

HOUSE BILL NO. 292

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES DAHLSTROM, Lynn, Coghill, Wilson, Seaton, Gatto

Introduced: 4/30/03

Referred: Health, Education and Social Services, Judiciary

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.** The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 LEGISLATIVE FINDINGS. The legislature finds that

8 (1) duties of the state include regulating medical practice and fostering the
9 development of standards of professional conduct in a critical area of practice;

10 (2) the state is interested in protecting the life and health of pregnant women;

11 (3) women have a right to know the medical risks associated with their
12 reproductive options;

13 (4) the creation of an unbiased, scientific information site on the Internet that
14 sufficiently describes reproductive options and their potential consequences will protect,

1 inform, and promote a woman's free and private choices between permanent and life-affecting
2 alternatives;

3 (5) the creation of an unbiased, scientific information site on the Internet that
4 sufficiently describes reproductive options and their potential consequences will reduce costly
5 and undue litigation, will promote judicial economy and resources, and will provide
6 physicians with a clear understanding of what constitutes informed consent for abortion by
7 providing immunity to physicians who use the information from the Internet site;

8 (6) considerable testimony has been received at legislative hearings during the
9 last three years indicating that women have obtained abortions in Alaska without considering
10 sufficient information.

11 * **Sec. 2.** AS 18.05 is amended by adding a new section to read:

12 **Sec. 18.05.032. Information relating to pregnancy and pregnancy**
13 **alternatives.** (a) The department shall maintain on the Internet, in printable form,
14 standard information that

15 (1) contains geographically indexed material designed to inform a
16 person of public and private agencies and services that are available to assist a
17 pregnant woman with the woman's reproductive choices; the department should
18 include information about at least the following types of agencies and services:

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

21 (B) clinics and facilities that provide abortion options and
22 counseling and post-abortion counseling and services;

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

27 (3) provides information concerning the circumstantial criteria for the
28 availability of medical assistance benefits for prenatal care, childbirth, and neonatal
29 care, as well as the circumstantial criteria for the availability of medical assistance
30 benefits for abortion services;

31 (4) states that informed and voluntary consent is required under

1 AS 18.16.060 for an abortion;

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

6 (6) describes the fetal development of a typical unborn child at two-
7 week gestational increments from fertilization to full-term, including photographs
8 depicting the anatomical characteristics of a typical unborn child at two-week
9 gestational increments, and relevant information about the possibility of an unborn
10 child's survival at the various gestational ages; the fetal dimensions in the photographs
11 must be accurately represented and shall be realistic and appropriate for the woman's
12 state of pregnancy; the information must be objective, nonjudgmental, and designed to
13 convey only accurate scientific information about unborn children at various
14 gestational ages;

15 (7) contains objective, unbiased information that describes the methods
16 of abortion procedures and treatments commonly employed and the medical risks and
17 possible complications commonly associated with each procedure and treatment, as
18 well as the possible psychological effects that have been associated with having an
19 abortion;

20 (8) contains objective, unbiased information describing the possible
21 medical risks and complications commonly associated with pregnancy and childbirth,
22 as well as the possible psychological effects that have been associated with carrying a
23 child to term.

24 (b) The information required under (a) of this section must be written in easily
25 comprehensible language and must be displayed in a typeface that is large enough to
26 be clearly legible.

27 (c) In this section,

28 (1) "fertilization" means the fusion of a human spermatozoon with a
29 human ovum;

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

1 (3) "informed consent" is consent that would be considered voluntary
2 and informed under AS 18.16.060(b);

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

5 * **Sec. 3.** AS 18.16.010(a) is amended to read:

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

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

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

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

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

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

22 * **Sec. 4.** AS 18.16.010 is amended by adding a new subsection to read:

23 (h) A person who performs or induces an abortion in violation of (a)(5) of this
24 section is civilly liable to the pregnant woman for compensatory and punitive damages
25 except that, for purposes of an action for damages under this subsection, a person is
26 considered to have complied with AS 18.16.060(b)(1)(C) if the person demonstrates
27 by a preponderance of the evidence that the person gave to the woman a written copy
28 of the material maintained on the Internet under AS 18.05.032 before the abortion was
29 performed or induced. In a civil action under this subsection, there is a rebuttable
30 presumption that an abortion was performed without the pregnant woman's informed
31 consent if the physician who performed the abortion does not submit into evidence the

1 copy of the woman's written certification required to be retained in the physician's
2 files under AS 18.16.060(b)(3).

3 * **Sec. 5.** AS 18.16 is amended by adding a new section to read:

4 **Sec. 18.16.060. Informed consent requirements.** (a) Except in the case of a
5 medical emergency, a person may not knowingly perform or induce an abortion
6 without the voluntary and informed consent of

7 (1) a woman on whom an abortion is to be performed or induced;

8 (2) the parent, guardian, or custodian of a pregnant, unemancipated
9 minor if required under AS 18.16.020;

10 (3) a pregnant, unemancipated minor if authorized by a court under
11 AS 18.60.030; or

12 (4) the parent, guardian, or custodian of a pregnant woman adjudged
13 mentally incompetent.

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

16 (1) at least 24 hours before the abortion procedure, the physician who
17 is to perform the abortion or the referring physician has orally informed the woman or
18 another person whose consent is required of the

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

20 (B) gestational estimation of the pregnancy at the time the
21 abortion is to be performed;

22 (C) nature and risks of undergoing or not undergoing the
23 proposed procedure that a reasonable patient would consider material to
24 making a voluntary and informed decision of whether to undergo the
25 procedure; and

26 (D) availability of the information required to be maintained on
27 the Internet under AS 18.05.032; if the person requests a written copy of the
28 Internet information, the physician shall provide it;

29 (2) before the abortion, the woman or another person whose consent is
30 required certifies in writing that the information required to be given under (1) of this
31 subsection has been provided; and

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

4 (c) The information required in (b)(1) of this section shall be provided
 5 individually and in a private setting to protect privacy, maintain the confidentiality of
 6 the decision, ensure that the information focuses on the individual circumstances, and
 7 ensure an adequate opportunity to ask questions.

8 (d) In this section, "medical emergency" means a condition that, on the basis
 9 of a physician's good faith clinical judgment, so complicates the medical condition of
 10 a pregnant woman that

11 (1) the immediate termination of the woman's pregnancy is necessary
 12 to avert the woman's death; or

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

15 * **Sec. 6.** AS 18.50.245(e) is amended to read:

16 (e) The state registrar shall adopt regulations to implement this section. The
 17 regulations that establish the information that will be required in a report of an induced
 18 termination of pregnancy must require information substantially similar to the
 19 information required under the United States Standard Report of Induced Termination
 20 of Pregnancy, as published by the National Center for Health Statistics, Centers for
 21 Disease Control and Prevention, United States Department of Health and Human
 22 Services, in April 1998, as part of DHHS Publication No. (PHS) 98-1117. **The report**
 23 **must also include, if known, whether the patient requested and received a written**
 24 **copy of the information required to be maintained on the Internet under**
 25 **AS 18.05.032.**

26 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
 27 read:

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