



2012 State Legislative Session Report¹

OVERVIEW

The 2012 state legislative year has produced significant victories for Life across the United States, building on 2011's historic progress and laying the groundwork for future victories in 2013 and beyond. Americans United for Life (AUL) and AUL Action, working in 39 states in 2012, provides this "State Legislative Session Report" to highlight our victories and outline this year's state-based pro-life activity.

AUL VICTORIES

Through its state representatives and other significant relationships with state-based allies, AUL actively worked in 39 states to enact life-affirming laws and to defeat anti-life initiatives. In 2012, AUL realized several important victories for Life, including the enactment of 19 life-affirming laws:

- Alabama enacted AUL's "Abortion-Mandate Opt-Out Act."
- In an omnibus measure, Arizona became the first state to enact AUL's model late-term abortion limitation, proscribing abortions at or after 20-weeks gestation based on well-documented dangers to women's health and the pain experienced by unborn children.
- With AUL Action's advice and consultation and based, in part, on AUL model legislation, Arizona also enacted provisions in the omnibus measure that regulate the provision of abortion-inducing drugs, supplement existing abortion clinic regulations, mandate that women receiving negative prenatal diagnoses be given information about perinatal hospice, and require the performance of an ultrasound at least 24 hours before an abortion.
- Arkansas restricted schools that distribute drugs with life-ending mechanisms of action from receiving public funds.
- AUL Action worked with allies in California to defeat a bill allowing non-physicians to perform surgical abortions.

¹ This report covers activity between January 1 and July 15, 2012.

- AUL worked with allies in Georgia to enact a ban on abortions at or after 20-weeks gestation. The measure also revised the state’s reporting requirements for such abortions, requiring an abortion provider to report the medical diagnosis that necessitated the procedure.
- Georgia enacted a law that would make it a felony to assist in another person's suicide. This legislation was prompted by a February 2012 decision by the Georgia Supreme Court striking down a 1994 law prohibiting publicly advertising suicide assistance.
- Georgia and Mississippi enacted measures including “reproductive healthcare facilities” in the definition of mandatory reporters for suspected child sexual abuse.
- New Hampshire overrode Governor John Lynch’s veto of a partial-birth abortion ban.
- New Hampshire also enacted a measure revising the state’s judicial bypass proceedings to give the court two business days (rather than 48 hours) to rule on a judicial bypass request.
- New Hampshire enacted a measure requiring the state Department of Health to collect, compile, and maintain abortion statistics and to prepare and submit an annual report to the general court.
- New Hampshire adopted AUL’s model resolution honoring pregnancy care centers.
- South Carolina enacted protections for infants who are born-alive following attempted abortions.
- South Carolina and South Dakota enacted AUL’s “Abortion-Mandate Opt-Out Act.”
- Tennessee enacted a measure including an unborn child at any point in gestation as a victim of homicide.
- AUL once again helped to defeat a measure in Vermont to legalize assisted suicide.
- Virginia enacted an ultrasound requirement that is based, in substantial part, on AUL’s model language.
- Virginia also enacted a measure permitting recovery for the death of an unborn child in a wrongful death (civil) action.

LEGISLATIVE TRENDS

In 2012, the most popular abortion-related topics included (a) prohibitions on government funding and insurance coverage for abortion; (b) legislation and resolutions related to pregnancy care centers; (c) informed consent; (d) ultrasound requirements; (e) restrictions or regulations on abortion-inducing drugs and so-call “telemed” abortions; and (f) abortion clinic regulations and other abortion provider requirements.

- Interest at the state level in supporting and honoring pregnancy care centers (PCC) increased in 2012. However, the number of states considering anti-PCC legislation also increased, growing by approximately 150 percent.

- The number of states considering bans on abortion decreased significantly as compared to 2011 activity levels. Specifically, the number of states considering 20-week bans or partial-birth abortion bans decreased by more than 50 percent, while the number of states considering post-viability bans decreased to 10 percent of 2011 activity levels.
- In 2012, states considered approximately 70 measures related to biotechnologies, a nearly 50 percent decline from 2011 activity levels. Notably, no state considered a ban on human cloning and only two states considered bans on destructive embryo research.
- Nearly 50 percent of biotechnology-related measures considered in 2012 (33 measures) relate to assisted reproductive technologies (ART), including *in vitro* fertilization (IVF). Moreover, the majority of these measures did not involve necessary regulation, but instead related to parentage or insurance coverage of ART.
- There was a nearly 40 percent increase in the number of measures introduced to protect healthcare freedom of conscience.
- As a result of a substantial increase in the number of bills related to pain management and palliative care, measures related to end-of-life issues increased nearly two-fold (from approximately 105 measures in 2011 to approximately 200 measures this year).

DETAILED ACTIVITY AND ANALYSIS

Newly Enacted State Laws and Adopted Legislative Resolutions

In 2012, at least 60 new life-affirming laws,² including at least 38 measures related to abortion, were enacted. Additionally, 16 pro-life state resolutions were adopted.

Newly enacted laws and other significant developments include:

Abortion:

- Alabama enacted a measure prohibiting abortion coverage in the state health insurance Exchange except in cases of life endangerment, rape, incest, or ectopic pregnancy.
- Alaska Governor Sean Parnell signed a budget bill limiting Medicaid funding for abortion to cases of rape, incest, or life endangerment. (Currently, the state is under a court order to fund all medically necessary abortions.)
- Alaska enacted a measure establishing “Choose Life” license plates. Proceeds from the sale of the specialty plates will benefit pregnancy care centers.
- Alaska also allocated \$200,000 for the creation of a pregnancy care center.

² This count does not include some end-of-life measures enacted in 2012 as the life-affirming impact of these measures is questionable.

- Arizona enacted a late-term abortion limitation based on AUL’s model language. In the same omnibus measure, Arizona also enacted regulations on the provision of abortion-inducing drugs, supplemented its existing abortion clinic regulations, mandated that women receiving negative prenatal diagnoses be given information about perinatal hospice, and mandated the performance of an ultrasound at least 24 hours before an abortion.
- Arizona also enacted a law prohibiting family planning contracts with or grants to abortion providers including Planned Parenthood.
- Arizona amended an existing provision related to individual income tax credits for donations to qualified charitable organizations, clarifying that those organizations cannot provide of pay for coverage of abortions.
- Arkansas enacted three measures maintaining existing prohibitions on the use of educational funds for abortions or abortion referrals.
- California defeated an attempt to permit non-physicians to perform surgical abortions.
- Georgia enacted a late-term abortion limitation. The measure included a requirement revising the state’s reporting requirements for such abortions. Abortion providers must now report the medical diagnosis that necessitated the late-term procedure.
- Georgia and Mississippi enacted measures including “reproductive healthcare facilities” in the definition of “mandatory reporters” for suspected child sexual abuse.
- Louisiana banned abortions at or after 20-weeks gestation based on the pain felt by an unborn child.
- Louisiana enacted a measure requiring that an audible heartbeat be obtained and an ultrasound image be displayed for a woman before abortion.
- Maryland approved an appropriations bill that re-enacted current (weak) restrictions on public funding of abortion to cases of incest, rape, threats to life or health, and fetal impairment.
- Mississippi enacted a measure requiring abortion providers to be board certified in obstetrics and gynecology and to maintain hospital staff and admitting privileges.³
- Minnesota amended the requirements for organizations seeking funding for abortion alternatives programs. Eligibility for the grants now accrues to organizations that have had operational programs since 2011 (instead of 2005).
- Missouri extended a restriction on the allocation of Missouri Alternatives to Abortion Services Program prohibiting abortion providers from participating in the program.
- New Hampshire enacted a measure revising the state’s judicial bypass proceedings to give a court two business days (rather than 48 hours) to rule on a judicial bypass request.
- New Hampshire legislators overrode Governor John Lynch’s veto of a ban on partial-birth abortion.

³ The measure has been enjoined by a federal district court.

- New Hampshire enacted a measure requiring the state Department of Health to collect, compile, and maintain abortion statistics and to prepare and submit an annual report to the general court.
- New Jersey Governor Chris Christie vetoed a budget bill that would have allocated \$7.5 million to “family planning organizations” such as Planned Parenthood.
- North Carolina legislators overrode Governor Bev Perdue’s veto of a measure defunding abortion providers.⁴
- Oklahoma enacted a measure providing women the opportunity to hear the heartbeats of their unborn children.
- Oklahoma also enacted a measure prohibiting the use of telemedicine to administer abortion-inducing drugs.
- Oklahoma enacted a measure allowing a woman or the parent or legal guardian of a minor to sue if there is a violation of the state’s informed consent law, ultrasound requirement, requirement that women be counseled on fetal pain, parental involvement law, or any another law regulating a minor’s abortion.
- South Carolina and South Dakota enacted measures, based on AUL model legislation, prohibiting health plans offered through the states’ health insurance Exchanges from including abortion coverage.
- Amending a recent law requiring women considering abortion to received counseling at a PCC, South Dakota enacted a requirement that PCCs have licensed medical and mental health professionals on staff.
- Four states enacted measures related to informed consent: South Dakota, Utah, Virginia, and Washington.
 - South Dakota’s new law requires that women exhibiting certain risk factors receive counseling about the mental health risks associated with abortion and amends an existing state law requiring counseling at a pregnancy care center before an abortion.
 - Utah’s law extends the reflection period before an abortion from 24 hours to 72 hours and requires face-to-face initial consultation.
 - Virginia now requires in-person informed consent counseling at least 24 hours before an abortion.
 - Washington enacted a law including abortion under provisions for general informed consent.
- Tennessee enacted a measure changing the “effective date” of an existing law prohibiting so-called “telemed abortions.”
- Tennessee also enacted a measure requiring abortion providers to have admitting privileges at a hospital located in the same county as the abortion facility or in an adjacent county.

⁴ A similar measure enacted in North Carolina in 2011 is currently in litigation.

- Virginia enacted an ultrasound requirement.
- Wisconsin enacted a measure prohibiting abortion coverage in the state health insurance Exchange except in cases of life endangerment, rape, incest or possible “grave, long-lasting physical health damage.”
- Wisconsin enacted a measure amending its current informed consent requirements to mandate that an abortion provider determine whether a woman is being coerced into the abortion. The measure also requires abortion counseling materials to include information on organizations that support victims of domestic violence.
- In the same measure, Wisconsin also prohibited the use of telemedicine to administer abortion-inducing drugs and limited their provision to physicians.

Legal Recognition and Protection of the Unborn:

- Iowa law now provides for stillbirth certificates.
- Colorado enacted measures funding substance abuse treatment for pregnant women and prohibiting the use of drug tests performed as part of prenatal care in criminal prosecutions.
- Kentucky enacted a measure allocating \$1.4 million over two years for substance abuse prevention and treatment for pregnant women.
- Minnesota enacted a measure allowing emergency service personnel to accept a relinquished infant who is seven days old or younger. (An earlier version of the law allowed a health care provider to accept relinquished infants 72 hours old or younger.)
- Mississippi enacted a measure protecting the anonymity of the parent relinquishing a newborn under the state’s infant abandonment statute.
- Oklahoma now mandates that the Department of Human Services investigate when a newborn tests positive for controlled substances.
- South Carolina enacted protections for infants who are born-alive following attempted abortions.
- Tennessee enacted a measure including an unborn child at any point in gestation as a victim of homicide.
- In a related development, the Utah Human Services, Child and Family Services Agency approved administrative regulations that include exposure to alcohol or other “harmful” substances *in utero* in the state’s definitions of “abuse,” “neglect,” and “dependency.”
- Virginia enacted a measure permitting recovery for the death of an unborn child in a wrongful death (civil) action.
- Virginia also enacted two measures amending existing laws on child abuse reporting. Healthcare providers are now required to report to the state Department of Social Services any diagnosis of fetal alcohol spectrum disorders or other medical condition caused by exposure to controlled substances during pregnancy.

Biotechnologies:

- Colorado enacted an appropriations measure that includes the Adult Stem Cells Cure Fund.
- Indiana enacted a measure which prohibits destructive research on embryos created with an ovum provided to a “qualified third party.” In other words, the state now prohibits research on embryos created from ova initially provided for *in vitro* fertilization purposes.
- Indiana also enacted a measure prohibiting the purchase or sale of a human ovum. The measure does not prohibit transactions between a woman and a qualified *in vitro* fertilization (IVF) clinic for certain expenses (*i.e.*, earnings lost, travel expenses, medical expenses, or recovery time).
- Hawaii enacted measures requiring the state Auditor to assess the social and financial effects of requiring health insurance coverage for fertility preservation procedures for persons of reproductive age who have been diagnosed with cancer.
- Maryland appropriated general funds to the Maryland Stem Cell Research Fund (which includes destructive embryo research).
- Maryland enacted a measure prohibiting the use of sperm or eggs from a “known donor” if the donor receives any remuneration for the “donation” of sperm or eggs. The prohibition does not apply to anonymous donation to a sperm bank or fertility clinic.
- Maryland also enacted a measure related to the parentage of IVF-conceived children for the purposes of trusts and estates.
- Mississippi made appropriations in support of eight university programs, but prohibited the funds from being used for research in which a human embryo is destroyed.
- Massachusetts enacted a measure requiring any person who renders prenatal care, postnatal care, or genetic counseling to parents of an unborn child diagnosed with Down syndrome to provide up-to-date information about Down syndrome. Mandated information includes information about physical, developmental, educational, and psychosocial outcomes; life expectancy; intellectual and functional development; and treatment options, as well as information on educational and support groups.
- New York adopted a state budget appropriating funds to the Empire State Stem Cell Research Account which also promotes destructive research.

Freedom of Conscience

- Arizona enacted a measure allowing, based on the religious beliefs of an employer or a beneficiary, a “religiously-affiliated employer” to offer a health plan that does not cover contraceptives. “Religiously-affiliated employer” is defined as either a nonprofit that primarily employs and serves individuals who share the nonprofit’s religious beliefs or as

an organization that has incorporating documents that clearly state that religious beliefs are “central to the organization’s operating principles.”

- Kansas enacted a measure allowing an individual or healthcare facility to refuse to perform, make referrals for, or participate in abortion services or services that the individual or facility “reasonably believes” would end a pregnancy.

End-of-Life:

- Connecticut enacted regulations related to hospice care.
- Georgia enacted a law that would make it a felony to assist in another person's suicide. This legislation was prompted by a February 2012 decision by the Georgia Supreme Court striking down a 1994 law prohibiting public advertising of suicide assistance.
- Georgia also enacted a law authorizing pharmacists to use a remote automated medication system for hospices without an on-site pharmacy.
- Georgia enacted an amendment to their Do Not Resuscitate (DNR) statute to authorize nurses, physician assistants, and “caregivers” to withhold or withdraw cardiopulmonary resuscitation pursuant to a DNR order issued by an attending physician.
- Idaho enacted an amendment to their “Medical Consent and Natural Death Act” that strengthens protections for a patient who has expressed a desire to continue life-sustaining care (through advance directives or those authorized to consent for him or her).
- Illinois, Iowa, and Rhode Island created programs adopting Physician Orders for Life-Sustaining Treatment (POLST) Paradigms.
- New Hampshire enacted a law clarifying that, when determining whether to withhold or withdraw medically administered nutrition and hydration or life-sustaining treatment from a mentally incompetent or developmentally disabled person, a healthcare facility’s standard protocols should only be considered if the patient does not have a validly executed advance directive and the action has not been authorized by an existing guardianship or other court order.
- Maine created a work group to determine how to improve the treatment of chronic, non-cancer related pain.
- Similarly, New Mexico enacted a continuing education requirement for non-cancer pain management.
- Tennessee enacted regulations on pain management clinics.
- Utah enacted regulations on the use of electronic information for monitoring pain management.

Legislative resolutions adopted in 2012 include:

- A resolution by the Missouri House honoring AUL President and CEO Dr. Charmaine Yoest and the work of AUL.
- Legislative resolutions honoring pregnancy care centers in eight states: Florida, New Hampshire, South Carolina, Tennessee, Utah, Virginia, West Virginia, and Wisconsin.
- Legislative resolutions opposing the U.S. Department of Health and Human Services (HHS) “preventive care” mandate in four states: Missouri, New Hampshire, Ohio, and Wyoming.
- A resolution by the Louisiana legislature urging the U.S. Congress to defund and to appropriate no further funding to Planned Parenthood.
- A resolution adopted by both chambers of the Tennessee legislature approving a ballot initiative (for the 2014 ballot). The initiative proposes an amendment to the Tennessee constitution that provides that there is no state constitutional right to abortion.
- A resolution in West Virginia expressing concern at the growth in the number and cost of taxpayer-funded abortions and asking HHS to monitor the number of abortions funded by Medicaid.
- Conversely, resolutions adopted in Georgia and Illinois honored individuals associated with Planned Parenthood.
- A resolution adopted in Hawaii designated a “Reproductive Rights Awareness Week,” while a resolution in Vermont commemorated the 39th anniversary of *Roe v. Wade*.

Abortion

Overall, 41 states considered at least 359 measures related to abortion, a decrease of approximately 25 percent from 2011 activity levels.

Abortion Funding:

At least 25 states including Alabama, Alaska, Arizona, Arkansas, California, Delaware, Hawaii, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, Oklahoma, Pennsylvania, Tennessee, Vermont, and West Virginia considered measures related to abortion funding.

Most of these states considered measures to limit abortion funding, but at least four states—Delaware, Hawaii, Michigan, and Minnesota—considered measures to expand abortion funding.

Arizona enacted a law prohibiting family planning contracts with or grants to abortion providers including Planned Parenthood.

The state also amended an existing provision related to individual income tax credits for donations to qualified charitable organizations, clarifying that those organizations cannot provide of pay for coverage of abortions.

Arkansas enacted three measures maintaining existing laws prohibiting the use of educational funds for abortions or abortion referrals.

The Louisiana legislature adopted a measure urging Congress to defund and to appropriate no further funding to Planned Parenthood.

Missouri extended an existing prohibition on the allocation of Missouri Alternatives to Abortion Services Program funds to abortion providers.

North Carolina overrode Governor Bev Perdue's veto of a measure defunding abortion providers.

The West Virginia House adopted a resolution expressing concern for the steady growth in the number and cost of taxpayer funded abortions and urging that the issue of public funding of abortions be re-evaluated.

Conversely, Indiana considered a measure that would have repealed a statute (enacted in 2011) prohibiting state contracts with or grants to entities that perform abortions.⁵

Abortion Funding in State Budgets:

At least 10 states including Alaska, Maryland, Minnesota, Missouri, Nebraska, New Jersey, Vermont, Virginia, West Virginia, and Wisconsin included provisions related to abortion funding in their proposed state budgets.

Alaska Governor Sean Parnell signed a budget bill that would limit Medicaid funding for abortion to cases of rape, incest, or life endangerment. (The state is currently under a court order to fund all medically necessary abortions.)

Maryland approved an appropriations bill that re-enacted current (weak) restrictions on public funding of abortion to cases of incest, rape, threats to life or health, and fetal impairment.

New Jersey Governor Chris Christie vetoed a budget bill that would have given \$7.5 million to "family planning organizations" such as Planned Parenthood.

⁵ The 2011 defunding measure is currently in litigation and has been enjoined by a federal court.

Insurance Coverage of Abortion:

At least 22 states considered measures related to insurance coverage of abortion—either through the state health insurance Exchanges (required by 2014 under the federal healthcare law), Medicaid, or private insurance. These states included Alabama, California, Florida, Georgia, Idaho, Iowa, Kansas, Maryland, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, Oklahoma, South Carolina, South Dakota, Tennessee, Virginia, Washington, Wisconsin, West Virginia, and Wyoming.

Alabama enacted a measure that prohibits abortion coverage in the state health insurance Exchange except in cases of life endangerment, rape, incest, or ectopic pregnancy.

Similarly, Wisconsin enacted a measure prohibiting abortion coverage in the state health insurance Exchange except in cases of life endangerment, rape, incest, or possible “grave, long-lasting physical health damage.”

South Carolina and South Dakota enacted measures, based on AUL model legislation, prohibiting health plans offered through the states’ health insurance Exchanges from including abortion coverage.

Conversely, Minnesota considered a measure that would have expanded access to abortion-inducing drugs under private insurance plans, and Washington considered a measure requiring health plans that cover maternity care to cover abortion care unless the purchaser of the health plan affirmatively opts out of the coverage.

Pregnancy Care Centers:

Interest at the state level in supporting and honoring pregnancy care centers (PCC) increased in 2012. However, the number of states considering anti-PCC legislation also increased, growing by approximately 150 percent.

At least 21 states including Alaska, Florida, Kansas, Kentucky, Michigan, Missouri, Minnesota, Nebraska, New Hampshire, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin considered measures related to state funding for PCCs and/or legislative resolutions honoring their life-affirming missions.

Direct State Funding for Pregnancy Care Centers

At least six states including Alaska, Kansas, Michigan, Minnesota, Missouri, and Pennsylvania considered measures related to direct state funding for pregnancy care centers.

Alaska allocated \$200,000 for the creation of a pregnancy center.

Minnesota amended the requirements for organizations seeking funding for abortion alternative programs. Eligibility for grants now accrues to organizations that have had operational programs since 2011 (instead of 2005).

“Choose Life” License Plates; Proceeds Benefit Pregnancy Care Centers

At least four states considered measures to support PCCs through “Choose Life” specialty license plates—Alaska, Illinois, Rhode Island, and Wisconsin. Notably, Wisconsin also considered a measure for specialty plates that expressed support for Planned Parenthood.

Alaska established the “Choose Life” specialty license plates. Proceeds from the sale of the plates will benefit pregnancy care centers.

Resolutions Honoring Pregnancy Care Centers

At least 13 states considered resolutions commending the life-saving work of PCCs—Florida, Kansas, Kentucky, Michigan, Nebraska, New Hampshire, Ohio, South Carolina, Tennessee, Utah, Virginia, West Virginia, and Wisconsin. Pro-PCC resolutions were adopted in eight states: Florida, New Hampshire, South Carolina, Tennessee, Utah, Virginia, West Virginia, and Wisconsin.

Similarly, Missouri considered a measure protecting the religious mission of PCCs.

Efforts to Regulate Pregnancy Care Centers

Conversely, at least five states including Florida, New York, South Dakota, Washington, and Wisconsin considered measures to unnecessarily regulate or interfere with the work of PCCs.

Amending a recent law requiring women considering abortion to receive counseling at a PCC, South Dakota enacted a requirement that PCCs have licensed medical and mental health professionals on staff.

Informed Consent and Informed Consent Enhancements:

At least 24 states including Alabama, Alaska, Arizona, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Mississippi, New Hampshire, New Jersey, New York, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Utah, Virginia, Washington, and Wisconsin considered measures related to informed consent for abortion.

South Dakota enacted a measure requiring that women exhibiting certain risk factors receive counseling about mental health risks associated with abortion and amending an existing state law requiring counseling at a PCC before an abortion.

Oklahoma law now permits a woman to commence a civil action if an abortion provider violates the state's informed consent law.

Utah enacted a measure clarifying that face-to-face consultation is required before abortion.

Washington enacted a law which includes abortion under provisions of the state's general informed consent requirements.

Reflection Period Before Abortion:

At least 12 states including Arizona, Iowa, Kansas, Michigan, Minnesota, Mississippi, Missouri, New York, Rhode Island, South Dakota, Utah, and Virginia considered measures requiring a reflection period (usually 24 hours) before a woman may undergo an abortion.

Utah extended the reflection period before an abortion from 24 hours to 72 hours.

Virginia now requires in-person informed consent counseling at least 24 hours before an abortion.

"Heartbeat" Informed Consent:

At least seven states including Arizona, Idaho, Indiana, Iowa, Kentucky, Louisiana, and Oklahoma considered measures giving a woman the opportunity to hear the heartbeat of her unborn child before an abortion.

Louisiana enacted a measure requiring that an audible heartbeat be provided to a woman before abortion.

Oklahoma enacted a measure providing women (at 6 weeks or longer gestation) the opportunity to hear their unborn children's heartbeats.

Anti-Coercion Measures:

At least 11 states including Arizona, Florida, Georgia, Iowa, Kansas, Michigan, New Jersey, Rhode Island, South Dakota, Virginia, and Wisconsin considered measures prohibiting the use of coercion to compel a woman's decision on abortion and/or informing women that no one may use coercion to compel a decision about abortion.

Wisconsin enacted a measure amending its current informed consent requirements to mandate that an abortion provider determine whether a woman is being coerced into the abortion. The measure also requires abortion counseling materials to include information on organizations that support victims of domestic violence.

Informed Consent Concerning Prenatal Diagnosis:

At least two states – Arizona and Florida – considered measures to require that a woman who receives a negative prenatal diagnosis be given certain information before she may elect to have an abortion.

As part of an omnibus measure, Arizona enacted a cutting-edge counseling provision which requires abortion providers to inform women about alternatives to abortion and hospice programs for those who are seeking an abortion due to fetal abnormality.

Florida considered a measure that would have required resources and counseling be allocated to women who receive prenatal test results indicating a developmental disability such as Down syndrome.

Ultrasound Requirements:

At least 18 states including Alabama, Alaska, Arizona, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, New Jersey, Oklahoma, Pennsylvania, Rhode Island, and Virginia considered ultrasound requirements for abortion.

As part of an omnibus measure, Arizona amended its existing ultrasound requirement to require that an ultrasound be performed at least 24 hours prior to an abortion.

Louisiana enacted a measure requiring that ultrasound images be displayed for the woman before an abortion.

Oklahoma now permits a woman to commence a civil action if an abortion provider violates the state's ultrasound requirement.

Virginia enacted a requirement, based in substantial part on AUL's model language, that a woman undergo an ultrasound and have the opportunity to view the images before an abortion.

Abortion Inducing Drugs and “Telemed” Abortions:

At least 12 states including Alabama, Arizona, California, Indiana, Iowa, Michigan, Minnesota, Mississippi, Missouri, Oklahoma, Tennessee, and Wisconsin considered measures to regulate abortion-inducing drugs and/or the practice of so-called “telemed” abortions.

Arizona law now requires that abortion providers follow the protocol approved by the Federal Drug Administration (FDA) when administering RU-486 and other abortion-inducing drugs.

Oklahoma enacted a measure prohibiting the use of telemedicine to administer abortion-inducing drugs.

Tennessee enacted a measure changing the “effective date” of an existing law prohibiting “telemed” abortions.

Wisconsin now prohibits the use of telemedicine to administer abortion-inducing drugs and limits their provision to physicians.

Conversely, Minnesota Governor Mark Dayton vetoed a bill that would have required the physical presence of a physician for the administration of an abortion-inducing drug.

Abortion Clinic Regulation and Abortion Provider Requirements:

Abortion Clinic Regulations:

At least 19 states including Alabama, Arizona, California, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Mississippi, Missouri, Ohio, Oklahoma, South Dakota, Tennessee, and West Virginia considered measures regulating abortion clinics and/or individual abortion providers.

Alabama made a technical amendment to an existing statute, clarifying that a requirement that a physician make a determination of post-fertilization age applies only to abortion procedures.

As part of an omnibus abortion measure, Arizona revised its existing abortion clinic regulations. The revisions include procedures for the reporting of serious injuries, requirements for hospital admitting privileges, and new penalties for noncompliance.

Minnesota Governor Mark Dayton vetoed a measure that would have regulated facilities performing 10 or more abortions per month.

Individual Provider Requirements:

Mississippi enacted a measure requiring abortion providers to be board certified in obstetrics and gynecology and to maintain both hospital staff and admitting privileges.

Tennessee also enacted a measure requiring abortion providers to have admitting privileges at a hospital located in the same county as the abortion facility or in an adjacent county.

Individual Provider Liability:

A number of states including Arizona, Kansas, Louisiana, Mississippi, Missouri, and Oklahoma considered measures related to an abortion provider's liability in civil lawsuits or for violations of state abortion-related laws.

Oklahoma enacted a measure allowing a woman or the parent or legal guardian of a minor to sue if there is a violation of the state's informed consent law, ultrasound requirement, requirement that women be counseled on fetal pain, parental involvement law, or any another law regulating a minor's abortion.

Abortion Reporting:

At least 12 states including Alabama, Arizona, Georgia, Indiana, Maryland, Minnesota, Missouri, New Hampshire, New Mexico, Pennsylvania, Vermont, and West Virginia considered measures related to abortion reporting.

Alabama made a technical amendment to an existing reporting statute, clarifying it should be construed to require a report of post-fertilization age only for abortion procedures.

In a measure prohibiting late-term abortions, Georgia also enacted a requirement revising its abortion reporting requirements for abortions performed at or after 20 weeks. The new law requires an abortion provider to report the medical diagnosis that necessitated the procedure.

New Hampshire enacted a measure requiring the state Department of Health to collect, compile, and maintain abortion statistics and to prepare and submit an annual report to the general court.

Sex Abuse Reporting By Abortion Providers:

At least four states including Georgia, Illinois, Mississippi, and West Virginia considered measures to require abortion providers and clinics to report child/sexual abuse.

Georgia and Mississippi enacted measures including “reproductive healthcare facilities” in the definition of mandatory reporters for suspected child sexual abuse.

State Constitutional Amendments:

At least eight states including Georgia, Minnesota, Mississippi, Missouri, New Jersey, Oklahoma, Vermont, and West Virginia considered abortion-related amendments to their state constitutions.

State Freedom of Choice Acts:

At least four states including Florida, New York, Vermont, and Wisconsin considered state “Freedom of Choice Acts” (FOCA) or similar measures to protect the legal “right” to abortion.

Similarly, the Hawaii legislature adopted a measure designating a “Reproductive Rights Awareness Week,” and Vermont adopted a resolution commemorating the 39th anniversary of *Roe v. Wade*.

Abortion Bans:

The number of states considering bans on abortion decreased significantly as compared to 2011 activity levels. Specifically, the number of states considering 20-week bans or partial-birth

abortion bans decreased by more than 50 percent, while the number of states considering post-viability bans decreased to 10 percent of 2011 activity levels.

At least 17 states including Alaska, Arizona, Florida, Georgia, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, Ohio, Rhode Island, Virginia, West Virginia, and Wisconsin considered measures to ban abortions.

Of these, at least 12 states considered measures to ban abortion at 20-weeks gestation: Alaska, Arizona, Florida, Georgia, Kansas, Louisiana, Michigan, Mississippi, New Hampshire, Rhode Island, Virginia, and West Virginia.

Arizona enacted AUL's late-term abortion limitation.

Georgia and Louisiana enacted bans on abortions at or after 20-weeks gestation based on the pain felt by an unborn child.

At least five states considered measures to ban sex and race-based abortion: Florida, Missouri, New Jersey, Rhode Island, and West Virginia.

At least three states considered abortion bans beginning when an unborn child has a heartbeat: Kentucky, Minnesota, and Mississippi.

At least three states considered measures to ban partial-birth abortion: Florida, New Hampshire, and Wisconsin, while New Jersey considered a measure to ban abortion at 24-weeks gestation (defined as viability in the measure).

New Hampshire overrode Governor John Lynch's veto of a partial-birth abortion ban. New Hampshire also considered measure to ban third-trimester abortions.

Parental Involvement:

At least 11 states including Georgia, Michigan, Mississippi, New Hampshire, New Jersey, New Mexico, Oklahoma, Rhode Island, Virginia, Washington, and West Virginia considered laws related to parental involvement (notification or consent) for abortion.

New Hampshire enacted a measure revising the state's judicial bypass proceedings to allow a court two business days (rather than 48 hours) to rule on a judicial bypass request.

Oklahoma enacted legislation allowing a woman to commence a civil action if an abortion provider violates the state's parental consent law.

“Emergency Contraception”

In 2012, at least eight states and the District of Columbia considered approximately 20 measures relating to so-called “emergency contraception.”

Emergency Room Access:

At least four states including Arizona, Kansas, Missouri, and Ohio considered measures requiring emergency rooms to provide sexual assault victims with information about and/or access to “emergency contraception.”

Insurance Coverage:

Minnesota considered legislation that would have required insurance plans to provide coverage for “all FDA approved contraceptives” (which includes “emergency contraception”). The bill contained a narrow “religious” exemption.

Conversely, in Idaho, legislation was introduced to ensure that “abortifacients, sterilization, and contraception” would not be required coverage in disability insurance policies. In Tennessee, legislation was introduced to eliminate “emergency contraception” as a family planning service in the TennCare (Medicaid waiver) and Title X programs.

Legal Recognition and Protection of the Unborn

Fetal Homicide and Assault:

At least 10 states including Arizona, Colorado, Florida, Illinois, Louisiana, Massachusetts, New Hampshire, Pennsylvania, Rhode Island, and Tennessee introduced measures criminalizing the killing of or an assault on an unborn child, amending existing fetal homicide or assault laws, or providing enhanced penalties for these offenses.

Tennessee enacted a measure including an unborn child at any point in gestation as a victim of homicide.

Wrongful Death:

Virginia enacted a measure permitting recovery for the death of an unborn child in a wrongful death (civil) action.

Born-Alive Infant Protection:

At least seven states including Florida, Kansas, Louisiana, Massachusetts, Pennsylvania, South Carolina, and West Virginia considered measures providing or enhancing legal protection for an infant born alive including those who survive attempted abortions.

South Carolina’s born-alive infant protection measure was enacted.

Infant Abandonment (or “Baby Moses”) Laws:

Minnesota enacted a measure allowing emergency service personnel to accept a relinquished infant who is seven days old or younger. (An earlier version of the law allowed a healthcare provider to accept relinquished infants 72 hours old or younger.)

Mississippi enacted a measure protecting the anonymity of the parent relinquishing a newborn under the state’s infant abandonment statute.

Fetal Death Certificates and Disposal of Fetal Remains:

At least seven states including Iowa, Kentucky, Michigan, Mississippi, Pennsylvania, New Mexico, and West Virginia considered measures authorizing fetal death certificates and/or prescribing standards for the burial or disposal of fetal remains.

Iowa’s requirement for fetal death certificates was enacted.

Substance Abuse by Pregnant Women:

Colorado enacted two measures funding substance abuse treatment for pregnant women and prohibiting the use of drug tests performed as part of prenatal care in criminal prosecutions.

Kentucky enacted a measure allocating \$1.4 million over two years for substance abuse prevention and treatment for pregnant women.

Oklahoma now mandates that the Department of Human Services investigate when a newborn tests positive for controlled substances.

In a related development, the Utah Human Services, Child and Family Services Agency approved regulations that would include exposure to alcohol or other “harmful” substances *in utero* in the state’s definitions of “abuse,” “neglect,” and “dependency.”

Virginia enacted two measures amending existing laws on child abuse reporting. Health care providers are now required to report to the state Department of Social Services any diagnosis of fetal alcohol spectrum disorders or other medical condition caused by exposure to controlled substances during pregnancy.

Biotechnologies

More than 20 states considered almost 70 measures related to biotechnologies. This represents a decline of almost 50 percent from 2011 activity levels.

Human Cloning:

No states considered prohibitions on human cloning. While relatively few states typically consider such measures each year, it is surprising that no states considered any cloning prohibitions in 2012.

Destructive Embryo Research:

At least two states – New Jersey and Virginia – considered bans on destructive embryo research. This low level of activity marks a continued decline in the number of states considering complete bans on destructive research.

The bill in New Jersey prohibited the creation of human embryos solely for research purposes and prohibited the selling of embryos.

In a related move, Indiana enacted a measure which prohibits destructive research on embryos created with an ovum provided to a “qualified third party.” In other words, the state prohibits research on embryos created from ova initially provided for *in vitro* fertilization purposes.

Conversely, at least two states – Connecticut and Massachusetts – considered measures promoting destructive embryo research.

Fetal Experimentation:

No states considered measures banning experimentation on aborted or unborn fetuses. In fact, a law enacted this year in Indiana prohibiting research on embryos created from certain ova explicitly excludes fetal stem-cell research from its application.

Ethical Forms of Research:

At least one state – New Jersey – sought to promote ethical alternatives to destructive embryo research by considering legislation permanently declaring the month of May as “Bone Marrow and Umbilical Cord Blood Donation Awareness Month.”

However, it appears that no other states considered legislation promoting adult stem-cell or umbilical cord blood research, a drastic downturn from past years when several states considered such measures.

State Funding of Biotechnology:

Limitations on Funding of Unethical Forms of Research:

Bans or restrictions on the funding of human cloning and/or embryo research were considered in at least two states: Mississippi and Missouri.

Mississippi made appropriations in support of eight university programs, but prohibited the funds from being used for research in which a human embryo is destroyed.

The measure in Missouri proposed an amendment for consideration in November 2012 that would have prohibited the funding of human cloning for all purposes.

An additional state – Wisconsin – introduced measures that would have created real and personal property tax exemptions for machinery and other tangible personal property used for “qualified research,” but stated that “qualified research” does not include “embryonic stem cell research.”

Funding of Unethical Forms of Research:

At least three states including Illinois, Maryland, and New York considered measures providing funding for unethical forms of research.

In Maryland, budget legislation appropriating general funds to the Maryland Stem Cell Research Fund was enacted without the governor signature. Similarly, New York adopted a state budget measure appropriating funds to the Empire State Stem Cell Research Account (which promotes destructive research).

New Jersey considered measures which suggested that embryonic research raises ethical concerns and that those issues should be considered in state funding, but did not explicitly prohibit such funding.

Funding of Ethical Forms of Research:

Colorado enacted an appropriations measure that includes the Adult Stem Cells Cure Fund.

Similarly, Kansas considered a measure making appropriations for the Midwest Institute for Stem Cell Biology, and Nebraska considered a measure creating a “Stem Cell Research Cash Fund” for “nonembryonic research.”

Chimeras:

No states considered bans on the creation of chimeras (human-animal hybrids).

Assisted Reproductive Technologies:

Nearly 50 percent of biotechnology-related measures considered in 2012 (33 measures) related to assisted reproductive technologies (ART), including *in vitro* fertilization (IVF). The majority of these measures (24 measures) did not involve necessary regulation, but instead related to parentage or insurance coverage of ART.

At least six states including Arizona, Maryland, Minnesota, New Jersey, New York, and Washington considered measures imposing some regulation of ART including measures

requiring that informed consent information be provided to potential parents or regulating sperm and semen donation. This level of activity was similar to 2011 levels.

Maryland enacted a measure prohibiting the use of sperm from a “known donor” if the donor receives any remuneration for the donation of sperm. The prohibition does not apply to anonymous donation to a sperm bank or fertility clinic.

Only one state – New Jersey – considered a measure allowing only one human ovum to be fertilized at a time for the purposes of IVF.

At least five states including Alabama, Illinois, Maryland, Massachusetts, and Rhode Island considered measures related to the parentage and inheritance rights of children conceived using ART.

Maryland enacted a measure concerning parentage as it relates to trusts and estates.

Finally, at least seven states including Alabama, Connecticut, Hawaii, Maryland, Massachusetts, Missouri, and New Jersey considered measures requiring or regulating insurance coverage for ART.

Hawaii enacted measures requiring the state Auditor to assess the social and financial effects of requiring health insurance coverage for fertility preservation procedures for persons of reproductive age who have been diagnosed with cancer.

Surrogacy:

At least four states including Arizona, California, Maryland, and New Jersey considered measures related to gestational surrogacy.

The measure in Arizona would have prohibited surrogacy agreements, while the legislation in Maryland and New Jersey authorized such agreements. The California measure outlined certain requirements for surrogacy agreements.

Embryo Adoption:

Only two states – Mississippi and Rhode Island – considered measures related to embryo adoption.

On a related front, New Jersey considered a measure that would make certain cryopreserved embryos wards of the state, allowing the state to find parents (married couples) for the embryos.

Human Egg Harvesting:

At least seven states including Arizona, Illinois, Indiana, Massachusetts, Maryland, New Jersey, and Oklahoma considered varying regulations of egg harvesting, such as stipulations of

eligibility for egg “donation,” regulation of compensation, and requirements involving informed consent.

Indiana enacted a measure prohibiting the purchasing or selling of an ovum. The measure does not prohibit certain transactions between a woman and a qualified IVF clinic for certain expenses (*i.e.*, earnings lost, travel expenses, medical expenses, or recovery time).

Maryland enacted a measure prohibiting the use of eggs from a “known donor” if the donor receives any remuneration for the “donation” of eggs. The prohibition does not apply to the anonymous donation to a tissue bank or fertility clinic.

Genetic Discrimination:

Massachusetts enacted a measure requiring that any person who provides prenatal care, postnatal care, or genetic counseling to parents with an unborn child diagnosed with Down syndrome provide up-to-date information about Down syndrome. Mandated information includes information about physical, developmental, educational, and psychosocial outcomes; life expectancy; intellectual and functional development; and treatment options, as well as information on educational and support groups.

Healthcare Freedom of Conscience

Thus far in 2012, at least 18 states considered approximately 37 measures related to healthcare freedom of conscience – an increase of nearly 40 percent from 2011 activity levels.

Protection for Freedom of Conscience:

With help from AUL, New Hampshire and Alabama, two of only three states that currently lack any statutory protections for healthcare providers’ freedom of conscience, introduced and debated “comprehensive” conscience protection bills.

Comprehensive conscience protection legislation was also introduced in at least six other states including Kansas, Missouri, Nebraska, Oklahoma, Pennsylvania, and Rhode Island. (However, bills in Alabama, Missouri, and Nebraska were amended to limit their protections.)

Kansas enacted a measure allowing an individual or healthcare facility to refuse to perform, make referrals for, or participate in abortion services or services that the individual or facility “reasonably believes” would end a pregnancy.

At least four states including Arizona, Missouri, New Jersey, and West Virginia considered legislation forcing pharmacists and/or pharmacies to stock and dispense “emergency contraception.”

Moreover, in at least five states with existing “contraceptive” (insurance) mandates including Arizona, Georgia, Missouri, New Hampshire, and New Jersey, legislation was introduced to include or expand exemptions for religious-based objections.

Arizona enacted a measure allowing a “religiously-affiliated employer” to offer a health plan that does not cover contraceptives based on the religious beliefs of the employer or a beneficiary. “Religiously-affiliated employer” is defined as either a nonprofit that primarily employs and serves individuals who share the nonprofit’s religious beliefs or as an organization that has incorporating documents that clearly state that religious beliefs are “central to the organization’s operating principles.”

Missouri Governor Jay Nixon vetoed legislation which would have protected individual and group insurance consumers from paying for insurance coverage that violates their moral or religious beliefs.

Response to the HHS “Preventive Care” Mandate:

At least thirteen states including Georgia, Idaho, Kentucky, Michigan, Missouri, New Hampshire, New Jersey, Ohio, Oklahoma, Pennsylvania, Tennessee, West Virginia and Wyoming introduced resolutions opposing the U.S. Department of Health and Human Services (HHS) mandate that nearly all insurance plans fully cover “all FDA approved contraceptives” (which includes the abortion-inducing drug *ella*). Most of these resolutions urged that HHS repeal its mandate and that Congress take legislative action to protect freedom of conscience.

The resolutions in Idaho, New Hampshire, Oklahoma, Tennessee, and Wyoming were adopted.

Conversely, resolutions supporting the HHS mandate were introduced in at least two states: Michigan and New Jersey.

End of Life

In 2012, measures related to end-of-life issues increased nearly two-fold (from approximately 105 measures in 2011 to approximately 200 measures this year).

Assisted Suicide and Euthanasia:

At least seven states including Georgia, Hawaii, Massachusetts, New York, Pennsylvania, Vermont, and Washington considered measures related to assisted suicide. This amounted to a slight reduction from last year’s activity levels, when 10 states considered measures related to assisted suicide.

Georgia enacted a law that would make it a felony to assist in another person's suicide. This legislation was prompted by a February 2012 decision by the Georgia Supreme Court striking down a 1994 law prohibiting public advertising of suicide assistance.

In Massachusetts, two bills were introduced to permit physician-assisted suicide, including a ballot initiative.

In Vermont, measures to legalize physician-assisted suicide were defeated.

Washington again considered a requirement that, when a patient dies from assisted suicide, the physician who signs a patient's death certificate designate that assisted suicide was the cause of death.

Hawaii, New York, and Pennsylvania introduced measures permitting physician-assisted suicide.

Life-Sustaining Treatments and Futile Care:

At least five states including Alaska, Georgia, Idaho, New Hampshire, and Tennessee considered measures specifically dealing with the provision or withholding of life-sustaining treatments, particularly nutrition and hydration. This represented an increase from 2011 activity levels when only three states considered such measures.

Georgia enacted an amendment to their Do Not Resuscitate (DNR) statute to authorize nurses, physician assistants, and "caregivers" to withhold or withdraw cardiopulmonary resuscitation pursuant to a DNR order issued by an attending physician.

Idaho enacted an amendment to their "Medical Consent and Natural Death Act" that strengthens protections for a patient who has expressed a desire to continue life-sustaining care (through advance directives or those authorized to consent for him or her).

New Hampshire enacted a law clarifying that, when determining whether to withhold or withdraw medically administered nutrition and hydration or life-sustaining treatment from a mentally incompetent or developmentally disabled person, a healthcare facility's standard protocols should only be considered if the patient does not have a validly executed advance directive and the action has not been authorized by an existing guardianship or other court order.

Advance Planning Documents (*e.g.*, Advance Directives, Living Wills, Healthcare Powers of Attorney, Do Not Resuscitate (DNR) Orders, Proxies, and Physician Orders for Life-Sustaining Treatment (POLST)):

While many states considered measures creating or modifying traditional advance planning documents (*e.g.*, advance directives, Living Wills), the trend of adopting Physician Orders for Life-Sustaining Treatment (POLST) Paradigm programs continued in 2012.

At least three states – Illinois, Iowa, and Rhode Island – created POLST programs.

Conversely, POLST-related measures were considered but not enacted in Kentucky and Wyoming.

Idaho made modifications to their POLST program, and Vermont considered changes to its program.

At least 20 states including Georgia, Hawaii, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maryland, Michigan, Missouri, New Hampshire, New Jersey, Oklahoma, Rhode Island, Tennessee, Utah, Virginia, Vermont, Washington, and Wyoming considered and/or enacted measures related to advance planning documents, with some states considering more than one related measure.

End-of-Life Counseling and Patients’ “Bills of Rights”:

Mississippi and New Jersey each considered a “bill of rights” for patients and residents of healthcare facilities.

Pain Management and Palliative Care:

At least 32 states including Alabama, California, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Utah, Vermont, Washington, West Virginia, and Wyoming considered and/or enacted measures relating to pain management and palliative care, with some states considering more than one measure. This represents a twofold increase from 2011 activity levels.

Provisions enacted in 2012 include hospice regulations in Connecticut; a Georgia law authorizing pharmacists to use a remote, automated medication system for hospices without an

on-site pharmacy; the creation of a work group to review how to improve the treatment of chronic, non-cancer related pain in Maine; a continuing education requirement for non-cancer pain management in New Mexico; regulation of pain management clinics in Tennessee; and a new law in Utah regulating the use of electronic information for monitoring pain management.

LOOKING FORWARD TO 2013

As the 2012 state legislative sessions close and preparation for 2013 begin, AUL remains a leader in the efforts to protect Life from conception through natural death. AUL continues to lay the groundwork for the ultimate reversal of *Roe v. Wade*, while working to eliminate taxpayer funding of abortion and protecting women and girls from the harms inherent in abortion including the increasingly predatory practices of the scandal-ridden abortion industry. As we continue to accumulate victories, AUL will continue its innovative and aggressive efforts until all are welcomed in life and protected in law.