

CS FOR SENATE BILL NO. 91(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 4/3/01

Referred: Judiciary, Finance

Sponsor(s): SENATOR WARD

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to information and services available to pregnant women and other**
2 **persons; and ensuring informed consent before an abortion may be performed, except in**
3 **cases of 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 pregnancy and pregnancy**
7 **alternatives.** (a) The department shall prepare a standard information pamphlet that
8 (1) contains geographically indexed material designed to inform a
9 person of public and private agencies and services that are available to assist a
10 pregnant woman with the woman's reproductive choices; the department should
11 include information about at least the following types of agencies and services:

12 (A) agencies and services designed to assist a woman through
13 pregnancy, including adoption agencies and counseling services; and

14 (B) clinics and facilities that provide abortion options and

1 counseling and post-abortion counseling and services;

2 (2) includes a comprehensive regional directory of the agencies and
3 clinics identified by the department under (1) of this subsection, a description of the
4 services they offer, and the manner in which the agencies and clinics may be
5 contacted, including telephone numbers;

6 (3) provides information concerning the circumstantial criteria for the
7 availability of medical assistance benefits for prenatal care, childbirth, and neonatal
8 care, as well as the circumstantial criteria for the availability of medical assistance
9 benefits for abortion services;

10 (4) states that a person who coerces a woman to undergo an abortion
11 may be prosecuted for a felony offense under AS 11.41.530;

12 (5) states that a physician who performs or induces an abortion on a
13 woman without obtaining the woman's informed consent may be liable to the woman
14 for damages in a civil action;

15 (6) states that the father of a child is liable to assist in the support of
16 the child even in instances where the father has offered to pay for an abortion, and that
17 the law permits adoptive parents to pay costs of prenatal care, childbirth, and neonatal
18 care;

19 (7) describes the fetal development of a typical unborn child at two-
20 week gestational increments from fertilization to full-term, including photographs
21 depicting the anatomical characteristics of a typical unborn child at two-week
22 gestational increments, and relevant information about the possibility of an unborn
23 child's survival at the various gestational ages; the fetal dimensions in the photographs
24 must be accurately represented and shall be realistic and appropriate for the woman's
25 state of pregnancy; the information must be objective, nonjudgmental, and designed to
26 convey only accurate scientific information about unborn children at various
27 gestational ages;

28 (8) contains objective, unbiased information that describes the methods
29 of abortion procedures and treatments commonly employed and the medical risks and
30 possible complications commonly associated with each procedure and treatment, as
31 well as the possible psychological effects that have been associated with having an

1 abortion;

2 (9) contains objective, unbiased information describing the possible
3 medical risks and complications commonly associated with pregnancy and childbirth,
4 as well as the possible psychological effects that have been associated with carrying a
5 child to term.

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

9 (c) The department shall advertise the availability of the information required
10 under (a) of this section and distribute the information free of charge on request and in
11 appropriate volume to the requester. The department shall also place the information
12 in public hospitals, clinics, or other health facilities throughout the state and, upon
13 request of an administrator, in a private hospital, clinic, or health facility so that
14 members of the public may obtain the information voluntarily, without request.

15 (d) In this section,

16 (1) "fertilization" means the fusion of a human spermatozoon with a
17 human ovum;

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

20 (3) "informed consent" means a voluntary and knowing decision to
21 undergo a specific procedure or treatment, based on at least the following information:
22 a description of the proposed treatment or procedure, reasonably foreseeable
23 complications and risks to the patient from the procedure, and the manner in which the
24 procedure and its foreseeable complications and risks compare with those of each
25 readily available alternative to the procedure;

26 (4) "unborn child" means the offspring of a human being in utero at
27 various stages of biological development.

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

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

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

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

4 (3) before an abortion is knowingly performed or induced on an
 5 unmarried, unemancipated woman under 17 years of age, consent has been given as
 6 required under AS 18.16.020 or a court has authorized the minor to consent to the
 7 abortion under AS 18.16.030 and the minor consents; for purposes of enforcing this
 8 paragraph, there is a rebuttable presumption that a woman who is unmarried and under
 9 17 years of age is unemancipated; [AND]

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

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

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

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

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

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

27 (b) Consent to an abortion is voluntary and informed when all of the following
 28 are true:

29 (1) before the abortion procedure, the physician who is to perform the
 30 abortion or the referring physician has orally informed the woman of the

31 (A) name of the physician who will perform the procedure;

1 (B) gestational estimation of the pregnancy at the time the
2 abortion is to be performed; and

3 (C) nature and risks of undergoing or not undergoing the
4 proposed procedure that a reasonable patient would consider material to
5 making a voluntary and informed decision of whether to undergo the
6 procedure;

7 (2) before the abortion, the woman certifies in writing that the
8 information required to be given under (1) of this subsection has been provided; and

9 (3) the physician who is to perform the abortion or a representative of
10 the physician receives a copy of the written certificate required under (2) of this
11 subsection and retains a copy in the physician's file.

12 (c) The information required in (b)(1) of this section shall be provided to the
13 woman individually and in a private setting to protect the woman's privacy, maintain
14 the confidentiality of the woman's decision, ensure that the information focuses on the
15 woman's individual circumstances, and ensure that the woman has an adequate
16 opportunity to ask questions.

17 (d) In this section,

18 (1) "informed consent" means a voluntary and knowing decision to
19 undergo a specific procedure or treatment, based on at least the following information:
20 a description of the proposed treatment or procedure, reasonably foreseeable
21 complications and risks to the patient from the procedure, and the manner in which the
22 procedure and its foreseeable complications and risks compare with those of each
23 readily available alternative to the procedure;

24 (2) "medical emergency" means a condition that, on the basis of a
25 physician's good faith clinical judgment, so complicates the medical condition of a
26 pregnant woman that

27 (A) the immediate termination of the woman's pregnancy is
28 necessary to avert the woman's death; or

29 (B) a delay in providing an abortion will create serious risk of
30 substantial and irreversible impairment of a major bodily function of the
31 woman.

1 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:
3 SEVERABILITY. Under AS 01.10.030, the provisions of this Act are severable.