

## Legal Appendix to “Momma’s Got the Pill”

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### *Coding of Comstock Statutes and the Regulation of Birth Control, 1873 to 1973*

This appendix summarizes information about the evolution of anti-obscenity statutes in the 48 coterminous United States and their relevance for the use of contraception from 1958 to 1965.<sup>1</sup> It also summarizes the information in secondary sources, our coding scheme and how coding decisions are reached in each case. For each state, we note the relevant text of the statute, the agreement (or disagreement) of our interpretation with Dennett (1926), Smith (1964), Dienes (1972), and a 1974 report by the Department of Health and Economic Welfare (DHEW). We also incorporate relevant judicial decisions, attorney general decisions, and information from Planned Parenthood Affiliate Histories (Guttmacher 1979) when this information informs an understanding of the relevant statutory climate.

#### Brief Overview of Anti-Obscenity Statutes in the United States before *Griswold v. Connecticut*

In 1873, the U.S. Congress codified a prohibition on the sales of contraception with the passage of the Comstock Act. Named for their zealous congressional advocate, Anthony Comstock, this law outlawed the interstate mailing, shipping or importation of articles, drugs, medicines and printed materials of “obscenities”, which applied to anything used “for the prevention of conception.”<sup>2</sup> Despite the narrow purview of this federal Act, it also aimed to “incite every State Legislature to enact similar laws” (Dienes 1972: 43, quoting Representative Merrimam, *New York Times*, Mar. 15, 1873, p. 3, col. 3). While this Act failed to curtail the trade in obscenities directly, it did succeed in this secondary purpose. In its aftermath, every state in the Union except New Mexico enacted or amended an anti-obscenity statute, many of which additionally proscribed the sales or dissemination of information or articles relating to contraception.

These laws vary considerably in their scope and relevance for the use of contraception in the 1960s. We group them into six categories:

1. Obscene Information (OI): These statutes ban not only the dissemination of obscene information, but many also ban the sales of obscene information. Some of these statutes ban the sales of obscenities more generally. We looked for other evidence (court cases, attorney general decisions, etc.) of the force or enforcement of these laws, but we found no evidence that they were applied to contraception in any state.
2. Obscene Articles or Instruments (OAI): These statutes are similar to OI laws, but they explicitly mention obscene, indecent or immoral “articles or instruments.” It is unclear whether “articles or

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<sup>1</sup> We omit an analysis of Alaska and Hawaii because these states were not admitted until 1959.

<sup>2</sup> This Act was quite comprehensive. It banned any “book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever for the prevention of conception” (Tone 1996, p. 488). The federal Comstock Act was amended in 1971 to strike out the language prohibiting contraceptives from being mailed (Public Law 91-662, §3).

instruments” refer to contraceptive devices or whether they would be interpreted as such in the 1960s. The language is very similar to other statutes that explicitly mention “articles or instruments” for the prevention of conception, inducing a miscarriage, or causing an abortion. We looked for other evidence (court cases, attorney general decisions, etc.) for the impact of these laws. In most cases we found no evidence that they applied to the use of contraceptives. In one instance, however, an Illinois case, *Lanteen Laboratories, Inc. v. Clark*, 294 Ill. App. 81, 13 N.E. 2d 678 (1938), held that the indiscriminate sale of contraceptives through drug stores to both married and unmarried persons was the sale of an “article of indecent or immoral use” and found this within the purview of Illinois’ ban on the sale of obscenities. Similar cases in other states were not found.

3. Information regarding prevention of conception (IP): The statutes are similar to OI laws, but they explicitly mention articles, instruments, medicines or secret nostrums for the “prevention of conception.” Although these laws ban the sale of any type of information about the prevention of conception, they do not ban the sales of contraceptives themselves. Presumably, customers or patients could request these and physicians or pharmacists could fill these requests without violating an IP law.
4. Sales of items for the prevention of conception (SI): These statutes explicitly ban the sales of any article, instrument, medicine or secret nostrum for the prevention of conception. These laws prohibit both physicians and pharmacists from fitting diaphragms, selling condoms, and prescribing or filling a prescription for the birth control pill at the request of patients or when patients’ health was at stake.
5. Physician or pharmacist exceptions (PX): Some states with IP or SI laws codified exceptions to their restrictions. We group these into four types:
  - a. Blanket exemption for physicians or pharmacists (PX): These laws note that nothing in them is to be construed so as to affect legally licensed physicians or pharmacists and omit further qualifications. These laws should exempt physicians from SI laws.
  - b. Legitimate practice (PX\_LB): These laws note that nothing in them is to be construed so as to affect physicians or pharmacists in their “usual course of practice”, “legitimate business”, or “regular business.” These words seem to have been relevant for exempting physicians from prosecution in the case of the prevention of disease (for instance, trying to deliver babies, provide gynecological or pelvic examinations, or cure sexually transmitted diseases). It is less clear how much leeway they provided for the prescription of contraceptives. The interpretation of these statutes is also disputed among legal scholars (see table A1: States with Coding Discrepancies Across Sources).
  - c. State license: These laws note that persons other than physicians can sell contraceptives, but require all others (including pharmacists) to obtain a license.
  - d. Teaching, textbooks and scientific publications: These laws note that nothing in them is to be construed so as to affect teaching in medical colleges or the publication of standard medical textbooks or the publication of information in scientific journals (“or” implies that not all

laws had all three of these features). While these laws allowed physicians to learn about contraception in medical school, they did not exempt them from sales bans under SI laws.

The differences in coding across sources and the final coding used in the analysis are summarized in table A1. In cases where sources differed, we looked up the statutes, examined the statutory language, and incorporated information from case histories and Planned Parenthood accounts. The final pages of this document explain coding decisions for each state. Scanned copies of each statute cited in these notes are available from the author's webpage.

**Table A1. Summary of State Statutes in Four Secondary Sources**

IP—information/advertising ban

SI—sales of items banned

PX—blanket exemptions for physician and/or pharmacists; “legitimate business” exceptions, LB

	Smith*			Dienes			DHEW			Dennett			Final Coding		
	IP	SI	PX	IP	SI	PX	IP	SI	PX	IP	SI	PX	IP	SI	PX
STATES CODING IN AGREEMENT ACROSS SOURCES															
Alabama	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Arkansas	.	X	X	X	X	X	X	X	X	.	.	.	X	X	X
Connecticut	X	X	.	X	X	.	.	.	.	X	X	.	X	X	.
Florida	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Georgia	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Illinois	.	.	.	.	.	.	.	.	.	.	.	.	X	X <sup>†</sup>	.
Kansas	X	X	.	X	X	.	X	.	.	X	X	.	X	X	.
Louisiana	X	.	.	X	.	.	X	.	.	.	.	.	X	.	.
Maine	X	.	.	X	.	.	X	.	.	X	.	.	X	.	.
Massachusetts	X	X	.	X	X	.	X	X	.	X	X	.	X	X	.
Michigan	X	.	.	X	.	.	X	.	.	.	.	.	X	.	.
Mississippi	X	X	.	X	X	.	X	X	.	X	X	.	X	X	.
Montana	X	X	X	X	X	X	X	X	X	X	X	.	X	X	X
Nebraska	X	X	.	X	X	.	X	X	.	X	X	.	X	X	.
New Hampshire	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
New Jersey	X	X	.	X	X	.	X	X	.	X	X	.	X	X	†
New Mexico	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
New York	.	X	X	X	X	X	X	X	X	X	X	X	X	X	X
North Carolina	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Oregon	.	X	X	X	X	X	X	X	X	.	.	.	X	X	X
Rhode Island	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
South Carolina	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Tennessee	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Texas	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Vermont	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Virginia	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Washington	X	.	.	X	.	.	X	.	.	X	X	.	X	.	.
West Virginia	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Wisconsin	X	X	X	X	X	X	X	X	X	.	.	.	X	X	X

# STATES WITH CODING DISCREPANCIES ACROSS SOURCES

Arizona	X	.	.	X	.	.	X	.	.	X	X	.	X	X	.
California	X	.	.	X	.	.	X	.	.	X	X	.	X	X	.
Colorado	X	V	.	X	X	X	.	.	.	X	X	X	X	X	LB
Delaware	X	X	X	X	X	X	.	.	.	.	.	.	X	X	LB
Idaho	X	X	X	X	X	X	X	X	X	X	X	.	X	X	X <sup>ψ</sup>
Indiana	X	X	.	X	X	X	X	X	.	X	X	X	X	X	LB
Iowa	X	X	X	X	X	X	X	X	X	X	X	.	X	X	LB
Kentucky	X	V	.	X	X	X	.	.	.	.	.	.	.	.	.
Maryland	X	V	.	.	.	.	.	.	.	.	.	.	.	.	.
Minnesota	.	X	X	X	X	X	X	X	X	X	X	.	X	X	X
Missouri	.	X	.	X	X	X	X	X	.	X	X	.	X	X	LB
Nevada	X	V	.	X	X	X	X	.	.	X	X	X	X	X <sup>δ</sup>	LB
North Dakota	.	.	.	.	.	.	.	.	.	X	.	.	.	.	.
Ohio	.	X	X	X	X	X	X	X	.	X	X	X	X	X	LB
Oklahoma	.	.	.	.	.	.	.	.	.	X	X	.	.	.	.
Pennsylvania	X	.	.	X	.	.	X	.	.	X	X	.	X	α	.
South Dakota <sup>β</sup>	X	V	.	.	.	.	X	.	.	.	.	.	X	.	.
Utah	X	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Wyoming	X	.	.	X	X	X	X	X	.	X	X	X	X	X	LB
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Total														30 24	7-PX 8-LB

\*Smith cites advertisement and sales bans separately, so he may not list an IP if there is also a SI law; he also combines advertisement bans under the same heading as vending machine prohibitions denoted V.

† See notes for New Jersey

ψ See notes for Idaho

α See notes for Pennsylvania

β Advertising and vending machine laws not enacted until 1949

γ Coding reflects the *Lanteen* decision. See notes for Illinois.

δ See notes for Nevada.

The analysis in “Momma’s Got the Pill” compares states with sales bans without physician exceptions (SI laws) to states with no SI laws and in alternative specifications to states with less restrictive obscenity laws that mention contraception (IP laws) within the same census region. Because the interpretation of physician exceptions for “legitimate practice” or “legitimate business” is unclear, the analysis takes a conservative approach and codes these states as *having* sales bans. An online sensitivity appendix also presents estimates for coding that assumes these states had physician exceptions. These estimates are generally slightly larger in magnitude but comparable to those using the more conservative coding. The next section discusses the history and relevance of sales bans.

### ***More on the History and Relevance of Sales Bans***

The most careful account of the evidence that sales bans (SI laws) mattered comes from David Garrow's 1994 book, *Liberty and Sexuality: The Right to Privacy and the Making of Roe v. Wade*. The book documents the history of the enforcement of the Connecticut and Massachusetts' Comstock laws using historical documents like correspondence and newspapers. I summarize here from his work on the Northeast as it illustrates the complexity of understanding the importance of these laws.<sup>3</sup>

In *United States v. One Package* on December 7, 1936, the U.S. Court of Appeals for the Second Circuit delivered a significant victory for birth control advocates by ruling against the federal government's seizure of birth control supplies shipped to a U.S. physician. The appellate court held that the U.S. federal Comstock Act could not be used to intercept shipments of contraceptives being shipped to a physician. Margaret Sanger and her lawyer called the ruling "the end of birth control laws" (p. 42), and the American Medical Association (AMA) embraced teaching the best methods of birth control less than one year later. The AMA's announcement of the *One Package* decision read, "Although the statutes in force in several states that forbid the dissemination of information concerning methods for the prevention of conception do not in express terms exempt physicians from their operation, it seems fair nevertheless to assume that state courts...will adopt lines of reasoning similar to those followed in the case cited" (p. 44). This optimism is echoed on the contemporary Planned Parenthood website which states that "Judge Augustus Hand, writing for the U.S. Circuit Court of Appeals, orders a sweeping liberalization of federal Comstock laws, ruling that contemporary data on the damages of unplanned pregnancy and the benefits of contraception mean that contraceptive devices and birth control could no longer be classified as obscene," <http://www.plannedparenthood.org/about-us/who-we-are/history-and-successes.htm#early>, May 26, 2008.

According to Garrow and the legislative and judicial histories in Massachusetts and Connecticut, this summary is a simplification of the facts. In fact, just days after the AMA declaration, the Massachusetts police served a search warrant to a "mother's health center" in Salem, which was operated by the Birth Control League of Massachusetts, and, contrary to the hopes of Sanger and others, the Massachusetts Supreme Judicial Court upheld the guilty conviction upon appeal. Similarly, the Connecticut Supreme Court upheld its statute and affirmed prosecutions in 1943 (p. 100). Over the next 15 years, the Planned Parenthood Federation challenged the Connecticut law repeatedly in the legislature with little success (this is documented at length in Garrow, chapters 2 and 3, pp. 79-195). When the *Poe* case made it to the Connecticut Supreme Court years later, the Court ruled unanimously to uphold Connecticut's anti-contraception law once more on December 22, 1959.

*Poe* was then appealed to the U.S. Supreme Court, where it was ultimately dismissed on the basis that the plaintiffs lacked standing to challenge the Connecticut law, because the statute had not been enforced against them (i.e. none of the plaintiffs were arrested for distributing contraceptive information or supplies). Frankfurter's dismissal of the appeal noted that "it appeared that the statutes in question had been enacted in 1879 and that no one ever had been prosecuted thereunder except two doctors and a nurse, who were charged with operating a birth-control clinic, and that the information against them had

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<sup>3</sup> I have searched archives and libraries for further information on the enforcement of Comstock statutes in other states but, unfortunately, have found very little information on this. The best information I have found is anecdotal evidence from the Planned Parenthood Affiliate Histories as well as from Dienes (1972), which is presented in the discussion of legal coding for some states.

been dismissed after the State Supreme Court had sustained the legislation in 1940 on an appeal from a demurrer to the information” (*Poe v. Ullman*, 367 U.S. 497, 1961).

The interesting feature of Frankfurter’s decision—which has also shaped the legal literature on this issue—is that it was based more on the preparation of the attorneys in the case than the facts on the ground. When asked if the statute had ever been enforced during oral arguments, neither attorney in the *Poe* case answered in the affirmative. Fowler Harper, attorney for the appellants, responded saying, “I’m ignorant of the extent to which the law is enforced...so far as I know it has never been enforced against a person who used a contraceptive...Police do not peek into people’s bedrooms to see whether they’re using contraceptives...I know of no prosecution of an individual for use” (Garrow 1994: 178). Harper also made the mistake of noting “that contraceptive articles, including diaphragms, were quietly available for purchase at Connecticut pharmacies.” This led Justice Potter Stewart to interject that “the law has no impact” (p. 180), and the decision later claimed that the “fact that Connecticut has not chosen to press the enforcement of this statute deprives these controversies of the immediacy which is an indispensable condition of constitutional adjudication” (*Poe v. Ullman*, 367 U.S. 497, 1961).

Garrow notes the irony that, on the very day the U.S. Supreme Court was voting to dismiss *Poe*, the *Wallingford Post* reported that Thomas Cocco was arrested in Connecticut for possessing approximately \$100 worth of contraceptives (p. 188). Moreover, Garrow notes that birth control clinics had not operated in Connecticut from the 1938 *Gardner* decision until 1965 (p. 80).

Given these facts, it seems reasonable that the laws may have functioned to suppress the use of contraceptives in several ways:

1. Planned Parenthood/Birth Control Leagues shut down local offices following unfavorable decisions. Because many of these clinics provided lower cost services, this imposed constraints on lower income women. It is more likely that higher income families would have been able to obtain contraceptives from willing physicians, inter-state travel, or other means in the same way women with means had greater access to abortion before it was legalized.
2. Uncertainty surrounding potential enforcement would dissuade physicians from risking illegal prescriptions.
3. The potential stigma associated with asking a physician for illegal devices may have deterred potential patients from such requests.

In light of this, it is not surprising that the black market was so active and profitable (Tone 2000, 2001). Women and men quietly got supplies under other auspices from a variety of mail-order and local suppliers. It is possible that these black market suppliers rendered these laws completely ineffective for methods pre-dating the Pill. This is, in fact, borne out in the quantitative evidence presented in section IV of the paper from historical fertility studies.

It is important to note that the off-setting activity of the black market would not invalidate the empirical strategy used for the purposes of this paper. The primary assumption necessary for identification of the Pill’s impact is that sales bans mattered more for the birth control pill than for other methods in the early 1960s. That is, it is sufficient if these laws did not matter for condoms and diaphragms at all as long as they mattered somewhat for the Pill. There are two main reasons that they would have:

1. Unlike other contraceptives, production of the birth control pill required the synthesis of a chemical compound, which probably limited black market production—at least in the immediate aftermath of its appearance on the U.S. market. In the longer-term, new distribution channels and suppliers would have emerged (as appears to be the case with diaphragms and condoms). But, in the first 7 years that the Pill was available, it is unlikely that physicians (given the uncertainty surrounding enforcement) or the black market would supply the Pill in the same quantities as in the case where the sales of contraception were legal.
2. Women could neither verify the safety (ingesting chemicals of unknown quality poses health risks) nor the effectiveness of black market pills. The quality of illegally obtained methods like diaphragms or condoms was easier to verify through visual inspection. In contrast, placebo pills might look, smell, and taste the same as the real thing. As a result, it makes sense that even if the Pill were available illegally, women may have been less likely to purchase or use it.

For each of these reasons, it makes sense that sales bans would have been more effective at reducing use of the birth control pill than reducing use of other methods. The relevance of these laws on methods predating the Pill is not an issue for the validity of the identification strategy. It need only be the case that these laws functioned to slow the diffusion of oral contraception in the shorter-term, which seems reasonable given the history of these laws and the special nature of oral contraception. In addition to arguments relying upon this qualitative evidence and other histories, the paper uses historical fertility studies in section IV to provide direct, quantitative evidence that, indeed, sales bans limited the use of oral contraception before the *Griswold* decision.

### ***Notes on the Coding of Statutes in Each State***

#### Alabama

No secondary sources cited any laws. We verified general obscenity statutes enacted in 1884 [Stats. Dec. 3, 1884, p. 74], but they appear to ban only the public display of obscene information: “Any person who brings, or causes to be brought into this state for sale, or advertises, or prints, or sells, or offers to sell, or receives subscription for any indecent or obscene book, pamphlet, print, picture, or paper, must, on conviction, be fined not less than fifty nor more than one thousand dollars” [AL Code §5014 (1923)]. The amendments before 1975 do not change the scope of this statute. We could not find any court cases construing these obscenity statutes to be applicable to contraception. We conclude that contraceptives were not illegal in Alabama. *Coding: OI.*

#### Arizona

Dennett cites a sales ban that the other three sources do not. The statute, originally passed in 1870, is nearly identical to that of California and Idaho, and it is also part of a series of anti-obscenity statutes, in which the sale and distribution of “any obscene or indecent writing, paper, or book...” is prohibited [AZ R.S. §283 (1901)]. Specifically, the law reads “Every person who willfully writes, composes, or publishes any notice or advertisement of any medicine or means for producing or facilitating a miscarriage or abortion, or for the prevention of conception, or who offers his services by any notice, advertisement, or otherwise, to assist in the accomplishment of any such purposes, is guilty of a misdemeanor” [AZ R.S. §288 (1901)].

Because we were unsure how to interpret this law, we examined additional records. We located a directive issued by S.F. Farnsworth, M.D., County Medical Director, on June 17, 1959, addressed to all division heads: “No information regarding birth control shall be given out by Maricopa County Health Department Personnel during any clinic session. No literature or pamphlets in regard to birth control will be displayed or distributed by clinic personnel in any Maricopa County Health Department clinic facility. Patients who request information regarding birth control or Planned Parenthood clinics may receive such information at the time of PHN [Phoenix Home Nursing] home visits.” It is not clear what the “PHN” visits indicate or when patients might have them. It is noted in a 1962 court case, *Planned Parenthood Committee of Phoenix v. Maricopa County*, that “the directive of Dr. Farnsworth has caused a complete stoppage of referrals from the county clinics and Planned Parenthood’s business operations have come almost to a standstill. It was also stipulated that Planned Parenthood’s discontinuation of a large part of [\*235] its business activity was caused by the fact that prosecution under A.R.S. §13-213 [\*\*722] was likely unless such curtailment took place.”

The Arizona Supreme Court, in *Planned Parenthood v. Maricopa County* (decided October 31, 1962) interpreted the statute very narrowly as (1) a ban only on advertising and (2) held that “advertising” was NOT intended to be understood in its broadest sense of “almost every activity designed to capture the attention of another” but rather as something composed or written and published in some sort of “newspaper or similar mass media.” The decision states that Planned Parenthood receiving referrals was not “advertising”, nor is the person making the referral if this is done “in the course of his professional treatment of his patient.” Nevertheless, the court mentioned that Planned Parenthood would be in direct violation of the statutes if it were to “aggressively solicit 'referrals'.”

Therefore, we agree with Dennett that the offering of “services by any notice, advertisement, or otherwise, to assist in the accomplishment of any such purposes” is a prohibition on physicians in providing services or selling supplies to patients before 1963. However, it appears that *Planned Parenthood v. Maricopa County* narrowed the scope of the statute to apply only to printed advertising in its strictest sense. The statute retained the same language until at least 1978. Coding: IP, SI until 1962.

### Arkansas

This law, originally passed in 1943, appears to ban the dissemination of information, as well as the sale of contraceptive supplies, with an exception for physicians or those with a license: “No appliances, drugs or medicinal preparations...for the prevention of conception or venereal diseases, shall be advertised...displayed, sold or otherwise disposed of in the State of Arkansas, without a license...except that this section shall not apply to physicians and medical practitioners regularly licensed to practice medicine...in the state of Arkansas...” [AR Stat. Ann. §82-944 (1947)]. We interpret this law as a ban on advertisements and sales, with an exception for physicians. The language of this statute remained in this form until at least 1976. Coding: IP, SI, PX.

### California

Dennett cites a sales ban that no other secondary source mentions. Research into the cited Business and Professional Code (Bus. And Prof. Code §600) revealed a law that was originally passed in 1873 [added by Code Amdts. 1873-74, p. 430] and that bans the dissemination of information or the offering of assistance to prevent conception: “Every person who willfully writes, composes, or publishes any notice or advertisement of any medicine or means...for the prevention of conception, or who offers his services



by any notice, advertisement, or otherwise, to assist in the accomplishment of any such purposes, is guilty of a felony” [CA P.C. §317 (1915)]. As in the case of Arizona (with a nearly identical statute), we interpret the “offering of services” as a prohibition on sales [see notes from Arizona for further explanation].

Additional evidence for this interpretation of the statute comes from Planned Parenthood Beginnings: Affiliate Histories (by Lenore Guttmacher 1979). Rev. Arthur G. Elcombe recounted a conversation with a female patient in a county hospital in San Diego in 1960. She said that “all employees, including residents in Obstetrics were forbidden by law to provide her with services for birth control” (p. 21). He noted that he “immediately inquired regarding this, found it to be true, looked for P.P. [Planned Parenthood] in the phone book, couldn't find it.” His efforts resulted in the opening of the first clinic in San Diego several years later, but he does not note when the legal environment changed. Other affiliate histories from California do not mention the legal environment, so it is unclear whether they were operating (deliberately) in violation of the law. Another possibility is that local ordinances mattered more than state law, but no such ordinances have been located thus far. *Coding: IP, SI.*

### Colorado

Smith cites only an advertising prohibition, which we located [From Smith: “Colo. Laws 1937, p. 504, §2 was amended in 1961, the prohibition against sale being removed; see Colo. Rev. Stat. Ann. §§40-9-17 (Supp. 1961)”. We also found a statute enacted in 1885 that appears to ban the dissemination of information and supplies for all except by practitioners of medicine or druggists in their “legitimate business.” The wording is as follows: “Whoever exhibits, lends, gives away, sells...any obscene, lewd, or indecent, or lascivious book, pamphlet, paper, drawing, print, picture, writing, advertisement, circular...or other article of an immoral or indecent nature; or any drug, or medicine, or instrument...for preventing conception... shall be guilty of misdemeanor...but nothing in this act shall be construed to affect...the practice of regular practitioners of medicine, or druggists in their legitimate business” [CO R.S. §1778 (1908)]. We interpret this language as a physician exception. *Coding: IP, SI, PX\_LB.*

### Connecticut

Connecticut’s law was passed in 1879, and we record the prohibition of sales and advertisements with no physician exception. The statute bans “any person who shall use any drug, medicinal article or instrument for the purpose of preventing conception...” [CT Gen. Stat. Ann. §53-32 (1960)]; it survived until successfully challenged in *Griswold v. Connecticut* [381 U.S. 479; 85 S. Ct. 1678; 14 L. Ed. 2d 510; 1965 U.S. LEXIS 2282]. *Coding: IP, SI.*

### Delaware

Dennett and DHEW cite no laws, while Smith and Dienes cite sales bans with a physician exception. (Dienes additionally mentions an advertising prohibition.) Sales and advertising bans of information and supplies for all were found, but the ban does not apply “to the sale or distribution of such appliances, drugs or medicinal preparations by regularly licensed physicians in the normal and usual course of the practice of their profession” [DE Code 1935 §4116]. The bans were passed in 1935 [40 Del. Laws, Ch. 98, 1 (1935); see also Code 1935 §4114-4116; Del. Code Ann. Tit 16 §2501 (1953)]. *Coding: IP, SI, PX\_LB.*

## Florida

FL Rev. Gen. Stat. §5438 (1920) changed to FL Stat. Ann. §847.01 (1941). This section was repealed by Laws 1961, c. 61-7, §13. The law is originally passed in 1868 and appears to ban only the dissemination of obscene information: “Whoever imports, prints, publishes, exhibits, displays, sells or distributes any book, pamphlet...or other thing, containing obscene language or any obscene prints, figures, pictures or descriptions manifestly tending to the corruption of the morals of youth...or has in his possession any book, pamphlet...other thing, either for the purpose of sale, exhibition, loan or circulation...shall be punished by imprisonment in State prison...” [FL Rev. Gen. Stat. §5438 (1920)]. We could not find any court cases construing these obscenity statutes to be applicable to contraception. *Coding: OI.*

## Georgia

This law is originally passed in 1878 and appears to ban the dissemination of obscene information and the sale of “articles” or “instruments.” It reads as follows: “If any person shall bring...into this State for sale or exhibition, or shall sell or offer to sell, or shall give away or offer to give away, or having possession thereof shall knowingly exhibit to another any indecent pictorial newspaper tending to debauch the morals, or any indecent or obscene book, pamphlet, paper...instrument, or article of indecent and obscene use, or shall advertise any of said articles or things for sale, by any form of notice, printed, written, or verbal, or shall manufacture, draw, or print any of said articles, with intent to sell or expose or to circulate the same, he shall be guilty of a misdemeanor” [GA P.C. §385 (1914)]. We found no court cases that construed this statute to apply to contraceptives. *Coding: OI.*

## Idaho

Idaho has laws originally passed in 1887 that appear to ban the dissemination of obscene information and the advertising of goods for the prevention of conception, but not the explicit sale of “articles” or “instruments” [see ID R.S. §6840 and §6843 (1887)]: “Every person who willfully publishes any notice or advertisement of any medicine or means...for the prevention of conception, or who offers his services by any notice, advertisement, or otherwise to assist in the accomplishment of any such purpose, is guilty of a felony” [ID R.S. §6843 (1887)]. However, as with Arizona and California, the language “who offers his services by any notice, advertisement, or otherwise to assist in the accomplishment of any such purpose” suggests a sales ban. Dennett was current in 1925 and omits a physician exception passed in 1937. The act reads as follows: “No appliances, drugs or medicinal preparations intended or having special utility for the prevention of conception and/or venereal disease, shall be advertised (except as hereinafter provided) displayed, dispensed, sold, or otherwise disposed of...without a license therefore issued by the Commissioner of Law Enforcement of the State of Idaho...except that this act shall not apply to physicians and medical practitioners licensed...in the State of Idaho” [Stats. 1937, ch. 72 §1]. *Coding: IP, SI, PX.*

## Illinois

The Illinois anti-obscenity statute, as well as the component banning articles for “indecent or immoral use”, was first published in 1845: “Whoever brings...for sale or exhibition, or shall sell or...give away...or have possession, with or without intent to sell or give away any obscene and indecent book, pamphlet, paper...instrument or article of indecent or immoral use, or shall advertise the same for sale, or

write...or print...any circular, handbill, card, book, pamphlet, advertisement or notice of any kind, or shall give information orally, stating when, how, or of whom, or by what means any of the said indecent and obscene articles and things hereinbefore mentioned can be purchased or otherwise obtained, or shall manufacture, draw and expose...or print any such articles, shall be confined in the county jail...or be fined not less than \$100 nor more than \$1,000 for each offense...” [IL Stat. Ann. Ch. 38, §455 (1924)]. Although ambiguous in its relevance for contraception, the courts permitted an interpretation of a prohibition on sales in *Lanteen* (1938). Illinois revised its definition of obscenity in 1961 and eliminated reference to articles “for indecent or immoral use.” The revised statute appears to be a general obscenity statute that does not apply to contraceptives. *Coding: OAI, judicial construction of sales ban—SI until 1961.*

### Indiana

This law is originally passed in 1905. Dienes and Dennett cite a physician exception, while Smith and DHEW do not. The actual statute is ambiguous. It is an obscenity statute that reads, “Whoever sells or lends, or offers to sell or lend...or has in his possession, with or without intent to sell, lend or give away, any...medicine for...preventing conception, or advertises the same or any of them...shall be fined...to which may be added imprisonment in the county jail...but nothing in this section...shall be construed to affect...the practice of regular practitioners of medicine or druggists in their legitimate business” [Ind. Ann. Stat. §10-2803 (1956)]. While this law is unclear as to whether prescribing contraceptives was part of a physician's “legitimate business”, we interpret this law as having a codified physician exception. However, according to DHEW, in 1963 the words “for the prevention of conception” were removed from the statute. Another advertising law remained in effect until at least 1971: “Whoever prints or publishes an advertisement of any secret drug or nostrum purporting to be for the exclusive use of females, or which cautions females against their use when in a condition of pregnancy, or in any way publishes any account or description of any drug, medicine, instrument or apparatus for preventing conception...or sells or gives away, or keeps for sale or gratuitous distribution, any newspaper, circular, pamphlet or book containing such advertisement, account or description or any secret drug or nostrum purporting to be exclusively for the use of females, or for the preventing of conception...shall be fined...to which may be added imprisonment...” [Acts 1905, c. 169, s.465; Ind. Ann. Stat. §10-2806 (1956)]. *Coding: IP, SI, PX\_LB.*

### Iowa

This law is originally passed in 1897 and appears to ban the dissemination of information and supplies for all except by practitioners of medicine or druggists in their “regular business.” While this law is unclear as to whether prescribing contraceptives was part of a physician's “regular business”, we interpret this law as having a codified physician exception. Dennett appears to have overlooked the physician exception. The 1897 Iowa Annotated Code reads as follows: “Whoever sells...or gives away, or has in his possession with intent to sell, loan or give away, any obscene, lewd, indecent or lascivious book, pamphlet, paper...or any instrument or article of indecent or immoral use, or any medicine, article or thing designed or intended for procuring abortion or preventing conception, or advertises the same for sale, or writes or prints any letter, circular, hand-bill, card, book, pamphlet, advertisement or notice of any kind, giving information, directly or indirectly, when, where, how or by what means any of the articles or things hereinbefore mentioned can be purchased, or otherwise obtained or made, shall be fined...or be imprisoned...or both...[but] nothing in the five preceding sections [covering the sales and advertising

prohibitions] shall be construed to affect...the practice of regular practitioners of medicine or druggists in their regular business” [Iowa Ann. Code §4952 and §4957 (1897)]. *Coding: IP, SI, PX\_LB.*

### Kansas

The anti-obscenity law originally passed in 1886 [KS Gen. Stat. §2845 (1909)], while the law regarding the prevention of conception passed in 1874. The latter appears to ban the dissemination of information and supplies: “That if any publisher or other person shall by printing, writing, or in any other way publish...or expose to sale any obscene pictures; an account, advertisement or description of any drug, medicine, instrument or apparatus used...for the purpose of preventing conception, or procuring abortion or miscarriage; or shall by writing or printing, in any circular, newspaper, pamphlet or book or in any way publish or circulate any advertisement or obscene notice herein recited; or shall within the state of Kansas keep for sale or for gratuitous distribution any newspaper, circular, book or pamphlet containing such notice or advertisement of such drugs, medicines, instruments or apparatus; or shall keep for sale any secret nostrum, drug, medicine, instrument or apparatus named...shall be deemed guilty of a misdemeanor...” [KS Gen. Stat. §2844 (1909)]. The entirety of KS Gen. Stat. §21.1101 (1949) [same language as KS Gen. Stat. §2844 (1909)] was repealed by L. 1963, ch. 222, §1. We code an advertising and sales ban that was repealed in 1963. *Coding: IP, SI.*

### Kentucky

DHEW and Dennett cite no laws, while Dienes finds advertising and sales bans with a physician exception. Smith only cites advertisement restrictions. The original anti-obscenity law was passed in 1894. KY Stat. §1352 (1930) does not contain any explicit mention of the “prevention of conception.” It prohibits “any person or corporation who sells, lends, gives away or shows...or advertises in any manner, or who otherwise offers for loan, gift, sale or distribution, any obscene, lewd, lascivious, filthy, indecent or disgusting book, magazine, pamphlet, newspaper...or any written or printed matter of an indecent character; or any article or instrument of indecent or immoral use, or purporting to be for indecent or immoral use or purpose, or who designs, copies, draws, photographs, prints, utters, publishes or in any manner manufactures or prepares any such book, picture, drawing, magazine, pamphlet, newspaper...article or thing, or who writes, prints, publishes...any advertisement or notice of any kind, giving information directly or indirectly, stating, or purporting so to do, where, how, of whom, or by what means, any...obscene, lewd, lascivious, filthy, disgusting or indecent book, picture, writing, paper, figure, image, matter, article or thing named in this section, can be purchased, obtained or had” [KY Stat. §1352 (1930)]. *Coding: OIA.*

### Louisiana

The original law was passed in 1920 and contains the explicit mention of the “prevention of conception”: “Distribution of abortifacients is the intentional: (1) Distribution or advertisement for distribution of any drug, potion, instrument, or article for the purpose of procuring an abortion; or (2) Publication of any advertisement or account of any secret drug or nostrum purporting to be exclusively for the use of females, for preventing conception or producing abortion or miscarriage...” [LA R.S. §14.88 (1950)]. According to DHEW (1974, p. 199), an Attorney General decision in 1965 reversed previous interpretations of this law for contraceptives. We code only an advertising ban in Louisiana. *Coding: IP.*

## Maine

The original law was passed in 1857 and bans the sale or distribution of written materials rather than supplies: “Whoever publishes, sells or distributes by hand or otherwise any circular, pamphlet, or book containing recipes or prescriptions for the cure of chronic female complaints or private diseases, or recipes or prescriptions for drops, pills, tinctures, or other compound designed to prevent conception...shall be punished by a fine...or by imprisonment for not more than three months” [ME R.S. Ch. 135 §10 (1930)]. This ban on advertisements was repealed in 1967. *Coding: IP.*

## Maryland

Smith was the only source to cite any laws, mentioning a ban on sales from vending machines, which we confirmed [Ann. Code, 1957, §41]. The original anti-obscenity law was passed in 1888 and does not contain any explicit mention of the “prevention of conception”: “If any person shall bring...into this State for sale or exhibition, or shall sell, lend, give away...or have in his or her possession with intent to sell or give away, or to exhibit, show, advertise or otherwise offer for loan, gift, sale or distribution any lewd, obscene or indecent book, magazine, pamphlet...or any article or instrument of indecent or immoral use, or shall design...publish or prepare such book, picture, card, drawing, paper or other article, or shall write or print...any circular, advertisement or notice of any kind, or giving information orally, stating when, where, how or of whom or by what means such a lewd, indecent or obscene article or thing can be purchased, seen or obtained, shall in every such case be guilty of a misdemeanor...” [MD Gen. Laws Art. 27 §372 (1914)]. *Coding: OAI.*

## Massachusetts

The original law prohibiting sales and advertising was passed in 1847. The original statute reads as follows: “Whoever sells, lends, gives away, exhibits...an instrument or other article...or any drug, medicine, instrument or article whatever for the prevention of conception...or advertises the same, or writes, prints, or causes to be written or printed a card, circular, book, pamphlet, advertisement or notice of any kind stating when, where, how, of whom or by what means such article can be purchased or obtained, or manufactures or makes any such article shall be punished by imprisonment...or by a fine...” [MA Gen. Laws 1921 §21]. The statute was revised following the Griswold decision in 1966 to ban sales to unmarried individuals. *Coding: IP, SI.*

## Michigan

The original law was passed in 1897 and does not contain any explicit mention of the “prevention of conception”: “That any person who sells, lends, gives away...or advertise[s]...or distribute[s] any obscene, immoral, lewd, lascivious, or indecent book, magazine, pamphlet, newspaper, writing, paper, print picture, drawing, publication, or photograph, or any article or instrument of indecent or immoral use, or who designs...publishes, or otherwise prepares such a book, picture, drawing, paper, or other article or thing, or writes or prints...a circular, advertisement, or notice of any kind, or gives information orally, stating when, where, how, or of whom, or by what process such obscene article or thing can be purchased or obtained...shall be guilty of a misdemeanor...” [MI Comp. Laws §11702 (1897)]. The statute contains language similar to other statutes limiting the distribution of contraception (“article or instrument of indecent or immoral use”), but there is no explicit mention of goods for the prevention of conception.

There is an explicit advertising ban similar to that of Maine: “The publication or sale within this state of any circular, pamphlet or book containing recipes or prescriptions in indecent or obscene language for the cure of chronic female complaints or private diseases, or recipes or prescriptions for drops, pills, tinctures, or other compounds designed to prevent conception...is hereby prohibited...[T]he publisher and seller shall each be guilty of a misdemeanor” [MI Comp. Laws §11728 (1897)]. We code only an advertising ban in Michigan. Dennett appears to have overlooked this prohibition. *Coding: IP*.

#### Minnesota

The original law was passed in 1894 and clearly provides for an advertising and sales ban: “A person who sells, lends, gives away...or advertises...any instrument or article, or any drug or medicine, for the prevention of conception...or who writes or prints...a card, circular, pamphlet, advertisement, or notice of any kind, or gives information orally, stating when, where, how, of whom, or by what means, such an article or medicine can be purchased or obtained, or who manufactures any such article or medicine, is guilty of a misdemeanor” [MN Code §6572 (1894)]. All sources except Dennett mention a physician exception. The physician exception is broader than typical “legitimate business” exceptions: “An article or instrument, used or applied by physicians lawfully practicing, or by their direction or prescription, for the cure or prevention of disease, is not an article of indecent or immoral nature or use, within this chapter. *The supplying of such articles to such physicians, or by their direction or prescription, is not an offense under this chapter*” [MN Code §6574 (1894); emphasis added]. We agree with the interpretations of Smith, Dienes and DHEW. *Coding: IP, SI, PX*.

#### Mississippi

The original law was passed in 1892 clearly provides for an advertising and sales ban: “A person who sells, lends, gives away, or in any manner exhibits...or advertises or offers for sale, loan, or distribution any instrument or article, or any drug or medicine, for the prevention of conception...or who writes or prints...a card, circular, pamphlet, advertisement, or notice of any kind, or gives information orally, stating when, where, how, of whom, or by what means such article or medicine can be purchased or obtained, or who manufactures any such article or medicine, is guilty of a misdemeanor...” [MS Code Ann. §2289 (1957)]. A 1970 revision removed “for the prevention of conception” from the text. *Coding: IP, SI*.

#### Missouri

The original law passed in 1879 clearly provides for an advertising and sales ban: “Every person who shall manufacture, print, publish, buy or...sell, give away, distribute or circulate any obscene, lewd or licentious book, pamphlet, picture, or print or other publication of an indecent or scandalous character, or who shall keep for sale or sell any article or thing intended to prevent conception...or who shall publish, sell or circulate any written or printed card, circular, book, pamphlet, or notice of any kind, stating when, where, how or of whom or by what means any of the articles or things mentioned in this section can be had or obtained...shall be deemed guilty of a misdemeanor” [MO Rev. Stat. §3799 (1889)]. A physician exception appears to have been passed in 1881: “Whoever sells, or offers for sale, or gives away, or exhibits or circulates, with or without intent to sell or give away, any obscene, lewd or indecent or lascivious book, pamphlet, paper...instrument or article of indecent or immoral use, or medicine for procuring abortion or preventing conception, or advertises the same for sale, or writes or prints any letter,

circular, hand-bill, card, book, pamphlet, advertisement or notice of any kind, giving information, directly or indirectly, when, where, how or by what means any of the articles or things hereinbefore mentioned can be purchased or otherwise obtained or made, shall on conviction thereof be fined...or be imprisoned...or both; but nothing in this section shall be construed so as to affect teaching in regular medical colleges, or public standard medical books, or the practice of regular practitioners of medicine, or druggists in their legitimate business” [MO Rev. Stat. §3801 (1889), from Laws 1881, p. 124]. The advertisement and sale of “secret drug[s] or nostrum[s] purporting to be for the use of females” is also prohibited [R.S. 1929, §4275]. The words “for the prevention of conception” were removed from prohibitory statutes in 1967 [Mo. Rev. Stat. §542.380]. *Coding: IP, SI, PX\_LB.*

### Montana

All sources except Dennett mention a physician exception. This is because the relevant statute [Secs. 1-2, Ch. 134, L. 1935] was passed in 1935, nine years after Dennett published her review. The statute clearly provides for an advertising and sales ban with a physician exception: “It shall be unlawful for any person, firm, corporation, copartnership, or association to sell, offer for sale, or give away, through the medium of vending machines, personal or collective distribution, by solicitation, peddling or in any other manner whatsoever, contraceptive devices....The forgoing provisions shall not apply to regularly licensed practitioners of medicine, osteopathy or other licensed persons practicing other healing arts, and registered pharmacists of the state of Montana, nor to wholesale drug jobbers or manufacturers who sell to the retail stores only” [MT Rev. Codes Ann. §94-3616 (1947)]. MT Rev. Codes Ann. §94-3617 (1947) prohibits the exhibition or display of contraceptives “other than in the place of business of a licensed pharmacist.” *Coding: IP, SI, PX.*

### Nebraska

The original law was passed in 1885 clearly provides for an advertising and sales ban: “If the publishers of any newspaper in the state, shall print or publish any advertisement of any secret drug or nostrum, purporting to be exclusively for the use of females, or if any druggist or other person shall sell or keep for sale, or shall give away any such secret drug or nostrum, purporting to be exclusively for the use of females; or if any person shall, by printing or writing, or in any other way publish an account or description of any drug, medicine, instrument, or apparatus for the purpose of preventing conception...or shall, by writing or printing in any circular, newspaper, pamphlet, or book, or in any other way publish or circulate any obscene notice, or shall, within the state of Nebraska, keep for sale or gratuitous distribution, any newspaper, circular, pamphlet, or book containing such notice of such drugs, instruments, or apparatus, or shall keep for sale, or gratuitous distribution any secret nostrum, drug, or medicine for the purpose of preventing conception...such person or persons so violating any of the provisions of this section, shall be fined...or be imprisoned...or both....*Provided*, That nothing in this section shall be so construed as to affect teaching in regular chartered medical colleges, or the publication of standard medical books” [NE Compiled Stat. §45 (1885)]. The exception only applies to teaching in medical colleges and the publication of text books, and not to physicians or druggists. *Coding: IP, SI.*

### Nevada

Smith cites advertising/vending machine laws, while DHEW cites only an advertising ban. Dienes and Dennett mention advertisement and sales bans with physician exceptions. The original laws were passed

in 1877 and ban the sale or distribution of written materials with an exception for physicians in the “legitimate practice of their profession”: “SEC. 186. It shall not be lawful for any person to advertise or publish...in a newspaper, pamphlet, handbill, book, or otherwise, within this state, any medicine, nostrum, drug, substance, or device for the prevention of human propagation, or which purports to be, or is represented to be, a preventive of conception or pregnancy in women” [NV R.L. §6451 (1912)]. Section 6455 of the 1912 Revised Laws further elaborates: “Every person who shall knowingly sell, distribute, give away, or in any manner dispose of or exhibit to another person any newspaper, pamphlet, book, periodical, handbill, printed slip, or writing, or cause the same to be so sold, distributed, disposed of, or exhibited, containing any advertisement prohibited in sections 186 or 187 of this act, or containing any description or notice of, or reference to, or information concerning, or direction how or where to procure any medicine, drug, nostrum, substance, device, instrument, or service, the advertisement of which is herein prohibited or declared to be unlawful, shall, on conviction thereof, be liable to the same punishment as prescribed in section 187 of this act; *provided*, that nothing in this act shall be construed to interfere with or apply to legally licensed physicians in the legitimate practice of their profession.” The ban on advertisements was not repealed before 1963. *Coding: IP, SI, PX\_LB*.

### New Hampshire

The original law was passed in 1891 is a ban on printed obscenities: “No person shall print or publish, or sell, lend, give or show to any other person any obscene book, pamphlet, magazine, newspaper, print or picture, or any printed paper devoted to the publication or illustration of stories or accounts of bloodshed, lust, or crime, or principally made up of police reports and criminal news, and no person shall circulate, display, or post any advertisement of any such literature or pictures, or cause it to be done” [NH Public Stat. ch. 265 §6 (1891)]. We code no contraceptive laws in New Hampshire. *Coding: OI*.

### New Jersey

The original law appears to have been passed in 1898 and explicitly prohibits the advertising or sale of articles for the prevention of conception: “Any person who, without just cause, utters or exposes to the view of another...or...sell[s] the same, any instrument, medicine or other thing, designed or purporting to be designed for the prevention of conception...or who in any way advertises or aids in advertising the same, or in any manner, whether by recommendation for or against its use or otherwise, gives or causes to be given, or aids in giving any information how or where any such instrument, medicine or other thing may be had, seen, bought or sold, is a disorderly person” [NJ Stat. Ann. §2A: 170-76 (1953)]. The New Jersey statute is interpreted in *Sanitary Vendors* (1963) [40 N.J. 157; 190 A.2d 876; 1963 N.J. LEXIS 169; 96 A.L.R.2d 948] to allow dispensation of contraceptives by physicians and druggists. However, the legality of the “use of contraceptives” was still under consideration by the courts until *State v. Baird* (1967) [50 N.J. 376; 235 A.2d 673; 1967 N.J. LEXIS 178]. *Coding: IP, SI, [PX after 1963]*.

### New Mexico

New Mexico enacted a general obscenity statute in 1884. It appears in a section about gambling, fraudulent devices, and obscene publications. Its provisions “suppress gaming and gambling-houses, lotteries, and fraudulent devices and practices, for the purpose of gaining or obtaining money or property, and...prohibit the sale or exhibiting of obscene or immoral publications, prints, picture, or illustrations”



[NM Stat. Ann. §14-1812 (1941)]. We found no statutes with explicit mention of “goods for the prevention of conception.” *Coding: OI.*

### New York

All secondary sources agree on the coding of New York's laws. The original law appears to have been passed in 1868 (Dienes pp. 43-44), repealed completely in 1872, and another provision passed in 1873 (and written by Anthony Comstock himself). In 1887, the bans on advertising and representations were extended: “A person who sells, lends, gives away, or in any manner exhibits...or has in his possession with intent to sell, lend or give away, or advertises, or offers for sale, loan or distribution, any instrument or article, or any recipe, drug or medicine for the prevention of conception...or advertises, or holds out representations that it can be so used or applied, or any such description as will be calculated to lead another to so use or apply any such article, recipe, drug, medicine or instrument, or who writes or prints...a card, circular, pamphlet, advertisement or notice of any kind, or gives information orally, stating when, where, how, of whom, or by what means such an instrument, article, recipe, drug or medicine can be purchased or obtained, or who manufactures any such instrument, article, recipe, drug or medicine, is guilty of a misdemeanor...” [NY C.L. Art. 106 §1142 (1909)]. There is also an explicit physician exception: “An article or instrument, used or applied by physicians lawfully practicing, or by their direction or prescription, for the cure or prevention of disease, is not an article of indecent or immoral nature or use, within this article. The supplying of such articles to such physicians or by their direction or prescription, is not an offense under this article” [NY C.L. Art. 106 §1145 (1909)]. The language remained unchanged until the law was repealed in 1965. In 1971, section 6811 of the NY Education Law was amended to allow the prescription by a physician and sale by a physician or pharmacist of contraceptives to any individual 16 and over (Dienes 321). *Coding: IP, SI, PX.*

### North Carolina

The general obscenity statute was passed in 1885 but does not apply to the prevention of conception: “If any person shall exhibit for the purpose of gain, lend for hire or otherwise publish or sell for the purpose of gain, or exhibit in any school, college or other institution of learning, or have in his possession for the purpose of sale or distribution, any obscene book, paper, writing, print, drawing or other representation, he shall be guilty of a misdemeanor” [NC Stat. “Revisal” §3731 (1905)]. *Coding: OI.*

### North Dakota

The original law was passed 1895 and does not contain any explicit mention of the “prevention of conception”—only “article or instrument of immoral use” [N.D. R.C. 12-2109 (1943)]. A law passed in 1909 prohibits the advertisement of “any medicine, drug compound, appliance, or any means whatever, whereby it is claimed that sexual diseases of men and women may be cured or relieved, or miscarriage or abortion produced, or who shall advertise any medicine or means whereby the monthly periods of women can be regulated...” [ND R.C. §23-1205 (1943)]. This statute remained in existence in this form until its repeal in 1975 [S.L. 1975, ch. 106, §673]. Sales by vending machine are prohibited [N.D. Cent. Code §12-43-12 (1960)] beginning in 1959. *Coding: OAI.*

## Ohio

This law is originally passed in 1885 and appears to ban the dissemination of information and supplies for all except by practitioners of medicine or druggists and physicians in their “legitimate business”:

“Whoever sells, loans, or gives away...or otherwise distribute[s]...any obscene, lewd, lascivious or indecent picture...instrument, or any article for indecent or immoral use, or any indecent instrument or article for procuring abortion, or for preventing conception, or for self-pollution, or any medicine for procuring abortion or preventing conception, or advertises any of said articles or things for sale, or writes, prints, or dictates any letter, circular, hand-bill, card, book, pamphlet, advertisement or notice of any kind, or orally gives any information stating where, when, or by what means any of the articles or things herein named can be purchased or procured in any way, or where they are made, or draws or designs, writes, prints or makes in any way, any of said articles, or things, or employs or procures in any way, any person to sell or give away, or in any manner to distribute any of the said articles or things or any advertisement thereof, shall be fined...or imprisoned...or both; but nothing in this section or the next two sections shall be construed to affect teaching in regularly chartered medical colleges, or the publication of standard medical books, or the practice of regular practitioners of medicine, or druggists in their legitimate business” [OH R.S. §7027 (1896)]. All sources except DHEW cite the physician exception. The physician exception for the sales and advertising ban was part of the original statute enacted in 1885 [April 30, 1885: 82 v. 184]. *Coding: IP, SI, PX\_LB.*

## Oklahoma

Dennett cites advertisement and sales prohibitions, but we found no law nor did any of the other sources. Oklahoma has a general obscenity statute banning obscene information, passed at least by 1891. [We could not verify the existence of any laws prior to this date.] There is no specific mention of articles for the prevention of conception: “Every person who willfully and lewdly either writes...or sells, distributes, or keeps for sale, or exhibits any obscene or indecent writing, paper or book...is guilty of a misdemeanor” [OK Stat. §2216 (1891)]. We verified the existence of the statute in this form until at least 1971. *Coding: OI.*

## Oregon

Sales bans with physician exceptions are mentioned in each source except Dennett. Oregon passed prohibitions on sales and advertisement of contraceptives, including a physician exception, in 1935 [L. 1935, ch. 126, §1 and §7, pp. 195-196]. The statute reads as follows: “No appliances, drugs or medicinal preparations intended or having special utility for the prevention of conception and/or venereal diseases, shall be advertised...displayed, sold or otherwise disposed of in the state of Oregon, without a license therefore issued by the state board of pharmacy...except that this section shall not apply to physicians and medical practitioners regularly licensed to practice medicine... in the state of Oregon” [OR C.L. An. §58-561 (1939)]. *Coding: IP, SI, PX.*

## Pennsylvania

Dennett cites a sales ban that is not mentioned by the other three sources. Reading the laws, it appears that advertisements (of “secret” drugs) are prohibited, but the interpretation with respect to sales of contraceptives is ambiguous: “Whoever prints or publishes...in any newspaper, pamphlet, book or

circular, any advertisement of, or sells or keeps for sale, or gives away or publishes an account or description of, or by writing, publishes or circulates any notice of any secret drug, nostrum, medicine, recipe or instrument, purporting to be for the use of females for the purpose of preventing conception...is guilty of a misdemeanor..." [PA Stat. Ann. Tit. 18 §4525 (1945)]. This law was passed in 1939, and it replaced 1870 and 1897 laws that prohibited the advertisement, sale, or possession of "secret" drugs for use by females or for preventing conception.<sup>4</sup> However, a 1948 court case (*Commonwealth v. Payne* [66 Pa. D. & C. 462, 1949 WL 2998 (Pa. Quar. Sess.)]) held that "Section 525 of the Penal Code of 1939, 18 P.S. §4525, does not prohibit the sale or keeping for sale of contraceptives, provided the articles are not publicized or exhibited in any manner." By the late 1950s, therefore, we code Pennsylvania as having an advertising ban only. *Coding: IP.*

### Rhode Island

It appears that a statute banning obscene information was passed as early as 1896: "Every person who shall import, print, publish, sell, or distribute any book, pamphlet, ballad, printed paper, or other thing containing obscene, indecent, or impure language, or manifestly tending to the corruption of the morals of youth, or any print, picture, figment, or other description which is indecent, impure, or manifestly tending to the corruption of the morals of youth, or shall introduce into any family, school, or place of education, or shall buy, procure, receive, or have in his possession any such book, pamphlet, ballad, printed paper, or other thing, either for the purpose of sale, exhibition, loan, or circulation, or with intent to introduce the same into any family, school, or place of education, shall be imprisoned...or be fined ..." [RI General Laws §11-31-1 (1956)]. *Coding: OI.*

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<sup>4</sup>Act 1870, March 16, P.L. 39, §2 (18 P.S. §777): "If any person shall print or publish, or cause to be printed or published, in any newspaper in this state, any advertisement of any secret drug or nostrum purporting to be for the use of females; or if any druggist or other person shall sell or keep for sale, or shall give away any such secret drug or nostrum purporting to be for the use of females, or if any person shall, by printing or writing, or in any other way, publish an account or description of any drug, medicine, instrument or apparatus for the purpose of preventing conception, or of procuring abortion or miscarriage, or shall, by writing or printing, or any circular, newspaper, pamphlet or book, or in any other way publish or circulate any obscene notice, or shall, within this state, keep for sale or gratuitous distribution any secret drug, nostrum or medicine for the purpose of preventing conception, procuring abortion or miscarriage, such person or persons, so violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding six months, or both, at the discretion of the court: Provided, That nothing in this act contained shall be construed to affect teaching in regular chartered medical colleges, or the publication of standard medical books."

Act 1897, May 12, P.L. 63, §2 (18 P.S. §778): "A person who sells, lends, gives away or in any manner exhibits or offers to sell, lend or give away, or has in his possession with intent to sell, lend or give away or advertises or offers for sale, loan or distribution, any instrument or article, or any recipe, drug or medicine for the prevention of conception, or for causing unlawful abortion, or advertises or hold out representations that it can be so used or applied, or any such description as will be calculated to lead another to so use or apply any such article, recipe, drug, medicine or instrument, or who writes or prints, or causes to be written or printed, a card, circular, pamphlet, advertisement or notice of any kind, or gives information orally stating when, where, how, of whom or by what means such an instrument, article, recipe, drug or medicine can be purchased or obtained, or who manufactures any such instrument, article, recipe, drug or medicine, is guilty of a misdemeanor, and shall be liable to the same penalties as provided in section one of this act."

### South Carolina

A statute banning obscene information was passed as early as 1894: “Whoever knowingly imports, prints, publishes, sells or distributes any book, pamphlet, ballad, printed paper or thing containing obscene, indecent or improper print, picture, figure or description manifestly tending to the corruption of the morals of youth, or introduces into a family, school or place of education, or brings, procures, receives or has in his possession any such book, pamphlet, printed paper, picture or ballad, or other thing, either for the purpose of sale, exhibition, to aid in a circulation, or with intent to introduce the same into a family, school or place of education, shall be punished by imprisonment...or by a fine...or both, at the discretion of the Court” [SC Rev. Stat. §255 (1894)]. *Coding: OI.*

### South Dakota

Smith cites a vending machine/advertising law, while DHEW mentions an advertising ban only. Dennett and Dienes mention no laws. We verified Smith’s citation of S.D. Code §13.1726 (1939 Supp.), which prohibits the advertisement and display, as well as sale by vending machine, of prophylactics, defined as “articles or devices of whatsoever nature intended or having special utility for preventing pregnancy or venereal disease.” This law can be found as SD C.L. §22-24-7 and §22-24-8 (1967). Section 22-24-7 (the advertising and display ban) was repealed by S.L. 1976, ch. 158, §24-11. Before these laws were enacted, South Dakota had a general obscenity statute that passed by at least 1910: “Every person who, willfully and lewdly, either...writes or composes, stereotypes, prints, publishes, sells, distributes or keeps for sale, or exhibits any obscene or indecent writing, paper or book, or designs or copies, draws or engraves, paints or otherwise prepares any obscene or indecent picture or print of any description, or molds, cuts, casts, or otherwise makes any obscene or indecent figure or form, is guilty of a misdemeanor” [SD Comp. Laws §371 (1910)]. *Coding: IP.*

### Tennessee

It appears the general obscenity statute was passed as early as 1884: “If any person print, publish, import, sell, or distribute any book, pamphlet, ballad or printed paper containing obscene language or obscene prints, pictures, or descriptions, manifestly tending to corrupt the morals; or introduce the same into any family, school or place of education; or have the same in his possession for the purpose of loan, sale, exhibition or circulation, or with intent to introduce the same into any family, school, or place of education, he shall be guilty of a misdemeanor” [TN Statute Laws §5657 (1884)]. *Coding: OI.*

### Texas

Obscenity statutes appear to have been passed as early as 1897. While one such statute deals with “publications of scandals, whoring, lechery, assignations, intrigues between men and women and immoral conduct of persons” [TX Penal Code art. 527 (1925)], another follows more closely to other general obscenity statutes: “If any person shall make, publish or print any indecent and obscene print, picture or written composition manifestly designed to corrupt the morals of youth, or shall designedly make any obscene and indecent exhibition of his own or the person of another in public, he shall be fined not exceeding one hundred dollars” [TX Penal Code art. 526 (1925)]. We code no contraceptive laws in Texas. *Coding: OI.*

## Utah

Only Smith mentions an advertising prohibition. The remaining sources mention no laws. We wanted to verify Smith's citation [Utah Code Ann. §§58-19-1 to 58-19-10 (1953)], but these were for prophylactics, defined as "any device, appliance or medicinal agent used in the prevention of venereal disease." We could not verify the existence of any other laws relating to contraceptives. A general obscenity statute appears to have been passed as early as 1898: "Every person who wilfully and lewdly, either...writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale, or exhibits any obscene or indecent writing, paper, or book; or designs, copies, draws, engraves, paints, or otherwise prepares any obscene or indecent picture or print; or moulds, cuts, casts, or otherwise makes any obscene or indecent figure...is guilty of a misdemeanor" [UT Rev. Stat. §4247 (1898)]. *Coding: OI.*

## Vermont

It appears that a general obscenity statute was passed no later than 1880: "A person who imports, prints, publishes, sells, lends, circulates, distributes, exhibits or introduces into a family or place of education a book or other thing containing obscene language, prints, pictures, figures or descriptions, or buys, procures or has in his possession any such book or thing with intent to sell, lend, circulate, distribute or exhibit the same, or to introduce it into a family or place of education, shall be imprisoned...or fined..." [VT R.L. §4252 (1880)]. *Coding: OI.*

## Virginia

We verify a general obscenity law dating to 1874: "If a person import, print, publish, sell or distribute, any book or other thing containing obscene language, or any print, picture, figure, or description, manifestly tending to corrupt the morals of youth, or introduce into any family or place of education, or buy or have in his possession any such thing for the purpose of sale, exhibition or circulation, or with intent to introduce it into any family or place of education, he shall be confined in jail...and fined..." [VA Code tit 54 §11 (1874)]. *Coding: OI.*

## Washington

Dennett cites a sales ban that no other source mentions. It appears an advertising ban was passed in 1909. Wash. Rev. Code §9.60.030 (1998) cites the enactment of the statute by Laws 1909, ch. 249, §208, as well as an amendment by Laws 1971, Ex. Sess., ch. 185, §2. This 1971 amendment deleted the words "for the prevention of conception" from the statute. The original statute stating the advertising ban reads as follows: "Every person who shall expose for sale, loan, or distribution, any instrument or article, or any drug or medicine, for the prevention of conception...or shall write, print, distribute, or exhibit any...advertisement or notice of any kind, stating when, where, how, or of whom such article or medicine can be obtained, shall be guilty of a misdemeanor" [WA R.S. Ann. §2460 (1932)]. This statute does not appear to include a ban on sales. A general obscenity statute [WA Codes and Stat. Ann. §2459] was also passed in 1909. Section 2459 does not mention the prevention of conception and §2460 only bans the exposure for sale. *Coding: IP.*

## West Virginia

It appears that the "corruption of morals statute" passed as early as 1849, though we could only verify laws from 1899: "If any person import, print, exhibit, publish, sell, or distribute any book or other thing

containing obscene language, or any print, picture, figure or description manifestly tending to corrupt the morals of youth, or introduce into any family or place of education, or buy or have in his possession, any such thing, for the purpose of sale, exhibition, or circulation, or with intent to introduce it into any family or place of education, he shall be confined in jail...and fined..." [WV Code §11 (1899)]. *Coding: OI.*

### Wisconsin

General obscenity statutes (concerning obscene information and the "corruption of morals") existed from 1849. Dennett was current in 1925 and records no laws relating to the use of contraception. However, an advertising and sales ban with physician exception was passed in 1933 (enacted by L. 1933 c. 420): "(1) As used in this chapter, the term 'indecent articles' means any drug, medicine, mixture, preparation, instrument, article or device of whatsoever nature used or intended or represented to be used to procure a miscarriage or prevent pregnancy. (2) No person, firm or corporation shall publish, distribute or circulate any circular, card, advertisement or notice of any kind offering or advertising any indecent article for sale, nor shall exhibit or display any indecent article to the public....(4) No person, firm or corporation shall sell or dispose of...any indecent articles to or for any unmarried person; and no sale in any case of any indecent articles shall be made except by a pharmacist registered under the provisions of ch. 151 or a physician or surgeon duly licensed under the laws of this state. (5) Any person, firm or corporation violating any provision of this section shall be deemed guilty of a misdemeanor..." [WI Stat. §151.15 (1957)<sup>5</sup>]. *Coding: IP, SI, PX.*

### Wyoming

Smith cites only an advertising ban, while DHEW cites a sales ban. Dienes and Dennett mention advertising and sales bans with a physician exception. In an almost identical obscenity statute to that of Indiana, sales and advertisement of goods for the prevention of conception are prohibited, but the statute does not apply to the practice of doctors or druggists "in their legitimate business." The law was first passed in 1890, with the physician exception being part of the original statute [WY S.L., p. 138 §81 (1890)]: "Whoever sells or lends...or gives away...or in any manner exhibits, or has in his possession, with or without intent to sell, lend, or give away, any obscene, lewd, indecent, or lascivious book, pamphlet, paper, drawing...instrument or article of indecent or immoral use, or instrument or article for procuring abortion or for self-pollution, or medicine for procuring abortion, or preventing conception; or advertises the same or any of them for sale; or writes or prints any letter, circular, hand-bill, card, book, pamphlet, advertisement, or notice of any kind; or gives information orally, stating when, how, where, or by what means, or of whom, any of the obscene, lewd, indecent, or lascivious articles or things hereinbefore mentioned, can be purchased, borrowed, presented, or otherwise obtained, or are manufactured; or manufactures, or draws and exposes or draws with intent to sell, or have sold, or prints any such articles or things shall be fined...to which may be added imprisonment...but nothing in this section, or in the next two sections [§6-104 and §6-105], shall be construed to affect teaching in regular chartered medical colleges, or the publication of standard medical books, or the practice of regular practitioners of medicine or druggists in their legitimate business" [WY Stat. §6-103 (1959)]. There is a separate statute, also dating from 1890, that prohibits the "advertisement of any secret drug or nostrum

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<sup>5</sup> In 1933, section (5) included "In addition thereto, any license, permit or registration certificate issued under any law or ordinance to any such persons, firm or corporation, shall be canceled or revoked." These words were removed in 1941 by L. 1941 c. 161.

purporting to be for the exclusive use of females...or for preventing conception” [Wyo. Stat. Ann. §6-105 (1959)]. However, in 1969, the words “for the prevention of conception” are removed from the statutes.  
*Coding: IP, SI, PX\_LB.*

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