



NATIONAL ABORTION FEDERATION 2003 STATE LEGISLATIVE REPORT

OVERVIEW

In 2003, **over 600 anti-abortion bills** (including both abortion restrictions and bills affirmatively funding "crisis pregnancy centers" and "abortion alternatives" organizations, or "CPCs") were filed in state legislatures across the country. The most common types of abortion restrictions included abortion bans, biased counseling bills, parental involvement bills, bills restricting public funding of abortion, and TRAP bills, described in more detail below.¹

By the end of the 2003, **fourteen new abortion restrictions had been passed** by state legislatures and signed into law (or received override votes to overcome a governor's veto). One of the anti-abortion bills (New Hampshire's parental notification bill) was struck down as unconstitutional by a federal court, and two others (Virginia's "partial birth infanticide" bill and Missouri's biased counseling bill) remained enjoined in court challenges at year's end. The remaining anti-abortion bills which were enacted without court challenge included six biased counseling bills (AR, MN, SD, VA, WV, and TX); two parental involvement bills (CO and VA); one TRAP bill (TX); and two bills restricting public funding of abortion (IA and TN).

As abortion clinics were under attack in 2003, CPCs were treated more favorably, through state budget allocations and more creative forms of funding. The most popular form of funding CPCs was through "choose life" license plate bills (passed in AR, LA, MS, and TN). Arkansas' and Tennessee's "Choose Life" license plate bills were challenged in court.

While fourteen state abortion restrictions were passed in 2003, two affirmative bills protecting abortion access were passed and signed into law. The two bills (a clinic protection bill and a unique anti-refusal clause bill) were both passed by the California legislature.

In the off-year state elections in 2003, abortion opponents maintained their control over the governor's seat in the three states that held gubernatorial elections: Kentucky, Mississippi, and Louisiana. Two other states (New Jersey and Virginia) held legislative elections. In Virginia, pro-choice candidates gained three seats in the House of Delegates, which still has an anti-choice majority. In New Jersey, pro-choice candidates gained seats in both houses, but do not hold a clear majority in a legislature that remains divided on abortion issues. With no significant change in the legislative balance on abortion issues resulting from the elections, there will likely be no slowdown in the number of anti-abortion bills filed and passed by states in session in 2004. Six states will not be in session in 2004: Arkansas, Montana, North Dakota, Nevada, Oregon and Texas.

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, e.g. in the form of bans, parental involvement bills, medical abortion bills, and a limited category of public funding limitations on abortions.

ANTI-ABORTION LEGISLATION IN 2003

ABORTION BANS

State bills which impose broad bans on abortion come in several different forms.

In recent years, bans on safe abortion procedures, frequently entitled "partial birth abortion" or "partial birth infanticide" bills, have been introduced across the country, mirroring the "Partial-Birth Abortion Ban Act of 2003" passed by Congress.

In 2003, other types of abortion bans (not necessarily procedure-specific) were also introduced in state legislatures, including complete bans; bills banning abortion after viability or after a certain time period; bills banning abortions by hospitals; bills banning abortions performed due to the gender of a fetus; and in Michigan, a unique bill that redefined birth to give fetuses (called "perinates" by the bill) rights equal to a "legal person with full constitutional and legal rights," effectively banning safe abortion procedures.

Most abortion ban bills filed inflicted criminal penalties on abortion providers and did not include adequate exceptions for a woman's health.

Proposed Bills:

In 2003, **broad bans on abortions were proposed in the following twenty states**, including but not limited to bills entitled "partial birth abortion" or "partial birth infanticide" bans:

AR	MA	NH	TN
CT	MI	NJ	VA
GA	MN	NY	VT
HI	MS	OR	VA
KS	ND	UT	WV

Enacted Bills:

Virginia was the only state in 2003 to pass a broad ban bill into law. The "partial birth infanticide" bill defines and classifies the crime of "partial birth infanticide" with no exception for the health of the woman. The governor's veto of the bill was followed by a successful override vote. The bill was then immediately challenged in court and enjoined pending court resolution.

Although Virginia was the only state to pass a broad ban, Michigan came close. The anti-choice Michigan legislature approved the uniquely worded "legal birth definition act," which defined "birth" in a manner that could have resulted the banning of safe abortion procedures, without adequate exceptions for a woman's health or life. After Michigan's governor vetoed the bill, Michigan's Right to Life chapter initiated a campaign to override the veto through a citizen ballot drive. If the campaign is able to collect about 254,000 signatures within 180 days of the campaign's start (carrying over into 2004), the bill will return to the legislature, which can then override the governor's veto by a simple majority vote. Similar bans passed by the Michigan legislature have

been struck down in court as unconstitutional, and if the "legal birth definition act" is approved by the legislature, it is likely to end up in court as well.

BIASED COUNSELING (“INFORMED CONSENT/WOMEN’S RIGHT TO KNOW”) AND WAITING PERIOD BILLS

Misleadingly titled "Women's Right To Know" or "informed consent" bills by their anti-abortion sponsors, biased counseling bills are often accompanied by waiting period requirements. They mandate that abortion providers give their patients materials developed by the state, such as pictures of fetal development, information about "abortion alternatives," and information about the risks of abortion. Most of these bills do not require an equal amount of information about the risks of pregnancy and childbirth. In 2003, the state materials described in many of the proposed biased counseling bills required abortion providers to give patients misleading or inaccurate information pertaining to an alleged link between breast cancer and abortion, fetal pain, and the psychological effects of abortion despite a lack of scientific evidence supporting such mandated misinformation and the existence of scientific evidence refuting such assertions.

Proposed Bills:

Biased counseling bills were filed in the following twenty-seven states in 2003:

AK	IA	MA	NC	RI	WV
AR	IL	ME	NJ	SD	WI
FL	IN	MN	NY	TX	
GA	KY	MO	OK	VA	
HI	LA	MT	OR	WA	

Enacted Bills:

Biased counseling bills in various forms **passed in seven states (AR, MN, MO, SD, TX, VA, WV)**, bringing the total number of states with biased counseling laws to thirty-three. Arkansas passed a unique form of a biased counseling bill, requiring abortion providers to offer ultrasounds to all of their patients, and South Dakota and Virginia passed bills adding requirements to biased counseling statutes already on the books.

The remaining **four states -- Missouri, Minnesota, Texas, and West Virginia -- passed biased counseling bills containing 24 hour waiting period requirements**, bringing the total number of states that have passed waiting period laws to twenty-six. Although Missouri's bill was vetoed by the governor, the legislature overrode the veto, and the bill is currently being challenged in court and remained enjoined at the end of the year.

PARENTAL INVOLVEMENT BILLS

In 2003, states filed a variety of parental involvement bills. The most common type of parental involvement bills were parental consent and notification bills, which states either introduced for the

first time, or attempted to amend existing bills with stricter standards (e.g., by adding notarization requirements, changing the standard from notice to consent, or making the bypass system more onerous).

In addition, 2003 revealed a new trend in anti-abortion parental involvement legislation: bills imposing restrictions on a minor's ability to travel to another state to obtain an abortion. Such bills were filed in Connecticut, Missouri, and West Virginia this year.

Proposed Bills:

In all, **parental involvement bills were introduced in the following twenty-eight states:**

AL	GA	MD	NC	OK	VA
AR	HI	MI	NH	OR	WA
CO	KS	MN	NJ	SC	WV
CT	MA	MS	NM	TX	
FL	ME	MO	NY	VT	

Enacted Bills:

Of the twenty-eight states proposing new parental involvement laws, **three (CO, NH and VA) enacted parental involvement bills into law** in 2003.

The Colorado bill enacted into law modifies the definition of abortion and adds new notification procedures under the Colorado Parental Notification Act. The original Act required that written notice of a minor's pending abortion be delivered or sent by certified mail to the parents at least 48 hours before the abortion. A Colorado court ruled these restrictions to be unconstitutional. The 2003 amended version now allows the same notice to go to an adult relative (grandparent, adult aunt or adult uncle) if the minor is residing with that relative, with exceptions for abuse, neglect, or other circumstances. The new law also clarifies the bypass procedure, declaring that court proceedings must be heard and decided within four days of filing a petition, and appeals must be heard and decided within five days of filing.

Virginia's new parental consent law requires a physician to obtain a notarized statement of parental consent prior to performing an abortion on an unemancipated minor, increasing the burdens of Virginia's previous parental notification law. The law also imposes stricter requirements for judicial bypass exemptions.

In addition, a parental notification bill was approved by the legislature and governor in New Hampshire. The bill required written notice to be delivered to the parent, guardian or conservator of an un-emancipated minor at least 48 hours prior to an abortion. The passage of the bill restricting minors' access to abortion in New Hampshire represented a significant step backward in a traditionally pro-choice state. The bill was challenged immediately, and struck down as unconstitutional in federal court.

TRAP BILLS

Targeted Regulation of Abortion Provider (TRAP) bills single out abortion clinics for unnecessary and restrictive regulations not imposed on comparable medical facilities. Once enacted, TRAP laws can over-regulate providers to the point that it may become impossible or impractical for providers to continue to offer abortion care. **In 2003, TRAP bills were filed in twenty-four states across the country.** The bills included various structural, staffing, and licensing requirements for abortion clinics, or redefined outpatient clinics as hospitals or ambulatory surgical centers, subjecting them to unnecessarily burdensome regulations.

Proposed Bills:

The states introducing TRAP legislation in 2003 included:

AL	IL	MN	NJ	TX
AR	IN	MS	NY	VA
CO	KS	MO	OK	WA
CT	LA	MT	OR	WV
FL	ME	NC	RI	

Enacted Bills:

Despite the large number of TRAP bills filed across the country, **Texas was the only state to enact TRAP bills into law in 2003.** One TRAP bill passed in Texas amends existing law to require the office of any physician performing more than 50 abortions per year to have a special license under the Health and Safety Code. In addition, TRAP language included in a separate Texas bill enacted in 2003 contained conflicting licensing requirements as well as restrictions on where abortions may be performed.

OTHER 2003 ANTI-ABORTION LEGISLATION

Other categories of anti-abortion bills that were introduced and enacted in 2003 include refusal clause bills, funding bills, physician-only bills, medical abortion bills, medical malpractice insurance bills, and other restrictions on abortion rights and access.

Refusal Clause: These bills generally allow health care providers and 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.

Refusal clause bills that would either specifically include abortion or are broad enough in their language to encompass abortion were filed in seventeen states (CA, FL, IN, MD, MI, MO, NC, NY, OH, PA, RI, TN, VA, VT, WA, WI, WV) in 2003. However, none were enacted.

It should be noted that this list does not include bills filed in several states which exempt pharmacists from requirements to provide “abortifacients.” Although such bills deceptively imply that pharmacists dispense medical abortion or other “abortifacients,” in fact medical abortion drugs are not distributed by pharmacists. These bills consequently have no legal effect on current abortion practice.

Notably, one of the two bills passed into law in California in 2003 affirmatively protecting abortion access, took the form of an anti-refusal clause bill (see section below on affirmative legislation). California SB 932 prohibits certain hospitals from preventing those they lease or sell their facilities to from providing abortion services.

Public Funding: Bills which restrict public funding of abortion for low income women were filed in a dozen states in 2003.

Among the public funding restrictions passed in 2003, measures in Iowa and Tennessee directly targeted abortion. Iowa’s legislature reenacted restrictions that allow for state funding of abortions only in cases of life endangerment, rape, incest, and fetal abnormality. Tennessee codified restrictions limiting state funding to cases of life endangerment, rape and incest.

CPC Funding: Even as legislatures were busy limiting funding for family planning and abortion in 2003, they attempted to increase funding of “crisis pregnancy centers” (CPCs) and “abortion alternatives” programs. The most popular form of funding for anti-abortion programs in 2003 was through “Choose Life” license plate legislation, which establishes funding for CPCs. Choose Life license plate bills were filed in 22 states (AR, DE, GA, IA, IL, KY, LA, MI, MN, MO, MS, NC, NV, NH, NJ, OH, OK, PA, TN, TX, VA, WV) and were enacted in four states (AR, LA, MS, TN) in 2003. Louisiana’s bill created license plates for motorcycles, despite a court ruling that similar plates for cars were unconstitutional.

The Arkansas bill is currently being challenged in court. In addition, the bill has been declared unconstitutional by Arkansas’ attorney general’s office, which declared that the bill authorizing the sale of these license plates was “unconstitutional as offending the guarantees of freedom of speech, equal protection and due process.” Tennessee’s choose life bill is similarly being challenged in federal court.

The Choose Life bill in Virginia was approved by the Virginia legislature but vetoed by the governor.

Other bills singling out CPCs for financial benefits in the form of tax credits were filed in several states, and Delaware, Louisiana, Michigan, and Pennsylvania enacted bills appropriating direct funding to CPCs.

Medical Abortion Bills: Other state legislation included bills targeting medical abortion for new restrictions. Such bills were filed in ten states (AL, IA, IN, MO, OH, RI, UT, WA, WV, and TX). The only new law affecting medical abortion was enacted in Iowa, which included medical abortion among other types of abortion already subject to reporting requirements.

Medical Malpractice Insurance Requirements Specific to Abortion Providers:

Bills singling out abortion providers for additional medical malpractice coverage requirements were filed in Connecticut and Missouri.

AFFIRMATIVE LEGISLATION IN 2003

CLINIC PROTECTION BILLS

There are two main types of state bills that have been introduced to protect abortion clinics from harassment and violent threats.

The first type of clinic protection legislation is the state FACE act, modeled after the federal Freedom of Access to Clinic Entrances Act – the 1994 law that imposes federal civil and criminal penalties on those who use or threaten force to injure, intimidate, or interfere with access to abortion clinics.

The second type of clinic protection legislation is the bubble/buffer zone bill. These bills create both a bubble of protection around those entering and leaving abortion clinics and a buffer zone of protection around the health care facility itself. The bills allow patients and providers to enter and leave clinics free from harassment and intimidation by creating zones of safety into which protesters may not enter.

In 2003 FACE legislation was proposed, but not passed, in Illinois and New Mexico. Bubble/buffer zone bills were introduced, but not passed, in Montana and West Virginia. Two Rhode Island bills introduced in 2003 contained both FACE and bubble/buffer zone language, but neither bill was passed.

Four other states (MA, NY, WI, and CA) introduced various bills in 2003 that attempted to protect clinic access through means other than FACE or bubble/buffer zone language. The Massachusetts and New York bills proposed photography bans protecting clinic patients, and the Wisconsin bill protected clinic access by patients, but applied to a broader category of health clinics and was not specific to reproductive health facilities.

California was the only state to pass a new clinic protection bill into law in 2003. The new law amends existing "hate crime" criminal statutes to specifically include protections for abortion clinics and to prohibit insurance companies from raising premiums for abortion clinics that are targets of anti-abortion criminal actions.

"ANTI-REFUSAL" BILL PASSED IN CALIFORNIA: PROTECTING ABORTION ACCESS FROM DISCRIMINATORY HOSPITAL AGREEMENTS:

A second affirmative bill passed into law in California in 2003 was a unique bill protecting abortion access. The "anti-refusal" bill, rather than explicitly allowing hospitals to refuse abortion services, accomplishes the opposite. The California bill protects abortion access by prohibiting real estate agreements which limit abortion-related use of certain hospitals.

THE WORST BILLS OF 2003

Among the attempts by anti-choice legislators to reduce the safety and accessibility of abortions through legislation introduced in 2003, some bills stood out for the extreme proposals they presented to elevate fetal rights and limit abortion access.

FETUS' RIGHT TO A TRIAL

The first bill filed by the Georgia House of Representatives in 2003, Georgia House Bill 1 (along with a companion bill), attempted to give fetuses the right to a jury trial prior to any abortion. The legislation required that any time a woman seeks an abortion, the fetus would be appointed a guardian ad litem to represent it in a jury trial in which the rights of the fetus would be weighed against those of the woman. The companion bill added that a woman must obtain a grand jury indictment of the fetus before obtaining an abortion, which the bill designates as a form of "execution." Further, any abortion provider must obtain a death warrant before performing an abortion. Influenced by their Georgian neighbors, anti-choice lawmakers in Oklahoma filed a similar bill in their state.

Neither of these bills passed.

EXTREME MEASURES IN WEST VIRGINIA

In West Virginia, anti-abortion legislators introduced several extreme abortion restrictions in addition to those already mentioned previously in this report. Some of the most extreme anti-abortion measures included bills requiring that every woman seeking an abortion get the so-called "father's" consent; requiring that every woman seeking an abortion present two forms of identification; and allowing any woman to sue her doctor if, during the abortion, either she or her "unborn child" is harmed.

While none of these bills passed, a similar identification requirement in Texas was on the verge of becoming a new regulation at year's end, despite a lack of statutory authority in the authorizing bill's language.

FETUS MEMORIAL

Anti-choice legislators in South Carolina's House of Representatives elevated their anti-abortion campaign. South Carolina H.B. 3188 called for a six-foot statue of a fetus to be erected on the grounds of the capitol, visible from the roadway, "to memorialize unborn children who have given their lives because of legal abortion in South Carolina." The bill's sponsors eventually replaced the proposed memorial of a six-foot fetus with a memorial in the shape of a swing set.

The bill failed to pass by year's end.