

CS FOR HOUSE BILL NO. 292(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 5/17/03

Referred: Judiciary

Sponsor(s): REPRESENTATIVES DAHLSTROM, Lynn, Coghill, Wilson, Seaton, Gatto

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;

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 is reviewed and approved for medical accuracy and appropriateness by recognized obstetrics

1 and gynecological specialists designated by the State Medical Board and that sufficiently
 2 describes reproductive options and their potential consequences will protect, inform, and
 3 promote a woman's free and private choices;

4 (5) the creation of an unbiased, scientific information site on the Internet that
 5 is reviewed and approved for medical accuracy and appropriateness by recognized obstetrics
 6 and gynecological specialists designated by the State Medical Board and that sufficiently
 7 describes reproductive options and their potential consequences will reduce costly and undue
 8 litigation, will promote judicial economy and resources, and will provide physicians with a
 9 clear understanding of what constitutes informed consent for abortion by providing immunity
 10 to physicians who use the information from the Internet site.

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, services, clinics, and facilities designed to assist a
 20 woman through pregnancy, including adoption agencies and counseling
 21 services;

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

24 (C) agencies, services, clinics, and facilities designed to assist
 25 with or provide contraceptive options and counseling to help prevent future
 26 unwanted pregnancies;

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

31 (3) provides information concerning the circumstantial criteria for the

1 availability of medical assistance benefits for prenatal care, childbirth, and neonatal
2 care, the circumstantial criteria for the availability of medical assistance benefits for
3 abortion services, and the circumstantial criteria for the availability of medical
4 assistance benefits for contraception;

5 (4) states that informed and voluntary consent is required under
6 AS 18.16.060 for an abortion;

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

11 (6) describes the fetal development of a typical unborn child at two-
12 week gestational increments from fertilization to full-term, including photographs
13 depicting the anatomical characteristics of a typical unborn child at two-week
14 gestational increments, and relevant information about the possibility of an unborn
15 child's survival at the various gestational ages; the fetal dimensions in the photographs
16 must be accurately represented and shall be realistic and appropriate for the woman's
17 state of pregnancy; the information must be objective, nonjudgmental information that
18 is reviewed and approved for medical accuracy and appropriateness by recognized
19 obstetrics and gynecological specialists designated by the State Medical Board and
20 designed to convey only accurate scientific information about unborn children at
21 various gestational ages;

22 (7) contains objective, unbiased information that is reviewed and
23 approved for medical accuracy and appropriateness by recognized obstetrics and
24 gynecological specialists designated by the State Medical Board and that describes the
25 methods of abortion procedures and treatments commonly employed and the medical
26 risks and possible complications commonly associated with each procedure and
27 treatment, as well as the possible psychological effects that have been associated with
28 having an abortion;

29 (8) contains objective, unbiased information that is reviewed and
30 approved for medical accuracy and appropriateness by recognized obstetrics and
31 gynecological specialists designated by the State Medical Board and describing the

1 possible medical risks and complications commonly associated with pregnancy and
 2 childbirth, as well as the possible psychological effects that have been associated with
 3 carrying a child to term;

4 (9) contains objective, unbiased, and comprehensive information that
 5 is reviewed and approved for medical accuracy and appropriateness by recognized
 6 obstetrics and gynecological specialists designated by the State Medical Board and on
 7 different types of available contraceptive choices and the medical risk and possible
 8 complications commonly associated with each method as well as the possible
 9 psychological effects that have been associated with using contraceptives;

10 (10) contains a dated, time-stamped signature form that can be printed
 11 out as evidence that the person identified on the form, with appropriate security
 12 safeguards as to identity, has reviewed the information described in (1) - (9) of this
 13 subsection.

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

17 (c) In this section,

18 (1) "fertilization" means the fusion of a human spermatozoon with a
 19 human ovum;

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

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

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

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

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

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

30 (2) the abortion is performed in a hospital or other facility approved for
 31 the purpose by the Department of Health and Social Services or a hospital operated by

1 the federal government or an agency of the federal government;

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

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

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

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

13 (h) A person who performs or induces an abortion in violation of (a)(5) of this
14 section is civilly liable to the pregnant woman and the pregnant woman's estate, and
15 only to the pregnant woman and the pregnant woman's estate, for compensatory and
16 punitive damages caused by the violation except that, for purposes of an action for
17 damages under this subsection, a person is considered to have complied with
18 AS 18.16.060(b)(1)(C) and (D) if the person demonstrates by a preponderance of the
19 evidence that the woman received or reviewed a copy of the material maintained on
20 the Internet under AS 18.05.032 at least 24 hours before the abortion was performed
21 or induced. In a civil action under this subsection, there is a rebuttable presumption
22 that an abortion was performed without the pregnant woman's informed consent if the
23 physician who performed the abortion does not submit into evidence the copy of the
24 woman's written certification required to be retained in the physician's files under
25 AS 18.16.060(b)(3).

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

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

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

31 (2) the parent, guardian, or custodian of a pregnant, unemancipated

1 minor if required under AS 18.16.020;

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

4 (4) the parent or guardian of a pregnant woman legally determined to
5 be mentally incompetent.

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

8 (1) at least 24 hours before the abortion procedure, the physician who
9 is to perform the abortion, a member of the physician's staff who is a licensed health
10 care provider, or the referring physician has verbally informed the woman or another
11 person whose consent is required of the

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

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

15 (C) nature and risks of undergoing or not undergoing the
16 proposed procedure that a reasonable patient would consider material to
17 making a voluntary and informed decision of whether to undergo the
18 procedure; and

19 (D) availability of the information required to be maintained on
20 the Internet under AS 18.05.032; if the person requests a written copy of the
21 Internet information, the physician shall provide it; the requirement of this
22 subparagraph may also be satisfied by a member of the physician's staff who is
23 a licensed health care provider performing the required activities if the licensed
24 person offers the person an opportunity to consult a physician; the
25 requirements of this subparagraph may also be satisfied if the physician or a
26 member of the physician's staff receives from the person an appropriately
27 dated and signed form of the type described in AS 18.05.032(a)(10) and retains
28 the form in the patient's file;

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)(A) - (C) of this section shall be
 5 provided individually and in a private setting to protect privacy, maintain the
 6 confidentiality of the decision, ensure that the information focuses on the individual
 7 circumstances, and ensure an adequate opportunity to ask questions. Provision of the
 8 information telephonically or by electronic mail or regular mail at least 24 hours
 9 before the person's appointment satisfies the requirements of this subsection as long as
 10 the person whose consent is required under (a) of this section has an opportunity to ask
 11 questions after receiving the information.

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

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

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

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

20 (e) The state registrar shall adopt regulations to implement this section. The
 21 regulations that establish the information that will be required in a report of an induced
 22 termination of pregnancy

23 (1) must require information substantially similar to the information
 24 required under the United States Standard Report of Induced Termination of
 25 Pregnancy, as published by the National Center for Health Statistics, Centers for
 26 Disease Control and Prevention, United States Department of Health and Human
 27 Services, in April 1998, as part of DHHS Publication No. (PHS) 98-1117;

28 (2) must require, if known, whether the unidentified patient
 29 requested and received a written copy of the information required to be
 30 maintained on the Internet under AS 18.05.032; and

31 (3) may not include provisions that would violate a woman's

1 **privacy by requiring the woman's name or any identifying information in the**
2 **report.**

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

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