

**ALASKA LEGISLATURE**

**2632**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004**

1 governor under this section. The Department of Administration may adopt emergency  
 2 regulations to implement an order issued by the governor under this section, including  
 3 regulations regarding the scope of compensation and benefits and any allocation  
 4 between the state and the state employee of contributions relating to the benefits.

5 Emergency regulations adopted under this section

6 (1) are not subject to AS 44.62 (Administrative Procedure Act); and

7 (2) take effect immediately unless the Department of Administration  
 8 specifies another date.

9 (c) In this section, "benefits" includes credited service in a state retirement  
 10 system, membership in the supplemental employee benefits system under  
 11 AS 39.30.150 - 39.30.180, and group life and health insurance provided under  
 12 AS 39.30.090 - 39.30.095 or under a collective bargaining agreement.

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

15 APPLICABILITY. Until a collective bargaining agreement in effect on the effective  
 16 date of this Act expires, this Act applies to state employees covered by that collective  
 17 bargaining agreement only if that agreement is modified to accept the provisions of this Act.

18 \* Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to  
 19 read:

20 RETROACTIVITY. This Act is retroactive to September 11, 2001.

21 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SB 26  
(S) Publish Date: 3/26/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: All  
Title "An Act relating to state employees BRU \_\_\_\_\_  
who are called to active duty..." Component \_\_\_\_\_  
Sponsor Ellon/Taylor Component No. \_\_\_\_\_  
Requester \_\_\_\_\_

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

FUND SOURCE	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY2003) cost: \_\_\_\_\_  
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
Current year funding requirements are unknown at this time.  
Out year funding is indeterminate. There is no way to predict the number of emergencies for which an Administrative Order under the proposed legislation might be considered.

Prepared by: David Stewart Phone 465-4431  
Division: Division of Personnel Date/Time 3/25/03 1:10 PM  
Approved by: \_\_\_\_\_ Date 3/25/2003  
Agency: \_\_\_\_\_

COMMITTEE COPY

# Alaska State Legislature

Senator Robin Taylor



Senator Kim Elton

## MEMORANDUM

**DATE:** March 27, 2003

**TO:** Senator Gary Wilken, Co-Chair  
Senator Lyda Green, Co-Chair  
Senate Finance Committee

**FROM:** ~~Senator Kim Elton~~ and Senator Robin Taylor

**SUBJ:** Hearing Request for SB 26, an Act relating to state employees who are called to active duty as reserve or auxiliary members of the armed forces of the United States; and providing for an effective date.

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We respectfully request a hearing for SB 26, allowing the governor to ensure that state employees who are members of reserve and auxiliary military units, including the Alaska National Guard, Alaska Naval Militia, and the Alaska State Defense Force will not be financially penalized while on active duty. These courageous Alaskans could continue to receive the equivalent of their state salaries, and some or all of their state benefits.

Governor Frank H. Murkowski has recently confirmed that members of the Alaska Air National Guard's 176th Wing have received federal activation and deployment orders to participate in ongoing operations in support of Operation Enduring Freedom.

More than 150 members of the Alaska Air Guard were activated for a period of up to 12 months. Their deployment date has not been determined.

SB 26 allows the governor to continue health benefits for the families of these dedicated men and women.

We ask that you hear SB 26 at your earliest convenience.

# Alaska State Legislature

Senator Robin Taylor  
Chair, State Affairs



Senator Kim Elton  
Minority Whip

## SB 26 Sponsor Statement

*"An Act relating to state employees who are called to active duty as reserve or auxiliary members of the armed forces of the United States; and providing for an effective date."*

This measure allows the Governor to ensure that state employees who are members of reserve and auxiliary military units, including the Alaska National Guard, Alaska Naval Militia, and The Alaska State Defense Force will not be financially penalized while on active duty. These courageous Alaskans could continue to receive their state salaries, or the equivalent, and some or all of their state benefits.

This is the right thing to do for our reserve and auxiliary service members who are called to active duty. The governors of many other states already possess this authority. Alaska should join their ranks.

This authority would be discretionary and triggered by an order of the governor. We do not anticipate a governor would invoke this provision for a short-term mobilization of the National Guard for, say, disaster assistance. We would expect that it generally would be invoked only for large-scale activations such as those we have seen recently across the country. The intent of the bill is that state employees called to active duty should not be financially harmed.

*We urge your prompt and favorable action on this measure.*

# Alaska State Legislature

Senator Robin Taylor  
Chair, State Affairs



Senator Kim Elton  
Minority Whip

## SB 26 Bullet Points

“An Act relating to state employees who are called to active duty as reserve or auxiliary members of the armed forces of the United States; and providing for an effective date.”

- Governor **may** authorize by administrative order for state employees who are called to active duty to continue to receive state compensation and some or all of their state benefits.
- Department of Administration **may** adopt emergency regulations to implement order issued by governor.
- Not subject to AS 44.62 (Administrative Procedure Act) because they are meant to be immediate and of limited duration.
- Retroactive to September 11, 2001.
- We don't anticipate emergency regulations providing full salary, just benefits and any difference between active duty pay and state salary.
- Soldiers' families keeping health insurance.

March 25, 2003

Paula,

First, thanks to Senator Elton for sponsoring, with Senator Taylor, this very important bill. Per your request, my comments to the legislature follow for your review.

**Julie Benson's Testimony to the State Affairs Committee on March 25th**

Mr. Chairman and members of the committee. I know you are busy during this session and I want to sincerely thank you for hearing SB 26. My name is Julie Benson and I am married to a State Trooper and Air National Guardsman. This bill is important to us both individually and as a family. My husband, Adam, originally planned to testify today but, as frequently happens, was called to work on his day off.

My husband has been a Trooper for 4 years and we are currently stationed in Ketchikan. We have one daughter with another child due in July. My husband is a US Army trained helicopter pilot and left full time military service to pursue his dream of living in Alaska where he had been stationed. Upon leaving the Army, Adam joined the Alaska Air National Guard as a KC135 crew chief. Last year, after the tragic events of September 11th, Adam was activated for 6 months during Operation Enduring Freedom and spent time in the Middle East last summer.

I would like to help you understand that SB 26 is essential legislation for state employees who make the difficult choice to serve not only their state, but also their country. When my husband was activated last summer, our benefits through his employment as a trooper were immediately discontinued. This resulted in lost retirement contributions, as well as the loss of certain pay raises he would have received had he remained employed by the state. Adam and I feel that any loss of pay and benefits due to activation is just not right.

The individuals who choose to perform service to their country as well as their state are exemplary public servants and should not be penalized by the state, especially at a time of significant national crisis. These people are federal and state servants because they choose to be, not because they have to be.

My husband is a unique individual who feels compelled to serve in every aspect of his professional life. When he left the Army, there was never a question of whether or not he would continue to serve his country. He immediately joined an active air guard unit that is frequently deploying its members worldwide. Though we understood the potential sacrifice of this decision, it was never up for debate. Civil service is what Adam is all about. And despite the family compromises that we make, I am so thankful for men and women like my husband and I am proud to be his wife.

The passage of this bill is the right thing to do. Under current state policy, the men and women who are called to serve are punished by their employer, the State of Alaska. I doubt that the passage of this bill will change any of their decisions to continue their voluntary military service. It's just what they do because it's the right thing for them to do. The right thing for the rest of us to do is to use every avenue available, to support them as they, and their families, make incredible sacrifices to protect and defend.

Please support the men and women who choose to serve our great nation and our great state by supporting SB 26. I'm happy to answer any questions you may have for me. Thank you for your time.

As my testimony indicates, my family was significantly affected last year when my husband was called to active duty. He lost pay in addition to state retirement and health benefits. SB 26 would correct what we believe is wrong with the state's current treatment of employees who are called to serve their country.

As stated in my testimony, if you have any questions for me or my husband, please feel free to contact us via email or by phone at 225-0328. Thank you again for your work on this bill.

Julie Benson

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State workers called to military duty will keep regular pay

By The Associated Press  
February 23, 2003

NASHVILLE - State workers called to active military duty with the National Guard or Armed Forces Reserves will continue to get paid the same salary they make in their civilian jobs, under an executive order signed Saturday by Gov. Phil Bredesen.

"Signing this document is the least that we can do for hard-working state employees, Guardsmen, Reservists and their families," Bredesen told more than 500 people at the 74th Annual Conference of the National Guard Association of Tennessee.

Shortly after the speech, Bredesen took a plane to Washington, where he is attending the National Governors' Association meeting.

The executive order renews a pledge by former Gov. Don Sundquist that was set to expire March 11.

It requires government agencies and departments to extend military leave and provide offsetting pay to state employees whose active-duty wages are less than their normal salary.

For example, if an employee normally earning \$2,619 a month - the average government salary - is called to active duty making only \$2,100 a month, the state will pay \$519 a month. The benefit is capped at \$1,000 a month.

Bredesen also encouraged private employers to supplement pay of their workers who are deployed.

"Guardsmen and Reservists already have given so much," Bredesen said. "They should not have to sacrifice financially in order to defend our freedom and security."

An estimated 480 state employees were members of the Tennessee Army and Air National Guards in January 2002, the most current number available from the Department of Personnel. An unspecified number serve in the Armed Forces Reserves.

The Tennessee National Guard now has more than 2,200 members on active duty.

It was unclear how many state workers have been called to duty.

Bredesen said he will keep renewing the new order as long as the nation is at a high risk of war.

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## States Act To Protect Citizen Soldiers' Income

Pamela M. Prah, Staff Writer

Stateline.org

April 1, 2003



While pressed for cash, several states are acting to make sure National Guard troops and reservists called on to fight against Iraq or terrorism don't lose out financially.

Florida, New York, Tennessee and Virginia recently acted to assure that state employees don't get less income while they are on active duty. Connecticut went farther by also guaranteeing health care coverage for activated state workers. New York is offering the most generous package. It includes health care, pay differential and tuition breaks.

Despite facing some of the most wrenching budget decisions in decades, state leaders are choosing to put the welfare of those serving in uniform – and their families – as a top priority.

"What we've seen since September 11 is that many states and municipalities recognize the sacrifices that especially the Guards make, since it's the National Guard troops who are called up for Homeland Security" said John Goheen, spokesman for the National Guard Association of the United States.

"They [states and municipalities] want to step up and want to improve benefits and provide more as a means for recruiting and retention and as a way to thank the National Guard for their sacrifices," Goheen said. His Washington, D.C. –based association represents National Guard members.

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"While we applaud those states and municipalities that have offered up pay differentials, we certainly understand that some states and municipalities just can't do it because the only way they could do it is to cut someplace else."

*John Goheen, National Guard Association of the United States*

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Many cash-strapped states may find it difficult to offer generous pay and health care benefits for reservists and their families. Collectively, the states deficits will be nearly \$90 billion in fiscal 2004, according to the National Association of State Budget Officers.

"It's tough times for the states," Goheen said. "While we applaud those states and municipalities that have offered up pay differentials, we certainly understand that some states and municipalities just can't do it because the only way they could do it is to cut someplace else," Goheen said.

Federal law requires that employers -- including states and municipalities -- keep the same or similar jobs, pay and benefits waiting for employees who are away on military duty. But employers are not required to pay workers while they are serving.

The cost of such programs is hard to determine in advance since states often don't know how many Guard members and reservists will be called up. Generally, however, state employees in the National Guard or the National Guard Reserves number in the hundreds, not thousands. Virginia figures it will cost the state about \$600,000 a year to make up the pay difference for the 200 state employees currently deployed, said Ellen Qualls, spokeswoman for Virginia Gov. Mark R. Warner (D).

"It's more common now than it ever was for employers to be providing some kind of differential pay, if not a continuation of pay, and some kind of health benefits, if not an expansion of health benefits, for their Reservists and Guard members," said Lt. Colonel Vince Savoia, a spokesman for the Employer Support of the Guard and Reserve (ESGR), a Department of Defense agency that helps employers understand troop and reservists' rights.

California, Delaware, Kansas, New Jersey, Ohio, Oklahoma, West Virginia, Washington and Wyoming are among the states that have policies that expand pay differential and/or medical coverage for state Reserve and National Guard members called to active duty, according to ESGR.

Connecticut, New York and Virginia have all enacted measures in March that go beyond the Uniformed Services and Employment and Reemployment Rights Act of 1994, the federal law that mandates job protections for reservists.

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"It's more common now than it ever was for employers to be providing some kind of differential pay, if not a continuation of pay, and some kind of health benefits, if not an extension of health benefits, for their Reservists and Guard members."

*Lt. Colonel Vince Savoia, Employer Support of the Guard and Reserve*

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The most sweeping proposal comes from New York Gov. George E. Pataki (R) who outlined his "Patriot Plan" in early March and is implementing provisions of it via executive orders, with the most recent March 24.

Pataki's executive orders ensure the following for all military personnel, not just state workers:

- continued health care coverage while on active duty
- automatic renewal of their drivers' licenses
- free passes to family members to state parks and beaches
- free high-speed Internet access at state colleges and universities for families to contact their enlisted relatives

Other components of Pataki's proposed plan require state lawmakers' approval, such as giving free college tuition to children and spouses of New York military personnel killed on duty. An estimated 4,000 New York National Guard troops are on state and federal active duty, the governor's office said.

Connecticut Gov. John G. Rowland signed legislation March 27 extending health care and providing pay differential for state employees called to active duty while Virginia Gov. Warner signed an executive order March 26 providing pay differential.

In Indiana, state Rep. Jeff Espich (R) plans to introduce a measure ordering the state to make up any difference in pay for state workers, according to Espich spokeswoman Karen L. Howe.

Forty-one percent of reservists reported they lost money when called to active duty compared to 29 percent who said they got a pay boost, according to a recent survey of reservists by the General Accounting Office, a federal watchdog agency.

Private employer also have acted voluntarily to provide more pay and benefits, according to the ESGR. The employers include American Express, Boeing Co., Coca Cola, Ford Motor. Co., Hewlett Packard, Miller Brewing Co., Sara Lee, United Parcel Service and Xerox.

Contact Pamela M. Prah at pprah@stateline.org

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Issues to Watch

States to Watch

## SENATE COMMITTEE REPORT First Committee of Referral

DATE: 1/21/03

FURTHER: Finance

Date of 5-Day Notice: 3/13/03  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 3/26/03

State Affairs Committee considered      SENATE BILL NO. 26

### SB 26 STATE EMPLOYEES CALLED TO MILITARY DUTY

"An Act relating to state employees who are called to active duty as reserve or auxiliary members of the armed forces of the United States; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 26 (STA)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
APM/ALL Depts	3/25/03	<del>XXXX</del>		1

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		DO PASS	DO NOT PASS	NO REC	AMEND
Cowdery	<i>John J. Cowdery</i>	✓			
Hoffman	<i>[Signature]</i>	✓			
Dyson	<i>[Signature]</i>	✓			
Guess	<i>[Signature]</i>	✓			
G. Stevens	CHAIR: <i>[Signature]</i>	✓			



**SB**

**30**

**HFIN**

**FILE**



# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3  
 Bill Version: HCS CSSB 30(JUD)  
 ( H ) Publish Date: 4/1/04  
 Dept. Affected: Health & Social Services  
 RDU Health Care Services  
 Component Women's and Adolescents Services

Revision Date/Time (Note if correction):  
 Title INFORMED CONSENT FOR ABORTION

Sponsor DYSON

Requester HOUSE (JUD)

Component No. 2668

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	20.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>20.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES (0)</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	20.0					
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>20.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: \_\_\_\_\_

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill requires that information be prepared and made available via the Internet, to every woman seeking an abortion, on the medical risks of abortion, pregnancy, and where services can be sought, by geographical region. The DHSS already produces, procures and disseminates a range of materials regarding how to have a healthy baby and ways to keep the baby safe and healthy after birth. In addition, the Department maintains a 24-hour referral line for services. Ensuring the intent of this bill is addressed will require resources for the production of the additional informational materials on abortion. (continued on next page)

Prepared by: Dwayne Peoples

Division: Health Care Services

Phone 465-5830

Date/Time 01/29/2004

Approved by: Joel S. Gilbertson, Commissioner

Date 02/02/2004

Agency: Department of Health and Social Services

FISCAL NOTE

FN # 3

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. HCS CSSB 30(JUD)

ANALYSIS CONTINUATION

CONTRACTUAL: \$20.0 for a professional services contract in Year 1 for the production and posting of the web-based materials required under this bill.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 4  
 Bill Version: HCS CSSB 30(JUD)  
 ( H ) Publish Date: 4/1/04  
 Dept. Affected: Health & Social Services  
 RDU Public Health  
 Component Bureau of Vital Statistics

Revision Date/Time (Note if correction):  
 Title INFORMED CONSENT FOR ABORTION

Sponsor DYSON  
 Requester HOUSE (JUD)

Component No. 961

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	30.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>30.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES (0)</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	30.0					
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>30.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: \_\_\_\_\_

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill would add a requirement to the report of Induced Termination of Pregnancy (ITOP) program that the Bureau of Vital Statistics (BVS) collect and record data on whether or not each reported patient requested and received a written copy of information on reproductive options required to be maintained on the Internet.

CONTRACTUAL: \$30.0 in GF for contractual service costs would be required in Year 1 (one-time costs) to provide for 1) a contract to revise the BVS ITOP computer program (\$20,000);

(continued on next page)

Prepared by: Doug Bruce, Director  
 Division: Public Health  
 Approved by: Joel S. Gilbertson, Commissioner  
 Agency: Department of Health and Social Services

Phone 465-3090  
 Date/Time 01/29/2004  
 Date 02/02/2004

FISCAL NOTE  
FN # 4

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. HCS CSSB 30(JUD)

ANALYSIS CONTINUATION

2) to produce, print and distribute revised ITOP reporting forms to providers throughout Alaska (\$2,000); and 3) to contract for the drafting of regulations to implement AS 18.50.245(e) (\$8,000).

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3  
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 ( H ) Publish Date: 4/1/04  
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Sponsor DYSON  
 Requester HOUSE (JUD)

Component No. 2668

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Note: Amounts do not include inflation unless otherwise noted below.

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Personal Services						
Travel						
Contractual	20.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>20.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES (0)</b>						

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1004 GF	20.0					
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Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>20.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: \_\_\_\_\_

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**POSITIONS**

Full-time						
Part-time						
Temporary						

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This bill requires that information be prepared and made available via the Internet, to every woman seeking an abortion, on the medical risks of abortion, pregnancy, and where services can be sought, by geographical region. The DHSS already produces, procures and disseminates a range of materials regarding how to have a healthy baby and ways to keep the baby safe and healthy after birth. In addition, the Department maintains a 24-hour referral line for services. Ensuring the intent of this bill is addressed will require resources for the production of the additional informational materials on abortion. (continued on next page)

Prepared by: Dwayne Peebles  
 Division: Health Care Services  
 Approved by: Joel S. Gilbertson, Commissioner  
 Agency: Department of Health and Social Services

Phone 465-5830  
 Date/Time 01/29/2004  
 Date 02/02/2004

FISCAL NOTE  
FN # 3

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. HCS CSSB 30(JUD)

ANALYSIS CONTINUATION

CONTRACTUAL: \$20.0 for a professional services contract in Year 1 for the production and posting of the web-based materials required under this bill.

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 RDU Public Health  
 Component Bureau of Vital Statistics

Revision Date/Time (Note if correction):  
 Title INFORMED CONSENT FOR ABORTION

Sponsor DYSON  
 Requester HOUSE (JUD)

Component No. 961

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	30.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>30.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES (0)</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	30.0					
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>30.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: \_\_\_\_\_

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill would add a requirement to the report of Induced Termination of Pregnancy (ITOP) program that the Bureau of Vital Statistics (BVS) collect and record data on whether or not each reported patient requested and received a written copy of information on reproductive options required to be maintained on the Internet.

CONTRACTUAL: \$30.0 in GF for contractual service costs would be required in Year 1 (one-time costs) to provide for 1) a contract to revise the BVS ITOP computer program (\$20,000);

(continued on next page)

Prepared by: Doug Bruce, Director  
 Division Public Health  
 Approved by: Joel S. Gilbertson, Commissioner  
 Agency Department of Health and Social Services

Phone 465-3090  
 Date/Time 01/29/2004  
 Date 02/02/2004

FISCAL NOTE

FN # 4

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. HCS CSSB 30(JUD)

ANALYSIS CONTINUATION

2) to produce, print and distribute revised ITOP reporting forms to providers throughout Alaska (\$2,000); and 3) to contract for the drafting of regulations to implement AS 18.50.245(e) (\$8,000).

*amended parts 5+6*

*as amended adopted*

23-LS0193\Y  
Mischel  
4/29/04

S.S.04

HOUSE CS FOR CS FOR SENATE BILL NO. 30( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATORS DYSON, Green, Taylor, Ogan, Cowdery, Seekins, Wagoner  
REPRESENTATIVE Lynn

*E.C.  
Amendment #1  
defeated  
2-7*

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to information and services available to pregnant women and other  
2 persons; ensuring informed consent before an abortion may be performed; and  
3 providing exceptions to informed consent in certain cases."

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

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

7 LEGISLATIVE FINDINGS. The legislature finds that

8 (1) duties of the state include regulating medical practice and fostering the  
9 development of standards of professional conduct in a critical area of medical practice;

10 (2) the state is interested in protecting the life and health of pregnant women;

11 (3) women have a right to know the medical risks associated with their  
12 reproductive options;

13 (4) the creation of an unbiased, scientific information site on the Internet that  
14 sufficiently describes reproductive options and their potential consequences will protect,

L

1 inform, and promote a woman's free and private choices between permanent and life-affecting  
2 alternatives;

3 (5) the creation of an unbiased, scientific information site on the Internet that  
4 sufficiently describes reproductive options and their potential consequences will reduce costly  
5 and undue litigation, will promote judicial economy and resources, and will provide  
6 physicians with a clear understanding of what constitutes informed consent for abortion by  
7 creating a rebuttable presumption that the physician has provided sufficient information to the  
8 pregnant woman if that physician distributes the information maintained on the Internet site;

9 (6) considerable testimony has been received indicating that women have, on  
10 occasion, received abortions in the state without considering sufficient information.

11 \* Sec. 2. AS 18.05 is amended by adding a new section to read:

12 **Sec. 18.05.032. Information relating to pregnancy and pregnancy**  
13 **alternatives.** (a) The department shall maintain on the Internet, in printable form,  
14 standard information that

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

20 (A) agencies, services, clinics, and facilities designed to assist a  
21 woman through pregnancy, including adoption agencies, and counseling  
22 services;

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

25 (C) agencies, services, clinics, and facilities designed to assist  
26 with or provide contraceptive options and counseling for appropriate family  
27 planning;

28 (2) includes a comprehensive regional directory of the agencies,  
29 services, clinics, and facilities that request to be identified by the department under (1)  
30 of this subsection, a description of the services they offer, and the manner in which the  
31 agencies, services, clinics, and facilities may be contacted, including telephone

1 numbers;

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

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

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

9 (6) describes the fetal development of a typical unborn child at two-  
10 week gestational increments from fertilization to full-term, including links to  
11 photographs of a typical unborn child at two-week gestational increments, and  
12 relevant information about the possibility of an unborn child's survival at the various  
13 gestational ages; the information must be objective, nonjudgmental information that is  
14 designed to convey only accurate scientific information about unborn children at  
15 various gestational ages;

16 (7) contains objective, unbiased information that describes the methods  
17 of abortion procedures and treatments commonly employed and the medical risks and  
18 possible complications commonly associated with each procedure and treatment, as  
19 well as the possible physical and psychological effects that have been associated with  
20 having an abortion;

21 (8) contains objective, unbiased information describing the possible  
22 medical risks and complications commonly associated with pregnancy and childbirth,  
23 as well as the possible physical and psychological effects that have been associated  
24 with carrying a child to term;

25 (9) contains objective, unbiased information concerning the harmful  
26 effects on an unborn child when a woman consumes alcohol, tobacco, or illegal drugs  
27 during pregnancy;

28 (10) contains objective, unbiased, and comprehensive information  
29 describing the different types of available contraceptive choices, including abstinence  
30 and natural family planning, describing the methods of contraception that are intended  
31 to prevent fertilization and the methods that are intended to prevent implantation of a

1 fertilized egg, and describing the reliability, psychological effects, medical risks, and  
2 complications commonly associated with each method;

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

5 (12) contains a dated, time-stamped signature form that can be printed  
6 out as evidence that the person identified on the form, with appropriate security  
7 safeguards as to identity, has reviewed the information described in (1) - (11) of this  
8 subsection.

9 (b) The department shall adopt regulations establishing procedures for  
10 establishing and maintaining the information under this section.

11 (c) In this section,

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

13 (2) "fertilization" means the fusion of a human spermatozoon with a  
14 human ovum;

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

17 (4) "unborn child" means the offspring of a human being in utero at  
18 various stages of biological development.

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

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

21 (1) the abortion is performed by a physician [OR SURGEON] licensed  
22 by the State Medical Board under AS 08.64.200;

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

26 (3) before an abortion is knowingly performed or induced on an  
27 unmarried, unemancipated woman under 17 years of age, consent has been given as  
28 required under AS 18.16.020 or a court has authorized the minor to consent to the  
29 abortion under AS 18.16.030 and the minor consents; for purposes of enforcing this  
30 paragraph, there is a rebuttable presumption that a woman who is unmarried and under  
31 17 years of age is unemancipated; [AND]

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

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

5 \* Sec. 4. AS 18.16.010 is amended by adding new subsections to read:

6 (h) A physician or other health care provider is liable for failure to obtain the  
7 informed consent of a person as required under AS 18.16.060 if the claimant  
8 establishes by a preponderance of the evidence that the provider has failed to inform  
9 the person of the common risks of and reasonable alternatives to the proposed abortion  
10 procedure and that, but for that failure, the person would not have consented to the  
11 abortion procedure.

12 (i) In an action under (h) of this section,

13 (1) there is a rebuttable presumption that an abortion was performed  
14 with the pregnant woman's informed consent if the person who performed the abortion  
15 submits into evidence a copy of the woman's signature form maintained under  
16 AS 18.05.032(a) signed [at least 24 hours] before the procedure; and

17 (2) the defenses described in AS 09.55.556 are not available.

18 \* Sec. 5. AS 18.16 is amended by adding a new section to read:

19 **Sec. 18.16.060. Informed consent requirements.** (a) Except as provided in  
20 (d) of this section, a person may not knowingly perform or induce an abortion without  
21 the voluntary and informed consent of

22 (1) a woman on whom an abortion is to be performed or induced;

23 (2) the parent, guardian, or custodian of a pregnant, unemancipated  
24 minor if required under AS 18.16.020; or

25 (3) a pregnant, unemancipated minor if authorized by a court under  
26 AS 18.60.030.

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

1 procedure and the gestational estimation of the pregnancy at the time the abortion is to  
2 be performed and has provided either

3 (1) the Internet information required to be maintained under  
4 AS 18.05.032; the physician or a member of the physician's staff who is a licensed  
5 health care provider shall provide a copy of the Internet information if a person  
6 requests a written copy; if a member of the physician's staff provides the information  
7 required under this paragraph, the member of the physician's staff shall offer the  
8 opportunity to consult with the physician; or

9 (2) information about the common risks of and reasonable alternatives  
10 to an abortion.

11 (c) The information required in (b) of this section shall be provided at least 24  
12 hours before the procedure in a private setting to protect privacy, maintain the  
13 confidentiality of the decision, ensure that the information focuses on the individual  
14 circumstances, and ensure an adequate opportunity to ask questions. Provision of the  
15 information telephonically or by electronic mail, regular mail, or facsimile transmittal  
16 before the person's appointment satisfies the requirements of this subsection as long as  
17 the person whose consent is required under (a) of this section has an opportunity to ask  
18 questions of the physician after receiving the information.

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

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

29 (2) a delay in providing an abortion will create serious risk of  
30 substantial and irreversible impairment of a major bodily function of the woman.

31 \* Sec. 6. AS 18.50.245(e) is amended to read:

X

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1 (e) The state registrar shall adopt regulations to implement this section. The  
2 regulations that establish the information that will be required in a report of an induced  
3 termination of pregnancy

4 (1) must require information substantially similar to the information  
5 required under the United States Standard Report of Induced Termination of  
6 Pregnancy, as published by the National Center for Health Statistics, Centers for  
7 Disease Control and Prevention, United States Department of Health and Human  
8 Services, in April 1998, as part of DHHS Publication No. (PHS) 98-1117;

9 (2) must require, if known, whether the unidentified patient  
10 requested and received a written copy of the information required to be  
11 maintained on the Internet under AS 18.05.032; and

12 (3) may not include provisions that would violate a woman's  
13 privacy by requiring the woman's name or any identifying information in the  
14 report.

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

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

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4  
 Bill Version: HCS CSSB 30(JUD)  
 ( H ) Publish Date: 4/1/04  
 Dept. Affected: Health & Social Services  
 RDU Public Health  
 Component Bureau of Vital Statistics

Revision Date/Time (Note if correction):  
 Title INFORMED CONSENT FOR ABORTION

Sponsor DYSON

Requester HOUSE (JUD)

Component No. 961

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	30.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>30.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**CAPITAL EXPENDITURES**

**CHANGE IN REVENUES (0)**

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	30.0					
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>30.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: \_\_\_\_\_  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 This bill would add a requirement to the report of Induced Termination of Pregnancy (ITOP) program that the Bureau of Vital Statistics (BVS) collect and record data on whether or not each reported patient requested and received a written copy of information on reproductive options required to be maintained on the Internet.  
  
 CONTRACTUAL: \$30.0 in GF for contractual service costs would be required in Year 1 (one-time costs) to provide for 1) a contract to revise the BVS ITOP computer program (\$20,000);  
  
 (continued on next page)

Prepared by: Doug Bruce, Director Phone 465-3090  
 Division Public Health Date/Time 01/29/2004  
 Approved by: Joel S. Gilbertson, Commissioner Date 02/02/2004  
 Agency Department of Health and Social Services

FISCAL NOTE  
FN # 4

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. HCS CSSB 30(JJJ)

ANALYSIS CONTINUATION

2) to produce, print and distribute revised ITOP reporting forms to providers throughout Alaska (\$2,000); and 3) to contract for the drafting of regulations to implement AS 18.50.245(e) (\$8,000).

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3  
 Bill Version: HCS CSSB 30(JUD)  
 ( H ) Publish Date: 4/1/04  
 Dept. Affected: Health & Social Services  
 RDU Health Care Services  
 Component Women's and Adolescents Services

Revision Date/Time (Note if correction):  
 Title INFORMED CONSENT FOR ABORTION

Sponsor DYSON  
 Requester HOUSE (JUD)

Component No. 2668

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	20.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>20.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (0)						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	20.0					
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>20.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: \_\_\_\_\_  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill requires that information be prepared and made available via the Internet, to every woman seeking an abortion, on the medical risks of abortion, pregnancy, and where services can be sought, by geographical region. The DHSS already produces, procures and disseminates a range of materials regarding how to have a healthy baby and ways to keep the baby safe and healthy after birth. In addition, the Department maintains a 24-hour referral line for services. Ensuring the intent of this bill is addressed will require resources for the production of the additional informational materials on abortion. (continued on next page)

Prepared by: Dwayne Peoples Phone 465-5830  
 Division: Health Care Services Date/Time 01/29/2004  
 Approved by: Joel S. Gilbertson, Commissioner Date 02/02/2004  
 Agency: Department of Health and Social Services

FISCAL NOTE

FN # 3

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. HCS CSSB 30(JUD)

ANALYSIS CONTINUATION

CONTRACTUAL: \$20.0 for a professional services contract in Year 1 for the production and posting of the web-based materials required under this bill.

## HOUSE CS FOR CS FOR SENATE BILL 170(FIN)

(May 5, 2004)

### Sectional Summary

**Sections 1 - 4** allow communities to adopt, as part of a local option, lower amounts of alcohol that may be possessed or imported into the community than may currently be possessed or imported, and still presumed to be for personal use rather than for sale. Certain communities have already adopted lower limits by ordinance. If it is part of a local option, however, state law enforcement authorities can help communities enforce these lower limits.

**Sections 5 and 6** close a local option loophole. Under current law a local option limiting alcohol applies in a five-mile radius around the center of the village. This circle helps protect against bootleggers on skiffs and snowmachines from bringing alcohol to sell in local option villages. If villages are close together, the areas of protection may overlap, and a loophole in the law essentially wipes away the protective circle for both villages, and limits alcohol only in the village itself. These sections provide that the least restrictive local option applies in the overlapping areas.

**Section 7** raises the penalty for furnishing alcohol to a person under 21 years of age from a class A misdemeanor to a class C felony, if the offense occurs in a village or municipality that has adopted a local option, unless the village or municipality opts out of the class C felony application as part of their local option.

**Sections 8 - 11** improve the law for forfeiture of property used in bootlegging in several ways. First, **Section 8** allows for the forfeiture of money used in bootlegging offenses. Second, **Sections 9 and 10** strengthen forfeiture law for vehicles, watercraft, and aircraft used to bootleg alcohol. It adopts the standards required in current law under *State v. Rice*, 626 P.2d 104 (Alaska 1981), for innocent owners to protect their interest in property subject to forfeiture for bootlegging. Third, **Section 11** makes it mandatory that means of transportation used in bootlegging be forfeited if (a) the bootlegger has a conviction for a violent felony or is on felony probation or parole; (b) the bootlegger has a prior bootlegging conviction; or (c) the alcohol transported was at least twice the amount presumed to be possessed for sale (24 liters of hard liquor, 48 liters of wine, or 24 gallons of beer). A court is not required to forfeit a car, truck, snowmachine, fourwheeler, or watercraft if it is the only means of transportation for a family in a village, and if the members of the family were innocent or could not prevent the bootlegging. **Section 11** also allows the state to share the proceeds from forfeited property with municipal law enforcement agencies that participate in the arrest or conviction of a bootlegger.

**Section 12** is a conforming amendment to the change described in **Section 16**.

**Section 13** closes a loophole in our assault statutes by making criminally negligent conduct that causes serious physical injury with a dangerous instrument a class C felony. Under current law there is no statute addressing this conduct. The injury must be the kind that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy. One example of this conduct is a person who is partially impaired (but not enough to be DUI), drives in a dangerous manner, and causes serious physical injury to another person.

**Sections 14 - 15** increase the penalty for sexual abuse by penetration of young children by teenagers from a class A misdemeanor to a class C felony.

**Section 16** adopts a new crime - that of violating a person's duty as a third party custodian. It applies to a person who agrees to be a third party custodian, but does not report to authorities if the person in custody violates release conditions. It is either a class A or class B misdemeanor, depending on the crime with which the person released is charged.

**Section 17** disallows self-defense if the force applied resulted from use of a deadly weapon, and the state proves that the defendant was furthering his own felony criminal objectives or those of a gang, or was buying or selling a felony amount of illegal drugs.

**Section 18** is a conforming section to **Section 16**.

**Section 19** requires the court to issue written or oral findings addressing the need to place a person charged with a crime in the custody of a third-party custodian as a condition of the defendant's release.

**Sections 20 - 22 and 25** adopt a procedure to determine if a witness has a valid Fifth Amendment privilege against self-incrimination. An attorney is appointed for the witness, and the court makes the determination in a closed proceeding outside the presence of the prosecution. Under these sections, the prosecution is provided no information needed to decide whether to grant immunity. These provisions essentially make no change to existing procedures.

**Sections 23 - 24 and 31 - 32** give direction to courts in sentencing a defendant for more than one crime. Current law appears to require consecutive sentences, but was not interpreted that way because of bad drafting. This clarifies that for most crimes a court may impose sentences that are concurrent or partially concurrent. However, for homicides, kidnapping, and serious sex offenses, this section specifies the minimum amount of consecutive time that must be imposed. For example, for two counts of first-degree murder, the court must require the mandatory minimum term of the second offense to be served consecutively. For manslaughter and kidnapping, at least the period of the presumptive term of the second offense must be served consecutively.

Sections 26, 28, and 30 disallow the “big gulp” defense in drunk driving cases. It reverses a recent court decision, *Conrad v. State*, 60 P.3d 701 (Alaska App. 2002), that allows a driver to claim that he drank alcohol just before driving, and was able to drive before the alcohol affected his perceptions. This case is a major step back in the state’s efforts to reduce drunk driving, and requires expert testimony about alcohol assimilation rates and other issues confusing to jurors. The legislature, in prohibiting driving with .08 blood alcohol, as determined by a chemical test taken within four hours of driving, intended to avoid this battle of chemical experts.

Sections 27 and 29 provide that once a person has been convicted of felony drunk driving or felony refusal to submit to a chemical test, a subsequent drunk driving or refusal offense will also be a felony if it occurs within 20 years of the previous felony conviction.

Section 33 allows for greater disclosure to the public by a state or municipal agency of information about juvenile offenders, if necessary to protect the safety of the public.

Section 34 provides conforming repealers.

Sections 35 and 36 include applicability and effective date provisions.



## SENATOR FRED DYSON

### SB 30 SPONSOR STATEMENT

*"An Act relating to information and services available to pregnant women and other persons; and ensuring informed consent before an abortion may be performed, except in cases of medical emergency."*

Since the early 1970's, Alaskan physicians who perform or induce abortions are required, in regulation, to inform patients "of the medical implications and the possible emotional and physical sequelae of the procedure" (12 A.A.C. 40.070). SB 30 raises these regulations into statute, and standardizes the information presented to the patients by means of a website maintained by the Department of Health and Social Services. This website will list accurate, objective information that explains resources available to a pregnant woman that may assist her in making and implementing her own reproductive decisions. This bill will enable women to make healthy, educated choices regarding their own individual and private circumstances.

Considerable testimony has been received that indicates that Alaskan women, on occasion, do not receive adequate information as they consider the alternative of abortion. These events are extremely damaging and must be prevented. Providing women with information that is "unbiased, objective, scientific" is necessary to their informed choice. This bill creates a website that is mandated to provide such information. Medical personnel who perform abortions are already required in regulation to explain possible consequences. This bill provides physicians with an optional tool that also provides legal coverage for fulfilling the informed consent requirements—which are already required. This tool will protect both women and doctors.



## SENATOR FRED DYSON

### SB 30

#### SECTIONAL ANALYSIS (HCS for CS for SB 30(JUD) Version G)

*"An Act relating to information and services available to pregnant women and other persons; and ensuring informed consent before an abortion may be performed, except in cases of medical emergency."*

Section 1 FINDINGS language describes the interests and intentions of the Legislature's intervention in this issue. Interests include regulating medical practice, protecting the life and health and choices of pregnant women, and clarifying a physician's requirements to obtain informed consent, which will in turn, conserve legal and judicial resources.

Section 2 directs the Department of Health and Social Services to develop a website designed to assist a pregnant woman with her reproductive choices. This website will provide resources, specific to geographic region, for women to use in order to make and implement these decisions. The material will include information on adoption, counseling, abortion, childbirth, contraception, clinics, fetal development, and other resources.

Section 3 adds that abortion may not be performed unless informed consent is obtained, as outlined in Section 5. This elevates 12 A.A.C. 40.070 to statute.

Section 4 clarifies the liability for a physician who performs or induces an abortion without meeting the informed consent provisions.

Section 5 outlines the terms consent for an abortion to be considered both informed and voluntary. Informed consent requirements are bypassed in cases of medical emergency, rape, and incest. The pregnant woman or her parent/guardian/etc. will certify that the requirements have been met, and that the abortion is voluntary and informed. The Internet information may be dispersed by email, fax, telephone, and mail.

Section 6 adds to the current abortion reporting law. In preparing the report, the state registrar must require whether or not the pregnant woman received the website's information.

Section 7 speaks to the effective date and the severability of this legislation.

## Amendments to Version 6

- Page 1, lines 13—page 2, line 1  
Page 2, lines 5-7  
Page 3, lines 15-17  
Page 3, lines 20-22  
Page 3, lines 27-29  
Page 4, lines 2-4  
Page 4, lines 7-9

Delete “that is reviewed and approved for medical accuracy and appropriateness by recognized obstetrical and gynecological specialists designated by the State Medical Board and”

- Page 5, lines 20-28 (i)(1) and (i)(2)  
Delete all material  
Insert: “(2) the defenses described in AS 09.55.556 are not available.”

- Page 2, line 10  
After “abortion”  
Add: “by creating a rebuttable presumption that the physician has provided sufficient information to the pregnant woman if that physician distributes the information maintained on the Internet site”

- Page 4, Section 2. Add a new subsection

“(12) contains a dated, time-stamped signature form that can be printed out as evidence that the person identified on the form, with appropriate security safeguards as to identity, has reviewed the information described in (1) - (11) of this subsection.”

- Page 5, line 31—Page 6, line 1  
Delete: “written certification required under AS 18.16.060(b)”  
Add: “signature form maintained under AS 18.05.032(a)(12), signed at least 24 hours before the procedure.”

- Page 6, lines 25-27  
Delete: “provided in a manner that the physician or health care provider, after considering all of the attendant facts and circumstances, reasonably determine is appropriate for that woman or person whose consent is required”  
Add: “that a reasonable patient would consider material to making a voluntary and informed decision of whether to undergo the procedure”

- Page 6, line 28  
After “provided”

Add: "at least 24 hours"

- Page 3, line 13

Delete: "four-week"

Insert: "two-week"

- Page 6, lines 24-27

Delete: "(2) information about the nature of, risks of, and alternatives to an abortion provided in a manner that the physician or health care provider, after considering all of the attendant facts and circumstances, reasonably determine is appropriate for that woman or person whose consent is required."

Insert: "(2) information about the common risks of and reasonable alternatives to an abortion."

## Rationale

- A. The website's information must be "reviewed and approved for medical accuracy and appropriateness by recognized obstetrical and gynecological specialists designated by the State Medical Board."

*Response: DHSS has experience and safeguards for ensuring objectivity, and oversight by the State Medical Board—and further, to one OB-GYN whom they nominate—is not necessary. The Division of Public Health stated in a letter last year that "all information posted can be referenced back to multiple authoritative sources, such as the Centers for Disease Control, Office of Women's Health, peer reviewed published research, etc. For complex documents related to medical care guidance, the Department has a committee of experts in the field co-author and review the document prior to distribution." In this case, DHSS will be required to create "objective, unbiased, scientific" website. DHSS currently produces many pamphlets, and currently has experts and professionals they employ and contract and utilize in their production. None of their other documents/pamphlets/circulations necessitate external review. Conversations with the State Medical Board indicate that they do not desire this duty. The duties of the State Medical Board, as outlined in current statute (AS 08.64.101) do not include oversight of DHSS. Further, the State Medical Board is composed of political appointees, and an OB-GYN whom they nominate will most likely be operating in private practice, where controls for bias are not necessary.*

- B. Physicians are immune if "(1) the risk not disclosed is too commonly known or is too remote to require disclosure; or (2) the person who is the subject of the alleged failure to obtain the informed consent stated to the physician or other health care provider that the person would or would not undergo the abortion procedure regardless of the risk involved or that the person did not want to be informed of the matters to which the person would be entitled to be informed."

*Response: This language sets up a 'reasonable physician standard,' as opposed to a 'reasonable patient standard.' A significant effort of this bill was to guarantee that women get all the information they need—not to get all the information a doctor thinks they need. This language does not fix the problem that the bill attempted to address—that is, Alaskan women have sometimes gotten abortions without getting all the information necessary from the doctors. Especially in light of the removal of parental consent protections, women—or teenage girls—may not know the common risks. Should we allow people to make significant health care decisions—with serious emotional, physical, and social ramifications—with a refusal to consider all of the facts? The refusal to desire all of the facts indicates a significant problem. The current defenses of AS 09.55.556 also do not provide sufficient protections.*

- C. Physicians are immune if, "in an action under this subsection, there is a rebuttable presumption that an abortion was performed with the pregnant woman's informed consent if the person who performed the abortion submits into evidence a copy of the woman's written certification required under AS 18.16.060(b)."

*Response: Initially, we required physicians to provide a pamphlet. Then, we switched to a website. Then, instead of requiring the physicians to provide the information, we instead made it optional but created liability for doctors to provide sufficient information while giving immunity to those doctors who used the state's information. The new language removes the incentive to use the state's information. This language effectively completes the removal of the state's requirements of certain information. All is now optional and depends on the doctors' decisions.*

- D. Physicians are allowed to use either the state's information or "information about the nature of, risks of, and alternatives to an abortion provided in a manner that the physician or health care provider, after considering all of the attendant facts and circumstances, reasonably determine is appropriate for that woman or person whose consent is required."

*Response: This language, again, sets a 'reasonable physician standard' as opposed to a 'reasonable patient standard.' See (B) above. This language allows doctors to sidestep the information that the legislature decides is appropriate.*

- E. 24-hour waiting period.

*Response: The 24-hour period is not designed to delay or block access; with provisions that allow distribution in many formats (email, internet, fax, mail) and the fact (agreed upon by abortion providers) that abortions aren't performed without a couple office visits or calls or weeks of planning; this information is designed to protect the woman's opportunity to consider the information presented by the doctor. It is not a 24-hour wait from when the woman wants to have an abortion performed; it is a 24-hour wait from when the woman first gets the information that guarantees the woman may consider the information. The woman can get the information ahead of time, before travel, or on her own before she ever becomes pregnant. Rural Health Centers have Internet access. Abortions are not performed in the bush. And women from the bush do not travel into town for an abortion, unless an abortion is planned in advance. The physician can provide these women with the information ahead of time, and if nothing else, the information can be obtained at each Rural Health Center.*

- F. Aligning the time increments of fetal descriptions with the fetal photographs.

*Response: It is important that the descriptions match the photographs to ensure that the information is clear and complete. If the descriptions are set in two-week increments, the photographs should correspond.*

- G. If a physician chooses not to use the State's information, he/she may use "information about the common risks of and reasonable alternatives to an abortion."

*Response: This language changes aligns with current statutes AS 09.55.556 regarding informed consent.*

- SB 30.

Regardless of where one stands on the abortion issue, there is unified support for the concept that a woman be fully informed during her own decision. Providing women with information that is "unbiased, objective, scientific" is necessary to any informed choice. This bill is mandated to provide such information. It is essential to the psychological and physical well-being of a woman who is considering an abortion that she receive complete and accurate information on her alternatives. Objections to providing people with information are adversarial to a woman's freedom of choice, and preventing them from considering all relevant information is coercive and injures their freedom of privacy.

- Medical personnel.

Medical personnel who perform abortions are already mandated in regulation to explain possible consequences. They have been exposed to lawsuits when women feel under-informed. This bill gives physicians legal coverage by creating a document that provides the information that is already currently required. Additionally, this tool is optional.

- The U.S. Supreme Court.

The U.S. Supreme Court has rendered a decision in the case of Planned Parenthood of Pennsylvania v. Casey that upheld the constitutionality of a Pennsylvania law which required informed-consent, parental consent, and a twenty-four-hour waiting period prior to an abortion:

*"...What is at stake is the woman's right to make the ultimate decision, not a right to be insulated from all others in doing so...if they are not a substantial obstacle to the woman's exercise of the right to choose...Unless it has that effect on her right of choice, a state measure designed to persuade her to choose childbirth over abortion will be upheld if reasonably related to that goal...In attempting to ensure that a woman apprehend the full consequences of her decision, the State furthers the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed. If the information the State requires to be made available to the woman is truthful and not misleading, the requirement may be permissible...The idea that important decisions will be more informed and deliberate if they follow some period of reflection does not strike us as unreasonable, particularly where the statute directs that important information become part of the background of the decision..." "...That the information might create some uncertainty and persuade some women to forgo abortions does not lead to the conclusion that the Constitution forbids the provision of such information. Indeed, it only demonstrates that this information might very well make a difference, and that it is therefore relevant to a woman's informed choice..." "...calculated to inform the woman's free choice, not hinder it."*

- Regarding Testimony. Through the committee process, we have received testimony that some people are apprehensive to be influenced by this unbiased, objective, scientific information. I'm not sure quite how to respond to this fear. Others have asked why this information is not mandated to all pregnant women, not just those seeking abortion. To respond, reiteration is needed that current law already requires informed, voluntary consent for abortion. There is no informed consent requirement for childbirth, nor does this bill establish such a requirement. Additionally, DHSS has agreed that the language in this bill provides for the maintaining of current, updated information. Finally, this bill does not change any of the current laws regarding parental consent; those provisions are unaffected.

Provided by Senator Dyson

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Provided by Senator Dyson

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

## Informed Consent/Abortion Info

### AS 08.64.105. Regulation of abortion procedures.

The 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.

### 12 A.A.C. 40.070

Unless otherwise provided in 12 AAC 40.060 (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.), 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.

History: Eff. 12/20/70, Register 36; am 8/29/73, Register 47

### 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, Sec. 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.

**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.

**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 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 40.25.110 - 40.25.120.

(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.

**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.

**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-sustaining;

(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.

# LEGISLATIVE RESEARCH REPORT

FEBRUARY 4, 2004



REPORT NUMBER 04.093

## ABORTION LAWS IN THE UNITED STATES AND ALASKA

PREPARED FOR REPRESENTATIVE LESIL MCGUIRE

BY ROGER WITHINGTON, LEGISLATIVE ANALYST

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You asked for information concerning abortion laws. Specifically, you asked for a summary of abortion laws in the United States and a summary of the current abortion laws in Alaska. You also asked that we include any noteworthy court cases in our summaries.

### ABORTION LAWS IN THE UNITED STATES

In response to your request, we attach two resources from the website of the Henry J. Kaiser Family Foundation.<sup>1</sup> One of the resources, which we include as Attachment A, is an *Issue Update* entitled "Abortion Policy and Politics." This update provides a history of abortion laws in the United States, a summary of the nine most important U.S. Supreme Court cases regarding abortion, and an overview of current abortion policies in the U.S. The other resource, which we include as Attachment B, is a Fact Sheet that provides abortion related statistics in the U.S.

We also include a more comprehensive summary of significant United States Supreme Court decisions regarding abortion in the United States. This document, compiled by NARAL,

<sup>1</sup> The Henry J. Kaiser Family Foundation is a private non-profit foundation that focuses on the major health care issues facing the United States. The URL for the Henry J. Kaiser Family Foundation is [www.kff.org/](http://www.kff.org/).

summarizes 36 of the most significant United States Supreme Court decisions that have impacted abortion laws in the United States.<sup>2</sup> We include NARAL's list as Attachment C.

We include two cases, the seminal *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southern Pennsylvania v. Casey*, 505 U.S. 833 (1992), cited by both the Henry J. Kaiser Family Foundation and by NARAL as playing a significant role in the evolution of abortion law in the U.S.<sup>3</sup>

In *Roe v. Wade*, which we include as Attachment D, the court ruled that the fundamental right to privacy extends to a woman's decision whether or not to have an abortion. In *Planned Parenthood of Southern Pennsylvania v. Casey*, which we include as Attachment E, the court upheld several restrictions to abortion. These restrictions include a 24-hour waiting period (sometimes referred to as mandatory delay) and specific counseling requirements, provisions similar to elements contained in Senate Bill 30 and House Bill 292 that are currently before the Alaska State Legislature. According to the Henry J. Kaiser Family Foundation, *Planned Parenthood of Southern Pennsylvania v. Casey* is the most important abortion ruling since 1973.

As an additional resource, we located an article in *The Journal of the American Medical Association* that analyzes the impact of Mississippi's 1992 mandatory delay law on abortions and births. We include "The Impact of Mississippi's Mandatory Delay Law on Abortions and Births" as Attachment F.

## ABORTION LAWS IN ALASKA

Alaska lawmakers first legalized abortion in 1970 (Chapter 103 SLA 1970), three years prior to the two U.S. Supreme Court decisions that made abortions legal under certain conditions in the United States, *Roe v. Wade* and *Doe v. Bolton*. Alaska Statute 18.16 sets forth the conditions under which abortions may occur in Alaska. Alaska Statute 8.64.105 assigns the Alaska State Medical Board the responsibility of adopting regulations necessary to carry into effect the provisions of the law (AS 18.16), as well as defining ethical, unprofessional, or dishonorable conduct related to abortions, setting standards of professional competency in the performance of abortions, and establishing procedures and standards for facilities, equipment, and care of patients in the performance of an abortion. Over the years there have been challenges to various aspects of Alaska's abortion laws and regulations. These challenges can be categorized into areas related to state constitutional protection, abortion procedures, mandatory hospitalization, physician-only restrictions, public funding, refusal clause, and minors' access to abortion. We provide a summary of each of these categories, with relevant court cases, as follows.

**State Constitutional Protection:** The right to privacy guaranteed under Article 1, Section 22 of the Alaska Constitution protects a woman's right to reproductive choice as a fundamental right, and to a greater extent than does the U.S. Constitution. In 1997, the Alaska Supreme Court

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<sup>2</sup> The NARAL Pro-Choice America (formerly The National Abortion and Reproductive Rights Action League) is the political arm of the pro-choice movement and an advocate of reproductive freedom and choice. The URL for the NARAL is [www.naral.org](http://www.naral.org). We also queried the websites of several pro-life organizations; however, none of these organizations compile such information.

<sup>3</sup> If you would like copies of any of the other court decision noted by the Henry J. Kaiser Family Foundation or NARAL, please let us know.

struck down a "quasi-public" hospital's policy that barred abortion procedures at the facility. This decision also declared a state statute immunizing persons and hospitals from liability for refusing to participate in abortion invalid as applied to "quasi-public" institutions (*Valley Hospital Association v. Mat-Su Coalition for Choice*, 948 P.2d 963, 1997).

**Ban on Abortion Procedures:** The superior court held that Alaska's ban on abortion procedures (AS 18.16.050, Partial-birth Abortions) is "vague and imprecise" and therefore unconstitutional under the state constitution. The court issued a permanent injunction prohibiting enforcement of the law (*Planned Parenthood of Alaska, Inc. v. State*, No. 3AN-97 6019 CIV (Alaska Superior Court, March 13, 1998). An appeal was withdrawn (No. S-08610, July 17, 2000).<sup>4</sup>

**Mandatory Hospitalization:** Alaska Statute 18.16.010 requires that all abortions must be performed in a hospital, in a facility approved for that purpose by the state, or in a hospital operated by the federal government or one of its agencies. Regulations further state that ambulatory surgical facilities (the only non-hospital facilities receiving state-approval to perform abortions) may not perform abortions after the first trimester, affectively requiring that post-first trimester abortions be performed in a hospital.<sup>5</sup>

In 1981, the Alaska Attorney General concluded that the requirement that all abortions be performed in a hospital or other approved facility is invalid since it does not exclude the first trimester of pregnancy (Opinion of the Attorney General, No. J-66-816-81, October 7, 1981, citing *Sendak v. Arnold*, 429 U.S. 968, 1976). In 1984, the Alaska Attorney General further stated that the regulation of other aspects of first trimester abortions is "obviously problematic" (Opinion of the Attorney General, No. 366-028-85, July 24, 1984).

**Physician-Only Restriction:** Alaska Statute 18.16.010 requires that only a physician or surgeon licensed by the state may perform an abortion. In 1976, the Alaska Attorney General issued an opinion stating that this law is constitutional (Informal Opinion of the Attorney General, Oct. 21, 1976).

**Public Funding:** Alaska Administrative Code 7.47.200(a) and 7.47.210(a) define the circumstances under which women eligible for state medical assistance for general health care may obtain an abortion. In 2001, the Alaska Supreme Court found the regulation that limited state medical assistance for abortions to cases of life endangerment, rape, or incest to be in violation of the state constitution. The Court issued a permanent injunction prohibiting its enforcement (*State v. Planned Parenthood of Alaska, Inc.*, 28 P.3d 904, Alaska 2001).<sup>6</sup>

In 2002, the Alaska Legislature enacted a FY2003 budget bill that did not provide any state funds for medical assistance to pay for abortions that were not considered a mandatory service under federal law (federal law mandates Medicaid abortion coverage in cases of life endangerment, rape, or incest). The superior court issued an order finding that this budget restriction is without

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<sup>4</sup> The State withdrew its appeal of the superior court's decision following the decision in *Stenberg v. Carhart*, 530 U.S. 914, 2000, in which the U.S. Supreme Court held that a ban on "partial-birth" abortion that lacks an exception to protect a woman's health, and that prohibits more than one procedure places an undue burden on a woman's right to choose and is therefore unconstitutional.

<sup>5</sup> 7 AAC 12.370.

<sup>6</sup> The U.S. Supreme Court has upheld a similar restriction under the federal Constitution (*Williams v. Zbaraz*, 448 U.S. 358, 1980).

effect and ordered the state to continue to pay for medically necessary abortions (*Planned Parenthood of Alaska, Inc. v. Livey*, No. 3-AN-98-07004, August 19, 2002).<sup>7</sup>

**Refusal Clause:** Alaska Statute 18.16.010 states that no person or hospital may be required to participate in an abortion and that no person or hospital may be liable for refusing to participate in an abortion. In 1978, the Alaska Attorney General issued two opinions stating that under the state constitution, non-sectarian hospitals built or operated with public funds may not refuse to offer abortion services (Opinion of the Attorney General, No. 15, March 31, 1978; Opinion of the Attorney General, No. 8, February 10, 1978).<sup>8</sup>

**Minors' Access to Abortion:** Alaska Statutes 18.16.010, 18.16.020, and 18.16.030 state that an unemancipated minor under age 17 may not obtain an abortion without the written consent of one parent. A minor may obtain an abortion without parental consent if a court finds, by clear and convincing evidence, that she is mature and well informed enough to make an intelligent decision (also referred to as judicial bypass), that there is evidence that she has been subject to physical or sexual abuse or to a pattern of emotional abuse by one or both parents, or that parental consent is not in her best interest.

A state superior court ruled that this law violates the state constitution. The state Supreme Court reversed this ruling and sent the case back to the lower court for an evidentiary hearing to determine the law's constitutionality (*Planned Parenthood of Alaska, Inc. v. State*, No. 3AN-97-6014, February 25, 1998, summary judgment), (Alaska Superior Court, Oct. 5, 1998, final amended judgment). As a result of the evidentiary hearing, the superior court once again found the law unconstitutional and unenforceable (*Planned Parenthood v. State*, 3AN-97-6014 C1, Alaska Superior Court, October 13, 2003, Decision on Remand).

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

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<sup>7</sup> In 2003 the Alaska Legislature attempted to limit funding to mandatory abortion services under federal law in the FY2004 budget bill. However, the Alaska Attorney General stated that such restriction is unconstitutional and that the state must continue to fund medically necessary abortions in accordance with the 2002 court order (Opinion of the Attorney General, No. 883-03-0044, November 18, 2003).

<sup>8</sup> *Valley Hospital Association v. Mat-Su Coalition for Choice*, 948 P.2d 963, Alaska 1997 can also be applied to this law.

LIST OF ATTACHMENTS

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"Abortion Policy and Politics," *Issue Update*, The Henry K. Kaiser Family Foundation, October 2002,  
[www.kff.org/womenshealth/3270-index.cfm](http://www.kff.org/womenshealth/3270-index.cfm)

**Attachment B**

"Abortion in the U.S.," *Fact Sheet*, The Henry K. Kaiser Family Foundation, January 2003,  
[www.kff.org/womenshealth/326902-index.cfm](http://www.kff.org/womenshealth/326902-index.cfm)

**Attachment C**

U.S. Supreme Court Decisions Concerning Reproductive Rights, 1965-2003, NARAL Pro-Choice America,  
[www.prochoiceamerica.org/facts/scotus\\_decisions\\_choice.cfm](http://www.prochoiceamerica.org/facts/scotus_decisions_choice.cfm)

**Attachment D**

*Roe et al. v. Wade*, 410 U.S. 113, 1973

**Attachment E**

*Planned Parenthood of Southeastern Pennsylvania, et al., Petitioners 91-744 v. Robert P. Casey, et al.*, 505 U.S. 833, 1992

**Attachment F**

T. Joyce, S.K. Henshaw, J.D. Skatrud, "The Impact of Mississippi's Mandatory Delay Law on Abortions and Births," *The Journal of the American Medical Association*, Volume 278, Number 8, August 27, 1997

## Attachment A

"Abortion Policy and Politics," *Issue Update*, The Henry K. Kaiser Family  
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[www.kff.org/womenshealth/3270-index.cfm](http://www.kff.org/womenshealth/3270-index.cfm)

## Abortion Policy and Politics

October 2002

Since the landmark U.S. Supreme Court decision *Roe v. Wade* legalized abortion in 1973, debate has continued over how and when abortions are provided. Every state has laws regulating some aspect of the provision of abortion, and many have passed restrictions that are now in effect, such as parental consent or notification requirements; mandated counseling and waiting periods; and limits on funding for abortion. In Congress, the primary focus of legislation has historically been on limiting use of public funds for abortions.

In more recent years, public debate has centered on methods of abortion, particularly those performed later in pregnancy. Congress and most state legislatures have considered whether certain procedures—labeled by opponents as “partial-birth abortions”—should be outlawed. To date, the U.S. Supreme Court and other lower courts have struck down or significantly curtailed enforcement of these bans. Most recently, in August 2002, President Bush signed the “Born-Alive Infants Protection Act,” which grants federal rights to human fetuses “born alive” at any stage of development, specifically including those that might occur during an attempted abortion procedure. Meanwhile, new medical developments—most notably the Food and Drug Administration’s (FDA) September 2000 approval of mifepristone (RU-486), the first non-surgical “medical abortion” drug—is drawing increased attention to early abortions. Federal and state legislators have discussed whether to adopt restrictions specific to medical abortions, and anti-abortion groups filed a petition to the FDA in August 2002 urging the agency to reverse approval of mifepristone.

While the debate over abortion has not abated, the abortion rate—the number of induced abortions per 1,000 women aged 15-44—in the U.S. is at an historic low. In 1998, the most current year for which data is available, there were 17 abortions per 1,000 women of reproductive age, the lowest level in two decades.<sup>1</sup> Even with these declines, abortion remains one of the most commonly performed surgical procedures in the U.S.: Based on 1992 rates, an estimated 43 percent of women will have had an abortion by age 45.<sup>2</sup>

### History and Overview of Abortion

Individual states began restricting or outright outlawing abortion beginning in the mid-1800s. By 1880, the procedure was criminalized in every state with exceptions often allowed in cases where a woman’s life was at risk. In spite of these bans, many women sought out illegal means of terminating unwanted pregnancies, leading to high rates of maternal mortality and reproductive complications.

Beginning in 1970, a handful of states started considering legislation to allow abortion in certain circumstances. The U.S. Supreme Court decriminalized abortion nationwide in 1973 in two companion cases, *Roe v. Wade* and *Doe v. Bolton* (see box on Key Supreme Court Cases on Abortion). The Court asserted that the fundamental constitutional right to privacy encompasses a woman’s decision to terminate a pregnancy

before the point of viability, that is, when the fetus can survive outside of the woman’s body. As a result, legislation regulating abortion during the first two trimesters of pregnancy had to satisfy a “compelling” state interest—a tough legal standard that many restrictions passed after *Roe* did not meet. Abortions could still be banned after viability—with exceptions to protect a woman’s life and health.

Immediately after the Supreme Court’s ruling, abortion opponents introduced legislation at the state and federal level aimed at overturning *Roe*—or at least limiting access to abortion. As a result, the Supreme Court heard several cases challenging abortion regulations during the 1970s, typically rejecting the state laws as violations of the right to choose abortion. The exception was limitations on the use of public funds or public facilities, several of which were found constitutional during this period.

During the 1970s and early 1980s, Congressional attempts to pass a constitutional amendment banning abortion failed. However, in 1980, the U.S. Supreme Court upheld Congress’s first significant national abortion restriction. The justices found constitutional a 1977 appropriations bill rider known as the Hyde Amendment, which forbid the use of federal Medicaid funds for abortions unless a woman’s life is threatened by pregnancy. (Medicaid is the federal-state health insurance program for the poor, including 9.5 million women of reproductive age.) Congress also passed similar restrictions on public funding of abortion in a range of federal agencies and programs.

A series of Supreme Court cases in the 1980s and 1990s considered the constitutionality of various state abortion restrictions and regulations, such as waiting periods or directed counseling. Although most were struck down, the Court did find that states could require girls under age 18 to notify or receive permission from a parent for an abortion, as long as a judicial bypass procedure was available that also allowed for this permission to be granted by a local court.

### Public Supports Legal Abortion, With Restrictions

According to recent national surveys, a majority of Americans—58 percent—think that abortion laws should remain as they are or be loosened, rather than tightened.<sup>3</sup> However, half favor some restrictions on abortion. Overall, 28 percent of Americans say abortion should be *legal under all circumstances*; 19 percent say abortion should be *illegal under all circumstances*, and a slim majority (51 percent) say abortion should be *legal under certain circumstances*. Further reflecting the public’s mixed views on abortion, the nation is now divided in the percentage of people who identify as “pro-choice” versus “pro-life.” The percentage of Americans who say they are “pro-choice” has *decreased* from 56 percent in 1995 to 47 percent in 2000; likewise, those calling themselves “pro-life” *increased* from 33 percent to 45 percent during the same time period.<sup>3</sup>

## Key Supreme Court Cases on Abortion

**January 22, 1973.** In *Roe v. Wade*, the Court legalized abortion. The Court based its 7-2 ruling on a woman's constitutional right to privacy. This case established the "trimester framework" to determine when and how abortion services could be regulated. During the first trimester of pregnancy, the Court reserved for the pregnant woman and her physician the right to decide whether or not to terminate a pregnancy, generally without interference from the state. In the second trimester, states were allowed to regulate abortion procedures and services, but only in ways that could be reasonably related to protecting the health of the woman. In the third trimester, the government's interest in potential life became "compelling" at the point of viability, meaning that abortion could be regulated, limited, or even prohibited. States were not allowed, however, to prohibit abortion if it affected the life or health of the pregnant woman.

On the same date, in *Doe v. Bolton*, the Court struck down, also by a 7-2 vote, restrictions on facilities and procedures that could be used to perform abortions. The Court noted that a doctor's judgment about the necessity of an abortion may include "all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well-being of the patient."

**July 1, 1976.** In *Planned Parenthood v. Danforth*, the Court, by a 6-3 vote, said that states may not give a husband the power to overrule his pregnant wife's decision to have an abortion and that the state may not prohibit the most common second-trimester abortion method at that time (saline amniocentesis). By a 5-4 vote, the Court also said that parents of minor, unmarried girls may not be given an absolute veto over their daughter's abortion choice.

**January 9, 1979.** In *Colautti v. Franklin*, by a 6-3 vote, the Court reaffirmed its intention to give doctors broad discretion in determining the timing of "fetal viability"—when a fetus can live outside the mother's womb. The justices said states can seek to protect a fetus that has reached viability, but that the determination of when that occurs must be made by doctors, not courts or legislatures.

**June 30, 1980.** In *Harris v. McRae*, the Court decided, 5-4, that public health care programs for the poor, such as Medicaid, need not cover abortions. The Court noted that while the government may not place obstacles in front of a woman seeking an abortion, it does not have to remove obstacles—such as poverty—"not of its own creation."

**June 15, 1983.** In three decisions led by one called *City of Akron v. Akron Center for Reproductive Health*, the Court ruled, 6-3, that states and local communities may not require that all abortions after the first trimester of pregnancy be performed in a hospital. The Court also held that states *can* require girls under age 18 to notify a parent, so long as they establish an alternative mechanism—such as a judicial bypass procedure—for girls who could not involve their parents to demonstrate they were mature enough to make the decision or that an abortion was in their "best interests."

**June 11, 1986.** In *Thornburgh v. American College of Obstetricians and Gynecologists*, the Court struck down, 5-4, Pennsylvania abortion regulations that would have required women to delay their abortions for at least 24 hours and said that doctors must inform them about potential risks of abortion and available medical assistance benefits for prenatal care and childbirth.

**July 3, 1989.** In *Webster v. Reproductive Health Services*, the Court provided states with new authority to limit a woman's right to choose abortion, but stopped short of reversing *Roe v. Wade*. In fact, it was the first time since that ruling that only four justices—less than a majority—supported *Roe* as originally formulated. The High Court upheld Missouri's restrictions on use of public money, medical personnel, or facilities in performing abortion procedures. Also upheld was a requirement that doctors determine, when possible, whether a fetus at least 20 weeks old is capable of surviving outside the womb, by testing lung capacity and conducting other tests.

**June 29, 1992.** In its most important abortion ruling since 1973, *Planned Parenthood v. Casey*, the Court voted 5-4 to uphold the core of its *Roe v. Wade* decision and affirmed that states may not outlaw abortions before viability. But a plurality of the Court upheld several abortion restrictions—including a 24-hour "waiting period" and specific counseling requirement—and said states may impose limits on women seeking abortions as long as they do not create an "undue burden." Thus, the Court's decision in *Planned Parenthood v. Casey* abandoned the legal framework of its 1973 *Roe* ruling and adopted a new test—abortion regulations will only be struck down if they place a "substantial obstacle" in the path of a woman seeking to end her pregnancy.

**June 28, 2000.** In *Stenberg v. Carhart*, the Court voted 5-4 to strike down Nebraska's ban on "partial-birth abortions" because it imposed an "undue burden" on women's right to end their pregnancies. The Court said the law, versions of which were also passed in 30 other states, lacked an exemption to preserve women's health and was so broadly worded that it could have been used to ban some of the most common abortion methods used after the first trimester.

In 1992, the Supreme Court explicitly modified *Roe v. Wade* with its decision *Planned Parenthood of Southeastern Pennsylvania v. Casey*. While the Court affirmed the legal right for women to terminate a pregnancy, it also allowed states to restrict abortion services under a new standard: at any point in the pregnancy, including the first trimester, as long as an "undue burden" (defined as a "substantial obstacle") was not created for the woman. This "undue burden" standard has generally been easier for states to meet when attempting to regulate abortion services, but the interpretation of what constitutes an undue burden is ongoing. Waiting periods, counseling requirements, regulation of abortion providers, parental involvement laws, and bans on abortion methods are among the restrictions still being negotiated in state and federal courts and legislatures.

### The Current Policy Framework of Abortion

#### *Public Health Programs and Private Insurance*

Restrictions on the use of public funds for abortion have been a part of the legislative landscape since the 1970s. At the federal level, the Hyde Amendment continues to ban abortion coverage under Medicaid, unless a woman's life is endangered or the pregnancy resulted from rape or incest. Similar limits apply to a range of other federal departments and programs, including the Federal Employee Health Benefits Program, the health insurance plan for federal employees, their dependents, and retirees. Military health care coverage does not include abortion except in cases of life endangerment. Military personnel and their dependents are prohibited from obtaining abortion services at military facilities overseas (even if they wish to use their own funds), except in cases of life endangerment, rape, or incest.

Since the 1970s, federal law has generally prohibited the use of foreign aid funds for abortion services. In the early 1980s, the federal government implemented additional regulations restricting the activities of organizations that receive U.S. foreign aid to provide family planning services. This so-called "global gag rule" was lifted during the Clinton Administration, but the Bush Administration implemented a new version of the policy in 2001, forbidding organizations receiving U.S. international family planning grants from using additional funds of their own to provide legal abortion services, lobby for abortion law reform, or counsel or refer clients for abortion.

As of July 2002, thirty-two states (AL, AZ, AR, CO, DE, FL, GA, ID, IN, IA, KS, KY, LA, ME, MI, MO, NE, NV, NH, NC, ND, OH, OK, PA, RI, SC, TN, TX, UT, VA, WI, WY) and the District of Columbia fund abortions only under specific conditions, generally when a woman's life is endangered or the pregnancy results from rape or incest. Of these, three (IA, WI, VA) also provide funds for other exceptional circumstances such as fetal anomaly, while two (MS, SD) only do so in cases of life endangerment—in theory violating federal Medicaid law.<sup>4</sup> Fourteen states (AK, CA, CT, IL, IN, MA, MN, MT, NJ, NM, OR, TX, VT, WV) were under court order to pay for medically necessary abortions sought by low-income women under Medicaid. An additional four (HI, MD, NY, WA) use their own funds for these abortions, with one (MD) placing limits on the health conditions that qualify.

Eleven states (CO, IL, KY, MA, MS, NE, ND, OH, PA, RI, VA) also prohibit insurance coverage of abortion services for all public employees or in cases when public funds are used; most have some exceptions, such as in cases where the woman's life is endangered.<sup>4</sup> In five states (ID, KY, MO, ND, RI), abortion can only be covered through private insurance if done so through an optional rider with an additional premium (ID, KY, MO, ND, RI), but one (RI) is not enforcing this law.<sup>5</sup>

#### *Policies Affecting Patients*

Forty-three states have passed requirements that a young woman notify or get the consent of one or both parents before an abortion. Of these, thirty-two were in effect as of August 2002: eighteen consent laws (AL, ID, IN, KY, LA, ME, MA, MI, MS, MO, NC, ND, PA, RI, SC, TN, WI, WY) and fourteen notification requirements (AR, DE, GA, IA, KS, MD, MN, NE, OH, SD, TX, UT, VA, WV). For the remaining eleven, consent (AK, AZ, CA, NM, OK) or notification (CO, FL, IL, MT, NV, NJ) were not in effect largely due to court orders.<sup>6</sup>

The U.S. House of Representatives has voted several times, most recently in April 2002, to pass the Child Custody Protection Act (H.R. 476), which would make it a federal crime for anyone other than a parent or legal guardian to "knowingly" transport a minor across state lines for her to obtain an abortion if she has not met a parental notification or consent requirement in her home state. As in previous years, it remains to be seen if this bill will see action in the Senate.

Twenty-two states have passed requirements that women delay set numbers of hours (typically at least a full day or more) and receive state-specified counseling before an abortion. Seventeen have policies that are in effect (AR, ID, IN, KS, KY, LA, MI, MS, NE, ND, OH, PA, SC, SD, UT, VA, WI). Four do not currently enforce the requirements (DE, MA, MT, TN), and one (AL) has a law that has not yet taken effect.

#### *Policies Affecting Medical Practitioners*

Recently, a number of state legislatures have considered whether to adopt additional, detailed regulations governing abortion providers' medical practices and facilities. These regulations, and to whom they apply, vary considerably from state to state. Some examples include permitting state health departments to copy and remove patient records; mandating specific structural details, such as doorway widths, of spaces where abortions are performed; or mandating comprehensive and unique administrative reporting or quality assurance programs and special training for staff procedures. Seventeen states (AL, AZ, AR, CT, FL, KY, MI, MS, MO, NE, NC, PA, RI, SC, TN, TX, WI) and Puerto Rico currently have enforceable laws regulating abortion providers and abortions at any stage of gestation, including the first trimester.<sup>8</sup> Of these, six (AR, MS, NC, PA, RI, SC) have enforceable provisions also regulating second-trimester abortions, while an additional nine states (AK, GA, HI, IN, MN, NJ, SD, UT, VA) have enforceable regulations specific to second-trimester procedures.<sup>8</sup> In early 2001, the U.S. Supreme Court refused to grant review in the first case challenging one of these laws, which was passed in South Carolina.

#### *"Partial-birth Abortion" Bans*

In the 1990s, the emphasis in legislative debate over abortion shifted to types of procedures used after the first trimester of pregnancy—which account for a small proportion of the total number of abortions performed in the United States. Some abortion opponents began to refer to one method—dilation and extraction (D&X), a variant of the more common second-trimester procedure, dilation and evacuation (D&E)—as "partial-birth abortion."

Between 1995 and 2000, the House and Senate passed a bill outlawing so-called "partial-birth abortions" three times. Former President Clinton vetoed the legislation twice—in 1995 and 1997. Both times, override attempts succeeded in the House, but the Senate fell short of the two-thirds majority needed to do so. During the 1999-2000 session, the House and Senate voted again to approve versions of the bill, but differences in the two measures did not get reconciled and sent to the President before the Congressional term ended.

In 2000, in *Stenberg v. Carhart*, a divided Supreme Court struck down a Nebraska law banning "partial-birth abortions." Voting 5-4, the justices said that the law imposes an "undue burden" on a woman's constitutional right to decide to end her pregnancy. The Court found that the Nebraska law was written so broadly that it could criminalize the D&E method as well as the D&X method.<sup>9</sup>

The Court also took issue with the fact that the Nebraska law did not include an exception to preserve a woman's health, even in situations where doctors considered the banned method the best way to do so. Justice Sandra Day O'Connor, who was a crucial fifth vote for the majority, wrote a concurring opinion that said some version of a "partial-birth abortion" ban might be constitutional if it were crafted to only prohibit the D&X procedure and included an exception if the life or health of the pregnant woman was at risk.

Nebraska was one of thirty-one states that passed "partial-birth abortion" bans.<sup>10</sup> Some state legislators have begun crafting new bans in light of the Supreme Court decision, and Congress is likely to consider the issue again. Recently, the Judiciary Committee of the U.S. House of Representatives approved a new version of a "partial-birth abortion" ban, which—unlike previous years—has the President's support.

#### "Born-Alive Infants Protection Act"

The debate over "partial-birth abortion" is believed to have helped pave the way for the "Born-Alive Infants Protection Act" (HR 2175). Passed in August 2002, the measure gives federal rights to a human fetus "born alive" at any stage of development. Any "live birth" that might occur during an attempted abortion is explicitly included. Essentially, the legislation amends the legal definition of a "person," "human being," "child," and "individual" in federal laws and regulations to include any "born alive infant," meaning that it is completely outside of the woman's body and has a beating heart or other signs of life. The law also states that it does not "affirm, deny, expand, or contract the legal status of a fetus." Abortion opponents strongly supported this legislation, while abortion rights advocates did not actively oppose it.

#### Medical Abortion

In September 2000, the FDA approved mifepristone (also known as "RU-486") for use as a medical abortion method. The FDA found the drug, when used with a second drug called misoprostol, to be safe and effective in terminating early pregnancies.<sup>11</sup> FDA approval was preceded by clinical trials conducted between 1994 and 1995 by the Population Council, the non-profit research organization that holds the U.S. patent for mifepristone.

Mifepristone is being marketed as *Mifeprex*, an early option pill, by Danco Laboratories, a New York-based company licensed by the Population Council. As distribution has gotten under way, questions remain as to whether insurance plans—both public and private—will cover this abortion method in a manner similar to surgical abortions. Some lawmakers, including members of Congress, are debating whether new laws should be adopted to specifically regulate these types of pregnancy terminations. Anti-abortion groups have filed a petition with the FDA calling for the agency to withdraw its approval of mifepristone.<sup>12</sup>

#### Clinic Violence

Many abortion facilities received threatening mail and hoax overnight packages during the fall of 2001, when the U.S. population was on heightened alert to the possibility of receiving anthrax in their mail.<sup>13</sup> These were the latest episodes in the ongoing harassment and violence experienced by abortion providers and their staff, which led abortion rights advocates to seek protection from legislatures and the courts. In response, states passed a myriad of laws in the 1990s, and Congress adopted the Freedom of Access to Clinic Entrances Act (FACE) in 1994, making it a federal crime to engage in certain violent, threatening, obstructive, and destructive conduct intended to injure, intimidate, or interfere with those seeking to obtain or provide reproductive health services.

The U.S. Supreme Court has refused appeals by abortion opponents who argue FACE violates the First Amendment. However, the justices have ruled in three other cases brought against abortion opponents for their actions at the workplaces and homes of abortion providers—lawsuits that were among the hundreds filed by physicians and clinics in the 1990s. Most recently, in 2000, a 6-3 majority of the Supreme Court upheld a Colorado law making it a crime to "knowingly obstruct" another person's entry to or exit from a health care facility. *Hill v. Colorado* found that it is constitutional to bar any person within 100 feet of a facility's entrance from coming within eight feet of another person—without their consent.

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- <sup>2</sup> Henshaw SK, Unintended Pregnancy in the United States, *Family Planning Perspectives*, 1998, 30:24-29, 46.
- <sup>3</sup> Gallup Surveys, January 2002, January 2001, March-April 2000, March 1996, and September 1995.
- <sup>4</sup> Center for Reproductive Law and Policy, Fact Sheet: Portrait of Injustice: Abortion Coverage Under the Medicaid Program, July 2002.
- <sup>5</sup> The Alan Guttmacher Institute, Restricting Insurance Coverage of Abortion, August 2002.
- <sup>6</sup> Center for Reproductive Law and Policy, Fact Sheet: Young Women's Access to Abortion Services, June 2002; The Alan Guttmacher Institute, Parental Involvement in Minors' Abortions, August 2002.
- <sup>7</sup> The Alan Guttmacher Institute, Mandatory Waiting Periods for Abortion, August 2002.
- <sup>8</sup> Scott Jones Bonnie, Targeted Regulation of Abortion Providers: Avoiding the "TRAP," Center for Reproductive Law and Policy, May 2001.
- <sup>9</sup> Annas GJ, Partial-birth abortion, congress, and the constitution, *New England Journal of Medicine*, 1998, 339:279-283.
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- <sup>11</sup> Spitz I et al., Early pregnancy termination with mifepristone and misoprostol in the United States, *New England Journal of Medicine* 1998, 338:1241-7.
- <sup>12</sup> Lueck S, "Anti-abortion Groups Petition FDA to Withdraw Mifeprex Approval," *Wall Street Journal*, August 21, 2002.
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## **Attachment B**

"Abortion in the U.S.," *Fact Sheet*, The Henry K. Kaiser Family Foundation,  
January 2003,  
[www.kff.org/womenshealth/326902-index.cfm](http://www.kff.org/womenshealth/326902-index.cfm)

## Abortion in the U.S.

Overall, about one quarter of all pregnancies in the United States now end in abortion. About half (49%) of the approximately 5 million pregnancies occurring each year are unintended and, of these, roughly one in two are terminated by abortion.<sup>1</sup> While abortion remains one of the most common surgical procedures in this country, abortion rates have been on the decline.

In 2000, the Alan Guttmacher Institute (AGI) estimates that a total of 1.31 million U.S. pregnancies ended in abortion – down from an all-time annual high of 1.61 million in 1990.<sup>2</sup> The most recent national data available from the Centers for Disease Control and Prevention (CDC) indicate that, between 1992 and 1997, the number of abortions performed each year nationwide dropped from 1.5 million to about 1.2 million (see Abortion Statistics box for differences in these data sets).<sup>3</sup>

A number of possible factors have been cited to explain the recent trends, including the aging of the population, greater acceptance of unwed childbearing, more effective use of contraception (including the back-up birth control method "emergency contraception"),<sup>4</sup> shifts in attitudes, laws restricting abortion access, and a decrease in the number of abortion providers.

### Incidence and Trends

- According to AGI, the 2000 abortion rate (the number of abortions per 1,000 women aged 15–44) was 21.3, reflecting a five percent (5%) decline since 1996.<sup>2</sup> The CDC estimates that the national abortion rate decreased from 26 per 1,000 in 1992 to 20 per 1,000 in 1997.<sup>1</sup>
- In 2000, the annual abortion ratio (the proportion of pregnancies that end in abortion) was 24.5.<sup>2</sup>
- It is estimated that 39 million abortions have been performed since the procedure was legalized in 1973,<sup>4</sup> and that at least one in three women in the U.S. will have an abortion by age 45.<sup>5</sup>
- Abortion rates vary significantly throughout the world. The most recent estimates – from 1996 – range from a low of 6.5 in the Netherlands to a high of 77.7 in Cuba. While the U.S. abortion rate has historically been higher than that in many western European countries, the 2000 rate of 21.3 is now within the range of other developed nations such as Sweden (18.7) and Australia (22.2).<sup>2,6</sup>

### Methods

- There are two general abortion types available to U.S. women: surgical and non-surgical or "medical" abortions.
- Most abortions (94–99%) performed in the U.S. are surgical.<sup>2,7</sup> The most common surgical methods include vacuum aspiration, dilation and curettage (D&C), and dilation and evacuation (D&E).<sup>8</sup> A much less common surgical method used for later abortions is dilation and extraction (D&X), a D&E variant.

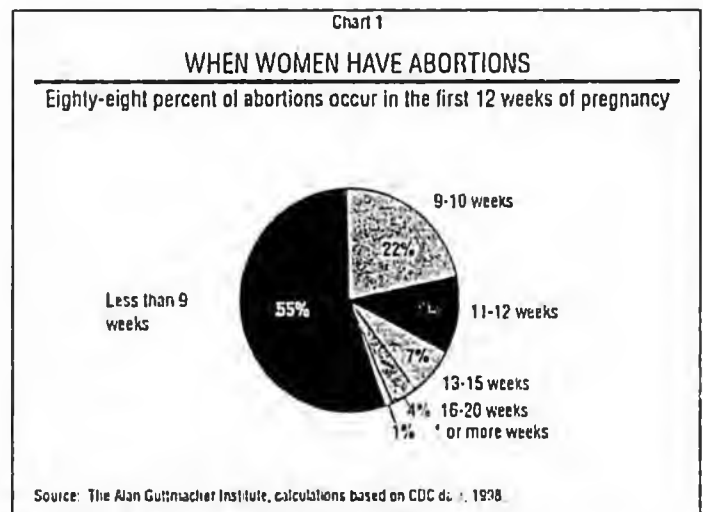
- In September 2000, the Food and Drug Administration (FDA) approved mifepristone, the first drug specifically designed for use as a method of medical abortion. Medical abortions can also be initiated through the "off-label" use of a drug called methotrexate, which has been approved by the FDA for other purposes.
- During the first six months of 2001, one-third of all abortion providers reported performing at least one early medical abortion. Among abortions that took place outside of hospitals, six percent (6%, or about 35,300) were medical abortions. Seventy-two percent (72%) of these abortions used mifepristone.<sup>2</sup>
- The U.S. distributor of mifepristone estimates that a total of 130,000 women have obtained an abortion using mifepristone in the two years since FDA approval.<sup>9</sup>

### Safety and Effectiveness

- The overall failure rate for surgical abortion is about one percent (1%); the overall failure rate for medical abortion—those not successfully completed in a given period of time—is five percent (5%).<sup>8</sup>
- The risk of death associated with abortion between 1993 and 1997 was 0.6 per 100,000 abortions, making it one of the safest surgical procedures in the U.S.<sup>10</sup> (The risk of maternal death from childbirth is 6.7 per 100,000 deliveries.) The risk of a major complication is also less than one percent (1%).<sup>9</sup>

### Timing

- Eighty-nine percent (89%) of abortions are performed in the first twelve weeks of pregnancy; nearly 56 percent are performed within the first eight weeks of pregnancy. Just one percent (1%) of all abortions occur at twenty-one weeks or later (see Chart 1).<sup>11</sup>



## Abortion Patients

- About 19 percent of women having abortions in the U.S. are teens; 33 percent are between the ages of 20 and 24; and 48 percent are aged 25 and older. Approximately 83 percent are unmarried and 41 percent are white. About 61 percent have given birth before.<sup>12</sup>
- Fifty-four percent (54%) of women who had an abortion in 2000 said that they used contraception in the month that they conceived.<sup>4</sup>
- From 1994-2000, abortion rates declined by 27 percent among adolescents aged 15-19, while rates among low-income women (those living below 100 percent of the federal poverty line) increased by 25 percent.<sup>4</sup>

## Abortion Sites and Providers

- Clinics made up 46 percent of abortion providers in 2000, followed by hospitals (33%) and physicians (21%).<sup>2</sup>
- Most abortions in the U.S. are performed in independent clinics that specialize in abortion services. In 2000, 93 percent of reported abortions were performed in clinics, five percent (5%) took place in hospitals, and two percent (2%) were performed in the private offices of physicians.<sup>2</sup>
- Eighty-seven percent (87%) of all U.S. counties have no abortion provider, and 34 percent of women of reproductive age (15-44) live in these counties.<sup>2</sup>
- Older ob/gyns are more likely than their younger colleagues to have performed an abortion in the past five years: 39 percent of ob/gyns 65 and older report doing so, as compared with 20 percent of those under 40. Overall, 58 percent of ob/gyns who performed an abortion in the past five years are 50 or older.<sup>11</sup>
- Seventy percent (70%) of residency programs in obstetrics and gynecology offered training in first-trimester abortion in 1991-1992. The proportion that included abortion as a standard part of residency training had declined from 25 percent to 12 percent since 1985.<sup>14</sup>
- A majority (56%) of non-hospital abortion providers reported experiencing one or more forms of harassment in 2000. Among providers performing more than 400 abortions annually, 82 percent said they experienced one or more forms of harassment.<sup>15</sup>

## Abortion Costs and Coverage

- The costs of an abortion will vary depending on factors such as location, timing, and type of procedure. In 2000, an average self-paying client was charged \$372 for a surgical abortion at 10 weeks and \$470 for a medical abortion performed in a non-hospital setting.<sup>15</sup>
- Nationwide, 26 percent of women seeking abortions receive abortion services that are billed directly to public or private insurance.<sup>15</sup>
- Thirty-one percent (31%) of Americans with employer-based health insurance are covered for abortion services.<sup>16</sup>
- About one in five women (18%) in the U.S. aged 17-44 are uninsured.<sup>17</sup> The majority of states make funding for abortions available through Medicaid only in very limited circumstances such as rape, incest, or a threat to the life of the woman.

## Abortion Statistics: Methods and Most Current Data

The most reliable national abortion data come from the Centers for Disease Control and Prevention (CDC), a federal agency, and The Alan Guttmacher Institute (AGI), a private health research organization. The CDC collects data annually, from state health departments, and analysis is available within two to three years. AGI surveys all known abortion providers roughly every four to five years. The most recent national CDC data is from 1997; AGI's is from 2000-2001.

AGI estimates – which are generally higher – have historically been considered more reflective of national abortion statistics. This is largely because the CDC is subject to the reporting limitations of state health departments. Not every state gathers abortion data. Those that do may collect it differently, and differ in how complete their reporting is, how they calculate gestational age, and how they categorize different abortion methods. The CDC also recently changed the way that it calculates abortion data overall. Starting with 1998, the agency no longer takes into account the four states – Alaska, California, New Hampshire, and Oklahoma – that do not report abortion statistics. As a result, nationwide data is not available from the CDC after 1997.

## References

- <sup>1</sup> CDC, Abortion surveillance: preliminary analysis—United States, 1996. *MMWR*, 1998, 47:1025-1028, 1035. While CDC abortion data is available through 1998, the most recent secondary analyses – which provide more details of trends – are based on 1996 figures.
- <sup>2</sup> Finer L and Henshaw SK, Abortion incidence and services in the United States in 2000, *Perspectives on Sexual and Reproductive Health*, 2002, 35:6-15. The term "abortion provider" is a place where abortions are performed; it includes hospitals, clinics, and doctors' offices. "Providers" in this context are different from "physicians."
- <sup>3</sup> CDC, Abortion surveillance: preliminary analysis—United States, 1997. *MMWR*, 2000, 48, No. 51 and 52.
- <sup>4</sup> Jones RK, Darroch JL and Henshaw SK, Contraceptive use among U.S. women having abortions in 2000-2001, *Perspectives on Sexual and Reproductive Health*, 2002, 34: 294-301.
- <sup>5</sup> Alan Guttmacher Institute, unpublished calculations.
- <sup>6</sup> Alan Guttmacher Institute, *Sharing Responsibility: Women, Society and Abortion Worldwide*. New York: AGI, 1999.
- <sup>7</sup> CDC, Abortion Surveillance—United States, 1998. *MMWR*, 2002, 51(SS03):1-32.
- <sup>8</sup> Hatcher RA et al., *Contraceptive Technology*, 17th edition, New York: Ardent Media, Inc, 1998.
- <sup>9</sup> Danco Laboratories, Dear Colleague letter, January 10, 2003.
- <sup>10</sup> National Center for Health Statistics. *Vital Statistics of the United States*, 1991. Washington D.C.: US Public Health Service, 1991, p.2.
- <sup>11</sup> Alan Guttmacher Institute (AGI) calculations using CDC data, published in AGI, *Abortion Fact Sheet*, 2003.
- <sup>12</sup> Jones RK et al., Patterns in the socioeconomic characteristics of women obtaining abortions in 2000-2001, *Perspectives on Sexual and Reproductive Health*, 2002, 34: 226-35.
- <sup>13</sup> Kaiser Family Foundation. *1995 Survey of Obstetrician/Gynecologists on Contraception and Unplanned Pregnancy, Attitudes and Practices with Regard to Abortion*. Menlo Park, CA: Henry J. Kaiser Family Foundation, June 1995.
- <sup>14</sup> MacKay HT and McKay AP, Abortion training in obstetric and gynecology residency programs in the United States, 1991-1992, *Family Planning Perspectives*, 1995, 27: 112-115.
- <sup>15</sup> Henshaw SK and Finer L, The accessibility of abortion services in the United States, 2001, *Perspectives on Sexual and Reproductive Health*, 2003, 35:16-24.
- <sup>16</sup> Kaiser Family Foundation and Health Research and Educational Trust, *Survey of Employer-Sponsored Health Benefits 2001*, Menlo Park, CA: Henry J. Kaiser Family Foundation, 2001.
- <sup>17</sup> Kaiser Family Foundation estimate based on Urban Institute analyses of the March 2000 Current Population Survey, U.S. Bureau of the Census.

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## **Attachment C**

U.S. Supreme Court Decisions Concerning Reproductive Rights,  
1965-2003, NARAL Pro-Choice America,  
[www.prochoiceamerica.org/facts/scotus\\_decisions\\_choice.cfm](http://www.prochoiceamerica.org/facts/scotus_decisions_choice.cfm)



NARAL  
Pro-Choice America Foundation

U.S. SUPREME COURT DECISIONS  
CONCERNING REPRODUCTIVE RIGHTS  
1965-2003

- Griswold v. Connecticut*,  
381 U.S. 479 (1965) By a vote of 7-2, the Supreme Court invalidated a Connecticut statute that prohibited the use of contraceptives, holding that the statute violated the constitutional right to marital privacy.
- Eisenstadt v. Baird*,  
405 U.S. 438 (1972) By a vote of 6-1, the Court invalidated a law prohibiting the distribution of contraceptives to unmarried people, holding that the constitutional right to privacy extends to the reproductive decisions of both married and unmarried people.
- Roe v. Wade*,  
410 U.S. 113 (1973) By a vote of 7-2, the Court invalidated a Texas law prohibiting abortions not necessary to save the woman's life. The Court held that the fundamental right to privacy extends to a woman's decision whether or not to have an abortion and that any governmental interference with that right is subject to strict judicial scrutiny. The Court recognized two compelling state interests sufficient to justify restrictions on a woman's right to choose. States may regulate the abortion procedure after the first trimester of pregnancy in ways necessary to promote women's health. After the point of fetal viability -- approximately 24 to 28 weeks -- a state may, to protect the potential life of the fetus, prohibit abortions not necessary to preserve the woman's life or health.
- Doe v. Bolton*,  
410 U.S. 179 (1973) Decided with *Roe v. Wade*. By a vote of 7-2, the Court invalidated provisions of a Georgia law that required that: (1) any abortion be performed in a hospital; (2) a woman secure the approval of three physicians and a hospital committee before obtaining an abortion; and (3) a woman seeking to obtain an abortion be a resident of the state.
- Bigelow v. Virginia*,  
421 U.S. 809 (1975) By a vote of 7-2, the Court invalidated the application of a Virginia statute that prohibited the advertisement of abortion services.

- Connecticut v. Mcnillo*,  
423 U.S. 9 (1975)
- The Court unanimously upheld the use of a Connecticut statute that prohibited the performance of abortion to prosecute a non-physician.
- Bellotti v. Baird (I)*,  
428 U.S. 132 (1976)
- The Court unanimously ruled that the district court should have abstained from deciding the constitutionality of a Massachusetts statute requiring parental consent until the state court had interpreted the statute. The Court noted, however, that a state may, in some circumstances, require a minor woman to obtain parental consent before obtaining an abortion.
- Planned Parenthood of Central Missouri v. Danforth*,  
428 U.S. 52 (1976)
- By a vote of 6-3, the Court invalidated provisions of a Missouri statute that: (1) required a married woman to obtain the consent of her husband prior to obtaining an abortion; (2) required a physician to preserve the life and health of the fetus at every stage of pregnancy; and (3) prohibited the use of saline amniocentesis as a method of abortion. By a vote of 5-4, the Court struck down a requirement that an unmarried minor woman obtain the written consent of one parent before obtaining an abortion because the statute provided no alternative to parental consent such as judicial waiver of the consent requirement. The Court upheld provisions that: (1) required facilities to keep confidential records, available only for statistical purposes to public health officials, intended to preserve maternal health and life by increasing medical knowledge and to monitor whether abortions are performed in accordance with the law; (2) required that a woman sign a consent form prior to an abortion; and (3) defined "viability" as "that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supportive systems."
- Maher v. Roe*,  
432 U.S. 464 (1977)
- By a vote of 6-3, the Court upheld a Connecticut prohibition of the use of public funds for abortions, except those "medically necessary," even though the state provides funding for childbirth.
- Beal v. Doe*,  
432 U.S. 438 (1977)
- Decided with *Maher v. Roe*. By a vote of 6-3, the Court upheld a Pennsylvania regulation that prohibited the use of public funds for abortions not "medically necessary."
- Poelker v. Doe*,  
432 U.S. 519 (1977)
- By a vote of 6-3, *per curiam*, the Court upheld the refusal of a public hospital to provide publicly funded abortions when there was no threat to the health or life of the woman.

- Carey v. Population Services*,  
431 U.S. 678 (1977) By a vote of 7-2, the Court invalidated a New York law prohibiting the sale or distribution of contraceptives to minors.
- Colautti v. Franklin*,  
439 U.S. 379 (1979) By a vote of 6-3, the Court invalidated as unconstitutionally vague a Pennsylvania statute that required a physician, under threat of criminal penalties, to use the method and "degree of care" most likely to preserve the life and health of the fetus if the physician determined the fetus was viable or had "sufficient reason to believe that the fetus may be viable."
- Bellotti v. Baird (II)*,  
443 U.S. 622 (1979) By a vote of 8-1, the Court invalidated a Massachusetts law that required a minor to obtain the consent of both parents before obtaining an abortion. Four Justices reasoned that the procedure for judicial waiver was unconstitutional because it required parental consultation in every case before the minor woman was permitted to go to court to demonstrate that she was mature enough to make her own decision or that an abortion was in her best interests. Four other Justices considered the statute unconstitutional because it provided an absolute veto over a minor woman's abortion decision to a third-party, whether a parent or a judge.
- Harris v. McRae*,  
448 U.S. 297 (1980) By a vote of 5-4, the Court upheld the Hyde amendment, which prohibits the use of federal funds for abortions not necessary to preserve the woman's life. The Court also held that states that participate in the Medicaid program are not required by Title XIX of the Social Security Act to fund medically necessary abortions for which federal funds are unavailable under the Hyde amendment.
- Williams v. Zbaraz*,  
448 U.S. 358 (1980) Decided with *Harris v. McRae*. By a vote of 5-4, the Court upheld an Illinois statute prohibiting the use of state funds for abortions not necessary to save the woman's life.
- H.L. v. Matheson*,  
450 U.S. 398 (1981) By a vote of 6-3, the Court upheld as not invalid on its face a Utah statute requiring a physician to notify a minor woman's parent before performing an abortion, but the Court did not decide whether the statute would be unconstitutional as applied to a mature minor because the plaintiff had not alleged that she was mature.
- City of Akron v. Akron Center for Reproductive Health [Akron I]*,  
By a vote of 6-3, the Court invalidated those provisions of a city ordinance that: (1) required physicians to give their patients anti-abortion information, including telling them that "the unborn child is a human life from the moment of conception;" (2) required a 24-hour

462 U.S. 416 (1983)      waiting period following these lectures; (3) mandated that all abortions after the first trimester be performed in a hospital; (4) required parental consent for a minor woman to obtain an abortion, without providing a procedure for waiver of the consent requirement; and (5) required physicians to dispose of fetal remains in an unspecified "humane and sanitary manner."

*Planned Parenthood Association of Kansas City, Mo. v. Ashcroft*,  
462 U.S. 476 (1983)      Decided with *Akron Center*. By a vote of 6-3, the Court invalidated a provision of a Missouri statute that required all second-trimester abortions to be performed in a hospital. By a vote of 5-4, the Court upheld requirements that: (1) a second physician be present during a post-viability abortion; (2) a minor woman obtain either parental consent or a judicial waiver; and (3) a pathology report be made for each abortion.

*Simopoulos v. Virginia*,  
462 U.S. 506 (1983)      By a vote of 8-1, the Court affirmed the criminal conviction of a physician for performing a second-trimester abortion outside a licensed hospital, noting that Virginia's definition of "hospital" differed from Missouri's and Akron's in that it included "outpatient hospitals," and was therefore broad enough to include any adequately equipped clinic. Thus, the Court held that the Virginia restriction on abortions after the first trimester was necessary to promote the health of women obtaining abortions.

*Thornburgh v. American College of Obstetricians and Gynecologists*,  
476 U.S. 747 (1986)      By a vote of 5-4, the Court invalidated provisions of Pennsylvania statute that required: (1) physicians to secure "informed consent" by providing anti-abortion information, including the availability of State-supplied printed materials describing the characteristics of the fetus and listing alternatives to abortion; (2) the reporting of detailed information available to the public for copying, including identification of the performing and referring physicians and personal information about the woman obtaining an abortion; (3) a physician performing a post-viability abortion to use that "degree of care" required to preserve the life and health of any unborn child intended to be born and to use the method of abortion most likely to preserve the life of the fetus, unless it would present a significantly greater medical risk to the woman's life or health; and (4) the presence of a second physician at abortions when viability is possible without providing an exception for a medical emergency.

*Webster v. Reproductive Health Services*,  
By a vote of 5-4, the Court upheld provisions of a Missouri statute prohibiting the use of public facilities or public personnel to perform abortions and requiring a physician to make determinations and

492 U.S. 490 (1989) perform tests concerning gestational age, weight and lung maturity when he or she has reason to believe a woman to be 20 weeks or more pregnant. For the first time in the sixteen years since *Roe v. Wade*, only a minority of the Justices on the Court -- four Justices -- voted to reaffirm *Roe*.

*Hodgson v. Minnesota*,  
497 U.S. 417 (1990) By a vote of 5-4, the Court invalidated as having no rational basis a Minnesota law requiring notification of both parents without a procedure for judicial waiver of the notice requirement. However, by a vote of 5-4, the Court upheld another provision that required two-parent notification but included a procedure for judicial waiver, as well as a 48-hour waiting period for minors.

*Ohio v. Akron Center for Reproductive Health [Akron II]*,  
497 U.S. 502 (1990) By a vote of 6-3, the Court upheld an Ohio statute that required a minor woman to notify one parent or obtain a judicial waiver, rejecting a facial challenge alleging that the burdensome judicial procedure did not fulfill the constitutional requirement of a meaningful bypass procedure.

*Rust v. Sullivan*,  
500 U.S. 173 (1991) By a vote of 5-4, the Court upheld federal regulations prohibiting health care professionals at family planning clinics that receive Title X funds from counseling or referring women regarding abortion, or even informing a pregnant patient that abortion is a legal option.

*Planned Parenthood of Southeastern Pennsylvania v. Casey*,  
505 U.S. 833 (1992) By a vote of 5-4, the Court "retained and once again reaffirmed" the "essential holding" of *Roe v. Wade*. The 5-4 majority also struck down a spousal notification provision of Pennsylvania's Abortion Control Act. However, by a vote of 7-2, the Court upheld provisions of the Act that required (1) physicians to provide patients with anti-abortion information, including pictures of fetuses at various stages of development to discourage women from obtaining abortions; (2) a mandatory 24-hour delay following these lectures; and (3) a one-parent consent requirement for minors with a judicial bypass. By a vote of 8-1 (Blackmun was the sole dissenter), the Court upheld a provision that required the filing of reports, available for public inspection and copying, including the name and location of any facility performing abortions that receives any state funds.

Most significantly, the three-justice plurality opinion (authored by O'Connor, Kennedy, and Souter), abandoned *Roe's* trimester framework and the strict scrutiny standard of review applied to fundamental rights, implementing the less protective "undue burden" standard of review for pre-viability abortions. The plurality explicitly overruled portions of *Akron* and *Thornburgh* that had limited states' ability to restrict the right to choose, deeming them "inconsistent with

*Roe's* statement that the State has a legitimate interest in promoting the life or potential life of the unborn."

Four Justices (Rehnquist, Scalia, Thomas, and White) voted to uphold all the challenged provisions and overturn *Roe* completely, stating that it was wrongly decided and the Constitution does not protect the right to choose. Only two Justices (Blackmun and Stevens) voted to continue to protect the right to choose as a fundamental right under *Roe* by subjecting state restrictions to strict scrutiny.

*Bray v. Alexandria Women's Health Clinic,*  
506 U.S. 263 (1993)

By a vote of 5-4, the Court held that a federal civil rights law, known as the "Ku Klux Klan" Act, 42 U.S.C. § 1985(3), does not protect women from anti-choice blockaders obstructing access to reproductive health clinics. The Court held that anti-choice blockades do not constitute sex-based discrimination for the purpose of the statute.

*National Organization for Women v. Scheidler [Scheidler I],*  
510 U.S. 249 (1994)

By a vote of 9-0, the Court held that claims under the Racketeer Influenced and Corrupt Organizations (RICO) act do not require proof of an economic motive, and that NOW and a group of women's health centers could pursue their civil suit against Joseph Scheidler, the Pro-Life Action League (PLAL) and others.

*Madsen v. Women's Health Center,*  
512 U.S. 753 (1994)

By a vote of 5-4 the Court upheld provisions of a Florida injunction that: (1) created a 36-foot buffer zone outside the entrance to a reproductive health clinic; and (2) prohibited anti-choice protesters from making noise that could be heard by patients inside the clinic during the hours in which surgical procedures were performed. The Court noted that such injunctions burden "no more speech than necessary to serve a significant government interest." The court invalidated provisions creating a 300-foot "no approach" zone around the clinic, a ban on signs and images visible to people inside the clinic, and a 300-foot ban on picketing outside the residences of clinic employees.

*Schenck v. Pro-Choice Network,*  
519 U.S. 357 (1997)

By a vote of 8-1, the Court invalidated the provision in a New York injunction that created a 15-foot "floating" buffer zone around any person or vehicle seeking access to or leaving a clinic. The Court held that the "floating" buffer zones "burden more speech than necessary to serve the relevant government interests." The Court limited this holding to the facts of this case and noted that it did not address "whether the governmental interests involved would ever justify some sort of zone of separation between individuals entering the clinics and protestors, as measured by the distance between the two." By a vote of 6-3, the Court upheld a provision creating a 15-foot "fixed" buffer zone outside of clinic doorways, driveways, and parking lot entrances. The

Court also upheld a "cease and desist" provision that permits two "sidewalk counselors" to approach a person inside the "fixed" buffer zones unless and until the person indicates a desire for the counselor to withdraw; the "sidewalk counselor" must then retreat 15 feet from the person he/she had been counseling and remain outside of the buffer zone.

*Lambert v. Wicklund*  
520 U.S. 292 (1997)

In a *per curiam* opinion, the Court upheld the judicial bypass provision of a Montana statute requiring one-parent notification before a minor may have an abortion. The Court held that a judicial bypass procedure requiring a minor to show that parental notification is not in her best interest is equivalent to a judicial bypass procedure requiring a minor to show that abortion without parental notification is in her best interest.

*Mazurek v.  
Armstrong*,  
520 U.S. 968 (1997)

By a vote of 6-3, the Court reversed a lower court ruling that would have permitted health care providers to move forward with their challenge to a Montana law banning the performance of abortion by licensed physician assistants working under the supervision of a doctor. Without full briefing or oral argument, the Court found that, in general, physician-only requirements are constitutional. As the Court's first application of the "undue burden" standard since *Planned Parenthood of Southeastern Pennsylvania v. Casey*, this decision indicates that the standard is less protective than it initially appeared and that regardless of a law's intended effect, the Court will not invalidate state restrictions on abortion before viability unless the actual effect is to create a substantial obstacle on women obtaining an abortion.

*Stenberg v. Carhart*,  
530 U.S. 914 (2000)

By a vote of 5-4, the Court invalidated a Nebraska law that prohibited so-called "partial birth" abortion unless the procedure is necessary to save the life of the woman. First, the Court held that the Nebraska law is unconstitutional because it lacks any exception to protect women's health, noting that "[s]ince the law requires a health exception in order to validate even a postviability abortion regulation, it at a minimum requires the same in respect to a previability regulation." The Court also clarified that the health exception must protect women against health risks caused by the pregnancy as well as health risks caused by a regulation that forces women to choose a less medically appropriate procedure. Second, the Court found that the Nebraska law imposed an undue burden on women because it was written so broadly that it would affect not only dilation and extraction (D&X) procedures, but also dilation and evacuation (D&E) procedures, the most common form of previability second trimester abortions. The Court reasoned that

physicians who used the D&E procedure would fear prosecution, conviction, and imprisonment, resulting in an undue burden upon a woman's right to choose.

*Hill v. Colorado*,  
530 U.S. 703 (2000)

By a vote of 6-3, the Court upheld the constitutionality of the zone of separation provision in Colorado's clinic protection statute. The provision prohibits a person from knowingly approaching within eight feet of another person without consent, for the purpose of passing a leaflet or handbill, displaying a sign, or engaging in oral protest, education, or counseling. This restriction applies within a 100-foot radius from clinic entrances. The Court reasoned that states have a legitimate interest in protecting the health and safety of their citizens, and that this interest "may justify a special focus on unimpeded access to health care facilities and the avoidance of potential trauma to patients associated with confrontational protests." The Court held that the Colorado statute is content neutral because it only regulates where the speech can occur. In addition, the statute was not adopted because of any disagreement with the message or viewpoint of any speech. Further, Colorado's interests in protecting clinic access and privacy, and providing clear guidelines for law enforcement officers, are not related to the content of the demonstrators' speech. The Court also held that the zone of separation provision is a valid time, place, and manner regulation because it is narrowly tailored to serve the State's significant and legitimate governmental interests and leaves open ample alternative channels for communication. Such channels include communicating at normal conversational distance, displaying signs, and distributing leaflets near the path of oncoming pedestrians.

*Ferguson v. City of Charleston*,  
532 U.S. 67 (2001)

By a vote of 6-3, the Court held that the Medical University of South Carolina's policy of testing pregnant women for cocaine is unconstitutional under the Fourth Amendment in the absence of consent. The Court recognized that the purpose of the policy was to obtain evidence for criminal prosecution, not to help pregnant women or their fetuses. The Court also noted that punitive programs that punish pregnant women for drug use during pregnancy can actually harm the women and children they purport to protect.

*Scheidler v. National Organization for Women [Scheidler II]*,  
537 U.S. 393 (2003)

By a vote of 8-1, the Court held that rights potentially violated by clinic protestors – women's right to seek medical services, clinic doctors' rights to perform their jobs, and clinics' rights to provide medical services and otherwise conduct their business – were not "property" that could be "obtained" within the meaning of the Hobbs Act (a federal anti-extortion statute). On that basis, the Court overturned a jury verdict against clinic protestors, in which jurors had found that the

protestors' had used improper means to obtain "property" belonging to the plaintiffs (clinics, and patients or prospective patients), and had therefore committed extortion. Because it voided the underlying offenses necessary to sustain a RICO violation in the case, the Court declined to reach the issue of whether the clinics could be entitled to injunctive relief under RICO, but it voided the injunction issued in the instant case.

January 1, 2004

**Attachment D**

*Roe et al. v. Wade*, 410 U.S. 113, 1973

Memorandums and Work Drafts  
Considered by the  
House Judiciary Committee



GREGG D. RENKES  
ATTORNEY GENERAL OF ALASKA

February 11, 2004

The Honorable Lesil McGuire  
Chair, House Judiciary Committee  
Alaska Legislature  
State Capitol - Room 118  
Juneau, AK 99801-1182

The Honorable Tom Anderson  
Vice-Chair, House Judiciary Committee  
Alaska State Legislature  
State Capitol - Room 432  
Juneau, AK 99801-1182

Re: Legal Analysis of CS HB 292(HES)

Dear Representatives McGuire and Anderson:

CS HB 292(HES) proposes to establish particular information, to be prepared by the Department of Health and Social Services (DHSS), to be provided to a patient that is seeking an abortion. The bill further proposes that a physician who fails to obtain the "informed consent" of a patient prior to providing abortion services is liable for both compensatory and punitive damages. Finally, the bill seeks to establish a 24-hour waiting period from the time the patient is provided the information to the time that a patient may receive the abortion.

This is well intentioned and necessary legislation that attempts to address the State's compelling interest in ensuring that no abortion is performed in our state without informed consent. However, as proposed, this bill will likely not survive a constitutional challenge under the privacy provision of the Alaska Constitution, Art. I, Sec. 22 and the equal protection provision of the Alaska Constitution, Art. I, Sec. 1.

We provide the following background and suggested changes in an effort to assist your committee in preparing a bill that will survive constitutional challenge. Alaska's courts have consistently found our constitution provides greater protections than the

federal constitution or those of many other states. See e.g., *Valley Hospital Association, Inc. v. Mat-Su Coalition for Choice*, 948 P.2d 963 (Alaska 1997), *State v. Planned Parenthood*, 28 P.3d 904 (Alaska 2001), *State v. Planned Parenthood*, 35 P.3d 30 (Alaska 2001). This is critical to understanding how our courts would address legislation that would purport to restrict abortion rights. In *Valley Hospital Association v. Mat-Su Coalition*, *infra*, the Alaska Supreme Court explicitly rejected the lessening of protections of the right to an abortion that were articulated in the plurality opinion in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). Instead, the Alaska Supreme Court established a test similar to that expressed in *Roe v. Wade*, 410 U.S. 113 (1973), affirming the right to an abortion as a fundamental right that can be legally constrained only when the constraints are justified by a compelling state interest and no less restrictive means could advance this interest. The challenge faced by the proposed legislation is that the application of this test to specified information requirements, a 24-hour waiting period, and the physician liability provision could result in a determination that one or more of these provisions are unconstitutional if they employ excessive means to accomplish the ends of assuring that a patient is informed and has given her consent before receiving an abortion. Any evaluation of whether the least restrictive means are being employed is necessarily subjective. What we provide is our best guess at how the court might read the provisions included in the proposed bill. In our view, the bill as presently written raises the following potential legal problems:

**Section 1 (Legislative Findings):** The Senate sponsors of the bill drafted legislative findings to help establish the status of "compelling interest" in legislating in this area. The House substitute of the bill refined those findings. Although, the findings do not have any legal effect, they do outline the purpose of the legislation. The one problem with this section is found on page 2, lines 9 and 10. The findings mention the availability of immunity for physicians who use the information on the Internet site outlined in Section 2 of the bill. However, there is no corresponding immunity language in the bill. If there is a desire to provide for immunity, then that should be clearly set forth in the body of the bill.

**Section 2 (The contents of the pamphlet):** Section 2 of the bill provides the substances of what should be included in the pamphlet developed by DHSS. The following are legal issues that we believe would be raised in a challenge to the bill.

Page 2, line 31 and page 3, lines 1-4 (eligibility for public benefits): Under *Karlin v. Faust*, 975 F. Supp. 1177 (W.D.Wisc. 1997) (aff'd 188 F.3d 446 (7<sup>th</sup> Cir. 1999)), rehearing and rehearing en banc denied, 198 F.3d 620 (7<sup>th</sup> Cir. 1999), the court held that it was not constitutional to require this type of information to be provided to women who were pregnant as a result of rape or incest, since such information would likely cause

psychological harm and serve no medical purpose. Therefore at a minimum, changes should be made for those circumstances where the pregnancy is the result of rape or incest, where a woman is carrying a child with a lethal anomaly, or where the information would serve no legitimate purpose.

Page 3, lines 7-9 (child support): Although the policy of the State of Alaska may be that fathers are liable for child support, there are legal issues with respect to the establishment of paternity and support orders in civil actions. This statement may lead a woman to believe that she will indeed get child support and it is not always that easy. Thus, we recommend that the reference to child support by fathers be changed to more fully describe the processes available for establishing paternity and liability for child support.

Page 3, lines 11-21 (photos of unborn children in two-week gestational increments): Although tailored to be unbiased and accurate, the graphic nature of such photos may be found burdensome or used to create an undue interference in a woman's right to make a reproductive choice. As articulated in the pamphlet, there would be at least 18 photos of "unborn children" in two-week gestational increments, along with other information, such as viability. The photos would comprise a large portion, if not most of the pamphlet itself. Any legal challenge brought would argue that the pictures were not intended to provide information but to shock and burden a woman's reproductive choice. This argument would most likely state that these pictures were not in proportion to the remainder of the pamphlet. Based upon the recent decisions by the Alaska Supreme Court, this argument would be difficult to overcome and therefore we recommend that some attention be given to the make up of the pamphlet as a whole and the proportion of the pamphlet that includes pictures.

Page 3, lines 22-31 and page 4, lines 1-9 (information regarding risks and benefits of abortion, carrying to term and contraceptives): Despite requiring the submission of information in an objective, unbiased way, these three provisions might be found to be unconstitutionally vague. Specifically, by using both the pamphlet for the purpose of providing information that would be considered informed consent, there is also an express provision in the bill that is entitled informed consent. However, the two provisions do not require the same information. Therefore, a legal challenge would be that a physician who was trying to comply with the legal requirement could not be sure whether they were in compliance or were violating the law. A similar problem arises with respect to the liability provision. Since there is different information being imparted, a physician would not know when they would be liable under the bill.

Since some of the specific information requirements will likely be found unconstitutional in their application to certain circumstances, the clear application of the law is going to be compromised. Even with the severability provision included in this bill, a physician will face potential civil liability for guessing incorrectly about which information is required or whether some information can be omitted because it serves no medical purpose. Generally, physicians are required, both by sound medical practice and by their malpractice insurance providers, to assure that informed consent is obtained from their patients. They are also required to obtain informed consent under AS 09.55.556. To the extent that there is reasonable confusion about the specific information requirements, the civil liability provision is likely to have a chilling effect on the availability of abortions.

**Sections 3 and 4** (Require informed consent from abortion and provide for civil liability for the failure to obtain informed consent): It should be noted that the court in *Valley Hospital Association v. Mat-Su Coalition* explicitly found AS 18.16.010(b) to be unconstitutional to the extent it applies to quasi-public institutions. In addition, the parental consent provision and judicial bypass provision were found to be unconstitutional by the superior court in Anchorage. See *Planned Parenthood of Alaska v. State*, 3AN-97-6014 CI (decision on remand from 35 P.3d 30 (Alaska 2001)). To the extent that the above issues are corrected, and the changes to Section 2 of the bill are addressed, the amendment proposed in Section 3 is not problematic.

Section 4 has two problems. First, this is the section that purports to provide immunity from civil liability; however, in the committee substitute there is no mention of immunity. Second, this section appears to impose a 24-hour waiting period. This requirement could be challenged on equal protection grounds. Specifically, the argument would be that the equal protection rights of women are violated because only abortion requires a specific level of informed consent not any other procedure. Although there is a general informed consent provision under Title 9, there is no other informed consent provision in state law that deals with other specific types of medical procedures. In addition, since abortion is a medical procedure only sought by women, the argument would be that in so legislating, we would be violating women's equal protection rights. In addition, under this section there would be a required 24-hour waiting period. Therefore, abortion would be the only medical procedure that had a 24-hour waiting requirement. To survive an equal protection challenge the state would have to show that the 24-hour waiting period was justified by a compelling state interest and no less restrictive means could advance that interest.

In addition, there could be problems with this waiting period because of the rural nature of Alaska. Many women who would seek an abortion will have to travel

from rural communities at great expense. Depending upon how it is implemented a 24-hour waiting requirement could result in time and expense to these women and may result in delays. Under these circumstances a 24-hour delay may not meet the requirement of being the least restrictive means to accomplish the purpose of assuring a woman is informed and has consented to an abortion.

**Section 5 (Informed consent requirements):** There are four problems with this section. The first relates to the requirement from which informed consent is required. As noted previously, parental consent and judicial bypass provisions have been found unconstitutional by the superior court as recently as August of 2003, although we are arguing for appeal to overturn this ruling. There are also express prohibitions under Title 13 stating that a guardian does not have the authority to consent to an abortion for a ward. Therefore, these sections are either unconstitutional or do not accurately state the law.

The second problem is the 24-hour waiting period, which was discussed above. The same concerns and legal issues arise with the existence of the 24-hour waiting period in this section as do in Section 4. However, there is one change to this section that was not stated in the previous section. Specifically, this section allows for the distribution of the information required under this section or on the Internet to be done by mail, telephone or by facsimile. The availability of these options would provide a defense to the legal arguments that would be raised with respect to the 24-hour waiting period. However, it is not clear whether these options would satisfy the court with respect to the equal protection challenges raised. In addition, these options should be clearly stated so as to apply to any 24-hour waiting requirement in the bill.

The third problem with this section is the provision that authorizes that these protections are not required in a medical emergency. The definition of medical emergency will be challenged as being vague. For example, it does not address the ability to dispense with the formalities in order to avoid a medical emergency. In fact, if the definition is not met, one must wait for a medical emergency to manifest before obtaining an abortion, thereby putting the mother's life in jeopardy. This will be challenged, and it is difficult to predict the success of such a challenge; however, it should be noted that almost identical language was found unconstitutional by the superior court in the parental consent and judicial bypass bill litigation currently being appealed by the state.

The final problem is the same as stated with respect to Section 2 of the bill and the vagueness on what actually constitutes informed consent so that a physician would clearly know what information was required to be dispensed to meet the requirements of the bill. Since this section purports to require different information than that outlined in

Hon. Lesil McGuire, Chair  
Hon. Tom Anderson, Vice-Chair  
House Judiciary Committee

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the pamphlet, there are vagueness arguments that could be raised and which need to be addressed.

In summary, it is most likely that if this bill passes, a legal challenge will be brought. In light of the foregoing analysis, you see there remain a number of legal problems with the bill that need to be addressed in order to defend any lawsuit that would be filed. We stand ready to assist you in drafting an informed consent bill that will accomplish the critically important objectives pursued by the sponsors of this legislation while at the same time having the best possible chance of surviving judicial scrutiny.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Renkes", written in a cursive style.

Gregg D. Renkes  
Attorney General

# ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair  
Rep. Tom Anderson, Vice-Chair  
Rep. Jim Holm  
Rep. Dan Ogg  
Rep. Ralph Samuels  
Rep. Les Gara  
Rep. Max Gruenberg



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## House Judiciary Committee

### Memorandum

**To:** Jean Mischel, Leg. Legal  
**From:** Vanessa Tondini, Committee Aide  
House Judiciary Committee  
**Date:** March 30, 2004  
**Re:** CS Request

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Please create a final draft House Judiciary Committee Substitute for work order # 23-LS0193\O, HCS CSSB 30 (JUD), incorporating the attached four amendments. Regarding conceptual amendment #6, there are two different versions of the amendment attached. The committee passed the amendment conceptually to combine and include all the language from both versions, thus creating a new (10). Also, please conform the language of this subsection to the other similar subsections (including any necessary changes made to address issues raised in the legal opinion from the Attorney General dated March 18, 2004) and renumber the bill accordingly. The bill was passed out of committee today!!!

If you have any questions, please call me at 4990. Thank you so much for all your hard work and help on this bill!!!

The information attached to this memo is CONFIDENTIAL and/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

HCS CS 8B 30 (JUD)  
VERSION "0"

CONCEPTUAL AMENDMENT #1 - PASSED  
by Rep. Ogg

P.4, Line 3  
Alter "alcohol"  
Insert " , tobacco "

AMENDMENT NO. 4 - PASSED

OFFERED TO HCS CSSB 30(JUD)  
BY REPRESENTATIVE GRUENBERG

Page 4, line19: Delete "or surgeon."