SB 300

SENATE BILL NO. 300

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Introduced: 3/29/00
Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to services and information available to pregnant women and other persons; and requiring informed consent and a 24-hour waiting period before an abortion may be performed unless there is a medical emergency."

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

* **Section 1.** AS 18.05 is amended by adding a new section to read:

Sec. 18.05.032. Information relating to unborn children and abortion. (a) The department shall obtain or prepare written information that

(1) contains geographically-indexed material designed to inform a person of public and private agencies and services, including adoption agencies, that are available to assist a woman through a pregnancy, at childbirth, and while the child is dependent; the material must include a comprehensive list of the agencies, a description of the services they offer, and the manner in which the agencies may be contacted, including telephone numbers; in addition to this written material, the department, through a toll-free 24-hour-a-day telephone number, shall orally provide

a list and description of agencies that are in the locality of the caller;

(2) provides information on the availability of medical assistance benefits for prenatal care, childbirth, and neonatal care;

(3) states that a person may not lawfully coerce a woman to undergo an abortion;

(4) states that a physician who performs or induces an abortion on a woman without obtaining the woman's informed consent may be liable to the woman for damages in a civil action;

(5) states that the father of a child is liable to assist in the support of the child even in instances where the father has offered to pay for an abortion, and that the law permits adoptive parents to pay costs of prenatal care, childbirth, and neonatal care;

(6) is designed to inform the woman of the anatomical and physiological characteristics of a typical unborn child at two-week gestational increments from fertilization to full term, including photographs representing the development of unborn children at two-week gestational increments and relevant information about the possibility of an unborn child's survival at the various gestational ages; the photographs must contain the dimensions of the fetus and shall be realistic and appropriate for the woman's stage of pregnancy; the information must be objective, nonjudgmental, and designed to convey only accurate scientific information about unborn children at various gestational ages;

(7) contains objective information that describes the methods of abortion procedures and treatments commonly employed, the medical risks commonly associated with each procedure and treatment, the possible detrimental psychological effects of abortion, and the medical risks commonly associated with carrying an unborn child to term; the information about the medical risks commonly associated with abortion procedures and treatments must include

(A) when medically accurate, the risks of infection, hemorrhage, breast cancer, danger to subsequent pregnancies, and infertility; and

(B) where appropriate, the possible adverse psychological effects of an abortion.

"Implantation" * When combined with "Implantation"

(b) The information required under (a) of this section must be written in easily comprehensible language and must be printed in a typeface that is large enough to be clearly legible.

(c) The department shall make the information required under (a) of this section available free of charge on request and in an appropriate volume to the requestor.

(d) In this section,

(1) "conception" means the fusion of a human spermatozoan with a human ovum; *

(2) "fertilization" has the meaning given "conception";

(3) "gestational age" means the age of the unborn child as calculated from the first day of the last menstrual period of the pregnant woman;

(4) "pregnant" or "pregnancy" means a female reproductive condition of having a developing fetus in the body from the time of conception;

(5) "unborn child" means the offspring of human beings from conception until birth.

* **Sec. 2.** AS 18.16.010(a) is amended to read:

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

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

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

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

(4) the woman is domiciled or physically present in the state for 30 days before the abortion**; and**

(5) the applicable requirements of AS 18.16.060 have been satisfied.

* Sec. 3. AS 18.16.010 is amended by adding a new subsection to read:

(h) A person who performs or induces an abortion in violation of (a)(5) of this section is civilly liable to the pregnant woman for compensatory and punitive damages.

* Sec. 4. AS 18.16 is amended by adding a new section to read:

Sec. 18.16.060. Informed consent requirements. (a) Except in case of a medical emergency, a person may not knowingly perform or induce an abortion without the voluntary and informed consent of the woman on whom the abortion is to be performed or induced.

(b) Consent to an abortion is voluntary and informed only if all of the following are true:

(1) at least 24 hours before the abortion, the physician who is to perform the abortion or the referring physician has orally informed the woman of

(A) the particular medical risks associated with the abortion procedure to be employed; the medical risks include,

(i) when medically accurate, the risks of infection, hemorrhage, breast cancer, danger to subsequent pregnancies, and infertility; and

(ii) where appropriate, the possible adverse psychological effects of an abortion;

(B) alternatives to the abortion that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;

(C) the probable gestational age of the unborn child at the time the abortion is to be performed;

(D) the medical risks associated with carrying the unborn child to term;

(E) the name of the physician who will perform the abortion procedure;

(F) that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care; and

(G) that the father is liable to assist in the support of the

woman's child, even in instances where the father has offered to pay for the abortion.

(2) at least 24 hours before the abortion, the physician who is to perform the abortion, the referring physician, or a person to whom the responsibility has been delegated by either physician has informed the woman that

(A) the Department of Health and Social Services provides written information that describes unborn children at various gestational ages and lists the agencies that offer alternatives to abortion; and

(B) the woman has a right to review the written information described in (A) of this paragraph and that a copy will be given to the woman at no cost;

(3) a copy of the information described in (2)(A) of this subsection has been given to the woman; and

(4) before the abortion,

(A) the woman certifies in writing that the information required to be given under (1) - (3) of this subsection has been received; and

(B) the physician who is to perform the abortion or a representative of the physician receives a copy of the written certificate prescribed by (A) of this paragraph.

(c) In this section,

(1) ~~"conception"~~ "fertilization" means the fusion of a human spermatozoan with a human ovum;

(2) "gestational age" means the age of the unborn child as calculated from the first day of the last menstrual period of the pregnant woman;

(3) "medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman that the immediate termination of the woman's pregnancy is necessary to avert the woman's death or that a delay in providing an abortion will create serious risk of substantial and irreversible impairment of a major bodily function of the woman;

(4) "pregnant" or "pregnancy" means a female reproductive condition

of having a developing fetus in the body from the time of conception;

(5) "unborn child" means the offspring of human beings from conception until birth.

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

SEVERABILITY. Under AS 01.10.030, the provisions of this Act are severable.

Testimony of Dr. Peter Wakamura 4/5/00

Judiciary Committee

Mr. Chair and Members:

I. Thank you for the opportunity to comment on SB 300.

II. SB 300 is introduced as (1) an act relating to services and information available to pregnant women and (2) requirement of a 24-hour waiting period prior to an abortion.

III. As a physician with 39 years of medical experience, with 30 of those years as a heal administrator, I have a high level of understanding and comfort in dealing with issues as they relate to mental health, physical health, and social well being.

IV. Issues become much more difficult when we address personal religious and philosophical beliefs.

V. As the State Health Officer and Director of Public Health, I struggle with SB 300 because it is an attempt to deal with philosophical issues under the pseudo coverage of A health umbrella.

VI. Definitions of "conception", "fertilization", "pregnancy", "gestational age", and "unborn child" are modified not to guide medical and health interventions but to meet philosophical needs of those individuals in total objection to abortion.

The use of surgical procedures and medications to treat a wide variety of health conditions is dependent on a truly medical and scientific definition of terms. Many medications used to treat serious health problems are terminated at the onset of pregnancy.

The child birth process and pregnancy starts with a sequence of events that are detectable by chemical and physical changes.

True conception is not a fusion of a sperm and ovum. Fusion can take place in a petri dish or test tube and frequently takes place after a sexual act, which in most cases does not lead to pregnancy. Conception is the implantation of a developing zygote (Blastocyte) in the female body and is detectable through hormone changes in the urine.

(comment about meds ok to take until true pregnancy, including E.C.)

VII. The language of the bill imparts the false impression that physicians do not counsel women seeking abortions.

The bill also encourages the presentation of biased information about the possible complications of a surgical abortion but says nothing about the complications of carrying a pregnancy to term or those resulting from seeking an illegal abortion.

VIII. Requiring all pregnant women to view pictures of a developing fetus at 2 week increments could be psychologically harmful or distasteful in certain situations such as the medical inability to carry a pregnancy to term or the presence of a severely damaged fetus.

IX. Informed consent requirements of this bill falsely imply unsubstantiated complications such as increased cancer, greater risks of infertility, and greater adverse psychological affects associated with surgical terminations of a pregnancy.

X. SB 300 requires a 24-hour waiting period between informed consent and the procedure. This is not a requirement without significant consequences. Second trimester abortions increased by 53% in one state that imposed this requirement.

XI. As your State Health Officer and as the Director of Public Health, I interpret SB 300 as a significant barrier to medical, psychological, and public health.

Thank you.

Peter Nakamura
Director D.O.H.

Alaska State Legislature

Senate

Official Business

RICK
HALFORD
State Capitol
Juneau, Alaska
99801-1182
Phone (907) 465-4958
Fax (907) 465-4928

P.O. Box 670190
Chugiak, Alaska 99567
Phone (907) 694-4958
Fax (907) 694-0549

600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone (907) 376-4958

SB 300 - Informed Consent

SB 300 was introduced as a companion to HB 329 to help expedite consideration of this issue by both bodies of the legislature. I appreciate the committee's consideration of this legislation.

(3) "HIV" means the human immunodeficiency virus. (§ 1 ch 1 SLA 1994; am § 3 ch 91 SLA 1996)

Effect of amendments. — The 1996 amendment, effective September 18, 1996, inserted "or physician assistant" and deleted "physician's assistant registered under AS 08.64," following "08.64" in the last sentence of subsection (a).

Sec. 18.15.320. Cost of performing test; reimbursement. (a) The cost of performing a blood test under AS 18.15.300 shall be paid by the department.

(b) If a defendant for whom a blood test has been ordered under AS 18.15.300 is convicted of an offense for which the defendant was charged, and for which a blood test could be ordered under AS 18.15.300, the court shall order the defendant to reimburse the department for the cost of the test and may order the Department of Corrections to deduct the amount of the test from any pay the inmate receives under AS 33.30.201. (§ 1 ch 1 SLA 1994)

Article 7. General Provisions.

Section
900. Definition

Sec. 18.15.900. Definition. In this chapter, "department" means the Department of Health and Social Services. (am § 6 ch 104 SLA 1971)

Revisor's notes. — Formerly AS 18.15.190. Renumbered in 1986.

Chapter 16. Regulation of Abortions.

Section
10. Abortions
20. Consent required before minor's abortion
30. Judicial bypass for minor seeking an abortion
50. Partial-birth abortions
90. Definitions

Sec. 18.16.010. Abortions. (a) An abortion may not be performed in this state unless

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

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

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

(4) the woman is domiciled or physically present in the state for 30 days before the abortion.

(b) Nothing in this section requires a hospital or person to participate in an abortion, nor is a hospital or person liable for refusing to participate in an abortion under this section.

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

(d) *[Repealed, § 6 ch 14 SLA 1997.]*

(e) A person who performs or induces an abortion in violation of(a)(3) of this section is civilly liable to the pregnant minor and the minor's parents, guardian, or custodian for compensatory and punitive damages.

(f) It is an affirmative defense to a prosecution or claim for a violation of (a)(3) of this section that the pregnant minor provided the person who performed or induced the abortion with false, misleading, or incorrect information about the minor's age, marital status, or emancipation, and the person who performed or induced the abortion did not otherwise have reasonable cause to believe that the pregnant minor was under 17 years of age, unmarried, or unemancipated.

(g) It is an affirmative defense to a prosecution or claim for violation of (a)(3) of this section that compliance with the requirements of (a)(3) of this section was not possible because an immediate threat of serious risk to the life or physical health of the pregnant minor from the continuation of the pregnancy created a medical emergency necessitating the immediate performance or inducement of an abortion. In this subsection, "medical emergency" means a condition that, on the basis of the physician's or surgeon's good faith clinical judgment, so complicates the medical condition of a pregnant minor that

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

(2) a delay in providing an abortion will create serious risk of substantial and irreversible impairment of a major bodily function of the pregnant minor. (§ 65-4-6 ACLA 1949; am § 1 ch 103 SLA 1970; am § 22 ch 166 SLA 1978; am §§ 2, 3, 6 ch 14 SLA 1997)

Revisor's notes. — Formerly AS 11.15.060. Renumbered in 1978.

In 1986, the section was reorganized to conform to the style of the Alaska Statutes. Subsection (b) was formerly the last sentence of (a); subsection (c) was formerly (b); and former subsection (d) was formerly the second sentence of (a).

Cross references. — For power of the State Medical Board to regulate abortion procedures, see AS 08.64.105.

For purpose and findings concerning the 1997 amendment to this section, see § 1, ch. 14, SLA 1997 in the 1997 Temporary and Special Acts.

Effect of amendments. — The 1997 amendment, effective July 31, 1997, rewrote paragraph (a)(3), repealed subsection (d), and added subsections (e)-(g).

Editor's notes. — For the constitutionality of statutes concerning abortions, see Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), Doe v. Bolton, 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed. 2d 201 (1973), Planned Parenthood of Missouri v. Danforth, 428 U.S. 52, 96 S. Ct. 2831, 49 L. Ed. 2d 788 (1976), Sendak v. Arnold, 429 U.S. 968, 97 S. Ct. 476, 50 L. Ed. 2d 579 (1976), Akron v. Akron Center for Reproductive Health, Inc., 462 U.S. 416, 103 S. Ct. 2481, 76 L. Ed. 2d 687 (1983), Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747, 106 S. Ct. 2169, 90 L. Ed. 2d 779 (1986), Webster v. Reproductive Health Services, 492 U.S. 490, 109 S. Ct. 3040, 106 L. Ed. 2d 410 (1989), Hodgson v. Minnesota, 497 U.S. 417, 110 S. Ct. 2926, 111 L. Ed. 2d 344 (1990), Ohio v. Akron Center for Reproductive Health, 497 U.S. 502, 110 S. Ct. 2972, 111 L. Ed. 2d 405 (1990), Planned Parenthood of Southeastern Pennsylvania v. Casey, U.S. , 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992). See also 1 Am. Jur. 2d, Abortion and Birth Control, § 3 and 1 C.J.S., Abortion, § 2.

Legislative history reports. — For report on ch. 103, SLA 1970 (CSSB 527 (HWE)), see 1970 Senate Journal Supplement No. 10; 1970 Journal Supplements Nos. 12 and 13. Also refer to the following relevant reports on abortion bills: 1970 Senate Journal Supplements Nos. 1 and 4 (re SB 411); 1970 House Journal Supplement No. 11 (re CSHB 776).

Opinions of attorney general. — Separation of responsibilities in AS 18.16.010 is clear: the approval of facilities is granted to the Department of Health and Social Services; the ethical and professional responsibilities of medical doctors are committed to the supervision of the State Medical Board. No language in AS 08.64.105 vitiates any of the responsibilities granted in paragraph (a)(2) to the Department of Health and Social Services. October 7, 1974 Op. Att'y Gen.

Under the language of subsection (a) only paragraph (1) is clearly constitutional; paragraph (2) could be validated by limiting its effect to abortions performed after the end of the first trimester of pregnancy; paragraph (3) is clearly unconstitutional as written; and paragraph (4) is subject to constitutional challenge, as neither the Alaskan or U.S. Supreme Court has dealt with durational residency requirements in the context of abortion. October 21, 1976 Op. Att'y Gen. (issued before the 1997 amendment of (a)(3)).

NOTES TO DECISIONS

Constitutionality. — Subsection (b) is unconstitutional to the extent it applies to quasi-public institutions. Valley Hosp. Ass'n v. Mat-Su Coalition for Choice, 948 P.2d 963 (Alaska 1997).

Quoted in Cleveland v. Municipality of Anchorage, 631 P.2d 1073 (Alaska 1981).

Cited in Bird v. Municipality of Anchorage, 787 P.2d 119 (Alaska Ct. App. 1990).

Collateral references. — 1 Am. Jur. 2d, Abortion and Birth Control, § 1 et seq.

1 C.J.S., Abortion, § 1 et seq.

Necessity, to warrant conviction of abortion, that fetus be living at time of commission of acts. 16 ALR2d 949.

Pregnancy as element of abortion or homicide based thereon. 46 ALR2d 1393.

Validity of statute or ordinance forbidding or regulating sale or advertisement of contraceptives or abortives, or dissemination of birth control information. 96 ALR2d 955.

Applicability in criminal proceedings of privilege as to communications between physician and patient. 7 ALR3d 1458.

Earlier prosecution for offense during which homicide was committed as bar to prosecution for homicide. 11 ALR3d 834.

Woman upon whom abortion is committed or attempted as accomplice for purposes of rule requiring corroboration of accomplice testimony. 34 ALR3d 858.

Right of action for injury to or death of woman who consented to illegal abortion. 36 ALR3d 630.

Homicide based on killing of unborn child. 40 ALR3d 444.

Minor's right to have abortion performed without parental consent. 42 ALR3d 1406.

Woman's right to have abortion without consent of, or against objections of, child's father. 62 ALR3d 1097.

Availability in state court of defense of entrapment where accused denies committing acts which constitute offense charged. 5 ALR4th 1128.

Entrapment defense in sex offense prosecutions. 12 ALR4th 413.

Validity of state statutes and regulations limiting or restricting public funding for abortions sought by indigent women. 20 ALR4th 1166.

Medical malpractice in performance of legal abortion. 69 ALR4th 875.

Recoverability of compensatory damages for mental anguish or emotional distress for tortiously causing another's birth. 74 ALR4th 798.

Sec. 18.16.020. Consent required before minor's abortion. A person may not knowingly perform or induce an abortion upon a minor who is known to the person to be pregnant, unmarried, under 17 years of age, and unemancipated unless, before the abortion, at least one of the following applies:

(1) one of the minor's parents or the minor's guardian or custodian has consented in writing to the performance or inducement of the abortion;

(2). a court issues an order under AS 18.16.030 authorizing the minor to consent to the abortion without consent of a parent, guardian, or custodian, and the minor consents to the abortion; or

(3) a court, by its inaction under AS 18.16.030, constructively has authorized the minor to consent to the abortion without consent of a parent, guardian, or custodian, and the minor consents to the abortion. (§ 4 ch 14 SLA 1997)

Cross references. — For purpose and findings concerning the enactment of this section, see § 1, ch. 14, SLA 1997 in the 1997 Temporary and Special Acts.

Effective dates. — Section 4, ch. 14, SLA 1997, which enacted this section, took effect on July 31, 1997.

Sec. 18.16.030. Judicial bypass for minor seeking an abortion. (a) A woman who is pregnant, unmarried, under 17 years of age, and unemancipated who wishes to have an abortion without the consent of a parent, guardian, or custodian may file a complaint in the superior court requesting the issuance of an order authorizing the minor to consent to the performance or inducement of an abortion without the consent of a parent, guardian, or custodian.

(b) The complaint shall be made under oath and must include all of the following:

(1) a statement that the complainant is pregnant;

(2) a statement that the complainant is unmarried, under 17 years of age, and unemancipated;

(3) a statement that the complainant wishes to have an abortion without the consent of a parent, guardian, or custodian;

(4) an allegation of either or both of the following:

(A) that the complainant is sufficiently mature and well enough informed to decide intelligently whether to have an abortion without the consent of a parent, guardian, or custodian; or

(B) that one or both of the minor's parents or the minor's guardian or custodian was engaged in physical abuse, sexual abuse, or a pattern of emotional abuse against the minor, or that the consent of a parent, guardian, or custodian otherwise is not in the minor's best interest;

(5) a st
attorney
(c) The
section ar
The hear
business
the compl
subsectio
hold the
the compl
consent o
may rely
an order
induceme
(d) If th
to represe
(e) If th
if the cou
mature ar
court shal
induceme
court doe
complaint
(f) If th
the court
abuse, or
parents o
consent of
best inte
complaina
consent o
specified i
(g) If th
court shal
(1) the
this sectio
order und
not make
subsection
(2) if th
this sectio
of this sec
make the
(h) The
that the c
(i) If th
decision t
complaina
(j) If th
superior c
supreme c
notice and
appellant

(5) a statement as to whether the complainant has retained an attorney and, if an attorney has been retained, the name, address, and telephone number of the attorney.

(c) The court shall fix a time for a hearing on any complaint filed under (a) of this section and shall keep a record of all testimony and other oral proceedings in the action. The hearing shall be held at the earliest possible time, but not later than the fifth business day after the day that the complaint is filed. The court shall enter judgment on the complaint immediately after the hearing is concluded. If the hearing required by this subsection is not held by the fifth business day after the complaint is filed, the failure to hold the hearing shall be considered to be a constructive order of the court authorizing the complainant to consent to the performance or inducement of an abortion without the consent of a parent, guardian, or custodian, and the complainant and any other person may rely on the constructive order to the same extent as if the court actually had issued an order under this section authorizing the complainant to consent to the performance or inducement of an abortion without such consent.

(d) If the complainant has not retained an attorney, the court shall appoint an attorney to represent the complainant.

(e) If the complainant makes only the allegation set out in (b)(4)(A) of this section and if the court finds by clear and convincing evidence that the complainant is sufficiently mature and well enough informed to decide intelligently whether to have an abortion, the court shall issue an order authorizing the complainant to consent to the performance or inducement of an abortion without the consent of a parent, guardian, or custodian. If the court does not make the finding specified in this subsection, it shall dismiss the complaint.

(f) If the complainant makes only the allegation set out in (b)(4)(B) of this section and the court finds that there is clear and convincing evidence of physical abuse, sexual abuse, or a pattern of emotional abuse of the complainant by one or both of the minor's parents or the minor's guardian or custodian, or by clear and convincing evidence the consent of the parents, guardian, or custodian of the complainant otherwise is not in the best interest of the complainant, the court shall issue an order authorizing the complainant to consent to the performance or inducement of an abortion without the consent of a parent, guardian, or custodian. If the court does not make the finding specified in this subsection, it shall dismiss the complaint.

(g) If the complainant makes both of the allegations set out in (b)(4) of this section, the court shall proceed as follows:

(1) the court first shall determine whether it can make the finding specified in (e) of this section and, if so, shall issue an order under that subsection; if the court issues an order under this paragraph, it may not proceed under (f) of this section; if the court does not make the finding specified in (e) of this section, it shall proceed under (2) of this subsection;

(2) if the court under (1) of this subsection does not make the finding specified in (e) of this section, it shall proceed to determine whether it can make the finding specified in (f) of this section and, if so, shall issue an order under that subsection; if the court does not make the finding specified in (f) of this section, it shall dismiss the complaint.

(h) The court may not notify the parents, guardian, or custodian of the complainant that the complainant is pregnant or wants to have an abortion.

(i) If the court dismisses the complaint, the complainant has the right to appeal the decision to the supreme court, and the superior court immediately shall notify the complainant that there is a right to appeal.

(j) If the complainant files a notice of appeal authorized under this section, the superior court shall deliver a copy of the notice of appeal and the record on appeal to the supreme court within four days after the notice of appeal is filed. Upon receipt of the notice and record, the clerk of the supreme court shall place the appeal on the docket. The appellant shall file a brief within four days after the appeal is docketed. Unless the

appellant waives the right to oral argument, the supreme court shall hear oral argument within five days after the appeal is docketed. The supreme court shall enter judgment in the appeal immediately after the oral argument or, if oral argument has been waived, within five days after the appeal is docketed. Upon motion of the appellant and for good cause shown, the supreme court may shorten or extend the maximum times set out in this subsection. However, in any case, if judgment is not entered within five days after the appeal is docketed, the failure to enter the judgment shall be considered to be a constructive order of the court authorizing the appellant to consent to the performance or inducement of an abortion without the consent of a parent, guardian, or custodian, and the appellant and any other person may rely on the constructive order to the same extent as if the court actually had entered a judgment under this subsection authorizing the appellant to consent to the performance or inducement of an abortion without consent of another person. In the interest of justice, the supreme court, in an appeal under this subsection, shall liberally modify or dispense with the formal requirements that normally apply as to the contents and form of an appellant's brief.

(k) Each hearing under this section, and all proceedings under (j) of this section, shall be conducted in a manner that will preserve the anonymity of the complainant. The complaint and all other papers and records that pertain to an action commenced under this section, including papers and records that pertain to an appeal under this section, shall be kept confidential and are not public records under AS 09.25.110 — 09.25.120.

(*l*) The supreme court shall prescribe complaint and notice of appeal forms that shall be used by a complainant filing a complaint or appeal under this section. The clerk of each superior court shall furnish blank copies of the forms, without charge, to any person who requests them.

(m) A filing fee may not be required of, and court costs may not be assessed against, a complainant filing a complaint under this section or an appellant filing an appeal under this section.

(n) Blank copies of the forms prescribed under (l) of this section and information on the proper procedures for filing a complaint or appeal shall be made available by the court system at the official location of each superior court, district court, and magistrate in the state. The information required under this subsection must also include notification to the minor that

(1) there is no filing fee required for either form;

(2) no court costs will be assessed against the minor for procedures under this section;

(3) an attorney will be appointed to represent the minor if the minor does not retain an attorney;

(4) the minor may request that the superior court with appropriate jurisdiction hold a telephonic hearing on the complaint so that the minor need not personally be present. (§ 4 ch 14 SLA 1997)

Cross references. — For purpose and findings concerning the enactment of this section, see § 1, ch. 14, SLA 1997 in the 1997 Temporary and Special Acts.

Effective dates. — Section 4, ch. 14, SLA 1997, which enacted this section, took effect on July 31, 1997.

Sec. 18.16.050. Partial-birth abortions. (a) Notwithstanding compliance with AS 18.16.010, a person may not knowingly perform a partial-birth abortion unless a partial-birth abortion is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury and no other medical procedure would suffice for that purpose. Violation of this subsection is a class C felony.

(b) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section or under any other law if the prosecution is based on this section.

(c) In this section, "partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery. (§ 1 ch 15 SLA 1997)

Effective date
which enacted th
1997.

Sec. 18.16.
(1) "abortio
substance or d
that "abortion
(A) save th
(B) deliver
woman and th
(C) remove
(2) "unema
has not done
(A) entered
(B) become
(C) been en
(D) otherwi
guardian, or c

Cross referer
concerning the er
14, SLA 1997 in t

Article
1. Licensing of
2. Licensing of
3. General Prov

Effective date
which enacted th
30, 1997.

Section
05. Policy decla
10. License req
20. Issuance ar

Sec. 18.18.
hospice progr
without undu
financial reso
furtherance c
programs tha
voluntary hos
program stan

Sec. 18.18
corporation, r
unless the pe
the departme

Effective dates. — Section 1, ch. 15, SLA 1997, which enacted this section, took effect on July 31, 1997.

Sec. 18.16.090. Definitions. In this chapter,

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

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

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

(C) remove a dead unborn child;

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

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

(B) become employed and self-subsisting;

(C) been emancipated under AS 09.55.590; or

(D) otherwise become independent from the care and control of the woman's parent, guardian, or custodian. (§ 4 ch 14 SLA 1997)

Cross references. — For purpose and findings concerning the enactment of this section, see § 1, ch. 14, SLA 1997 in the 1997 Temporary and Special Acts.

Effective dates. — Section 4, ch. 14, SLA 1997, which enacted this section, took effect on July 31, 1997.

Chapter 18. Hospice Care Programs.

Article
1. Licensing of Hospice Programs (§§ 18.18.005 — 18.18.100)
2. Licensing of Volunteer Hospice Programs (§ 18.18.200)
3. General Provisions (§§ 18.18.300 — 18.18.390)

Effective dates. — Section 1, ch. 104, SLA 1997, which enacted this chapter, took effect on September 30, 1997.

Article 1. Licensing of Hospice Programs.

Sec. 18.18.005. Policy declaration. It is the policy of the state that regulation of hospice programs should ensure an appropriate standard of care for hospice clients without unduly burdening the programs with requirements that consume staff time and financial resources that are essential for the delivery of services to hospice clients. In furtherance of this policy, this chapter establishes two sets of standards for hospice programs that recognize the more limited staff time and financial resources available to voluntary hospice programs while requiring all programs to comply with basic minimum program standards. (§ 1 ch 104 SLA 1997)

Sec. 18.18.010. License required. A person, including a partnership, association, or corporation, may not represent itself as a hospice program or operate a hospice program unless the person, partnership, association, or corporation has obtained a license from the department. (§ 1 ch 104 SLA 1997)

(5) describes the circumstances under which the applicant will be practicing, including the name and license number of the supervising physician; and

(6) describes the scope of medical practice required to perform the duties for which the courtesy license is issued;

(7) repealed 8/9/95.

(e) A courtesy license is valid only for the duration of the hospital fellowship or other purpose recognized by the board, but may not exceed one year in length.

(f) A courtesy license holder is subject to all relevant provisions of AS 08.64, 12 AAC 40, and any other statutes or regulations governing the practice of medicine and the prescription of drugs in this state. (Eff. 5/1/94, Register 130; am 8/9/95, Register 135)

Authority: AS 08.02.030 AS 08.64.100

12 AAC 40.050. BIOGRAPHICAL DATA. An application for censure by credentials or examination will not be considered complete until the applicant has requested the following documents and they are on file in the division office:

(1) a physician profile from the American Medical Association or American Osteopathic Association;

(2) clearance from the United States Department of Justice, Drug Enforcement Administration;

(3) clearance from the Federation of State Medical Boards regarding previous or pending disciplinary actions against the applicant by another jurisdiction. (Eff. 8/29/73, Register 47; am 3/30/84, Register 89; am 5/18/85, Register 94; am 8/2/86, Register 99; am 5/1/94, Register 130)

Authority: AS 08.64.100 AS 08.64.190 AS 08.64.200

12 AAC 40.055. INTERVIEW. (a) An applicant for a license or permit regulated by the board shall be interviewed in accordance with AS 08.64.255 or AS 08.64.279 if additional information from the applicant is necessary for the board to determine whether the applicant meets the qualifications in AS 08.64 and this chapter for the license or permit the applicant seeks.

(b) In determining whether an interview is required, the board or a member of the board will consider the information provided by the applicant on the completed application form and

(1) the applicant's disciplinary history with any medical board, licensing agency, credentialing authority, medical or professional school, internship program, residency program, or military authority;

(2) the applicant's charges or convictions of a felony, misdemeanor, or violation of a law, statute, or regulations of this or

another jurisdiction, including the United States or another country, that relate to the grounds for the applicable license or permit denial or imposition of disciplinary sanctions under AS 08.64 or this chapter; the applicant's charges or convictions

(A) include those crimes involving alcohol or narcotics or other controlled substances; but

(B) exclude minor traffic violations;

(3) the applicant's mental, emotional, or physical fitness to practice in a profession regulated by the board under the standards established for the applicable license or permit denial or imposition of disciplinary sanctions under AS 08.64 or this chapter; the board will limit inquiry of the applicant's personal history under this paragraph to information concerning the five years immediately before the date of application;

(4) the applicant's history of negotiated settlements, judgments, or awards in claims or civil actions alleging medical or professional malpractice against the applicant;

(5) the information obtained from a disciplinary data bank regarding the applicant;

(6) the information supplied by the applicant's medical or professional school;

(7) the information received from the program in which the applicant completed post graduate training; and

(8) the information received from other licensing jurisdictions regarding the applicant's professional license status and history. (Eff. 4/10/88, Register 106; am 8/17/97, Register 143)

Authority: AS 08.64.100 AS 08.64.255 AS 08.64.279
AS 08.64.240

ARTICLE 2. ABORTIONS.

12 AAC 40.060. TERMINATION OF PREGNANCY. Termination of pregnancy must be requested by the pregnant woman, unless she has been adjudged mentally incompetent or is unmarried and under 18 years of age, in which case the request must be made by her parent or guardian. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 11.15.060(a) AS 08.64.105

12 AAC 40.070. INFORMED CONSENT. Unless otherwise provided in 12 AAC 40.060, a written informed consent shall be obtained

from the patient or from any other person whose consent is required before termination of a pregnancy. Such written informed consent shall be on the patient's chart. The patient and other persons whose consent is required shall be advised of the medical implications and the possible emotional and physical sequelae of the procedure. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.105

12 AAC 40.080. MEDICAL PROCEDURES. The patient shall be examined by a physician licensed in Alaska, and a written record of the patient's physical and emotional health shall be prepared before performing an abortion procedure as set out in 12 AAC 40.110. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.105

12 AAC 40.090. EVALUATION. The attending physician shall make an evaluation of the patient and an estimation of the duration of gestation based upon the patient's history, examination and test results. This information shall be recorded on the patient's chart. (Eff. 12/20/70, Register 36)

Authority: AS 08.64.105

12 AAC 40.100. CONSULTATION REQUIREMENTS. Abortions interrupting a pregnancy up to and including the twelfth week of gestation may be performed without consultation. Abortions performed after the twelfth week of gestation shall be preceded by consultation with another physician. The consultation shall include an opinion as to the preferred method of termination of pregnancy. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.105

12 AAC 40.110. ABORTION PROCEDURES. During the second or third trimester of a pregnancy, acceptable procedures include dilatation and curettage, suction aspiration of the uterus, injection of pharmacological agents, hysterectomy and hysterotomy. The exact procedure to be used will depend upon the patient's total health, age, associated disease and pathology, and anomalies such as skeletal defects and other medical indications. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.105

12 AAC 40.120. STANDARDS FOR HOSPITALS AND FACILITIES. (a) During the second or third trimester of a pregnancy,

abortions shall be performed under sterile conditions. A bed and a registered nurse shall be available for a minimum recovery period of one-half hour. A registered nurse shall be present during the procedure.

(b) During the second or third trimester of a pregnancy, blood, blood derivatives, blood substitutes or plasma expanders shall be immediately available when an abortion is performed, and an operating room appropriately staffed and equipped for major surgery in accordance with regulations adopted under AS 18.20.060 shall be immediately available. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.105

12 AAC 40.130. RECORDS. During the second or third trimester of a pregnancy, the attending physician shall record a medical history, findings of the physical examination, operative report of the abortion procedure and pathology report as part of the clinical record to be maintained by the hospital or facility. The physician and hospital or facility shall treat the patient's identity and medical record as confidential information. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.105

12 AAC 40.140. LIMITATION. A fetus which has not developed beyond 150 days after the first day of the last menstrual period may be considered non-viable for purposes of AS 11.15.060(a). In the performance of an abortion after that date, the physician shall be guided by a reasonable judgment as to whether the fetus is viable in fact. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.105 AS 11.15.060(a)

ARTICLE 3. CONTINUING MEDICAL EDUCATION.

Section
200. General requirements
210. Credit hours
220. Certification of compliance

Editor's note: For new location of the substance of former 12 AAC 40.160, see 12 AAC 40.990.

---

12 AAC 40.200. GENERAL REQUIREMENTS. (a) A physician seeking renewal of a license on or after January 1, 1986 shall obtain an

SB 300/

HB329 Testimony

My name is Debbie Joslin. My husband, Steven and I live in Delta Junction with our three children; Matthew, Emily and Victoria. Steven is the resource forester in our area. I am a homeschooling mom. I teach 3rd and 4th grade Sunday School and Kings Kids at my church.

On January 15, 1999 I was 22 weeks pregnant when we drove 100 miles to Fairbanks for an ultrasound on our child. After a lengthy examination of the baby, I was told we were expecting a male child with multiple anomalies. The baby we named Isaiah John had a brain cyst, a missing or unconnected stomach and a hypoplastic left heart. We were given the name of a Perinatologist in Anchorage. A perinatologist, as I understand it, is a doctor who specializes in unborn babies who have serious health complications. I spoke to this specialist over the phone and made arrangements to go to Anchorage and have another ultrasound. During that phone conversation she urged me to have the pregnancy terminated. The reasons she listed were that the baby would probably die anyway, the medical expenses would be too great and that my own life was probably in danger. Keep in mind, she had not examined me at this point. I made an appointment with this doctor, since I was told she was the only perinatologist in the state. My husband and I drove 350 miles to keep that appointment, leaving Delta at 40 below zero. When we arrived for our appointment we first saw a genetic counselor who went over some family history with us and explained that they thought Isaiah had Trisomy 18, a chromosomal abnormality (an extra number 18 chromosome). She expressed surprise that we were not considering terminating the pregnancy and asked several times whether we wanted to consider terminating the pregnancy. Another ultrasound was performed by a technician and then the perinatologist took over the exam and listed the following anomalies: Brain cyst, missing or unconnected stomach, hypoplastic left heart, eyes not properly spaced, underdeveloped chin, something wrong with spinal development, something wrong with his penis, rocker bottom feet, possibly an extra toe and fluid in the abdominal cavity and lungs. We were told the fluid indicated that Isaiah was already in congestive heart failure and that he would never make it to his due date in May. We were also told that all Trisomy infants were severely mentally retarded. The perinatologist told us that Isaiah would never respond to us if he were to live. She described a somewhat vegetative state but more probably he would be stillborn any day. She said that if he were to be born alive he would only live for a few hours or maybe a day at most. We agreed to an amniocemesis to determine whether Isaiah did actually have Trisomy 18. Our hope was that he would not, and we could begin to make plans for heart surgery. She told us doctors will not operate on Trisomy infants since they ALL die in infancy anyway.

You can imagine what heavy hearts we had as we drove back to Delta. The plans and dreams I had had for my son were shelved as we instead discussed his funeral. Within a few days I got a call from the genetic counselor with the preliminary test results which showed Isaiah had Trisomy 13. I asked how that differed from Trisomy 18 and she said it was worse. She asked again about termination and I told her again that we were not interested in that. Almost immediately I got a call from my doctor in Fairbanks who asked

me about termination. I told her (again) that I was not interested in that. She told me that since my life was in danger and I had chosen to continue with the pregnancy, she could no longer be my doctor as she was a general practitioner and not qualified to handle such a case. I began seeing the osteopath doctor in Delta and an OB/GYN in Fairbanks. I told them what I had been told about the baby and about my own health. The OB/GYN doctor told me he could not understand why I had been told my life was in danger. He treated me during the remainder of the pregnancy and I never had any complications or problems. Only the usual complaints pregnant women suffer from.

A couple of weeks after the preliminary results, the genetic counselor called with the final results from Isaiah's amniocentesis. It was final - Isaiah had Trisomy 13. She asked me again about termination and I told her no again. I then asked her out of curiosity what she would do if I did say yes. She got very excited and told me that "there is the most wonderful clinic in Kansas". I asked if she meant Tiller's and she said "yes, do you know him"? "No, I told her, but I know about him". She offered to have other women who had had abortions call me but I declined. Sensing that I was not interested in pursuing this any further she told me in a very apologetic voice that "there is a parent support group, but well....they are rather positive". She made it sound as though positive was a bad thing to be. She then went on to tell me that she had information on the group including an 800 number as well as pamphlets and books in her office that gave detailed information about Trisomy 18, 13 and related disorders including pictures. I called S.O.F.T. (Support Organization for Trisomy 18, 13 and Related Disorders) right away and found that they were indeed positive - but realistic. I told the woman over the phone about Isaiah's diagnosis and she told me that probably they were right but there was a chance he could live. She talked to me about the other "parents" and I remember asking her, "parents, you mean they have children?" "Yes, some did,"she said. "How old". I was told that they varied but there were a few children who were teenagers and even a couple of adults. The lady took my name and address and told me she would send me a family packet right away. I also requested the books they had available; Trisomy 13, a Guideline for Families and Care of the Infant and Child with Trisomy 18 or 13. These were the books the genetic counselor had described, the very ones she had in her office. While the information was heartbreaking, it also offered some hope and some help. Two things we hadn't had much of. Not only did some of these children live - they played and smiled and laughed and talked and learned things and showed affection and responded to love and affection.

We located a wonderful pediatrician in Fairbanks who agreed that Isaiah's chances were not good but she was willing to do what she could to help him. We made the decision to hire her and made plans to deliver our baby in Fairbanks. On May 10, only 11 days before his due date, Isaiah John Joslin was born at Fairbanks Memorial Hospital. He weighed 6 lbs 1 oz and was 18 1/4 inches long. Isaiah was a pretty baby with lots of bright red hair. Isaiah had difficulty breathing when first born but as the doctors and nurses checked him over they could find no sign of the problems seen earlier on three different ultrasounds. The brain cyst, stomach problem and hypoplastic heart were all missing as were all of the other problems earlier noted. However, Isaiah suffered from a ventricular septal defect (VSD) - a hole in his heart. Although very serious, it was a far cry from the problems he

had had earlier. Isaiah required oxygen and a nasal gastric tube for feeding. Because of the hole in his heart he was too weak to nurse and had to be fed with a tube. Isaiah looked so normal that even the nursing staff agreed we should retest him. Test results again showed Isaiah to have Trisomy 13. He stayed in the hospital for 12 days and then came home where we cared for him for 20 days before he left us to go to be with the LORD in heaven. Those were some of the hardest but sweetest days of my life.

I am telling you this story so you can understand why I stand before you today and ask that you pass HB329/ SB 300

After talking to other doctors and doing a great deal of research and reading about Trisomy infants and because of my own personal experience, I believe my life was never in any danger. Yet, this undue burden was placed on me at a time when I already had plenty to worry about.

I was told that ALL Trisomy infants die. I now know that somewhere between 90 and 95% of all Trisomy infants die before one year of age. That doesn't leave much room for hope I realize but it is quite different than saying they ALL die.

I was not told about the parent support group (S.O.F.T.) for over two weeks. Well, you may say they were not sure your child had Trisomy until the final results were in. Perhaps, but they were sure enough that they continually brought up termination. I drove 250 miles to see the doctor and was never shown the written information about this disorder that they had right there. .

Though they were careful to tell me every negative thing they could about the baby, I was never told of any of the risks of having an abortion. There was never any mention made of the risk to my health, either physical or emotional.

I believe the doctors who repeatedly brought up termination probably meant well. The problem comes in where they apparently believed that their professional status, or their medical degrees placed them in a position to know better than me what was best for me, my family and my baby. That simply was not true.

Giving life to Isaiah was hard on our family. But it wasn't TOO hard. It was expensive. But it wasn't TOO expensive. It was hard on the other children. But it wasn't TOO hard. Giving life to Isaiah blessed our family, including the other children. Because of his heart condition Isaiah was always lethargic and sleepy and tired acting but he was never in pain. The equipment which monitored his oxygen saturation rate showed that whenever we held him or showed affection to him, Isaiah was aware of it. His saturation levels would soar when he was being loved on. There seems to be a feeling out there that a successful life is one that is free from pain or suffering or trials and that isn't true. Isaiah's life was successful. We loved him and he loved us.

Of course I would like for every mother to make the same decision I did but I realize that won't happen. But every mother deserves to have all of the information pertinent to her situation so that she can make an intelligent informed decision. I stand before you today and say that if you vote against HB329 you are saying, in effect, that women are not competent enough to be trusted with the facts regarding the health of their own bodies and that of their unborn children. A "no" vote says that you have no compassion for families and believe that doctors are better suited to make decisions for women and their unborn babies.

A "yes" vote for ~~HB329~~ SB300 sends an entirely different message. A vote *for* informed consent says that you have respect for the intelligence of women and believe that they have the right to be trusted with the information necessary to make decisions for themselves. I trust and hope that this body of legislators will prove themselves to be in favor of women's rights.

Thank you.

Debbie Joslin

Jan Whitefield, M.D., F.A.C.O.G.

4115 Lake Otis Parkway
Anchorage, AK 99508

April 4, 2000

Re: SB300

Dear Madams and Sirs:

I object to this proposed legislation on a variety of grounds. As a person who supplies abortion as part of my work, I have very specific insight on the effects of this legislation. I do NOT have anything monetary to gain from opposing this legislation. If the number of abortions decreases in Alaska, the options are delivery of a fetus, and that also is part of my work, and represents a larger income to me than abortion, so this is not financially motivated.

- The mandatory 24 hour waiting period, as written, will be discriminatory to Alaskan Natives. There is a large database of information maintained by the State epidemiologist. Women who fly in from outlying areas where abortion is not available will have to spend extra time in the location where the procedure is being performed. This means that, as a group, the procedures will cost them more money than compared to a person who lives where the procedures are locally available. Since the majority of women who live in the bush are Alaskan Natives, this has the effect of making abortions less accessible, and more expensive than for their non-Native counterparts. This makes the law discriminatory to Alaskan Natives. Data analysis on the abortion database will clearly demonstrate this discrimination toward Alaska Natives.

- The bill legislates material to be given to the patient that provides information about the possibility of an "unborn child's" survival at the various gestational ages. It should be noted that "unborn child" is a term not listed in the index on the noted book "Williams Obstetrics", an authoritative text in Obstetrics. However, even if one substitutes a medically correct term such as "fetus", this information is argued over by experts in the field, and an agreement could not be reached as to what this information should be.

- Section 18.16.060 paragraph (b), subheading (1) lists requirements for informed consent, and information that must be available and given to a patient. Subheading (2) states that the Department of Health and Social Services provides written information that describes the fetus (the bill uses "unborn child" here) at various gestational ages, and lists the agencies that offer alternatives to abortion; that the women has the right to review the information, and that a copy will be given to the women at no cost. This information is already available, and is given by me to any patient who requests it, but I do not force it on her. Last week I did abortions on two women who wanted to be pregnant, and were carrying desired pregnancies. Unfortunately, prenatal diagnosis found that both of the women were carrying pregnancies that were incompatible with life. Both chose to have abortions, rather than carry these pregnancies and wait for either intrauterine deaths, or deliver fetuses, only to have them die shortly after birth. The extensive descriptions that are mandated by this bill would have been very difficult for these patients to go through. They wanted these pregnancies, and this type of counseling would have been emotional torture for them.

- C. Everette Koop, when he was a Pro-Life Surgeon General, analyzed the medical literature and could demonstrate no link between abortion and psychological risk. This bill devotes an entire

subheading to a risk that is non-existent according to our prior Surgeon General. This represents clear bias on the part of the crafters of the bill.

- Links between abortion and breast cancer have similarly been investigated by the American College of Obstetrics and Gynecology, and no link could be demonstrated, leading ACOG to issue a statement stating that no demonstrable link exists. This purported risk is alluded to in the bill, again demonstrating clear bias on the part of the crafters of the bill.

- The word "conception" was defined as the fusion of a human spermatozoon with a human ovum. Stedman's Medical dictionary, 23rd Ed. defines it as "Implantation of a blastocyst". Currently, in Alaska, it is possible for couples to undergo invitro fertilization (IVF), where fertilized eggs can be frozen when too many eggs result from a stimulated ovarian cycle. If a woman has fertilized eggs stored somewhere, how does this bill affect storage of these fertilized ova? If a woman finds that she has all the children that she wants, does this mean that destruction of those fertilized eggs is actually an abortion, and, if so, does she need to be similarly counseled on these abortions issues? Does she need to be advised that there may be women who would agree to be surrogate mothers with these fertilized ova? Would the laboratory director be required to do abortion counseling if fertilized eggs are destroyed?

- According to this bill, "fertilization" has the same meaning as conception. It that is so, why do physicians and scientists have two separate words with two separate meanings?

- The Standard medical dictionary, "Stedman's", does not have a definition for "unborn child", but does define such terms as "blastocyst", "zygote", "embryo", and other valid scientific terms. The term "unborn child" has the effect of clouding an already contentious area. This state has never assigned to a fetus the rights of a live born child, and this definition tends to only cloud these issues.

- No other surgical procedure is singled out in Alaskan Law where the legislative branch attempts to define medical informed consent. Informed consent is a fluid process. As medical techniques evolve, risks and benefits of given procedures change. The physicians who perform procedures are the ones most knowledgeable in providing current, state of the art discussions about this, or any other procedure. Inherently, it is unreasonable to expect that the legislature could write a law containing any specifics at all, since these specifics will change over time. As specific risk and benefits change, the law would have to be rewritten; a daunting task indeed. That is why informed consent needs to remain in the hands of the medical provider.

This bill is highly biased, essentially forcing information on a woman who selects to seek an abortion, no matter what the reason. There is no parallel bill requiring women who choose to carry a pregnancy to term to be supplied with alternatives, including abortion providers in their area, whom they could turn to if they chose not to carry the pregnancy. There is no parallel bill outlining the risks of carrying a pregnancy to term, nor educational material outlining the responsibilities of raising a child, or potential psychological risks of having a child when a women isn't prepared for it. If a women carries a pregnancy to term, there is no parallel requirement that, fro instance, the WICK office be required to supply the names of facilities and providers that perform abortions, with appropriate telephone numbers to contact them.

Psychological damage has never been proven to occur as a result of abortions, but this bill, if passed and enforced, may change the situation. If women are forced to undergo biased counseling, it is possible that psychological damage may occur, thus causing a problem where none now exists. Contrary to "protecting" Alaska women, this bill may actually harm them.

Taken as a whole, this bill has a number of flaws. It is discriminatory to Alaskan Natives. It is biased in that it forces information on a person seeking an abortion who may or may not want this information, and the information is already available for the patient who wants it. It attempts to define informed

consent – a process wholly in the purview of the provider, not the legislature. It "defines" medical terms such as "conception," which already have medical definitions, and by doing so needlessly introduces ambiguities such as in the area of embryo storage.

Please veto this bill if it ever is brought to a vote in the senate, or at any of the subcommittees.

Sincerely,

Jan Whitefield, M.D., Ph.D.

Alaska Civil Liberties Union

An Affiliate of the American Civil Liberties Union
P. O. Box 201844, Anchorage, AK 99520-1844
Phone: (907) 258-0044 Fax: (907) 258-0288 Email: akclu@alaska.net

To: Senate Judiciary Committee
From: Jennifer Rudinger, Executive Director
Date: Tuesday April 4, 2000 (for testimony to be delivered in April 5th Committee hearing)

Re: **SB 300: BIASED COUNSELING AGAINST ABORTION AND MANDATORY DELAY**

The US Supreme Court's 1992 decision in Planned Parenthood of Southeastern Pennsylvania v. Casey upheld, among other restrictions, a Pennsylvania law requiring that physicians provide women with state-prepared anti-choice materials at least 24 hours prior to the abortion procedure. The law forces a doctor to provide every woman seeking an abortion with information that is intended to discourage the procedure -- even if the information is irrelevant, unnecessary, and ultimately harmful to her health.

Such "biased counseling" laws are currently enforced in more than a dozen states. In a number of other states, these laws have been enacted but are enjoined or otherwise unenforced. Often introduced under the deceptive label of "Informed Consent" or "Women's Right to Know," biased counseling laws in fact serve to hamper women's access to abortion.

Alaska, however, is one of several states that evaluate restrictions on women's reproductive choices under the stricter standard of judicial review established by the US Supreme Court in 1973 in Roe v. Wade. Therefore, the Casey analysis and conclusion do not apply when an Alaska court reviews laws such as SB 300, and it is our opinion that SB 300 is unconstitutional under the Alaska Supreme Court's decision in Valley Hospital Association, Inc. v. Mat-Su Coalition for Choice, et al. in 1997.

Aside from our concerns that SB 300 violates the Alaska Constitution, there are many reasons why the bill is bad public policy.

1. Biased Counseling Gives Women Inaccurate and Incomplete Medical Information.

Mandatory anti-choice lectures do not give women accurate or meaningful medical information. Women are not told, for example, that a legal, first-trimester abortion has a lower complication rate than any other surgery, but in fact, the mortality risk of full-term pregnancy and childbirth is more than 20 times *greater* than that of a first-trimester abortion. Rather, women are read a list of possible complications from the abortion procedure, which in reality occur very rarely. SB 300 does not require that women be told about the psychological effects of giving a child up for adoption or carrying an unwanted

pregnancy to term – rather, SB 300 requires that women be told only that *abortions* pose risks of

psychological injury. In fact, according to a 1987-88 investigation by the former Surgeon General of the United States, Dr. C. Everett Koop (who is no champion of choice), as well as a study by the World Health Organization, there is no medical evidence that abortion causes psychological injury. On the contrary, relief is the most common reaction to a voluntary abortion, whereas women who are forced to continue unwanted pregnancies suffer adverse and sometimes severe psychological consequences.

SB 300 requires physicians to tell their patients that abortion increases a woman's chance of developing breast cancer. This is a scientifically unsupported statement mandated not out of concern for women's health, but in order to scare women away from choosing abortion. In fact, the most recent and most conclusive research about abortion and breast cancer, a study of more than 1.5 million women in Denmark, found that "induced abortions have no overall effect on the risk of breast cancer."

2. Requiring That Physicians Deliver the Biased Lectures Makes Access to Quality Reproductive Health Care More Difficult and Expensive.

SB 300 prohibits a trained counselor, nurse, or other health care practitioner from providing the biased counseling to the patient, requiring instead that a doctor deliver the state's anti-choice message. This stipulation has a direct effect on women's health. Many clinics experience serious difficulty in finding doctors willing and able to perform abortions, and the few who are available often find themselves barely able to meet the needs of their patients. By prohibiting doctors from delegating counseling and related tasks to other trained professionals, these laws make it far more difficult for clinics to provide women with the quality health care they deserve. Furthermore, since a doctor's time costs much more than that of a nurse, clinician, social worker, or counselor, the doctors-only stipulation drives up the costs of abortion and other health services provided by clinics.

3. Informed Consent Is Already Required For Medical Procedures.

A woman must give her informed consent before undergoing *any* surgical procedure, including abortion. Modern standards of the medical profession, as well as state laws, ensure that health care practitioners provide women with accurate and unbiased information regarding the risks and benefits of their various treatment options, and obtain their informed consent. SB 300 singles out abortion from all other medical procedures. Implicit in the requirement of a biased lecture is the assumption that women do not adequately think through their abortion decision and that the state must do their thinking for them. This assumption reflects a lack of respect for women's moral decision-making. In fact, virtually all women have carefully considered their decision to have an abortion

by the time they arrive at the clinic. Clinics in Alaska routinely refer for additional counseling the small number of women who remain ambivalent.

4. Biased Counseling Requirements Violate Standard Medical Practice and the Doctor/Patient Relationship.

SB 300 requires a doctor to supply all of the state-mandated information to every woman in every instance in order to avoid liability. This state-imposed litany may conflict with the doctor's ethical obligation to give the best medical advice to the patient, in view of her individual circumstances. For example, it is both pointless and cruel to "inform" a victim of rape or incest that the "father" of the "unborn child" is liable for financial assistance if she carries the pregnancy to term, or to remind a woman carrying a fetus with impairments so severe that it could never survive outside the womb that her "unborn child" will be 20 weeks old at the time of the abortion. Moreover, doctors are forced to provide nonmedical information -- about the availability of child support, for example -- about which they may not be qualified to speak and which is totally irrelevant to the physician's ethical obligation to provide the best medical care and advice to the patient. Indeed, the American Medical Association has resolved to oppose these types of measures, finding that "informed consent requirements [for specific medical procedures] often are not medically indicated and never are appropriate areas for codification in law." [American Medical Association, "AMA Opposition to 'Procedure Specific" Informed Consent," House of Delegates Resolution 226 (A-99).]

SB 300 is a perfect example of why legislators should not insert themselves into the business of practicing medicine. The definitions of "fertilization", "gestational age", and "pregnancy" contained in the bill are medically inaccurate, and the definition and use of the term "unborn child" is both medically inaccurate and inflammatory. Furthermore, providing women with "information" about their legal rights to collect child support from the father is both insensitive and cruel in the case of rape or incest victims and unrealistic because in reality, the percentage of fathers who actually *pay* this support is appallingly low.

5. Waiting Periods Cause Medical Risks

There are fewer than a dozen abortion providers in Alaska, and they are concentrated in Anchorage and the Kenai Peninsula. Therefore, many women in rural Alaska and in the Interior must travel great distances at great personal expense in order to terminate their pregnancy. Alaska Women's Health Services, for example, one of a handful of clinics in the state that perform abortions, serves women from all over the state whose journeys are more often measured in days than hours. With the hardships that these women face in rescheduling work, family, or school responsibilities, compounded by the providers' scheduling problems, a 24-hour waiting period could result in a delay as long as two weeks. Given these realities, a waiting period poses significant health risks to women seeking abortions.

Such a delay can push a first-trimester abortion into a second-trimester abortion, making what would have been a routine procedure into a more complicated and dangerous one. The American Medical Association, in its report on abortion, states that "[m]andatory waiting periods [and other barriers] have the potential to threaten the safety of induced abortion. Each of these factors increases the gestational age at which the induced pregnancy

termination occurs, thereby also increasing the risk associated with the procedure." After the twelfth week of pregnancy, abortions require more skill, and there is greater risk of uterine perforation, hemorrhage, and other complications. By compelling women to delay their abortions, forced waiting periods add a significant risk factor to the abortion procedure.

6. Waiting Period Laws Demean Women's Decision-Making Ability.

No other medical procedures, even much more dangerous and complicated surgeries, have legally required waiting periods. The forced delay implies that women who seek abortions do so without adequate reflection and are incapable of making reasoned, moral decisions regarding their health and future. In reality, a built-in delay already exists between the time a woman finds out that she is pregnant and the time she enters the clinic, during which period she has ample, time to think over her decision. As I have already pointed out above, clinics themselves routinely provide counseling and refer any uncertain patients for further counseling. For some, the mandatory delay is more than merely insulting – it is cruel to tell a woman who knows that her fetus is anencephalic (lacking the upper portion of the brain) or a woman who has become pregnant through rape or incest that she must wait 24 hours and reconsider her decision.

7. Conclusion: SB 300 Endangers Women's Health and Violates Women's Constitutional Right to Reproductive Choice.

SB 300 is not created to protect women's health. The purpose is clear: this bill is designed to make a woman's very personal decision even more difficult. SB 300 intimidates women and discourages them from exercising their reproductive rights. Fear of civil sanctions and the intrusive nature of the state-prescribed litany of propaganda also serve to deter doctors from performing abortions, further exacerbating the alarming present shortage of providers in Alaska.

The AkCLU respectfully urges this Committee not to place any further burdens on women's rights to choose abortion. Please feel free to call on me if you have any further questions or concerns. I can be reached at (907) 258-0044 most days, from mid-morning until mid-evening.

Thank you for your careful consideration.