



Tennessee | RANKING 13

In response to a state Supreme Court decision that manufactured a state constitutional right to abortion in the Tennessee constitution, Tennesseans passed a constitutional amendment declaring “[n]othing in this Constitution secures or protects a right to abortion or requires the funding of an abortion.” The amendment enabled legislators to immediately consider and enact legislation that would have been invalidated under the former Supreme Court decision.

ABORTION

- The Tennessee Constitution has been amended to include the following: “Nothing in this Constitution secures or protects a right to abortion or requires the funding of an abortion. The people retain the right through their elected state representatives and state senators to enact, amend, or repeal statutes regarding abortion, including, but not limited to, circumstances of pregnancy resulting from rape or incest or when necessary to save the life of the mother.”
- In 2019, Tennessee passed a conditional law that would criminalize the performance of an abortion except when necessary to protect the life of the mother or prevent “serious risk of substantial and irreversible impairment of a major bodily function.”
- Tennessee passed a limitation on abortion once a fetal heartbeat is detected. There are also a 6-, 8-, 10-, 12-, 15-, 18-, 20-, 21-, 22-, 23-, and 24-week limitations. The law is enjoined and in ongoing litigation.
- No abortion may be performed after viability except in a medical emergency. If an abortion is performed, it must be in a hospital.
- Tennessee prohibits partial-birth abortion.
- Tennessee prohibits abortions based on the sex, race, or diagnosis or potential of Down syndrome. The law is enjoined and in ongoing litigation.
- Tennessee’s informed consent law requires the woman receive oral, in-person counseling at least 48 hours before the procedure on: (a) the probable gestational age of her unborn child at the time the abortion is to be performed, (b) that if 24 or more weeks have elapsed since the first day of her last menstrual period, her unborn child may be viable, (c) the availability of services to assist with pregnancy and post-natal care, and (d) the risks associated with abortion and continuing the pregnancy to term. The 48-hour reflection period is enjoined and in ongoing litigation.
- A sign explaining the possibility of reversing the effects of a chemical abortion must be posted in an office or facility where more than fifty elective abortions are performed. The physician must also let the woman know at least 48 hours prior to the abortion that it may be possible to reverse the effects of a chemical abortion and information is available on the department of health website. The law is enjoined and in ongoing litigation.
- Tennessee’s informed consent law also states that if an ultrasound is performed prior to the abortion procedure, it must be reported whether or not the person performing the ultrasound detected a

heartbeat, and that the woman shall be offered “the opportunity to learn the results of the ultrasound.”

- A separate requirement states that an ultrasound must be performed. If a heartbeat is detected, it must be audible. The person performing the ultrasound must provide a simultaneous explanation of what is being depicted and display the image so the woman may view it. The requirement states nothing prevents the woman from averting her eyes or requesting the sound to be turned off.
- Abortion facilities must post signs notifying a woman that it is against the law for anyone to coerce her into having an abortion.
- A physician may not perform an abortion on an unemancipated minor under the age of 18 without the written consent of one parent unless there is a medical emergency, the minor is the victim of incest, or the minor obtains a court order.
- A federal district court has declared Tennessee’s abortion clinic regulations unconstitutional (as applied to the particular abortion provider who challenged the law). A 2015 provision defining “ambulatory surgical treatment centers” to include facilities where 50 or more surgical abortions are performed in a calendar year is no longer enforced. The state permanently stopped enforcing the law “in light of the Supreme Court’s current case law and to avoid the expense and utilization of resources on continued litigation.”
- Only a physician licensed or certified by the state may perform an abortion. Tennessee law provides that a nurse practitioner or physician assistant may not write or sign a prescription, dispense any drug or medication, or perform any procedure involving a drug or medication whose sole purpose is to cause an abortion.
- Tennessee also requires abortion providers to have admitting privileges at a hospital located in the same county as the abortion facility or in an adjacent county. The state permanently stopped enforcement “in light of the Supreme Court’s current case law and to avoid the expense and utilization of resources on continued litigation.”
- It has an enforceable abortion reporting law but does not require the reporting of information to the Centers for Disease Control (CDC). The annual report issued by the state Department of Health must report whether the ultrasound performed prior to the abortion detected a heartbeat, what abortion method was used—differentiating between chemical and surgical abortions—if a surgical abortion was performed, what procedure was used, and if any complications occurred during or after the abortion.
- No licensed physician may perform or attempt to perform any abortion, including a chemical abortion, or prescribe any drug or device intended to cause a chemical abortion, except in the physical presence of the pregnant woman. This requirement effectively prohibits “webcam abortions.”
- Tennessee 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.
- Tennessee prohibits the use of funds for abortion or abortion research within the state Genetic Testing Program.
- Tennessee law provides that all federal money provided to the state for family planning services will be used fully by government-run health agencies, and none will be paid to third-party providers or private organizations or entities. This law prevents abortion providers from receiving family planning funds.

- A 2018 law declared it is “the policy of the state to favor childbirth” so that “family planning services that do not include elective abortions” or promote elective abortions are favored when distributing state funds. In accordance with this, the law required that Tennessee seek a Medicaid waiver to exclude elective abortion providers from the TennCare program.
- It prohibits insurance companies from offering abortion coverage within state insurance exchanges established pursuant to the federal healthcare law.
- Tennessee implemented a “tiering system” for the allocation of family planning funding including funding for which abortion providers might be eligible. Under the system, first priority for funding is given to public entities that are operated by state or local government entities. Most abortion providers fall into the lowest priority category of this system.
- Tennessee 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

- Tennessee has created a specific affirmative duty for physicians to provide medical care and treatment to an infant born alive at any stage of development.
- Tennessee law includes an unborn child at any point in gestation as a potential victim of homicide.
- Tennessee law provides for enhanced penalties for murdering a pregnant woman.
- It allows a wrongful death (civil) action only when an unborn child is born alive following a negligent or criminal act and dies thereafter.
- Tennessee has a “Baby Moses” law, establishing a safe haven for mothers to legally leave their infants at designated places and ensuring that the infants receive appropriate care and protection.
- Tennessee law provides for the prosecution of women for alcohol or drug abuse while pregnant.
- Tennessee requires publicly funded substance abuse facilities to give preference to pregnant women and requires any facility capable of accommodating a pregnant woman to provide such treatment. The law also prohibits state officials from filing for protective services for the child if the mother is less than 5 months (i.e., 20 weeks) into her pregnancy and seeks substance abuse treatment as part of her prenatal care.
- Tennessee law provides for a Certificate of Birth Resulting in Stillbirth.
- Tennessee requires that physicians report on the final disposition of aborted children (with exceptions for those aborted through the use of abortion-inducing drugs and where the expulsion of the aborted baby does not occur at the clinic). The law also prohibits the transfer of the remains for anything of value including “any reimbursements” for incurred costs.
- Tennessee requires written consent of the mother for any medical experiments on, research on, or photography of an aborted fetus. The law includes an exception for the purpose of capturing images that are reasonably believed to depict evidence of a violation of state or federal law.

BIOETHICS LAWS

- Tennessee does not prohibit human cloning or destructive embryo research. Further, it allows fetal

experimentation with the consent of the mother.

- The state Department of Health encourages healthcare professionals to provide pregnant women with a publication containing information on cord blood banking.
- Tennessee maintains no meaningful regulation of assisted reproductive technologies or human egg harvesting, however, it provides for the relinquishment of rights to an embryo (i.e., embryo adoption).

PATIENT PROTECTION LAWS

- Suicide by physician is a felony in Tennessee.

HEALTHCARE FREEDOM OF CONSCIENCE

PARTICIPATION IN ABORTION

- A physician is not required to perform an abortion, and no person may be required to participate in the performance of an abortion.
- A hospital is not required to permit the performance of an abortion within its facilities.

PARTICIPATION IN RESEARCH HARMFUL TO HUMAN LIFE

- Tennessee 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?

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

RECOMMENDATIONS FOR TENNESSEE

WOMEN'S PROTECTION PROJECT PRIORITIES

- Enhanced penalties and enforcement mechanisms for the state's abortion-related laws
 - Drug-Induced Abortion Information and Reporting Act
 - Parental Involvement Enhancement Act
 - Components of the Child Protection Act related to mandatory reporting of suspected child abuse and providing remedies for interference with parental rights
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INFANTS' PROTECTION PROJECT PRIORITIES

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

LEGAL RECOGNITION AND PROTECTION FOR THE UNBORN

- 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