



Reproductive Choice in the States in 2005

The National Abortion Federation (NAF) is the professional association of abortion providers in North America. Together, NAF members care for over half the women who choose abortion each year in the United States. NAF's mission is to ensure that abortion remains safe, legal and accessible. To further that mission, NAF tracks legislative initiatives at the state level that affect abortion providers. Each year, more and more state initiatives seek to limit women's access to reproductive health care services. This report will discuss some of the key state legislation impacting a woman's right to access safe and legal abortion care in 2005.

In 2005, forty-eight state legislatures across the country considered over 500 anti-choice bills. Twenty-six bills restricting abortion providers and abortion services were signed into law in 2005. Governors supportive of a woman's right to choose vetoed harmful bills in Arizona, Kansas and Wisconsin. Additionally, seventeen states considered affirmative bills protecting and supporting health care professionals or abortion rights, and five affirmative bills supporting reproductive choice were enacted. The most common types of proposed abortion restrictions included abortion bans, biased counseling and waiting period bills, restrictions on minors' access to abortion services, bills restricting public funding of abortion, and Targeted Regulations of Abortion Providers (TRAP).¹

The 2005 elections had positive outcomes for pro-choice concerns. On November 8, a proposed ballot initiative in California requiring abortion providers to notify the parents or guardians of minors seeking abortions failed. The measure, which qualified for the ballot in May after supporters submitted 950,000 signatures of Californians in favor of it, would have

¹ Note: while there are other types of bills hostile to family planning and reproductive rights, the only bills tracked in this report are those specific to abortion access or restrictions.

changed the state constitution to prohibit abortions for minors until 48 hours after a parent or guardian had been notified. Several other California ballot initiatives also failed, though this one had the narrowest margin, failing 52.6% to 47.4%.

In the Governors' races, U.S. Sen. Jon Corzine (D) defeated Republican candidate Douglas Forrester with 53% of the vote to become New Jersey's next governor. Corzine is a strong advocate of abortion rights. Virginia Lt. Gov. Tim Kaine (D) was elected to become that state's next governor. While Kaine supports some restrictions on abortion, such as parental involvement laws for minors seeking abortion, in a debate in October Kaine said that in the event the U.S. Supreme Court overturns *Roe v. Wade*, he would veto any attempt to make abortion illegal in Virginia.

Anti-Choice State Legislation In 2005

Abortion Bans

State bills that impose broad bans on abortion come in several different forms. In recent years, bans on safe abortion procedures have been introduced across the country, mirroring the federal abortion ban passed by the United States Congress. Although the federal abortion ban was found unconstitutional by three different federal judges in 2004,² states continue to introduce this type of legislation.

Additionally in 2005, several states proposed constitutional amendments to remove any state and/or federal protection for abortion (KY, MS, ND, NM, TN, VA, WV). Other bills introduced in the states included complete abortion bans and bills banning abortion as early as five weeks gestation unless the woman's life is in danger.

² *NAF v. Ashcroft*, 330 F. Supp. 2d 436 (S.D.N.Y. 2004); *Carhart v. Ashcroft*, 331 F. Supp. 2d 805 (Neb. 2004); *PPFA v. Ashcroft*, 320 F. Supp. 2d 957 (N.D. Cal. 2004).

Proposed Bills:

In 2005, **twenty-four states** considered abortion bans:

AR	AZ	CO	GA	HI	IL
KY	MA	MS	ND	NH	NJ
NM	NY	OH	OK	OR	SC
SD	TN	TX	VA	WA	WV

Enacted Bills:

The **North Dakota** legislature adopted a concurrent resolution urging the U.S. Congress to pass a constitutional amendment to protect the life of a human being at every stage of biological development. **South Dakota** enacted a broad ban on abortion in the state except to save the life of the woman, with a provision that the law would go into effect if *Roe v. Wade* were overturned. **Texas** also enacted a law that prohibits third trimester abortions involving a viable fetus unless the woman's life is at risk, the woman is at risk for brain damage or paralysis, or the fetus has an irreversible brain impairment.

Biased Counseling and Waiting Period Bills

Biased counseling legislation requires abortion providers to give their patients information dictated by the state, often in the form of a mandated script or state-developed literature. Most of these bills single out abortion and do not require specific information about the risks of pregnancy and childbirth. In some instances, state legislators have attempted to include misleading information in state materials regarding the risk of developing so called "post-abortion syndrome" following an abortion, or the alleged link between abortion and an increased risk of breast cancer.³ Misleadingly titled "Women's Right to Know" or "informed consent" bills by their anti-choice sponsors, biased counseling legislation is often accompanied by a waiting period requirement. As a result of these laws, women may be required to stay

³ Leading medical authorities have reported that abortion is not associated with long-term psychological problems and the National Cancer Institute, after reviewing data about pregnancy and breast cancer with more than 100 leading experts, concluded that "induced abortion is not associated with an increase in breast cancer risk."

overnight away from home and arrange for childcare or time off from work. Such delays disproportionately affect low-income women and women who live in rural areas.⁴

Recently, some biased counseling bills have included mandated information about the possibility that the fetus feels pain at a certain gestation, and that an anesthesia or analgesia could potentially be used to alleviate this perception of pain. Experts in science and medicine have reached no consensus on the central questions in this debate. These bills have gained increased visibility following consideration of the issue at the federal level, and have been introduced in at least 18 states this year.

Proposed Bills:

In 2005, **thirty-three states** considered biased counseling and/or waiting period bills:

AR	AL	AZ	CA	CO	CT
GA	IA	ID	IN	KY	LA
MA	ME	MI	MN	MT	NC
NE	NH	NJ	NY	OK	OR
RI	SD	TN	TX	VA	WA
WI	WV	WY			

Enacted Bills:

Georgia and **Oklahoma** enacted extensive anti-choice legislation outlining specific biased counseling requirements and instituting 24-hour waiting periods in both states for all women seeking abortions. A woman must now receive state-directed information when she seeks

⁴ In 2000, 87% of counties in the U.S. had no abortion provider, and that percentage rose to 97% with no abortion provider for nonmetropolitan counties in 1999. Source: Finer, Lawrence B. & Stanley K. Henshaw, "Abortion Incidence and Services in the United States in 2000," *Perspectives on Sexual and Reproductive Health*, 2003, 35(1):11.

abortion services, and be notified that information has been published by the state regarding abortion and fetal development.

Several states amended their current biased counseling laws. **Indiana** now requires that physicians inform women before an abortion of the availability of fetal ultrasound imaging and auscultation of fetal heart tone services. **Louisiana** removed the exception for rape or incest survivors from their biased counseling law, so all women seeking abortion care are now required to receive the state-directed information, although rape and incest survivors are still exempted from the state's 24-hour waiting period.

South Dakota enacted a biased counseling bill mandating that women be given medically inaccurate information during the informed consent process, specifically about the risks of depression and suicide. It also requires that the woman be told that she has a relationship with an unborn human being that is protected by the U.S. Constitution and the laws of South Dakota. The law further requires that women be given the name, address, and telephone number of a "pregnancy help center" in the area at least 24 hours prior to the abortion procedure.⁵ The law was challenged in court, and a U.S. District Court judge in July issued a temporary injunction barring its enforcement, saying the state cannot violate abortion providers' First Amendment rights by requiring them to "espouse the state's theology."⁶

Arkansas, Georgia and Minnesota enacted legislation specifically requiring that women be given information about the possibility of fetal pain after 20 weeks gestation. All three states will be adding information about fetal pain to their state informed consent materials. In Georgia, a woman must be informed prior to the abortion procedure that information about fetal pain exists on a state-sponsored website. In Arkansas and Minnesota, the woman must

⁵ A "pregnancy help center" may include Crisis Pregnancy Centers (CPCs), which have a well-documented history of misinforming and intimidating women in order to prevent them from accessing abortion care.

⁶ See Kaiser Daily Reports, available at http://www.kaisernetwork.org/daily_reports/rep_index.cfm?hint=2&DR_ID=33732

be informed of the possibility of fetal pain perception prior to the abortion procedure, and offered an anesthesia or analgesia to eliminate the possibility of pain perception.

Vetoed Bill:

Wisconsin Governor Doyle vetoed a bill that would have required that women be given information about the possibility of fetal pain after 20 weeks' gestation. The Governor stated in his veto message: "For any medical procedure, the information that a doctor provides to a patient should be based on the best available science and proven medical practice...It would be reckless to inject a requirement that doctors communicate unproven science to their patients during an already difficult and sometimes traumatic time. Certainly, the legislature is in no position to decide what is and what is not settled medical fact."⁷

Minors' Access Bills

In 2005, state legislators continued to introduce a variety of bills impeding minors' access to abortion care. The most common were parental consent or notification bills, and amendments to current laws creating stricter standards (e.g., by adding notarization requirements, changing the standard from notice to consent, or making the bypass system more onerous).

Additionally, states are increasingly addressing the parental involvement issue through ballot initiatives that propose to amend the state constitution. Thirty-four states already place some type of parental involvement restrictions on minors' access to abortion care.

⁷ Full text of Governor Doyle's veto message available at:
<http://www.wisgov.state.wi.us/docview.asp?docid=5754&docid=19>

Proposed Bills:

In 2005, **thirty-one states** considered bills restricting minors' access:

AR	CA	CT	DE	FL	GA
HI	IA	ID	IL	KS	MA
MD	ME	MO	MS	MT	NC
NJ	NM	NY	OK	OR	RI
SD	TN	TX	VT	WA	WI
WV					

Enacted Bills:

Arkansas amended their existing parental involvement statute to require written consent from a parent or guardian before a minor can obtain an abortion. The minor must either bring her parent or guardian to the clinic to give permission in person or must obtain a notarized signature. **Texas** also amended their existing parental notice law to also require the written consent of one parent. The **Georgia** legislature modified their current parental notification law to remove the previous “in loco parentis” option, which allowed teens to choose to notify a grandparent or other relative standing in for a parent. Now only a parent or guardian can receive the required notice.

In 2004, voters in **Florida** approved a ballot initiative amending the state constitution to allow the legislature to enact parental notification laws. Accordingly, in 2005 the state legislature passed, and the Governor signed, a parental notification law that requires doctors to notify the parents or legal guardians of a minor seeking an abortion at least 48 hours before providing the procedure. The law was challenged in court, however the judge did not block the law from taking effect, and litigation is ongoing.

Missouri Governor Blunt called an unprecedented special legislative session this fall with the express purpose of enacting abortion related legislation after bills instituting broad abortion

restrictions failed to pass in the regular legislative session. During the special session, the legislature passed, and the Governor signed, a far-reaching abortion restriction law primarily directed at preventing Missouri minors from accessing abortion services in states other than Missouri which do not impose the same mandatory parental involvement requirements as Missouri. The law allows minors and parents to file a lawsuit against abortion providers who provide an abortion for Missouri minors without following Missouri's parental consent law. It also allows lawsuits against others who help a minor obtain an abortion without the consent required by Missouri's parental consent statute. The law was immediately challenged in both federal and state court, and litigation is ongoing.

Oklahoma enacted a parental notice bill requiring that young women give written notice to a parent in person or by certified mail at least 48 hours before an abortion. The law was challenged in court, and litigation is ongoing.

States have also experimented with amending the emergency provisions of their current parental involvement laws. **South Dakota** amended their parental notice law to require that the physician attempt to provide notice to a minor's parent within 24 hours after an emergency abortion, which previously was a complete exception to the parental notice requirement. The minor could also seek a judicial bypass following an emergency abortion. **Idaho** also added new provisions to their enjoined parental notice law to require notice after an emergency abortion, unless the physician deems it in the patient's best interest to not inform a parent. The entire Idaho parental notice law, including the new provisions, remains enjoined, and litigation is ongoing.

Finally, **Kansas** enacted a law that requires any physician who provides abortion care to a minor under the age of 14 to take a sample of the fetal tissue and submit it to the Kansas Bureau of Investigation. The stated purpose of retaining this tissue is to investigate possible instances of child rape in the state.

Ballot Initiatives:

California voters in November defeated a ballot initiative that proposed to amend the state constitution to require parental notification for minors seeking abortions. Pro-choice advocates and abortion providers throughout the state worked diligently with the Campaign for Teen Safety to educate voters about the potential dangers the initiative posed to the health and safety of California minors. The California Medical Association, the California Nurses Association, and the California Academy of Family Physicians joined numerous other organizations in opposition to this ballot initiative. To learn more about this historic victory, visit the website of the Campaign at: <http://campaign4teensafety.phoenix.vertex.net>.

Targeted Regulation of Abortion Provider Bills

Targeted Regulation of Abortion Provider (TRAP) bills single out abortion clinics for medically unnecessary and restrictive regulations not imposed on comparable health care facilities. Once enacted, TRAP laws can over-regulate providers to the point that it can become difficult or even impossible for providers to continue to offer abortion care. The bills often include various structural, staffing, and licensing requirements only for abortion clinics, or redefine outpatient clinics as hospitals or ambulatory surgical centers, subjecting them to unnecessary, politically motivated regulations.

Several states have also recently introduced restrictions on what types of medical professionals can provide abortion care in the state, as well as legislation interfering with medical abortions by arbitrarily imposing medically unnecessary restrictions on the administration of mifepristone.

Proposed Bills:

In 2005, **twenty-one** states introduced TRAP legislation:

AL	CO	FL	GA	IL	IN
KS	MO	MS	NC	ND	OH
OK	OR	PA	RI	TX	VA
VT	WA	WV			

Enacted Bills:

The **Florida** legislature enacted an extensive TRAP law that singles out second-trimester providers for increased regulation by the state Agency for Health Care Administration. The regulations may include standards for physical facilities, supplies and equipment, personnel, screening and evaluation of patients, abortion procedures, recovery, follow-up care, and incident reporting. The Agency continues to work on a proposed draft of the regulations.

Indiana enacted a law authorizing the State Department of Health to adopt extensive requirements for any surgical abortion providers in the state. Providers must comply with the new regulations in order to obtain a license in the state.

The **Mississippi** legislature amended their current TRAP law, which has been enjoined following a legal challenge in 2004. The new provision requires that all abortions provided after the first trimester be performed in an ambulatory surgical center, a hospital, or a Level I abortion facility, and appears to be constitutional.

During the special legislative session, **Missouri** enacted a law that included a provision requiring that physicians providing abortions have clinical privileges at a hospital within 30 miles of the physician's location. This type of provision places a physician's ability to serve his or her patients at the mercy of hospitals that may not, out of bias or fear, grant privileges to abortion providers. It

may further exacerbate the provider shortage that already exists in Missouri, where 97% of the counties in the state have no abortion provider.⁸

Vetoed Bill:

Kansas Governor Sebelius vetoed an extensive TRAP bill that would have singled out abortion providers in the state for increased regulations. The legislature's attempt to override the veto failed by only two votes in the House. Governor Sebelius' veto message accurately captured the true intent of these types of bills: "Once again in 2005, the Legislature has chosen pure politics over good policy, has rejected uniform standards for all procedures, and has instead chosen to regulate only one procedure – abortion."⁹

Other 2005 Anti-Choice Legislation

One state in 2005 took a unique step in the legislative consideration of the issue of abortion by convening a task force to study abortion in the state. Other anti-choice measures that continued to pass in state legislatures in 2005 included refusal clause bills and bills affirmatively funding organizations that provide "abortion alternatives" counseling.

Task Force

The South Dakota legislature created a new entity, the "South Dakota Task Force to Study Abortion" which was a 17-member panel authorized to report its findings to the Legislature and Governor. The Task Force held several public hearings over the course of the year, where they heard testimony from experts on various scientific, social, and ethical perspectives on abortion. The majority of the Task Force was anti-choice, however, and the 72 page final report that was issued to the legislature on Friday, December 9 strongly reflected this bias. The report stated, among many other things, that a fetus is a human being from the moment of conception, that abortion terminates the life of a "unique, whole, living human being," and

⁸ In 2000, 97% of counties in Missouri had no abortion provider, and 71% of women in Missouri lived in these counties. See The Alan Guttmacher Institute's "State Facts About Abortion: Missouri" at <http://www.guttmacher.org/pubs/sfaa/missouri.html>.

⁹ Full text of Governor Sebelius' veto message is available at: http://www.kslegislature.org/bills/2006/gov_2503.pdf

that the decision to have an abortion in the state is neither voluntary nor informed because women do not receive enough information and are pressured into making the decision. The Task Force made several recommendations that the legislature could consider during the 2006 legislative session, including adopting an amendment to the state constitution that gives fetuses the same protections as children.¹⁰

The final report was so contentious that even the Task Force chair, who is anti-choice, voted against adopting the report, stating that it was “less than completely objective and factual.”¹¹ Many Task Force members walked out of the final meeting and did not participate in the final vote after the majority rejected proposals designed to reduce the number of unintended pregnancies in the state.

Refusal Clauses

Refusal clause bills generally allow individual health care providers and/or institutions to refuse to provide, pay for, or make referrals for reproductive health services, based on their subjective religious or personal beliefs. The bills usually do not require that patients receive notice that their access to reproductive health services is being denied, or that access to these services is available elsewhere. In 2005, refusal clause bills that specifically mentioned or were broad enough to include abortion services were considered in at least fourteen states.

Arizona Governor Napolitano vetoed a refusal clause bill that would have allowed a pharmacy, health professional or health care institution to refuse to participate in or provide referrals for abortions or emergency contraception if they have “moral or religious” objections. Napolitano stated in her veto letter: “Pharmacies and other health care service providers have no right to interfere in the lawful personal medical decisions made by patients and their doctors.”¹²

¹⁰ See Kaiser Daily Women’s Health Policy: State Politics & Policy, “South Dakota Task Force Approves Final Report on Abortion-Related Issues; Some Members Disappointed With Outcome,” December 15, 2005.

¹¹ See Chet Brokaw, “Abortion Task Force Chair Disappointed with Final Report, Process,” The Associated Press, Dec. 13, 2005.

¹² Full text of Governor Napolitano’s veto message is available at: <http://www.governor.state.az.us/press/2005/0504/veto%20letter%20HB%202541.pdf>

Wisconsin Governor Doyle also vetoed a bill that would have expanded the ability of health care professionals, including nurses and pharmacists, to object for moral or religious reasons to participating in broadly defined abortion procedures. The bill also allowed health care workers to refuse to refer a patient to another health care provider who would perform the requested procedure. Governor Doyle stated in his veto message: “This bill lets your doctor put his or her political beliefs ahead of your medical best interests. That is simply unconscionable.”¹³

Crisis Pregnancy Center Funding

Even as legislatures were busy limiting funding for family planning and abortion in 2005, they increased funding for "Crisis Pregnancy Centers" (CPCs) and “abortion alternatives” programs. CPCs are organizations which may appear to provide comprehensive reproductive health services, but they do not always give women accurate information about their reproductive health care options, or even referrals for abortion or birth control services. In fact, CPCs have a well-documented history of misinforming and intimidating women in order to prevent them from accessing abortion care.

The most popular form of funding for anti-abortion programs in 2005 was through direct allocations of state money. **Kansas** designated \$300,000 for a pregnancy maintenance initiative program that awards grants to not-for-profit organizations providing services to enable women to carry their pregnancies to term. None of these grants can be awarded to any group “performing, promoting, referring for or educating in favor of abortion.”¹⁴ **Minnesota** enacted the “Positive Alternatives Act” which designates \$5 million over four years for grants to nonprofit organizations that encourage women to carry their pregnancies to term. **North Dakota** set aside \$500,000 over two years to promote childbirth over abortion in the state, and **Missouri** designated over \$1 million that would be available to low-income women during pregnancy to encourage them to carry the pregnancy to term.

¹³ Full text of Governor Doyle’s veto message is available at:
http://www.wisgov.state.wi.us/journal_media_detail.asp?locid=19&prid=1448

¹⁴ 2005 KS HB 2301.

Several other states considered "Choose Life" license plate legislation, which raises funds that are then donated to CPCs. Such plates, or ones with a similar message, were proposed in Georgia, Maine, Missouri, North Carolina, New Jersey, Ohio, Oregon, Rhode Island, South Carolina, and Texas.¹⁵ **Ohio** was the only state to adopt a "Choose Life" license plate, which is now available for an additional \$30, some of which goes to non-profit groups that encourage adoption. The law has been challenged in court, and litigation is ongoing. **Arkansas** allocated funds from the sale of their current "Choose Life" license plate for a "Choose Life Adoption Assistance Program" that will distribute funds to qualified nonprofit organizations that counsel pregnant women committed to adoption.

Pro-Choice Legislation in 2005

Proposed Bills

At least seventeen states considered bills supportive of abortion access or abortion providers in 2005 on a variety of different pro-choice issues.

Four states (HI, MA, MN, RI) considered proposals to integrate the privacy protections of *Roe v. Wade* into state law. Five states (MT, NM, NY, RI, UT) introduced bills to provide greater protection for reproductive health care clinics from protestors or violence. Several states considered license plates with pro-choice messages to counteract the "Choose Life" license plate bills. Rhode Island introduced several different bills to repeal current harmful abortion restrictions in the state.

Enacted Bills

Montana enacted a clinic protection bill, which creates a buffer zone between abortion protestors and patients entering health clinics, when the patient is within 36 feet of the entrance to the health care facility. Although this was the only clinic protection bill enacted by a state legislature, several individual cities considered proposals to protect health care facilities within their city limits.

¹⁵ "Choose Life" license plate schemes have been successfully challenged in LA, SC, and TN. See *Henderson v. Stalder*, 265 F. Supp. 2d 699 (E.D. La. 2003); *Planned Parenthood of S.C. Inc. v. Rose*, 361 F.3d 786 (4th Cir. 2004), rehearing en banc denied, 373 F.3d 580 (4th Cir. 2004), cert. denied, 73 U.S.L.W. 3448 (U.S. Jan. 24, 2005); *ACLU v. Bredesen*, 2004 U.S. Dist. LEXIS 26517 (Sept. 24, 2004).

In **West Palm Beach, Florida**, city commissioners in September approved a 20-foot buffer zone and a prohibition on excessive noise around the entrances to health care facilities. The city is currently defending the law against a challenge from the protesters. The **Pittsburgh City Council** in December approved a city ordinance that would create a buffer zone between protesters and health care facilities, prohibiting protesters from being within 15 feet of the facility or approaching within 8 feet of a person without their consent when the person is within 100 feet of the facility. The ordinance must still be approved by Mayor Tom Murphy. If he vetoes it the council likely has enough votes to override the veto.¹⁶

Montana also passed a bill that amends the current state statute to remove the prohibition on physician assistants providing abortion services. The change brought the statute into compliance with a previous Montana Supreme Court decision that struck down the state prohibition.¹⁷

The legislatures in **California** and **Vermont** enacted affirmative bills commemorating the decision in *Roe v. Wade* in 2005. The **Virginia** legislature also enacted a resolution honoring the life of Dr. Herbert C. Jones, a long-time abortion provider who contributed extensively to the community in Virginia and the broader pro-choice mission.

Conclusion

The National Abortion Federation will continue to work in 2006 to oppose anti-choice legislation and regulations which would restrict access to safe and legal reproductive health care services. For additional information and to learn how you can take action for choice, please visit our website at www.prochoice.org.

¹⁶ See Kaiser Daily Women's Health Policy: State Politics & Policy, "Pittsburgh City Council Gives Final Approval to Ordinance That Would Establish Buffer Zone Outside Abortion Clinics," December 14, 2005.

¹⁷ *Armstrong v. State*, 1999 MT 261.