

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 329(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 3/30/00

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES COGHILL, Kohring, Dyson, Ogan, Sanders, Green, Harris

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to services and information available to pregnant women and
2 other persons; and requiring informed consent and a 24-hour waiting period
3 before an abortion may be performed unless there is a medical emergency."

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

5 * **Section 1.** AS 18.05 is amended by adding a new section to read:

6 **Sec. 18.05.032. Information relating to unborn children and abortion.** (a)

7 The department shall obtain or prepare written information that

8 (1) contains geographically-indexed material designed to inform a
9 person of public and private agencies and services, including adoption agencies, that
10 are available to assist a woman through a pregnancy, at childbirth, and while the child
11 is dependent; the material must include a comprehensive list of the agencies, a
12 description of the services they offer, and the manner in which the agencies may be
13 contacted, including telephone numbers; in addition to this written material, the
14 department, through a toll-free 24-hour-a-day telephone number, shall orally provide

1 a list and description of agencies that are in the locality of the caller;

2 (2) provides information on the availability of medical assistance
3 benefits for prenatal care, childbirth, and neonatal care;

4 (3) states that a person may not lawfully coerce a woman to undergo
5 an abortion;

6 (4) states that a physician who performs or induces an abortion on a
7 woman without obtaining the woman's informed consent may be liable to the woman
8 for damages in a civil action;

9 (5) states that the father of a child is liable to assist in the support of
10 the child even in instances where the father has offered to pay for an abortion, and that
11 the law permits adoptive parents to pay costs of prenatal care, childbirth, and neonatal
12 care;

13 (6) is designed to inform the woman of the anatomical and
14 physiological characteristics of a typical unborn child at two-week gestational
15 increments from fertilization to full term, including photographs representing the
16 development of unborn children at two-week gestational increments and relevant
17 information about the possibility of an unborn child's survival at the various
18 gestational ages; the photographs must contain the dimensions of the fetus and shall
19 be realistic and appropriate for the woman's stage of pregnancy; the information must
20 be objective, nonjudgmental, and designed to convey only accurate scientific
21 information about unborn children at various gestational ages;

22 (7) contains objective information that describes the methods of
23 abortion procedures and treatments commonly employed, the medical risks commonly
24 associated with each procedure and treatment, the possible detrimental psychological
25 effects of abortion, and the medical risks commonly associated with carrying an
26 unborn child to term; the information about the medical risks commonly associated
27 with abortion procedures and treatments must include

28 (A) when medically accurate, the risks of infection, hemorrhage,
29 breast cancer, danger to subsequent pregnancies, and infertility; and

30 (B) where appropriate, the possible adverse psychological
31 effects of an abortion.

1 (b) The information required under (a) of this section must be written in easily
2 comprehensible language and must be printed in a typeface that is large enough to be
3 clearly legible.

4 (c) The department shall make the information required under (a) of this
5 section available free of charge on request and in an appropriate volume to the
6 requestor.

7 (d) In this section,

8 (1) "fertilization" means the fusion of a human spermatozoan with a
9 human ovum;

10 (2) "gestational age" means the age of the unborn child as calculated
11 from the first day of the last menstrual period of the pregnant woman;

12 (3) "pregnant" or "pregnancy" means a female reproductive condition
13 of having a developing fetus in the body from the time of fertilization;

14 (4) "unborn child" means the offspring of human beings from
15 fertilization until birth.

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

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

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

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

23 (3) before an abortion is knowingly performed or induced on an
24 unmarried, unemancipated woman under 17 years of age, consent has been given as
25 required under AS 18.16.020 or a court has authorized the minor to consent to the
26 abortion under AS 18.16.030 and the minor consents; for purposes of enforcing this
27 paragraph, there is a rebuttable presumption that a woman who is unmarried and under
28 17 years of age is unemancipated; [AND]

29 (4) the woman is domiciled or physically present in the state for 30
30 days before the abortion; **and**

31 **(5) the applicable requirements of AS 18.16.060 have been satisfied.**

1 * **Sec. 3.** AS 18.16.010 is amended by adding a new subsection to read:

2 (h) A person who performs or induces an abortion in violation of (a)(5) of this
 3 section is civilly liable to the pregnant woman for compensatory and punitive damages.
 4 In a civil action under this subsection, there is a rebuttable presumption that an
 5 abortion was performed without the pregnant woman's informed consent if the
 6 physician who performed the abortion does not submit into evidence the copy of the
 7 woman's written certification required to be retained in the physician's files under
 8 AS 18.16.060(b)(4)(B).

9 * **Sec. 4.** AS 18.16 is amended by adding a new section to read:

10 **Sec. 18.16.060. Informed consent requirements.** (a) Except in case of a
 11 medical emergency, a person may not knowingly perform or induce an abortion
 12 without the voluntary and informed consent of the woman on whom the abortion is to
 13 be performed or induced.

14 (b) Consent to an abortion is voluntary and informed only if all of the
 15 following are true:

16 (1) at least 24 hours before the abortion, the physician who is to
 17 perform the abortion or the referring physician has orally informed the woman of

18 (A) the particular medical risks associated with the abortion
 19 procedure to be employed; the medical risks include,

20 (i) when medically accurate, the risks of infection,
 21 hemorrhage, breast cancer, danger to subsequent pregnancies, and
 22 infertility; and

23 (ii) where appropriate, the possible adverse
 24 psychological effects of an abortion;

25 (B) alternatives to the abortion that a reasonable patient would
 26 consider material to the decision of whether or not to undergo the abortion;

27 (C) the probable gestational age of the unborn child at the time
 28 the abortion is to be performed;

29 (D) the medical risks associated with carrying the unborn child
 30 to term;

31 (E) the name of the physician who will perform the abortion

1 procedure;

2 (F) the possible availability of medical assistance benefits for
3 prenatal care, childbirth, and neonatal care; and

4 (G) the father's liability to assist in the support of the woman's
5 child, even in instances where the father has offered to pay for the abortion;
6 however, the information required under this subparagraph may be omitted by
7 the physician when the physician considers its omission appropriate under the
8 circumstances of the pregnancy.

9 (2) at least 24 hours before the abortion, the physician who is to
10 perform the abortion, the referring physician, or a person to whom the responsibility
11 has been delegated by either physician has informed the woman that

12 (A) the Department of Health and Social Services provides
13 written information that describes unborn children at various gestational ages
14 and lists the agencies that offer alternatives to abortion; and

15 (B) the woman has a right to review the written information
16 described in (A) of this paragraph and that a copy will be given to the woman
17 at no cost;

18 (3) a copy of the information described in (2)(A) of this subsection has
19 been given to the woman; and

20 (4) before the abortion,

21 (A) the woman certifies in writing that the information required
22 to be given under (1) - (3) of this subsection has been received; and

23 (B) the physician who is to perform the abortion or a
24 representative of the physician receives a copy of the written certificate
25 prescribed by (A) of this paragraph and retains a copy in the physician's file.

26 (c) In this section,

27 (1) "fertilization" means the fusion of a human spermatozoan with a
28 human ovum;

29 (2) "gestational age" means the age of the unborn child as calculated
30 from the first day of the last menstrual period of the pregnant woman;

31 (3) "medical emergency" means a condition that, on the basis of the

1 physician's good faith clinical judgment, so complicates the medical condition of a
2 pregnant woman that the immediate termination of the woman's pregnancy is necessary
3 to avert the woman's death or that a delay in providing an abortion will create serious
4 risk of substantial and irreversible impairment of a major bodily function of the
5 woman;

6 (4) "pregnant" or "pregnancy" means a female reproductive condition
7 of having a developing fetus in the body from the time of fertilization;

8 (5) "unborn child" means the offspring of human beings from
9 fertilization until birth.

10 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section
11 to read:

12 **SEVERABILITY.** Under AS 01.10.030, the provisions of this Act are severable.