

Alaska State Legislature
FREE CONFERENCE COMMITTEE ON SB 30

May 11, 2004

5:30 p.m.

TAPE(S) 04-1

MEMBERS PRESENT

Senator Fred Dyson, Chair
Senator Ralph Seekins
Senator Georgianna Lincoln

Representative Nancy Dahlstrom, Chair
Representative John Coghill
Representative Sharon Cissna

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 30(JUD) am

"An Act relating to information and services available to pregnant women and other persons; and ensuring informed consent before an abortion may be performed, except in cases of medical emergency."

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

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

MOVED CCS SB 30 FROM COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 30

SHORT TITLE: ABORTION: INFORMED CONSENT; INFORMATION

SPONSOR(S): SENATOR(S) DYSON

01/21/03	(S)	READ THE FIRST TIME - REFERRALS
01/21/03	(S)	HES, JUD, FIN
03/17/03	(S)	HES AT 1:30 PM BUTROVICH 205
03/17/03	(S)	Heard & Held

03/17/03 (S) MINUTE(HES)
 03/26/03 (S) HES AT 1:30 PM BUTROVICH 205
 03/26/03 (S) Heard & Held
 03/26/03 (S) MINUTE(HES)
 04/03/03 (S) HES AT 5:00 PM BELTZ 211
 04/03/03 (S) Heard & Held
 04/03/03 (S) MINUTE(HES)
 04/09/03 (S) HES AT 1:30 PM BUTROVICH 205
 04/09/03 (S) Heard & Held
 04/09/03 (S) MINUTE(HES)
 04/14/03 (S) HES AT 1:30 PM BUTROVICH 205
 04/14/03 (S) Moved CSSB 30(HES) Out of
 Committee
 04/14/03 (S) MINUTE(HES)
 04/15/03 (S) HES RPT CS 2DP 1DNP 1NR SAME TITLE
 04/15/03 (S) DP: DYSON, GREEN;
 04/15/03 (S) DNP: DAVIS; NR: WILKEN
 05/02/03 (S) JUD AT 1:00 PM CAPITOL 120
 05/02/03 (S) Heard & Held
 05/02/03 (S) MINUTE(JUD)
 05/03/03 (S) JUD AT 9:00 AM BELTZ 211
 05/03/03 (S) Moved CSSB 30(JUD) Out of
 Committee
 05/03/03 (S) MINUTE(JUD)
 05/06/03 (S) JUD RPT CS 3DP SAME TITLE
 05/06/03 (S) DP: SEEKINS, THERRIAULT, OGAN
 05/12/03 (S) FIN RPT CS(JUD) 3DP 3NR 1AM
 05/12/03 (S) DP: GREEN, TAYLOR, STEVENS B;
 05/12/03 (S) NR: WILKEN, HOFFMAN, BUNDE; AM:
 OLSON
 05/12/03 (S) FIN AT 9:00 AM SENATE FINANCE 532
 05/12/03 (S) Moved Out of Committee
 05/12/03 (S) MINUTE(FIN)
 05/16/03 (S) TRANSMITTED TO (H)
 05/16/03 (S) VERSION: CSSB 30(JUD) AM
 05/16/03 (H) READ THE FIRST TIME - REFERRALS
 05/16/03 (H) HES, JUD, FIN
 05/17/03 (H) HES RPT HCS(HES) 4DP 1NR
 05/17/03 (H) DP: SEATON, COGHILL, WOLF, WILSON;
 05/17/03 (H) NR: CISSNA
 05/17/03 (H) HES AT 1:00 PM CAPITOL 106
 05/17/03 (H) Moved HCS CSSB 30(HES) Out of
 Committee
 05/17/03 (H) MINUTE(HES)
 02/18/04 (H) JUD AT 1:00 PM CAPITOL 120
 02/18/04 (H) Heard & Held
 02/18/04 (H) MINUTE(JUD)

03/18/04 (H) JUD AT 1:00 PM CAPITOL 120
 03/18/04 (H) Heard & Held
 03/18/04 (H) MINUTE(JUD)
 03/26/04 (H) JUD AT 1:00 PM CAPITOL 120
 03/26/04 (H) Scheduled But Not Heard
 03/29/04 (H) JUD AT 1:00 PM CAPITOL 120
 03/29/04 (H) Bill Postponed To 3/30/04
 03/30/04 (H) JUD AT 1:00 PM CAPITOL 120
 03/30/04 (H) Moved HCS CSSB 30(JUD) Out of
 Committee
 03/30/04 (H) MINUTE(JUD)
 04/01/04 (H) JUD RPT HCS(JUD) NT 2DP 5NR
 04/01/04 (H) DP: ANDERSON, MCGUIRE; NR:
 SAMUELS,
 04/01/04 (H) HOLM, GARA, GRUENBERG, OGG
 05/03/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 05/03/04 (H) -- Meeting Canceled --
 05/04/04 (H) FIN AT 8:30 AM HOUSE FINANCE 519
 05/04/04 (H) Scheduled But Not Heard
 05/05/04 (H) FIN AT 8:30 AM HOUSE FINANCE 519
 05/05/04 (H) Heard & Held
 05/05/04 (H) MINUTE(FIN)
 05/06/04 (H) FIN RPT HCS(FIN) NT 2DP 1DNP 5NR
 05/06/04 (H) DP: MEYER, WILLIAMS; DNP: CROFT;
 05/06/04 (H) NR: HAWKER, STOLTZE, CHENAULT,
 FATE,
 05/06/04 (H) FOSTER
 05/06/04 (H) FIN AT 8:30 AM HOUSE FINANCE 519
 05/06/04 (H) Moved HCS CSSB 30(FIN) Out of
 Committee
 05/06/04 (H) MINUTE(FIN)
 05/07/04 (H) MOVED DOWN THE CALENDAR
 05/07/04 (H) FAILED TO ADOPT FIN HCS Y12 N23 E1
 A4
 05/08/04 (H) VERSION: HCS CSSB 30(JUD)
 05/09/04 (S) CONCURRENCE MESSAGE READ AND HELD
 05/09/04 (S) CONFERENCE COMMITTEE APPOINTED
 05/09/04 (S) DYSON (CHAIR), SEEKINS, LINCOLN

WITNESS REGISTER

Mr. Jason Hooley
 Staff to Senator Fred Dyson
 Alaska State Capitol
 Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 30.

Ms. Sherry Hill
Department of Health &
Social Services
PO Box 110601
Juneau, AK 99801-0601
POSITION STATEMENT: Commented on SB 30.

ACTION NARRATIVE

TAPE 04-1, SIDE A
^#SB30

HCS CSSB 30(JUD)-ABORTION: INFORMED CONSENT; INFORMATION

CHAIR FRED DYSON called the meeting to order at 10:38 p.m. All members were present. He moved to use HCS CSSB 30(JUD) as the working document. There were no objections and it was so ordered.

CHAIR DYSON said the work done in House Judiciary significantly improved the bill. An exception for rape and incest was added. Also, a requirement for information that a patient would want to know about birth control and family planning services was added along with information on prenatal alcohol poisoning and drug exposure. The one problem area is that the reasonable patient standard regarding informed consent was changed to a reasonable physician standard.

It is my perspective that we want to not treat this procedure any different than the other informed consent procedures, which say that the physician health care providers are required to provide the information that any reasonable patient would want and need to know. It is my proposal that we pick some language out of the Senate version that gets us back to the same reasonable patient standard that is in existing law.

MR. JASON HOOLEY, staff to Senator Dyson, pointed out the language under consideration in the Senate version was in Sec. 5(b)(1)(c) on page 5, lines 25 - 28; and in the House version in Sec. 5(b)(2) on page 6, lines 24 - 27.

CHAIR DYSON said the House version has the physician standard of care.

REPRESENTATIVE COGHILL moved to delete Sec. 5 (b)(2) from the House Judiciary version and insert Sec. 5 (b)(1)(C) from the Senate version.

SENATOR SEEKINS said "information about the" would need to be inserted after (C) to make that language consistent with the text of the House version.

CHAIR DYSON objected and offered Amendment 1 for clarification, saying it would read:

(2) information about the nature and risk of undergoing or not undergoing the proposed procedure that a reasonable patient would consider material to making a voluntary and informed decision of whether to undergo the procedure;

REPRESENTATIVE COGHILL said that language was okay with him.

CHAIR DYSON related that the reasonable patient standard is standard in the rest of state law; he thought Representative Cissna should worry about a doctor slanting informed consent information in one direction and the patient in another, but he thought the reasonable patient standard would protect both.

REPRESENTATIVE CISSNA responded that she comes from a different point of view on this and she felt uncomfortable with the changes. "It was a fragile balance that we had passing this one. It took us time. I think this is going to take us a lot more time."

MR. HOOLEY said the Department of Law (DOL) informed him that the current informed consent statutes in Title 9 have been interpreted in case law to reflect a reasonable patient standard.

CHAIR DYSON said that he felt the same way.

REPRESENTATIVE CISSNA said:

I think this is an assault on a woman and our ability to respect her autonomy. Yes, we are putting the doctor in harm's way here and we're

asking something of women that we aren't asking of a woman when she has a breast removed or when she does anything else.

CHAIR DYSON countered that he thought using the reasonable patient standard empowers women and all other patients because it is a consistent standard and says that women have the right to the information and are capable of making those decisions without the doctor filtering it.

SENATOR SEEKINS said that's how he looks at it, too. In this case, if the doctor or health care provider gets to determine what information is appropriate for the facts and circumstances for the woman, he can predetermine what kind of information is presented.

SENATOR LINCOLN asked who decides what material will be presented by the doctor to his patient.

CHAIR DYSON explained that ultimately this bill equates to a policy decision to significantly add to the list of information that is presented to the patient. "I approve of everything that was added."

The department produces scores of pamphlets and goes through a fairly elaborate process, sometimes hiring experts and a peer review. If the information they provide is off track, it is the legislature's job to herd them back.

SENATOR LINCOLN said she wanted to hear from the department on this part of the issue.

MS. SHERRY HILL, Department of Health and Social Services (DHSS), said the House version has physicians prepare that information; the Senate version has someone assigned by the Medical Board.

CHAIR DYSON said the question before them is who will prepare information and what will the criteria be that the department uses for preparing it.

CHAIR DYSON asked if health information that is presented to the public is subject to some kind of peer review.

MS. HILL replied yes, the department didn't want to make any assumptions and that it looks to medical professionals

who have established such information on a nationwide basis.

SENATOR LINCOLN asked who would determine what was going to be presented to the women.

MR. HOOLEY responded that the Division of Public Health wrote a letter saying that its protocols for developing health information include a peer review. It has external contracts with a variety of medical professionals on every document that it produces. The department's own standards for developing the information are developed by a team of medical personnel.

REPRESENTATIVE CISSNA said she found it hard to believe that they are talking about adults who are adult enough to have a pregnancy.

They are not a member of a police state that decides every move in their lives; and they happen to be a woman. But the second they are a woman in a decision like this, all of a sudden the state is moving in here. The state is putting a huge burden on a doctor in this situation that says that he's got to put this woman through paces.... I worked in publications for over 30 years. You can't do unbiased.... I think the House version is a better standard.

CHAIR DYSON responded that he thought she just made an eloquent case for the Senate version that would keep existing law on informed consent. The House version allows the medical professional to filter the information.

SENATOR SEEKINS agreed with Representative Cissna that the person should be the focus here. The House version allows a physician's staff member to determine what she thinks is in the best interest of this particular person as far as the information regarding the nature and risks of the procedure. The Senate version allows the woman to make up her own mind after being given all the information that's available. "I think the Senate version of this does exactly that...."

REPRESENTATIVE CISSNA responded to both Senator Seekins and Chair Dyson:

Each of you are assuming the woman comes into the office not having thought about this and getting all her information in this office. My point of view is that is not the case. The woman has gone through - and I've talked to many women who have been in this process - that is not to say that I even understand all of their decisions, because how could I? I'm not them. At the same time they have gone through days or weeks of absolutely turning their lives inside out and weighing enormous amounts of things and that is the point in a person's life when they do look for sources of information. We, the state, in this are saying they get into this office and they were born and we're going to set up an information set for them to have. That's presumptuous on our part. The woman has the right to seek that relationship with the physician that is going to be concerned about the medical part of this. That is why she goes to the physician....

REPRESENTATIVE COGHILL asked for the vote.

CHAIR DYSON restated the motion to substitute the Senate language (current law) into the House Judiciary version.

REPRESENTATIVE CISSNA objected. Representatives Coghill and Representative Dahlstrom voted yea; Representative Cissna voted nay; Senators Seekins and Dyson voted yea; Senator Lincoln voted nay; and Amendment 1 was adopted.

CHAIR DYSON asked Mr. Hooley to direct the committee to the State Medical Board's review of the material.

MR. HOOLEY replied the language is referenced seven times in the House version; the Senate version has no corresponding language.

CHAIR DYSON said he thought the review was fine, but the information has to be unbiased and accurate. Two problems from his perspective are that when the board gets into appropriateness, that is the legislature's purview. He, therefore, moved to delete "appropriateness".

Second, the House version did not elaborate on what happens when the Medical Board's expert disapproves of what the department has produced. The board has very strongly stated

that it does not want to assume that responsibility and the department does not feel it is appropriate.

MS. HILL added that the Medical Board has a different purview than the medical experts the department uses to review its publications.

SENATOR SEEKINS said that he understands the language to mean that obstetrical and gynecological specialists would be designated by the Medical Board to do the review. It could enlist people who are known for their unbiased scientific information.

CHAIR DYSON and SENATOR SEEKINS both said they would not make a motion to delete the Medical Board and its designee's review language.

SENATOR LINCOLN concurred with Senator Seekins' interpretation. She didn't want the department to have to do it.

CHAIR DYSON said he wanted a woman to have all the information to make her decision, not just what somebody thinks is appropriate. There is also the separation of powers issue. He moved to delete "and appropriateness" as is grammatically correct from all the passages that talk about the State Medical Board and its designee.

SENATOR LINCOLN asked him to count how many places it appeared.

REPRESENTATIVE COGHILL said page 1, line 14; page 2, line 6; page 3, line 16, 21, 28; and page 4, line 8. There were no objections and Amendment 2 was adopted.

TAPE 04-1, SIDE B

CHAIR DYSON said the next issue is whether the board has to review and approve information.

REPRESENTATIVE CISSNA pointed out that language in both bills referred to "reviewed and approved" and that was the will of the body.

CHAIR DYSON asked if the Medical Board would have to convene specially to consider the report.

SENATOR SEEKINS opined:

I don't think the Medical Board has to approve the report unless they are the ones who are doing it. If they have got some other designee, that person submits it without having to go through the approval process with the Medical Board.

MS. HILL said that's how the department was interpreting it, too.

SENATOR LINCOLN said she thought the State Medical Board meets quarterly.

MS. HILL said it would be appropriate for the designated group to set a standard for the approval processes.

REPRESENTATIVE COGHILL agreed that somewhere along the line medical accuracy has to be a standard that is approved. He supported asking recognized authorities to bring that issue to the Medical Board.

CHAIR DYSON recapped that the House Judiciary version adds review by a group that is not subject to the department's contracting or selection process and, therefore, it could be argued that it has its biases, but it would be a different set [of biases].

My guess is that practically speaking, there will be some angst and consternation with the Medical Board when it tries to figure out how to deal with this new responsibility that they are probably not chartered to do and are not eager for it.

REPRESENTATIVE COGHILL corrected him by saying that it is chartered to review this very issue.

CHAIR DYSON stood corrected.

REPRESENTATIVE COGHILL moved to pass CCS SB 30 from committee with individual recommendations. There were no objections and it was so ordered. There being no further business to come before the committee, Chair Dyson adjourned the meeting at 4:30 p.m.

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