

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7886 HOUSE JUDICIARY

131

HB

376

(7)

Date Referred: February 11, 1994

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-23-94

The JUDICIARY Committee considered:

HB 376

HOUSE BILL NO. 376

ASSIST & PROTECT VULNERABLE ADULTS

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

RECOMMENDATIONS: the same title
be replaced with CSHB 376 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO PASS</u>	DP	<u>OTHER RECOMMENDATIONS</u>	DNP	NR	AM
<i>Joseph D. ...</i>	<input checked="" type="checkbox"/>	<i>Rep. ...</i>		<input checked="" type="checkbox"/>	
<i>Shnette Jones</i>	<input checked="" type="checkbox"/>	<i>Mail Phillips</i>		<input checked="" type="checkbox"/>	
<i>Brian S. Porter</i>	<input checked="" type="checkbox"/>	<i>Rep. Davidson</i>		<input checked="" type="checkbox"/>	
<i>Ann ...</i>	<input checked="" type="checkbox"/>				

Brian S. Porter
CHAIRMAN'S SIGNATURE

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8-GH2001NE
Lauterbach
3/17/94

CS FOR HOUSE BILL NO. 376(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

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

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

4 * Section 1. AS 08.86.200(b) is amended to read:

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

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

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

Consist
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SB248
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1 believe that a vulnerable adult suffers from abandonment, exploitation, abuse,
 2 neglect, or self-neglect [AN ELDERLY PERSON HAS SUFFERED HARM] shall,
 3 not later than 24 hours after first having cause for the belief, report the belief to the
 4 department's central information and referral service for vulnerable adults
 5 [HARM TO THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES]:

6 (1) a physician or other licensed health care provider;
 7 (2) a mental health professional as defined in AS 47.30.915(11) [AND
 8 INCLUDING A MARITAL AND FAMILY THERAPIST LICENSED UNDER
 9 AS 08.63];

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

13 (5) a guardian or conservator;
 14 (6) a police officer;
 15 (7) a village public safety officer;
 16 (8) a village health aide;
 17 (9) a social worker;

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

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

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

27 (14) a caregiver of the vulnerable adult.

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

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

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

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

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

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

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

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

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

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

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

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1 information and referral service for vulnerable adults [HARM], the reporting
 2 person may [SHALL] make the report [OF HARM] to a police officer or a village
 3 public safety officer. The police officer or village public safety officer shall take
 4 immediate action to protect the vulnerable adult [ELDERLY PERSON] and shall, at
 5 the earliest opportunity, notify the department.

6 * Sec. 7. AS 47.24.010(F) is repealed and reenacted to read:

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

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

12 Sec. 47.24.011. DUTIES OF THE DEPARTMENT REGARDING SERVICES
 13 AND PROTECTION FOR VULNERABLE ADULTS. In order to facilitate the
 14 provision of supportive and protective services for vulnerable adults, the department
 15 shall

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

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

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

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

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

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

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

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and

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

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

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

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

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

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

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

(d) If the long term care ombudsman or the Department of Health and Social

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1 Services receives directly a report regarding the abandonment, exploitation, abuse,
 2 neglect, or self-neglect of a vulnerable adult in an out-of-home care facility, the
 3 ombudsman or the Department of Health and Social Services shall provide the report,
 4 and the results of their actions or investigations regarding the report, to the central
 5 information and referral service of the Department of Administration. The Department
 6 of Administration may investigate the report as described in AS 47.24.015 if the
 7 department determines that action is appropriate.

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

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

22 (b) After the department conducts an investigation under (a) of this section,
 23 the department shall prepare a written report of the investigation, including findings,
 24 recommendations, and a determination of whether and what kind of supportive or
 25 protective services are needed by and are to be offered to the vulnerable adult. After
 26 the department's designee conducts an investigation under (a) of this section, the
 27 designee shall prepare a written report of the investigation, including findings,
 28 recommendations, and a proposed determination of whether and what kind of
 29 supportive or protective services are to be offered to the vulnerable adult. The
 30 department shall prepare, and attach to the designee's report, a final determination
 31 regarding services to be offered to the vulnerable adult.

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- 1 (5) a brother or sister of the vulnerable adult who is 18 years of age
2 or older; or
- 3 (6) a close friend or relative of the vulnerable adult who is 18 years of
4 age or older.
- 5 (b) An individual from the list in (a) of this section may not be selected as a
6 surrogate decision maker if
- 7 (1) the department determines that individual does not possess decision
8 making capacity; or
- 9 (2) there are allegations that individual is a perpetrator of the
10 abandonment, exploitation, abuse, or neglect of the vulnerable adult.
- 11 (c) If the department intends to select a surrogate decision maker from a
12 priority level in the list in (a) of this section and there is more than one individual at
13 that priority level who is willing to be the surrogate decision maker, those individuals
- 14 (1) may select from amongst themselves, by majority vote, an
15 individual to serve as the surrogate decision maker; or
- 16 (2) as a group may serve as the surrogate decision maker and reach
17 decisions by consensus.
- 18 Sec. 47.24.017. DELIVERY OF PROTECTIVE SERVICES FOR
19 VULNERABLE ADULTS. (a) If the department determines under AS 47.24.015 that
20 a vulnerable adult is in need of protective services and either the vulnerable adult, the
21 vulnerable adult's guardian or attorney in fact, or a surrogate decision maker selected
22 under AS 47.24.016 consents to receipt of the protective services, and to the extent
23 that resources are available, the department shall ensure that the protective services for
24 the vulnerable adult are provided by the department or its designee within 10 working
25 days after the department received the report under AS 47.24.010 regarding the
26 abandonment, exploitation, abuse, neglect, or self-neglect of the vulnerable adult.
27 However, if circumstances beyond the control of the department or the department's
28 designee make it impossible to provide the protective services within the 10 working
29 days, the department shall ensure that the services are provided as soon as possible
30 after that time.
- 31 (b) Notwithstanding (a) of this section, if the department determines that an

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New words

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1 emergency life threatening situation exists that necessitates temporary provision of
 2 protective services to a vulnerable adult, the department may temporarily provide the
 3 necessary protective services in a manner determined by the department to be the most
 4 appropriate in light of the emergency situation, regardless of whether the vulnerable
 5 adult or any other person has consented to receipt of the services.

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

10 Sec. 47.24.019. PETITIONING COURT FOR CERTAIN PROTECTIVE
 11 SERVICES. (a) If, after investigation under AS 47.24.015, the department has
 12 reasonable cause to believe that a vulnerable adult is in need of protective services and
 13 is an incapacitated person, the department may petition the court under AS 13.26 for
 14 appointment of a guardian or temporary guardian for the vulnerable adult for the
 15 purpose of deciding whether to consent to the receipt of protective services for the
 16 vulnerable adult.

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

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

28 ³ Sec. 9: AS 47.24.040 is repealed and reenacted to read:

29 Sec. 47.24.040. MONITORING. If ongoing protective services are provided
 30 to a vulnerable adult under AS 47 4.017, the department shall monitor the adult's
 31 situation, as the department considers appropriate, until the department determines that

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1 the protective services are no longer needed.

2 * Sec. 10. AS 47.24.050 is amended to read:

3 Sec. 47.24.050. CONFIDENTIALITY OF REPORTS. (a) Investigation
4 reports and reports of the abandonment, exploitation, abuse, neglect, or self-neglect
5 of a vulnerable adult [HARM] filed under this chapter [AS 47.24.010 - 47.24.100]
6 are confidential and are not subject to public inspection and copying under
7 AS 09.25.110 - 09.25.125. However, in accordance with this chapter [AS 47.24.010 -
8 47.24.100] and regulations adopted under this chapter [AS 47.24.010 - 47.24.100],
9 investigation reports may be used by appropriate [GOVERNMENTAL] agencies or
10 individuals inside and outside the state, in connection with investigations or judicial
11 proceedings involving the abandonment, exploitation, abuse, neglect, or self-neglect
12 of a vulnerable adult [HARM TO AN ELDERLY PERSON].

13 (b) The department shall disclose a report of the abandonment, exploitation,
14 abuse, neglect, or self-neglect of a vulnerable adult [HARM] if the vulnerable adult
15 [ELDERLY PERSON] who is the subject of the report consents in writing. The
16 department shall, upon request, disclose the number of verified reports of
17 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult
18 [HARM] that occurred at an institution that provides [FOR] care for vulnerable
19 adults [OF THE ELDERLY].

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

21 Sec. 47.24.070. REGULATIONS. Before adoption by the department,
22 regulations to implement this chapter shall be provided to the Older Alaskans
23 Commission established under AS 44.21.200 for review.

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

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

30 (b) An employer or supervisor of a person who in good faith makes a report
31 under AS 47.24.010 [AS 47.24.110] may not discharge, demote, transfer, reduce pay

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1 or benefits or work privileges of, prepare a negative work performance evaluation of,
2 or take other detrimental action against the person because the person made the report.
3 The person making the report may bring a civil action for compensatory and punitive
4 damages against an employer or supervisor who violates this subsection. In the civil
5 action there is a rebuttable presumption that the detrimental action by the employer or
6 supervisor was retaliatory if it was taken within 90 days after the report was made.

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

8 Sec. 47.24.900. DEFINITIONS. In this chapter,

9 (1) "abandonment" means desertion of a vulnerable adult by a
10 caregiver;

11 (2) "abuse" means

12 (A) the wilful, intentional, or reckless nonaccidental, and
13 nontherapeutic infliction of physical pain, injury, or mental distress; or

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

15 (3) "caregiver" means

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

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

21 (4) "decision making capacity" means the ability to understand and
22 appreciate the nature and consequences of a decision and the ability to reach and
23 communicate an informed decision;

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

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

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

31 (8) "incapacitated person" means a person whose ability to receive and

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1 evaluate information or to communicate decisions is impaired to the extent that the
2 person lacks the ability to provide or arrange for the essential requirements for the
3 person's physical health or safety without court-ordered assistance;

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

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

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

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

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

19 (14) "unable to consent" means refusal to, or inability to, accept
20 services because

21 (A) the person is an incapacitated person or apparently is an
22 incapacitated person;

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

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

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

30 (16) "vulnerable adult" means a person 18 years of age or older who,
31 because of physical or mental impairment, is unable to meet the person's own needs

1 or to seek help without assistance.

2 * Sec. 14. AS 08.63.200(b)(2); AS 47.24.010(g), 47.24.010(h), 47.24.020, 47.24.030,
3 47.24.060, 47.24.075, 47.24.100, and 47.24.110 are repealed.

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

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

13 (c) The Department of Administration may proceed to adopt regulations necessary to
14 implement the changes made by this Act. The regulations may not take effect before July 1,
15 1994.

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

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

No. 5Bill Version: HB 376(H) Publish Date: 1/14/94**FISCAL NOTE****STATE OF ALASKA
1994 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Administration
 Title: An act relating to services for and protection BRU: Senior Services
of vulnerable adults. Component: Senior Services Administration
 Sponsor: _____
 Requestor: Governor COMPONENT SERIAL NO. 1981

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	258.5	263.7	268.9	274.3	279.8	285.4
TRAVEL	20.0	20.4	20.8	21.2	21.6	22.1
CONTRACTUAL	264.1	269.4	274.8	280.3	285.9	291.6
SUPPLIES	5.0	5.1	5.2	5.3	5.4	5.5
EQUIPMENT	12.0	12.2	12.5	12.7	13.0	13.2
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	559.6	570.8	582.2	593.9	605.7	617.8

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	538.0	549.2	560.6	572.3	584.1	596.2
1005 GF/Program Receipts						
1006 GF/MHTIA	21.6	21.6	21.6	21.6	21.6	21.6
Other						
Total	559.6	570.8	582.2	593.9	605.7	617.8

Estimate of current year (FY94) cost: \$ _____

POSITIONS:

FULL-TIME	5	5	5	5	5	5
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page in necessary)

Future costs inflated at 2% annual increase.

This fiscal note reflects the transfer of staff and support for Adult Protective Services to the Senior Services BRU. See fiscal notes from the Department of Health and Social Services for equivalent reductions.

Further analysis is on the attached pages.

Prepared by: Connie J. Sipe, Director
Division: Older Alaskans CommissionPhone: 563-5654
Date: _____Approved by Commissioner: [Signature]
Agency: AdministrationDate: 1/14/94PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
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Fiscal Note Analysis
Adult Protective Services

Transfers:

1. Transfer from Department of Health and Social Services, Family and Youth Services BRU, Southcentral and Northern Regional Office Components: Three full-time Social Worker positions, range 16, PCNs 06-3714, 06-3426, and 06-3725.
Total = 195.1

2. Transfer from Department of Health and Social Services, Purchased Services BRU, Adult Services Component: Adult foster/residential care, other purchased protective and contractual services.
Total = 364.5.

3. Transfer from Department of Administration, Senior Services BRU, Pioneers' Homes Component:
 - a. One full-time position (vacant) transferred within the BRU and reclassified to Clerk Typist, Anchorage.
 - b. One position will be reclassified to become a Social Worker in Anchorage for adult protective services.

Total Funds transferred = 559.6

Adult Protective Services will use the funds as follows:

Personal Services:	<u>Months</u>	<u>Subtotal</u>	<u>Total</u>
1 PFT Soc. Worker III (Fbks)	12	66.8	
2 PFT Soc. Worker III (Anch)	24	128.3	
1 PFT Soc. Worker I (Anch)	10	35.1	
1 PFT Clerk Typist (Anch)	10	<u>28.3</u>	
Total Personal Services			258.5

Note: The division will identify and cross-train personnel in one or more Pioneers' Homes in Southeast to handle Adult Protective Services cases in that region on an "as needed" basis.

Travel	20.0
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Contractual:

Purchased protective services, adult foster/residential	190.0	
Lease space	33.0	
Telephone (800 number, 24 hr. answering/paging)	34.0	
Risk management and other contractual costs	7.1	
Total Contractual services		264.1

Supplies 5.0

Equipment: software, telephones, computers, furniture 12.0

Total Transferred In for Protective Services 559.6

FISCAL NOTE

No. 4
 Bill Version: HB 376
 (H) Publish Date: 1/14/94

**STATE OF ALASKA
 1994 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Administration
 Title: An act relating to services for and protection BRU: Senior Services
of vulnerable adults. Component: Pioneers' Homes
 Sponsor: _____
 Requestor: Governor COMPONENT SERIAL NO. 1950

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
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 ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other						
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: \$ _____

POSITIONS:

FULL-TIME	(2)					
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page in necessary)

Two vacant positions will be transferred to the Senior Services Administration component.

Prepared by: Connie J. Sipe, Director Phone: 563-5654
 Division: Senior Services Date: _____

Approved by Commissioner: *UBCC* Date: 12/27/93
 Agency: Administration

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FISCAL NOTE

No. 3

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Bill Version: HB 376

(H) Publish Date: 1/14/94

Revision Date: 1/10/94 Dept. Affected: Health and Social Services
 Title: Vulnerable Adults Protective Services BRU: Family & Youth Services
 Component: Northern Region
 Sponsor: Rules Committee
 Requestor: By Request of Governor COMPONENT SERIAL NO. 255

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	(68.0)					
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	(68.0)	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES						
---------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	(68.0)					
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	(68.0)	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	1					
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: None

ANALYSIS: (Attach a separate page if necessary)

One Adult Protective Services (APS) specialist is being transferred from the Division of Family and Youth Services (DFYS) Northern Region to the new Division of Senior Services to support the Protection of Vulnerable Adults Legislation.

When the existing Protection of the Elderly statute was passed in 1983, no funding was provided, other than 5.0 for brochures. The specialist position in Fairbanks was created from child protective services funds. Subsequent efforts to expand funding for a credible adult protective services program have not been fruitful. The Task Force that reviewed APS within DFYS recommended it be consolidated with other senior services where it is believed the program may be better supported and developed.

Prepared by: Laborah R. Wing, Director *Laborah R. Wing*
 Division: Division of Family & Youth Services

Phone: 465-3191
 Date: 01/12/94

Approved by Commissioner: Margaret R. Lowe *Margaret R. Lowe*
 Agency: Department of Health & Social Services

Date: 1-13-94

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FISCAL NOTE

N^o 2
 B... version: HB 376
 (H) Publish Date: 1/14/94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date: 1/10/94 Dept. Affected: Health and Social Services
 Title: Vulnerable Adults Protective Services BRU: Family & Youth Services
 Component: Southcentral Region
 Sponsor: Rules Committee
 Requestor: By Request of Governor COMPONENT SERIAL NO. 254

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	(127.1)					
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	(127.1)	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGES IN REVENUES						
----------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	(127.1)					
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	(127.1)	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL - TIME	2					
PART - TIME						
TEMPORARY						

Estimate of current year (FY94) impact: None

ANALYSIS: (Attach a separate page if necessary)

Two Adult Protective Services (APS) specialists are being transferred from the Division of Family and Youth Services (DFYS) Southcentral Region to the new Division of Senior Services to support the Protection of Vulnerable Adults Legislation.

When the existing protection of the Elderly statute was passed in 1983, no funding was provided, other than 5.0 for brochures. The Adult Protective Services Specialist positions in Anchorage were created from child protective services funds. Subsequent efforts to expand funding for a credible adult protective services program have not been fruitful. The Task Force that reviewed APS within DFYS recommended it be consolidated with other senior services where it is believed the program may be better supported and developed.

Prepared by: Deborah R. Wing, Director *Deborah R. Wing*
 Division: Division of Family & Youth Services
 Approved by Commissioner: Margaret R. Lowe *Margaret R. Lowe*
 Agency: Department of Health & Social Services
 Margaret Lowe, M. Ed., Ed. S.

Phone: 465-3191
 Date: 01/10/94
 Date: 1-11-94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

No. 1
 Bill Version: HB 376
 (H) Publish Date: 1/14/94

Revision Date: 1/10/94 Dept. Affected: Health and Social Services
 Title: Vulnerable Adults Protective Services BRU: Purchased Services
 Component: Adult Services
 Sponsor: Rules Committee
 Requestor: by Request of Governor COMPONENT SERIAL NO. _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	(364.5)					
MISCELLANEOUS						
TOTAL OPERATING	(364.5)	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGES IN REVENUES						
----------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	(342.9)					
1008 GF/Program Receipts						
1008 GF/MHTIA	(21.6)					
Other						
TOTAL	(364.5)	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: None

ANALYSIS: (Attach a separate page if necessary)

When the existing Protection of the Elderly statute was passed in 1983, no funding was provided. In the late 70's, the department had also been given statutory responsibility for licensing adult facilities. Again no funds were provided for licensing and no funds were provided for upgrading the care of dependent adults residing in existing facilities, then called, boarding homes.

In 1983, the department obtained funds for residential and foster care for dependent adults. These funds became the Adult Services Component of the Purchased Services BRU and are being transferred from the Division of Family and Youth Services, DHSS, to the Division of Senior Services, Department of Administration to support the Protection of Vulnerable Adults Legislation.

Prepared by: Deborah R. Wing, Director
 Division: Division of Family & Youth Services

Phone: 465-3131
 Date: 01/10/94

Approved by Commissioner: Margaret Lowe, M. Ed., Ed. S.
 Agency: Department of Health & Social Services

Date: _____

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: HB 376

Revision Date: _____ Dept. Affected: Public Safety
 Title: Assist & Protect Vulnerable Adults BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: H. RULES by Request

Requestor: H. HES COMPONENT SERIAL NO. 799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () <small>Revenue Code</small>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

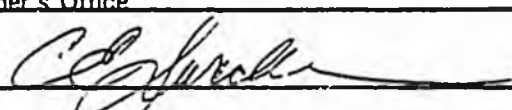
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 94) impact: \$ _____

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)
 No significant fiscal impact upon the Alaska State Troopers is anticipated.

Prepared By: Lee Ann Lucas Phone: 465-4322
 Division: Commissioner's Office Date: 2/2/94
 Approved by Commissioner:  Date: 2/2/94
 Agency: Richard L. Burton, Dept. of Public Safety

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

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

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

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

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

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

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

a v. AD who is the

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

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

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

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

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

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

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

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

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

1 adults who are in need of protective services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ca v. AD who is the

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (3) a pharmacist;

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

7 (5) a guardian or conservator;

8 (6) a police officer;

9 (7) a village public safety officer;

10 (8) a village health aide;

11 (9) a social worker;

12 (10) a member of the clergy;

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

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

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

21 regiver of the vulnerable adult.

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

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

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

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

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

HOUSE BILL NO. 376

IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/14/94

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

- 24 (1) may select from amongst themselves, by majority vote, an
25 individual to serve as the surrogate decision maker; or
26 (2) as a group may serve as the surrogate decision maker and reach
27 decisions by consensus.

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

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

* 11 (c) The department, or its designee, shall immediately terminate an
12 investigation under this section upon the request of the vulnerable adult who is the
13 subject of the report made under AS 47.24.010. However, if the investigation to that
14 point has resulted in reasonable cause to believe that the vulnerable adult is in need
15 of protective services, *for the section, status does not*
mean revelation other than

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

17 or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (b) An employer or supervisor of a person who in good faith makes a report
10 under AS 47.24.010 [AS 47.24.110] may not discharge, demote, transfer, reduce pay
11 or benefits or work privileges of, prepare a negative work performance evaluation of,
12 or take other detrimental action against the person because the person made the report.

13 [The person making the report may bring a civil action for compensatory and punitive]
14 damages against an employer or supervisor who violates this subsection. In the civil
15 action there is a rebuttable presumption that the detrimental action by the employer or
16 supervisor was retaliatory if it was taken within 90 days after the report was made.

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

18 Sec. 47.24.900. DEFINITIONS. In this chapter,

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

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

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

25 (3) "caregiver" means

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 incapacitated person;
2 (B) of coercion by or fear of reprisal from the perpetrator of
3 abandonment, exploitation, abuse, or neglect;
4 (C) of dependency on the perpetrator of abandonment,
5 exploitation, abuse, or neglect for services, care, or support; or
6 (D) of an inability to perceive that refusal to consent results in
7 an imminent and substantial danger of death or irreparable harm to self or
8 others;

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

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

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

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

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

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

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

HOUSE COMMITTEE REPORT

(9)

Date Referred: January 14, 1994

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 2/9/94

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 376

HOUSE BILL NO. 376

ASSIST & PROTECT VULNERABLE ADULTS

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

RECOMMENDATIONS:

[] the same title
be replaced with _____ [] a new title

[] have attached amendments(s)

[] do pass

[] do not pass

[] no recommendations

[X] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (3) (Dept/Date)

[] fiscal impact _____

[*] fiscal note(s) Admin, H+SS 1/14/94

[X] zero fiscal note Public Safety

[X] zero fiscal note(s) Admin 1/14/94

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Car Bunde</i>	✓	<i>Patricia</i>		✓	
<i>[Signature]</i>	✓	<i>[Signature]</i>			X
<i>Betty Damm</i>		<i>[Signature]</i>		✓	
<i>Lrene Michole</i>	✓	<i>[Signature]</i>			
		<i>Auley Olberg</i>		✓	

[Signature]
V'S SIGNATURE

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

P.O. BOX 110200
JUNEAU, ALASKA 99811-0200
PHONE: (907) 465-2200
FAX: (907) 465-2496

February 14, 1994

The Honorable Brian Porter
Chairman
House Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

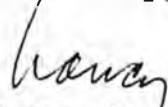
Dear Representative Porter:

This is to request your consideration in scheduling House Bill 376 before the House Judiciary Committee as soon as possible.

The bill, which deals with protections for vulnerable adults, represents efforts of the department and senior groups in the state over the past two years to better coordinate and strengthen the network of services provided to Alaska's seniors.

Thank you.

Sincerely,


Nancy Bear Usera
Commissioner

NBU/nl

cc: Raga Elim
Legislative Liaison
Office of the Governor

Roberley Waldron
Deputy Commissioner

Connie Sipe
Director
Division of Senior Services

Received

BRIAN PORTER

DEPARTMENT OF ADMINISTRATION

HOUSE BILL 376 SERVICES AND PROTECTION FOR VULNERABLE ADULTS

House Bill 376 has been introduced by Governor Hickel with the intent to make significant improvements in the way that protective services would be provided to vulnerable adults who are victims of abuse, neglect or exploitation. The bill would transfer the authority for adult protective services from the Department of Health & Social Services (Division of Family & Youth Services) to the Department of Administration (Division of Senior Services).

The Department of Administration worked as part of Governor Hickel's Interagency Task Force on Senior Services to develop this bill. Briefly, here are the highlights of improvements and changes contained in the bill. A more detailed analysis follows.

House Bill 376 would:

- Combine protective services for the elderly and other adults
- Offer protection to the "vulnerable," without interfering with elderly or disabled adults capable of caring for themselves
- Streamline abuse reporting and reduce duplicative work by state investigating agencies
- Open a central information and referral service for all vulnerable adults and their caregivers
- Promote more coordination with local service provider agencies to the same population
- Use local service providers as more "friendly" outreach workers wherever possible
- Honor a competent adult's refusal of services or request to terminate investigation
- Share appropriate information on status of investigation with the reporter of the abuse
- Use family members as "surrogate decision makers" when abuse victim is not able to give consent to receipt of services
- Clarify when and for what relief the state may seek judicial intervention to protect a person
- Redefine abuse to focus on intentional or reckless - not accidental - harm to adults
- Redefine neglect to focus on intentional failure to provide care, not inability to care
- Redefine exploitation to include exploitation of the victim's person as well as resources
- Provide for a smooth transition and transfer between the departments

DETAILED ANALYSIS OF BILL'S IMPROVEMENTS

New perspective on who are "vulnerable adults" and what is "abuse." The first section of the bill, at page 1, lines 5 -13, defines the protected class of persons as "vulnerable" adults who suffer abandonment, exploitation, abuse, neglect or self-neglect. This new definition in effect combines two formerly separate statutes: one for elder abuse and one for abuse of disabled persons. The definition also more correctly recognizes that not all elderly and not all disabled persons are "vulnerable." This section transfers the function of receiving reports to a new central information and referral service to be located in the Department of Administration.

Reporting of abuse updated and streamlined. As the first section continues onto page 2, the bill amends the list of persons who are required by this law to report their belief that a vulnerable adult is suffering from one of the listed types of abuse. (For brevity's sake, this paper will use "abuse" generally to refer to the entire list of types of harm covered by the bill.)

Section 1, subsections (c) and (d), page 2, l. 31 through page 3, l.16, bring the reporting requirements into compliance with the new assignment to Administration and with the new terminology in the bill regarding vulnerable adults and the types of abuse covered.

Section 1, subsection (e), page 3., ll.17 -25 clarify that when a victim is in imminent risk, the reporting person may contact a local police officer if the reporter is unable to contact the department, so that the police officer may take action to protect the vulnerable adult.

Section 1, subsection (f) , starting page 3, l. 26, clarifies that a person who observes abuse in an out-of-home care facility may fulfill the person's duty to report by making a report to the long term care ombudsman (of the Older Alaskans Commission) or the Department of Health & Social Services (the licensing section of the Medical Assistance Division or the Division of Mental Health & Developmental Disabilities).

The deletions from subsection (f), shown on page 3, ll.30 -31 and page 4, ll. 1 -21, simply delete duplicative language on protections for reporting persons, as that subject is covered later in Section 6 of the bill.

Department of Administration's new system for serving vulnerable adults who are abused.

Section 2, starting on page 4, l. 22, describes the duties of the department under the amended law. The Department of Administration will compile information on abuse, maintain a central information and referral (I & R) line, run a statewide system to serve abused adults.

More coordination with local service providers. The Department would be able to designate other (willing) state agencies or community-based service providers to deliver some or all of the supportive and protective services needed. This would be a major improvement over the current system, as the Department could use local provider agencies more familiar and less threatening to the alleged victim of abuse, such as the outreach worker from the local senior center to make initial contact and offer services. If cases involve serious abuse, the department might immediately send its social worker, or the social worker could pick up the case after the local senior center's first contact and assessment of the situation.

Reducing duplicate investigations by state agencies. Sec. 47.24.013, starting page 5, l. 14, is one of the bill's major improvements over the current delivery system. Currently, an allegation that abuse has occurred in a nursing home or hospital requires reporting to the Division of Family & Youth Services and to the Certification and Licensing Unit of Medical Assistance. In addition, the Long Term Care Ombudsman has jurisdiction under federal and state law to investigate the same situation if the office is called. Facilities often find themselves dealing with three to five state agencies over one allegation.

The bill improves this inefficient use of state resources by stating that when a facility is licensed by Health & Social Services (nursing homes, hospitals) and the victim is over the age of 60, then the report of abuse will be transferred for investigation and action to the appropriate licensing unit in DH&SS and the long term care ombudsman's office, which will be required to investigate, coordinate their investigations and responses, and to provide a report of the results to the central I & R service of Administration within 60 days.

Similarly, when the alleged victim of abuse in a licensed out-of-home care facility is under age 60, the case will still be transferred to the appropriate licensing agency within DH&SS, and the protective services unit in Administration will not be required to duplicate efforts by investigating the same case.

Investigative duties. Sec. 47.24.015, starting at page 6, l. 24, outlines how the Department of Administration is to take action on reports of possible abuse. The department is required to initiate a prompt investigation, which must include a face-to-face interview with the subject of the report, unless a personal interview would endanger the vulnerable adult. Note that the department may use a designee agency to conduct this work. The department's investigation must be summarized in a written report, including a summary of services to be provided.

Victim's request to drop investigation. If the subject of the report requests that the investigation cease, the department or its designee must terminate the investigation. However, in an improvement over current law, the department is not forced to abandon the case altogether upon the alleged victim's request. Rather, when the investigation to date has already resulted in "reasonable cause to believe that the vulnerable adult is in need of protective services," the department may either petition the court for certain protective services or may report the case for criminal investigation.

This new procedure recognizes the reality of many cases where the alleged victim is too scared of or threatened by the perpetrator to be willing to cooperate with any investigation, or where the victim appears to be temporarily or permanently incapable of making an informed decision about his or her own safety and affairs.

Sharing of information with reporter of abuse. Page 7, lines 20 - 22, are also an attempt to cure a problem in the current delivery system for protective services for adults. This section explicitly requires the department to notify the person who made the abuse report about the status of the investigation regarding the vulnerable adult. This will improve relations with reporters who are ongoing caregivers for the subject adult, as these caregivers need to know whether the person is safe and how the caregiver can best interact with the subject adult in the future.

New use of surrogate decision makers. A new official recognition of "surrogate decision makers" for vulnerable adults is included in sec. 47.24.016, which starts at page 7, l. 23. Under this

section, when the department finds that a vulnerable adult needs protective services, but the adult victim lacks decision making capacity or is "unable to consent" due to illness, coercion, fear of reprisal from or dependency on the perpetrator, then the department may seek consent from a guardian or attorney in fact for the victim. Under this new law, if there is no guardian, the department may select from the statute's list of surrogate decision makers for the person, for the purpose of deciding whether the person will "consent" to receiving protective or supportive services.

The surrogate decision maker selection process in the bill is modeled after similar acts in several other states. It allows the department to use --in the priority order listed--the consent of the vulnerable adult's spouse, domestic partner, adult child, parent, sibling, or close adult friend or relative. An incompetent person or an alleged perpetrator of the abuse may not be used as a surrogate. If more than one willing surrogate exists at the chosen priority level--like three adult children--then those persons may choose among themselves or make surrogate decisions by a majority vote.

Allowing surrogate decision making will allow the department to more quickly move ahead with protective services in many situations, and will avoid the expense of petitioning the court for orders or for a guardianship in those many situations here the crisis is only temporary and can be remedied by health care treatments or movement to a new safer environment. (Note that this power can not be used when the vulnerable adult victim retains capacity and capability to make his or her own consent decisions.)

Delivery of protective services. Sec. 47.24.017, starting page 8, l. 28 discusses service delivery. When the department determines that a vulnerable adult needs protective services, and the person or appropriate surrogate has consented, the department will provide services within 10 days, to the extent of resources available from all sources (department, client, other agencies). When an emergency situation exists the department may provide protective services without consent. Services are always to be delivered in a culturally relevant manner that protects the adult's right to live in the "least restrictive environment" and maximizes the person's own decision making capabilities.

Petitioning the court for protective services. Section 47.24.019, starting at page 9, l. 20., gives the department authority to petition the court for appointment of a guardian in order to decide if the person will consent to services, or to petition for involuntary commitment when the person is mentally ill and likely to seriously harm self or others, or to petition the court to issue an injunction against any caregiver who is interfering with the person's receiving services which the person has consented to receive.

Confidentiality and disclosure of reports. Section 4 of the bill amends AS 47.24.050, as shown at page 10, ll. 12 - 29. Under the proposed bill, confidential reports about investigations may be shared with "appropriate agencies or individuals." The department must delineate who is appropriate and how information will be shared. This section would ease a problem in the current law where confidentiality requirements can be so strictly interpreted that, for example, a local service provider such as an adult day care center which cares for a senior five days a week can not be asked to use its professional staff to help monitor the status of a client who is living with a caregiver who has abused the client in the past.

Immunity from liability or retaliation. This protection in the current law is maintained in the bill, section 6, on page 11.

Definitions. Many of the definitions are improvements to current law. The most important changes are highlighted here. Definitions are found on pages 11 - 13 of the bill draft.

"Abuse" will no longer mean any harm to an elder or disabled person. The proposed bill says that abuse is the wilful, intentional or reckless infliction of injury or mental distress, or sexual assault. The new definition will eliminate current investigations of purely accidental harm where other professionals who witness the accidental harm (such as in a nursing home) feel compelled by law to make a formal report of the abuse.

(One actual case that could have been ignored under this new definition was the accidental dropping from two feet above to the bed by one of two nurses' aides doing a difficult transfer of a resident. Although everyone saw the aide crying in remorse over the accident, and the aide had no history of carelessness or abuse, under the current statute, the elder was "harmed" and other employees felt compelled to report this technical incident of "abuse.")

"Designee" of the department, which can assist with investigation or provision of services to vulnerable adults, includes state agencies, community-based programs, individuals, or providers of supportive services licensed or authorized by agreement with the department .

"Exploitation" will include unjust or improper use of either the vulnerable person or his or her resources for another person's profit or advantage.

"Neglect" will mean the intentional failure by a caregiver to provide essential care, and not just the financial or physical inability of the caregiver to render care.

"Protective services" can include protective placement or other services intended to prevent or alleviate harm.

"Unable to consent," as discussed earlier, will be broader than just those persons who are "incompetent," i.e., permanently incapacitated from decision making. Unable to consent will include persons who are unable to consent due to coercion, fear, dependency, or temporary inability to perceive the imminent and substantial risk of death or irreparable injury if the person refuses assistance.

"Vulnerable adult" means a person over age 18 who, because of physical or mental impairment, is unable to meet his or her own needs, or is unable to seek help. Note that the bill would change the current law's presumption that all elderly persons and all physically, developmentally or mentally disabled persons are vulnerable and subject to special protection and possible interference in their affairs by state protective services.

General provisions of the bill. Section 8, page 13, lines 12 -13 repeals the existing abuse of the disabled law . Section 9, page 13, starting line 14, specifies how the transition of resources, cases, and ongoing contracts will be transferred between agencies upon the effective date of the Act. The bill authorizes the Department of Administration to proceed with regulations while awaiting the effective date of the Act. The transition section has an immediate effective date upon the Governor's signature, and the rest of the bill would be effective July 1, 1994.

WALTER J. HICKEL
GOVERNOR



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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 14, 1994

*The Honorable Ramona Barnes
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Dear Speaker Barnes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to services for and protection of vulnerable adults. This bill will place responsibility for the delivery of services to vulnerable adults within the Department of Administration. This bill also extends the scope of existing adult protective services to include all vulnerable adults who are in need of such services.

Section 1 of the bill clarifies the circumstances that give rise to a duty to make a report of a vulnerable adult. The circumstances are abandonment, exploitation, abuse, neglect, or self-neglect. Under this section, the report will be made to the Department of Administration. This section also deletes the existing liability immunity provisions, which are later reestablished in sec. 6 of the bill.

Section 2 sets out the duties of the Department of Administration regarding services and protection for vulnerable adults. The duties include establishing a central information and referral service for vulnerable adults, establishing criteria and procedures for the delivery of community-based services, designation of local service providers as department designees to meet local service needs, and adoption of regulations to implement the program.

Section 2 also sets out provisions regarding certain reports of abandonment, exploitation, abuse, neglect, or self-neglect, and regarding the action that is to be taken on all reports. The investigation required to be done by the Department of Administration includes a face-to-face interview and a written report of findings. Section 2 also provides for delivery of protective services and assures that, to the extent practicable, the services will be delivered in a timely and culturally relevant manner.

The Honorable Ramona Barnes
January 14, 1994
Page 2

Section 2 provides authorization for family members or friends to be surrogate decision makers for a vulnerable adult who is in need of protective services but is unable to consent to services. This provision allows for the delivery of necessary protective services without the necessity of seeking an emergency guardianship in adult abuse cases. Section 2 also sets out the procedures available for providing protective services when court action to protect the adult is necessary.

Section 3 repeals and reenacts an existing statute to provide for monitoring of vulnerable adults who are receiving ongoing protective services. Section 4 addresses the confidentiality of reports made under these provisions; sec. 5 requires that regulations being adopted by the Department of Administration be provided to the Older Alaskans Commission; and sec. 6 provides for immunity from liability for individuals who make reports of vulnerable adults.

Section 7 sets out, in a more appropriate location, definitions for terms used in AS 47.24. The existing definition section is repealed in sec. 8. Section 8 of the bill also repeals existing statutes that address reports of abuse of elderly and disabled persons to the Department of Health and Social Services.

Section 11 provides a July 1, 1994 effective date for the statutory changes made by the bill.

If this bill is enacted into law, the revisor of statutes will need to make appropriate changes to the existing article structure of AS 47.24.

I urge your support of this important legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Walter J. Hickel".

Walter J. Hickel
Governor

House Bill 376

For An Act Entitled: "An Act relating to services for and protection of vulnerable adults; and providing for an effective date."

Senior Legislative Package

This bill is part of a legislative package intended to consolidate and improve services for seniors. The package includes amendments to support a Division of Senior Services within the Department of Administration (HB 378), protection of vulnerable adults (HB 376/SB 248), and licensing of adult facilities (HB 377/SB 249). By divesting itself of adult services, DFYS will be fully focused on services to children, youth and families. Key department staff participated in drafting the content of the package. We believe that moving Adult Protective Services and licensing of adult facilities out of DFYS will improve services to the elderly and to vulnerable adults as the functions are relocated to divisions specializing in those populations. The department urges review and passage of this bill as well as the remaining bills in the package.

Background for Change

In the 1992 legislative session, the department recommended that a Task Force be created to address adult protective services issues which were raised in legislation. The department stated:

DFYS activity in APS is so understaffed that neighbors of victims do not know help is possible and professionals fail to report, assuming an inadequate investigative response. In 1983 the Protection of the Elderly reporting statute was passed, but not funded. Ten years later

- We don't have a full protective services system.
- We don't provide the same level of protection to elderly and vulnerable adults as we do to children.
- We know that we don't have an adequate system.
- We want to do better. So how do we do that?

H:\18LEGIS2\HB376-PP.PJO

Community members tend to report incidents of suspected abuse or neglect to elderly and vulnerable adult victims, if they perceive the protective services agency as able to effectively respond. Reports of harm have grown from 78 the first year after the reporting law was passed to around 440 in recent years. This is in line with the national average, but we believe that confidence in DFYS' response to adults in need is not there. Since only one in eight cases of abuse or neglect are reported, community confidence in the responding agency is critical.

There are only three workers specializing in Adult Protective Services (two in Anchorage and one in Fairbanks). In all other areas of the state (35 field offices) adult protective services are provided by staff who are assigned to provide protective services to both children and adults. DFYS also relies heavily on other agencies to provide services to adults following the investigation and disposition of a report of harm. The APS program in DFYS has been on the frontage road rather than on the expressway.

This administration created a two tiered collaborative effort in the fall of 1992 to address APS and related issues. Members included an eight member Deputy Commissioner and Director level policy working group from the departments of Administration and Health and Social Services and a separate task force of program specialists. This bill is an outcome of those deliberations. Passage would respond to the concern of the department expressed in 1992. We believe that over time re-locating protective services for adults will result in development of a professional response system.

DEPARTMENTS POSITION

The department strongly supports this bill.

Recommended:

Deborah R. Wing

Date:

1/21/94

Deborah R. Wing, Director
Division of Family and Youth Services

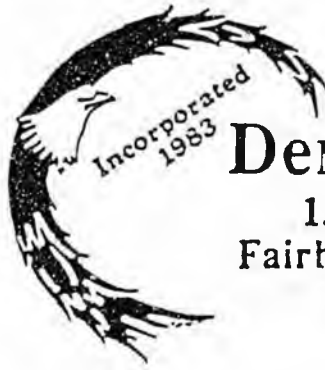
Approved:

Margaret R. Lowe

Date:

1-24-94

Margaret R. Lowe, M.Ed., Ed.S.
Commissioner
Department of Health and Social Services



Denakkanaaga

1302 21st Avenue
Fairbanks, Alaska 99701
(907) 456-5827

Received

March 4, 1994

Representative Brian Porter
Chairman, House Judiciary Committee
Alaska State Legislature
State Capitol, Room 118
Juneau, AK 99801-1182

Dear Representative Porter:

We would like to comment on House Bill 376 - Assist and Protect Vulnerable Adults - currently before your committee.

Sec. 47.24.010. Denakkanaaga supports legislative action which will stop a perpetrator's financial, physical, or emotional abuse or neglect of a vulnerable adult. Such abusive actions are crimes. Self-neglect is an equally significant, but separate issue because it touches on the personal living rights and habits of an individual and each situation has to be assessed on its own merits. Self-neglect is not a crime. It may not be possible to lump self-neglect in with the types of abuse which are crimes. We strongly suggest that self-neglect be covered in separate provisions.

Sec. 47.24.010. We have no idea what or where "the department's (presumably the Division of Senior Services) central information and referral service for vulnerable adults" is. Others may be equally unknowledgeable. If we suspected a vulnerable adult was in immediate, serious danger, we would most likely approach the police. In villages, some people are afraid to report their suspicions of abuse because the perpetrators are relatives or powerful council members.

Sec. 47.24.016. The surrogate provision appears to conflict with the court's involvement in appointing guardians. The issue of self-neglect, in particular, may have to be resolved in court since it involves the rights and competency of an individual to make decisions about his/her own welfare. For the division to immediately assume a surrogate relationship over a person reported to be self-neglectful may interfere with that person's constitutional rights.

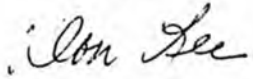
Sec. 47.24.120. The provision on retaliation should be extended to cover any type of retaliation. In particular, people in small villages who, in good faith, make reports about elder abuse may be subject to forms of retaliation other than those currently covered. Conversely, there might be a provision of a warning if someone deliberately makes a false report of abuse as a form of retaliation against the person falsely accused.

*The Denakkanaaga Elder Foster Care Project
funded by*



Thank you for your attention.

Sincerely,

A handwritten signature in cursive script that reads "Don Lee".

Don Lee
Executive Director
FAX (907) 451-0163

**INTERNAL
MEMORANDUM**

DATE: February 9, 1994
TO: Pete
FROM: Jack
RE: HB 376, ASSIST AND PROTECT VULNERABLE ADULTS

I see no real reason to oppose the intent of this bill. On the other hand, the devil is in the details.

To begin with, existing AS 47.24.010 makes all members of the clergy mandatory reporters. If the Governor wishes to fix this section of statute, I suggest he start by eliminating that provision. It is fundamentally unconstitutional and, more importantly it is very wrong, for the state to invade the confessional in this manner. I have no doubt that most ministers would report a situation that was imminently threatening danger to the individual. But the constitutional free exercise clause would seem to preclude this type of direct interference in the clergy-laity relationship. Any law that makes a clergyman a mandatory reporter is, in my opinion, a violation of the constitutional protection afforded to the church.

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF FAMILY AND YOUTH SERVICES

P.O. BOX 110630
JUNEAU, ALASKA 99811-0630
PHONE: (907) 465-3170

February 16, 1994

Honorable Cynthia Toohey, Co-Chair
House Education and Social Services Committee
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Toohey:

This is written to respond to questions raised by various committee members in the hearing last Wednesday on HB 376, relating to Vulnerable Adults. Patricia O'Brien of my staff was testifying when questions were raised. I would appreciate it if you could see that each committee member receives a copy of these responses.

Question: What does the department do in support of a person who has been sued for making a report of abuse or neglect under the existing Protection of the Elderly Law?

Response: The department has to its knowledge no experience with such a situation. We are awaiting additional information from Representative Bettye Davis, who believes there is such a case, and will provide follow up if one is found.

Question: What would be the state's protocol if such a case presented itself?

Response: Each case would be examined in consultation with the State's Division of Risk Management and the State Attorney General's Office. Sections AS 47.24.010 and 120 provide immunity from civil or criminal liability for a report of harm made in good faith. The law does not provide that the state indemnify and defend people making reports of harm. Possible reasons for being sued include allegations that the report was not made in good faith or that the report was not timely or was knowingly delayed. The immunity provisions are intended to help shield persons who report from being sued. Consequently there may be situations where the state would defend a reporter to ensure that others continue to report abuse and neglect in the future.

Question: What is the penalty for failure to report under the child protection reporting law?

Response: Failure to report is a class B misdemeanor. Under AS 12.55.035 that is a fine of up to \$1,000 and 90 days. For an organization under AS 12.55.135.(b) that is up to \$25,000 and 90 days.

Representative Toohey
February 15, 1994
Page 2

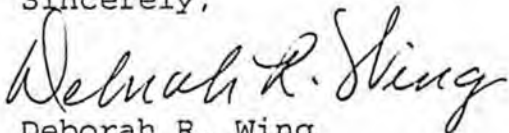
Question: Have there ever been any prosecutions/convictions of health care professionals who failed to report harm under AS 47.24?

Response: No

Correction: In response to the question on the clergy being included as a required reporter, the information given that the clergy are included in the child protection reporting statute was in error, though clergy often do report.

I hope this information is useful to you. Please let me know if any further information is needed.

Sincerely,



Deborah R. Wing
Director

cc: Elmer Lindstrom
Special Assistant
Office of the Commissioner

Connie Sipe
Director
Division of Senior Services
Department of Administration

Susan Cox
Assistant Attorney General
Department of Law

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Frontier Bldg.
Anchorage, AK 99503
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Older Alaskans Commission

October 7, 1993

The Honorable Nancy Bear Usera
Commissioner
Department of Administration
P.O. Box 110200
Juneau, AK 99811-0200

Re: Governor's Proposal
for Senior Reorganization

Dear Commissioner Usera:

On behalf of the Commission, I want to express our appreciation of the opportunity to review, with Deputy Commissioner Waldron, Governor Hickel's proposal to reorganize senior services in state government, including the summaries of the three proposed bills.

The commission fully endorses the concepts behind the three bills, and the plan to create a new division of senior services by administrative order. We appreciate your leadership in initiating the Task Force last year, and believe that your choice and direction of Task Force members led directly to this excellent proposal for a new approach to senior services.

The commission plans to work, both as a group and individually, to understand the bills in both concept and detail, and will advocate for their support among the seniors in our local and regional areas. We would like to receive a copy of the actual bills' language as soon as they are public.

The commission has three comments or suggestions for the bill regarding the Commission and the Pioneers' Homes Advisory Board:

1. We think the increased linkage of the two boards, by the designation of a voting seat on each board for the chairman of the other board, is an excellent improvement.
2. While we support the new voting power given to the three departmental commission members from the administration, we would urge addition of language that the chairman of the Alaska Commission on Aging must be selected from among the seven layperson members appointed by the Governor.

Commissioner Nancy Bear Usera

Page 2

October 7, 1993

3. We strongly feel that because commissioners are either selected by or retained at the pleasure of the current governor, the members of the commission should choose their own chairman. The citizen-led impetus to create a commission in 1980 appears to still reflect the general sentiment in our state that the wisdom and experience of seniors should be recognized by allowing them a strong role in managing senior affairs in our state government.

Finally, we wish to note our concern that there be adequate fiscal and personnel resources to successfully carry out the two important new functions of the new Division of Senior Services, namely, the licensing of Assisted Living homes and Adult Protective Services.

Again, thank you for the chance to comment upon this proposal. Please convey to Governor Hickel our strong support of his plan.

Sincerely,



Donald M. Hoover, Chairman
Older Alaskans Commission



Bringing lifetimes of experience and leadership to serve all generations.

CHAIR
Mary Lou Meiners
805 Gold Belt
Juneau, AK 99801
(907) 586-2568

ALASKA STATE LEGISLATIVE COMMITTEE

VICE CHAIRMAN
CCTF Coordinator
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Juneau, AK 99802
(907) 586-6680

SECRETARY
Joan McKinnon
5201 Raccliff Drive
Anchorage, AK 99504
(907) 337-0742

December 15, 1992

Conrad J. ...
Executive Director
Older Alaskans Commission
P.O. Box 110209
Juneau, Alaska

Dear Connie,

During the December meeting of the State Legislative Committee of A.A.R.P., the proposed Consolidation of Senior Services was discussed.

If and when such a Centralization should become a reality, the members of the Alaska State Legislative Committee go on record favoring the establishment of a Division of Senior Services within the Department of Community and Regional Affairs.

Thank you for this opportunity to express our opinion on this matter.

Sincerely,
Mary Lou Meiners, Chair
Alaska State Legislative Council

AGENET

Alaska
Geriatric
Exchange
NETwork

January 27, 1993

Velma Ellyson, President

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Homer, AK 99603
235-7655

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Jill Sandleben, Vice President

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Fax 586-9018
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Shell Marie Reading, Sec.Trea

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Fax 561-3315
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Fax 952-0372
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Rose Megli, Board

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Dillingham, AK 99576
842-1231

Fax 842-5691
Area: Southwest

Cyndi Nation, Board

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Fairbanks, AK 99712
452-8251, ext. 3152

Fax 459-3850
Area: Interior

Patricia Porter, Board

361 Senior Ct.
Kenai, AK 99611
283-4156

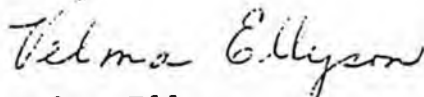
Fax 283-5358
Area: South Central

Interagency Task Force
c/o Older Alaskans Commission
3602 C Street Suite 260
Anchorage, Ak 99503

Dear Interagency Task Force,

We, the association of programs providing senior services through Older Alaska Commission grants, are in favor of a Division of Senior Services. This reorganization of programs that serve Older Alaskans into a combined Division of Senior Services will greatly assist us in being about to provide efficient, cost effective services to Alaskan seniors.

Sincerely,



Velma Ellyson
President



PIONEERS' HOMES ADVISORY BOARD

Amos "Joe" Alter, Chairman

October 15, 1993

P.O. Box 110211

Juneau, AK 99811-0211



Nancy Bear Usera, Commissioner
Alaska Department of Administration
P O Box 110200
Juneau, AK 99811-00200

Dear Nancy:

You and your hospitality are great and I am sure I speak for each and all of our Board Members as I thank you.

The opportunity to meet with you and discuss Administration priorities and concern was an excellent way for us to start our home visits. In the Board role of communicating your concerns to Pioneers' Homes residents and the public and visa versa we have the following findings to report to you:

1. The Board, residents, and the public are generally supportive of Administration proposals for reorganization of senior programs within a new division of aging with one exception. Predominate opinion prefers Board selection of its own chairman.
2. The proposed rate increases are generally acceptable.
3. More Mental Health Trust funds should be provided to complement current appropriations for Pioneers' Homes. Current efforts to serve the special needs of Alzheimer and related dementia needs of residents is commendable but inadequate. Planned staff training designed to enhance service to these special residents is essential and appreciated. A closer working relationship between this Board and the Mental Health Board is recommended.
4. Appropriate revisions should be made in current conditions governing employment of qualified part time staff to enhance availability of such staff.
5. There is general opposition to privatization of the homes.

Robert Gore, Board Member
John Dapceovich, Board Member

Vallie Byrdsong, Board Member
Stella Odsather, Board Member

Robert Kallenburg, Board Member
Peggy Arness, Board Member

6. Great appreciation and a minimum of dissatisfaction with the system was obvious. We urge continuing restructuring of the service model to address those future needs not met otherwise.

We thank you again for the opportunity to work with you and your dedicated Pioneers' Home staff.

Sincerely,

A handwritten signature in cursive script that reads "Joe".

Amos J. Alter

H B

3 9 2

FISCAL NOTE

STATE OF ALASKA
994 LEGISLATIVE SESSION

BILL NO. HB 392

Revision Date:		Dept. Affected:	Revenue
Title:	Permanent Fund Dividend Program	BRU:	Permanont Fund Dividend
Sponsor:	PARNELL	Component:	Permanent Fund Dividend
Requestor:	House State Affairs	COMPONENT SERIAL NO.	9 8 1

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ -0-

ANALYSIS:

The Department has worked closely with the sponsor and *strongly supports* this legislation.

Prepared by:	Thomas C. Williams	Phone: 465-2323
Division:	Permanent Fund Dividend	Date: 01-31-94
Approved by Commissioner:		Date: 1/31/94
Agency:	Department of Revenue	

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REPRESENTATIVE
SEAN R. PARNELL

HOUSE OF REPRESENTATIVES

SPONSOR STATEMENT

HOUSE BILL 392

"An Act relating to the confidentiality of permanent fund dividend application information; relating to the permanent fund dividend; and providing for an effective date"

This bill has been developed in coordination with the Permanent Fund Dividend Division to improve, update and place into law some of the current regulations of the program. I encourage passage of this bill quickly because of its PFD eligibility restoration clause affecting two years of PFD's (1992 & 1993) for 1600 Alaskans and the accompanying correction for future eligibility. This clause is necessary because of a recent court decision which interpreted a 1992 legislative action differently than the legislature intended. This eligibility problem stems from the legislature's inadvertent removal of the "piggy back" rule which allows spouses to be absent with their resident spouse, if their resident spouse is absent for an allowable reason. The "piggy back" will be reestablished by redefining allowable absences as eligibility criteria instead of elements of residency.

Additionally, the bill would place many regulations into statute as a means of protecting PFD recipients from the often changing winds of regulations. The most noteworthy of these is the provision protecting a PFD applicants' financial privacy. The bill also places into statute regulations on: allowable absences and six month pre-departure residency requirement; exemption for children from the six month pre-departure residency requirement; requirements for application signatures; and a reaffirmation of the department's authority to establish deadlines.

The bill would update statutes to comply with current law by closing some minor loopholes and clarifying original intent. Specifically, this would be accomplished by:

- (1) closing a loophole so convicted felons cannot receive a PFD;
- (2) closing a loophole related to children born out of state to nonresidents;
- (3) adding a requirement for a verifier on the application;
- (4) allowing collection of duplicate payments without expiration;
- (5) allowing the department limited power to withhold payments if an applicant has an unpaid assessment pending;
- (6) clarifying how much of an individual's dividend is exempt from attachment;
- (7) giving the PFD program priority to recover erroneous payments;
- (8) clarifying that the statutory intent cannot be circumvented by having a judgment assigned to the court only to be distributed to a private party by the court on the assignor's behalf; and
- (9) clarifying other general language and correcting grammatical errors.

This bill will address a pressing need for 1600 Alaskans as well as assist the PFD Division in administering the program more efficiently and effectively. For these reasons I respectfully urge your support of HB 392.

SECTIONAL ANALYSIS OF HB 392

As of January 21, 1994

- Section 1.* Updates a reference to correspond to the amendments made in *Section 12*.
- Section 2.* a. Redefines allowable absences as eligibility criteria instead of elements of residency; and
b. eliminates redundant language.
- Section 3.* a. Closes a loophole for children brought out of state to nonresidents; and
b. exempts children from 6 month pre-departure residency requirement enacted in *Section 5*.
- Section 4.* a. Places into statute what common law currently requires; and
b. ensures that an individual who was granted a suspended imposition of sentence would still be ineligible if incarcerated for a felony conviction.
- Section 5.* a. Places into statute all absences currently allowable by regulation;
b. eliminates the department's discretion to add allowable absences; and
c. moves into statute the 6 month pre-departure regulatory requirement for absences exceeding 180 days during the qualifying year.
- Section 6.* a. Ensures an applicant must sign their application; and
b. adds requirement for verifier(s).
- Section 7.* Ensures that an individual who was granted a suspended imposition of sentence would still be banned from future program participation and subject to a penalties in AS 43.23.035 if convicted of a crime in connection with making application.
- Section 8.* Allows duplicate payments of dividends to be assessed without a time limit.
- Section 9.* Allows the department to withhold payments if an applicant has an unpaid assessment pending.
- Section 10.* Makes the department's current authority to establish deadlines explicit.
- Section 11.* Clarifies language to correspond to the original intent as administered from the beginning of the program.
- Section 12.* Gives the PFD program priority in recovering erroneous payments before all other levies, executions, garnishments and attachments.
- Section 13.* Clarifies language and corrects a grammatical error.

SECTIONAL ANALYSIS OF HB 392

As of January 21, 1994

- Section 14.* Adds language to make it clear that the intent of the statute cannot be circumvented by having a judgement assigned to the court only to be distributed to a private party by the court on the assignor's behalf.
- Section 15.* Places into statute most of the current confidentiality regulations.
- Section 16.*
- a. Deletes the reference to absences in the definition of "state resident" since absences are redefined as eligibility criteria in *Section 2*;
 - b. makes it clear that while absent an individual must maintain at all times an intent to return to remain permanently in order to retain residency; and
 - c. renumbers the section as appropriate.
- Section 17.* Reaffirms the 1992 and 1993 eligibility of individuals accompanying their eligible resident spouse [*Superior Court Dana Fabe's December 16, 1993 decision invalidated the "piggyback" provision of 15 AAC 23.163(c)(15) effective January 1, 1992*].
- Section 18.* January 1, 1994 effective date for sections 1 - 3, 5, 6, 10 - 14, and 16.
- Section 19.* Immediate effective date for sections 1 - 3, 5, 6, and 8 - 18.
- Section 20.* January 1, 1995 effective date for sections 4 and 7.

1

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

COPY

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2195

MEMORANDUM

February 14, 1994

SUBJECT: Permanent fund dividend program (HB 392)

TO: Representative Al Vezey, Chair
House State Affairs Committee

FROM: Tamara Brandt Cook
Director

Here is the sectional summary you requested for HB 392.

Sec. 1. The statute dealing with the scholarship loan program is amended to reflect the change made in Sec. 12 in the priority for certain payments made pursuant to collections of debt.

Sec. 2. Adds to the eligibility requirements the requirement that an individual be present in the state during the year preceding the current dividend year or absent only as permitted by a new statute added in Sec. 5 of this bill.

Sec. 3. Requires the parent, guardian or authorized representative who applies for a dividend on behalf of an unemancipated minor or disabled individual to also meet the eligibility requirements for a dividend.

Sec. 4. In the provision making certain individuals convicted of a felony ineligible for a dividend, a statement is added that the subsection does not apply if the felony conviction is reversed. Suspending imposition of sentence and granting of probation do not constitute reversal of a conviction.

Sec. 5. A new section is added setting out the types of absences that are allowable. In addition to specific allowable absences, an individual may be absent for a reason consistent with the intent to remain a resident if the absence does not exceed certain stated durations. An individual who is otherwise eligible and who is absent for more than 180 days during the calendar year immediately preceding the current dividend year remains eligible only if the individual was a resident of the state for at least 6 consecutive months before leaving the state.

Sec. 6. Requires the statement of eligibility and certification of residency to be signed by two people (other than the applicant), or, if the application is being filed on behalf of another, one other person.

Sec. 7. Provides that suspension of a sentence or the granting of probation do not constitute reversal of a conviction for purposes of the penalty section dealing with conviction of a crime in connection with a false statement made on a certification of residency.

Sec. 8. Existing law requires notice of an improperly paid dividend to be sent to the recipient within certain time periods before a proceeding to recover the dividend may be commenced, with some exceptions. This section adds to the exceptions a proceeding to recover a duplicate payment of a dividend.

Sec. 9. Prohibits the department, during the time in which an appeal may be filed or while an appeal is pending, from paying a dividend to an individual who, as a result of a proceeding to recover a dividend, owes money to the state. Requires the department to pay a prior year dividend to an individual who is not the subject of a criminal investigation involving payment of a dividend if the individual has not exhausted appeal rights and if the department has not issued a formal hearing decision by September 30 of the year following the year for which the dividend is declared.

Sec. 10. Requires the department to adopt regulations that establish procedures and time limits for providing missing or additional information in connection with a dividend application.

Sec. 11. Reworded slightly as a technical correction.

Sec. 12. Provides that amounts owed to the state as a result of a dividend improperly paid to an individual are not partially exempt from collection and these obligations have first priority over other obligations of the individual.

Sec. 13. Prohibits the department from accepting an assignment or remedy for the collection of debt applied to a current year dividend before April 1 of the current year.

Sec. 14. Limits assignment of the right to receive a dividend for a debt owed to or administered by a government agency or to a court for a debt owed to the court.

Sec. 15. Makes information related to an individual's application or dividend confidential and sets out information that may be released by the department under certain stated conditions.

Representative Al Vezey, Chair
February 14, 1994
Page 3

Sec. 16. Modifies the definition of state resident for purposes of the dividend program.

Sec. 17. Permits certain individuals who applied for the 1992 or 1993 dividend in a timely fashion to receive the dividend despite the provision that the residency of an individual's spouse may not be the principal factor relied upon in determining the residency of the individual.

Sec. 18. Certain sections of the bill are retroactive to the beginning of the 1994 dividend year.

Sec. 19. Certain sections take effect immediately.

Sec. 20. The two sections dealing with reversal of convictions take effect at the beginning of the next dividend year.

TBC:gc
94-120.glc

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
SUGGESTED LANGUAGE FOR A HOUSE JUDICIARY COMMITTEE'S
AMENDMENT TO CS HB 392 (STA)

As of March 14, 1994

Amend Section 14, lines 6-8 on page 9 to read:

(b) A person may assign the right to receive a permanent fund dividend to

(1) a federal, state, or municipal government agency for a debt owed to or administered by the agency; or [TO]

(2) a court for a debt owed to the court or a government agency, or for court ordered restitution under AS 12.55.045 -- 12.55.051 or 12.55.100.

Amend #1

Alaska State Legislature

REPRESENTATIVE
SEAN R. PARNELL



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HOUSE OF REPRESENTATIVES

March 14, 1994

The Honorable Donald E. Young
House of Representatives
2331 Rayburn House Office Bldg.
Washington D. C. 20515-0201

Dear Congressman Young:

As my office alerted you by phone March 9, House Bill 392 was amended by the House State Affairs Committee, such that it would impact the Permanent Fund Dividends of your staff. I am working to have the clause amended in the next committee hearing to address this problem.

I sponsored HB 392 at the request of the Department of Revenue. HB 392 was never designed to alter current allowable absences, but the State Affairs' amendment to HB 392 cut off allowable absences at 5 years. In short, your staff members who have been claiming allowable absences for five or more years, would need to return to Alaska for one year before claiming further Permanent Fund Dividends. Only members of Congress and their families were exempted.

I want to assure you that I am working to remedy the inequity created by the amendment. Like you, I believe that those Alaskans serving as staff in your office are serving Alaska and should continue receiving the Permanent Fund Dividend. Please feel free to call me if you have any concerns or questions.

Very truly yours,

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

Rep. Sean Parnell

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
AGENCIES AND INSTITUTIONS RECEIVING PFD DATA

As of February 18, 1993

I. STATE OF ALASKA AGENCIES

A. Alaska Court System (ACS)

1. Preparing jury lists

Each September, as required by AS 09.20.050(b), the PFD Division creates and sends the ACS a magnetic tape file containing the name, address, date of birth, and social security number for all current year applicants who will be over seventeen years old by March, are U.S. citizens, and have an Alaska address.

B. Department of Administration, Division of Finance (DOF)

1. Accounting for PFD warrants

Each week, the PFD Division creates and sends the DOF a magnetic tape file containing the name, warrant issue amount, warrant date, warrant number and social security number for each dividend warrant issued that week. The DOF inputs the information into the state accounting system where it controls the redemption of the PFD warrants and establishes an accounting audit trail.

C. Department of Education, Alaska Commission on Postsecondary Education (ACPE)

1. Submitting dividend attachments and garnishments

Each June, the PFD Division creates and sends the ACPE a magnetic tape file containing the name, address, date of birth, social security number, and record key for all current year filers over sixteen years old. Prior to October the ACPE returns a tape file that contains a record for each dividend they wish to attach. The ACPE's file contains a copy of the record the PFD Division supplied, with an appended garnishment amount and case number. The ACPE also supplies a printout of the tape and a document certifying that the garnishments are accurate and legal. The PFD Division makes payment on the garnishments as the dividends are processed for payment.

D. Department of Health and Social Services, Division of Public Assistance (DPA)

1. Administering the Hold Harmless program

Each week, the PFD Division creates and sends the DPA a magnetic tape file containing the name, address, date of birth, social security number, sponsor

Agencies and Institutions Receiving PFD Data

As of February 18, 1993

information, payment amount and payment date for the dividends issued that week. In January, the PFD Division creates and sends the DPA a complete payment file containing the same data along with the warrant numbers.

E. Department of Labor, Division of Administrative Services, Research and Analysis Section (DOL)

1. Determining compliance with resident hire requirements, determining work force demographics, and identifying unemployment insurance fraud

Each June, the PFD Division creates and sends the DOL a magnetic tape file containing the name, address, date of birth, social security number, household packet key, sponsor information, eligibility information, military indicator, absence data, sex and fraud indicator for all current year applicants.

F. Department of Law, Civil Division, Anchorage Collections Section (DL)

1. Submitting dividend attachments and garnishments

Each June, the PFD Division creates and sends the DL a disk file containing the name, address, date of birth, social security number, and record key for all current year adult applicants. The PFD Division makes payment on the garnishments as the dividends are processed for payment.

2. Submitting dividend assignments made under the Rules of Court

Each June, the PFD Division creates and sends the DL a magnetic tape file containing the name, address, date of birth, social security number, and record key for all current year adult applicants. The DL uses this file to ensure individuals who are required to assign their dividend have actually applied for a dividend. The PFD Division makes payment on the garnishments as the dividends are processed for payment.

G. Department of Natural Resources, Division of Land and Water Management (DLWM)

1. Verifying residency qualifications for land discount programs

Each June, the PFD Division creates and sends the DLWM a magnetic tape file containing the name, address, date of birth, and social security number for all current year adult applicants.

Agencies and Institutions Receiving PFD Data

As of February 18, 1993

H. Department of Public Safety (DPS)

1. Identifying and locating individuals

The PFD Division provides on-line access to the name, address, date of birth, social security number, birth state, birth name and packet application information for all applicants via the *PFD Information System* to 17 Alaska State Troopers staff and 2 Fish and Wildlife Protection staff.

I. Department of Revenue, Child Support Enforcement Division (CSED)

1. Identifying and locating individuals

The PFD Division provides on-line access to the name, address, date of birth, social security number, birth state, birth name and packet application information for all applicants via the *PFD Information System* to 80 CSED staff.

2. Submitting dividend attachments and garnishments

Each June, the PFD Division creates and sends the CSED a magnetic tape file containing the name, address, date of birth, social security number and record key for all current year adult applicants. Prior to October the CSED returns a tape file that contains a copy of the record the PFD Division supplied, with an appended garnishment amount and case number. The CSED also supplies a printout of the tape and a document certifying that the garnishments are accurate and legal. The PFD Division makes payment on the garnishments as the dividends are processed for payment.

J. Department of Revenue, Income & Excise Audit Division (IEAD)

1. Identifying and locating individuals

The PFD Division provides on-line access to the name, address, date of birth, social security number, birth state, birth name and packet application information for all applicants via the *PFD Information System* to 9 IEAD staff, including Unclaimed Property Section staff.

K. Office of the Lt. Governor, Division of Elections (DE)

1. Conducting voter registration drives

Upon request, the PFD Division creates and sends the DE a magnetic tape file containing the name, address, date of birth, and social security number for all current year applicants who are over eighteen years old.

Agencies and Institutions Receiving PFD Data

As of February 18, 1993

L. University of Alaska. Advanced College Tuition (ACT) Program

1. Administering the ACT program

Each month, the PFD Division creates and sends the UOA a diskette containing the name, address, social security number and date of birth of applicants who have elected to contribute half of their PFD to the ACT program.

II. FEDERAL GOVERNMENT AGENCIES

A. Internal Revenue Service (IRS)

1. Identifying and locating individuals

Upon request, the PFD division provides copies of applications to the IRS as well as copies of the front and back of redeemed warrants. The division blanks out all direct deposit account information appearing on 1993 and subsequent year applications.

Prior to 1993, each July the PFD Division also provided two microfilm copies of each application along with microfiche copies of a record of each applicant's name, social security number, date of birth and PFD Division Document Locator Number (DLN) sorted alphabetically by last name. Since disclosure of applicants' direct deposit account information contained on the face of the application is precluded by the confidentiality requirements of 15 AAC 23.253(c), in 1993 the PFD Division discontinued sending the IRS microfilm copies of all applications.

2. Submitting levies of dividends

Each June, the PFD Division creates and sends the IRS a magnetic tape file containing the applicant's name, address, date of birth, social security number and record key for all current year applicants. Prior to October the IRS returns a tape file that contains a copy of the record the PFD Division supplied, with an appended levy amount and case number. The IRS also supplies a single levy and a document certifying that the tape file is correct and that the levy of each dividend contained on the file is accurate and legal. The PFD Division makes payment on the garnishments as the dividends are processed for payment.

Agencies and Institutions Receiving PFD Data

As of February 18, 1993

3. Ensuring compliance with federal income tax reporting requirements

Each January, the PFD Division sends the IRS a magnetic tape file containing the applicant's name, address, social security number, the amount paid and the amount withheld for all applicants paid during the prior calendar year in an IRS Form 1099 format as required by federal law.

B. Selective Service Commission (SSC)

1. Ensuring compliance with draft registration requirements

Upon request, the PFD Division creates and sends the SSC a magnetic tape file containing the name, address, date of birth, and social security number for all current year male applicants between seventeen and twenty-eight years old.

III. MUNICIPAL GOVERNMENTS

A. Municipality of Anchorage (MOA)

1. Submitting dividend attachments and garnishments and dividend assignments made under the Rules of Court

Each June, the PFD Division creates and sends the MOA a magnetic tape file containing the name, address, date of birth, social security number and record key for all current year adult applicants. The MOA includes the applicant's record key on all paper services sent to the PFD Division.

IV. FINANCIAL INSTITUTIONS

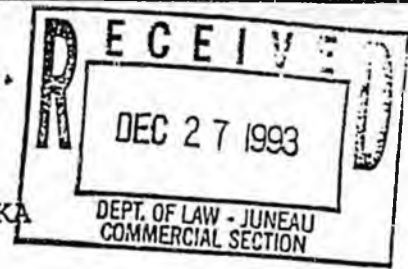
A. Participating Alaska Financial Institutions (PAFI)

1. Ensuring requesting PFD applicants qualify for direct deposit

Each June, the PFD Division creates and sends each of the PAFIs a magnetic tape or disk file containing the applicant's name, address, date of birth, social security number, and account number for all current year adult and child applicants who have requested to have their dividend directly deposited into a PAFI account. The PAFIs use the information verify that the applicant qualifies for direct deposit in accordance with 15 AAC 23.223(b)(4).

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1-13-94
JW



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

GLORIA LYNN ZEILER, JANELLE)
BOLLS, JOHN B. HOWELL, and)
SANDRA BROADMAX, on Behalf)
of Themselves and Others)
Similarly Situated,)

Plaintiffs,)

vs.)

STATE OF ALASKA, DEPARTMENT)
OF REVENUE, PERMANENT FUND)
DIVIDEND DIVISION,)

Defendants.)

Filed in the Trial Courts
STATE OF ALASKA, THIRD DISTRICT
Clerk of the Trial Courts

DEC 16 1993

By [Signature] Deputy

RECEIVED

JAN 10 1994

STATE OF ALASKA
DEPT. OF REVENUE
PFD DIVISION

Case No. 3AN-92-1567 Civil

ORDER

Defendant in this case has moved for summary judgment and dismissal, asserting the validity of Department of Revenue regulations that deny Permanent Fund Dividends (hereafter "Dividends") to residents who accompany their nonresident spouses out of state on allowable absences and that create a presumption of nonresidency for applicants whose spouses are nonresidents. In response, plaintiffs move for summary judgment that the regulations have been invalid.

I. FACTUAL AND PROCEDURAL BACKGROUND

The following facts do not appear to be disputed for purposes of resolving the cross-motions before the court. Plaintiffs Gloria Lynn Zeiler, Janelle Bolles, and Sandra Broadnax were all established Alaska residents when they married their

nonresident military spouses stationed in Alaska. Each plaintiff's spouse was subsequently transferred out of state by the military, and each plaintiff accompanied her spouse on the transfer. Plaintiffs Zeiler and Bolls returned to Alaska several years after the out-of-state transfer; plaintiff Broadnax remains in New Jersey. Defendant State of Alaska issued Dividends to plaintiffs Zeiler and Bolls during the period that they were out of state,¹ and later asked for repayment of those Dividends.² Plaintiff Broadnax has not been issued a Dividend since she left Alaska in 1986.

The remaining plaintiff, John Howell, was an Alaska resident who married in 1969. Howell's spouse moved to Hawaii for medical reasons in 1985, and Howell visited her there periodically.³ In 1991, the Permanent Fund Dividend Division placed Howell on review status, but awarded him a Dividend after a delay of several months.

Plaintiffs brought this action alleging that the denial or delay of Dividend awards to state residents who accompany their nonresident spouses on allowable absences violates equal

¹ Zeiler left the state in 1982 and returned in 1989 after her spouse's repeated requests for reassignment to Alaska. Bolls left in 1985 and returned in 1988.

² The State also demanded of Bolls that she repay a Dividend issued to her during the first year of her return to Alaska in 1988.

³ Howell's spouse apparently is a nonresident for purposes of Dividend eligibility.

protection under the state and federal constitutions and is illegal under the governing Alaska statutes. All of these issues are currently before the court on cross-motions for summary judgment.

II. EVOLUTION OF THE REGULATORY SCHEME

Although the parties have not addressed this complication,⁴ the Department of Revenue has issued at least six generations of regulations having potential applicability to the Dividend eligibility of plaintiffs during the periods in question. These variants have usually overlapped with one another; for example, three then-existing versions of the regulations were repealed on April 1, 1989,⁵ and two more versions were repealed on January 1, 1993.⁶ It is ambiguous, therefore, which regulations were actually applied to any given Dividend decision in dispute in this case, particularly when the parties have not indicated specifically which Dividend issuances and non-issuances are contested. The effective dates and dates

⁴ Both defendant and plaintiffs have made their argument under the assumption that the disputed regulations in this case are 15 AAC 23.130 and 15 AAC 23.150, as replaced in 1993 by 15 AAC 23.143 and 15 AAC 23.163. As explained in the text, however, these two sets of regulations have been effective only since April 1, 1989, and would not have applied to Dividends for years prior to 1989.

⁵ 15 AAC 23.030 and .040; 15 AAC 23.450 and .460; and 15 AAC 23.655 and .665.

⁶ 15 AAC 23.130 and .150; 15 AAC 23.175.

of repeal of the various potentially applicable regulations are given below:

<u>Regulation No.</u>	<u>Effective</u>	<u>Repealed</u>
15 AAC 23.030 and .040	4/30/80	4/1/89
15 AAC 23.450 and .460	7/1/82	4/1/89
15 AAC 23.655 and .665	5/12/83	4/1/89
15 AAC 23.130 and .150	4/1/89	1/1/93
15 AAC 23.175	3/31/90	1/1/93
15 AAC 23.143 and .163	1/1/93	-----

As it happens, the most recent two of the three versions in effect prior to April 1, 1989 contained identical relevant provisions, as follows:

DEFINITION OF A STATE RESIDENT. (a) A state resident is an individual physically present in the state who intends to remain permanently in the state, or, if not physically present in the state, was a resident immediately before departure from the state, intends to return to the state, is absent for one or more of the allowable reasons set out in [the ALLOWABLE ABSENCES section], and demonstrates at all times during an absence an intent to return to the state and remain permanently in the state. An individual may not claim a dividend payment if during the six months immediately preceding his or her application the individual was absent from the state for one or more reasons not included as an allowable absence under [the ALLOWABLE ABSENCES section].

* * *

(e) The spouse of an individual who is not a state resident as defined in this

section is not a state resident unless the spouse meets the requirements of (a) and (b) of this section and provides with his or her application documentation of his or her intent to remain permanently in the state despite the nonresidency of his or her spouse.

ALLOWABLE ABSENCES. ... (b) Absence from the state for active service in a branch of the armed forces of the United States is an allowable absence.

* * *

(1) Absence from the state by a spouse ... of an individual state resident who is absent for reasons allowed by (a)-(j) of this section is an allowable absence, if the spouse... was a resident of the state immediately before departure and has not established residence elsewhere. The absence of the spouse... must be related to the absence of the resident who is absent for the reasons allowed by subsections (a)-(j).

Two major implications of these provisions are apparent: (1) there is a presumption against finding an individual to be a state resident when that individual's spouse is a nonresident⁷; and (2) a resident who accompanies a resident spouse on an allowable absence will maintain Dividend eligibility.⁸ With respect to plaintiffs' claims arising prior to April 1, 1989, therefore, it is these implications that are in dispute.

Plaintiffs' claims arising on or after April 1, 1989, and before March 31, 1990, are brought against regulations 15 AAC

⁷ This is the basis of plaintiff Howell's claims.

⁸ This is the basis of the claims of plaintiffs Zeiler, Bolls, and Broadnax.

23.130 and 15 AAC 23.150, the only versions in effect during that period. While these regulations kept in place the presumption against finding spouses of nonresidents to be state residents, see 15 AAC 23.130(g), two notable changes to the prior versions were made. First, it was now an allowable absence for a resident to accompany an "eligible applicant", rather than a "resident", spouse on an allowable absence.⁹ Second, a new provision was added under the allowable absences section:

If a resident spouse, child, or dependent's primary reason for an absence is to accompany a resident of another state, that absence is not allowed.

15 AAC 23.150(g). The effect of this new provision was to confirm the negative of the prior rule that residents accompanying resident spouses on allowable absences could keep their eligibility; accompanying nonresident spouses on such absences was not allowed.

On March 31, 1990, a new version of the allowable absence regulation became effective. See 15 AAC 23.175. This new version contained no provision analogous to the concurrently effective 15 AAC 23.150(g), but was otherwise identical to the previous version in relevant respects.

On January 1, 1993, all previous versions of the regulations were repealed, and a new version became effective. See 15 AAC 23.143 and 15 AAC 23.163. The major change under the

⁹ This change has no apparent significance to the resolution of the issues presently before the court.

current regulations is that it is no longer permissible to presume that an applicant is not a resident, when the sole basis for the presumption is the fact that the applicant's spouse is a nonresident.¹⁰ 15 AAC 23.143(j). This change apparently reverses the rule under all previous generations of the regulations.

The current regulations continue, however, to deny eligibility to residents moving from Alaska "to accompany a nonresident spouse unless the Alaska resident is on an allowable absence". 15 AAC 23.143(d)(11). No provision is made for an allowable absence to accompany a nonresident or ineligible spouse. See 15 AAC 23.163. Consequently, in this respect, the effect of the latest version of the regulations is the same as it has always been: to deny Dividend eligibility to residents accompanying nonresident spouses on allowable absences.

After reviewing the various permutations of the applicable regulations, this court finds that the issues of the

¹⁰ The court notes, however, that there is an apparent conflict between 15 AAC 23.143(j) and 15 AAC 23.173(e). The latter provides:

An individual whose spouse is not a resident eligible for a dividend must provide documentation that demonstrates an intent to remain permanently in Alaska despite the nonresidency of the spouse. The department will, in its discretion, require additional proof of the individual's intent to remain in Alaska.

The court's decision is premised on the presumption that the specific language of 15 AAC 23.143(j) controls, to the extent that 15 AAC 23.173(e) is inconsistent.