

The Prevention of Coerced and Unsafe Abortions Act

A Model Bill at StopForcedAbortions.Org

The Problem

- Victims of coerced and unsafe abortions are currently denied any rights of recourse for negligent pre-abortion screening and counseling.
- Over 60% of women undergoing abortions feel pressured to choose abortions contrary to their own values and preferences.
- Over 80% have known risk factors which indicate that abortion, in their cases, are contraindicated. The risks are clearly greater than any hoped-for and unproven benefits.
- Abortionists routinely ignore their medical obligation to screen for risk factors and to provide a reasonable, evidence-based risk versus benefits assessment. Why? Because case law shields them from any liability for psychological injuries absent a physical injury.
- The absence of clear standards for pre-abortion screening also shields those supplying abortion pills and out-of-state referrals from any liability for complicity in coerced abortions or reckless endangerment.
- Removes legal obstacles which typically make it difficult or impossible for women suffering injuries from abortion from winning and collecting a judgment for damages.
- Protects women from reckless referrals to out-of-state abortion providers.
- Guarantees victims rights of redress against those who recklessly provide or abet self-abortion pills or kits.

What the Act Does

- Clarifies in statute the duty of physicians to screen for risk factors which place women at higher risk of physical or negative complications of abortion.
- Restores the accountability of physicians for making informed medical recommendations based on each woman's individual risk profile.
- Better protects women from undergoing coerced abortions, which is a major risk factor for severe post-abortion psychological problems.
- Strengthens the Women's Right to Know Law by ensuring that women are given not only the general information about abortion risks, but also the specific information most relevant to their own unique risk factors.

What the Act Does NOT Do

- It does not impose any burdens on women seeking abortions.
- It does not ban any abortions, even in those cases where a woman may be at higher risk of one or more adverse reactions.
- It does not impose any requirements on abortion providers that are contrary to the standard of care for screening that applies to other medical procedures.
- It does not require any enforcement by the State. The provisions of the bill are enforced solely by civil remedies.

The Benefits

- If abortion is as safe and beneficial as Planned Parenthood claims, it will do nothing more than help to ensure that all abortionists rise up to their same high standard of care.
- If abortion is more dangerous than they have admitted, it will help to prevent the subset of abortions that are most dangerous.
- Promoters of dangerous self-abortion methods will be deterred by exposure to liability for both reckless endangerment and the wrongful death of aborted children.
- (Specific details on reverse side)

A more detailed description of key provisions with section numbers

- 5(1) The Department of Health shall prepare a checklist of risk factors that can be electronically completed and submitted by abortion providers and their patients.
- 3(1) “At least one hour prior to the performance of an abortion, a person licensed under the Uniform Credentialing Act as either a physician, psychiatrist, psychologist, mental health practitioner, physician assistant, registered nurse, or social worker has: Evaluated the pregnant woman in person to identify the presence of risk factors associated with complications associated with abortion, the list including, at least the following risk factors: i. perceived pressure from others to terminate a pregnancy; . . . [all other risk factors identified by the APA are spelled out here, plus] . . . xvii. any other risk factors identified by the Department of Health;”
- 3(3) “A digitally signed copy of the electronic file, including all information from subsections (1) and (2), is filed with the Department of Health’s Abortion Registry [defined in Section 5] within thirty days after the abortion and a copy is retained in the physician’s permanent records.”
- 4(1)a “**Each violation** of Section 3 shall entitle the woman or her survivors to ten thousand dollars for each failure to screen for a risk factor and for **each failure** to inform her of associated complications **plus actual damages and reasonable attorney’s fees and costs;**”
- 4(7) and (1)b: Any failure to comply with the standard of screening and counseling required “shall create a **presumption that the woman would not have agreed to an abortion**” and shall entitle the woman and/or the father to “**damages for the wrongful death** of the unborn child.”
- 4(2) expands the statutes of limitations allowing women to seek damages to the longer of ten years after the abortion, or four years **after a woman has recovered from any emotional injury** that may have impeded her ability to bring her suit.
- 4(7)(b) creates a right to redress for emotional injuries even if there is no physical injury.
- 4(1)(c)(ii) allow suits by women counseled to undertake unsafe abortions **even if they do not go through with it**. This parallels provisions in many deceptive business statutes that allow suits against companies who engage in practices that are likely to deceive at least some people.
- 4(1)(c)(iii) allows suits against the manufacturer or distributors of abortifacients, including mifepristone, who fail to provide adequate safeguards.
- 4(4) grants rights of redress against abortion providers **outside the state** who advertise their services in the state or accept referrals from parties within the state. It also applies the required standards for screening, disclosure and evidence based medical recommendations defined in Section 3 to adjudication of these cases.
- 4(11) allows suits against non-physicians who refer for abortion or encourage, aid or abet self-abortions all of which are potentially dangerous given the lack of proper pre-abortion screening and counseling.
- 4(7)(c) eliminates the requirement that only abortion providers may serve as expert witnesses.
- 3(2) requires abortionists to document a **reasonable evidence-based medical recommendation** based on each woman’s unique profile of risks, wants, and needs.
- 3(3) and 3(6) **establish a presumption of negligence** if abortion providers fail to report the information needed to identify and track the frequency of women at elevated risk of abortion complications to the Department of Health. Similar information is already reported for public health research and tracking, for venereal diseases and diseases like Covid. Gathering this data relative to unwanted and unsafe abortions serves similar public health interests.

Contact: David C. Reardon, Ph.D.
DReardon@ElliotInstitute.org

StopForcedAbortions.Org