

[**Drafter’s note:** The *Women’s Protection Project* is comprised of six pieces of AUL model legislation, along with a new enforcement module. This legislative package is intended to be introduced and debated as a single, omnibus measure. However, some states maintain a “single subject” or similar rule for legislation, precluding the possibility of an omnibus measure. In those states, each component piece of legislation should be introduced separately. AUL legal and policy experts are available to provide advice and drafting assistance.]

ABORTION PATIENTS’ ENHANCED SAFETY ACT

Drawing on decades of leadership and experience with regulating abortion facilities and providers, AUL’s “Abortion Patients’ Enhanced Safety Act” mandates that abortion clinics meet exacting and medically appropriate standards of patient care and requires regular inspections by state health officials. In light of the tragedy of Dr. Kermit Gosnell’s “house of horrors” abortion clinic in Philadelphia and the fact that, since 2010, at least 15 states have launched investigations into abortion clinics and individual abortion providers, AUL’s language provides the best means for protecting women from the all-too-often substandard conditions at today’s “back alley” abortion clinics.

[**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*]¹ with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use [, *prescription, or means*] is not an abortion if done with the intent to:

- (1) Save the life or preserve the health of the unborn child;
- (2) Remove a dead unborn child caused by spontaneous abortion; or
- (3) Remove an ectopic pregnancy.

(b) “**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*

¹ 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).

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*].

WOMEN'S RIGHT TO KNOW ACT

Abortion clinics all too often fail to provide adequate and accurate information to women considering abortion. As a result, many women are physically and psychologically harmed by the abortion process. AUL's "The Woman's Right to Know Act" is designed to equip women with the knowledge they need before making an abortion decision and to ensure that their consent is valid. This Act would require basic information about the abortion procedure, its risks and alternatives, to be provided to women at least twenty-four (24) hours before an abortion.

HOUSE/SENATE BILL No. _____

By Representatives/Senators _____

Section 1. Title.

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

Section 2. Legislative Findings and Purposes.

- (a) The [*Legislature*] of the State of [*Insert name of State*] finds that:
- (1) It is essential to the psychological and physical well-being of a woman considering an abortion that she receive complete and accurate information on abortion and its alternatives.
 - (2) The knowledgeable exercise of a woman's decision to have an abortion depends on the extent to which she receives sufficient information to make an informed choice between two alternatives: giving birth or having an abortion.
 - (3) Adequate and legitimate informed consent includes information which "relat[es] to the consequences to the fetus." *Planned Parenthood v. Casey*, 505 U.S. 833, 882-883 (1992).
 - (4) [*Insert percentage*] of all abortions are performed in clinics devoted solely to providing abortions and family planning services. Most women who seek abortions at these facilities do not have any relationship with the physician who

performs the abortion, before or after the procedure. They do not return to the facility for post-surgical care. In most instances, the woman's only actual contact with the physician occurs simultaneously with the abortion procedure, with little opportunity to receive counseling concerning her decision.

- (5) The decision to abort “is an important, and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences.” *Planned Parenthood v. Danforth*, 428 U.S. 52, 67 (1976).
 - (6) “The medical, emotional, and psychological consequences of an abortion are serious and can be lasting. . . .” *H.L. v. Matheson*, 450 U.S. 398, 411 (1981).
 - (7) Abortion facilities or providers often offer only limited or impersonal counseling opportunities.
 - (8) Many abortion facilities or providers hire untrained and unprofessional “counselors” to provide pre-abortion counseling, but whose primary goal is actually to “sell” or promote abortion services.
- (b) Based on the findings in Subsection (a) of this Section, the purposes of this Act are to:
- (1) Ensure that every woman considering an abortion receives complete information on abortion and its alternatives and that every woman submitting to an abortion does so only after giving her voluntary and fully-informed consent to the abortion procedure;
 - (2) Protect unborn children from a woman's uninformed decision to have an abortion;
 - (3) Reduce “the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed.” *Planned Parenthood v. Casey*, 505 U.S. 833, 882 (1992); and
 - (4) Adopt the construction of the term “medical emergency” accepted by the U.S. Supreme Court in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

Section 3. Definitions.

For purposes of this Act only:

- (a) “**Abortion**” means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable

pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:

- (1) Save the life or preserve the health of the unborn child;
- (2) Remove a dead unborn child caused by spontaneous abortion; or
- (3) Remove an ectopic pregnancy.

(b) “**Complication**” means any adverse physical or psychological condition arising from the performance of an abortion, which includes but is not limited to: uterine perforation, cervical perforation, infection, bleeding, hemorrhage, blood clots, failure to actually terminate the pregnancy, incomplete abortion (retained tissue), pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, metabolic disorder, shock, embolism, coma, placenta previa in subsequent pregnancies, preterm delivery in subsequent pregnancies, free fluid in the abdomen, adverse reactions to anesthesia and other drugs; any psychological or emotional complications such as depression, anxiety, and sleeping disorders; and any other “adverse event” as defined by the Food and Drug Administration (FDA) criteria provided in the Medwatch Reporting System. The Department may further define “complication.”

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

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

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

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

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

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

(i) “**Medical emergency**” means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to

necessitate the immediate termination of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

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

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

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

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

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

Section 4. Informed Consent Requirement.

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

(a) At least twenty-four (24) hours before the abortion, the physician who is to perform the abortion or the referring physician has informed the woman, orally and in person, of the following:

- (1) The name of the physician who will perform the abortion;
- (2) Medically-accurate information that a reasonable patient would consider material to the decision of whether or not to undergo the abortion, including (a) a description of the proposed abortion method; (b) the immediate and long-term medical risks associated with the proposed abortion method including, but not limited to, the risks of infection, hemorrhage, cervical or uterine perforation, danger to subsequent pregnancies, and increased risk of breast cancer; and (c) alternatives to the abortion;
- (3) The probable gestational age of the unborn child at the time the abortion is to be performed;

- (4) The probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed;
- (5) The medical risks associated with carrying her child to term; and
- (6) Any need for anti-Rh immune globulin therapy if she is Rh negative, the likely consequences of refusing such therapy, and the cost of the therapy.

(b) At least twenty-four (24) hours before the abortion, the physician who is to perform the abortion, the referring physician, or a qualified person has informed the woman, orally and in person, that:

- (1) Medical assistance benefits may be available for prenatal care, childbirth, and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials and informational DVD given to her and described in Section 5.
- (2) The printed materials and informational DVD in Section 5 describe the unborn child and list agencies that offer alternatives to abortion.
- (3) The father of the unborn child is liable to assist in the support of this child, even in instances where he has offered to pay for the abortion. In the case of rape or incest, this information may be omitted.
- (4) She is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally-funded benefits to which she might otherwise be entitled.
- (5) The information contained in the printed materials and informational DVD given to her, as described in Section 5, are also available on a State-maintained website.

(c) The information required in Subsections 4(a) and 4(b) is provided to the woman individually and in a private room to protect her privacy, to maintain the confidentiality of her decision, and to ensure that the information focuses on her individual circumstances and that she has an adequate opportunity to ask questions.

(d) At least twenty-four (24) hours before the abortion, the woman is given a copy of the printed materials and permitted to view or given a copy of the informational DVD described in Section 5. If the woman is unable to read the materials, they shall be read to her. If the woman

asks questions concerning any of the information or materials, answers shall be provided to her in a language she can understand.

[Optional – Information on Fetal Pain: (e) At least twenty-four (24) hours prior to an abortion being performed or induced on an unborn child who is twenty (20) weeks gestation or more, the physician performing the abortion on the pregnant woman, the referring physician, or a qualified person assisting the physician shall, orally and in person, offer information on fetal pain to the pregnant woman. This information and counseling shall include, but shall not be limited to, the following:

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

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

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

[(h)] In the event of a medical emergency requiring an immediate termination of pregnancy, the physician who performed the abortion shall clearly certify in writing the nature of the medical emergency and the circumstances which necessitated the waiving of the informed

consent requirements of this Act. This certification shall be signed by the physician who performed the emergency abortion, and shall be permanently filed in both the records of the physician performing the abortion and the records of the facility where the abortion takes place.

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

Section 5. Publication of Materials.

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

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

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

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

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

The materials shall state that it is unlawful for any individual to coerce a woman to undergo an abortion [*Insert reference to State's anti-coercion statute(s), if any*] and that if a minor is denied financial support by the minor's parents, guardian, or custodian due to the minor's refusal to have an abortion performed, the minor shall be deemed emancipated for the purposes of eligibility for public-assistance benefits, except that such benefits may not be used to obtain an abortion. The materials shall also state that any physician who performs an abortion upon a woman without her

informed consent may be liable to her for damages in a civil action at law and that the law permits adoptive parents to pay costs of prenatal care, childbirth, and neonatal care. The materials shall also include the following statement:

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

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

(c) Materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the unborn child at two (2) week gestational increments from fertilization to full term, including color photographs of the developing unborn child at two (2) week gestational increments. The descriptions shall include information about brain and heart functions, the presence of external members and internal organs during the applicable stages of development, and any relevant information on the possibility of the unborn child's survival. If a photograph is not available, a picture must contain the dimensions of the unborn child and must be realistic. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages.

(d) Materials which contain objective information describing the various surgical and drug-induced methods of abortion, as well as the immediate and long-term medical risks commonly associated with each abortion method including, but not limited to, the risks of infection, hemorrhage, cervical or uterine perforation or rupture, danger to subsequent pregnancies, increased risk of breast cancer, the possible adverse psychological effects associated with an abortion, and the medical risks associated with carrying a child to term.

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

- (f) A checklist certification form to be used by the physician or a qualified person under Subsection 4[(f)] of this Act, which will list all the items of information which are to be given to the woman by a physician or the agent under this Act.
- (g) The materials shall be printed in a typeface large enough to be clearly legible.
- (h) The Department shall produce a standardized DVD that may be used statewide, presenting the information described in Subsections 5(a), 5(b), 5(c), 5(d), and 5(e), in accordance with the requirements of those Subsections. In preparing the DVD, the Department may summarize and make reference to the printed comprehensive list of geographically indexed names and services described in Subsection 5(a). The DVD shall, in addition to the information described in Subsections 5(a), 5(b), 5(c), 5(d), and 5(e), show an ultrasound of the heartbeat of an unborn child at four (4) to five (5) weeks gestational age, at six (6) to eight (8) weeks gestational age, and each month thereafter, until viability. That information shall be presented in an objective, unbiased manner designed to convey only accurate scientific information.
- (i) The materials required under this Section and the DVD described in Subsection 5(h) shall be available at no cost from the Department upon request and in appropriate number to any person, facility, or hospital.

Section 6. Medical Emergencies.

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

Section 7. Criminal Penalties.

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

Section 8. Civil Penalties.

- (a) In addition to any and all remedies available under the common or statutory law of this State, failure to comply with the requirements of this Act shall:
- (1) Provide a basis for a civil malpractice action for actual and punitive damages.
 - (2) Provide a basis for a professional disciplinary action under [*Medical Malpractice Act*].

- (b) No civil liability may be assessed against the female upon whom the abortion is performed.
- (c) When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the abortion was performed.
- (d) If judgment is rendered in favor of the plaintiff, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant.
- (e) If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for reasonable attorney's fee in favor of the defendant against the plaintiff.

Section 9. Reporting.

(a) For the purpose of promoting maternal health and life by adding to the sum of medical and public health knowledge through the compilation of relevant data, and to promote the State's interest in protecting the unborn child, a report of each abortion performed shall be made to the Department on forms prescribed by it. The reports shall be completed by the hospital or other licensed facility in which the abortion occurred, signed by the physician who performed the abortion, and transmitted to the Department within fifteen (15) days after each reporting month. The report forms shall not identify the individual patient by name and shall include the following information:

- (1) Identification of the physician who performed the abortion, the facility where the abortion was performed, and the referring physician, agency, or service, if any. Notwithstanding any provision of law to the contrary, the Department shall ensure that the identification of any physician or other health care provider reporting under this Section shall not be released or otherwise made available to the general public.
- (2) The county and state in which the woman resides.
- (3) The woman's age.
- (4) The number of prior pregnancies and prior abortions of the woman.
- (5) The probable gestational age of the unborn child.

- (6) The type of procedure performed or prescribed and the date of the abortion.
- (7) Preexisting medical condition(s) of the woman which would complicate pregnancy, if any.
- (8) Medical complication(s) which resulted from the abortion, if known.

[Drafter's Note: Please refer to AUL's "Abortion Complication Reporting Act" for more detail regarding reporting of abortion complications.]

- (9) The length and weight of the aborted child for any abortion performed pursuant to a medical emergency as defined in Section 6 of this Act.
 - (10) Basis for any medical judgment that a medical emergency existed which excused the physician from compliance with any provision of this Act.
- (b) When an abortion is performed during the first (1st) trimester of pregnancy, the tissue that is removed shall be subjected to a gross or microscopic examination, as needed, by the physician or a qualified person designated by the physician to determine if a pregnancy existed and was terminated. If the examination indicates no fetal remains, that information shall immediately be made known to the physician and sent to the Department within fifteen (15) days of the analysis.
- (c) When an abortion is performed after the first (1st) trimester of pregnancy, the physician must certify whether or not the child was viable, and the dead unborn child and all tissue removed at the time of the abortion shall be submitted for tissue analysis to a board-eligible or certified pathologist. If the report reveals evidence of viability or live birth, the pathologist shall report such findings to the Department within fifteen (15) days, and a copy of the report shall also be sent to the physician performing the abortion. The Department shall prescribe a form on which pathologists may report any evidence of live birth, viability, or absence of pregnancy.
- (d) Every facility in which an abortion is performed within this State during any quarter year shall file with the Department a report showing the total number of abortions performed within the hospital or other facility during that quarter year. This report shall also show the total abortions performed in each trimester of pregnancy. These reports shall be submitted on a form prescribed by the Department that will enable a facility to indicate whether or not it is receiving any State-appropriated funds. The reports shall be available for public inspection and copying only if the facility receives State-appropriated funds within the twelve (12)-calendar-month period immediately preceding the filing of the report. If the facility indicates on the form that it is not receiving State-appropriated funds, the Department shall regard that facility's report as confidential unless it receives other evidence that causes it to conclude that the facility receives State-appropriated funds.

(e) After thirty (30) days public notice following the law's enactment, the Department shall require that all reports of maternal deaths occurring within the State arising from pregnancy, childbirth, or intentional abortion state the cause of death, the duration of the woman's pregnancy, when her death occurred, and whether or not the woman was under the care of a physician during her pregnancy prior to her death. The Department shall issue any necessary regulations to assure that information is reported, and conduct its own investigation, if necessary, to ascertain such data.

Known incidents of maternal mortality of nonresident women arising from induced abortion performed in this State shall be included in the report as incidents of maternal mortality arising from induced abortions.

Incidents of maternal mortality arising from continued pregnancy or childbirth and occurring after induced abortion has been attempted but not completed, including deaths occurring after induced abortion has been attempted but not completed as a result of ectopic pregnancy, shall be included as incidents of maternal mortality arising from induced abortion.

(f) Every physician who is called upon to provide medical care or treatment to a woman who is in need of medical care because of a complication or complications resulting, in the good faith judgment of the physician, from having undergone an abortion or attempted abortion, shall prepare a report. The report must be filed with the Department within thirty (30) days of the date of the physician's first examination of the woman. The report shall be on forms prescribed by the Department. The forms shall contain the following information, as received, and such other information except the name of the patient, as the Department may from time to time require:

- (1) Age of the patient;
- (2) Number of pregnancies patient may have had prior to the abortion;
- (3) Number and type of abortions patient may have had prior to this abortion;
- (4) Name and address of the facility where the abortion was performed;
- (5) Gestational age of the unborn child at the time of the abortion, if known;
- (6) Type of abortion performed, if known;
- (7) Nature of complication or complications;
- (8) Medical treatment given; and

(9) The nature and extent, if known, of any permanent condition caused by the complication.

(g) Reports filed pursuant to Subsections 9(a) or 9(f) shall not be deemed public records and shall remain confidential, except that disclosure may be made to law enforcement officials upon an order of a court after application showing good cause. The court may condition disclosure of the information upon any appropriate safeguards it may impose.

(h) The Department shall prepare a comprehensive annual statistical report for the Legislature based upon the data gathered from reports under Subsections 9(a) and 9(f). The statistical report shall not lead to the disclosure of the identity of any physician or person filing a report under Subsections 9(a) or 9(f), nor of any patient about whom a report is filed. The statistical report shall be available for public inspection and copying.

(i) Original copies of all reports filed under Subsections 9(a), 9(d), and 9(f) shall be available to the [*State Medical Board*] for use in the performance of its official duties.

(j) The following penalties shall attach to any failure to comply with the requirements of this Section:

(1) Any person required under this Section 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 [*Medical Practice Act*].

(2) 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 penalty/offense classification*].

(3) Any person who willfully discloses any information obtained from reports filed pursuant to Subsection 9(a) or 9(f), other than that disclosure authorized under Subsection 9(g), or as otherwise authorized by law, is guilty of a [*Insert appropriate penalty/offense classification*].

(4) Intentional, knowing, reckless, or negligent failure of the physician to examine an unborn child or tissue remains or submit an unborn child or tissue remains to a pathologist as required by Subsections 9(b) or 9(c), or intentional, knowing, or reckless failure of the pathologist to report any evidence of live birth or viability to the Department in the manner and within the time prescribed in Subsection 9(c) is a [*Insert appropriate penalty/offense classification*].

- (5) In addition to the above penalties, any person, organization, or facility who willfully violates any of the provisions of this Section requiring reporting shall upon conviction:
- a. For the first time, have his, her, or its license suspended for a period of six (6) months.
 - b. For a second time, have his, her, or its license suspended for a period of one (1) year.
 - c. For the third time, have his, her, or its license revoked.

(k) The Department shall create the forms required by this Act within sixty (60) days after the effective date of this Act and shall cause to be published, within ninety (90) days after the effective date of this Act, the printed materials described in this Act. No provision of this Act requiring the reporting of information on forms published by the Department, or requiring the distribution of printed materials published by the Department pursuant to this Act, shall be applicable until ten (10) days after the requisite forms are first created and printed materials are first published by the Department or until the effective date of this Act, whichever is later.

Section 10. Construction.

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

Section 11. 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 12. 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 13. Effective Date.

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

PARENTAL INVOLVEMENT ENHANCEMENT ACT

Americans, by a wide majority, support laws requiring parental consent or notice prior to a chemical or surgical abortion procedure being performed on a minor. Specifically, these laws boast a 71 % nationwide approval rating, protect the health and wellbeing of minors, respect parental rights, and save the lives of unborn babies.

AUL’s “Parental Involvement Enhancement Act” provides a variety of legally sound options to enhance the protections already available in existing parental involvement laws including notarization requirements, requirements for identification and proof of relationship, more stringent standards for judicial bypass proceedings, and mandates that abortion providers fully disclose and discuss abortion’s risks and alternatives with both the minor and her parents or guardians.

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

[Drafter’s Note: The Sections in this model may be enacted individually or in groups, depending on the needs of an individual state. Each substantive Section contains a drafter’s note indicating when enactment of the enhancement would be appropriate, and provides language that may be tailored to fit a state’s particular law. For assistance in drafting a complete overhaul of a state’s parental notice or consent law, please see also AUL’s “Parental Consent for Abortion Act” or “Parental Notification of Abortion Act.”]

Section 1. Short Title.

This Act may be cited as the “Parental Involvement Enhancement Act.”

Section 2. Legislative Findings and Purposes.

- (a) The Legislature of the State of *[Insert name of State]* finds that:
- (1) Immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences.
 - (2) The medical, emotional, and psychological consequences of abortion are sometimes serious and can be lasting, particularly when the patient is immature.

- (3) The capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related.
- (4) Parents ordinarily possess information essential to a physician's exercise of his or her best medical judgment concerning the child.
- (5) Parents who are aware that their minor daughter has had an abortion may better ensure that she receives adequate medical attention after her abortion.
- (6) Parental consultation is usually desirable and in the best interests of the minor.

(b) The [Legislature]'s purposes in enacting this enhancement to the State of [Insert name of State]'s parental [consent or notice] law are to further the important and compelling State interests of:

- (1) Protecting minors against their own immaturity;
- (2) Fostering family unity and preserving the family as a viable social unit;
- (3) Protecting the constitutional rights of parents to rear children who are members of their household;
- (4) Reducing teenage pregnancy and abortion; and
- (5) In light of the foregoing statements of purpose, allowing for judicial bypasses of the parental [consent or notice] requirement to be made only in exceptional or rare circumstances.

Section 3. Definitions.

[Drafter's Note: These are recommended definitions, but some may not be compatible with a state's existing parental involvement law. In drafting a specific bill, care should be taken to select only those definitions that are compatible with existing state law or with the intent of the new bill.]

For purposes of this Act only:

(a) “**Abortion**” means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:

- (1) Save the life or preserve the health of the unborn child;
 - (2) Remove a dead unborn child caused by spontaneous abortion; or
 - (3) Remove an ectopic pregnancy.
- (b) “**Actual notice**” means the giving of notice directly, in person or by telephone.
- (c) “**Constructive notice**” means notice by certified mail to the last known address of the parent or guardian with delivery deemed to have occurred forty-eight (48) hours after the certified notice is mailed.
- (d) “**Coercion**” means restraining or dominating the choice of a pregnant woman by force, threat of force, or deprivation of food and shelter.
- (e) “**Consent**” means, in the case of a pregnant woman who is less than eighteen (18) years of age, a notarized written statement signed by the pregnant woman and her mother, father, or legal guardian declaring that the pregnant woman intends to seek an abortion and that her mother, father, or legal guardian consents to the abortion; or, in the case of a pregnant woman who is an incompetent person, a notarized written statement signed by the pregnant woman’s guardian declaring that the guardian consents to the performance of an abortion upon the pregnant woman.
- (f) “**Department**” means the Department of [*Insert appropriate title*] of the State of [*Insert name of State*].
- (g) “**Emancipated minor**” means any person under eighteen (18) years of age who is or has been married or who has been legally emancipated.
- (h) “**Incompetent**” means any person who has been adjudged a disabled person and has had a guardian appointed for her under the [*State Probate Act or other appropriate state law*].
- (i) “**Medical emergency**” means a condition that, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.
- (j) “**Neglect**” means the failure of a parent or legal guardian to supply a minor with necessary food, clothing, shelter, or medical care when reasonably able to do so or the failure to protect a minor from conditions or actions that imminently and seriously endanger the minor’s physical or mental health when reasonably able to do so.

(k) “**Physical abuse**” means any physical injury intentionally inflicted by a parent or legal guardian on a minor.

(l) “**Physician,**” “**attending physician,**” or “**referring physician**” means any person licensed to practice medicine in this State. The term includes medical doctors and doctors of osteopathy.

(m) “**Pregnant woman**” means a woman who is pregnant and is less than eighteen (18) years of age and not emancipated, or who has been adjudged an incompetent person under [*Insert citation(s) or other reference(s) to state statute(s) relating to petition and hearing; independent evaluation, etc.*].

(n) “**Sexual abuse**” means any sexual conduct or sexual penetration as defined in [*Insert citation(s) or other reference(s) to appropriate section(s) of the state criminal code or other appropriate law(s)*] and committed against a minor by a parent or legal guardian.

Section [4]. Notarized Consent.

[Drafter’s Note: This enhancement is appropriate for a state with a parental consent law that does not already require notarized consent.]

(a) No person shall perform an abortion upon a pregnant woman unless, in the case of a woman who is less than eighteen (18) years of age, he or she first obtains the notarized written consent of both the pregnant woman and one of her parents or her legal guardian; or, in the case of a woman who is an incompetent person, he or she first obtains the notarized written consent of her guardian.

(b) The physician shall keep the notarized written consent of the parent or legal guardian in the medical file of the pregnant woman for five (5) years past the majority of the pregnant woman, but in no event less than seven (7) years.

Section [5]. Notarized Waiver of Notice Requirement.

[Drafter’s Note: This enhancement is appropriate for a state with a parental notice law that permits the person(s) entitled to notice to waive the requirement.]

(a) Notice is not required if the physician obtains a notarized written statement by the pregnant woman’s parent or legal guardian, dated not more than 30 days before the abortion, waiving the right of the parent or legal guardian to notice of the pregnant woman’s abortion.

(b) The physician shall keep a copy of the notarized written statement of the parent or legal guardian waiving their right to notice in the medical file of the pregnant woman for five (5) years past the majority of the pregnant woman, but in no event less than seven (7) years.

Section [6]. Proof of Identification and Relationship to Pregnant Woman – Consent.

[Drafter's Note: This enhancement is appropriate for a state with a parental consent law that does not require the consenting parent or guardian to provide identification or proof of the parent or guardian's relationship to the pregnant woman.]

(a) The physician shall obtain from the parent or legal guardian entitled to consent:

(1) Government-issued proof of the identity of the parent or legal guardian; and

(2) Written documentation that establishes that the parent or legal guardian is the lawful parent or legal guardian of the pregnant woman.

(b) The physician shall keep a copy of the proof of identification of the parent or legal guardian and the written documentation that establishes the relationship of the parent or legal guardian to the pregnant woman in the medical file of the pregnant woman for five (5) years past the majority of the pregnant woman, but in no event less than seven (7) years.

(c) A physician receiving parental consent under this section shall execute for inclusion in the medical record of the pregnant woman an affidavit stating: "I, (Insert name of physician), certify that according to my best information and belief, a reasonable person under similar circumstances would rely on the information presented by both the pregnant woman and her parent or legal guardian as sufficient evidence of identity and relationship."

Section [7]. Proof of Identification and Relationship to Pregnant Woman – Waiver of Notice Requirement.

[Drafter's Note: This enhancement is appropriate for a state with a parental notice law that permits the person(s) entitled to notice to waive the requirement.]

(a) In lieu of the notice required by this section, the physician shall obtain from the parent or legal guardian entitled to notice:

(1) Government-issued proof of the identity of the parent or legal guardian;

(2) Written documentation that establishes that the parent or legal guardian is the lawful parent or legal guardian of the pregnant woman; and

(3) A signed statement by the parent or legal guardian that the parent or legal guardian has been notified that an abortion is to be performed on the pregnant woman.

(b) The physician shall keep a copy of the proof of identification of the parent or legal guardian and the written documentation that establishes the relationship of the parent or legal guardian to the pregnant woman in the medical file of the pregnant woman for five (5) years past the majority of the pregnant woman, but in no event less than seven (7) years.

(c) A physician receiving parental notice under this section shall execute for inclusion in the medical record of the pregnant woman an affidavit stating: "I, (Insert name of physician), certify that according to my best information and belief, a reasonable person under similar circumstances would rely on the information presented by both the pregnant woman and her parent or legal guardian as sufficient evidence of identity and relationship."

Section [8]. Notice of Post-Emergency.

[Drafter's Note: This enhancement is appropriate for states with parental consent or parental notification laws. This suggested language is based on laws in Oklahoma, Florida, and South Dakota.]

(a) [*Consent or Notice*] shall not be required under section [*Insert section number*] of this Act if the attending physician certifies in the minor or incompetent woman's medical record that a medical emergency exists and there is insufficient time to [*obtain the required consent or provide the required notice*]. However, the attending physician shall, within twenty-four (24) hours after completion of the abortion, notify one of the parents or the legal guardian of the minor or incompetent woman in the manner provided in this section that a medical emergency abortion was performed on the minor or incompetent woman and of the circumstances that warranted invocation of this section.

(b) Unless the minor or incompetent woman gives notice of her intent to seek a judicial waiver pursuant to section [*Insert number for judicial waiver section*] of this [*Act*], the attending physician shall verbally inform the parent or legal guardian of the minor or incompetent woman within twenty-four (24) hours after the performance of a medical emergency abortion that an abortion was performed on the minor or incompetent woman. The attending physician shall also inform the parent or legal guardian of the basis for the certification of the physician required under paragraph (a) of this section, and provide details regarding any additional risks to the minor or incompetent woman. The attending physician shall also send a written notice of the

performed abortion by certified mail to the last known address of the parent or legal guardian, restricted delivery, return receipt requested.

(c) If the minor or incompetent woman gives notice to the attending physician of her intent to seek a judicial waiver pursuant to section [*Insert number for judicial waiver section*] of this title, the physician shall file a notice with any judge of a court of competent jurisdiction that the minor has given such notice and shall provide the information the physician would have been required to provide the parent under paragraph (b) of this section if the minor or incompetent woman had not given notice of her intent to seek a judicial waiver.

(d) The court shall expeditiously schedule a confidential conference with notice to the minor or incompetent woman and the physician. If the minor or incompetent woman is able to participate in the proceedings, the court shall advise the minor or incompetent woman that she has the right to court-appointed counsel and shall, upon her request, provide the minor or incompetent woman with such counsel. If the minor or incompetent woman is unable to participate, the court shall appoint counsel on behalf of the minor or incompetent woman.

(e) After an appropriate hearing, the court, taking into account the medical condition of the minor or incompetent woman, shall set a deadline by which the minor or incompetent woman must file a petition or motion pursuant to section [*Insert number for judicial waiver section*] of this [*Act*]. The court may subsequently extend the deadline in light of the medical condition of the minor or incompetent woman or other equitable considerations. If the minor or incompetent woman does not file a petition or motion by the deadline, either in that court or in another court of competent jurisdiction with a copy filed in that court, the court shall direct that the court clerk provide the notice to a parent or legal guardian.

Section [9]. Venue.

[Drafter's Note: This enhancement is for any state that does not restrict the venue in which a minor may file a petition for judicial waiver of the state's consent or notice requirement.]

The pregnant woman may petition a [*circuit*] court in the county in which the pregnant woman resides for a waiver of the [*consent or notice*] requirement.

Section [10]. Burden of Evidence for Bypass.

[Drafter's Note: This enhancement is for a state that wishes to define or to provide a heightened evidentiary requirement in judicial waiver proceedings.]

(a) If the court finds, by clear and convincing evidence, that the pregnant woman is both sufficiently mature and well-informed to decide whether to have an abortion, the court shall issue an order authorizing the pregnant woman to consent to the performance or inducement of an abortion without the *[consent or notification]* of a parent or guardian and the court shall execute the required forms. If the court does not make the finding specified in this subsection or subsection (b) of this section, it shall dismiss the petition.

(b) If the court finds, by clear and convincing evidence, that the pregnant woman is the victim of physical or sexual abuse by one or both of her parents or her legal guardian, or that *[obtaining the consent or the notification]* of a parent or legal guardian is not in the best interest of the pregnant woman, the court shall issue an order authorizing the pregnant woman to consent to the performance or inducement of an abortion without the *[consent or notification]* of a parent or guardian. If the court does not make the finding specified in this subsection or subsection (a) of this section, it shall dismiss the petition.

Section [11]. Judicial Bypass Standards.

[Drafter's Note: This enhancement is for states that want to enact specific standards for courts to use when evaluating judicial waiver petitions.]

(a) If the pregnant woman claims to be mature and well-informed at a proceeding held pursuant to *[Insert section number]*, the pregnant woman must prove by clear and convincing evidence that she is sufficiently mature and capable of giving informed consent without *[obtaining consent from or giving notice to]* her parent or legal guardian based on her experience level, perspective, and judgment.

(b) In assessing the pregnant woman's experience level, the court may consider, among other relevant factors, the pregnant woman's age and experiences working outside the home, living away from home, traveling on her own, handling personal finances, and making other significant decisions. In assessing the pregnant woman's perspective, the court may consider, among other relevant factors, what steps the pregnant woman took to explore her options and the extent to which she considered and weighed the potential consequences of each option. In assessing the pregnant woman's judgment, the court may consider, among other relevant factors, the pregnant

woman's conduct since learning of her pregnancy and her intellectual ability to understand her options and to make an informed decision.

(c) In assessing whether, by clear and convincing evidence, [*obtaining the consent or notification*] of a pregnant woman's parent or guardian is not in her best interest, a court may not consider the potential financial impact on the pregnant woman or the pregnant woman's family if the pregnant woman does not have an abortion.

Section [12]. Mental Health Evaluation.

[Drafter's Note: This enhancement is for any state that wants to better protect minors from their own immaturity or coercion or abuse by others, and is based on Louisiana law.]

(a) Prior to court proceedings addressing a petition for judicial waiver, the court may require the pregnant woman to participate in an evaluation and counseling session with a mental health professional from the [*State Health Department*] or a staff member from the [*State Department of Social Services*], or both. Such evaluation shall be confidential and scheduled expeditiously.

(b) Such evaluation and counseling session shall be for the purpose of developing trustworthy and reliable expert opinion concerning the pregnant woman's sufficiency of knowledge, insight, judgment, and maturity with regard to her abortion decision in order to aid the court in its decision and to make the state's resources available to the court for this purpose. Persons conducting such sessions may employ the information and printed materials referred to in [*Insert citation(s) to state informed consent law, if applicable*] in examining how well the pregnant woman is informed about pregnancy, fetal development, abortion risks and consequences, and abortion alternatives, and should also endeavor to verify that the pregnant woman is seeking an abortion of her own free will and is not acting under coercion, intimidation, threats, abuse, undue pressure, or extortion by any other persons.

(c) The results of such evaluation and counseling shall be reported to the court by the most expeditious means, commensurate with security and confidentiality, to assure receipt by the court prior to a hearing on the pregnant woman's petition.

Section [13]. Disclosure and Consent Form.

[Drafter's Note: This enhancement is appropriate for states with parental consent laws. It is based on the consent form developed by the Texas Medical Board.]

- (a) A form created by the [*Insert appropriate department*] shall be used by physicians to obtain the consent required prior to performing an abortion on a minor who is not emancipated.
- (b) A form is not valid, and therefore consent is not sufficient, unless:
- (1) A parent or legal guardian initials each page of the form, indicating that he or she has read and understands the information included on that page;
 - (2) A parent or legal guardian signs the last page of the form in front of a person who is a notary public;
 - (3) The minor initials each list of risks and hazards, detailed in sections (c)(4)(i)-(iv) below;
 - (4) The minor signs a “consent statement,” described in section (c)(6) below; and
 - (5) The physician signs the declaration described in section (c)(7) below.
- (c) The form shall include, but is not limited to, the following:
- (1) A description of the minor’s rights, including her right to informed consent;
 - (2) A description of the parent or legal guardian’s rights under [*Insert name of State*] law;
 - (3) A detailed description of the surgical and/or medical procedures that are planned to be performed on the minor;
 - (4) A detailed list of the risks and hazards related to the surgical and medical procedures planned for the minor, including, but not limited to, the following:
 - i. Risks and hazards that may occur in connection with any surgical, medical, and/or diagnostic procedure: potential for infection; blood clots in veins and lungs; hemorrhage (heavy bleeding); allergic reactions; or death.
 - ii. Risks and hazards that may occur with a surgical abortion: hemorrhage (heavy bleeding); a hole in the uterus (uterine perforation) or other damage to the uterus; sterility; injury to the bowel and/or bladder; a possible hysterectomy as a result of complication or injury during the procedure; and failure to remove all products of conception that may result in an additional procedure.

- iii. Risks and hazards that may occur with a medical/non-surgical abortion: hemorrhage (heavy bleeding); failure to remove all products of conception that may result in an additional procedure; sterility; and possible continuation of pregnancy.
 - iv. Risks and hazards of the particular procedure planned for the minor: cramping of the uterus or pelvic pain; infection of the female organs (uterus, tubes, and ovaries); cervical laceration; incompetent cervix; and emergency treatment for any of the above named complications.
- (5) A description of additional information that must be provided by the physician to the minor under [*Insert name of State*] law, including, but not limited to [*Insert information required by the state's informed consent law, if applicable (e.g. the probable gestational age of the unborn baby; the availability of medical assistance benefits; the father's responsibilities, etc.)*]
- (6) A "consent statement" which must be signed by the minor. The consent statement must include, but is not limited to, the following points, which must be individually initialed by the minor:
- i. That the minor understands that the doctor is going to perform an abortion on her which will end her pregnancy and will result in the death of her unborn child;
 - ii. That the minor is not being forced to have an abortion and that she has the choice not to have the abortion and may withdraw consent prior to the abortion;
 - iii. That the minor gives permission for the procedure;
 - iv. That the minor understands that there are risks and hazards that could affect the minor if she has the surgical or medical procedures planned for her;
 - v. That the minor has been given the opportunity to ask questions about her condition, alternative forms of treatment, risk of non-treatment, the procedures to be used, and the risks and hazards involved;
 - vi. That the minor has been given information required under [*Insert citation(s) to the state's informed consent law, if applicable*]; and
 - vii. That the minor has sufficient information to give informed consent.

- (7) A “physician declaration,” which must be signed by the physician, stating that the physician or his or her assistant has explained the procedure and the contents of this form to the minor and her parent or legal guardian, as required, and has answered all questions. Further, to the best of the physician’s knowledge, the patient and her parent or legal guardian have been adequately informed and have consented to the procedure.
- (8) A “parental consent statement” stating that the signing parent or legal guardian:
- i. Understands that the doctor signing the “physician declaration” is going to perform an abortion on the minor, which will end her pregnancy and result in the death of her unborn child;
 - ii. That the parent or legal guardian has had the opportunity to read this form or have it read to him or her and has initialed each page;
 - iii. That the parent or legal guardian had the opportunity to ask questions to the physician or the physician’s assistant about the information in this form and the surgical and medical procedures to be performed on the minor;
 - iv. That the parent or legal guardian believes that he or she has sufficient information to give informed consent; and
 - v. That by the parent or legal guardian’s signature, the parent or legal guardian affirms that he or she is the minor’s father, mother, or legal guardian.
- (9) A page for the parent or legal guardian’s signature that must be notarized by a notary public.
- (10) Any additional information that must be provided to a woman under the laws of *[Insert name of State]* in order for a physician to obtain her informed consent prior to performing an abortion.

Section [14]. Construction.

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

Section [15]. 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 [16]. Right of Intervention.

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

Section [17]. Effective Date.

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

CHILD PROTECTION ACT

Currently, all 50 states have laws requiring healthcare professionals and others to report the suspected sexual abuse of minors including statutory rape. The federal government also mandates that Title X healthcare facilities comply with state criminal reporting laws. However, there is substantial evidence that many family planning and abortion clinics are not reporting all instances of suspected abuse, and are instead advising minors and their abusers on how to circumvent the law. As a result, sexual predators are free to continue to abuse their victims, scarring them for life.

In response, the pro-life movement must champion legislation that requires family planning and abortion clinics, their employees, and their volunteers to report all cases of suspected sexual abuse to state authorities and to impose strict penalties upon anyone who is found to be circumventing these laws or encouraging non-reporting of sexual abuse. To achieve these aims, AUL has drafted the “Child Protection Act.” This innovative legislation has three major components – all designed to protect minors from on-going and continued abuse, neglect, and coercion.

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

Section 1. Short Title.

This Act may be cited as the “[*Insert name of State*] Child Protection Act.”

Section 2. Legislative Findings and Purposes.

- (a) The [*Legislature*] of the State of [*Insert name of State*] finds that:
- (1) Children are increasingly being preyed upon, victimized, and coerced into illegal sexual relationships by adults.
 - (2) [*Insert name of State*] law requires caretakers, healthcare facilities, healthcare providers, teachers, and other specified individuals to report suspected incidents of sexual crimes against children. [*Insert reference to appropriate state statute(s)*].

- (3) However, many of these suspected criminal acts go unreported and perpetrators are not investigated or prosecuted.
 - (4) [*Insert name of State*] may better prevent future sexual crimes against children by investigating, prosecuting, incarcerating, and treating those who prey upon and victimize children.
 - (5) To prevent future and continuing sexual crimes against children, all crimes of this nature must be reported to state investigators and state agencies that are specifically trained and equipped to professionally, thoroughly, and compassionately investigate cases of suspected crimes against children, relieving mandatory reporters of this responsibility.
 - (6) The physical, emotional, developmental, and psychological impact of sexual crimes on child victims can be severe and long-lasting.
 - (7) The societal costs of these crimes are also significant and affect the entire populace.
 - (8) The collection, maintenance, and preservation of evidence—including forensic tissue samples—furtheres [*Insert name of State*]'s interest in protecting children from sexual crimes and provides the State with the tools necessary for successful investigations and prosecutions.
 - (9) Parents and guardians have both the right and responsibility to be involved in medical treatment decisions involving their children and no one has the right to knowingly or willfully impede or circumvent this right.
 - (10) There are documented cases of individuals other than a parent or guardian aiding, abetting, and assisting minor girls to procure abortions without their parents' or guardians' knowledge, consent, or involvement. This includes transporting children across state lines to avoid [*Insert name of State*]'s parental [*involvement or consent or notice*] requirements for abortion.
 - (11) Such actions violate both the sanctity of the familial relationship and [*Insert name of State*]'s parental [*involvement or consent or notice*] law for abortion.
- (b) The [*Legislature*]'s purposes in enacting the [*Child Protection Act*] are to further the important and compelling state interests of:

- (1) Protecting children from sexually predatory adults.
- (2) Ensuring that adults who are involved in illegal sexual relationships or contact with children are reported, investigated, and, when warranted, prosecuted.
- (3) Relieving medical professionals and other mandatory reporters of suspected sexual crimes against children from any responsibility to personally investigate an allegation or suspicion. Mandatory reporters must simply report allegations, suspicions, and pertinent facts. Trained law enforcement or social services personnel will then be responsible for any investigation and for the ultimate disposition of the allegation(s) or case.
- (4) Reducing the physical, emotional, developmental, and psychological impact of sexual crimes on child victims.
- (5) Reducing the societal and economic burden on the populace that results from sexual crimes against children.
- (6) Providing law enforcement officials with the tools and evidence necessary to investigate and prosecute child predators.
- (7) Protecting and respecting the right of parents and guardians to be involved in the medical decisions and treatment of their children and preventing anyone from knowingly or willfully subverting or circumventing these rights.

Section 3. Definitions.

For the purposes of this Act only:

(a) “**Abuse**” means [*Insert specific language from existing state statutes concerning the reporting of child abuse, child sexual abuse, or similar terms*] [*or, the involvement of a child in any sexual act with a parent or another adult; any sexual activity involving a child under the age of twelve (12); the aiding or toleration of a parent or caretaker of the child’s sexual involvement with any other adult; the child’s involvement in pornographic displays; or any other involvement of a child in sexual activity constituting a crime under the laws of this State*].

[Drafter’s Note: Depending on the specific provisions and prohibitions of the state’s criminal code or other statutes, a more definitive exclusion of sexual acts or conduct between two

(consenting) children may be appropriate in light of recent federal court decisions. Please consult AUL for specific drafting assistance.]

(b) “**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.
- (3) Remove an ectopic pregnancy.

(c) “**Adult**” means one who has attained the age [*of eighteen (18) or the legal age of majority in this State*].

(d) “**Caretaker**” means any person legally obligated to provide or secure adequate care for the child, including a parent, guardian, tutor, legal custodian, foster home parent, or anyone else providing the child with a residence.

(e) “**Child**” or “**children**” means anyone under the age of [*eighteen (18) or, if appropriate, state’s age of consent for sexual activity*].

(f) “**Mandatory reporter**” means any of the following individuals performing their occupational duties:

- (1) [*Insert specific categories and definitions of mandatory reporters from existing state statutes defining “mandatory reporters” for child abuse, child sexual abuse, or similar terms*].
- (2) “**Reproductive healthcare facility**” means any office, clinic, or any other physical location that provides abortions, abortion counseling, abortion referrals, contraceptives, contraceptive counseling, sex education, or gynecological care and services.

(i) “**Sexual abuse**” means [*Insert specific language from existing state statutes concerning child sexual abuse or similar terms*] [*or, any sexual conduct, sexual contact, or sexual*

penetration as defined in [Insert appropriate reference(s) to state criminal code provision(s)] and committed against a child by an adult or involving a child under the age of twelve (12)].

Section 4. Mandatory Reporter Requirements.

A mandatory reporter must report [*in writing*] every instance of alleged or suspected abuse, sexual abuse, or sexual crimes against a child as defined by [*Insert appropriate reference(s) to state criminal code or other statutory provision(s)*]. The mandatory reporter may not use his or her discretion in deciding what cases should or should not be reported to the appropriate law enforcement or state agencies.

Section 5. Mandatory Reporting Procedure.

If a mandatory reporter has cause to believe that a child has been abused, sexually abused, or has been the victim of a sexual crime as defined in [*Insert appropriate reference(s) to state criminal code or other statutory provision(s)*], the mandatory reporter shall make a report no later than the forty-eighth (48th) hour after such abuse, sexual abuse, or crime has been brought to his or her attention or he or she suspects such abuse, sexual abuse, or crime. A mandatory reporter may not delegate the responsibility to report such abuse, sexual abuse, or crime to any other person but must personally make the report. The mandatory reporter must make a report to [*designated appropriate local or state law enforcement agency and/or other state agency*].

Section 6. Contents of the Report.

The person making the report must identify the name and address of the child as well as the name and address of the person(s) who is responsible for the care or custody of the child. The person making the report must also file any pertinent information he or she may have relating to the alleged or suspected abuse, sexual abuse, or sexual crime.

Section 7. Failure to Report.

Any mandatory reporter who has cause to believe that a child has been abused, sexually abused, or has been the victim of a sexual crime as defined in [*Insert appropriate reference(s) to state criminal code or other statutory provision(s)*] and does not report such abuse, sexual abuse, or sexual crime as provided by this Act shall be subject to [*Insert reference(s) to appropriate civil remedy, fine, or other penalty*].

Section 8. Maintenance of Forensic Samples from Abortions Performed on a Child.

(a) Any physician who performs an abortion on a child who is less than *[fourteen (14)]* years of age at the time of the abortion procedure shall preserve, in accordance with rules and regulations adopted by the *[state Attorney General or other appropriate law enforcement agency charged with the collection and preservation of evidence]* pursuant to this Act, fetal tissue extracted during such abortion. The physician shall submit such tissue to the *[Insert name of proper state agency such as state Department of Public Safety, state Bureau of Investigation, or the state Crime Laboratory]*.

(b) The *[state Attorney General or other appropriate law enforcement agency charged or familiar with the forensic collection and preservation of evidence]* shall adopt rules and regulations prescribing:

- (1) The amount and type of fetal tissue to be preserved and submitted by a physician pursuant to this Section;
- (2) Procedures for the proper preservation of such tissue for the purpose of DNA testing and examination;
- (3) Procedures for documenting the chain of custody of such tissue for use as evidence;
- (4) Procedures for proper disposal of fetal tissue preserved pursuant to this Section;
- (5) A uniform reporting instrument mandated to be utilized by physicians when submitting fetal tissue under this Section which shall include the name and address of the physician submitting the fetal tissue and the name and complete address of residence of the parent or legal guardian of the child upon whom the abortion was performed; and
- (6) Procedures for communication with law enforcement agencies regarding evidence and information obtained pursuant to this Section.

(c) Failure of a physician to comply with any provision of this Section or any rule or regulation adopted thereunder:

- (1) Shall constitute unprofessional conduct for the purposes of [*Insert appropriate statutory reference(s)*]; and
- (2) Is a [*Insert appropriate criminal offense classification*] and a [*Insert appropriate higher offense classification*] upon a second or subsequent conviction.

Section 9. Prohibition on Intentionally Causing, Aiding, Abetting, or Assisting Child to Obtain an Abortion Without Parental [*Involvement or Consent or Notification*].

(a) No person shall intentionally cause, aid, or assist a child to obtain an abortion without the [*consent or notification required by [insert reference(s) to state parental involvement for abortion law]*].

(b) A person who violates subsection (a) of this Section shall be civilly liable to the child and to the person or persons required to [*give the consent/receive notice under [insert reference(s) to state parental involvement for abortion law]*]. A court may award damages to the person or persons adversely affected by a violation of subsection (a) of this Section, including compensation for emotional injury without the need for personal presence at the act or event, and the court may further award attorneys' fees, litigation costs, and punitive damages. Any adult who engages in or consents to another person engaging in a sexual act with a child in violation of the provisions of [*Insert appropriate reference(s) to state criminal code provision(s)*], which results in the child's pregnancy, shall not be awarded damages under this Section.

(c) It shall not be a defense to a claim brought under this Section that the abortion was performed or induced pursuant to consent to the abortion given in a manner that is otherwise lawful in the state or place where the abortion was performed or induced.

(d) An unemancipated child does not have capacity to consent to any action in violation of this Section.

(e) A court of competent jurisdiction may enjoin conduct that would be in violation of this Section upon petition by the Attorney General, a prosecuting or district [*county or city*] attorney, or any person adversely affected or who reasonably may be adversely affected by such conduct, upon a showing that such conduct:

- (1) Is reasonably anticipated to occur in the future.
- (2) Has occurred in the past, whether with the same child or others, and that it is not unreasonable to expect that such conduct will be repeated.

Section 10. Right of Intervention.

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

Section 11. Severability.

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

Section 12. Effective Date.

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

ABORTION-INDUCING DRUGS SAFETY ACT

In response to the abortion industry’s expanding promotion of chemical abortion, including dangerous “telemed” abortions (where women are provided abortion-inducing drugs such as RU-486 over telecommunication systems like Skype and without face-to-face consultations with and examinations by physicians), AUL’s “Abortion-Inducing Drugs Safety Act” requires that abortion providers follow the protocols approved by the U.S. Food and Drug Administration (FDA) and eliminates opportunities for abortion providers to engage in unsafe and impersonal “telemed” practices or to provide these dangerous drugs according to unproven protocols.

[Drafter’s Note: AUL has drafted detailed talking points to assist those interested in introducing this model in preparing for and countering arguments typically raised by abortion providers. Those talking points are available upon request by contacting AUL’s Legislative Coordinator at (202) 741-4907 or Legislation@AUL.org.]

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

Section 1. Title.

This Act may be known and cited as the “Abortion-Inducing Drugs Safety Act.”

Section 2. Legislative Findings and Purposes.

- (a) The [*Legislature*] of the State of [*Insert name of State*] finds that:
- (1) The Food and Drug Administration (FDA) approved the drug mifepristone (brand name “Mifeprex”), a first-generation [*selective*] progesterone receptor modulator ([S]PRM), as an abortion-inducing drug with a specific gestation, dosage, and administration protocol.
 - (2) As approved by the FDA, and as outlined in the Mifeprex drug label, an abortion by mifepristone consists of three 200 mg tablets of mifepristone taken orally, followed by two 200 mcg tablets of misoprostol taken orally, through 49 days LMP (a gestational measurement using the first day of the woman’s “last menstrual period” as a marker). The patient is to return for a follow-up visit in order to confirm that a complete termination of pregnancy has occurred. This FDA-approved protocol is referred to as the “Mifeprex regimen.”

- (3) The aforementioned treatment requires three office visits by the patient, and the dosages may only be administered in a clinic, medical office, or hospital and under supervision of a physician.
- (4) The Mifeprex final printed labeling (FPL) outlines the FDA-approved dosage and administration of both drugs in the Mifeprex regimen, namely mifepristone and misoprostol.
- (5) Court testimony by Planned Parenthood and other abortion providers demonstrates that providers routinely fail to follow the FDA-approved protocol for the Mifeprex regimen, as it is outlined in the Mifeprex FPL. *See, e.g., Planned Parenthood Cincinnati Region v. Taft*, 459 F. Supp. 2d 626 (S.D. Oh. 2006).
- (6) Specifically, Planned Parenthood and other abortion providers are administering a single oral dose of 200 mg of mifepristone, followed by a single *vaginal* or *buccal* dose of .8 mg misoprostol, through 63 days LMP, without medical supervision, and without follow-up care. *See, e.g., Planned Parenthood Cincinnati Region*, 459 F. Supp. 2d at 630n.7.
- (7) The use of mifepristone presents significant medical risks to women, including but not limited to abdominal pain, cramping, vomiting, headache, fatigue, uterine hemorrhage, viral infections, pelvic inflammatory disease, severe bacterial infection, and death.
- (8) Abortion-inducing drugs are associated with an increased risk of complications relative to surgical abortion. The risk of complications increases with advancing gestational age, and, in the instance of mifepristone, with failure to complete the two-step dosage process.
- (9) In July 2011, the FDA reported 2,207 adverse events in the U.S. after women used the Mifeprex regimen for the termination of pregnancy. Among those were 14 deaths, 612 hospitalizations, 339 blood transfusions, and 256 infections (including 48 “severe infections”).
- (10) “Off-label” or so-called “evidence-based” use of the Mifeprex regimen can be deadly. To date, 14 women have reportedly died after administration of the Mifeprex regimen, with eight deaths attributed to severe bacterial infection. All eight of those women administered the regimen in an “off-label” or “evidence-based” manner advocated by abortion providers.

- (11) Medical evidence demonstrates that women who utilize abortion-inducing drugs incur more complications than those who have surgical abortions.
- (b) Based on the findings in Subsection (a) of this Section, it is the purpose of this Act to:
 - (1) Protect women from the dangerous and potentially deadly off-label use of abortion-inducing drugs, such as, but not limited to, the Mifeprex regimen; and
 - (2) Ensure that physicians abide by the protocol tested and approved by the FDA for such abortion-inducing drugs, as outlined in the drug labels.

Section 3. Definitions.

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

Use of such drugs to induce abortion is also known as “**medical abortion.**”

(b) “**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;
- (3) Remove an ectopic pregnancy; or
- (4) Treat a maternal disease or illness for which the prescribed drug is indicated.

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

- (d) “**Final printed labeling (FPL)**” means the FDA-approved informational document for an abortion-inducing drug which outlines the protocol authorized by the FDA and agreed upon by the drug company applying for FDA authorization of that drug.
- (e) “**LMP**” or “**gestational age**” means the time that has elapsed since the first day of the woman’s last menstrual period.
- (f) “**Mifeprex regimen**” means the abortion-inducing drug regimen that involves administration of mifepristone (brand name “Mifeprex”) and misoprostol. It is the only abortion-inducing drug regimen approved by the FDA. It is also known as the “**RU-486 regimen**” or simply “**RU-486.**”
- (g) “**Mifepristone**” means the first drug used in the Mifeprex regimen.
- (h) “**Misoprostol**” means the second drug used in the Mifeprex regimen.
- (i) “**Physician**” means any person licensed to practice medicine in this State. The term includes medical doctors and doctors of osteopathy.
- (j) “**Pregnant**” or “**pregnancy**” means that female reproductive condition of having an unborn child in the mother’s [*woman*’s] uterus.
- (k) “**Unborn child**” means the offspring of human beings from conception until birth.

Section 4. Unlawful Distribution of Abortion-Inducing Drug.

- (a) It shall be unlawful to knowingly give, sell, dispense, administer, otherwise provide, or prescribe any abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion in that pregnant woman, or enabling another person to induce an abortion in a pregnant woman, unless the person who gives, sells, dispenses, administers, or otherwise provides or prescribes the abortion-inducing drug is a physician, and the provision or prescription of the abortion-inducing drug satisfies the protocol authorized by the FDA as outlined in the final printed labeling (FPL) for the drug or drug regimen. In the case of the Mifeprex regimen, the Mifeprex label includes the FDA-approved dosage and administration instructions for both mifepristone (Mifeprex) and misoprostol.
- (b) Because the failure and complications rates from medical abortion increase with advancing gestational age, because the physical symptoms of medical abortion can be identical to the symptoms of ectopic pregnancy, and because abortion-inducing drugs do not treat ectopic pregnancies but rather are contraindicated in ectopic pregnancies, the physician giving, selling, dispensing, administering, or otherwise providing or prescribing the abortion-inducing drug must first examine the woman and document, in the woman’s medical chart, gestational age and

intrauterine location of the pregnancy prior to giving, selling, dispensing, administering, or otherwise providing or prescribing the abortion-inducing drug.

(c) Every pregnant woman to whom a physician gives, sells, dispenses, administers, otherwise provides, or prescribes any abortion-inducing drug shall be provided with a copy of the drug's label.

(d) The physician giving, selling, dispensing, administering, otherwise providing, or prescribing the abortion-inducing drug must have a signed contract with a physician who agrees to handle complications and be able to produce that signed contract on demand by the patient or by the Department. Every pregnant woman to whom a physician gives, sells, dispenses, administers, otherwise provides, or prescribes any abortion-inducing drug shall receive the name and phone number of the physician who will be handling emergencies, and the hospital at which any emergencies will be handled. The physician who contracts to handle emergencies must have active admitting privileges and gynecological/surgical privileges at the hospital designated to handle any emergencies associated with the use or ingestion of the abortion-inducing drug.

(e) The physician giving, selling, dispensing, administering, otherwise providing, or prescribing any abortion-inducing drug, or an agent of said physician, must schedule a follow-up visit for the woman at approximately 14 days after administration of the abortion-inducing drug to confirm that the pregnancy is completely terminated and to assess the degree of bleeding. Said physician or agent of physician shall make all reasonable efforts to ensure that the woman returns for the scheduled appointment. A brief description of the efforts made to comply with this subsection, including the date, time, and identification by name of the person making such efforts, shall be included in the woman's medical record.

Section 5. Reporting.

If a physician provides an abortion-inducing drug to another for the purpose of inducing an abortion as authorized in Section 4 of this Act, and if the physician knows that the woman who uses the abortion-inducing drug for the purpose of inducing an abortion experiences—during or after the use—an adverse event, the physician shall provide a written report of the adverse event within three (3) days of the event to the FDA via the Medwatch Reporting System [*and to the State Medical Board*].

[The State Medical Board shall compile and retain all reports it receives under this Section. All reports the Board receives are public records open to inspection under [Insert citation(s) to or appropriate reference(s) to applicable State code section(s) regarding public records]. In no case shall the State Medical Board release to any person or entity the name or any other personal identifying information regarding a person who uses an abortion-inducing drug for the purpose of inducing an abortion and who is the subject of a report the State Medical Board

receives under this provision.]

An "**adverse event**" shall be defined for purposes of this Act according to the FDA criteria given in the Medwatch Reporting System.

[Drafter's Note: *Inclusion of the Reporting requirements is optional and may be removed without diminishing the effect of the regulation itself.*]

Section 6. Criminal Penalties.

A person who intentionally, knowingly, or recklessly violates any provision of this Act is guilty of a [*Insert appropriate penalty/offense classification*]. In this Section, "**intentionally**" is defined by Section [*Insert section number*] of the [*State Penal Code*].

No criminal penalty may be assessed against the pregnant woman upon whom the drug-induced abortion is performed.

Section 7. Civil Penalties.

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

- (1) Provide a basis for a civil malpractice action for actual and punitive damages.
- (2) Provide a basis for a professional disciplinary action under [*Medical Malpractice Act*].
- (3) Provide a basis for recovery for the woman's survivors for the wrongful death of the woman under the [*Wrongful Death Act*].

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

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

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

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 law 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*].

WOMEN'S HEALTH DEFENSE ACT

AUL's "Women's Health Defense Act" prohibits late-term abortions based on increasing evidence of the negative impact that such abortions have on women's health, as well as concerns about the pain felt by an unborn child. Unlike other available legislative models prohibiting late-term abortions, AUL's model is the only one to directly attack the Supreme Court's primary rationale for affirming *Roe v. Wade* – the "reliance interest." The specific language and animating principles of this model directly undercut the Supreme Court's ill-informed assumption that abortion is good for women and beneficial to woman's health, drastically weakening support for the Court's rationale that *Roe* must be maintained because women rely on abortion for their betterment.

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

Section 1. Title.

This Act may be known and cited as the "Women's Health Defense Act" [*or, alternatively, the "Women's Late-Term Pregnancy Health Act."*]

Section 2. Legislative Findings and Purposes.

- (a) The [*Legislature*] of the State of [*Insert name of State*] finds that:
- (1) Abortion can cause serious physical and psychological (both short- and long-term) complications for women, including but not limited to: uterine perforation, uterine scarring, cervical perforation or other injury, 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, organ damage, adverse reactions to anesthesia and other drugs, psychological or emotional complications such as depression, anxiety, sleeping disorders, and death.

- (2) Abortion has a higher medical risk when the procedure is performed later in pregnancy. Compared to an abortion at eight (8) weeks gestation or earlier, the relative risk increases exponentially at higher gestations. L. Bartlett et al., *Risk factors for legal induced abortion-related mortality in the United States*, OBSTETRICS & GYNECOLOGY 103(4):729 (2004).
- (3) In fact, the incidence of major complications is highest after 20 weeks of gestation. J. Pregler & A. DeCherney, WOMEN'S HEALTH: PRINCIPLES AND CLINICAL PRACTICE 232 (2002).
- (4) According to the Alan Guttmacher Institute, the risk of death associated with abortion increases with the length of pregnancy, from one death for every one million abortions at or before eight (8) weeks gestation to one per 29,000 abortions at sixteen (16) to twenty (20) weeks and one per 11,000 abortions at twenty-one (21) or more weeks (citing L. Bartlett et al., *Risk factors for legal induced abortion-related mortality in the United States*, OBSTETRICS & GYNECOLOGY 103(4):729–737 (2004)).
- (5) After the first trimester, the risk of hemorrhage from an abortion, 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) In addition, there is substantial and well-documented medical evidence that an unborn child by at least 20 weeks gestation has the capacity to feel pain during an abortion. K. Anand, *Pain and its effects in the human neonate and fetus*, N.E.J.M. 317:1321 (1987).

- (b) For these reasons, the [*Legislature*]'s purposes in promulgating this Act are to:
- (1) Based on the documented risks to women's health, prohibit abortions at or after 20 weeks gestation except in cases of a medical emergency.
 - (2) Prohibit abortions at or after 20 weeks gestation, in part, because of the pain felt by an unborn child.
 - (3) Define "medical emergency" to encompass "significant health risks," namely only those circumstances in which a pregnant woman's life or a major bodily function is threatened. *Gonzales v. Carhart*, 550 U.S. 124, 161 (2007).

Section 3. Definitions.

For purposes of this Act only:

- (a) "**Abortion**" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:
- (1) Save the life or preserve the health of the unborn child;
 - (2) Remove a dead unborn child caused by spontaneous abortion; or
 - (3) Remove an ectopic pregnancy.
- (b) "**Attempt to perform**" means an act or omission of a statutorily-required act that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion.
- (c) "**Conception**" means the fusion of a human spermatozoon with a human ovum.
- (d) "**Gestational age**" means the time that has elapsed since the first day of the woman's last menstrual period.
- (e) "**Major bodily function**" includes, but is not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

- (f) “**Medical facility**” means any public or private hospital, clinic, center, medical school, medical training institution, health care facility, physician's office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location wherein medical care is provided to any person.
- (g) “**Physician**” means any person licensed to practice medicine in this State. The term includes medical doctors and doctors of osteopathy.
- (h) “**Pregnant**” or “**pregnancy**” means that female reproductive condition of having an unborn child in the [woman's] uterus.
- (i) “**Probable gestational age**” means what, in reasonable medical judgment, will with reasonable probability be the gestational age of the unborn child at the time the abortion is considered, performed, or attempted.
- (j) “**Reasonable medical judgment**” means that medical judgment that would be made by a reasonably prudent physician [*in the community*], knowledgeable about the case and the treatment possibilities with respect to the medical condition(s) involved.
- (k) “**Unborn child**” means the offspring of human beings from conception until birth.

Section 4. Prohibition.

- (a) Except in the case of a medical emergency as specifically defined in Subsection 4(c) of this Act, no abortion shall be performed, induced, or attempted unless the physician [*or the referring physician*] has first made a determination of the probable gestational age of the unborn child. In making such a determination, the physician [*or referring physician*] shall make such inquiries of the pregnant woman and perform or cause to be performed all such medical examinations, imaging studies, and tests as a reasonably prudent physician [*in the community*], knowledgeable about the medical facts and conditions of both the woman and the unborn child involved, would consider necessary to perform and consider in making an accurate diagnosis with respect to gestational age.
- (b) Except in a medical emergency as specifically defined in Subsection 4(c) of this Act, no physician or person shall knowingly perform, induce, or attempt to perform an abortion upon a pregnant woman when the probable gestational age of her unborn child has been determined to be at least twenty (20) weeks.
- (c) **Medical Emergency Exception:** For the purposes of this Act, “**medical emergency**” means a condition in which an abortion is necessary to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when

continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function (as specifically defined in Section 3(e) of this Act) of the pregnant woman.

Section 5. Reporting.

(a) Any physician who performs an abortion pursuant to Section 4(c) of this Act shall report, in writing, to the medical facility in which the abortion is performed the reason(s) for the determination that a medical emergency existed. The physician's written report shall be included in a written report from the medical facility to the *[Insert appropriate State department, department head, or regulatory body]*. If the abortion is not performed in a medical facility, the physician shall report, in writing, the reason(s) for the determination that a medical emergency existed to the *[Insert appropriate State department, department head, or regulatory body]* as part of the written report made by the physician to the *[Insert appropriate State department, department head, or regulatory body]*. The physician and the medical facility shall retain a copy of the written reports required under this Section for not less than five (5) years.

(b) Failure to report under this Section does not subject the physician to criminal or civil penalties under Sections 6 and 7 of this Act.

(c) Subsection 4(b) does not preclude sanctions, disciplinary action, or any other appropriate action by the *[Insert appropriate citation or reference to State Medical Board or other appropriate agency]*.

Section 6. Criminal Penalties.

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

(b) Any physician who intentionally or knowingly performs or induces an abortion in violation of this Act and thereby kills an unborn child shall be fined not less than ten thousand (10,000) nor more than one-hundred thousand (100,000) dollars under this Act, or be imprisoned *[at hard labor]* not less than one (1) year nor more than ten (10) years, or both.

Section 7. Civil Penalties.

(a) The woman, the father of the unborn child, if married to the mother at the time she receives an abortion in violation of this Act, and/or, if the mother has not attained the age of eighteen (18) years at the time of the abortion, the maternal grandparents of the unborn child, may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or, if brought by the maternal grandparents, the maternal grandparents consented to the abortion.

- (b) Such relief shall include
 - (1) Money damages for all injuries, psychological and physical, occasioned by the violation of this Act; and
 - (2) Statutory damages equal to *[Insert number]* times the cost of the abortion performed in violation of this Act.

Section 8. Review by State Medical Board *[of Medical Licensure and Supervision]*.

- (a) A physician-defendant accused of an offense under this Act may seek a hearing before the State Medical Board *[or other appropriate State agency]* as to whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself; and/or as to whether the continuation of the pregnancy would have created a serious risk of substantial and irreversible impairment of a major bodily function (as specifically defined in Section 3(e) of this Act) of the pregnant woman.
- (b) The findings on this issue are admissible at the civil and criminal trials of the physician-defendant. Upon a motion of the physician-defendant, the court shall delay the beginning of the trial(s) for not more than thirty (30) days to permit such a hearing to take place.

Section 9. Penalties for Medical Facilities.

- (a) A medical facility licensed pursuant to *[Insert reference(s) to appropriate statute(s) or regulation(s)]* in which an abortion is performed or induced in violation of this Act shall be subject to immediate revocation of its license by the *[Insert name of appropriate department or agency]*.
- (b) A medical facility licensed pursuant to *[Insert references to appropriate statute(s) or regulation(s)]* in which an abortion is performed or induced in violation of this Act shall lose all state funding for *[Insert number]* years and will be required to reimburse the State for funds from the calendar *[fiscal]* year in which the abortion in violation of this Act was performed.

Section 10. Prosecutorial Exclusion.

A woman upon whom an abortion in violation of this Act is performed or induced may not be prosecuted under this Act for a conspiracy to violate Section 4 of this Act.

Section 11. 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 12. 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 13. 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 14. Effective Date.

This Act shall take effect on [*Insert date*].