

Introduced: 2/19/81
Referred: Health, Education &
Social Services and Judiciary

1 IN THE HOUSE

BY MARTIN

2 HOUSE BILL NO. 185

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the regulation of abortions;
7 adopting an Unborn Child Protection Act; and providing
8 for 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
17 is 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

1 her 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
6 act or omission of another may maintain an action for wrongful death
7 under 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 -
12 09.55.580 and under (a) of this section, the person causing the death
13 is liable to the plaintiff for

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

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

19 (3) costs and reasonable attorney fees.

20 Sec. 18.27.030. CLAIMS ABOLISHED. The following claims are con-
21 trary to the public policy of the state, are abolished, and may not be
22 entertained in a court of the state:

23 (1) a claim of a parent or child against a person because
24 the birth of the child resulted from the failure of a method of contra-
25 ception or abortion;

26 (2) a claim of a parent or child against a person because
27 the child is born with severe mental or physical defects that could
28 have been detected before birth by the proper exercise of medical
29 expertise.

1 Sec. 18.27.040. DEFENSE ABOLISHED. The failure or refusal of a
2 person to prevent the live birth of a person is not a defense in any
3 action and may not be considered in an award of damages or child sup-
4 port.

5 Sec. 18.27.050. MEDICAL TREATMENT. The right to medical treatment
6 of a live-born child in the course of an atortion procedure is the same
7 as the right of a child born prematurely.

8 Sec. 18.27.060. CLINICAL RESEARCH ON PREGNANT WOMAN. (a) A
9 pregnant woman may not be a subject in clinical research activity
10 unless the purpose of the activity is to meet the health needs of the
11 woman and unless the unborn child will be placed at risk only to the
12 minimum extent necessary to meet those needs or unless the risk to the
13 unborn child is minimal.

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

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

18 (1) the purpose of the activity is to meet the health needs
19 of the mother;

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

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

23 Sec. 18.27.070. CLINICAL RESEARCH ON UNBORN CHILD. (a) An
24 unborn child may not be a subject in clinical research activity unless
25 the purpose of the activity is to meet the health needs of the unborn
26 child and the unborn child will be placed at risk only to the minimum
27 extent necessary to meet those needs or the risk to the unborn child is
28 minimal.

29 (b) Clincial research activity permitted under (a) of this section

1 may be conducted only if the mother and father are legally competent
2 and have given their informed consent.

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

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

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

7 Sec. 18.27.080. CLINICAL RESEARCH ON LIVE-BORN CHILD. (a) A
8 live-born child may not be a subject in clinical research activity
9 unless the purpose of the activity is to meet the health needs of the
10 child and the child will be placed at risk only to the minimum extent
11 necessary to meet those needs.

12 (b) Clinical research activity permitted under (a) of this sec-
13 tion may be conducted only if the nature of the investigation is such
14 that mentally competent adults would not be suitable subjects and the
15 mother and father are legally competent and have given their informed
16 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. 18.27.090. PROHIBITIONS ON CLINICAL RESEARCH GENERALLY. (a)
22 Clinical research activity involving an unborn child, a live-born
23 child, or a pregnant woman may not be conducted unless

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

26 (2) except where the purpose of the activity is to meet the
27 health needs of the unborn child, there is no discernible risk to the
28 unborn child and the activity offers the least possible risk for achiev-
29 ing the objectives of the activity;

1 (3) the individuals engaged in the research activity will
2 not decide the timing, method, and procedures used to terminate the
3 pregnancy, or the viability of the unborn child at the termination of
4 the pregnancy; and

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

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

11 (c) Consent to involve a pregnant woman or an unborn child as a
12 subject in clinical research activity is not valid unless the persons
13 listed in AS 18.27.060 - 18.27.080, as applicable, have been given the
14 following:

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

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

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

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

22 (5) an offer to answer inquiries concerning the procedures;
23 and

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

26 ARTICLE 2. STATE SUPPORT OF CHILDBIRTH.

27 Sec. 18.27.150. STATE POLICY FAVORING CHILDBIRTH OVER ABORTION.

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

1 Sec. 18.27.160. SUBSIDY FOR ABORTION PROHIBITED. State money may
2 not be used by an agency of the state or of a political subdivision for
3 performing or promoting the performance of an abortion unless the abor-
4 tion is necessary to prevent the death of the woman.

5 Sec. 18.27.170. FAMILY PLANNING FUNDING. State money may not be
6 granted to a person or to a public or private agency for programs
7 relating to the performance, reference, or counseling of women for the
8 performance of abortions.

9 Sec. 18.27.180. HEALTH INSURANCE CONTRACTS. Health insurance
10 contracts, plans, or policies issued in the state may not provide
11 coverage for abortions except by an optional rider for which there is
12 paid an additional premium. This section does not apply to the perfor-
13 mance of an abortion necessary to prevent the death of the woman.

14 Sec. 18.27.190. PROHIBITION OF ABORTION IN GOVERNMENT HOSPITALS.
15 A person may not perform an abortion in a hospital owned, maintained,
16 or operated by the state or a state agency or by a political subdivi-
17 sion of the state unless the abortion is necessary to prevent the
18 death of the woman.

19 Sec. 18.27.200. DENIAL OF TAX-EXEMPT STATUS AND GOVERNMENT ASSIS-
20 TANCE TO FACILITIES AND HOSPITALS PERFORMING ABORTIONS. A facility or
21 hospital which allows or authorizes the performance of an abortion that
22 is not necessary to prevent the death of the woman is not eligible for
23 tax-exempt status or for governmental assistance in any form from or
24 through the state or its political subdivisions.

25 ARTICLE 3. FREEDOM OF CONSCIENCE.

26 Sec. 18.27.250. POLICY. It is the policy of the state to respect
27 and protect the right of conscience of an individual and to prohibit
28 discrimination, disqualification, coercion, disability, or imposition
29 of liability upon an individual

1 (1) who refuses to obtain, receive or accept medical ser-
2 vices; or

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

5 Sec. 18.27.260. FREEDOM OF CONSCIENCE. (a) A physician or nurse
6 may not be held civilly or criminally liable for refusal to perform,
7 assist, counsel, suggest, recommend, refer, or participate in a medical
8 procedure which is contrary to the conscience of the physician or
9 nurse.

10 (b) The provisions of (a) of this section do not apply where
11 there is an emergency need for an abortion and the continuation of the
12 pregnancy would prove an immediate threat and grave risk to the life or
13 health of the pregnant woman.

14 Sec. 18.27.270. DISCRIMINATION IN EMPLOYMENT. A person may not
15 discriminate against an individual in licensing, hiring, promotion,
16 transfer, staff appointment, hospital or other privileges, because the
17 individual refuses to receive, obtain, accept, perform, assist, counsel,
18 suggest, recommend, refer, or participate in a medical procedure con-
19 trary to conscience.

20 Sec. 18.27.280. PHYSICIAN'S DUTY TO PATIENT. Nothing in AS 18.-
21 27.250 - 18.27.330 relieves a physician from the duty to inform an
22 adult patient of the patient's condition, prognosis and risks. However,
23 a physician has no duty to perform, assist, counsel, suggest, recommend,
24 refer, or participate in medical procedures contrary to conscience.

25 Sec. 18.27.290. DISCRIMINATION IN PUBLIC ASSISTANCE. A public
26 officer or agency may not deny or condition aid, assistance, or benefits
27 because the recipient refuses to participate in medical procedures
28 contrary to conscience.

29 Sec. 18.27.300. INSTITUTIONAL IMMUNITY. (a) A person who owns,

1 operates, or manages a medical facility may not be held civilly or
2 criminally liable to a person, estate, or public or private entity by
3 reason of refusal of the medical facility to permit or provide medical
4 services which violate its ethical guidelines, constitution, bylaws,
5 articles of incorporation, or regulations.

6 (b) The provisions of (a) of this section do not apply where
7 there is an emergency need for an abortion and the continuation of the
8 pregnancy would prove an immediate threat and grave risk to the life or
9 health of the pregnant woman.

10 Sec. 18.27.310. DISCRIMINATION AGAINST MEDICAL FACILITY. A
11 person, public or private institution, or public officer may not dis-
12 criminate against a person operating an existing medical facility or
13 attempting to establish a new medical facility because of the refusal
14 of the person planning, proposing, or operating a medical facility to
15 permit or perform medical services which violate its existing or pro-
16 posed ethical guidelines, constitution, bylaws, articles of incorpo-
17 ration, or regulations.

18 Sec. 18.27.320. CIVIL REMEDY. (a) A person injured by an action
19 prohibited under AS 18.27.250 - 18.27.330 has a claim and may recover
20 treble damages, including pain and suffering, but not less than \$2,500,
21 and costs and attorney fees.

22 (b) The remedy authorized under (a) of this section is cumulative
23 and not exclusive of other remedies authorized under other state or
24 federal laws.

25 Sec. 18.27.330. EXCEPTION. Nothing in AS 18.27.250 - 18.27.330
26 excuses a person, public or private institution, or public officer from
27 liability for refusal to permit or provide a form of medical care if
28 the person, public or private institution, or public officer has entered
29 into a contract to provide that form of medical care.

1 ARTICLE 4. REGULATION OF THE ABORTION PROCEDURE.

2 Sec. 18.27.350. ABORTION DURING FIRST TRIMESTER. An abortion may
3 not be performed upon a pregnant woman before the end of the first
4 trimester of her pregnancy unless by a physician licensed to practice
5 medicine in the state, in a hospital or an abortion facility.

6 Sec. 18.27.360. ABORTION AFTER FIRST TRIMESTER. An abortion may
7 not be performed upon a pregnant woman after the end of the first tri-
8 mester of her pregnancy unless by a board eligible or certified obste-
9 trician and gynecologist in a hospital.

10 Sec. 18.27.370. INFORMED CONSENT. (a) A physician may not
11 perform an abortion unless, before the abortion, the physician certifies
12 in writing that the woman has given her voluntary and written informed
13 consent after the physician had provided her with the informational
14 materials published under AS 18.27.380 not more than 30 days or less
15 than 48 hours before she consents to the abortion. The physician shall
16 certify in writing the marital status and age of the pregnant woman
17 based on proof offered by her.

18 (b) In order to ensure that the consent for an abortion is in-
19 formed, the physician shall advise the woman

20 (1) that according to his best judgment, she is pregnant;

21 (2) how many weeks have elapsed since conception based on
22 information provided by her as to the time of her last menstrual period
23 or based on appropriate medical examination;

24 (3) that the unborn child is a human life from the instant
25 of conception;

26 (4) of the probable anatomical and physiological character-
27 istics of the unborn child at the time that the abortion is to be
28 performed;

29 (5) that there may be, if it is his opinion,

1 (A) immediate and long-term physical dangers from the
2 abortion;

3 (B) psychological trauma resulting from the abortion;
4 and

5 (C) sterility and an increase in the incidence of pre-
6 mature births, tubal pregnancies, and still births in subsequent
7 pregnancies;

8 (6) that there may be, if it is his opinion, particular
9 risks associated with her pregnancy and the abortion technique to be
10 used;

11 (7) that there are alternatives to abortion and that public
12 and private agencies may assist her in accepting an alternative to
13 abortion and a list of agencies providing the assistance;

14 (8) that if more than 24 weeks have elapsed since the date
15 of the beginning of her last menstrual period, the unborn child may be
16 viable and he has an obligation imposed by law to preserve the life and
17 health of a viable unborn child born during or after the abortion.

18 (c) An abortion may not be performed upon an unemancipated minor
19 during the first trimester of the minor's pregnancy until the attending
20 physician certifies in writing that each parent of the minor has been
21 provided by the physician in person with the informational materials
22 published under AS 18.27.380 at least 24 hours before the consent of the
23 minor to the abortion or unless the physician certifies in writing that
24 he has caused the informational materials published under AS 18.27.380
25 to be mailed by certified mail to each parent of the minor separately
26 to the last known address at least 48 hours before the consent of the
27 minor to the abortion. If a parent of the minor is dead or if the
28 rights or interests of a parent have been legally terminated, notice to
29 the remaining parent complies with this subsection. If both parents

1 are dead or if the rights and interests of both parents have been
2 legally terminated, notice to the legal guardian complies with this
3 subsection. After the first trimester of pregnancy, a physician may
4 not perform an abortion upon an unemancipated minor without obtaining
5 the consent of one of the minor's parents or her legal guardian or a
6 court order that the abortion is necessary to preserve the life or
7 health of the minor.

8 (d) An abortion may not be performed during the first trimester
9 of pregnancy upon a woman who certifies that she is married until the
10 attending physician certifies in writing that the husband of the woman
11 has been provided by the physician in person with the informational
12 materials published under AS 18.27.380 at least 24 hours before the
13 woman's consent to the abortion or unless the attending physician
14 certifies in writing that he has caused the informational materials
15 published under AS 18.27.380 to be mailed by certified mail to the last
16 known address of the husband at least 48 hours before the consent of
17 the woman to the abortion. This subsection does not apply when the
18 woman to be aborted is legally separated from her husband or if she has
19 secured a legal declaration of non-paternity in accordance with law.
20 After the first trimester of pregnancy, a physician may not perform an
21 abortion upon a married woman without obtaining the consent of the
22 husband or a court order that the abortion is necessary to preserve the
23 life or health of the woman.

24 (e) If the woman does not understand English, the physician shall
25 certify that the information required by this section has been provided
26 to the woman in a manner that is understandable by her. If an inter-
27 preter is used, the name of the interpreter shall be entered on the
28 certification of the physician required under (a) of this section.

29 (f) The provisions of this section do not apply when the attend-

1 ing physician certifies that there is an emergency need for an abortion
2 and that the continuation of the pregnancy constitutes an immediate
3 threat and grave risk to the life or health of the pregnant woman.

4 Sec. 18.27.380. INFORMATIONAL MATERIALS. (a) The department
5 shall publish easily understood materials to inform interested persons
6 of

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

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

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

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

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

27 Sec. 18.27.390. ABORTION AFTER VIABILITY. (a) An abortion not
28 necessary to preserve the life or health of the woman may not be per-
29 formed after 24 weeks from the first day of the last menstrual period

1 of the woman unless the attending physician determines with reasonable
2 medical certainty that the unborn child is not viable and certifies in
3 writing the medical findings upon which he based his opinion that the
4 unborn child is not viable.

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

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

24 Sec. 18.27.400. PREVENTION OF PAIN TO UNBORN CHILD. (a) If
25 there is reasonable medical certainty that a proposed method of abortion
26 is likely to cause pain to the fetus and the use of an anesthetic or
27 analgesic would eliminate or alleviate the pain to the fetus without
28 establishing medical problems for the woman, the physician shall inform
29 the woman that an anesthetic or analgesic may eliminate or alleviate

1 pain to the fetus and the anesthetic or analgesic shall be used in the
2 abortion.

3 (b) An anesthetic or analgesic may not be used under (a) of this
4 section if

5 (1) a medical emergency exists and the use of the anesthetic
6 or analgesic would complicate the medical procedures proposed;

7 (2) the use of the anesthetic or analgesic would decrease
8 the possibility of the more than momentary survival of the fetus apart
9 from the body of the woman, with or without artificial support.

10 (c) An anesthetic or analgesic used to eliminate or alleviate the
11 pain caused to the woman in an abortion procedure that has the effect
12 of eliminating or alleviating the pain to the fetus complies with (a)
13 of this section.

14 ARTICLE 5. POST-ABORTION REQUIREMENTS.

15 Sec. 18.27.450. RECORDS. (a) Abortion facilities and hospitals
16 in which abortions are performed shall keep records, including admission
17 and discharge notes, histories, results of tests and examinations,
18 nurses work sheets, social service records, progress notes, all written
19 certifications required by this chapter, and a copy of the notice
20 forms, consent forms, court orders, abortion reports, and complication
21 reports required by this chapter. The records shall be maintained in
22 the files of the hospital or abortion facility for a period of seven
23 years.

24 (b) The medical records of abortion facilities and hospitals in
25 which abortions are performed are confidential under art. I, sec. 22 of
26 the state constitution and may be used by the department only for
27 gathering statistical data and insuring compliance with the provisions
28 of this chapter.

29 Sec. 18.27.460. REPORTING. (a) A report for each abortion per-

formed shall be completed by the attending physician. The report is confidential and may not contain the name of the woman. The report shall include

- (1) patient number;
- (2) name and address of the abortion facility or hospital;
- (3) date of abortion;
- (4) the following information regarding the pregnant woman:
 - (A) zip code of residence;
 - (B) age;
 - (C) race;
 - (D) marital status;
 - (E) number of previous pregnancies;
 - (F) years of education;
 - (G) number of living children;
 - (H) number of previous induced abortions;
 - (I) date of last induced abortion;
 - (J) date of last live birth;
 - (K) method of contraception at time of conception;
 - (L) date of beginning of last menstrual period;
 - (M) medical condition at time of abortion;
 - (N) RH type;
- (5) type of abortion procedure;
- (6) complications by type;
- (7) type of procedure done after the abortion;
- (8) type of family planning recommended;
- (9) type of additional counseling given;
- (10) signature of attending physician;
- (11) the certifications provided for in this chapter.

(b) A separate complication report for any post-abortion care

1 provided to the woman shall be completed by the physician providing
2 post-abortion care or diagnosing or treating a post-abortion complica-
3 tion. The report shall include

4 (1) the date of the abortion;

5 (2) the name and address of the abortion facility or hospital
6 where the abortion was performed, if known; and

7 (3) the nature of the abortion complication diagnosed or
8 treated.

9 (c) Abortion reports shall be signed by the attending physician
10 and submitted to the department within 30 days from the date of the
11 abortion. Complication reports shall be signed by the physician provid-
12 ing the post-abortion care and submitted to the department within 30
13 days from the date of the post-abortion care.

14 (d) A copy of the abortion report shall be made a part of the
15 medical record of the patient of the facility or hospital in which the
16 abortion was performed. If post-abortion complications are discovered,
17 diagnosed, or treated by physicians not associated with the facility or
18 hospital where the abortion was performed, the department shall forward
19 a copy of the complication report to that facility or hospital to be
20 made a part of the patient's permanent record.

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

25 Sec. 18.27.470. WARDSHIP FOR LIVE-BORN CHILD. An unmarried
26 mother and a married couple may consent in writing to the placing of a
27 child for adoption if the abortion results in a live birth. If the
28 consent is given before the live birth, the child born becomes a ward
29 of the state upon birth. A wardship established under this section

1 continues until the child is placed for adoption. The wardship may be
2 terminated by the unmarried mother, a member of the married couple, or
3 the putative father of the child of the unmarried mother at any time
4 before the child is placed for adoption by delivery to the department
5 of an election to keep the child.

6 Sec. 18.27.480. PATHOLOGICAL EXAMINATION. (a) All tissue removed
7 at the time of an abortion shall be submitted for analysis and tissue
8 report to a board eligible or certified pathologist. The report shall
9 be made a part of the record of the patient. There may be no sale or
10 commercial exploitation of the aborted tissue. There may be no experi-
11 mentation with the aborted tissue without the prior written consent of
12 the woman.

13 (b) The results of the analysis and report required under (a) of
14 this section shall be given to the physician within seven days of the
15 abortion.

16 (c) Evidence of a live birth or viability shall be reported the
17 the bureau of vital statistics.

18 Sec. 18.27.490. DISPOSAL OF REMAINS. A physician who performs an
19 abortion shall insure that the remains are disposed of by burial or
20 cremation.

21 Sec. 18.27.500. INSTRUCTIONS TO BE PROVIDED AFTER ABORTION. A
22 physician who performs an abortion shall provide the patient with
23 medical instructions to be followed by the patient to insure safe
24 recovery from the abortion.

25 ARTICLE 6. REGULATION OF ABORTION FACILITIES.

26 Sec. 18.27.550. INSPECTION. The department shall inspect abortion
27 facilities at least once every six months to insure compliance with
28 this chapter and the laws and regulations of the state concerning
29 health and sanitation.

1 Sec. 18.27.560. COUNSELING. An abortion facility may not
2 advertise or hold itself out as also providing counseling to pregnant
3 women unless

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

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

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

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

16 Sec. 18.27.570. REFERRALS. No fee or other form of consideration
17 may be paid or received for referral of a woman to an abortion facility,
18 hospital, or physician for the purpose of receiving an abortion.

19 Sec. 18.27.580. PROHIBITED ADVERTISING. A person or abortion
20 facility may not advertise, print, publish, distribute, or circulate a
21 communication through print, radio, or television media advocating,
22 advising, or suggesting an act which would be a violation of this
23 chapter or which is in any way misleading. This section does not limit
24 the right of a physician, abortion facility, or hospital to distribute
25 a communication through print, radio, or television media explaining a
26 surgical procedure or an act used or performed in connection with the
27 abortion of an unborn child which is not a violation of this chapter
28 and which is not in any way misleading.

29 ARTICLE 7. DISTRIBUTION OF ABORTIFACIENTS.

1 Sec. 18.27.600. DISTRIBUTION OF ABORTIFACIENT PROHIBITED. A
2 person may not distribute an abortifacient except as authorized under
3 AS 18.27.620 - 18.27.630.

4 Sec. 18.27.610. ACTS PROHIBITED. The distribution of an aborti-
5 facient includes

6 (1) distribution, sale, offer for sale, possession with
7 intent to sell, advertisement or display for sale of any abortifacient;
8 or

9 (2) publication of an advertisement or account of a secret
10 drug or nostrum purporting to be effective as an abortifacient.

11 Sec. 18.27.620. PRESCRIPTION OF ABORTIFACIENT. A physician may
12 not intentionally prescribe an abortifacient unless he advises the
13 woman that the abortifacient is known to and is intended to cause the
14 expulsion of a fetus from the body of the woman.

15 Sec. 18.27.630. DISTRIBUTION PERMITTED. Nothing in AS 18.27.-
16 600 - 18.27.630 prohibits the distribution of an abortifacient if

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

19 (2) the distribution is made upon prescription or order of a
20 physician; or

21 (3) the advertisement is addressed to physicians or druggists
22 and confined to trade or professional channels not likely to reach the
23 general public.

24 ARTICLE 8. REGISTRATION OF FETAL DEATH.

25 Sec. 18.27.660. REPORTING FETAL DEATH. (a) Fetal death shall be
26 reported within 72 hours after expulsion or abortion, by filing with
27 the bureau of vital statistics a certificate of death.

28 (b) For the purposes of this section, a fetal death is reported
29 as a birth and as a death except that separate birth and death certifi-

1 cates are not required to be prepared and recorded.

2 Sec. 18.27.670. FETAL DEATH REPORT. (a) The form on which fetal
3 death in the case of an abortion is reported shall contain information
4 the department may prescribe but may not include the names or addresses
5 of the parents.

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

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

14 ARTICLE 9. LICENSING OF AMBULATORY SURGICAL CENTERS.

15 Sec. 18.27.700. LICENSING OF AMBULATORY SURGICAL CENTERS. The
16 commissioner shall adopt regulations for the licensing of ambulatory
17 surgical centers to foster and protect the public health by assuring
18 that the center provides the administration, staffing, physical plant,
19 equipment, and ancillary supporting services necessary for patient
20 care. A center shall meet minimum standards required by AS 18.27.700 -
21 18.27.790.

22 Sec. 18.27.710. REQUIREMENTS. The commissioner may by regulation
23 require that an ambulatory surgical center

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

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

28 (3) provide the technical diagnostic and treatment services
29 and equipment to assure the safe performance of surgery and related

1 care undertaken in the center;

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

6 (5) file reports required by regulation;

7 (6) meet other requirements established by regulation of the
8 commissioner in the interest of the health, safety, and welfare of
9 residents of the state.

10 Sec. 18.27.720. LICENSES. (a) An ambulatory surgical center may
11 not be established, maintained, or operated, or the term "ambulatory
12 surgical center" or a similar term or abbreviation used without a li-
13 cense.

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

19 Sec. 18.27.730. CONSTRUCTION PLANS. (a) After January 1, 1982,
20 the owner or governing body of a proposed ambulatory surgical center
21 shall submit plans of the proposed center to the commissioner for
22 review and approval before beginning construction, including moderniza-
23 tion, addition to, or conversion of an existing structure. A center
24 may not be constructed without a construction permit from the depart-
25 ment.

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

28 Sec. 18.27.740. APPROVAL OF STATE FIRE MARSHAL. (a) Before the
29 commissioner issues a construction permit for an ambulatory surgical

1 center, the construction plans shall be approved by the state fire
2 marshal.

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

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

7 Sec. 18.27.750. LICENSE AND PERMIT FEES. The commissioner shall
8 charge \$50 for a construction permit and \$200 for each license or tem-
9 porary permit for an ambulatory surgical center.

10 Sec. 18.28.760. INSPECTIONS AND REPORTS. (a) The commissioner
11 shall inspect each ambulatory surgical center at least once every six
12 months. The commissioner may require by regulation periodic reports
13 from each ambulatory surgical center. A report required by the commis-
14 sioner is a public record, but a report may not require a violation of
15 the confidentiality of the doctor-patient relationship except upon
16 court order. The commissioner may not regulate the medical or surgical
17 treatment provided to a patient in an ambulatory surgical center by a
18 licensed physician but may report to the State Medical Board activities
19 which are inconsistent with good medical practice.

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

25 Sec. 18.27.770. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

26 (a) The commissioner may deny, suspend, or revoke the license of an
27 ambulatory surgical center if he finds a substantial failure to comply
28 with the requirements of this chapter or the regulations adopted under
29 AS 18.27.700 - 18.27.790. Notice shall be sent by certified mail or

1 personal service setting out the reasons for the action. An applicant
2 or licensee aggrieved by the action of the commissioner shall be given
3 an opportunity for a hearing under AS 44.62.330 - 44.62.630.

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

8 Sec. 18.27.780. EXEMPTIONS. The provisions of AS 18.27.700 -
9 18.27.790 do not apply to

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

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

13 Sec. 18.27.790. ENFORCEMENT. The commissioner may maintain an
14 action to restrain the establishment, management, or operation of an
15 unlicensed ambulatory surgical center.

16 ARTICLE 10. MISCELLANEOUS PROVISIONS.

17 Sec. 18.27.820. APPOINTMENT OF GUARDIANS FOR UNBORN CHILDREN.

18 (a) On the filing of an action challenging the constitutionality of
19 this chapter, a provision of it, or a statute of the state concerned
20 with abortion, the attorney general shall apply to the court having
21 jurisdiction of the action for the appointment of a guardian ad litem
22 of an unborn child or children affected by the action and for the class
23 of unborn children potentially affected by the action.

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

28 Sec. 18.27.830. REGULATIONS. The commissioner may adopt regula-
29 tions necessary to carry out the provisions of this chapter.

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ARTICLE 11. PENALTIES.

Sec. 18.27.870. PENALTIES. (a) Distribution of an abortifacient in violation of AS 18.27.600 - 18.27.630 is a class C felony.

(b) Clinical research in violation of AS 18.27.060 - 18.27.090 is a class A misdemeanor.

(c) An abortion in violation of AS 18.27.350 - 18.27.390 is a class A misdemeanor.

(d) A violation of AS 18.27.560 - 18.27.580 is a class A misdemeanor.

(e) A violation of AS 18.27.700 - 18.27.790 is a class A misdemeanor.

(f) A violation of AS 18.27.450 - 18.27.460 or 18.27.480 - 18.27.490 is a class B misdemeanor.

(g) A violation of AS 18.27.660 - 18.27.670 is a class B misdemeanor.

(h) A violation of AS 18.27.160 - 18.27.200 is a class B misdemeanor.

ARTICLE 12. DEFINITIONS.

Sec. 18.27.900. DEFINITIONS. In this chapter,

(1) "abortifacient" means a drug or device intended to cause the expulsion of a fetus from the body of a woman whether or not a fetus exists when the drug or device is used;

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

(3) "abortion facility" means a clinic, ambulatory surgical center, physician's office, or other place or facility other than a

1 hospital in which abortions are performed;

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

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

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

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

21 (8) "commissioner" means the commissioner of health and
22 social services;

23 (9) "conception" means the fertilization of the ovum of a
24 female individual by the sperm of a male individual;

25 (10) "department" means the Department of Health and Social
26 Services;

27 (11) "fetal death" means death of the unborn child before its
28 complete expulsion or extraction from the mother; the death is indicated
29 by the fact that after separation the unborn child does not breathe or

1 show other evidence of life, including beating of the heart, pulsation
2 of the umbilical cord, or definite movement of voluntary muscles;

3 (12) "fetus" means the product of fertilization from the time
4 of conception until the expulsion or extraction of the fetus or opening
5 of the uterine cavity;

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

7 (14) "health" means physical or mental health;

8 (15) "hospital" means a hospital licensed under AS 18.20.010 -
9 18.20.130;

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

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

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

19 (19) "surgery" means the treatment of human beings by a
20 physician or dentist by the use of one or more of the following pro-
21 cedures:

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

26 (B) reduction of fractures or dislocations of a bone,
27 joint, or bony structure;

28 (C) repair of malformations or body defects resulting
29 from injury, birth defects, or other causes that require cutting,

manipulation, or suture;

(D) instrumentation of the uterine cavity, including the procedure commonly known as dilatation and curettage for diagnostic or therapeutic purposes;

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

(F) human sterilization procedures;

(G) endoscopic procedures;

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

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

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

Sec. 08.64.105. REGULATION OF ABORTION PROCEDURES. The State Medical Board shall adopt regulations necessary to [CARRY INTO EFFECT THE PROVISIONS OF AS 18.16.010 AND SHALL] define ethical, unprofessional or dishonorable conduct as related to abortions, set standards of professional competency in the performance of abortions and establish procedures and set standards for facilities, equipment and care of patients in the performance of an abortion.

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

* Sec. 6. This Act takes effect January 1, 1982.