

UNBORN INFANTS DIGNITY ACT

HOUSE/SENATE BILL NO. _____

By Representatives/Senators _____

[Drafter’s Note: *Provisions in this model legislation may be enacted individually or collectively, depending on the needs of an individual state. Further, AUL will work with legislators to ensure that the appropriate legislative findings and purposes in Section 2 and definitions in Section 3 are included in any proposed legislation.*]

Section 1. Title.

This Act may be known and cited as the “Unborn Infants Dignity Act.”

Section 2. Legislative Findings and Purpose

- (a) The [Legislature] of the State of [Insert name of State] finds that:
- (1) Deceased unborn infants deserve the same respect and dignity as other human beings.
 - (2) The laws of the State of [Insert name of State] do not ensure that miscarried, stillborn, or aborted infants receive proper burials or final disposition.
 - (3) [Insert name of State] also fails to require fetal death reporting and the issuance of fetal death certificates except [Insert short description of circumstances when, under existing state law(s), the reporting of fetal deaths is required and/or a fetal death certificate is available].
 - (4) Further, while the loss of an unborn infant at any stage of development is often devastating to parents, [Insert name of State] only offers [Certificates of Birth Resulting in Stillbirth] to parents for fetal deaths that occur [Insert short description of circumstances when, under existing state law(s), a certificate of stillbirth or similar document is available].
 - (5) [Insert name of State] does not explicitly prohibit the sale, transfer, distribution, or donation of the bodily remains of unborn infants resulting from abortion for experimentation.

- (6) It is the public policy of the State of *[Insert name of State]* to promote childbirth over abortion. Permitting the sale, transfer, distribution, or donation of the bodily remains of unborn infants resulting from abortion, particularly for pecuniary gain, and the use of the bodies of aborted infants for experimentation violate *[Insert name of State]*'s public policy.
- (b) Based on the findings in subsection (a), the purposes of this Act are to:
- (1) Ensure that the mother of a deceased unborn infant is given the opportunity to bury or dispose of the bodily remains of her infant with dignity and respect;
 - (2) Require institutions where deceased unborn infants are delivered or where unborn infants are aborted to provide a dignified final disposition of the bodily remains of these infants;
 - (3) Require fetal death reports for all fetal deaths as defined in this Act;
 - (4) Ensure that parents of all stillborn infants are offered the opportunity to obtain a *[Certificate of Birth Resulting in Stillbirth]*;
 - (5) Prohibit the sale, transfer, distribution, or other unlawful disposition of an infant, an unborn infant, or bodily remains resulting from an abortion;
 - (6) Prohibit the use of bodily remains resulting from an abortion for experimentation; and
 - (7) Ensure that the bodily remains of an unborn infant resulting from an occurrence other than an abortion are not sold, transferred, or distributed for experimentation without the mother's informed, written consent.

Section 3. Definitions.

[Drafter's Note: *These are recommended definitions, but some may not be compatible with a state's existing laws. In drafting specific legislation, care should be taken to select only those definitions that are compatible with existing state law or with the intent of the new bill (i.e., to modify or deviate from definitions in existing state law).*]

As used in 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 the knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn infant. 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 infant;
- (2) Remove a dead unborn infant caused by spontaneous abortion; or
- (3) Remove an ectopic pregnancy.

(b) “**Authorized representative**” has the same meaning as *[Insert appropriate reference(s) and/or citation(s) to state law(s)]*.

(c) “**Bodily remains**” means the physical remains, corpse, or body parts of a dead unborn infant who has been expelled or extracted from his or her mother and who has reached a stage of development so that there are cartilaginous structures and/or fetal or skeletal parts, whether or not the remains have been obtained by induced, spontaneous, or accidental means. The death is indicated by the fact that, after such expulsion or extraction, the unborn infant does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(d) “**Infant**” means a human being who has been completely expelled or extracted from his or her mother, regardless of the state of gestational development, that, after expulsion or extraction, whether or not the umbilical cord has been cut or the placenta is attached, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion, shows any evidence of life, including, but not limited to, one or more of the following:

- (1) Breathing;
- (2) A heartbeat;
- (3) Umbilical cord pulsation; or

(4) Definite movement of voluntary muscles.

(e) “**Experiment**” or “**experimentation**” means the use of an infant, unborn infant, or bodily remains of a dead unborn infant in any trial, test, procedure, or observation carried out with the goal of verifying, refuting, or establishing the validity of a hypothesis, but does not include diagnostic or remedial tests, procedures, or observations which have the purpose of determining the life or health of the infant or unborn infant or preserving the life or health of the infant, unborn infant, or the infant’s mother or pathological study.

(f) “**Fetal death**” means death prior to expulsion or extraction from his or her mother of an unborn infant who has reached a stage of development so that there are cartilaginous structures and/or fetal or skeletal parts. The death is indicated by the fact that, after such expulsion or extraction, the unborn infant does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(g) “**Final disposition**” means the burial, [*interment*], cremation, or other legal disposition of a dead unborn infant.

(h) “**Incineration**” means the combined burning of bodily remains with medical waste as defined in this Act.

(i) “**Medical waste**” means discarded biologic product such as blood, tissue, or body parts removed from medical facilities, as well as bedding, bandages, syringes, and similar materials that have been used in treating patients. The term excludes “**bodily remains**” as defined in this Act.

(j) “**Miscarriage**” means the spontaneous or accidental death of an unborn infant before he or she is able to survive independently that does not result in the birth of a live infant. The death is indicated by the fact that, after the expulsion of the unborn infant, he or she does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(k) “**Pathological study**” means the examination of body tissue for diagnostic or forensic purposes.

(l) “**Physician**” means any person licensed to practice medicine in this State. The

term includes medical doctors and doctors of osteopathy.

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

(n) “**Stillbirth**” means the birth of a human being that has died in the uterus. The death is indicated by the fact that, after the expulsion of the unborn infant, he or she does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(o) “**Therapeutic**” means intended to treat or cure a disease or disorder by remedial agents or methods.

(p) “**Unborn infant**” means the offspring of human beings from conception until birth.

(q) “**Valuable consideration**” means anything that will confer benefit upon a person who performed or assisted with the performance of an abortion, or an institution where the bodily remains of an aborted infant were expelled or extracted, including, but not limited to: money, work, performance, assets, or a promise.

Section 4. Release of Dead Unborn Infant to Mother for Final Disposition.

(a) In every instance of fetal death, irrespective of the duration of pregnancy, the individual in charge of the institution where the bodily remains were expelled or extracted, upon request of the mother, shall release to the mother or the mother’s authorized representative the bodily remains for final disposition:

(1) By burial, [*interment*,] or cremation as those terms are defined in [*Insert appropriate reference(s) to state law(s)*], or

(2) When the bodily remains are the result of a miscarriage or stillbirth, in compliance with [*Insert appropriate reference(s) to the state’s Anatomical Gift Act*].

(b) Such request may be made by the mother or her authorized representative prior to or shortly after the expulsion or extraction of the bodily remains.

Section 5. Authorization for Final Disposition of Dead Unborn Infant.

(a) In every instance of fetal death, irrespective of the duration of pregnancy, where a mother does not request the release of her dead unborn infant, the funeral director or other person assuming responsibility for the final disposition of the bodily remains shall obtain from the mother or her authorized representative a written authorization for final disposition on a form prescribed and furnished or approved by the [*Insert name of appropriate state department or agency*]. The authorization may allow final disposition to be by a funeral director or the individual in charge of the institution where the bodily remains were expelled or extracted.

(b) The mother or her authorized representative may direct the final disposition of the bodily remains to be:

- (1) Burial, [*interment,*] or cremation as those terms are defined in [*Insert appropriate reference(s) to state law(s)*]; or
- (2) When the bodily remains are the result of a miscarriage or stillbirth, in compliance with [*Insert appropriate reference(s) to the state's Anatomical Gift Act*].

After final disposition, the funeral director, the individual in charge of the institution, or other person making the final disposition shall retain the authorization for not less than seven (7) years.

(c) Irrespective of the duration of pregnancy, the individual in charge of the institution where the bodily remains were expelled or extracted must ensure that the final disposition of the bodily remains is:

- (1) By burial, [*interment,*] or cremation as those terms are defined in [*Insert appropriate reference(s) to state law(s)*]; or
- (2) When the bodily remains are the result of a miscarriage or stillbirth, in compliance with [*Insert appropriate reference(s) to the state's Anatomical Gift Act*].

Final disposition of bodily remains may not be by incineration.

(d) If final disposition of the bodily remains is by cremation, the medical examiner of

the county in which fetal death occurred shall sign the authorization for final disposition.

(e) Bodily remains may be moved from the place of death to be prepared for final disposition with the consent of the physician or county medical examiner who certifies the cause of death.

(f) A permit for final disposition issued under the laws of another state that accompanies bodily remains brought into [*Insert name of State*] is authorization for final disposition of the bodily remains in this State.

Section 6. Fetal Death Certificates.

(a) A fetal death certificate for each fetal death which occurs in this State shall be filed with the [*State Registrar*], within three (3) days after such delivery, miscarriage, or abortion.

(b) The funeral director or person assuming responsibility for the final disposition of the bodily remains shall file the fetal death certificate. In the absence of such a person, the physician in attendance at or after the expulsion or extraction of bodily remains shall file the certificate of fetal death. The physician shall obtain the personal data from the next of kin or the best qualified person or source available, complete the certificate as to personal data, and deliver the certificate to the person responsible for completing the medical certification of the cause of death within twenty-four (24) hours after the expulsion or extraction of bodily remains.

(c) The medical certification shall be completed and signed within forty-eight (48) hours after delivery by the physician in attendance at or after the expulsion or extraction, except when inquiry into the cause of death is required by [*Insert appropriate reference(s) to state law(s)*]. This certification shall record the sex of the infant when it can be determined.

Section 7. Certificate of Birth for Stillborn Infant.

The [*Insert name of appropriate state department or agency*] shall establish a [*Certificate of Birth Resulting in Stillbirth*] to be offered to the parent(s) of a stillborn infant. The medical staff treating the stillbirth shall notify the parent(s) or their authorized representative of the ability to request the certificate. The certificate shall be available to any parent of a stillborn infant upon proper application. This certificate shall not be used as evidence of live birth or for identification purposes.

Section 8. Prohibitions on Buying, Selling, and Experimentation on Unborn Infants or Bodily Remains Resulting from Abortion.

- (a) No person shall [*knowingly*] sell, transfer, distribute, give away, accept, use, or attempt to use an infant, unborn infant, or bodily remains resulting from an abortion.
- (b) No person shall aid or abet any such sale, transfer, distribution, other unlawful disposition, acceptance, use, or attempted use of an infant, unborn infant, or bodily remains resulting from an abortion.
- (c) No person shall use an infant, unborn infant, or bodily remains resulting from an abortion in animal or human research, experimentation, or study, or for transplantation, except:
 - (1) For diagnostic or remedial tests, procedures, or observations which have the purpose of determining the life or health of the infant or unborn infant or preserving the life or health of the infant, unborn infant, or the infant's mother; or
 - (2) For pathological study.
- (d) No person shall experiment upon an unborn infant who is intended to be aborted unless the experimentation is therapeutic to the unborn infant.
- (e) No person shall perform or offer to perform an abortion where part or all of the justification or reason for the abortion is that the bodily remains may be used for animal or human research, experimentation, or transplantation.

[Drafter's Note: *Only when a state cannot or refuses to enact Section 8, prohibiting experimentation on aborted unborn infants, should Section 9, ensuring informed consent from the mother of the aborted infant and prohibiting pecuniary gain for experimentation on aborted infants, be enacted.*]

[Section 9. Informed Consent Required for Fetal Experimentation or Transplantation.

Under circumstances in which the State of [Insert name of State] permits the use of bodily remains resulting from an abortion for animal or human research, experimentation, study, or for transplantation pursuant to [Insert specific reference(s) to

state laws, regulations, or other authority permitting the use of bodily remains resulting from an abortion for animal or human research, experimentation, study, or for transplantation]:

(a) That use can occur only if the mother makes a signed, written statement declaring that:

- (1) The mother donates the specific bodily remains for animal or human research, experimentation, study, or for transplantation;*
- (2) The donation is made without any restriction regarding the identity of individuals who may be the recipients of transplantations of any bodily remains;*
- (3) The mother has not been informed of the identity of any individuals who may be recipients of transplantations of bodily remains;*
- (4) The mother has been informed of any known medical risks to her or risks to her privacy that might be associated with the donation of the bodily remains;*
- (5) The mother understands her right to obtain the bodily remains for final disposition in accordance with [Insert name of State] law;*
- (6) The consent of the mother for the abortion was obtained prior to requesting or obtaining consent for a donation of the bodily remains for use in such research, experimentation, study, or for transplantation;*
- (7) No alteration(s) to the timing, method, or procedures used to terminate the pregnancy will be [was] made solely for the purpose of obtaining the bodily remains; and*
- (8) The abortion was performed in accordance with applicable state law.*

(b) No person shall [knowingly] sell, transfer, distribute, give away, or accept bodily remains resulting from an abortion for valuable consideration.

(c) No person shall solicit or [knowingly] acquire, receive, or accept a donation of bodily remains resulting from an abortion for the purpose of transplantation of such

bodily remains into another person if:

- (1) *The donation will be or is made pursuant to a promise to the donating individual that the donated bodily remains will be transplanted into a recipient specified by such individual;*
 - (2) *The donated bodily remains will be transplanted into a relative of the donating individual; or*
 - (3) *The person who solicits or knowingly acquires, receives, or accepts the donation has provided valuable consideration for the costs associated with such abortion.*
- (d) *No person shall:*
- (1) *Solicit or [knowingly] acquire, receive, or accept a donation of bodily remains resulting from an abortion knowing that a human pregnancy was deliberately initiated to provide such bodily remains; or*
 - (2) *[Knowingly] acquire, receive, or accept bodily remains obtained from a human fetus that was gestated in the uterus of a nonhuman animal.*
- (e) *The attending physician with respect to obtaining the bodily remains from the mother makes a signed, written statement declaring:*
- (1) *The bodily remains have been donated by the mother in accordance with this Act; and*
 - (2) *The attending physician has disclosed to the mother the attending physician's interest or the interest of the attending physician's employer, if any, in the research, experimentation, study, or transplantation to be conducted with the specific bodily remains.]*

[Section 10.] Criminal Penalties.

- (a) An individual in charge of an institution where bodily remains were expelled or extracted who violates Section 4 shall be guilty of a *[Insert appropriate penalty/offense classification]* for each violation.

(b) The person assuming responsibility for the final disposition of bodily remains or an individual in charge of an institution where bodily remains were expelled or extracted who violates Section 5 shall be guilty of a [*Insert appropriate penalty/offense classification*] for each violation.

(c) Any person who [*knowingly*] sells, transfers, distributes, gives away, accepts, uses, or attempts to use an infant, unborn infant, or bodily remains resulting from an abortion in violation of this Act or who aids or abets any such sale, transfer, distribution, other unlawful disposition, acceptance, use, or attempted use of an infant, unborn infant, or bodily remains resulting from an abortion in violation of Section 8 shall be guilty of a [*Insert appropriate penalty/offense classification*] for each violation.

(d) Any person who experiments upon an infant, unborn infant, or bodily remains resulting from an abortion; experiments upon an unborn infant who is intended to be aborted; or performs or offers to perform an abortion where part or all of the justification or reason for the abortion is that the bodily remains may be used for animal or human research, experimentation, study, or for transplantation, in violation of Section 8, shall be guilty of a [*Insert appropriate penalty/offense classification*] for each violation.

[(e) Any person who violates the requirements and restrictions in Section 9 shall be guilty of a [*Insert appropriate penalty/offense classification for each violation*].]

[Section 11.] Civil and Administrative Action.

In addition to whatever remedies are available under the statutory [*or common*] law of this State, failure to comply with the requirements of this Act shall:

(a) Provide a basis for recovery for the parent(s) of the infant or unborn infant or the parent(s) or guardian(s) of the mother, if the mother is a minor, for the unlawful disposition of or experimentation upon an infant, unborn infant, or bodily remains. Such relief shall include:

- (i) Money damages for all psychological injuries occasioned by the violation(s) of this Act; and
- (ii) Statutory damages equal to [*Insert number*] times the cost of the mother's delivery or abortion.

(b) Provide a basis for professional disciplinary action under [*Insert appropriate*

reference(s) to state statute(s) and/or administrative rule(s) concerning the state Medical Board or other appropriate state regulatory or licensing bodies' oversight and review authority] for the suspension or revocation of any license for physicians, licensed vocational and registered nurses, or other licensed or regulated healthcare providers.

(c) Any conviction of any healthcare provider for any failure to comply with the requirements of this Act shall result in the automatic suspension of his or her license for a period of at least one (1) year [*or other appropriate penalty*] and said license shall be reinstated after that time only under such conditions as the [*Insert reference(s) to appropriate state regulatory or licensing bodies*] shall require to ensure compliance with this Act.

[Section 12.] Construction.

(a) Nothing in this Act shall be construed to affect existing federal or state law regarding abortion.

(b) Nothing in this Act shall be construed as creating or recognizing a right to abortion.

(c) Nothing in this Act shall be construed to alter generally accepted medical standards.

[Section 13.] 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 herefrom 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 14.] 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 Act is challenged.

[Section 15.] Effective Date.

This Act takes effect on *[Insert date]*.