

**HOUSE CS FOR CS FOR SENATE BILL NO. 30(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/6/04

Referred: Rules

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

REPRESENTATIVE Lynn

**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 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 creating a rebuttable presumption that the physician has provided sufficient information to the  
8 pregnant woman if that physician distributes the information maintained on the Internet site;

9 (6) considerable testimony has been received indicating that women have, on  
10 occasion, received abortions in the state without considering 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, services, clinics, and facilities that are available  
17 to assist a woman with the woman's reproductive choices; the department shall include  
18 information about at least the following types of agencies, services, clinics, and  
19 facilities:

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

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

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

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

1 numbers;

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

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

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

9 (6) describes the fetal development of a typical unborn child at two-  
10 week gestational increments from fertilization to full-term, including links to  
11 photographs of a typical unborn child at two-week gestational increments, and  
12 relevant information about the possibility of an unborn child's survival at the various  
13 gestational ages; the information must be objective, nonjudgmental information that is  
14 designed to convey only accurate scientific information about unborn children at  
15 various gestational ages;

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

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

25 (9) contains objective, unbiased information concerning the harmful  
26 effects on an unborn child when a woman consumes alcohol, tobacco, or illegal drugs  
27 during pregnancy;

28 (10) contains objective, unbiased, and comprehensive information  
29 describing the different types of available contraceptive choices, including abstinence  
30 and natural family planning, describing the methods of contraception that are intended  
31 to prevent fertilization and the methods that are intended to prevent implantation of a

1 fertilized egg, and describing the reliability, psychological effects, medical risks, and  
2 complications commonly associated with each method;

3 (11) contains a disclaimer on the website home page concerning the  
4 graphic or sensitive nature of the information contained on the website;

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

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

11 (c) In this section,

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

13 (2) "fertilization" means the fusion of a human spermatozoon with a  
14 human ovum;

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

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

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

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

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

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

26 (3) before an abortion is knowingly performed or induced on an  
27 unmarried, unemancipated woman under 17 years of age, consent has been given as  
28 required under AS 18.16.020 or a court has authorized the minor to consent to the  
29 abortion under AS 18.16.030 and the minor consents; for purposes of enforcing this  
30 paragraph, there is a rebuttable presumption that a woman who is unmarried and under  
31 17 years of age is unemancipated; [AND]

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

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

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

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

12 (i) In an action under (h) of this section,

13 (1) there is a rebuttable presumption that an abortion was performed  
14 with the pregnant woman's informed consent if the person who performed the abortion  
15 submits into evidence a copy of the woman's signature form maintained under  
16 AS 18.05.032(a) signed at least 24 hours before the procedure; and

17 (2) the defenses described in AS 09.55.556 are not available.

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

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

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

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

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

27 (b) Consent to an abortion is informed and voluntary when the woman or  
28 another person whose consent is required certifies in writing that the physician who is  
29 to perform the abortion, a member of the physician's staff who is a licensed health care  
30 provider, or the referring physician has verbally informed the woman or another  
31 person whose consent is required of the name of the physician who will perform the

1 procedure and the gestational estimation of the pregnancy at the time the abortion is to  
2 be performed and has provided either

3 (1) the Internet information required to be maintained under  
4 AS 18.05.032; the physician or a member of the physician's staff who is a licensed  
5 health care provider shall provide a copy of the Internet information if a person  
6 requests a written copy; if a member of the physician's staff provides the information  
7 required under this paragraph, the member of the physician's staff shall offer the  
8 opportunity to consult with the physician; or

9 (2) information about the common risks of and reasonable alternatives  
10 to an abortion.

11 (c) The information required in (b) of this section shall be provided at least 24  
12 hours before the procedure in a private setting to protect privacy, maintain the  
13 confidentiality of the decision, ensure that the information focuses on the individual  
14 circumstances, and ensure an adequate opportunity to ask questions. Provision of the  
15 information telephonically or by electronic mail, regular mail, or facsimile transmittal  
16 before the person's appointment satisfies the requirements of this subsection as long as  
17 the person whose consent is required under (a) of this section has an opportunity to ask  
18 questions of the physician after receiving the information.

19 (d) Notwithstanding (a) of this section, informed consent that meets the  
20 requirements of (a) - (c) of this section is not required in the case of a medical  
21 emergency or if the pregnancy is the result of sexual assault under AS 11.41.410 -  
22 11.41.427, sexual abuse of a minor under AS 11.41.434 - 11.41.440, incest under  
23 AS 11.41.450, or an offense under a law of another jurisdiction with elements similar  
24 to one of these offences. In this subsection, "medical emergency" means a condition  
25 that, on the basis of a physician's good faith clinical judgment, so complicates the  
26 medical condition of a pregnant woman that

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

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

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

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

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

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

12 **(3)** **may not include provisions that would violate a woman's**  
13 **privacy by requiring the woman's name or any identifying information in the**  
14 **report.**

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

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