



North Dakota | RANKING 12

North Dakota maintains strong legal protections for women considering abortion including a prohibition on abortions at or after 5 months (i.e., 20 weeks) development, comprehensive informed consent requirements, an admitting privileges requirement for abortion providers, and funding for organizations that promote abortion alternatives. In addition, North Dakota is one of only a handful of states that effectively prohibits human cloning for all purposes.

ABORTION

- North Dakota has enacted a measure prohibiting abortion should *Roe v. Wade* be overturned.
- North Dakota prohibits abortion at 5 months (i.e., 20 weeks) gestation.
- North Dakota prohibits sex-selection abortions or because the child has been diagnosed with a genetic abnormality.
- North Dakota prohibits partial-birth abortion.
- North Dakota has a dismemberment ban whose effective date is conditioned on the right to regulate abortion being returned to the states.
- North Dakota passed a law prohibiting an abortion when the unborn child has a detectable heartbeat, as early as 6 weeks gestation. The law is permanently enjoined.
- A physician may not perform an abortion on a woman until at least 24 hours after the woman has been informed of the medical risks associated with abortion, the medical risks of carrying the pregnancy to term, the probable gestational age of the unborn child, state assistance benefits, the father's legal obligations, the availability of state-prepared information on the development of the unborn child, and a list of agencies that offer alternatives to abortion. A woman must also be informed that "the abortion will terminate the life of a whole, separate, unique, living human being" and be provided information about the abortion-breast cancer link.
- In 2019, North Dakota added a requirement that the woman be informed of the possibility of reversing the effects of a chemical abortion.
- Abortion providers must offer a woman the opportunity to view an ultrasound image of her unborn child.
- A physician may not perform an abortion on an unmarried minor under the age of 18 without the written consent of both parents (or the surviving parent, custodial parent, or guardian), unless there is a medical emergency or the minor obtains a court order.
- North Dakota prohibits anyone from coercing a woman into an abortion. Further, abortion facilities must post a notice stating that no one can force a woman to have an abortion. In addition, North Dakota has enhanced the penalties for sex traffickers who coerce or force their victims to undergo abortions.
- Only physicians licensed to practice medicine or osteopathy in North Dakota or employed in the United States may perform abortions.

- North Dakota also requires abortion providers to have admitting privileges at a local hospital and to be board certified in obstetrics/gynecology, and abortion facilities must also obtain and maintain a transfer agreement with a local hospital to assist in the treatment of abortion-related complications. Further, clinics must have at least one staff member trained in cardiopulmonary resuscitation.
- North Dakota has an enforceable abortion reporting law but does not require the reporting of information to the Centers for Disease Control (CDC). A physician performing an abortion must report the post-fertilization age of the aborted child. The measure applies to both surgical and nonsurgical abortions.
- North Dakota regulates the provision of abortion-inducing drugs by requiring that the administration satisfy protocols approved by the U.S. Food & Drug Administration (FDA) and that the drugs be administered by or in the same room and in the physical presence of the physician who prescribed, dispensed, or otherwise provided the drug or chemical to the patient (thereby prohibiting “webcam abortions”). An abortion provider’s challenge to the law failed in the North Dakota Supreme Court.
- North Dakota 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.
- North Dakota law also provides that no state funds or funds from any agency, county, municipality, or any other subdivision thereof and no federal funds passing through the state treasury or a state agency may be used to pay for the performance of an abortion or for promoting the performance of an abortion unless it is necessary to prevent the death of the woman.
- State and federal funds for treatment and support services for victims of human trafficking may be used to refer for or counsel for family planning services, but may not be used to perform, refer for, or encourage abortion.
- No funds, grants, gifts, or services of an organization receiving funds distributed by the Children’s Services Coordinating Committee may be used for the purposes of direct provision of contraception services, abortion, or abortion referrals to minors.
- An abortion may not be performed in a hospital owned or operated by the state, unless the abortion is necessary to preserve the life of the woman.
- State health insurance contracts, policies, and plans must exclude coverage for abortion unless the abortion is necessary to preserve the woman’s life.
- Private insurance companies are also prohibited from covering abortions except in cases of life endangerment.
- North Dakota offers “Choose Life” license plates, the proceeds of which benefit pregnancy resource centers.

LEGAL RECOGNITION AND PROTECTION OF UNBORN CHILDREN AND NEWLY BORN INFANTS

- North Dakota has created a specific affirmative duty of physicians to provide medical care and treatment to infants born alive after viability.
- Under North Dakota criminal law, the killing of an unborn child at any stage of gestation is defined as homicide.

- North Dakota defines a nonfatal assault on an unborn child as a criminal offense.
- It allows a wrongful death (civil) action when a viable unborn child is killed through a negligent or criminal act.
- North Dakota requires healthcare professionals to report suspected prenatal drug exposure. In addition, healthcare professionals must test newborns for drug exposure when there is adequate suspicion of prenatal use by the mother.

BIOETHICS LAWS

- North Dakota prohibits both human cloning and fetal experimentation; however, it does not prohibit destructive embryo research.
- North Dakota allows healthcare professionals to inform pregnant patients of options relating to umbilical cord blood, and hospitals are to allow pregnant patients to arrange for such donations.
- The Uniform Parentage Act includes “donation of embryos” in its definition of “assisted reproduction.” However, North Dakota does not maintain meaningful regulations of assisted reproductive technologies or human egg harvesting.

PATIENT PROTECTION LAWS

- In North Dakota, assisting a suicide is a felony.

HEALTHCARE FREEDOM OF CONSCIENCE

PARTICIPATION IN ABORTION

- A hospital, physician, nurse, hospital employee, or any other person is not under a legal duty or contractual obligation to participate in abortion.

PARTICIPATION IN RESEARCH HARMFUL TO HUMAN LIFE

- North Dakota currently provides no protection for the rights of healthcare providers who conscientiously object to participation in human cloning, destructive embryo research, and other forms of medical research that violate a provider’s moral or religious beliefs.

WHAT HAPPENS AFTER *ROE* IS OVERTURNED?

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

RECOMMENDATIONS

FOR NORTH DAKOTA

WOMEN'S PROTECTION PROJECT PRIORITIES

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

INFANTS' PROTECTION PROJECT PRIORITIES

- Unborn Infants Dignity Act
 - Perinatal Hospice Information Act
 - Born-Alive Infant Protection Act (for a pre-viable child)
 - Unborn Infants Wrongful Death Act
-

PATIENT PROTECTION ACT PRIORITIES

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

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

- Pregnant Woman's Protection Act

BIOETHICS

- Promotion of ethical forms of medical research

HEALTHCARE FREEDOM OF CONSCIENCE

- Healthcare Freedom of Conscience Act