



Florida | RANKING 17

Despite a Florida Supreme Court decision enunciating a broader state constitutional “right” to abortion than that interpreted in the U.S. Constitution, Florida continues to make strides in protecting women and unborn children from the harms inherent in abortion. In 2020, Florida passed a parental consent law.

ABORTION

- The Florida Supreme Court determined in *In re T.W.* that the right to privacy in the state constitution provides a right to abortion. The court stated, “Florida’s privacy provision is clearly implicated in a woman’s decision of whether or not to continue her pregnancy.” However, it went on to say that “[u]nder our Florida Constitution, the state’s interest becomes compelling upon viability.”
- Florida limits abortions after viability.
- At least 24 hours prior to abortion, Florida requires that a woman receive in-person counseling regarding the nature and medical risks of abortion, the risks of continued pregnancy, and the gestational age of the unborn child. The law is enjoined and in ongoing litigation.
- It also requires that the woman receive printed materials discussing pregnancy services and abortion alternatives, providing a description of the unborn child, and discussing available medical benefits. The law is permanently enjoined.
- Florida requires that an ultrasound be performed, and that the ultrasound be reviewed with a woman before she gives her consent for the abortion.
- Parental notice and consent are required for a minor seeking an abortion unless there is a notarized waiver, a medical emergency, or the minor obtains a court order. Parents must be notified about the emergency abortion within 24 hours of the procedure. Parental notification must be given in person, by telephone, or by mail at least 48 hours prior to performing the abortion. Parental consent must be notarized and include proof of identification.
- Only physicians licensed by the state in medicine or osteopathy or those physicians practicing medicine or osteopathy and employed in the United States may perform abortions.
- In addition, abortion providers are required to have hospital admitting privileges and abortion clinics are required to have written emergency transfer agreements to facilitate the transfer of a patient with a medical emergency and/or abortion complication with a local hospital.
- Florida law mandates health and safety standards for abortion facilities and abortion providers, including annual inspections of abortion facilities as well as prompt investigations of credible allegations that abortions are being performed at unlicensed clinics. Portions of the law were challenged by Planned Parenthood, and the inspection requirements have been preliminarily enjoined.

- Florida 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 information such as the gestational age of the unborn child and the number of infants who were born alive after an attempted abortion.
- Florida 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.
- Florida prohibits insurance plans that cover abortions (except in cases of life endangerment, rape, or incest) from receiving federal or state subsidies through a health insurance Exchange established pursuant to the federal healthcare law.
- Florida provides direct funding to pregnancy resource centers including faith-based centers.
- In 2018, Florida passed a bill allowing the state Department of Health to contract with not-for-profit pregnancy support organizations that provide various pro-life services including pregnancy testing, education, and counseling and a 24-hour hotline so clients can contact a nearby pregnancy center, as well as wellness-related care such as high blood pressure and diabetes screening.
- Florida 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

- An infant born alive during or immediately after an attempted abortion is entitled to the same rights, powers, and privileges as any other child born alive in the course of natural birth. Healthcare providers must take reasonable and medically appropriate measures to preserve the life and health of born-alive infants.
- Florida criminalizes the killing of an unborn child at any stage of gestation.
- Any crime that results in the death of an unborn child is subject to the same penalties as a crime that causes the death of another.
- Florida allows a wrongful death (civil) action only when an unborn child is born alive following a negligent or criminal act and dies thereafter.
- Florida also prohibits the sale, donation or transfer of the bodily remains of an aborted infant.
- Florida has enacted a “Baby Moses” law under which a mother or legal guardian who is unable to care for a newborn infant may anonymously and safely leave the infant in the care of a responsible person at a hospital, police station, fire station, or other prescribed location.
- It defines substance abuse during pregnancy as “child abuse” under civil child-welfare statutes and funds drug treatment programs for pregnant women and newborns.

BIOETHICS LAWS

- Florida does not prohibit human cloning or destructive embryo research, and its prohibition on fetal experimentation applies only to a live child (and not to an aborted child).

- Florida maintains a Public Cord Blood Tissue Bank to collect, screen for infectious and genetic diseases, perform tissue banking, cryopreserve, and store umbilical cord blood. Women admitted to a hospital or birthing facility may be offered the opportunity to donate umbilical cord blood to the Bank (which is a public resource).
- Florida regulates assisted reproductive technologies and includes “embryo adoption” in a statutory list of “fertility techniques.”
- Only “reasonable compensation” directly related to the donation of human eggs is permitted.

PATIENT PROTECTION LAWS

- Suicide by physician is considered manslaughter.

HEALTHCARE FREEDOM OF CONSCIENCE

PARTICIPATION IN ABORTION AND CONTRACEPTION

- Under Florida law, a hospital staff member, person associated with or employed by a hospital, or physician’s employee who objects on religious or moral grounds is not required to participate in any medical procedure that results in an abortion.
- Certain individuals including physicians may refuse to furnish any contraceptive or family planning service, supplies, or information because of religious objections.
- Hospitals are not required to perform abortions.

PARTICIPATION IN RESEARCH HARMFUL TO HUMAN LIFE

- Florida does not expressly protect the rights of conscience of all healthcare providers who conscientiously object to participation in procedures other than abortion, such as destructive embryo research and human cloning.

WHAT HAPPENS AFTER *ROE* IS OVERTURNED?

- Abortion will be legal up to viability based on an existing, enforceable law enacted before the state court decision.

RECOMMENDATIONS FOR FLORIDA

WOMEN'S PROTECTION PROJECT PRIORITIES

- Enhanced penalties and enforcement mechanisms for the state's abortion-related laws
 - Drug-Induced Abortion Information and Reporting Act
 - Child Protection Act
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INFANTS' PROTECTION PROJECT PRIORITIES

- Unborn Infants Dignity Act
 - Prenatal Nondiscrimination Act
 - Perinatal Hospice Information Act
 - Born-Alive Infant Protection Act
 - Unborn Infants Wrongful Death 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

ABORTION

- State Constitutional Amendment (providing that there is no state constitutional right to abortion)
- Defunding the Abortion Industry and Advancing Women's Health Act

LEGAL RECOGNITION AND PROTECTION FOR THE UNBORN

- Crimes Against the Unborn Child Act (protecting 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

HEALTHCARE FREEDOM OF CONSCIENCE

- Healthcare Freedom of Conscience Act