



## National Association of Christian Lawmakers

### NALC Model State Heartbeat Act

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**Passed by the NALC-National Legislative Council Executive Committee  
by unanimous vote July 17, 2021**

SECTION 1. This Act shall be known as the [STATE] Heartbeat Act.

#### SECTION 2. LEGISLATIVE FINDINGS.

- (a) The legislature finds that the State of [STATE NAME] never repealed, either expressly or by implication, the state statutes enacted before the ruling in Roe v. Wade, 410 U.S. 113 (1973), that prohibit and criminalize abortion unless the mother's life is in danger.
- (b) The legislature further finds, according to contemporary medical research, that:
  - (1) fetal heartbeat has become a key medical predictor that an unborn child will reach live birth;
  - (2) cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac;
  - (3) [STATE] has compelling interests from the outset of a woman's pregnancy in protecting the health of the woman and the life of the unborn child; and
  - (4) to make an informed choice about whether to continue her pregnancy, the pregnant woman has a compelling interest in knowing the likelihood of her unborn child surviving to full-term birth based on the presence of cardiac activity.

#### SECTION 3. DEFINITIONS. In this subchapter:

- (a) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.
- (b) "Gestational age" means the amount of time that has elapsed from the first day of a woman's last menstrual period.

- (c) "Gestational sac" means the structure comprising the extraembryonic membranes that envelop the unborn child and that is typically visible by ultrasound after the fourth week of pregnancy.
- (d) "Physician" means an individual licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine.
- (e) "Pregnancy" means the human female reproductive condition that:
  - (1) begins with fertilization;
  - (2) occurs when the woman is carrying the developing human offspring; and
  - (3) is calculated from the first day of the woman's last menstrual period.
- (f) "Standard medical practice" means the degree of skill, care, and diligence that an obstetrician of ordinary judgment, learning, and skill would employ in like circumstances.
- (g) "Unborn child" means a human fetus or embryo in any stage of gestation from fertilization until birth.

#### SECTION 4. DETERMINATION OF PRESENCE OF FETAL HEARTBEAT REQUIRED; RECORD.

- (a) For the purposes of determining the presence of a fetal heartbeat under this section, "standard medical practice" includes employing the appropriate means of detecting the heartbeat based on the estimated gestational age of the unborn child and the condition of the woman and her pregnancy.
- (b) Except as provided by this chapter, a physician may not knowingly perform or induce an abortion on a pregnant woman unless the physician has determined, in accordance with this section, whether the woman's unborn child has a detectable fetal heartbeat.
- (c) In making a determination under Subsection (b), the physician must use a test that is:
  - (1) consistent with the physician's good faith and reasonable understanding of standard medical practice; and
  - (2) appropriate for the estimated gestational age of the unborn child and the condition of the pregnant woman and her pregnancy.
- (d) A physician making a determination under Subsection (b) shall record in the pregnant woman's medical record:
  - (1) the estimated gestational age of the unborn child;
  - (2) the method used to estimate the gestational age; and
  - (3) the test used for detecting a fetal heartbeat, including the date, time, and results of the test.

SECTION 5. PROHIBITED ABORTION OF UNBORN CHILD WITH DETECTABLE FETAL HEARTBEAT; EFFECT.

- (a) Except as provided by this chapter, a physician may not knowingly perform or induce an abortion on a pregnant woman if the physician detected a fetal heartbeat for the unborn child as required by this chapter or failed to perform a test to detect a fetal heartbeat.
- (b) A physician does not violate this section if the physician performed a test for a fetal heartbeat as required by this chapter and did not detect a fetal heartbeat.
- (c) This section does not affect:
  - (1) the provisions of this chapter that restrict or regulate an abortion by a particular method or during a particular stage of pregnancy; or
  - (2) any other provision of state law that regulates or prohibits abortion.

SECTION 6. EXCEPTION FOR MEDICAL EMERGENCY; RECORDS.

- (a) Sections 5 and 6 of this chapter do not apply if a physician believes a medical emergency exists that prevents compliance with this chapter.
- (b) A physician who performs or induces an abortion under circumstances described by Subsection (a) shall make written notations in the pregnant woman's medical record of:
  - (1) the physician's belief that a medical emergency necessitated the abortion; and
  - (2) the medical condition of the pregnant woman that prevented compliance with this chapter.
- (c) A physician performing or inducing an abortion under this section shall maintain in the physician's practice records a copy of the notations made under Subsection (b).

SECTION 7. CONSTRUCTION.

- (a) This chapter does not create or recognize a right to abortion before a fetal heartbeat is detected.
- (b) This chapter may not be construed to:
  - (1) authorize the initiation of a cause of action against or the prosecution of a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of this chapter;
  - (2) wholly or partly repeal, either expressly or by implication, any other statute that regulates or prohibits abortion; or
  - (3) restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state.

SECTION 8. LIMITATIONS ON PUBLIC ENFORCEMENT.

- (a) Notwithstanding chapter or any other law, the requirements of this chapter shall be enforced exclusively through the private civil actions described in Section 9. No enforcement of this chapter, and no enforcement of [Respective state penal code regarding criminal homicide or assault), in response to violations of this chapter, may be taken or threatened by this state, a political subdivision, a district or county attorney, or an executive or administrative officer or employee of this state or a political subdivision against any person, except as provided in Section 9.
- (b) Subsection (a) may not be construed to:
  - (1) legalize the conduct prohibited by this chapter;
  - (2) limit in any way or affect the availability of a remedy established by Section 9; or
  - (3) limit the enforceability of any other laws that regulate or prohibit abortion.

#### SECTION 9. CIVIL LIABILITY FOR VIOLATION OR AIDING OR ABETTING VIOLATION.

- (a) Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against any person who:
  - (1) performs or induces an abortion in violation of this chapter;
  - (2) knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of this subchapter, regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of this subchapter; or
  - (3) intends to engage in the conduct described by Subdivision (1) or (2).
- (b) If a claimant prevails in an action brought under this section, the court shall award:
  - (1) injunctive relief sufficient to prevent the defendant from violating this subchapter or engaging in acts that aid or abet violations of this subchapter;
  - (2) statutory damages in an amount of not less than \$10,000 for each abortion that the defendant performed or induced in violation of this subchapter, and for each abortion performed or induced in violation of this subchapter that the defendant aided or abetted; and
  - (3) costs and attorney's fees.
- (c) Notwithstanding Subsection (b), a court may not award relief under this section in response to a violation of Subsection (a)(1) or (2) if the defendant demonstrates that the defendant previously paid the full amount of statutory damages under Subsection (b)(2) in a previous action for that particular abortion performed or induced in violation of this subchapter, or for the particular conduct that aided or abetted an abortion performed or induced in violation of this subchapter.
- (d) Notwithstanding any other law, a person may bring an action under this section not later than the fourth anniversary of the date the cause of action accrues.

- (e) Notwithstanding any other law, the following are not a defense to an action brought under this section:
- (1) ignorance or mistake of law;
  - (2) a defendant's belief that the requirements of this chapter are unconstitutional or were unconstitutional;
  - (3) a defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violates this chapter;
  - (4) a defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;
  - (5) non-mutual issue preclusion or non-mutual claim preclusion;
  - (6) the consent of the unborn child's mother to the abortion; or
  - (7) any claim that the enforcement of this subchapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by Section 10.
- (f) It is an affirmative defense if:
- (1) a person sued under Subsection (a)(2) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion had complied or would comply with this subchapter; or
  - (2) a person sued under Subsection (a)(3) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion will comply with this subchapter.
  - (3) The defendant has the burden of proving an affirmative defense under Subsection (f)(1) or (2) by a preponderance of the evidence.
- (g) This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by [the freedom of speech section of the] [State Name] Constitution.
- (h) Notwithstanding any other law, this state, a state official, or a district or county attorney may not intervene in an action brought under this section. This subsection does not prohibit a person described by this subsection from filing an amicus curiae brief in the action.
- (i) Notwithstanding any other law, a court may not award costs or attorney's fees under the [State Name] Rules of Civil Procedure or any other rule adopted by the supreme court, to a defendant in an action brought under this section.
- (j) Notwithstanding any other law, a civil action under this section may not be brought by a person who impregnated the abortion patient through an act of rape, sexual assault, incest under state law.

## SECTION 10. CIVIL LIABILITY: UNDUE BURDEN DEFENSE LIMITATIONS.

- (a) A defendant against whom an action is brought under Section 9 does not have standing to assert the rights of women seeking an abortion as a defense to liability under that section unless:
- (1) the United States Supreme Court holds that the courts of this state must confer standing on that defendant to assert the third-party rights of women seeking an abortion in state court as a matter of federal constitutional law; or
  - (2) the defendant has standing to assert the rights of women seeking an abortion under the tests for third-party standing established by the United States Supreme Court.
- (b) A defendant in an action brought under Section 9 may assert an affirmative defense to liability under this section if:
- (1) the defendant has standing to assert the third-party rights of a woman or group of women seeking an abortion in accordance with Subsection (a); and
  - (2) the defendant demonstrates that the relief sought by the claimant will impose an undue burden on that woman or that group of women seeking an abortion.
- (c) A court may not find an undue burden under Subsection (b) unless the defendant introduces evidence proving that:
- (1) an award of relief will prevent a woman or a group of women from obtaining an abortion; or
  - (2) an award of relief will place a substantial obstacle in the path of a woman or a group of women who are seeking an abortion.
- (d) A defendant may not establish an undue burden under this section by:
- (1) merely demonstrating that an award of relief will prevent women from obtaining support or assistance, financial or otherwise, from others in their effort to obtain an abortion; or
  - (2) arguing or attempting to demonstrate that an award of relief against other defendants or other potential defendants will impose an undue burden on women seeking an abortion.
- (e) The affirmative defense under Subsection (b) is not available if the United States Supreme Court overrules *Roe v. Wade*, 410 U.S. 113 (1973) or *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), regardless of whether the conduct on which the cause of action is based under Section 9 occurred before the Supreme Court overruled either of those decisions.
- (f) Nothing in this section shall in any way limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability under Section 9, and a court may not award relief under Section 9 if the conduct for which the defendant has been sued was an exercise of state or federal constitutional rights that personally belong to the defendant.

## SECTION 11. CIVIL LIABILITY: VENUE.

- (a) Notwithstanding any other law, a civil action brought under Section 9 shall be brought in:

- (1) the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;
- (2) the county of residence for any one of the natural person defendants at the time the cause of action accrued;
- (3) the county of the principal office in this state of any one of the defendants that is not a natural person; or
- (4) the county of residence for the claimant if the claimant is a natural person residing in this state.

(b) If a civil action is brought under Section 9 in any one of the venues described by Subsection (a), the action may not be transferred to a different venue without the written consent of all parties.

## SECTION 12. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL IMMUNITY PRESERVED.

- (a) This section prevails over any conflicting law.
- (b) This state has sovereign immunity, a political subdivision has governmental immunity, and each officer and employee of this state or a political subdivision has official immunity in any action, claim, or counterclaim or any type of legal or equitable action that challenges the validity of any provision or application of this chapter, on constitutional grounds or otherwise.
- (c) A provision of state law may not be construed to waive or abrogate an immunity described by Subsection (b) unless it expressly waives immunity under this section.

## SECTION 13. SEVERABILITY.

- (a) It is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every application of the provisions in this chapter, are severable from each other.
- (b) If any application of any provision in this chapter to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this chapter shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this chapter to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining applications and shall remain in force, and shall be treated as if the legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden.

- (c) If any court declares or finds a provision of this chapter facially unconstitutional, when discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating the United States Constitution and [State Name] Constitution, those applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted as if the legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate the United States Constitution and [State Name] Constitution.
- (d) The legislature further declares that it would have enacted this chapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this chapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this chapter, were to be declared unconstitutional or to represent an undue burden.
- (e) If any provision of this chapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force.
- (f) No court may decline to enforce the severability requirements of Subsections (a), (b), (c), (d), and (e) on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision does not rewrite a statute, as the statute continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:
  - (1) is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the [State Name] Constitution or United States Constitution;
  - (2) is not a formal amendment of the language in a statute; and
  - (3) no more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

#### SECTION 14. AWARD OF ATTORNEY'S FEES IN ACTIONS CHALLENGING ABORTION LAWS.

*(Note: This may require amendment of a state's relevant civil procedure code)*

- (a) Notwithstanding any other law, any person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent this state, a political subdivision, any governmental entity or public official in this state, or any person in this state from enforcing any statute, ordinance, rule, regulation, or any other type of law that regulates or restricts abortion or that limits taxpayer funding for individuals or entities that perform or promote abortions, in any state or federal court, or that represents any litigant seeking such relief in any state or federal court, is jointly and severally liable to pay the costs and attorney's fees of the prevailing party.
- (b) For purposes of this section, a party is considered a prevailing party if a state or federal court:

- (1) dismisses any claim or cause of action brought against the party that seeks the declaratory or injunctive relief described by Subsection (a), regardless of the reason for the dismissal; or
  - (2) enters judgment in the party's favor on any such claim or cause of action.
- (c) Regardless of whether a prevailing party sought to recover costs or attorney's fees in the underlying action, a prevailing party under this section may bring a civil action to recover costs and attorney's fees against a person, including an entity, attorney, or law firm, that sought declaratory or injunctive relief described by Subsection (a) not later than the third anniversary of the date on which, as applicable:
- (1) the dismissal or judgment described by Subsection (b) becomes final on the conclusion of appellate review; or
  - (2) the time for seeking appellate review expires.
- (d) It is not a defense to an action brought under Subsection (c) that:
- (1) a prevailing party under this section failed to seek recovery of costs or attorney's fees in the underlying action;
  - (2) the court in the underlying action declined to recognize or enforce the requirements of this section; or
  - (3) the court in the underlying action held that any provisions of this section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

#### SECTION 15. CONSTRUCTION OF ABORTION STATUTES.

- (a) A statute that regulates or prohibits abortion may not be construed to repeal any other statute that regulates or prohibits abortion, either wholly or partly, unless the repealing statute explicitly states that it is repealing the other statute.
- (b) A statute may not be construed to restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state unless the statute explicitly states that political subdivisions are prohibited from regulating or prohibiting abortion in the manner described by the statute.
- (c) Every statute that regulates or prohibits abortion is severable in each of its applications to every person and circumstance. If any statute that regulates or prohibits abortion is found by any court to be unconstitutional, either on its face or as applied, then all applications of that statute that do not violate the United States Constitution and [State Name] Constitution shall be severed from the unconstitutional applications and shall remain enforceable, notwithstanding any other law, and the statute shall be interpreted as if containing language limiting the statute's application to the persons, group of persons, or circumstances for which the statute's application will not violate the United States Constitution and [State Name] Constitution.

#### SECTION 16. [HEALTH DEPARTMENT] ENFORCEMENT; EXCEPTION.

The [HEALTH department] shall enforce this chapter except for Section 3 through 15, which shall be enforced exclusively through the private civil enforcement actions described by Section 9 and may not be enforced by the department.

#### SECTION 17. REQUIRED DOCUMENTATION.

- (a) If an abortion is performed or induced on a pregnant woman because of a medical emergency, the physician who performs or induces the abortion shall execute a written document that certifies the abortion is necessary due to a medical emergency and specifies the woman's medical condition requiring the abortion.
- (b) A physician shall:
  - (1) place the document described by Subsection (a) in the pregnant woman's medical record; and
  - (2) maintain a copy of the document described by Subsection (a) in the physician's practice records.
- (c) A physician who performs or induces an abortion on a pregnant woman shall:
  - (1) if the abortion is performed or induced to preserve the health of the pregnant woman, execute a written document that:
    - (A) specifies the medical condition the abortion is asserted to address; and
    - (B) provides the medical rationale for the physician's conclusion that the abortion is necessary to address the medical condition; or
  - (2) for an abortion other than an abortion described by Subdivision (1), specify in a written document that maternal health is not a purpose of the abortion.
- (d) The physician shall maintain a copy of a document described by Subsection (c) in the physician's practice records.

#### SECTION 18. VOLUNTARY AND INFORMED CONSENT.

- (a) Consent to an abortion is voluntary and informed only if:
  - (1) the physician who is to perform or induce the abortion informs the pregnant woman on whom the abortion is to be performed or induced of:
    - (A) the physician's name;
    - (B) the particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate:
      - (i.) the risks of infection and hemorrhage;
      - (ii.) the potential danger to a subsequent pregnancy and of infertility; and
      - (iii.) the possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer;
    - (C) the probable gestational age of the unborn child at the time the abortion is to be performed or induced; and
    - (D) the medical risks associated with carrying the child to term;

- (2) the physician who is to perform or induce the abortion or the physician's agent informs the pregnant woman that:
  - (A) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;
  - (B) the father is liable for assistance in the support of the child without regard to whether the father has offered to pay for the abortion; and
  - (C) public and private agencies provide pregnancy prevention counseling and medical referrals for obtaining pregnancy prevention medications or devices, including emergency contraception for victims of rape or incest;
- (3) the physician who is to perform or induce the abortion or the physician's agent:
  - (A) provides the pregnant woman with the printed materials described and required by law; and
  - (B) informs the pregnant woman that those materials:
    - (i.) have been provided by the commission [Department of State Health Services];
    - (ii.) are accessible on an Internet website sponsored by the commission [department];
    - (iii.) describe the unborn child and list agencies that offer alternatives to abortion; and
    - (iv.) include a list of agencies that offer sonogram services at no cost to the pregnant woman;
- (4) (*if applicable*) before any sedative or anesthesia is administered to the pregnant woman and at least 24 hours before the abortion or at least two hours before the abortion if the pregnant woman waives this requirement by certifying that she currently lives 100 miles or more from the nearest abortion provider that is a facility licensed under state law or a facility that performs more than 50 abortions in any 12-month period:
  - (A) the physician who is to perform or induce the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers performs a sonogram on the pregnant woman on whom the abortion is to be performed or induced;
  - (B) the physician who is to perform or induce the abortion displays the sonogram images in a quality consistent with current medical practice in a manner that the pregnant woman may view them;
  - (C) the physician who is to perform or induce the abortion provides, in a manner understandable to a layperson, a verbal explanation of the results of the sonogram images, including a medical description of the dimensions of the embryo or fetus, the presence of cardiac activity, and the presence of external members and internal organs; and
  - (D) the physician who is to perform or induce the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers makes audible the heart auscultation for the pregnant woman to hear, if present, in a quality consistent with current medical practice and provides, in a manner understandable to a layperson, a simultaneous verbal explanation of the heart auscultation;

- (5) before receiving a sonogram under Subdivision (4)(A) and before the abortion is performed or induced and before any sedative or anesthesia is administered, the pregnant woman completes and certifies with her signature an election form that states as follows:

"ABORTION AND SONOGRAM ELECTION

- (1) THE INFORMATION AND PRINTED MATERIALS DESCRIBED BY [STATE CODE CITATION], HAVE BEEN PROVIDED AND EXPLAINED TO ME.
- (2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF AN ABORTION.
- (3) *(IF APPLICABLE)* STATE LAW REQUIRES THAT I RECEIVE A SONOGRAM PRIOR TO RECEIVING AN ABORTION.
- (4) *(IF APPLICABLE)* I UNDERSTAND THAT I HAVE THE OPTION TO VIEW THE SONOGRAM IMAGES.
- (5) *(IF APPLICABLE)* I UNDERSTAND THAT I HAVE THE OPTION TO HEAR THE HEARTBEAT.
- (6) *(IF APPLICABLE)* I UNDERSTAND THAT I AM REQUIRED BY LAW TO HEAR AN EXPLANATION OF THE SONOGRAM IMAGES UNLESS I CERTIFY IN WRITING TO ONE OF THE FOLLOWING:

\_\_\_ I AM PREGNANT AS A RESULT OF A SEXUAL ASSAULT, INCEST, OR OTHER VIOLATION OF THE PENAL CODE THAT HAS BEEN REPORTED TO LAW ENFORCEMENT AUTHORITIES OR THAT HAS NOT BEEN REPORTED BECAUSE I REASONABLY BELIEVE THAT DOING SO WOULD PUT ME AT RISK OF RETALIATION RESULTING IN SERIOUS BODILY INJURY.

\_\_\_ I AM A MINOR AND OBTAINING AN ABORTION IN ACCORDANCE WITH JUDICIAL BYPASS PROCEDURES UNDER CHAPTER 33, TEXAS FAMILY CODE.

\_\_\_ MY UNBORN CHILD [FETUS] HAS AN IRREVERSIBLE MEDICAL CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE DIAGNOSTIC PROCEDURES AND DOCUMENTED IN MY MEDICAL FILE.

- (7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL AND WITHOUT COERCION.

- (8) *(IF APPLICABLE)* FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER [STATE CODE] OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD ONLY:

I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER [STATE CODE] OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD, I WAIVE THE REQUIREMENT TO WAIT 24 HOURS AFTER THE SONOGRAM IS PERFORMED BEFORE RECEIVING THE ABORTION PROCEDURE. MY PLACE OF RESIDENCE IS: \_\_\_\_\_.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE";

- (6) before the abortion is performed or induced, the physician who is to perform or induce the abortion receives a copy of the signed, written certification required by Subdivision (5); and
- (7) the pregnant woman is provided the name of each person who provides or explains the information required under this section.

#### SECTION 19. PHYSICIAN REPORTING REQUIREMENTS.

*(Note: May require amendment of specific state abortion reporting statute)*

- (a) A physician who performs an abortion at an abortion facility must complete and submit a monthly report to the department on each abortion performed by the physician at the abortion facility. The report must be submitted on a form provided by the department.
- (b) The report may not identify by any means the patient.
- (c) The report must include:
- (1) whether the abortion facility at which the abortion is performed is licensed under this chapter;
  - (2) the patient's year of birth, race, marital status, and state and county of residence;
  - (3) the type of abortion procedure;
  - (4) the date the abortion was performed;
  - (5) whether the patient survived the abortion, and if the patient did not survive, the cause of death;

- (6) the probable post-fertilization age of the unborn child based on the best medical judgment of the attending physician at the time of the procedure;
  - (7) the date, if known, of the patient's last menstrual cycle;
  - (8) the number of previous live births of the patient;
  - (9) the number of previous induced abortions of the patient;
  - (10) whether the abortion was performed or induced because of a medical emergency and any medical condition of the pregnant woman that required the abortion; and
  - (11) the information required under Sections 9(a) and (c).
- (d) Except as provided by law, all information and records held by the [state health/medical department] under this chapter are confidential and are not open records for the purposes of [state FOI law]. That information may not be released or made public on subpoena or otherwise, except that release may be made:
- (1) for statistical purposes, but only if a person, patient, physician performing an abortion, or abortion facility is not identified;
  - (2) with the consent of each person, patient, physician, and abortion facility identified in the information released;
  - (3) to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter; or
  - (4) to appropriate state licensing boards to enforce state licensing laws.
- (e) A person commits an offense if the person violates Subsection (b), (c), or (d). An offense under this subsection is a Class A misdemeanor.
- (f) Not later than the 15th day of each month, a physician shall submit to the department the report required by this section for each abortion performed by the physician at an abortion facility in the preceding calendar month.
- (g) The [state health/medical department] shall establish and maintain a secure electronic reporting system for the submission of the reports required by this section. The department shall adopt procedures to enforce this section and to ensure that only physicians who perform one or more abortions during the preceding calendar month are required to file the reports under this section for that month.

SECTION 20. Every provision in this Act and every application of the provision in this Act are severable from each other. If any provision or application of any provision in this Act to any person, group of persons, or circumstance is held by a court to be invalid, the invalidity does not affect the other provisions or applications of this Act.

SECTION 21. The change in law made by this Act applies only to an abortion performed or induced on or after the effective date of this Act.

SECTION 22. This Act takes effect [Month Day, Year].