

HOUSE CS FOR CS FOR SENATE BILL NO. 30(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/1/04

Referred: Finance

Sponsor(s): SENATORS DYSON, Green, Taylor, Ogan, Cowdery, Seekins, Wagoner

REPRESENTATIVES Lynn, Dahlstrom

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to information and services available to pregnant women and other**
2 **persons; ensuring informed consent before an abortion may be performed; and**
3 **providing exceptions to informed consent in certain cases."**

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

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 between permanent and life-affecting
 4 alternatives;

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

11 (6) considerable testimony has been received indicating that women have, on
 12 occasion, received abortions in the state without considering sufficient information.

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

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

17 (1) contains geographically indexed material designed to inform a
 18 person of public and private agencies, services, clinics, and facilities that are available
 19 to assist a woman with the woman's reproductive choices; the department shall include
 20 information about at least the following types of agencies, services, clinics, and
 21 facilities:

22 (A) agencies, services, clinics, and facilities designed to assist a
 23 woman through pregnancy, including adoption agencies, and counseling
 24 services;

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

27 (C) agencies, services, clinics, and facilities designed to assist
 28 with or provide contraceptive options and counseling for appropriate family
 29 planning;

30 (2) includes a comprehensive regional directory of the agencies,
 31 services, clinics, and facilities that request to be identified by the department under (1)

1 of this subsection, a description of the services they offer, and the manner in which the
2 agencies, services, clinics, and facilities may be contacted, including telephone
3 numbers;

4 (3) provides information concerning the eligibility for medical
5 assistance benefits for prenatal care, childbirth, neonatal care, abortion services,
6 women's health care, and contraception;

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

9 (5) provides information concerning the process by which a mother of
10 a child may establish a child support order to assist in the support of a child;

11 (6) describes the fetal development of a typical unborn child at two-
12 week gestational increments from fertilization to full-term, including links to
13 photographs of a typical unborn child at four-week gestational increments, and
14 relevant information about the possibility of an unborn child's survival at the various
15 gestational ages; the information must be objective, nonjudgmental information that is
16 reviewed and approved for medical accuracy and appropriateness by recognized
17 obstetrical and gynecological specialists designated by the State Medical Board and
18 designed to convey only accurate scientific information about unborn children at
19 various gestational ages;

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

27 (8) contains objective, unbiased information that is reviewed and
28 approved for medical accuracy and appropriateness by recognized obstetrical and
29 gynecological specialists designated by the State Medical Board and describing the
30 possible medical risks and complications commonly associated with pregnancy and
31 childbirth, as well as the possible physical and psychological effects that have been

1 associated with carrying a child to term;

2 (9) contains objective, unbiased information that is reviewed and
3 approved for medical accuracy and appropriateness by recognized obstetrical and
4 gynecological specialists designated by the State Medical Board and concerning the
5 harmful effects on an unborn child when a woman consumes alcohol, tobacco, or
6 illegal drugs during pregnancy;

7 (10) contains objective, unbiased, and comprehensive information that
8 is reviewed and approved for medical accuracy and appropriateness by recognized
9 obstetrical and gynecological specialists designated by the State Medical Board and
10 describing the different types of available contraceptive choices, including abstinence
11 and natural family planning, describing the methods of contraception that are intended
12 to prevent fertilization and the methods that are intended to prevent implantation of a
13 fertilized egg, and describing the reliability, psychological effects, medical risks, and
14 complications commonly associated with each method;

15 (11) contains a disclaimer on the website home page concerning the
16 graphic or sensitive nature of the information contained on the website.

17 (b) The department shall adopt regulations establishing procedures for
18 establishing and maintaining the information under this section.

19 (c) In this section,

20 (1) "abortion" has the meaning given in AS 18.16.090;

21 (2) "fertilization" means the fusion of a human spermatozoon with a
22 human ovum;

23 (3) "gestational age" means the age of the unborn child as calculated
24 from the first day of the last menstrual period of a pregnant woman;

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

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

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

29 (1) the abortion is performed by a physician [OR SURGEON] licensed
30 by the State Medical Board under AS 08.64.200;

31 (2) the abortion is performed in a hospital or other facility approved for

1 the purpose by the Department of Health and Social Services or a hospital operated by
2 the federal government or an agency of the federal government;

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

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

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

13 * **Sec. 4.** AS 18.16.010 is amended by adding new subsections to read:

14 (h) A physician or other health care provider is liable for failure to obtain the
15 informed consent of a person as required under AS 18.16.060 if the claimant
16 establishes by a preponderance of the evidence that the provider has failed to inform
17 the person of the common risks and reasonable alternatives to the proposed abortion
18 procedure and that, but for that failure, the person would not have consented to the
19 abortion procedure.

20 (i) It is a defense to any action for the alleged failure to obtain the informed
21 consent of a person under (h) of this section that

22 (1) the risk not disclosed is too commonly known or is too remote to
23 require disclosure; or

24 (2) the person who is the subject of the alleged failure to obtain the
25 informed consent stated to the physician or other health care provider that the person
26 would or would not undergo the abortion procedure regardless of the risk involved or
27 that the person did not want to be informed of the matters to which the person would
28 be entitled to be informed.

29 (j) In an action under this subsection, there is a rebuttable presumption that an
30 abortion was performed with the pregnant woman's informed consent if the person
31 who performed the abortion submits into evidence a copy of the woman's written

1 certification required under AS 18.16.060(b).

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

3 **Sec. 18.16.060. Informed consent requirements.** (a) Except as provided in
4 (d) of this section, a person may not knowingly perform or induce an abortion without
5 the voluntary and informed consent of

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

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

9 (3) a pregnant, unemancipated minor if authorized by a court under
10 AS 18.60.030.

11 (b) Consent to an abortion is informed and voluntary when the woman or
12 another person whose consent is required certifies in writing that the physician who is
13 to perform the abortion, a member of the physician's staff who is a licensed health care
14 provider, or the referring physician has verbally informed the woman or another
15 person whose consent is required of the name of the physician who will perform the
16 procedure and the gestational estimation of the pregnancy at the time the abortion is to
17 be performed and has provided either

18 (1) the Internet information required to be maintained under
19 AS 18.05.032; the physician or a member of the physician's staff who is a licensed
20 health care provider shall provide a copy of the Internet information if a person
21 requests a written copy; if a member of the physician's staff provides the information
22 required under this paragraph, the member of the physician's staff shall offer the
23 opportunity to consult with the physician; or

24 (2) information about the nature of, risks of, and alternatives to an
25 abortion provided in a manner that the physician or health care provider, after
26 considering all of the attendant facts and circumstances, reasonably determine is
27 appropriate for that woman or person whose consent is required.

28 (c) The information required in (b) of this section shall be provided before the
29 procedure in a private setting to protect privacy, maintain the confidentiality of the
30 decision, ensure that the information focuses on the individual circumstances, and
31 ensure an adequate opportunity to ask questions. Provision of the information

1 telephonically or by electronic mail, regular mail, or facsimile transmittal before the
 2 person's appointment satisfies the requirements of this subsection as long as the person
 3 whose consent is required under (a) of this section has an opportunity to ask questions
 4 of the physician after receiving the information.

5 (d) Notwithstanding (a) of this section, informed consent that meets the
 6 requirements of (a) - (c) of this section is not required in the case of a medical
 7 emergency or if the pregnancy is the result of sexual assault under AS 11.41.410 -
 8 11.41.427, sexual abuse of a minor under AS 11.41.434 - 11.41.440, incest under
 9 AS 11.41.450, or an offense under a law of another jurisdiction with elements similar
 10 to one of these offences. In this subsection, "medical emergency" means a condition
 11 that, on the basis of a physician's good faith clinical judgment, so complicates the
 12 medical condition of a pregnant woman that

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

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

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

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

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

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

29 (3) may not include provisions that would violate a woman's
 30 privacy by requiring the woman's name or any identifying information in the
 31 report.

1 * **Sec. 7.** 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.