the number is shockingly high, we know it is still a fraction of the amount of money seniors lost in Washington County last year." She adds that true losses to Washington County seniors could total \$10 million.

"Elder financial abuse is a crime of opportunity and it's on the rise," said Maine Attorney General Steven Rowe to participants at a May 2004 conference on elder abuse. "Seventy percent of the nation's net worth is owned by those aged 50 or older. This makes seniors a rich target. Forty percent of all reported elder abuse cases involve financial exploitation."

According to Rowe, Maine's Bureau of Elder and Adult Services referred substantiated cases totaling more than \$22 million to the Attorney General's Office between July 2001 and May 2004. The average victim reported losing \$39,000, Rowe said.

While reports of elder financial abuse are increasingly common, experts are unaware of the true scope of the crisis nationwide.

Like other forms of elder abuse, few cases of financial exploitation are reported to officials. A study conducted by NCEA in 1998 found that for every reported case of elder abuse, another five cases went unreported. And elders are less likely to report incidents of financial exploitation than any other category of abuse, according to a paper by The Archstone Foundation. NCEA recently cited estimates indicating that only 1 in 25 cases of elder financial abuse is reported to officials, suggesting that as many as 5 million seniors may be victims of financial exploitation each year.

And as the U.S. population ages, the incidence of elder financial abuse is likely to rise. In 2000, there were an estimated 35 million individuals age 65 or older in the United States, comprising nearly 13 percent of the total population. The Federal Interagency Forum on Aging-Related Statistics reports that the size of the older population is expected to double by 2030, growing to 70 million. This will create an even larger population of seniors vulnerable to financial exploitation.

According to a report issued in 2002 by the National Research Council, "The occurrence and severity of elder mistreatment are likely to increase markedly over the coming decades, as the population ages, caregiving responsibilities and

"The occurrence and severity of elder mistreatment are likely to increase markedly over the coming decades, as the population ages, caregiving responsibilities and relationships change, and increasing numbers of older persons require long-term care."

—The National Research Council



"Elder financial abuse is a crime of opportunity and it's on the rise."

—Maine Attorney General Steven Rowe

relationships change, and increasing numbers of older persons require long-term care.”

The Cost of Abuse

While little is known about the exact costs associated with elder abuse, experts note they are likely significant. “When elder abuse victims lose their homes or financial resources through exploitation and end up in a nursing home on Medicaid or in government-subsidized housing, the taxpayers pick up those costs,” noted Lori Stiegel of the American Bar Association’s Commission on Law and Aging at a 2003 hearing of the U.S. Judiciary Committee. “When elder abuse victims need services from adult protection programs, long-term care ombudsman programs, state regulatory agencies, law enforcement agencies, prosecutors, public guardians or the resources of a court system to help protect them from further abuse, the taxpayers bear those costs.” The cost to the elderly victims is equally troubling.

“Losing the fruits of a lifetime’s labor through financial exploitation can be devastating,” said a recent paper on elder financial crimes by NCEA and the Goldman Institute on Aging. “It may compromise victims’ independence and security, destroy legacies and lead to depression, hopelessness or even suicide. Although financial crimes are committed against members of all age groups, the impact is particularly great on the elderly.”

For seniors, victimization can mean the loss of lifelong savings and pension benefits. As a result, elder victims may find themselves suddenly dependent on public assistance programs or going without food, medication or other necessities.

At a 1999 hearing of the U.S. Senate Judiciary Committee, Susan Herman of the National Center for Victims of Crime noted that financial exploitation of the elderly can have serious, lifelong impacts for victims. “Generally, senior citizens do not have the time or opportunity for financial recovery—their prime earning years are behind them. At a time when one tries to conserve assets, a blow to financial security is often a permanent and life-threatening setback,” she stated.

Challenges for State Officials

As state and local officials try to address the incredibly complex problem of elder financial abuse, they face a number of challenges.

Experts point out that seniors are uniquely vulnerable to financial exploitation. Many live independently and are isolat-

“When elder abuse victims lose their homes or financial resources through exploitation and end up in a nursing home on Medicaid or in government-subsidized housing, the taxpayers pick up those costs.”

—Lori Stiegel

ABA’s Commission on Law and Aging

ed from the rest of the community. Elders tend to be home during the day, more trusting of strangers, less likely to report exploitation and increasingly dependent on others for daily tasks, such as home repairs. American seniors also hold a disproportionate percentage of the country’s wealth and often have quick access to significant amounts of cash. Together, these factors render seniors at high risk of becoming victims of financial exploitation and fraud.

Yet, little is known about the extent of financial crimes against the elderly. While some research has been conducted on elderly victimization by telemarketing frauds, only limited information exists on other areas of elder financial abuse, including fraud and theft by family

members and domestic caregivers.

Further complicating the matter is the fact that few cases of elder financial abuse are reported to officials. According to experts, seniors may be reluctant to report such crimes against them out of shame or embarrassment. For other aging adults, financial matters remain a taboo subject—not one that is discussed openly. Some may fear being seen as incompetent, or worse, being deprived of their independence should they report having been defrauded. Elders who are victimized by family members, meanwhile, may be hesitant to report crimes against them, reluctant to get loved ones in trouble.

Experts also point out difficulties in regulating in-home care providers, one of the fastest growing job segments in the country. Individual caregivers are rarely subjected to background checks, which poses a major risk to the well-being of elders. Greenwood reports, “The majority of cases I prosecute now are convicted felons...taking care of the elderly.”

Another challenge for state leaders is the complexity of elder financial abuse and the need for interagency coordination at state and local levels. Like other forms of elder abuse, effective state responses to financial exploitation require collaboration by a range of state and local agencies, including law enforcement, adult protective services, victim service agencies and private partners. Without adequate mechanisms in place for interagency coordination, for example, incidents of elder fraud reported to APS may never be passed on to law enforcement officials, preventing prosecution of cases and restitution to elder victims. Yet, coordination remains a major challenge for states due to limited agency mandates, finite resources, competing priorities and workforce shortages.

Experts caution that the lack of coordination can be disastrous for elder victims. According to A. Ricker Hamilton, protective program administrator for Maine and past president of the National Adult Protection Services Association, the lack of interagency coordination means that "victims remain hidden. Elder abuse continues to be undetected and underreported. We need to develop a systemic response to elder abuse before we become victims."

States Respond

Despite these and other challenges, states are becoming increasingly aware of elder financial abuse and are taking steps to address the problem through legislative and programmatic initiatives.

For instance, in a 2003 survey by the National Association of Adult Protective Services Administrators, 29 out of the 35 responding states noted that they had a mandatory reporting statute that included financial exploitation. According to a recent study by the University of Iowa, state mandatory report-

"We must do everything we can to guard the elderly from fraud and abuse and afford them the respect and security they deserve."

—Arlene M. Gendron, Executive Director

ing laws are linked to significantly higher investigation rates of elder abuse cases among states.

In Maine, the Improvident Transfers of Title law allows seniors who have transferred property as a result of undue influence to get court orders for its return. The law applies to both financial and real property that has been transferred to someone with a confidential or fiduciary relationship to the victim, including family members, accountants, brokers, financial advisors, health care providers, attorneys, caregivers and friends.

According to Arizona law, individuals in a position of trust who use deception or intimidation to gain permanent control of a senior's assets are considered guilty of theft. Individuals guilty of violating their duties to elders are further subject to damages in civil actions equal to three times the amount of monetary damages to the elder and forfeit their claims to an elder's estate.

State Initiatives: Getting Banks Involved

Some states are including banks in their efforts to combat elder financial abuse, recognizing the potential for frontline bank employees to detect suspected cases of financial exploitation of seniors on a daily basis.

The Oregon Elder Financial Exploitation Program is a partnership between the Oregon Department of Justice, local agencies serving the elderly, the Oregon Bankers Association and AARP. With funding from the U.S. Department of Justice's Office for the Victims of Crime, the program has developed training materials to educate bank personnel on recognizing the warning signs of elder financial exploitation and the appropriate mechanisms for reporting suspected cases. Oregon law grants immunity to banks and their staffs when reporting suspicions of elder financial abuse.

Meanwhile, the California Bankers Association is sponsoring AB 1664, the Elder Abuse Reporting Bill. Introduced by Assemblyman Mike Gordon, the bill authorizes the staff of financial institutions to report incidents of suspected financial abuse of an elder or dependent adult. The bill also authorizes APS officials to request and receive financial information of a bank client when investigating the financial abuse of an elder. The bill passed the House of Representatives and is currently under consideration in the Senate.



Continued on page 35

Stolen 'Golden Years'

—Continued from page 21

An Oregon law protects banks from liability when they report suspected cases of elder financial exploitation. While the law does not represent a mandatory reporting law for bank personnel, it provides protection for banking institutions and their employees when reporting suspicions of abuse.

States are also initiating programs to respond to elder financial abuse.

Illinois Gov. Rod Blagojevich's new program would enable investigators to develop liaisons with senior service providers, prosecutors, other law enforcement agencies and financial representatives to more effectively refer cases. In addition, the unit would provide educational programs for senior citizen groups and others throughout the state about the warning signs of financial abuse and fraud. Investigators would also provide support and guidance to elders throughout the investigation and prosecution process. Gov. Blagojevich said of the program and stopping elder financial abuse, "We must do everything we can to guard the elderly from fraud and abuse and afford them the respect and security they deserve."

Meanwhile, the primary force behind Florida's battle against elder fraud is the state's senior citizens themselves. As part of the Seniors vs. Crime Project, elders serve as volunteers to educate their peers on the dangers of consumer fraud and possible warning signs. The Senior Sleuths, as they are known, also assist the attorney general's office and other law enforcement agencies to detect fraud in their communities. With the help of more than 2,000 Senior Sleuths performing such tasks as checking to ensure that prescriptions are accurately filled and conducting undercover sting operations to detect businesses using false or deceptive practices, the attorney general's office has been successful in handling more than 2,000 complaints, prosecuting over 40 cases and recovering more than \$3 million since the program's inception.

For many states, becoming more aware of the threat of elder financial abuse represents the first step in developing innovative state responses. While limited information exists on the exact scope of the problem at the national level, individual cases like those of the abused women in Missouri and Oregon underscore the serious threats seniors face in protecting the assets on which they depend.

As the U.S. population ages, states will continue to face the challenges of elder financial abuse and exploitation. While states have already taken important steps to address this growing problem, much more remains to be done.

Carrie Abner is a public safety and justice policy analyst at The Council of State Governments.

Fact File

- Nearly 33 percent of the complaints for telemarketing frauds in 2004 were made by individuals age 60 and older, up from 27 percent in 2002.
- The proportion of individuals losing \$5,000 or more through Internet fraud is higher for victims 60 years and older than for any other age group.
- From 1992 to 1997, seniors were the victims of 2.7 million property and violent crimes; 2.5 million burglaries, motor vehicle thefts and household thefts; 46,000 purse snatchings and pocket-pickings; and 165,000 non-lethal violent crimes including rape, robbery and aggravated and simple assault.
- Estimates indicate that only 1 in 25 cases of elder financial abuse is reported. There may be as many as 5 million elders victimized by financial exploitation each year.

Sources: National Fraud Information Center; National White Collar Crime Center; U.S. Department of Justice; Bureau of Consumer Protection; U.S. Department of Justice; Bureau of Consumer Protection.



SENATE COMMITTEE REPORT

DATE: 4/25/06

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 5/3/06

State Affairs Committee considered CS FOR HOUSE BILL NO. 399(FIN)

HB 399 ELDER FRAUD AND ASSISTANCE/OPA

"An Act establishing the office of elder fraud and assistance; and relating to fraud involving older Alaskans."

and recommends:

- be replaced with S CS CS HB 399 (STA)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
SCS House Bill:	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

PREVIOUS

FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DOA	4/14/06	/			4
DPS	3/6/06	/			3
LAI	3/6/06	/			2
DSS	3/6/06	/			1

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>	X			
<i>[Signature]</i>	✓			
CHAIR: <i>[Signature]</i>	✓			

Hon. Haggins

Thompson, Chair

HB

400

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 400(JUD)
(H) Publish Date: 2/21/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Military and Veterans' Affairs
Title Confiscation of Firearms RDU Military and Veterans Affairs
Component Homeland Security & Emergency Management
Sponsor Military & Veterans Affairs
Requester _____ Component No. 2657

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: John Cramer Phone (907) 465-4602
Division: Administrative Services Division Date/Time 2/13/06 9:15 AM
Approved by: Craig E. Campbell, Commissioner Date 2/13/2006
Agency: Department of Military & Veterans' Affairs

AMENDMENT

2

OFFERED IN THE HOUSE

BY REPRESENTATIVE HAWKER

TO: CS HB 400 work draft 24-LS1543\L

1 Page 1, line 7 through page 1, line 10

2 Delete all material

3

4 Insert "Sec. 26.23.205. Confiscation of firearms. A person forfeits any office or
5 governmental position if the person is convicted of official misconduct under AS 11.56.850
6 or interference with constitutional rights under AS 11.76.110 as a result of confiscating,
7 attempting to confiscate, or ordering the confiscation of a firearm, under color of law, during
8 a disaster emergency."

Sec. 11.56.850. Official misconduct.

(a) A public servant commits the crime of official misconduct if, with intent to obtain a benefit or to injure or deprive another person of a benefit, the public servant

(1) performs an act relating to the public servant's office but constituting an unauthorized exercise of the public servant's official functions, knowing that that act is unauthorized; or

(2) knowingly refrains from performing a duty which is imposed upon the public servant by law or is clearly inherent in the nature of the public servant's office.

(b) Official misconduct is a class A misdemeanor.

Sec. 11.76.110. Interference with constitutional rights.

(a) A person commits the crime of interference with constitutional rights if

(1) the person injures, oppresses, threatens, or intimidates another person with intent to deprive that person of a right, privilege, or immunity in fact granted by the constitution or laws of this state;

(2) the person intentionally injures, oppresses, threatens, or intimidates another person because that person has exercised or enjoyed a right, privilege, or immunity in fact granted by the constitution or laws of this state; or

(3) under color of law, ordinance, or regulation of this state or a municipality or other political subdivision of this state, the person intentionally deprives another of a right, privilege, or immunity in fact granted by the constitution or laws of this state.

(b) In a prosecution under this section, whether the injury, oppression, threat, intimidation, or deprivation concerns a right, privilege, or immunity granted by the constitution or laws of this state is a question of law.

(c) Interference with constitutional rights is a class A misdemeanor.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE HAWKER

TO: CS HB 400 work draft 24-LS1543\

1 Page 1, line 4, following "confiscation of a"

2 Insert "firearm"

3

4 Page 1, line 5, following "carried"

5 Delete "firearm by law-abiding citizens"

6 Insert "by a law-abiding citizen"

7

As amended, the section would read:

(5) authorizes the confiscation of a firearm lawfully owned, possessed, or carried by a law-abiding citizen.

24-LS1543L
Luckhaupt
3/1/06

CS FOR HOUSE BILL NO. 400()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES COGHILL, Lynn, Dahlstrom, Wilson, Anderson, Thomas

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to confiscation of firearms during disaster emergencies."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 26.23.200 is amended by adding a new paragraph to read:

4 (5) authorizes the confiscation of a lawfully owned, possessed, or
5 carried firearm by law-abiding citizens.

6 * Sec. 2. AS 26.23 is amended by adding a new section to read:

7 Sec. 26.23.205. Confiscation of firearms. A person forfeits any office or
8 governmental position held if the person, under color of law, confiscates, attempts to
9 confiscate, or orders the confiscation of a firearm during a disaster emergency having
10 no right to do so and no reasonable ground to believe the person has such a right.
11 However, a person does not violate this section if the person is acting as a private
12 citizen who has been directed by another whom the person reasonably believes to be a
13 peace officer or active member of the armed forces or militia, to assist in confiscating
14 a firearm. In addition to forfeiture of office or position, an officer under the
15 jurisdiction of the Alaska Police Standards Council who violates this section is subject

1

to revocation of the officer's certification.

ALASKA STATE HOUSE OF REPRESENTATIVES

Session

Contact:

Interim Address:

3340 Badger Road
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4271



(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

HB 400

"An Act relating to Disasters and Confiscation of Firearms"

SPONSOR STATEMENT

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed." (Second Amendment to the United States Constitution - ratified December, 1791)

The wisdom of this Amendment comes not from seeing what future threats to a free State might be, but knowing that the right of the people to keep and bear arms will insure the security of that free State.

In the chaos following Hurricane Katrina, various government agencies, including Federal officers, made systematic attempts to sweep New Orleans of guns, even if it meant entering the homes of law abiding gun owners.

National Guard, federal, state, or local law enforcement personnel should not be allowed to confiscate lawfully owned and lawfully carried firearms.

House Bill 400 will make it a class A felony for any person to knowingly confiscate, attempt to confiscate, or order the confiscation of a firearm during a disaster emergency.

This bill will insure that law-abiding citizens are not disarmed by the government during a time when they may need their firearms the most.

(24-LS1543-A)

ALASKA STATE HOUSE OF REPRESENTATIVES



Session

(907)-465-3719

FAX# (907)-465-3258

State Capitol

Room 204

Contact:

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3340 Badger Road

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REPRESENTATIVE JOHN COGHILL

HB 400

"An Act relating to disasters and confiscation of firearms."

SECTIONAL

Section 1

Sec. 26.23.200 places limitation on the authority, and responsibility set out in AS 26.23.010 – 26.23.220 Disasters. This bill adds a new section that states there is no authority granted or implied under the Alaska Disaster Act that:

(5) authorizes the confiscation of a lawfully owned, possessed, or carried firearm.

Section 2

Sec. 26.23.205 describes the penalty for:

Confiscation of firearms. A person who knowingly confiscates, attempts to confiscate, or orders the confiscation of a firearm during a disaster emergency is guilty of a class A felony and shall be punished as provided in AS12.55.125(c) 20 years imprisonment and fined \$250,000 as provided in AS12.55.035 Fines.

In this section, "knowingly" has the meaning given in AS 11.81.900 (2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance.

Westlaw.

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Page 1

Slip Copy, 2005 WL 2428840 (E.D.La.)
(Cite as: Slip Copy)

C

Only the Westlaw citation is currently available.
United States District Court, E.D. Louisiana.
NATIONAL RIFLE ASSOCIATION OF
AMERICA, INC. 11250 Waples Mill Rd. Fairfax,
VA 22030, Second Amendment Foundation, Inc.
12500 NE 10th Place Bellevue, WA 98005, Buell
O. Teel 24161 Trairo Road Ponchatoula, LA 70454
Plaintiffs

v.

C. Ray NAGIN, Mayor of New Orleans P. Edwin
Compass III, Superintendent of Police, New
Orleans Jack Strain, Jr., Sheriff, St. Tammany
Parish John Does I-VI, Sheriff's Deputies, St.
Tammany Parish, Defendants
No. Civ.A. 05-20,000.

Sept. 23, 2005.

Long Law Firm, L.L.P., Michael A. Patterson, Bar
Roll No. 10373, Daniel D. Holliday, III, T.A., Bar
Roll No. 23135, Adrian G. Nadeau, Bar Roll No.
28169, Baton Rouge, Louisiana, Stephen P.
Halbrook, Pro Hac Vice, Fairfax, VA, for Plaintiffs.
Talley, Anthony, Hughes, & Knight, L.L.C.,
Charles M. Hughes, Jr., Bar Roll No. 14382,
Mandeville, Louisiana, for defendant, Jack Strain,
Jr., Sheriff, St. Tammany Parish, Louisiana.
Office of the City Attorney, City of New Orleans
Joseph V. Dirosa, Jr., Bar Roll No. 4959, New
Orleans, Louisiana, for defendants, C. Ray Nagin,
Mayor of New Orleans and P. Edwin Compass, III,
Superintendent of Police for the City of New
Orleans.

Section "A"

ZAINY, J.

CONSENT ORDER

*1 THIS CAUSE came on pursuant to the motion of
the plaintiffs, National Rifle Association of

America, Inc., Second Amendment Foundation, Inc.
and Buell O. Teel for a temporary restraining order
and for a preliminary injunction on September 23,
2005.

Present were the following:

Michael A. Patterson, Daniel D. Holliday, III and
Adrian G. Nadeau for plaintiffs;
Charles M. Hughes, Jr. for the defendant, Jack
Strain, Jr., Sheriff, St. Tammany Parish, Louisiana;
and,
Joseph V. DiRosa, Jr. for the defendants, C. Ray
Nagin, Mayor of New Orleans and P. Edwin
Compass, III, Superintendent of Police for the City
of New Orleans.

Defendant, Jack Strain, Jr., Sheriff, St. Tammany
Parish, Louisiana, reserving all rights and waiving
none, affirmatively denies all of the allegations in
the Complaint For Declaratory Judgment and
Injunctive Relief, and specifically and affirmatively
denies that it was or is the policy, custom or
practice of the St. Tammany Parish Sheriff's Office
to illegally seize lawfully possessed firearms from
citizens, including plaintiff, Buell O. Teel or that
Sheriff Strain or any of his deputies, officers,
agents, servants or employees illegally confiscated
firearms from any citizens or that he has any such
firearms in his possession or that any constitutional
or statutory right of any plaintiff or other individual
has been violated:

Defendants, C. Ray Nagin, Mayor of New Orleans
and P. Edwin Compass, III, Superintendent of
Police for the City of New Orleans, deny the
allegations in the Complaint For Declaratory
Judgment and Injunctive Relief and specifically
deny that it was or is the policy of the City of New
Orleans nor the New Orleans Police Department to
illegally seize lawfully possessed firearms from
citizens;

Defendants C. Ray Nagin, Mayor of the City of

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Page 2

Slip Copy, 2005 WL 2428840 (E.D.La.)
(Cite as: Slip Copy)

New Orleans, and P. Edwin Compass, III, Superintendent of the Department of Police for the City of New Orleans, specifically deny each and every allegation in the Complaint for Declaratory Judgment and Injunctive Relief and specifically reserving all rights herein and waiving none, assert the following:

1. C. Ray Nagin has not issued, nor has he any intention of issuing, any order, declaration, promulgation, and/or directive pursuant to the authority granted unto him by LSA-R.S. 29:721, et seq., ordering the seizure of any lawfully-possessed firearm from law abiding citizens, nor has C. Ray Nagin delegated any authority granted unto him pursuant to LSA-RS 29:721, et seq. to any other city official, department head, officer, employee, and/or agent of the City of New Orleans including, but not limited to, P. Edwin Compass, III, Superintendent of the Department of Police for the City of New Orleans and/or Warren Riley, Deputy Superintendent of the Department of Police of the City of New Orleans;
2. P. Edwin Compass, III acknowledges that no authority has been delegated to him by C. Ray Nagin, Mayor of the City of New Orleans, pursuant to the powers granted unto the said Mayor by the provisions of LSA-RS 29:721, et seq. to order the seizure of lawfully-possessed firearms from law abiding citizens and that any and all statements which are allegedly attributed to him in such regard do not represent any policy, statement, ordinance, regulation, decision, custom or practice of either C. Ray Nagin or the City of New Orleans, its agencies and/or departments;
- *2 3. C. Ray Nagin and P. Edwin Compass, III affirmatively deny that seizures of lawfully possessed firearms from law abiding citizens has occurred as a result of the actions of officers, city officials, employees and/or agents of the City of New Orleans or any of its departments and further affirmatively deny that any such weapons are presently in the possession of the City of New Orleans, its agents and/or departments;
4. C. Ray Nagin and P. Edwin Compass, III further affirmatively deny that it is the custom, practice and or policy of the City of New Orleans, either officially or unofficially, to seize and/or confiscate lawfully-possessed firearms from law abiding citizens

Furthermore, Defendants, Jack Strain, Jr., Sheriff, St. Tammany Parish, Louisiana, C. Ray Nagin, Mayor of New Orleans and P. Edwin Compass, III, Superintendent of Police for the City of New Orleans reserve all rights that they may have in this matter.

Notwithstanding the above, the parties hereby consent to the entry of the following order:

IT IS ORDERED, ADJUDGED AND DECREED that C. Ray Nagin, Mayor of New Orleans; P. Edwin Compass III, Superintendent of Police for New Orleans; and Jack Strain, Jr., Sheriff, St. Tammany Parish; and the officers, deputies, agents, servants, and employees of all such persons, and upon those persons in active concert or participation with them, are hereby enjoined and prohibited, until further order of this Court:

1. From confiscating lawfully-possessed firearms from citizens, including, but not limited to, Plaintiff Buell O. Teel and members of Plaintiffs National Rifle Association, Inc. and Second Amendment Foundation, Inc.
2. And they are further ordered to return any and all firearms which may have been confiscated by Defendants, their officers, deputies, agents, servants, and employees of all such persons from Plaintiff, Buell O. Teel, who plaintiffs have assured the Court is authorized to possess firearms; members of Plaintiff, National Rifle Association, Inc., who lawfully possess firearms; and members of Plaintiff Second Amendment Foundation, Inc., who lawfully possess firearms; and all other persons who lawfully possess them, upon presentation of identification and execution of a receipt therefore.

Nothing in this order shall supercede any declaration of emergency promulgated by the applicable authorities.

E.D.La.,2005.
National Rifle Ass'n of America, Inc. v. Nagin
Slip Copy, 2005 WL 2428840 (E.D.La.)

END OF DOCUMENT

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IN THE UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF LOUISIANA

NATIONAL RIFLE ASSOCIATION OF)
AMERICA, INC.)
11250 Waples Mill Rd.)
Fairfax, VA 22030,)
)
SECOND AMENDMENT FOUNDATION, INC.)
12500 NE 10th Place)
Bellevue, WA 98005,)
)
BUELL O. TEEL)
24161 Trairo Road)
Ponchatoula, LA 70454)

CIVIL ACTION NO. _____

Plaintiffs

v.

C. RAY NAGIN, Mayor of New Orleans

P. EDWIN COMPASS III,
Superintendent of Police, New Orleans

JACK STRAIN, JR., Sheriff,
St. Tammany Parish

JOHN DOES I-V, Sheriff's Deputies,
St. Tammany Parish,

Defendants

COMPLAINT
(For Declaratory and Injunctive Relief)

1. This is an action to vindicate the constitutional rights of the law-abiding citizens of Louisiana to keep and bear arms to protect themselves from criminal violence, and to enjoin confiscation of lawful firearms without due process, discriminatory policies based on wealth, and arbitrary searches and seizures. These acts were committed against victims of Hurricane

Katrina.

Parties

2. Plaintiff National Rifle Association of America, Inc. (hereafter "NRA") is a non-profit association incorporated under the laws of New York, with its principal place of business in Fairfax, Virginia. NRA has a membership of almost 4 million persons, of whom scores of thousands reside in Louisiana, many in the areas devastated by Hurricane Katrina. The purposes of NRA include protection of the right of citizens to have firearms for the lawful defense of their families, persons, and property, and to promote public safety and law and order. NRA brings this action on behalf of itself and its members.

3. Plaintiff Second Amendment Foundation, Inc. (hereafter "SAF"), is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington. SAF has over 600,000 members and supporters nationwide, including thousands in Louisiana (many in the areas devastated by Hurricane Katrina). The purposes of SAF include education, research, publishing and legal action focusing on the Constitutional right privately to own and possess firearms and the consequences of gun control. SAF brings this action on behalf of itself and its members.

5. Plaintiff Buell Teel is a resident of Ponchatoula, Louisiana, and is a citizen of the United States.

6. Defendant Ray Nagin is the Mayor of New Orleans whose principal place of business is in New Orleans. He is being sued in his official capacity.

7. Defendant P. Edwin Compass III is the Superintendent of Police for New Orleans whose principal place of business is in New Orleans. He is being sued in his official capacity.

Defendant Jack Strain, Jr., is Sheriff, St. Tammany Parish, whose principal place of business is in Covington, Louisiana. He is being sued in his official capacity.

Defendants John Does I-V were at all times pertinent herein Sheriff's Deputies from St. Tammany Parish. Their identities and principal places of business are currently unknown.

Jurisdiction

Jurisdiction is founded on 28 U.S.C. § 1331 in that this action arises under the Constitution and laws of the United States, and under 28 U.S.C. § 1343(3) in that this action seeks to redress the deprivation, under color of the laws, statutes, ordinances, regulations, customs and usages of Louisiana and political subdivisions thereof, of rights, privileges or immunities secured by the United States Constitution. Supplemental jurisdiction is founded upon the laws of the State of Louisiana.

This action seeks relief pursuant to 28 U.S.C. §§ 2201, 2202, and 42 U.S.C. § 1983. Venue lies in this district pursuant to 28 U.S.C. § 1391.

Facts

On August 26, 2005, Louisiana Governor Kathleen Babineaux Blanco declared a state of emergency based on the imminent threat of Hurricane Katrina to the safety and security of the citizens of Louisiana.

I. the devastation and breakdown of law and order that followed, law-abiding citizens were left on their own without police protection to protect their families, persons, and property from looters, rapists, and criminals of various types. Police who sought to do their duty were overwhelmed.

Defendants responded to this crisis in part by ordering that the law-abiding citizens be

disarmed, leaving them at the mercy of roving gangs, home invaders, and other criminals. Defendants had no lawful authority to order the wholesale confiscation of firearms from citizens who lawfully possessed such firearms in their homes or who were lawfully carrying such firearms.

During and after Hurricane Katrina, beginning in August 2005 and continuing through the present, Defendants Mayor C. Ray Nagin and P. Edwin Compass III, the Superintendent of Police, have pursued a policy of seizing lawfully-possessed firearms from law-abiding residents. Superintendent Compass announced, on or about September 8, 2005, that anyone with a weapon, even one legally registered, will have it confiscated, adding: "No one will be able to be armed. Guns will be taken. Only law enforcement will be allowed to have guns."

During the same period, Mayor Nagin ordered the New Orleans Police and other law enforcement entities under his authority to evict persons from their homes and to confiscate their lawfully-possessed firearms. Police went from house to house and confiscated numerous firearms from citizens at gunpoint.

Thousands of members of Plaintiff NRA members and hundreds of members of Plaintiff SAF reside in New Orleans. The overwhelming majority of NRA and SAF members lawfully possess firearms. NRA and SAF members from New Orleans have been and remain subject to having their firearms unlawfully confiscated from their homes and persons pursuant to the policies of Mayor Nagin and Superintendent Compass, subjecting said NRA and SAF members to irreparable harm.

While decreeing that ordinary citizens may not possess firearms, Defendants Nagin and Compass followed a policy of allowing certain businesses and wealthy persons to hire hundreds

of armed security guards to protect their property

On or about September 9, 2005, Plaintiff Buell O. Teel was with his brother on a boat in Lake Pontchartrain in St. Tammany Parish proceeding to chart a course to the industrial canal in New Orleans, so that barges could be positioned after the storm damage. They were stopped by officers in a St. Tammany Parish Sheriff's boat who asked, at gunpoint, if they had any weapons. Teel responded that they had two rifles in a hard case. Teel lawfully possessed these rifles for self protection. The officers boarded Teel's boat and confiscated his rifles, refusing to give him a receipt. Said officers are identified here as John Does I-III.

Proceeding a mile further on the lake, Teel was again stopped at gunpoint by other officers in a St. Tammany Parish Sheriff's boat who asked if they had any weapons. Said officers are identified here as John Does IV-V.

Said Defendants John Does I-V were acting officially under the authority of Defendant Jack Strain, Jr., Sheriff of St. Tammany Parish. Sheriff Strain either explicitly ordered said officers to confiscate firearms from citizens of St. Tammany Parish, or allowed said officers acting under his authority to do so and ratified their actions.

As a proximate cause of the aforesaid acts of Defendants and their agents and employees, Plaintiffs have been subjected to irreparable harm in that they are subject to having their lawfully-possessed firearms confiscated from them, or have actually had their lawfully-possessed firearms confiscated from them, subjecting them to endangerment from criminal violence and violating their constitutional rights as set forth herein.

COUNT ONE
(Right to Keep and Bear Arms)

Paragraphs 1 through xx are realleged and incorporated herein by reference.

Article I, § 11, of the Louisiana Constitution provides: "The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person." The Second Amendment to the United States Constitution, which applies to the States through the Fourteenth Amendment, similarly provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

The above-described acts of Defendants ordering the confiscation of firearms of citizens and actually confiscating firearms from citizens abridged and infringed on the right of each Plaintiff and countless other citizens to keep and bear arms, in violation of La. Const., Art. I, § 11, and U.S. Const., Amends. II and XIV.

**COUNT TWO
(Due Process)**

Paragraphs 1 through xx are realleged and incorporated herein by reference.

The Fourteenth Amendment to the United States Constitution provides that no State shall deprive any person of life, liberty, or property without due process of law.

The firearms confiscated by Defendants constituted private property which was lawfully possessed by Plaintiffs pursuant to State and Federal law. Moreover, the manner in which Plaintiffs kept, bore, and possessed such property was a liberty interest recognized by State and Federal law.

Said liberty and property interests are recognized by La. Const., Art. I, § 11, which guarantees the right to keep and bear arms; LSA-R.S. § 40:1379.3, which provides for a statewide permit which "shall grant authority to a citizen to carry a concealed handgun on his person" (subsection B) and which may be revoked only

according to specified procedures; and by other provisions of Louisiana law.

Accordingly, by ordering the confiscation of firearms and by actually confiscating the firearms belonging to Plaintiffs and countless other citizens, Defendants deprived them of liberty and property without due process of law, in violation of U.S. Const., Amend. XIV.

**COUNT THREE
(Equal Protection)**

Paragraphs 1 through xx are realleged and incorporated herein by reference.

The Fourteenth Amendment to the United States Constitution provides that no State shall deny to any person the equal protection of the laws.

At the same time that Defendants Nagin and Compass instituted and executed their policy of confiscating firearms from Plaintiffs and countless other law-abiding citizens and thereby prevented them from protecting their more-modest homes from looters and other intruders, Defendants allowed selected wealthy persons to keep their firearms and/or to retain armed private security personnel to protect their more expensive homes and properties. This means that one's ability to exercise one's rights and to protect life and property depended on whether one had or has the economic means to retain armed private security personnel.

Defendants thereby discriminated in favor of the selected few, and against Plaintiffs and the great majority of citizens, solely on the basis of wealth and influence. Defendants thereby denied Plaintiffs and countless other citizens the equal protection of the law.

**COUNT FOUR
(Search and Seizure)**

Paragraphs 1 through xx are realleged and incorporated herein by reference.

The Fourth Amendment to the United States Constitution, which applies to the States through the Fourteenth Amendment, provides in part that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated"

As described above, Defendants issued or executed orders that persons (including Plaintiffs) be accosted at gunpoint by law enforcement officers and that their persons, homes, boats, and other properties be searched and temporarily seized, and that their firearms be seized and kept for an indefinite period of time. Plaintiffs committed no unlawful acts, did not threaten any law enforcement officers, or engage in any other activity that would justify such searches and seizures.

The above-described acts of Defendants violated the right of each Plaintiff and countless other citizens to be secure in their persons and houses against unreasonable searches and seizures, in violation of U.S. Const., Amends. IV and XIV.

WHEREFORE, plaintiffs pray that the Court:

1. Enter a declaratory judgment that the aforesaid acts by Defendants in ordering the confiscation of firearms and actually confiscating firearms violated the Plaintiffs' rights to keep and bear arms, not to be deprived of liberty or property without due process of law, not to be denied the equal protection of the laws, and to be free of unreasonable searches and seizures, all in violation of the Second, Fourth, and Fourteenth Amendments of the U.S. Constitution, and of the Louisiana Constitution, Article I, § 11.

2. Issue a temporary restraining order and preliminary and permanent injunctions compelling Defendants to return all unlawfully seized firearms to Plaintiffs (including the

members of the association Plaintiffs) and to their other lawful owners, and ordering them not to make further unlawful seizures of firearms.

3. Grant such other and further relief as may be proper.
4. Award plaintiffs attorney's fees and costs.

Respectfully Submitted,

National Rifle Association of America, Inc., *et al.*,
Plaintiffs

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Major Victory For Firearms Owners And Freedom In Louisiana

Friday, September 23, 2005

(Fairfax, VA) – The United States District Court for the Eastern District in Louisiana today sided with the National Rifle Association (NRA) and issued a restraining order to bar further gun confiscations from peaceable and law-abiding vic'ims of Hurricane Katrina in New Orleans.

"This is a significant victory for freedom and for the victims of Hurricane Katrina. The court's ruling is instant relief for the victims who now have an effective means of defending themselves from the robbers and rapists that seek to further exploit the remnants of their shattered lives," said NRA Executive Vice President Wayne LaPierre.

Joining LaPierre in hailing the U.S. District Court decision was NRA chief lobbyist Chris W. Cox. "This is an important victory. But the battle is not over. The NRA will remedy state emergency statutes in all 50 states, if needed, to ensure that this injustice does not happen again."

The controversy erupted when *The New York Times* reported, the New Orleans superintendent of police directed that no civilians in New Orleans will be allowed to have guns and that "only law enforcement are allowed to have weapons." ABC News quoted New Orleans' deputy police chief, saying, "No one will be able to be armed. We are going to take all the weapons."

The NRA also pledged that it will continue its work to ensure that every single firearm arbitrarily and unlawfully seized under this directive is returned to the rightful law-abiding owner.

--nra--

Established in 1871, the National Rifle Association is America's oldest civil rights and sportsmen's group. Four million members strong, NRA continues its mission to uphold Second Amendment rights and to advocate enforcement of existing laws against violent offenders to reduce crime. The Association remains the nation's leader in firearm education and training for law-abiding gun owners, law enforcement and the armed services

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