

HOUSE BILL NO. 357

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FOURTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES VANCE, McCabe, Tomaszewski, Underwood, St. Clair, G.Nelson, Moore, Elam, Allard

Introduced: 2/23/26

Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to abortion; relating to who may perform an abortion; relating to civil**
2 **enforcement of abortion laws; relating to abortion after the detection of a fetal**
3 **heartbeat; amending Rules 3 and 82, Alaska Rules of Civil Procedure, and Rule 508,**
4 **Alaska Rules of Appellate Procedure; and providing for an effective date."**

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

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

8 SHORT TITLE. This Act may be known as the Alaska Heartbeat Act.

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

11 LEGISLATIVE FINDINGS. The legislature finds that, according to contemporary
12 medical research,

13 (1) fetal heartbeat has become a key medical predictor that an unborn child
14 will reach live birth;

1 (2) cardiac activity begins at a biologically identifiable moment in time,
2 normally when the fetal heart is formed in the gestational sac;

3 (3) the state has compelling interests from the outset of a woman's pregnancy
4 in protecting the health of the woman and the life of the unborn child; and

5 (4) to make an informed choice about whether to continue her pregnancy, a
6 woman has a compelling interest in knowing the likelihood of her unborn child surviving to
7 live birth based on the presence of cardiac activity.

8 * **Sec. 3.** AS 18.16.010(a) is amended to read:

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

10 (1) the abortion is performed by a **health care provider** [PHYSICIAN
11 LICENSED BY THE STATE MEDICAL BOARD UNDER AS 08.64.200];

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

15 (3) before an abortion is knowingly performed or induced on a
16 pregnant, unmarried, unemancipated woman under 18 years of age, notice or consent
17 have been given as required under AS 18.16.020 or a court has authorized the minor to
18 proceed with the abortion without parental involvement under AS 18.16.030 and the
19 minor consents; for purposes of enforcing this paragraph, there is a rebuttable
20 presumption that a woman who is unmarried and under 18 years of age is
21 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 requirements of AS 18.16.100 and 18.16.110 have been**
27 **satisfied.**

28 * **Sec. 4.** AS 18.16.010(c) is amended to read:

29 (c) A person who knowingly violates a provision of this section, **other than**
30 **(a)(6) of this section**, upon conviction, is punishable by a fine of not more than
31 \$1,000, or by imprisonment for not more than five years, or by both.

1 * **Sec. 5.** AS 18.16.010(g) is amended to read:

2 (g) It is a defense to a prosecution or claim for violation of (a)(3) of this
3 section that, in the clinical judgment of the **health care provider** [PHYSICIAN OR
4 SURGEON], compliance with the requirements of (a)(3) of this section was not
5 possible because [, IN THE CLINICAL JUDGMENT OF THE PHYSICIAN OR
6 SURGEON,] an immediate threat of serious risk to the life or physical health of the
7 pregnant minor from the continuation of the pregnancy created a medical emergency
8 necessitating the immediate performance or inducement of an abortion. In this
9 subsection,

10 (1) "clinical judgment" means a **health care provider's**
11 [PHYSICIAN'S OR SURGEON'S] subjective professional medical judgment
12 exercised in good faith;

13 (2) "defense" has the meaning given in AS 11.81.900(b);

14 (3) "medical emergency" means a condition that, on the basis of the
15 **health care provider's** [PHYSICIAN'S OR SURGEON'S] good faith clinical
16 judgment, so complicates the medical condition of a pregnant minor that

17 (A) an immediate abortion of the minor's pregnancy is
18 necessary to avert the minor's death; or

19 (B) a delay in providing an abortion will create serious risk of
20 medical instability caused by a substantial and irreversible impairment of a
21 major bodily function of the pregnant minor.

22 * **Sec. 6.** AS 18.16.010(h) is amended to read:

23 (h) A [PHYSICIAN OR OTHER] health care provider is liable for failure to
24 obtain the informed consent of a person as required under AS 18.16.060 if the
25 claimant establishes by a preponderance of the evidence that the provider has failed to
26 inform the person of the common risks and reasonable alternatives to the proposed
27 abortion procedure and that, but for that failure, the person would not have consented
28 to the abortion procedure.

29 * **Sec. 7.** AS 18.16.010(i) is amended to read:

30 (i) It is a defense to any action for the alleged failure to obtain the informed
31 consent of a person under (h) of this section that

1 (1) the risk not disclosed is too commonly known or is too remote to
2 require disclosure; or

3 (2) the person who is the subject of the alleged failure to obtain the
4 informed consent stated to the [PHYSICIAN OR OTHER] health care provider that
5 the person would or would not undergo the abortion procedure regardless of the risk
6 involved or that the person did not want to be informed of the matters to which the
7 person would be entitled to be informed.

8 * **Sec. 8.** AS 18.16.010(j) is amended to read:

9 (j) In an action under (h) of this section, there is a rebuttable presumption that
10 an abortion was performed with the pregnant woman's informed consent if the person
11 who performed the abortion submits into evidence a copy of the [WOMAN'S] written
12 certification required under AS 18.16.060(b).

13 * **Sec. 9.** AS 18.16.020(b) is amended to read:

14 (b) In (a)(1) of this section, actual notice must be given or attempted to be
15 given in person or by telephone by either **a health care provider** [THE PHYSICIAN]
16 who has referred the minor for an abortion or by the **health care provider**
17 [PHYSICIAN] who intends to perform the abortion. An individual designated by the
18 **health care provider** [PHYSICIAN] may initiate the notification process, but the
19 actual notice shall be given by the **health care provider** [PHYSICIAN]. The **health**
20 **care provider** [PHYSICIAN] giving notice of the abortion must document the notice
21 or attempted notice in the minor's medical record and take reasonable steps to verify
22 that the person to whom the notice is provided is the parent, legal guardian, or
23 custodian of the minor seeking an abortion. Reasonable steps to provide notice must
24 include

25 (1) if in person, requiring the person to show government-issued
26 identification along with additional documentation of the person's relationship to the
27 minor; additional documentation may include the minor's birth certificate or a court
28 order of adoption, guardianship, or custodianship;

29 (2) if by telephone, initiating the call, attempting to verify through a
30 review of published telephone directories that the number to be dialed is that of the
31 minor's parent, legal guardian, or custodian, and asking questions of the person to

1 verify that the person's relationship to the minor is that of parent, legal guardian, or
 2 custodian; when notice is attempted by telephone but the **health care provider**
 3 **[PHYSICIAN]** or **health care provider's** **[PHYSICIAN'S]** designee is unsuccessful in
 4 reaching the parent, legal guardian, or custodian, the **health care provider's**
 5 **[PHYSICIAN'S]** designee shall continue to initiate the call, in not less than two-hour
 6 increments, for not less than five attempts, in a 24-hour period.

7 * **Sec. 10.** AS 18.16.020(c) is amended to read:

8 (c) If actual notice is attempted unsuccessfully after reasonable steps have
 9 been taken as described under (b) of this section, **a** **[THE]** referring physician or the
 10 **health care provider** **[PHYSICIAN]** intending to perform an abortion on a minor
 11 may provide constructive notice to the minor's parent, legal guardian, or custodian.
 12 Constructive notice is considered to have been given 48 hours after the certified notice
 13 is mailed. In this subsection, "constructive notice" means that notice of the abortion
 14 was provided in writing and mailed by certified mail, delivery restricted to addressee
 15 only, to the last known address of the parent, legal guardian, or custodian after taking
 16 reasonable steps to verify the mailing address.

17 * **Sec. 11.** AS 18.16.020(d) is amended to read:

18 (d) A **health care provider** **[PHYSICIAN]** who suspects or receives a report
 19 of abuse under this section shall report the abuse as provided under AS 47.17.020.

20 * **Sec. 12.** AS 18.16.020(e) is amended to read:

21 (e) A **health care provider** **[PHYSICIAN]** who is informed that the
 22 pregnancy of a minor resulted from criminal sexual assault of the minor must retain,
 23 and take reasonable steps to preserve, the products of conception and evidence
 24 following the abortion for use by law enforcement officials in prosecuting the crime.

25 * **Sec. 13.** AS 18.16.040 is amended to read:

26 **Sec. 18.16.040. Reports.** For each month in which an abortion is performed on
 27 a minor by a **health care provider** **[PHYSICIAN]**, the **health care provider**
 28 **[PHYSICIAN]** shall file a report with the Department of Health indicating the number
 29 of abortions performed on a minor for that month, the age of each minor, the number
 30 of previous abortions performed on each minor, if any, and the number of pregnancies
 31 of each minor, if any, and the number of consents provided under each of the

1 exceptions enumerated under AS 18.16.020(a)(1) - (4). A report filed under this
 2 section may not include identifying information of the minor other than the minor's
 3 age.

4 * **Sec. 14.** AS 18.16.060(b) is amended to read:

5 (b) Consent to an abortion is informed and voluntary when

6 **(1) the health care provider who is to perform the abortion**
 7 [WOMAN OR ANOTHER PERSON WHOSE CONSENT IS REQUIRED] certifies
 8 in writing that the **health care provider** [PHYSICIAN WHO IS TO PERFORM THE
 9 ABORTION], a member of the **health care provider's** [PHYSICIAN'S] staff who is a
 10 licensed health care provider, or the referring **health care provider** [PHYSICIAN]
 11 has verbally informed the woman or another person whose consent is required of the
 12 name of the **health care provider** [PHYSICIAN] who will perform the procedure and
 13 the gestational estimation of the pregnancy at the time the abortion is to be performed
 14 and has provided

15 **(A)** [EITHER (1)] the Internet information required to be
 16 maintained under AS 18.05.032; the **health care provider** [PHYSICIAN] or a
 17 member of the **health care provider's** [PHYSICIAN'S] staff who is a licensed
 18 health care provider shall provide a copy of the Internet information [IF A
 19 PERSON REQUESTS A WRITTEN COPY]; if a member of the **health care**
 20 **provider's** [PHYSICIAN'S] staff provides the information required under this
 21 paragraph, the member of the **health care provider's** [PHYSICIAN'S] staff
 22 shall offer the opportunity to consult with the **health care provider**
 23 [PHYSICIAN];

24 **(B)** [OR (2)] information about the nature and risks of
 25 undergoing or not undergoing the proposed procedure that a reasonable patient
 26 would consider material to making a voluntary and informed decision of
 27 whether to undergo the procedure;

28 **(2) the health care provider who is to perform the abortion, or a**
 29 **member of the health care provider's staff who is a licensed health care provider,**
 30 **informs the woman of the particular medical risks associated with the procedure,**
 31 **including, when medically accurate,**

1 **(A) the risks of infection and hemorrhage;**

2 **(B) the potential danger to a subsequent pregnancy and of**
 3 **infertility;**

4 **(C) the possibility of increased risk of breast cancer**
 5 **following a performed or induced abortion and the natural protective**
 6 **effect of a completed pregnancy in avoiding breast cancer; and**

7 **(D) the medical risks associated with carrying the child to**
 8 **term; and**

9 **(3) the woman is provided with the name of each person who**
 10 **provides or explains the information required by this subsection.**

11 * **Sec. 15.** AS 18.16.060(c) is amended to read:

12 (c) The information required in (b) of this section shall be provided before the
 13 procedure in a private setting to protect privacy, maintain the confidentiality of the
 14 decision, ensure that the information focuses on the individual circumstances, and
 15 ensure an adequate opportunity to ask questions. Provision of the information
 16 telephonically or by electronic mail, regular mail, or facsimile transmittal before the
 17 person's appointment satisfies the requirements of this subsection as long as the person
 18 whose consent is required under (a) of this section has an opportunity to ask questions
 19 of the **health care provider** [PHYSICIAN] after receiving the information.

20 * **Sec. 16.** AS 18.16.060(d) is amended to read:

21 (d) Notwithstanding (a) of this section, informed consent that meets the
 22 requirements of (a) - (c) of this section is not required in the case of a medical
 23 emergency or if the pregnancy is the result of sexual assault under AS 11.41.410 -
 24 11.41.427, sexual abuse of a minor under AS 11.41.434 - 11.41.440, incest under
 25 AS 11.41.450, or an offense under a law of another jurisdiction with elements similar
 26 to one of these offenses. In this subsection, "medical emergency" means a condition
 27 that, on the basis of a **health care provider's** [PHYSICIAN'S] good faith clinical
 28 judgment, so complicates the medical condition of a pregnant woman that

29 (1) the immediate termination of the woman's pregnancy is necessary
 30 to avert the woman's death; or

31 (2) a delay in providing an abortion will create serious risk of

1 substantial and irreversible impairment of a major bodily function of the woman.

2 * **Sec. 17.** AS 18.16.090 is amended to read:

3 **Sec. 18.16.090. Definitions.** In AS 18.16.010 - 18.16.090 [THIS CHAPTER],

4 (1) "abortion" means the use or prescription of an instrument,
5 medicine, drug, or other substance or device to terminate the pregnancy of a woman
6 known to be pregnant, except that "abortion" does not include the termination of a
7 pregnancy if done with the intent to

8 (A) save the life or preserve the health of the unborn child;

9 (B) deliver the unborn child prematurely to preserve the health
10 of both the pregnant woman and the woman's child; or

11 (C) remove a dead unborn child;

12 (2) **"health care provider" has the meaning given in AS 18.23.070;**

13 (3) **"unemancipated"** means that a woman who is unmarried and under
14 17 years of age has not done any of the following:

15 (A) entered the armed services of the United States;

16 (B) become employed and self-subsisting;

17 (C) been emancipated under AS 09.55.590; or

18 (D) otherwise become independent from the care and control of
19 the woman's parent, guardian, or custodian.

20 * **Sec. 18.** AS 18.16 is amended by adding new sections to read:

21 **Article 2. Fetal Heartbeat; Additional Requirements.**

22 **Sec. 18.16.100. Determination of presence of fetal heartbeat required;**
23 **record.** (a) Except as otherwise provided in AS 18.16.100 - 18.16.270, a health care
24 provider may not knowingly perform or induce an abortion on a woman unless the
25 health care provider has determined, in accordance with this section, whether the
26 woman's unborn child has a detectable fetal heartbeat.

27 (b) In making a determination under (a) of this section, a health care provider
28 shall use a test that is

29 (1) consistent with standard medical practice; and

30 (2) appropriate for the estimated gestational age of the unborn child
31 and the condition of the woman and her pregnancy.

1 (c) A health care provider making a determination under (a) of this section
2 shall record in the woman's medical record

3 (1) the estimated gestational age of the unborn child;

4 (2) the method used to estimate the gestational age; and

5 (3) the test used for detecting a fetal heartbeat, the date and time the
6 test is performed, and the result of the test.

7 (d) In this section, "standard medical practice" means the degree of skill, care,
8 and diligence that a health care provider of ordinary judgment, learning, and skill
9 would employ in like circumstances.

10 **Sec. 18.16.110. Prohibited abortion of unborn child with detectable fetal**
11 **heartbeat; effect.** (a) Except as provided in AS 18.16.120 and 18.16.130, a health
12 care provider may not knowingly perform or induce an abortion on a woman if the
13 health care provider detects a fetal heartbeat for the unborn child or fails to perform a
14 test in accordance with AS 18.16.100 to detect a fetal heartbeat.

15 (b) A health care provider does not violate this section if the health care
16 provider performs a test in accordance with AS 18.16.100 to detect a fetal heartbeat
17 and does not detect a fetal heartbeat.

18 **Sec. 18.16.120. Exception for medical emergency; records.** (a)
19 AS 18.16.100 and 18.16.110 do not apply if a health care provider believes a medical
20 emergency exists that prevents compliance with those sections.

21 (b) A health care provider who performs or induces an abortion under
22 circumstances described in (a) of this section shall

23 (1) make written notations in the woman's medical record of

24 (A) the health care provider's belief that a medical emergency
25 necessitated the abortion; and

26 (B) the medical condition of the woman that prevented
27 compliance with AS 18.16.100 or 18.16.110; and

28 (2) maintain in the health care provider's practice records a copy of the
29 notations made under (1) of this subsection.

30 **Sec. 18.16.130. Exception for preemption and intergovernmental**
31 **immunity.** AS 18.16.100 and 18.16.110 do not apply to an abortion performed at the

1 behest of a federal agency, contractor, or employee that is carrying out duties under
 2 federal law if a prohibition on the abortion would violate the doctrine of preemption or
 3 doctrine of intergovernmental immunity.

4 **Sec. 18.16.140. Limitations on public enforcement.** Notwithstanding any
 5 other provision of law, the requirements of AS 18.16.100 and 18.16.110 shall be
 6 enforced exclusively through the private civil actions described in AS 18.16.150.
 7 Except as provided in AS 18.16.150, the state, a political subdivision of the state, a
 8 district attorney, or an officer or employee of the state or a political subdivision of the
 9 state may not enforce or threaten to enforce, directly or indirectly, a provision of
 10 AS 18.16.100 or 18.16.110 against a person, and a violation of AS 18.16.100 or
 11 18.16.110 may not be used to justify or trigger the enforcement of another law or
 12 adverse consequence under another law.

13 **Sec. 18.16.150. Civil liability.** (a) A person, other than the state, a political
 14 subdivision of the state, or an officer or employee of a state or a political subdivision
 15 of the state, may bring a civil action against another person who

16 (1) performs or induces an abortion in violation of AS 18.16.100 -
 17 18.16.270;

18 (2) knowingly engages in conduct that aids or abets the performance or
 19 inducement of an abortion, including paying for or reimbursing the costs of an
 20 abortion through insurance or otherwise, if the abortion is performed or induced in
 21 violation of AS 18.16.100 - 18.16.270, regardless of whether the person knows or
 22 should know that the abortion is performed or induced in violation of AS 18.16.100 -
 23 18.16.270; or

24 (3) intends to engage in the conduct described in (1) or (2) of this
 25 subsection.

26 (b) If a claimant prevails in an action brought under this section, the court
 27 shall award

28 (1) injunctive relief sufficient to prevent the defendant from violating
 29 AS 18.16.100 - 18.16.270 or engaging in acts that aid or abet the performance of
 30 abortions performed in violation of AS 18.16.100 - 18.16.270;

31 (2) statutory damages in an amount of not less than \$10,000 for each

1 abortion that the defendant performed or induced in violation of AS 18.16.100 -
2 18.16.270 and for each abortion performed or induced in violation of AS 18.16.100 -
3 18.16.270 of which the defendant aided or abetted the performance or inducement;

4 (3) nominal and compensatory damages if the plaintiff has suffered
5 injury or harm, including loss of consortium and emotional distress, resulting from the
6 defendant's conduct; and

7 (4) costs and attorney fees.

8 (c) Notwithstanding (b) of this section, a court may not award relief under
9 (b)(2) or (4) of this section in response to a violation of (a)(1) or (2) of this section if
10 the defendant demonstrates that the defendant previously paid the full amount of
11 statutory damages awarded under (b)(2) of this section in a previous action for that
12 particular abortion performed or induced in violation of AS 18.16.100 - 18.16.270, or
13 for the particular conduct that aided or abetted the performance or inducement of an
14 abortion performed or induced in violation of AS 18.16.100 - 18.16.270.

15 (d) Notwithstanding any other provision of law, a person may not bring an
16 action under this section unless the action is commenced within six years after the
17 accrual of the cause of action.

18 (e) The following are not defenses to an action brought under this section:

19 (1) a defendant's ignorance or mistake of law;

20 (2) a defendant's belief that the requirements of AS 18.16.100 -
21 18.16.270 are or were unconstitutional;

22 (3) a defendant's reliance on a court decision that has been overruled
23 on appeal or by a subsequent court, even if that court decision had not been overruled
24 when the defendant engaged in conduct that violates AS 18.16.100 - 18.16.270;

25 (4) a defendant's reliance on a state or federal court decision that is not
26 binding on the court in which the action has been brought;

27 (5) nonmutual issue preclusion or nonmutual claim preclusion;

28 (6) the consent of the woman to the abortion; or

29 (7) any claim that the enforcement of AS 18.16.100 - 18.16.270 or the
30 imposition of civil liability against the defendant violates the constitutional rights of a
31 third party, except as provided in AS 18.16.160.

1 (f) This section may not be construed to impose liability for speech or conduct
2 protected by the First Amendment to the Constitution of the United States, as made
3 applicable to the states through the United States Supreme Court's interpretation of the
4 Fourteenth Amendment to the Constitution of the United States, or by art. I, sec. 5,
5 Constitution of the State of Alaska.

6 (g) Notwithstanding any other provision of law, the state, a political
7 subdivision of the state, a district attorney, or an officer or employee of the state or a
8 political subdivision of the state may not

9 (1) act in concert or participation with a person who brings an action
10 under this section;

11 (2) establish or attempt to establish an agency or fiduciary relationship
12 with a plaintiff who brings an action under this section;

13 (3) attempt to control or influence a plaintiff's decision to bring an
14 action under this section or the plaintiff's conduct of the litigation; or

15 (4) intervene in an action brought under this section.

16 (h) Subsection (g) of this section does not prohibit a person or entity described
17 in that subsection from filing an amicus curiae brief in an action brought under this
18 section, so long as that person or entity does not act in concert or participation with a
19 plaintiff bringing the action or violate any provision of that subsection.

20 (i) Notwithstanding any other provision of law, a court may not award costs or
21 attorney fees to a defendant who is sued under this section.

22 (j) Notwithstanding any other provision of law, a civil action may not be
23 brought under this section

24 (1) against a woman on whom an abortion was performed or induced
25 or attempted to be performed or induced in violation of this chapter or against a
26 woman who intends or seeks to abort her unborn child in violation of this chapter;

27 (2) against a person or entity that performs or attempts to perform, or
28 aids or abets or attempts to aid or abet the performance of, an abortion at the behest of
29 a federal agency, contractor, or employee that is carrying out duties under federal law
30 if a prohibition on that abortion would violate the doctrine of preemption or doctrine
31 of intergovernmental immunity;

1 (3) against a common carrier that transports a pregnant woman to an
2 abortion provider if the common carrier is unaware that the woman intends to abort
3 her unborn child; or

4 (4) by a person who impregnated a woman seeking an abortion
5 through an act of rape, sexual assault, sexual abuse of a minor, or incest.

6 **Sec. 18.16.160. Civil liability: defenses.** (a) A defendant in an action brought
7 under AS 18.16.150(a)(2) or (3) may assert an affirmative defense to liability if the
8 defendant reasonably believed, after conducting a reasonable investigation, that the
9 health care provider performing or inducing the abortion complied with or would
10 comply with AS 18.16.100 - 18.16.270.

11 (b) The defendant has the burden of proving an affirmative defense under (a)
12 of this section by a preponderance of the evidence.

13 (c) Nothing in AS 18.16.100 - 18.16.270 limits or precludes a defendant from
14 asserting the defendant's personal constitutional rights as a defense to liability under
15 AS 18.16.150, and a court may not award relief under AS 18.16.150 if the conduct for
16 which the defendant has been sued was an exercise of a state or federal constitutional
17 right that personally belongs to the defendant.

18 (d) Nothing in AS 18.16.100 - 18.16.270 limits or precludes a defendant from
19 asserting the unconstitutionality of a provision of this chapter or another law of the
20 state as a defense to liability under AS 18.16.150.

21 **Sec. 18.16.170. Civil liability: venue.** (a) A civil action brought under
22 AS 18.16.150 may be brought in

23 (1) the judicial district in which all or a substantial part of the events or
24 omissions giving rise to the claim occurred;

25 (2) the judicial district of residence of an individual defendant in the
26 action at the time the cause of action accrued;

27 (3) the judicial district of the principal office in this state of a
28 defendant in the action that is not an individual; or

29 (4) the judicial district of residence of the claimant if the claimant is an
30 individual residing in this state.

31 (b) Notwithstanding any other provision of law, a civil action brought under

1 AS 18.16.150 in a venue listed in (a) of this section may not be transferred to a
2 different venue without the written consent of all parties.

3 **Sec. 18.16.180. Sovereign, governmental, and official immunity preserved.**

4 (a) Notwithstanding any other provision of law, the state shall have sovereign
5 immunity, each political subdivision of the state shall have governmental immunity,
6 and each officer and employee of the state or a political subdivision of the state shall
7 have official immunity and sovereign or governmental immunity, as applicable, in an
8 action, claim, counterclaim, or legal or equitable action that challenges the validity of
9 a provision or application of AS 18.16.100 - 18.16.270, on constitutional grounds or
10 otherwise, or that seeks to prevent or enjoin the state, a political subdivision of the
11 state, or an officer or employee of the state or a political subdivision of the state from
12 enforcing a provision or application of AS 18.16.100 - 18.16.270, unless that
13 immunity has been abrogated or preempted by federal law in a manner consistent with
14 the Constitution of the United States.

15 (b) Notwithstanding any other provision of law, a provision of state law may
16 not be construed to waive or abrogate an immunity described in this section unless the
17 provision expressly waives or abrogates immunity with specific reference to this
18 section.

19 (c) Notwithstanding any other provision of law, an attorney representing the
20 state, a political subdivision of the state, or an officer or employee of the state or a
21 political subdivision of the state may not waive an immunity described in this section
22 or take an action that would result in a waiver of that immunity.

23 (d) Notwithstanding any other provision of law, a court of this state does not
24 have jurisdiction to consider an action, claim, or counterclaim that seeks declaratory or
25 injunctive relief to prevent the state, a political subdivision of the state, an officer or
26 employee of the state or a political subdivision of the state, or another person from
27 enforcing a provision or application of AS 18.16.100 - 18.16.270 or from filing a civil
28 action under this chapter.

29 (e) Nothing in AS 18.16.100 - 18.16.270 may be construed to prevent a
30 defendant from asserting the invalidity or unconstitutionality of a provision or
31 application of this chapter or another law of the state as a defense to an action, claim,

1 or counterclaim brought against that litigant.

2 **Sec. 18.16.190. Award of attorney fees in actions challenging abortion**
 3 **laws.** (a) Notwithstanding any other provision of law, a person, including an entity,
 4 attorney, or law firm, that seeks declaratory or injunctive relief to prevent the state, a
 5 political subdivision of the state, a governmental entity or public official in the state,
 6 or another person in the state from enforcing a statute, ordinance, regulation, or other
 7 type of law that regulates or restricts abortion or that limits taxpayer funding for
 8 individuals or entities that perform or promote abortions, in a state or federal court, or
 9 that represents a litigant seeking the relief in a state or federal court, is jointly and
 10 severally liable to pay the costs and attorney fees of the prevailing party.

11 (b) For purposes of this section, a party is considered a prevailing party if a
 12 state or federal court

13 (1) dismisses a claim or cause of action brought against the party by
 14 the litigant that seeks the declaratory or injunctive relief described in (a) of this
 15 section, regardless of the reason for the dismissal; or

16 (2) enters judgment in the party's favor on the claim or cause of action.

17 (c) Regardless of whether a prevailing party sought to recover costs or
 18 attorney fees in the underlying action, a prevailing party under this section may not
 19 bring an action to recover costs and attorney fees against a person, including an entity,
 20 attorney, or law firm, that sought the declaratory or injunctive relief described in (a) of
 21 this section unless the action is commenced within three years after the date on which

22 (1) a dismissal or judgment as described in (b) of this section becomes
 23 final on the conclusion of appellate review; or

24 (2) the time for seeking appellate review expires.

25 (d) It is not a defense to an action brought under (c) of this section that

26 (1) a prevailing party under this section failed to seek recovery of costs
 27 or attorney fees in the underlying action;

28 (2) the court in the underlying action declined to recognize or enforce
 29 the requirements of this section; or

30 (3) the court in the underlying action held that a provision of this
 31 section is invalid, unconstitutional, or preempted by federal law, notwithstanding the

1 doctrines of issue or claim preclusion.

2 **Sec. 18.16.200. Severability.** (a) In accordance with *Leavitt v. Jane L.*, 518
3 U.S. 137 (1996), in which, in the context of determining the severability of a state
4 statute regulating abortion, the United States Supreme Court held that an explicit
5 statement of legislative intent is controlling, it is the intent of the legislature that every
6 provision, section, subsection, sentence, clause, phrase, or word of AS 18.16.100 -
7 18.16.270 and every application of a provision of AS 18.16.100 - 18.16.270 to every
8 person, group of persons, or circumstance are severable from each other.

9 (b) If an application of a provision of AS 18.16.100 - 18.16.270 to a person,
10 group of persons, or circumstance is found by a court to be invalid, preempted, or
11 unconstitutional, or to impose an undue burden on a woman or group of women
12 seeking an abortion, the remaining applications of that provision to all other persons
13 and circumstances shall be severed and preserved, and shall remain in effect. All
14 constitutionally valid applications of the provisions of AS 18.16.100 - 18.16.270, and
15 every application of those provisions that can be enforced without imposing an undue
16 burden on women seeking an abortion, shall be severed from any application that a
17 court finds to be invalid, preempted, or unconstitutional, or to impose an undue burden
18 on women seeking an abortion, and the valid applications shall remain in force, as it is
19 the legislature's intent and priority that every valid application be allowed to stand
20 alone. Even if a reviewing court finds a provision of AS 18.16.100 - 18.16.270 to
21 impose an undue burden in a large or substantial fraction of relevant cases, the
22 applications that do not present an undue burden shall be severed from the remaining
23 applications, shall remain in force, and shall be treated as if the legislature had enacted
24 a statute limited to the persons, group of persons, or circumstances for which the
25 statute's application does not impose an undue burden.

26 (c) The legislature declares that it would have enacted AS 18.16.100 -
27 18.16.270, and each provision, section, subsection, sentence, clause, phrase, and word,
28 and all constitutional applications of the provisions of AS 18.16.100 - 18.16.270,
29 regardless of whether any provision, section, subsection, sentence, clause, phrase,
30 word, or application of AS 18.16.100 - 18.16.270 were declared invalid, preempted, or
31 unconstitutional or to impose an undue burden.

1 (d) If a provision of AS 18.16.100 - 18.16.270 is found by a court to be
 2 unconstitutionally vague, any application of that provision that does not present
 3 constitutional vagueness problems shall be severed and remain in force, consistent
 4 with the severability requirements of (a) - (c) of this section.

5 (e) A court may not decline to enforce the severability requirements of (a) -
 6 (d) of this section on the grounds that severance would rewrite the statute or involve
 7 the court in legislative or lawmaking activity. A court that declines to enforce or
 8 enjoins a state official from enforcing a statutory provision does not rewrite a statute,
 9 as the statute continues to contain the same words as before the court's decision. A
 10 judicial injunction or declaration of unconstitutionality

11 (1) is nothing more than an edict prohibiting enforcement that may
 12 subsequently be vacated by a later court if the later court has a different understanding
 13 of the requirements of the Constitution of the State of Alaska or the Constitution of the
 14 United States;

15 (2) is not a formal amendment of the language in a statute; and

16 (3) no more rewrites a statute than a decision by the executive not to
 17 enforce a duly enacted statute in a limited and defined set of circumstances.

18 (f) If a state or federal court disregards the severability requirements of (a) -
 19 (e) of this section and declares or finds a provision of AS 18.16.100 - 18.16.270
 20 facially unconstitutional, when there are discrete applications of that provision that can
 21 be enforced against a person, a group of persons, or circumstances without violating
 22 federal law, the Constitution of the State of Alaska, or the Constitution of the United
 23 States, or imposing an undue burden on women seeking an abortion, that provision
 24 shall be interpreted, as a matter of state law, as if the legislature had enacted a
 25 provision limited to the person, group of persons, or circumstances for which the
 26 provision's application will not violate federal law, the Constitution of the State of
 27 Alaska, or the Constitution of the United States, or impose an undue burden on women
 28 seeking an abortion, and every court shall adopt this saving construction of that
 29 provision until the court ruling that pronounced the provision facially unconstitutional
 30 is vacated or overruled.

31 **Sec. 18.16.210. Department enforcement.** The department shall enforce

1 AS 18.16.220 - 18.16.250.

2 **Sec. 18.16.220. Required documentation.** (a) If an abortion is performed or
3 induced on a woman because of a medical emergency, the health care provider who
4 performs or induces the abortion shall execute a written document that certifies the
5 abortion is necessary because of a medical emergency and specifies the woman's
6 medical condition requiring the abortion and the medical rationale for the health care
7 provider's conclusion that the abortion is necessary to address the medical condition.

8 (b) A health care provider who executes a document under (a) of this section
9 shall

10 (1) place the document in the woman's medical record; and

11 (2) maintain a copy of the document in the health care provider's
12 practice records.

13 (c) For an abortion other than an abortion described in (a) of this section, a
14 health care provider who performs or induces an abortion on a woman shall execute a
15 written document that specifies that maternal health is not a purpose of the abortion
16 and maintain a copy of the document in the health care provider's practice records.

17 **Sec. 18.16.230. Sonogram required.** (a) Before a sedative or anesthesia is
18 administered to a woman and at least 24 hours before an abortion is performed or
19 induced, or at least two hours before the abortion is performed or induced if the
20 woman waives the 24-hour requirement under (b) of this section,

21 (1) the health care provider who is to perform or induce the abortion or
22 an agent of the health care provider who is a sonographer certified by a national
23 registry of medical sonographers shall perform a sonogram on the woman;

24 (2) the health care provider who is to perform or induce the abortion
25 shall display the sonogram images in a quality consistent with current medical practice
26 and in a manner that allows the woman to view the images;

27 (3) the health care provider who is to perform or induce the abortion
28 shall provide, in a manner understandable to a layperson, an oral explanation of the
29 results of the sonogram, including a medical description of the dimensions of the
30 embryo or fetus, the presence of cardiac activity, and the presence of external
31 members and internal organs; and

1 (4) the health care provider who is to perform or induce the abortion or
2 an agent of the health care provider who is a sonographer certified by a national
3 registry of medical sonographers shall make audible during the sonogram the heart
4 auscultation, if present, for the woman to hear, in a quality consistent with current
5 medical practice, and shall provide, in a manner understandable to a layperson, a
6 simultaneous oral explanation of the heart auscultation.

7 (b) A woman may waive the 24-hour requirement in (a) of this section by
8 certifying that she currently lives 100 miles or more from the nearest abortion provider
9 that is a facility licensed under state law or a facility that performs more than 50
10 abortions in any 12-month period.

11 (c) Before receiving a sonogram under (a) of this section, before an abortion is
12 performed or induced, and before any sedative or anesthesia is administered, a woman
13 shall complete and certify with her signature an election form that states the following:

14 "Abortion and Sonogram Election

15 (1) The information and printed materials described in
16 AS 18.16.060 have been provided and explained to me.

17 (2) I understand the nature and consequences of an
18 abortion.

19 (3) I understand that state law requires that I receive a
20 sonogram before receiving an abortion.

21 (4) I understand that I have the option to view the
22 sonogram images.

23 (5) I understand that during the sonogram the fetal
24 heartbeat must be made audible so that I can hear it.

25 (6) I am making this election of my own free will and
26 without coercion.

27 (7) For a woman who lives 100 miles or more from the
28 nearest abortion provider that is a facility licensed under state law or a
29 facility that performs more than 50 abortions in any 12-month period
30 only:

31 I certify that, because I currently live 100 miles or more

1 from the nearest abortion provider that is a facility licensed
 2 under state law or a facility that performs more than 50
 3 abortions in any 12-month period, I waive the requirement to
 4 wait 24 hours after the sonogram is performed before receiving
 5 the abortion procedure.

6 My place of residence is: _____.

7 _____
 8 Signature

Date."

9 (d) A health care provider may not perform or induce an abortion unless the
 10 health care provider has received a copy of the signed, written certification required by
 11 (c) of this section from the woman.

12 **Sec. 18.16.240. Health care provider reporting requirements.** (a) A health
 13 care provider who performs an abortion at an abortion facility shall complete and
 14 submit, not later than the 15th day of each month, a monthly report to the department
 15 on the abortions performed by the health care provider at the abortion facility. The
 16 report shall be submitted on a form provided by the department. A health care provider
 17 is not required to submit a report for a calendar month in which the health care
 18 provider did not perform an abortion.

19 (b) The report may not identify a patient or include any information that could
 20 lead to the identification of a patient.

21 (c) The report must indicate, for each abortion performed,

22 (1) whether the abortion facility at which the abortion was performed
 23 is licensed under AS 47;

24 (2) the patient's year of birth, race, marital status, and state and
 25 borough or county of residence;

26 (3) the type of abortion procedure performed;

27 (4) the date the abortion was performed;

28 (5) whether the patient survived the abortion and, if the patient did not
 29 survive the abortion, the patient's cause of death;

30 (6) the estimated postfertilization age of the unborn child based on the
 31 best medical judgment of the attending health care provider at the time of the

1 procedure;

2 (7) the date, if known, of the first day of the patient's last menstrual
3 period;

4 (8) the number of previous live births of the patient;

5 (9) the number of previous induced abortions of the patient; and

6 (10) whether the abortion was performed or induced because of a
7 medical emergency and, if the abortion was performed or induced because of a
8 medical emergency, the medical condition of the patient that required the abortion.

9 (d) Except as provided by another law to the contrary, all information and
10 records held by the department under AS 18.16.100 - 18.16.270 are confidential, are
11 not public records under AS 40.25.110 or 40.25.125, and may not be released or made
12 public upon subpoena or otherwise, except that release may be made

13 (1) with the consent of each person, patient, health care provider, and
14 abortion facility identified in the information released;

15 (2) for statistical purposes; information released under this paragraph
16 may not identify any person, patient, health care provider performing an abortion, or
17 abortion facility;

18 (3) to medical personnel, appropriate state agencies, or the district or
19 superior court to enforce AS 18.16.100 - 18.16.270; or

20 (4) to appropriate state licensing boards to enforce state licensing laws.

21 (e) A person who violates (b), (c), or (d) of this section is guilty of a Class A
22 misdemeanor.

23 (f) The department shall establish and maintain a secure electronic reporting
24 system for the submission of the reports required by this section. The department shall
25 adopt procedures to enforce this section.

26 **Sec. 18.16.250. Construction.** (a) AS 18.16.100 - 18.16.270 do not create or
27 recognize a right to abortion before a fetal heartbeat is detected.

28 (b) AS 18.16.100 - 18.16.270 may not be construed to

29 (1) authorize the initiation of a cause of action against or the
30 prosecution of a woman on whom an abortion is performed or induced or attempted to
31 be performed or induced in violation of this chapter;

1 (2) wholly or partly repeal, either expressly or by implication, any
2 other statute that regulates or prohibits abortion; or

3 (3) restrict a political subdivision of the state from regulating or
4 prohibiting abortion in a manner that is at least as stringent as the laws of the state.

5 **Sec. 18.16.260. Constitutional interpretation.** To protect human life, nothing
6 in art. I, sec. 22, of the Constitution of the State of Alaska may be construed to secure
7 or protect a right to an abortion or require the state to fund an abortion.

8 **Sec. 18.16.270. Definitions.** In AS 18.16.100 - 18.16.270,

9 (1) "abortion" has the meaning given in AS 18.16.090;

10 (2) "department" means the Department of Health;

11 (3) "fetal heartbeat" means cardiac activity or the steady and repetitive
12 rhythmic contraction of the fetal heart within the gestational sac;

13 (4) "gestational age" means the amount of time that has elapsed from
14 the first day of a woman's last menstrual period;

15 (5) "gestational sac" means the structure comprising the
16 extraembryonic membranes that envelop an unborn child and that is typically visible
17 by ultrasound after the fourth week of pregnancy;

18 (6) "health care provider" has the meaning given in AS 18.23.070;

19 (7) "pregnancy" means the human female reproductive condition that

20 (A) begins with fertilization;

21 (B) occurs when the woman is carrying the developing human
22 offspring; and

23 (C) is calculated from the first day of a woman's last menstrual
24 period;

25 (8) "unborn child" means a human fetus or embryo in any stage of
26 gestation from fertilization until birth.

27 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 **INDIRECT COURT RULE AMENDMENTS.** (a) AS 18.16.150(i) and 18.16.190,
30 enacted by sec. 18 of this Act, have the effect of changing Rule 82, Alaska Rules of Civil
31 Procedure, and Rule 508, Alaska Rules of Appellate Procedure, by limiting the court's

1 discretion in awarding costs and attorney fees in certain cases.

2 (b) AS 18.16.170(b), enacted by sec. 18 of this Act, has the effect of changing Rule 3,
3 Alaska Rules of Civil Procedure, by permitting a plaintiff to commence an action in any
4 judicial district and by preventing the court from granting a contested change of venue
5 motion.

6 * **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 **CONDITIONAL EFFECT.** (a) AS 18.16.150(i) and 18.16.190, enacted by sec. 18 of
9 this Act, take effect only if sec. 19(a) of this Act receives the two-thirds majority vote of each
10 house required by art. IV, sec. 15, Constitution of the State of Alaska.

11 (b) AS 18.16.170(b), enacted by sec. 18 of this Act, takes effect only if sec. 19(b) of
12 this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
13 Constitution of the State of Alaska.

14 * **Sec. 21.** This Act takes effect immediately under AS 01.10.070(c).