I. Civil Statute Protecting Dependent Adults or Elders from Neglect or Abuse: 
ALASKA STAT. § 47.24.010 et seq.

A. Conduct

1. Neglect: The intentional, knowing, or reckless failure by a caregiver to provide essential care or services or access to essential care or services or to carry out a prescribed treatment plan necessary to maintain the physical and mental health of the vulnerable adult when the vulnerable adult is unable to provide or obtain the essential care or services or to carry out the prescribed treatment plan on the vulnerable adult’s own behalf. In this paragraph, "essential care or services" includes food, clothing, shelter, medical care, and supervision. ALASKA STAT. § 47.24.900(12).

2. Abuse:

   (a) Definition: ALASKA STAT. § 47.24.900(2)

   (i) The intentional, knowing, or reckless nonaccidental and nontherapeutic infliction of physical pain, injury, mental or emotional distress, or fear, including coercion and intimidation; or

   (ii) Sexual assault under ALASKA STAT. § 11.41.410 or § 11.41.420

   (b) Single Act/Pattern

   (i) It is unclear by a reading of the statute if a single act is sufficient or if a pattern of abuse and/or neglect is necessary to invoke the protective statutes. It is noted that in Hill v. Giani, 296 P.3d 14 (Alaska 2013), a report made pursuant to ALASKA STAT. § 47.24.010 alleged both repeated and isolated conducts of abusive behavior.
(c) Legal Requirement for the act(s) or omission(s)

(i) While the definition of “neglect” requires the omission to come from a “caregiver,” no such requirement is made in the definition for “abuse.” Although, § 47.24.013 is triggered when such abuse occurs by the staff or a volunteer of an out-of-home care facility.

As primarily a reporting statute, the emphasis is on the requirements imposed upon those who are required to report abuse and neglect. Those who are required to report abuse and neglect are only required to have reasonable cause to believe that the definitions of abuse and neglect are met. ALASKA STAT. § 47.24.010.

3. Exploitation: ALASKA STAT. § 47.24.900(8)

(a) Unjust or improper use of another person or another person's resources for one's own profit or advantage, with or without the person's consent; and

(b) Includes acts by a person who stands in a position of trust or confidence with a vulnerable adult or who knows or should know that the vulnerable adult lacks the capacity to consent that involve obtaining profit or advantage through undue influence, deception, fraud, intimidation, or breach of fiduciary duty; in this subparagraph, "fraud" has the meaning given in ALASKA STAT. § 13.26.324(1) and (2).

B. Vulnerable Adults

1. Types of Impairment

A “vulnerable adult” is anyone 18 years of age or older who, because of incapacity, mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, fraud, confinement, or disappearance, is unable to meet the person's own needs or to seek help without assistance. ALASKA STAT. § 47.24.900(21).

C. Person/Entities Excluded from the Statute

A person who in good faith makes a report under ALASKA STAT. § 47.24.010, regardless of whether the person is required to do so, is immune from civil or criminal liability that might otherwise be incurred or imposed for making the report. ALASKA STAT. § 47.24.120(a).

A person may not bring an action for damages against a police officer, a village public safety officer, the state, or a political subdivision of the state based on a
decision under **ALASKA STAT. § 47.24.010** to take or not to take immediate action to protect a vulnerable adult.

D. Reporting Requirement for Litigation to State

There are no statutory provisions requiring reporting litigation to the State.

E. Preclusion of Arbitration

The effect of arbitration clauses on Alaska’s protection of vulnerable adult statute is not addressed in the statute and is untested by Alaska courts.

F. Relationship to Medical Malpractice Actions

The relationship between Alaska’s protection of vulnerable adult statute and medical malpractice claims has not been specifically addressed. In *Hynes v. DeRamus*, 222 P.3d 874 (Alaska 2010), the plaintiff brought claims for failure to report elder abuse and medical malpractice. The court there made no mention of any special relationship between the claims. It is important to note, however, that the claim for failure to report elder abuse was not made pursuant to the protective statute and the claim was ultimately dismissed for failure to state a claim.

G. Criminal Provision

A person commits the crime of endangering the welfare of a vulnerable adult in the first degree if the person intentionally abandons a vulnerable adult in any place under circumstances creating a substantial risk of physical injury to the vulnerable adult and the vulnerable adult is in the person's care by contract or authority of law, or in a facility or program that is required by law to be licensed by the state, or violates **ALASKA STAT. § 11.51.210** and, as a result of the violation, the vulnerable adult suffers serious physical injury. **ALASKA STAT. § 11.51.200.**

A person commits the crime of endangering the welfare of a vulnerable adult in the second degree if the person fails without lawful excuse to provide support for the vulnerable adult and the vulnerable adult is in the person's care by contract or authority of law or in a facility or program that is required by law to be licensed by the state. **ALASKA STAT. § 11.51.210.**

1. Interplay with Civil Statute

A person listed in § 47.24.010(a) who, because of the circumstances, should have had reasonable cause to believe that a vulnerable adult suffers from undue influence, abandonment, exploitation, abuse, neglect, or self-neglect but who knowingly fails to comply with this section is guilty of a class B misdemeanor. If a person convicted under this section is a member of a profession or occupation that is licensed, certified, or regulated by the state, the court shall notify the appropriate licensing,
certifying, or regulating entity of the conviction. **Alaska Stat. § 47.24.010(c).**

**H. Statute of Limitations**

Alaska’s protection of vulnerable adults statute does not create a civil cause of action specifically for elder abuse. *Hymes v. DeRamus*, 222 P.3d 874 (Alaska 2010). Therefore, no statute of limitations for elder abuse is prescribed by this statute.

An action for damages for personal injury based on the protective services undertaken pursuant to **Alaska Stat. § 47.24.015** may only be brought if the actions taken were performed with gross negligence or intentional misconduct. **Alaska Stat. § 47.24.015(f).** There is no statute of limitations specifically provided by the statutes regarding protection of vulnerable adults. Alaska generally provides for a two-year statute of limitations on tort actions and upon a liability created by statute. **Alaska Stat. § 09.10.070(a).**

**I. Burden of Proof**

Alaska’s protection of vulnerable adults statute does not prescribe a burden of proof for civil actions.

The statute provides a process for reporting abuse and neglect of vulnerable adults, which includes *inter alia* reporting to licensing boards and agencies. If an agency, pursuant to its investigation permitted by **Alaska Stat. § 47.24.013**, finds *reasonable cause* that a certified nurse aid has committed abuse or neglect, the agency must report the matter to the Board of Nursing. **Alaska Stat. § 47.24.013(f).**

Those individuals making reports of abuse only need to have *reasonable cause* to believe that abuse or neglect is occurring. **Alaska Stat. § 47.24.010.** Once a report is made and an investigation is undertaken, *reasonable cause* is needed before a court may be petitioned for certain protective services. **Alaska Stat. § 47.24.019(a).**

Under some circumstances, *probable cause* is needed to support a prescribed course of action to protect a vulnerable adult from abuse. **Alaska Stat. § 47.24.015(c).**

**J. Can Regulations Establish Standard of Care:**

Alaska courts have not yet used the statute regarding protection of vulnerable adults to establish a standard of care. Alaska has adopted the Restatement (Second) of Torts §§ 286, 288A, and 288B regarding negligence per se. *Ferrell v. Baxter*, 484 P.2d 250 (Alaska 1971). A court may adopt as the standard of care the requirements of a statute whose purpose is to protect the class of persons to which the plaintiff belong, to protect the particular interest invaded, to protect that
interest against the kind of harm which resulted, and to protect that interest against the particular hazard from which the harm results, and that the unexcused violation of such a statute is negligence itself.  *Shanks v. Upjohn Co*, 835 P.2d 1189, 2101 (Alaska 1992).

Notably, there does not appear to be an independent civil cause of action for failing to report abuse or neglect of vulnerable adults pursuant to *Alaska Stat.* § 47.24.010 and the Alaska courts appear to be reluctant to allow the statute to serve as a basis for such a cause of action.  See *Hymes v. DeRamus*, 222 P.3d 874 (Alaska 2010) (stating that nothing in §§ 47.24.013, 47.24.015(a) create a private cause of action for elder abuse and therefore dismissing plaintiff’s claims for failure to report elder abuse).

II. DAMAGES

A. **Damages Available:** Damages available under Alaska’s protection of vulnerable adults statute are those resulting from the gross negligence or intentional misconduct regarding the protective services rendered. Those damages are limited to direct compensatory damages. *Alaska Stat.* §§ 47.24.010(e), 47.24.015(f).

B. **Does Pain and Suffering of Decedent/Resident Survive Death:**

Not addressed in either the statutes providing for protection of vulnerable adults or case law pertaining to the protection of vulnerable adult statutes since no independent cause of action is created by the statutes for elder abuse or neglect.

C. **Attorney’s Fees Available:**

Not addressed in either the statutes providing for protection of vulnerable adults or case law pertaining to the protection of vulnerable adult statutes since no independent cause of action is created by the statutes for elder abuse or neglect.

III. LEGISLATION AFFECTING STATUTE

A. **Pending:** None at this time.

B. **Anticipated:** None at this time.