



South Dakota | RANKING 9

South Dakota maintains some of the most comprehensive and protective abortion-related laws in the nation, protecting women and unborn children through health and safety standards and comprehensive informed consent requirements. Moreover, South Dakota is one of only a small number of states that prohibit destructive embryo research, human cloning, and fetal experimentation. In 2020, South Dakota passed a resolution denouncing the National Education Association's policy to support a "fundamental right to abortion" stating, "South Dakota recognizes that abortion ends the life of a whole, separate, unique, living human being."

ABORTION

- South Dakota maintains a law that would "on the date that the states are given the exclusive authority to regulate abortion" ban abortion throughout pregnancy except if necessary to preserve a woman's life. It specifically applies both to surgical and chemical abortions and applies at all stages of pregnancy.
- South Dakota provides that it is a misdemeanor to intentionally perform an abortion of an unborn child capable of feeling pain (defined as occurring at 20 weeks after fertilization), unless the abortion is necessary to prevent a serious health risk to the mother. In 2017, South Dakota increased the penalties on abortion providers who violate this prohibition.
- It also prohibits sex-selection abortions.
- South Dakota prohibits partial-birth abortion.
- A physician may not perform an abortion on a woman until at least 72 hours (excluding weekends and holidays) after she has been informed of the probable gestational age of her unborn child, the medical risks of abortion, the medical risks of carrying the pregnancy to term, and the name of the physician who will perform the abortion. She must also be informed about available medical assistance benefits, the father's legal responsibilities, and her right to review additional information prepared by state health department officials.
- South Dakota requires that women be informed that "the abortion will terminate the life of a whole, separate, unique, living human being;" that the woman "has an existing relationship with the unborn human being and that the relationship enjoys protection under the United States Constitution and under the laws of South Dakota;" and that "by having an abortion her existing relationship and her existing constitutional rights with regards to that relationship will be terminated."
- South Dakota requires that a woman be informed of the risk of suicide and suicide ideation following abortion.
- South Dakota requires that a woman be offered to view an ultrasound and hear the heartbeat of the unborn child. The woman must be offered the opportunity to hear a description of the ultrasound image as well.
- South Dakota requires informed consent to include information on the possibility of reversing the effects

of a chemical abortion and requires the Department of Health to include such information on its website.

- A physician must perform an assessment of a woman's medical and personal circumstances prior to an abortion. Moreover, a woman exhibiting certain risk factors must receive counseling about mental health risks associated with abortion.
- South Dakota requires a woman consult with a state-registered pregnancy help center before undergoing an abortion. Registered pregnancy help centers are required to have licensed medical and mental health professionals on staff or available through a collaborative agreement. The state Department of Health must maintain a registry of state "pregnancy help centers." A center seeking to be listed on the registry must certify that it has a licensed medical director and that the center does not perform abortions, has no affiliation with any organization or physician that performs abortion, and that it does not refer women for abortions. The law excludes agencies that place children for adoption from the registry. This law is in ongoing litigation.
- Abortion providers must also screen women for coercion and give them information regarding help to escape sex trafficking. Providers must also inform them that they cannot be forced to have an abortion because of the child's gender, and must post signs informing a woman that she cannot be coerced into undergoing a sex-selection abortion. State-prepared, written informed consent materials must include information that sex-selection abortions are illegal. Kidnapping the pregnant woman or kidnapping another person in the mother's presence with the intent to cause her to undergo an abortion is a felony.
- A physician may not perform an abortion on an unemancipated minor under the age of 18 until at least 48 hours after providing written notice to one parent or after obtaining a court order. South Dakota also requires parental notification within 24 hours after the performance of an "emergency abortion" on a minor; however, an exception to the requirement is permitted if a minor indicates that she will seek a judicial bypass.
- South Dakota requires that all abortion facilities meet minimum health and safety standards. Further, beginning at the 12th week of pregnancy and through the 22nd week of pregnancy, abortions must be performed in a hospital, or if one is not available, "in a licensed physician's medical clinic or office of practice subject to the [state's blood supply requirements]." Further, an abortion after 22 weeks of pregnancy may only be performed by a physician, in a hospital, and only in the case of a medical emergency.
- The State Department of Health includes information on an abortion clinic's inspection on its public website, including the date of the inspection, the results, and details of any required corrective action.
- Only a physician licensed by the state or a physician practicing medicine or osteopathy and employed in the state or the United States may perform an abortion. The state medical board prohibits physician assistants and nurses from entering into practice agreements under which they may perform abortions.
- No surgical or chemical abortion may be scheduled except by a licensed physician and only after the physician physically and personally meets with the pregnant woman, consults with her, and performs an assessment of her medical and personal circumstances.
- There is an enforceable abortion reporting law, but it does not require the reporting of information to the Centers for Disease Control (CDC). The measure applies to both surgical and nonsurgical abortions and requires abortion providers to report abortion method, deaths that occur, as well as short- and long-term complications.

- South Dakota prohibits public funding for abortion unless the procedure is necessary to preserve the woman’s life.
- South Dakota prohibits health plans offered through the state’s health insurance Exchanges required under the federal healthcare law from including abortion coverage.
- Abortion providers are required to disseminate information on how to fight sex trafficking.
- South Dakota 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

- Infants born alive after an abortion attempt have the right to “medical treatment and other necessary health care.”
- Under South Dakota law, the killing of an unborn child at any stage of gestation is defined as a form of homicide.
- South Dakota defines a nonfatal assault on an unborn child as a crime.
- It allows a wrongful death (civil) action when an unborn child at any stage of development is killed through a negligent or criminal act.
- It defines substance abuse during pregnancy as “child abuse” under civil child-welfare statutes.
- South Dakota maintains a measure allowing a woman who loses a child after 20 weeks’ gestation to obtain a Certificate of Birth Resulting in a Stillbirth.
- South Dakota prohibits the sale of fetal body parts.

BIOETHICS LAWS

- South Dakota prohibits human cloning for any purpose, destructive embryo research, and fetal experimentation.
- However, it does not promote ethical forms of research.
- South Dakota maintains no meaningful regulation of assisted reproductive technologies or human egg harvesting.

PATIENT PROTECTION LAWS

- Suicide by physician is a felony in South Dakota.

HEALTHCARE FREEDOM OF CONSCIENCE

PARTICIPATION IN ABORTION

- South Dakota law protects the rights of physicians, nurses, counselors, social workers, and other persons to refuse to perform, assist in, provide referrals for, or counsel for abortions.
- A healthcare provider’s conscientious objection to performing or assisting in an abortion may not be a basis for liability, dismissal, or other prejudicial actions by a hospital or medical facility with which the person is affiliated or employed.

- A counselor, social worker, or other person in a position to address “the abortion question . . . as part of [the] workday routine” who objects to providing abortion advice or assistance may not be held liable to any person or subject to retaliation by an institution with which the person is affiliated or employed.
- No hospital is required to admit a woman for the purpose of abortion. The refusal of a hospital to participate in abortions may not be a basis for liability.
- A pharmacist is not required to dispense medication if there is reason to believe the medication would be used to cause an abortion.

PARTICIPATION IN RESEARCH HARMFUL TO HUMAN LIFE

- South Dakota currently provides no specific 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?

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

RECOMMENDATIONS

FOR SOUTH DAKOTA

WOMEN'S PROTECTION PROJECT PRIORITIES

- Enhanced penalties and enforcement mechanisms for the state's abortion-related laws
 - Coercive Abuse Against Mothers Prevention Act
 - Drug-Induced Abortion Information and Reporting Act
 - Women's Health Protection Act (emergency transfer and admission provisions)
 - Child Protection Act
-

INFANTS' PROTECTION PROJECT PRIORITIES

- Unborn Infants Dignity Act
 - Prenatal Nondiscrimination Act
 - Perinatal Hospice Information 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

BIOETHICS

- Assisted Reproductive Technologies Disclosure and Risk Reduction Act

HEALTHCARE FREEDOM OF CONSCIENCE

- Healthcare Freedom of Conscience Act