



# Delaware | RANKING: 31

Delaware maintains only minimal protections for a woman considering an abortion. Loopholes in its parental notice law eviscerate the protection such a law normally provides, and Delaware does not require that abortion facilities meet minimal health and safety standards. Further, it does not proscribe or limit human cloning, destructive embryo research, fetal experimentation, or human egg harvesting.

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## ABORTION

- Delaware passed legislation codifying *Roe v. Wade* under state law and has no limitation on abortion prior to viability. Abortion after viability is prohibited except in cases where it is necessary to protect the woman's life or health or if there is a fetal anomaly "for which there is not a reasonable likelihood of the fetus's sustained survival outside the uterus without extraordinary medical measures."
- In 2017, Delaware's informed consent law was repealed in its entirety.
- Delaware prohibits a physician from performing an abortion on an unemancipated minor under the age of 16 until 24 hours after notice has been given to one parent; however, the Delaware Attorney General has issued a "Statement of Policy" providing that state officials will not prosecute abortion providers who fail to comply with this requirement. The law also permits substitute notice of a grandparent or mental health professional.
- Delaware prohibits some coerced abortions, defining "coercion" as "restraining or dominating the choice of a minor female by force, threat of force, or deprivation of food and shelter." It emancipates a minor for social assistance purposes if her parents or guardians deny financial support because of her refusal to undergo an abortion.
- Only licensed physicians may perform abortions.
- Delaware 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.
- Delaware 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.
- Delaware 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

- It has a specific affirmative duty of physicians to provide medical care to infants born alive after an abortion or attempted abortion that would be provided to an infant born alive as a result of natural birth.
- Delaware law does not provide for the prosecution of third parties who kill or injure an unborn child.

- Delaware allows a parent or other relative to bring a wrongful death (civil) lawsuit when a viable unborn child is killed through the negligent or criminal act of another.

## **BIOETHICS LAWS**

- Delaware does not proscribe or limit human cloning, destructive embryo research, fetal experimentation, or human egg harvesting. It also does not promote ethical forms of research or regulate assisted reproductive technologies.

## **PATIENT PROTECTION LAWS**

- Suicide by physician is a felony in Delaware.

## **HEALTHCARE FREEDOM OF CONSCIENCE**

### **PARTICIPATION IN ABORTION AND CONTRACEPTION**

- Delaware law provides that no person can be required to participate in any medical procedure that results in an abortion.
- Hospitals are not required to permit abortions within their facilities.
- If health insurance plans provide coverage for prescription drugs, coverage must also be provided for contraception. A conscience exemption exists for religious employers.

### **PARTICIPATION IN RESEARCH HARMFUL TO HUMAN LIFE**

- Delaware 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.

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

- Abortion will be legal throughout pregnancy.

# RECOMMENDATIONS

## FOR DELAWARE

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### 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, emergency transfer and admission provisions)
  - Drug-Induced Abortion Information and Reporting Act
  - Parental Consent for Abortion Act
  - Parental Involvement Enhancement Act
  - Child Protection Act
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### INFANTS' PROTECTION PROJECT PRIORITIES

- Unborn Infants Dignity Act
  - Prenatal Nondiscrimination Act
  - Perinatal Hospice Information Act
  - Unborn Infants 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 Medication Education Act
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### ADDITIONAL PRIORITIES

#### 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
- Protection for unborn children from nonfatal assaults
- 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

#### HEALTHCARE FREEDOM OF CONSCIENCE

- Healthcare Freedom of Conscience Act