



Arkansas | RANKING: 2 |

Arkansas has been a leader in implementing the Mother-Child strategy, enacting laws that protect both mother and child from the harms inherent in abortion. It maintains strong informed consent and parental involvement requirements, comprehensive health and safety requirements for abortion facilities, and effective limits on state taxpayer funding for abortion and abortion providers.

ABORTION

- Arkansas’ policy, as explained in Amendment 68, § 2 to the state constitution, is to “protect the life of every unborn child from conception until birth, to the extent permitted by the Federal Constitution.”
- Arkansas maintains an enforceable abortion prohibition should the U.S. Constitution be amended or certain U.S. Supreme Court decisions be reversed or modified.
- Arkansas also prohibits abortion at or after 5 months of development (i.e., 20 weeks) on the basis of the pain felt by unborn children.
- Arkansas enacted the Sex Discrimination by Abortion Prohibition Act, which prohibits the practice of sex-selective abortion.
- Arkansas prohibits partial-birth abortion.
- It also prohibits the dismemberment abortion procedure. The law is enjoined and in ongoing litigation.
- In 2017, Arkansas enacted the Born-Alive Infant Protection Act, which provides protections for infants born alive after an abortion attempt.
- Arkansas requires that, 48 hours prior to an abortion, a physician provide a woman with information about the proposed abortion method, the immediate and long-term risks associated with the proposed method, alternatives to abortion, the probable anatomical and physiological characteristics of the



unborn child at the time the abortion is to be performed, and the medical risks associated with carrying the unborn child to term. Further, state-prepared materials must be made available to her. These materials include color photographs of the probable anatomical and physiological characteristics of the unborn child at 2-week gestational increments and a list of private and public agencies providing counseling and alternatives to abortion.

- An abortion provider must check for the unborn child’s heartbeat prior to abortion and must inform the woman if a heartbeat is detected. Arkansas also requires that women considering abortion receive information about fetal pain.
- Arkansas requires that an abortion provider offer a woman the opportunity to see the ultrasound image if an ultrasound is used in preparation for the abortion.
- A woman must also be informed that a spouse, boyfriend, parent, friend, or other person cannot force her to have an abortion.
- Arkansas’ informed consent requirements include a provision requiring that women be given information on the potential ability to reverse the effects of chemical abortions.
- A physician may not perform an abortion on an unemancipated minor under the age of 18 without notarized written consent or in-person consent (with photo identification) from a parent or legal guardian, unless the minor states by affidavit that she is the victim of physical or sexual abuse and her only living parent or guardian is the perpetrator, a medical emergency exists, or the minor obtains a court order. Arkansas requires a detailed consent form prior to a minor’s abortion.
- Arkansas prohibits intentionally causing, aiding, abetting, or assisting a child to obtain an abortion without parental consent and requires the collection of forensic samples when an abortion is performed on a minor under the age of 14.
- It prohibits an abortion if an unborn child’s heartbeat is detected and the unborn child is at 12 weeks of development or greater. The law is permanently enjoined.
- Arkansas’s comprehensive abortion facility regulations apply to “any facility in which the primary function is the willful termination of pregnancy.” The regulations prescribe minimum health and safety standards for the facility, staffing, and clinic administration.
- All abortion facilities performing ten or more abortions per month must be licensed by the state Department of Health.



- Only a person licensed to practice medicine in the State of Arkansas may perform an abortion.
- Arkansas has an enforceable abortion reporting law but does not require the reporting of information to the Centers for Disease Control (CDC). The measure pertains to both surgical and nonsurgical abortions and requires abortion providers to report short-term complications.
- When an abortion is performed, an abortion provider must report information related to the post-fertilization age of the unborn child.
- Employees and volunteers at “reproductive health facilities” are included in the list of mandatory reporters of suspected sexual abuse of minors.
- Arkansas law requires that, before administering an abortion-inducing drug, a physician must first examine a woman to ensure she does not have an ectopic pregnancy. After administration of the abortion-inducing drug, the physician must schedule a follow-up visit to ensure that the abortion is completed. The physician must also have a contract with a physician who has active admitting privileges and gynecological/surgical privileges at a hospital and who agrees to handle any complications. The contracted physician requirement is enjoined and in ongoing litigation.
- The Arkansas Constitution provides that no public funds will be used to pay for any abortion, except to save the mother’s life. However, Arkansas follows the federal standard for Medicaid funding for abortions, permitting the use of federal or state matching Medicaid funds for abortions necessary to preserve the life of the woman or when the pregnancy is the result of rape or incest.
- Arkansas enacted a measure prohibiting the disbursement of federal and state funds to entities that perform abortions or provide abortion referrals.
- It prohibits the use of public funds for abortions, abortion referrals, or the purchase or dispensing of abortion-inducing drugs in public schools.
- Arkansas prohibits abortion coverage in the state health insurance Exchanges (required under the federal healthcare law), except in cases of rape, incest, or when the mother’s life is in danger.
- Arkansas offers “Choose Life” license plates, directing the proceeds to organizations providing abortion alternatives.



LEGAL RECOGNITION AND PROTECTION OF THE UNBORN AND NEWLY BORN

- Under Arkansas law, the killing of an unborn child at any stage of gestation is defined as a form of homicide.
- It also criminalizes nonfatal assaults on an unborn child.
- Arkansas permits women to use force to defend their unborn children from criminal violence.
- Arkansas allows a parent or other relative to bring a wrongful death (civil) lawsuit when a viable unborn child is killed through a negligent or criminal act.
- In 2017, Arkansas passed legislation prohibiting wrongful life (civil) lawsuits when there is a claim that a child would not or should not have been born.
- In 2017, Arkansas passed legislation that requires the proper burial or cremation of remains resulting from an abortion. The law is enjoined and in ongoing litigation.
- Under the Child Maltreatment Act, “neglect” includes prenatal drug use that causes the child to be born with an illegal substance in his or her system or a drug-related health problem. Moreover, test results may be used as evidence of neglect in subsequent proceedings.
- Arkansas requires healthcare providers to report the birth of an infant who suffers from fetal alcohol syndrome.
- Arkansas allows a woman who loses a child after 5 months (i.e., 20 weeks) gestation to seek a Certificate of Birth Resulting in Stillbirth which is filed with the state registrar.

BIOETHICS LAWS

- Arkansas prohibits both cloning to produce children and cloning for biomedical research.
- However, it maintains no laws pertaining to destructive embryo research. Moreover, Arkansas’ fetal experimentation statute only prohibits research on a born-alive child, allowing, with the permission of the mother, research on a child born dead (e.g., aborted).



- The Newborn Umbilical Cord Initiative Act has established a network to collect and store postnatal tissue and fluid.
- Arkansas excludes an “unborn child” from the definition of “person” in the context of assisted reproductive technologies.
- Arkansas mandates that only physicians may perform artificial insemination procedures.
- Arkansas maintains no regulations related to human egg harvesting.

END OF LIFE LAWS

- Under Arkansas law, suicide by physician is a felony.

HEALTHCARE FREEDOM OF CONSCIENCE

PARTICIPATION IN ABORTION

- No person may be required to perform or participate in a medical procedure that results in abortion and cannot be subject to civil liability or other recriminatory action for their refusal to participate in abortions.
- In addition, no hospital is required to permit an abortion within its facility and cannot be subject to civil liability or other recriminatory action for its refusal.
- Arkansas provides some protection for the conscience rights of pharmacists and pharmacies.

PARTICIPATION IN RESEARCH HARMFUL TO HUMAN LIFE

- Arkansas currently provides no protection for the rights of healthcare providers who conscientiously object to participation in human cloning, destructive embryo research, or other forms of medical research that violate a provider’s moral or religious beliefs.



DID YOU KNOW?

- In 2017, Arkansas enacted the Unborn Child Protection from Dismemberment Abortion Act which prohibits the dismemberment abortion procedure.

WHAT HAPPENS AFTER ROE IS OVERTURNED?

- Abortion will not be legal. Enforceable Pre-*Roe* law currently in place, prohibiting all abortions.



RECOMMENDATIONS

for Arkansas

Women's Protection Project Priorities

- Enhanced penalties and enforcement mechanisms for the state's abortion-related laws
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Infants' Protection Project Priorities

- Unborn Infants Dignity Act
 - Prenatal Nondiscrimination Act
 - Perinatal Hospice Information Act
 - Unborn Wrongful Death Act (for a pre-viable child)
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Patient Protection Act Priorities

- Joint Resolution Opposing Suicide by Physician
 - "Charlie Gard Act" (formerly the "Life Sustaining Care Act")
 - Pain Medicine Education Act
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Additional Priorities

Abortion

- Defunding the Abortion Industry and Advancing Women's Health Act

Bioethics

- Prohibition on Public Funding of Human Cloning and Destructive Embryo Research Act

Healthcare Freedom of Conscience

- Healthcare Freedom of Conscience Act