ABORTION COMPLICATION REPORTING ACT

Model Legislation & Policy Guide
For the 2013 Legislative Year

AMERICANS UNITED FOR LIFE
Changing Law to Protect Human Life, State by State
INTRODUCTION

In today’s culture, abortion has been marketed to women as a “cure all” solution to an unintended pregnancy. Masked by inaccurate and incomplete data on abortion’s safety and efficacy, the true dangers of the abortion procedure remain under-reported and all too often ignored. How many women have died from botched abortions? How many women continue to suffer in silence from long-term abortion complications? How many abortions are actually performed in the United States each year? We simply do not know.

As a result of the current defective abortion reporting system, American abortion statistics and data are inaccurate and oftentimes misleading. A number of abortions go unreported, and the deaths and injuries of countless women who have had abortions are swept under the rug. As the author of a leading abortion textbook acknowledges, “[T]here are few surgical procedures given so little attention and so underrated in its potential hazard as abortion.”

It’s frightening that, for 40 years, although abortion has become one of the most common medical procedures performed in America, it remains a procedure that we know so little about. The reality of abortion and its impact on women remain shrouded in mystery; yet, abortion advocates demand unfettered access to the procedure and crassly promote abortion as a “life-saving” solution with negligible risks.

In order to protect the health and lives of women, complete and reliable data on abortion must be available to women, the medical community, and the general public. A comprehensive state reporting system – one that emphasizes reporting on complications – is the only way to accomplish this goal. Only when such a system is in place will we finally be able unmask the reality of abortion in America. AUL’s “Abortion Complication Reporting Act” provides such a system. For more information, please contact AUL’s Legislative Coordinator at (202) 741-4907 or Legislation@AUL.org.

DENISE M. BURKE, ESQ.
Vice President of Legal Affairs
Americans United for Life

3 This model focuses on the reporting of abortion complications. For more information about reporting of demographic information on abortions, please consult Section 9 of AUL’s Women’s Right to Know Act.
ABORTION COMPLICATION REPORTING ACT

HOUSE/SENATE BILL No. _______________
By Representatives/Senators _______________

Section 1. Title.

This Act may be known and cited as the “Abortion Complication Reporting Act.”

Section 2. Legislative Findings and Purposes.

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


(2) Specifically, the State “has a legitimate concern with the health of women who undergo abortions.” Akron v. Akron Ctr. for Reproductive Health, Inc. 462 U.S. 416, 428-29 (1983).

(3) Abortion is an invasive, surgical procedure that can cause severe physical and psychological (both short- and long-term) complications for women, 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 delivery in subsequent pregnancies, free fluid in the abdomen, adverse reactions to anesthesia and other drugs, and psychological or emotional complications such as depression, suicidal ideation, anxiety, and sleeping disorders.

(4) To facilitate reliable scientific studies and research on the safety and efficacy of abortion, it is essential that the medical and public health communities have access to accurate information both on the abortion procedure and on complications resulting from abortion.

(5) Abortion “record keeping and reporting provisions that are reasonably directed to the preservation of maternal health and that properly respect a patient’s

(6) Abortion and complication reporting provisions do not impose an “undue burden” on a woman’s right to choose whether or not to terminate a pregnancy. “The collection of information with respect to actual patients is a vital element of medical research, and so it cannot be said that the requirements serve no purpose other than to make abortions more difficult.” Planned Parenthood v. Casey, 505 U.S. 833 at 900-901 (1992).

(7) To promote its interest in maternal health and life, the State of [Insert name of State] maintains an interest in:

a. Collecting information on all complications from all abortions performed in the State; and

b. Compiling statistical reports based on abortion complication information collected pursuant to this Act for future scientific studies and public health research.

(b) Based on the findings in subsection (a) of this Act, it is the purpose of this Act to promote the health and safety of women, by adding to the sum of medical and public health knowledge through the compilation of relevant data on all complications and maternal deaths resulting from abortion in the State of [Insert name of State].

Section 3. Definitions.

For the 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.

Abortion Complication Reporting Act Americans United for Life
(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 delivery in subsequent pregnancies, free fluid in the abdomen, adverse reactions to anesthesia and other drugs; any psychological or emotional complications such as depression, suicidal ideation, anxiety, sleeping disorders, and any other “adverse event” as defined by the Food and Drug Administration (FDA) criteria provided in the Medwatch Reporting System.

(c) “Department” means the Department of [Insert name of appropriate department or agency] of the State of [Insert name of State].

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

(e) “Hospital” means any institution licensed as a hospital pursuant to the law of this State.

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

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

Section 4. Abortion Complication Reporting.

(a) A facility shall file a written report with the Department regarding each patient who comes under the facility’s care and reports any complication, requires medical treatment, or suffers death that the attending physician or facility staff has reason to believe is a primary, secondary, or tertiary result of an abortion.

(b) These reports shall be submitted within thirty (30) days of the discharge or death of the patient treated for the complication.

(c) The Department shall summarize aggregate data from the reports required under this Act and submit the data to the U.S. Centers for Disease Control and Prevention (CDC) for the purpose of inclusion in the annual Vital Statistics Report. The aggregated data shall also be made independently available to the public by the Department in a downloadable format.
(d) The Department shall develop and distribute, or make available online in a downloadable format, a standardized form for the report required under Section 4(a) of this Act.

(e) The Department shall communicate this reporting requirement to all medical professional organizations, licensed physicians, hospitals, emergency rooms, abortion facilities, Department of Health clinics, and ambulatory surgical facilities operating in the State.

(f) The report required under this section shall not contain:

   (1) The name of the woman;

   (2) Common identifiers such as her social security number or motor vehicle operator’s license number; or

   (3) Other information or identifiers that would make it possible to identify in any manner or under any circumstances an individual who has obtained or seeks to obtain an abortion.

(g) Absent a valid court order or judicial subpoena, neither the Department, any other state department, agency, or office, nor any employees thereof shall compare data concerning abortions or abortion complications maintained in an electronic or other information system file with data in any another electronic or other information system that could result in identifying in any manner or under any circumstances an individual obtaining or seeking to obtain an abortion.

(h) Statistical information that may reveal the identity of a woman obtaining or seeking to obtain an abortion shall not be maintained by the Department or any other state department, agency, or office.

(i) The Department or an employee of the Department shall not disclose to a person or entity outside the Department the reports or the contents of the reports required under this Act in a manner or fashion as to permit the person or entity to whom the report is disclosed to identify in any way or under any circumstances the person who is the subject of the report.

Section 5. Reporting Requirements.

Each report of a complication, medical treatment, or death following abortion required under Section 4 of this Act shall contain, at minimum, the following information:

(a) The age and race of the patient;
(b) The characteristics of the patient, including residency status, county of residence, marital status, education, number of previous pregnancies, number of miscarriages, number of stillbirths, number of living children, and number of previous abortions;

(c) The date the abortion was performed, the reason for the abortion if known, and the method used if known;

(d) The type or classification of facility where the abortion was performed;

(e) The specific complication(s) that led to the treatment, including, but not limited to, failure to actually terminate the pregnancy, missed ectopic pregnancy, uterine perforation, cervical perforation, incomplete abortion (retained tissue), bleeding, infection, hemorrhage, blood clots, cardiac arrest, respiratory arrest, pelvic inflammatory disease, damage to pelvic organs, endometritis, renal failure, metabolic disorder, shock, embolism, free fluid in the abdomen, acute abdomen, adverse reaction to anesthesia or other drugs, hemolytic reaction due to the administration of ABO-incompatible blood or blood products, hypoglycemia where onset occurs while patient is being cared for in the abortion facility, physical injury associated with therapy performed in the abortion facility, coma, death, and psychological or emotional complications including but not limited to depression, suicidal ideation, anxiety, and sleep disorders; and

(f) The amount billed to cover the treatment of the specific complication(s), including whether the treatment was billed to Medicaid, insurance, private pay, or other method. This should include charges from any physician, hospital, emergency room, prescription or other drugs, laboratory tests, and any other costs for the treatment rendered.

Section 6. Penalties.

(a) Any person required under this Act to file a report, keep any records, or supply any information, who willfully fails to file such report, keep such records, or supply such information at the time or times required by law or regulation, is guilty of unprofessional conduct, and his or her license for the practice of medicine [and surgery] shall be subject to suspension or revocation in accordance with procedures provided under the [Insert reference(s) to the state Medical Practice Act or other appropriate statute(s) or administrative rule(s) or procedure(s)].

(b) Any person who willfully delivers or discloses to the Department any report, record or information known by him or her to be false is guilty of a [Insert appropriate offense classification].

Abortion Complication Reporting Act

Americans United for Life
(c) Any person who willfully discloses any information obtained from reports filed pursuant to this Act, other than the disclosure authorized by the Act or otherwise authorized by law, is guilty of a [Insert appropriate offense classification].

(d) In addition to the above penalties, any facility that willfully violates any of the provisions of this Act requiring reporting shall upon conviction:

   (1) Have its license suspended for a period of six (6) months for the first violation.

   (2) Have its license suspended for a period of one (1) year for the second violation.

   (3) Have its license revoked upon a third or subsequent violation.

Section 7. 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 Act to make lawful an abortion that is currently unlawful.

Section 8. 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 9. 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 10. Effective Date.

This Act takes effect on [Insert date].
STATE OF THE STATES: WHERE ARE WE NOW?

ABORTION COMPLICATION REPORTING

Twenty-four states require reporting (to varying degrees) on abortion complications:
AL, AZ, AR, CT, FL, IL, IN, LA, MA, MI, MN, MS, MO, NE, OH, OK, OR, PA, SD, TN, TX, WA, WI, and WY.
More detailed information about the need and justification for abortion complication and other reporting can be found in AUL’s annual publication *Defending Life 2012: Defending Life 2012: Building a Culture of Life, Deconstructing the Abortion Industry*.

*Defending Life 2012* is available online at AUL.org.

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

**AMERICANS UNITED FOR LIFE**
655 15th Street, NW, Suite 410
Washington DC 20005
202.289.1478 | Fax 202.289.1473 | Legislation@AUL.org

www.AUL.org

©2012 Americans United for Life

This policy guide may be copied and distributed freely as long as the content remains unchanged and Americans United for Life is referenced as the creator and owner of this content.