

HOUSE BILL NO. 43

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES GRENN, Kawasaki, Gara, Drummond

Introduced: 1/18/17

Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to prescribing, dispensing, and administering an investigational drug,**
2 **biological product, or device by physicians for patients who are terminally ill; providing**
3 **immunity related to manufacturing, distributing, or providing investigational drugs,**
4 **biological products, or devices; and relating to licensed health care facility**
5 **requirements."**

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

7 *** Section 1.** AS 08.64.367 is amended by adding new subsections to read:

8 (c) A physician may not be subject to disciplinary action by the board for
9 prescribing, dispensing, or administering an investigational drug, biological product,
10 or device, or providing related treatment, to a patient if the patient
11 (1) has a terminal illness;
12 (2) is ineligible or unable to participate in a current clinical trial for the
13 investigational drug, biological product, or device;

1 (3) has considered, after consultation with the physician, all other
 2 treatment options currently approved by the United States Food and Drug
 3 Administration; and

4 (4) has given informed consent in writing for the use of the
 5 investigational drug, biological product, or device.

6 (d) In this section,

7 (1) "investigational drug, biological product, or device" means a drug,
 8 biological product, or device that has successfully completed Phase 1 studies of
 9 clinical trials for investigation and remains in ongoing clinical trials under Phase 2 or
 10 Phase 3, but has not been approved for general use by the United States Food and
 11 Drug Administration;

12 (2) "terminal illness" means a disease that, without life-sustaining
 13 procedures, will result in death in the near future or a state of permanent
 14 unconsciousness from which recovery is unlikely.

15 * **Sec. 2.** AS 09.65 is amended by adding a new section to read:

16 **Sec. 09.65.325. Immunity relating to use or nonuse of investigational**
 17 **drugs, biological products, and devices.** (a) A person is not liable in an action for
 18 damages for the injury or death of a patient with a terminal illness resulting from the
 19 patient's use of an investigational drug, biological product, or device if the person,
 20 acting in good faith and with reasonable care, is a

21 (1) physician or member of the medical team who prescribed,
 22 dispensed, or administered the investigational drug, biological product, or device, or
 23 provided related treatment, to the patient and, before prescribing, dispensing, or
 24 administering the drug, product, or device, or providing related treatment, the
 25 physician or member of the medical team

26 (A) obtained the informed consent of the patient in writing after
 27 presenting to the patient all treatment options currently approved by the United
 28 States Food and Drug Administration for treatment of the patient's terminal
 29 illness; and

30 (B) provided written notice of the immunity provided under
 31 this section to the patient; or

1 (2) manufacturer, importer, or distributor of the investigational drug,
2 biological product, or device and, before providing the drug, product, or device to the
3 patient's physician, presented to the physician all treatment options currently approved
4 by the United States Food and Drug Administration for treatment of the patient's
5 terminal illness and provided written notice of the immunity provided under this
6 section to the patient.

7 (b) A person, acting in good faith and with reasonable care, is not liable in an
8 action for damages solely for declining to

9 (1) prescribe, dispense, or administer an investigational drug,
10 biological product, or device to a patient; or

11 (2) provide an investigational drug, biological product, or device to a
12 patient's physician.

13 (c) In this section, "investigational drug, biological product, or device" and
14 "terminal illness" have the meanings given in AS 08.64.367.

15 * **Sec. 3.** AS 17.20.110 is amended by adding a new subsection to read:

16 (b) This section does not apply to a physician who prescribes or administers a
17 new drug in accordance with the conditions set out in AS 08.64.367(c).

18 * **Sec. 4.** AS 47.32.030 is amended by adding a new subsection to read:

19 (d) The department may not require a licensed entity to increase services for
20 the sole purpose of accommodating a physician's practice of prescribing, dispensing,
21 or administering an investigational drug, biological product, or device, or providing
22 related treatment, to a patient. In this subsection, "investigational drug, biological
23 product, or device" has the meaning given in AS 08.64.367.