

HOUSE BILL NO. 329

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE DOOGAN

Introduced: 1/17/08

Referred: Health, Education and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to consent to abortion and parental notification of an abortion on a**
2 **minor; and repealing the judicial bypass provisions relating to abortions."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 18.16.010(a) is amended to read:

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

6 (1) the abortion is performed by a physician licensed by the State
7 Medical Board under AS 08.64.200;

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

11 (3) before an abortion is knowingly performed or induced on an
12 unmarried, unemancipated woman under 16 [17] years of age, **notice** [CONSENT] has
13 been given as required under AS 18.16.020 [OR A COURT HAS AUTHORIZED
14 THE MINOR TO CONSENT TO THE ABORTION UNDER AS 18.16.030] and the

1 minor consents; for purposes of enforcing this paragraph, there is a rebuttable
 2 presumption that a woman who is unmarried and under 16 [17] years of age is
 3 unemancipated;

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

6 (5) the applicable requirements of AS 18.16.060 have been satisfied.

7 * **Sec. 2.** AS 18.16.010(f) is amended to read:

8 (f) It is an affirmative defense to a prosecution or claim for a violation of
 9 (a)(3) of this section that the pregnant minor provided the person who performed or
 10 induced the abortion with false, misleading, or incorrect information about the minor's
 11 age, marital status, or emancipation, and the person who performed or induced the
 12 abortion did not otherwise have reasonable cause to believe that the pregnant minor
 13 was under 16 [17] years of age, unmarried, or unemancipated.

14 * **Sec. 3.** AS 18.16.020 is repealed and reenacted to read:

15 **Sec. 18.16.020. Notice required before minor's abortion.** (a) A person may
 16 not knowingly perform or induce an abortion on a minor who is known to the person
 17 to be pregnant, unmarried, under 16 years of age, and unemancipated unless, before
 18 the abortion, one of the minor's parents or the minor's guardian or custodian has been
 19 notified in writing of the performance or inducement of the abortion.

20 (b) Notwithstanding (a) of this section, notice is not required in the case of a
 21 medical emergency or if the pregnancy is the result of incest under AS 11.41.450, or
 22 an offense under a law of another jurisdiction with elements similar to AS 11.41.450.

23 * **Sec. 4.** AS 18.16.060(a) is amended to read:

24 (a) Except as provided in (d) of this section, a person may not knowingly
 25 perform or induce an abortion without the voluntary and informed consent of a person

26 [(1) A WOMAN] on whom an abortion is to be performed or induced
 27 [;

28 (2) THE PARENT, GUARDIAN, OR CUSTODIAN OF A
 29 PREGNANT, UNEMANCIPATED MINOR IF REQUIRED UNDER AS 18.16.020;
 30 OR

31 (3) A PREGNANT, UNEMANCIPATED MINOR IF AUTHORIZED

1 BY A COURT UNDER AS 18.16.030].

2 * **Sec. 5.** AS 18.16.060(b) is amended to read:

3 (b) Consent to an abortion is informed and voluntary when the [WOMAN OR
4 ANOTHER] person whose consent is required certifies in writing that the physician
5 who is to perform the abortion, a member of the physician's staff who is a licensed
6 health care provider, or the referring physician has verbally informed the [WOMAN
7 OR ANOTHER] person whose consent is required of the name of the physician who
8 will perform the procedure and the gestational estimation of the pregnancy at the time
9 the abortion is to be performed and has provided either

10 (1) the Internet information required to be maintained under
11 AS 18.05.032; the physician or a member of the physician's staff who is a licensed
12 health care provider shall provide a copy of the Internet information if a person
13 requests a written copy; if a member of the physician's staff provides the information
14 required under this paragraph, the member of the physician's staff shall offer the
15 opportunity to consult with the physician; or

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

19 * **Sec. 6.** AS 18.16.060(d) is amended to read:

20 (d) Notwithstanding (a) of this section, informed consent that meets the
21 requirements of (a) - (c) of this section is not required in the case of a medical
22 emergency [OR IF THE PREGNANCY IS THE RESULT OF SEXUAL ASSAULT
23 UNDER AS 11.41.410 - 11.41.427, SEXUAL ABUSE OF A MINOR UNDER
24 AS 11.41.434 - 11.41.440, INCEST UNDER AS 11.41.450, OR AN OFFENSE
25 UNDER A LAW OF ANOTHER JURISDICTION WITH ELEMENTS SIMILAR
26 TO ONE OF THESE OFFENCES. IN THIS SUBSECTION, "MEDICAL
27 EMERGENCY" MEANS A CONDITION THAT, ON THE BASIS OF A
28 PHYSICIAN'S GOOD FAITH CLINICAL JUDGMENT, SO COMPLICATES THE
29 MEDICAL CONDITION OF A PREGNANT WOMAN THAT

30 (1) THE IMMEDIATE TERMINATION OF THE WOMAN'S
31 PREGNANCY IS NECESSARY TO AVERT THE WOMAN'S DEATH; OR

1 (2) A DELAY IN PROVIDING AN ABORTION WILL CREATE
2 SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A
3 MAJOR BODILY FUNCTION OF THE WOMAN].

4 * **Sec. 7.** AS 18.16.090 is amended by adding a new paragraph to read:

5 (3) "medical emergency" means a condition that, on the basis of a
6 physician's good faith clinical judgment, so complicates the medical condition of a
7 pregnant woman that

8 (A) the immediate termination of the woman's pregnancy is
9 necessary to avert the woman's death; or

10 (B) a delay in providing an abortion will create serious risk of
11 substantial and irreversible impairment of a major bodily function of the
12 woman.

13 * **Sec. 8.** AS 44.21.410(a) is amended to read:

14 (a) The office of public advocacy shall

15 (1) perform the duties of the public guardian under AS 13.26.360 -
16 13.26.410;

17 (2) provide visitors and experts in guardianship proceedings under
18 AS 13.26.131;

19 (3) provide guardian ad litem services to children in child protection
20 actions under AS 47.17.030(e) and to wards and respondents in guardianship
21 proceedings who will suffer financial hardship or become dependent upon a
22 government agency or a private person or agency if the services are not provided at
23 state expense under AS 13.26.025;

24 (4) provide legal representation [IN CASES INVOLVING JUDICIAL
25 BYPASS PROCEDURES FOR MINORS SEEKING ABORTIONS UNDER
26 AS 18.16.030,] in guardianship proceedings to respondents who are financially unable
27 to employ attorneys under AS 13.26.106(b), to indigent parties in cases involving
28 child custody in which the opposing party is represented by counsel provided by a
29 public agency, to indigent parents or guardians of a minor respondent in a
30 commitment proceeding concerning the minor under AS 47.30.775;

31 (5) provide legal representation and guardian ad litem services under

1 AS 25.24.310; in cases arising under AS 47.15 (Uniform Interstate Compact on
2 Juveniles); in cases involving petitions to adopt a minor under AS 25.23.125(b) or
3 petitions for the termination of parental rights on grounds set out in
4 AS 25.23.180(c)(3); in cases involving petitions to remove the disabilities of a minor
5 under AS 09.55.590; in children's proceedings under AS 47.10.050(a) or under
6 AS 47.12.090; in cases involving appointments under AS 18.66.100(a) in petitions for
7 protective orders on behalf of a minor; and in cases involving indigent persons who
8 are entitled to representation under AS 18.85.100 and who cannot be represented by
9 the public defender agency because of a conflict of interests;

10 (6) develop and coordinate a program to recruit, select, train, assign,
11 and supervise volunteer guardians ad litem from local communities to aid in delivering
12 services in cases in which the office of public advocacy is appointed as guardian ad
13 litem;

14 (7) provide guardian ad litem services in proceedings under
15 AS 12.45.046 or AS 18.15.355 - 18.15.395;

16 (8) establish a fee schedule and collect fees for services provided by
17 the office, except as provided in AS 18.85.120 or when imposition or collection of a
18 fee is not in the public interest as defined under regulations adopted by the
19 commissioner of administration;

20 (9) provide visitors and guardians ad litem in proceedings under
21 AS 47.30.839;

22 (10) provide legal representation to an indigent parent of a child with a
23 disability; in this paragraph, "child with a disability" has the meaning given in
24 AS 14.30.350;

25 (11) investigate complaints and bring civil actions under
26 AS 44.21.415(a) involving fraud committed against residents of the state who are 60
27 years of age or older; in this paragraph, "fraud" has the meaning given in
28 AS 44.21.415.

29 * **Sec. 9.** AS 18.16.030 is repealed.