

SENATE BILL NO. 15

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY SENATOR DYSON

Introduced: 1/21/09

Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to abortion, fetal pain, anesthesia, and informed consent; and**
2 **providing for an effective date."**

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

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 SHORT TITLE. This Act may be known as the Fetal Pain Awareness and Prevention
7 Act.

8 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 LEGISLATIVE PURPOSE AND FINDINGS. (a) The purpose of this Act is to

11 (1) ensure that every woman considering an abortion receives complete
12 information on the reality and status of the woman's pregnancy and of the unborn child;

13 (2) ensure that every woman who chooses to have an abortion has first
14 received accurate information on the ability of an unborn child to feel pain;

1 (3) protect an unborn child from a woman's uninformed decision to have an
2 abortion;

3 (4) take measures to protect an unborn child from suffering pain needlessly
4 during an abortion;

5 (5) reduce the risk, described by the United States Supreme Court in Planned
6 Parenthood v. Casey, 505 U.S. 833, 882 (1992), that a woman may elect an abortion, only to
7 discover later, with devastating psychological consequences, that the woman's decision was
8 not fully informed; and

9 (6) provide a woman considering an abortion the opportunity to choose
10 anesthesia or analgesia that will alleviate or eliminate pain that an unborn child may feel
11 during an abortion.

12 (b) The legislature finds that

13 (1) receipt of complete and accurate information on the reality and status of a
14 woman's pregnancy by the woman is essential to the woman's psychological and physical
15 well-being;

16 (2) the United States Supreme Court, in Planned Parenthood v. Danforth, 428
17 U.S. 52, 67 (1976), stated that the decision to abort is an important and often stressful one,
18 and it is desirable and imperative that an abortion decision be made with full knowledge of its
19 nature and consequences;

20 (3) adequate and legitimate informed consent to an abortion includes
21 information that relates to the consequences of an abortion to the fetus as found by the United
22 States Supreme Court in Planned Parenthood v. Casey, 505 U.S. 833, 882 (1992); and

23 (4) the state may take measures to protect unborn children from suffering pain
24 needlessly during the performance of an abortion.

25 * **Sec. 3.** AS 18.05.032(a) is amended to read:

26 (a) The department shall maintain on the Internet, in printable form, standard
27 information that

28 (1) contains geographically indexed material designed to inform a
29 person of public and private agencies, services, clinics, and facilities that are available
30 to assist a woman with the woman's reproductive choices; the department shall include
31 information about at least the following types of agencies, services, clinics, and

1 facilities:

2 (A) agencies, services, clinics, and facilities designed to assist a
3 woman through pregnancy, including adoption agencies, and counseling
4 services;

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

7 (C) agencies, services, clinics, and facilities designed to assist
8 with or provide contraceptive options and counseling for appropriate family
9 planning;

10 (2) includes a comprehensive regional directory of the agencies,
11 services, clinics, and facilities that request to be identified by the department under (1)
12 of this subsection, a description of the services they offer, and the manner in which the
13 agencies, services, clinics, and facilities may be contacted, including telephone
14 numbers;

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

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

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

22 (6) describes the fetal development of a typical unborn child at two-
23 week gestational increments from fertilization to full-term, including links to
24 photographs of a typical unborn child at four-week gestational increments, and
25 relevant information about the possibility of an unborn child's survival at the various
26 gestational ages; the information must be objective, nonjudgmental information that is
27 reviewed and approved for medical accuracy by recognized obstetrical and
28 gynecological specialists designated by the State Medical Board and designed to
29 convey only accurate scientific information about unborn children at various
30 gestational ages;

31 (7) contains objective, unbiased information that is reviewed and

1 approved for medical accuracy by recognized obstetrical and gynecological specialists
2 designated by the State Medical Board and that describes the methods of abortion
3 procedures and treatments commonly employed and the medical risks and possible
4 complications commonly associated with each procedure and treatment, as well as the
5 possible physical and psychological effects that have been associated with having an
6 abortion;

7 (8) contains objective, unbiased information that is reviewed and
8 approved for medical accuracy by recognized obstetrical and gynecological specialists
9 designated by the State Medical Board and that describes the possible medical risks
10 and complications commonly associated with pregnancy and childbirth, as well as the
11 possible physical and psychological effects that have been associated with carrying a
12 child to term;

13 (9) contains objective, unbiased information that is reviewed and
14 approved for medical accuracy by recognized obstetrical and gynecological specialists
15 designated by the State Medical Board and that concerns the harmful effects on an
16 unborn child when a woman consumes alcohol, tobacco, or illegal drugs during
17 pregnancy;

18 (10) contains objective, unbiased, and comprehensive information that
19 is reviewed and approved for medical accuracy by recognized obstetrical and
20 gynecological specialists designated by the State Medical Board and that describes the
21 different types of available contraceptive choices, including abstinence and natural
22 family planning, that describes the methods of contraception that are intended to
23 prevent fertilization and the methods that are intended to prevent implantation of a
24 fertilized egg, and that describes the reliability, psychological effects, medical risks,
25 and complications commonly associated with each method;

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

28 (12) contains a signature form by which a person may indicate the
29 person has reviewed the information;

30 **(13) contains objective, unbiased, and comprehensive information**
31 **that is reviewed and approved for medical accuracy by recognized obstetrical**

1 and gynecological specialists designated by the State Medical Board and that
 2 describes

3 (A) scientific evidence explaining how an unborn child
 4 experiences and responds to pain;

5 (B) anesthesia available to reduce pain to the unborn child
 6 before an abortion is performed;

7 (C) all risks to the pregnant woman and to the unborn child
 8 of administering anesthesia.

9 * **Sec. 4.** AS 18.16.010(a) is amended to read:

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

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

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

16 (3) before an abortion is knowingly performed or induced on an
 17 unmarried, unemancipated woman under 17 years of age, consent has been given as
 18 required under AS 18.16.020 or a court has authorized the minor to consent to the
 19 abortion under AS 18.16.030 and the minor consents; for purposes of enforcing this
 20 paragraph, there is a rebuttable presumption that a woman who is unmarried and under
 21 17 years of age is unemancipated;

22 (4) the woman is domiciled or physically present in the state for 30
 23 days before the abortion; [AND]

24 (5) the applicable requirements of AS 18.16.060 have been satisfied;
 25 and

26 (6) the applicable requirements of AS 18.16.070 have been
 27 satisfied.

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

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

1 provider, or the referring physician

2 (1) has verbally informed the woman or another person whose consent
3 is required of

4 (A) the name of the physician who will perform the procedure;

5 (B) fetal pain and the option of anesthesia for the unborn
6 child and the risks associated with the anesthesia, as required under
7 AS 18.16.070; and

8 (C) the gestational estimation of the pregnancy at the time the
9 abortion is to be performed; and

10 (2) has provided either

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

18 (B) [(2)] information about the nature and risks of undergoing
19 or not undergoing the proposed procedure that a reasonable patient would
20 consider material to making a voluntary and informed decision of whether to
21 undergo the procedure.

22 * **Sec. 6.** AS 18.16 is amended by adding a new section to read:

23 **Sec. 18.16.070. Anesthesia for an abortion; consent.** (a) Except as provided
24 in (d) of this section, a person may not knowingly perform or induce an abortion of an
25 unborn child that is 20 weeks gestational age or more unless the pregnant woman or
26 other person whose consent is required certifies that the pregnant woman or other
27 person has received information on fetal pain and the option of fetal anesthesia not
28 less than 24 hours before the abortion is to be performed. The information provided
29 must include

30 (1) a statement that, by 20 weeks gestational age, an unborn child

31 (A) possess all anatomical links in the unborn child's nervous

1 system that are necessary for feeling pain;

2 (B) is capable of experiencing pain;

3 (2) a description of the actual steps in the abortion procedure to be
4 performed or induced and the steps in which the unborn child is capable of feeling
5 pain; and

6 (3) a statement that maternal anesthesia typically offers little pain
7 prevention for the unborn child and that an anesthetic or analgesic is available to
8 minimize or alleviate pain to the fetus.

9 (b) At the request of the person on whom an abortion is to be performed, a
10 qualified licensed health care provider shall administer anesthesia in a manner
11 consistent with standard medical practice in the community to eliminate or alleviate
12 pain to the fetus caused by the particular method of abortion to be performed or
13 induced.

14 (c) The information required under (a) of this section shall be provided in
15 person by the physician performing or inducing the abortion, the referring physician,
16 or a qualified assistant to the physician.

17 (d) The requirements of (a) - (c) of this section do not apply when the
18 physician who is to perform an abortion or the referring physician for the abortion
19 determines, based on the physician's best medical judgment, that

20 (1) a medical emergency exists; in this paragraph, "medical
21 emergency" means a physician has determined, based on good faith clinical judgment,
22 that

23 (A) a condition exists that so complicates the health of a
24 pregnant woman that the immediate termination of the woman's pregnancy is
25 necessary to avert the death of the pregnant woman; or

26 (B) a delay in performing an abortion will create a serious risk
27 of substantial and irreversible impairment of a major bodily function of the
28 pregnant woman;

29 (2) the administration of an anesthetic or analgesic would, to a
30 medically significant degree, decrease the possibility of sustained survival of the fetus
31 apart from the body of the mother, with or without artificial support; or

1 (3) the administration of an anesthetic or analgesic would increase the
2 risk to the woman's life or physical health.

3 (e) A written certification must be signed by the woman on whom an abortion
4 is to be performed or another person whose consent is required that the information
5 required under this section has been received, that an option for fetal anesthesia was
6 provided and that the woman either requested fetal anesthesia or opted not to receive
7 the anesthesia or analgesia. The certification shall be retained in the woman's medical
8 record and be available for the department and the appropriate licensing agency to
9 review.

10 (f) The department and the appropriate licensing agency in the state shall
11 enforce the requirements of this section by the imposition of an administrative fine or
12 other appropriate discipline under the agency's licensing authority.

13 (g) In addition to other civil or criminal liability, a person performing or
14 inducing an abortion in violation of this section is liable for actual and punitive
15 damages in a malpractice action.

16 (h) A court or administrative body shall maintain the privacy of a woman on
17 whom an abortion was performed by redacting identifying information from court
18 records, by closing any proceeding, or by entry of a protective order upon request.

19 (i) Nothing in this section shall be construed to create or recognize a right to
20 an abortion or to legalize an abortion that is otherwise prohibited under state law.

21 (j) In this section, "department" means the Department of Health and Social
22 Services.

23 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).