

1 IN THE HOUSE

BY MARTIN

2 HOUSE BILL NO. 768

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the regulation of abortions; adopt-
7 ing an Unborn Child Protection Act; and providing for
8 an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. LEGISLATIVE POLICY. It is the intention and policy of the
11 legislature to fulfill its constitutional duty to protect the fundamental
12 right of all human beings to life from the moment of conception and to pro-
13 tect and promote unborn human life and maternal health by regulating abor-
14 tions in conformity with the constitution and laws of the United States and
15 of the State of Alaska. Therefore, the legislature declares and finds that
16 the unborn child is a living human being from the moment of conception and is
17 a legal person possessed of and entitled to the right to life under the
18 constitution and laws of the state, and it is the policy of the state to
19 prohibit abortions unless necessary for the preservation of the mother's
20 life, consistent with the constitution and laws of the United States and of
21 the state.

22 * Sec. 2. AS 11.81.900(39) is amended to read:

23 (39) "person" means a natural person including an unborn
24 child at any stage of its development and when appropriate, an organiza-
25 tion, government, or governmental instrumentality;

26 * Sec. 3. AS 18 is amended by adding a new chapter to read:

27 CHAPTER 27. UNBORN CHILD PROTECTION ACT.

28 ARTICLE 1. PROTECTION OF UNBORN CHILD.

29 Sec. 18.27.010. UNBORN CHILD UNDER CRIMINAL CODE. A woman and her

1 physician are not subject to AS 11 for participation in an abortion
2 procedure that is consistent with the provisions of this chapter which
3 causes death or injury to an unborn child.

4 Sec. 18.27.020. WRONGFUL DEATH. (a) An unborn child who had the
5 probability of eventual birth whose death was caused by the wrongful act
6 or omission of another may maintain an action for wrongful death under
7 AS 09.55.570 - 09.55.580.

8 (b) A person may not maintain a wrongful death action against the
9 woman or her physician for the death of an unborn child resulting from
10 an abortion procedure that is consistent with this chapter.

11 (c) In a wrongful death action brought under AS 09.55.570 - 09.55.-
12 580 and under (a) of this section, the person causing the death is
13 liable to the plaintiff for

14 (1) the actual damages caused or \$1,000, whichever is greater;

15 (2) exemplary damages determined by the court or jury when
16 the death is caused by the wilful act or omission or the gross negli-
17 gence of the defendant; and

18 (3) costs and reasonable attorney fees.

19 Sec. 18.27.030. MEDICAL TREATMENT. The right to medical treatment
20 of a live-born child in the course of an abortion procedure is the same
21 as the right of a child born prematurely.

22 Sec. 18.27.040. CLINICAL RESEARCH ON PREGNANT WOMAN. (a) A
23 pregnant woman may not be a subject in clinical research activity unless
24 the purpose of the activity is to meet the health needs of the woman and
25 unless the unborn child will be placed at risk only to the minimum
26 extent necessary to meet those needs or unless the risk to the unborn
27 child is minimal.

28 (b) Clinical research activity permitted under (a) of this section
29 may be conducted only if the mother and father are legally competent and

1 have given their informed consent.

2 (c) The father's consent need not be secured if

3 (1) the purpose of the activity is to meet the health needs
4 of the mother;

5 (2) his identity or whereabouts cannot reasonably be ascer-
6 tained or he is not reasonably available; or

7 (3) the pregnancy resulted from rape or incest.

8 Sec. 18.27.050. CLINICAL RESEARCH ON UNBORN CHILD. (a) An unborn
9 child may not be a subject in clinical research activity unless the
10 purpose of the activity is to meet the health needs of the unborn child
11 and the unborn child will be placed at risk only to the minimum extent
12 necessary to meet those needs or the risk to the unborn child is mini-
13 mal.

14 (b) Clincial research activity permitted under (a) of this section
15 may be conducted only if the mother and father are legally competent and
16 have given their informed consent.

17 (c) The father's consent need not be secured if

18 (1) his identity or whereabouts cannot reasonably be ascer-
19 tained or he is not reasonably available; or

20 (2) the pregnancy resulted from rape or incest.

21 Sec. 18.27.060. CLINICAL RESEARCH ON LIVE-BORN CHILD. (a) A
22 live-born child may not be a subject in clinical research activity
23 unless the purpose of the activity is to meet the health needs of the
24 child and the child will be placed at risk only to the minimum extent
25 necessary to meet those needs.

26 (b) Clincial research activity permitted under (a) of this section
27 may be conducted only if the nature of the investigation is such that
28 mentally competent adults would not be suitable subjects and the mother
29 and father are legally competent and have given their informed consent.

1 (c) The father's consent need not be secured if

2 (1) his identity or whereabouts cannot reasonably be ascer-
3 tained or he is not reasonably available; or

4 (2) the pregnancy resulted from rape or incest.

5 Sec. 18.27.070. PROHIBITIONS ON CLINICAL RESEARCH GENERALLY. (a)
6 Clinical research activity involving an unborn child, a live-born child,
7 or a pregnant woman may not be conducted unless

8 (1) appropriate studies have been completed on animals and on
9 persons who are not pregnant;

10 (2) except where the purpose of the activity is to meet the
11 health needs of the unborn child, there is no discernible risk to the
12 unborn child and the activity offers the least possible risk for achiev-
13 ing the objectives of the activity;

14 (3) the individuals engaged in the research activity will not
15 decide the timing, method, and procedures used to terminate the preg-
16 nancy, or the viability of the unborn child at the termination of the
17 pregnancy; and

18 (4) procedures which may cause more than minimum risk to the
19 unborn child or the pregnant woman will not be used to terminate the
20 pregnancy solely to benefit the research activity.

21 (b) No monetary or other inducement may be offered to a person to
22 terminate pregnancy or subject an unborn or live-born child to clinical
23 research activity.

24 (c) Consent to involve a pregnant woman or an unborn child as a
25 subject in clinical research activity is not valid unless the persons
26 listed in AS 18.27.040 - 18.27.060, as applicable, have been given the
27 following:

28 (1) a fair explanation of the procedures to be followed and
29 their purposes, including identification of experimental procedures;

1 (2) a description of possible attendant discomforts and risks
2 reasonably to be expected;

3 (3) a description of benefits reasonably to be expected;

4 (4) a disclosure of appropriate alternative procedures that
5 might be advantageous for the subject;

6 (5) an offer to answer inquiries concerning the procedures;
7 and

8 (6) information that the person is free to withdraw consent
9 and discontinue participation in the activity at any time.

10 ARTICLE 2. STATE SUPPORT OF CHILDBIRTH.

11 Sec. 18.27.080. STATE POLICY FAVORING CHILDBIRTH OVER ABORTION.

12 It is the policy of the state that normal childbirth is to be given
13 preference, encouragement, and support, by law over abortion.

14 Sec. 18.27.090. SUBSIDY FOR ABORTION PROHIBITED. State money may
15 not be used by an agency of the state or of a political subdivision for
16 performing or promoting the performance of an abortion unless the abor-
17 tion is necessary to prevent the death of the woman.

18 Sec. 18.27.100. FAMILY PLANNING FUNDING. State money may not be
19 granted to a person or to a public or private agency for programs relat-
20 ing to the performance, reference, or counseling of women for the per-
21 formance of abortions.

22 Sec. 18.27.110. HEALTH INSURANCE CONTRACTS. Health insurance
23 contracts, plans, or policies issued in the state may not provide cover-
24 age for abortions except by an optional rider for which there is paid an
25 additional premium. This section does not apply to the performance of
26 an abortion necessary to prevent the death of the woman.

27 Sec. 18.27.120. PROHIBITION OF ABORTION IN GOVERNMENT HOSPITALS.
28 A person may not perform an abortion in a hospital owned, maintained, or
29 operated by the state or a state agency or by a political subdivision of

1 the state unless the abortion is necessary to prevent the death of the
2 woman.

3 Sec. 18.27.130. DENIAL OF TAX-EXEMPT STATUS AND GOVERNMENT ASSIST-
4 ANCE TO FACILITIES AND HOSPITALS PERFORMING ABORTIONS. A facility or
5 hospital which allows or authorizes the performance of an abortion that
6 is not necessary to prevent the death of the woman is not eligible for
7 tax-exempt status or for governmental assistance in any form from or
8 through the state or its political subdivisions.

9 ARTICLE 3. FREEDOM OF CONSCIENCE.

10 Sec. 18.27.140. POLICY. It is the policy of the state to respect
11 and protect the right of conscience of an individual and to prohibit
12 discrimination, disqualification, coercion, disability, or imposition of
13 liability upon an individual

14 (1) who refuses to obtain, receive or accept medical services;
15 or

16 (2) who is engaged in the delivery of medical services,
17 whether acting individually or in association with other individuals.

18 Sec. 18.27.150. FREEDOM OF CONSCIENCE. (a) A physician or nurse
19 may not be held civilly or criminally liable for refusal to perform,
20 assist, counsel, suggest, recommend, refer, or participate in a medical
21 procedure which is contrary to the conscience of the physician or nurse.

22 (b) The provisions of (a) of this section do not apply where there
23 is an emergency need for an abortion and the continuation of the preg-
24 nancy would prove an immediate threat and grave risk to the life or
25 health of the pregnant woman.

26 Sec. 18.27.160. DISCRIMINATION IN EMPLOYMENT. A person may not
27 discriminate against an individual in licensing, hiring, promotion,
28 transfer, staff appointment, hospital or other privileges, because the
29 individual refuses to receive, obtain, accept, perform, assist, counsel,

1 suggest, recommend, refer, or participate in a medical procedure con-
2 trary to conscience.

3 Sec. 18.27.170. PHYSICIAN'S DUTY TO PATIENT. Nothing in AS 18.27.-
4 140 - 18.27.220 relieves a physician from the duty to inform an adult
5 patient of the patient's condition, prognosis and risks. However, a
6 physician has no duty to perform, assist, counsel, suggest, recommend,
7 refer, or participate in medical procedures contrary to conscience.

8 Sec. 18.27.180. DISCRIMINATION IN PUBLIC ASSISTANCE. A public
9 officer or agency may not deny or condition aid, assistance, or benefits
10 because the recipient refuses to participate in medical procedures
11 contrary to conscience.

12 Sec. 18.27.190. INSTITUTIONAL IMMUNITY. (a) A person who owns,
13 operates, or manages a medical facility may not be held civilly or
14 criminally liable to a person, estate, or public or private entity by
15 reason of refusal of the medical facility to permit or provide medical
16 services which violate its ethical guidelines, constitution, bylaws,
17 articles of incorporation, or regulations.

18 (b) The provisions of (a) of this section do not apply where there
19 is an emergency need for an abortion and the continuation of the preg-
20 nancy would prove an immediate threat and grave risk to the life or
21 health of the pregnant woman.

22 Sec. 18.27.200. DISCRIMINATION AGAINST MEDICAL FACILITY. A person,
23 public or private institution, or public officer may not discriminate
24 against a person operating an existing medical facility or attempting to
25 establish a new medical facility because of the refusal of the person
26 planning, proposing, or operating a medical facility to permit or perform
27 medical services which violate its existing or proposed ethical guide-
28 lines, constitution, bylaws, articles of incorporation, or regulations.

29 Sec. 18.27.210. CIVIL REMEDY. (a) A person injured by an action

1 prohibited under AS 18.27.140 - 18.27.220 has a claim and may recover
2 treble damages, including pain and suffering, but not less than \$2,500,
3 and costs and attorney fees.

4 (b) The remedy authorized under (a) of this section is cumulative
5 and not exclusive of other remedies authorized under other state or
6 federal laws.

7 Sec. 18.27.220. EXCEPTION. Nothing in AS 18.27.140 - 18.27.220
8 excuses a person, public or private institution, or public officer from
9 liability for refusal to permit or provide a form of medical care if the
10 person, public or private institution, or public officer has entered
11 into a contract to provide that form of medical care.

12 ARTICLE 4. REGULATION OF THE ABORTION PROCEDURE.

13 Sec. 18.27.230. ABORTION DURING FIRST TRIMESTER. An abortion may
14 not be performed upon a pregnant woman before the end of the first
15 trimester of her pregnancy unless by a physician licensed to practice
16 medicine in the state, in a hospital or an abortion facility.

17 Sec. 18.27.240. ABORTION AFTER FIRST TRIMESTER. An abortion may
18 not be performed upon a pregnant woman after the end of the first tri-
19 mester of her pregnancy unless by a board eligible or certified obstetri-
20 cian and gynecologist in a hospital.

21 Sec. 18.27.250. CONSENT. (a) A physician may not perform an
22 abortion unless, before the abortion, the physician certifies in writing
23 that the woman has given her voluntary and written informed consent
24 after the physician had advised her as required under AS 18.27.260 not
25 more than 30 days or less than 48 hours before she consents to the
26 abortion. The physician shall certify in writing the marital status and
27 age of the pregnant woman based on proof offered by her.

28 (b) An abortion may not be performed upon an unemancipated minor
29 during the first trimester of the minor's pregnancy until the attending

1 physician certifies in writing that each parent of the minor has been
2 provided by the physician in person with the materials described in (a)
3 of this section at least 24 hours before the consent of the minor to the
4 abortion or unless the physician certifies in writing that he has caused
5 the information described in (a) of this section to be mailed by certi-
6 fied mail to each parent of the minor separately to the last known
7 address at least 48 hours before the consent of the minor to the abor-
8 tion. If a parent of the minor is dead or if the rights or interests of
9 a parent have been legally terminated, notice to the remaining parent
10 complies with this subsection. If both parents are dead or if the
11 rights and interests of both parents have been legally terminated,
12 notice to the legal guardian complies with this subsection. After the
13 first trimester of pregnancy, a physician may not perform an abortion
14 upon an unemancipated minor without obtaining the consent of one of the
15 minor's parents or her legal guardian or a court order that the abortion
16 is necessary to preserve the life or health of the minor.

17 (c) An abortion may not be performed during the first trimester of
18 pregnancy upon a woman who certifies that she is married until the
19 attending physician certifies in writing that the husband of the woman
20 has been provided by the physician in person with the information des-
21 cribed in (a) of this section at least 24 hours before the woman's
22 consent to the abortion or unless the attending physician certifies in
23 writing that he has caused the materials described in (a) of this sec-
24 tion to be mailed by certified mail to the last known address of the
25 husband at least 48 hours before the consent of the woman to the abor-
26 tion. This subsection does not apply when the woman to be aborted is
27 legally separated from her husband or if she has secured a legal declara-
28 tion of non-paternity in accordance with law. After the first trimester
29 of pregnancy, a physician may not perform an abortion upon a married

1 woman without obtaining the consent of the husband or a court order that
2 the abortion is necessary to preserve the life or health of the woman.

3 (d) The provisions of this section do not apply when the attending
4 physician certifies that there is an emergency need for an abortion and
5 that the continuation of the pregnancy constitutes an immediate threat
6 and grave risk to the life or health of the pregnant woman.

7 Sec. 18.27.260. INFORMED CONSENT. (a) The department shall
8 publish easily understood materials to inform interested persons of

9 (1) public and private agencies and services available to
10 assist a woman through pregnancy, childbirth, and while the child is
11 dependent, including adoption agencies; these materials shall include a
12 comprehensive list of available agencies and the manner in which they
13 may be contacted;

14 (2) the probable physical character of the unborn child at
15 the time abortion is planned; the materials shall include information on
16 physiological and anatomical characteristics including appearance,
17 mobility, tactile sensitivity, response to pain stimulus, brain and
18 heart function, the presence of external members and internal organs at
19 the stage of development of the unborn child; scientifically verifiable
20 photographs or other means of visual illustration may be used;

21 (3) the policy of the state that the unborn child is an
22 individual human being and is therefore entitled to respect and humane
23 treatment and that it is the policy of the state to encourage the woman
24 to carry her unborn child to term.

25 (b) The department shall provide the material described in (a) of
26 this section upon request and without charge.

27 (c) Subsection (a) of this section does not apply if the depart-
28 ment certifies that the materials are not available.

29 Sec. 18.27.270. ABORTION AFTER VIABILITY. (a) An abortion not

1 necessary to preserve the life or health of the woman may not be per-
2 formed after 24 weeks from the first day of the last menstrual period of
3 the woman unless the attending physician determines with reasonable
4 medical certainty that the unborn child is not viable and certifies in
5 writing the medical findings upon which he based his opinion that the
6 unborn child is not viable.

7 (b) A physician who performs an abortion upon a pregnant woman
8 carrying a viable unborn child must use the available method or tech-
9 nique of abortion most likely to preserve the life and health of the
10 unborn child. If the method or technique of abortion which would most
11 likely preserve the life and health of the unborn child would present a
12 greater risk to the life and health of the pregnant woman than another
13 available method or technique, the physician may use a method or tech-
14 nique which is safer to the woman. When the physician performs an
15 abortion upon a viable unborn child, the physician shall certify in
16 writing the available methods or techniques considered and the reasons
17 for choosing the method or technique employed.

18 (c) An abortion of a viable unborn child shall be performed only
19 when there is in attendance a physician other than the physician per-
20 forming the abortion who shall take control of and provide immediate
21 medical care for a child born as a result of the abortion. During the
22 abortion, the physician performing it, and, after the abortion, the
23 physician required to be in attendance, shall take all reasonable steps
24 in keeping with good medical practice, consistent with the procedure
25 used, to preserve the life and health of the unborn child.

26 ARTICLE 5. POST-ABORTION REQUIREMENTS.

27 Sec. 18.27.280. RECORDS. (a) Abortion facilities and hospitals
28 in which abortions are performed shall keep records, including admission
29 and discharge notes, histories, results of tests and examinations,

1 nurses work sheets, social service records, progress notes, all written
2 certifications required by this chapter, and a copy of the notice forms,
3 consent forms, court orders, abortion reports, and complication reports
4 required by this chapter. The records shall be maintained in the files
5 of the hospital or abortion facility for a period of seven years.

6 (b) The medical records of abortion facilities and hospitals in
7 which abortions are performed are confidential under art. I, sec. 22 of
8 the state constitution and may be used by the department only for gather-
9 ing statistical data and insuring compliance with the provisions of this
10 chapter.

11 Sec. 18.27.290. REPORTING. (a) A report for each abortion per-
12 formed shall be completed by the attending physician. The report is
13 confidential and may not contain the name of the woman. The report
14 shall include

- 15 (1) patient number;
- 16 (2) name and address of the abortion facility or hospital;
- 17 (3) date of abortion;
- 18 (4) the following information regarding the pregnant woman:
 - 19 (A) zip code of residence;
 - 20 (B) age;
 - 21 (C) race;
 - 22 (D) marital status;
 - 23 (E) number of previous pregnancies;
 - 24 (F) years of education;
 - 25 (G) number of living children;
 - 26 (H) number of previous induced abortions;
 - 27 (I) date of last induced abortion;
 - 28 (J) date of last live birth;
 - 29 (K) method of contraception at time of conception;

- 1 (L) date of beginning of last menstrual period;
- 2 (M) medical condition at time of abortion;
- 3 (N) RH type;
- 4 (5) type of abortion procedure;
- 5 (6) complications by type;
- 6 (7) type of procedure done after the abortion;
- 7 (8) type of family planning recommended;
- 8 (9) type of additional counseling given;
- 9 (10) signature of attending physician;
- 10 (11) the certifications provided for in this chapter.

11 (b) A separate complication report for any post-abortion care
12 provided to the woman shall be completed by the physician providing
13 post-abortion care or diagnosing or treating a post-abortion complica-
14 tion. The report shall include

- 15 (1) the date of the abortion;
- 16 (2) the name and address of the abortion facility or hospital
17 where the abortion was performed, if known; and
- 18 (3) the nature of the abortion complication diagnosed or
19 treated.

20 (c) Abortion reports shall be signed by the attending physician
21 and submitted to the department within 30 days from the date of the
22 abortion. Complication reports shall be signed by the physician provid-
23 ing the post-abortion care and submitted to the department within 30
24 days from the date of the post-abortion care.

25 (d) A copy of the abortion report shall be made a part of the
26 medical record of the patient of the facility or hospital in which the
27 abortion was performed. If post-abortion complications are discovered,
28 diagnosed, or treated by physicians not associated with the facility or
29 hospital where the abortion was performed, the department shall forward

1 a copy of the complication report to that facility or hospital to be
2 made a part of the patient's permanent record.

3 (e) The department is responsible for collecting abortion and
4 complication reports and collating and evaluating data gathered from the
5 reports. The department shall publish a statistical report annually
6 based on data from abortions performed in the previous calendar year.

7 Sec. 18.27.300. WARDSHIP FOR LIVE-BORN CHILD. (a) An unmarried
8 mother and a married couple may consent in writing to the placing of a
9 child for adoption if the abortion results in a live birth. If the
10 consent is given before the live birth, the child born becomes a ward of
11 the state upon birth. A wardship established under this section con-
12 tinues until the child is placed for adoption. The wardship may be
13 terminated by the unmarried mother, a member of the married couple, or
14 the putative father of the child of the unmarried mother at any time
15 before the child is placed for adoption by delivery to the department of
16 an election to keep the child.

17 Sec. 18.27.310. PATHOLOGICAL EXAMINATION. All tissue removed at
18 the time of an abortion shall be submitted for analysis and tissue
19 report to a board eligible or certified pathologist. The report shall
20 be made a part of the record of the patient. There may be no sale or
21 commercial exploitation of the aborted tissue. There may be no experi-
22 mentation with the aborted tissue without the prior written consent of
23 the woman.

24 Sec. 18.27.320. DISPOSAL OF REMAINS. A physician who performs an
25 abortion shall insure that the remains are disposed of in a humane and
26 sanitary manner.

27 Sec. 18.27.330. INSTRUCTIONS TO BE PROVIDED AFTER ABORTION. A
28 physician who performs an abortion shall provide the patient with medical
29 instructions to be followed by the patient to insure safe recovery from

1 the abortion.

2 ARTICLE 6. REGULATION OF ABORTION FACILITIES.

3 Sec. 18.27.340. INSPECTION. The department shall inspect abortion
4 facilities at least once every six months to insure compliance with this
5 chapter and the laws and regulations of the state concerning health and
6 sanitation.

7 Sec. 18.27.350. COUNSELING. An abortion facility may not
8 advertise or hold itself out as also providing counseling to pregnant
9 women unless

10 (1) the counseling is done by a licensed physician, a li-
11 censed registered nurse, or another person holding at least a bachelor's
12 degree in psychology or a similarly appropriate field or special train-
13 ing in counseling from an accredited college or university;

14 (2) the counseling includes factual information given in a
15 manner as not to be misleading, including specific discussion of the
16 development of the unborn child;

17 (3) the counseling includes a thorough discussion of the
18 alternatives to abortion and the availability of agencies and services
19 to assist her if the woman chooses not to have an abortion; and

20 (4) the type of counseling provided, either individual or
21 group, is clearly indicated in the advertisement.

22 Sec. 18.27.360. REFERRALS. No fee or other form of consideration
23 may be paid or received for referral of a woman to an abortion facility,
24 hospital, or physician for the purpose of receiving an abortion.

25 Sec. 18.27.370. PROHIBITED ADVERTISING. A person or abortion
26 facility may not advertise, print, publish, distribute, or circulate a
27 communication through print, radio, or television media advocating,
28 advising, or suggesting an act which would be a violation of this chapter
29 or which is in any way misleading. This section does not limit the

1 right of a physician, abortion facility, or hospital to distribute a
2 communication through print, radio, or television media explaining a
3 surgical procedure or an act used or performed in connection with the
4 abortion of an unborn child which is not a violation of this chapter and
5 which is not in any way misleading.

6 ARTICLE 7. DISTRIBUTION OF ABORTIFACIENTS.

7 Sec. 18.27.380. DISTRIBUTION OF ABORTIFACIENT PROHIBITED. A
8 person may not distribute an abortifacient except as provided in AS 18.-
9 27.390 - 18.27.400.

10 Sec. 18.27.390. ACTS PROHIBITED. The distribution of an aborti-
11 facient includes

12 (1) distribution, sale, offer for sale, possession with
13 intent to sell, advertisement or display for sale of any drug, potion,
14 instrument or article for the purpose of procuring an abortion; or

15 (2) publication of an advertisement or account of a secret
16 drug or nostrum purporting to be exclusively for the use of women to
17 produce an abortion or miscarriage.

18 Sec. 18.27.400. DISTRIBUTION PERMITTED. Nothing in AS 18.27.380 -
19 18.27.400 prohibits the distribution of abortifacients if

20 (1) the distribution is to a physician or druggist or to an
21 intermediary in a chain of distribution to physicians or druggists;

22 (2) the distribution is made upon prescription or order of a
23 physician; or

24 (3) the advertisement is addressed to physicians or druggists
25 and confined to trade or professional channels not likely to reach the
26 general public.

27 ARTICLE 8. REGISTRATION OF FETAL DEATH.

28 Sec. 18.27.410. REPORTING FETAL DEATH. (a) Fetal death shall be
29 reported within 72 hours after expulsion or abortion, by filing with the

1 bureau of vital statistics a certificate of death.

2 (b) For the purposes of this section, a fetal death is reported as
3 a birth and as a death except that separate birth and death certificates
4 are not required to be prepared and recorded.

5 Sec. 18.27.420. FETAL DEATH REPORT. (a) The form on which fetal
6 death in the case of an abortion is reported shall contain information
7 the department may prescribe but may not include the names or addresses
8 of the parents.

9 (b) If a physician was in attendance at a fetal death, the physi-
10 cian shall report the birth and the cause of death on the fetal death
11 report. If a nurse-midwife was in attendance at a fetal death, the
12 nurse-midwife shall report the birth but not certify to the cause of
13 death on the fetal death report.

14 (c) Nothing in this section alters the responsibility imposed on a
15 public officer to prepare death reports under other provisions of state
16 law.

17 ARTICLE 9. LICENSING OF AMBULATORY SURGICAL CENTERS.

18 Sec. 18.27.430. LICENSING OF AMBULATORY SURGICAL CENTERS. The
19 commissioner shall adopt regulations for the licensing of ambulatory
20 surgical centers to foster and protect the public health by assuring
21 that the center provides the administration, staffing, physical plant,
22 equipment, and ancillary supporting services necessary for patient care.
23 A center shall meet minimum standards required by AS 18.27.430 - 18.27.-
24 520.

25 Sec. 18.27.440. REQUIREMENTS. The commissioner may by regulation
26 require that an ambulatory surgical center

27 (1) be organized, administered, staffed, and equipped to
28 provide on a regular and scheduled basis surgical procedures that may,
29 in the commissioner's judgment, be safely performed outside a hospital;

1 (2) include licensed or support personnel on its staff;

2 (3) provide the technical diagnostic and treatment services
3 and equipment to assure the safe performance of surgery and related care
4 undertaken in the center;

5 (4) enter into and maintain a written currently effective
6 agreement with a licensed hospital to provide for the emergency admis-
7 sion of post-surgical patients who may require hospital admission and
8 care;

9 (5) file reports required by regulation;

10 (6) meet other requirements established by regulation of the
11 commissioner in the interest of the health, safety, and welfare of
12 residents of the state.

13 Sec. 18.27.450. LICENSES. (a) An ambulatory surgical center may
14 not be established, maintained, or operated, or the term "ambulatory
15 surgical center" or a similar term or abbreviation used without a li-
16 cense.

17 (b) A nontransferable license may be granted to an ambulatory
18 surgical center for a period of one year from date of issue. The com-
19 missioner may issue a nonrenewable temporary permit for not more than
20 six months if additional time is needed to make the proper investigation
21 of a center.

22 Sec. 18.27.460. CONSTRUCTION PLANS. (a) After January 1, 1981,
23 the owner or governing body of a proposed ambulatory surgical center
24 shall submit plans of the proposed center to the commissioner for review
25 and approval before beginning construction, including modernization,
26 addition to, or conversion of an existing structure. A center may not
27 be constructed without a construction permit from the department.

28 (b) This section does not affect the application of municipal
29 building and zoning ordinances.

1 Sec. 18.27.470. APPROVAL OF STATE FIRE MARSHAL. (a) Before the
2 commissioner issues a construction permit for an ambulatory surgical
3 center, the construction plans shall be approved by the state fire
4 marshal.

5 (b) A license for an ambulatory surgical center may not be issued
6 or renewed until the state fire marshal approves the center.

7 (c) The state fire marshal may adopt regulations to carry out this
8 section.

9 Sec. 18.27.480. LICENSE AND PERMIT FEES. The commissioner shall
10 charge \$50 for a construction permit and \$200 for each license or tem-
11 porary permit for an ambulatory surgical center.

12 Sec. 18.28.490. INSPECTIONS AND REPORTS. (a) The commissioner
13 shall inspect each ambulatory surgical center at least once every six
14 months. The commissioner may require by regulation periodic reports
15 from each ambulatory surgical center. A report required by the commis-
16 sioner is a public record, but a report may not require a violation of
17 the confidentiality of the doctor-patient relationship except upon court
18 order. The commissioner may not regulate the medical or surgical treat-
19 ment provided to a patient in an ambulatory surgical center by a li-
20 censed physician but may report to the State Medical Board activities
21 which are inconsistent with good medical practice.

22 (b) A licensed ambulatory surgical center shall assure that the
23 clinical record established for each patient includes a history, physi-
24 cal examination, justification for treatment planned and rendered, tests
25 and examinations performed, and observations made and treatment provided.

26 Sec. 18.27.500. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a)
27 The Commissioner may deny, suspend, or revoke the license of an ambu-
28 latory surgical center if he finds a substantial failure to comply with
29 the requirements of this chapter or the regulations adopted under AS 18.

1 27.430 - 18.27.520. Notice shall be sent by certified mail or personal
2 service setting out the reasons for the action. An applicant or licen-
3 see aggrieved by the action of the commissioner shall be given an oppor-
4 tunity for a hearing under AS 44.62.330 - 44.62.630.

5 (b) On the basis of a hearing or on the default of the applicant
6 or licensee, the commissioner shall issue, deny, suspend, or revoke a
7 license. A copy of the determination shall be sent by certified mail or
8 served personally upon the applicant or licensee.

9 Sec. 18.27.510. EXEMPTIONS. The provisions of AS 18.27.430 -
10 18.27.520 do not apply to

11 (1) surgical outpatient facilities located within and owned
12 and operated by a licensed hospital;

13 (2) private offices of practicing physicians and dentists.

14 Sec. 18.27.520. ENFORCEMENT. The commissioner may maintain an
15 action to restrain the establishment, management, or operation of an
16 unlicensed ambulatory surgical center.

17 ARTICLE 10. MISCELLANEOUS PROVISIONS.

18 Sec. 18.27.530. APPOINTMENT OF GUARDIANS FOR UNBORN CHILDREN. (a)
19 On the filing of an action challenging the constitutionality of this
20 chapter, a provision of it, or a statute of the state concerned with
21 abortion, the attorney general shall apply to the court having juris-
22 diction of the action for the appointment of a guardian ad litem of an
23 unborn child or children affected by the action and for the class of
24 unborn children potentially affected by the action.

25 (b) The attorney general shall provide the guardian ad litem
26 appointed under (a) of this section with money reasonably adequate to
27 provide protection to the children and the class of unborn children
28 affected by the action.

29 Sec. 18.27.540. REGULATIONS. The commissioner may adopt regula-

1 tions necessary to carry out the provisions of this chapter.

2 ARTICLE 11. PENALTIES.

3 Sec. 18.27.550. PENALTIES. (a) Distribution of an abortifacient
4 in violation of AS 18.27.380 - 18.27.400 is a class C felony.

5 (b) Clinical research in violation of AS 18.27.040 - 18.27.070 is
6 a class A misdemeanor.

7 (c) An abortion in violation of AS 18.27.230 - 18.27.270 is a
8 class A misdemeanor.

9 (d) A violation of AS 18.27.350 - 18.27.370 is a class A misde-
10 meanor.

11 (e) A violation of AS 18.27.430 - 18.27.520 is a class A misde-
12 meanor.

13 (f) A violation of AS 18.27.280 - 18.27.290 or 18.27.310 - 18.27.-
14 320 is a class B misdemeanor.

15 (g) A violation of AS 18.27.410 - 18.27.420 is a class B misde-
16 meanor.

17 (h) A violation of AS 18.27.090 - 18.27.130 is a class B misde-
18 meanor.

19 ARTICLE 12. DEFINITIONS.

20 Sec. 18.27.600. DEFINITIONS. In this chapter,

21 (1) "abortion" means the intentional destruction of the life
22 of an unborn child in the womb of the mother or the termination of the
23 pregnancy of the mother with the intention to decrease the probability
24 of a live birth; "abortion" does not include the removal of a dead or
25 dying unborn child;

26 (2) "abortion facility" means a clinic, ambulatory surgical
27 center, physician's office, or other place or facility other than a
28 hospital in which abortions are performed;

29 (3) "ambulatory surgical center" or "center" means a facility

1 established to provide surgical care which is not a part of a hospital
2 and in which the patient is admitted to and discharged from the facility
3 within the same working day; it does not include an office maintained by
4 a physician for the practice of medicine or an office maintained by a
5 dentist for the practice of dentistry;

6 (4) "at risk" means the possibility of injury as a conse-
7 quence of participation as a subject in research activities which depart
8 from professionally established and accepted procedures necessary to
9 meet an individual's needs.

10 (5) "born" means the time the head or other part of the body
11 of a fetus emerges from the uterine cavity during the course of a natural
12 childbirth, the time the uterine cavity is opened during a cesarean
13 section, or the time the placenta is detached from the uterine wall
14 whether the fetus is in utero or ex utero;

15 (6) "clinical research" means biomedical or behavioral re-
16 search involving human subjects, including the unborn, conducted accord-
17 ing to a formal procedure; it includes research concerning physiological
18 processes in man and human in vitro fertilization;

19 (7) "commissioner" means the commissioner of health and
20 social services;

21 (8) "conception" means the fertilization of the ovum of a
22 female individual by the sperm of a male individual;

23 (9) "department" means the Department of Health and Social
24 Services;

25 (10) "fetal death" means death of the unborn child before its
26 complete expulsion or extraction from the mother; the death is indicated
27 by the fact that after separation the unborn child does not breathe or
28 show other evidence of life, including beating of the heart, pulsation
29 of the umbilical cord, or definite movement of voluntary muscles;

1 (11) "fetus" means the product of fertilization from the time
2 of conception until the expulsion or extraction of the fetus or opening
3 of the uterine cavity;

4 (12) "first trimester" means the first 12 weeks of gestation;

5 (13) "health" means physical or mental health;

6 (14) "hospital" means a hospital licensed under AS 18.20.010 -
7 18.20.130;

8 (15) "in vitro fertilization" means any fertilization of human
9 ova which occurs outside the body of a female, either through admixture
10 of donor human sperm and ova or by any other means;

11 (16) "live-born child" means a born child who exhibits either
12 heartbeat, spontaneous respiratory activity, spontaneous movement of
13 voluntary muscles, or pulsation of the umbilical cord if still attached
14 to the child ex utero;

15 (17) "physician" means any person licensed to practice medi-
16 cine in the state;

17 (18) "surgery" means the treatment of human beings by a physi-
18 cian or dentist by the use of one or more of the following procedures:

19 (A) cutting into a part of the body by surgical scapel,
20 electro-cautery, or other means for diagnosis or the removal or
21 repair of diseased or damaged tissue, organs, tumors, or foreign
22 bodies;

23 (B) reduction of fractures or dislocations of a bone,
24 joint, or bony structure;

25 (C) repair of malformations or body defects resulting
26 from injury, birth defects, or other causes that require cutting,
27 manipulation, or suture;

28 (D) instrumentation of the uterine cavity, including the
29 procedure commonly known as dilatation and curettage for diagnostic

1 or therapeutic purposes;

2 (E) instrumentation of or injection of a substance into
3 the uterine cavity of a woman for the purpose of terminating a
4 pregnancy;

5 (F) human sterilization procedures;

6 (G) endoscopic procedures;

7 (19) "unborn child" means the offspring of human beings from
8 the moment of conception, through pregnancy, and until live birth,
9 including the human conceptus, zygote, morula, blastocyst, embryo, and
10 fetus;

11 (20) "viability" means that stage of fetal development when
12 the unborn child is potentially able to live outside the mother's womb,
13 whether with or without artificial aid.

14 * Sec. 4. AS 08.64.105 is amended to read:

15 Sec. 08.64.105. REGULATION OF ABORTION PROCEDURES. The State
16 Medical Board shall adopt regulations necessary to [CARRY INTO EFFECT
17 THE PROVISIONS OF AS 18.16.010 AND SHALL] define ethical, unprofessional
18 or dishonorable conduct as related to abortions, set standards of profes-
19 sional competency in the performance of abortions and establish proce-
20 dures and set standards for facilities, equipment and care of patients
21 in the performance of an abortion.

22 * Sec. 5. AS 08.64.380(3)(A) and AS 18.16 are repealed.

23 * Sec. 6. This Act takes effect January 1, 1981.
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