



## Texas | RANKING 20

Texas continues to promote life-affirming legislative action, making it one of the most protective states in the nation and a prominent target of abortion activists. Texas also recognizes the humanity of unborn children and provides funding for adult stem-cell research projects, but it does not prohibit human cloning or fetal experimentation.

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### ABORTION

- Texas possesses an enforceable abortion prohibition should the U.S. Constitution be amended or certain U.S. Supreme Court decisions be reversed or modified.
- Texas limits abortion at 5 months (i.e., 20 weeks) based on medical evidence that an unborn child at that stage of development can feel pain.
- A third-trimester abortion may not be performed on a viable fetus unless necessary to preserve the woman's life or prevent a "substantial risk of serious impairment" to her physical or mental health or when the fetus has a severe and irreversible abnormality. An additional law provides that a third-trimester abortion may not be performed on a viable fetus unless necessary to prevent "severe, irreversible brain damage" to the woman, paralysis, or if the fetus has a severe and irreversible "brain impairment."
- Texas prohibits partial-birth abortion.
- Texas prohibits the dismemberment abortion procedure. The law is enjoined and in ongoing litigation.
- A physician may not perform an abortion on a woman until at least 24 hours after obtaining her informed consent and after informing her of the nature and risks of the proposed abortion procedure, including the gestational development of the unborn child and available assistance from both public and private agencies. The counseling must be in-person if a woman lives within 100 miles of the abortion facility. The physician must hand the woman a copy of the materials the day of the counseling or at least two hours before the abortion procedure if the woman lives over 100 miles from the abortion facility.
- Texas also requires a physician to inform a woman seeking abortion of the abortion-breast cancer link.
- Texas requires the performance of an ultrasound before an abortion. The abortion provider must display the ultrasound image, make audible the heart auscultation, and provide a medical description of the images depicted in the ultrasound image.
- A physician may not perform an abortion on an unemancipated minor under the age of 18 without the written, notarized consent of one parent or a guardian, unless there is a medical emergency or the minor obtains a court order. Further, Texas has created a presumption that an abortion patient is a minor unless valid government identification is shown. Texas also limits the venue options for requesting a judicial

bypass order, stipulates that a minor must be present in court for the required hearing, requires the judge to find by “clear and convincing evidence” that the minor should be granted the court order, and prescribes the factors the judge will consider in making his/her determination.

- Texas prohibits insurance companies from coercing a woman’s abortion decision through force or by threatening adverse alteration to an insurance plan.
- A Texas law requiring that abortion facilities meet the same health and safety standards as other facilities performing outpatient surgeries was struck down by the U.S. Supreme Court in *Whole Woman’s Health v. Hellerstedt*.
- Texas’ requirement that abortion providers maintain hospital admitting privileges was also struck down in *Whole Women’s Health v. Hellerstedt*.
- Texas 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 and requires abortion providers to report deaths that occur in their facilities, as well as short-term complications.
- Texas requires that physicians providing “medical abortions” be able to do the following: accurately date a pregnancy, determine that the pregnancy is not ectopic, and provide surgical intervention or provide for the patient to receive a surgical abortion. The patient must be examined by a physician and informed of the risks and benefits of the procedure and the possibility that a surgical abortion may be required. A law requiring a physician to examine a woman before dispensing abortion-inducing drugs has been upheld by the Fifth Circuit.
- Texas 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.
- The Texas Supreme Court has upheld a law limiting taxpayer assistance for abortion to cases where the abortion is necessary to preserve a woman’s life or when the pregnancy is the result of rape or incest.
- Funds administered under the Maternal and Infant Health Improvement Program for Women and Children cannot be used for abortions, except in cases of life endangerment.
- Texas has enacted laws prohibiting state agencies from contracting with entities that perform or promote elective abortions or are affiliates of entities that perform or promote elective abortions. The restrictions have been challenged in state court but remain in force while the lawsuit proceeds.
- Texas continues to allocate millions of dollars to the mission of pregnancy resource centers and other entities providing abortion alternatives.
- Texas 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**

- Under Texas law, a “living human child born alive after an abortion or premature birth is entitled to the same rights, powers and privileges as are granted by the laws of [Texas] to any other child born alive after the normal gestational period.”

- In 2019, Texas expanded on this by passing legislation that created a physician-patient relationship between the physician who performed the abortion and the infant born alive after the abortion attempt. The physician is required to “exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child” as a physician would provide to any other child born at the same gestational age. This includes transferring the infant to a hospital.
- Under Texas law, the killing of an unborn child at any stage of gestation is defined as a form of homicide.
- Texas defines a nonfatal assault on an unborn child as a criminal offense.
- Texas allows parents and other relatives to bring a wrongful death (civil) lawsuit when an unborn child at any stage of development is killed through the negligence or criminal act of another.
- Texas defines substance abuse during pregnancy as “child abuse” under civil child-welfare statutes. It has also created a task force charged, in part, with advising on potential criminal liability for a woman who exposes her unborn child to controlled substances.
- It also requires that health care facilities must properly bury or cremate fetal and embryonic remains. This law is in ongoing litigation.

## **BIOETHICS LAWS**

- Texas does not prohibit human cloning or destructive embryo research. Further, it does not prohibit fetal experimentation outright, but includes “fetal tissue” in its ban on the sale or transfer of “human organs.”
- However, it specifically allows the use of adult stem cells in hospitals under certain circumstances, and it has created a funding mechanism for funding of adult stem-cell research projects.
- The state Department of State Health Services publishes a brochure related to umbilical cord-blood donation, and physicians are to provide the brochure to their pregnant patients.
- Texas law provides that blood obtained by a blood bank may be used for the collection of adult stem cells if the donor consents.
- Texas maintains no meaningful regulation of assisted reproductive technologies or human egg harvesting, but the Uniform Parentage Act includes the “donation of embryos” in its definition of “assisted reproduction.”

## **PATIENT PROTECTION LAWS**

- Suicide by physician is a felony in Texas.

## **HEALTHCARE FREEDOM OF CONSCIENCE**

### **PARTICIPATION IN ABORTION**

- A physician, nurse, staff member, or employee of a hospital who objects to participating directly or indirectly in an abortion may not be required to participate in an abortion.
- A healthcare provider’s conscientious objection to participating in abortions may not be a basis for discrimination in employment or education. A person whose rights are violated may bring an action for relief, including back pay and reinstatement.

- A private hospital or healthcare facility is not required to make its facilities available for the performance of an abortion unless a physician determines that the woman's life is immediately endangered.

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

- Texas 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 not be legal except to save the life of the mother based on existing law enacted before *Roe*.

# RECOMMENDATIONS FOR TEXAS

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## WOMEN'S PROTECTION PROJECT PRIORITIES

- Enhanced penalties and enforcement mechanisms for the state's abortion-related laws
  - Women's Health Protection Act (emergency transfer and admission provisions)
  - Components of the Child Protection Act related to evidence retention and remedies for third-party interference with parental rights
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## INFANTS' PROTECTION PROJECT PRIORITIES

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

- Federal Abortion-Mandate Opt-Out 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