

HOUSE BILL NO. 266

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE TILTON

Introduced: 1/8/18

Referred: Prefiled

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the duties of physicians and health care practitioners when**
2 **performing or inducing abortions; providing that a child removed from a pregnant**
3 **woman's womb alive after an abortion may be surrendered and found to be a child in**
4 **need of aid; and providing for an effective date."**

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

6 * **Section 1.** AS 18.16.010 is amended by adding new subsections to read:

7 (k) When a physician performs or induces an abortion in the state, the
8 physician shall use the method of terminating the pregnancy that provides the best
9 opportunity for the unborn child to survive after the child is removed from the
10 pregnant woman's womb if, in the physician's clinical judgment, the method of
11 terminating the pregnancy does not present a serious risk to the life or health of the
12 pregnant woman.

13 (l) If the unborn child is removed from the pregnant woman's womb alive
14 under (k) of this section, any health care practitioner present shall exercise the same

1 degree of professional skill, care, and diligence to preserve the life and health of the
 2 child as a reasonably diligent and conscientious health care practitioner would render
 3 to a child born alive at the same fetal age in the course of a natural birth.

4 (m) In this section,

5 (1) "alive" means that a child, after birth or removal from a pregnant
 6 woman's womb, has spontaneous respiratory or cardiac function or pulsation of the
 7 umbilical cord, regardless of whether the umbilical cord has been cut;

8 (2) "clinical judgment" means a physician's or surgeon's subjective
 9 professional medical judgment exercised in good faith;

10 (3) "fertilization" has the meaning given in AS 18.05.032(c);

11 (4) "fetal age" means the age of the unborn child as calculated from the
 12 moment of fertilization.

13 * **Sec. 2.** AS 18.16 is amended by adding a new section to read:

14 **Sec. 18.16.012. Surrender of child removed from womb alive.** If a child is
 15 removed from a pregnant woman's womb alive under AS 18.16.010(k) and (l), the
 16 child's parent may surrender the child to the physician or an employee of the hospital
 17 or facility where the abortion is performed under AS 47.10.013(c). The person to
 18 whom the child is surrendered shall notify the Department of Health and Social
 19 Services as required under AS 47.10.013(d).

20 * **Sec. 3.** AS 47.10.011 is amended to read:

21 **Sec. 47.10.011. Children in need of aid.** Subject to AS 47.10.019, the court
 22 may find a child to be a child in need of aid if it finds by a preponderance of the
 23 evidence that the child has been subjected to any of the following:

24 (1) a parent or guardian has abandoned the child as described in
 25 AS 47.10.013, and the other parent is absent or has committed conduct or created
 26 conditions that cause the child to be a child in need of aid under this chapter;

27 (2) a parent, guardian, or custodian is incarcerated, the other parent is
 28 absent or has committed conduct or created conditions that cause the child to be a
 29 child in need of aid under this chapter, and the incarcerated parent has not made
 30 adequate arrangements for the child;

31 (3) a custodian with whom the child has been left is unwilling or

1 unable to provide care, supervision, or support for the child, and the whereabouts of
2 the parent or guardian is unknown;

3 (4) the child is in need of medical treatment to cure, alleviate, or
4 prevent substantial physical harm or is in need of treatment for mental injury and the
5 child's parent, guardian, or custodian has knowingly failed to provide the treatment;

6 (5) the child is habitually absent from home or refuses to accept
7 available care and the child's conduct places the child at substantial risk of physical or
8 mental injury;

9 (6) the child has suffered substantial physical harm, or there is a
10 substantial risk that the child will suffer substantial physical harm, as a result of
11 conduct by or conditions created by the child's parent, guardian, or custodian or by the
12 failure of the parent, guardian, or custodian to supervise the child adequately;

13 (7) the child has suffered sexual abuse, or there is a substantial risk that
14 the child will suffer sexual abuse, as a result of conduct by or conditions created by the
15 child's parent, guardian, or custodian or by the failure of the parent, guardian, or
16 custodian to adequately supervise the child; if a parent, guardian, or custodian has
17 actual notice that a person has been convicted of a sex offense against a minor within
18 the past 15 years, is registered or required to register as a sex offender under AS 12.63,
19 or is under investigation for a sex offense against a minor, and the parent, guardian, or
20 custodian subsequently allows a child to be left with that person, this conduct
21 constitutes prima facie evidence that the child is at substantial risk of being sexually
22 abused;

23 (8) conduct by or conditions created by the parent, guardian, or
24 custodian have

25 (A) resulted in mental injury to the child; or

26 (B) placed the child at substantial risk of mental injury as a
27 result of

28 (i) a pattern of rejecting, terrorizing, ignoring, isolating,
29 or corrupting behavior that would, if continued, result in mental injury;

30 [OR]

31 (ii) exposure to conduct by a household member, as

1 defined in AS 18.66.990, against another household member that is a
 2 crime under AS 11.41.100 - 11.41.220, 11.41.230(a)(1) or (2), or
 3 11.41.410 - 11.41.432, an offense under a law or ordinance of another
 4 jurisdiction having elements similar to a crime under AS 11.41.100 -
 5 11.41.220, 11.41.230(a)(1) or (2), or 11.41.410 - 11.41.432, an attempt
 6 to commit an offense that is a crime under AS 11.41.100 - 11.41.220 or
 7 11.41.410 - 11.41.432, or an attempt to commit an offense under a law
 8 or ordinance of another jurisdiction having elements similar to a crime
 9 under AS 11.41.100 - 11.41.220 or 11.41.410 - 11.41.432; or

10 (iii) repeated exposure to conduct by a household
 11 member, as defined in AS 18.66.990, against another household
 12 member that is a crime under AS 11.41.230(a)(3) or 11.41.250 -
 13 11.41.270 or an offense under a law or ordinance of another jurisdiction
 14 having elements similar to a crime under AS 11.41.230(a)(3) or
 15 11.41.250 - 11.41.270;

16 (9) conduct by or conditions created by the parent, guardian, or
 17 custodian have subjected the child or another child in the same household to neglect;

18 (10) the parent, guardian, or custodian's ability to parent has been
 19 substantially impaired by the addictive or habitual use of an intoxicant, and the
 20 addictive or habitual use of the intoxicant has resulted in a substantial risk of harm to
 21 the child; if a court has previously found that a child is a child in need of aid under this
 22 paragraph, the resumption of use of an intoxicant by a parent, guardian, or custodian
 23 within one year after rehabilitation is prima facie evidence that the ability to parent is
 24 substantially impaired and the addictive or habitual use of the intoxicant has resulted
 25 in a substantial risk of harm to the child as described in this paragraph;

26 (11) the parent, guardian, or custodian has a mental illness, serious
 27 emotional disturbance, or mental deficiency of a nature and duration that places the
 28 child at substantial risk of physical harm or mental injury;

29 (12) the child has committed an illegal act as a result of pressure,
 30 guidance, or approval from the child's parent, guardian, or custodian;

31 **(13) the child was removed from the mother's womb alive during**

1 **an abortion performed under AS 18.16.010(k) and (l) and a parent of the child is**
2 **unwilling or unable to care for the child.**

3 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 APPLICABILITY. AS 18.16.010(k) - (m), added by sec. 1 of this Act, AS 18.16.012,
6 added by sec. 2 of this Act, and AS 47.10.011, as amended by sec. 3 of this Act, apply to
7 abortions performed or induced on or after the effective date of those sections.

8 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).