

UNIFORM  
LAWS  
ANNOTATED

MATRIMONIAL,  
FAMILY  
AND  
HEALTH LAWS

*MASTER EDITION*

# UNIFORM LAWS ANNOTATED

**Matrimonial, Family and Health Laws**

With  
Annotations From State and Federal Courts

ST. PAUL, MINN.  
WEST PUBLISHING CO.

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## EXPLANATION

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New Volumes 9 and 9A of the Master Edition of Uniform Laws Annotated contain the text of the following Uniform Acts:

### Volume 9

Abortion Act (Revised)  
Adoption Act  
Alcoholism and Intoxication Treatment Act  
Child Custody Jurisdiction Act  
Civil Liability for Support Act  
Controlled Substances Act  
Divorce Recognition Act  
Drug Dependence Treatment and Rehabilitation Act  
Duties to Disabled Persons Act

### Volume 9A

Juvenile Court Act  
Marriage and Divorce Act  
Minor Student Capacity to Borrow Act  
Narcotic Drug Act  
Parentage Act  
Paternity, Act on  
Reciprocal Enforcement of Support Act

These acts were drafted by the National Conference of Commissioners on Uniform State Laws and recommended for adoption in all states. This new edition combines the sixteen Uniform Acts relating to matrimonial, family and health laws for convenient reference to the text of such statutes and the up-to-date judicial constructions thereof in all of the adopting jurisdictions.

### NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM LAWS

The National Conference of Commissioners on Uniform State Laws is composed of Commissioners from each of the states, the District of Columbia and Puerto Rico. In thirty-three of these jurisdictions the Commissioners are appointed by the chief executive acting under express legislative authority. In the other jurisdictions the appointments are made by general executive

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authority. There are usually three representatives from each jurisdiction. The term of appointment varies, but three years is the usual period. The Commissioners are chosen from the legal profession, being lawyers and judges of standing and experience, and teachers of law in some of the leading law schools. They are united in a permanent organization, under a constitution and by-laws, and meet in Annual Conference in the same vicinity as the American Bar Association, usually for five or six days immediately preceding the meeting of that Association. The record of the activities of the National Conference, the reports of its committees, and its approved acts are printed in the Annual Proceedings.

The object of the National Conference, as stated in its constitution, is "to promote uniformity in state laws on all subjects where uniformity is deemed desirable and practicable." The National Conference works through standing and special committees. In recent years all proposals of subjects for legislation are referred to a standing Committee on Scope and Program. After due investigation, and sometimes a hearing of parties interested, this committee reports whether the subject is one upon which it is desirable and feasible to draft a uniform law. If the National Conference decides to take up the subject, it refers the same to a special committee with instructions to report a draft of an act. With respect to some of the more important acts, it has been customary to employ an expert draftsman. Tentative drafts of acts are submitted from year to year and are discussed section by section. Each uniform act is thus the result of one or more tentative drafts subjected to the criticism, correction, and emendation of the Commissioners, who represent the experience and judgment of a select body of lawyers chosen from every part of the United States. When finally approved by the National Conference, the uniform acts are recommended for general adoption throughout the jurisdiction of the United States and are submitted to the American Bar Association for its approval.

## OFFICIAL COMMENTS

The notes or comments prepared by the Commissioners on Uniform State Laws in explanation of a particular Act appear under the Commissioners' Prefatory Note preceding the text of such Act while the notes and comments prepared in explanation of specific sections of an Act are carried under the relevant sections thereof.

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### ACTION IN ADOPTING JURISDICTIONS

Variations that occur between an Official Uniform Act text section and the corresponding text section of an adopting jurisdiction are carried under the heading "Action in Adopting Jurisdictions". Under this heading in the sections affected will be found an alphabetical listing of the relevant jurisdictions with an explanatory note pointing out the differences between the texts.

In many jurisdictions, additional provisions that are not contained in the Official Text have been enacted. These provisions are reflected in the general statutory notes preceding the text of the particular Act.

### ANNOTATIONS OR NOTES OF DECISIONS

The annotations or constructions by the courts of the Uniform Acts herein are complete from earliest times to date. They cover all decisions of courts of record in the adopting jurisdictions, as well as those of the Supreme Court of the United States and other Federal Courts construing such Uniform Acts in the following reports:

<i>Reports</i>	<i>Abbreviations</i>
Atlantic Reporter	A.
Atlantic Reporter, Second Series	A.2d
California Reporter	Cal.Rptr.
New York Supplement	N.Y.S.
New York Supplement, Second Series	N.Y.S.2d
North Eastern Reporter	N.E.
North Eastern Reporter, Second Series	N.E.2d
North Western Reporter	N.W.
North Western Reporter, Second Series	N.W.2d
Pacific Reporter	P.
Pacific Reporter, Second Series	P.2d
South Eastern Reporter	S.E.
South Eastern Reporter, Second Series	S.E.2d
South Western Reporter	S.W.
South Western Reporter, Second Series	S.W.2d
Southern Reporter	So.
Southern Reporter, Second Series	So.2d
Federal Reporter	F.
Federal Reporter, Second Series	F.2d
Federal Supplement	F.Supp.
Federal Rules Decisions	F.R.D.
Supreme Court Reporter	S.Ct.
United States Reports	U.S.

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<i>Reports</i>	<i>Abbreviations</i>
Lawyers' Edition .....	L.Ed.
Lawyers' Edition, Second Series .....	L.Ed.2d
Other Standard Reports	

The annotations appear under numbered notes so that the user, by referring to the same numbered note in the Pocket Part, can readily locate the most recent decisions on the same point.

An alphabetical index to the annotations or constructions by the courts will be found preceding the annotations under each section.

## LAW REVIEW COMMENTARIES

Copious references to informative articles and discussions in Law Reviews and other legal periodicals, relating to various aspects of the Uniform Acts herein, appear under the sections to which they are pertinent.

## LIBRARY REFERENCES

Another helpful feature of this edition consists of the references keyed to topics in the American Digest System, wherein cases from all jurisdictions on related material are annotated, and to sections of Corpus Juris Secundum which discuss the prevailing authority on related subject matter.

## INDEX TO TEXT

Separate alphabetical descriptive-word indices to the text of the individual Uniform Acts will be found at the end of the volume in which each Act is included, following the divider.

THE PUBLISHER

August, 1979

## Acknowledgment

### Official Text and Comments

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Acknowledgment is gratefully made to The American Law Institute and to the National Conference of Commissioners on Uniform State Laws for permission to reproduce the official Text and Comments for the Acts included herein.

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## CITE THIS BOOK

Uniform \_\_\_\_\_ Act (U.L.A.) § \_\_\_\_.

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# REVISED UNIFORM ABORTION ACT

## 1973 ACT

### Historical Note

The Revised Uniform Abortion Act was approved by the National Conference of Commissioners on Uniform State Laws in 1973. It supersedes the Uniform Abortion Act approved by the Commissioners in 1971. As of May 31, 1979, neither the original Act nor the Revised Act had been adopted in any jurisdiction.

The Act, as originally adopted in 1971, read as follows:

#### § 1. [Abortion Defined; When Authorized]

(a) "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

(b) An abortion may be performed in this state only if it is performed:

(1) by a physician licensed to practice medicine [or osteopathy] in this state or by a physician practicing medicine [or osteopathy] in the employ of the government of the United States or of this state, [and the abortion is performed [in the physician's office or in a medical clinic, or] in a hospital approved by the [Department of Health] or operated by the United States, this state, or any department, agency, or political subdivision of either;] or by a female upon herself upon the advice of the physician; and

(2) within [20] weeks after the commencement of the pregnancy [or after [20] weeks only if the physician has reasonable cause to believe (i) there is a substantial risk that continuance of the pregnancy would endanger the life of the mother or would gravely impair the physical or mental health of the mother, (ii) that the child would be born with grave physical or mental defect, or (iii) that the pregnancy resulted from

rape or incest, or illicit intercourse with a girl under the age of 16 years of age].

#### § 2. [Penalty]

Any person who performs or procures an abortion other than authorized by this Act is guilty of a [felony] and, upon conviction thereof, may be sentenced to pay a fine not exceeding [\$1,000] or to imprisonment [in the state penitentiary] not exceeding [5 years], or both.

#### § 3. [Uniformity of Interpretation]

This Act shall be construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states which enact it.

#### § 4. [Short Title]

This Act may be cited as the Uniform Abortion Act.

#### § 5. [Severability]

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

#### § 6. [Repeal]

The following acts and parts of acts are repealed:

- (1)
- (2)
- (3)

#### § 7. [Time of Taking Effect]

This Act shall take effect . . . . .

## ABORTION ACT

### Commissioners' Prefatory Note (1973 Act)

In August, 1971, the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Abortion Act. At that time, strong appeals were being made in the state legislatures for reform of existing abortion laws. The first enactment of reform legislation had occurred earlier in New York in 1970. With the prospect of uneven legislative responses to the demand for reform, of wholesale "forum shopping," and of the discrimination that inherently would develop, the NCCUSL offered the Uniform Act, based primarily upon the New York enactment.

In 1973, much controversy was settled by the United States Supreme Court in *Roe et al. v. Wade*, 1973, 93 S.Ct. 1409, 410 U.S. 959, and *Doe et al. v. Bolton*, 1973, 93 S.Ct. 1410, 410 U.S. 959. The Supreme Court established specific parameters for determining the state interest in abortion. The decision made the Uniform Abortion Act obsolete. Accordingly, the drafting committee set about developing a Revised Uniform Abortion Act for promulgation by the NCCUSL at its annual meeting in July-August, 1973.

The Act is drafted to reflect the varying degrees of requirements, limitations, and interests of the state and the pregnant female which may be imposed by statute in abortion cases. The act is organized according to the "trimesters" of pregnancy as discussed by the Supreme Court.

There are provisions in this act relating to consent of the mother in obtaining an abortion. The question of consent to abortion was not considered in the original Uniform Abortion Act, but it does present a significant problem. Who may give the consent? What effect shall age of the pregnant female have upon the giving of consent? Is there any time that consent may be vitiated by a physician for health or other reasons? May objection to abortion be overridden in any cases? An effort is made to answer all of these questions.

Another section included in this revision, but absent from the original act, concerns the right of physicians, hospital and medical facilities, nurses, and other related employees, to refuse to participate in abortions. The revised act addresses the issue in a bracketed section. This means that enactment of the section is optional, and its exclusion would not affect the basic principles of law which ought to be uniform.

Criminal penalty also is provided for violations of the act, thus concluding the substantive sections of the act. It is hoped that the Revised Uniform Abortion Act now conforms to the *Roe et al. v. Wade*, and related decisions, and that it provides constitutionally valid provisions for state enactment.

## ABORTION ACT

### Commissioners' Prefatory Note (1971 Act)

This Act is based largely upon the New York abortion act following a review of the more recent laws on abortion in several states and

upon recognition of a more liberal trend in laws on this subject. Recognition was given also to the several decisions in state and federal courts which show a further trend toward liberalization of abortion laws, especially during the first trimester of pregnancy.

Recognizing that a number of problems appeared in New York, a shorter time period for "unlimited" abortions was advisable. The time period was bracketed to permit the various states to insert a figure more in keeping with the different conditions that might exist among the states. Likewise, the language limiting the place or places in which abortions may be performed was also bracketed to account for different conditions among the states. In addition, limitations on abortions after the initial "unlimited" period were placed in brackets so that individual states may adopt all or any of these reasons, or place further restrictions upon abortions after the initial period.

This Act does not contain any provision relating to medical review committees or prohibitions against sanctions imposed upon medical personnel refusing to participate in abortions because of religious or other similar reasons, or the like. Such provisions, while related, do not directly pertain to when, where, or by whom abortions may be performed; however, the Act is not drafted to exclude such a provision by a state wishing to enact the same.

# REVISED UNIFORM ABORTION ACT

1973 ACT

Sec.

1. Definitions.
2. Limitations on Abortions.
3. Consent Required.
4. Exceptions to Requirements.
5. Express Objection.
6. Participation in Abortion Not Required.
7. Penalty.
8. Application and Construction.
9. Short Title.
10. Severability.
11. Repeal.
12. Time of Taking Effect.

*Be it enacted . . . . .*

## § 1. [Definitions]

As used in this Act:

(1) "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead embryo or fetus.

(2) "Hospital" means a hospital approved by the [state department of health] or operated by the United States, this State, or any department, agency, or political subdivision thereof.

(3) "Medical facility" means a facility other than a hospital, such as a medical clinic, that has adequate staff and services necessary to perform an abortion safely, to provide after-care, and to cope with any complication or emergency that might reasonably be expected to arise therefrom, or that has arrangements with a nearby hospital to provide those services.

(4) "Licensed physician" means a physician licensed to practice medicine [or osteopathy] in this state, or a physician practicing medicine [or osteopathy] in the employ of the government of the United States or of this State, or any department, agency, or political subdivision thereof.

### Commissioners' Comment

The definition of abortion is retained from the original Uniform Act.	In the original Uniform Act, no definition of hospital or medical facility was included. A hospital
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was the principal facility in which abortions were to be permitted. The state was offered optional language which would allow abortions in physicians' offices or medical clinics.

Abortion legislation in several states has brought about the establishment of abortion clinics offering no other medical services. Abortion in many cases is a relatively simple operation, and does not require hospitalization. However, some qualifications for facilities that are not hospitals is necessary for the health and safety of those seeking abortion. There is a state interest in protecting the health and safety of those seeking abortion after the first trimester, and the standards

necessary to the protection of pregnant females must be escalated as full term approaches, since the dangers of the operation increase proportionately. The drafters, therefore, have provided a definition of "hospital," and of "medical facility" to distinguish clearly between the two, and to provide a basis for determining the location for performing abortions during the three stages of pregnancy.

A specific definition of "licensed physician" does not occur in the original act. However, the principles set forth in this definition are fundamentally carried over from the language of Section 1(b)(1) of the original Uniform Act.

#### Law Review Commentaries

Abortion and public policy: What are the issues? 17 N.Y.L.F. 411 (1972).

Abortion statutes as invasion of woman's right of privacy. 15 St. Louis U.L.J. 642 (1971).

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Florida abortion law: Reform or regression in 1972. 24 U.Fla.L.R. 346 (1972).

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New Jersey's abortion law: Establishment of religion? 25 Rutgers L. Rev. 452 (1972).

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New York reform abortion law: Consideration, application and legal consequences—more than we bargained for? 35 Albany L.Rev. 644 (1971).

New York's abortion reform law: Unanswerable questions. V. N. Duin. 37 Albany L.Rev. 22 (1972).

Oklahoma: Call for abortion law reform. 24 Okl.L.Rev. 243 (1971).

Phoenix of abortion freedom. 17 N.Y.L.F. 335 (1972).

South Carolina and abortion law. 24 S.C.L.Rev. 425 (1972).

Survey of statutory and case law on abortion: Contradictions and problems. 1972 U.Ill.Law.Forum 177.

## § 1

## ABORTION ACT

Symposium: Abortion and the law.  
23 Case W.Res.L.Rev. 705 (1972); 17  
Western Res.L.Rev. 369 (Dec. 1965).

Texas abortion statutes: Constitutional issues and need for reform.  
23 Baylor L.Rev. 605 (1971).

### Library References

Abortion and Birth Control ☞1.

C.J.S. Abortion §§ 1 et seq., 44 et seq.

## § 2. [Limitations on Abortions]

An abortion may be performed in this State only under the following circumstances:

(1) During the first [12] [13] [14] weeks of pregnancy by a woman upon herself upon the advice of a licensed physician or by a licensed physician.

(2) After the first [12] [13] [14] weeks of pregnancy and before the fetus is viable, by a licensed physician and in a hospital or medical facility.

(3) After the fetus is viable, by a licensed physician, in a hospital, and in the medical judgment of the physician the abortion is necessary to preserve the life or health of the woman.

### Commissioners' Comment

This provision concerns the first trimester of pregnancy. The decision to abort is left solely to the woman and her licensed physician. This conforms to the Supreme Court's determination that no compelling state interest exists in the first trimester. "For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician." *Roe v. Wade*, 1973, 93 S.Ct. 1409, 410 U.S. 959.

The Uniform Act provides bracketed language of 12, 13, or 14 weeks to measure the period of the first trimester. There is variability in the time of transition between the first and second trimester, and it is left to the state to decide which time period should

prevail. It was the drafters' intent to provide certainty as to the time period, notwithstanding the viability in individual cases, since the physician's responsibility and potential liability are substantial and require a great degree of certainty. Since this is a criminal statute, and the greatest problem will arise with decisions made towards the end of the first trimester, a definite standard was deemed desirable.

In the second trimester, the state has an interest in the health of the mother, and may regulate the abortion procedure. The Uniform Act limits the performance of abortion to hospitals and medical facilities, as defined. Abortion in the first trimester is a relatively simple operation, and the chances of damage to the mother's health and life are

slight. In the second trimester, the probability of harm is great enough to require the operation to be performed in regulated institutional environments such as state approved clinics and hospitals.

In the third trimester, that period after the child becomes viable, the state has an interest not only in the health and safety of the mother, but also in the health and safety of the viable infant. The "state may regulate and even proscribe abortion, except where it is necessary in appropriate medical judgment, for the preservation of the life or health of the mother." *Roe et al. v. Wade*, supra. The Uniform Act proscribes abortion except in the situation that the operation "is necessary to preserve the life or health of the woman." This conforms precisely to the scope of the state interest.

A precise numerical measure for the end of the second trimester and the beginning of the third is not provided. The end of the

second trimester can occur from 24 to 28 weeks into the pregnancy. With this level of variability, establishing a precise legal time for the end of the second trimester would not accord well with the facts of many given cases. Further, the fact of viability can be determined well enough in individual cases, with reasonable medical judgment, for the physician to determine if the standards applicable to the second or to the third trimester should prevail in making the abortion decision. Thus, the question of the time of viability is left to the physician's determination.

In the third trimester, abortion is considerably more serious a procedure. Therefore, the operation may be performed only in hospitals, the institutions with the most facilities and personnel for assuring the life and health of the mother. In this section, the need for separate definitions of "hospital" and "medical facility" is clearly demonstrated.

#### Library References

Abortion and Birth Control ⇐1.

C.J.S. Abortion §§ 3-11.

### § 3. [Consent Required]

Consent to an abortion must first be given by the woman or, if she is mentally incapable of giving consent, by a parent or guardian or by order of the [appropriate] court. A woman is not incapable by reason of her minority of giving consent to an abortion under this Act.

#### Commissioners' Comment

Legal consent to the operation is required. This is to avoid superimposition of the decision to abort upon a pregnant female,

particularly by overzealous agencies. There have been cases in which social agencies have pressed abortion upon clients