

SENATE BILL NO. 179

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - SECOND SESSION**

BY SENATORS COGHILL, Giessel

Introduced: 2/12/16

Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act prohibiting abortions when the unborn child is viable outside the pregnant**
2 **woman's womb with certain exceptions; providing that an infant removed from a**
3 **pregnant woman's womb alive after an abortion may be surrendered and found to be a**
4 **child in need of aid; and repealing a prohibition against partial-birth abortions."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 *** Section 1. AS 18.16.010(a) is amended to read:**

7 (a) **Except as provided in (k) of this section, an** [AN] abortion may **only**
8 [NOT] be performed **or induced** in this state **if** [UNLESS]

9 (1) the abortion is performed by a physician licensed by the State
10 Medical Board under AS 08.64.200;

11 (2) the abortion is performed in a hospital or other facility approved for
12 the purpose by the Department of Health and Social Services or a hospital operated by
13 the federal government or an agency of the federal government;

14 (3) before an abortion is knowingly performed or induced on a

1 pregnant, unmarried, unemancipated woman under 18 years of age, notice or consent
 2 have been given as required under AS 18.16.020 or a court has authorized the minor to
 3 proceed with the abortion without parental involvement under AS 18.16.030 and the
 4 minor consents; for purposes of enforcing this paragraph, there is a rebuttable
 5 presumption that a woman who is unmarried and under 18 years of age is
 6 unemancipated;

7 (4) the woman is domiciled or physically present in the state for 30
 8 days before the abortion; [AND]

9 (5) the applicable requirements of AS 18.16.060 have been satisfied;
 10 **and**

11 **(6) in the clinical judgment of the physician performing or**
 12 **inducing the abortion, the unborn child is not viable outside the pregnant**
 13 **woman's womb at the time the abortion is performed or induced.**

14 * Sec. 2. AS 18.16.010 is amended by adding new subsections to read:

15 (k) A physician may perform or induce an abortion when, in the physician's
 16 clinical judgment, the unborn child is viable outside the pregnant woman's womb only
 17 if

18 (1) the pregnancy is the result of sexual assault under AS 11.41.410 -
 19 11.41.427, sexual abuse of a minor under AS 11.41.434 - 11.41.440, incest under
 20 AS 11.41.450, or an offense under a law of another jurisdiction with elements similar
 21 to one of these offenses; or

22 (2) the abortion is medically necessary.

23 (l) When a physician performs or induces an abortion under (k) of this section,
 24 the physician shall use the method of terminating the pregnancy that provides the best
 25 opportunity for the unborn child to survive after the child is removed from the
 26 pregnant woman's womb if, in the physician's clinical judgment, the method of
 27 terminating the pregnancy does not present a serious risk to the life or physical health
 28 of the pregnant woman.

29 (m) If the unborn child is removed from the pregnant woman's womb alive
 30 under (l) of this section, any health care practitioner present shall exercise the same
 31 degree of professional skill, care, and diligence to preserve the life and health of the

1 child as a reasonably diligent and conscientious health care practitioner would render
2 to a child born alive at the same fetal age in the course of a natural birth.

3 (n) In this section,

4 (1) "alive" means that a child, after birth or removal from a pregnant
5 woman's womb, has spontaneous respiratory or cardiac function or pulsation of the
6 umbilical cord, regardless of whether the umbilical cord has been cut;

7 (2) "clinical judgment" means a physician's or surgeon's subjective
8 professional medical judgment exercised in good faith;

9 (3) "fertilization" has the meaning given in AS 18.05.032(c);

10 (4) "fetal age" means the age of the unborn child as calculated from the
11 moment of fertilization;

12 (5) "knowingly" has the meaning given in AS 11.81.900(a);

13 (6) "medically necessary" has the meaning given for "medically
14 necessary abortion" in AS 47.07.068;

15 (7) "serious risk to the life or physical health" has the meaning given in
16 AS 47.07.068;

17 (8) "viable" means capable of surviving outside the mother's womb,
18 with or without artificial aid.

19 * **Sec. 3.** AS 18.16 is amended by adding a new section to read:

20 **Sec. 18.16.012. Surrender of child removed from womb alive.** If a child is
21 removed from a pregnant woman's womb alive under AS 18.16.010(k) - (m), the
22 child's parent may surrender the child to the physician or an employee of the hospital
23 or facility where the abortion is performed under AS 47.10.013(c). The person to
24 whom the child is surrendered shall notify the Department of Health and Social
25 Services as required under AS 47.10.013(d).

26 * **Sec. 4.** AS 47.10.011 is amended to read:

27 **Sec. 47.10.011. Children in need of aid.** Subject to AS 47.10.019, the court
28 may find a child to be a child in need of aid if it finds by a preponderance of the
29 evidence that the child has been subjected to any of the following:

30 (1) a parent or guardian has abandoned the child as described in
31 AS 47.10.013, and the other parent is absent or has committed conduct or created

1 conditions that cause the child to be a child in need of aid under this chapter;

2 (2) a parent, guardian, or custodian is incarcerated, the other parent is
3 absent or has committed conduct or created conditions that cause the child to be a
4 child in need of aid under this chapter, and the incarcerated parent has not made
5 adequate arrangements for the child;

6 (3) a custodian with whom the child has been left is unwilling or
7 unable to provide care, supervision, or support for the child, and the whereabouts of
8 the parent or guardian is unknown;

9 (4) the child is in need of medical treatment to cure, alleviate, or
10 prevent substantial physical harm or is in need of treatment for mental injury and the
11 child's parent, guardian, or custodian has knowingly failed to provide the treatment;

12 (5) the child is habitually absent from home or refuses to accept
13 available care and the child's conduct places the child at substantial risk of physical or
14 mental injury;

15 (6) the child has suffered substantial physical harm, or there is a
16 substantial risk that the child will suffer substantial physical harm, as a result of
17 conduct by or conditions created by the child's parent, guardian, or custodian or by the
18 failure of the parent, guardian, or custodian to supervise the child adequately;

19 (7) the child has suffered sexual abuse, or there is a substantial risk that
20 the child will suffer sexual abuse, as a result of conduct by or conditions created by the
21 child's parent, guardian, or custodian or by the failure of the parent, guardian, or
22 custodian to adequately supervise the child; if a parent, guardian, or custodian has
23 actual notice that a person has been convicted of a sex offense against a minor within
24 the past 15 years, is registered or required to register as a sex offender under AS 12.63,
25 or is under investigation for a sex offense against a minor, and the parent, guardian, or
26 custodian subsequently allows a child to be left with that person, this conduct
27 constitutes prima facie evidence that the child is at substantial risk of being sexually
28 abused;

29 (8) conduct by or conditions created by the parent, guardian, or
30 custodian have

31 (A) resulted in mental injury to the child; or

1 (B) placed the child at substantial risk of mental injury as a
2 result of

3 (i) a pattern of rejecting, terrorizing, ignoring, isolating,
4 or corrupting behavior that would, if continued, result in mental injury;
5 [OR]

6 (ii) exposure to conduct by a household member, as
7 defined in AS 18.66.990, against another household member that is a
8 crime under AS 11.41.100 - 11.41.220, 11.41.230(a)(1) or (2), or
9 11.41.410 - 11.41.432, an offense under a law or ordinance of another
10 jurisdiction having elements similar to a crime under AS 11.41.100 -
11 11.41.220, 11.41.230(a)(1) or (2), or 11.41.410 - 11.41.432, an attempt
12 to commit an offense that is a crime under AS 11.41.100 - 11.41.220 or
13 11.41.410 - 11.41.432, or an attempt to commit an offense under a law
14 or ordinance of another jurisdiction having elements similar to a crime
15 under AS 11.41.100 - 11.41.220 or 11.41.410 - 11.41.432; or

16 (iii) repeated exposure to conduct by a household
17 member, as defined in AS 18.66.990, against another household
18 member that is a crime under AS 11.41.230(a)(3) or 11.41.250 -
19 11.41.270 or an offense under a law or ordinance of another jurisdiction
20 having elements similar to a crime under AS 11.41.230(a)(3) or
21 11.41.250 - 11.41.270;

22 (9) conduct by or conditions created by the parent, guardian, or
23 custodian have subjected the child or another child in the same household to neglect;

24 (10) the parent, guardian, or custodian's ability to parent has been
25 substantially impaired by the addictive or habitual use of an intoxicant, and the
26 addictive or habitual use of the intoxicant has resulted in a substantial risk of harm to
27 the child; if a court has previously found that a child is a child in need of aid under this
28 paragraph, the resumption of use of an intoxicant by a parent, guardian, or custodian
29 within one year after rehabilitation is prima facie evidence that the ability to parent is
30 substantially impaired and the addictive or habitual use of the intoxicant has resulted
31 in a substantial risk of harm to the child as described in this paragraph;

1 (11) the parent, guardian, or custodian has a mental illness, serious
2 emotional disturbance, or mental deficiency of a nature and duration that places the
3 child at substantial risk of physical harm or mental injury;

4 (12) the child has committed an illegal act as a result of pressure,
5 guidance, or approval from the child's parent, guardian, or custodian;

6 **(13) the infant was removed from the mother's womb alive during**
7 **an abortion performed under AS 18.16.010(k) - (m) and a parent of the child is**
8 **unwilling or unable to care for the infant.**

9 * Sec. 5. AS 18.16.010(g)(1) and 18.16.050 are repealed.

10 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 APPLICABILITY. AS 18.16.010(a), as amended by sec. 1 of this Act,
13 AS 18.16.010(k) - (n), added by sec. 2 of this Act, AS 18.16.012, added by sec. 3 of this Act,
14 and AS 47.10.011, as amended by sec. 4 of this Act, apply to abortions performed or induced
15 on or after the effective date of this Act.

REPEALED LANGUAGE

AS 18.16.010 (g) It is a defense to a prosecution or claim for violation of (a)(3) of this section that, in the clinical judgment of the physician or surgeon, compliance with the requirements of (a)(3) of this section was not possible because, in the clinical judgment of the physician or surgeon, an immediate threat of serious risk to the life or physical health of the pregnant minor from the continuation of the pregnancy created a medical emergency necessitating the immediate performance or inducement of an abortion. In this subsection,

(1) "clinical judgment" means a physician's or surgeon's subjective professional medical judgment exercised in good faith;

Sec. 18.16.050. Partial-birth abortions.

(a) Notwithstanding compliance with **AS 18.16.010**, a person may not knowingly perform a partial-birth abortion unless a partial-birth abortion is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury and no other medical procedure would suffice for that purpose. Violation of this subsection is a class C felony.

(b) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section or under any other law if the prosecution is based on this section.

(c) In this section, "partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.