Women’s Ultrasound Right to Know Act

Model Legislation & Policy Guide
With each passing year, more and more women emerge from the silence after abortion. They are wounded and speak out in anguish on the physical, emotional, spiritual, and psychological harm they have suffered and still suffer as a direct result of their abortions. Often, this harm arises as a consequence of women “choosing” abortion without adequate and accurate information concerning the procedure itself and abortion’s risks, alternatives, and long-term consequences. Women’s experiences reflect the fact that abortion clinics often fail to provide adequate and accurate medical information to women considering abortions.

In the abortion industry, paternalistic attitudes toward women still prevail and, as a result, women continue to be uninformed about the risks and consequences of abortion. States have the constitutional power to take measures to prevent the resulting harm to women by passing comprehensive and carefully drafted informed consent laws. Many states have already taken steps to protect women by passing a variety of informed consent requirements. However, there is still much that can still be done to inform women completely and accurately about the reality of abortion.

Ultrasound requirements serve an essential medical purpose in that they diagnose ectopic pregnancies which, if left undiagnosed, can result in infertility or even fatal blood loss.\(^1\) Further, an ultrasound enables a healthcare provider to more accurately date the gestational age of a pregnancy. Accurate dating of a pregnancy protects a woman since the risks of abortion increase as gestational age increases.

Ultrasound requirements also ensure an informed choice because they allow a woman to see her unborn child as he or she really is—by seeing his or her form and face on a screen and also by hearing the heartbeat.

Clearly, ultrasound provisions both promote the woman’s physical and psychological health and advance the states’ important and legitimate interest in protecting life.\(^2\) To advance these interests, AUL’s *Women’s Ultrasound Right to Know Act* contains the following basic elements:

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2. In *Dobbs v. Jackson Women’s Health Organization*, the Supreme Court held that “the authority to regulate abortion must be returned to the people and their elected representatives.” *Dobbs*, 597 U.S. ___ (2022).
• A requirement that the physician performing the abortion, the referring physician, or a qualified person assisting the physician perform fetal ultrasound imaging and auscultation of fetal heart tone monitoring to confirm presence, location, and gestational age of the pregnancy; and

• A requirement that the physician give the woman the option of viewing the ultrasound image and hearing the fetal heart tone monitoring.

Additionally, ultrasound requirements should contain a provision requiring the abortion provider to adhere to standard medical practice within the community and to accurately portray the presence of the unborn child’s external members and internal organs (if present or viewable). One concern is that, without this provision, abortion providers will use the ultrasound equipment to show a woman an image of one of her own organs and then falsely inform her that it is her unborn child. In addition, each law should require some type of certification form which describes exactly what services and opportunities the woman was provided and also indicates whether or not she opted to view the ultrasound or hear the fetal heart tone monitoring.

Ultrasound requirements that mandate ultrasound imaging and provide a woman the option to see her unborn child and hear the heartbeat are concrete, effective steps states can take to protect the woman’s health and ensure that her consent for an abortion is as fully informed as possible. In addition, medical evidence indicates that women feel bonded to their children after seeing them on the ultrasound screen.\(^3\) Once that bond is established, researchers argue, a woman no longer feels ambivalent toward her pregnancy and actually begins to feel invested in her unborn child.\(^4\) Clearly, ultrasound requirements both protect women’s health and further the states’ interest in protecting life.

For more information and drafting assistance, please contact AUL’s Legislative Team at Legislation@aul.org.

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\(^4\) Id. at 392.
WOMEN’S ULTRASOUND RIGHT TO KNOW ACT

HOUSE/SENATE BILL NO. ______________
By Representatives/Senators _______________

Section 1. Title.

This Act may be known and cited as the “Women’s Ultrasound Right to Know Act.”

Section 2. Legislative Findings and Purposes.

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

(1) Ultrasound requirements serve an essential medical purpose in confirming the presence, location, and gestational age of a pregnancy.

(2) Ultrasound requirements also serve an essential medical purpose in diagnosing ectopic pregnancies which, if left undiagnosed, can result in infertility or even fatal blood loss.

(3) Furthermore, it is critical to the psychological and physical well-being of a woman considering an abortion that she receives complete and accurate information on the reality and status of her pregnancy and of her unborn child.

(4) 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).

(5) The knowledgeable exercise of a woman’s decision to have an abortion depends on the extent to which the woman receives sufficient information to make an informed choice between two alternatives: giving birth or having an abortion.

(b) Based on the findings in subsection (a), the purposes of this Act are to:

(1) Protect the physical health and welfare of every woman considering an abortion;
(2) Ensure that every woman considering an abortion receives complete information on the reality and status of her pregnancy and of her unborn child, and that every woman submitting to an abortion does so only after giving her voluntary and informed consent to the abortion;

(3) Protect the unborn child from a woman’s uninformed decision to have an abortion; and

(4) 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).

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 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) “Auscultation” means the act of listening for sounds made by internal organs of the fetus, specifically for a fetal heartbeat, utilizing an ultrasound transducer and fetal heart rate (FHR) monitor.

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

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

(e) “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.

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

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

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

(i) "Unborn child" means the offspring of human beings from conception until birth.

(j) "Ultrasound" means the use of ultrasonic waves for diagnostic or therapeutic purposes, specifically to monitor a developing fetus.

Section 4. Ultrasound Requirement.

Except in the case of a medical emergency, at least twenty-four (24) hours before the performance of an abortion, the physician who is to perform the abortion on the pregnant woman [the referring physician] or a qualified person assisting the physician shall perform fetal ultrasound imaging and auscultation of fetal heart tone services on the patient undergoing the abortion.

Section 5. Informed Consent.

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 on the pregnant woman [, the referring physician.] or a qualified person assisting the physician has offered the woman, orally and in person, the opportunity to:

(1) View the active ultrasound image of the unborn child and hear the heartbeat of the unborn child if the heartbeat is audible; and

(2) Receive a physical picture of the ultrasound image of the unborn child.
(b) At the woman's request, the physician or qualified person assisting the physician, at least twenty-four (24) hours prior to the performance of the abortion, shall:

1. Provide the active ultrasound image to the pregnant woman for her to view and auscultation of fetal heart tone for her to hear; and

2. Provide a physical picture of the ultrasound image of the unborn child.

(c) At least twenty-four (24) hours prior to the performance of the abortion, a physician or qualified person assisting the physician shall obtain the woman's signature on a certification form stating the following:

1. That she has been offered the opportunity to view the active ultrasound image of the unborn child and to hear the heartbeat of the unborn child if the heartbeat is audible;

2. That she has been offered the opportunity to receive the physical picture of the ultrasound image of the unborn child; and

3. That the woman either (A) requested to view the active ultrasound imaging and hear auscultation of fetal heart tone and/or receive the physical picture of the ultrasound image; or (B) that the woman opted not to view the active ultrasound imaging and hear auscultation of fetal heart tone and/or receive the physical picture of the ultrasound image.

(d) Before the abortion is performed or induced, the physician who is to perform or induce the abortion shall receive a copy of the written certification prescribed by Section 5(c). The physician shall retain a copy of the signed certification form in the woman's medical record.

(e) The Department shall enforce the provisions of this Act at all facilities and medical facilities that provide abortion services.

Section 6. Standard of Medical Practice.

(a) The active ultrasound image must be of a quality consistent with standard medical practice in the community, shall contain the dimensions of the unborn child, and shall accurately portray the presence of external members and internal organs of the unborn child, if present or viewable.
(b) The auscultation of fetal heart tone must be of a quality consistent with standard medical practice in the community.

Section 7. 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 twenty-four (24) hour delay will cause substantial and irreversible impairment of a major bodily function.

Section 8. Criminal Penalties.

(a) Any person who purposefully, knowingly, or recklessly performs or attempts to perform or induce an abortion without complying with Section 4 with this Act is guilty of a [Insert appropriate penalty/offense classification].

(b) Any person who purposefully, knowingly, or recklessly performs or attempts to perform or induce an abortion without complying with any other provision of this Act is guilty of a [Insert appropriate penalty/offense classification].


(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. Any intentional violation of this Act shall be admissible in a civil suit as prima facie evidence of a failure to obtain informed consent, which, except in the case of a medical emergency as defined by this Act, constitutes medical malpractice.

(2) Provide a basis for a professional disciplinary action under [Medical Malpractice Act].

(3) Provide a basis for recovery for the woman for the wrongful death of her unborn child under the [Wrongful Death Act] [whether or not the unborn child was born alive or was viable at the time the abortion was performed].
[Drafter's Note: Subsection 9(a)(3) may need to be modified to correspond with the requirements of the state's wrongful death statutes. Please consult AUL for drafting assistance.]

(b) 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.

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

(d) 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 fees in favor of the defendant against the plaintiff.

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].