

CS FOR SENATE BILL NO. 348(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/30/98

Referred: Rules

Sponsor(s): SENATE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain rights of conscience protection for persons who
2 directly or indirectly provide or perform health services."

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

4 * **Section 1.** AS 18 is amended by adding a new chapter to read:

5 **Chapter 17. Rights of Conscience Protection.**

6 **Sec. 18.17.010. Policy.** It is the public policy of the state to respect and
7 protect the rights of conscience of all persons who are involved in providing health
8 services. It is the purpose of this chapter to protect as a basic civil right the right of
9 all persons to refuse to counsel, advise, pay for, provide, perform, assist, or participate
10 directly or indirectly in providing or performing certain health services that violate the
11 persons' religious or moral convictions and to prohibit all forms of discrimination,
12 disqualification, coercion, disability, or liability of the persons by reason of their
13 refusals.

14 **Sec. 18.17.020. Civil rights of conscience.** (a) Subject to AS 18.12.050, a

1 person has the right not to counsel, advise, pay for, provide, perform, assist, or
2 participate directly or indirectly in providing or performing a health service if the
3 service includes a procedure that violates the person's religious or moral convictions
4 and the procedure is intended to end the life of an individual or involves an elective
5 abortion.

6 (b) Subject to AS 18.12.050, a person may not be required to counsel, advise,
7 pay for, provide, perform, assist, or participate directly or indirectly in providing or
8 performing a health service if the service includes a procedure that violates the
9 person's religious or moral convictions and the procedure is intended to end the life
10 of an individual or involves an elective abortion.

11 **Sec. 18.17.030. Individual rights of conscience.** (a) Subject to
12 AS 18.12.050, an individual may not be required to counsel, advise, pay for, provide,
13 perform, assist, or participate directly or indirectly in providing or performing a health
14 service if the service includes a procedure that violates the individual's religious or
15 moral convictions and the procedure is intended to end the life of an individual or
16 involves an elective abortion.

17 (b) An individual is not civilly, criminally, or administratively liable to a
18 person for refusing, upon request or assignment and except as provided under
19 AS 18.12.050, to counsel, advise, pay for, provide, perform, assist, or participate
20 directly or indirectly in providing or performing a health service if the service includes
21 a procedure that violates the individual's religious or moral convictions and the
22 procedure is intended to end the life of an individual or involves an elective abortion,
23 and if

24 (1) before the request or assignment, the individual notified the person
25 making the request or assignment of the individual's refusal to provide or perform that
26 type of health service and, if requested to do so, the individual stated the refusal in
27 writing; or

28 (2) within 24 hours after being asked or assigned to provide or perform
29 the health service, the individual notified the person making the request or assignment
30 of the individual's refusal.

31 (c) A person may not discriminate against, penalize, discipline, or retaliate

1 against an individual in employment; privileges; benefits; remuneration; promotion;
 2 termination of employment; eligibility for admission to, renewal or participation in, or
 3 graduation from an educational, study, or training program; or a grant, contract, or
 4 other program because of the individual's refusal or unwillingness to counsel, advise,
 5 pay for, provide, perform, assist, or participate directly or indirectly in providing or
 6 performing a health service if the service includes a procedure that violates the
 7 individual's religious or moral convictions and the procedure is not required under
 8 AS 18.12.050 and is intended to end the life of an individual or the procedure involves
 9 an elective abortion.

10 **Sec. 18.17.040. Institutional rights of conscience.** (a) A health care
 11 institution may not be required to counsel, advise, pay for, provide, perform, assist, or
 12 participate in providing or performing a health service if the service includes a
 13 procedure that violates the religious or moral convictions of a majority of the board
 14 of directors or other administrative head of the institution or of a majority of its
 15 owners or partners and the procedure is intended to end the life of an individual or
 16 involves an elective abortion. A health care institution is not required to admit or keep
 17 a patient for the purpose of providing to that patient a health service if the service
 18 includes a procedure that violates the religious or moral convictions of a majority of
 19 the board of directors or other administrative head of the institution or of a majority
 20 of its owners or partners and the procedure is intended to end the life of an individual
 21 or involves an elective abortion.

22 (b) A health care institution is not civilly, criminally, or administratively liable
 23 to a person for refusing to participate directly or indirectly in providing or performing
 24 a health service if the service includes a procedure that violates the religious or moral
 25 convictions of a majority of the board of directors or other administrative head of the
 26 institution or of a majority of its owners or partners and the procedure is intended to
 27 end the life of an individual or involves an elective abortion, and if the institution

28 (1) posted notice of its refusal policy in plain sight in the admission
 29 area of the institution before the health service is requested; or

30 (2) within 24 hours after receiving the request, notified the person
 31 requesting the health service of its refusal and there has been no irreversible change

1 in the circumstances of the patient or person making the request during the time
2 between making the request and the institution's refusal that would make it unjust for
3 the institution to refuse the request.

4 (c) A person may not discriminate or retaliate against a health care institution
5 in a grant, contract, or program because of the institution's refusal to counsel, advise,
6 pay for, provide, perform, assist, or participate directly or indirectly in providing or
7 performing a health service if the service includes a procedure that violates the
8 religious or moral convictions of a majority of the board of directors or other
9 administrative head of the institution or of a majority of its owners or partners and the
10 procedure is intended to end the life of an individual or involves an elective abortion.

11 **Sec. 18.17.050. Exceptions.** (a) This chapter does not relieve a person from
12 liability to pay for a health service, for which the person freely and knowingly
13 contracted to pay, that was performed before a timely conscientious objection was
14 asserted by the person.

15 (b) A health care institution or a department or division of the institution that
16 is established for the sole or primary purpose of providing specific types of health
17 services may exclude an individual who objects to a procedure from employment in
18 a position for which the performance of the services is a necessary and substantial
19 responsibility if the individual's moral or conscience rights cannot be reasonably
20 accommodated by diligent effort. In this paragraph, "procedure" means a medical
21 procedure intended to end the life of an individual or involving an elective abortion.

22 **Sec. 18.17.060. Remedies.** (a) Notwithstanding other provisions of law, a
23 person injured by an act or omission that violates a provision of this chapter may
24 obtain an injunction and is entitled to receive three times the actual damages sustained
25 by the person or \$3,000 for each violation, whichever is greater.

26 (b) Remedies provided for under this section are in addition to other remedies
27 that may be available under federal or state law.

28 **Sec. 18.17.070. Federal requirements not affected.** Nothing in this chapter
29 changes, modifies, or otherwise affects requirements of 42 U.S.C. 1395cc, 42 U.S.C.
30 1395dd, or 42 U.S.C. 1396a (a)(57) or (58).

31 **Sec. 18.17.080. Definitions.** In this chapter,

1 (1) "elective abortion" means the use or prescription of an instrument,
 2 medicine, drug, or other substance or device to terminate the pregnancy of a woman
 3 known to be pregnant, except that "elective abortion" does not include the termination
 4 of a pregnancy

5 (A) if done with the intent to save the life or preserve the health
 6 of the unborn child;

7 (B) if done with the intent to deliver the unborn child
 8 prematurely to preserve the health of both the pregnant woman and the
 9 woman's child;

10 (C) if done with the intent to remove a dead unborn child;

11 (D) if done with the intent to save the life of the pregnant
 12 woman whose life is endangered by a physical disorder, illness, or injury if no
 13 other medical procedure would save the life of the woman;

14 (E) that is a result of incest; or

15 (F) that is the result of an act of sexual assault that has been
 16 reported to a peace officer;

17 (2) "health care institution" means a public or private corporation,
 18 partnership, association, organization, agency, or other entity that is involved in
 19 providing health care; in this paragraph, "entity" includes a hospital, clinic, physician's
 20 office, medical school, nursing school, other health care training institution, insurance
 21 organization, or financing organization;

22 (3) "health service" means a phase or type of service performed at a
 23 health care institution or by a health professional, paraprofessional, or pharmacist or
 24 by an employee of a health professional, paraprofessional, or pharmacist; in this
 25 paragraph, "service" includes testing, diagnosis, prognosis, research, counseling,
 26 therapy, treatment, family planning, referral, prescription, medication, surgery, the
 27 termination of or failure to perform a procedure, and any necessary support services.

28 * **Sec. 2.** Under AS 01.10.030, if any provision of AS 18.17.010 - 18.17.080 or the
 29 application of AS 18.17.010 - 18.17.080 to any person or circumstance is held invalid, the
 30 remainder of AS 18.17.010 - 18.17.080 or the application of those statutes to other persons
 31 or circumstances is not affected.