

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

May 3, 2003  
9:12 a.m.

**MEMBERS PRESENT**

Senator Ralph Seekins, Chair  
Senator Scott Ogan, Vice Chair  
Senator Gene Therriault

**MEMBERS ABSENT**

Senator Johnny Ellis  
Senator Hollis French

**COMMITTEE CALENDAR**

CS FOR HOUSE BILL NO. 212(JUD)

"An Act relating to trusts, including trust protectors, trustee advisors, transfers of property in trust, and transfers of trust interests, and to creditors' claims against property subject to a power of appointment."

MOVED CSHB 212(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 1(JUD)

"An Act relating to stalking and to violating a protective order; and amending Rules 4 and 65, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration."

HEARD AND HELD

SENATE BILL NO. 30

"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."

MOVED CSSB 30(JUD) OUT OF COMMITTEE

SENATE BILL NO. 175

"An Act relating to civil liability for commercial recreational activities and for guest passengers on an aircraft or watercraft; and providing for an effective date."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 176

"An Act relating to civil liability for injuries or death resulting from livestock activities."

SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 114

"An Act relating to the issuance of a search warrant."

SCHEDULED BUT NOT HEARD

**PREVIOUS ACTION**

HB 212 - No previous action recorded.

HB 1 - See State Affairs minutes dated 4/24/03.

SB 30 - See HESS minutes dated 3/17/03, 3/26/03, 4/3/03, 4/9/03  
and 4/14/03 and Judiciary minutes dated 5/2/03.

**WITNESS REGISTER**

Ms. Vanessa Tondini  
Staff to Representative Lesil McGuire  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Commented on HB 212.

Mr. Bruce Roberts, DA  
Municipality of Anchorage  
**POSITION STATEMENT:** Commented on HB 1.

Representative Cheryl Heinze  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Sponsor of HB 1.

Ms. Mary Wells  
c/o Representative Heinze  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Supported HB 1.

Ms. Karen Vosburgh, Executive Director  
Alaska Right to Life  
PO Box 1847 Palmer AK  
**POSITION STATEMENT:** Supported SB 30.

Ms. Mary Ross, Nurse Midwife  
Nurse's Association & Nurse Practitioner's Association  
342 5th Ave.  
Anchorage AK 99501  
**POSITION STATEMENT:** Opposed SB 30.

Ms. Cassandra Johnson-Blackbird

PO Box 238676  
Anchorage AK 99501  
**POSITION STATEMENT:** Opposed SB 30.

Ms. Theda Pittman  
PO Box 241513  
Anchorage AK 99524  
**POSITION STATEMENT:** Opposed SB 30.

Dr. Bob Johnson  
PO Box 945  
Kodiak AK 99615  
**POSITION STATEMENT:** Supported SB 30.

Ms. Jennifer Rudinger, Executive Director  
Alaska Civil Liberties Union (ACLU)  
**POSITION STATEMENT:** Opposed SB 30.

Dr. Carolyn Brown  
No address provided  
**POSITION STATEMENT:** Opposed SB 30.

Ms. Debbie Joslin  
PO Box 377  
Delta Junction AK 99737  
**POSITION STATEMENT:** Supported SB 30.

**ACTION NARRATIVE**

**TAPE 03-35, SIDE A**

**HB 212-POWERS OF APPOINTMENTS/TRUSTS/CREDITORS**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at 9:12 a.m. Present were Senators Ogan and Therriault. The first order of business to come before the committee was HB 212.

MS. VANESSA TONDINI, Staff to Representative Lesil McGuire, said that version S is identical to version I of the Senate companion bill, SB 163.

SENATOR THERRIAULT moved to pass CSHB 212(JUD) from committee with the attached fiscal note with individual recommendations. There were no objections and it was so ordered.

**HB 1-STALKING & PROTECTIVE ORDERS**

CHAIR SEEKINS announced HB 1, version \H, to be up for consideration.

REPRESENTATIVE CHERYL HEINZE, sponsor of HB 1, said it closes a dangerous loophole in the Alaska statutes by allowing the victims of stalking, the security of a judicial protective order. Any person who believes he is a victim of stalking not related to domestic violence may file a petition in the district or Superior Court and receive a stalking protective order. Under current law, protection to a stalking victim is only associated with domestic violence cases. This bill also streamlines the process for public safety and judicial practitioners by harmonizing the arrest and notification procedures to mirror those already in place for domestic violence.

SENATOR OGAN asked her to explain why they are using ex parte orders.

MR. BRUCE ROBERTS, District Attorney, City of Anchorage, explained that ex parte means that one party can have contact with a judge. Ordinarily a judge, being a neutral party, should not speak to one party without the other one present. This would allow the petitioner not to actually have a hearing behind closed doors. She fills out a form, presents that to the court with the facts and is then sworn under oath and provides testimony or answers questions in support of that affidavit. It is a public record. One of the reasons to make a restraining order ex parte is because it couldn't be accomplished if you had to wait for the respondent or the batterer or whoever. However, the defendant has an opportunity to respond to the order within 20 days.

CHAIR SEEKINS said that Representative Holm submitted an amendment that would remove a defendant from the registry if the protective order is found to be without merit and dissolved by the court, which protects people from the frivolous or spiteful order request.

CHAIR SEEKINS asked Representative Heinze if she wanted to work on that language with Representative Holm.

REPRESENTATIVE HEINZE was surprised she hadn't heard about this amendment and said she would work on it with him. There are all kinds of protective laws associated with domestic violence, but this bill is mainly for someone being stalked who has no idea who the person is that is stalking them.

SENATOR OGAN asked what are the typical cases of stalking that the city deals with.

MR. ROBERTS replied that he had been with the District Attorney's Office for 15 years and that stalking is a misdemeanor within the municipality and the state has misdemeanor and felony stalking (violation of a restraining order). He was a little leery of the amendment because if the petitioner applies for the order, she has to prove as of now that she is in need of protection and that an act of domestic violence has been committed against her. Sometimes reconciliation takes place or one or both people don't show up at the hearing. He didn't know if an order could be issued against someone who was unknown.

CHAIR SEEKINS noted that AS 18.65.540, the Department of Public Safety shall maintain a central registry of protective orders issued or filed with the court that must include the names of the petitioner, the respondent, their dates of birth and the conditions and duration of the order. The registry shall retain a record of the protective order after it has expired. Representative Holm is suggesting the Department of Public Safety should remove from the registry an ex parte protective order that is dissolved by the court or expires without being issued. He thought the idea might have some merit.

MR. ROBERTS said the registry is a public record, but one of the reasons for it is that it is shared between states. There may be some federal requirements and the amendment might need review.

SENATOR OGAN said he was concerned about due process.

CHAIR SEEKINS said he agreed with the intent of the bill, but he wanted to examine that question so that they didn't unduly burden someone who was not a stalker.

MS. MARY WELLS said she is the reason this bill is before them. She and her entire family, including her husband, was stalked by an individual who befriended her children and called them at all times of the day and night with threats. She felt this bill would have provided her with a lot of protection and hoped that it would pass this year.

CHAIR SEEKINS thanked everyone for their comments and said the bill would be held for further work.

**SB 30-ABORTION: INFORMED CONSENT; INFORMATION**

CHAIR SEEKINS announced SB 30 to be up for consideration.

MS. KAREN VOSBURGH, Executive Director, Alaska Right To Life, said people need this information about potential physical and psychological damage that is incurred by abortion. She read from a report from the Gerber Institute in Toronto Canada saying that abortion complications are seriously underreported.

CHAIR SEEKINS asked her to submit her testimony to his office by fax.

MS. MARY ROSS, Nurse/Midwife, said she opposed SB 30 because it presented another hurdle to abortion, which is a woman's constitutional right. The requirement to get extensive counseling is belittling to an intelligent woman and an infringement on privacy. In her experience with women, this decision is never taken lightly. Many times, it's difficult for a pregnant teen to talk to her parents and she might get an illegal abortion, which could lead to her getting an infection or worse. She said this not only places burdens on physicians, but places limits on the professional scope of practice. The right to abortion is a matter of privacy and a constitutional right that was decided by the Supreme Court of the United States of America. Moral judgment that seems to be in this bill does not have a role to play in the laws of the land.

**TAPE 03-35, SIDE B**

CHAIR SEEKINS asked if this was an official position taken by the Nurse's Association and if she could fax them a copy of the resolution. She said she would get that to them.

MS. CASSANDRA JOHNSON-BLACKBIRD, Anchorage mother, said she didn't think her reproductive health history is anybody's business. She did not think that all negative things in a woman's life could be linked to abortion. She related her personal story about her decision process in having an abortion - after which she felt an "overwhelming sense of relief." She is married now and has two children; she considers herself happy, productive and successful.

MS. PAULINE UTTER, Anchorage grandmother, said she has had an abortion and three children. She stated that 90 percent of all pregnancies are unintended and 50 percent of all women in the United States have had abortions. She can't believe we are still

discussing this issue; she also couldn't believe that all those women are psychologically damaged by the fact that they have had an abortion. If there is information provided on the Internet, she requested that it is accurate and doesn't use emotional phrases like "unborn child," but rather medically correct terms like fetal development. It should also provide accurate information about the amount of money women can expect to receive if she has a child out of wedlock and what will happen to her earning capabilities.

SENATOR OGAN asked her if it was accurate that 50 percent of all women in the U.S. have abortions.

MS. UTTER replied that it is accurate.

SENATOR OGAN asked her if she felt that pro-choice people should make an informed choice. He felt that people making this choice should have all the information.

MS. HUNTER replied, "Are you suggesting that we aren't informed?"

SENATOR THERRIault remarked that some people suggest that the information is slanted and he felt that a website run by the state would have accurate medical information.

MS. HUNTER replied post abortion counseling and services are biased.

SENATOR DYSON inserted that "foetus" is the Latin word for unborn child and they are trying to provide for translation of this information into various languages.

MS. THEDA PITTMAN, Anchorage resident, opposed SB 30, but said she supports efforts to reduce the number of abortions. She thought SB 30 was poor public policy, because it does not adequately document the state's interest in this matter.

It treats pregnancies and abortions as though they were uniform events from woman to woman from beginning to end. It would be a better position for the state to focus on the process of unplanned and unwanted pregnancies. The worst of these, I believe, are rape and incest.

MS. PITTMAN noted that sometimes contraceptives fail and sometimes there are reasons they cannot be used at all, like

lack of health insurance or the inability to afford the contraceptive or poor judgment.

She supported Senator Dyson's comment about adult men having sex with minor females, but said it disturbs her that these problems are approached from the perspective of trying to fix the woman. In reality, in an overwhelming number of cases, it is the woman who will have to feed, cloth, shelter and care for the child 365 days a year for 18 years or more. And, while she applauded fathers who shared the costs and the actual work, that isn't the norm, yet. She preferred that pregnant women were not told to believe that is the case. She felt that abortions would continue whether or not this bill passed, but she felt there was no better place than the Judiciary Committee to say that this is not the standard or spirit of law.

DR. BOB JOHNSON said he has been a resident of Alaska for 65 years and he performed approximately 70 abortions per year in the last 10 years of his practice. He is familiar with the procedure and with the women who request it. He practiced medicine before abortion was legal and saw many children born into families where they weren't wanted, couldn't be afforded, belonged to single mothers who were the offspring of single mothers, many of whom were on welfare. If those children grew up satisfactorily, they were often wards of the state. Many of them did not grow up satisfactorily and were his patients as well. He had patients plead with him to terminate their pregnancy. Out of his 700 patients, only two had post abortion depression - considerably less than those who had post partum depression. He never had a complication with a mother that required intervention; there were no maternal deaths and no blood loss that required transfusions. There were no infections.

DR. JOHNSON said he thought this law was a mistake and that it intrudes upon the privacy of women. Some women sought counseling at a crisis center and were made to feel guilty about considering abortion. He felt that if there was depression associated with abortion that it came from the right-to-life people attaching so much guilt to it with their comments.

He also was very concerned about what might occur on an Internet site. His experience is that many of the complications that are mentioned are influenced by those who believe this is an evil concept and feel it is their responsibility to discourage women from making the choice. They emphasize out of proportion often what the complications are and their severity, as well as their

frequency. He felt that having a law dictate what a doctor has to tell his patients is out of line.

SENATOR THERRIAULT pointed out that language in the bill says that only unbiased objective information should be provided. He asked if the doctor is required by law to provide basic information about possible complications and their frequency.

DR. JOHNSON replied that his point is that he doesn't trust the Legislature to have accurate information and he didn't think it was a legislator's responsibility to decide what information a patient should have; it's the woman's decision. Some women don't want to know what the fetus looks like every two weeks and he wasn't sure it was necessary that they do. Doctors already have to be responsible for giving their patients objective information on which to base their decisions. They are required to discuss the possible complications of any procedure.

SENATOR THERRIAULT asked if the government dictates what information needs to be in other health pamphlets.

DR. JOHNSON replied that the Department of Health gives them information on immunization.

SENATOR THERRIAULT asked how that is any different than what is being requested here.

DR. JOHNSON replied that it is quite different because one has to do with a woman's choice about what to do with her life while the vaccination is elective.

SENATOR THERRIAULT responded that his children couldn't attend school without vaccinations.

DR. JOHNSON said that is true.

CHAIR SEEKINS pointed out that adult consent is required for a minor child to get a vaccination, but not to get an abortion.

DR. JOHNSON replied that the reason vaccinations are required is that the larger community is at risk. In the case of abortion, it is an individual decision and the larger community is not at risk on the basis of the woman's decision.

10:25 a.m.

SENATOR DYSON asked if he could infer from his testimony that there are no human rights considerations that public policy makers should take into account when dealing with abortion. Roe v. Wade said that the state has an increasing interest in the life of a child with its viability.

DR. JOHNSON replied that their consideration of the embryo and the fetus as being an unborn child capable of behaving as a human being is inaccurate. "A child is a potential child, but so is every child that is not conceived because of the use of birth control.... I feel a fetus is not an individual and does not have even all its parts together, yet; is not capable of rational thinking, is not capable of anything other than the most basic responses to perhaps pain or noise.... It's not an individual, particularly in the first trimester..."

SENATOR DYSON asked if a woman should be able to decide to have an abortion based simply on the fact that it's not wanted.

DR. JOHNSON replied, "Of course."

MS. JENNIFER RUDINGER, Executive Director, ACLU, said she submitted written testimony, but she wanted to notice the committee that the ACLU has serious concerns about the constitutionality of SB 30 since it imposes restrictions on a woman's right to choose, only if she is choosing to terminate a pregnancy. Those restrictions are not placed on a woman who is carrying her pregnancy to term. Carrying a pregnancy to term may be against a doctor's advice or pose a health risk, but they are not being sent home to think it over for 24 hours before they consent to getting prenatal health care. She felt that the spirit of the bill is biased because it is limited to only one surgical procedure, even though it is statistically safer than pregnancy and delivery. Women would receive information that may not be relevant to their particular circumstances and would have to go home and think it over - the implication being that they might not really know what they are doing.

She would defer to doctors on this point, but she has been told that the definition of gestational age on page 3, lines 30 - 31 is medically questionable. Also, on lines 9 - 10 language discussing a fetus' survival at various gestational ages is something people in the medical field do not agree upon. She thought it would be difficult to come up with language for a website on the issue.

The waiting period in SB 30 is a burden that is being imposed only on women exercising their right to choose in one particular manner with which the sponsor of the bill disagrees. It is not imposed on any one having another surgical procedure. She felt that abortion is being singled out for particular restrictions.

Planned Parenthood v. Casey established minimal standards of what the government cannot do in terms of restricting civil liberties, but it doesn't set the ceiling. States can go even farther in protecting individual rights from being restricted by the government. Most states do go farther in many different contexts.

The Alaska Constitution has a right to privacy and only six or seven other states have that. The Alaska Supreme Court has found that the right to privacy protects a woman's fundamental right to make health care decision concerning her reproductive system. There is also an equal protection issue here, too, because if you have two similarly pregnant women, one does not have to be subject to a waiting period before she can be given informed consent medical care. The other woman, who chooses to terminate her pregnancy has to wait 24-hours or more before she gets medical treatment. The state has to show a compelling governmental interest in treating them differently.

DR. CAROLYN BROWN said she already faxed her testimony to the committee. She said SB 30 will in no way provide appropriate information and services available to pregnant women as outlined in the bill nor will it provide access to appropriate information for pregnant women or providers who have no access to the Internet and no computer services. It is not known who will elect to have an abortion beforehand and only after the decision is made, is a woman subject to the required information and 24-hour waiting period. She viewed this as an attempt by ultra conservatives to have a state funded program promote their own reproductive agenda. Further, she said, the fiscal note for providing the information is incomplete and the requirement for informed consent is already obtained from within the Bureau of Vital Statistics. So, that is another waste of state general fund resources.

SENATOR OGAN asked if she felt that retaining a copy in the physician's file is incorrect and that it is the patient's file.

DR. BROWN replied that was her belief.

SENATOR OGAN said he would probably introduce an amendment to correct that language.

MS. DEBBIE JOSLIN used an analogy of her husband having cataracts and declining to have surgery as an example of another procedure that required informed consent.

**TAPE 03-36, SIDE A**

CHAIR SEEKINS closed the public testimony.

SENATOR OGAN motioned to adopt an amendment to delete "physician's" and insert "patient's" on page 6, line 1. He explained that a patient's files are kept in a physician's office. There was no objection and it was so ordered.

SENATOR OGAN motioned to pass CSSB 30(JUD) with the attached fiscal notes from committee with individual recommendations and asked for unanimous consent. There was no objection and it was so ordered.

CHAIR SEEKINS adjourned the meeting at 10:48 p.m.