

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 12, 2008

1:41 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Lesil McGuire
Senator Bill Wielechowski
Senator Gene Therriault

MEMBERS ABSENT

Senator Charlie Huggins, Vice Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 165

"An Act relating to providing field accommodations for big game hunters."

MOVED HB 165 OUT OF COMMITTEE

SENATE BILL NO. 164

"An Act relating to disclosures required for the sale of a used motor vehicle, including a trailer, by a motor vehicle dealer."

MOVED CSSB 164(JUD) OUT OF COMMITTEE

SENATE BILL NO. 264

"An Act relating to partial-birth abortions."

HEARD AND HELD

HOUSE BILL NO. 268

"An Act relating to damaging a vehicle on public land by starting a fire or causing an explosion."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 165

SHORT TITLE: BIG GAME GUIDES AND TRANSPORTERS

SPONSOR(S): REPRESENTATIVE(S) LEDOUX

02/28/07	(H)	READ THE FIRST TIME - REFERRALS
02/28/07	(H)	RES
03/12/07	(H)	RES AT 1:00 PM BARNES 124
03/12/07	(H)	Heard & Held

03/12/07 (H) MINUTE(RES)
 03/19/07 (H) RES AT 1:00 PM BARNES 124
 03/19/07 (H) Moved Out of Committee
 03/19/07 (H) MINUTE(RES)
 03/21/07 (H) RES RPT 8DP 1NR
 03/21/07 (H) DP: WILSON, ROSES, GUTTENBERG, EDGMON,
 KOHRING, SEATON, GATTO, JOHNSON
 03/21/07 (H) NR: KAWASAKI
 05/01/07 (H) RETURNED TO RLS COMMITTEE
 05/05/07 (H) TRANSMITTED TO (S)
 05/05/07 (H) VERSION: HB 165
 05/07/07 (S) READ THE FIRST TIME - REFERRALS
 05/07/07 (S) RES, JUD
 05/09/07 (S) RES AT 4:00 PM BUTROVICH 205
 05/09/07 (S) Heard & Held
 05/09/07 (S) MINUTE(RES)
 02/18/08 (S) RES AT 3:30 PM BUTROVICH 205
 02/18/08 (S) Moved HB 165 Out of Committee
 02/18/08 (S) MINUTE(RES)
 02/19/08 (S) RES RPT 7DP
 02/19/08 (S) DP: HUGGINS, GREEN, MCGUIRE, STEVENS,
 WIELECHOWSKI, WAGONER, STEDMAN
 03/03/08 (S) JUD AT 1:30 PM BELTZ 211
 03/03/08 (S) Scheduled But Not Heard
 03/10/08 (S) JUD AT 1:30 PM BELTZ 211
 03/10/08 (S) Heard & Held
 03/10/08 (S) MINUTE(JUD)

BILL: SB 164

SHORT TITLE: USED MOTOR VEHICLE SALES

SPONSOR(s): SENATOR(s) MCGUIRE

04/27/07 (S) READ THE FIRST TIME - REFERRALS
 04/27/07 (S) TRA, JUD
 02/12/08 (H) TRA AT 1:00 PM CAPITOL 17
 02/12/08 (S) Moved SB 164 Out of Committee
 02/12/08 (S) MINUTE(TRA)
 02/15/08 (S) TRA RPT 3DP 1NR
 02/15/08 (S) DP: KOOKESH, WILKEN, OLSON
 02/15/08 (S) NR: WIELECHOWSKI
 02/29/08 (S) JUD AT 1:30 PM BELTZ 211
 02/29/08 (S) Heard & Held
 02/29/08 (S) MINUTE(JUD)

BILL: SB 264

SHORT TITLE: PARTIAL-BIRTH ABORTION

SPONSOR(s): SENATOR(s) OLSON

02/11/08 (S) READ THE FIRST TIME - REFERRALS
02/11/08 (S) JUD
03/12/08 (S) JUD AT 1:30 PM BELTZ 211

BILL: HB 268

SHORT TITLE: MOTOR VEHICLE ARSON ON PUBLIC LAND

SPONSOR(s): REPRESENTATIVE(s) STOLTZE

01/04/08 (H) PREFILE RELEASED 1/4/08
01/15/08 (H) READ THE FIRST TIME - REFERRALS
01/15/08 (H) JUD
02/06/08 (H) JUD AT 1:00 PM CAPITOL 120
02/06/08 (H) Moved Out of Committee
02/06/08 (H) MINUTE(JUD)
02/08/08 (H) JUD RPT 1DP 4NR 1AM
02/08/08 (H) DP: RAMRAS
02/08/08 (H) NR: DOOGAN, COGHILL, DAHLSTROM, SAMUELS
02/08/08 (H) AM: HOLMES
02/21/08 (H) TRANSMITTED TO (S)
02/21/08 (H) VERSION: HB 268
02/25/08 (S) READ THE FIRST TIME - REFERRALS
02/25/08 (S) JUD
03/12/08 (S) JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

TREVOR FULTON, staff
to Senator McGuire
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Explained the provisions in the committee substitute for SB 164 on behalf of the sponsor.

SENATOR DONNY OLSON
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Sponsor of SB 264.

DR. JAN WHITEFIELD, Obstetrician Gynecologist
Anchorage, AK

POSITION STATEMENT: Testified that he does pregnancy terminations and he objects to SB 264.

JEAN MISCHER, Attorney
Legislative Legal and Research Services Division

Legislative Affairs Agency
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Responded to questions and offered perspective on SB 264 as the drafter.

CLOVER SIMON, CEO
Planned Parenthood of Alaska
Anchorage, AK

POSITION STATEMENT: Spoke in opposition to SB 264.

ROBYN HENRY, Representing Herself
Anchorage, AK

POSITION STATEMENT: Offered a personal perspective on the issue of woman's health risk as it relates to SB 264.

DONNA STARK, Representing Herself
Anchorage, AK

POSITION STATEMENT: Testified in opposition to SB 264.

IRENE BECKER, Director
Pregnancy Care Center
Home, AK

POSITION STATEMENT: Testified that SB 264 will seal up loopholes created by Roe v. Wade.

BEN MULLIGAN, staff
to Representative Bill Stoltze

POSITION STATEMENT: Introduced HB 268 on behalf of the sponsor.

DAVID TYLER, State Fire Marshal
Division of Fire & Life Safety
Department of Public Safety
Anchorage, AK

POSITION STATEMENT: Spoke in support of HB 268.

BRIT LIVELY, Butte resident
stated support for HB 268.

POSITION STATEMENT: Testified in support of HB 268.

MARTY QUASS, Representing Himself
MatSu Borough Resident said he

POSITION STATEMENT: Testified in strong support of HB 268.

RODNEY DIAL, Lieutenant
Alaska State Troopers
Department of Public Safety

Ketchikan, AK

POSITION STATEMENT: Spoke in support of HB 268.

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [1:41:01 PM](#). Present at the call to order were Senators French, Wielechowski, Therriault and McGuire.

HB 165-BIG GAME GUIDES AND TRANSPORTERS

[1:41:19 PM](#)

CHAIR FRENCH announced the consideration of HB 165. He noted that during the hearing on Monday the sponsor presented the bill and public testimony was taken. Finding no questions, he solicited a motion.

[1:41:59 PM](#)

SENATOR WIELECHOWSKI motioned to report HB 165 from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection HB 165 is moved from the Senate Judiciary Committee.

SB 164-USED MOTOR VEHICLE SALES

CHAIR FRENCH announced the consideration of SB 164.

[1:42:18 PM](#)

SENATOR MCGUIRE moved to adopt committee substitute (CS) to SB 164, labeled 25-LS0867\E, Bannister, as the working document.

CHAIR FRENCH objected for discussion purposes.

[1:43:03 PM](#)

TREVOR FULTON, staff to Senator McGuire, explained that the CS excludes current litigation related to used motor vehicle sales by dealers from the retroactive application of the bill.

CHAIR FRENCH added that he understands that the idea behind the new provision is to allow any pending case to continue to its conclusion without affecting the rights of the individuals now in court, but to preclude any future court action.

MR. FULTON agreed that is the intent.

SENATOR McGUIRE clarified that the original bill did not intend to capture existing litigation and this further clarifies that intent.

CHAIR FRENCH asked if she's aware of any consumer advocacy or other group that opposes the bill.

SENATOR McGUIRE replied she's heard no opposition. She relayed that when the original legislation passed she supported the underlying concept, but it went too far. We've been working with Ed Sniffen [consumer protection section of the Department of Law] on that, she added.

CHAIR FRENCH, finding no further questions or debate, asked for a motion.

[1:45:26 PM](#)

SENATOR McGUIRE motioned to report CSSB 164 from committee with individual recommendations and attached zero fiscal note(s).

CHAIR FRENCH announced that without objection CSSB 164(JUD) is moved from the Senate Judiciary Committee.

At ease from [1:45:43 PM](#) to [1:46:51 PM](#)

SB 264-PARTIAL-BIRTH ABORTION

[1:46:55 PM](#)

CHAIR FRENCH announced the consideration of SB 264, an Act relating to partial-birth abortion. He recognized the prime sponsor and highlighted that the subject is difficult to discuss and debate, but in this system of democracy it's crucial that these things are debated in public. Clearly there are strong feelings on both sides of this matter and everyone will have an opportunity to speak with as much passion as they like. Nevertheless, everyone is expected to comport themselves in a way that's respectful to each point of view.

[1:48:44 PM](#)

SENATOR OLSON, sponsor of SB 264, echoed the Chair's sentiments about respecting differing opinions. He paraphrased the following sponsor statement:

Since the Supreme Court of the United States determined that states, not the federal government, should control certain medical procedures within their state boundaries, abortions have been legal in Alaska.

Despite strong controversies on the abortion issue, there is one practice that many people agree needs to stop. Partial-birth or late term abortion is a process that few people support.

Senate Bill 264 will end this practice in Alaska. The procedure is well described by its name, with the child being partially born and then terminated. Alaska is one of only 14 states that has not restricted this practice. Recently, Congress passed legislation with broad bi-partisan support to ban it nationwide.

Senate Bill 264 will bring State of Alaska statutes more in line with federal law.

CHAIR FRENCH observed that the sponsor is uniquely positioned to speak on the issue given his background in both medicine and law. As he read the Gonzales decision [Gonzales v. Carhart] he became aware that the mother's health exception was not added in this bill, although it has been added to many abortion bans. He asked the sponsor to articulate his view about the degree of medical uncertainty with respect to whether an intact D&E (dilation and evacuation) is less risky to the health of the mother than a standard D&E.

SENATOR OLSON asked if he was talking about a D&C (dilation and curettage), he was not familiar with the term D&E.

CHAIR FRENCH apologized if he had written it down incorrectly.

SENATOR OLSON explained that dilatation and curettage is a medical procedure that's done by physicians and other healthcare providers. Essentially, the cervix is dilated with an instrument and what's inside the uterus is evacuated. He asked the Chair to pose his specific question in relation to the Carhart case.

1:52:11 PM

CHAIR FRENCH relayed that he was reading from the Gonzales v. Carhart decision, which has a fairly lengthy description of a D&E.

SENATOR WIELECHOWSKI added that on page 4 it says that D&E is dilation and evacuation.

CHAIR FRENCH continued to say that the Gonzales decision points out that there are two ways to perform a D&E—the standard method and the intact method. The intact method is discussed in SB 264.

The standard D&E is different in that it involves more than one pass and the removal of pieces from the uterus. Some medical experts feel that several passes involves greater risk for abrasion, cuts, and infection than the intact D&E. He noted that over the years the U.S. Supreme Court has consistently said that the health of the mother must be considered when looking at any abortion ban. With that in mind, he questioned whether this bill shouldn't contain that exception.

SENATOR OLSON clarified that he's been to medical school and he's a physician so he can speak from that standpoint, and he's been to law school, but he isn't a lawyer. With respect to the health of the mother he stated the following:

When you have a mother that comes on in with a number of children and she's starting to bleed out—as has been the case in some of the situations that I've seen—and her hematocrit starts to run low, you need to do something in order to save that mother. And whatever means are necessary to go ahead and evacuate or stop the bleeding is what I consider the standard of medical care out there. And that's the obligation that I think a practitioner has to the patient that comes through the doors of whatever institution you happen to be working at, whether it's a private clinic or a hospital. As far as going out and taking out a late-term conceptus that's there [and] that may or may not be viable, I think that's where people start to go ahead and raise questions as to whether that...should be allowed. And I think that's where the emotional argument comes in—at that point.

[1:54:41 PM](#)

... [dilation] of the cervix is one of those things that's fairly uncomfortable especially if it's done without anesthesia or any kind of analgesic...medication. The...[dilation]...looks fairly uncomfortable...and then you go in there with a curette or a curettage or in your case you brought up the idea of using a pair of forceps. ... You're introducing a foreign object into the cavity of a human being and whenever you do anything like that you're at risk for abrasions, you're at risk for infections, you're at risk for a number of other things. One of the things I have seen most often though actually is perforation of the uterus. I think that's one of the things that is very difficult to

evaluate. I know there have been a fair number of complications with that in the practice when I was practicing fulltime. We want to try and avoid that at all costs. But as far as evacuating something that's intact, you're still dealing with the idea that you're...essentially abrading the placenta away from the lining of the uterus. Obviously there's going to be some bleeding with that, and there's other medical risks that you may be putting the mother's life in more danger than she was if she was to actually continue on with the pregnancy.

I want to make it clear that pregnancy in itself...has its own medical risks. ... Many women before the practice of medicine became more complicated and more developed than it is in the Western society. And you can see this in Third World countries, people that are pregnant many times do die...giving childbirth.

[1:57:10 PM](#)

SENATOR THERRIAULT asked the sponsor if he believes the suggested language would survive the expected state constitutional challenge.

CHAIR FRENCH deferred the question, awaiting the arrival of the drafter, and opened public testimony.

[1:59:41 PM](#)

DR. JAN WHITEFIELD, Obstetrician Gynecologist practicing in Anchorage, said he does pregnancy terminations and he objects to SB 264. He stated the following:

As you and your honored colleagues have spoken, you have used the term late term abortion and the term D&E. Now the bill that I have in front of me, Senate Bill 264, describes what a "partial-birth" abortion means, and it goes through an actual description. And if one puts on the hat of a person who thinks of a "D&E or partial-birth abortion," each of you will have an image in your mind as to what that means—what it means to bring a fetus through a mother's vagina to where the fetus dies—acts that may be performed. And you would have some sort of image of that.

Now the person who practices those first and second trimester abortions—I have to look at this legislation and think about this generally in terms of the

description and then specifically what it means as a practitioner. And in addition I took this bill to my colleagues—I have...five other colleagues who perform abortions in my office. And we all went through the bill and there's nothing in this bill that talks about how far along a pregnancy would be before this bill would be applied. This doesn't say this is a second trimester definition; this doesn't say it's a late second trimester definition. In fact, the definition where in pregnancy that this would be applied is completely void. It's not stated whatsoever.

When I do a first trimester pregnancy termination, one of the things I will do is dilate the cervix and put a vacuum suction tube through the cervix into the uterus. At the time that I do that if a woman has had a number of children her cervix may actually lie at the opening of her vagina. And when I apply the suction to empty the patient's uterus out at a 12-week pregnancy or an 11-week pregnancy, sometimes I will see the feet of the fetus come up the suction tube when the abortion is being done. When the fetus entered the suction tube it was alive, and when it comes out at the end of the suction tube, obviously, it's not alive.

The problem is that in this particular law which is being proposed, it doesn't exclude that particular act as being included under the definition of a partial-birth abortion. In this particular case, what would be done is I would be bringing the fetus into a suction tube and I would see, in this case, that the feet are coming out first. It would be a breach presentation and the fetus may be essentially almost completely outside the woman's body before it actually dies. And that's, of course, limited to women who have a lot of relaxation of their vagina and cervix and the cervix is present at the opening of the vagina.

[2:01:49 PM](#)

So this bill has unintended consequences. The way it's written, if I do the standard vacuum suction first trimester pregnancy termination, it would be entirely possible for somebody to look over my shoulders and say, "Look, I see that fetus's feet in the fallopian tube. It was dead when it came out of the tube, but it was alive when it went into the tube and that is,

therefore, a partial-birth abortion." So as I see it, the way this law is written there is unintended consequences and the penalty is not malpractice. The penalty is two years in prison if you look at the federal bill, along with considerable monetary problems.

When I took this bill and showed it to my partners who do first trimester pregnancy terminations and said, "As you read this bill, would this modify your practice in terms of what you would offer a patient in terms of a first trimester pregnancy termination?" Three of the five said yes, that they would limit how far along in the first trimester they would go because they were concerned that the ambiguity in the way the bill was written could therefore be applied to a first trimester termination. As such, I see that as unintended consequences of the way this was written. Maybe I'm fooling myself. Maybe those were intended consequences. Maybe it was meant to be chilling to people who do pregnancy terminations at any point in pregnancy.

[2:05:21 PM](#)

CHAIR FRENCH noted that Ms. Michelle was available and asked Senator Therriault to rephrase his question.

SENATOR THERRIAULT asked if the language suggested in SB 264 takes previous litigation into account, and if it is intentionally phrased so that it will make a difference or be meaningful to the court.

[2:05:57 PM](#)

JEAN MISCHEL, Attorney, Legislative Legal and Research Services Division, opined that from a legal standpoint, the bill significantly changes the phrasing of a definition of "partial-birth abortion." "It tracks precisely the Congressional Act that was upheld by the U.S. Supreme Court." In the recent decision the phrase, "deliberately and intentionally" on page 2, line 6, was significant so it couldn't apply to an inadvertent partial-birth abortion if a physician intended to perform a regular D&C or D&E and the fetus came out too far. "If it weren't deliberate and intentional then there would be no violation under this Act," she said.

The language on page 1, lines 8-10, is modified. The new subsection (c)(1)(A) says, "partially vaginally delivers a

living fetus for the purpose of performing an overt act that the person knows will kill the fetus;". In the analysis under the Congressional Act the phrase "living fetus" was significant. There was concern that a delivery might occur after the death of the fetus and still be considered a prohibited partial-birth abortion. The phrase "overt act" was also very significant in the court analysis so it doesn't apply to a miscarriage or something else that killed the fetus other than a certain type of abortion.

[2:08:44 PM](#)

MS. MISCHEL said what isn't in the bill is any limitation on the trimester during which the procedure is performed. The Congressional Act applies during or after the second trimester of a pregnancy. SB 264 arguably could apply during the first trimester. The prohibition in existing law was not modified. "This is just a definitional change to track the Congressional standards that were upheld by the U.S. Supreme Court. She agreed with Dr. Whitefield that without any change to the bill, there is the potential for enforcement for a first trimester partial-birth abortion. Currently that isn't specified anywhere in state law.

[2:10:11 PM](#)

SENATOR THERRIAULT relayed that he wanted to have in mind what key phrases are meaningful to the court.

MS. MISCHEL explained that another very significant change in SB 264 that mirrors the Congressional Act is the description of how far the fetus comes through the mother's vagina. Other state laws weren't clear and were found to be unconstitutional, so the U.S. Supreme Court went into some detail with respect to why this is not too ambiguous to enforce, or for a physician to understand. Anatomical landmarks were given to clearly distinguish a partial-birth abortion from other abortions. There was testimony or evidence that physicians might be wrongfully prosecuted for performing an abortion that was not a partial-birth abortion because "the lines are fuzzy when you're delivering a little fetus or parts of a fetus." The U.S. Supreme Court case goes into graphic anatomical detail as to why this definition does not suffer constitutional vagueness.

[2:12:36 PM](#)

SENATOR OLSON clarified that the intent of the bill is not to ban abortions. He asked Ms. Mischel to address the unintended consequences that Dr. Whitefield highlighted, so that the valid

concerns of obstetricians and other healthcare providers could be allayed.

MS. MISCHEL reiterated that this bill addresses the federal analysis of the constitutionality of the partial-birth abortion ban. Other than setting the trimesters, this is consistent with the Congressional Act. But the Alaska State Constitution has an express right to privacy and she cannot state with any certainty that the Alaska Supreme Court would agree with the U.S. Supreme Court, that this isn't constitutionally vague and doesn't otherwise infringe on an Alaska resident's right to privacy.

[2:14:38 PM](#)

MS. MISCHEL explained that the U.S. Supreme Court relied heavily on the Casey case [Casey v. Planned Parenthood] and the Alaska Supreme Court rejected the Casey interpretation of a woman's right to privacy in the context of an abortion. The likelihood is that someone will ask for declaratory judgment to hear from the Alaska Supreme Court, she said. Since there is no trimester limitation in the bill, she agrees with Dr. Whitefield that performing a partial-birth abortion in the first trimester is arguable prohibited under this bill. She reiterated that the definition of partial-birth abortion does provide anatomical landmarks so under this bill, so physicians aren't prohibited from performing other types of abortions. "Just an abortion that is performed after partially delivering a living fetus through the vagina that causes the entire fetal head to come outside the mother's body, or the trunk past the navel if it's a breach delivery." That's as specific as I can be with respect to questions about the practice, she said. "The intent of the bill and the function of the Congressional Act that was upheld by the U.S. Supreme Court was to proscribe only the living fetus partial-delivery type of abortion." Although it's being called a partial-birth abortion, the procedure does have a more technical term.

MS. MISCHEL said, "I think these committee hearings are a good opportunity for committee members to describe and to make clear that the intention of SB 264 is not to prohibit other types of legalized abortion in the state."

[2:17:26 PM](#)

SENATOR McGUIRE said she appreciates the analysis but she believes the sponsor is saying he would like the trimester point defined in the bill. With due respect to the idea that someone would review the committee recording to determine the intent, she said she thinks it's better to have the trimester point

clear in the bill itself. She asked whether other states that have passed legislation based on the Gonzales case, have defined the second and third trimester in their legislation.

MS. MISCHEL said her limited review of other states' responses to the Gonzales case is that, unlike Alaska, they already had a trimester limit in existing state law. She continued to say:

An educated guess is that most states do expressly limit the prohibition to second trimester abortions, as does the Congressional Act. But since our partial-birth abortion prohibition in current law didn't have a trimester limit and this bill just redefines the meaning of partial-birth abortion, really to avoid the vagueness challenge, it is a good idea and I agree with you that if the intent of the committee is to limit this to second trimester abortions that that should be included in this bill.

[2:20:01 PM](#)

CLOVER SIMON, CEO, Planned Parenthood Alaska, stated opposition to SB 264. She stated the following:

The language in this bill closely tracks the federal ban, which was just discussed, that was upheld in 2007 by the U.S. Supreme Court. However, the Alaska Supreme Court has held that the state constitution's right to privacy is stronger than the federal right, and in March of 1998 the Alaska Superior Court found the newly enacted statute [AS] 18.16.050 partial-birth abortion ban in violation of the Alaska Constitution. And I don't feel that this change in language adequately addresses why it was found unconstitutional. From the conclusion in the Superior Court, "The Act is also found to be a restriction on a woman's fundamental right to an abortion as set forth in Valley Hospital by burdening virtually all abortions due to its vagueness and therefore is unconstitutional for that reason as well. The Act is a violation of a woman's right to privacy guaranteed by the Alaska Constitution."

What continues to trouble me about this bill is that all procedures covered under the federal abortion ban passed in 2003, which was upheld by the federal Supreme Court, are already against the law nationwide and obviously, here in Alaska. Currently, these

procedures as described in the bill, if they truly do apply to second trimester abortion, are not happening here. Secondly, the bill does not address the protection of the health of a woman who might, under some horrible circumstance, need medical care that might be construed as falling under this ban.

The sponsor stated that this bill puts in definition, in our state statutes, some clarity to partial-birth. However, there's still—as was just discussed—no clarity on when the statute goes into effect so I am definitely opposed to this bill.

[2:22:11 PM](#)

ROBYN HENRY, resident of Anchorage and 15 year Alaska resident, offered a personal perspective on the issue of a woman's health risk. She read the following into the record:

In October 2003 I learned that I was pregnant with Marcus. I had been trying to conceive for over two years, but nothing had prepared me for the emotions I experienced when I discovered I was carrying new life. It was my turn to experience a miracle. Each night I'd read books about Marcus's development and marveled at the changes in my body. I could have not been more thrilled about having this child.

Then in January 2004, approximately 19 weeks into my pregnancy, I'd gotten the results of a test that indicated possible Downs Syndrome. After only a moment's hesitation, I made a commitment to raise and love my son as he was, unconditionally. A blood test was done, followed by an ultrasound, in preparation for an amniocentesis. But the ultrasound revealed the condition to be much worse than Downs. Marcus had severe cystic hygroma with hydrops—a disease that causes fluid under the skin and in the fetal cavity. In Marcus's case, the fluid buildup was extensive. The doctor explained to me that the condition was fatal. Given the extent of the continual fluid buildup, there was no chance that Marcus would survive. The only question now was how long he would live before dying in my womb.

In addition the doctor explained to me that the situation could lead to a condition called maternal-mirror syndrome. This is a situation where I could

acquire a similar fatal condition from Marcus, which in my case could lead to adult respiratory distress and other complications. The situation left me with two choices: 1) let the condition take its course, have a stillborn baby and risk getting very seriously ill myself, or 2) safely discontinue the pregnancy of my dying son. While it was not an easy choice to accept, it was rather straightforward. I chose to preserve my own life.

As you listen to my personal story, I bring to you this challenge. Imagine yourself in my shoes, or imagine yourself in my doctor's shoes. What would it be like to be told, after hearing such devastating news, that I would be forced to wait for my child to die, deliver a stillborn baby, and in the process, accept the possibility of becoming fatally ill? That I would not have access to an existing safe procedure that would preserve my own health. Put yourself in those shoes because those are my shoes and I am the face and name of a mother that would be affected by this bill if you don't include "health for the mother" in this bill.

In closing...I would like to say that I agree with those of you that believe that this bill is about life and I agree with those of you who believe this bill is about choice, but it's not about life versus choice. ...It's about choosing existing life, which is what I did in honor and memory of my dying son. ... I want my story to bring home the idea that you need to be very clear about the language in the bill, and understand the situations like I was in exist out there and they're very difficult, and restricting options can be heartbreaking.

[2:26:58 PM](#)

DONNA STARK, representing herself from Anchorage, expressed opposition to SB 264. She continued to say:

I still find it hard to fathom that the U.S. Congress passed, United States President signed, and the United States Supreme Court upheld a law that, in effect, imposes the death penalty on certain women in this country. To pass a law interfering with a woman's right to self determination concerning her medical care was bad enough. But to not leave any provision

for exceptions for her health, in essence sentences certain women to death. I would urge you now to reconsider the federal law as an unlawful imposition of the death sentence in our state. I especially hope you would not repeat the mistake by duplicating that law at the state level.

Just recently our state legislature had first-hand experience with unintended consequences of laws passed for political expediency. In the rush to show the public that it cared about ethics after the corruption scandal, the legislature finally took action to limit campaign contributions and gifts. What we all found was that these new limits would interfere with one of your member's ability to receive a lifesaving organ transplant. Who knew when the law was first crafted that this situation would arise? Fortunately, when the consequences of your actions were discovered, you voted reasonably to make an exception that would allow your fellow legislators to take the medical step necessary to save his life.

It's very easy to ignore unintended consequences when there is no personal example and the people affected are invisible. Rather than some unknown woman, let me use the recently revealed pregnancy of Governor Palin as an example. If you don't already know, pregnancy later in a woman's life carries more risk of complications. What if Governor Palin were faced with some unforeseen crisis during the latter months of her pregnancy? Who of you here would have the right to decide that her doctors could not save her life? Would you really limit her physician's options because you want to score political points in the abortion debate?

I also refer to the corruption scandal. I'm fairly certain that all of the indicted legislators, the indicted chiefs of staff, and those still facing charges campaigned for their office on an anti-abortion platform. I do not believe I would entrust my medical care to any of them, or any of the ones who may yet be indicted.

Before this current session started, I attended a constituent town hall meeting. I heard testimony about low income health clinics closing, about unaffordable daycare costs, unaffordable healthcare costs, the

plights of parents with incarcerated children—in essence a very long list of human needs. Do we really need to spend our valuable court and police resources arresting doctors for trying to save their patients' lives? Do we have room in jail for them? I was fairly certain that we have a shortage of doctors in this state. Please let the federal government spend their resources on enforcement of this thoughtless law.

In conclusion, just a couple of days ago Governor Palin made the comment that if anyone thought she couldn't handle being governor and have a baby, why that was the thinking of a Neanderthal. I could not agree with her more. Women have had a long hard fight and we have proven over and over that we are more than capable of determining our own destinies. This legislation is the exact antithesis of a woman's rights. It is an exact example of Neanderthal thinking.

[2:31:46 PM](#)

IRENE BECKER, Director, Pregnancy Care Center in Homer, said she has served in her present position for 11 years and has been very involved in the abortion issue. She opined that one positive thing this bill will do is to seal up a lot of the current loopholes that were created by Roe v. Wade. When that bill was passed in 1973, there were no parameters with respect to "who could perform the abortions, who could do it, at what age, viability of the fetus." At the time none of that was an issue, but she believes that over the years a lot of the bills that have come up, have been for housekeeping and getting things in better order. Also, technology has advanced to actually realize what happens in the womb. She continued to say:

Women were told to believe [that] at three months or so that it was just a blob and you basically were scrapping out...just an excess of things that were there. We know now—primarily the partial-birth abortion is done at the fifth month—the baby's in a waking and sleeping pattern, he feels pain, the heart had started beating at 21 days. They know too that the baby's in a dream situation because there's rapid eye movement, marrow has turned to bone, strong kicks, aware of outside noises. Five-month-old babies...can live outside the womb, they are a viable entity, and I think [in] all of this we're not really considering this baby. ...

You can tell pretty much by any ultrasound how far along the fetus is developed, how long the gestation period has been. This bill closes in the gap. It makes the baby important; it brings value to that life. With a partial-birth abortion the baby is turned around, taken out feet first, a sharp object is run into its neck, the brains are sucked out and then the rest of the baby is delivered and it's a gristly, gristly practice that, as an American and as a human being, I find extremely, extremely disturbing. So, we as Alaska need to take a stand for this kind of a life, get in step with the things that nationwide statistically, people are very much against this type of an abortion. We need to become part of that. ...

Maybe I'm here just to speak up for the little ones because I know that they can live outside the womb and I also know that there's a lot of people that would love to have these babies.

[2:35:05 PM](#)

CHAIR FRENCH asked the sponsor if he'd like to respond to any of the testimony that was heard.

SENATOR OLSON clarified that the intent of this bill is to mirror the federal law. Currently 36 states are regulating the procedures that are done within their borders. Alaska is in the minority of states that does not have such regulation. He also clarified that AS 18.16.050(a) and (b) are unaffected by this legislation. "All this does is modify [subsection] (c) so you have the protection to save the life of a mother under [existing subsection] (a)."

CHAIR FRENCH found that no one else wished to testify. He closed public testimony and set SB 264 aside.

HB 268-MOTOR VEHICLE ARSON ON PUBLIC LAND

[2:36:50 PM](#)

CHAIR FRENCH announced the consideration of HB 268.

BEN MULLIGAN, staff to Representative Bill Stoltze, said HB 268 establishes that intentionally starting a fire or causing an explosion that damages a motor vehicle is a class C felony. He explained that the legislation was suggested by a community where on average a dozen vehicles are burned each year.

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SENATOR WIELECHOWSKI asked if the community would be Jim Creek.

MR. MULLIGAN said that's correct, but according to testimony and discussion before the House Judiciary Committee vehicle arson occurs in other areas of the state as well. The bill was vetted through the departments of public safety and law as well as the Jim Creek community.

CHAIR FRENCH asked if the bill differentiates between a new car and a junked vehicle.

MR. MULLIGAN replied they're treated the same way because the hazard that the arson creates is the same.

CHAIR FRENCH asked how much of the car has to burn for the statute to come into play. For example, would it apply to setting a tire on fire.

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MR. MULLIGAN suggested he ask Trooper Dial, but he imagines that it would mean the entire car since statute describes a motor vehicle as one that's registered by the Division of Motor Vehicles (DMV).

SENATOR WIELECHOWSKI suggested getting a legal opinion because his interpretation is different. Noting that he's seen vehicles that have been damaged with bats, tire irons and shotgun blasts, he asked why the bill is limited to intentional damage by fire.

MR. MULLIGAN explained that fires and explosions affect more than just the vehicle. The hazard potentially extends to the public, first responders, and the habitat.

SENATOR THERRIAULT asked for a definition of motor vehicle. He questioned whether it would have to have two axles, tires and be capable of self propulsion. Referring to previous questions, he said he wasn't sure if the Chair was trying to differentiate between a part of a car or a BMW versus a junk car.

CHAIR FRENCH said he has concern about making it a felony crime to damage a junked car. For example, kids could face felony charges for having built a campfire against an already junked car. "We may want to think about making certain that there's a certain level of damage done to the car." The bill talks about

"damages" without placing any limitation on the significance of the damage.

SENATOR THERRIAULT observed that the Chair wants to make sure this doesn't capture the bonfire that's set to roast marshmallows.

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CHAIR FRENCH acknowledged he's thinking about the more insignificant instances that could provoke a felony charge, which is a very serious charge to face.

SENATOR THERRIAULT commented that it's strange that if he were to torch his own car on public property it'd be a felony charge, but if he were to do the same thing on his own property it'd be okay.

MR. MULLIGAN clarified that the bill was introduced to address a problem in the sponsor's district that was occurring on state and municipal land. If it should be addressed for private property the sponsor could look at that.

SENATOR THERRIAULT said he understands the problem the bill targets and he's sympathetic, but he just wants to make certain this is the right approach.

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SENATOR WIELECHOWSKI asked if it's not already a class C felony to burn someone's car because it would be destruction of property worth more than \$500. The question was deferred to Lt. Dial.

CHAIR FRENCH asked Mr. Mulligan if he had anything to add.

MR. MULLIGAN pointed out that the bill talks about intentional damage so intent must be proved. For that reason he doesn't believe that someone who builds a bonfire that accidentally burns a vehicle would be prosecuted under this bill.

2:45:09 PM

DAVID TYLER, State Fire Marshal, thanked the sponsor for addressing the problem of burning abandoned and derelict vehicles. The bottom line is that it's hazardous to firefighter safety, he said. Not much thought is given to these fires, but they can be very hazardous. Front shock absorber bumpers can go off like grenades and fuel tanks can explode. Another hazard that's created is wild land fires. None have gotten to be

serious large fires yet, but it's just a matter of time. Abandoned and burned vehicles can be found on the Chena Hot Springs Road, Steese Highway, and the dike on the Tanana River. Sometimes the vehicles are towed out and torched as a disposal method.

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CHAIR FRENCH asked how often this occurs and if the typical car is nice and has been stolen and torched for fun, or an old beater that's torched for a different kind of fun.

MR. TYLER estimated that fire departments in the Interior respond to vehicle fires between 20 and 30 times a year; he didn't have numbers for the entire state. The cars are usually older and abandoned. Sometimes they're torched to conceal a crime.

2:48:23 PM

BRIT LIVELY, Butte resident, stated support for HB 268. She addressed previous questions about the kind of vehicles that are burned, whether there should be an exception for partial cars, or incidental burnings from campfires. According to the fire department, junk vehicles are usually towed or hauled in on trucks. Sometimes they're filled with extra tanks or propane bottles so that when they're torched the explosion is bigger. But newer cars that were stolen in Anchorage are also hauled out and torched. Recently a body was discovered in a car that had been torched a year earlier, allegedly it was a drug-related murder. In another instance a van load of stolen tires was torched in a wooded location close to her house.

MS. LIVELY said she is one of the people who asked Representative Stoltze to introduce this legislation. Although some may think a class C felony for burning a car is "over the top", HB 268 is the solution for keeping the Butte community safe from this ongoing year-round problem, she said. Prior to approaching the sponsor, Butte residents consulted state troopers, emergency services, the local fire department, and a volunteer legal professional. The consensus was that the troopers didn't have the tools to deter this activity in the state even though this has been an ongoing problem for over 25 years. In the 90s the National Guard gathered up the wrecks in the Knik River Valley and Jim Creek area and dedicated volunteers disposed of the monstrosities. However, this activity has been accelerating and it's endangering local firefighters, contaminating woods and waterways, placing homes and lives in danger, and giving the area a reputation that contradicts the

values and standards of its residents. "In our opinion HB 268, making car burnings a class C felony crime, will not jam up the legal system, but will serve as a powerful deterrent for misfits including gang members and car thieves who currently seem to enjoy their dangerous and destructive pursuits." Also, it will reassure residents and public land users that when they report these deeds the authorities will have the tools to arrest and prosecute these offenders. "HB 268 is an easy fix to convict, but it is even a more easy fix to deter," she said.

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MARTY QUASS, resident of the MatSu Borough, said he strongly supports HB 268. He lives on the Knik River and has a panoramic view of the public use area under discussion. Over the years he's had occasion to call 911 to report car burnings and the typical response has been that resources aren't available and so nothing can be done. It's time to change that, he said. One day the woods will go up in flames and the Butte area residents will have a major calamity on their hands.

CHAIR FRENCH observed that this behavior could be made a class A felony crime and it's doubtful that it would do anything about the manpower shortage that troopers and police face statewide.

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CHAIR FRENCH asked Lt. Dial why vehicle burning isn't a felony criminal mischief.

RODNEY DIAL, Lieutenant, Alaska State Troopers, explained that it's not a crime to damage your own vehicle, but it's criminal mischief to damage another person's property. In some car burnings it's possible to charge criminally negligent burning as well, but when someone damages their own vehicle on state or public land there isn't much that law enforcement can do. The ability to take some enforcement action is one reason the troopers support HB 268. He added that a class C felony allows the court to assess a wide range of sentencing options, from no time at all and suspended imposition of sentence, up to a couple of years in prison.

CHAIR FRENCH set HB 268 aside for a subsequent hearing.

There being no further business to come before the committee, Chair French adjourned the meeting at [2:59:26 PM](#).