

SENATE BILL NO. 105

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATORS LEMAN, Miller, Halford, Taylor, Green

Introduced: 3/1/95

Referred: HES, JUD

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a requirement that a parent, guardian, or custodian consent
2 before a minor receives an abortion; establishing a judicial bypass procedure by
3 which a minor may petition a court for authorization to consent to an abortion
4 without consent of a parent, guardian, or custodian; amending the definition of
5 'abortion'; and amending Alaska Rules of Civil Procedure 40, 53, and 79; Alaska
6 Rules of Appellate Procedure 204, 210, 212, 213, 508, and 512.5; and Alaska
7 Administrative Rule 9."

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

9 * **Section 1.** PURPOSE; FINDINGS. (a) It is the intent of the legislature in enacting this
10 Act to further the important and compelling state interests of
11 (1) protecting minors against their own immaturity;
12 (2) fostering the family structure and preserving it as a viable social unit;
13 (3) protecting the rights of parents to rear children who are members of their

1 household; and

2 (4) protecting the health of minor women.

3 (b) The legislature finds that

4 (1) immature minors often lack the ability to make fully informed choices that
5 take account of both immediate and long-range consequences;

6 (2) the physical, emotional, and psychological consequences of abortion are
7 serious and can be lasting particularly when the patient is immature;

8 (3) the capacity to become pregnant and the capacity for mature judgment
9 concerning the wisdom of an abortion are not necessarily related;

10 (4) parents ordinarily possess information essential to a physician's or
11 surgeon's best medical judgment concerning the child;

12 (5) parents who are aware that their minor daughter has had an abortion may
13 better ensure that the daughter receives adequate medical attention after the abortion;

14 (6) parental consultation is usually desirable and in the best interest of the
15 minor; and

16 (7) parental involvement legislation enacted in other states has shown to have
17 a significant effect in reducing abortion, birth, and pregnancy rates among minors.

18 * **Sec. 2.** AS 18.16.010(a) is amended to read:

19 (a) An abortion may not be performed in this state unless

20 (1) the abortion is performed by a physician or surgeon licensed by the
21 State Medical Board under AS 08.64.200;

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

25 (3) **before an abortion is knowingly performed on an unmarried,**
26 **unemancipated woman under 18 years of age, consent has been given as required**
27 **under AS 18.16.020 or a court has authorized the minor to consent to the abortion**
28 **under AS 18.16.030 and the minor consents; for purposes of enforcing this**
29 **paragraph, there is a rebuttable presumption that a woman who is unmarried and**
30 **under 18 years of age is unemancipated** [CONSENT HAS BEEN RECEIVED
31 FROM THE PARENT OR GUARDIAN OF AN UNMARRIED WOMAN LESS

1 THAN 18 YEARS OF AGE]; and

2 (4) the woman is domiciled or physically present in the state for 30
3 days before the abortion.

4 * **Sec. 3.** AS 18.16.010 is amended by adding new subsections to read:

5 (e) A person who performs or induces an abortion in violation of (a)(3) of this
6 section is civilly liable to the pregnant woman and the woman's parents, guardian, or
7 custodian for compensatory and punitive damages.

8 (f) It is an affirmative defense to a prosecution or claim for a violation of
9 (a)(3) of this section that the pregnant woman provided the person who performed or
10 induced the abortion with false, misleading, or incorrect information about the
11 woman's age, marital status, or emancipation, and the person who performed or
12 induced the abortion did not otherwise have reasonable cause to believe that the
13 pregnant woman was under 18 years of age, unmarried, or unemancipated.

14 (g) It is an affirmative defense to a prosecution or claim for violation of (a)(3)
15 of this section that compliance with the requirements of (a)(3) of this section was not
16 possible because an immediate threat of serious risk to the life or physical health of
17 the pregnant woman from the continuation of the pregnancy created a medical
18 emergency necessitating the immediate performance or inducement of an abortion. In
19 this subsection, "medical emergency" means a condition that, on the basis of the
20 physician's or surgeon's good faith clinical judgment, so complicates the medical
21 condition of a pregnant woman that

22 (1) an immediate abortion of the woman's pregnancy is necessary to
23 avert the woman's death; or

24 (2) a delay in providing an abortion will create serious risk of
25 substantial and irreversible impairment of a major bodily function of the pregnant
26 woman.

27 * **Sec. 4.** AS 18.16 is amended by adding new sections to read:

28 **Sec. 18.16.020. CONSENT REQUIRED BEFORE MINOR'S ABORTION.**

29 A person may not knowingly perform or induce an abortion upon a woman who is
30 known to the person to be pregnant, unmarried, under 18 years of age, and un-
31 emancipated unless, before the abortion, at least one of the following applies:

1 (1) one of the woman's parents or the woman's guardian or custodian
2 has consented in writing to the performance or inducement of the abortion;

3 (2) a court issues an order under AS 18.16.030 authorizing the woman
4 to consent to the abortion without consent of a parent, guardian, or custodian and the
5 woman consents to the abortion; or

6 (3) a court, by its inaction under AS 18.16.030, constructively has
7 authorized the woman to consent to the abortion without consent of a parent, guardian,
8 or custodian and the woman consents to the abortion.

9 Sec. 18.16.030. JUDICIAL BYPASS FOR MINOR SEEKING AN
10 ABORTION. (a) A woman who is pregnant, unmarried, under 18 years of age, and
11 unemancipated who wishes to have an abortion without the consent of a parent,
12 guardian, or custodian may file a complaint in the superior court requesting the
13 issuance of an order authorizing the woman to consent to the performance or
14 inducement of an abortion without the consent of a parent, guardian, or custodian.

15 (b) The complaint shall be made under oath and must include all of the
16 following:

17 (1) a statement that the complainant is pregnant;

18 (2) a statement that the complainant is unmarried, under 18 years of
19 age, and unemancipated;

20 (3) a statement that the complainant wishes to have an abortion without
21 the consent of a parent, guardian, or custodian;

22 (4) an allegation of either or both of the following:

23 (A) that the complainant is sufficiently mature and well enough
24 informed to decide intelligently whether to have an abortion without the
25 consent of a parent, guardian, or custodian; or

26 (B) that one or both of the woman's parents or the woman's
27 guardian or custodian was engaged in a pattern of physical, sexual, or
28 emotional abuse against the woman, or that the consent of a parent, guardian,
29 or custodian otherwise is not in the woman's best interest;

30 (5) a statement as to whether the complainant has retained an attorney
31 and, if an attorney has been retained, the name, address, and telephone number of the

1 attorney.

2 (c) The court shall fix a time for a hearing on any complaint filed under (a)
3 of this section and shall keep a record of all testimony and other oral proceedings in
4 the action. The court shall hear and determine the action and may not refer any portion
5 of it to a referee. The hearing shall be held at the earliest possible time, but not later
6 than the fifth business day after the day that the complaint is filed. The court shall
7 enter judgment on the complaint immediately after the hearing is concluded. If the
8 hearing required by this subsection is not held by the fifth business day after the
9 complaint is filed, the failure to hold the hearing shall be considered to be a
10 constructive order of the court authorizing the complainant to consent to the
11 performance or inducement of an abortion without the consent of a parent, guardian,
12 or custodian, and the complainant and any other person may rely on the constructive
13 order to the same extent as if the court actually had issued an order under this section
14 authorizing the complainant to consent to the performance or inducement of an
15 abortion without such consent.

16 (d) The court shall appoint a guardian ad litem to protect the interests of the
17 complainant at the hearing that is held under this section. If the complainant has not
18 retained an attorney, the court shall appoint an attorney to represent the complainant.
19 If the guardian ad litem is an attorney admitted to the practice of law in this state, the
20 court also may appoint the guardian ad litem to serve as the complainant's attorney.

21 (e) If the complainant makes only the allegation set out in (b)(4)(A) of this
22 section and if the court finds by clear and convincing evidence that the complainant
23 is sufficiently mature and well enough informed to decide intelligently whether to have
24 an abortion, the court shall issue an order authorizing the complainant to consent to
25 the performance or inducement of an abortion without the consent of a parent,
26 guardian, or custodian. If the court does not make the finding specified in this
27 subsection, it shall dismiss the complaint.

28 (f) If the complainant makes only the allegation set out in (b)(4)(B) of this
29 section and the court finds by clear and convincing evidence that there is evidence of
30 a pattern of physical, sexual, or emotional abuse of the complainant by one or both of
31 the woman's parents or the woman's guardian or custodian, or that the consent of the

1 parents, guardian, or custodian of the complainant otherwise is not in the best interest
2 of the complainant, the court shall issue an order authorizing the complainant to
3 consent to the performance or inducement of an abortion without the consent of a
4 parent, guardian, or custodian. If the court does not make the finding specified in this
5 subsection, it shall dismiss the complaint.

6 (g) If the complainant makes both of the allegations set out in (b)(4) of this
7 section, the court shall proceed as follows:

8 (1) the court first shall determine whether it can make the finding
9 specified in (e) of this section and, if so, shall issue an order under that subsection;
10 if the court issues an order under this paragraph, it may not proceed under (f) of
11 this section; if the court does not make the finding specified in (e) of this section, it
12 shall proceed under (2) of this subsection;

13 (2) if the court under (1) of this subsection does not make the finding
14 specified in (e) of this section, it shall proceed to determine whether it can make the
15 finding specified in (f) of this section and, if so, shall issue an order under that
16 subsection; if the court does not make the finding specified in (f) of this section, it
17 shall dismiss the complaint.

18 (h) The court may not notify the parents, guardian, or custodian of the
19 complainant that the complainant is pregnant or wants to have an abortion.

20 (i) If the court dismisses the complaint, the complainant has the right to
21 appeal the decision to the supreme court, and the superior court immediately shall
22 notify the complainant that there is a right to appeal.

23 (j) If the complainant files a notice of appeal authorized under this section, the
24 superior court shall deliver a copy of the notice of appeal and the record on appeal to
25 the supreme court within four days after the notice of appeal is filed. Upon receipt of
26 the notice and record, the clerk of the supreme court shall place the appeal on the
27 docket. The appellant shall file a brief within four days after the appeal is docketed.
28 Unless the appellant waives the right to oral argument, the supreme court shall hear
29 oral argument within five days after the appeal is docketed. The supreme court shall
30 enter judgment in the appeal immediately after the oral argument or, if oral argument
31 has been waived, within five days after the appeal is docketed. Upon motion of the

1 appellant and for good cause shown, the supreme court may shorten or extend the
2 maximum times set out in this subsection. However, in any case, if judgment is not
3 entered within five days after the appeal is docketed, the failure to enter the judgment
4 shall be considered to be a constructive order of the court authorizing the appellant to
5 consent to the performance or inducement of an abortion without the consent of a
6 parent, guardian, or custodian, and the appellant and any other person may rely on the
7 constructive order to the same extent as if the court actually had entered a judgment
8 under this subsection authorizing the appellant to consent to the performance or
9 inducement of an abortion without consent of another person. In the interest of justice,
10 the supreme court, in an appeal under this subsection, shall liberally modify or
11 dispense with the formal requirements that normally apply as to the contents and form
12 of an appellant's brief.

13 (k) Each hearing under this section, and all proceedings under (j) of this
14 section, shall be conducted in a manner that will preserve the anonymity of the
15 complainant. The complaint and all other papers and records that pertain to an action
16 commenced under this section, including papers and records that pertain to an appeal
17 under this section, shall be kept confidential and are not public records under
18 AS 09.25.110 - 09.25.120.

19 (l) The supreme court shall prescribe complaint and notice of appeal forms that
20 shall be used by a complainant filing a complaint or appeal under this section. The
21 clerk of each superior court shall furnish blank copies of the forms, without charge,
22 to any person who requests them.

23 (m) A filing fee may not be required of, and court costs may not be assessed
24 against, a complainant filing a complaint under this section or an appellant filing an
25 appeal under this section.

26 Sec. 18.16.090. DEFINITIONS. In this chapter,

27 (1) "abortion" means the use or prescription of an instrument, medicine,
28 drug, or other substance or device to terminate the pregnancy of a woman known to
29 be pregnant, except that "abortion" does not include the termination of a pregnancy if
30 done with the intent to

31 (A) save the life or preserve the health of the unborn child;

1 (B) deliver the unborn child prematurely to preserve the health
2 of both the pregnant woman and the woman's child; or

3 (C) remove a dead unborn child;

4 (2) "unemancipated" means that a woman who is unmarried and under
5 18 years of age has not done any of the following:

6 (A) entered the armed services of the United States;

7 (B) become employed and self-subsisting;

8 (C) been emancipated under AS 09.55.590; or

9 (D) otherwise become independent from the care and control of
10 the woman's parent, guardian, or custodian.

11 * **Sec. 5.** AS 18.16.010(d) is repealed.

12 * **Sec. 6.** AS 18.16.030(c), added by sec. 4 of this Act, has the effect of amending Alaska
13 Rule of Civil Procedure 53 by prohibiting referral of a certain type of case to a master.

14 * **Sec. 7.** AS 18.16.030(c), added by sec. 4 of this Act, has the effect of amending Alaska
15 Rule of Civil Procedure 40 by setting a specific timetable for hearing certain cases.

16 * **Sec. 8.** AS 18.16.030(j), added by sec. 4 of this Act, has the effect of amending Alaska
17 Rules of Appellate Procedure 204, 210, 212, and 213 by establishing specific time limits
18 applicable to certain appeals and by instructing the supreme court to modify or dispense with
19 formal requirements applicable to certain briefs.

20 * **Sec. 9.** AS 18.16.030(k), added by sec. 4 of this Act, has the effect of amending Alaska
21 Rule of Appellate Procedure 512.5 by making certain appellate records and papers
22 confidential.

23 * **Sec. 10.** AS 18.16.030(m), added by sec. 4 of this Act, has the effect of amending Alaska
24 Administrative Rule 9, Alaska Rule of Civil Procedure 79, and Alaska Rule of Appellate
25 Procedure 508 by prohibiting filing fees and assessment of court costs in certain actions.