

CS FOR HOUSE BILL NO. 364(FIN)(efd fld)(ct rule fld)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 4/6/08

Offered: 3/18/08

Sponsor(s): REPRESENTATIVES COGHILL, Keller, Meyer, Stoltze, Lynn, Johnson, Dahlstrom, Wilson, Neuman, Roses, Kelly, Gatto

SENATOR Dyson

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to notice and consent for a minor's abortion; relating to penalties for**
2 **performing an abortion; relating to a judicial bypass procedure for an abortion; relating**
3 **to coercion of a minor to have an abortion; and relating to reporting of abortions**
4 **performed on minors."**

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

6 * **Section 1.** AS 18.16.010(a) is amended to read:

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

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

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

13 (3) before an abortion is knowingly performed or induced on **a**
14 **pregnant**, [AN] unmarried, unemancipated woman under 17 years of age, **notice and**

1 consent **have** [HAS] been given as required under AS 18.16.020 or a court has
 2 authorized the minor to consent to the abortion **without parental notice** under
 3 AS 18.16.030 and the minor consents; for purposes of enforcing this paragraph, there
 4 is a rebuttable presumption that a woman who is unmarried and under 17 years of age
 5 is unemancipated;

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

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

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

10 (g) It is **a** [AN AFFIRMATIVE] defense to a prosecution or claim for
 11 violation of (a)(3) of this section that, **in the clinical judgment of the physician or**
 12 **surgeon**, compliance with the requirements of (a)(3) of this section was not possible
 13 because, **in the clinical judgment of the physician or surgeon**, an immediate threat
 14 of serious risk to the life or physical health of the pregnant minor from the
 15 continuation of the pregnancy created a medical emergency necessitating the
 16 immediate performance or inducement of an abortion. In this subsection,

17 **(1) "clinical judgment" means a physician's or surgeon's**
 18 **subjective professional medical judgment exercised in good faith;**

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

20 **(3) "medical emergency" means a condition that, on the basis of the**
 21 **physician's or surgeon's good faith clinical judgment, so complicates the medical**
 22 **condition of a pregnant minor that**

23 **(A)** [(1)] an immediate abortion of the minor's pregnancy is
 24 necessary to avert the minor's death; or

25 **(B)** [(2)] a delay in providing an abortion will create serious
 26 risk of **medical instability caused by a** substantial and irreversible impairment
 27 of a major bodily function of the pregnant minor.

28 * **Sec. 3.** AS 18.16.020 is repealed and reenacted to read:

29 **Sec. 18.16.020. Notice and consent required before minor's abortion.** (a) A
 30 person may not knowingly perform or induce an abortion upon a minor who is known
 31 to the person to be pregnant, unmarried, under 17 years of age, and unemancipated

1 unless, before the abortion, at least one of the following applies:

2 (1) one of the minor's parents, the minor's legal guardian, or the
3 minor's custodian has been given notice of the planned abortion not less than 48 hours
4 before the abortion is performed and the parent, legal guardian, or custodian has
5 consented in writing to the performance or inducement of the abortion;

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

9 (3) a court, by its inaction under AS 18.16.030, constructively has
10 authorized the minor to consent to the abortion without notice and consent of a parent,
11 guardian, or custodian, and the minor consents to the abortion; or

12 (4) the minor is the victim of physical abuse, sexual abuse, or a pattern
13 of emotional abuse committed by one or both of the minor's parents or by a legal
14 guardian or custodian of the minor and the abuse is documented by a declaration of the
15 abuse in a signed and notarized statement by

16 (A) the minor; and

17 (B) another person who has personal knowledge of the abuse

18 who is

19 (i) the sibling of the minor who is 21 years of age or

20 older;

21 (ii) a law enforcement officer;

22 (iii) a representative of the Department of Health and

23 Social Services who has investigated the abuse;

24 (iv) a grandparent of the minor; or

25 (v) a stepparent of the minor.

26 (b) In (a)(1) of this section, actual notice must be given or attempted to be
27 given in person or by telephone by either the physician who has referred the minor for
28 an abortion or by the physician who intends to perform the abortion. An individual
29 designated by the physician may initiate the notification process, but the actual notice
30 shall be given by the physician. The physician giving notice of the abortion must
31 document the notice or attempted notice in the minor's medical record and take

1 reasonable steps to verify that the person to whom the notice is provided is the parent,
 2 legal guardian, or custodian of the minor seeking an abortion. Reasonable steps to
 3 provide notice must include

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

8 (2) if by telephone, initiating the call, attempting to verify through a
 9 review of published telephone directories that the number to be dialed is that of the
 10 minor's parent, legal guardian, or custodian, and asking questions of the person to
 11 verify that the person's relationship to the minor is that of parent, legal guardian, or
 12 custodian; when notice is attempted by telephone but the physician or physician's
 13 designee is unsuccessful in reaching the parent, legal guardian, or custodian, the
 14 physician's designee shall continue to initiate the call, in not less than two-hour
 15 increments, for not less than five attempts, in a 24-hour period.

16 (c) If actual notice is attempted unsuccessfully after reasonable steps have
 17 been taken as described under (b) of this section, the referring physician or the
 18 physician intending to perform an abortion on a minor may provide constructive
 19 notice to the minor's parent, legal guardian, or custodian. Constructive notice is
 20 considered to have been given 48 hours after the certified notice is mailed. In this
 21 subsection, "constructive notice" means that notice of the abortion was provided in
 22 writing and mailed by certified mail, delivery restricted to addressee only, to the last
 23 known address of the parent, legal guardian, or custodian after taking reasonable steps
 24 to verify the mailing address.

25 (d) A physician who suspects or receives a report of abuse under this section
 26 shall report the abuse as provided under AS 47.17.020.

27 (e) A physician who is informed that the pregnancy of a minor resulted from
 28 criminal sexual assault of the minor must retain, and take reasonable steps to preserve,
 29 the products of conception and evidence following the abortion for use by law
 30 enforcement officials in prosecuting the crime.

31 * **Sec. 4.** AS 18.16.030(a) is amended to read:

1 (a) A woman who is pregnant, unmarried, under 17 years of age, and
2 unemancipated who wishes to have an abortion without **notice to and** the consent of a
3 parent, guardian, or custodian may file a complaint in the superior court requesting the
4 issuance of an order authorizing the minor to consent to the performance or
5 inducement of an abortion without **notice to or** the consent of a parent, guardian, or
6 custodian.

7 * **Sec. 5.** AS 18.16.030(b) is amended to read:

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

10 (1) a statement that the complainant is pregnant;

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

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

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

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

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

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

26 * **Sec. 6.** AS 18.16.030(c) is amended to read:

27 (c) The court shall fix a time for a hearing on any complaint filed under (a) of
28 this section and shall keep a record of all testimony and other oral proceedings in the
29 action. The hearing shall be held at the earliest possible time, but not later than the
30 **third** [FIFTH] business day after the day that the complaint is filed. The court shall
31 enter judgment on the complaint immediately after the hearing is concluded. If the

1 hearing required by this subsection is not held by the **third** [FIFTH] business day after
2 the complaint is filed, the failure to hold the hearing shall be considered to be a
3 constructive order of the court authorizing the complainant to consent to the
4 performance or inducement of an abortion without **notice to or** the consent of a
5 parent, guardian, or custodian, and the complainant and any other person may rely on
6 the constructive order to the same extent as if the court actually had issued an order
7 under this section authorizing the complainant to consent to the performance or
8 inducement of an abortion without such consent.

9 * **Sec. 7.** AS 18.16.030(j) is amended to read:

10 (j) If the complainant files a notice of appeal authorized under this section, the
11 superior court shall deliver a copy of the notice of appeal and the record on appeal to
12 the supreme court within **three** [FOUR] days after the notice of appeal is filed. Upon
13 receipt of the notice and record, the clerk of the supreme court shall place the appeal
14 on the docket. The appellant shall file a brief within **three** [FOUR] days after the
15 appeal is docketed. Unless the appellant waives the right to oral argument, the
16 supreme court shall hear oral argument within five days after the appeal is docketed.
17 The supreme court shall enter judgment in the appeal immediately after the oral
18 argument or, if oral argument has been waived, within five days after the appeal is
19 docketed. Upon motion of the appellant and for good cause shown, the supreme court
20 may shorten or extend the maximum times set out in this subsection. However, in any
21 case, if judgment is not entered within five days after the appeal is docketed, the
22 failure to enter the judgment shall be considered to be a constructive order of the court
23 authorizing the appellant to consent to the performance or inducement of an abortion
24 without **notice to or** the consent of a parent, guardian, or custodian, and the appellant
25 and any other person may rely on the constructive order to the same extent as if the
26 court actually had entered a judgment under this subsection authorizing the appellant
27 to consent to the performance or inducement of an abortion without **notice to or the**
28 consent of another person. In the interest of justice, the supreme court, in an appeal
29 under this subsection, shall liberally modify or dispense with the formal requirements
30 that normally apply as to the contents and form of an appellant's brief.

31 * **Sec. 8.** AS 18.16.030(n) is amended to read:

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

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

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

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

11 (4) the minor may request that the superior court with appropriate
 12 jurisdiction hold a telephonic hearing on the complaint so that the minor need not
 13 personally be present;

14 **(5) the minor may request that the superior court with**
 15 **appropriate jurisdiction issue an order directing the minor's school to excuse the**
 16 **minor from school to attend court hearings held under this section and to have**
 17 **the abortion if one is authorized by the court and directing the school not to**
 18 **notify the minor's parent, legal guardian, or custodian that the minor is**
 19 **pregnant, seeking an abortion, or is absent for purposes of obtaining an abortion.**

20 * **Sec. 9.** AS 18.16 is amended by adding new sections to read:

21 **Sec. 18.16.035. Coercion of a minor prohibited; emancipation.** (a) A person
 22 may not coerce a minor who is pregnant to have an abortion.

23 (b) In addition to emancipation by other means provided by law, denial of
 24 financial support by a parent, legal guardian, or custodian who has a legal duty of
 25 support for purposes of coercing a minor to have an abortion shall be sufficient
 26 evidence of emancipation status of the minor for purposes of AS 18.16.010 -
 27 18.16.090.

28 (c) In this section, "coercion" means to restrain or dominate a minor by force,
 29 threat of force, or deprivation of food, support, or shelter.

30 **Sec. 18.16.040. Reports.** For each month in which an abortion is performed on
 31 a minor by a physician, the physician shall file a report with the Department of Health

1 and Social Services indicating the number of abortions performed on a minor for that
2 month, the age of each minor, the number of previous abortions performed on each
3 minor, if any, and the number of pregnancies of each minor, if any, and the number of
4 consents provided under each of the exceptions enumerated under AS 18.16.020(a)(1)
5 - (4). A report filed under this section may not include identifying information of the
6 minor other than the minor's age.

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

9 SEVERABILITY. If any provision of this Act is held to be invalid or unenforceable
10 by its terms or as applied to any person or circumstance, the remainder of the provisions shall
11 be construed to give the maximum effect permitted by law, unless the holding shall be of utter
12 invalidity or unenforceability, in which event, the provision shall be considered severable and
13 does not affect the remaining provisions or the application of the severed provision to other
14 persons who are not similarly situated or to other dissimilar circumstances.