INTRODUCTION

With any inpatient or outpatient procedure, medical professionals are required to inform the patient of what will be done to their body and any potential risks or side effects. Abortion should be no different. Women have the right to know what is being done to their bodies, those of their preborn children, and the risks and possible side effects the procedure entails. Abortion can cause cramping, hemorrhaging, damage to the uterus, infection, and future infertility. Abortion clinics all too often fail to provide adequate and accurate information to women considering abortions. As a result, many women are physically and psychologically harmed by the abortion process. When a woman is not presented with accurate information and data, her “choice” to abort is, in reality, no choice at all. Only 8 states require informed consent that includes the psychological harm connected to the abortion.

The following excerpts from real women’s stories demonstrate how vital it is to give proper information to women before they undergo abortions:

- “The doctor never conferred with me... I wasn’t given any information on what they were going to do or how. I was just taken in and ‘taken care of,’ as they put it. I was never given the choice of whether I would want to allow adoption or anything.”

- “I had an abortion while I was in college. There was absolutely no informed consent. I was a student and the doctor didn’t even discuss any other options with me at all. He simply made arrangements for me to have an abortion and sent me on my way. When I got to the abortion clinic no one (again) discussed anything about the...

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procedure. . . It was a numbing and heartless experience.”

- “[The doctor] never told me how big my baby was or any of the complications that could happen, and he certainly didn’t tell me about the after effects. I trusted him because he had the title of ‘doctor’. . . I couldn’t believe that my doctor hadn’t told me that my baby was eight inches long and looked like a little human being. He had kept important information from me…”

To better equip women with the knowledge they need before making an abortion decision and to ensure that their consent is valid, informed consent laws should require the following information be provided to a woman at least 24 hours before an abortion:

- The name of the doctor who is to perform the abortion;
- A description of the procedure to be used;
- The risks of the abortion procedure as well as of childbirth;
- Scientifically accurate information about the preborn child;
- The possibility of medical benefits;
- The father’s liability for support, etc.; and
- A brochure explaining risks of and alternatives to abortion and providing scientifically accurate information concerning the development of the preborn child.

In 1992, in ruling informed consent laws constitutional, the U.S. Supreme Court noted that such laws 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.”

With Dobbs returning abortion regulation to rational-basis review, states may enhance their informed consent laws by requiring information on fetal pain, the availability of ultrasounds, the link between abortion and the incidence of subsequent breast cancer (“ABC link”), perinatal hospice options for women faced with prenatal diagnoses of lethal fetal anomalies, coercion counseling, and the potential ability to reverse the effects of a chemical abortion.

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8 Casey, 505 U.S. at 882.
before all of the drugs have been ingested. Currently, there are 29 states with an informed consent requirement.

To ensure that women are given basic, relevant, and medically appropriate information about abortion, AUL has drafted the *Women’s Right to Know Act*. For more information and drafting assistance, please contact AUL at Legislation@AUL.org.
WOMEN’S 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 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 receives 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.


   (4) Most abortions are performed in clinics devoted solely to providing abortions and family planning services. Most women who seek abortions at these facilities lack any prior or subsequent relationship with the physician who performs the abortion procedure. They generally do not return to the facility for post-surgical care. In most cases, 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
States have legitimate interests in preserving prenatal life at all developmental stages; protecting maternal health and safety; eliminating barbaric medical procedures; preserving the medical profession’s integrity, mitigating fetal pain, and preventing racial, sexual, or disability discrimination. *Dobbs v. Jackson Women’s Health Org.*, 141 S. Ct. 2228, 2284 (2022).


(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 their primary goal is actually to “sell” or promote abortion services.

(b) Based on the findings in subsection (a), 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 an preborn child 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


**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 preborn 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 preborn child;

2. Remove a dead preborn 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 the Department may define, including:

1. uterine perforation,
2. cervical perforation,
3. infection,
4. bleeding,
5. hemorrhage,
6. blood clots,
7. failure to actually terminate the pregnancy,
8. incomplete abortion (retained tissue),
9. pelvic inflammatory disease, endometritis,
10. missed ectopic pregnancy,
11. cardiac arrest,
12. respiratory arrest,
13. renal failure,
14. metabolic disorder,
15. shock,
16. embolism,
17. coma,
18. placenta previa in subsequent pregnancies,
19. preterm birth in subsequent pregnancies,
20. free fluid in the abdomen,
21. adverse reactions to anesthesia and other drugs,
22. any psychological or emotional complications, such as depression, anxiety, and sleeping disorders; and
(19) any other “adverse event” as defined by the Food and Drug Administration (FDA) criteria provided in the Medwatch Reporting System.

(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 institution or location where medical care is provided to any person, including a:

(1) hospital,
(2) clinic,
(3) center,
(4) medical school,
(5) medical training institution,
(6) healthcare facility,
(7) physician’s office,
(8) infirmary,
(9) dispensary; or
(10) ambulatory surgical treatment center.

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

(g) “Gestation” or “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 under this State’s law(s).

(i) “Medical emergency” means that condition which, based on the physician’s good faith clinical judgment, so complicates a pregnant woman’s medical condition as to necessitate the immediate termination of her pregnancy to:

(1) avert her death; or
(2) avert a delay-induced serious risk of substantial and irreversible impairment of a major bodily function.

(j) “Physician” means any person licensed to practice medicine or osteopathy in this State.
“Pregnant” or “pregnancy” means that female reproductive condition of having an preborn child in the woman’s uterus.

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

“Preborn child” means the offspring of human beings from conception to birth.

“Viability” means the state of fetal development when, in the physician’s good-faith clinical judgment based on the totality of circumstances, there is a reasonable likelihood of the preborn child’s sustained survival prebornoutside this or her mother’s body, with or without artificial support.

**Section 4. Informed Consent Requirement.**

No physician shall perform or induce an abortion without the voluntary and informed written 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 24 hours before the abortion, the [acting/performing/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 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

           a. the risks of infection,
           b. hemorrhage,
           c. cervical or uterine perforation,
           d. danger to subsequent pregnancies, and;
           e. increased risk of breast cancer; and

       c. alternatives to the abortion;
(3) the preborn child’s probable gestational age preborn at the time the abortion is to be performed;

(4) The preborn child’s probable anatomical and physiological characteristics preborn 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 24 hours before the abortion, the [acting/performing/referring] physician or an otherwise qualified person has informed the woman, orally and in person, in a manner that she understands, 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 video given to her and described in Section 5.

(2) the printed materials and informational video in Section 5 describe the preborn child and list agencies that offer alternatives to abortion.

(3) the father of the preborn child is liable to assist in the support of the child, even in instances where he has offered to pay for the abortion.
   i. 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:
   i. her right to future care or treatment and
   ii. the status of any state or federally funded benefits to which she might otherwise be entitled.

(5) the information contained in the printed materials and informational video 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:
(1) protect her privacy,
(2) maintain the confidentiality of her decision,
(3) ensure the information focuses on her individual circumstances; and
(4) ensure she has an adequate opportunity to ask questions.

(d) At least 24 hours before the abortion, the [facility or acting/performing/referring physician] gives to the woman a copy of the printed materials and permits her to view or gives her a copy of the informational video described in Section 5. If the woman is unable to read the materials, the [acting/performing/referring physician] shall read them to her. If the woman asks questions concerning any of the information or materials the [acting/performing/referring physician] shall provide answers shall provide to her in a language she can understand.

[OPTIONAL: Information on Fetal Pain: (e) At least 24 hours prior to an abortion being performed or induced on an preborn child who is 20 weeks’ gestation or more, the acting/performing/physician or an otherwise 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 the following:

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

[OPTIONAL: Information on Chemical Abortion Reversal: (f) At least 24 hours prior to an abortion being performed or induced utilizing abortion-inducing drugs, the
acting/performing/referring physician or an otherwise qualified person assisting the physician shall, orally and in person, inform the woman of the following:

1. that it may be possible to reverse the effects of the abortion should she change her mind, but that time is of the essence; and

2. that information on and assistance with reversing the effects of abortion-inducing drugs is available in the state-prepared materials.

For purposes of this Section, “abortion-inducing drugs” means any substance prescribed or dispensed for on or off-label use, with the intent to terminate a woman's clinically diagnosable pregnancy; with knowledge that the termination will, with reasonable likelihood cause the death of the preborn child.

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.).

Prior to the abortion, the woman shall certify in writing on a Department-provided or Department-approved checklist form that the information required under subsections 5(a), 5(b), 5(c), [and 5(d)], 5(e), and 5(f)] has been provided. Any physician who performs an abortion 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.

Except in the case of a medical emergency, the [acting/performing] physician shall receive and sign a copy of the written certification prescribed in subsection [(g)] of this Section prior to performing the abortion. The physician shall permanently retain a copy of the checklist certification form in the woman's medical record.

If a medical emergency requiring an immediate termination of pregnancy occurs, the physician who performed the abortion shall certify in writing:

1. the nature of the medical emergency; and

2. the circumstances which necessitated the waiving of the informed consent requirements of this Act.

The physician who performed the emergency abortion shall sign the certification and permanently file it in:
(1) the records of the physician performing the abortion, and;

(2) the records of the facility where the abortion takes place.

[(k)] A physician shall not require or obtain payment for a service provided in relation to abortion from 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), 4(e), and 4(ff).

Section 5. Publication of Materials.

The Department shall cause to be published printed materials and an informational video 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 or part of an existing website, to provide the information required by and described in this Section.

The Department shall not collect or maintain information regarding persons using the website. The Department shall monitor the website on a weekly basis to prevent and correct tampering.

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 Department shall print the materials in a typeface large enough to be clearly legible.

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

(a) a comprehensive list of geographically indexed public and private agencies,
(b) their telephone numbers and addresses;
(c) a description of prenatal, childbirth, and neonatal services available to assist a woman;
(d) a 24-hour, toll-free telephone number which any person may call to obtain information about the agencies and the services they offer in the caller’s locality;
(e) a notice that it is unlawful for any person to coerce a woman to undergo an abortion [Insert reference(s) to state’s anti-coercion statute(s), if any];
(f) a notice that a minor is considered “emancipated” under public assistance
benefits eligibility (which cannot be used to obtain an abortion) if a minor’s parents, guardian, or custodian deny financial support to a minor because of the minor’s refusal to receive an abortion.

(g) a notice 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;

(h) a notice that [applicable state law] permits adoptive parents to pay prenatal care, childbirth, and neonatal care costs.

(i) 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 or her agent give you the opportunity to call agencies like these before you undergo an abortion.”

(j) Information on the support obligations of the father of a child who is born alive, including:

(i) the father’s legal duty to support his child, which may include child support payments and health insurance, and

(ii) the fact that paternity may be established by:

(A) the father’s signature on a birth certificate,

(B) a statement of paternity; or

(C) by court action.

(iii) a notice that more information concerning establishment of paternity and child support services and enforcement may be obtained by calling state or county public assistance agencies.

(k) Information on the preborn child’s probable anatomical and physiological characteristics at 2 week gestational increments from fertilization to full term. The materials shall be presented in an objective, nonjudgmental, and designed to convey only accurate scientific information about the preborn child at various gestational ages, including:

(i) color photographs of such preborn child at two (2) week gestational increments. If a photograph is unavailable, a picture must contain a realistic depiction of the preborn child’s dimensions;

(ii) information about brain and heart functions,

(iii) the presence of external members and internal organs during the applicable stages of development; and

(iv) any relevant information on the possibility of the preborn child’s
survival.

(l) Information that objectively describes 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 any complication described in Section 3(b).

(m) a uniform resource locator (URL) for the state-maintained website where the materials described in Subsections 5(a)-(k), 5(l), 5(m), [and] 5(o),[and 5(p)] can be found.

[OPTIONAL: Information on Chemical Abortion Reversal: (o) information on the potential ability of qualified medical professionals to reverse the effects of abortion obtained through abortion-inducing drugs, such as mifepristone (brand name Mifeprex), commonly referred to as “RU-486,” including contact details containing more information at http://www.abortionpillreversal.com/ and by contacting (877) 558-0333 for assistance in locating a medical professional that can aide in the reversal of abortion.]

[(n)] a checklist certification form to be used by the physician or a qualified person under subsection 4[(l)] 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.

[(o)] The Department shall produce a standardized video that may be used statewide, and presents the following information to be presented in an objective, unbiased manner designed to convey only accurate scientific information:

(i) information described in Subsections 5(a)-(k), 5(l), 5(m), 5(n), [and] 5(o),[and 5(p)], in accordance with the requirements of those subsections;

(ii) summaries and references to printed, comprehensive lists of geographically indexed names and services described in subsection 5(a) as the Department may create;

(iii) an ultrasound of a preborn child’s heartbeat at

(A) 4-5 weeks’ gestational age;

(B) 6-8 weeks’ gestational age; and

(C) each subsequent month until viability.

[(r)] The Department shall make the materials required under this Section and the informational video described in subsection 5[(r)] available upon request, in appropriate number to any person, facility, or hospital, at no cost.

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 Remedies and Professional Sanctions.

(a) In addition to any remedy available under this State’s common or statutory law, failure to comply with the requirements of this Act shall:

   (1) provide a basis for a civil malpractice action for actual and punitive damages; and

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

(b) No civil liability may be assessed against the recipient of the abortion.

(c) Upon request, 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 abortion recipient.

(d) 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.

(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 may render judgment for reasonable attorney’s fees in favor of the defendant against the plaintiff.

Section 9. Construction.

(a) This Act does not create or recognize a right to abortion.

(b) This Act does not make lawful an abortion that is currently unlawful.
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 Act 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, is construed to give it the maximum effect permitted by law. If such holding wholly invalidates or renders the provision unenforceable, such provision is severable and does not affect the remainder of this Act or how the Act applies to other persons not similarly situated or to other, dissimilar circumstances.

Section 12. Effective Date.

This Act takes effect on [Insert date].