Montana | RANKING: 40

Montana state courts have held that the state constitution provides a broader "right" to abortion than that interpreted in the federal constitution, making it difficult for the state to enact comprehensive, commonsense regulations that protect maternal health.

ABORTION

- State courts have held that the Montana Constitution provides a broader right to abortion than that interpreted in the U.S. Constitution. Under the auspices of these decisions, several state laws have been declared unconstitutional, including laws limiting taxpayer funding for abortions, requiring parental notice prior to a minor undergoing an abortion, requiring a 24-hour reflection period prior to an abortion, mandating that state-prepared informed consent information be offered to a woman prior to an abortion, and requiring that only a licensed physician perform an abortion.

- Montana prohibits partial-birth abortion performed after viability.

- Montana requires one parent be notified 48 hours in advance if the minor seeking the abortion is under 16. In 2013, the state passed a law requiring notarized written consent of a parent or legal guardian as well as proof of identification and relationship. The written consent requirement is permanently enjoined.

- A Montana law requires that licensed physicians or physician assistants perform abortions. It is one of a small minority of states that do not limit the performance of abortions to only licensed physicians. The law is enjoined and in ongoing litigation.

- Montana has an enforceable abortion reporting law but does not require the reporting of information to the Centers for Disease Control (CDC). The measure applies to both surgical and nonsurgical abortions.

- Montana taxpayers are required by court order to fund "medically necessary" abortions for women eligible for public assistance. This requirement essentially equates to funding abortion-on-demand in light of the U.S. Supreme Court's broad definition of "health" in the context of abortion.

- Montana offers "Choose Life" license plates, the proceeds of which benefit pregnancy resource centers and/or other organizations providing abortion alternatives.

- Montana maintains a Freedom of Clinic Access (FACE) law, making it a crime to block access to an abortion facility and restricting how close sidewalk counselors and demonstrators can be to the facility.

LEGAL RECOGNITION AND PROTECTION OF THE UNBORN AND NEWLY BORN

- Montana permits the prosecution of a third party who intentionally kills an unborn child who has reached at least eight weeks development.

- Under Montana law, a person commits an offense if he "purposefully, knowingly, or negligently causes the death of a premature infant born alive, if such infant is viable."

- Montana allows a wrongful death (civil) action when a viable unborn child is killed through a negligent or criminal act.

- It has created a specific affirmative duty of physicians to provide medical care and treatment to infants born alive at any stage of development.

- Montana has a "Baby Moses" law, establishing a safe haven for mothers to legally leave their infants at designated places and ensuring the infants receive appropriate care and protection.

- Specific professionals are required to report any infant affected by drug exposure.

- Montana maintains a measure allowing a woman who loses a child after 20 weeks gestation to obtain a Certificate of Birth Resulting in Stillbirth.

BIOETHICS LAWS

- Montana only prohibits cloning to produce children, making it a "clone-and-kill" state since it does not prohibit cloning-for-research.

- Montana does not prohibit destructive embryo research, and its prohibition on fetal experimentation applies only to children born alive (i.e., it does not apply to aborted fetuses).

- Montana does not promote ethical forms of research.
- It maintains no meaningful regulation of assisted reproductive technologies or human egg harvesting.

END OF LIFE LAWS

- The Montana Supreme Court has stated that it finds nothing in Montana Supreme Court precedent or state statutes indicating that suicide by physician is against public policy—thus potentially paving the way for suicide by physician in the state.

HEALTHCARE FREEDOM OF CONSCIENCE

PARTICIPATION IN ABORTION AND CONTRACEPTION

- On the basis of religious or moral beliefs, an individual, partnership, association, or corporation may refuse to participate in an abortion or to provide advice concerning abortion.
- A private hospital or healthcare facility is not required, contrary to religious or moral tenets, stated religious beliefs, or moral convictions, to admit a woman for an abortion or to permit the use of its facilities for an abortion.
- Montana has a "contraceptive equity" requirement, meaning that health insurance coverage must include coverage for contraception. There is no conscience exemption for employers or insurers with a religious or moral objection to contraception.

PARTICIPATION IN RESEARCH HARMFUL TO HUMAN LIFE

- Montana 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, the Montana legislature passed a bill that would prohibit abortions at or after 5 months (i.e., 20 weeks) on the basis of the pain experienced by unborn children. However, this was vetoed by the Governor.

- Additionally, Montana passed a bill that included a requirement abortion providers document information such as the gestational age and vital signs of the fetus after the abortion procedure. However, this was also vetoed by the Governor.

WHAT HAPPENS AFTER ROE IS OVERTURNED?

- Abortion will be legal up to viability. Pre-*Roe* law has been repealed and there is a state court version of *Roe*.

RECOMMENDATIONS
for Montana

Women's Protection Project Priorities

- Enhanced penalties and enforcement mechanisms for the state's abortion-related laws
- Women's Right to Know Act with reflection period
- Coercive Abuse Against Mothers Prevention Act
- Women's Health Protection Act (abortion clinic regulations)
- Drug-Induced Abortion Information and Reporting Act
- Parental Involvement Enhancement Act
- Child Protection Act

Infants' Protection Project Priorities

- Unborn Infants Dignity Act
- Prenatal Nondiscrimination Act
- Perinatal Hospice Information Act
- Unborn Wrongful Death Act

Patient Protection Act Priorities

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

Additional Priorities

Abortion

- State constitutional amendment (providing that there is no state constitutional right to abortion)
- Defunding the Abortion Industry and Advancing Women's Health Act
- Federal Abortion-Mandate Opt-Out Act

Legal Recognition and Protection for the Unborn

- Crimes Against the Unborn Child Act (to protect a child from conception)
- Pregnant Woman's Protection Act

Bioethics

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

End-of-Life

- Suicide by Physician Ban Act

Healthcare Freedom of Conscience

- Healthcare Freedom of Conscience Act