
WOMEN'S RIGHT TO KNOW ACT

Model Legislation & Policy Guide
For the 2015 Legislative Year



Changing Law to Protect Human Life, State by State

INTRODUCTION

Abortion proponents claim to be “pro-choice” but, they only actually support the choice to have an abortion. Abortion clinics all too often fail to provide adequate and accurate information to women considering abortion. As a result, many women are physically and psychologically harmed by the abortion process.¹ When a woman is not presented with accurate data, her “choice” to abort is, in reality, no choice at all.

The following excerpts from real women’s stories demonstrate how vital it is to give proper information to women before they undergo abortions:

- “The doctor never conferred with me... I wasn’t given any information on what they were going to do or how. I was just taken in and ‘taken care of,’ as they put it. I was never given the choice of whether I would want to allow adoption or anything.”²
- “I had an abortion while I was in college. There was absolutely no informed consent. I was a student and the doctor didn’t even discuss any other options with me at all. He simply made arrangements for me to have an abortion and sent me on my way. When I got to the abortion clinic no one (again) discussed anything about the procedure.... It was a numbing and heartless experience.”³
- “[The doctor] never told me how big my baby was or any of the complications that could happen, and he certainly didn’t tell me about the after effects. I trusted him because he had the title of ‘doctor’... I couldn’t believe that my doctor hadn’t told me that my baby was eight inches long and looked like a little human being. He had kept important information from me....”⁴

To better equip women with the knowledge they need before making an abortion decision and to ensure that their consent is valid, informed consent laws should require the following information be provided to a woman at least twenty-four (24) hours before an abortion:

¹ See, e.g., Speckhard & Rue, “Post-Abortion Syndrome: An Emerging Public Health Concern,” J. SOC. ISSUES 48(3): 95-119 (1982) (reporting that 81 percent of women surveyed felt victimized by the abortion process).

² Linda E., “Multiply Abused,” *available at* <http://www.pregnantpause.org/ownwords/storyme.htm> (last visited June 25, 2014) (emphasis added).

³ Silent No More, “It was a numbing and heartless experience (2012),” *available at* <http://silentnomoreawareness.org/testimonies/testimony.aspx?ID=885> (last visited June 25, 2014).

⁴ Linda G., “‘Misinformed’ Consent,” *available at* <http://www.afterabortion.org/PAR/V6/n2/testimony.htm> (last visited June 25, 2014) (emphasis added). See also, “Women Who’ve Had Abortions,” *available at* <http://www.lovematters.com/women.htm> (last visited June 25, 2014).

- The name of the doctor who is to perform the abortion;
- A description of the procedure to be used;
- The risks of the abortion procedure as well as of childbirth;
- Scientifically accurate information about the unborn child;
- The possibility of medical benefits;
- The father's liability for support, etc.; and
- A brochure explaining risks of and alternatives to abortion and providing scientifically accurate information concerning the development of the unborn child.

States can also enhance their informed consent laws by requiring information on fetal pain, the availability of ultrasounds, the link between abortion and breast cancer ("ABC link"), information on perinatal hospice options for women faced with a prenatal diagnosis of a lethal fetal anomaly, and counseling on coercion.

In 1992, the U.S. Supreme Court ruled that informed consent laws are constitutional.⁵ The Court found that such laws reduce "the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed."⁶

To ensure that women are given basic, relevant, and medically appropriate information about abortion, AUL has drafted the *Women's Right to Know Act*. For more information and drafting assistance, please contact AUL's Legislative Coordinator at (202) 289-1478 or Legislation@AUL.org.

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⁵ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). The Supreme Court has also refused to review a lower court ruling which found Mississippi's informed consent law constitutional. *Barnes v. Moore*, 970 F.2d 12 (5th Cir. 1992), *cert. denied*, 506 U.S. 1013 (1992).

⁶ *Casey*, 505 U.S. at 882.

WOMEN’S RIGHT TO KNOW ACT

HOUSE/SENATE BILL No. _____

By Representatives/Senators _____

Section 1. Title.

This Act may be known and cited as the “Women's Right to Know Act.” [*Or, alternatively, as the “Women’s Health Information Act” or the “Informed Consent for Abortion Act.”*]

Section 2. Legislative Findings and Purposes.

(a) The [Legislature] of the State of [Insert name of State] finds that:

- (1) It is essential to the psychological and physical well-being of a woman considering an abortion that she receives complete and accurate information on abortion and its alternatives.
- (2) The knowledgeable exercise of a woman's decision to have an abortion depends on the extent to which she receives sufficient information to make an informed choice between two alternatives: giving birth or having an abortion.
- (3) Adequate and legitimate informed consent includes information which “relat[es] to the consequences to the fetus.” *Planned Parenthood v. Casey*, 505 U.S. 833, 882-883 (1992).
- (4) [Insert percentage] of all abortions are performed in clinics devoted solely to providing abortions and family planning services. Most women who seek abortions at these facilities do not have any relationship with the physician who performs the abortion, before or after the procedure. They do not return to the facility for post-surgical care. In most instances, the woman's only actual contact with the physician occurs simultaneously with the abortion procedure, with little opportunity to receive counseling concerning her decision.
- (5) The decision to abort “is an important, and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences.” *Planned Parenthood v. Danforth*, 428 U.S. 52, 67 (1976).
- (6) “The medical, emotional, and psychological consequences of an abortion are serious and can be lasting. . . .” *H.L. v. Matheson*, 450 U.S. 398, 411 (1981).

- (7) Abortion facilities or providers often offer only limited or impersonal counseling opportunities.
 - (8) Many abortion facilities or providers hire untrained and unprofessional “counselors” to provide pre-abortion counseling, but their primary goal is actually to “sell” or promote abortion services.
- (b) Based on the findings in subsection (a), the purposes of this Act are to
- (1) Ensure that every woman considering an abortion receives complete information on abortion and its alternatives, and that every woman submitting to an abortion does so only after giving her voluntary and fully-informed consent to the abortion procedure;
 - (2) Protect unborn children from a woman's uninformed decision to have an abortion;
 - (3) Reduce “the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed.” *Planned Parenthood v. Casey*, 505 U.S. 833, 882 (1992); and
 - (4) Adopt the construction of the term “medical emergency” accepted by the U.S. Supreme Court in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

Section 3. Definitions.

For purposes of this Act only:

- (a) “**Abortion**” means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:
- (1) Save the life or preserve the health of the unborn child;
 - (2) Remove a dead unborn child caused by spontaneous abortion; or
 - (3) Remove an ectopic pregnancy.
- (b) “**Complication**” means any adverse physical or psychological condition arising from the performance of an abortion, which includes but is not limited to: uterine perforation, cervical perforation, infection, bleeding, hemorrhage, blood clots, failure to actually terminate the

pregnancy, incomplete abortion (retained tissue), pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, metabolic disorder, shock, embolism, coma, placenta previa in subsequent pregnancies, preterm birth in subsequent pregnancies, free fluid in the abdomen, adverse reactions to anesthesia and other drugs, any psychological or emotional complications such as depression, anxiety, and sleeping disorders, and any other “adverse event” as defined by the Food and Drug Administration (FDA) criteria provided in the Medwatch Reporting System. The Department may further define “complication.”

(c) “**Conception**” means the fusion of a human spermatozoon with a human ovum.

(d) “**Department**” means the Department of [*Insert appropriate title*] of the State of [*Insert name of State*].

(e) “**Facility**” or “**medical facility**” means any public or private hospital, clinic, center, medical school, medical training institution, healthcare facility, physician's office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location wherein medical care is provided to any person.

(f) “**First trimester**” means the first twelve (12) weeks of gestation.

(g) “**Gestational age**” means the time that has elapsed since the first day of the woman's last menstrual period.

(h) “**Hospital**” means an institution licensed pursuant to the provisions of the law of this State.

(i) “**Medical emergency**” means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(j) “**Physician**” means any person licensed to practice medicine in this State. The term includes medical doctors and doctors of osteopathy.

(k) “**Pregnant**” or “**pregnancy**” means that female reproductive condition of having an unborn child in the [*woman's*] uterus.

(l) “**Qualified person**” means an agent of the physician who is a psychologist, licensed social worker, licensed professional counselor, registered nurse, or physician.

- (m) “**Unborn child**” means the offspring of human beings from conception until birth.
- (n) “**Viability**” means the state of fetal development when, in the judgment of the physician based on the particular facts of the case before him or her and in light of the most advanced medical technology and information available to him or her, there is a reasonable likelihood of sustained survival of the unborn child outside the body of his or her mother, with or without artificial support.

Section 4. Informed Consent Requirement.

No abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

- (a) At least twenty-four (24) hours before the abortion, the physician who is to perform the abortion or the referring physician has informed the woman, orally and in person, of the following:
 - (1) The name of the physician who will perform the abortion;
 - (2) Medically accurate information that a reasonable patient would consider material to the decision of whether or not to undergo the abortion, including
 - a. A description of the proposed abortion method;
 - b. The immediate and long-term medical risks associated with the proposed abortion method including, but not limited to, the risks of infection, hemorrhage, cervical or uterine perforation, danger to subsequent pregnancies, and increased risk of breast cancer; and
 - c. Alternatives to the abortion;
 - (3) The probable gestational age of the unborn child at the time the abortion is to be performed;
 - (4) The probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed;
 - (5) The medical risks associated with carrying her child to term; and

- (6) Any need for anti-Rh immune globulin therapy if she is Rh negative, the likely consequences of refusing such therapy, and the cost of the therapy.
- (b) At least twenty-four (24) hours before the abortion, the physician who is to perform the abortion, the referring physician, or a qualified person has informed the woman, orally and in person, that:
- (1) Medical assistance benefits may be available for prenatal care, childbirth, and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials and informational DVD given to her and described in Section 5.
 - (2) The printed materials and informational DVD in Section 5 describe the unborn child and list agencies that offer alternatives to abortion.
 - (3) The father of the unborn child is liable to assist in the support of the child, even in instances where he has offered to pay for the abortion. In the case of rape or incest, this information may be omitted.
 - (4) She is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled.
 - (5) The information contained in the printed materials and informational DVD given to her, as described in Section 5, are also available on a state-maintained website.
- (c) The information required in subsections 4(a) and 4(b) is provided to the woman individually and in a private room to protect her privacy, to maintain the confidentiality of her decision, and to ensure that the information focuses on her individual circumstances and that she has an adequate opportunity to ask questions.
- (d) At least twenty-four (24) hours before the abortion, the woman is given a copy of the printed materials and permitted to view or is given a copy of the informational DVD described in Section 5. If the woman is unable to read the materials, they shall be read to her. If the woman asks questions concerning any of the information or materials, answers shall be provided to her in a language she can understand.

[OPTIONAL Information on Fetal Pain: (e) At least twenty-four (24) hours prior to an abortion being performed or induced on an unborn child who is twenty (20) weeks gestation or more, the physician performing the abortion on the pregnant woman, the referring physician, or

a qualified person assisting the physician shall, orally and in person, offer information on fetal pain to the pregnant woman. This information and counseling shall include, but shall not be limited to, the following:

- (1) That, by twenty (20) weeks, the unborn child possesses all anatomical links in its nervous system (including spinal cord, nerve tracts, thalamus, and cortex) that are necessary in order to feel pain;*
- (2) That an unborn child who is twenty (20) weeks gestation or more is fully capable of experiencing pain;*
- (3) A description of the actual steps in the abortion procedure to be performed or induced and at which steps in the abortion procedure the unborn child is capable of feeling pain;*
- (4) That maternal anesthesia typically offers little pain prevention for the unborn child; and*
- (5) That an anesthetic or analgesic is available in order to minimize and/or alleviate pain to the fetus.]*

[OPTIONAL Information on Chemical Abortion Reversal: *(f) At least twenty-four (24) hours prior to an abortion being performed or induced utilizing abortion-inducing drugs, the physician performing the abortion on the pregnant woman, the referring physician, or a qualified person assisting the physician shall, orally and in person, inform the woman of the following:*

- (a) That it may be possible to reverse the effects of the abortion should she change her mind, but that time is off the essence; and*
- (b) That information on and assistance with reversing the effects of abortion-inducing drugs is available in the state-prepared materials.*

*For purposes of this Section, “**abortion-inducing drugs**” means a medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with knowledge that the termination will with reasonable likelihood cause the death of the unborn child. This includes off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as misoprostol (Cytotec), and methotrexate. This definition does not apply to drugs that may be known to cause an abortion, but which are prescribed for other medical indications (e.g., chemotherapeutic agents, diagnostic drugs, etc.).]*

[(g)] Prior to the abortion, the woman certifies in writing on a checklist form provided or approved by the Department that the information required to be provided under subsections 5(a), 5(b), 5(c), [and] 5(d)[, 5(e), and 5(f)] have been provided. All physicians who perform abortions shall report the total number of certifications received monthly to the Department. The Department shall make the number of certifications received available to the public on an annual basis.

[(h)] Except in the case of a medical emergency, the physician who is to perform the abortion shall receive and sign a copy of the written certification prescribed in subsection [(g)] of this Section prior to performing the abortion. The physician shall retain a copy of the checklist certification form in the woman's medical record.

[(i)] In the event of a medical emergency requiring an immediate termination of pregnancy, the physician who performed the abortion shall clearly certify in writing the nature of the medical emergency and the circumstances which necessitated the waiving of the informed consent requirements of this Act. This certification shall be signed by the physician who performed the emergency abortion, and shall be permanently filed in both the records of the physician performing the abortion and the records of the facility where the abortion takes place.

[(j)] A physician shall not require or obtain payment for a service provided in relation to abortion from a patient who has inquired about an abortion or scheduled an abortion until the expiration of the 24-hour reflection period required in subsections 4(a), 4(b), [and] 4(d)[, 4(e) and 4(f)].

Section 5. Publication of Materials.

The Department shall cause to be published printed materials and an informational DVD in English [*and Spanish and other appropriate language(s)*] within [*Insert appropriate number*] days after this Act becomes law. The Department shall develop and maintain a secure internet website, which may be part of an existing website, to provide the information required by and described in this Section. No information regarding persons using the website shall be collected or maintained. The Department shall monitor the website on a weekly basis to prevent and correct tampering.

On an annual basis, the Department shall review and update, if necessary, the following easily comprehensible printed materials and informational DVD:

(a) Geographically indexed materials that inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while her child is dependent, including but not limited to adoption agencies.

The materials shall include a comprehensive list of the agencies, a description of the services they offer, and the telephone numbers and addresses of the agencies and shall inform the woman about available medical assistance benefits for prenatal care, childbirth, and neonatal care.

The Department shall ensure that the materials described in this Section are comprehensive and do not directly or indirectly promote, exclude, or discourage the use of any agency or service described in this Section. The materials shall also contain a toll-free, 24-hour-a-day telephone number which may be called to obtain information about the agencies in the locality of the caller and of the services they offer.

The materials shall state that it is unlawful for any individual to coerce a woman to undergo an abortion [*Insert reference to state's anti-coercion statute(s), if any*] and that if a minor is denied financial support by the minor's parents, guardian, or custodian because of the minor's refusal to have an abortion performed, the minor shall be deemed emancipated for the purposes of eligibility for public-assistance benefits, except that such benefits may not be used to obtain an abortion.

The materials shall also state that any physician who performs an abortion upon a woman without her informed consent may be liable to her for damages in a civil action at law and that the law permits adoptive parents to pay costs of prenatal care, childbirth, and neonatal care. The materials shall also include the following statement:

“There are many public and private agencies willing and able to help you to carry your child to term, and to assist you and your child after your child is born, whether you choose to keep your child or to place her or him for adoption. The State of [*Insert name of State*] strongly urges you to contact one or more of these agencies before making a final decision about abortion. The law requires that your physician or his agent give you the opportunity to call agencies like these before you undergo an abortion.”

(b) Information on the support obligations of the father of a child who is born alive, including but not limited to the father's legal duty to support his child, which may include child support payments and health insurance, and the fact that paternity may be established by the father's signature on a birth certificate, by a statement of paternity, or by court action. The printed material shall also state that more information concerning establishment of paternity and child support services and enforcement may be obtained by calling state or county public assistance agencies.

(c) Materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the unborn child at two (2) week gestational increments from fertilization to full term, including color photographs of the developing unborn child at two (2) week gestational

increments. The descriptions shall include information about brain and heart functions, the presence of external members and internal organs during the applicable stages of development, and any relevant information on the possibility of the unborn child's survival. If a photograph is not available, a picture must contain the dimensions of the unborn child and must be realistic. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages.

(d) Objective information describing the various surgical and drug-induced methods of abortion, as well as the immediate and long-term medical risks commonly associated with each abortion method including, but not limited to uterine perforation, cervical perforation, infection, bleeding, hemorrhage, blood clots, failure to actually terminate the pregnancy, incomplete abortion (retained tissue), pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, metabolic disorder, shock, embolism, coma, placenta previa in subsequent pregnancies, preterm birth in subsequent pregnancies, free fluid in the abdomen, adverse reactions to anesthesia and other drugs, any psychological or emotional complications such as depression, anxiety, and sleeping disorders, and any other “adverse event” as defined by the Food and Drug Administration (FDA) criteria provided in the Medwatch Reporting System; and the medical risks associated with carrying a child to term.

(e) A uniform resource locator (URL) for the state-maintained website where the materials described in Subsections 5(a), 5(b), 5(c), [and] 5(d)[, and 5(f)] can be found.

[OPTIONAL Information on Chemical Abortion Reversal: (f) *Information on the potential ability of qualified medical professionals to reverse the effects of abortion obtained through the use of abortion-inducing drugs, such as mifepristone (brand name Mifeprex) and misoprostol, commonly referred to as “RU-486,” including information directing women to obtain further information at <http://www.abortionpillreversal.com/> and by contacting (877) 558-0333 for assistance in locating a medical professional that can aide in the reversal of abortion.]*

[(g)] A checklist certification form to be used by the physician or a qualified person under subsection 4[(g)] of this Act, which will list all the items of information which are to be given to the woman by a physician or the agent under this Act.

[(h)] The materials shall be printed in a typeface large enough to be clearly legible.

[(i)] The Department shall produce a standardized DVD that may be used statewide, presenting the information described in Subsections 5(a), 5(b), 5(c), 5(d), [and] 5(e) [, and 5(f),] in accordance with the requirements of those subsections. In preparing the DVD, the Department may summarize and make reference to the printed, comprehensive list of geographically indexed names and services described in subsection 5(a). The DVD shall, in addition to the information

described in subsections 5(a), 5(b), 5(c), 5(d), [and] 5(e) [, and 5(f)] show an ultrasound of the heartbeat of an unborn child at four (4) to five (5) weeks gestational age, at six (6) to eight (8) weeks gestational age, and each month thereafter, until viability. That information shall be presented in an objective, unbiased manner designed to convey only accurate scientific information.

[(j)] The materials required under this Section and the DVD described in subsection 5([i]) shall be available at no cost from the Department upon request and in appropriate number to any person, facility, or hospital.

Section 6. Medical Emergencies.

When a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an immediate abortion is necessary to avert her death or that a 24-hour delay will cause substantial and irreversible impairment of a major bodily function.

Section 7. Criminal Penalties.

Any person who intentionally, knowingly, or recklessly violates this Act is guilty of a [*Insert appropriate penalty/offense classification*].

Section 8. Civil Remedies and Professional Sanctions.

(a) In addition to any and all remedies available under the common or statutory law of this State, failure to comply with the requirements of this Act shall:

- (1) Provide a basis for a civil malpractice action for actual and punitive damages.
- (2) Provide a basis for a professional disciplinary action under [*Medical Malpractice Act*].

(b) No civil liability may be assessed against the woman upon whom the abortion is performed.

(c) When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the abortion was performed.

(d) If judgment is rendered in favor of the plaintiff, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant.

(e) If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for reasonable attorney's fee in favor of the defendant against the plaintiff.

Section 9. Construction.

- (a) Nothing in this Act shall be construed as creating or recognizing a right to abortion.
- (b) It is not the intention of this law to make lawful an abortion that is currently unlawful.

Section 10. Right of Intervention.

The [Legislature], by joint resolution, may appoint one or more of its members, who sponsored or cosponsored this Act in his or her official capacity, to intervene as a matter of right in any case in which the constitutionality of this law is challenged.

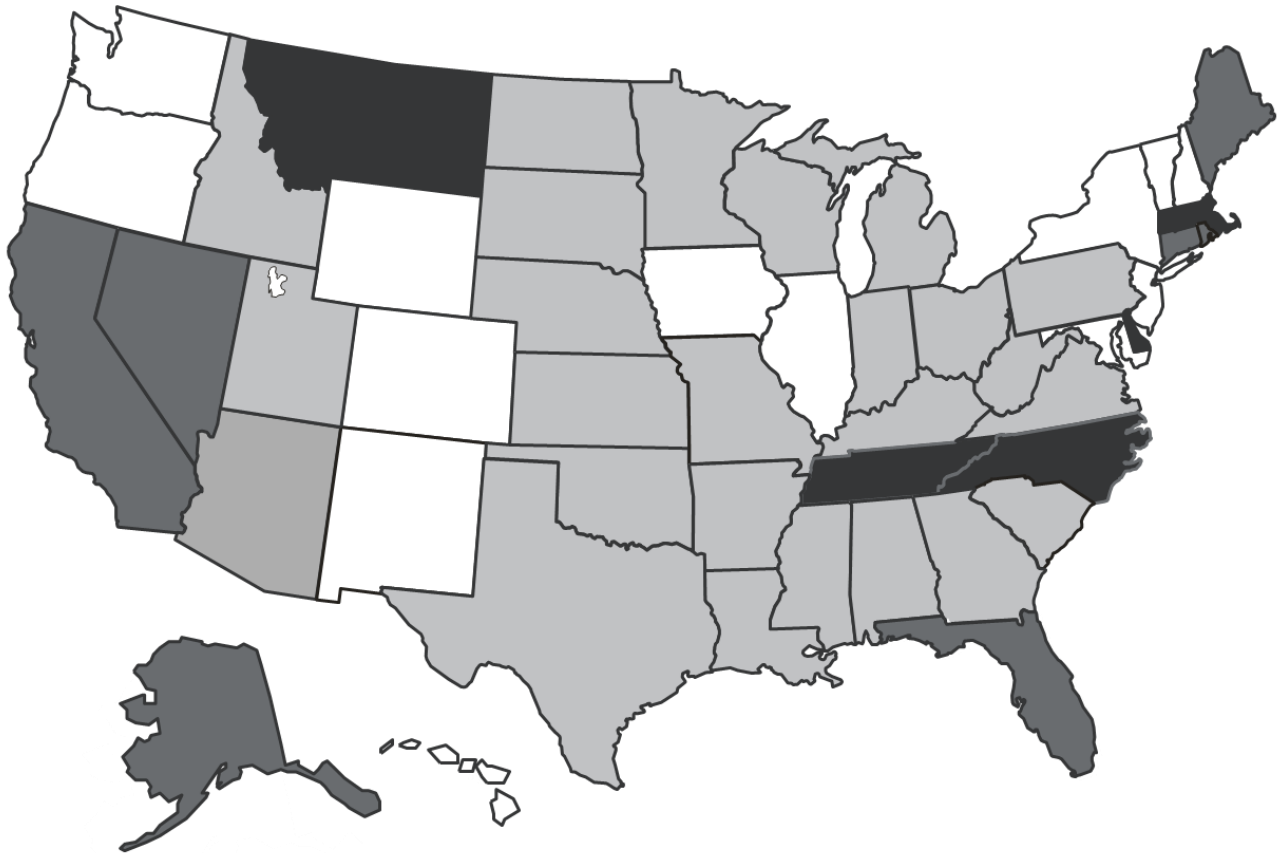
Section 11. Severability.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable here from and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.




Section 12. Effective Date.

This Act takes effect on [Insert date].

STATE OF THE STATES: WHERE ARE WE NOW? INFORMED CONSENT LAWS



Thirty-two state laws are in effect.

-  Twenty-five states require informed consent with a one-day reflection period (usually 24 hours): AL (48 hours), AZ, AR, GA, ID, IN (18 hours), KS, KY, LA, MI, MN, MS, MO (72 hours), NE, ND, OH, OK, PA, SC, SD (72 hours), TX, UT (72 hours), VA, WV, and WI.
-  Seven states require informed consent with no reflection period: AK, CA, CT, FL, ME, NV, and RI.
-  Five states have enacted informed consent laws that are in litigation or enjoined: DE, MA, MT, NC, and TN.

More detailed information about the need and justification for informed consent laws can be found in AUL's annual publication *Defending Life*.

Defending Life 2014 is available online at AUL.org.

For further information regarding this or other AUL policy guides, please contact:

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