

CS FOR SENATE BILL NO. 191(EDC)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE SENATE EDUCATION COMMITTEE

Offered: 3/16/16

Referred: Judiciary

Sponsor(s): SENATORS DUNLEAVY, Giessel

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to disciplinary sanctions imposed by the State Medical Board;**
2 **restricting employees and representatives of abortion services providers, and affiliates of**
3 **abortion services providers, from delivering instruction or distributing materials in**
4 **public schools and providing civil penalties for violations; relating to revocation or**
5 **suspension of teacher certificates; relating to the receipt of state funds by teachers and**
6 **school board members; and providing for an effective date."**

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

8 *** Section 1.** AS 08.64.326(a) is amended to read:

9 (a) The board may impose a sanction if the board finds after a hearing that a
10 licensee

11 (1) secured a license through deceit, fraud, or intentional
12 misrepresentation;

13 (2) engaged in deceit, fraud, or intentional misrepresentation while

1 providing professional services or engaging in professional activities;

2 (3) advertised professional services in a false or misleading manner;

3 (4) has been convicted, including conviction based on a guilty plea or
4 plea of nolo contendere, of

5 (A) a class A or unclassified felony or a crime in another
6 jurisdiction with elements similar to a class A or unclassified felony in this
7 jurisdiction;

8 (B) a class B or class C felony or a crime in another jurisdiction
9 with elements similar to a class B or class C felony in this jurisdiction if the
10 felony or other crime is substantially related to the qualifications, functions, or
11 duties of the licensee; or

12 (C) a crime involving the unlawful procurement, sale,
13 prescription, or dispensing of drugs;

14 (5) has procured, sold, prescribed, or dispensed drugs in violation of a
15 law regardless of whether there has been a criminal action;

16 (6) intentionally or negligently permitted the performance of patient
17 care by persons under the licensee's supervision that does not conform to minimum
18 professional standards even if the patient was not injured;

19 (7) failed to comply with this chapter, a regulation adopted under this
20 chapter, or an order of the board;

21 (8) has demonstrated

22 (A) professional incompetence, gross negligence, or repeated
23 negligent conduct; the board may not base a finding of professional
24 incompetence solely on the basis that a licensee's practice is unconventional or
25 experimental in the absence of demonstrable physical harm to a patient;

26 (B) addiction to, severe dependency on, or habitual overuse of
27 alcohol or other drugs that impairs the licensee's ability to practice safely;

28 (C) unfitness because of physical or mental disability;

29 (9) engaged in unprofessional conduct, in sexual misconduct, or in
30 lewd or immoral conduct in connection with the delivery of professional services to
31 patients; in this paragraph, "sexual misconduct" includes sexual contact, as defined by

1 the board in regulations adopted under this chapter, or attempted sexual contact with a
 2 patient outside the scope of generally accepted methods of examination or treatment of
 3 the patient, regardless of the patient's consent or lack of consent, during the term of the
 4 physician-patient relationship, as defined by the board in regulations adopted under
 5 this chapter, unless the patient was the licensee's spouse at the time of the contact or,
 6 immediately preceding the physician-patient relationship, was in a dating, courtship,
 7 or engagement relationship with the licensee;

8 (10) has violated AS 18.16.010;

9 (11) has violated any code of ethics adopted by regulation by the
 10 board;

11 (12) has denied care or treatment to a patient or person seeking
 12 assistance from the physician if the only reason for the denial is the failure or refusal
 13 of the patient to agree to arbitrate as provided in AS 09.55.535(a); [OR]

14 (13) has had a license or certificate to practice medicine in another
 15 state or territory of the United States, or a province or territory of Canada, denied,
 16 suspended, revoked, surrendered while under investigation for an alleged violation,
 17 restricted, limited, conditioned, or placed on probation unless the denial, suspension,
 18 revocation, or other action was caused by the failure of the licensee to pay fees to that
 19 state, territory, or province; or

20 (14) has violated AS 14.03.092.

21 * **Sec. 2.** AS 08.64.331 is amended by adding a new subsection to read:

22 (g) If the board finds that a licensee has violated AS 14.03.092, the board shall
 23 suspend or revoke the licensee's license to practice.

24 * **Sec. 3.** AS 14.03 is amended by adding a new section to read:

25 **Sec. 14.03.092. Restricting activities of abortion services providers and**
 26 **affiliates in public schools.** (a) An employee or representative acting on behalf of an
 27 abortion services provider or of an affiliate of an abortion services provider may not

28 (1) present or deliver any instruction or program on any health topic,
 29 including human sexuality or family planning, to students at a public school during the
 30 hours the school is in session;

31 (2) distribute materials to or display materials for students at a public

1 school; or

2 (3) provide materials of any kind to a person if

3 (A) the materials were created by or bear the identifying mark
4 of the abortion services provider or the affiliate of an abortion services
5 provider; and

6 (B) the employee or representative knows that the person to
7 whom the materials are provided intends to use the materials for instruction in
8 a public school or to distribute the materials to or display the materials for
9 students at a public school.

10 (b) A teacher or school board member may not knowingly authorize or allow a
11 person to take an action described in (a)(1) or (2) of this section.

12 (c) An abortion services provider or an affiliate of an abortion services
13 provider whose employee or representative acting on behalf of the abortion services
14 provider or affiliate violates (a) of this section is liable in a civil action for a penalty of
15 \$5,000 or actual damages, whichever is greater, plus costs and reasonable attorney
16 fees, to each aggrieved student or the student's estate.

17 (d) A teacher or school board member who violates (b) of this section may not
18 receive state funds on or after the date of the violation.

19 (e) In this section,

20 (1) "abortion services provider" means a person who performs elective
21 abortions;

22 (2) "affiliate of an abortion services provider" means a person who has
23 a legal relationship with a person who performs elective abortions; for purposes of this
24 paragraph, a legal relationship is created by at least one written instrument
25 demonstrating

26 (A) common ownership, management, or control;

27 (B) the existence of a franchise; or

28 (C) the granting or extension of a license or other agreement
29 authorizing common use of a brand name, trademark, service mark, or other
30 registered identification mark;

31 (3) "elective abortion" has the meaning given in AS 47.07.068;

1 (4) "knows" and "knowingly" have the meaning given to "knowingly"
2 in AS 11.81.900(a);

3 (5) "teacher" has the meaning given in AS 14.20.350.

4 * **Sec. 4.** AS 14.20.030(a) is amended to read:

5 (a) The commissioner or the Professional Teaching Practices Commission
6 may revoke or suspend a certificate only for the following reasons:

7 (1) incompetency, which is defined as the inability or the unintentional
8 or intentional failure to perform the teacher's customary teaching duties in a
9 satisfactory manner;

10 (2) immorality, which is defined as the commission of an act which,
11 under the laws of the state, constitutes a crime involving moral turpitude;

12 (3) substantial noncompliance with the school laws of the state or the
13 regulations of the department; [OR]

14 (4) upon a determination by the Professional Teaching Practices
15 Commission that there has been a violation of ethical or professional standards or
16 contractual obligations; or

17 **(5) a violation of AS 14.03.092.**

18 * **Sec. 5.** AS 14.20.170(a) is amended to read:

19 (a) A teacher, including a teacher who has acquired tenure rights, may be
20 dismissed at any time only for the following causes:

21 (1) incompetency, which is defined as the inability or the unintentional
22 or intentional failure to perform the teacher's customary teaching duties in a
23 satisfactory manner;

24 (2) immorality, which is defined as the commission of an act that,
25 under the laws of the state, constitutes a crime involving moral turpitude; [OR]

26 (3) substantial noncompliance with the school laws of the state, the
27 regulations or bylaws of the department, the bylaws of the district, or the written rules
28 of the superintendent; or

29 **(4) a violation of AS 14.03.092.**

30 * **Sec. 6.** AS 14.20.175(b) is amended to read:

31 (b) A teacher who has acquired tenure rights is subject to nonretention for the

1 following school year only for the following causes:

2 (1) the school district demonstrates that

3 (A) the district has fully complied with the requirements of
4 AS 14.20.149 with respect to the tenured teacher;

5 (B) the teacher's performance, after completion of the plan of
6 improvement, failed to meet the performance objectives set out in the plan; and

7 (C) the evaluation of the teacher established that the teacher
8 does not meet the district performance standards;

9 (2) immorality, which is defined as the commission of an act that,
10 under the laws of the state, constitutes a crime involving moral turpitude; [OR]

11 (3) substantial noncompliance with the school laws of the state, the
12 regulations or bylaws of the department, the bylaws of the district, or the written rules
13 of the superintendent; **or**

14 **(4) a violation of AS 14.03.092.**

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, if any provision of this Act or the application
18 of this Act to any person or circumstance is held invalid, the remainder of this Act and the
19 application to other persons or circumstances are not affected.

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