



## Kansas | RANKING 6

In recent years, Kansas has aggressively implemented a life-affirming legal strategy for protecting women and their unborn children. It has prohibited certain abortions such as those performed for sex selection, adopted protective health and safety standards for abortion facilities, and ensured that taxpayer dollars are not used to subsidize abortions or abortion providers like Planned Parenthood. In 2019, the Kansas Supreme Court found a right to abortion in the state's Constitution. The decision was controversial, and voters in Kansas may see a constitutional amendment on the ballot in the future.

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### ABORTION

- The Kansas Supreme Court held that there is a right to abortion under the Kansas Constitution.
- Kansas maintains a “delayed enforcement” provision prohibiting abortion should *Roe v. Wade* be overturned.
- Kansas prohibits abortions at or after 5 months (i.e., 20 weeks) on the basis of the pain experienced by unborn children.
- Kansas permits abortions after viability only when an abortion provider has a documented referral from another physician not legally or financially affiliated with the abortion provider and both physicians determine that the abortion is necessary to preserve the life of the pregnant woman or the continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman. The impairment must not result from the woman’s own behavior.
- Kansas prohibits sex-selection abortions.
- Kansas prohibits partial-birth abortion.
- Kansas prohibits dismemberment abortions. The law is enjoined and in ongoing litigation.
- Under Kansas law, a physician may not perform an abortion until at least 24 hours after a woman has received complete and accurate information on the proposed abortion method, the risks of the proposed method, the probable gestational age of the unborn child, the probable anatomical and physiological development of the unborn child, the medical risks of carrying the pregnancy to term, and the name of the physician who will perform the abortion.
- Further, a woman must be informed that “abortion will terminate the life of a whole, separate, unique, living human being” and be provided written information on medical assistance benefits, agencies offering alternatives to abortion, the father’s legal liability, and the development of the unborn child.
- The informed consent law also requires information on fetal pain, the woman’s right to view an ultrasound image, the increased risk of breast cancer associated with abortion, and the documented risk of subsequent pre-term births following abortions.
- In 2017, Kansas passed a law that requires that women be given information regarding the qualifications and background of the physician performing their abortion.

- Kansas requires an ultrasound evaluation for all women seeking abortions. Further, the physician or other healthcare professional must, at the request of the woman, review and explain the ultrasound results including the probable gestational age of the unborn child before the abortion procedure is performed.
- Women must also be informed that the state-mandated written materials are available online and provided with a list of organizations providing free ultrasound examinations.
- All women in “medically challenging pregnancies” must be given a list of websites for national perinatal assistance including information regarding which entities provide these services free of charge. Similarly, Kansas has authorized grants, contracts, or cooperative agreements to help a family after they learn that their child has Down syndrome or other conditions.
- Kansas requires abortion providers to state in their printed materials that it is illegal for someone to coerce a woman into having an abortion. Abortion facilities must also post signs stating that it is illegal to force a woman to have an abortion.
- A physician may not perform an abortion on an unemancipated minor under the age of 18 without the written, notarized consent of two parents, unless there is a medical emergency or the minor obtains a court order. The consent of only one parent is required when the parents are not married to each other, one cannot be found, or the minor is the victim of incest by her father (which must be reported).
- Any physician who performs an abortion on a minor under the age of 14 must retain fetal tissue extracted during the procedure and send it to the Kansas Bureau of Investigation. The tissue is to be submitted “for the purpose of DNA testing and examination” and will be used to investigate (and potentially prosecute) incidents of child rape and sexual abuse.
- Kansas enacted comprehensive health and safety regulations for abortion clinics which include a requirement that the clinic be licensed by the state. The law is enjoined and in ongoing litigation.
- Kansas requires that a physician performing abortions have admitting privileges at an accredited hospital located within 30 miles of the abortion facility.
- Kansas 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.
- Kansas also requires reporting of the medical reasons supporting the termination of a late-term pregnancy.
- Kansas mandates that the state Department of Social and Rehabilitation Services produce and distribute a report on the number of child abuse reports received from abortion providers.
- When RU-486 or any drug is used for the purpose of inducing an abortion, the drug must be administered by a physician or in the same room and in the physical presence of the physician who prescribed, dispensed, or otherwise provided the drug to the woman.
- Kansas 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.
- A Kansas law effectively preventing abortion providers from receiving federal Title X funding was upheld by the Tenth Circuit.
- No state funds may be expended for any abortion, and tax benefits for abortion or abortion providers are specifically prohibited.

- Contracts with the Kansas Department of Health and Environment’s pregnancy maintenance program may not be granted to groups that promote, refer for, or educate in favor of abortion.
- Abortions may not be performed in any facility, hospital, or clinic owned, leased, or operated by the University of Kansas Hospital Authority unless necessary to preserve a woman’s life or prevent “a serious risk of substantial and irreversible impairment of a major bodily function.”
- Kansas prohibits abortions in state-run or state-leased facilities except when necessary to save a woman’s life.
- School districts, district employees or volunteers, and educational service providers are prohibited from contracting with a school district to provide abortion services (except when necessary to save a woman’s life).
- Kansas prohibits insurance companies from offering abortion coverage within state insurance Exchanges established pursuant to the federal healthcare law, except in cases of life endangerment.
- Kansas prohibits private insurance companies from covering abortion, except in cases of life endangerment. Further, the state employee health benefits plan may not provide coverage for abortion except in cases of life endangerment. Kansas has also removed any tax benefit for insurance coverage of abortion.
- Public health benefits coverage for children cannot be used for abortions or abortion coverage.
- Kansas provides direct funding to pregnancy resource centers and other organizations promoting abortion alternatives.
- Kansas offers “Choose Life” license plates, the proceeds of which benefit non-abortion related services.

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

- Under Kansas law, an “unborn child” (from fertilization to birth) is recognized as a potential victim of murder, manslaughter, vehicular manslaughter, and battery.
- Kansas defines a criminal assault on a pregnant woman that results in miscarriage, stillbirth, or “damage to pregnancy” as an enhanced offense for sentencing purposes.
- Kansas allows a wrongful death (civil) action when a viable unborn child is killed by a negligent or criminal act.
- It prohibits wrongful birth and wrongful life lawsuits.
- Kansas law requires that an attending physician take “all reasonable steps necessary to maintain the life and health” of a child (at any stage of development) who survives an attempted abortion.
- Kansas maintains a law related to fetal death or stillborn certificates.

## **BIOETHICS LAWS**

- Kansas maintains no laws banning human cloning, destructive embryo research, or fetal experimentation.
- Kansas has enacted a measure promoting morally responsible growth in the biotechnology industry. It has specifically indicated that the terms “bioscience,” “biotechnology,” and “life sciences” shall not be

construed to include 1) induced human abortions or the use of cells or tissues derived therefrom and 2) any research the funding of which would be contrary to federal law. The law effectively prohibits funding of human cloning and destructive embryo research.

- Kansas has directed the state Department of Health and Environment to develop and make available education and training (for healthcare providers) in the basic procedures and requirements for collecting and maintaining umbilical cord, cord blood, amniotic fluid, and placenta donations. A healthcare provider giving health services to a pregnant woman must advise her of post-delivery options to donate the umbilical cord.
- Kansas has appropriated funds for adult stem-cell research.
- Kansas maintains no meaningful regulation of assisted reproductive technologies or human egg harvesting.

## **PATIENT PROTECTION LAWS**

- In Kansas, assisting a suicide is a felony.
- Kansas maintains a Pain Patient's Bill of Rights, which, among other provisions, allows physicians to prescribe a dosage of opiates deemed medically necessary to relieve pain. The law does not expand the scope of medical practice to allow suicide by physician or euthanasia.

## **HEALTHCARE FREEDOM OF CONSCIENCE**

### **PARTICIPATION IN ABORTION**

- No person may be required to participate in medical procedures that result in abortion.
- No hospital may be required to perform abortions in its facilities.
- Kansas permits an individual or healthcare facility to refuse to perform, make referrals for, or participate in abortion services or services that the individual or facility "reasonably believes" would end a pregnancy.
- Kansas provides some protection for the conscience rights of pharmacists and pharmacies.

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

- Kansas 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 up to 20 weeks of pregnancy.

# RECOMMENDATIONS FOR KANSAS

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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
  - Women's Health Protection Act (emergency transfer and admission provisions)
  - Drug-Induced Abortion Information and Reporting Act
  - Components of the Child Protection Act related to mandatory reporters of suspected child sexual abuse and remedies for third-party interference with parental rights
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## INFANTS' PROTECTION PROJECT PRIORITIES

- Unborn Infants Dignity 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 Management Education Act
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## ADDITIONAL PRIORITIES

### 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