



## Louisiana | RANKING 1

Louisiana maintains the nation's most comprehensive laws protecting the health and safety of women seeking abortions and providing legal recognition and protection to the unborn. It also is one of few states to effectively regulate emerging biotechnologies. Not only does the state prohibit destructive embryo research, but it has also established an umbilical cord-blood banking program and allows for embryo adoption.

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### ABORTION

- Louisiana has declared that “the unborn child is a human being from the time of conception and is, therefore, a legal person for purposes of the unborn child’s right to life and is entitled to the right to life from conception under the laws and Constitution of this state.”
- Louisiana has enacted a measure prohibiting abortion once *Roe v. Wade* is overturned. The prohibition includes an exception for life endangerment.
- It prohibits abortions at or after 5 months (i.e., 20 weeks) on the basis of the pain felt by unborn children.
- In 2019, Louisiana passed legislation requiring an ultrasound be performed in order to determine whether the unborn child has a detectable heartbeat. If one is detected, an abortion is prohibited. The law will only go into effect if the Fifth Circuit Court of Appeals upholds Mississippi’s heartbeat law.
- Louisiana prohibits any person from intentionally performing an abortion on an unborn child at or after 5 months post-fertilization age, if the mother is seeking the abortion solely because of the unborn child’s genetic abnormality. The law is enjoined and in ongoing litigation.
- Louisiana prohibits partial-birth abortion throughout pregnancy except when necessary to save the life of the woman.
- Louisiana prohibits dismemberment abortions. The law is in ongoing litigation and not in effect.
- A physician may not perform an abortion until at least 72 hours after a woman has been provided information about the proposed abortion procedure, the alternatives to abortion, the probable gestational age of the unborn child, the risks associated with abortion, and the risks associated with carrying the child to term. She must also be told about available medical assistance benefits, the father’s legal responsibilities, and that her consent for an abortion may be withdrawn or withheld without any loss of government benefits. Women must also be provided information on psychological risks of abortion, human trafficking, and abuse. Informed consent requirements apply to both surgical and chemical abortions. The 72-hour reflection period requirement is in ongoing litigation.
- In 2019, Louisiana added a requirement that the woman also be given information on the physician who will perform the abortion, including whether he or she is currently board certified, has active admitting privileges as a hospital and the name of said hospital, has malpractice insurance, or whether he or she has ever been placed on probation or had his or her license suspended or revoked.



- Importantly, to ensure that informed consent information focuses on a woman's individual circumstances and that she has an adequate opportunity to ask questions, the required information must be provided to the woman individually and in a room that protects her privacy.
- Louisiana maintains a website providing the required informed consent information, as well as information on abortion alternatives. Abortion providers must give women the website's address following their first contact.
- Louisiana law requires that before an abortion is performed on an unborn child less than 5 months post-fertilization age, the woman must receive information about resources, programs, and services for women diagnosed with fetal genetic abnormality and for infants and children born with disabilities. The law is in ongoing litigation.
- Louisiana also provides a booklet describing the development of the unborn child; detailing abortion methods and their risks; providing a list of public and private agencies including adoption agencies that are available to provide assistance; providing information about state medical assistance benefits; and describing a physician's liability for failing to obtain a woman's informed consent prior to an abortion.
- In addition, a woman considering an abortion must receive information about fetal pain; specifically, she must be told about the availability of anesthesia or analgesics to prevent pain to the unborn child. Further, the mandatory informed consent materials state that by 5 months (i.e., 20 weeks) gestation, an unborn child can experience and respond to pain and that anesthesia is routinely administered to unborn children for prenatal surgery at 20 weeks' gestation or later.
- Louisiana mandates that an ultrasound be performed before an abortion and requires that the person performing the ultrasound read a "script" that includes offering the woman a copy of the ultrasound print. In 2012, the state supplemented this requirement, mandating that the ultrasound images be displayed, and an audible heartbeat be provided to a woman before an abortion.
- Printed materials must include a comprehensive list of facilities that offer obstetric ultrasounds free of charge.
- Louisiana requires abortion providers to state in their printed materials that it is illegal for someone to coerce a woman into having an abortion. A coerced abortion occurs when a person engages in or threatens physical force to compel a pregnant woman to have an abortion against her will, "whether or not the abortion procedure has been attempted or completed."
- Abortion providers must post signs declaring that "it is unlawful for anyone to make you have an abortion against your will, even if you are a minor." Clinics must also post the phone number of the National Human Trafficking Resource Center hotline. In 2019, Louisiana strengthened its process for reporting human trafficking to law enforcement.
- A woman seeking an abortion following rape or incest and using state funds to pay for the abortion must be offered the same informed consent information (without the 24-hour reflection period) as is required for other abortions.
- A physician may not perform an abortion on an unemancipated minor under the age of 18 without notarized, written consent from one parent, unless there is a medical emergency or the minor obtains a court order. In 2017, Louisiana strengthened its parental consent law by requiring proof of identity for the person giving parental consent on behalf of the minor. Louisiana also added a counseling



- requirement for minors seeking judicial bypass of parental consent, in order to verify that the minor is not a victim of coerced abortion or sexual trafficking.
- Further, the definition of “child abuse” includes coerced abortion. Louisiana has authorized a state court to issue a temporary restraining order prohibiting activities associated with a coerced abortion.
  - Louisiana requires the licensing of abortion facilities and imposes minimum health and safety standards in a variety of areas including clinic administration, professional qualifications, patient testing, physical plant, and post-operative care.
  - Louisiana law allows state officials to close an abortion clinic for any violation of state or federal law that presents a risk to patients.
  - Only physicians licensed to practice medicine in Louisiana may perform abortions. Abortion providers must have admitting privileges at a hospital within 30 miles of the abortion facility, but this provision is currently in litigation. Louisiana requires that physicians performing abortions be board-certified or enrolled in obstetrics and gynecology or family medicine or, if enrolled in a residency program, they be under the direct supervision of a physician board-certified in obstetrics and gynecology or family medicine. The law is in ongoing litigation.
  - Louisiana has an enforceable abortion reporting law but does not require the reporting of information to the Centers for Disease Control (CDC). The measure requires abortion providers to report short-term complications and the name and address of the hospital or facility where treatment was provided for the complications. Drug-induced abortions and any complications arising from an abortion must be reported.
  - In 2019, Louisiana passed legislation requiring physicians, medical directors, and the abortion facility to maintain the relevant records and reports for at least 7 years for adult patients and at least 10 years from the age of majority for minor patients.
  - Louisiana requires the presence of a physician when abortion-inducing drugs are administered or dispensed and requires the scheduling of a follow-up appointment for the woman.
  - Louisiana follows the federal standard for Medicaid funding for abortions, only 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.
  - Public funds may not be used “for, to assist in, or to provide facilities for an abortion, except when the abortion is medically necessary to prevent the death of the mother.” In 2018, Louisiana passed a law banning the Department of Health from entering into agreements for medical funding with any healthcare entity that performs or assists in the performance of abortions.
  - No individual or organization that performs elective abortions (or an affiliate of that individual or organization) may provide instruction or materials in public schools.
  - Louisiana prohibits insurance companies from offering abortion coverage within state insurance Exchanges established pursuant to the federal healthcare law.
  - Louisiana funds programs providing direct support for groups and organizations promoting abortion alternatives.
  - Louisiana offers “Choose Life” license plates, the proceeds of which benefit organizations providing abortion alternatives.



## LEGAL RECOGNITION AND PROTECTION OF UNBORN CHILDREN AND NEWLY BORN INFANTS

- Louisiana has created a specific affirmative duty of physicians to provide medical care and treatment to infants born alive at any stage of development.
- Under Louisiana criminal law, the killing of an unborn child at any stage of gestation is defined as a form of homicide. In addition, an “unborn child” is a victim of a feticide if killed during the perpetration of certain crimes including robbery and cruelty to juveniles.
- Louisiana defines a nonfatal assault on an unborn child as a criminal offense.
- It allows a wrongful death (civil) action when an unborn child at any stage of development is killed through a negligent or criminal act.
- Under the Louisiana Children’s Code, the definition of “prenatal neglect” includes 1) “exposure to chronic or severe use of alcohol;” 2) the use of any controlled dangerous substance “in a manner not lawfully prescribed” that results in symptoms of withdrawal to the newborn; 3) the presence of a controlled substance or related metabolite in the newborn; or 4) observable and harmful effects in the newborn’s appearance or functioning.
- It also funds drug treatment programs for pregnant women and newborns.
- The Parental Rights for Disposition of Fetal Remains Act requires that, prior to the final disposition of a miscarried child, a health facility must notify the woman of her right to arrange for final disposition of the child and the availability of a chaplain or counseling services.
- Louisiana’s prohibits buying, selling, transferring, or acquiring the body parts of aborted babies for money. The law is in ongoing litigation.
- Louisiana requires burial or cremation of remains resulting from an abortion. The law is in ongoing litigation.

## BIOETHICS LAWS

- Louisiana prohibits destructive embryo research and the funding of human cloning (although it does not explicitly prohibit human cloning).
- Louisiana prohibits experimentation on live-born human beings or fetuses in utero.
- Louisiana prohibits the creation of chimeras (human-animal hybrids).
- It has established the Umbilical Cord Blood Banking Program to promote public awareness of the potential benefits of cord blood banking, to encourage research into the uses of cord blood, to facilitate pre-delivery arrangements for cord blood donations, and to promote professional education programs.
- Louisiana regulates assisted reproductive technologies and allows for embryo adoption.
- Louisiana prohibits a “gestational carrier contract” from requiring abortion for any reason, including prenatal diagnosis or reduction of multiples.

## PATIENT PROTECTION LAWS

- In Louisiana, suicide by physician is a felony.



## HEALTHCARE FREEDOM OF CONSCIENCE

### PARTICIPATION IN ABORTION

- Any person has the right not to participate in or be required to participate in any healthcare service that violates his or her conscience (including abortion and the provision of abortion-inducing drugs) to the extent that “access to health care is not compromised.” The person’s conscientious beliefs must be in writing, and patients must be notified. The law is not to be construed as relieving any healthcare provider from providing “emergency care.”
- A healthcare facility must ensure that it has sufficient staff to provide patient care in the event an employee declines to participate in any healthcare service that violates his or her conscience.

### PARTICIPATION IN RESEARCH HARMFUL TO HUMAN LIFE

- Any person has the right not to participate in or be required to participate in any healthcare service that violates his or her conscience (including human embryonic stem-cell research, human embryo cloning, euthanasia, or suicide by physician) to the extent that “access to health care is not compromised.” The person’s conscientious beliefs must be in writing, and patients must be notified. The law is not to be construed as relieving any healthcare provider from providing “emergency care.”
- A healthcare facility must ensure that it has sufficient staff to provide patient care in the event an employee declines to participate in any healthcare service that violates his or her conscience.

### DID YOU KNOW?

- In 2019, Louisiana passed legislation proposing to add that “nothing in [the] constitution shall be construed to secure or protect a right to abortion or require the funding of abortion” to the state constitution. It will be on the ballot for voters in 2020.
- Planned Parenthood has challenged the cumulative impact of the abortion regulations in the state. Litigation is ongoing.
- In 2020, the U.S. Supreme Court will hear arguments in *June Medical Services, LLC v. Gee*, a challenge to Louisiana’s admitting privileges law that was upheld by the Fifth Circuit Court of Appeals.

### WHAT HAPPENS AFTER *ROE* IS OVERTURNED?

- Louisiana has a law, conditioned on *Roe* being overturned, that makes abortion illegal, which may be enforceable.



# RECOMMENDATIONS FOR LOUISIANA

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## WOMEN'S PROTECTION PROJECT PRIORITIES

- Enhanced penalties and enforcement mechanisms for the state's abortion-related laws
  - Parental Involvement Enhancement Act
  - Child Protection Act
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## PATIENT PROTECTION ACT PRIORITIES

- Joint Resolution Opposing Suicide by Physician
  - Charlie Gard Act (formerly the Life Sustaining Care Act)
  - Pain Management Education Act
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## ADDITIONAL PRIORITIES

### LEGAL RECOGNITION AND PROTECTION FOR THE UNBORN

- Prohibition on wrongful birth and wrongful life lawsuits
- Pregnant Woman's Protection Act

### BIOETHICS

- Human Cloning Prohibition Act
- Assisted Reproductive Technologies Disclosure and Risk Reduction Act