
ABORTION PATIENTS' ENHANCED SAFETY ACT

Model Legislation & Policy Guide
For the 2013 Legislative Year



Changing Law to Protect Human Life, State by State

INTRODUCTION

In the late 1960's and early 1970's, abortion advocates assured judges, legislators, and the American public that legalizing abortion would be beneficial to the health and well-being of American women. In support of these arguments, they devised a litany of purported "advantages" of legalized abortion including increased medical safety.

First, proponents argued, if abortion were legal, the procedure would be safer for women because it would become an accepted part of "mainstream medical care," proper surgical procedures would be followed, and skilled and reputable gynecologists and surgeons would perform the procedure. Second, legalized abortion would eliminate the 5,000 to 10,000 deaths that abortion advocates falsely claimed resulted from illegal or so-called "back-alley" abortions each year.¹ Finally, legalizing abortion would ensure that women received proper care before, during, and after the procedure. Legalized abortion would ensure that no woman would bleed to death, alone and in pain following an unsafe abortion.

These were the promises. But has it proven to be the reality? Has 40 years of legal abortion eliminated these problems from our national consciousness? Sadly, it has not. Instead, abortion clinics across the nation have become the true "back-alleys" of abortion mythology. Legalized abortion has not eliminated substandard medical care, kept people without medical licenses from performing abortions, ended the use of dirty, unsanitary procedure rooms and unsterile,

¹ However, the numbers of deaths from illegal abortion were greatly exaggerated, as were the claims that abortions were inherently unsafe before *Roe v. Wade*. For example, in 1960, Planned Parenthood's Director Mary Calderone wrote:

Abortion is no longer a dangerous procedure. This applies not just to therapeutic abortions as performed in hospitals but also so-called illegal abortions as done by physicians . . . abortion, whether therapeutic or illegal, is in the main no longer dangerous, because it is being done well by physicians.

Mary Calderone, *Illegal Abortion as a Public Health Problem*, 50 Am. J. Pub. Health 949 (July 1960).

Moreover, the late Dr. Bernard Nathanson, a founder of National Abortion and Reproductive Rights Action League (NARAL), later conceded that these statistics were intentionally misleading:

How many deaths were we talking about when abortion was illegal? In NARAL, we generally emphasized the drama of the individual case, not the mass statistics, but when we spoke of the latter it was always "5,000 to 10,000 deaths a year." I confess that I knew the figures were totally false, and I suppose the others did too if they stopped to think of it . . . The overriding concern was to get the laws eliminated, and anything within reason which had to be done was permissible.

Bernard Nathanson, *Aborting America* (New York: Doubleday, 1979), p. 193.

inadequate instrumentation, ensured competent post-abortion care, nor prevented women from dying from unsafe abortions.

There is abundant evidence to support the contention that abortion clinics are the true “back-alleys” that abortion advocates warned us about. A quick review of just few cases of substandard abortion care poignantly contrasts the reality of abortion in America today with what abortion advocates promised legalized abortion would eradicate:

Case Study – Pennsylvania:

In February 2010, federal agents raided Kermit Gosnell’s West Philadelphia abortion clinic, the Women’s Medical Society, and found “deplorable and unsanitary” conditions including blood on the floors; parts of aborted children stored in jars; post-operative recovery areas that consisted solely of recliners; padlocked emergency exits; and broken and inoperable emergency equipment. During the course of the investigation, it was discovered that Gosnell typically did not arrive at the clinic until 6 pm each day and sanctioned the performance of gynecological exams and the administration of controlled substances and prescription medication by non-licensed staff at the clinic.

Following the raids, Gosnell’s license to practice medicine was immediately suspended and the clinic was closed down. During a later grand jury investigation, prosecutors learned that state health officials had ignored dozens of complaints against Gosnell and that the clinic had not been inspected since 1993. They also learned that Gosnell had been illegally performing late-term abortions, delivering viable babies and killing them by cutting their spinal cords with scissors.²

Case Study - Texas:

A recent investigation of dozens of Texas abortion clinics revealed hundreds of patient names and sensitive medical information illegally dumped by several abortion clinics – a clear violation of HIPAA, a federal law that protects the privacy of patient medical records; the illegal disposal of hazardous bio-medical and infectious waste, including tissue that appeared to be the partial remains of aborted babies; dirty and poorly maintained conditions inside and outside the abortion clinics; drug violations including the illegal dumping of drug vials containing controlled substances and the availability and use of blank prescription slips; and widespread abuses of Texas’s informed consent law and the mandated 24-hour reflection period. Moreover, undercover calls and visits to the abortion clinics revealed a pattern of willingness to help minors

² See Report of the Grand Jury, MISC. NO. 0009901-2008 (Jan. 11, 2011), *available at* <http://www.phila.gov/districtattorney/PDFs/GrandJuryWomensMedical.pdf> (last visited Sept. 19, 2012).

evade the state's parental consent law and of staff ignoring mandatory reporting requirements for suspected child sex abuse.³

Case Study - Arizona:

A young mother bled to death from a two-inch laceration in her uterus. As she lay in what medical assistants described as a pool of blood that soaked the bedding and ran down the woman's legs, she was heard crying for help and asking what was wrong with her. Where was her doctor? He was eating lunch in the break room, refusing requests to check her condition, and later left her bleeding and unconscious to visit his tailor. The woman died after bleeding for two to three hours. Sadly, a hospital emergency room was less than five minutes down the street.⁴

Case Study - Kansas:

Two inspections of the same Topeka, Kansas abortion clinic discovered fetal remains stored in the same refrigerator as food; a dead rodent in the clinic hallway; overflowing, uncovered disposal bins containing medical waste; unlabeled, pre-drawn syringes with controlled substances in an unlocked refrigerator; improperly labeled and expired medicines; a carpeted floor in the surgical procedure room; and visible dirt and general disarray throughout the clinic. The abortionist, who operated the unsanitary clinic, also consistently violated practice guidelines for conscious sedation.⁵

Case Study – South Carolina:

In 1994, several women testified before the General Assembly of the South Carolina legislature that when they walked into some of the state's abortion clinics they saw bloody, unwashed sheets, bloody cots in recovery rooms, and dirty bathrooms. Clinic workers testified that the remains of unborn children were not disposed of properly, but rather rinsed down sinks.⁶

To help remedy the epidemic of substandard conditions at the nation's abortion clinics and for states that have already enacted minimal health and safety standards for abortion clinics, AUL has developed the "Abortion Patients' Enhanced Safety Act," legislation which requires abortion

³ See Special Report: Widespread Abortion Abuses in Texas (Mar. 1, 2011), available at <http://www.operationrescue.org/archives/tx-abortion-abuses/> (last visited Sept. 19, 2012).

⁴ Phoenix Police Department Report, July 15, 1998; testimony of Dr. John I. Biskind, *State v. Biskind*, No. CR99-00198 (Ariz. Superior Ct.), Feb. 13, 2001.

⁵ Consent Order, Board of Healing Arts of the State of Kansas, Docket No. 50-H, Feb. 14, 2005; Final Order, Board of Healing Arts of the State of Kansas, Docket No. 50-H-58, June 14, 2005.

⁶ Dial, *Abortion: A Dirty Industry*, CITIZEN MAGAZINE, July 2001.

clinics to meet the same health, safety, staffing, and other standards as ambulatory surgical centers (healthcare facilities that specialize in providing outpatient surgeries).

For more information, please contact AUL's Legislative Coordinator at (202) 741-4907 or Legislation@AUL.org.

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ABORTION PATIENTS’ ENHANCED SAFETY ACT

[Drafter’s Note: *The best candidates for this legislation have an established record of enacting protective legislation such as comprehensive informed consent requirements, parental consent, ultrasound requirements, and comprehensive and specifically targeted abortion clinic regulations. Moreover, several issues will need to be carefully considered before introducing this legislation including whether or not the administration of abortion-inducing drugs such as RU-486 will be specifically covered or excluded. Moreover, states that have abortion clinic regulations already on the books may also want to consider enacting specific ambulatory surgical center standards to remedy noted deficiencies in the existing regulations. Please contact AUL for assistance in this regard.*]

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

Section 1. Title.

This Act may be known and cited as the “Abortion Patients’ Enhanced Safety Act.”

Section 2. Legislative Findings and Purposes.

- (a) The Legislature of the State of *[Insert name of State]* finds that:
- (1) The *[vast majority]* of all abortions in this State are performed in clinics devoted solely to providing abortions and family planning services. Most women who seek abortions at these facilities do not have any relationship with the physician who performs the abortion either before or after the procedure and they do not return to the facility for post-surgical care. In most instances, the woman’s only actual contact with the abortion provider occurs simultaneously with the abortion procedure, with little opportunity to ask questions about the procedure, potential complications, and proper follow-up care.
 - (2) For most abortions, the woman arrives at the clinic on the day of the procedure, has the procedure in a room within the clinic, and recovers under the care of clinic staff, all without a hospital admission.
 - (3) “The medical, emotional, and psychological consequences of an abortion are serious and can be lasting” *H.L. v. Matheson*, 450 U.S. 398, 411 (1981).

- (4) Abortion is an invasive surgical procedure that can lead to numerous and serious medical complications. Potential complications for first trimester abortions include, among others, bleeding, hemorrhage, infection, uterine perforation, blood clots, cervical tears, incomplete abortion (retained tissue), failure to actually terminate the pregnancy, free fluid in the abdomen, acute abdomen, missed ectopic pregnancies, cardiac arrest, sepsis, respiratory arrest, reactions to anesthesia, fertility problems, emotional problems, and even death.
- (5) The risks for second trimester abortions are greater than for first trimester abortions. The risk of hemorrhage, in particular, is greater, and the resultant complications may require a hysterectomy, other reparative surgery, or a blood transfusion.
- (6) The State of [*Insert name of State*] has a legitimate concern for the public's health and safety. *Williamson v. Lee Optical*, 348 U.S. 483, 486 (1985).
- (7) The State of [*Insert name of State*] "has legitimate interests from the outset of pregnancy in protecting the health of women." *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 847 (1992). More specifically, the State of [*Insert name of 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).
- (8) Moreover, the State of [*Insert name of State*] has "a legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under circumstances that ensure maximum safety for the patient." *Roe v. Wade*, 410 U.S. 113, 150 (1973).
- (9) Since the Supreme Court's decision in *Roe v. Wade*, courts have repeatedly recognized that for the purposes of regulation, abortion services are rationally distinct from other routine medical services, because of the "particular gravitas of the moral, psychological, and familial aspects of the abortion decision." *Greenville Women's Clinic v. Bryant*, 222 F.3d 157, 173 (4th Cir. 2000), *cert. denied*, 531 U.S. 1191 (2001).
- (10) An ambulatory surgical center (ASC) [*or other appropriate term as used in existing state statutes, administrative rules, or other regulatory material(s)*] is a healthcare facility that specializes in providing surgery services in an outpatient

setting. ASCs generally provide a cost-effective and convenient environment that may be less stressful than what many hospitals offer. Particular ASCs may perform surgeries in a variety of specialties or dedicate their services to one specialty.

- (11) Patients who elect to have surgery in an ASC arrive on the day of the procedure, have the surgery in an operating room, and recover under the care of the nursing staff, all without a hospital admission.
- (b) Based on the findings in subsection (a) of this Act, it is the purpose of this Act to:
- (1) to define certain abortion clinics as “ambulatory surgical centers” [*or other appropriate term as used in existing state statutes, administrative rules, or other regulatory material(s)*] under the laws of this State and to subject them to licensing and regulation as such;
 - (2) to promote and enforce the highest standard for care and safety in facilities performing abortions in this State;
 - (3) to provide for the protection of public health through the establishment and enforcement of rigorous and medically appropriate standard of care and safety in abortion clinics; and
 - (4) to regulate the provision of abortion consistent with and to the extent permitted by the decisions of the Supreme Court of the United States.

Section 3. Definitions.

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*]⁷ 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;

⁷ This language is used when state officials intend the regulations prescribed herein to apply to the provision of abortion-inducing drugs (such as the use of RU-486).

- (2) Remove a dead unborn child caused by spontaneous abortion; or
 - (3) Remove an ectopic pregnancy.
- (b) “**Abortion clinic**” means a facility, other than an accredited hospital, in which five (5) or more first trimester abortions in any month or any second or third trimester abortions are performed.
- (c) “**Department**” means the [*Insert name of state department or agency that licenses and regulates ambulatory surgical centers or similar state-regulated entities*] of the State of [*Insert name of State*].

Section 4. Statutory Definition of “Ambulatory Surgical Center” [*Or Other Appropriate Term*] Modified to Include Certain Facilities Performing Abortions.

- (a) The term “**ambulatory surgical center**” [*or other appropriate term as used in existing state statutes, administrative rules, or other regulatory material(s)*] as used in [*Insert specific reference(s) to state statute(s), administrative rules, or other regulatory material(s) governing ambulatory surgical centers or similar state-regulated entities*] shall include abortion clinics which do not provide services or other accommodations for abortion patients to stay more than twenty-three (23) hours within the clinic.
- (b) All ambulatory surgical centers [*or other appropriate term as used in existing state statutes, administrative rules, or other regulatory material(s)*] operating in this State including abortion clinics must meet the licensing and regulatory standards prescribed in [*Insert specific reference(s) to state statute(s), administrative rules, or other regulatory material(s) providing licensing and regulatory standards for ambulatory surgical centers or similar state-regulated entities*].

Section 5. Criminal Penalties.

Whoever operates an abortion clinic as defined in this Act without a valid ambulatory surgical center [*or other appropriate term as used in existing state statute(s), administrative rules, or other regulatory material(s)*] license issued by the Department is guilty of a [*Insert proper penalty/offense classification*].

Section 6. Civil Penalties and Fines.

- (a) Any violation of this Act may be subject to a civil penalty or fine up to [*Insert appropriate amount*] imposed by the Department.
- (b) Each day of violation constitutes a separate violation for purposes of assessing civil penalties or fines.

(c) In deciding whether and to what extent to impose fines, the Department shall consider the following factors:

- (1) Gravity of the violation including the probability that death or serious physical harm to a patient or individual will result or has resulted;
- (2) Size of the population at risk as a consequence of the violation;
- (3) Severity and scope of the actual or potential harm;
- (4) Extent to which the provisions of the applicable statutes or regulations were violated;
- (5) Any indications of good faith exercised by licensee;
- (6) The duration, frequency, and relevance of any previous violations committed by the licensee; and
- (7) Financial benefit to the licensee of committing or continuing the violation.

(d) Both the Office of the Attorney General and the Office of the District Attorney [*or other appropriate classification such as "County Attorney"*] for the county in which the violation occurred may institute a legal action to enforce collection of civil penalties or fines.

Section 7. Injunctive Remedies.

In addition to any other penalty provided by law, whenever in the judgment of the Director of the [*Insert name of state department or agency that licenses and regulates ambulatory surgical centers or similar state-regulated entities*], any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of this Act, the Director shall make application to any court of competent jurisdiction for an order enjoining such acts and practices, and upon a showing by the Director that such person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court without bond.

Section 8. 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 9. 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 or any portion thereof is challenged.

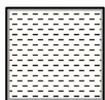
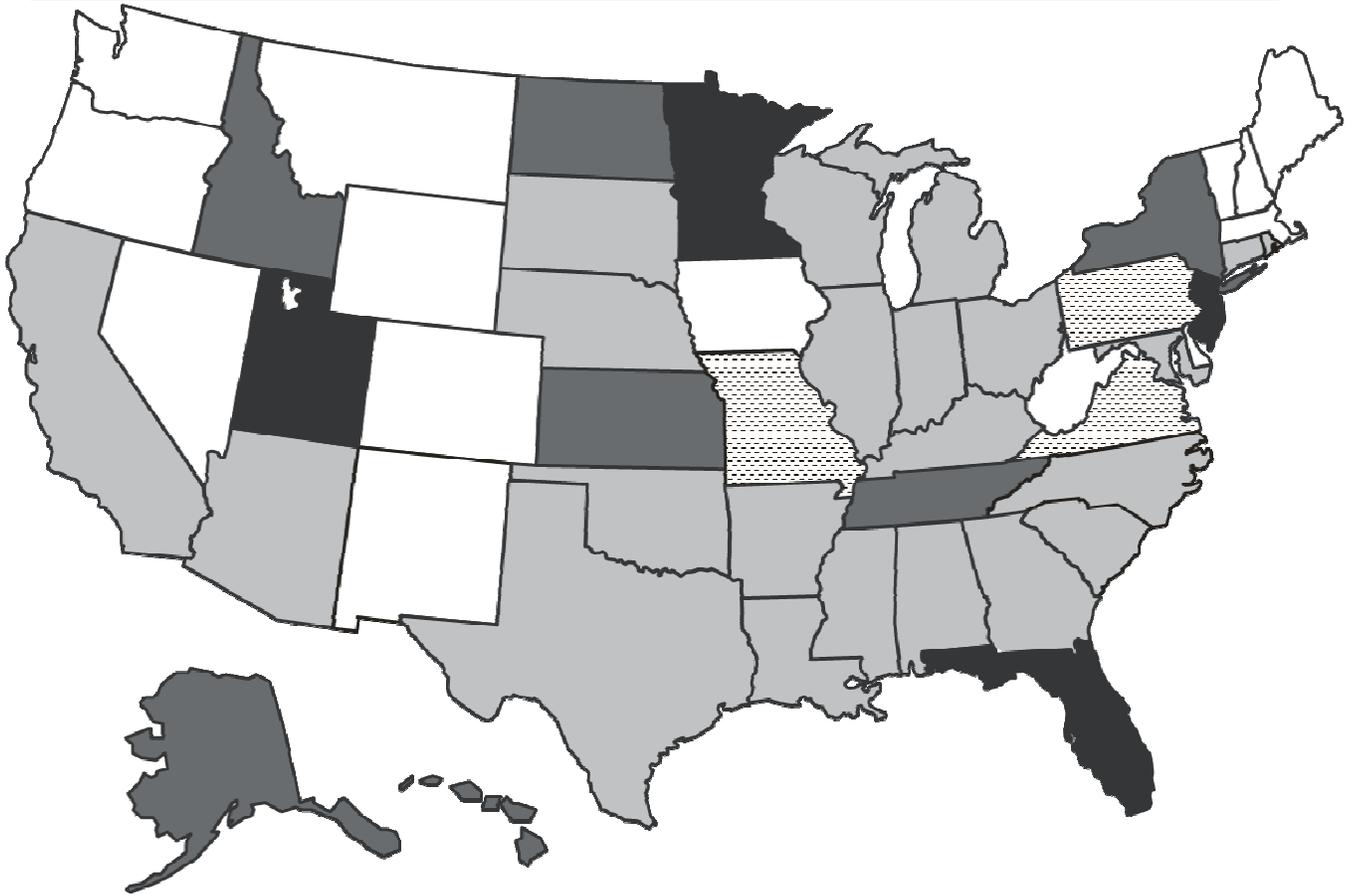
Section 10. Severability.

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 11. Effective Date.

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

STATE OF THE STATES: WHERE ARE WE NOW? ABORTION CLINIC REGULATIONS



Three states impose stringent ambulatory/outpatient surgical center standards on any facilities performing abortions: MO, PA, and VA.



Twenty-two states maintain varying degrees of abortion clinic regulations that apply to facilities performing abortions: AL, AZ, AR, CA, CT, GA, IL, IN, KY, LA, MD, MI, MS, NE, NC, OH, OK, RI, SC, SD, TX, and WI.



Four states regulate facilities performing post-first trimester abortions: FL, MN, NJ, and UT.



Seven states have abortion clinic regulations that are in litigation, enjoined or otherwise not enforced: AK, HI, ID, KS, NY, ND, and TN.

More detailed information about the need and justification for comprehensive health and safety regulations for abortion clinics can be found in AUL's annual publication *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:

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