ABORTION PROVIDERS' PRIVILEGING ACT

Model Legislation & Policy Guide

For the 2013 Legislative Year

Changing Law to Protect Human Life, State by State

INTRODUCTION

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

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

These were the promises. But has it proven to be the reality? Has 40 years of legal abortion eliminated these problems from our national consciousness? Sadly, it has not. Instead, abortion clinics across the nation have become the true "back-alleys" of abortion mythology. Legalized abortion has not eliminated substandard medical care, kept people without medical licenses from performing abortions, ensured competent post-abortion care, nor prevented women from dying from unsafe abortions.

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

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

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

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

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

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

States laws mandating that abortion providers have hospital admitting privileges are critical to ensuring that women receive proper and competent abortion care. Americans United for Life developed the "Abortion Providers' Privileging Act" to provide states with a concise and effective admitting privileges requirement. It is well-suited to use in states that want to supplement existing abortion clinic regulations or rules. States wishing to enact an admitting privileges requirement as well as more comprehensive clinic requirements should consult AUL's "Women's Health Protection Act" or "Abortion Patients' Enhanced Safety Act."

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

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ABORTION PROVIDERS' PRIVILEGING ACT

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

Section 1. Title.

This Act may be known and cited as the "Abortion Providers' Privileging 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 clinics do not have any relationship with the physician who performs the abortion either 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 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) In some cases, abortion providers travel into [*Insert name of State*] from other states [*or locations*] to perform abortions at abortion clinics in this State. These physicians typically do not live in or remain in this State when not providing abortions or abortion-related care.

(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 (both short- and long-term) medical complications. Potential complications for abortion include, among others, bleeding, hemorrhage, infection, uterine perforation, uterine scarring, blood clots, cervical tears, incomplete abortion (retained tissue), failure to actually terminate the pregnancy, free fluid in the abdomen, acute abdomen, organ damage, missed ectopic pregnancies, cardiac arrest, sepsis, respiratory arrest, reactions to anesthesia, 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).

(8) 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).

(9) 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).

(b) Based on the findings in subsection (a), it is the purpose of this Act to provide for the protection of public health generally and of women's health and safety specifically through the establishment and enforcement of an admitting privileges requirement for physicians providing abortions in [*freestanding*] abortion clinics in this State.

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*][2] 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

[2] The bracketed language is used when state officials intend the requirements prescribed herein to apply to the provision of abortion-inducing drugs (such as RU-486).

(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) "**Admitting privileges**" means the right of a physician[*, by virtue of membership with a hospital's medical staff,*] to admit patients [*from an abortion clinic*] to a particular hospital for the purposes of providing specific diagnostic or therapeutic services to such patient in that hospital.

(d) "**Physician**" means a person licensed to practice medicine in the State of [*Insert name of State*]. This term includes medical doctors and doctors of osteopathy.

Section 4: Admitting Privileges Requirement.

On any day when any abortion is performed in an abortion clinic, a physician with admitting privileges at an accredited hospital in this State and within thirty (30) miles of the abortion clinic must remain on the premises of the abortion clinic to facilitate the transfer of emergency cases if hospitalization of an abortion patient or a child born alive is necessary and until all abortion patients are stable and ready to leave the recovery room.

Section 5. 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 [*state Department of Health or other appropriate department or agency*].

(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 [*state Department of Health or other appropriate department or agency*] shall consider the following factors:

(1) Whether physical harm to a patient or a child born alive has occurred;

(2) Severity and scope of the actual or potential harm;

(3) Any indications of good faith exercised by the abortion clinic involved in the violation to comply with the requirements of this Act;

(4) The duration, frequency, and relevance of any previous violations of this Act by the abortion clinic; and

(5) Financial benefit to the abortion clinic of committing or continuing the violation.

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

Section 6. Injunctive Remedies.

In addition to any other penalty provided by law, whenever in the judgment of the [*Director [or other appropriate title or designation] of the Department of Health or other appropriate department or agency*] , 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 [or other appropriate title or designation] of the Department of Health or other appropriate department or agency*] shall make application to any court of competent jurisdiction for an order enjoining such acts and practices, and upon a showing by the [*Director [or other appropriate title or designation] of the Department of Health or other appropriate department or agency*] 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 7. Construction.

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

(b) It is not the intention of this Act to make lawful an abortion that is currently unlawful.

Section 8. Right of Intervention.

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

Section 9. Severability.

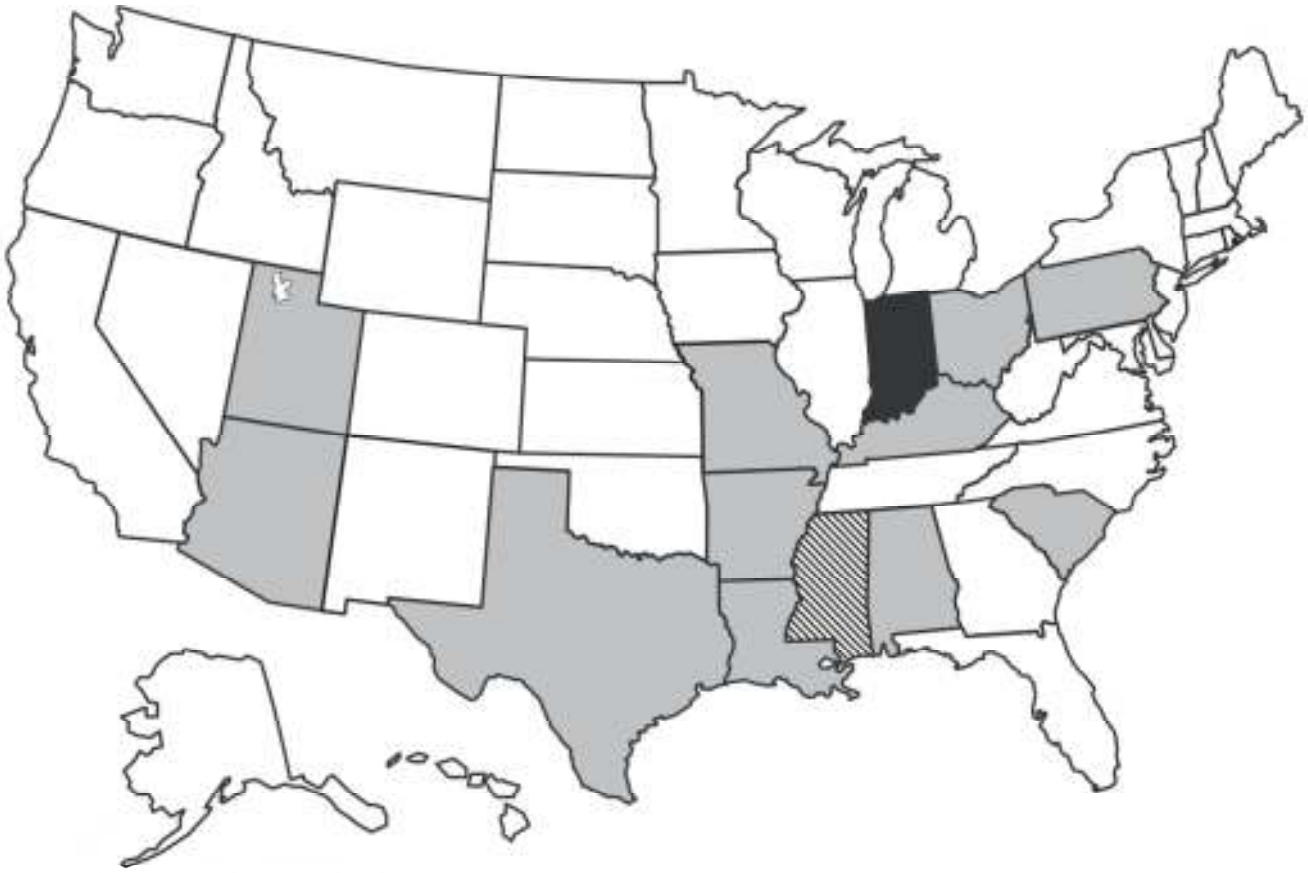
Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable 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 10. Effective Date.

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

STATE OF THE STATES: WHERE ARE WE NOW?

ADMITTING PRIVILEGES FOR ABORTION PROVIDERS



Eleven states require abortion providers to maintain admitting privileges: AL, AZ, AR, KY, LA, MO, OH, PA, SC, TX, and UT.

Abortion providers in some counties in one state must maintain admitting privileges: IN.

One state's 2012 admitting privileges' requirement is in litigation (while a less stringent, earlier requirement remains on the books): MS.

More detailed information about the need and justification for comprehensive health and safety regulations for abortion clinics can be found in AUL's annual publication *Defending Life 2012: Building a Culture of Life, Deconstructing the Abortion Industry*.

Defending Life 2012 is available online at AUL.org.

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

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