



## *Stop Harming Women: Legal Restrictions on Prescribing or Dispensing Dangerous Abortion Pills*

### Introduction

According to a new [analysis](#) of patient claims data, “The Abortion Pill Harms Women,” by the Ethics and Public Policy Center (EPPC), the Food and Drug Administration (FDA) has severely underestimated the rate of serious adverse medical events after taking the abortion drug mifepristone. The incidence of serious adverse events is nearly 22 times the rate the FDA currently recognizes on the required drug label for the chemical abortion drug Mifeprex.

Danco Laboratories, the primary manufacturer of Mifeprex, has long touted alongside the FDA that its drug is “safe and effective.” But this new real-world analysis concludes that more than one in ten women experience a serious or even life-threatening adverse event within 45 days of taking mifepristone.

The FDA originally approved the drug following data of 30,966 women across 10 clinical trials, some of which were conducted 42 years ago finding an adverse event rate of 0.5%. Contrary to common best practices for all pharmaceutical products, Danco failed to perform after-market research of mifepristone’s complications and has never reexamined its risks since its original approval in September 2000.

EPPC's analysis used commercially available patient de-identified claims data on mifepristone for 865,727 women to determine an adverse event rate of 10.93%. The vast population of data allows for a far more accurate picture of the adverse effects real women face compared to the original, outdated trial data used for the agency approval.

Now that mifepristone is used for more than 6 in 10 abortions in the United States, the risk this drug poses to women is higher than ever before and existing policies must be reevaluated in light of new data.

The *Dobbs* decision in 2022 decentralized the legal issue of abortion and sent it back to the states. Each state can now, independently, legally prohibit abortion, allow it, or permit it with conditions such as gestational age limits, informed consent requirements or in-person dispensing mandates. Elective abortion is, for example, illegal in Louisiana (in most cases) but legal throughout pregnancy in Illinois.

The 50 states each have general authority, pursuant to their police power, to regulate the medical profession. The U.S. Supreme Court has upheld the states' police power to enact and enforce medical regulations since the nineteenth century. *Dent v. West Virginia* (1888). States [uniformly prohibit](#) the practice of medicine without a license for any medical intervention.

Doctors and other practitioners must be licensed in any state in which they practice. Medical professionals have an obligation to know and obey the laws of the state that regulates their medical practice, meaning they must practice within the scope of their medical license. This includes laws that prohibit certain procedures or provide heightened informed consent safeguards for chemical abortion. In addition, medical practitioners may violate state law or federal law (21 U.S.C. § 841(a)(1) (b)(1)(C) or 18 U.S.C. § 2) by writing prescriptions for a drug outside the usual course of professional practice.

Generally speaking, laws governing the prescription of drugs across state lines are governed by state-specific medical practice acts. Each state requires medical practitioners to be licensed in the state where the patient is located at the time of the consultation, which means that the practitioner must hold a valid medical license in the state where the patient resides to legally prescribe drugs. However, many states also provide exceptions, including “temporary” licenses, or “special purpose licenses” or “waivers.” Healthcare professionals can consult organizations like the Federation of State Medical Boards ([FSMB](#)) and the Interstate Medical Licensure Compact ([IMLC](#)) to verify the requirements in each state.

Chemical abortion is a unique process requiring two drugs for which the FDA originally required intensive medical oversight. The FDA still maintains a [black box warning](#) on mifepristone, which warns of “SERIOUS AND SOMETIMES FATAL INFECTIONS OR BLEEDING.” As the percentage of abortions done through chemical means has increased to roughly [63% or more](#), the inherent risks have not gone away, even if Internet marketing and abortion advocates ignore them, making remote prescription hazardous with increased risks for women.

The FDA-approved chemical abortion regimen consists of two drugs, not one, mifepristone and misoprostol. Mifepristone (previously called RU-486) is an anti-progestin (progesterone), which cuts off nutrients to the developing fetus and kills it. Misoprostol is a prostaglandin, which causes contractions to expel the fetus and placental tissue. In 2000, the U.S. Food & Drug Administration (FDA) approved mifepristone for the American medical market *only on condition* that it be used with misoprostol. That remains the FDA requirement. See [Information about Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation | FDA](#). The FDA concluded that, *used alone*, mifepristone was ineffective and unsafe. Without using them together, in the correct order, at the right time, there is no medical or legal justification for their use for elective abortion in the United States. Moreover, if misoprostol is prescribed alone for abortion, without mifepristone, it is off label. In fact, if mifepristone is not taken first and misoprostol taken second, one after the other in a timely manner, as directed in the original labeling, the failure (incomplete abortion) rates are too high, and *neither drug can be considered safe and effective as required by 21 U.S.C. § 355* (requiring that a new drug be “safe and effective”).

Likewise, the rate of effectiveness of mifepristone declines after 10 weeks, which means a woman must know accurately the gestational age of her pregnancy. [According to](#) the American College of Obstetricians & Gynecologists (ACOG), “Ultrasound measurement of the embryo or fetus in the first trimester...is the most accurate method to establish or confirm gestational age.” Because there is no in-person visit with a doctor to confirm gestational age, the remote prescription of mifepristone, by telemedicine and across state lines, increases the medical risks to women.

What could go wrong? A woman in Indiana in 2013 ordered chemical abortion from an overseas pharmacy and took the pills without medical oversight when they arrived. *Patel v. State*, 60 N.E.3d 1041, 1043 (Ind. Ct. App. 2016). According to medical testimony in the case, the woman

“delivered a live baby of approximately twenty-five to thirty weeks gestation who died shortly after birth” after taking mifepristone and misoprostol.

There are additional risks with remote prescription of mifepristone and misoprostol. A doctor may not be licensed in the state of the woman’s residence. Prescription over the Internet may fail to meet proper standards of care. Louisiana passed legislation in May 2024 which classified mifepristone and misoprostol as "controlled substances", but other states may not be as circumspect and careful.

Ignoring state law, abortion activists have decided to do abortions for women in states where abortion is prohibited by prescribing chemical abortion into states which prohibit elective abortion from a state which allows elective abortion. That means they are practicing remote medicine. They cannot do a clinical examination or confirm gestational age by precise means. They cannot confirm a completed abortion. They cannot check a woman for hemorrhage. The symptoms of chemical abortion mask the symptoms of ectopic pregnancy, which can be life-threatening. This means that a woman with an ectopic pregnancy who has taken mifepristone and misoprostol won’t know that she has an ectopic pregnancy. If the woman has a complication, she cannot see the remote doctor. And without medical oversight, remote prescription also means greater isolation of the woman and will likely raise the risk of coerced abortion. The risk of coerced abortion—which is already prevalent—is increased. ACOG reported that “[i]n 2007, the prevalence of IPV [intimate partner violence] was nearly three times greater for women seeking an abortion compared with women who were continuing their pregnancies...” Comm. On Health Care for Underserved Women, Am. Coll. Of Obstetricians & Gynecologists, Reproductive and Sexual Coercion, Comm. Op. No. 554, at 2 (2013, reaffirmed 2022); Another group of researchers found “[h]igh rates of physical, sexual, and emotional IPV...across six continents among women seeking a TOP [termination of pregnancy].” Megan Hall, et al., Associations between Intimate Partner Violence and Termination of Pregnancy: A Systematic Review and Meta-Analysis, PLOS Med. January 7, 2014, at 1, 15.

Recent cases in [Texas](#) and [Louisiana](#), and a [warning](#) by the Arkansas attorney general to chemical abortionists advertising in Arkansas, confirm that state regulations and prohibitions can have real impact, and that states have a right to enforce their laws that prohibit practitioners from operating without a license or in violation of sound healthcare standards. In light of the EPPC's new data on real-world experiences with chemical abortion, Americans United for Life urges state lawmakers and law enforcement officials to reaffirm their commitment to protecting women from this dangerous drug. *Stop Harming Women: Legal Restrictions on Prescribing or Dispensing Dangerous Abortion Pills* is a state-by-state compilation of laws that regulate chemical abortion, provided to facilitate accountability for abortion advocates and others who would seek to circumvent commonsense health and safety laws that protect women from the unacceptable risks associated with mifepristone.

## Alabama

Now that *Roe* is overturned, Alabama prohibits all abortions with certain exceptions thanks to the Human Life Amendment Act, which was passed in 2019. Voters have affirmed that the Alabama constitution “does not protect a right to abortion or require funding for abortion.” There are over 50 pregnancy centers serving women in need across the state. Alabama currently enjoys a super-majority of pro-life members in both legislative chambers.

Alabama judges and justices are elected in partisan elections for six-year terms. This system tends to reinforce the strong pro-life convictions of a majority of Alabamans. Indeed, two ongoing cases in the state’s federal court were positively impacted by the *Dobbs* decision: one on the state’s parental notification law and one on its abortion prohibition.

The governor of Alabama, Kay Ivey, is a Republican. The Attorney General, Steve Marshall, called the *Roe* decision “fatally flawed” and, after the release of the *Dobbs* decision, stated, “any act of vandalism or violence against any crisis pregnancy center, church, or other pro-life entity in retaliation for [\[the Dobbs\] decision](#) will be prosecuted by the Attorney General’s Office to the fullest extent of the law.” When the FDA permitted pharmacies to dispense abortion pills, the AG joined a [letter](#) against this decision, which noted some state laws, including Alabama’s, require in-person dispensing.

The state conducted inspections of abortion facilities and publicized inspection reports. Even with that policy in place, however, Alabama abortion centers were routinely cited for failing to meet basic health and safety standards.

### Constitutional Provisions

#### **Alabama Constitution, Art. I, § 36.06**

- (a) This state acknowledges, declares, and affirms that it is the public policy of this state to recognize and support the sanctity of unborn life and the rights of unborn children, including the right to life.
- (b) This state further acknowledges, declares, and affirms that it is the public policy of this state to ensure the protection of the rights of the unborn child in all manners and measures lawful and appropriate.
- (c) Nothing in this constitution secures or protects a right to abortion or requires the funding of an abortion

### Statutory Prohibitions

#### **Ala. Code § 13A-13-7**

Any person who willfully administers to any pregnant woman any drug or substance or uses or employs any instrument or other means to induce an abortion, miscarriage or premature delivery or aids, abets or prescribes for the same, unless the same is necessary to preserve her life or health and

done for that purpose, shall on conviction be fined not less than \$100.00 nor more than \$1,000.00 and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than 12 months.

**Ala. Code §§ 26-23H-4 (Life/Health Exception)**

(a) It shall be unlawful for any person to intentionally perform or attempt to perform an abortion except as provided for by subsection (b).

(b) An abortion shall be permitted if an attending physician licensed in Alabama determines that an abortion is necessary in order to prevent a serious health risk to the unborn child's mother. Except in the case of a medical emergency as defined herein, the physician's determination shall be confirmed in writing by a second physician licensed in Alabama. The confirmation shall occur within 180 days after the abortion is completed and shall be prima facie evidence for a permitted abortion.

**In-Person Dispensing Requirements**

**Alabama: Ala. Code § 26-23E-7**

Only a physician may give, sell, dispense, administer, or otherwise prescribe an abortion-inducing drug. Because the failure and complications from medical abortion increase with advancing gestational age, because the physical symptoms of medical abortion can be identical to the symptoms of ectopic pregnancy, and because abortion-inducing drugs do not treat ectopic pregnancies but rather are contraindicated in ectopic pregnancies, the physician giving, selling, dispensing, administering, or otherwise providing or prescribing the abortion-inducing drug must first examine the pregnant woman in person and document, in the woman's medical chart, the gestational age and intrauterine location of the pregnancy prior to giving, selling, dispensing, administering, or otherwise providing or prescribing the abortion-inducing drug.

**Informed Consent Laws**

**Ala. Code § 26-23A-1 et seq.**

Except in the case of a medical emergency, no abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

(a) At least 48 hours before the abortion, the physician who is to perform the abortion, the referring physician, or a qualified person has informed and provided the woman in person, or by return receipt certified mail restricted delivery, and if by mail, again in person prior to the abortion, a copy of the printed materials in Section 26-23A-5 which list agencies that offer assistance, adoption agencies, development of the unborn child, methods and risks of abortion and childbirth, father's obligations, and alternatives to abortion. Mailing of the materials in Section 26-23A-5 may be arranged by telephone.

(b) Prior to an abortion, the physician who is to perform the abortion, the referring physician, or a qualified person has informed the woman in person:

- (1) The name of the physician who will perform the abortion in writing or a business card.
  - (2) The nature of the proposed abortion method and associated risks and alternatives that a reasonable patient would consider material to the decision of whether or not to undergo the abortion.
  - (3) The probable gestational age of the unborn child at the time the abortion is to be performed, and the probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed. If the unborn child is viable or has reached a gestational age of more than 19 weeks, that:
    - a. The unborn child may be able to survive outside the womb.
    - b. The woman has the right to request the physician to use the method of abortion that is most likely to preserve the life of the unborn child, provided such abortion is not otherwise prohibited by law.
    - c. If the unborn child is born alive, the attending physician has the legal obligation to take all reasonable steps necessary to maintain the life and health of the child.
  - (4) The physician who is to perform the abortion or the referring physician is required to perform an ultrasound on the unborn child before the abortion. The woman has a right to view the ultrasound before an abortion. The woman shall complete a required form to acknowledge that she either saw the ultrasound image of her unborn child or that she was offered the opportunity and rejected it.
  - (5) She has the right to view the videotape and ultrasound of her unborn child as described in Section 26-23A-6.
  - (6) Any need for anti-Rh immune globulin therapy, and if she is Rh negative, the likely consequences of refusing such therapy and the cost of the therapy.
  - (7) She cannot be forced or required by anyone to have an abortion. She is free to withhold or withdraw her consent for an abortion without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled.
- (c) The woman shall complete and sign a form that she has received the information of subsections (a) and (b), and does provide her informed consent for an abortion on her unborn child.



(d) Prior to the performance of an abortion, the physician who is to perform the abortion or his or her agent shall receive the signed receipt of the certified mail dated 48 hours before the abortion, if mailed, and the signed forms that she has received the information of subsections (a) and (b) before the abortion, had the opportunity to view the video and the ultrasound of her unborn child, and provided her informed consent for an abortion. The abortion facility shall retain the signed receipt, signed forms, and the ultrasound in the woman's medical file for the time required by law, but not less than four years.

Note:

The state's near-total prohibition under § 26-23H-1 et seq. overshadows § 26-23A-1 et seq., as most abortions are now prohibited except in limited circumstances (e.g., to save the mother's life).

## Data and Documentation Requirements

### **Ala. Code § 22-9A-13(b) (2012)**

(b) A report of induced termination of pregnancy for each induced termination of pregnancy which occurs in this state shall be filed with the Office of Vital Statistics, or as otherwise directed by the State Registrar, no later than 10 days after the last day of the month during which the procedure was performed.

(1) When the induced termination of pregnancy is performed in an institution, the person in charge of the institution or his or her designated representative shall prepare and file the report.

(2) When the induced termination of pregnancy is performed outside an institution, the physician in attendance shall prepare and file the report.

(3) Beginning January 1, 2012, the Office of Vital Statistics shall collect the following information for all induced terminations of pregnancies . . .

a. Postfertilization age . . . .

b. Method of abortion . . . .

c. Whether an intra-fetal injection was used in an attempt to induce fetal demise (such as, but not limited to, intra-fetal potassium chloride or digoxin).

d. Age and race of the patient.

e. If the probable postfertilization age was determined to be 20 or more weeks, the basis of the determination that the pregnant woman had a condition which so complicated her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.

f. If the probable postfertilization age was determined to be 20 or more weeks, whether or not the method of abortion used was one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive and, if such a method was not used, the basis of the determination that termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the woman than would other available methods.

See also:

Ala. Admin. Code r. 420-7-1.03(4)(b) (2022);

<https://www.alabamapublichealth.gov/healthstats/publications.html>.

## Civil Liability Provisions

### **Ala. Code § 26-21-6(b)**

#### **Professional Discipline Under Parental Consent Requirements**

**Applies to Ala. Code §§ 26-21-1 through 26-21-8**

(b) In addition to whatever remedies are available under the common or statutory law of this state, failure to comply with the requirements of this chapter shall provide a basis for professional disciplinary action under any applicable statutory or regulatory procedure for the suspension or revocation of any license for physicians, psychologists, licensed social workers, licensed professional counselors, registered nurses, or other licensed or regulated persons.

### **Ala. Code § 26-21-6.1**

#### **Civil Remedies Under Parental Consent Requirements**

**Applies to Ala. Code §§ 26-21-1 through 26-21-8**

In addition to whatever remedies are available under the common or statutory law of this state, failure to comply with the requirements of this chapter shall provide a basis for a civil action for compensatory and/or punitive damages. Any criminal conviction under this chapter shall be admissible in a civil suit as prima facie evidence of a failure to obtain an informed consent or parental or judicial consent. The civil action may be based on a claim that the action was a result of simple negligence, gross negligence, wantonness, willfulness, intention, or breach of other legal standard of care. The Medical Liability Act of 1987 shall not apply to any civil causes of action brought pursuant to Sections 26-21-1, 26-21-2, 26-21-3, 26-21-4, 26-21-6, 26-21-6.1, and 26-21-7.

### **Ala. Code § 26-23A-10**

#### **Civil Remedies and Professional Discipline Under Informed Consent Laws**

**Applies to Ala. Code §§ 26-23A-1 through 26-23A-13**

In addition to whatever remedies are available under the common or statutory law of this state, failure to comply with the requirements of this chapter shall:

(1) Provide a basis for a civil action for compensatory and punitive damages. Any conviction under this chapter shall be admissible in a civil suit as prima facie evidence of a failure to obtain an informed consent or parental or judicial consent. The civil action may be based on



a claim that the act was a result of simple negligence, gross negligence, wantonness, willfulness, intention, or other legal standard of care.

(2) Provide a basis for professional disciplinary action under any applicable statutory or regulatory procedure for the suspension or revocation of any license for physicians, psychologists, licensed social workers, licensed professional counselors, registered nurses, or other licensed or regulated persons. Any conviction of any person for any failure to comply with the requirements of this chapter shall result in the automatic suspension of his or her license for a period of at least one year and shall be reinstated after that time only on such conditions as the appropriate regulatory or licensing body shall require to insure compliance with this chapter.

(3) Provide a basis for recovery for the woman for the wrongful death of the child, whether or not the unborn child was viable at the time the abortion was performed or was born alive.

#### **Ala. Code § 26-23E-13**

##### **Civil Remedies for Abortion-Inducing Drugs**

**Applies to Ala. Code §§ 26-23E-1 through 26-23E-17**

Any person who can demonstrate personal injury, including physical injury, emotional distress, or mental anguish, where such injury has resulted from the failure of an abortion or reproductive health center to conform to the requirements of this chapter, may maintain a civil action for damages against the abortion or reproductive health center and against the administrator of the facility.

#### **Ala. Code § 26-23E-14**

##### **Professional Discipline for Abortion-Inducing Drugs**

**Applies to Ala. Code §§ 26-23E-1 through 26-23E-17**

(a) The failure of any physician, nurse practitioner, physician assistant, registered professional nurse, or licensed practical nurse to conform to the requirements of this chapter or any rule or regulation adopted under provision of this chapter may be grounds for adverse licensure action, up to and including license revocation.

(b) Any abortion or reproductive health center that is found to have provided an abortion, in a manner that violates this chapter or any rule or regulation adopted under the provision of this chapter, may be subject to adverse licensure action, up to and including license revocation.

#### **Ala. Code § 26-23E-15**

##### **Other Civil Remedies for Abortion-Inducing Drugs**

**Applies to Ala. Code §§ 26-23E-1 through 26-23E-17**

Upon application by the Department of Public Health, a circuit court or any judge thereof shall have jurisdiction for cause shown, to grant a temporary restraining order, a preliminary injunction, a permanent injunction, or any combination of those remedies, restraining and enjoining any person from violating the provisions of this chapter and any rules promulgated thereunder. Any temporary restraining order, preliminary injunction, or permanent injunction shall be issued without bond. This remedy is in addition to any other remedies available to the Department of Public Health.

## Alaska

Alaska permits abortion throughout pregnancy due to a state constitutional decision. There have been discussions in recent years about a ballot initiative to protect life and prevent taxpayer funding for abortion, which is the only feasible way to override the court's decision. The state has around a dozen pro-life pregnancy centers, mostly in the southern half of the state. Alaska has just four abortion businesses and does not permit abortion by mail.

The Alaska Senate is strongly pro-life, but the House of Representatives is split on the issue. This split, combined with the state supreme court's decision, makes it difficult to enact pro-life laws.

Alaska judges are selected through a hybrid Missouri-style judicial nomination system, whereby the governor chooses from a list created by a nominating commission. This system tends to reinforce the pro-abortion views of members of the legal profession and other committee members. State courts are currently hearing a challenge to Alaska's physician-only rule.

Alaska Governor Mike Dunleavy is a Republican. In light of the *Dobbs* decision and the returning of abortion regulation to the states, Governor Dunleavy announced he would introduce "a resolution for a proposed constitutional amendment to the legislature in the next session to answer the question whether abortion shall, or not be a constitutionally protected right." Unfortunately, Alaska does not regulate or inspect abortion clinics. The only abortion facility inspection reports AUL was able to obtain were through federal CLIA lab inspections.

### In-Person Dispensing Requirement

#### **Alaska Stat. § 18.16.010(a)(1)**

An abortion may not be performed in this state unless the abortion is performed by a physician or surgeon licensed by the State Medical Board under AS 08.64.200.

#### Note:

The attorney general issued a [press release](#) explaining that the state had constitutional protections for abortion rights, but this statute "has always operated to prohibit the sale of mifepristone directly to patients, whether by mail or in person" and "a woman in Alaska who receives a dose of mifepristone does so in a clinical setting. There are telehealth provisions, but no matter what, the pill is still administered in a clinic, where the prescribing doctor is either present or virtually present through telehealth." When FDA permitted pharmacies to dispense abortion pills, the AG joined a [letter](#) against this decision, which noted some state laws require in-person dispensing.

### Informed Consent Laws

#### **Alaska Stat. § 18.16.060**

(a) Except as provided in (d) of this section, a person may not knowingly perform or induce an abortion without the voluntary and informed consent of

- (1) a woman on whom an abortion is to be performed or induced;
- (2) the parent, guardian, or custodian of a pregnant, unemancipated minor if required under AS 18.16.020; or
- (3) a pregnant, unemancipated minor if authorized by a court under AS 18.16.030.

(b) Consent to an abortion is informed and voluntary when the woman or another person whose consent is required certifies in writing that the physician who is to perform the abortion, a member of the physician's staff who is a licensed health care provider, or the referring physician has verbally informed the woman or another person whose consent is required of the name of the physician who will perform the procedure and the gestational estimation of the pregnancy at the time the abortion is to be performed and has provided either

- (1) the Internet information required to be maintained under AS 18.05.032; the physician or a member of the physician's staff who is a licensed health care provider shall provide a copy of the Internet information if a person requests a written copy; if a member of the physician's staff provides the information required under this paragraph, the member of the physician's staff shall offer the opportunity to consult with the physician; or
- (2) information about the nature and risks of undergoing or not undergoing the proposed procedure that a reasonable patient would consider material to making a voluntary and informed decision of whether to undergo the procedure.

(c) The information required in (b) of this section shall be provided before the procedure in a private setting to protect privacy, maintain the confidentiality of the decision, ensure that the information focuses on the individual circumstances, and ensure an adequate opportunity to ask questions. Provision of the information telephonically or by electronic mail, regular mail, or facsimile transmittal before the person's appointment satisfies the requirements of this subsection as long as the person whose consent is required under (a) of this section has an opportunity to ask questions of the physician after receiving the information.

(d) Notwithstanding (a) of this section, informed consent that meets the requirements of (a)--(c) of this section is not required in the case of a medical emergency or if the pregnancy is the result of sexual assault under AS 11.41.410--11.41.427, sexual abuse of a minor under AS 11.41.434--11.41.440, incest under AS 11.41.450, or an offense under a law of another jurisdiction with elements similar to one of these offenses. In this subsection, "medical emergency" means a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman that

- (1) the immediate termination of the woman's pregnancy is necessary to avert the woman's death; or
- (2) a delay in providing an abortion will create serious risk of substantial and irreversible impairment of a major bodily function of the woman.

#### Notes:

Cf. Alaska Stat. § 18.16.010: This statute governs general abortion regulations, requiring compliance with § 18.16.060's informed consent provisions as a condition for performing abortions. It also sets penalties for violations.

Alaska's Supreme Court recognizes a fundamental right to reproductive choice under the state constitution's privacy clause, making § 18.16.060's requirements subject to strict scrutiny.

## Data and Documentation Requirements

### **Alaska Stat. § 18.50.245 (2004)**

(a) A hospital, clinic, or other institution where an induced termination of pregnancy is performed in the state shall submit a report directly to the state registrar within 30 days after the induced termination is completed. The report may not contain the name of the patient whose pregnancy was terminated but must contain the information required by the state registrar in regulations adopted under this section.

(b) When an induced termination of pregnancy is performed by a physician outside of a hospital, clinic, or other institution, the physician shall submit the report required under this section within 30 days after the induced termination of pregnancy is completed. . . .

(c) The state registrar shall adopt regulations to implement this section. The regulations that establish the information that will be required in a report of an induced termination of pregnancy

(1) must require information substantially similar to the information required under the United States Standard Report of Induced Termination of Pregnancy, as published by the National Center for Health Statistics, Centers for Disease Control and Prevention, United States Department of Health and Human Services . . . .

### **Alaska Stat. § 18.16.040 (2022)**

For each month in which an abortion is performed on a minor by a physician, the physician shall file a report with the Department of Health indicating the number of abortions performed on a minor for that month, the age of each minor, the number of previous abortions performed on each minor, if any, and the number of pregnancies of each minor, if any, and the number of consents provided under each of the exceptions enumerated under AS 18.16.020(a)(1)-(4). A report filed under this section may not include identifying information of the minor other than the minor's age.

#### Notes:

Cf. Alaska Admin. Code tit. 7, § 05.695 (2005).

State reports available here: <https://health.alaska.gov/en/division-of-public-health/health-analytics-vital-records/> Although parental notification provisions are permanently enjoined by *Planned Parenthood of the Great Nw. v. State*, 375 P.3d 1122 (Alaska 2016), the general reporting for minors still in effect.

## Arizona

Arizona has traditionally been a pro-life leader among the states, but in 2024 state voters passed the Arizona Abortion Ballot Initiative to amend the constitution to name abortion a "fundamental right". The Arizona judiciary will now play a key role in interpreting the reach of this amendment. Arizona judges are selected through a hybrid Missouri-style judicial nomination system, whereby the governor chooses from a list of candidates created by a nominating commission. State supreme court justices are appointed to six-year terms and then retained or rejected by voters. Although Arizona residents are generally pro-life, this system tends to reinforce the pro-abortion views of members of the legal profession and other committee members. Arizona does inspect abortion clinics, and AUL's *Unsafe* project obtained records of violations that included using expired medications on patients and prescribing chemical abortion pills without verifying that the patient was even pregnant.

### Constitutional Authorization

#### **Ariz. Const. Art. II, § 8.1**

A. Every individual has a fundamental right to abortion, and the state shall not enact, adopt or enforce any law, regulation, policy or practice that does any of the following:

1. Denies, restricts or interferes with that right before fetal viability unless justified by a compelling state interest that is achieved by the least restrictive means.
2. Denies, restricts or interferes with an abortion after fetal viability that, in the good faith judgment of a treating health care professional, is necessary to protect the life or physical or mental health of the pregnant individual.
3. Penalizes any individual or entity for aiding or assisting a pregnant individual in exercising the individual's right to abortion as provided in this section.

B. For the purposes of this section:

1. "Compelling state interest" means a law, regulation, policy or practice that meets both of the following:
  - (a) Is enacted or adopted for the limited purpose of improving or maintaining the health of an individual seeking abortion care, consistent with accepted clinical standards of practice and evidence-based medicine.
  - (b) Does not infringe on that individual's autonomous decision making.
2. "Fetal viability" means the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

3. “State” means this state, any agency of this state or any political subdivision of this state.”

Note:

The recent Arizona constitutional amendment calls into question the enforceability of the state's abortion provisions. Those that are clearly unenforceable are omitted here; others are included here for reference's sake, but care should be taken to verify enforceability.

In-Person Dispensing Requirements

**Ariz. Rev. Stat. § 36-2160(B)**

A manufacturer, supplier or physician or any other person is prohibited from providing an abortion-inducing drug via courier, delivery or mail service.

**Ariz. Rev. Stat. §36-3604(A)**

A health care provider shall not use telehealth to provide an abortion.

Note:

Pro-abortion Attorney General, Kris Mayes, has [acknowledged](#) that Arizona law prohibits the mailing of chemical abortion drugs: “An Arizona statute that pre-dates the constitutional amendment providing a fundamental right to abortion prohibits manufacturers, suppliers, physicians, and anyone else from providing abortion medication to someone through a courier, delivery, or mail service. This statute may be challenged under the new constitutional protections for abortion care, but it remains on the books until it is changed by the Legislature or invalidated by a court.”

Informed Consent Laws

**Ariz. Rev. Stat. § 36-2153**

A. An abortion shall not be performed or induced without the voluntary and informed consent of the woman on whom the abortion is to be performed or induced. Except in the case of a medical emergency and in addition to the other requirements of this chapter, consent to an abortion is voluntary and informed only if all of the following are true:

1. At least twenty-four hours before the abortion, the physician who is to perform the abortion or the referring physician has informed the woman, orally and in person, of:
  - (a) The name of the physician who will perform the abortion.
  - (b) The nature of the proposed procedure or treatment.



(c) The immediate and long-term medical risks associated with the procedure that a reasonable patient would consider material to the decision of whether or not to undergo the abortion.

(d) Alternatives to the procedure or treatment that a reasonable patient would consider material to the decision of whether or not to undergo the abortion.

(e) The probable gestational age of the unborn child at the time the abortion is to be performed.

(f) The probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed.

(g) The medical risks associated with carrying the child to term.

Relationship statutes/ regulations relating to the subject matter:

Ariz. Rev. Stat. § 36-2156: Requires ultrasounds 24 hours before abortions, complementing § 36-2153's informed consent by mandating offers to view the ultrasound.

Ariz. Rev. Stat. § 36-2158: Adds informed consent requirements for lethal fetal conditions, requiring perinatal hospice information, reinforcing § 36-2153's framework.

Documentation and Data Requirements

**Ariz. Rev. Stat. § 36-2161**

A. . . . The report must include the following information:

1. The name and address of the facility where the abortion was performed.
2. The type of facility where the abortion was performed.
3. The county where the abortion was performed.
4. The woman's age.
5. The woman's educational background by highest grade completed and, if applicable, level of college completed.
6. The county and state in which the woman resides.
7. The woman's race and ethnicity.
8. The woman's marital status.
9. The number of prior pregnancies and prior abortions of the woman.

10. The number of previous spontaneous terminations of pregnancy of the woman.
11. The gestational age of the unborn child at the time of the abortion.
12. The reason for the abortion . . . .
13. The type of procedure performed or prescribed and the date of the abortion.
14. Any preexisting medical conditions of the woman that would complicate pregnancy.
15. Any known medical complication that resulted from the abortion . . . .
16. The basis for any medical judgment that a medical emergency existed that excused the physician from compliance with the requirements of this chapter. . . .
23. Whether anesthesia was administered to the mother.
24. Whether anesthesia was administered to the unborn child.
25. Whether any genetic abnormality of the unborn child was detected at or before the time of the abortion by genetic testing, such as maternal serum tests, or by ultrasound, such as nuchal translucency screening, or by other forms of testing.
26. If a surgical abortion was performed, the method of final disposition of bodily remains and whether the woman exercised her right to choose the final disposition of bodily remains.

Note:

State reports available here: <https://www.azdhs.gov/director/reports/index.php>.

Reporting requirements related to genetic abnormalities are currently at litigation in *Isaacson v. Mayes*, No. 2:21-cv-1417 (D. Ariz.); Ariz. Admin. Code §§ 9-10-119 (2016), 9-10-1505 (2018), 9-10-1509 (2019).

## Civil Liability Provisions

### **Ariz. Stat. § 36-2152(J)–(K)**

#### **Civil Remedies Under Parental Consent Requirements**

#### **Applies to Ariz. Stat. § 36-2152**

J. In addition to other remedies available under the common or statutory law of this state, one or both of the minor's parents or the minor's guardian may bring a civil action in the superior court in the county in which the parents or the guardian resides to obtain appropriate relief for a violation of this section, unless the pregnancy resulted from the criminal conduct of the parent or guardian. The civil action may be based on a claim that failure to obtain consent was a result of simple negligence, gross negligence, wantonness, wilfulness, intention or any other legal standard of care. The civil action may be brought against the person who performs the abortion in violation of this section and

any person who causes, aids or assists a minor to obtain an abortion without meeting the requirements of this section. Relief pursuant to this subsection includes the following:

1. Money damages for all psychological, emotional and physical injuries that result from the violation of this section.
2. Statutory damages in an amount equal to \$5,000 or three times the cost of the abortion, whichever is greater.
3. Reasonable attorney fees and costs.

K. A civil action brought pursuant to this section must be initiated within six years after the violation occurred.

**Ariz. Stat. § 36-2153(K)–(M)**  
**Civil Action Under Informed Consent Requirements**  
**Applies to Ariz. Stat. § 36-2153**

K. In addition to other remedies available under the common or statutory law of this state, any of the following may file a civil action to obtain appropriate relief for a violation of this section:

1. A woman on whom an abortion has been performed without her informed consent as required by this section.
2. The father of the unborn child if the father was married to the mother at the time she received the abortion, unless the pregnancy resulted from the plaintiff's criminal conduct.
3. A maternal grandparent of the unborn child if the mother was not at least eighteen years of age at the time of the abortion, unless the pregnancy resulted from the plaintiff's criminal conduct.

L. A civil action filed pursuant to subsection K of this section shall be brought in the superior court in the county in which the woman on whom the abortion was performed resides and may be based on a claim that failure to obtain informed consent was a result of simple negligence, gross negligence, wantonness, wilfulness, intention or any other legal standard of care. Relief pursuant to subsection K of this section includes the following:

1. Money damages for all psychological, emotional and physical injuries resulting from the violation of this section.
2. Statutory damages in an amount equal to \$5,000 or three times the cost of the abortion, whichever is greater.
3. Reasonable attorney fees and costs.

M. A civil action brought pursuant to this section must be initiated within six years after the violation occurred.

**Ariz. Stat. § 36-2156(C)–(E)**  
**Civil Action Under Ultrasound Requirements**  
**Applies to Ariz. Stat. § 36-2156**

C. In addition to other remedies available under the common or statutory law of this state, any of the following may file a civil action to obtain appropriate relief for a violation of this section:

1. A woman on whom an abortion has been performed without her informed consent as required by this section.
2. The father of the unborn child if married to the mother at the time she received the abortion, unless the pregnancy resulted from the plaintiff's criminal conduct.
3. The maternal grandparents of the unborn child if the mother was not at least eighteen years of age at the time of the abortion, unless the pregnancy resulted from the plaintiff's criminal conduct.

D. A civil action filed pursuant to subsection C of this section shall be brought in the superior court in the county in which the woman on whom the abortion was performed resides and may be based on a claim that failure to obtain informed consent was a result of simple negligence, gross negligence, wantonness, wilfulness, intention or any other legal standard of care. Relief pursuant to subsection C of this section includes any of the following:

1. Money damages for all psychological, emotional and physical injuries resulting from the violation of this section.
2. Statutory damages in an amount equal to five thousand dollars or three times the cost of the abortion, whichever is greater.
3. Reasonable attorney fees and costs.

E. A civil action brought pursuant to this section must be initiated within six years after the violation occurred.

**Ariz. Stat. § 36-2158(C)**  
**Professional Discipline Under Informed Consent for Lethal Fetal Anomalies**  
**Applies to Ariz. Stat. § 36-2158**

C. A physician who knowingly violates this section commits an act of unprofessional conduct and is subject to license suspension or revocation pursuant to title 32, chapter 13 or 17.

**Ariz. Stat. § 36-2158(D)–(F)**  
**Civil Action Under Informed Consent for Lethal Fetal Anomalies**  
**Applies to Ariz. Stat. § 36-2158**

D. In addition to other remedies available under the common or statutory law of this state, any of the following individuals may file a civil action to obtain appropriate relief for a violation of this section:

1. A woman on whom an abortion has been performed without her informed consent as required by this section.
2. The father of the unborn child if the father was married to the mother at the time she received the abortion, unless the pregnancy resulted from the father's criminal conduct.
3. A maternal grandparent of the unborn child if the mother was not at least eighteen years of age at the time of the abortion, unless the pregnancy resulted from the maternal grandparent's criminal conduct.

E. A civil action filed pursuant to subsection D of this section shall be brought in the superior court in the county in which the woman on whom the abortion was performed resides and may be based on a claim that failure to obtain informed consent was a result of simple negligence, gross negligence, wantonness, wilfulness, intention or any other legal standard of care. Relief pursuant to this subsection includes the following:

1. Money damages for all psychological, emotional and physical injuries resulting from the violation of this section.
2. Statutory damages in an amount equal to \$5,000 or three times the cost of the abortion, whichever is greater.
3. Reasonable attorney fees and costs.

F. A civil action brought pursuant to this section must be initiated within six years after the violation occurred.

Note:

Ariz. Stat. § 36-2158 may be affected by ongoing litigation in *Isaacson v. Mayes*, see remand by *Isaacson v. Mayes*, 84 F. 4<sup>th</sup> 1089 (9th Cir. 2023)

## Arkansas

Arkansas is ranked first for pro-life policy on AUL's Life List. Arkansas has a pro-life constitutional amendment as well as a conditional law in place that prevents virtually all abortions now that *Roe* is overturned. The state regularly leads the nation in creative solutions to support flourishing families and to help women choose Life. Arkansas has over fifty pregnancy centers serving women across the state, compared to just two abortion centers which are both located in Little Rock.

Arkansas has a super-majority of pro-life lawmakers in both chambers. The General Assembly meets every other year, meaning lawmakers must think proactively to address issues that may arise during

the off year. Since *Roe* is now overturned, Arkansas will have to deal with interstate travel for abortion and women seeking abortion pills online. This means lawmakers will have to enforce the state's laws against online pill vendors to make sure that the protections they've enacted can truly help women and families in their state.

State supreme court justices are selected through nonpartisan elections, a process that tends to reinforce the pro-life views of a majority of Arkansans. Arkansas has several laws currently enjoined by federal courts that it should seek to enforce now that *Roe* is overturned. Attorney General Tim Griffin has begun targeting companies providing abortion pills through the mail, sending them Cease and Desist letters.

### Constitutional Provision

#### **Ark. Const. Amend. 68, § 2**

The policy of Arkansas is to protect the life of every unborn child from conception until birth, to the extent permitted by the Federal Constitution.

### Statutory Prohibitions

#### **Ark. Code Ann. § 5-61-102**

- (a) It is unlawful for any person to administer or prescribe any medicine or drug to any woman with child with the intent to produce an abortion or premature delivery of any fetus before or after the period of quickening or to produce or attempt to produce the abortion by any other means.
- (b) Any person violating a provision of this section is guilty of a Class D felony.
- (c) Nothing in this section shall be construed to allow the charging or conviction of a woman with any criminal offense in the death of her own unborn child in utero.

#### **Ark. Code Ann. § 5-61-304**

- (a) A person shall not purposely perform or attempt to perform an abortion except to save the life of a pregnant woman in a medical emergency.
- (b) Performing or attempting to perform an abortion is an unclassified felony with a fine not to exceed one hundred thousand dollars (\$100,000) or imprisonment not to exceed ten (10) years, or both.
- (c) This section does not:
  - (1) Authorize the charging or conviction of a woman with any criminal offense in the death of her own unborn child; or
  - (2) Prohibit the sale, use, prescription, or administration of a contraceptive measure, drug, or chemical if the contraceptive measure, drug, or chemical is administered before the time



when a pregnancy could be determined through conventional medical testing and if the contraceptive measure, drug, or chemical is sold, used, prescribed, or administered in accordance with manufacturer instructions.

(d) It is an affirmative defense to prosecution under this section if a licensed physician provides medical treatment to a pregnant woman which results in the accidental or unintentional injury or death to the unborn child.

### In-Person Dispensing Requirement

#### **Ark. Code § 20-16-1504(b)**

It is unlawful for any manufacturer, supplier, physician, or any other person to provide any abortion-inducing drug via courier, delivery, or mail service.

#### **Ark. Code § 20-16-603 (b)(1)**

When mifepristone or another drug or chemical regimen is used to induce an abortion, the initial administration of the drug or chemical shall occur 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.

#### Note:

On May 21, 2024, Attorney General, Tim Griffin, sent a [cease and desist letter](#) to company, Aid Access, informing them that under Arkansas law, abortion pills may not be legally shipped to the state. The letter does not cite to Ark. Code § 20-16-1504(b) or Ark. Code § 20-16-603 (b)(1) specifically, but implicitly mentions the statutes.

### Informed Consent Laws

#### **Ark. Code Ann. § 20-16-1701 et seq.**

(a) A person shall not perform or induce an abortion without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced.

(b) Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if:

(1) At least seventy-two (72) hours before the abortion, the physician who is to perform the abortion or the referring physician has informed the woman, orally and in person, of the following:

(A) The name of the physician who will perform the abortion;

(B) Medically accurate information that a reasonable patient would consider material to the decision concerning whether or not to undergo the abortion, including:

- (i) A description of the proposed abortion method;
  - (ii) The immediate and long-term medical risks associated with the proposed abortion method, including without limitation the risks of:
    - (a) Cervical or uterine perforation;
    - (b) Danger to subsequent pregnancies;
    - (c) Hemorrhage; and
    - (d) Infection; and
  - (iii) Alternatives to the abortion;
- (C) The probable gestational age of the unborn child at the time the abortion is to be performed;
- (D) The probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed;
- (E) The medical risks associated with carrying the unborn child to term;
- (F) Any need for anti-Rh immune globulin therapy if the woman is Rh negative, the likely consequences of refusing such therapy, and the cost of the therapy; and
- (G) Information on reversing the effects of abortion-inducing drugs;
- (2) At least seventy-two (72) hours before the abortion, the physician who is to perform the abortion, the referring physician, or a qualified person informs the woman, orally and in person, that:
- (A) Medical assistance benefits may be available for prenatal care, childbirth, and neonatal care and that more detailed information on the availability of such assistance is contained in the printed materials and informational DVD given to her under § 20-16-1704;
  - (B) The printed materials and informational DVD under § 20-16-1704 describe the unborn child and list agencies that offer alternatives to abortion;
  - (C)
    - (i) The father of the unborn child is liable to assist in the support of the child, even in instances in which he has offered to pay for the abortion.
    - (ii) In a case of rape or incest, the information required under subdivision (b)(2)(C)(i) of this section may be omitted;

(D) The woman is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she otherwise might be entitled;

(E) The information contained in the printed materials and informational DVD given to her under § 20-16-1704 is also available on a state website; and

(F) Human trafficking literature, also known as “Laura's Card”, as described in § 16-90-1107;

- (3) (A) The information required under subdivisions (b)(1) and (2) of this section is provided to the woman individually and in a private room to protect her privacy, to maintain the confidentiality of her decision, to ensure that the information focuses on her individual circumstances, and to ensure that she has an adequate opportunity to ask questions.

(B) Subdivision (b)(3)(A) of this section does not preclude the provision of required information through a translator in a language understood by the woman;

- (4) (A) At least seventy-two (72) hours before the abortion, the woman is given a copy of the printed materials and permitted to view and given a copy of the informational DVD under § 20-16-1704.

(B) If the woman is unable to read the materials, the materials shall be read to her in a language she can understand.

(C) If the woman asks questions concerning any of the information or materials under this subdivision (b)(4), the person who provides or reads the information or materials shall answer her questions in a language she can understand;

- (5) (A) At least seventy-two (72) hours before an abortion is performed or induced on a woman whose pregnancy has progressed to twenty (20) weeks' gestation or more, the physician performing the abortion on the pregnant woman, the referring physician, or a qualified person assisting the physician, orally and in person, offers information on fetal pain to the patient.

(B) The information required under subdivision (b)(5)(A) of this section and counseling related to that information shall include without limitation the following:

- (i) That by twenty (20) weeks' gestational age, the unborn child possesses all anatomical links in its nervous system, including spinal cord, nerve tracts, thalamus, and cortex, that are necessary in order to feel pain;

- (ii) That an unborn child at twenty (20) weeks' gestation or more is fully capable of experiencing pain;
  - (iii) A description of the actual steps in the abortion procedure to be performed or induced and at which steps in the abortion procedure the unborn child is capable of feeling pain;
  - (iv) That maternal anesthesia typically offers little pain prevention for the unborn child; and
  - (v) That an anesthetic or analgesic, or both, are available so that pain to the fetus is minimized or alleviated;
- (6)
  - (A) Before the abortion, the pregnant woman certifies in writing on a checklist form provided or approved by the Department of Health that the information required under § 20-16-1704 has been provided.
  - (B) A physician who performs an abortion shall report monthly to the department the total number of certifications the physician has received.
  - (C) The department shall make available to the public annually the number of certifications received under subdivision (b)(6)(B) of this section;
- (7)
  - (A) Except in the case of a medical emergency, the physician who is to perform the abortion receives and signs a copy of the written certification required under subdivision (b)(6)(A) of this section before performing the abortion.
  - (B) The physician shall retain a copy of the checklist certification form in the pregnant woman's medical record;
- (8) At least seventy-two (72) hours before an abortion that is being performed or induced utilizing abortion-inducing drugs, the physician who is to perform the abortion, the referring physician, or a qualified person informs the pregnant woman, orally and in person, that:
  - (A) It may be possible to reverse the effects of the abortion if the pregnant woman changes her mind, but that time is of the essence; and
  - (B) Information on reversing the effects of abortion-inducing drugs is available in materials prepared by the department;
- (9)
  - (A) After dispensing the first dose of abortion-inducing drugs to a woman, the physician who is to perform the abortion, the referring physician, or a qualified person shall provide a written notice to the patient that states:

## Data and Documentation Requirements

**Ark. Code § 20-16-1406 (2013)**

- (a) (1) A physician who performs or induces or attempts to perform or induce an abortion shall report to the Department of Health on a schedule and in accordance with rules adopted by the department.
- (2) The report required under subdivision (a)(1) of this section shall include without limitation:
- (A) Whether a determination of probable post-fertilization age was made, the probable post-fertilization age of the unborn child determined, and the method and basis of the determination;
  - (B) If a determination of probable post-fertilization age of the unborn child was not made, the basis of the determination that a medical emergency existed;
  - (C) If the probable post-fertilization age of the unborn child was determined to be twenty (20) or more weeks, the basis of the determination that the pregnant woman had a condition which so complicated her medical condition as to necessitate the immediate abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman, not including psychological or emotional conditions;
  - (D) The method used for the abortion; and
  - (E) If an abortion was performed when the probable post-fertilization age of the unborn child was determined to be twenty (20) or more weeks.

Notes:

*See also id.* § 20-16-1707 (2019)

State reports available here: <https://healthy.arkansas.gov/programs-services/data-statistics-registries/vital-statistics/>.

Civil Liability Provisions

**Ark. Code Ann. § 20-16-603(d)(1) Professional Discipline for Abortion-Inducing Drugs  
Applies to Ark. Code Ann. § 20-16-603**

(d)(1) If the Arkansas State Medical Board finds that a physician licensed by the board has violated the rules of professional conduct by performing an abortion in violation of this subchapter, the board shall revoke the physician's license.

**Ark. Code Ann. § 20-16-603(e)–(h) Civil Liability for Abortion-Inducing Drugs  
Applies to Ark. Code Ann. § 20-16-603**

- (e) (1)(A) A woman who receives an abortion, the father of the unborn child who was the subject of the abortion if the father was married to the woman who received the abortion at the time the abortion was performed, or a maternal grandparent of the unborn child may maintain an action against the person who performed the abortion in violation of this section for actual and punitive damages.
- (B) A woman who attempts to receive an abortion in violation of this section may maintain an action against the person who attempted to perform the abortion for actual and punitive damages.
- (2)(A) Upon petition by any citizen in the county in which an alleged violation of this section occurred or in which the defendant resides, a court may enjoin a healthcare professional who has knowingly or recklessly violated this section.
- (B) An injunction under subdivision (e)(2)(A) of this section shall prevent the abortion provider from performing further abortions in violation of this section.
- (f) (1) If a judgment is rendered in favor of the plaintiff who prevails in an action under subsection (e) of this section, the court shall award reasonable attorney's fees and costs in favor of the plaintiff against the defendant.
- (2) If a judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall order the plaintiff to pay reasonable attorney's fees to the defendant.
- (g) A pregnant woman who obtains or possesses mifepristone or another drug or chemical used for the purpose of inducing an abortion to terminate her pregnancy shall not be subject to an action under subsection (e) of this section.
- (h) (1) In a civil proceeding or action brought under this section, the court shall determine if the anonymity of a woman who receives or attempts to receive an abortion shall be preserved from public disclosure without her consent.
- (2)(A) Upon determining that the woman's anonymity shall be preserved, the court shall issue an order to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure.
- (B) An order under subdivision (h)(2)(A) of this section shall be accompanied by specific written findings explaining:
- (i) Why the anonymity of the woman should be preserved from public disclosure;
  - (ii) Why the order is essential to that end;
  - (iii) How the order is narrowly tailored to serve that interest; and
  - (iv) Why no reasonable, less restrictive alternative exists.



(C) In the absence of written consent of the woman who receives or attempts to receive an abortion, anyone other than a public official who brings an action under subsection (e) of this section shall bring the action under a pseudonym.

(D) This subsection does not conceal the identity of the plaintiff or of a witness from the defendant.

**Ark. Code Ann. § 20-16-1507**

**Civil Remedies and Professional Discipline for Abortion-Inducing Drugs**

**Applies to Ark. Code Ann. §§ 20-16-1501 through 20-16-1510**

(a) In addition to whatever remedies are available under the common or statutory law of this state, failure to comply with the requirements of this subchapter shall provide a basis for:

(1) A civil malpractice action for actual and punitive damages;

(2) A professional disciplinary action under [§ 16-114-201 et seq.](#); and

(3) Recovery for the woman's survivors for the wrongful death of the woman under [§ 16-62-102](#).

(b) A civil liability may not be assessed against the pregnant woman upon whom the drug-induced abortion is performed.

(c) When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the drug-induced abortion was performed.

(d) If judgment is rendered in favor of the plaintiff, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant.

(e) If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney's fee in favor of the defendant against the plaintiff.

(f) Upon a finding of the Arkansas State Medical Board that a physician failed to comply with the requirements of this subchapter, the board shall revoke the physician's medical license.

**Ark. Code Ann. § 20-16-2508**

**Civil Remedies and Professional Discipline Under Informed Consent Requirements**

**Applies to Ark. Code Ann. §§ 20-16-2501 through 20-16-2509**

(a) In addition to any remedies available under the common law or statutory law of this state, failure to comply with the requirements of this subchapter shall provide a basis for a:

(1) Civil malpractice action for actual and punitive damages; and

(2) Professional disciplinary action under the Arkansas Medical Practices Act, [§ 17-95-201 et seq.](#), [§ 17-95-301 et seq.](#), and [§ 17-95-401 et seq.](#)

- (b) A civil penalty shall not be assessed against the woman upon whom the abortion is performed.
- (c) When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may close the proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the abortion was performed or attempted.
- (d) If judgment is rendered in favor of the plaintiff, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant.
- (e) If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney's fee in favor of the defendant against the plaintiff.

#### **Ark. Code Ann. § 20-16-811**

#### **Civil Remedies and Professional Discipline Under Parental Consent Requirements Applies to Ark. Code Ann. §§ 20-16-801 through 20-16-817**

- (a) The performance of an abortion in violation of this subchapter or failure to report under [§ 20-16-814](#) shall be a Class A misdemeanor and shall be grounds for a civil action by a person whose consent is required.
- (b) This subchapter does not allow the charging or conviction of a woman with any criminal offense in the death of her own unborn child in utero.
- (c) Failure to comply with this subchapter shall provide a basis for:

- (1) A civil action for compensatory and punitive damages which may include a medical malpractice action under [§ 16-114-201 et seq.](#);
- (2) Professional disciplinary action by the appropriate healthcare licensing board for the suspension or revocation of a license for a healthcare professional for at least one (1) year;
- (3) Recovery for the parent of the infant or the parent or legal guardian of the pregnant woman, if the pregnant woman is a minor, for the wrongful death of the infant under [§ 16-62-102](#); and
- (4) Injunction from future acts prohibited by this section.

#### **Ark. Code Ann. § 20-16-1710**

#### **Civil Remedies and Professional Discipline Under Informed Consent Requirements Applies to Ark. Code Ann. §§ 20-16-1701 through 20-16-1711**

- (a) In addition to any remedies available under the common law or statutory law of this state, failure to comply with the requirements of this subchapter shall provide a basis for a:

(1) Civil malpractice action for actual and punitive damages; and

(2) Professional disciplinary action under the Arkansas Medical Practices Act, [§ 17-95-201 et seq.](#), [§ 17-95-301 et seq.](#), and [§ 17-95-401 et seq.](#)

(b) A civil liability shall not be assessed against the woman upon whom the abortion is performed.

(c) When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may close the proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the abortion was performed or attempted.

(d) If judgment is rendered in favor of the plaintiff, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant.

(e) If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney's fee in favor of the defendant against the plaintiff.

**Ark. Code Ann. § 20-16-1906**

**Civil Remedies and Professional Discipline for Sex Discrimination by Abortion**

**Applies to Ark. Code Ann. §§ 20-16-1901 through 20-16-1910**

(a) (1) A physician or other person who knowingly violates this subchapter is liable for damages and shall have his or her medical license suspended or revoked as applicable.

(2) The physician or other person may also be enjoined from future acts prohibited by this subchapter.

(b) (1) A woman who receives an abortion in violation of this subchapter without being informed of the prohibition of abortion as a method of sex selection for children, the parent or legal guardian of the woman if the woman is a minor who is not emancipated, or the legal guardian of the woman if the woman has been adjudicated incompetent, may commence a civil action for any reckless violation of this subchapter and may seek both actual and punitive damages.

(2) Damages may include without limitation:

(A) Money damages for all psychological and physical injuries occasioned by the violation of this subchapter; and

(B) Statutory damages equal to ten (10) times the cost of the abortion performed in violation of this subchapter.

(c) A physician or other person who performs an abortion in violation of this subchapter shall be considered to have engaged in unprofessional conduct for which his or her license to provide healthcare services in this state shall be suspended or revoked by the Arkansas State Medical Board.

(d) (1) A cause of action for injunctive relief against any physician or other person who has knowingly violated this subchapter may be maintained by:

(A) A person who is the spouse, parent, guardian, or current or former licensed healthcare provider of the woman who receives or attempts to receive an abortion in violation of this subchapter; or

(B) The Attorney General.

(2) The injunction shall prevent the physician or other person from performing further abortions in violation of this subchapter.

**Ark. Code Ann. § 20-16-2105**

**Civil Remedies and Professional Discipline for Down Syndrome Discrimination by Abortion  
Applies to Ark. Code Ann. §§ 20-16-2101 through 20-16-2107**

(a) (1) A physician who knowingly violates this subchapter is liable for damages and shall have his or her medical license revoked as applicable.

(2) The physician may also be enjoined from future acts prohibited by this subchapter.

(b) (1) A woman who receives an abortion in violation of this subchapter without being informed of the prohibition of abortion for the purposes of aborting an unborn child diagnosed with Down Syndrome, the parent or legal guardian of the woman if the woman is a minor who is not emancipated, or the legal guardian of the woman if the woman has been adjudicated incompetent, may commence a civil action for any reckless violation of this subchapter and may seek both actual and punitive damages.

(2) Damages may include without limitation:

(A) Money damages for any psychological and physical injuries occasioned by the violation of this subchapter; and

(B) Statutory damages equal to ten (10) times the cost of the abortion performed in violation of this subchapter.

(c) A physician or other person who performs an abortion in violation of this subchapter shall be considered to have engaged in unprofessional conduct and his or her license to provide healthcare services in this state shall be revoked by the Arkansas State Medical Board.

(d) (1) A cause of action for injunctive relief against any physician or other person who has knowingly violated this subchapter may be maintained by:

(A) A person who is the spouse, parent, guardian, or current or former licensed healthcare provider of the woman who receives or attempts to receive an abortion in violation of this subchapter; or

(B) The Attorney General.

(2) The injunction shall prevent the physician or other person from performing further abortions in violation of this subchapter.

## California

California is one of the strongest advocates among the states for abortion extremism. One of the first states to legalize abortion before *Roe*, California has codified it in the state constitution and statutes many times since. California has dozens of abortion centers, mostly clustered around Los Angeles, and allows “abortion on demand” through virtual visits. Starting in 2024, public colleges and universities are required by California law to stock and dispense chemical abortion pills in their on-campus health clinics. California also permits non-doctors to perform abortions, and the California Supreme Court has mandated that the state's Medicaid program, MediCal, cover all abortions as “medically necessary”, meaning that California taxpayers are forced to pay for elective abortions. Governor Newsom sees himself as a champion for abortion. He recently signed legislation forcing insurance plans to cover all abortion-related costs, and in response to *Dobbs*, he signed legislation to protect Californians from “civil liability for providing, aiding, or receiving abortion care in the state.” After the 2022 Midterm Elections, Governor Newsom kept his position as Governor. Attorney General Rob Bonta will complete a second term. Fighting against this pro-abortion atmosphere are the nearly 150 pregnancy resource centers serving women across the state.

The California state legislature operates year-round in two-year sessions. Both chambers are comprised of a super-majority of pro-abortion lawmakers, and lawmakers are working with Governor Newsom and pro-abortion activists on the “California Future of Abortion Council.” The legislature is also currently considering bills that would extend the “right to abortion” to permit a form of infanticide in certain circumstances and to pay for women in other states to travel to California for late-term abortions.

California judges are appointed by the governor, confirmed by the Commission on Judicial Appointments, and then confirmed on the ballot during the next general election.

More pregnancies end in abortion in California than in any other state, but California does not gather or publicize any data on complications or outcomes. California does occasionally inspect abortion businesses, but exempts them from many building code standards.

### Constitutional Authorization

#### **Cal. Const. art.**

California Constitution Art. I § 1.1

The state shall not deny or interfere with an individual's reproductive freedom in their most intimate decisions, which includes their fundamental right to choose to have an abortion and their fundamental right to choose or refuse contraceptives. This section is intended to further the constitutional right to privacy guaranteed by Section 1, and the constitutional right to not be denied equal protection guaranteed by Section 7. Nothing herein narrows or limits the right to privacy or equal protection.

### Statutory Prohibitions

## Limitation

### Cal. Health & Safety Code § 123468

The performance of an abortion is unauthorized if performed by someone other than the pregnant person and if either of the following is true:

(a) The person performing the abortion is not a health care provider authorized to perform an abortion pursuant to Section 2253 of the Business and Professions Code.

(b) The abortion is performed on a viable fetus, and both of the following are established:

(1) In the good faith medical judgment of the physician, the fetus was viable.

(2) In the good faith medical judgment of the physician, continuation of the pregnancy posed no risk to life or health of the pregnant person.

## Shield Law for Out-Of-State Civil Liability

### Cal. Health & Safety Code § 123467.5

(a) A law of another state that authorizes a person to bring a civil action against a person or entity that does any of the following is contrary to the public policy of this state:

(1) Receives or seeks an abortion.

(2) Performs, provides, or induces an abortion.

(3) Knowingly engages in conduct that aids or abets the performance, provision, or inducement of an abortion.

(4) Attempts or intends to engage in the conduct described in paragraphs (1) to (3), inclusive.

(b) The state shall not do either of the following:

(1) Apply a law described in subdivision (a) to a case or controversy heard in state court.

(2) Enforce or satisfy a civil judgment received through an adjudication under a law described in subdivision (a).

(c) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

## Relevant Related Statutes:

### Cal. Health & Safety Code § 123468.5

(a) (1) California law governs in any action in this state, whether civil, administrative, or criminal, against any person who provides, receives, aids or abets in providing or receiving, or attempts to provide or receive, by any means, including telehealth, the health care services



described in paragraph (2) if the provider was located in this state or any other state where the care was legal at the time of the challenged conduct.

(2) Reproductive health care services and gender-affirming health care services, including gender-affirming mental health care services, are subject to paragraph (1).

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(2) Reproductive health care services and gender-affirming health care services, including gender-affirming mental health care services, are subject to paragraph (1).

## Colorado

Colorado was the first state in the nation to legalize elective abortion in 1967, based upon § 230.3 of the Model Penal Code. Colorado currently permits abortion throughout pregnancy. In 2024, Colorado voters approved a ballot initiative which enacted a broad state constitutional right to abortion, including a constitutional right to abortion funding, forcing all citizens to fund elective abortion through their state taxes. Colorado has over a dozen abortion businesses, and it allows “telemed abortion” through virtual visits. One of the only third-trimester abortion facilities in the U.S. has operated in Boulder for decades. Fortunately, Colorado has approximately 50 pregnancy centers serving women across the state.

### Constitutional Authorization

Colo. Constitution art. II, § 32

The right to abortion is hereby recognized. Government shall not deny, impede, or discriminate against the exercise of that right, including prohibiting health insurance coverage for abortion.

### Data and Documentation Requirements

#### **Colo. Code Regs. § 1006-1-10**

Within five days of ... each induced termination of pregnancy which occurs in this State, regardless of the length of gestation, the event shall be reported to the State Registrar on the prescribed Report of Spontaneous or Induced Abortion form by the person in charge of the institution in which the event occurred. If the induced termination of pregnancy was performed outside an institution, the attending physician or his designee shall prepare and submit the prescribed Report of Spontaneous or Induced Abortion form. State reports are available here: <https://cdphe.colorado.gov/center-for-health-and-environmental-data/registries-and-vital-statistics/vital-statistics-program>

## **Connecticut**

After *Dobbs*, Connecticut permits abortion until viability with broad exceptions. Connecticut has only three abortion centers but allows “telemed abortion” through virtual visits. In 2021, the General Assembly enacted a law targeting pregnancy centers. Despite continued threats from the state government, however, 20 pregnancy centers continue to serve women across Connecticut. The Connecticut General Assembly has pro-abortion majorities in both chambers. Connecticut maintains a statutory “right” to abortion, stating that the “decision to terminate a pregnancy prior to viability . . . shall be solely that of the patient in consultation with the patient’s physician or . . . advanced practice registered nurse, nurse midwife or physician assistant.” In 2022 and 2023, Connecticut lawmakers also enacted laws to protect abortion doctors from accountability if they break the law in another state or if they are sued for malpractice.

### Statutory Prohibitions

#### **Conn. Gen. Stat. § 19a-602**

(a) The decision to terminate a pregnancy prior to the viability of the fetus shall be solely that of the patient in consultation with the patient's physician or, pursuant to the provisions of subsection (d) of this section, the patient's advanced practice registered nurse, nurse-midwife or physician assistant.

(b) No abortion may be performed upon a patient after viability of the fetus except when necessary to preserve the life or health of the patient.

(c) A physician licensed pursuant to chapter 3701 may perform an abortion, as defined in section 19a-912.

(d) An advanced practice registered nurse licensed pursuant to chapter 378,2a nurse-midwife licensed pursuant to chapter 3773 and a physician assistant licensed pursuant to chapter 370 may perform medication and aspiration abortions under and in accordance with said chapters.

### Data and Documentation Requirements

#### **Conn. Agencies Regs. § 19-13-D54(b)**

(b) All induced abortions will be reported within seven days by the physician performing the procedure to the state commissioner of public health who will maintain such reports in a confidential file and use them only for statistical purposes except in cases involving licensure. Such reports will specify date of abortion, place where performed, age of woman and town and state of residence, approximate duration of pregnancy, method of abortion, and explanation of any complications. The name of the woman will not be given. These records will be destroyed within two years after date of receipt. In addition, a fetal death certificate shall be filed for each fetus born dead which is the result of gestation of not less than twenty weeks, or a live birth certificate shall be filed for each fetus born alive regardless of gestational age, as provided in sections 7-48 and 7-60 of the Connecticut General Statutes. If a live born fetus subsequently dies, a death certificate shall be filed as provided in section 7-62b of the Connecticut General Statutes.

#### Authoritative interpretation by state agencies or courts:

An unpublished decision discusses the abortion reporting requirements, but doesn't delve into the validity of the requirements. *Comm'r, Dep't of Pub. Health v. Freedom of Information Comm'n*, No. CV054007787S, 2006 WL 2677831 (Conn. Sup. Ct. Aug. 31, 2006). Regulations direct compliance with the reporting requirements. Conn. Agencies Regs. § 19-13-D53 (1996), *id.* at § 19a-116-1 (1996).

#### Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

Connecticut doesn't publicly provide the reports, and they are only available through a Freedom of Information Act request. <https://portal.ct.gov/dph/health-information-systems--reporting/abortion-statistics>.

Informed consent is required for minors, with broad exceptions, at Conn. Gen. Stat. § 19a-601.

## **Delaware**

After *Dobbs*, Delaware permits abortion up to viability due to a broad legalization law enacted in 2017, with exceptions for life and health after viability, and fetal anomaly without a “reasonable likelihood of the fetus’s sustained survival outside the uterus without extraordinary medical measures.” Delaware has just three abortion centers but allows abortion through virtual visits. Thankfully, Delaware also has at least one pregnancy center in each of its three counties. Delaware has the second-smallest legislature in the U.S., and it is dominated by pro-abortion lawmakers in both chambers. Delaware lawmakers *repealed* the state’s informed consent law in 2017, leaving women without necessary information on abortion risks and alternatives. In 2022, Delaware lawmakers went even farther and passed a law that allows physician assistants and advanced practice registered nurses to prescribe dangerous chemical abortion drugs. In the same year, the state enacted a law that protects abortionist who provide abortion services to women who reside in states where such services are illegal.

## Statutory Prohibitions

### **Del. Code Ann. tit. 24 § 1790 (2020)**

(a) Any of the following may terminate, assist in the termination of, or attempt the termination of a human pregnancy before viability:

- (1) A physician.
- (2) A physician assistant with a collaborative agreement with an appropriately-trained physician.
- (3) A certified nurse midwife or certified nurse practitioner who demonstrates knowledge and competency including successful completion of a training or certification approved by the Board of Nursing.

(b) A physician may not terminate, attempt to terminate, or assist in the termination or attempt at termination of a human pregnancy otherwise than by birth after viability, unless, in the good faith medical judgment of the physician, the termination is necessary for the protection of the woman's life or health or in the event of a fetal anomaly for which there is not a reasonable likelihood of the fetus's sustained survival outside the uterus without extraordinary medical measures.

(c) A physician assistant or an advanced practice registered nurse may prescribe medication for the termination of pregnancy including Mifeprex, Mifepristone, and Misoprostol.

## Data and Documentation Requirements

### **16 Del. Admin. Code § 3133**

Each induced termination of pregnancy which occurs in this State, regardless of the length of gestation, shall be reported to the Delaware Health Statistics Center within the Division of Public Health by the person in charge or a designated representative of the institution or abortion facility in which the induced termination of pregnancy was performed. If the induced termination of pregnancy was performed outside an institution or abortion facility, the attending physician shall prepare and file the report. Such reporting shall occur within 30 days after the end of the month in which the

induced termination of pregnancy was performed. These reports are to be used only for purposes of statistical analysis and shall not be incorporated into the permanent official records of the system of vital statistics. The reporting form shall include only those items recommended by the federal agency responsible for national vital statistics except that it shall not include any item that allows identification of patients or physicians. Furthermore, no statistical analysis shall be released which identifies the reporting institution or abortion facility.

Authoritative interpretation by state agencies or courts:

There is some discussion of the reporting requirements in *State ex rel. Jennings v. City of Seaford* to the extent that they preempt a city's pro-life ordinance. 278 A.3d 1149 (Del. Ch. Ct. 2022).

Delaware reports data to the Centers for Disease Control and Prevention (CDC). Some of the vital statistics reports are publicly available: <https://dhss.delaware.gov/dhss/dph/pubreportsaz.html>.

## Civil Liability Provisions

### **24 Del. C. § 1789B**

#### **Civil Remedies Under Parental Notice Requirements**

#### **Applies to 24 Del. C. §§ 1780 through 1789B**

Failure to give notice pursuant to the requirements of this subchapter is prima facie evidence of interference with family relations in appropriate civil actions. The law of this State shall not be construed to preclude the award of punitive damages in any civil action relevant to violations of this subchapter. Nothing in this subchapter shall be construed to limit the common law rights of parents.

## **Florida**

Florida was once seen as the abortion haven of the deep south—performing over 3,000 procedures after 15 weeks gestation every year. However, now that *Roe* is overturned, abortion has been limited at 6 weeks, thanks to a statute passed in 2023 and signed by Governor Ron DeSantis. Florida had over 30 abortion businesses, mostly in the southern half of the state, compared to the 150 pregnancy resource centers serving women across the state. In the Florida legislature, both chambers enjoy a majority of pro-life lawmakers. The legislature is part-time and traditionally has only heard one or two pro-life bills each session.

Although Florida had a state supreme court which created a state constitutional “right to abortion,” that decision was overturned by the current state supreme court in 2022, so there is no state constitutional right to abortion. A ballot initiative was defeated in 2024. Governor Ron DeSantis is pro-life. He signed laws limiting abortion to 15 weeks and six weeks gestation and preventing a minor from obtaining an abortion without her parents’ consent. After the 2022 Midterm Elections, Governor Ron DeSantis will serve another term. Both chambers remain majority pro-life.

## Statutory Prohibitions

### **Fla. Stat. § 390.0111(1)**

(1) Termination after gestational age of 6 weeks; when allowed.--A physician may not knowingly perform or induce a termination of pregnancy if the physician determines the gestational age of the fetus is more than 6 weeks unless one of the following conditions is met:

(a) Two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition.

(b) The physician certifies in writing that, in reasonable medical judgment, there is a medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition, and another physician is not available for consultation.

(c) The pregnancy has not progressed to the third trimester and two physicians certify in writing that, in reasonable medical judgment, the fetus has a fatal fetal abnormality.

(d) The pregnancy is the result of rape, incest, or human trafficking and the gestational age of the fetus is not more than 15 weeks as determined by the physician. At the time the woman schedules or arrives for her appointment to obtain the abortion, she must provide a copy of a restraining order, police report, medical record, or other court order or documentation providing evidence that she is obtaining the termination of pregnancy because she is a victim of rape, incest, or human trafficking. If the woman is 18 years of age or older, the physician must report any known or suspected human trafficking to a local law enforcement agency. If the woman is a minor, the physician must report the incident of rape, incest, or human trafficking to the central abuse hotline as required by s. 39.201.

#### **Fla. Stat. § 390.01112**

(1) No termination of pregnancy shall be performed on any human being if the physician determines that, in reasonable medical judgment, the fetus has achieved viability, unless:

(a) Two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition; or

(b) The physician certifies in writing that, in reasonable medical judgment, there is a medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition, and another physician is not available for consultation.

(2) Before performing a termination of pregnancy, a physician must determine if the fetus is viable by, at a minimum, performing a medical examination of the pregnant woman and, to the maximum extent possible through reasonably available tests and the ultrasound required

under s. 390.0111(3), an examination of the fetus. The physician must document in the pregnant woman's medical file the physician's determination and the method, equipment, fetal measurements, and any other information used to determine the viability of the fetus.

(3) If a termination of pregnancy is performed during viability, the physician performing the termination of pregnancy must exercise the same degree of professional skill, care, and diligence to preserve the life and health of the fetus that the physician would be required to exercise in order to preserve the life and health of a fetus intended to be born and not aborted. However, if preserving the life and health of the fetus conflicts with preserving the life and health of the woman, the physician must consider preserving the woman's life and health the overriding and superior concern.

### In-Person Dispensing Requirements

#### **Fla. Stat. § 390.0111(2)**

Only a physician may perform or induce a termination of pregnancy. A physician may not use telehealth as defined in s. 456.47 to perform an abortion, including, but not limited to, medical abortions. Any medications intended for use in a medical abortion must be dispensed in person by a physician and may not be dispensed through the United States Postal Service or by any other courier or shipping service.

#### Authoritative interpretation by state agencies or courts/history of enforcement:

Executive: When FDA permitted pharmacies to dispense abortion pills, the state's Agency for Health Care Administration [sent out an email](#) with a reminder there are criminal penalties for doing that in Florida.

#### Relationship between statute and other federal/state statutes relating to the subject matter:

Florida's prohibition on mailing chemical abortion drugs is consistent with federal law. The Comstock Act, 18 U.S.C. § 1461, explicitly prohibits the mailing of chemical abortion pills.

### Informed Consent Laws

#### **Fla. Stat. § 390.0111(3)**

(3) Consents required.--A termination of pregnancy may not be performed or induced except with the voluntary and informed written consent of the pregnant woman or, in the case of a mental incompetent, the voluntary and informed written consent of her court-appointed guardian.

(a) Except in the case of a medical emergency, consent to a termination of pregnancy is voluntary and informed only if:

1. The physician who is to perform the procedure, or the referring physician, has, at a minimum, orally, while physically present in the same room, and at least 24 hours before the procedure, informed the woman of:



a. The nature and risks of undergoing or not undergoing the proposed procedure that a reasonable patient would consider material to making a knowing and willful decision of whether to terminate a pregnancy.

b. The probable gestational age of the fetus, verified by an ultrasound, at the time the termination of pregnancy is to be performed.

(I) The ultrasound must be performed by the physician who is to perform the abortion or by a person having documented evidence that he or she has completed a course in the operation of ultrasound equipment as prescribed by rule and who is working in conjunction with the physician.

(II) The person performing the ultrasound must offer the woman the opportunity to view the live ultrasound images and hear an explanation of them. If the woman accepts the opportunity to view the images and hear the explanation, a physician or a registered nurse, licensed practical nurse, advanced practice registered nurse, or physician assistant working in conjunction with the physician must contemporaneously review and explain the images to the woman before the woman gives informed consent to having an abortion procedure performed.

(III) The woman has a right to decline to view and hear the explanation of the live ultrasound images after she is informed of her right and offered an opportunity to view the images and hear the explanation. If the woman declines, the woman shall complete a form acknowledging that she was offered an opportunity to view and hear the explanation of the images but that she declined that opportunity. The form must also indicate that the woman's decision was not based on any undue influence from any person to discourage her from viewing the images or hearing the explanation and that she declined of her own free will.

(IV) Unless requested by the woman, the person performing the ultrasound may not offer the opportunity to view the images and hear the explanation and the explanation may not be given if, at the time the woman schedules or arrives for her appointment to obtain an abortion, a copy of a restraining order, police report, medical record, or other court order or documentation is presented which provides evidence that the woman is obtaining the abortion because the woman is a victim of rape, incest, domestic violence, or human trafficking or that the woman has been diagnosed as having a condition that, on the basis of a physician's good faith clinical judgment, would create a serious risk of substantial and irreversible impairment of a major bodily function if the woman delayed terminating her pregnancy.

c. The medical risks to the woman and fetus of carrying the pregnancy to term.

The physician may provide the information required in this subparagraph within 24 hours before the procedure if requested by the woman at the time she schedules or arrives for her appointment to obtain an abortion and if she presents to the physician a copy of a restraining order, police report, medical record, or other court order or documentation evidencing that she is obtaining the abortion because she is a victim of rape, incest, domestic violence, or human trafficking.

2. Printed materials prepared and provided by the department have been provided to the pregnant woman, if she chooses to view these materials, including:

a. A description of the fetus, including a description of the various stages of development.

- b. A list of entities that offer alternatives to terminating the pregnancy.
- c. Detailed information on the availability of medical assistance benefits for prenatal care, childbirth, and neonatal care.

3. The woman acknowledges in writing, before the termination of pregnancy, that the information required to be provided under this subsection has been provided. Nothing in this paragraph is intended to prohibit a physician from providing any additional information which the physician deems material to the woman's informed decision to terminate her pregnancy.

(b) If a medical emergency exists and a physician cannot comply with the requirements for informed consent, a physician may terminate a pregnancy if he or she has obtained at least one corroborative medical opinion attesting to the medical necessity for emergency medical procedures and to the fact that to a reasonable degree of medical certainty the continuation of the pregnancy would threaten the life of the pregnant woman. If a second physician is not available for a corroborating opinion, the physician may proceed but shall document reasons for the medical necessity in the patient's medical records.

(c) Violation of this subsection by a physician constitutes grounds for disciplinary action under s. 458.331 or s. 459.015. Substantial compliance or reasonable belief that complying with the requirements of informed consent would threaten the life or health of the patient is a defense to any action brought under this paragraph.

Interpretation:

The Florida Department of Health implements the statute by producing and updating materials on fetal development and support services, available online and in print. No specific regulatory interpretations are noted.

Relationship statutes/ regulations relating to the subject matter:

Fla. Stat. § 390.01112: Mandates reporting of abortion data, including informed consent compliance, aligning with § 390.0111(3)'s certification requirement.

Data and Documentation Requirements

**Fla. Stat. § 390.0112**

(1) The director of any medical facility in which abortions are performed, including surgical procedures and medical abortions, shall submit a report each month to the agency. If the abortion is not performed in a medical facility, the physician performing the abortion shall submit the monthly report. The report must be submitted electronically on a form adopted by the agency, the Board of Medicine, and the Board of Osteopathic Medicine which may not include personal identifying information and must include:

- (a) The number of abortions performed.

(b) The reasons such abortions were performed. If a woman upon whom an abortion is performed has provided evidence that she is a victim of human trafficking pursuant to s. 390.0111(3)(a)1.b.(IV), such reason must be included in the information reported under this section.

(c) For each abortion, the period of gestation at the time the abortion was performed.

(d) The number of infants born alive or alive immediately after an attempted abortion.

(e) Information consistent with the United States Standard Report of Induced Termination of Pregnancy adopted by the Centers for Disease Control and Prevention.

(f) The number of medication abortion regimens prescribed or dispensed.

Authoritative interpretation by state agencies or courts:

Fla. Admin. Code Ann. r. 59A-3.282 (2024), *id.* at 59A-9.034, (2024), *id.* at r. 64B8-9.002 (2023). Agency for Health Care Admin., *Induced Termination of Pregnancy (ITOP): Reporting System Guide*, State of Florida (July 1, 2022), [https://ahca.myflorida.com/content/download/7334/file/ITOP\\_Report\\_Guide.pdf](https://ahca.myflorida.com/content/download/7334/file/ITOP_Report_Guide.pdf). State reports available here: <https://ahca.myflorida.com/health-quality-assurance/bureau-of-central-services/frequently-requested-data>.

## Civil Liability Provisions

### **Fla. Stat. Ann. § 390.0111(3)(c)**

#### **Professional Discipline for Violation of 6-Week and Informed Consent Laws**

#### **Applies to Fla. Stat. Ann. § 390.0111**

(3)(c) Violation of this subsection by a physician constitutes grounds for disciplinary action under s. 458.331 or s. 459.015. Substantial compliance or reasonable belief that complying with the requirements of informed consent would threaten the life or health of the patient is a defense to any action brought under this paragraph.

### **Fla. Stat. Ann. § 390.0114(4)(c)**

#### **Professional Discipline Under Parental Notice Requirements**

#### **Applies to Fla. Stat. Ann. § 390.0114**

(4)(c) Violation of this subsection by a physician constitutes grounds for disciplinary action under s. 458.331 or s. 459.015.

## **Georgia**

After *Dobbs*, abortion is legal in Georgia only up to 6 weeks' gestation. Georgia had 14 abortion businesses in the state but 88 pregnancy resource centers. Georgia has also enacted a 20-week limit, robust informed consent including an ultrasound requirement, an enforceable abortion reporting law which covers both surgical and chemical abortion, a limit on chemical abortion by which it may be dispensed only upon prescription by a registered practitioner, but that includes advance practice nurses, physician assistants, and even veterinarians. Governor Brian Kemp has been a strong pro-

life advocate. Unfortunately, according to AUL's Unsafe project, there have been many health and safety violations at Georgia clinics, including a situation where emergency personnel were forced to take the stairs because the building did not have a working elevator. There is much that could be done in Georgia to enforce current laws.

## Statutory Prohibitions

### **Ga. Code Ann. § 31-9B-2**

(a) Except in the case of a medical emergency or when a pregnancy is diagnosed as medically futile, no abortion shall be performed or attempted to be performed unless the physician performing such procedure has first made a determination of the presence of a detectable human heartbeat, as such term is defined in [Code Section 1-2-1](#), of an unborn child.

(b) In addition to any criminal or civil penalties provided by law, failure by any physician to conform to any requirement of this Code section constitutes unprofessional conduct for purposes of paragraph (7) of subsection (a) of [Code Section 43-34-8](#) relating to medical licensing sanctions.”

### **Ga. Code Ann. § 16-12-141**

(a) As used in this article, the term:

(1) “Abortion” means the act of using, prescribing, or administering any instrument, substance, device, or other means with the purpose to terminate a pregnancy with knowledge that termination will, with reasonable likelihood, cause the death of an unborn child; provided, however, that any such act shall not be considered an abortion if the act is performed with the purpose of:

(A) Removing a dead unborn child caused by spontaneous abortion; or

(B) Removing an ectopic pregnancy.

(2) “Detectable human heartbeat” means embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the heart within the gestational sac.

(3) “Medical emergency” means a condition in which an abortion is necessary in order to prevent the death of the pregnant woman or the substantial and irreversible physical impairment of a major bodily function of the pregnant woman. No such greater risk shall be deemed to exist if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant woman or that the pregnant woman will purposefully engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

(4) “Medically futile” means that, in reasonable medical judgment, an unborn child has a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth.

(5) “Spontaneous abortion” means the naturally occurring death of an unborn child, including a miscarriage or stillbirth.

(b) No abortion is authorized or shall be performed if an unborn child has been determined in accordance with Code Section 31-9B-2 to have a detectable human heartbeat except when:

(1) A physician determines, in reasonable medical judgment, that a medical emergency exists;

(2) The probable gestational age of the unborn child is 20 weeks or less and the pregnancy is the result of rape or incest in which an official police report has been filed alleging the offense of rape or incest. As used in this paragraph, the term “probable gestational age of the unborn child” has the meaning provided by Code Section 31-9B-1; or

(3) A physician determines, in reasonable medical judgment, that the pregnancy is medically futile.

(c) In conducting an abortion, if the child is capable of sustained life, medical aid then available shall be rendered.

(d) No abortion is authorized or shall be performed in violation of subsection (a) of Code Section 31-9B-2.

(e) (1) No abortion is authorized or shall be performed after the first trimester unless the abortion is performed in a licensed hospital, in a licensed ambulatory surgical center, or in a health facility licensed as an abortion facility by the Department of Community Health.

(2) An abortion shall be performed only by a physician licensed under Article 2 of Chapter 34 of Title 43.

(f) Health records shall be available to the district attorney of the judicial circuit in which the act of abortion occurs or the woman upon whom an abortion is performed resides.

(g) Any woman upon whom an abortion is performed in violation of this Code section may recover in a civil action from the person who engaged in such violation all damages available to her under Georgia law for any torts.

(h) It shall be an affirmative defense to prosecution under this article if:

(1) A licensed physician provides medical treatment to a pregnant woman which results in the accidental or unintentional injury to or death of an unborn child;

(2) An advanced practice registered nurse or registered professional nurse, as such terms are defined in Code Section 43-26-3, or a licensed practical nurse, as such term is defined in Code Section 43-26-32, engages in the practice of nursing to provide care for a pregnant woman which results in the accidental or unintentional injury to or death of an unborn child;

(3) A licensed pharmacist engages in the practice of pharmacy, as such term is defined in Code Section 26-4-4, to provide care for a pregnant woman which results in the accidental or unintentional injury or death of an unborn child;

(4) A licensed physician assistant, as such term is defined in Code Section 43-34-102, provides care to a pregnant woman which results in the accidental or unintentional injury to or death of an unborn child; or

(5) A woman sought an abortion because she reasonably believed that an abortion was the only way to prevent a medical emergency.

## Informed Consent Laws

### **Ga. Code Ann. § 31-9A-3**

No abortion shall be performed in this state except with the voluntary and informed consent of the female upon whom the abortion is to be performed. Notwithstanding any provision of law to the contrary, except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

(1) The female is told the following, by telephone or in person, by the physician who is to perform the abortion, by a qualified agent of the physician who is to perform the abortion, by a qualified agent of a referring physician, or by a referring physician, at least 24 hours before the abortion:

(A) The particular medical risks to the individual patient associated with the particular abortion procedure to be employed, when medically accurate;

(B) The probable gestational age and presence of a detectable human heartbeat, as such term is defined in Code Section 1-2-1, of an unborn child at the time the abortion would be performed; and

(C) The medical risks associated with carrying an unborn child to term.

The information required by this paragraph may be provided by telephone without conducting a physical examination or tests of the patient, in which case the information required to be provided may be based on facts supplied to the physician by the female and whatever other relevant information is reasonably available to the physician. Such information may not be provided by a tape recording but must be provided during a consultation in which the physician or a qualified agent of the physician is able to ask questions of the female and the female is able to ask questions of the physician or the physician's qualified agent. If in the medical judgment of the physician any physical examination, tests, or other information subsequently provided to the physician requires a revision of the information previously supplied to the patient, that revised information shall be communicated to the patient prior to the performance of the abortion. Nothing in this Code section may be construed to preclude provision of required information in a language understood by the patient through a translator;

(2) The female is informed, by telephone or in person, by the physician who is to perform the abortion, by a referring physician, or by a qualified agent of the physician who is to perform the abortion at least 24 hours before the abortion:

(A) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(B) That the father will be liable pursuant to subsection (a) of Code Section 19-7-49 to assist in the support of her child;

(C) How to obtain a list of health care providers, facilities, and clinics that offer to perform ultrasounds free of charge; such list shall be arranged geographically and shall include the name, address, hours of operation, and telephone number of each listed entity; and

(D) That she has the right to review the printed materials described in Code Section 31-9A-4 and that these materials are available on a state sponsored website at a stated website address. The physician or the physician's qualified agent shall orally inform the female that materials have been provided by the State of Georgia and that they describe the unborn child, list agencies that offer alternatives to abortion, and contain information on fetal pain. If the female chooses to view the materials other than on the website, they shall either be given to her at least 24 hours before the abortion or mailed to her at least 72 hours before the abortion by certified mail, restricted delivery to addressee.

The information required by this paragraph may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to review the printed materials other than on the website;

(3) The female certifies in writing, prior to the abortion, that the information described in paragraphs (1) and (2) of this Code section has been furnished her and that she has been informed of her opportunity to review the information referred to in subparagraph (D) of paragraph (2) of this Code section;

(4) For all cases in which an ultrasound is performed prior to conducting an abortion or a pre-abortion screen:

(A) The woman shall at the conclusion of the ultrasound be offered the opportunity to view the fetal image and hear the fetal heartbeat. The active ultrasound image shall be of a quality consistent with standard medical practice in the community, contain the dimensions of the unborn child, and accurately portray the presence of external members and internal organs, including but not limited to the heartbeat, if present or viewable, of the unborn child. The auscultation of fetal heart tone shall be of a quality consistent with standard medical practice in the community; and

(B) At the conclusion of these actions and prior to the abortion, the female certifies in writing that:



(i) She was provided the opportunity described in subparagraph (A) of this paragraph;

(ii) Whether or not she elected to view the sonogram; and

(iii) Whether or not she elected to listen to the fetal heartbeat, if present; and

(5) Prior to the performance of the abortion, the physician who is to perform the abortion or the physician's qualified agent receives a copy of the written certifications prescribed by paragraphs (3) and (4) of this Code section and retains them on file with the female's medical record for at least three years following the date of receipt.

Interpretation:

DPH ensures ultrasound lists and website compliance but offers no specific regulatory interpretations.

Relationship statutes/ regulations relating to the subject matter:

LIFE Act (§ 16-12-141): Prohibits abortions after a detectable heartbeat, except in emergencies, rape/incest (up to 20 weeks), or medical futility, making § 31-9A-3's requirements relevant only for permitted procedures.

Any other pertinent information:

Post-SisterSong (2023), § 31-9A-3 is unlikely to face state constitutional challenges, but federal litigation could test its requirements (e.g., heartbeat disclosure) if perceived as coercive.

Data and Documentation Requirements

**Ga. Code Ann. § 31-10-19**

Each induced termination of pregnancy which occurs in this state, regardless of the length of gestation or weight, shall be reported directly to the department within ten days by the person in charge of the institution or clinic, or designated representative, in which the induced termination of pregnancy was performed. If the induced termination of pregnancy was performed outside an institution or clinic, the attending physician shall prepare and file the report within the time specified by this Code section.

**Ga. Code Ann. § 16-12-141.1(c)**

(c) Within 90 days after May 10, 2005, the Department of Human Resources (now known as the Department of Public Health for these purposes) shall prepare a reporting form for physicians which shall include:

(1) The number of females whose parent or guardian was provided the notice required in paragraph (1) of subsection (a) of Code Section 15-11-682 by the physician or such physician's agent; of that number, the number of notices provided personally under subparagraphs (a)(1)(A) and (a)(1)(B) of Code Section 15-11-682 and the number of notices provided by mail under subparagraph (a)(1)(C) of Code Section 15-11-682; and, of each of

those numbers, the number of females who, to the best of the reporting physician's information and belief, went on to obtain the abortion;

(2) The number of females upon whom the physician performed an abortion without providing to the parent or guardian of a minor the notice required by subsection (a) of Code Section 15-11-682; and of that number, the number of females for which subsection (b) of Code Section 15-11-682 and Code Section 15-11-686 were applicable;

(3) The number of abortions performed upon a female by the physician after receiving judicial authorization pursuant to subsection (b) of Code Section 15-11-682 and Code Section 15-11-684; and

(4) The same information described in paragraphs (1), (2), and (3) of this subsection with respect to females for whom a guardian or conservator has been appointed.

Authoritative interpretation by state agencies or courts:

Ga. Comp. R. & Regs. 511-1-3-.21 (2017).

Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

Other:

State data available here: <https://oasis.state.ga.us/oasis/webquery/qryitop.aspx>.

Civil Liability Provisions

**Ga. Code Ann. § 16-12-141(g)**

**Civil Remedies Under Heartbeat Law**

**Applies to Ga. Code Ann. § 16-12-141**

(g) Any woman upon whom an abortion is performed in violation of this Code section may recover in a civil action from the person who engaged in such violation all damages available to her under Georgia law for any torts.

Any Other Relevant Information

This statute has been in ongoing litigation; district court's injunction was reversed and remanded by the Georgia Supreme Court in *State v. SisterSong Women of Color Reproductive Justice Collective*, 317 Ga. 528 (Ga. 2023); statute appears to be currently in effect.

**Ga. Code Ann. § 31-9A-7**

**Civil Remedies Under Informed Consent Laws**

**Applies to Ga. Code Ann. §§ 31-9A-1 through 31-9A-8**

In any civil proceeding or action relating to this chapter or a breach of duty under this chapter, the court shall rule whether the anonymity of any female upon whom an abortion has been performed shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the

sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the female should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. This Code section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

#### Relevant Related Statutes

Ga. Code Ann. § 31-9A-5(b)

## **Hawaii**

After *Roe*, abortion remains legal in Hawaii up until viability. Hawaii was one of the first states to enact a “right to abortion” in state law, and still lacks basic protections for women and unborn children like informed consent, facility regulations, or parental involvement. Hawaii has just a handful of pregnancy centers and abortion facilities. It is at the center of a lawsuit seeking to remove all federal regulations on mifepristone, one of the drugs used for chemical abortion, so it can be sent through the mail and sold in pharmacies.

Hawaii employs a Missouri-style judicial selection commission process, by which judges are appointed by the governor from a list provided by the commission and confirmed by the state senate.

The Hawaii State Legislature has a super-majority of pro-abortion lawmakers. In 2021, Hawaii lawmakers expanded abortion practice to Advanced Practice Registered Nurses and Physician Assistants.

Governor David Ige has signed every abortion expansion bill that has come to his desk. He opposed the Trump administration’s limits on Title X funding to abortion businesses and affirmed his support for *Roe v. Wade* after seeing the leaked draft opinion for *Dobbs*. Hawaii does not inspect or license abortion clinics, so AUL has not been able to obtain any records from the state department of health.

After the 2022 Midterm Elections, Josh Green will serve as Governor. Both chambers kept a majority of pro-abortion lawmakers.

#### Statutory Prohibitions

##### **Haw. Rev. Stat. § 453-16**

(a) A licensed physician or surgeon or licensed osteopathic physician and surgeon may provide abortion care. A licensed physician assistant may provide medication or aspiration abortion care in the first trimester of pregnancy.

(b) The State shall not deny or interfere with a pregnant person's right to choose to:

(1) Obtain an abortion; or

(2) Terminate a pregnancy if the termination is necessary to protect the life or health of the pregnant person.

(c) Nothing in this section shall require any hospital or any person to participate in an abortion nor shall any hospital or any person be liable for a refusal.

(d) For purposes of this section:

“Abortion” means an intentional termination of the pregnancy of a nonviable fetus.

“Nonviable fetus” means a fetus that does not have a reasonable likelihood of sustained survival outside of the uterus.

## Idaho

After *Roe*, Idaho law will prohibit most abortions pursuant to its “delayed enforcement” or “conditional” law, with limited exceptions. This is in ongoing litigation. Idaho has made considerable progress over the past two decades in enacting pro-life principles into law, with limits on chemical abortion, including a requirement of in-person administration by a physician, and a prohibition on telehealth abortion, as well as an enforceable abortion data reporting law that applies to both surgical and chemical abortions. Idaho also has a fetal homicide law with protection from conception. Idaho has nineteen pregnancy resource centers to its four abortion businesses, which are currently closed pending litigation.

Idaho’s judiciary has five supreme court justices elected to six-year terms on a nonpartisan ballot, and appellate court judges are also elected to six-year terms. Other than the lawsuits against the conditional law and heartbeat law, there is no ongoing litigation in Idaho.

Governor Brad Little is pro-life and was one of the governors who signed onto the onto an *amicus* brief in *Dobbs v. Jackson Women’s Health Organization*, arguing the Supreme Court should overturn *Roe*. After the result was released, he issued a press statement “welcoming” the decision and affirming Idaho’s commitment to support pregnant women.

After the 2022 Midterm Elections, Brad Little will serve another term as Governor. Both chambers have a majority of pro-life lawmakers.

### Statutory Prohibitions

#### **Idaho Code § 18-622**

(1) Except as provided in subsection (2) of this section, every person who performs or attempts to perform an abortion as defined in this chapter commits the crime of criminal abortion. Criminal

abortion shall be a felony punishable by a sentence of imprisonment of no less than two (2) years and no more than five (5) years in prison. The professional license of any health care professional who performs or attempts to perform an abortion or who assists in performing or attempting to perform an abortion in violation of this subsection shall be suspended by the appropriate licensing board for a minimum of six (6) months upon a first offense and shall be permanently revoked upon a subsequent offense.

(2) The following shall not be considered criminal abortions for purposes of subsection (1) of this section:

(a) The abortion was performed or attempted by a physician as defined in this chapter and:

(i) The physician determined, in his good faith medical judgment and based on the facts known to the physician at the time, that the abortion was necessary to prevent the death of the pregnant woman. No abortion shall be deemed necessary to prevent the death of the pregnant woman because the physician believes that the woman may or will take action to harm herself; and

(ii) The physician performed or attempted to perform the abortion in the manner that, in his good faith medical judgment and based on the facts known to the physician at the time, provided the best opportunity for the unborn child to survive, unless, in his good faith medical judgment, termination of the pregnancy in that manner would have posed a greater risk of the death of the pregnant woman. No such greater risk shall be deemed to exist because the physician believes that the woman may or will take action to harm herself; or

(b) The abortion was performed or attempted by a physician as defined in this chapter during the first trimester of pregnancy and:

(i) If the woman is not a minor or subject to a guardianship, then, prior to the performance of the abortion, the woman has reported to a law enforcement agency that she is the victim of an act of rape or incest and provided a copy of such report to the physician who is to perform the abortion. The copy of the report shall remain a confidential part of the woman's medical record subject to applicable privacy laws; or

(ii) If the woman is a minor or subject to a guardianship, then, prior to the performance of the abortion, the woman or her parent or guardian has reported to a law enforcement agency or child protective services that she is the victim of an act of rape or incest and a copy of such report has been provided to the physician who is to perform the abortion. The copy of the report shall remain a confidential part of the woman's medical record subject to applicable privacy laws.

(3) If a report concerning an act of rape or incest is made to a law enforcement agency or child protective services pursuant to subsection (2)(b) of this section, then the person who made the report shall, upon request, be entitled to receive a copy of such report within seventy-two (72) hours of the report being made, provided that the report may be redacted as necessary to avoid interference with an investigation.

(4) Medical treatment provided to a pregnant woman by a health care professional as defined in this chapter that results in the accidental death of, or unintentional injury to, the unborn child shall not be a violation of this section.

(5) Nothing in this section shall be construed to subject a pregnant woman on whom any abortion is performed or attempted to any criminal conviction and penalty.

### **Idaho Code §§ 18-8804**

(1) A person may not perform an abortion on a pregnant woman when a fetal heartbeat has been detected, except in the case of a medical emergency, in the case of rape as defined in section 18-6101, Idaho Code, or in the case of incest as described in section 18-6601, Idaho Code. In the case of rape or incest:

(a) If the woman is not a minor or subject to guardianship, then, prior to the performance of the abortion, the woman has reported the act of rape or incest to a law enforcement agency and provided a copy of such report to the physician who is to perform the abortion; or

(b) If the woman is a minor or subject to guardianship, then, prior to the performance of the abortion, the woman or her parent or guardian has reported the act of rape or incest to a law enforcement agency or child protective services and a copy of such report have been provided to the physician who is to perform the abortion.

(2) Nothing in this section recognizes a right to abortion before a fetal heartbeat is detected.

### **In-Person Dispensing Requirements**

#### **Idaho Code § 18-617(2)**

No physician shall give, sell, dispense, administer, prescribe or otherwise provide an abortifacient for the purpose of effecting a chemical abortion unless the physician:

(a) Has the ability to assess the duration of the pregnancy accurately in accordance with the applicable standard of care for medical practice in the state;

(b) Has determined, if clinically feasible, that the unborn child to be aborted is within the uterus and not ectopic;

(c) Has the ability to provide surgical intervention in cases of incomplete abortion or severe bleeding, or, if the physician does not have admitting privileges at a local hospital, has made and documented in the patient's medical record plans to provide such emergency care through other qualified physicians who have agreed in writing to provide such care;

(d) Informs the patient that she may need access to medical facilities equipped to provide blood transfusions and resuscitation, if necessary, as a result of or in connection with the abortion procedure on a twenty-four (24) hour basis. If the appropriate medical facility is other than a local hospital emergency room, the physician shall provide the patient with the name, address and telephone number of such facility in writing; and

(e) Has complied with the informed consent provisions of section 18-609, Idaho Code.

Authoritative interpretation by state agencies or courts/history of enforcement:

Executive: When FDA permitted pharmacies to dispense abortion pills, the AG joined a [letter](#) against this decision, which noted some state laws require in-person dispensing.

Relationship between statute and other federal/state statutes relating to the subject matter:

Although Idaho's law does not expressly prohibit the mailing of chemical abortion drugs, Idaho Code § 18-617 helps to ensure that women receive chemical abortion pills directly from the abortionist rather than through the mail. This is consistent with federal law. The Comstock Act, 18 U.S.C. § 1461, prohibits the mailing of chemical abortion pills.

Idaho enacted a law that protects minors from abortion trafficking, including prohibiting adults from obtaining chemical abortion pills for minors (Idaho Code § 18-623). Although the law is temporarily enjoined, if it goes into effect, it will strengthen the state's current laws aimed at protecting women from the harm of chemical abortion.

Idaho has a total ban on abortion (Idaho Code § 18-622).

## Informed Consent Laws

### **Idaho Code § 18-609**

(1) Any physician may perform an abortion not prohibited by this act and any hospital or other facility described in section 18-608, Idaho Code, may provide facilities for such procedures without, in the absence of negligence, incurring civil liability therefor to any person including, but not limited to, the pregnant patient and the prospective father of the fetus to have been born in the absence of abortion, if informed consent for such abortion has been duly given by the pregnant patient.

(2) In order to provide assistance in assuring that the consent to an abortion is truly informed consent, the director of the department of health and welfare shall publish easily comprehended, nonmisleading and medically accurate printed material to be made available at no expense to physicians, hospitals or other facilities providing abortion and abortion-related services, and which shall contain the following:

(a) Descriptions of the services available to assist a woman through a pregnancy, at childbirth and while the child is dependent, including adoption services, a comprehensive list of the names, addresses, and telephone numbers of public and private agencies that provide such services and financial aid available;

(b) Descriptions of the physical characteristics of a normal fetus, described at two (2) week intervals, beginning with the fourth week and ending with the twenty-fourth week of development, accompanied by scientifically verified photographs of a fetus during such stages of development. The description shall include information about physiological and anatomical characteristics;



(c) Descriptions of the abortion procedures used in current medical practices at the various stages of growth of the fetus and any reasonable foreseeable complications and risks to the mother, including those related to subsequent childbearing;

(d) A list, compiled by the department of health and welfare, of health care providers, facilities and clinics that offer to perform ultrasounds free of charge and that have contacted the department annually with a request to be included in the list. The list shall be arranged geographically and shall include the name, address, hours of operation, telephone number and e-mail address of each entity;

(e) A statement that the patient has a right to view an ultrasound image and to observe the heartbeat monitoring of her unborn child and that she may obtain an ultrasound free of charge. The statement shall indicate that printed materials required by the provisions of this section contain a list, compiled by the department of health and welfare, of health care providers, facilities and clinics that offer to perform such ultrasounds free of charge;

(f) Information directing the patient where to obtain further information and assistance in locating a health care provider whom she can consult about chemical abortion, including the interventions, if any, that may affect the effectiveness or reversal of a chemical abortion, and informs the patient that if she wants to consult with such health care providers, she should contact those health care providers before she takes the abortifacient; and

(g) A section specific to unborn children diagnosed with Down syndrome in order to help educate mothers about the development of children with Down syndrome and the resources available in both the private and public sectors to assist parents of children with Down syndrome with the delivery and care of a child born with Down syndrome. The section shall include:

(i) Easily comprehended, medically accurate information regarding the development of a child with Down syndrome, including treatment and therapy strategies available during a pregnancy and after birth; and

(ii) Descriptions of the services available to assist Idaho families with children born with Down syndrome, including adoption services, support agencies, and organizations in both the public and private sectors. Such directory shall include the name, address, telephone number, website, and email address of agencies, ministries, and organizations that provide financial, medical, emotional, and spiritual support services to mothers and families with a child with Down syndrome.

The department shall ensure that a Spanish language version of the informed consent materials required in this subsection is made available to women considering an abortion.

- (3) (a) The department of health and welfare shall develop and maintain a stable internet website, that may be part of an existing website, to provide the information described in subsection (2) of this section. No information regarding persons using the website shall be collected or maintained. The department of health and welfare shall monitor the website on a weekly basis to prevent and correct tampering.

(b) As used in this section, “stable internet website” means a website that, to the extent reasonably practicable, is safeguarded from having its content altered other than by the department of health and welfare.

(c) When a pregnant patient contacts a physician by telephone or visit and inquires about obtaining an abortion, the physician or the physician's agent before or while scheduling an abortion-related appointment must provide the woman with the address of the state-sponsored internet website on which the printed materials described in subsection (2) of this section may be viewed as required in subsection (2) of this section.

(4) Except in the case of a medical emergency, no abortion shall be performed unless, prior to the abortion, the attending physician or the attending physician's agent certifies in writing that the materials provided by the director have been provided to the pregnant patient at least twenty-four (24) hours before the performance of the abortion. If the materials are not available from the director of the department of health and welfare, no certification shall be required. The attending physician, or the attending physician's agent, shall provide any other information required under this act.

(5) Except in the case of medical emergency, no abortion shall be performed unless, prior to an initial consultation or any testing, and not less than twenty-four (24) hours prior to the performance of the abortion, the woman is informed by telephone or in person, by the physician who is to perform the abortion or by an agent of the physician, that ultrasound imaging and heartbeat monitoring are available to the woman enabling the pregnant woman to view her unborn child or observe the heartbeat of the unborn child. The physician or agent of the physician shall inform the pregnant woman that the website and printed materials described in subsection (2)(d), (e) and (f) of this section contain telephone numbers, addresses and e-mail addresses of facilities that offer such services at no cost. If the woman contacts the abortion facility by e-mail, the physician or agent of the physician shall inform the woman of the requirements of this subsection by e-mail with the required information in a larger font than the rest of the e-mail. No fee for an abortion shall be collected prior to providing the information required in this subsection.

(6) All physicians or their agents who use ultrasound equipment in the performance of an abortion shall inform the patient that she has the right to view the ultrasound image of her unborn child before an abortion is performed. If the patient requests to view the ultrasound image, she shall be allowed to view it before an abortion is performed. The physician or agent shall also offer to provide the patient with a physical picture of the ultrasound image of her unborn child prior to the performance of the abortion, and shall provide it if requested by the patient. In addition to providing the material, the attending physician may provide the pregnant patient with such other information which in the attending physician's judgment is relevant to the pregnant patient's decision as to whether to have the abortion or carry the pregnancy to term.

(7) Within thirty (30) days after performing any abortion without certification and delivery of the materials, the attending physician, or the attending physician's agent, shall cause to be delivered to the director of the department of health and welfare, a report signed by the attending physician, preserving the patient's anonymity, denoting the medical emergency that excused compliance with the duty to deliver the materials. The director of the department of health and welfare shall compile the information annually and report to the public the total number of abortions performed in the state where delivery of the materials was excused; provided that any information so reported shall not identify any physician or patient in any manner which would reveal their identities.

(8) If section 18-608(3), Idaho Code, applies to the abortion to be performed and the pregnant patient is an adult and for any reason unable to give a valid consent thereto, the requirement for that pregnant patient's consent shall be met as required by law for other medical or surgical procedures and shall be determined in consideration of the desires, interests and welfare of the pregnant patient.

(9) The knowing failure of the attending physician to perform any one (1) or more of the acts required under subsection (7) of this section or section 39-261, Idaho Code, is grounds for discipline pursuant to section 54-1814(6), Idaho Code, and shall subject the physician to assessment of a civil penalty of one hundred dollars (\$100) for each month or portion thereof that each such failure continues, payable to the vital statistics unit of the department of health and welfare, but such failure shall not constitute a criminal act.

Relationship statutes/ regulations relating to the subject matter:

Trigger Ban (§ 18-622): Prohibits abortions except for life-threatening conditions or reported rape/incest, limiting § 18-609's application to these cases.

### Data and Documentation Requirements

**Idaho: Idaho Code Ann. § 18-609G; *id.* § 18-506; *id.* § 39-261; *id.* §§ 39-9504 through 39-9509(2018).**

#### **Idaho Code Ann. § 18-506**

(1) Any physician who performs or induces or attempts to perform or induce an abortion shall report to the department of health and welfare, on a schedule and in accordance with forms and rules adopted and promulgated by the department:

- (a) If a determination of probable postfertilization age was made, the probable postfertilization age determined and the method and basis of the determination;
- (b) If a determination of probable postfertilization age was not made, the basis of the determination that a medical emergency existed;
- (c) If the probable postfertilization age was determined to be twenty (20) or more weeks, the basis of the determination that the pregnant woman had a condition that so complicated her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, or the basis of the determination that it was necessary to preserve the life of an unborn child; and
- (d) The method used for the abortion.

#### **Idaho Code Ann. § 39-9504**

(1) Every hospital, licensed health care facility or individual medical practitioner shall file a written report with the department regarding each woman who comes under the hospital's, health care facility's or medical practitioner's care and receives treatment for any item listed in section 39-9503(2), Idaho Code, that the attending medical practitioner has reason to believe, in the

practitioner's reasonable medical judgment, constitutes an abnormal or a deviant process or event arising from the performance or completion of an abortion. . . .

Authoritative interpretation by state agencies or courts:

District court denied a preliminary injunction: District court denied a preliminary injunction against Idaho Code Ann. § 39-9504 (2019) in *Planned Parenthood of the Great Nw. & the Hawaiian Islands v. Waden*, 350 F. Supp. 3d 925 (D. Idaho 2018).

Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

Other:

State reports available here:  
<https://publicdocuments.dhw.idaho.gov/WebLink/Browse.aspx?id=11599&dbid=2&repo=PUBLI C-DOCUMENTS&cr=1>.

Civil Liability Provisions

**Idaho Code § 18-8805(3)**

**Professional Discipline Under Heartbeat Law**

**Applies to Idaho Code §§ 18-8801 through 18-8808**

(3) The professional license of any health care professional who performs or induces an abortion or who assists in performing or inducing an abortion in violation of this chapter shall be suspended by the appropriate licensing board for a minimum of six (6) months upon a first offense and shall be permanently revoked upon a subsequent offense.

**Idaho Code § 18-8807**

**Civil Remedies Under Heartbeat Law**

**Applies to Idaho Code §§ 18-8801 through 18-8808**

(1) Any female upon whom an abortion has been attempted or performed, the father of the preborn child, a grandparent of the preborn child, a sibling of the preborn child, or an aunt or uncle of the preborn child may maintain an action for:

- (a) All damages from the medical professionals who knowingly or recklessly attempted, performed, or induced the abortion in violation of this chapter;
- (b) Notwithstanding any other provision of law, statutory damages in an amount not less than twenty thousand dollars (\$20,000) from the medical professionals who knowingly or recklessly attempted, performed, or induced an abortion in violation of this chapter; and
- (c) Costs and attorney's fees.

(2) Notwithstanding any other provision of law, a person may bring an action under this section not later than four (4) years following the date the cause of action accrues.

(3) Notwithstanding any other provision of law, including chapter 1, title 12, Idaho Code, a court may not award costs or attorney's fees to a defendant in an action brought under this section unless the defendant has complied with the applicable requirements of sections 18-8803 and 18-8804, Idaho Code.

(4) The civil causes of action provided for in this section exist independently of any criminal action commenced pursuant to this chapter. A civil cause of action may be pursued under the provisions of this chapter even if a criminal prosecution is not pursued.

(5) Notwithstanding any other provision of law, including chapters 14, 17, and 18, title 54, Idaho Code, the requirements of this section shall be enforced exclusively through the private civil causes of action described. No enforcement of this section may be taken or threatened against any person by this state, a political subdivision of this state, a prosecuting attorney, or an executive or administrative officer or employee of this state or a political subdivision of this state.

(6) Notwithstanding any other provision of law, this state, a state official, or a prosecuting attorney may not intervene in an action brought under this section. Nothing in this subsection shall prohibit a person described in this subsection from filing an amicus curiae brief in the action.

(7) Nothing in this section shall be deemed to affect any familial rights or responsibilities or any proceedings conducted under Idaho law.

(8) In an action brought under this section, a court may not award compensatory or punitive damages if a person demonstrates that the person paid, or has been ordered to pay, compensatory or punitive damages, respectively, in a previous civil action for that particular violation of this chapter.

(9) Notwithstanding any other law to the contrary, a civil action may not be brought under this section by a person who, through an act of rape, sexual assault, incest, or other criminal conduct, impregnated the pregnant woman seeking an abortion in violation of this chapter.

(10) Notwithstanding any other law to the contrary, the following shall not be defenses to an action brought under this section:

- (a) That the pregnant woman or, if the pregnant woman is a minor, a parent or guardian consented to an unlawful abortion;
- (b) Ignorance or mistake of law;
- (c) A person's belief that any provision of this section is or was unconstitutional;
- (d) A person's reliance on a state or federal court decision that is not binding on the court in which the action has been brought;
- (e) Non-mutual issue preclusion or non-mutual claim preclusion;
- (f) Contributory or comparative negligence;
- (g) Assumption of risk; or

(h) A claim that an action brought under the section will violate a constitutional right of a third party.

(11) Notwithstanding any other law to the contrary, a court may:

(a) Not award attorney's fees or costs to a person subject to an action brought under this section unless the action is frivolous, without foundation, or brought in bad faith or for the sole reason for delay;

(b) Not award attorney's fees or costs to a person who prevails in challenging the constitutionality of this section under state law, unless the defense of this section is frivolous, without foundation, or brought in bad faith or for the sole reason for delay; and

(c) Award attorney's fees or costs to a person who prevails in defending the constitutionality of this section under state law, even though the challenge to the constitutionality of this section was not frivolous, without foundation, or brought in bad faith or for the sole reason for delay.

(12) The provisions of this section shall not be construed to impose liability on speech or conduct protected by the first amendment of the United States constitution<sup>1</sup> or by section 9, article I of the constitution of the state of Idaho.

#### **Idaho Code § 18-618**

#### **Civil Remedies for Abortion-Inducing Drugs**

#### **Applies to Idaho Code §§ 18-617**

Any female upon whom an abortion has been attempted or performed, or the father of the unborn child who was the subject of the abortion if the father was married to the woman who received the abortion at the time the abortion was attempted or performed, or a maternal grandparent of the unborn child in the event the mother is deceased, may maintain an action for actual damages against the person who in knowing or reckless violation of section 18-617, Idaho Code, attempted or performed the abortion. The court may, in its discretion, award punitive damages pursuant to section 6-1604, Idaho Code, and enjoin further violations of sections 18-617

## **Illinois**

After *Roe*, abortion remains legal in Illinois up to viability with exceptions thereafter. Illinois will continue to be an abortion hub, as it is surrounded by states that are more pro-life. The state currently has 26 abortion businesses, compared to 97 pregnancy care centers throughout the state. Nonetheless, Planned Parenthood has expanded its abortion operations in Illinois, encouraged by state public funding for abortion.

In 2019, the Illinois General Assembly passed a sweeping and devastating *Roe*-type “Reproductive Health Act” (RHA), which repealed the Illinois Abortion Law of 1975 that had been passed in response to *Roe*. It also repealed the partial-birth abortion ban and the state’s conscientious objection law, and it states that “[a] fertilized egg, embryo, or fetus does not have independent rights under



the law of this State.” (Thankfully, the RHA did not expressly repeal the Illinois fetal homicide law or the prenatal injury law.) The RHA also required insurance companies to cover abortions if they provide other pregnancy-related coverage, and repealed prohibitions on abortion funding. The RHA removed abortion from medical procedures that the state could regulate, and eliminated all authority to regulate abortion facilities. In 2022, Illinois repealed the state parental notice statute.

Illinois’ judiciary has seven supreme court justices elected on a nonpartisan ballot to ten-year terms. The appellate court judges are elected in the same way to a ten-year term. Although the state supreme court turned back a challenge to the state’s parental involvement law a few years ago, Illinois could be vulnerable to a state constitutional “right to abortion” in the future.

Newly re-elected Governor J.B. Pritzker is a staunch supporter of abortion. In his response to the release of the *Dobbs* opinion, he called the majority “extremists” and the decision “abhorrent.” He lamented the “indelible stain on our nation” and bemoaned the “dangerous spiral that will erode our democracy.” Governor Pritzker swore that “Illinois will be a safe haven for the exercise of your reproductive rights” and stated he would call a special session to “more firmly protect women’s reproductive rights.”

### Statutory Prohibitions

#### **775 Ill. Comp. Stat. 55/1-25(a)**

(a) A health care professional may provide abortion care in accordance with the health care professional's professional judgment and training and based on accepted standards of clinical practice consistent with the scope of his or her practice under the Medical Practice Act of 1987, the Nurse Practice Act, or the Physician Assistant Practice Act of 1987. An advanced practice registered nurse or physician assistant as defined in this Act may perform aspiration abortion procedures that do not require general anesthesia, consistent with their training and standards of clinical practice and, if applicable, consistent with any collaborative agreement. If the health care professional determines that there is fetal viability, the health care professional may provide abortion care only if, in the professional judgment of the health care professional, the abortion is necessary to protect the life or health of the patient.

#### **775 Ill. Comp. Stat. 55/1-15**

(a) Every individual has a fundamental right to make autonomous decisions about the individual's own reproductive health, including the fundamental right to use or refuse reproductive health care.

(b) Every individual who becomes pregnant has a fundamental right to continue the pregnancy and give birth or to have an abortion, and to make autonomous decisions about how to exercise that right.

(c) A fertilized egg, embryo, or fetus does not have independent rights under the laws of this State.

### Data and Documentation Requirements



**775 Ill. Comp. Stat. 55/1-25**

(a) A health care professional may provide abortion care in accordance with the health care professional's professional judgment and training and based on accepted standards of clinical practice consistent with the scope of his or her practice under the Medical Practice Act of 1987, the Nurse Practice Act, or the Physician Assistant Practice Act of 1987. An advanced practice registered nurse or physician assistant as defined in this Act may perform aspiration abortion procedures that do not require general anesthesia, consistent with their training and standards of clinical practice and, if applicable, consistent with any collaborative agreement. If the health care professional determines that there is fetal viability, the health care professional may provide abortion care only if, in the professional judgment of the health care professional, the abortion is necessary to protect the life or health of the patient.

(b) A report of each abortion performed by a health care professional shall be made to the Department on forms prescribed by it. Such reports shall be transmitted to the Department on a quarterly basis.

Authoritative interpretation by state agencies or courts: Ill. Admin. Code tit. 77 §§ 505.10 to 505.app. C (2013).

Relationship between statute and other federal/state statutes relating to the subject matter: State reports data to CDC.

Other: State statistics available here: <https://dph.illinois.gov/data-statistics/vital-statistics/abortion-statistics.html>.

## Indiana

After the overturning of *Roe*, Indiana's legislature met in a special session and passed a law that would prohibit all abortions except in limited circumstances. The law was challenged in court and was temporarily enjoined; however, the Indiana Supreme Court recently vacated the injunction, allowing the law to take effect. This law was the result of Indiana moving strongly toward embracing life over the past two decades. Over the years, Indiana has passed numerous pro-life measures, including a prohibition on partial-birth abortion, a prohibition on abortion for discriminatory reasons, fetal homicide with protection from conception, and the AUL model abortion data reporting law which requires the reporting of information to the Centers for Disease Control, applies to both surgical and chemical abortions, and requires abortion providers to report both short-term and long-term complications. Indiana's people and culture are solidly pro-life, with close to one hundred pregnancy resource centers compared to six abortion clinics.

Indiana's judiciary has a "Missouri-style" judicial selection system, with five Supreme Court justices appointed by the governor from a list provided by a judicial nominating commission for a term of two years, and they then must be elected by a statewide popular vote for ten-year terms. However, given the state's leadership for life, it is doubtful that the abortion industry would be able to obtain a state appellate decision finding a "right to abortion" in state law.

Indiana has benefited from pro-life executive leadership that has been committed to strategically defending pro-life laws in the courts and have won several decisions in the U.S. Supreme Court to uphold its laws.

## Statutory Prohibitions

### **Ind. Code § 16-34-2-1(a)(2)**

(a) Abortion shall in all instances be a criminal act, except when performed under the following circumstances:

(1) Except as prohibited in IC 16-34-4, before the earlier of viability of the fetus or twenty (20) weeks of postfertilization age of the fetus, if:

(A) for reasons based upon the professional, medical judgment of the pregnant woman's physician, if either:

(i) the abortion is necessary when reasonable medical judgment dictates that performing the abortion is necessary to prevent any serious health risk to the pregnant woman or to save the pregnant woman's life; or

(ii) the fetus is diagnosed with a lethal fetal anomaly;

(B) the abortion is performed by the physician in a hospital licensed under IC 16-21 or an ambulatory outpatient surgical center (as defined in IC 16-18-2-14) that has a majority ownership by a hospital licensed under IC 16-21;

(C) the woman submitting to the abortion has filed her consent with her physician. However, if in the judgment of the physician the abortion is necessary to preserve the life of the woman, her consent is not required;

(D) the woman submitting to the abortion has filed with her physician the written consent of her parent or legal guardian if required under section 4 of this chapter; and

(E) before the abortion, the attending physician shall certify in writing to the hospital or ambulatory outpatient surgical center in which the abortion is to be performed, that:

(i) in the attending physician's reasonable medical judgment, performing the abortion is necessary to prevent any serious health risk to the pregnant woman or to save the pregnant woman's life; or

(ii) the fetus has been diagnosed with a lethal fetal anomaly.

All facts and reasons supporting the certification shall be set forth by the physician in writing and attached to the certificate.

However, under this article, an abortion inducing drug may not be dispensed, prescribed, administered, or otherwise given to a pregnant woman after eight (8) weeks of postfertilization age. A physician must dispense the abortion inducing drug in person and have the pregnant woman consume the drug in the presence of the physician. A physician shall examine a pregnant woman in person before prescribing or dispensing an abortion inducing drug. The physician shall provide the pregnant woman with a copy of the manufacturer's instruction sheets and require that the pregnant woman sign the manufacturer's patient agreement form. A physician shall also provide, orally and in writing, along with other discharge information, the following statement: "Some evidence suggests that the effects of Mifepristone may be avoided, ceased, or reversed if the second pill, Misoprostol, has not been taken. Immediately contact the following for more information at (insert applicable abortion inducing drug reversal Internet web site and corresponding hotline number)." The physician shall retain a copy of the signed patient agreement form, and the signed physician's agreement form required by the manufacturer, in the patient's file. As used in this subdivision, "in person" does not include the use of telehealth or telemedicine services.

(2) Except as prohibited by IC 16-34-4, during the first ten (10) weeks of postfertilization age of the fetus, if:

(A) the pregnancy is a result of rape or incest;

(B) all the circumstances and provisions required for legal abortion set forth in subdivision (1)(C) through (1)(D) are present and adhered to;

(C) the abortion is performed in a hospital licensed under IC 16-21 or ambulatory outpatient surgical center (as defined in IC 16-18-2-14) that has a majority ownership by a hospital licensed under IC 16-21; and

(D) before the abortion, the attending physician shall certify in writing to the ambulatory outpatient surgical center or hospital in which the abortion is to be performed, after proper examination, the abortion is being performed at the woman's request because the pregnancy is the result of rape or incest. All facts and reasons supporting the certification shall be set forth by the physician in writing and attached to the certificate.

(3) Except as provided in subsection (b) or as prohibited by IC 16-34-4, at the earlier of viability of the fetus or twenty (20) weeks of postfertilization age and any time after, for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) based on reasonable medical judgment, performing the abortion is necessary to prevent any serious health risk to the pregnant woman or to save the pregnant woman's life;

(B) all the circumstances and provisions required for legal abortion set forth in subdivision (1)(C) through (1)(D) are present and adhered to;

(C) the abortion is performed in a hospital licensed under IC 16-21;

(D) the abortion is performed in compliance with section 3 of this chapter; and

(E) before the abortion, the attending physician shall certify in writing to the hospital in which the abortion is to be performed, that in the attending physician's reasonable medical judgment, performing the abortion is necessary to prevent any serious health risk to the pregnant woman or to save the pregnant woman's life. All facts and reasons supporting the certification shall be set forth by the physician in writing and attached to the certificate.

(b) A person may not knowingly or intentionally perform a partial birth abortion unless a physician reasonably believes that:

(1) performing the partial birth abortion is necessary to save the mother's life; and

(2) no other medical procedure is sufficient to save the mother's life.

(c) A person may not knowingly or intentionally perform a dismemberment abortion unless reasonable medical judgment dictates that performing the dismemberment abortion is necessary:

(1) to prevent any serious health risk to the mother; or

(2) to save the mother's life.

(d) Telehealth and telemedicine may not be used to provide any abortion, including the writing or filling of a prescription for any purpose that is intended to result in an abortion.

### In-Person Dispensing Requirements

#### **Ind. Code § 16-34-2-1 (a)(1)**

A physician must dispense the abortion inducing drug in person and have the pregnant woman consume the drug in the presence of the physician. . . . As used in this subdivision, “in person” does not include the use of telehealth or telemedicine services.

#### **Ind. Code § 16-34-2-1(d)**

Telehealth may not be used to provide any abortion, including the writing or filling of a prescription for any purpose that is intended to result in an abortion.

#### **Ind. Code § 16-34-1-11**

Telehealth may not be used to provide any abortion, including the writing or filling of a prescription for any purpose that is intended to result in an abortion.

#### **Ind. Code § 25-1-9.5-8**

A prescriber may issue a prescription to a patient who is receiving services through the use of telehealth if the patient has not been examined previously by the prescriber in person if the following conditions are met: . . . The prescription is not for an abortion inducing drug.

Authoritative interpretation by state agencies or courts/history of enforcement:

Executive: When FDA permitted pharmacies to dispense abortion pills, the Attorney General joined a [letter](#) sent to pharmacies that mentioned many states prohibit the mailing of abortion drugs, and included a cite to this statute.

Judicial:

Ongoing litigation: *Satanic Temple, Inc. v. Rokita*, 2023 WL 7016211, Case No. 1:22-cv-01859-JMS-MG (D. Ct. ID. Oct. 25, 2023). The Satanic Temple challenged the state's prohibition on telehealth and mailing abortion, arguing that it violated the Religious Freedom Restoration Act by prohibiting its members from performing Satanic Abortion rituals. The court found that the Satanic Temple lacked standing and dismissed the complaint. Case has been appealed to 7<sup>th</sup> Circuit.

Resolved litigation: *Whole Woman's Health Alliance, et al., v. Rokita, et al.*, 13 F.4<sup>th</sup> 595 (7th Cir. Sept. 8, 2021). The District Court entered an injunction against several statutes, including Ind. Code § 16-34-2-1 (a)(1) to the extent that it prohibits the use of telemedicine by requiring the physician to dispense the abortion-inducing drug and against the telemedicine ban pursuant to Ind. Code § 25-1-9.5-8. On appeal, the 7th circuit stayed the injunction, holding that the state was likely to prevail on its claim that the challenged statutes were constitutional. Specifically, the court found that previous precedent allowed for a state to require in-person meetings with physicians before an abortion, which also solidified the validity of telemedicine restrictions.

Relationship between statute and other federal/state statutes relating to the subject matter:

Indiana's prohibition on mailing chemical abortion drugs is consistent with federal law. The Comstock Act, 18 U.S.C. § 1461, explicitly prohibits the mailing of chemical abortion pills.

Indiana has a total ban on abortion (Ind. Code § 16-34-2-1).

Informed Consent Laws

**Ind. Code § 16-34-2-1.1<sup>1</sup>**

Sec. 1.1.

(a) An abortion shall not be performed except with the voluntary and informed consent of the pregnant woman upon whom the abortion is to be performed. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if the following conditions are met:

(1) At least eighteen (18) hours before the abortion and in the private, not group, presence of the pregnant woman, the physician who is to perform the abortion, the referring physician or a physician assistant (as defined in IC 25-27.5-2-10), an advanced practice registered nurse (as defined in IC 25-23-1-1(b)), or a certified nurse midwife (as defined in IC 34-18-2-6.5) to whom the responsibility has been delegated by the physician who is to perform the abortion or the referring physician has informed the pregnant woman orally and in writing of the following:

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<sup>1</sup> Provision requiring the provider to give specific information on the possibility of reversing a chemical abortion is temporarily enjoined.

(A) The name of the physician performing the abortion, the physician's medical license number, and an emergency telephone number where the physician or the physician's designee may be contacted on a twenty-four (24) hour a day, seven (7) day a week basis.

(B) That follow-up care by the physician or the physician's designee (if the designee is licensed under IC 25-22.5) is available on an appropriate and timely basis when clinically necessary.

(C) The nature of the proposed procedure or information concerning the abortion inducing drug that includes the following statement: "Some evidence suggests that effects of Mifepristone may be avoided, ceased, or reversed if the second pill, Misoprostol, has not been taken. Immediately contact the following for more information at (insert applicable abortion inducing drug reversal website and corresponding hotline number)."

(D) Objective scientific information of the risks of and alternatives to the procedure or the use of an abortion inducing drug, including:

- (i) the risk of infection and hemorrhage;
- (ii) the potential danger to a subsequent pregnancy; and
- (iii) the potential danger of infertility.

(E) That human physical life begins when a human ovum is fertilized by a human sperm.

(F) The probable gestational age of the fetus at the time the abortion is to be performed, including:

- (i) a picture of a fetus;
- (ii) the dimensions of a fetus; and
- (iii) relevant information on the potential survival of an unborn fetus; at this stage of development.

(G) That objective scientific information shows that a fetus can feel pain at or before twenty (20) weeks of postfertilization age.

(H) The medical risks associated with carrying the fetus to term.

(I) The availability of fetal ultrasound imaging and auscultation of fetal heart tone services to enable the pregnant woman to view the image and hear the heartbeat of the fetus and how to obtain access to these services.

(J) That the pregnancy of a child less than fifteen (15) years of age may constitute child abuse under Indiana law if the act included an adult and must be reported to the department of child services or the local law enforcement agency under IC 31-33-5.

(K) That Indiana does not allow a fetus to be aborted solely because of the fetus's race, color, national origin, ancestry, sex, or diagnosis or potential diagnosis of the fetus having Down syndrome or any other disability.

(L) That no one has the right to coerce the pregnant woman to have an abortion.

(2) At least eighteen (18) hours before the abortion, the pregnant woman will be informed orally and in writing of the following:

(A) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care from the county office of the division of family resources.

(B) That the father of the unborn fetus is legally required to assist in the support of the child. In the case of rape, the information required under this clause may be omitted.

(C) That adoption alternatives are available and that adoptive parents may legally pay the costs of prenatal care, childbirth, and neonatal care.

(D) That there are physical risks to the pregnant woman in having an abortion, both during the abortion procedure and after.

(E) That Indiana has enacted the safe haven law under IC 31-34-2.5.

(F) The:

(i) website address of the state department's website; and

(ii) description of the information that will be provided on the website and that is;

described in section 1.5 of this chapter.

(G) For the facility in which the abortion is to be performed, an emergency telephone number that is available and answered on a twenty-four (24) hour a day, seven (7) day a week basis.

(H) On a form developed by the state department and as described in IC 16-34-3, that the pregnant woman has a right to determine the final disposition of the remains of the aborted fetus.

(I) On a form developed by the state department, that the pregnant woman has a right, after a surgical abortion, to:



(i) dispose of the remains of the aborted fetus by interment in compliance with IC 23-14-54, or cremation through a licensee (as defined in IC 25-15-2-19) and in compliance with IC 23-14-31; or

(ii) have the health care facility dispose of the remains of the aborted fetus by interment in compliance with IC 23-14-54, or cremation through a licensee (as defined in IC 25-15-2-19) and in compliance with IC 23-14-31, and ask which method of disposition will be used by the health care facility.

(J) On a form developed by the state department:

(i) that a pregnant woman, after an abortion induced by an abortion inducing drug, will expel an aborted fetus; and

(ii) the disposition policy of the health care facility concerning the disposition of the aborted fetus. The disposition policy must allow the pregnant woman to return the aborted fetus to the health care facility for disposition by interment in compliance with IC 23-14-54, or cremation through a licensee (as defined in IC 25-15-2-19) and in compliance with IC 23-14-31.

(K) On a form developed by the state department, information concerning any counseling that is available to a pregnant woman after having an abortion.

The state department shall develop and distribute the forms required by clauses (H) through (K).

(3) The pregnant woman certifies in writing, on a form developed by the state department, before the abortion is performed, that:

(A) the information required by subdivisions (1) and (2) has been provided to the pregnant woman;

(B) the pregnant woman has been offered by the provider the opportunity to view the fetal ultrasound imaging and hear the auscultation of the fetal heart tone if the fetal heart tone is audible and that the woman has:

(i) viewed or refused to view the offered fetal ultrasound imaging; and

(ii) listened to or refused to listen to the offered auscultation of the fetal heart tone if the fetal heart tone is audible; and

(C) the pregnant woman has been given a written copy of the printed materials described in section 1.5 of this chapter.

(4) At least eighteen (18) hours before the abortion and in the presence of the pregnant woman, the physician who is to perform the abortion, the referring physician or a physician assistant (as defined in IC 25-27.5-2-10), an advanced practice registered nurse (as defined in IC 25-23-1-1(b)), or a certified nurse midwife (as defined in IC 34-18-2-6.5) to whom the responsibility has been delegated by the physician who is to perform the abortion or the

referring physician has provided the pregnant woman with a color copy of the informed consent brochure described in section 1.5 of this chapter by printing the informed consent brochure from the state department's website and including the following information on the back cover of the brochure:

(A) The name of the physician performing the abortion and the physician's medical license number.

(B) An emergency telephone number where the physician or the physician's designee may be contacted twenty-four (24) hours a day, seven (7) days a week.

(C) A statement that follow-up care by the physician or the physician's designee who is licensed under IC 25-22.5 is available on an appropriate and timely basis when clinically necessary.

(5) At least eighteen (18) hours before an abortion is performed and at the same time that the pregnant woman receives the information required by subdivision (1), the provider shall perform, and the pregnant woman shall view, the fetal ultrasound imaging and hear the auscultation of the fetal heart tone if the fetal heart tone is audible unless the pregnant woman certifies in writing, on a form developed by the state department, before the abortion is performed, that the pregnant woman:

(A) does not want to view the fetal ultrasound imaging; and

(B) does not want to listen to the auscultation of the fetal heart tone if the fetal heart tone is audible.

A pregnant woman must be advised, prior to the pregnant woman's decision concerning fetal ultrasound imaging, that an ultrasound image of the fetus will be provided to the pregnant woman to keep at no charge to the pregnant woman if the fetal ultrasound is performed.

(6) At least eighteen (18) hours before the abortion, the physician who is to perform the abortion, the referring physician or a physician assistant (as defined in IC 25-27.5-2-10), an advanced practice registered nurse (as defined in IC 25-23-1-1(b)), or a certified nurse midwife (as defined in IC 34-18-2-6.5) to whom the responsibility has been delegated by the physician who is to perform the abortion or the referring physician shall, in the private, not group, presence of the pregnant woman, verbally ask the pregnant woman if she is being coerced to have an abortion.

(b) This subsection applies to a pregnant woman whose unborn child has been diagnosed with a lethal fetal anomaly. The requirements of this subsection are in addition to the other requirements of this section. At least eighteen (18) hours before an abortion is performed on the pregnant woman, the physician who will perform the abortion shall:

(1) orally and in person, inform the pregnant woman of the availability of perinatal hospice services; and

(2) provide the pregnant woman copies of the perinatal hospice brochure developed by the state department under IC 16-25-4.5-4 and the list of perinatal hospice providers and programs developed under IC 16-25-4.5-5, by printing the perinatal hospice brochure and list of perinatal hospice providers from the state department's website.

(c) If a pregnant woman described in subsection (b) chooses to have an abortion rather than continuing the pregnancy in perinatal hospice care, the pregnant woman shall certify in writing, on a form developed by the state department under IC 16-25-4.5-6, at least eighteen (18) hours before the abortion is performed, that the pregnant woman has been provided the information described in subsection (b) in the manner required by subsection (b).

(d) For any abortion performed under this article, the physician who is to perform the abortion, the referring physician or a physician assistant (as defined in IC 25-27.5-2-10), an advanced practice registered nurse (as defined in IC 25-23-1-1(b)), or a certified nurse midwife (as defined in IC 34-18-2-6.5) to whom the responsibility has been delegated by the physician who is to perform the abortion or the referring physician shall include, or ensure the inclusion of, a copy of a pregnant woman's ultrasound report in the pregnant woman's patient file.

(e) If the physician who is to perform the abortion, the referring physician, a physician assistant (as defined in IC 25-27.5-2-10), an advanced practice registered nurse (as defined in IC 25-23-1-1(b)), or a certified nurse midwife (as defined in IC 34-18-2-6.5) suspects a pregnant woman is being coerced to have an abortion after making the inquiry required under subsection (a)(6), the physician, physician assistant, advanced practice registered nurse, or certified nurse midwife shall:

(1) inform the pregnant woman that coercing a pregnant woman to have an abortion is illegal;

(2) inform the pregnant woman that a demand by the father to have an abortion does not relieve him of financial support responsibilities; and

(3) provide the pregnant woman with:

(A) information about:

(i) assistance;

(ii) counseling; and

(iii) protective services offered by social programs and local or state law enforcement agencies;

(B) access to a telephone if she needs to make a private telephone call; and

(C) access to an alternate exit from the health care facility.

(f) Except as provided in subsection (g), if a physician, physician assistant (as defined in IC 25-27.5-2-10), advanced practice registered nurse (as defined in IC 25-23-1-1(b)), or certified nurse midwife (as defined in IC 34-18-2-6.5) has specific and credible information that a pregnant woman is being coerced into having an abortion, then an abortion may not be provided to the pregnant woman during

the twenty-four (24) hour period after the physician, physician assistant (as defined in IC 25-27.5-2-10), advanced practice registered nurse (as defined in IC 25-23-1-1(b)), or certified nurse midwife (as defined in IC 34-18-2-6.5) makes a report under IC 16-34-6-6(b).

(g) The twenty-four (24) hour period described in subsection (f) may be waived if a physician, in the physician's best medical judgment, determines that an abortion is necessary to prevent the death of the pregnant woman or to prevent substantial and irreversible injury to a major bodily function of the pregnant woman.

#### History of Enforcement:

No specific data on fines or penalties for non-compliance is available from the sources, but the Department of Health can impose penalties under IC 16-19-3-18 for violations.

#### Relationship statutes/ regulations relating to the subject matter:

Works in tandem with IC 16-34-2-1 (conditions for legal abortion), IC 16-34-3 (fetal remains disposition), and IC 16-34-2-4 (parental consent for minors).

### Data and Documentation Requirements

#### **Ind. Code § 16-34-2.4.7; *id.* § 16-34-2-5**

Sec. 5.

(a) Every health care provider who performs a surgical abortion or provides, prescribes, administers, or dispenses an abortion inducing drug for the purposes of inducing an abortion shall report the performance of the abortion or the provision, prescribing, administration, or dispensing of an abortion inducing drug on a form drafted by the state department, the purpose and function of which shall be the improvement of maternal health and life through the compilation of relevant maternal life and health factors and data, and a further purpose and function shall be to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law. For each abortion performed and abortion inducing drug provided, prescribed, administered, or dispensed, the report shall include, among other things, the following:

- (1) The age of the patient. . . .
- (4) The date and location. . . .
- (18) The physician's determination of the gestation of the fetus in weeks.
- (19) The reason for the abortion.
- (20) Whether the patient indicated that the patient was seeking an abortion as a result of being:
  - (A) abused;
  - (B) coerced;

(C) harassed; or

(D) trafficked.

(21) The following information concerning the abortion or the provision, prescribing, administration, or dispensing of the abortion inducing drug:

(A) The postfertilization age of the fetus (in weeks).

(B) The manner in which the postfertilization age was determined.

(C) The gender of the fetus, if detectable.

(D) Whether the fetus has been diagnosed with or has a potential diagnosis of having Down syndrome or any other disability.

(E) If after the earlier of the time the fetus obtains viability or the time the postfertilization age of the fetus is at least twenty (20) weeks, the medical reason for the performance of the abortion.

Authoritative interpretation by state agencies or courts:

There is some discussion of the reporting requirements in *Whole Woman's Health Alliance v. Rokita*, 553 F.Supp.3d 500 (S.D. Ind. 2021), *vacated by* 2022 WL 2663208 (7th Cir. July 11, 2022). However, the plaintiffs dismissed their challenge to the reporting requirements following the *Dobbs* decision. There is ongoing litigation over whether the reporting requirements violate HIPAA. *Scifres v. Comm'r, Ind. Dep't of Health*, No. 1:24-cv-2262 (S.D. Ind. Filed Dec. 23, 2024).

Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

Other:

State reports available here: <https://www.in.gov/health/vital-records/vital-statistics/terminated-pregnancy-reports/>.

Civil Liability Provisions

**Ind. Code § 16-34-2-4.2(d)–(e)**

**Civil Liability Under Parental Consent Requirements**

**Applies to Ind. Code §16-34-2-4.2**

(d) Except as provided in subsection (g), a person who violates subsection (c) is civilly liable to the unemancipated pregnant minor and the parent or legal guardian or custodian of the unemancipated pregnant minor. A court may award damages to the unemancipated pregnant minor or the parent or legal guardian or custodian of the unemancipated pregnant minor who is adversely affected by a violation of this section, including the following damages:

- (1) Compensation for physical or emotional injury, without the need of being physically present at the act or event.
- (2) Attorney's fees.
- (3) Court costs.
- (4) Punitive damages.

However, an adult who engaged in or consented to another person engaging in a sex act with a minor in violation of IC 35-42-4-3(a) or IC 35-42-4-9 that resulted in the pregnancy may not be awarded damages under this subsection.

(e) An unemancipated pregnant minor does not have the capacity to consent to any action in violation of this section or section 4 of this chapter. A person may not use as a defense to a violation of subsection (c) that the abortion was performed or induced with consent of the unemancipated pregnant minor and otherwise met the requirements of this chapter.

#### **Ind. Code § 16-34-4-9**

#### **Civil Remedies and Professional Discipline for Abortion Based on Sex, Disability, or Race Applies to Ind. Code §§ 16-34-4-1 through 16-34-4-9**

- (a) A person who knowingly or intentionally performs an abortion in violation of this chapter may be subject to:
- (1) disciplinary sanctions under IC 25-1-9; and
  - (2) civil liability for wrongful death.
- (b) A pregnant woman upon whom an abortion is performed in violation of this chapter may not be prosecuted for violating or conspiring to violate this chapter.

## **Iowa**

Iowa has a strong and growing pro-life movement, with forty-three pregnancy resource centers to just five abortion centers. After *Roe*, Iowa is seeking to enforce its “Heartbeat” law, which was been enjoined by the state supreme court, in which the court declared a state constitutional right to abortion. However, a decision this year by the supreme court repudiated the right to abortion and affirmed a 24-hour consultation period. In the meantime, the state’s 20-week limit is enforceable. Iowa has an ultrasound informed consent law, a parental notice law and a physician-only law. It also has an enforceable abortion reporting law that applies to both surgical and nonsurgical abortions, but critically it does not require the reporting of information to the Centers for Disease Control (CDC).

Iowa’s judiciary has seven supreme court justices who are appointed by the governor from a list of three candidates provided by the State Judicial Nominating Commission. They are selected for a one-year term and then must stand for a statewide retention election for eight-year terms. A similar

process is used for appellate judges, except they stand for retention elections for six-year terms. As discussed above, Iowa’s judiciary is trending strongly pro-life, and Iowa is one of a small handful of states in which a state constitutional “right to abortion” has been reversed.

After the 2022 Midterm Elections, Kim Reynolds is serving another term as Governor. Both chambers still hold the majority for pro-life legislators.

## Statutory Prohibitions

### **Iowa Code § 146C.2**

1. Except in the case of a medical emergency or when the abortion is medically necessary, a physician shall not perform an abortion unless the physician has first complied with the prerequisites of chapter 146A and has tested the pregnant woman as specified in this subsection, to determine if a fetal heartbeat is detectable.

a. In testing for a detectable fetal heartbeat, the physician shall perform an abdominal ultrasound, necessary to detect a fetal heartbeat according to standard medical practice and including the use of medical devices, as determined by standard medical practice and specified by rule of the board of medicine.

b. Following the testing of the pregnant woman for a detectable fetal heartbeat, the physician shall inform the pregnant woman, in writing, of all of the following:

(1) Whether a fetal heartbeat was detected.

(2) That if a fetal heartbeat was detected, an abortion is prohibited.

c. Upon receipt of the written information, the pregnant woman shall sign a form acknowledging that the pregnant woman has received the information as required under this subsection.

2. a. A physician shall not perform an abortion upon a pregnant woman when it has been determined that the unborn child has a detectable fetal heartbeat, unless, in the physician's reasonable medical judgment, a medical emergency exists, or when the abortion is medically necessary.

b. Notwithstanding paragraph “a”, if a physician determines that the probable postfertilization age, as defined in section 146B.1, of the unborn child is twenty or more weeks, the physician shall not perform an abortion upon a pregnant woman when it has been determined that the unborn child has a detectable fetal heartbeat, unless in the physician's reasonable medical judgment the pregnant woman has a condition which the physician deems a medical emergency, as defined in section 146B.1, or the abortion is necessary to preserve the life of an unborn child.

3. A physician shall retain in the woman's medical record all of the following:



a. Documentation of the testing for a fetal heartbeat as specified in subsection 1 and the results of the fetal heartbeat test.

b. The pregnant woman's signed form acknowledging that the pregnant woman received the information as required under subsection 1.

4. This section shall not be construed to impose civil or criminal liability on a woman upon whom an abortion is performed in violation of this section.

5. The board of medicine shall adopt rules pursuant to chapter 17A to administer this section.

### In-Person Dispensing Requirements

#### **Iowa Admin. Code r. 653-13.10(3)**

##### ***Permanently Enjoined***

*Physician's physical presence required.* When inducing an abortion by providing an abortion-inducing drug, a physician must be physically present with the woman at the time the abortion-inducing drug is provided.

#### Authoritative interpretation by state agencies or courts/history of enforcement:

Executive: When FDA permitted pharmacies to dispense abortion pills, the Attorney General joined a [letter](#) sent to pharmacies that mentioned many states prohibit the mailing of abortion drugs, but did not include a cite to this statute.

Judicial: In *Planned Parenthood of the Heartland, Inc. v. Iowa Bd. of Medicine*, 865 N.W.2d 252 (Iowa 2015), the court invalidated Iowa Admin. Code r. 653-13.10(3), finding that it placed “an undue burden on a woman’s right to terminate her pregnancy,” and that it violated Iowa’s state constitution.

#### Relationship between statute and other federal/state statutes relating to the subject matter:

Iowa’s prohibition on mailing chemical abortion drugs is consistent with federal law. The Comstock Act, 18 U.S.C. § 1461, explicitly prohibits the mailing of chemical abortion pills.

### Informed Consent Laws

#### **Iowa Code § 146A.1**

(1) A physician performing an abortion shall obtain written certification from the pregnant woman of all of the following at least twenty-four hours prior to performing an abortion:

a. That the woman has undergone an ultrasound imaging of the unborn child that displays the approximate age of the unborn child.

b. That the woman was given the opportunity to see the unborn child by viewing the ultrasound image of the unborn child.

c. That the woman was given the option of hearing a description of the unborn child based on the ultrasound image and hearing the heartbeat of the unborn child.

- d. (1) That the woman has been provided information regarding all of the following, based upon the materials developed by the department of health and human services pursuant to subparagraph (2):

(a) The options relative to a pregnancy, including continuing the pregnancy to term and retaining parental rights following the child's birth, continuing the pregnancy to term and placing the child for adoption, and terminating the pregnancy.

(b) The indicators, contra-indicators, and risk factors including any physical, psychological, or situational factors related to the abortion in light of the woman's medical history and medical condition.

- (2) The department of health and human services shall make available to physicians, upon request, all of the following information:

(a) Geographically indexed materials designed to inform the woman about public and private agencies and services available to assist a woman through pregnancy, at the time of childbirth, and while the child is dependent. The materials shall include a comprehensive list of the agencies available, categorized by the type of services offered, and a description of the manner by which the agency may be contacted.

(b) Materials that encourage consideration of placement for adoption. The materials shall inform the woman of the benefits of adoption, including the requirements of confidentiality in the adoption process, the importance of adoption to individuals and society, and the state's interest in promoting adoption by preferring adoption over abortion.

(c) Materials that contain objective information describing the methods of abortion procedures commonly used, the medical risks commonly associated with each such procedure, and the possible detrimental physical and psychological effects of abortion.

2. Compliance with the prerequisites of this section shall not apply to an abortion performed in a medical emergency.

3. A physician who violates this section is subject to licensee discipline pursuant to section 148.6.

4. This section shall not be construed to impose civil or criminal liability on a woman upon whom an abortion is performed, or to prohibit the sale, use, prescription, or administration of a measure, drug, or chemical designed for the purposes of contraception.

5. The board of medicine shall adopt rules pursuant to chapter 17A to administer this section.

6. As used in this section:

a. “Medical emergency” means a situation in which an abortion is performed to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy, but not including psychological conditions, emotional conditions, familial conditions, or the woman's age; or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman.

b. “Unborn child” means an individual organism of the species homo sapiens from fertilization to live birth.

#### History of Enforcement: Enforcement:

Occurs through Iowa Department of Public Health inspections and reporting requirements.

Litigation has focused on waiting periods and ultrasound mandates, with partial injunctions issued (e.g., 72-hour rule struck down in 2018).

#### Data and Documentation Requirements

##### **Iowa Code § 146B.2**

A physician who performs or attempts to perform an abortion shall report to the department, on a schedule and in accordance with forms and rules adopted by the department, all of the following:

- a. If a determination of probable postfertilization age of the unborn child was made, the probable postfertilization age determined and the method and basis of the determination.
- b. If a determination of probable postfertilization age of the unborn child was not made, the basis of the determination that a medical emergency existed.
- c. If the probable postfertilization age of the unborn child was determined to be twenty or more weeks, the basis of the determination of a medical emergency, or the basis of the determination that the abortion was necessary to preserve the life of an unborn child.
- d. The method used for the abortion and, in the case of an abortion performed when the probable postfertilization age was determined to be twenty or more weeks, whether the method of abortion used was one that, in the physician's reasonable medical judgment, provided the best opportunity for an unborn child to survive or, if such a method was not used, the basis of the determination that termination of the human pregnancy in that manner would pose a greater risk than would any other available method of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function.

#### Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

#### Other:

State reports available here: <https://hhs.iowa.gov/health-statistics>.

#### Civil Liability Provisions

**Iowa Code § 146B.2(4)(B)**  
**Civil Remedies Under Reporting Requirements**  
**Applies to Iowa Code §§ 146B.1 through 146.3**

- b. (1) A physician who fails to submit a report by the end of thirty days following the due date shall be subject to a late fee of five hundred dollars for each additional thirty-day period or portion of a thirty-day period the report is overdue.
- (2) A physician required to report in accordance with subsection 3 who has not submitted a report or who has submitted only an incomplete report more than one year following the due date, may, in an action brought in the manner in which actions are brought to enforce chapter 148, be directed by a court of competent jurisdiction to submit a complete report within a time period stated by court order or be subject to contempt of court.
- (3) A physician who intentionally or recklessly falsifies a report required under this section is subject to a civil penalty of one hundred dollars.

**Iowa Code § 146B.3**  
**Civil Remedies Under Ultrasound and Gestational Age Requirements**  
**Applies to Iowa Code §§ 146B.1 through 146.3**

- 1. Failure of a physician to comply with any provision of section 146B.2, with the exception of the late filing of a report or failure to submit a complete report in compliance with a court order, is grounds for licensee discipline under chapter 148.
- 2. A woman upon whom an abortion has been performed in violation of this chapter may maintain an action against the physician who performed the abortion in intentional or reckless violation of this chapter for actual damages.
- 3. A woman upon whom an abortion has been attempted in violation of this chapter may maintain an action against the physician who attempted the abortion in intentional or reckless violation of this chapter for actual damages.
- 4. A cause of action for injunctive relief to prevent a physician from performing abortions may be maintained against a physician who has intentionally violated this chapter by the woman upon whom the abortion was performed or attempted, by a parent or guardian of the woman if the woman is less than eighteen years of age at the time the abortion was performed or attempted, by a current or former licensed health care provider of the woman, by a county attorney with appropriate jurisdiction, or by the attorney general.
- 5. If the plaintiff prevails in an action brought under this section, the plaintiff shall be entitled to an award for reasonable attorney fees.
- 6. If the defendant prevails in an action brought under this section and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the defendant shall be entitled to an award for reasonable attorney fees.

7. Damages and attorney fees shall not be assessed against the woman upon whom an abortion was performed or attempted except as provided in subsection 6.

8. In a civil proceeding or action brought under this chapter, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted shall be preserved from public disclosure if the woman does not provide consent to such disclosure. The court, upon motion or on its own motion, shall make such a ruling and, upon determining that the woman's anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings an action under this section shall do so under a pseudonym. This subsection shall not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

9. This chapter shall not be construed to impose civil or criminal liability on a woman upon whom an abortion is performed or attempted.

## **Kansas**

Abortion is legal in Kansas up to 22 weeks. In 2024, Kansas's Supreme Court unilaterally declared a constitutional right to terminate a human being in the womb and struck down Kansas's law prohibiting dismemberment abortions in the second trimester. This creates a significant obstacle to progress in the state. Kansas pro-life leaders worked on a ballot resolution for a state constitutional amendment to return the abortion issue to the People and their state legislature, but it was unsuccessful. The state has thirty-eight pregnancy resource centers to just four abortion clinics.

Kansas has a variety of sound pro-life laws, including an enforceable abortion data reporting law which applies to both surgical and chemical abortions, limits on chemical abortion which require in-person administration by a physician only, and a fetal homicide law with protection from conception.

Kansas's judicial selection system, which serves as a model for many other states, has seven supreme court justices appointed by the governor from a list of candidates provided by the nominating commission. After having served at least a year, in the first even year statewide election, they must stand for a retention election for six-year terms. Unfortunately, because of pro-abortion gubernatorial leadership and the domination of the selection process by the abortion-favorable legal profession, Kansas's supreme court has manufactured a "right to abortion" contrary to the will of the People of Kansas. For this reason, Kansans should reconsider how it appoints state court judges.

### Statutory Prohibitions

**Kan. Stat. Ann. § 65-6724(a)**

(a) No person shall perform or induce, or attempt to perform or induce an abortion upon a pain-capable unborn child unless such person is a physician and has a documented referral from another physician not legally or financially affiliated with the physician performing or inducing, or attempting to perform or induce the abortion and both physicians provide a written determination, based upon a medical judgment arrived at using and exercising that degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent physician in the same or similar circumstances and that would be made by a reasonably prudent physician, knowledgeable in the field, and knowledgeable about the case and the treatment possibilities with respect to the conditions involved, that:

- (1) The abortion is necessary to preserve the life of the pregnant woman; or
- (2) a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman.

No such condition shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

### Informed Consent Laws

#### **Kan. Stat. §§ 65-6709**

No abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if:

(a) At least 24 hours before the abortion the physician who is to perform the abortion or the referring physician has informed the woman in writing, which shall be provided on white paper in a printed format in black ink with 12-point times new roman font, of:

(1) The following information concerning the physician who will perform the abortion;

(A) The name of such physician;

(B) the year in which such physician received a medical doctor's degree;

(C) the date on which such physician's employment commenced at the facility where the abortion is to be performed;

(D) whether any disciplinary action has been taken against such physician by the state board of healing arts by marking either a box indicating "yes" or a box indicating "no" and if the box indicating "yes" is marked, then provide the website addresses to the board documentation for each disciplinary action;

(E) whether such physician has malpractice insurance by marking either a box indicating "yes" or a box indicating "no";

(F) whether such physician has clinical privileges at any hospital located within 30 miles of the facility where the abortion is to be performed by marking either a box indicating “yes” or a box indicating “no” and if the box indicating “yes” is marked, then provide the name of each such hospital and the date such privileges were issued;

(G) the name of any hospital where such physician has lost clinical privileges; and

(H) whether such physician is a resident of this state by marking either a box indicating “yes” or a box indicating “no”;

(2) a description of the proposed abortion method;

(3) a description of risks related to the proposed abortion method, including risk of premature birth in future pregnancies, risk of breast cancer and risks to the woman's reproductive health and alternatives to the abortion that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;

(4) the probable gestational age of the unborn child at the time the abortion is to be performed and that Kansas law requires the following: “No person shall perform or induce an abortion when the unborn child is viable unless such person is a physician and has a documented referral from another physician not financially associated with the physician performing or inducing the abortion and both physicians determine that:

(1) The abortion is necessary to preserve the life of the pregnant woman; or

(2) a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman.” If the child is born alive, the attending physician has the legal obligation to take all reasonable steps necessary to maintain the life and health of the child;

(5) the probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed;

(6) the contact information for counseling assistance for medically challenging pregnancies, the contact information for perinatal hospice services and a listing of websites for national perinatal assistance, including information regarding which entities provide such services free of charge;

(7) the medical risks associated with carrying an unborn child to term; and

(8) any need for anti-Rh immune globulin therapy, if she is Rh negative, the likely consequences of refusing such therapy and the cost of the therapy.

(b) At least 24 hours before the abortion, the physician who is to perform the abortion, the referring physician or a qualified person has informed the woman in writing that:



- (1) Medical assistance benefits may be available for prenatal care, childbirth and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials given to her and described in K.S.A. 65-6710, and amendments thereto;
  - (2) the informational materials in K.S.A. 65-6710, and amendments thereto, are available in printed form and online, and describe the unborn child, list agencies which offer alternatives to abortion with a special section listing adoption services and list providers of free ultrasound services;
  - (3) the father of the unborn child is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion except that in the case of rape this information may be omitted;
  - (4) the woman is free to withhold or withdraw her consent to the abortion at any time prior to invasion of the uterus without affecting her right to future care or treatment and without the loss of any state or federally-funded benefits to which she might otherwise be entitled;
  - (5) the abortion will terminate the life of a whole, separate, unique, living human being; and
  - (6) by no later than 20 weeks from fertilization, the unborn child has the physical structures necessary to experience pain. There is evidence that by 20 weeks from fertilization unborn children seek to evade certain stimuli in a manner that in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are 20 weeks from fertilization or older who undergo prenatal surgery.
- (c) At least 30 minutes prior to the abortion procedure, prior to physical preparation for the abortion and prior to the administration of medication for the abortion, the woman shall meet privately with the physician who is to perform the abortion and such person's staff to ensure that she has an adequate opportunity to ask questions of and obtain information from the physician concerning the abortion.
- (d) At least 24 hours before the abortion, the woman is given a copy of the informational materials described in K.S.A. 65-6710, and amendments thereto. If the woman asks questions concerning any of the information or materials, answers shall be provided to her in her own language.
- (e) The woman certifies in writing on a form provided by the department, prior to the abortion, that the information required to be provided under subsections (a), (b) and (d) has been provided and that she has met with the physician who is to perform the abortion on an individual basis as provided under subsection (c). All physicians who perform abortions shall report the total number of certifications received monthly to the department. The total number of certifications shall be reported by the physician as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and

amendments thereto. The department shall make the number of certifications received available on an annual basis.

(f) Prior to the performance of the abortion, the physician who is to perform the abortion or the physician's agent receives a copy of the written certification prescribed by subsection (e) of this section.

(g) The woman is not required to pay any amount for the abortion procedure until the 24-hour waiting period has expired.

(h) A physician who will use ultrasound equipment preparatory to or in the performance of the abortion, at least 30 minutes prior to the performance of the abortion:

- (1) Informs the woman that she has the right to view the ultrasound image of her unborn child, at no additional expense to her;
- (2) informs the woman that she has the right to receive a physical picture of the ultrasound image, at no additional expense to her;
- (3) offers the woman the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image;
- (4) certifies in writing that the woman was offered the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image at least 30 minutes prior to the performance of the abortion; and
- (5) obtains the woman's signed acceptance or rejection of the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image.

If the woman accepts the offer and requests to view the ultrasound image, receive a physical picture of the ultrasound image or both, her request shall be granted by the physician at no additional expense to the woman. The physician's certification shall be time-stamped at the time the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image was offered.

(i) A physician who will use heart monitor equipment preparatory to or in the performance of the abortion, at least 30 minutes prior to the performance of the abortion:

- (1) Informs the woman that she has the right to listen to the heartbeat of her unborn child, at no additional expense to her;
- (2) offers the woman the opportunity to listen to the heartbeat of her unborn child;
- (3) certifies in writing that the woman was offered the opportunity to listen to the heartbeat of her unborn child at least 30 minutes prior to the performance of the abortion; and
- (4) obtains the woman's signed acceptance or rejection of the opportunity to listen to the heartbeat of her unborn child.

If the woman accepts the offer and requests to listen to the heartbeat of her unborn child, her request shall be granted by the physician at no additional expense to the woman. The physician's certification shall be time-stamped at the time the opportunity to listen to the heartbeat of her unborn child was offered.

(j) The physician's certification required by subsections (h) and (i) together with the pregnant woman's signed acceptance or rejection of such offer shall be placed in the woman's medical file in the physician's office and kept for 10 years. However, in the case of a minor, the physician shall keep a copy of the certification and the signed acceptance or rejection in the minor's medical file for five years past the minor's majority, but in no event less than 10 years.

(k) Any private office, freestanding surgical outpatient clinic or other facility or clinic in which abortions are performed shall conspicuously post a sign in a location so as to be clearly visible to patients. The sign required pursuant to this subsection shall be printed with lettering that is legible and shall be at least three quarters of an inch boldfaced type. The sign shall include the address for the pregnancy resources website published and maintained by the department of health and environment, and the following text:

Notice: It is against the law for anyone, regardless of their relationship to you, to force you to have an abortion. By law, we cannot perform an abortion on you unless we have your freely given and voluntary consent. It is against the law to perform an abortion on you against your will. You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened physical abuse or violence. You have the right to change your mind at any time prior to the actual abortion and request that the abortion procedure cease. It is unlawful for anyone to make you have an abortion against your will, even if you are a minor. The father of your child must provide support for the child, even if he has offered to pay for an abortion. If you decide not to have an abortion, you may qualify for financial help for pregnancy, childbirth and newborn care. If you qualify, medicaid will pay or help pay the cost of doctor, clinic, hospital and other related medical expenses, including childbirth delivery services and care for your newborn baby. Many agencies are willing to provide assistance so that you may carry your child to term, and to assist you after your child's birth.

The provisions of this subsection shall not apply to any private office, freestanding surgical outpatient clinic or other facility or clinic which performs abortions only when necessary to prevent the death of the pregnant woman.

(l) Any private office, freestanding surgical outpatient clinic or other facility or clinic in which abortions are performed that has a website shall publish an easily identifiable link on the homepage of such website that directly links to the department of health and environment's website that provides informed consent materials under the woman's-right-to-know act. Such link shall read: "The Kansas Department of Health and Environment maintains a website containing information about the development of the unborn child, as well as video of sonogram images of the unborn child at various stages of development. The Kansas Department of Health and Environment's website can be reached by clicking here."

(m) For purposes of this section:

(1) The term “human being” means an individual living member of the species of homo sapiens, including the unborn human being during the entire embryonic and fetal ages from fertilization to full gestation.

(2) The term “medically challenging pregnancy” means a pregnancy where the unborn child is diagnosed as having: (A) A severe anomaly; or (B) an illness, disease or defect which is invariably fatal.

#### History of Enforcement:

Litigation has challenged restrictive amendments, but the core informed consent and 24-hour waiting period remain in effect.

### Data and Documentation Requirements

#### **Kan. Stat. Ann. § 65-445**

(b) Each report required by this section shall include the number of pregnancies terminated during the period of time covered by the report, the type of medical facility where the pregnancy was terminated, information required to be reported under K.S.A. 65-6703(b) and (c), 65-6705(j), 65-6721(c) and 65-6724, and amendments thereto, if applicable to the pregnancy terminated, information required to be reported under K.S.A. 65-6758, and amendments thereto, and such other information as may be required by the secretary of health and environment. The report shall not include the names of the persons whose pregnancies were so terminated or upon whom an attempted abortion was performed. Each report required by K.S.A. 65-6703(b) and (c), 65-6705(j) and 65-6721(c), and amendments thereto, shall specify the medical diagnosis and condition constituting a substantial and irreversible impairment of a major bodily function or the medical diagnosis and condition that necessitated performance of an abortion to preserve the life of the patient. Each report required by K.S.A. 65-6703, and amendments thereto, shall include a sworn statement by the physician performing the abortion and the referring physician that such physicians are not legally or financially affiliated.

#### Authoritative interpretation by state agencies or courts:

Kan. Admin. Regs. §§ 28-56-1 to -10 (2012). State supreme court discussed how reports submitted under this section are protected matter and cannot be produced for a subpoena. *State v. Comprehensive Health of Planned Parenthood of Kan. & Mid-Mo., Inc.*, 241 P.3d 45 (Kan. 2010).

#### Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

#### Other:

State reports available here: <https://www.kdhe.ks.gov/1398/Kansas-Health-Statistics-Reports>.

### Civil Liability Provisions

#### **K.S.A. § 65-6726(b)**

#### **Civil Remedies for Abortions Based on Gender**

**Applies to K.S.A. § 65-6726**

- (b) (1) A woman upon whom an abortion is performed or induced, or upon whom there is an attempt to perform or induce an abortion, in violation of this section, the father, if married to the woman at the time of the abortion, and the parents or custodial guardian of the woman, if the woman has not attained the age of 18 years at the time of the abortion, may in a civil action obtain appropriate relief, unless, in a case where the plaintiff is not the woman upon whom the abortion was performed, the pregnancy resulted from the plaintiff's criminal conduct.
- (2) Such relief shall include:
  - (A) Money damages for all injuries, psychological and physical, occasioned by the violation of this section;
  - (B) statutory damages equal to three times the cost of the abortion;
  - (C) injunctive relief; and
  - (D) reasonable attorney fees.

**K.S.A. § 65-6705(q)(1)**

**Civil Remedies Under Parental Consent Requirements**

**Applies to K.S.A. § 65-6705**

- (q) (1) A custodial parent or legal guardian of the minor may pursue civil remedies against individuals, including the physician and abortion clinic staff, who violate the rights of parents, legal guardian or the minor as set forth in this section.
- (2) Such relief shall include:
  - (A) Money damages for all injuries, psychological and physical, occasioned by the violation of this section;
  - (B) the cost of any subsequent medical treatment such minor might require because of the abortion performed without parental consent or knowledge, or without a court order, in violation of this section;
  - (C) statutory damages equal to three times the cost of the abortion; and
  - (D) reasonable attorney fees.

**K.S.A. § 65-6716(h)**

**Civil Remedies Under Informed Consent for Abortion-Inducing Drugs Requirements**

**Applies to K.S.A. § 65-6716**

- (h) (1) If a physician provides a medication abortion using mifepristone in violation of this section, the following individuals may bring a civil action in a court of competent jurisdiction

against the physician for actual damages, exemplary and punitive damages and any other appropriate relief:

- (A) A woman to whom such medication abortion has been provided;
- (B) the father of the unborn child who was subject to such medication abortion; or
- (C) any grandparent of the unborn child who was subject to such medication abortion, if the woman was not 18 years of age or older at the time the medication abortion was performed or if the woman died as a result of the medication abortion.

(2) Notwithstanding any other provision of law, any action commenced in accordance with this subsection shall be filed within two years after the later of:

- (A) The date of the discovery of the violation under this section; or
- (B) the conclusion of a related criminal case.

(3) In any action brought under this section, the court shall award reasonable attorney fees and costs to:

- (A) A prevailing plaintiff; or
- (B) a prevailing defendant upon a finding that the action was frivolous and brought in bad faith.

(4) Except for the woman to whom the medication abortion was provided, no action may be brought by any person whose criminal conduct resulted in the pregnancy, and any such person shall not be awarded any damages in any action brought pursuant to this section.

#### **K.S.A. § 65-6716(g)**

#### **Licensing Penalties Under Informed Consent for Abortion-Inducing Drugs Requirements Applies to K.S.A. § 65-6716**

(g) The department of health and environment shall assess a fine of \$10,000 to any private office, freestanding surgical outpatient clinic, hospital or other clinic or facility that fails to post a sign required by subsection (b). Each day that a medication abortion that uses mifepristone, other than a medication abortion that is necessary to prevent the death of the pregnant woman, is performed in any private office, freestanding surgical outpatient clinic, hospital or other facility or clinic when the required sign is not posted during a portion of that day's business hours when patients or prospective patients are present shall be a separate violation. The department of health and environment shall remit all moneys received from fines under this subsection to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount into the state treasury to the credit of the state general fund.

#### **K.S.A. § 65-6726(b)**

#### **Civil Remedies for Abortion Based on Gender**

### **Applies to K.S.A. § 65-6726**

- (b) (1) A woman upon whom an abortion is performed or induced, or upon whom there is an attempt to perform or induce an abortion, in violation of this section, the father, if married to the woman at the time of the abortion, and the parents or custodial guardian of the woman, if the woman has not attained the age of 18 years at the time of the abortion, may in a civil action obtain appropriate relief, unless, in a case where the plaintiff is not the woman upon whom the abortion was performed, the pregnancy resulted from the plaintiff's criminal conduct.
- (2) Such relief shall include:
  - (A) Money damages for all injuries, psychological and physical, occasioned by the violation of this section;
  - (B) statutory damages equal to three times the cost of the abortion;
  - (C) injunctive relief; and
  - (D) reasonable attorney fees.

## **Kentucky**

Kentucky has made significant strides over the past decade toward creating a pro-life state. Kentucky has a “conditional” abortion prohibition to protect life that went into effect when *Roe* was overturned, which prohibits all abortions with exceptions for the life of the mother “or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant woman.”

The state has enacted numerous protections for women and preborn children. To name a few, the state has a comprehensive informed consent process, it prohibits sex-based, race-based, and disability-based abortions, it has a telemedicine ban, and it requires parental consent for minors seeking abortions. Also, there is only one remaining abortion clinic in the State, while there are fifty-five pregnancy resource centers.

On the ballot in the 2022 Midterm Elections, voters narrowly voted down an amendment to the Kentucky Constitution that would have prevented claims of a state constitutional right to abortion and government funding of abortion.

There is a Republican majority in both chambers of Kentucky’s legislature. In 2022, Kentucky lawmakers overrode the Governor’s veto and enacted an omnibus bill that strengthens the state abortion reporting law and the state’s limits on chemical abortions. This law is currently being litigated in court.

Kentucky’s judicial system has supreme court and appellate justices elected to eight-year terms on a nonpartisan general election ballot. Because such a system reinforces popular opinion supporting



the pro-life position, Kentucky does not appear to be vulnerable to a judicially-created state “right to abortion.”

Governor Andy Beshear is not a friend to life. However, Attorney General Daniel Cameron is a strong pro-life advocate and has shown himself to be willing to step in to defend pro-life laws without the Governor’s involvement.

## Statutory Prohibitions

### **Ky. Rev. Stat. § 311.772**

- (3) (a) Except as provided in Section 21 of this Act, no person may knowingly:
  - 1. Administer to, prescribe for, procure for, or sell to any pregnant woman any medicine, drug, or other substance with the specific intent of causing or abetting the termination of the life of an unborn human being; or
  - 2. Use or employ any instrument or procedure upon a pregnant woman with the specific intent of causing or abetting the termination of the life of an unborn human being.
- (b) Any person who violates paragraph (a) of this subsection shall be guilty of a Class D felony.
- (4) The following shall not be a violation of subsection (3) of this section:
  - (a) For a licensed physician to perform a medical procedure necessary in reasonable medical judgment to prevent the death or substantial risk of death due to a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant woman. However, the physician shall make reasonable medical efforts under the circumstances to preserve both the life of the mother and the life of the unborn human being in a manner consistent with reasonable medical practice; or
  - (b) Medical treatment provided to the mother by a licensed physician which results in the accidental or unintentional injury or death to the unborn human being.

### **Ky. Rev. Stat. § 311.7705**

- (1) Except as provided in subsection (2) of this section, no person shall intentionally perform or induce an abortion on a pregnant woman before determining in accordance with KRS 311.7704(1) whether the unborn human individual the pregnant woman is carrying has a detectable fetal heartbeat.
- (2) (a) Subsection (1) of this section shall not apply to a physician who performs or induces the abortion if the physician believes that a medical emergency exists that prevents compliance with subsection (1) of this section.

(b) A physician who performs or induces an abortion on a pregnant woman based on the exception in paragraph (a) of this subsection shall make written notations in the pregnant woman's medical records of both of the following:

1. The physician's belief that a medical emergency necessitating the abortion existed; and
2. The medical condition of the pregnant woman that prevented compliance with subsection (1) of this section.

The physician shall maintain a copy of the notations in the physician's own records for at least seven (7) years from the date the notations were made.

(3) A person is not in violation of subsection (1) of this section if the person acts in accordance with KRS 311.7704(1) and the method used to determine the presence of a fetal heartbeat does not reveal a fetal heartbeat.

(4) A pregnant woman on whom an abortion is intentionally performed or induced in violation of subsection (1) of this section is not guilty of violating subsection (1) of this section or of attempting to commit, conspiring to commit, or complicity in committing a violation of subsection (1) of this section. In addition, the pregnant woman is not subject to a civil penalty based on the abortion being performed or induced in violation of subsection (1) of this section.”

### In-Person Dispensing Requirements

#### **Ky. Rev. Stat. § 311.728**

A physician performing or inducing an abortion shall be present in person and in the same room with the patient. The use of telehealth as defined in KRS 304.17A-005 shall not be allowed in the performance of an abortion.

Authoritative interpretation by state agencies or courts/history of enforcement:

Executive: The Governor and AG [clashed](#) over implementing several pro-life laws, including this statute. AG (supporting the then-new laws) claimed Governor's office missed the 60-day deadline to create necessary forms (for the other laws).

Relationship between statute and other federal/state statutes relating to the subject matter:

Kentucky's prohibition on mailing chemical abortion drugs is consistent with federal law. The Comstock Act, 18 U.S.C. § 1461, explicitly prohibits the mailing of chemical abortion pills. Kentucky has a total ban on abortion (Ky. Rev. Stat. § 311.772).

### Informed Consent Laws

#### **Ky. Rev. Stat. Ann. § 311.725**

(1) No abortion shall be performed or induced except with the voluntary and informed written consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

(a) At least twenty-four (24) hours prior to the abortion, a physician, licensed nurse, physician assistant, or social worker to whom the responsibility has been delegated by the physician has verbally informed the woman of all of the following:

1. The nature and purpose of the particular abortion procedure or treatment to be performed and of those medical risks and alternatives to the procedure or treatment that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;
2. The probable gestational age of the embryo or fetus at the time the abortion is to be performed;
3. The medical risks associated with the pregnant woman carrying her pregnancy to term; and
4. The potential ability of a physician to reverse the effects of prescription drugs intended to induce abortion, where additional information about this possibility may be obtained, and contact information for assistance in locating a physician who may aid in the reversal;

(b) At least twenty-four (24) hours prior to the abortion, in an individual, private setting, a physician, licensed nurse, physician assistant, or social worker to whom the responsibility has been delegated by the physician has informed the pregnant woman that:

1. The cabinet publishes the printed materials described in subsection (2)(a), (b), and (c) of this section and that she has a right to review the printed materials and that copies will be provided to her by the physician, licensed nurse, physician assistant, or social worker free of charge if she chooses to review the printed materials;
2. Medical assistance benefits may be available for prenatal care, childbirth, and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials published by the cabinet;
3. The father of the fetus is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion; and
4. It is illegal in Kentucky to intentionally perform an abortion, in whole or in part, because of:
  - a. The sex of the unborn child;
  - b. The race, color, or national origin of the unborn child; or
  - c. The diagnosis, or potential diagnosis, of Down syndrome or any other disability;

(c) At least twenty-four (24) hours prior to the abortion, a copy of the printed materials has been provided to the pregnant woman if she chooses to view these materials;

(d) The pregnant woman certifies in writing, prior to the performance or inducement of the abortion:

1. That she has received the information required to be provided under paragraphs (a), (b), and (c) of this subsection; and
2. That she consents to the particular abortion voluntarily and knowingly, and she is not under the influence of any drug of abuse or alcohol; and

(e) Prior to the performance or inducement of the abortion, the physician who is scheduled to perform or induce the abortion or the physician's agent receives a copy of the pregnant woman's signed statement, on a form which may be provided by the physician, on which she consents to the abortion and that includes the certification required by paragraph (d) of this subsection.

(2) By January 1, 1999, the cabinet shall cause to be published in English in a typeface not less than 12 point type the following materials:

(a) Materials that inform the pregnant woman about public and private agencies and services that are available to assist her through her pregnancy, upon childbirth, and while her child is dependent, including, but not limited to, adoption agencies. The materials shall include a comprehensive list of the available agencies and a description of the services offered by the agencies and the telephone numbers and addresses of the agencies, and inform the pregnant woman about available medical assistance benefits for prenatal care, childbirth, and neonatal care and about the support obligations of the father of a child who is born alive. The cabinet shall ensure that the materials are comprehensive and do not directly or indirectly promote, exclude, or discourage the use of any agency or service described in this section;

(b) Materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the zygote, blastocyte, embryo, or fetus at two (2) week gestational increments for the first sixteen (16) weeks of her pregnancy and at four (4) week gestational increments from the seventeenth week of her pregnancy to full term, including any relevant information regarding the time at which the fetus possibly would be viable. The materials shall use language that is understandable by the average person who is not medically trained, shall be objective and nonjudgmental, and shall include only accurate scientific information about the zygote, blastocyte, embryo, or fetus at the various gestational increments. The materials shall include, for each of the two (2) of four (4) week increments specified in this paragraph, a pictorial or photographic depiction of the zygote, blastocyte, embryo, or fetus. The materials shall also include, in a conspicuous manner, a scale or other explanation that is understandable by the average person and that can be used to determine the actual size of the zygote, blastocyte, embryo, or fetus at a particular gestational increment as contrasted with the depicted size of the zygote, blastocyte, embryo, or fetus at that gestational increment; and

(c) Materials that inform the pregnant woman of the potential ability of a physician to reverse the effects of prescription drugs intended to induce abortion, where additional information

about this possibility may be obtained, and contact information for assistance in locating a physician who may aid in the reversal.

(3) Upon submission of a request to the cabinet by any person, hospital, physician, or medical facility for one (1) or more copies of the materials published in accordance with subsection (2) of this section, the cabinet shall make the requested number of copies of the materials available to the person, hospital, physician, or medical facility that requested the copies.

(4) If a medical emergency or medical necessity compels the performance or inducement of an abortion, the physician who will perform or induce the abortion, prior to its performance or inducement if possible, shall inform the pregnant woman of the medical indications supporting the physician's judgment that an immediate abortion is necessary. Any physician who performs or induces an abortion without the prior satisfaction of the conditions specified in subsection (1) of this section because of a medical emergency or medical necessity shall enter the reasons for the conclusion that a medical emergency exists in the medical record of the pregnant woman.

(5) If the conditions specified in subsection (1) of this section are satisfied, consent to an abortion shall be presumed to be valid and effective.

(6) The failure of a physician to satisfy the conditions of subsection (1) of this section prior to performing or inducing an abortion upon a pregnant woman may be the basis of disciplinary action pursuant to KRS 311.595.

(7) The cabinet shall charge a fee for each copy of the materials distributed in accordance with subsections (1) and (3) of this section. The fee shall be sufficient to cover the cost of the administration of the materials published in accordance with subsection (2) of this section, including the cost of preparation and distribution of materials.

#### History of Enforcement:

No specific fines or penalties are noted, but non-compliance can lead to license revocation under KRS § 311.606.

#### Relationship statutes/ regulations relating to the subject matter:

Interacts with Kentucky's 2022 trigger law (KRS § 311.772), which bans most abortions except in life-threatening cases.

### Civil Liability Provisions

#### **Ky. Rev. Stat. Ann. § 311.731(4)**

#### **Professional Discipline for Abortion on Basis of Sex, Disability, Race, Color, or National Origin**

#### **Applies to Ky. Rev. Stat. Ann. § 311.731**

(4) The State Board of Medical Licensure shall revoke a physician's license to practice medicine in this state if the physician violates subsection (2) of this section.

#### **Ky. Rev. Stat. Ann. § 311.731(5)**

#### **Licensing Penalties for Abortion on Basis of Sex, Disability, Race, Color, or National Origin**

**Applies to Ky. Rev. Stat. Ann. § 311.731**

(5) The Cabinet for Health and Family Services shall revoke the license of any person, including a licensed abortion facility, who violates subsection (2) of this section.

**Ky. Rev. Stat. Ann. § 311.731(6)**

**Civil Remedies Under Abortions on Basis of Sex, Disability, Race, Color, or National Origin**

**Applies to Ky. Rev. Stat. Ann. § 311.731**

(6) Any physician or other person who violates subsection (2) of this section is liable in a civil action for compensatory and punitive damages and reasonable attorney's fees to any person, including an unborn child, or the representative of the estate of any person, including an unborn child, who sustains injury, death, or loss to person or property as the result of the performance or inducement or the attempted performance or inducement of the abortion. In any action under this subsection, the court also may award any injunctive or other equitable relief that the court considers appropriate.

**Ky. Rev. Stat. Ann. § 311.732(11)**

**Civil Remedies Under Parental Consent Requirements**

**Applies to Ky. Rev. Stat. Ann. § 311.732**

(11) Failure to obtain consent pursuant to the requirements of this section is prima facie evidence of failure to obtain informed consent and of interference with family relations in appropriate civil actions. The law of this state shall not be construed to preclude the award of exemplary damages in any appropriate civil action relevant to violations of this section. Nothing in this section shall be construed to limit the common-law rights of parents.

**Ky. Rev. Stat. Ann. § 311.735(3)**

**Civil Remedies Under Spousal Notice Provisions**

**Applies to Ky. Rev. Stat. Ann. § 311.735**

(3) Failure to notify a spouse as required by this section is prima facie evidence of interference with family relations in appropriate civil actions. The law of this Commonwealth shall not be construed to preclude the award of punitive damages or damages for emotional distress, even if unaccompanied by physical complications in any civil action brought pursuant to violations of this section. Nothing in this section shall be construed to limit the common law rights of a husband.

## **Louisiana**

Louisiana is a strong pro-life model for the other states, and currently ranks second on AUL's Life List. Now that *Roe* is overturned, Louisiana is enforcing its conditional law and protecting Life. Louisiana has thirty-two pregnancy resource centers, and its last three abortion centers recently announced that they were closed.

Louisiana's House of Representatives and Senate are both Republican controlled, but Louisiana is one of the states where there are a number of pro-life Democrats as well.

Louisiana has seven supreme court justices elected by partisan election to ten-year terms. They are elected to represent one of the seven supreme court regional districts in the state. Justices on the Louisiana Court of Appeals are elected to ten-year terms on the partisan ballot. There is currently ongoing litigation on clinic licensing requirements and abortion funding through Medicaid.

Governor John Bel Edwards is a pro-life Democrat and has signed many pieces of pro-life legislation that have come across his desk. After the *Dobbs* opinion was released, he issued a press statement in which he called himself “unabashedly pro-life and opposed to abortion.” Attorney General Jeff Landry celebrated the opinion and promised to “continue defending Louisiana’s pro-life laws.” According to AUL’s Unsafe project, there is a history of serious health and safety violations in Louisiana’s abortion clinics.

## Statutory Prohibitions

### **La. Stat. § 40:1061**

A. The provisions of this Act shall become effective immediately upon, and to the extent permitted by, the occurrence of any of the following circumstances:

- (1) Any decision of the Supreme Court of the United States which overrules, in whole or in part, *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973), thereby restoring to the state of Louisiana the authority to prohibit or limit abortion.
- (2) Adoption of an amendment to the United States Constitution which, in whole or in part, restores to the state of Louisiana the authority to prohibit or limit abortion.
- (3) A decision of the Supreme Court of the United States in the case of *Dobbs v. Jackson Women's Health Organization*, Docket No. 19-1392, which overrules, in whole or in part, *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973), thereby restoring to the state of Louisiana the authority to prohibit or limit abortion.

B. The provisions of this Act shall be effective relative to the appropriation of Medicaid funds, to the extent consistent with any executive order by the President of the United States, federal statute, appropriation rider, or federal regulation that sets forth the limited circumstances in which states must fund abortion to remain eligible to receive federal Medicaid funds pursuant to 42 U.S.C. 1396 et. seq.

C. No person may knowingly administer to, prescribe for, or procure for, or sell to any pregnant woman any medicine, drug, or other substance with the specific intent of causing or abetting the termination of the life of an unborn human being. No person may knowingly use or employ any instrument or procedure upon a pregnant woman with the specific intent of causing or abetting the termination of the life of an unborn human being.

D. Any person in violation of this Section shall be prosecuted pursuant to the effective provisions of R.S. 14:87.7, and shall be subject to the penalties provided in R.S. 40:1061.29.



E. Nothing in this Section may be construed to prohibit the sale, use, prescription, or administration of a contraceptive measure, drug or chemical, if it is administered prior to the time when a pregnancy could be determined through conventional medical testing and if the contraceptive measure is sold, used, prescribed, or administered in accordance with manufacturer instructions.

F. It shall not be a violation of Subsection C of this Section for a licensed physician to perform a medical procedure necessary in reasonable medical judgment to prevent the death or substantial risk of death due to a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant woman. However, the physician shall make reasonable medical efforts under the circumstances to preserve both the life of the mother and the life of her unborn child in a manner consistent with reasonable medical practice.

G. Medical treatment provided to the mother by a licensed physician which results in the accidental or unintentional injury or death to the unborn child is not a violation of Subsection C of this Section.

H. Nothing in this Section may be construed to subject the pregnant mother upon whom any abortion is performed or attempted to any criminal conviction and penalty.

I. The terms as used in this Section have the same meaning as the definitions provided in R.S. 14:87.1.

J. This Section shall be known, and may be cited, as the Human Life Protection Act.

**La. Stat. § 40:1061.1.5**

**A. (1)**

(a) Prior to any abortion being performed, there shall first be performed an ultrasound, in accordance with the standards set forth in R.S. 40:1061.10(D), in order to determine whether or not a fetal heartbeat is present, and the results of the ultrasound shall be included in the pregnant woman's medical records.

(b) Except as provided in Paragraph (2), (3), or (4) of this Subsection, it shall be unlawful for any person to knowingly perform an abortion with the specific intent of causing or abetting the termination of the life of an unborn human being when a fetal heartbeat has been detected. Any person who acts based on the exceptions provided in Paragraph (2), (3), or (4) of this Subsection shall so note in the pregnant woman's medical records and shall specify in the pregnant woman's medical records which of the exceptions the person performing the abortion has invoked.

(2) (a) A person shall not be in violation of Paragraph (1) of this Subsection if the person performs a medical procedure designed to or intended, in that person's reasonable medical judgment, to prevent the death of a pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

(b) (i) A person who performs a medical procedure as described in Subparagraph (a) of this Paragraph shall declare in writing, under penalty of perjury, that

the medical procedure was necessary, to the best of that person's reasonable medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. The person shall also provide in that written statement the specific medical condition of the pregnant woman that the medical procedure was performed to address, and the medical rationale for the conclusion that the medical procedure was necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

(ii) The person who performs a medical procedure as described in Subparagraph (a) of this Paragraph shall place the written documentation required by this Subparagraph in the pregnant woman's medical records, and shall maintain a copy of the written documentation for not less than seven years.

(3) A person shall not be in violation of Paragraph (1) of this Subsection if the person has performed an examination for the presence of a fetal heartbeat in the unborn human individual using standard medical practice and that examination does not reveal a fetal heartbeat, or the person has been informed by a physician who has performed the examination for a fetal heartbeat that the examination did not reveal a fetal heartbeat.

(4) For purposes of this Section, "abortion" shall not include an abortion performed when the pregnancy is diagnosed as medically futile.

B. Repealed by Acts 2022, No. 545, § 4.

C. Whoever violates this Section shall be prosecuted pursuant to the effective provisions of R.S. 14:87.7 and shall be subject to the penalties provided in R.S. 40:1061.29.

D. In addition to any other grounds provided by law, it shall be grounds for the nonissuance, suspension, revocation, or restriction of a license, or the denial of reinstatement or renewal of a license, issued by the Louisiana State Board of Medical Examiners, that the applicant or licensee has performed an abortion in violation of this Section.

E. This Section shall not be construed to repeal any other provision of law that restricts or regulates the performance of an abortion by a particular method or during a particular stage of a pregnancy.

F. The provisions of this Section are hereby repealed in favor of the provisions of R.S. 40:1061 immediately upon and to the extent that either:

(1) A decision of the United States Supreme Court upholds the authority of each of the several states of the United States or of the state of Louisiana to prohibit elective abortions.

(2) An amendment to the Constitution of the United States of America is adopted that restores to each of the several states of the United States or to the state of Louisiana the authority to prohibit elective abortions.

## In-Person Dispensing Requirements

### **Louisiana: La. Stat. § 40:1061.11(A)**

When any drug or chemical is used for the purpose of inducing an abortion, the physician who prescribed the drug or chemical shall be in the same room and in the physical presence of the pregnant woman when the drug or chemical is initially administered, dispensed, or otherwise provided to the pregnant woman.

#### Authoritative interpretation by state agencies or courts/history of enforcement:

Executive: While it did not enforce under this statute, the Governor [signed](#) an extradition [warrant](#) for a New York doctor who prescribed abortion pills for a pregnant minor in Louisiana, illustrating the state's seriousness about preventing abortion via telemedicine

#### Relationship between statute and other federal/state statutes relating to the subject matter:

Louisiana's prohibition on mailing chemical abortion drugs is consistent with federal law. The Comstock Act, 18 U.S.C. § 1461, explicitly prohibits the mailing of chemical abortion pills. Louisiana has a total ban on abortion (La. Stat. § 40:1061).

## Informed Consent Laws

### **La. Stat. Ann. § 40:1061.17**

B. Informed consent; requirements. After a woman is determined to be pregnant, no abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

- (1) The provisions of R.S. 40:1061.10 requiring an ultrasound test and determination of viability are met.
- (2) The information required by this Section to be communicated orally and in person to the woman is provided to her individually and in a private room to protect her privacy, for the purpose of ensuring that the information focuses on her individual circumstances and that she has an adequate opportunity to ask questions.
- (3) (a) Written information from the physician. Except as provided in Subparagraph (c) of this Paragraph, at least seventy-two hours before the abortion, the physician who is to perform the abortion or the referring physician has informed the woman, in writing and read orally and in person of:
  - (i) The name of the physician who meets the requirements of R.S. 46:1061.10(A) and who will perform the abortion, which shall be listed in the same manner as the name appears on the membership roll of the Louisiana State Board of Medical Examiners.
  - (ii) The location and specialty of the physician's residency and whether the residency of the physician has been completed.

(iii) Whether the physician is currently board-certified and, if so, the medical specialty and the certifying organization.

(iv) Whether the physician has active admitting privileges at any hospital that provides obstetrical or gynecological healthcare services and, if so, the name of the hospital or hospitals. For purposes of this Subparagraph, “active admitting privileges” means that the physician is a member in good standing of the medical staff of a hospital that is currently licensed by the Louisiana Department of Health, with the ability to admit a patient and to provide diagnostic and surgical services to such patient.

(v) Whether the physician has malpractice insurance that would cover the abortion procedure.

(vi) Whether in the last ten years the physician has ever been placed on probation, reprimanded, or had his license suspended or revoked by any professional licensing organization and, if so, the jurisdiction in which the professional discipline was ordered. For purposes of this Subsection, the professional discipline action must be disclosed even if it was stayed or suspended. Disclosure of disciplinary action shall include but not be limited to action taken by the Louisiana State Board of Medical Examiners and the Louisiana Board of Pharmacy.

(vii) The internet address for disciplinary records of the Louisiana State Board of Medical Examiners.

(b) Oral information from the physician. Except as provided in Subparagraph (c) of this Paragraph, and in the same period of time provided for in the introductory paragraph of Subparagraph (a) of this Paragraph, the physician who is to perform the abortion or the referring physician has informed the woman, orally and in person of:

(i) A description of the proposed abortion method and of those risks (including risks to the woman's reproductive health) and alternatives to the abortion that a reasonable patient would consider material to the decision of whether or not to undergo the abortion.

(ii) The probable gestational age of the unborn child at the time the abortion is to be performed; and, if the unborn child is viable or has reached the gestational age of twenty-four weeks and the abortion may be otherwise lawfully performed under existing law, that:

(aa) The unborn child may be able to survive outside the womb.

(bb) The woman has the right to request the physician to use the method of abortion that is most likely to preserve the life of the unborn child.

(cc) If the unborn child is born alive, that attending physicians have the legal obligation to take all reasonable steps necessary to maintain the life and health of the child.

(iii) The probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed.

(iv) The medical risks associated with carrying her child to term.

(v) Any need for anti-Rh immune globulin therapy, if she is Rh negative, the likely consequences of refusing such therapy, and a good faith estimate of the cost of the therapy.

(vi) The availability of anesthesia or analgesics to alleviate or eliminate organic pain to the unborn child that could be caused by the method of abortion to be employed.

(vii) The requirement that at least seventy-two hours prior to the woman's having any part of an abortion performed or induced, the physician, referring physician, or qualified person working in conjunction with either physician must perform an obstetric ultrasound under the provisions of R.S. 40:1061.10.

(viii) The inclusion in her printed materials of a comprehensive list, compiled by the department, of facilities that offer obstetric ultrasounds free of charge.

(c) If the woman certifies in writing that she currently lives one hundred fifty miles or more from the nearest licensed outpatient abortion facility to her residence, then the physician who is to perform the abortion or the referring physician shall comply with all of the requirements of Subparagraphs (a) and (b) of this Paragraph at least twenty-four hours prior to the abortion.

(4) Oral information from a physician or qualified person.

(a) In the initial contact with an abortion provider by any person seeking to schedule an abortion for a minor or adult woman or for herself, whether such initial contact is by telephone, by internet communication, in person, or by any other means, the physician who is to perform the abortion or any person acting on behalf of the physician informs the person of the internet address of the department's abortion alternatives and informed consent website provided for in this Section.

(b) (i) Except as provided in Item (ii) of this Subparagraph, at least seventy-two hours before a scheduled abortion, the physician who is to perform the abortion, the referring physician, or a qualified person has informed the woman, orally and in person, that:

(aa) Medical assistance benefits may be available for prenatal care, childbirth, and neonatal care, and that more detailed information on the availability of such assistance is contained on the department's

website and in the printed materials which shall be given to her as provided in this Section.

(bb) The department's website and printed materials describe the unborn child and list agencies which offer alternatives to abortion.

(cc) The father of the unborn child is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion. In the case of rape, this information may be omitted.

(dd) She is free to withhold or withdraw her consent to the abortion at any time before or during the abortion without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled.

(ii) If the woman certifies in writing that she currently lives one hundred fifty miles or more from the nearest licensed outpatient abortion facility to her residence, then the physician who is to perform the abortion, the referring physician, or a qualified person shall comply with all of the requirements of Item (i) of this Subparagraph at least twenty-four hours before a scheduled abortion.

(c) For purposes of this Paragraph, “qualified person” shall mean an agent of the physician who is a psychologist, licensed social worker, licensed professional counselor, registered nurse, or physician.

(5) (a) Provision of printed materials. Except as provided in Subparagraph (b) of this Paragraph, at least seventy-two hours before the abortion, the woman is given a copy of the printed materials described in this Section by the physician who is to perform the abortion, the referring physician, or a qualified person as defined in Subparagraph (4)(c) of this Subsection. If the woman is unable to read the materials, they shall be read to her. If the woman asks questions concerning any of the information or materials, answers shall be provided to her in her own language.

(b) If the woman certifies in writing that she currently lives one hundred fifty miles or more from the nearest licensed outpatient abortion facility to her residence, then the woman shall be given a copy of the printed materials described in this Section by the physician who is to perform the abortion, the referring physician, or a qualified person as defined in Subparagraph (4)(c) of this Subsection at least twenty-four hours before the abortion. If the woman is unable to read the materials, they shall be read to her. If the woman asks questions concerning any of the information or materials, answers shall be provided to her in her own language.

(6) Certification and reporting. The woman certifies in writing on a form provided by the department, prior to the abortion, that the information and materials required to be provided under this Section have been provided at least seventy-two hours prior to the abortion; or, if applicable, at least twenty-four hours prior to the abortion in the case of a woman who has given prior certification in writing that she currently lives one hundred fifty miles or more from the nearest licensed outpatient abortion facility to her residence. All physicians who perform abortions shall report the total number of certifications received monthly to the

department. The department shall make the number of certifications received available to the public on an annual basis.

(7) Prior to the performance of the abortion, the physician who is to perform the abortion or his agent receives a copy of the written certification required by this Section.

(8) The woman is not required to pay any amount for the abortion procedures until the seventy-two-hour period has expired; or until expiration of the twenty-four-hour period applicable in the case of a woman who has given prior certification in writing that she currently lives one hundred fifty miles or more from the nearest licensed outpatient abortion facility to her residence.

Interpretation:

The 72-hour waiting period and ultrasound mandates were upheld in *Kliebert v. June Medical* (2016).

History of Enforcement:

Non-compliance can result in fines or license revocation under La. Stat. Ann. § 40:1061.29.

Relationship statutes/ regulations relating to the subject matter:

Interacts with Louisiana's 2022 trigger law (§ 40:1061.8), limiting abortions to medical emergencies.

Any other pertinent information:

The 72-hour waiting period is among the longest in the U.S.

Data and Documentation Requirements

**Louisiana: La. Stat. Ann. § 40:1061.21**

A. An individual abortion report for each abortion performed or induced shall be completed by the attending physician. The report shall be confidential and shall not contain the name or address of the woman. The report shall include all of the following:

- (1) Patient number.
- (2) Name and address of the facility at which the abortion was performed or induced.
- (3) Date of abortion.
- (4) The parish and zip code, if any, in which the pregnant woman resides.
- (5)(a) Age of pregnant woman. . . .
- (16) Medical condition of woman at time of abortion.
- (17) Rh type of pregnant woman.



(18) A photographic print or image produced as the result of the ultrasound test required by R.S. 40:1061.10(D).

(19) Type of abortion procedure.

(20) Reason for abortion.

(21) Complications by type.

Authoritative interpretation by state agencies or courts:

La. Admin. Code tit. 48, pt. I, § 4433 (2015)

Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

Other: State reports available here: <https://ldh.la.gov/page/schs-itop>.

Civil Liability Provisions

**La. Rev. Stat. § 40:1061.29(c)**

**Civil Remedies and Professional Discipline for Abortion**

**Applies to La. Rev. Stat. §§ 40:1061 through 40:1068**

C. In addition to whatever remedies are otherwise available under the law of this state, failure to comply with the provisions of this Chapter shall:

(1) Provide a basis for a civil malpractice action. Such an action may be brought by the woman upon whom the abortion was performed. Any intentional violation of this Chapter shall be admissible in a civil suit as prima facie evidence of a failure to comply with the requirements of this Chapter. When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the abortion was performed.

(2) Provide a basis for professional disciplinary action, including but not limited to any action authorized under R.S. 37:1261 et seq.

(3) Provide a basis for recovery for the woman for the death of her unborn child under Civil Code Article 2315.2, whether or not the unborn child was viable at the time the abortion was performed, or was born alive.

(4) Provide a basis for the attorney general, the district attorney in whose jurisdiction the violation occurred, or the secretary of the department to obtain a writ of injunction, which shall not be subject to being released upon bond. The trial of the proceeding shall be summary and by the judge without a jury.

Relevant Related Statutes:

La. Rev. Stat. § 40:1061.11 (Abortion-inducing Drugs Requirements)

La. Rev. Stat. § 40:1061.1.5 (Abortion after Heartbeat Detected prohibited)

La. Rev. Stat. § 40:1061.14.1 (Fraudulent Interference with Parental Consent)

La. Rev. Stat. § 40:1061.10 (Licensing, Ultrasound, Informed Consent Requirements)

La. Rev. Stat. § 40:1061.17 (Women’s Right to Know Act)

## Maine

After *Roe*, abortion remains legal in Maine up to viability, with broad exceptions for life and health even after viability. Maine has a pro-abortion “Freedom of Choice Act” providing a legal right to abortion at viability and beyond. In addition, Maine allows physician assistants and advanced practice registered nurses to perform abortions. Maine’s Medicaid program, MaineCare, covers abortion services with state tax dollars. Additionally, Maine requires private insurance carriers to cover abortion services, with limited exceptions for religious employers. Maine has eleven pregnancy resource centers. And Maine has enacted some legal protections, including an enforceable reporting law that applies to both surgical and chemical abortions and conscience protections for pro-life physicians, nurses, and other healthcare workers.

Maine’s judiciary has supreme court and appellate justices nominated by the governor and confirmed by the Maine Senate. Although Maine does not have a constitutional “right to abortion”, it appears to be vulnerable to judicial creation of one in the wake of *Roe*’s overturn.

Maine is in difficult terrain for Life in the northeast. Newly re-elected Governor Janet Mills is strongly pro-abortion. After the *Dobbs* decision, her office issued a press statement saying, “This decision is a fundamental assault on women’s rights and on reproductive freedom that will do nothing to stop abortion.” She pledged to “defend the right to reproductive health care with everything [she has],” and promised that her “veto pen will stand in the way of any effort to undermine, rollback, or outright eliminate the right to safe and legal abortion in Maine.” According to AUL’s Unsafe project, Maine does not have a regulatory framework for inspecting its abortion businesses.

### Statutory Prohibitions

#### **Me. Stat. Tit. 22 § 1598(1-B)**

After viability, an abortion may be performed only when it is necessary in the professional judgment of a physician licensed pursuant to Title 32, chapter 36 or 48. The physician shall apply the applicable standard of care in making a professional judgment under this subsection.

### Informed Consent Laws

#### **Me. Stat. tit. 22, § 1599A**

1. Consent by the woman. A health care professional, as defined in section 1596, subsection 1, paragraph C, may not perform an abortion unless, prior to the performance, the health care professional certifies in writing that the woman gave her informed written consent, freely and without coercion.

2. Informed consent. To ensure that the consent for an abortion is truly informed consent, the health care professional, as defined in section 1596, subsection 1, paragraph C, shall inform the woman, in a manner that in the health care professional's professional judgment is not misleading and that will be understood by the patient, of at least the following:

- A. According to the health care professional's best judgment she is pregnant;
- B. The number of weeks elapsed from the probable time of the conception;
- C. The particular risks associated with her own pregnancy and the abortion technique to be performed; and
- D. At the woman's request, alternatives to abortion such as childbirth and adoption and information concerning public and private agencies that will provide the woman with economic and other assistance to carry the fetus to term, including, if the woman so requests, a list of these agencies and the services available from each.

Interpretation:

The Maine Department of Health and Human Services oversees compliance through licensing but imposes minimal regulatory burdens due to Maine's permissive abortion laws.

Relationship statutes/ regulations relating to the subject matter:

Interacts with Maine's 2023 law (L.D. 1619), allowing later-term abortions for medical necessity.

Any other pertinent information:

Maine's abortion laws are among the least restrictive, with no waiting period or ultrasound mandate.

## Data and Documentation Requirements

### **Me. Stat. tit. 22 § 1596(2)**

2. Abortion reports. A report of each abortion performed must be made to the Department of Health and Human Services in a manner prescribed by the department. These reports may not identify the patient by name or include other identifying information.

The report must include, without limitation, the following information:

- A. The date and place the abortion was performed;
- B. The age of the person on whom the abortion was performed;
- C. The method used to perform the abortion; and
- D. The gestational age of the fetus when the abortion was performed.

The report containing the information and data required by this subsection must be transmitted by the health care provider to the department not later than 10 days following the end of the month in which the abortion is performed.

Relationship between statute and other federal/state statutes relating to the subject matter:  
State reports data to CDC.

Other:

State reports available here: <https://www.maine.gov/dhhs/mecdc/public-health-systems/data-research/data/index.html>.

### Civil Liability Provisions

**Me. Stat. Tit. §§ 1597-A(3)(B); 1597-A(8)(B)**  
**Civil Remedies Under Parental Consent Requirements**  
**Applies to Me. Stat. Tit. § 1597-A**

#### 3. Informed consent; disallowance of recovery

B. Recovery is not allowed against any health care professional upon the grounds that the abortion was rendered without the informed consent of the minor when:

(1) The health care professional, in obtaining the minor's consent, acted in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; or

(2) The health care professional has received and acted in good faith on the informed written consent to the abortion given by the minor to a counselor.

#### 8. Violations; penalties. The following penalties apply to violations of this section

B. A health care professional, as defined in section 1596, subsection 1, paragraph C, or counselor may not knowingly fail to perform any action required by this section. A person who violates this paragraph commits a civil violation for which a fine of not more than \$1,000 may be adjudged for each violation.

## **Maryland**

After *Roe*, abortion remains legal in Maryland up to viability with broad exceptions for life and health and for “genetic defect or serious deformity or abnormality” even after viability. Maryland has a pro-abortion “Freedom of Choice Act” that aggressively protects abortion. Although a recent count found 25 abortion centers in Maryland, it also has 40 pregnancy resource centers. The state does have a pro-life parental notification law for minors seeking abortion, however, abortion providers have broad discretion to waive parental notice.

Maryland’s House of Delegates and Senate are both Democrat-controlled. This year, they passed legislation that will implement a ballot question in the November 2024 General Election, asking Maryland voters to amend the state constitution to include a “right” to abortion. This November, Marylanders passed the ballot initiative entitled, the “Maryland Right to Reproductive Freedom Amendment” (“amendment”). The ballot initiative will amend the Maryland constitution to state, “[t]hat every person, as a central component of an individual’s rights to liberty and equality, has the fundamental right to reproductive freedom, including but not limited to the ability to make and

effectuate decisions to prevent, continue, or end one’s own pregnancy.” Further, the amendment prohibits the state from enacting laws that protect women by directing that Maryland “may not directly or indirectly, deny, burden, or abridge the right (to reproductive autonomy) unless justified by a compelling state interest achieved by the least restrictive means.” You can read AUL’s [full analysis of the 2024 Maryland Ballot Initiative](#).

The Maryland General Assembly also passed legislation that requires public universities to either provide abortion services on-campus or refer students seeking abortion services to off-campus abortion providers.

Maryland’s Missouri-style judicial nomination system leaves it vulnerable to a judicially created “right to abortion” in the state constitution. Maryland’s appellate judges were nominated by the governor from a shortlist prepared by the Maryland Judicial Nominating Commission and then confirmed by the Maryland Senate.

Wes Moore, a Democrat, was elected as Governor in the 2022 Midterm Elections. Governor Moore has publicly committed to “enshrine[ing] the right to abortion in Maryland’s Constitution and establish[ing] Maryland as a safe haven for reproductive health care.” Although openly pro-abortion, Governor Moore has also expressed his desire to “implement legislation requiring Maryland’s Medicaid program to provide one year of postpartum coverage to new mothers,” as well as “expand home visiting programs, which provide expecting and new mothers with wraparound supports and education.”

## Statutory Prohibitions

### **Md. Code, Health-Gen. § 20-209**

(a) In this section, “viable” means that stage when, in the best clinical judgment of the qualified provider based on the particular facts of the case before the qualified provider, there is a reasonable likelihood of the fetus's sustained survival outside the womb.

(b) Except as otherwise provided in this subtitle, the State may not interfere with the decision of a woman to terminate a pregnancy:

- (1) Before the fetus is viable; or
- (2) At any time during the woman's pregnancy, if:
  - (i) The termination procedure is necessary to protect the life or health of the woman; or
  - (ii) The fetus is affected by genetic defect or serious deformity or abnormality.

(c) The Department may adopt regulations that:

(1) Are both necessary and the least intrusive method to protect the life or health of the woman; and

(2) Are not inconsistent with established clinical practice.

(d) The qualified provider is not liable for civil damages or subject to a criminal penalty for a decision to perform an abortion under this section made in good faith and in the qualified provider's best clinical judgment in accordance with accepted standards of clinical practice.”

## Constitutional Authorization

### **Md. Const., Declaration of Rights, art. 48**

That every person, as a central component of an individual's rights to liberty and equality, has the fundamental right to reproductive freedom, including but not limited to the ability to make and effectuate decisions to prevent, continue, or end one's own pregnancy. The State may not, directly or indirectly, deny, burden, or abridge the right unless justified by a compelling State interest achieved by the least restrictive means.

## **Massachusetts**

Massachusetts has minimal pro-life protections for mothers and preborn children. After *Roe*, Massachusetts limits abortion at 24-weeks’ gestation, with exceptions for the life or health of the mother, lethal fetal disability, or if the unborn child “is incompatible with sustained life outside the uterus.” The Massachusetts Supreme Judicial Court has also interpreted a state constitutional right to abortion that is broader than *Roe*’s abortion right.

Democrats control both chambers in the Massachusetts legislature. In 2020, the legislature passed a “*Roe Act*,” prohibiting the government from interfering with a woman’s abortion decision or restricting particularly gruesome abortion methods. In 2023, the legislature appropriated one million dollars to fund a public awareness campaign against pro-life pregnancy centers. Massachusetts has approximately thirty pregnancy centers throughout the state, which offer a variety of different medical services at no cost to women and families.

Massachusetts’ governor directly appoints state supreme court justices with approval from the Governor’s Council; according to Ballotpedia, there currently is split control of the Massachusetts Supreme Judicial Court, meaning the court neither leans conservative nor liberal. However, historically, the state’s high court has been anti-life; the same court determined the state constitution required the state to pay Medicaid funds for abortion as a constitutionally protected right. Massachusetts also sought to restrict sidewalk counselors from public sidewalks within thirty-five feet of an abortion center entrance, but the law was struck down by the U.S. Supreme Court.

The newly elected Governor, Maura Healey, is outspokenly pro-abortion. Following a federal court’s ruling in Texas that temporarily blocked the FDA’s approval of chemical abortion drugs, Governor Healey announced that, at her request, the University of Massachusetts and health care

providers have taken action to stockpile doses of chemical abortion drugs. Governor Healey also issued an executive order, stating that certain state laws should be interpreted as protecting access to chemical abortion drugs.

## Statutory Prohibitions

### **Mass. Gen. Laws ch. 112 § 12N**

If a pregnancy has existed for 24 weeks or more, no abortion may be performed except by a physician, and only if in the best medical judgement of the physician it is:

- (i) necessary to preserve the life of the patient;
- (ii) necessary to preserve the patient's physical or mental health;
- (iii) warranted because of a lethal fetal anomaly or diagnosis; or
- (iv) warranted because of a grave fetal diagnosis that indicates that the fetus is incompatible with sustained life outside of the uterus without extraordinary medical interventions.

The right to abortion is protected by the state constitution (*Moe v. Sec'y of Admin. & Fin.*, 417 N.E.2d 387 (Mass. 1981)).

### **Mass. Gen. Laws ch. 112 § 12L**

The commonwealth, or a subdivision thereof, shall not interfere with a person's personal decision and ability to prevent, commence, terminate or continue their own pregnancy consistent with this chapter, or restrict the use of medically appropriate methods of abortion or the manner in which medically appropriate abortion is provided.

## Data and Documentation Requirements

### **Massachusetts: Mass. Gen. Laws ch. 112 § 12Q**

The commissioner of public health shall collect aggregate data on abortions performed by a physician, physician assistant, certified nurse practitioner or certified nurse midwife on a form promulgated by the commissioner that shall include, but not be limited to, the:

- (i) date and place of the abortions performed;
- (ii) ages of the pregnant patients;
- (iii) method used to perform the abortions; and
- (iv) gestational age when the abortions were performed.



The commissioner shall prepare from these forms such statistical tables with respect to maternal health, abortion procedures and gestational age as the commissioner deems useful and shall make an annual report thereof to the general court. Nothing in this section shall limit the authority of the department of public health to require reports pursuant to sections 24A and 25A of chapter 111.

Relationship between statute and other federal/state statutes relating to the subject matter:  
State reports data to CDC.

Other:

State reports available here: <https://www.mass.gov/lists/annual-massachusetts-induced-termination-of-pregnancy-reports>.

## Michigan

After Roe, a pre-Roe statute would prohibit abortion unless an abortion is necessary to preserve the woman's life. However, Michigan's Court of Claims permanently enjoined the law in September 2022, so abortion is currently only limited after viability. In November 2022, Michigan voters passed an amendment to the state constitution to add a "fundamental right to reproductive freedom, which entails the right to make and effectuate decisions about all matters relating to pregnancy," including abortion.

Michigan still has informed consent protections, including a 24-hour reflection period, offering of an ultrasound, and parental consent for minors under age 18. In 2021, the state house and senate both passed resolutions affirming the right to life of every unborn child. The state house also declared May 13th as Pregnancy Resource Awareness Day beginning in 2021. Michigan has around 100 pregnancy resource centers that provide life-affirming services to women and families.

Michigan's has a popular judicial selection system, with candidates nominated by party convention running in a general election without listing a party affiliation. According to Ballotpedia, the Michigan Supreme Court has three judges on the court appointed by a Republican governor, one judge was appointed by a Democratic governor, and three judges were selected in a nonpartisan election.

Unfortunately, re-elected Governor Gretchen Whitmer is an outspoken proponent of abortion. She, along with Planned Parenthood, filed a lawsuit alleging Michigan's pre-Roe law is unconstitutional. In 2021, Governor Whitmer line-item vetoed portions of the state budget to remove millions in funding for pro-life activities, including pregnancy resource centers.

AUL's Unsafe project uncovered numerous citations in inspection reports. Abortion facilities consistently failed to sterilize medical instruments, train staff, and secure and record medications. There also were numerous emergency transfers of patients to hospital emergency departments.

## Informed Consent Laws

### **Mich. Comp. Laws § 333.17015**

Sec. 17015.

(1) Subject to subsection (10), a physician shall not perform an abortion otherwise permitted by law without the patient's informed written consent, given freely and without coercion to abort.

(2) For purposes of this section and section 17015a:1

(a) “Abortion” means the intentional use of an instrument, drug, or other substance or device to terminate a woman's pregnancy for a purpose other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a fetus that has died as a result of natural causes, accidental trauma, or a criminal assault on the pregnant woman. Abortion does not include the use or prescription of a drug or device intended as a contraceptive.

(b) “Coercion to abort” means an act committed with the intent to coerce an individual to have an abortion, which act is prohibited by section 213a of the Michigan penal code, 1931 PA 328, MCL 750.213a.

(c) “Domestic violence” means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

(d) “Fetus” means an individual organism of the species *Homo sapiens* in utero.

(e) “Local health department representative” means an individual who meets 1 or more of the licensing requirements listed in subdivision (h) and who is employed by, or under contract to provide services on behalf of, a local health department.

(f) “Medical emergency” means a condition which, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant individual as to necessitate the immediate abortion of the individual's pregnancy to avert the individual's death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(g) “Medical service” means the provision of a treatment, procedure, medication, examination, diagnostic test, assessment, or counseling, including, but not limited to, a pregnancy test, ultrasound, pelvic examination, or an abortion.

(h) “Qualified person assisting the physician” means another physician or a physician's assistant licensed under this part or part 175,2 a fully licensed or limited licensed psychologist licensed under part 182,3 a professional counselor licensed under part 181,4 a registered professional nurse or a licensed practical nurse licensed under part 172,5 or a social worker licensed under part 185.6

(i) “Probable gestational age of the fetus” means the gestational age of the fetus at the time an abortion is planned to be performed.

(j) “Provide the patient with a physical copy” means confirming that the patient accessed the internet website described in subsection (5) and received a printed valid confirmation form from the website and including that form in the patient's medical record or giving a patient a copy of a required document by 1 or more of the following means:

- (i) In person.
- (ii) By registered mail, return receipt requested.
- (iii) By parcel delivery service that requires the recipient to provide a signature in order to receive delivery of a parcel.
- (iv) By facsimile transmission.

(3) Subject to subsection (10), a physician or a qualified person assisting the physician shall do all of the following not less than 24 hours before that physician performs an abortion upon a patient who is pregnant:

(a) Confirm that, according to the best medical judgment of a physician, the patient is pregnant, and determine the probable gestational age of the fetus.

(b) Orally describe, in language designed to be understood by the patient, taking into account the patient's age, level of maturity, and intellectual capability, each of the following:

- (i) The probable gestational age of the fetus the patient is carrying.
- (ii) Information about what to do and whom to contact should medical complications arise from the abortion.
- (iii) Information about how to obtain pregnancy prevention information through the department of health and human services.

(c) Provide the patient with a physical copy of the written standardized summary described in subsection (11)(b) that corresponds to the procedure the patient will undergo and is provided by the department of health and human services. If the procedure has not been recognized by the department of health and human services, but is otherwise allowed under Michigan law, and the department of health and human services has not provided a written standardized summary for that procedure, the physician shall develop and provide a written summary that describes the procedure, any known risks or complications of the procedure, and risks associated with live birth and meets the requirements of subsection (11)(b)(iii) through (vii).

(d) Provide the patient with a physical copy of a medically accurate depiction, illustration, or photograph and description of a fetus supplied by the department of health and human services pursuant to subsection (11)(a) at the gestational age nearest the probable gestational age of the patient's fetus.

(e) Provide the patient with a physical copy of the prenatal care and parenting information pamphlet distributed by the department of health and human services under section 9161.7

(f) Provide the patient with a physical copy of the prescreening summary on prevention of coercion to abort described in subsection (11)(i).

(4) The requirements of subsection (3) may be fulfilled by the physician or a qualified person assisting the physician at a location other than the health facility where the abortion is to be performed. The requirement of subsection (3)(a) that a patient's pregnancy be confirmed may be fulfilled by a local health department under subsection (18). The requirements of subsection (3) cannot be fulfilled by the patient accessing an internet website other than the internet website that is maintained and operated by the department of health and human services under subsection (11)(g).

(5) The requirements of subsection (3)(c) through (f) may be fulfilled by a patient accessing the internet website that is maintained and operated by the department of health and human services under subsection (11)(g) and receiving a printed, valid confirmation form from the website that the patient has reviewed the information required in subsection (3)(c) through (f) at least 24 hours before an abortion being performed on the patient. The website must not require any information be supplied by the patient. The department of health and human services shall not track, compile, or otherwise keep a record of information that would identify a patient who accesses this website. The patient shall supply the valid confirmation form to the physician or qualified person assisting the physician to be included in the patient's medical record to comply with this subsection.

(6) Subject to subsection (10), before obtaining the patient's signature on the acknowledgment and consent form, a physician personally and in the presence of the patient shall do all of the following:

(a) Provide the patient with the physician's name, confirm with the patient that the coercion to abort screening required under section 17015a was performed, and inform the patient of the right to withhold or withdraw consent to the abortion at any time before performance of the abortion.

(b) Orally describe, in language designed to be understood by the patient, taking into account the patient's age, level of maturity, and intellectual capability, each of the following:

(i) The specific risk, if any, to the patient of the complications that have been associated with the procedure the patient will undergo, based on the patient's particular medical condition and history as determined by the physician.

(ii) The specific risk of complications, if any, to the patient if the patient chooses to continue the pregnancy based on the patient's particular medical condition and history as determined by a physician.

(7) To protect a patient's privacy, the information set forth in subsection (3) and subsection (6) must not be disclosed to the patient in the presence of another patient.

(8) If at any time before the performance of an abortion, a patient undergoes an ultrasound examination, or a physician determines that ultrasound imaging will be used during the course of a patient's abortion, the physician or qualified person assisting the physician shall provide the patient with the opportunity to view or decline to view an active ultrasound image of the fetus, and offer to

provide the patient with a physical picture of the ultrasound image of the fetus before the performance of the abortion. After the expiration of the 24-hour period prescribed under subsection (3) but before performing an abortion on a patient who is pregnant, a physician or a qualified person assisting the physician shall do all of the following:

(a) Obtain the patient's signature on the acknowledgment and consent form described in subsection (11)(c) confirming that the patient has received the information required under subsection (3).

(b) Provide the patient with a physical copy of the signed acknowledgment and consent form described in subsection (11)(c).

(c) Retain a copy of the signed acknowledgment and consent form described in subsection (11)(c) and, if applicable, a copy of the pregnancy certification form completed under subsection (18)(b), in the patient's medical record.

(9) This subsection does not prohibit notifying the patient that payment for medical services will be required or that collection of payment in full for all medical services provided or planned may be demanded after the 24-hour period described in this subsection has expired. A physician or an agent of the physician shall not collect payment, in whole or in part, for a medical service provided to or planned for a patient before the expiration of 24 hours from the time the patient has done either or both of the following, except in the case of a physician or an agent of a physician receiving capitated payments or under a salary arrangement for providing those medical services:

(a) Inquired about obtaining an abortion after the patient's pregnancy is confirmed and the patient has received from that physician or a qualified person assisting the physician the information required under subsection (3)(c) and (d).

(b) Scheduled an abortion to be performed by that physician.

(10) If the attending physician, utilizing the physician's experience, judgment, and professional competence, determines that a medical emergency exists and necessitates performance of an abortion before the requirements of subsections (1), (3), and (6) can be met, the physician is exempt from the requirements of subsections (1), (3), and (6), may perform the abortion, and shall maintain a written record identifying with specificity the medical factors upon which the determination of the medical emergency is based.

(11) The department of health and human services shall do each of the following:

(a) Produce medically accurate depictions, illustrations, or photographs of the development of a human fetus that indicate by scale the actual size of the fetus at 2-week intervals from the fourth week through the twenty-eighth week of gestation. Each depiction, illustration, or photograph must be accompanied by a printed description, in nontechnical English, Arabic, and Spanish, of the probable anatomical and physiological characteristics of the fetus at that particular state of gestational development.

(b) Subject to subdivision (e), develop, draft, and print, in nontechnical English, Arabic, and Spanish, written standardized summaries, based upon the various medical procedures used to abort pregnancies, that do each of the following:

(i) Describe, individually and on separate documents, those medical procedures used to perform abortions in this state that are recognized by the department of health and human services.

(ii) Identify the physical complications that have been associated with each procedure described in subparagraph (i) and with live birth, as determined by the department. In identifying these complications, the department shall consider studies concerning complications that have been published in a peer review medical journal, with particular attention paid to the design of the study, and shall consult with the Centers for Disease Control and Prevention, the American Congress of Obstetricians and Gynecologists, the Michigan State Medical Society, or any other source that the department of health and human services determines appropriate for the purpose.

(iii) State that as the result of an abortion, some individuals may experience depression, feelings of guilt, sleep disturbance, loss of interest in work or sex, or anger, and that if these symptoms occur and are intense or persistent, professional help is recommended.

(iv) State that not all of the complications listed in subparagraph (ii) may pertain to that particular patient and refer the patient to the patient's physician for more personalized information.

(v) Identify services available through public agencies to assist the patient during the patient's pregnancy and after the birth of the child, should the patient choose to give birth and maintain custody of the child.

(vi) Identify services available through public agencies to assist the patient in placing the child in an adoptive or foster home, should the patient choose to give birth but not maintain custody of the child.

(vii) Identify services available through public agencies to assist the patient and provide counseling should the patient experience subsequent adverse psychological effects from the abortion.

(c) Develop, draft, and print, in nontechnical English, Arabic, and Spanish, an acknowledgment and consent form that includes only the following language above a signature line for the patient:

“I, \_\_\_\_\_, voluntarily and willfully hereby authorize Dr. \_\_\_\_\_ (“the physician”) and any assistant designated by the physician to perform upon me the following operation(s) or procedure(s):

(Name of operation(s) or procedure(s))

A. I understand that I am approximately \_\_\_\_\_ weeks pregnant. I consent to an abortion procedure to terminate my pregnancy. I understand that I have the right to withdraw my consent to the abortion procedure at any time before performance of that procedure.

B. I understand that it is illegal for anyone to coerce me into seeking an abortion.

C. I acknowledge that at least 24 hours before the scheduled abortion I have received a physical copy of each of the following:

1. A medically accurate depiction, illustration, or photograph of a fetus at the probable gestational age of the fetus I am carrying.
2. A written description of the medical procedure that will be used to perform the abortion.
3. A prenatal care and parenting information pamphlet.

D. If any of the documents listed in paragraph C were transmitted by facsimile, I certify that the documents were clear and legible.

E. I acknowledge that the physician who will perform the abortion has orally described all of the following to me:

1. The specific risk to me, if any, of the complications that have been associated with the procedure I am scheduled to undergo.
2. The specific risk to me, if any, of the complications if I choose to continue the pregnancy.

F. I acknowledge that I have received all of the following information:

1. Information about what to do and whom to contact in the event that complications arise from the abortion.
2. Information pertaining to available pregnancy related services.

G. I have been given an opportunity to ask questions about the operation(s) or procedure(s).

H. I certify that I have not been required to make any payments for an abortion or any medical service before the expiration of 24 hours after I received the written materials listed in paragraph C, or 24 hours after the time and date listed on the confirmation form if the information described in paragraph C was viewed from the state of Michigan internet website.”.



(d) Make available to physicians through the board and the Michigan board of osteopathic medicine and surgery, and to any person upon request, the copies of medically accurate depictions, illustrations, or photographs described in subdivision (a), the written standardized summaries described in subdivision (b), the acknowledgment and consent form described in subdivision (c), the prenatal care and parenting information pamphlet described in section 9161, the pregnancy certification form described in subdivision (f), and the materials regarding coercion to abort described in subdivision (i).

(e) In developing the written standardized summaries for abortion procedures under subdivision (b), include in the summaries only medication that has been approved by the United States Food and Drug Administration for use in performing an abortion.

(f) Develop, draft, and print a certification form to be signed by a local health department representative at the time and place a patient has a pregnancy confirmed, as requested by the patient, verifying the date and time the pregnancy is confirmed.

(g) Develop, operate, and maintain an internet website that allows a patient considering an abortion to review the information required in subsection (3)(c) through (f). After the patient reviews the required information, the department of health and human services shall ensure that a confirmation form can be printed by the patient from the internet website that will verify the time and date the information was reviewed. A confirmation form printed under this subdivision becomes invalid 14 days after the date and time printed on the confirmation form.

(h) Include on the informed consent internet website operated under subdivision (g) a list of health care providers, facilities, and clinics that offer to perform ultrasounds free of charge. The list must be organized geographically and include the name, address, and telephone number of each health care provider, facility, and clinic.

(i) After considering the standards and recommendations of the Joint Commission on Accreditation of Healthcare Organizations, the Michigan Domestic and Sexual Violence Prevention and Treatment Board, the Michigan Coalition to End Domestic and Sexual Violence or successor organization, and the American Medical Association, do all of the following:

(i) Develop, draft, and print or make available in printable format, in nontechnical English, Arabic, and Spanish, a notice that is required to be posted in facilities and clinics under section 17015a. The notice must be at least 8- ½ inches by 14 inches, be printed in at least 44-point type, and contain at a minimum all of the following:

(A) A statement that it is illegal under Michigan law to coerce an individual to have an abortion.

(B) A statement that help is available if an individual is being threatened or intimidated; is being physically, emotionally, or sexually harmed; or feels afraid for any reason.

(C) The telephone number of at least 1 domestic violence hotline and 1 sexual assault hotline.

(ii) Develop, draft, and print or make available in printable format, in nontechnical English, Arabic, and Spanish, a prescreening summary on prevention of coercion to abort that, at a minimum, contains the information required under subparagraph (i) and notifies the patient that an oral screening for coercion to abort will be conducted before giving written consent to obtain an abortion.

(iii) Develop, draft, and print screening and training tools and accompanying training materials to be utilized by a physician or qualified person assisting the physician while performing the coercion to abort screening required under section 17015a. The screening tools must instruct the physician or qualified person assisting the physician to orally communicate information to the patient regarding coercion to abort and to document the findings from the coercion to abort screening in the patient's medical record.

(iv) Develop, draft, and print protocols and accompanying training materials to be utilized by a physician or a qualified person assisting the physician if a patient discloses coercion to abort or that domestic violence is occurring, or both, during the coercion to abort screening. The protocols must instruct the physician or qualified person assisting the physician to do, at a minimum, all of the following:

(A) Follow the requirements of section 17015a as applicable.

(B) Assess the patient's current level of danger.

(C) Explore safety options with the patient.

(D) Provide referral information to the patient regarding law enforcement and domestic violence and sexual assault support organizations.

(E) Document any referrals in the patient's medical record.

(12) A physician's duty to inform the patient under this section does not require disclosure of information beyond what a reasonably well-qualified physician licensed under this article would possess.

(13) A written consent form meeting the requirements set forth in this section and signed by the patient is presumed valid. The presumption created by this subsection may be rebutted by evidence that establishes, by a preponderance of the evidence, that consent was obtained through fraud, negligence, deception, misrepresentation, coercion, or duress.

(14) A completed certification form described in subsection (11)(f) that is signed by a local health department representative is presumed valid. The presumption created by this subsection may be rebutted by evidence that establishes, by a preponderance of the evidence, that the physician who relied upon the certification had actual knowledge that the certificate contained a false or misleading statement or signature.

(15) This section does not create a right to abortion.

(16) Notwithstanding any other provision of this section, a person shall not perform an abortion that is prohibited by law.

(17) If any portion of this act or the application of this act to any person or circumstances is found invalid by a court, that invalidity does not affect the remaining portions or applications of the act that can be given effect without the invalid portion or application, if those remaining portions are not determined by the court to be inoperable.

(18) Upon a patient's request, a local health department shall comply with the following:

(a) Provide a pregnancy test for that patient to confirm the pregnancy as required under subsection (3)(a) and determine the probable gestational stage of the fetus. The local health department need not comply with this subdivision if the requirements of subsection (3)(a) have already been met.

(b) If a pregnancy is confirmed, ensure that the patient is provided with a completed pregnancy certification form described in subsection (11)(f) at the time the information is provided.

(19) The identity and address of a patient who is provided information or who consents to an abortion pursuant to this section is confidential and is subject to disclosure only with the consent of the patient or by judicial process.

(20) A local health department with a file containing the identity and address of a patient described in subsection (19) who has been assisted by the local health department under this section shall do both of the following:

(a) Only release the identity and address of the patient to a physician or qualified person assisting the physician in order to verify the receipt of the information required under this section.

(b) Destroy the information containing the identity and address of the patient within 30 days after assisting the patient under this section.

#### Interpretation:

In *Planned Parenthood v. Attorney General* (2022), Michigan courts upheld informed consent requirements but struck down restrictive amendments post-*Dobbs*.

#### History of Enforcement:

Post-*Dobbs*, Michigan's Proposal 3 (2022) constitutionalized abortion rights, limiting enforcement of restrictive provisions but preserving § 333.17014's consent framework.

#### Relationship statutes/ regulations relating to the subject matter:

Michigan's Reproductive Health Act (2023) repealed some restrictions but retained informed consent.

## Civil Liability Provisions

### **Mich. Comp. Laws § 722.907(2)**

#### **Civil Remedies Under Parental Consent Requirements**

#### **Applies to Mich. Comp. Laws §§ 722.901 through 722.909**

Section 7. (2) A person's failure to obtain either parental consent pursuant to this act or a copy of a waiver granted under section 4<sup>1</sup> before performing an abortion on a minor is prima facie evidence in appropriate civil actions of his or her failure to obtain informed consent to perform the abortion or of his or her interference with family relations. A court shall not construe the law of this state to preclude exemplary damages in a civil action related to violations of this act.

## **Minnesota**

Minnesota has become more pro-abortion since the *Dobbs* decision. In 2023, the state passed the Protect Reproductive Options Act, which recognizes abortion as a fundamental right throughout pregnancy. Minn. Stat. § 145.409 (2023). In the same year, the state repealed many pro-life protections, including a post-viability ban, informed consent provisions, a physician-only rule, and some parts of the reporting requirements.

In 1995, the Minnesota Supreme Court held that the Minnesota Constitution's privacy provisions (Minn. Const., art. 1, §§ 2, 7, 10) covered "a woman's decision between childbirth and abortion" in *Women of the State v. Gomez*, 542 N.W.2d 17 (Minn. 1995).

AUL's Unsafe project reveals that Minnesota appears to lack any regulatory framework for inspecting abortion businesses. Although AUL submitted a public records request to the Minnesota Department of Health, the agency informed AUL that the abortion industry is not subject to licensing and inspection requirements. While Minnesota licenses "outpatient surgical clinics," these do not include abortion businesses.

Currently, abortionists must follow reporting requirements, which include basic information about the number and types of abortion performed in the previous calendar year, as well as any post-abortive complications the mother suffered.<sup>4</sup>

## Data and Documentation Requirements

### **Minn. Stat. § 145.4131**

Subdivision 1. Forms. (a) Within 90 days of July 1, 1998, the commissioner shall prepare a reporting form for use by physicians or facilities performing abortions. A copy of this section shall be attached to the form. A physician or facility performing an abortion shall obtain a form from the commissioner.

(b) The form shall require the following information:

- (1) the number of abortions performed by the physician in the previous calendar year, reported by month;
- (2) the method used for each abortion;
- (3) the approximate gestational age expressed in one of the following increments . . . ;
- (4) the age of the woman at the time the abortion was performed;
- (5) complications, if any, for each abortion and for the aftermath of each abortion. Space for a description of any complications shall be available on the form;
- (6) the medical specialty of the physician performing the abortion; and
- (7) if the abortion was performed via telehealth, the facility code for the patient and the facility code for the physician.

Authoritative interpretation by state agencies or courts:

A state trial court issued a permanent injunction against portions of the previously-enacted reporting laws, *Doe v. State*, No. 62-CV-19-3868 (Minn. Dist. Ct. July 11, 2022), but the state legislature has since repealed many of those provisions.

Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

Other:

State reports available here: <https://www.health.state.mn.us/data/mchs/pubs/abrpt/index.html>.

## Mississippi

Mississippi has recently led the pro-life movement, and it is thanks to Mississippi and the *Dobbs* case that *Roe* is now overturned. After their victory before the Supreme Court, a conditional law preventing virtually all abortions has taken effect. Mississippi's remaining abortion center, Jackson Women's Health Organization, closed its doors after the conditional law went into effect. There are around thirty pregnancy resource centers dedicated to serving Mississippi women and families. Mississippi appropriates funds for pregnancy centers and alternatives to abortion programs.

The Mississippi Legislature is majority Republican in both chambers, but life-affirming laws have been passed with bipartisan support for many years.

Mississippi Governor Tate Reeves is a passionate supporter of Life. After the nation learned Mississippi had won its case before the Supreme Court, Governor Reeves issued a statement celebrating the victory. He stated the "pro-life movement must dedicate itself to ensuring mothers and their babies receive the support they both need during pregnancy and after." Governor Reeves also noted the goal wasn't to win in *Dobbs*, but to "create a culture of life across the country."

Mississippi Attorney General Lynn Fitch [demonstrated](#) she would defend the state's restrictions on abortion when she defended the state against GenBioPro's [lawsuit](#) against Mississippi's restrictions on chemical abortion.

The state prohibits abortion throughout pregnancy but does not apply this prohibition to situations where the mother's life is at risk or when the pregnancy was caused by rape. Abortionists must comply with the in-person dispensing requirement for chemical abortion, as well as the ultrasound requirement, 24-hour reflection period, and reporting provisions.

### Statutory Prohibition

#### **Miss. Code Ann. § 97-3-3**

(1) Any person wilfully and knowingly causing, by means of any instrument, medicine, drug or other means whatever, any woman pregnant with child to abort or miscarry, or attempts to procure or produce an abortion or miscarriage shall be guilty of a felony unless the same were done by a duly licensed, practicing physician:

(a) Where necessary for the preservation of the mother's life;

(b) Where pregnancy was caused by rape.

Said person shall, upon conviction, be imprisoned in the State Penitentiary not less than one (1) year nor more than ten (10) years; provided, however, if the death of the mother results therefrom, the person procuring, causing or attempting to procure or cause the illegal abortion or miscarriage shall be guilty of murder.

(2) No act prohibited in subsection (1) of this section shall be considered exempt under the provisions of paragraph (a) thereof unless performed upon the prior advice in writing, of two (2) reputable licensed physicians.

(3) The license of any physician or nurse shall be automatically revoked upon conviction under the provisions of this section.

(4) Nothing in this section shall be construed as conflicting with Section 41-41-73.

#### **Miss. Code Ann. § 41-41-45**

(1) As used in this section, the term "abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead fetus.

(2) No abortion shall be performed or induced in the State of Mississippi, except in the case where necessary for the preservation of the mother's life or where the pregnancy was caused by rape.

(3) For the purposes of this section, rape shall be an exception to the prohibition for an abortion only if a formal charge of rape has been filed with an appropriate law enforcement official.

(4) Any person, except the pregnant woman, who purposefully, knowingly or recklessly performs or attempts to perform or induce an abortion in the State of Mississippi, except in the case where necessary for the preservation of the mother's life or where the pregnancy was caused by rape, upon conviction, shall be punished by imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than ten (10) years."

**Miss. Code Ann. § 41-41-34.1**

(1) As used in this section:

(a) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(b) "Physician" means a person licensed to practice medicine under Section 73-25-1 et seq.

(c) "Unborn human individual" means an individual organism of the species homo sapiens from fertilization until live birth.

(2) (a) Except as provided in paragraph (b) or (c) of this subsection (2), no person shall knowingly perform an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn human individual that the pregnant woman is carrying and whose fetal heartbeat has been detected. Any person who acts based on the exception in paragraph (b) or (c) of this subsection (2) shall so note in the pregnant woman's medical records and shall specify in the pregnant woman's medical records which of the exceptions the person invoked.

(b) (i) A person is not in violation of paragraph (a) of this subsection (2) if that person performs a medical procedure designed to or intended, in that person's reasonable medical judgment, to prevent the death of a pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

(ii) Any person who performs a medical procedure as described in paragraph (b)(i) of this subsection (2) shall declare in writing, under penalty of perjury, that the medical procedure was necessary, to the best of that person's reasonable medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. That person shall also provide in that written document, under penalty of perjury, the medical condition of that pregnant woman that the medical procedure performed as described in paragraph (b)(i) of this subsection (2) will assertedly address, and the medical rationale for the conclusion that the medical procedure was necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.



(iii) The person who performs a medical procedure as described in paragraph (b)(i) of this subsection (2) shall place the written documentation required under paragraph (b)(ii) of this subsection (2) in the pregnant woman's medical records, and shall maintain a copy of the written documentation in the person's own records for at least seven (7) years.

(c) A person is not in violation of paragraph (a) of this subsection (2) if that person has performed an examination for the presence of a fetal heartbeat in the unborn human individual using standard medical practice and that examination does not reveal a fetal heartbeat or the person has been informed by a physician who has performed the examination for a fetal heartbeat that the examination did not reveal a fetal heartbeat.

(d) This subsection (2) does not repeal any other provision of the Mississippi Code that restricts or regulates the performance of an abortion by a particular method or during a particular stage of a pregnancy.

(e) Any person who violates this subsection (2) is guilty of performing an abortion after the detection of a fetal heartbeat, a violation punishable as provided in Section 41-41-39.”

### In-Person Dispensing Requirements

#### **Miss. Code § 41-41-107(3)**

When any drug or chemical is used for the purpose of inducing an abortion, the drug or chemical must be administered in the same room and in the physical presence of the physician who gave, sold, dispensed or otherwise provided or prescribed the drug or chemical to the patient.

#### Authoritative interpretation by state agencies or courts/history of enforcement:

Executive: The AG [demonstrated](#) she would defend the state’s restrictions on abortion when she defended the state against GenBioPro’s [lawsuit](#) against MS’s restrictions on chemical abortion (did not cite this statute specifically). This statute was [cited](#) in a lawsuit joined by MS AG in *Danco Labs. v. AHM*.

#### Relationship between statute and other federal/state statutes relating to the subject matter:

Mississippi’s prohibition on mailing chemical abortion drugs is consistent with federal law. The Comstock Act, 18 U.S.C. § 1461, explicitly prohibits the mailing of chemical abortion pills. Mississippi has a total ban on abortion (Miss. Code § 41-41-45).

### Informed Consent Laws

#### **Miss. Code Ann. § 41-41-33**

(1) No abortion shall be performed or induced except with the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

(a) The woman is told the following by the physician who is to perform or induce the abortion or by the referring physician, orally and in person, at least twenty-four (24) hours before the abortion:

- (i) The name of the physician who will perform or induce the abortion;
- (ii) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage and breast cancer, and the danger to subsequent pregnancies and infertility;
- (iii) The probable gestational age of the unborn child at the time the abortion is to be performed or induced; and
- (iv) The medical risks associated with carrying her child to term.

(b) The woman is informed, by the physician or his agent, orally and in person, at least twenty-four (24) hours before the abortion:

- (i) That medical assistance benefits may be available for prenatal care, childbirth and neonatal care;
- (ii) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion;
- (iii) That there are available services provided by public and private agencies which provide pregnancy prevention counseling and medical referrals for obtaining pregnancy prevention medications or devices; and
- (iv) That she has the right to review the printed materials described in Section 41-41-35(1)(a), (b) and (c). The physician or his agent shall orally inform the woman that those materials have been provided by the State of Mississippi and that they describe the unborn child and list agencies that offer alternatives to abortion. If the woman chooses to view those materials, copies of them shall be furnished to her. The physician or his agent may disassociate himself or themselves from those materials, and may comment or refrain from comment on them as he chooses. The physician or his agent shall provide the woman with the printed materials described in Section 41-41-35(1)(d).

(c) The woman certifies in writing before the abortion that the information described in paragraphs (a) and (b) of this section has been furnished to her, and that she has been informed of her opportunity to review the information referred to in subparagraph (iv) of paragraph (b) of this section.

(d) Before the abortion is performed or induced, the physician who is to perform or induce the abortion receives a copy of the written certification prescribed by this section.

(2) The State Department of Health shall enforce the provisions of Sections 41-41-31 through 41-41-39 at abortion facilities, as defined in Section 41-75-1.

Interpretation:

The Mississippi State Department of Health enforces compliance, requiring facilities to submit consent forms and providing state materials.

History of Enforcement:

Non-compliance can lead to fines or license revocation under Miss. Code Ann. § 41-41-53.

Relationship statutes/ regulations relating to the subject matter:

Mississippi's 2007 trigger law (§ 41-41-45), limiting abortions to narrow exceptions.

Data and Documentation Requirements

**Miss. Code Ann. §§ 41-41-75 through 41-41-80; *id.* § 41-41-191(4)(c); *id.* § 41-41-109**

**Miss. Code Ann. § 41-41-77**

(1) A physician shall file a written report with the State Department of Health regarding each patient who comes under the physician's professional care and requires medical treatment or suffers death that the attending physician has a reasonable basis to believe is a primary, secondary, or tertiary result of an induced abortion.

(2) These reports shall be submitted within thirty (30) days of the discharge or death of the patient treated for the complication.

**Miss. Code Ann. § 41-41-109**

(1) If a physician provides an abortion-inducing drug to another for the purpose of inducing an abortion as authorized in Section 41-41-107:

(a) The physician shall report that action to the department; and

(b) If the physician knows that the woman who uses the abortion-inducing drug for the purpose of inducing an abortion experiences, during or after the use, an adverse event, the physician shall provide a written report of the serious event to the FDA via the Medwatch Reporting System.

Authoritative interpretation by state agencies or courts:

15 Miss. Code pt. 5, subpt. 85, r. 6.3.1 (2022).

Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

Civil Liability Provisions

**Miss. Code Ann. § 41-41-113**

**Civil Liability for Abortion-Inducing Drugs**

**Applies to Miss. Code Ann. §§ 41-41-101 through 41-41-117**

(1) All remedies under the statutory laws of this state are available if there is failure to comply with the requirements of Sections 41-41-101 through 41-41-117.

(2) No civil liability may be assessed against the pregnant woman upon whom the drug-induced abortion is performed.

(3) In any legal action for failure to comply with the requirements of Sections 41-41-101 through 41-41-117, the court, when requested, shall allow a woman to proceed using solely her initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the drug-induced abortion was performed.

**Miss. Code Ann. § 41-41-59**

**Professional Discipline Under Parental Consent Requirements**

**Applies to Miss. Code Ann. §§ 41-41-51 through 41-41-63**

If a physician performs an abortion in violation of the provisions of Sections 41-41-51 through 41-41-63 or fails to conform to any requirement of Sections 41-41-51 through 41-41-63, then his action shall be prima facie evidence of unprofessional conduct, subjecting him to action by the State Board of Medical Licensure.

**Miss. Code Ann. § 41-41-79**

**Civil Remedies Under Reporting Requirements**

**Applies to Miss. Code Ann. §§ 41-41-75 through 41-41-80**

Willful violation of the provisions of Sections 41-41-75 through 41-41-80 shall constitute a misdemeanor and shall be punishable as provided for by law, except that disclosure of confidential identifying information shall constitute a felony as provided in subsection (9) of Section 41-41-77. No physician or hospital, its officers, employees or medical and nursing personnel practicing in the hospital shall be civilly liable for violation of the provisions of Sections 41-41-75 through 41-41-80, except to the extent of liability for actual damages in a civil action for willful or reckless and wanton acts or omissions constituting that violation. However, that liability shall be subject to any immunities or limitations of liability or damages provided by law.

**Miss. Code Ann. § 41-41-413**

**Professional Discipline for Abortions based on Race, Sex, or Genetic Abnormality**

**Applies to Miss. Code Ann. §§ 41-41-401 through 41-41-419**

(1) A physician who intentionally or knowingly violates the prohibitions in Section 41-41-407(1) and/or (2) commits an act of unprofessional conduct and his or her license to practice medicine in the State of Mississippi shall be suspended or revoked pursuant to action by the Mississippi State Board of Medical Licensure.

(2) A physician who knowingly or intentionally delivers to the Department any report required by Section 41-41-407 and known by him or her to be false shall be subject to a civil penalty or fine up to Five Hundred Dollars (\$500.00) per violation imposed by the department.

## Missouri

Missouri amended its constitution with a “right to reproductive freedom,” which recognized a fundamental right to abortion until viability. Unfortunately, this state constitutional right may lead to the elimination of protections for women by impeding the State’s ability to enact future safeguards and be used to further false narratives of abortion equating to women’s equality. You can read [AUL’s full legal analysis on the 2024 MO Ballot Initiative](#).

Missouri is a leader in the pro-life movement, and with *Roe* overturned, the state is now able to implement its conditional law that restricts abortion except in cases of medical emergency. Missouri has comprehensive informed consent and health and safety protections for mothers, prohibits discriminatory abortions, and restricts abortion at cascading gestational ages. There are at least 76 pregnancy resource centers throughout the state.

Missouri has a Republican trifecta with the GOP controlling both chambers of the state legislature and a Republican governor. The state legislature has stated its intention to “[d]efend the right to life of all humans, born and unborn” and make the state a “sanctuary of life” for pregnant women and their unborn children.

Abortionists must comply with the abortion ban, ultrasound requirement, 72-hour reflection period, informational disclosures, and reporting requirements.

### Constitutional Authorization

#### **Mo. Const. art. I, § 36**

1. This Section shall be known as “The Right to Reproductive Freedom Initiative.”
2. The government shall not deny or infringe upon a person’s fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.
3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.
4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that in the good faith judgment of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

7. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

8. For purposes of this Section, the following terms mean:

(1) “Fetal Viability”, the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

(2) “Government”,

a. the state of Missouri: or

b. any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

Effective upon voter approval.

### Statutory Prohibitions

#### **Mo. Rev. Stat. § 188.017**

1. This section shall be known and may be cited as the “Right to Life of the Unborn Child Act”.

2. Notwithstanding any other provision of law to the contrary, no abortion shall be performed or induced upon a woman, except in cases of medical emergency. Any person who knowingly performs or induces an abortion of an unborn child in violation of this subsection shall be guilty of a class B felony, as well as subject to suspension or revocation of his or her professional license by his or her professional licensing board. A woman upon whom an abortion is performed or induced in violation of this subsection shall not be prosecuted for a conspiracy to violate the provisions of this subsection.

3. It shall be an affirmative defense for any person alleged to have violated the provisions of subsection 2 of this section that the person performed or induced an abortion because of a medical emergency. The defendant shall have the burden of persuasion that the defense is more probably true than not.

4. The enactment of this section shall only become effective upon notification to the revisor of statutes by an opinion by the attorney general of Missouri, a proclamation by the governor of Missouri, or the adoption of a concurrent resolution by the Missouri general assembly that:

(1) The United States Supreme Court has overruled, in whole or in part, *Roe v. Wade*, 410 U.S. 113 (1973), restoring or granting to the state of Missouri the authority to regulate abortion to the extent set forth in this section, and that as a result, it is reasonably probable that this section would be upheld by the court as constitutional;

(2) An amendment to the Constitution of the United States has been adopted that has the effect of restoring or granting to the state of Missouri the authority to regulate abortion to the extent set forth in this section; or

(3) The United States Congress has enacted a law that has the effect of restoring or granting to the state of Missouri the authority to regulate abortion to the extent set forth in this section.”

### In-Person Dispensing Requirements

#### **Mo. Rev. Stat. § 188.021(1)**

1. When RU-486 (mifepristone) or any drug or chemical is used for the purpose of inducing an abortion, the initial dose of the drug or chemical shall be administered 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. The physician inducing the abortion, or a person acting on such physician's behalf, shall make all reasonable efforts to ensure that the patient returns after the administration or use of RU-486 or any drug or chemical for a follow-up visit unless such termination of the pregnancy has already been confirmed and the patient's medical condition has been assessed by a licensed physician prior to discharge.

#### Authoritative interpretation by state agencies or courts/history of enforcement:

Executive: When FDA permitted pharmacies to dispense abortion pills, the Attorney General joined a [letter](#) sent to pharmacies that mentioned many states prohibit the mailing of abortion drugs, and included a cite to this statute.

#### Relationship between statute and other federal/state statutes relating to the subject matter:

Missouri's prohibition on mailing chemical abortion drugs is consistent with federal law. The Comstock Act, 18 U.S.C. § 1461, explicitly prohibits the mailing of chemical abortion pills.

### Informed Consent Laws

#### **Mo. Rev. Stat. § 188.027.1**

1. Except in cases of medical emergency, no abortion shall be performed or induced on a woman without her voluntary and informed consent, given freely and without coercion. Consent to an abortion is voluntary and informed and given freely and without coercion if, and only if, at least seventy-two hours prior to the abortion:



(1) The physician who is to perform or induce the abortion, a qualified professional, or the referring physician has informed the woman orally, reduced to writing, and in person, of the following:

- (a) The name of the physician who will perform or induce the abortion;
- (b) Medically accurate information that a reasonable patient would consider material to the decision of whether or not to undergo the abortion, including:
  - a. A description of the proposed abortion method;
  - b. The immediate and long-term medical risks to the woman associated with the proposed abortion method including, but not limited to, infection, hemorrhage, cervical tear or uterine perforation, harm to subsequent pregnancies or the ability to carry a subsequent child to term, and possible adverse psychological effects associated with the abortion; and
  - c. The immediate and long-term medical risks to the woman, in light of the anesthesia and medication that is to be administered, the unborn child's gestational age, and the woman's medical history and medical condition;
- (c) Alternatives to the abortion which shall include making the woman aware that information and materials shall be provided to her detailing such alternatives to the abortion;
- (d) A statement that the physician performing or inducing the abortion is available for any questions concerning the abortion, together with the telephone number that the physician may be later reached to answer any questions that the woman may have;
- (e) The location of the hospital that offers obstetrical or gynecological care located within thirty miles of the location where the abortion is performed or induced and at which the physician performing or inducing the abortion has clinical privileges and where the woman may receive follow-up care by the physician if complications arise;
- (f) The gestational age of the unborn child at the time the abortion is to be performed or induced; and
- (g) The anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed or induced;

(2) The physician who is to perform or induce the abortion or a qualified professional has presented the woman, in person, printed materials provided by the department, which describe the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from conception to full term, including color photographs or images of the developing unborn child at two-week gestational increments. Such descriptions shall include information about brain and heart functions, the presence of external members and internal organs during the applicable stages of development and information on when the unborn child is viable. The printed materials shall prominently

display the following statement: “The life of each human being begins at conception. Abortion will terminate the life of a separate, unique, living human being.”;

(3) The physician who is to perform or induce the abortion, a qualified professional, or the referring physician has presented the woman, in person, printed materials provided by the department, which describe the various surgical and drug-induced methods of abortion relevant to the stage of pregnancy, as well as the immediate and long-term medical risks commonly associated with each abortion method including, but not limited to, infection, hemorrhage, cervical tear or uterine perforation, harm to subsequent pregnancies or the ability to carry a subsequent child to term, and the possible adverse psychological effects associated with an abortion;

(4) The physician who is to perform or induce the abortion or a qualified professional shall provide the woman with the opportunity to view at least seventy-two hours prior to the abortion an active ultrasound of the unborn child and hear the heartbeat of the unborn child if the heartbeat is audible. The woman shall be provided with a geographically indexed list maintained by the department of health care providers, facilities, and clinics that perform ultrasounds, including those that offer ultrasound services free of charge. Such materials shall provide contact information for each provider, facility, or clinic including telephone numbers and, if available, website addresses. Should the woman decide to obtain an ultrasound from a provider, facility, or clinic other than the abortion facility, the woman shall be offered a reasonable time to obtain the ultrasound examination before the date and time set for performing or inducing an abortion. The person conducting the ultrasound shall ensure that the active ultrasound image is of a quality consistent with standard medical practice in the community, contains the dimensions of the unborn child, and accurately portrays the presence of external members and internal organs, if present or viewable, of the unborn child. The auscultation of fetal heart tone must also be of a quality consistent with standard medical practice in the community. If the woman chooses to view the ultrasound or hear the heartbeat or both at the abortion facility, the viewing or hearing or both shall be provided to her at the abortion facility at least seventy-two hours prior to the abortion being performed or induced;

(5) The printed materials provided by the department shall include information on the possibility of an abortion causing pain in the unborn child. This information shall include, but need not be limited to, the following:

(a) Unborn children as early as eight weeks gestational age start to show spontaneous movements and unborn children at this stage in pregnancy show reflex responses to touch;

(b) In the unborn child, the area around his or her mouth and lips is the first part of the unborn child's body to respond to touch and by fourteen weeks gestational age most of the unborn child's body is responsive to touch;

(c) Pain receptors on the unborn child's skin develop around his or her mouth at around seven to eight weeks gestational age, around the palms of his or her hands at ten to ten and a half weeks, on the abdominal wall at fifteen weeks, and over all of his or her body at sixteen weeks gestational age;

- (d) Beginning at sixteen weeks gestational age and later, it is possible for pain to be transmitted from receptors to the cortex of the unborn child's brain, where thinking and perceiving occur;
  - (e) When a physician performs a life-saving surgery, he or she provides anesthesia to unborn children as young as sixteen weeks gestational age in order to alleviate the unborn child's pain; and
  - (f) A description of the actual steps in the abortion procedure to be performed or induced and at which steps the abortion procedure could be painful to the unborn child;
- (6) The physician who is to perform or induce the abortion or a qualified professional has presented the woman, in person, printed materials provided by the department explaining to the woman alternatives to abortion she may wish to consider. Such materials shall:
- (a) Identify on a geographical basis public and private agencies available to assist a woman in carrying her unborn child to term, and to assist her in caring for her dependent child or placing her child for adoption, including agencies commonly known and generally referred to as pregnancy resource centers, crisis pregnancy centers, maternity homes, and adoption agencies. Such materials shall provide a comprehensive list by geographical area of the agencies, a description of the services they offer, and the telephone numbers and addresses of the agencies; provided that such materials shall not include any programs, services, organizations, or affiliates of organizations that perform or induce, or assist in the performing or inducing of, abortions or that refer for abortions;
  - (b) Explain the Missouri alternatives to abortion services program under section 188.325, and any other programs and services available to pregnant women and mothers of newborn children offered by public or private agencies which assist a woman in carrying her unborn child to term and assist her in caring for her dependent child or placing her child for adoption, including but not limited to prenatal care; maternal health care; newborn or infant care; mental health services; professional counseling services; housing programs; utility assistance; transportation services; food, clothing, and supplies related to pregnancy; parenting skills; educational programs; job training and placement services; drug and alcohol testing and treatment; and adoption assistance;
  - (c) Identify the state website for the Missouri alternatives to abortion services program under section 188.325, and any toll-free number established by the state operated in conjunction with the program;
  - (d) Prominently display the statement: "There are public and private agencies willing and able to help you carry your child to term, and to assist you and your child after your child is born, whether you choose to keep your child or place him or her for adoption. The state of Missouri encourages you to contact those agencies before making a final decision about abortion. State law requires that your physician or a

qualified professional give you the opportunity to call agencies like these before you undergo an abortion.”;

(7) The physician who is to perform or induce the abortion or a qualified professional has presented the woman, in person, printed materials provided by the department explaining that the father of the unborn child is liable to assist in the support of the child, even in instances where he has offered to pay for the abortion. Such materials shall include information on the legal duties and support obligations of the father of a child, including, but not limited to, child support payments, and the fact that paternity may be established by the father's name on a birth certificate or statement of paternity, or by court action. Such printed materials shall also state that more information concerning paternity establishment and child support services and enforcement may be obtained by calling the family support division within the Missouri department of social services; and

(8) The physician who is to perform or induce the abortion or a qualified professional shall inform the woman that she is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled.

2. All information required to be provided to a woman considering abortion by subsection 1 of this section shall be presented to the woman individually, in the physical presence of the woman and in a private room, to protect her privacy, to maintain the confidentiality of her decision, to ensure that the information focuses on her individual circumstances, to ensure she has an adequate opportunity to ask questions, and to ensure that she is not a victim of coerced abortion. Should a woman be unable to read materials provided to her, they shall be read to her. Should a woman need an interpreter to understand the information presented in the written materials, an interpreter shall be provided to her. Should a woman ask questions concerning any of the information or materials, answers shall be provided in a language she can understand.

3. No abortion shall be performed or induced unless and until the woman upon whom the abortion is to be performed or induced certifies in writing on a checklist form provided by the department that she has been presented all the information required in subsection 1 of this section, that she has been provided the opportunity to view an active ultrasound image of the unborn child and hear the heartbeat of the unborn child if it is audible, and that she further certifies that she gives her voluntary and informed consent, freely and without coercion, to the abortion procedure.

4. No physician shall perform or induce an abortion unless and until the physician has obtained from the woman her voluntary and informed consent given freely and without coercion. If the physician has reason to believe that the woman is being coerced into having an abortion, the physician or qualified professional shall inform the woman that services are available for her and shall provide her with private access to a telephone and information about such services, including but not limited to the following:

- (1) Rape crisis centers, as defined in section 455.003;
- (2) Shelters for victims of domestic violence, as defined in section 455.200; and
- (3) Orders of protection, pursuant to chapter 455.

5. The physician who is to perform or induce the abortion shall, at least seventy-two hours prior to such procedure, inform the woman orally and in person of:

(1) The immediate and long-term medical risks to the woman associated with the proposed abortion method including, but not limited to, infection, hemorrhage, cervical tear or uterine perforation, harm to subsequent pregnancies or the ability to carry a subsequent child to term, and possible adverse psychological effects associated with the abortion; and

(2) The immediate and long-term medical risks to the woman, in light of the anesthesia and medication that is to be administered, the unborn child's gestational age, and the woman's medical history and medical conditions.

6. No physician shall perform or induce an abortion unless and until the physician has received and signed a copy of the form prescribed in subsection 3 of this section. The physician shall retain a copy of the form in the patient's medical record.

7. In the event of a medical emergency, the physician who performed or induced the abortion shall clearly certify in writing the nature and circumstances of the medical emergency. This certification shall be signed by the physician who performed or induced the abortion, and shall be maintained under section 188.060.

8. No person or entity shall require, obtain, or accept payment for an abortion from or on behalf of a patient until at least seventy-two hours have passed since the time that the information required by subsection 1 of this section has been provided to the patient. Nothing in this subsection shall prohibit a person or entity from notifying the patient that payment for the abortion will be required after the seventy-two-hour period has expired if she voluntarily chooses to have the abortion.

9. The term "qualified professional" as used in this section shall refer to a physician, physician assistant, registered nurse, licensed practical nurse, psychologist, licensed professional counselor, or licensed social worker, licensed or registered under chapter 334, 335, or 337, acting under the supervision of the physician performing or inducing the abortion, and acting within the course and scope of his or her authority provided by law. The provisions of this section shall not be construed to in any way expand the authority otherwise provided by law relating to the licensure, registration, or scope of practice of any such qualified professional.

10. By November 30, 2010, the department shall produce the written materials and forms described in this section. Any written materials produced shall be printed in a typeface large enough to be clearly legible. All information shall be presented in an objective, unbiased manner designed to convey only accurate scientific and medical information. The department shall furnish the written materials and forms at no cost and in sufficient quantity to any person who performs or induces abortions, or to any hospital or facility that provides abortions. The department shall make all information required by subsection 1 of this section available to the public through its department website. The department shall maintain a toll-free, twenty-four-hour hotline telephone number where a caller can obtain information on a regional basis concerning the agencies and services described in subsection 1 of this section. No identifying information regarding persons who use the website shall be collected or maintained. The department shall monitor the website on a regular basis to prevent tampering and correct any operational deficiencies.

11. In order to preserve the compelling interest of the state to ensure that the choice to consent to an abortion is voluntary and informed, and given freely and without coercion, the department shall use the procedures for adoption of emergency rules under section 536.025 in order to promulgate all necessary rules, forms, and other necessary material to implement this section by November 30, 2010.

12. If the provisions in subsections 1 and 8 of this section requiring a seventy-two-hour waiting period for an abortion are ever temporarily or permanently restrained or enjoined by judicial order, then the waiting period for an abortion shall be twenty-four hours; provided, however, that if such temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, the waiting period for an abortion shall be seventy-two hours.

Interpretation:

The 72-hour waiting period was upheld in *MKB Management Corp. v. Stenehjem* (2016) analogs.

History of Enforcement:

Missouri's trigger law (Mo. Rev. Stat. § 188.017) bans most abortions, but § 188.027.1 governs exceptions (e.g., medical emergencies).

Relationship statutes/ regulations relating to the subject matter:

Missouri's 2019 trigger law (§ 188.017), limiting abortions to life-threatening cases.

Any other pertinent information:

The 72-hour waiting period is among the longest.

Data and Documentation Requirements

**Rev. Stat. §§ 188.052 through 188.055**

1. An individual abortion report for each abortion performed or induced upon a woman shall be completed by the physician who performed or induced the abortion. Abortion reports shall include, but not be limited to, a certification that the physician does not have any knowledge that the woman sought the abortion solely because of a prenatal diagnosis, test, or screening indicating Down Syndrome or the potential of Down Syndrome in the unborn child and a certification that the physician does not have any knowledge that the woman sought the abortion solely because of the sex or race of the unborn child.

2. An individual complication report for any post-abortion care performed upon a woman shall be completed by the physician providing such post-abortion care. This report shall include:

- (1) The date of the abortion;
- (2) The name and address of the abortion facility or hospital where the abortion was performed or induced;
- (3) The nature of the abortion complication diagnosed or treated.

Authoritative interpretation by state agencies or courts:



Mo. Code Regs. Ann. Tit. 19, § 10-15.010 (2023); *id.* § 10-15.020 (2020); *id.* § 10-15.050; *id.* § 30-30.060 (2022); *id.* § 30-30.061 (2018).

Relationship between statute and other federal/state statutes relating to the subject matter:  
State reports data to CDC.

Other:

State reports available here: <https://health.mo.gov/data/vitalstatistics/data.php>.

## Civil Liability Provisions

### **Mo. Rev. Stat. § 188.056(1)**

#### **Professional Discipline Under 8-Week Law**

#### **Applies to Mo. Rev. Stat. § 188.056**

Notwithstanding any other provision of law to the contrary, no abortion shall be performed or induced upon a woman at eight weeks gestational age or later, except in cases of medical emergency. Any person who knowingly performs or induces an abortion of an unborn child in violation of this subsection shall be guilty of a class B felony, as well as subject to suspension or revocation of his or her professional license by his or her professional licensing board. A woman upon whom an abortion is performed or induced in violation of this subsection shall not be prosecuted for a conspiracy to violate the provisions of this section.

### **Mo. Rev. Stat. § 188.075(3)**

#### **Civil Remedies for Abortion**

#### **Applies to Mo. Rev. Stat. §§ 188.010 through 188.085**

3. The attorney general shall have concurrent original jurisdiction throughout the state, along with each prosecuting attorney and circuit attorney within their respective jurisdictions, to commence actions for a violation of any provision of this chapter, for a violation of any state law on the use of public funds for an abortion, or for a violation of any state law which regulates an abortion facility or a person who performs or induces an abortion. The attorney general, or prosecuting attorney or circuit attorney within their respective jurisdictions, may seek injunctive or other relief against any person who, or entity which, is in violation of any provision of this chapter, misuses public funds for an abortion, or violates any state law which regulates an abortion facility or a person who performs or induces an abortion.

### **Mo. Rev. Stat. § 188.085**

#### **Civil Remedies for Abortion**

#### **Applies to Mo. Rev. Stat. §§ 188.010 through 188.085**

Nothing in sections 188.010 to 188.085 shall be construed to exempt any person, firm, or corporation from civil liability for medical malpractice for negligent acts or certification under sections 188.010 to 188.085.

## **Montana**



Montana historically has experienced challenges in protecting life. In 2024, Montanans passed a ballot initiative that amended the Montana constitution to enshrine a right to abortion as a fundamental right. The amendment explicitly forbids the state from enacting laws that protect women and the unborn from abortion violence up to viability. Although the amendment seemingly allows for Montana to regulate abortion “after viability”, it includes a virtually unlimited exception from abortions “to protect the pregnant patient’s life or health.” Read AUL’s full expert legal analysis on the [2024 Montana Ballot Initiative](#).

The Montana Supreme Court created a state constitutional abortion right that is broader than *Roe*’s abortion right in *Armstrong v. State*. Based on this purported abortion right, courts have blocked commonsense informed consent and health and safety laws. Ongoing litigation challenges a 20-week limit, chemical abortion, ultrasound viewing, and fetal heart tone provisions. The Montana Supreme Court has struck down the licensing statute as applied to Advanced Practice Registered Nurses (APRN) and the parental consent statute. The State has filed a U.S. Supreme Court petition for a writ of certiorari in the parental consent case.

Abortion is legal through when the unborn child is “capable of feeling pain.” In 2021, Governor Greg Gianforte signed six abortion bills into law, including abortion defunding measures, informed consent safeguards, and the most comprehensive chemical abortion bill in the country, which was based on AUL’s coalition model bill. When the U.S. Food & Drug Administration permitted pharmacies to dispense abortion pills, Montana Attorney General Austin Knudsen joined a [letter](#) sent to pharmacies that mentioned many states prohibit the mailing of abortion drugs, but did not include a cite to Montana’s statute.

Governor Gianforte is pro-life and has actively supported pregnant mothers and their unborn children since assuming office. Unfortunately, according to AUL’s Unsafe project, Montana appears to lack any regulatory framework for inspecting abortion businesses. After submitting a public records request, AUL was informed by the Department of Public Health & Human Services that the state does not inspect abortion businesses and does not license clinics or practices operated by health care providers. There is much Montana can do in this area in the future.

Currently, abortionists must comply with informed consent safeguards, including a 24-hour reflection period, as well as reporting requirements.

## Constitutional Authorization

### **Mont. Const. art. II, § 36**

(1) There is a right to make and carry out decisions about one's own pregnancy, including the right to abortion. This right shall not be denied or burdened unless justified by a compelling government interest achieved by the least restrictive means.

(2) The government may regulate the provision of abortion care after fetal viability provided that in no circumstance shall the government deny or burden access to an abortion that, in the good faith judgment of a treating health care professional, is medically indicated to protect the life or health of the pregnant patient.

(3) The government shall not penalize, prosecute, or otherwise take adverse action against a person based on the person's actual, potential, perceived, or alleged pregnancy outcomes. The government

shall not penalize, prosecute, or otherwise take adverse action against a person for aiding or assisting another person in exercising their right to make and carry out decisions about their pregnancy with their voluntary consent.

(4) For purposes of this section:

(a) A government interest is “compelling” only if it clearly and convincingly addresses a medically acknowledged, bona fide health risk to a pregnant patient and does not infringe on the patient's autonomous decision making.

(b) “Fetal viability” means the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.”

## In-Person Dispensing Requirements

### **Mont. Code Ann. § 50-20-704**

#### ***Currently Enjoined***

An abortion-inducing drug may be provided only by a qualified medical practitioner following the procedures set forth in this part. A manufacturer, supplier, medical practitioner, qualified medical practitioner, or any other person may not provide an abortion-inducing drug via courier, delivery, or mail service.

#### Authoritative interpretation by state agencies or courts/history of enforcement:

Executive: When FDA permitted pharmacies to dispense abortion pills, the Attorney General joined a [letter](#) sent to pharmacies that mentioned many states prohibit the mailing of abortion drugs, but did not include a cite to this statute.

Judicial: Ongoing Litigation: In 2021, a Montana trial court granted a preliminary injunction against Mont. Code Ann. § 50-20-704 after it was challenged by Planned Parenthood. The Montana Supreme Court affirmed. On February 29, 2024, the District Court granted Planned Parenthood's motion for summary judgment, finding the law unconstitutional. The decision has been appealed to the Montana Supreme Court and is pending before the court. *See Planned Parenthood of Montana v. State*, No. DV-21-999 (Mont. Dist. Ct. Feb. 29, 2024).

#### Relationship between statute and other federal/state statutes relating to the subject matter:

Montana's prohibition on mailing chemical abortion drugs is consistent with federal law. The Comstock Act, 18 U.S.C. § 1461, explicitly prohibits the mailing of chemical abortion pills.

## Informed Consent Laws

### **Mont. Code Ann. § 50-20-106**

(1) An abortion may not be performed without the informed consent of the woman upon whom the abortion is to be performed. The informed consent must be received at least 24 hours prior to the abortion and certified prior to or at the time of the abortion.

(2) Informed consent must be certified by a written statement in a form prescribed by the department and signed by the physician and the woman upon whom the abortion is to be performed in which the physician certifies that the physician has made the full disclosure provided in 50-20-104(5) and in which the woman upon whom the abortion is to be performed acknowledges that the disclosures have been made to the woman and that the woman voluntarily consents to the abortion.

(3) If a woman chooses to review the written materials described in 50-20-304, the materials must be provided to the woman at least 24 hours before the abortion or be mailed to the woman by certified mail, with delivery restricted to the addressee, at least 72 hours before the abortion.

(4) The information required in 50-20-104(5)(a) may be provided by telephone without conducting a physical examination or tests of the patient. The information may be based on facts supplied to the physician by the woman and other relevant information that is reasonably available to the physician. The information may not be provided by a tape recording but must be provided during a consultation in which the physician is able to ask questions of the woman and the woman is able to ask questions of the physician. If a physical examination, tests, or the availability of other information subsequently indicates, in the medical judgment of the physician, a revision of information previously provided to the patient, the revised information may be communicated to the patient at any time prior to the performance of the abortion.

(5) The information required in 50-20-104(5)(b) may be provided by a tape recording if provision is made to record or otherwise register specifically whether the woman does or does not choose to review the printed materials.

(6) The informed consent or consent provided for in this section is not required if a licensed physician certifies that the abortion is necessary because of a medical emergency as defined in 50-20-303.

(7) An executive officer, administrative agency, or public employee of the state or of any local governmental body may not issue any order requiring an abortion or coerce any woman to have an abortion. A person may not coerce any woman to have an abortion.

(8) A violation of subsections (1) through (7) is a misdemeanor.

#### Interpretation:

In *Planned Parenthood v. State* (1999), Montana courts upheld informed consent under state constitutional privacy rights, limiting restrictive interpretations.

#### History of Enforcement:

No specific penalties reported, but non-compliance risks licensing sanctions under Mont. Code Ann. § 50-20-112.

### Data and Documentation Requirements

**Mont. Code Ann. § 50-20-110; *id.* § 50-20-306; *id.* § 50-20-709**

- (1) Every facility in which an abortion is performed within the state shall keep on file, on a form prescribed by the department, a statement dated and certified by the physician who performed the abortion that provides information with respect to the abortion as required by the department by rule. The information must include but is not limited to information on prior pregnancies, the medical procedure employed to administer the abortion, the gestational age of the fetus, the vital signs of the fetus after abortion, if any, and if after viability, the medical procedures employed to protect and preserve the life and health of the fetus.
- (2) The physician performing an abortion shall request pathology studies as required by the department by rule, and the facility shall keep the reports of the pathology studies on file.
- (3) In connection with an abortion, the facility shall keep on file the original of each of the documents required by this chapter relating to informed consent, consent to abortion, certification of necessity of abortion to preserve the life or health of the mother, and certification of necessity of abortion to preserve the life of the mother.
- (4) A health care provider who prescribes a medication intended to cause or induce an abortion shall keep on file, on a form prescribed by the department, a statement dated and certified by the health care provider reporting any adverse side effects experienced by the person to whom the medication was prescribed.
- (5)
  - (a) Within 30 days after the abortion, a facility shall file with the department a report on a form prescribed by the department and certified by the custodian of the records or physician in charge of the facility that provides all of the information required in subsections (1), (2), and (3).
  - (b) Within 30 days of prescribing a medication intended to cause or induce an abortion, a health care provider shall file a report with the department that provides the information required under subsection (4).
  - (c) Reports filed under this subsection (5) may not contain any information that would identify any individual involved with the abortion.
  - (d) A report must exclude copies of any documents required to be filed by subsection (3) but must certify that the documents were executed and are on file.

Authoritative interpretation by state agencies or courts:

State trial court held chemical abortion provisions were unconstitutional in *Planned Parenthood of Mont. v. State*, No. DV-21-999 (Mont. Dist. Ct. Feb. 29, 2024). Mont. Admin. Rs. 37.21.105, 37.21.110 (2001).

Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

Other:

Most recent state report available here:  
<https://dphhs.mt.gov/assets/publichealth/Epidemiology/VSU/2022MTVitalStatisticsFinal.pdf>.

## Civil Liability Provisions

### **Mont. Code Ann. § 50-20-307**

#### **Civil Remedies Under Informed Consent Requirements**

**Applies Mont. Code Ann. §§ 50-20-301 through 50-20-308**

(1) A person who performs an abortion in knowing or reckless violation of this chapter may be liable for actual and punitive damages in an action brought by the woman upon whom an abortion was performed or, if the woman is under 18 years of age or is physically or mentally incapacitated for purposes of being able to decide whether to bring and pursue an action, then, on the woman's behalf, by either:

- (a) the father of the unborn child who was the subject of the abortion; or
- (b) the grandparent of an unborn child who was the subject of the abortion.

(2) A person who attempts to perform an abortion in knowing or reckless violation of this chapter may be liable for actual and punitive damages in an action brought by the woman upon whom an abortion was attempted.

(3) If the department fails to issue the public report required in 50-20-306, a group of 10 or more citizens may seek an injunction, in a court of competent jurisdiction, against the director of the department to require that a complete report be issued within a period established by court order. Failure to comply with an injunction subjects the director to sanctions for civil contempt.

(4) If judgment is rendered in favor of the plaintiff in any action described in this section, the court shall award reasonable attorney fees in favor of the plaintiff against the defendant.

(5) An abortion or attempted abortion performed in violation of this chapter is the basis for a professional disciplinary action under 37-1-316.

### **Mont. Code Ann. § 50-20-307(4)**

#### **Professional Discipline Under Reporting Requirements**

**Applies to Mont. Code Ann. §§ 50-20-301 through 50-20-308**

(4) Reports that are not submitted by March 31 are subject to a penalty of \$500 for each 30-day period that the reports are overdue. A physician who is required to report but who, more than 1 year after the due date, has not submitted a report or who has submitted an incomplete report may, in an action brought by the department, be directed by a district court to submit a complete report within a period stated in the court order or be subject to sanctions for civil contempt.

### **Mont. Code Ann. § 50-20-712**

#### **Civil Remedies and Professional Discipline for Abortion-Inducing Drugs**

**Applies to Mont. Code Ann. §§ 50-20-701 to 50-20-714**

***Currently Enjoined***

(1) In addition to all other remedies available under the laws of this state, failure to comply with the requirements of this part:

- (a) provides a basis for a civil malpractice action for actual and punitive damages;
- (b) provides a basis for professional disciplinary action under Title 37 for the suspension or revocation of the license of a health care provider; and
- (c) provides a basis for recovery for the woman's survivors for the wrongful death of the woman under 27-1-513.

(2) Civil liability may not be imposed against the pregnant woman on whom the chemical abortion is attempted or performed.

(3) When requested, the court shall allow a woman to proceed using solely the woman's initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman on whom the chemical abortion was attempted or performed.

(4) If judgment is rendered in favor of the plaintiff, the court shall also render judgment for reasonable attorney fees in favor of the plaintiff against the defendant.

(5) If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court may render judgment for reasonable attorney fees in favor of the defendant against the plaintiff.

Note:

Currently enjoyed by *Planned Parenthood of Montana v. State*, No. DV-21-999, 2024 WL3886822 (Mont. Dist. Feb. 29, 2024)

**Mont. Code Ann. § 50-20-510(2)**

**Civil Remedies Under Parental Consent Requirements**

**Applies to Mont. Code Ann. §§ 50-20-501 to 50-20-511**

***Currently Enjoined***

(2) Failure to obtain the consent required under 50-20-504 is prima facie evidence in an appropriate civil action for a violation of a professional obligation. The evidence does not apply to issues other than failure to obtain the consent of a parent or legal guardian. A civil action may be based on a claim that the failure to obtain consent was the result of a violation of the appropriate legal standard of care. Failure to obtain consent is presumed to be actual malice pursuant to the provisions of 27-1-221. This part does not limit the common-law rights of parents.

Note:

Currently enjoined, and subsequently held unconstitutional by Montana Supreme Court in *Planned Parenthood of Montana v. State*, 417 Mont. 457 (Mt. 2024); but petition for certiorari filed and being considered as of April 2025.

## Nebraska

In November 2024, Nebraska voters passed the “Protect Women and Children” initiative. The ballot initiative amends the Nebraska constitution to protect life after 12 weeks gestation. At the same time, Nebraska voters rejected the radical “Protect the Right to Abortion” ballot measure, which would have created a fundamental right to abortion. You can read AUL’s full legal analysis on both of [Nebraska’s 2024 Ballot Questions](#)

Nebraska has a network of pro-life laws protecting women and unborn children, including a prohibition on dismemberment abortion. Nebraska has comprehensive informed consent laws, including a twenty-four-hour reflection period, abortion pill reversal information, and perinatal hospice materials. The state prohibits “tele-med abortions” and only permits licensed physicians to perform abortion procedures.

Governor Jim Pillen has promoted a culture of Life while in office. He has signed pro-life bills into law, including the Preborn Child Protection Act helping to drop abortion significantly in the state. Nebraska Attorney General Michael Hilgers joined a [brief](#) against the Food and Drug Administration’s chemical abortion expansion, but did not cite to Nebraska’s statute specifically.

According to AUL’s Unsafe project, the state has a substantive framework for abortion businesses, but AUL received only a handful of inspection reports. There were health and safety citations for having expired medications in emergency kits and inconsistently labeled tissue specimens.

Abortionists must follow the state constitution’s ban on abortions after twelve weeks gestation. Likewise, they must comply with in-person dispensing requirements for chemical abortion drugs, informed consent protections—including the twenty-four-hour reflection period—and reporting requirements.

## Constitutional Provision

### **Nebraska Constitution, art. I, § 31**

Except when a woman seeks an abortion necessitated by a medical emergency or when the pregnancy results from sexual assault or incest, unborn children shall be protected from abortion in the second and third trimesters.

## Statutory Prohibition

### **Neb. Rev. Stat. § 28-3-106**

No person shall perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing the abortion or by another physician upon whose determination that physician relies, that the probable postfertilization age of the woman's unborn child is twenty or more weeks unless, in reasonable medical judgment (1) she has a condition which so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function or (2) it is necessary to preserve the life of an unborn child. No such condition shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical



impairment of a major bodily function. In such a case, the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive, unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the woman than would another available method. No such greater risk shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

## In-Person Dispensing Requirements

### **Neb. Rev. Stat. § 28-335(2)**

No abortion shall be performed, induced, or attempted unless the physician who uses or prescribes any instrument, device, medicine, drug, or other substance to perform, induce, or attempt the abortion is physically present in the same room with the patient when the physician performs, induces, or attempts to perform or induce the abortion. Any person who knowingly or recklessly violates this subsection shall be guilty of a Class IV felony. No civil or criminal penalty shall be assessed against the patient upon whom the abortion is performed, induced, or attempted to be performed or induced.

#### Authoritative interpretation by state agencies or courts/history of enforcement:

Executive: AG joined a [brief](#) against the FDA's chemical abortion expansion, but did not cite to this statute specifically.

Legislative: LB 512 would add an in-person visit with the provider before and after the chemical abortion

#### Relationship between statute and other federal/state statutes relating to the subject matter:

Nebraska's prohibition on mailing chemical abortion drugs is consistent with federal law. The Comstock Act, 18 U.S.C. § 1461, explicitly prohibits the mailing of chemical abortion pills.

## Informed Consent Laws

### **Neb. Rev. Stat. § 28-327**

No abortion shall be performed except with the voluntary and informed consent of the woman upon whom the abortion is to be performed. Except in the case of an emergency situation, consent to an abortion is voluntary and informed only if:

(1) The woman is told the following by the physician who is to perform the abortion, by the referring physician, or by a physician assistant or registered nurse licensed under the Uniform Credentialing Act who is an agent of either physician, at least twenty-four hours before the abortion:

(a) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, perforated uterus, danger to subsequent pregnancies, and infertility;

- (b) The probable gestational age of the unborn child at the time the abortion is to be performed;
- (c) The medical risks associated with carrying her child to term;
- (d) That she cannot be forced or required by anyone to have an abortion and is free to withhold or withdraw her consent for an abortion; and
- (e) Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you change your mind and want to continue your pregnancy after taking mifepristone, information on finding immediate medical assistance is available on the website of the Department of Health and Human Services.

The person providing the information specified in this subdivision to the person upon whom the abortion is to be performed shall be deemed qualified to so advise and provide such information only if, at a minimum, he or she has had training in each of the following subjects: Sexual and reproductive health; abortion technology; contraceptive technology; short-term counseling skills; community resources and referral; and informed consent. The physician or the physician's agent may provide this information by telephone without conducting a physical examination or tests of the patient, in which case the information required to be supplied may be based on facts supplied by the patient and whatever other relevant information is reasonably available to the physician or the physician's agent;

(2) The woman is informed by telephone or in person, by the physician who is to perform the abortion, by the referring physician, or by an agent of either physician, at least twenty-four hours before the abortion:

- (a) The name of the physician who will perform the abortion;
- (b) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;
- (c) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion;
- (d) That she has the right to review the printed materials described in section 28-327.01. The physician or his or her agent shall orally inform the woman that the materials have been provided by the Department of Health and Human Services and that they describe the unborn child, list agencies which offer alternatives to abortion, and include information on finding immediate medical assistance if she changes her mind after taking mifepristone and wants to continue her pregnancy. If the woman chooses to review the materials, they shall either be given to her at least twenty-four hours before the abortion or mailed to her at least seventy-two hours before the abortion by certified mail, restricted delivery to addressee, which means the postal employee can only deliver the mail to the addressee. The physician and his or her agent may disassociate themselves from the materials and may comment or refrain from commenting on them as they choose; and

(e) That she has the right to request a comprehensive list, compiled by the Department of Health and Human Services, of health care providers, facilities, and clinics that offer to have ultrasounds performed by a person at least as qualified as a registered nurse licensed under the Uniform Credentialing Act, including and specifying those that offer to perform such ultrasounds free of charge. The list shall be arranged geographically and shall include the name, address, hours of operation, and telephone number of each entity. If requested by the woman, the physician who is to perform the abortion, the referring physician, or his or her agent shall provide such a list as compiled by the department;

(3) If an ultrasound is used prior to the performance of an abortion, the physician who is to perform the abortion, the referring physician, or a physician assistant or registered nurse licensed under the Uniform Credentialing Act who is an agent of either physician, or any qualified agent of either physician, shall:

(a) Perform an ultrasound of the woman's unborn child of a quality consistent with standard medical practice in the community at least one hour prior to the performance of the abortion;

(b) Simultaneously display the ultrasound images so that the woman may choose to view the ultrasound images or not view the ultrasound images. The woman shall be informed that the ultrasound images will be displayed so that she is able to view them. Nothing in this subdivision shall be construed to require the woman to view the displayed ultrasound images; and

(c) If the woman requests information about the displayed ultrasound image, her questions shall be answered. If she requests a detailed, simultaneous, medical description of the ultrasound image, one shall be provided that includes the dimensions of the unborn child, the presence of cardiac activity, if present and viewable, and the presence of external members and internal organs, if present and viewable;

(4) At least one hour prior to the performance of an abortion, a physician, psychiatrist, psychologist, mental health practitioner, physician assistant, or registered nurse licensed under the Uniform Credentialing Act; a social worker licensed under the Uniform Credentialing Act or holding a multistate authorization to practice in Nebraska under the Social Worker Licensure Compact; or a professional counselor holding a privilege to practice in Nebraska under the Licensed Professional Counselors Interstate Compact has:

(a) Evaluated the pregnant woman to identify if the pregnant woman had the perception of feeling pressured or coerced into seeking or consenting to an abortion;

(b) Evaluated the pregnant woman to identify the presence of any risk factors associated with abortion;

(c) Informed the pregnant woman and the physician who is to perform the abortion of the results of the evaluation in writing. The written evaluation shall include, at a minimum, a checklist identifying both the positive and negative results of the evaluation for each risk factor associated with abortion and both the licensed person's written certification and the woman's written certification that the pregnant woman was informed of the risk factors associated with abortion as discussed; and

(d) Retained a copy of the written evaluation results in the pregnant woman's permanent record;

(5) If any risk factors associated with abortion were identified, the pregnant woman was informed of the following in such manner and detail that a reasonable person would consider material to a decision of undergoing an elective medical procedure:

(a) Each complication associated with each identified risk factor; and

(b) Any quantifiable risk rates whenever such relevant data exists;

(6) The physician performing the abortion has formed a reasonable medical judgment, documented in the permanent record, that:

(a) The preponderance of statistically validated medical studies demonstrates that the physical, psychological, and familial risks associated with abortion for patients with risk factors similar to the patient's risk factors are negligible risks;

(b) Continuance of the pregnancy would involve risk of injury to the physical or mental health of the pregnant woman greater than if the pregnancy were terminated by induced abortion; or

(c) Continuance of the pregnancy would involve less risk of injury to the physical or mental health of the pregnant woman than if the pregnancy were terminated by an induced abortion;

(7) The woman certifies in writing, prior to the abortion, that:

(a) The information described in subdivisions (1) and (2)(a), (b), and (c) of this section has been furnished her;

(b) She has been informed of her right to review the information referred to in subdivision (2)(d) of this section; and

(c) The requirements of subdivision (3) of this section have been performed if an ultrasound is performed prior to the performance of the abortion; and

(8) Prior to the performance of the abortion, the physician who is to perform the abortion or his or her agent receives a copy of the written certification prescribed by subdivision (7) of this section. The physician or his or her agent shall retain a copy of the signed certification form in the woman's medical record.

Interpretation:

Nebraska Department of Health and Human Services (DHHS) enforces compliance, requiring consent certifications.

History of Enforcement:

Litigation upheld informed consent and ultrasound provisions.

Relationship statutes/ regulations relating to the subject matter:

LB 574 (2023), limiting abortions after 12 weeks.

Data and Documentation Requirements

**Neb. Rev. Stat. §§ 28-343 to -345; *id.* § 28-327.01(7)**

**Neb. Rev. Stat. § 28-343**

The Department of Health and Human Services shall prescribe an abortion reporting form which shall be used for the reporting of every abortion performed in this state. Such form shall include the following items:

- (1) The age of the pregnant woman;
- (2) The location of the facility where the abortion was performed;
- (3) The type of procedure performed;
- (4) Complications, if any;
- (5) The name of the attending physician;
- (6) The pregnant woman's obstetrical history regarding previous pregnancies, abortions, and live births;
- (7) The stated reason or reasons for which the abortion was requested;
- (8) The state of the pregnant woman's legal residence;
- (9) The length and weight of the aborted child, when measurable;
- (10) Whether an emergency situation caused the physician to waive any of the requirements of section 28-327; and
- (11) Such other information as may be prescribed in accordance with section 71-602.

The completed form shall be signed by the attending physician and sent to the department within fifteen days after each reporting month.

Authoritative interpretation by state agencies or courts:

A previous version of Neb. Rev. Stat. § 28-327.01 (2019) was permanently enjoined, but the state legislature has since amended the statute. 174 Neb. Admin. Code § 1-001 (2022); *id.* §§ 8-001 to -003 (2022).

Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

Other:

The most recent state report is available here: <https://datanexus-dhhs.ne.gov/views/AbortionTableauReportv2/DashboardA?%3Aembed=y&%3Aiid=1&%3AisGuestRedirectFromVizportal=y>.

## Civil Liability Provisions

### **Neb. Rev. Stat. § 28-327.04**

#### **Civil Remedies for Abortion; Informed Consent; Parental Consent Requirements Applies to Neb. Rev. Stat. §§ 28-327 through 28-327.12**

Any person upon whom an abortion has been performed or attempted in violation of section 28-327 or the parent or guardian of a minor upon whom an abortion has been performed or attempted in violation of such section shall have a right to maintain a civil cause of action against the person who performed the abortion or attempted to perform the abortion. A violation of subdivision (1), (2), (3), (7), or (8) of section 28-327 shall be prima facie evidence of professional negligence. The written certifications prescribed by subdivisions (4) and (7) of section 28-327 signed by the person upon whom an abortion has been performed or attempted shall constitute and create a rebuttable presumption of full compliance with all provisions of section 28-327 in favor of the physician who performed or attempted to perform the abortion, the referring physician, or the agent of either physician. The written certification shall be admissible as evidence in the cause of action for professional negligence or in any criminal action. If judgment is rendered in favor of the plaintiff in any such action, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant.

#### Relevant Related Statutes for Civil Remedies:

Neb. Rev. Stat. § 28-327.05 (Concerning civil actions and anonymity of woman):

Neb. Rev. Stat. § 28-327.06 (concerning a waiver for civil actions)

Neb. Rev. Stat. § 28-327.07 (concerning damages)

Neb. Rev. Stat. § 28-327.08 (concerning any action for civil remedies)

Neb. Rev. Stat. § 25-222 (concerning any action for professional negligence)

Neb. Rev. Stat. § 44-2828 (concerning any action to recover damages)

Neb. Rev. Stat. § 28-327.11 (concerning any civil action, rebuttable presumption, noneconomic damages, expert witness, etc.)

Neb. Rev. Stat. § 28-327.12 (concerning the statute of limitations, tolled, etc.)

## **Nevada**

Nevada passed a State Ballot initiative seeking to create a right to abortion in their constitution. This right will lead to the elimination of protections for women by impeding the State's ability to enact future safeguards and is being used to further false narratives of abortion equating to women's equality. For more, read AUL's [full legal analysis of the 2024 Nevada ballot initiative](#).

Nevada, by ballot initiative, approved a "Freedom of Choice Act" creating a legal right to abortion before 24 weeks' gestation. Thus, after Roe, abortion continues to be legal for up to 24 weeks with exceptions for life and health. Nevada only has abortion clinics in the major cities of Las Vegas and Reno but permits abortion pills to be sent through the mail without seeing a provider in person. Nevada has at least seven pregnancy centers clustered near its major cities.

The Nevada Legislature has pro-choice Democrat majorities in both chambers. Nevada recently enacted a bill allowing for minors to receive contraceptive drugs or devices, without the consent or notification of the parents or legal guardian.

Judges in Nevada are chosen in nonpartisan elections to serve six-year terms.

Nevada Governor Joe Lombardo is a pro-abortion Republican, who approves abortion protections and is working to enshrine protections for out-of-state abortion patients, turning Nevada into a haven for abortion patients.

## Constitutional Authorization

### **Nev. Const. art. I, § 25**

1. Every individual has a fundamental right to reproductive freedom, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including, without limitation, prenatal care, childbirth, postpartum care, birth control, vasectomy, tubal ligation, abortion, abortion care, management of a miscarriage and infertility care. The right of an individual to reproductive freedom shall not be denied, burdened or infringed upon unless justified by a compelling State interest that is achieved by the least restrictive means available.
2. Notwithstanding the provisions of subsection 1, the State may regulate the provision of abortion care after fetal viability, provided that in no circumstance may the State prohibit an abortion that, in the professional judgment of an attending provider of health care, is medically indicated to protect the life or physical or mental health of the pregnant individual.
3. The State shall not penalize, prosecute or otherwise take adverse action against an individual based on the actual, potential, perceived or alleged outcome of the pregnancy of the individual, including, without limitation, a miscarriage, stillbirth or abortion.
4. The State shall not penalize, prosecute or otherwise take adverse action against a provider of health care, who is licensed by the State, for acting consistent with the applicable scope of practice and standard of care for performing an abortion upon, providing abortion care to or providing reproductive care services to an individual who has granted the individual's voluntary consent.
5. The State shall not penalize, prosecute or otherwise take adverse action against any individual or entity for aiding or assisting another individual in exercising the right of the individual to reproductive freedom with the voluntary consent of the individual.
6. Nothing provided in this section narrows or limits the right to equality or equal protection.
7. As used in this section:
  - (a) "Compelling state interest" means an interest which is limited exclusively to the State's interest in protecting the health of an individual who is seeking reproductive health care that is consistent with accepted clinical standards of practice.



(b) “Fetal viability” means the point in a pregnancy when, in the professional judgment of an attending provider of health care and based on the particular facts of the case, there is a significant likelihood of the sustained survival of the fetus outside the uterus without the application of extraordinary medical measures.

(c) “Least restrictive means” means in a manner that restricts or infringes upon the autonomous decision-making of an individual to the slightest degree possible while furthering a compelling state interest.

### Statutory Prohibitions

#### **Nev. Rev. Stat. § 442.250(1)(b)–(c)**

1. No abortion may be performed in this state unless the abortion is performed:

(a) By a physician licensed to practice in this state or by a physician in the employ of the government of the United States who:

(1) Exercises his or her best clinical judgment in the light of all attendant circumstances including the accepted professional standards of medical practice in determining whether to perform an abortion; and

(2) Performs the abortion in a manner consistent with accepted medical practices and procedures in the community.

(b) Within 24 weeks after the commencement of the pregnancy.

(c) After the 24th week of pregnancy only if the physician has reasonable cause to believe that an abortion currently is necessary to preserve the life or health of the pregnant woman.

2. All abortions performed after the 24th week of pregnancy or performed when, in the judgment of the attending physician, there is a reasonable likelihood of the sustained survival of the fetus outside of the womb by natural or artificial supportive systems must be performed in a hospital licensed under chapter 449 of NRS.

3. Before performing an abortion pursuant to subsection 2, the attending physician shall enter in the permanent records of the patient the facts on which the physician based his or her best clinical judgment that there is a substantial risk that continuance of the pregnancy would endanger the life of the patient or would gravely impair the physical or mental health of the patient.

#### **Nev. Rev. Stat. § 200.220**

A woman who takes or uses, or submits to the use of, any drug, medicine or substance, or any instrument or other means, with the intent to terminate her pregnancy after the 24th week of pregnancy, unless the same is performed upon herself upon the advice of a physician acting pursuant to the provisions of NRS 442.250, and thereby causes the death of the child of the pregnancy, commits manslaughter and shall be punished for a category B felony by imprisonment in the state

prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000.

### Informed Consent Laws

#### **Nevada: Nev. Rev. Stat. § 422.253**

1. The attending physician or a person meeting the qualifications established by regulations adopted by the Division shall:
  - (a) In an accurate and thorough manner which is reasonably likely to be understood by the pregnant woman, orally:
    - (1) Explain that, in his or her professional judgment, she is pregnant and a copy of her pregnancy test is available to her.
    - (2) Inform her of the estimated gestational age.
    - (3) Explain:
      - (I) The procedure to be used and the proper procedures for her care after the abortion.
      - (II) The discomforts and risks that may accompany or follow the procedure.
      - (III) If an interpreter is available to assist the woman because the woman does not understand the language used on a form indicating consent or the language used by the attending physician or person meeting the qualifications established by regulations adopted by the Division, that an interpreter is available to provide the explanation.
  - (b) Offer to answer any questions the woman has concerning the procedure.
  - (c) Provide the woman with a copy of a form indicating consent.
2. The form indicating consent provided pursuant to subsection 1 must clearly describe the nature and consequences of the procedure to be used.
3. Informed consent shall be deemed to have been given by a woman seeking an abortion for the purposes of NRS 442.252 when:
  - (a) The form indicating consent provided pursuant to paragraph (c) of subsection 1 has been signed and dated by:
    - (1) The woman;
    - (2) The interpreter, if an interpreter is used;
    - (3) The attending physician who will perform the procedure; and

(4) The person meeting the qualifications established by regulations adopted by the Division if such a person performs the duties prescribed in subsection 1; and

(b) If the form indicating consent is not written in a language understood by the woman, the person who performs the duties prescribed in subsection 1 has certified on the form that the information described in subsection 1 has been presented in such a manner as to be understood by the woman.

Interpretation:

Nevada courts upheld informed consent in *Planned Parenthood v. Miller* (1996)

History of Enforcement:

Non-compliance with § 442.253 risks licensing sanctions under Nev. Rev. Stat. § 442.270.

Data and Documentation Requirements

**Nev. Rev. Stat. § 442.260**

1. The Division shall adopt and enforce regulations governing the conditions under and the methods by which abortions may be performed, the reasonable minimum qualifications of a person authorized to provide the information required in NRS 442.253, as well as all other aspects pertaining to the performance of abortions pursuant to NRS 442.250.
2. The Division shall adopt and enforce regulations for a system for reporting abortions. This system must be designed to preserve confidentiality of information on the identity of women upon whom abortions are performed. The Division may require that the following items be reported for each abortion . . . [listing types of data].

Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

## New Hampshire

After *Roe*, abortion continues to be legal up to 24 weeks with exceptions for life “endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function.” New Hampshire has fewer than a dozen pregnancy centers and about a dozen abortion clinics, and clustered in the southern half of the state.

New Hampshire’s General Court is the largest state legislative body with 400 members in the House. In 2020, both chambers flipped to slim Republican majorities but struggled to enact pro-life legislation. After the 2022 Mid-Terms, both the House and the Senate remain controlled by Republicans.

Pro-abortion Republican Governor Chris Sununu signed a law in 2021, the Fetal Life Protection Act, that would prevent elective abortions after viability and ensure that women receive ultrasounds to determine their unborn child's gestational age prior to undergoing an abortion.

Unfortunately, the state does not license or inspect abortion businesses. The only reports AUL's Unsafe project was able to obtain were inspections done related to the state's Title X program administration.

## Statutory Prohibitions

### **N.H. Rev. Stat. § 329:44**

I. Except in the case of a medical emergency as specifically defined in paragraph III, no abortion shall be performed, induced, or attempted by any health care provider unless a health care provider has first made a determination of the probable gestational age of the fetus. In making such a determination, the health care provider shall make such inquiries of the pregnant woman and perform or cause to be performed all such medical examinations, imaging studies, and tests as a reasonably prudent health care provider in the community, knowledgeable about the medical facts and conditions of both the woman and the fetus involved, would consider necessary to perform and consider in making an accurate diagnosis with respect to gestational age, provided, however, that the health care provider shall conduct an obstetric ultrasound examination of the patient for the purpose of making the determination. This paragraph shall be construed to require the performance of an ultrasound only if the provider either knows that the fetus has a gestational age of at least 24 weeks or is conscious of a substantial risk that the fetus has a gestational age of at least 24 weeks.

II. Except in the case of fetal abnormalities incompatible with life, or a medical emergency as specifically defined in paragraph III, no health care provider shall knowingly perform, induce, or attempt to perform an abortion upon a pregnant woman when the probable gestational age of her fetus has been determined to be at least 24 weeks or in the absence of a determination by a health care provider pursuant to paragraph I as to the fetus' probable gestational age.

III. For the purposes of this subdivision only, "medical emergency" means a condition in which an abortion is necessary to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function, as defined in RSA 329:43, V, of the pregnant woman.

## Civil Liability Provisions

### **R.S.A. § 132:35**

#### **Civil Remedies Under Parental Notice**

#### **Applies to R.S.A. §§ 132.32 through 132:36**

Performance of an abortion in violation of this subdivision shall be a misdemeanor and shall be grounds for a civil action by a person wrongfully denied notification. A person shall not be held liable under this section if the person establishes by written evidence that the person relied upon

evidence sufficient to convince a careful and prudent person that the representations of the pregnant minor regarding information necessary to comply with this section are bone fide and true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so.

## New Jersey

New Jersey ranks low on AUL's Life List due to the state's anti-life climate. The New Jersey Supreme Court has ruled that the state constitution provides a broader right to abortion than the U.S. Constitution, and abortion continues to be legal throughout pregnancy now that *Roe* is overturned. New Jersey has no informed consent protections, nor does it require parental involvement if a minor girl seeks an abortion. New Jersey has around twenty abortion clinics, and it permits abortion pills to be sent through the mail. Thankfully, it has around fifty-four pregnancy care centers across the state. New Jersey is also one of the eleven jurisdictions that has legalized physician-assisted suicide.

The New Jersey Legislature has solid pro-choice Democrat majorities in both chambers. In 2022, the legislature skipped normal processes to quickly enact a "Freedom of Reproductive Choice Act" that permits abortions on demand throughout pregnancy with virtually no safeguards for mother or child.

Justices on the New Jersey Supreme Court are selected through direct gubernatorial appointment. First, they must be nominated by the governor and then confirmed by a majority vote of the state senate. There is no ongoing abortion litigation in New Jersey.

New Jersey Governor Phil Murphy is stridently pro-abortion. He has expressed interest in establishing New Jersey as a "sanctuary state for abortion" and supports legislation requiring all health insurance plans to cover abortion "with no out-of-pocket costs."

New Jersey does not appear to have any laws regulating chemical abortion.

## New Mexico

New Mexico has practically no safeguards in place for women seeking abortion and therefore ranks near the very bottom of AUL's Life List. The state's parental notice statute was repealed, and there is no informed consent process in the law.

New Mexico is one of the only states that permits abortions throughout pregnancy and has an abortion clinic where surgical abortions are done past 32 weeks' gestation. The state also permits chemical abortion pills to be sent through the mail. Abortion providers see New Mexico as a gateway to pro-life states like Texas and Arizona and have threatened to place "mobile clinics" along the state's borders. On the other hand, New Mexico has two dozen pregnancy centers serving women and families across the state.

New Mexico Governor Michelle Lujan Grisham is a pro-abortion Democrat who has signaled interest in deregulating the abortion industry even further. After Dobbs, she signed an Executive

Order protecting abortionists. The State Legislature of New Mexico has solid pro-abortion Democrat majorities in both chambers. In 2021, the legislature repealed New Mexico's pre-*Roe* abortion law, which included a conscience protection for healthcare professionals who do not want to perform or refer for abortions.

New Mexico does not license or inspect abortion businesses. The only Unsafe reports AUL was able to obtain came from annual inspections of the CLIA-lab at the late-term abortion center, Southwestern Women's Options.

## Data and Documentation Requirements

### **N.M. Stat. § 24-14-18**

A. Each induced abortion which occurs in this state shall be reported to the state registrar within five days by the person in charge of the institution in which the induced abortion was performed. If the induced abortion was performed outside an institution, the attending physician shall prepare and file the report.

Relationship between statute and other federal/state statutes relating to the subject matter:  
State reports data to CDC.

### Other:

State health statistics reports available here: <https://www.nmhealth.org/data/vital/>.

## **New York**

New York is vehemently anti-life, with virtually no protections for women or preborn children. After *Roe*, abortion continues to be legal up to twenty-four weeks gestation with exceptions for the "absence of fetal viability," or the life or health of the mother. In 2019, New York passed the Reproductive Health Act which states that "[e]very individual who becomes pregnant has the fundamental right to choose to carry the pregnancy to term, to give birth to a child, or to have an abortion." It also prevents New York from "interfer[ing] with the exercise of [this right]."

## Statutory Prohibitions

### **N.Y. Pub. Health Law § 2599-AA**

The legislature finds that comprehensive reproductive health care is a fundamental component of every individual's health, privacy and equality. Therefore, it is the policy of the state that:

1. Every individual has the fundamental right to choose or refuse contraception or sterilization.
2. Every individual who becomes pregnant has the fundamental right to choose to carry the pregnancy to term, to give birth to a child, or to have an abortion, pursuant to this article.

3. The state shall not discriminate against, deny, or interfere with the exercise of the rights set forth in this section in the regulation or provision of benefits, facilities, services or information.

### **N.Y. Pub. Health Law § 2599-BB**

1. A health care practitioner licensed, certified, or authorized under title eight of the education law, acting within his or her lawful scope of practice, may perform an abortion when, according to the practitioner's reasonable and good faith professional judgment based on the facts of the patient's case: the patient is within twenty-four weeks from the commencement of pregnancy, or there is an absence of fetal viability, or the abortion is necessary to protect the patient's life or health.

2. This article shall be construed and applied consistent with and subject to applicable laws and applicable and authorized regulations governing health care procedures.

## **North Carolina**

In the post-*Roe* legal environment, North Carolina protects life after 12 weeks' gestation with exceptions for the life of the mother, in cases of rape or incest, or if the unborn baby has a "life-limiting anomaly" during the first 24 weeks of pregnancy. Over the years, the state has enacted many pro-life safeguards, including informed consent with a reflection period, a requirement that doctors have admitting privileges at a local hospital in case of emergency, and parental consent for minors seeking abortion. North Carolina has around fourteen abortion clinics, clustered near the colleges and universities. Fortunately, North Carolina has nearly one hundred pregnancy centers serving women and families in every part of the state.

The North Carolina Assembly has pro-life Republican majorities in both chambers. However, Josh Stein, the current Governor and former Attorney General of North Carolina, is a pro-choice Democrat. Within the first month as Governor, Stein signed an executive order committing his administration to access to abortion, IVF, and contraception, keeping in line with his previous actions as Attorney General. On the subject of chemical abortion, Stein has said, "No woman should ever have to worry about whether she can get the medication she needs. I will continue to do everything in my power to stand up for women's reproductive freedoms."

North Carolina judges and justices are selected through partisan elections. The state's supreme court is comprised of five Republican justices and two Democrat justices. Justices serve 8-year terms. There is ongoing litigation challenging the state's 12-week abortion limitation, and the state's restrictions on chemical abortions.

### **Statutory Prohibitions**

#### **N.C. Gen. Stat. § 90-21.81B**

Notwithstanding any of the provisions of G.S. 14-44 and G.S. 14-45, and subject to the provisions of this Article, it shall not be unlawful to procure or cause a miscarriage or an abortion in the State of North Carolina in the following circumstances:

(1) When a qualified physician determines there exists a medical emergency.



(2) During the first 12 weeks of a woman's pregnancy, when the procedure is performed by a qualified physician licensed to practice medicine in this State in a hospital, ambulatory surgical center, or clinic certified by the Department of Health and Human Services to be a suitable facility for the performance of abortions, in accordance with G.S. 90-21.82A or during the first 12 weeks of a woman's pregnancy when a medical abortion is procured.

(3) After the twelfth week and through the twentieth week of a woman's pregnancy, when the procedure is performed by a qualified physician in a suitable facility in accordance with G.S. 90-21.82A when the woman's pregnancy is a result of rape or incest.

(4) During the first 24 weeks of a woman's pregnancy, if a qualified physician determines there exists a life-limiting anomaly in accordance with this Article.

### In-Person Dispensing Requirements

#### **N.C. Gen. Stat. § 14-44.1(a)**

#### ***Currently enjoined***

All of the following are unlawful:

- (1) For any individual within the State, including a physician, an employee or contractor of a physician's office or clinic, or other abortion provider, or organization within the State, including a physician's office or clinic or other abortion provider, to mail, provide, or supply an abortion-inducing drug directly to a pregnant woman in violation of G.S. 90-21.83A(b)(2)a. Lack of knowledge or intent that the abortion-inducing drug will be administered outside the physical presence of a physician shall not be a defense to a violation of this subdivision.
- (2) For any manufacturer or supplier of an abortion-inducing drug to ship or cause to be shipped any abortion-inducing drug directly to a pregnant woman in violation of G.S. 90-21.83A(b)(2)a. Lack of knowledge or intent that the abortion-inducing drug will be administered outside the physical presence of a physician shall not be a defense to a violation of this subdivision.
- (3) For any individual or organization to purchase or otherwise procure an advertisement, host or maintain an internet website, or provide an internet service purposefully directed to a pregnant woman who is a resident of this State when the individual or organization knows that the purpose of the advertisement, website, or internet service is solely to promote the sale of an abortion-inducing drug to be administered to a woman in violation of G.S. 90-21.83A(b)(2)a.

#### Authoritative interpretation by state agencies or courts/history of enforcement:

Executive: Enforcement seems doubtful. The Governor recently signed an [Executive Order](#) directing the state Department of Health to take measures to ensure there is “reliable, consistent access to safe and legal reproductive health care medications.”

Judicial: Ongoing Litigation: *Bryant v. Stein*, 2024 WL 3107568, No. 1:23-CV-77 (M.D.N.C. June 3, 2024). Pro-abortion activists challenged several pro-life laws, including N.C. Gen. Stat. § 14-44.1, arguing that they were preempted by federal law. On June 3, 2024, the District Court issued judgment and granted a permanent injunction against such laws. The court held “[t]he following provisions of North Carolina law are preempted by federal law: . . . (b) N.C. Gen. Stat. § 14-44.1, § 90-21.83A, § 90-21.83B, and any other provisions of North Carolina law, to the extent they require that mifepristone be provided in person.” The case has been appealed to the 4<sup>th</sup> Circuit and is pending.

Relationship between statute and other federal/state statutes relating to the subject matter:

North Carolina’s prohibition on mailing chemical abortion drugs is consistent with federal law. The Comstock Act, 18 U.S.C. § 1461, explicitly prohibits the mailing of chemical abortion pills.

Informed Consent Laws

**N.C. Gen. Stat. § 90-21.83A**

***Currently Enjoined***

(a) No medical abortion shall be performed upon a woman in this State without her voluntary and informed consent as described in this section.

(b) Except in the case of a medical emergency, consent to a medical abortion is voluntary and informed only if all of the following conditions are satisfied:

(1) At least 72 hours prior to the medical abortion, a qualified physician or qualified professional has orally informed the woman, in person, of the information contained in the consent form.

(2) The consent form shall include, at a minimum, all of the following:

a. The name of the physician who will prescribe, dispense, or otherwise provide the abortion-inducing drugs to ensure the safety of the procedure and prompt medical attention to any complications that may arise, specific information for the physician's hospital admitting privileges, and whether the physician accepts the pregnant woman's insurance. The physician prescribing, dispensing, or otherwise providing any drug or chemical for the purpose of inducing an abortion shall be physically present in the same room as the woman when the first drug or chemical is administered to the woman.

b. The probable gestational age of the unborn child as determined by both patient history and by ultrasound results used to confirm gestational age.

c. A detailed description of the steps to complete the medical abortion.

d. A detailed list of the risks related to the specific abortion-inducing drug or drugs to be used, including hemorrhage, failure to remove all tissue of the unborn child which may require an additional procedure, sepsis, sterility, and possible continuation of the pregnancy.

e. The medical risks associated with carrying the child to term.

f. The display of a real-time view of the unborn child and heart tone monitoring that enable the pregnant woman to view her unborn child or listen to the heartbeat of the unborn child are available to the woman. The physician performing the abortion, qualified technician, or referring physician shall inform the woman that the printed materials and website described in G.S. 90-21.83 and G.S. 90-21.84 contain phone numbers and addresses for facilities that offer the services free of charge. If requested by the woman, the physician or qualified professional shall provide to the woman the list as compiled by the Department.

g. Information about Rh incompatibility, including that if the woman has an Rh-negative blood type, she could receive an injection of Rh immunoglobulin at the time of the medical abortion to prevent Rh incompatibility in future pregnancies.

h. Information about the risks of complications from a medical abortion, including incomplete abortion, increase with advancing gestational age, and that infection and hemorrhage are the most common causes of deaths related to medical abortions.

i. Notice that the woman may see the remains of her unborn child in the process of completing the abortion.

j. Notice that the physician who is to perform the medical abortion has no liability insurance for malpractice in the performance or attempted performance of an abortion, if applicable.

k. The location of the hospital that offers obstetrical or gynecological care located within 30 miles of the location where the medical abortion is performed or induced and at which the physician performing or inducing the medical abortion has clinical privileges. If the physician who will perform the medical abortion has no local hospital admitting privileges, that information shall be communicated.

If the physician or qualified professional does not know the information required in sub-subdivision a., j., or k. of this subdivision, the woman shall be advised that this information will be directly available from the physician who is to perform the medical abortion. However, the fact that the physician or qualified professional does not know the information required in sub-subdivision a., j., or k. shall not restart the 72-hour period. The information required by this subdivision shall be provided in English and in each language that is the primary language of at least two percent (2%) of the State's population. The information shall be provided orally in person, by the physician or qualified professional, in which case the required information may be based on facts supplied by the woman to the physician and whatever other relevant information is reasonably available. The information required by this subdivision shall not be provided by a tape recording but shall be provided during an in-person consultation conducted by a qualified professional or a qualified physician. A physician must be available to ask and answer questions within the statutory time frame upon request of the patient or the qualified professional. If, in the medical judgment of the physician, a physical examination, tests, or the availability of other information to the physician subsequently indicates a revision of the information previously supplied to the patient, then that revised information may be communicated to the patient at any time before the performance of the medical

abortion. Nothing in this section may be construed to preclude provision of required information in a language understood by the patient through a translator.

(3) A consent form shall not be considered valid, and informed consent not obtained from the woman, unless all of the following conditions are satisfied:

- a. The woman signs and initials each entry, list, description, or declaration required to be on the consent form described in subdivision (2) of this subsection.
- b. The woman signs and initials each entry, list, description, or declaration required to be on the acknowledgment of risks and consent statement described in subdivision (4) of this subsection.
- c. The physician signs the qualified physician declaration described in subdivision (5) of this subsection.
- d. The physician uses the consent form created by the Department for the purposes of this section.

(4) Prior to the medical abortion, an acknowledgment of risks and consent statement must be signed and initialed by the woman with a physical or electronic signature attesting she has received all of the following information at least 72 hours before the medical abortion. The acknowledgment of risks and consent statement shall include, at a minimum, all of the following:

- a. That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care.
- b. That public assistance programs under Chapter 108A of the General Statutes may or may not be available as benefits under federal and State assistance programs.
- c. That the father is liable to assist in the support of the child, even if the father has offered to pay for the abortion.
- d. That the woman has other alternatives to abortion, including keeping the baby or placing the baby for adoption.
- e. That the woman has been told about the printed materials described in G.S. 90-21.83, and that she has been told that these materials are available on a State-sponsored website, and she has been given the address of the State-sponsored website. The physician or a qualified professional shall orally inform the woman that the materials have been provided by the Department and that they describe the unborn child and list agencies that offer alternatives to abortion. If the woman chooses to view the materials other than on the website, the materials shall be given to her at least 72 hours before the medical abortion.
- f. Attestation that the woman (i) is not being forced to have a medical abortion, (ii) has a choice to not have the medical abortion, and (iii) is free to withhold or withdraw

her consent to the abortion-inducing drug regimen even after she has begun the abortion-inducing drug regimen.

g. Attestation that the woman understands that the medical abortion is intended to end her pregnancy.

h. Attestation that the woman understands the medical abortion regimen has specific risks and may result in specific complications.

i. Attestation that the woman has been given the opportunity to ask questions about her pregnancy, the development of her unborn child, and alternatives to medical abortion.

j. Confirmation that the woman has been provided access to State-prepared, printed materials on informed consent for abortion and the State-prepared and maintained website on informed consent for a medical abortion.

k. If applicable, that the woman has been given the name and phone number of a qualified physician who has agreed to provide medical care and treatment in the event of complications associated with the abortion-inducing drug regimen.

l. Notice that the physician will schedule an in-person follow-up visit for the woman at approximately seven to 14 days after providing the abortion-inducing drug or drugs to confirm that the pregnancy is completely terminated and to assess the degree of bleeding and other complications.

m. That the woman has received or been given sufficient information to give her informed consent to the abortion-inducing drug regimen or procedure.

n. That the woman has a private right of action to sue the qualified physician under the laws of this State if she feels she has been coerced or misled prior to obtaining an abortion, and how to access State resources regarding her legal right to obtain relief.

o. A statement that she will be given a copy of the forms and materials with all signatures and initials required under this Article, and all other informed consent forms required by this State.

The information required by this subdivision shall be provided in English and in each language that is the primary language of at least two percent (2%) of the State's population.

The physician has signed a physician declaration form stating that prior to the medical abortion procedure, the qualified physician has (i) explained in person the medical abortion procedure to be used, (ii) provided all of the information required in this section, and (iii) answered all of the woman's questions regarding the medical abortion.

Interpretation:

*Stuart v. Camnitz* (2014), though the ultrasound narration requirement was struck down as compelled speech. The 72-hour waiting period was upheld in *Bryant v. Woodall* (2021).

History of Enforcement:

Litigation struck down ultrasound narration but upheld waiting period and consent (see above)

Relationship statutes/ regulations relating to the subject matter:

SB 20 (2023), limiting abortions after 12 weeks.

Any other pertinent information:

The 72-hour waiting period is among the longest.

**N.C. Gen. Stat. § 90-21.81D**

(a) Procedure; Informed Consent.--If a qualified physician has determined there exists a life-limiting anomaly in accordance with this Article, in order to procure or cause a miscarriage or abortion, the qualified physician who made that determination must (i) procure or cause the miscarriage or abortion during the first 24 weeks of a woman's pregnancy and (ii) explain in writing and orally or provide to the woman all of the following information:

- (1) The basis of the determination that the diagnosis qualifies as life limiting.
- (2) The risks associated with the life-limiting anomaly and any procedure or treatment, medical, surgical, or otherwise, to perform the abortion.
- (3) While there exists a risk of stillbirth with life-limiting anomalies, life-limiting anomalies have resulted in live births of infants with unpredictable and variable lengths of life.
- (4) The woman has been provided by the qualified physician with current information on the life-limiting anomaly, including the likelihood of survival and length of survival, if known, after birth based on current medical evidence. The qualified physician proposing the abortion will offer referrals to the woman for neonatal and perinatal palliative care consultations. Neonatal consultation will discuss options for medical stabilization, evaluation, and possible treatments to support the infant after birth. Perinatal palliative care will discuss a plan for comfort care interventions that include the possibility of home discharge on palliative care.
- (5) The woman has been provided all information contained in G.S. 90-21.82 if the abortion is a surgical abortion or all information contained in G.S. 90-21.83A if the abortion is a medical abortion, and her informed consent has been obtained in accordance with those sections.
- (6) The woman has been provided all information, in addition to the information provided under subdivision (5) of this subsection, regarding her options and the spectrum of care, including all of the following:
  - a. Continuation of the pregnancy.
  - b. Referrals offered to perinatal palliative comfort care service providers to discuss palliative care, neonatal specialists, and other appropriate specialists, as indicated by

the particular life-limiting anomaly, and those service providers can discuss those options, including the stabilization of the infant in the labor and delivery room, transfer to the Neonatal Intensive Care Unit for further evaluation and treatment, and support for the mother and her family should they choose to continue the pregnancy.

(b) Affirmation.--All additional information provided to the woman under this section shall be signed and initialed by both the woman and the qualified physician.

(c) Report.--The qualified physician who performs an abortion due to the determination of a life-limiting anomaly under this section shall submit a report to the Department of Health and Human Services for statistical purposes. The report shall include, at a minimum, all of the following:

- (1) Identification of the qualified physician who diagnosed the baby with a life-limiting anomaly.
- (2) The probable gestational age of the unborn child.
- (3) Identification of the qualified physician who performed the abortion.
- (4) The pregnant woman's age and race.
- (5) The number of previous pregnancies, number of live births, and number of previous abortions of the pregnant woman.

(d) Public Records.--Materials generated by the physician or provided by the physician to the Department of Health and Human Services pursuant to this section shall not be public records under G.S. 132-1.

### Data and Documentation Requirements

#### **N.C. Gen. Stat. § 90-21.93**

(b) Contents.--Each report completed in accordance with this section shall contain, at a minimum, all of the following:

- (1) Identifying information of the (i) physician who provided the abortion-inducing drug or performed the surgical abortion and (ii) referring physician, agency, or service, if applicable.
- (2) The location, date, and type of the surgical abortion, or the location of where any abortion-inducing drug was administered or dispensed, including any health care provider facility, at the home of the pregnant woman, or other location.
- (3) The woman's county, state, and country of residence; age; and race.
- (4) The woman's number of live births, previous pregnancies, and number of previous abortions.
- (5) The woman's preexisting medical conditions, which could complicate her pregnancy.



- (6) The probable gestational age of the unborn child, as determined by both patient history and ultrasound, and the date of the ultrasound used to estimate gestational age.
- (7) The abortion-inducing drugs used, and the date in which the abortion-inducing drugs were dispensed, administered, and used.
- (8) Whether the woman returned for the scheduled follow-up appointment or examination to determine the completion of the abortion procedure and to assess bleeding, the results of the follow-up appointment or examination, and the date of any follow-up appointment or examination of the abortion procedure.
- (9) The reasonable efforts of the physician to encourage the woman to attend the follow-up appointment or examination if the woman did not attend.
- (10) Any specific complications the woman suffered from the abortion procedure.
- (11) The amount of money billed to cover the treatment for specific complications, including whether the treatment was billed to Medicaid, private insurance, private pay, or any other method, including ICD-10 diagnosis codes reported, any other codes reported, any charges for hospitals, emergency departments, physicians, prescriptions or other drugs, laboratory tests, and any other costs for treatment.

### Civil Liability Provisions

#### **N.C.G.S. § 90-21.88A**

#### **Professional Discipline Under Informed Consent Requirements**

#### **Applies to N.C.G.S. §§ 90-21.80 through 90-21.99**

A physician who violates any provision of this Article shall be subject to discipline by the North Carolina Medical Board under G.S. 90-14(a)(2) and any other applicable law or rule. Any licensed pharmacist who violates any provision of this Article shall be subject to discipline by the North Carolina Board of Pharmacy under Article 4A of this Chapter. Any other licensed health care provider who violates any provision of this Article shall be subject to discipline under their respective licensing agency or board. No pregnant woman seeking to obtain an abortion in accordance with this Article shall be subject to professional discipline for attempting to do so.

#### **N.C.G.S. § 90-21.88**

#### **Civil Remedies Under Informed Consent Provisions**

#### **Applies to N.C.G.S. §§ 90-21.80 through 90-21.99**

(a) Any person upon whom an abortion has been performed, her personal representative in the event of a wrongful death action in accordance with G.S. 28A-18-1, and any father of an unborn child that was the subject of an abortion may maintain an action for damages against the person who performed the abortion in knowing or reckless violation of this Article. Any person upon whom an abortion has been attempted may maintain an action for damages against the person who performed the abortion in willful violation of this Article.

(a1) Notwithstanding any other provision of law, (i) a woman upon whom the abortion has been attempted, induced, or performed or (ii) her parent or guardian, if she is a minor at the time of the

attempted or completed abortion, may bring an action under this section within three years from the date of the alleged violation or from the date of the initial discovery of harm from an alleged violation. If at the time of the alleged violation the woman is a minor, then the minor shall have three years from the date the minor attains the age of majority to bring an action under this section.

(b) Injunctive relief against any person who has willfully violated this Article may be sought by and granted to (i) the woman upon whom an abortion was performed or attempted to be performed in violation of this Article, (ii) any person who is the spouse, parent, sibling, or guardian of, or a current or former licensed health care provider of, the woman upon whom an abortion has been performed or attempted to be performed in violation of this Article, or (iii) the Attorney General. The injunction shall prevent the abortion provider from performing or inducing further abortions in this State in violation of this Article.

(c) If judgment is rendered in favor of the plaintiff in any action authorized under this section, the court shall also tax as part of the costs reasonable attorneys' fees in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous or brought in bad faith, then the court shall tax as part of the costs reasonable attorneys' fees in favor of the defendant against the plaintiff.

## North Dakota

North Dakota is a staunch supporter of Life, protecting both mothers and unborn children. Now that *Roe* is overturned, the state has a conditional law that will limit abortion at all gestational ages, but it is currently in litigation. North Dakota law limits abortions after viability and prohibits partial-birth abortions. North Dakota has a comprehensive informed consent law, including a disclosure that “the abortion will terminate the life of a whole, separate, unique, living human being.” Only licensed physicians who have admitting privileges at a local hospital and are board certified in obstetrics/gynecology may perform an abortion.

Republicans control the State House of Representatives and Senate in North Dakota.

North Dakota Supreme Court justices are chosen through nonpartisan elections. Given the state’s pro-life culture, it is doubtful that North Dakota is vulnerable to a judicially-created state “right to abortion.” The state’s conditional law is currently in litigation.

Governor Kelly Armstrong is pro-life and has signed Life-affirming bills into law, including a law requiring doctors in the state to watch a video on current abortion laws.

Regrettably, according to AUL’s Unsafe project, North Dakota appears to lack any regulatory framework for inspecting abortion businesses. After submitting an open records request, AUL staff were told that the state does not require licensure for abortion businesses or inspect them.

### Statutory Prohibitions

#### **N.D. Cent. Code § 14-02.1-04**

1. An abortion may not be performed by any person other than a physician who is using applicable medical standards and who is licensed to practice in this state. All physicians performing abortion procedures must have admitting privileges at a hospital located within thirty miles [42.28 kilometers]

of the abortion facility and staff privileges to replace hospital on-staff physicians at that hospital. These privileges must include the abortion procedures the physician will be performing at abortion facilities. An abortion facility must have a staff member trained in cardiopulmonary resuscitation present at all times when the abortion facility is open and abortions are scheduled to be performed.

2. After the first twelve weeks of pregnancy but before the time at which the unborn child may reasonably be expected to have reached viability, an abortion may not be performed in any facility other than a licensed hospital.

3. An abortion facility may not perform an abortion on a woman without first offering the woman an opportunity to receive and view at the abortion facility or another facility an active ultrasound of her unborn child. The offer and opportunity to receive and view an ultrasound must occur at least twenty-four hours before the abortion is scheduled to be performed. The active ultrasound image must be of a quality consistent with standard medical practice in the community, contain the dimensions of the unborn child, and accurately portray the presence of external members and internal organs, including the heartbeat, if present or viewable, of the unborn child. The auscultation of the fetal heart tone must be of a quality consistent with standard medical practice in the community. The abortion facility shall document the woman's response to the offer, including the date and time of the offer and the woman's signature attesting to her informed decision.

4. Any physician who performs an abortion without complying with the provisions of this section is guilty of a class A misdemeanor.

5. It is a class B felony for any person, other than a physician licensed under chapter 43-17, to perform an abortion in this state.

### In-Person Dispensing Requirements

#### **N.D. Cent. Code § 14-02.1-03.5(5)**

(5) When an abortion-inducing drug or chemical is used for the purpose of inducing an abortion, the drug or chemical must 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.

#### Authoritative interpretation by state agencies or courts/history of enforcement:

Executive: When FDA permitted pharmacies to dispense abortion pills, the Attorney General joined a [letter](#) sent to pharmacies that mentioned many states prohibit the mailing of abortion drugs, but did not include a cite to this statute.

#### Relationship between statute and other federal/state statutes relating to the subject matter:

North Dakota's prohibition on mailing chemical abortion drugs is consistent with federal law. The Comstock Act, 18 U.S.C. § 1461, explicitly prohibits the mailing of chemical abortion pills.

### Informed Consent Laws

#### **N.D. Cent. Code § 14-02.1-03**

1. A physician may not perform an abortion unless before such performance the physician certified in writing that the woman gave her informed consent as defined and provided in section 14-02.1-02

and shall certify in writing the pregnant woman's marital status and age based upon proof of age offered by her. Before the period of pregnancy when the unborn child may reasonably be expected to have reached viability, an abortion may not be performed upon an unemancipated minor unless the attending physician certifies in writing that each of the parents of the minor requesting the abortion has been provided by the physician in person with the information provided for in section 14-02.1-02 at least twenty-four hours before the minor's consent to the performance of abortion or unless the attending physician certifies in writing that the physician has caused materials of section 14-02.1-02 to be posted by certified mail to each of the parents of the minor separately to the last-known addresses at least forty-eight hours before the minor's consent to the performance of abortion. If a parent of the minor has died or rights and interests of that parent have been legally terminated, this subsection applies to the sole remaining parent. When both parents have died or the rights and interests of both parents have been legally terminated, this subsection applies to the guardian or other person standing in loco parentis. Notification by the attending physician is not required if the minor elects not to allow the notification of one or both parents or her guardian and the abortion is authorized by the juvenile court in accordance with section 14-02.1-03.1. None of the requirements of this subsection apply in the case of a medical emergency, except that when a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to prevent her death or prevent a serious health risk, and shall certify those indications in writing.

2. Subsequent to the period of pregnancy when the unborn child may reasonably be expected to have reached viability, an abortion, other than an abortion necessary to preserve her life or to prevent a serious health risk, may not be performed upon any woman in the absence of the written consent of a parent, if living, or the custodian or legal guardian of the woman, if the woman is unmarried and under eighteen years of age.

3. No executive officer, administrative agency, or public employee of the state of

or any local governmental body has power to issue any order requiring an abortion, nor shall any such officer or entity coerce any woman to have an abortion, nor shall any other person coerce any woman to have an abortion.

#### Interpretation:

Upheld in *MKB Management Corp. v. Stenehjem* (2016)

#### History of Enforcement:

Non-compliance risks penalties under N.D. Cent. Code § 14-02.1-12.

#### Relationship statutes/ regulations relating to the subject matter:

Interacts with SB 2150 (2023), limiting abortions to narrow exceptions.

### Documentation and Data Requirements

#### **N.D. Cent. Code § 14-02.1-02.2**

The abortion data report form must include:

1. The data called for in the United States standard report of induced termination of pregnancy as recommended by the national center for health statistics; and
2. Whether the abortion was:
  - a. Necessary in reasonable medical judgment and was intended to prevent the death of the pregnant female;
  - b. To terminate a pregnancy that resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20; or
  - c. Necessary to prevent a serious health risk.

Relationship between statute and other federal/state statutes relating to the subject matter:  
State reports data to CDC.

Other:

The most recent report is available here:  
<https://www.hhs.nd.gov/sites/www/files/documents/DOH%20Legacy/Vital/ITOP%202022.pdf>.

### Civil Liability Provisions

#### **N.D.C.C. § 14-02.1-03.2**

#### **Civil Remedies Under Informed Consent, Parental Consent**

#### **Applies to N.D.C.C. §§ 14-02.1-03 through 14-02.1-03.1**

Any person upon whom an abortion has been performed without informed consent as required by sections 14-02.1-02, 14-02.1-02.1, subsection 1 of section 14-02.1-03, 14-02.1-03.2, and 14-02.1-03.3 may maintain an action against the person who performed the abortion for ten thousand dollars in punitive damages and treble whatever actual damages the plaintiff may have sustained. Any person upon whom an abortion has been attempted without complying with sections 14-02.1-02, 14-02.1-02.1, subsection 1 of section 14-02.1-03, 14-02.1-03.2, and 14-02.1-03.3 may maintain an action against the person who attempted to perform the abortion for five thousand dollars in punitive damages and treble whatever actual damages the plaintiff may have sustained.

## **Ohio**

For many years, Ohio had been a strong pro-life state. However, in November 2024, the state faced a ballot initiative seeking to amend the state’s constitution to enshrine a “right” to abortion. Ohio citizens voted in favor of the amendment by a 13-point margin and abortion was codified to the state constitution.

Despite the constitutional amendment, Ohio maintains fairly comprehensive protections for women and preborn children. The state’s informed consent process requires a 24-hour reflection period and requires abortion providers to inform women of pertinent information, including the risks associated

with the abortion procedure and what agencies offer alternatives to abortion. Parental consent is required for minors seeking an abortion in Ohio. Additionally, the state provides protection for infants born alive after an attempted abortion and prohibits abortions sought because a preborn baby has Down syndrome. Ohio was also the first state to regulate the provision of abortion-inducing drugs.

Both the Ohio House of Representatives and State Senate are controlled by pro-life lawmakers, maintaining Republican supermajorities after the 2024 elections.

Justices on the Ohio Supreme Court are elected through partisan primaries and partisan general elections, and pro-life conservatives maintain a majority in the state supreme court. There is some ongoing litigation regarding Ohio's various pro-life laws, including the state's heartbeat protection and the state's ban on the use of telemedicine to obtain chemical abortion drugs.

Governor Mike DeWine, re-elected in the 2022 Mid-Terms by a large margin, has signed many life-affirming legislation into law. In response to the *Dobbs* decision, Governor DeWine gave a public address that called for civil debate on abortion and emphasized the work needed to be done to make Ohio "the most pro-family, pro-child state in the country."

### Constitutional Authorization

#### **Ohio Const. art. I, § 22**

A. Every individual has a right to make and carry out one's own reproductive decisions, including but not limited to decisions on:

1. contraception;
2. fertility treatment;
3. continuing one's own pregnancy;
4. miscarriage care; and
5. abortion.

B. The State shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against either:

1. An individual's voluntary exercise of this right or
2. A person or entity that assists an individual exercising this right,

unless the State demonstrates that it is using the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care.

However, abortion may be prohibited after fetal viability. But in no case may such an abortion be prohibited if in the professional judgment of the pregnant patient's treating physician it is necessary to protect the pregnant patient's life or health.

C. As used in this Section:

1. “Fetal viability” means “the point in a pregnancy when, in the professional judgment of the pregnant patient's treating physician, the fetus has a significant likelihood of survival outside the uterus with reasonable measures. This is determined on a case-by-case basis.”
2. “State” includes any governmental entity and any political subdivision.

D. This Section is self-executing.

**Statutory Prohibitions**

**Ohio Stat. § 2919.17**

(A) No person shall purposely perform or induce or attempt to perform or induce an abortion on a pregnant woman when the unborn child is viable.

(B) (1) It is an affirmative defense to a charge under division (A) of this section that the abortion was performed or induced or attempted to be performed or induced by a physician and that the physician determined, in the physician's good faith medical judgment, based on the facts known to the physician at that time, that either of the following applied:

(a) The unborn child was not viable.

(b) The abortion was necessary to prevent the death of the pregnant woman or a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

(2) No abortion shall be considered necessary under division (B)(1)(b) of this section on the basis of a claim or diagnosis that the pregnant woman will engage in conduct that would result in the pregnant woman's death or a substantial and irreversible impairment of a major bodily function of the pregnant woman or based on any reason related to the woman's mental health.

(C) Except when a medical emergency exists that prevents compliance with section 2919.18 of the Revised Code, the affirmative defense set forth in division (B)(1)(a) of this section does not apply unless the physician who performs or induces or attempts to perform or induce the abortion performs the viability testing required by division (A) of section 2919.18 of the Revised Code and certifies in writing, based on the results of the tests performed, that in the physician's good faith medical judgment the unborn child is not viable.

(D) Except when a medical emergency exists that prevents compliance with one or more of the following conditions, the affirmative defense set forth in division (B)(1)(b) of this section does not apply unless the physician who performs or induces or attempts to perform or induce the abortion complies with all of the following conditions:

(1) The physician who performs or induces or attempts to perform or induce the abortion certifies in writing that, in the physician's good faith medical judgment, based on the facts known to the physician at that time, the abortion is necessary to prevent the death of the



pregnant woman or a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

(2) Another physician who is not professionally related to the physician who intends to perform or induce the abortion certifies in writing that, in that physician's good faith medical judgment, based on the facts known to that physician at that time, the abortion is necessary to prevent the death of the pregnant woman or a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

(3) The physician performs or induces or attempts to perform or induce the abortion in a hospital or other health care facility that has appropriate neonatal services for premature infants.

(4) The physician who performs or induces or attempts to perform or induce the abortion terminates or attempts to terminate the pregnancy in the manner that provides the best opportunity for the unborn child to survive, unless that physician determines, in the physician's good faith medical judgment, based on the facts known to the physician at that time, that the termination of the pregnancy in that manner poses a greater risk of the death of the pregnant woman or a greater risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman than would other available methods of abortion.

(5) The physician certifies in writing the available method or techniques considered and the reasons for choosing the method or technique employed.

(6) The physician who performs or induces or attempts to perform or induce the abortion has arranged for the attendance in the same room in which the abortion is to be performed or induced or attempted to be performed or induced at least one other physician who is to take control of, provide immediate medical care for, and take all reasonable steps necessary to preserve the life and health of the unborn child immediately upon the child's complete expulsion or extraction from the pregnant woman.

(E) For purposes of this section, there is a rebuttable presumption that an unborn child of at least twenty-four weeks gestational age is viable.

(F) Whoever violates this section is guilty of terminating or attempting to terminate a human pregnancy after viability, a felony of the fourth degree.

(G) The state medical board shall revoke a physician's license to practice medicine in this state if the physician violates this section.

(H) Any physician who performs or induces an abortion or attempts to perform or induce an abortion with actual knowledge that neither of the affirmative defenses set forth in division (B)(1) of this section applies, or with a heedless indifference as to whether either affirmative defense applies, is liable in a civil action for compensatory and exemplary damages and reasonable attorney's fees to any person, or the representative of the estate of any person, who sustains injury, death, or loss to person or property as the result of the performance or inducement or the attempted performance or inducement of the abortion. In any action under this division, the court also may award any injunctive or other equitable relief that the court considers appropriate.

(I) A pregnant woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of division (A) of this section is not guilty of violating division (A) of this section or of attempting to commit, conspiring to commit, or complicity in committing a violation of division (A) of this section.

### In-Person Dispensing Requirements

#### **Ohio Rev. Code Ann. § 2919.124(B)**

##### ***Currently Enjoined***

No physician shall personally furnish or otherwise provide an abortion-inducing drug to a pregnant woman unless the physician is physically present at the location where the initial dose of the drug or regimen of drugs is consumed at the time the initial dose is consumed.

#### Authoritative interpretation by state agencies or courts/history of enforcement:

Executive: The Department of Health [attempted](#), but was not permitted, to stop a website from advertising telehealth assistance and mail-in abortion pills.

Judicial: Ongoing litigation: *Planned Parenthood Southwest Ohio Region v. Ohio Department of Health* (Ohio Ct. C.P. No. A2101148). Pro-abortion activists challenged Ohio Rev. Code Ann. § 2919.124, which resulted in a preliminary injunction being entered against the law on April 20, 2021. The pro-abortion plaintiffs subsequently amended their complaint to include new claims against another law that required only physicians to provide chemical abortion pills. On August 29<sup>th</sup>, 2024, the Hamilton County Court of Common Pleas granted a preliminary injunction against the law. The case is still ongoing.

#### Relationship between statute and other federal/state statutes relating to the subject matter:

Ohio's prohibition on mailing chemical abortion drugs is consistent with federal law. The Comstock Act, 18 U.S.C. § 1461, explicitly prohibits the mailing of chemical abortion pills.

### Informed Consent Laws

#### **Ohio Rev. Code Ann. § 2317.56**

##### ***Currently Enjoined***

(A) As used in this section:

- (1) "Medical emergency" has the same meaning as in section 2919.16 of the Revised Code.
- (2) "Medical necessity" means a medical condition of a pregnant woman that, in the reasonable judgment of the physician who is attending the woman, so complicates the pregnancy that it necessitates the immediate performance or inducement of an abortion.
- (3) "Probable gestational age of the zygote, blastocyte, embryo, or fetus" means the gestational age that, in the judgment of a physician, is, with reasonable probability, the gestational age of the zygote, blastocyte, embryo, or fetus at the time that the physician informs a pregnant woman pursuant to division (B)(1)(b) of this section.

(B) Except when there is a medical emergency or medical necessity, an abortion shall be performed or induced only if all of the following conditions are satisfied:

(1) At least twenty-four hours prior to the performance or inducement of the abortion, a physician meets with the pregnant woman in person in an individual, private setting and gives her an adequate opportunity to ask questions about the abortion that will be performed or induced. At this meeting, the physician shall inform the pregnant woman, verbally or, if she is hearing impaired, by other means of communication, of all of the following:

- (a) The nature and purpose of the particular abortion procedure to be used and the medical risks associated with that procedure;
- (b) The probable gestational age of the zygote, blastocyte, embryo, or fetus;
- (c) The medical risks associated with the pregnant woman carrying the pregnancy to term.

The meeting need not occur at the facility where the abortion is to be performed or induced, and the physician involved in the meeting need not be affiliated with that facility or with the physician who is scheduled to perform or induce the abortion.

(2) At least twenty-four hours prior to the performance or inducement of the abortion, the physician who is to perform or induce the abortion or the physician's agent does each of the following in person, by telephone, by certified mail, return receipt requested, or by regular mail evidenced by a certificate of mailing:

- (a) Inform the pregnant woman of the name of the physician who is scheduled to perform or induce the abortion;
- (b) Give the pregnant woman copies of the published materials described in division (C) of this section;
- (c) Inform the pregnant woman that the materials given pursuant to division (B)(2)(b) of this section are published by the state and that they describe the zygote, blastocyte, embryo, or fetus and list agencies that offer alternatives to abortion. The pregnant woman may choose to examine or not to examine the materials. A physician or an agent of a physician may choose to be disassociated from the materials and may choose to comment or not comment on the materials.

(3) If it has been determined that the unborn human individual the pregnant woman is carrying has a detectable fetal heartbeat, the physician who is to perform or induce the abortion shall comply with the informed consent requirements in section 2919.194 of the Revised Code in addition to complying with the informed consent requirements in divisions (B)(1), (2), (4), and (5) of this section.

(4) Prior to the performance or inducement of the abortion, the pregnant woman signs a form consenting to the abortion and certifies all of the following on that form:

(a) She has received the information and materials described in divisions (B)(1) and (2) of this section, and her questions about the abortion that will be performed or induced have been answered in a satisfactory manner.

(b) She consents to the particular abortion voluntarily, knowingly, intelligently, and without coercion by any person, and she is not under the influence of any drug of abuse or alcohol.

(c) If the abortion will be performed or induced surgically, she has been provided with the notification form described in division (A) of section 3726.14 of the Revised Code.

(d) If the abortion will be performed or induced surgically and she desires to exercise the rights under division (A) of section 3726.03 of the Revised Code, she has completed the disposition determination under section 3726.04 or 3726.041 of the Revised Code.

A form shall be completed for each zygote, blastocyte, embryo, or fetus to be aborted. If a pregnant woman is carrying more than one zygote, blastocyte, embryo, or fetus, she shall sign a form for each zygote, blastocyte, embryo, or fetus to be aborted.

The form shall contain the name and contact information of the physician who provided to the pregnant woman the information described in division (B)(1) of this section.

(5) Prior to the performance or inducement of the abortion, the physician who is scheduled to perform or induce the abortion or the physician's agent receives a copy of the pregnant woman's signed form on which she consents to the abortion and that includes the certification required by division (B)(4) of this section.

(C) The department of health shall publish in English and in Spanish, in a typeface large enough to be clearly legible, and in an easily comprehensible format, the following materials on the department's web site:

(1) Materials that inform the pregnant woman about family planning information, of publicly funded agencies that are available to assist in family planning, and of public and private agencies and services that are available to assist her through the pregnancy, upon childbirth, and while the child is dependent, including, but not limited to, adoption agencies. The materials shall be geographically indexed; include a comprehensive list of the available agencies, a description of the services offered by the agencies, and the telephone numbers and addresses of the agencies; and inform the pregnant woman about available medical assistance benefits for prenatal care, childbirth, and neonatal care and about the support obligations of the father of a child who is born alive. The department shall ensure that the materials described in division (C)(1) of this section are comprehensive and do not directly or indirectly promote, exclude, or discourage the use of any agency or service described in this division.

(2) Materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the zygote, blastocyte, embryo, or fetus at two-week gestational increments

for the first sixteen weeks of pregnancy and at four-week gestational increments from the seventeenth week of pregnancy to full term, including any relevant information regarding the time at which the fetus possibly would be viable. The department shall cause these materials to be published after it consults with independent health care experts relative to the probable anatomical and physiological characteristics of a zygote, blastocyte, embryo, or fetus at the various gestational increments. The materials shall use language that is understandable by the average person who is not medically trained, shall be objective and nonjudgmental, and shall include only accurate scientific information about the zygote, blastocyte, embryo, or fetus at the various gestational increments. If the materials use a pictorial, photographic, or other depiction to provide information regarding the zygote, blastocyte, embryo, or fetus, the materials shall include, in a conspicuous manner, a scale or other explanation that is understandable by the average person and that can be used to determine the actual size of the zygote, blastocyte, embryo, or fetus at a particular gestational increment as contrasted with the depicted size of the zygote, blastocyte, embryo, or fetus at that gestational increment.

(D) Upon the submission of a request to the department of health by any person, hospital, physician, or medical facility for one copy of the materials published in accordance with division (C) of this section, the department shall make the requested copy of the materials available to the person, hospital, physician, or medical facility that requested the copy.

(E) If a medical emergency or medical necessity compels the performance or inducement of an abortion, the physician who will perform or induce the abortion, prior to its performance or inducement if possible, shall inform the pregnant woman of the medical indications supporting the physician's judgment that an immediate abortion is necessary. Any physician who performs or induces an abortion without the prior satisfaction of the conditions specified in division (B) of this section because of a medical emergency or medical necessity shall enter the reasons for the conclusion that a medical emergency or medical necessity exists in the medical record of the pregnant woman.

(F) If the conditions specified in division (B) of this section are satisfied, consent to an abortion shall be presumed to be valid and effective.

(G) The performance or inducement of an abortion without the prior satisfaction of the conditions specified in division (B) of this section does not constitute, and shall not be construed as constituting, a violation of [division \(A\) of section 2919.12 of the Revised Code](#). The failure of a physician to satisfy the conditions of division (B) of this section prior to performing or inducing an abortion upon a pregnant woman may be the basis of both of the following:

(1) A civil action for compensatory and exemplary damages as described in division (H) of this section;

(2) Disciplinary action under [section 4731.22 of the Revised Code](#).

(H) (1) Subject to divisions (H)(2) and (3) of this section, any physician who performs or induces an abortion with actual knowledge that the conditions specified in division (B) of this section have not been satisfied or with a heedless indifference as to whether those conditions have been satisfied is liable in compensatory and exemplary damages in a civil action to any person, or the representative of the estate of any person, who sustains injury, death, or loss

to person or property as a result of the failure to satisfy those conditions. In the civil action, the court additionally may enter any injunctive or other equitable relief that it considers appropriate.

(2) The following shall be affirmative defenses in a civil action authorized by division (H)(1) of this section:

(a) The physician performed or induced the abortion under the circumstances described in division (E) of this section.

(b) The physician made a good faith effort to satisfy the conditions specified in division (B) of this section.

(3) An employer or other principal is not liable in damages in a civil action authorized by division (H)(1) of this section on the basis of the doctrine of respondeat superior unless either of the following applies:

(a) The employer or other principal had actual knowledge or, by the exercise of reasonable diligence, should have known that an employee or agent performed or induced an abortion with actual knowledge that the conditions specified in division (B) of this section had not been satisfied or with a heedless indifference as to whether those conditions had been satisfied.

(b) The employer or other principal negligently failed to secure the compliance of an employee or agent with division (B) of this section.

(4) Notwithstanding division (E) of section 2919.12 of the Revised Code, the civil action authorized by division (H)(1) of this section shall be the exclusive civil remedy for persons, or the representatives of estates of persons, who allegedly sustain injury, death, or loss to person or property as a result of a failure to satisfy the conditions specified in division (B) of this section.

(I) The department of job and family services shall prepare and conduct a public information program to inform women of all available governmental programs and agencies that provide services or assistance for family planning, prenatal care, child care, or alternatives to abortion.

Interpretation:

Upheld in *Preterm-Cleveland v. Yost* (2018).

History of Enforcement:

Non-compliance risks fines under Ohio Rev. Code § 3701.79.

Relationship statutes/ regulations relating to the subject matter:

SB 23 (2022), limiting abortions after cardiac activity.

Documentation and Data Requirements

**Ohio Rev. Code Ann. § 2919.202(A)**



A physician who performs or induces or attempts to perform or induce an abortion on a pregnant woman shall submit a report to the department of health in accordance with the forms, rules, and regulations adopted by the department that includes all of the information the physician is required to certify in writing or determine . . . .

Authoritative interpretation by state agencies or courts:

Ohio Rev. Code Ann. § 3701.79 (2023) held unconstitutional under state law. *Planned Parenthood Sw. Ohio Region v. Ohio Dep't of Health*, No. (Ohio Ct. C.P. Feb. 13, 2025).

Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

Other:

State reports available here: <https://odh.ohio.gov/explore-data-and-stats/published-reports/data-and-stats-abortion-reports>.

## Civil Liability Provisions

### **Ohio Rev. Code § 2919.123(E)**

#### **Professional Discipline for Abortion-Inducing Drugs**

#### **Applies to Ohio Rev. Code § 2919.123**

If the offender is a professionally licensed person, in addition to any other sanction imposed by law for the offense, the offender is subject to sanctioning as provided by law by the regulatory or licensing board or agency that has the administrative authority to suspend or revoke the offender's professional license, including the sanctioning provided in section 4731.22 of the Revised Code for offenders who have a certificate to practice or certificate of registration issued under that chapter.

### **Ohio Rev. Code § 2919.124(E)**

#### **Professional Discipline for Abortion-Inducing Drugs**

#### **Applies to Ohio Rev. Code § 2919.124**

If the offender is a professionally licensed person, in addition to any other sanction imposed by law for the offense, the offender is subject to sanctioning as provided by law by the regulatory or licensing board or agency that has the administrative authority to suspend or revoke the offender's professional license, including the sanctioning provided in section 4731.22 of the Revised Code for offenders who have a certificate to practice or certificate of registration issued under that chapter.

### **Ohio Rev. Code § 2919.121(D)**

#### **Professional Discipline Under Parental Consent Requirements**

#### **Applies to Ohio Rev. Code § 2919.121**

(D) It is an affirmative defense to any civil, criminal, or professional disciplinary claim brought under this section that compliance with the requirements of this section was not possible because an immediate threat of serious risk to the life or physical health of the minor from the continuation of her pregnancy created an emergency necessitating the immediate performance or inducement of an abortion.



**Ohio Rev. Code § 2919.121(F)**  
**Civil Remedies Under Parental Consent Requirements**  
**Applies to Ohio Rev. Code § 2919.121**

(F) Whoever violates division (B) of this section is liable to the pregnant minor and her parents, guardian, or custodian for civil, compensatory, and exemplary damages.

**Ohio Rev. Code § 2919.10(D)**  
**Professional Discipline for Abortion Because of Down Syndrome**  
**Applies to Ohio Rev. Code § 2919.121**

(D) The state medical board shall revoke a physician's license to practice medicine in this state if the physician violates division (B) of this section.

**Ohio Rev. Code § 2919.10(E)**  
**Civil Remedies for Abortion Because of Down Syndrome**  
**Applies to Ohio Rev. Code § 2919.121**

(E) Any physician who violates division (B) of this section is liable in a civil action for compensatory and exemplary damages and reasonable attorney's fees to any person, or the representative of the estate of any person, who sustains injury, death, or loss to person or property as the result of the performance or inducement or the attempted performance or inducement of the abortion. In any action under this division, the court also may award any injunctive or other equitable relief that the court considers appropriate.

## **Oklahoma**

Oklahoma is a strong pro-life state, and with the overturn of *Roe*, its conditional law protecting life at all stages with an exception for the mother's life is now in effect. Oklahoma regularly enacts comprehensive laws protecting mothers and unborn children. Some examples include a prohibition on sex-selection, a reflection period of seventy-two hours for the woman making the decision to have an abortion, and a requirement a parent be notified and consent to her minor daughter's abortion.

Pro-life members hold a supermajority in both the Oklahoma House of Representatives and State Senate. In the past couple years, Oklahoma has passed chemical abortion legislation, a heartbeat gestational protection, health and safety safeguards, and a conditional law.

Oklahoma employs a Missouri-styled judicial nomination system, whereby the governor selects Oklahoma Supreme Court justices from a three-name list compiled by the Oklahoma Judicial Nominating Commission. It could be that this anti-majoritarian form of judicial selection has contributed to the anti-Life position of the state supreme court. The state's appellate courts are heavily pro-abortion, and have upheld injunctions against several of Oklahoma's abortion regulations and are considering further actions against Oklahoma's early-gestation prohibition, licensing, physician-only and chemical abortion provisions.

Governor Kevin Stitt is an outspoken pro-life advocate. Governor Stitt and the Attorney General at the time, John O'Connor, held a joint press conference to celebrate the pro-life victory when the

*Dobbs* opinion was released. Republican Gentner Drummond was elected the next Attorney General of Oklahoma.

According to AUL's Unsafe project, Oklahoma either lacks any regulatory framework for inspecting abortion businesses or at least declines to make inspection reports public. After AUL submitted a public records request, the state health department informed AUL that abortion facility records are confidential.

### Statutory Prohibitions

#### **Okla. Stat. tit. 21 § 861**

Every person who administers to any woman, or who prescribes for any woman, or advises or procures any woman to take any medicine, drug or substance, or uses or employs any instrument, or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not less than two (2) years nor more than five (5) years.

#### **Okla. Stat. tit. 63 § 1-745.2**

Except as provided by Section 3 of this act, a person shall not knowingly perform or attempt to perform an abortion unless:

1. The abortion is necessary to save the life of a pregnant woman in a medical emergency; or
2. The pregnancy is the result of rape, sexual assault, or incest that has been reported to law enforcement.

#### **Okla. Stat. tit. 63 § 1-731.3**

A. No person shall perform or induce an abortion upon a pregnant woman without first detecting whether or not her unborn child has a heartbeat. No person shall perform or induce an abortion upon a pregnant woman after such time as her unborn child has been determined to have a detectable heartbeat except if, in reasonable medical judgment, she has a condition that so complicates her medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such condition may be determined to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

B. A "detectable heartbeat" shall mean embryonic or fetal cardiac activity or the steady or repetitive rhythmic contract of the heart within the gestational sac.

C. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

D. Any person violating subsection A of this section shall be guilty of homicide.

**Okla. Stat. tit. 63 §1-732**

A. No person shall perform or induce an abortion upon a pregnant woman after such time as her unborn child has become viable unless such abortion is necessary to prevent the death of the pregnant woman or to prevent impairment to her health.

B. An unborn child shall be presumed to be viable if more than twenty-four (24) weeks have elapsed since the probable beginning of the last menstrual period of the pregnant woman, based upon either information provided by her or by an examination by her attending physician. If it is the judgment of the attending physician that a particular unborn child is not viable where the presumption of viability exists as to that particular unborn child, then he shall certify in writing the precise medical criteria upon which he has determined that the particular unborn child is not viable before an abortion may be performed or induced.

C. No abortion of a viable unborn child shall be performed or induced except after written certification by the attending physician that in his best medical judgment the abortion is necessary to prevent the death of the pregnant woman or to prevent an impairment to her health. The physician shall further certify in writing the medical indications for such abortion and the probable health consequences if the abortion is not performed or induced.

D. The physician who shall perform or induce an abortion upon a pregnant woman after such time as her unborn child has become viable shall utilize the available method or technique of abortion most likely to preserve the life and health of the unborn child, unless he shall first certify in writing that in his best medical judgment such method or technique shall present a significantly greater danger to the life or health of the pregnant woman than another available method or technique.

E. An abortion of a viable unborn child shall be performed or induced only when there is in attendance a physician other than the physician performing or inducing the abortion who shall take control of and provide immediate medical care for the child. During the performance or inducing of the abortion, the physician performing it, and subsequent to it, the physician required by this section to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the child, in the same manner as if the child had been born naturally or spontaneously. The requirement of the attendance of a second physician may be waived when in the best judgment of the attending physician a medical emergency exists and further delay would result in a serious threat to the life or physical health of the pregnant woman. Provided that, under such emergency circumstances and waiver, the attending physician shall have the duty to take all reasonable steps to preserve the life and health of the child before, during and after the abortion procedure, unless such steps shall, in the best medical judgment of the physician, present a significantly greater danger to the life or health of the pregnant woman.

F. Any person violating subsection A of this section shall be guilty of homicide.

**In-Person Dispensing Requirements****Okla. Stat. tit. 63 § 1-756.3*****Currently Enjoined***

Abortion-inducing drugs shall only be provided by a qualified physician following procedures laid out in this act. It shall be unlawful for any manufacturer, supplier, physician, qualified physician or any other person to provide any abortion-inducing drug via courier, delivery or mail service.

### **Okla Stat. tit. 63, § 1-729.1**

When RU-486 (mifepristone) or any other drug or chemical is used for the purpose of performing or inducing an abortion, the physician who is prescribing, dispensing, or otherwise providing the drug or chemical shall be physically present, in person, in the same room as the patient when the drug or chemical is first provided to the patient.

#### Authoritative interpretation by state agencies or courts/history of enforcement:

Executive: When FDA permitted pharmacies to dispense abortion pills, the Attorney General joined a [letter](#) sent to pharmacies that mentioned many states prohibit the mailing of abortion drugs, but did not include a cite to this statute

Judicial: Ongoing litigation: *Okla. Coalition for Reprod. Justice v. Cline*, 441 P.3d 1145, 2019 OK 33 (Okla., 2019). In 2019, the Oklahoma Supreme Court temporarily enjoined Okla. Stat. tit. 63 § 1-756.3, blocking the law from being in effect during the course of the litigation. The state filed a motion to dismiss the case in the district court, which is pending.

#### Relationship between statute and other federal/state statutes relating to the subject matter:

In the 2025 legislative session, a bill (HB 1168) seeking to criminalize abortion pill trafficking was introduced. If passed, the bill will strengthen the state's current laws (Okla. Stat. tit. 63 §§ 1-756.3, 1-729.1) aimed at protecting women from the harm of chemical abortion.

Oklahoma protects life from conception, with an exception for cases where the abortion is “necessary to preserve” the life of the mother (Okla. Stat. tit. 21 § 861). Thus, under Oklahoma’s current law, chemical abortions are prohibited unless an abortionist determines the abortion is “necessary to preserve” the woman’s life. If such case arises, abortionists must comply with Okla. Stat. tit. 63 § 1-729.1, 1-756.3, assuming the laws are in effect.

Oklahoma’s prohibition on mailing chemical abortion drugs is consistent with federal law. The Comstock Act, 18 U.S.C. § 1461, explicitly prohibits the mailing of chemical abortion pills.

### Informed Consent Laws

#### **Okla. Stat. tit. 63, § 1-738.2**

A. No abortion shall be performed in this state except with the voluntary and informed consent of the woman upon whom the abortion is to be performed.

B. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

1. a. not less than seventy-two (72) hours prior to the performance of the abortion, the woman is told the following, by telephone or in person, by the physician who is to perform the abortion, or by a referring physician, or by an agent of either physician:

- (1) the name of the physician who will perform the abortion,
- (2) the medical risks associated with the particular abortion procedure to be employed,
- (3) the probable gestational age of the unborn child at the time the abortion is to be performed,
- (4) the medical risks associated with carrying her child to term, and
- (5) that ultrasound imaging and heart tone monitoring that enable the pregnant woman to view her unborn child or listen to the heartbeat of the unborn child are available to the pregnant woman. The physician or agent of the physician shall inform the pregnant woman that the website and printed materials described in Section 1-738.3 of this title, contain phone numbers and addresses for facilities that offer such services at no cost,

b. the information required by this paragraph may be provided by telephone without conducting a physical examination or tests of the woman. If the information is supplied by telephone, the information shall be based on facts supplied to the physician,

c. the information required by this paragraph shall not be provided by a tape recording, but shall be provided during a consultation in which the physician is able to ask questions of the woman and the woman is able to ask questions of the physician,

d. if a physical examination, tests, or other new information subsequently indicates, in the medical judgment of the physician, the need for a revision of the information previously supplied to the woman, that revised information may be communicated to the woman at any time prior to the performance of the abortion, and

e. nothing in subparagraph a of this paragraph may be construed to preclude provision of the required information in a language understood by the woman through a translator;

2. Not less than seventy-two (72) hours prior to the abortion, the woman is informed, by telephone or in person, by the physician who is to perform the abortion, by a referring physician, or by an agent of either physician:

a. that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care,

b. that the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion,

c. that:

- (1) she has the option to review the printed materials described in Section 1-738.3 of this title,

- (2) those materials have been provided by the State Board of Medical Licensure and Supervision, and
- (3) they describe the unborn child and list agencies that offer alternatives to abortion, and
- d. (1) if the woman chooses to exercise her option to view the materials in a printed form, they shall be mailed to her, by a method chosen by the woman, or
- (2) if the woman chooses to exercise her option to view the materials via the Internet, the woman shall be informed at least seventy-two (72) hours before the abortion of the specific address of the Internet website where the material can be accessed.

The information required by this paragraph may be provided by a tape recording if provision is made to record or otherwise register specifically whether the woman does or does not choose to review the printed materials;

3. The woman certifies in writing, prior to the abortion, that she has been told the information described in subparagraph a of paragraph 1 of this subsection and in subparagraphs a, b and c of paragraph 2 of this subsection and that she has been informed of her option to review or reject the printed information described in Section 1-738.3 of this title; and

4. Prior to the abortion, the physician who is to perform the abortion or the agent of the physician receives a copy of the written certification prescribed by paragraph 3 of this subsection.

C. The State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall promulgate rules to ensure that physicians who perform abortions and referring physicians or agents of either physician comply with all the requirements of this section.

D. Before the abortion procedure is performed, the physician shall confirm with the patient that she has received information regarding:

- 1. The medical risks associated with the particular abortion procedure to be employed;
- 2. The probable gestational age of the unborn child at the time the abortion is to be performed; and
- 3. The medical risks associated with carrying the unborn child to term.

Interpretation:

Upheld in *Nova Health Systems v. Pruitt* (2012); the 72-hour waiting period was affirmed in *Burns v. Cline* (2016).

History of Enforcement:

Enforced through health department inspections.

Relationship statutes/ regulations relating to the subject matter:

SB 1503 (2022), limiting abortions to narrow exceptions.

### Data and Documentation Requirements

#### **Okla. Stat. tit. 63, §§ 1-738i (C)**

C. As required by Section 5 of this act, information from a completed Individual Abortion Form or a completed Complications of Induced Abortion Report shall be combined with information from all other such completed forms and reports submitted for the year. An Annual Abortion Report providing statistics for the previous calendar year compiled from all of that year's completed forms and reports submitted in accordance with the Statistical Abortion Reporting Act shall be published annually by the Department on its stable Internet website.

Relationship between statute and other federal/state statutes relating to the subject matter:  
State reports data to CDC.

#### Other:

Most recent report available here: <https://oklahoma.gov/content/dam/ok/en/health/health2/aem-documents/data-and-statistics/center-for-health-statistics/induces-termination-of-pregnancy/2022%20AbortionReport.pdf>.

### Civil Liability Provisions

#### **Okla. Stat. § 1-729.3**

#### **Civil Remedies and Professional Discipline for Abortion-Inducing Drugs Applies to Okla. Stat. §§ 1-729.1 through 1.729.7**

A. Any person who knowingly or recklessly violates a provision of this act shall be liable for damages as provided in this section and may be enjoined from such acts in accordance with this section in an appropriate court.

B. Any female upon whom an abortion has been performed or induced, the father of the unborn child who was the subject of the abortion if the father was married to the woman who received the abortion at the time the abortion was performed or induced, or a maternal grandparent of the unborn child may maintain an action against the person who performed or induced the abortion in knowing or reckless violation of this act for actual and punitive damages. Any female upon whom an abortion has been attempted to be performed or induced in knowing or reckless violation of this act may maintain an action against the person who attempted to perform or induce the abortion for actual and punitive damages.

C. If a judgment is rendered in favor of the plaintiff in any action described in this section, the court shall also render judgment for a reasonable attorney fee in favor of the plaintiff against the defendant. If a judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney fee in favor of the defendant against the plaintiff.

D. A cause of action for injunctive relief against any person who has knowingly or recklessly violated this act may be maintained by:



1. The female upon whom an abortion was performed or induced or attempted to be performed or induced in violation of this act;
2. Any person who is the spouse, parent, sibling or guardian of, or a current or former licensed health care provider of, the female upon whom an abortion has been performed or induced or attempted to be performed or induced in violation of this act;
3. A district attorney with appropriate jurisdiction; or
4. The Attorney General.

The injunction shall prevent the abortion provider from performing or inducing further abortions in violation of this act in the State of Oklahoma.

E. Any person who knowingly or recklessly violates the terms of an injunction issued in accordance with this act shall be subject to civil contempt, and shall be fined Ten Thousand Dollars (\$10,000.00) for the first violation, Fifty Thousand Dollars (\$50,000.00) for the second violation, One Hundred Thousand Dollars (\$100,000.00) for the third violation and for each succeeding violation an amount in excess of One Hundred Thousand Dollars (\$100,000.00) sufficient to deter future violations. The fines shall be the exclusive penalties for such contempt. Each performance or induction or attempted performance or induction of an abortion in violation of the terms of an injunction is a separate violation. These fines shall be cumulative. However, no fine may be assessed against the woman on whom an abortion was performed or induced or was attempted to be performed or induced.

F. A physician who performed or induced an abortion or attempted to perform or induce an abortion in violation of this act shall be considered to have engaged in unprofessional conduct for which his or her license to practice medicine in the State of Oklahoma may be suspended or revoked by the State Medical Board of Licensure and Supervision or the State Board of Osteopathic Examiners.

**Okla. Stat. § 1-738.3f**  
**Civil Remedies Under Informed Consent Requirements**  
**Applies to Okla. Stat. §§ 1-738.2 through 1-738.5a**

A woman upon whom an abortion has been performed in negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes, or the parent or legal guardian of the woman if she is an unemancipated minor, as defined in Section 1-740.1 of Title 63 of the Oklahoma Statutes, may commence a civil action against the abortion provider, against the prescriber of any drug or chemical intended to induce abortion, and against any person or entity which referred the woman to the abortion provider or prescriber and which knew or reasonably should have known that the abortion provider or prescriber had acted in violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes for actual damages and, in cases of gross negligence, for punitive damages. The measure of damages shall include damages for the mental anguish and emotional distress of the plaintiff, in addition to all damages available for the wrongful death of the child whose life was aborted in negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes, notwithstanding any exception for abortion provided in Section 1053 of Title 12 of the Oklahoma Statutes. Whether the individual or entity committed an abortion in negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes shall be

determined by the trier of fact in the civil action by the greater weight of the evidence. Unless the defendant can prove to the trier of fact by the greater weight of the evidence that the abortion was performed on a child who was already dead from natural causes before the abortion, and that the defendant informed the plaintiff that the child was already dead at the time of the abortion, it shall be a rebuttable presumption that if an abortion was performed, that the child whose life was aborted was alive until the abortion was performed, and was capable eventually of living a normal human lifespan had the abortion not occurred.

Relevant Related Statutes

Okla. Stat. § 1053: Wrongful Death – Limitations of Actions – Damages

**Okla. Stat. § 1-740.4**

**Civil Remedies Under Parental Consent Requirements**

**Applies to Okla. Stat. § 1-740.1 through 1-740.5**

Performance of an abortion in knowing or reckless violation of Sections 1-740.1 through 1-740.5 of this title shall be a misdemeanor. Performance of an abortion in violation of Sections 1-740.1 through 1-740.5 of this title shall be grounds for actual and punitive damages in a civil action pursuant to Sections 1-738.3f through 1-738.3k of this title.

**Okla. Stat. § 1-737.5(B)**

**Licensing Penalties Re Signage in Abortion Facilities**

**Applies to Okla. Stat. § 1-737.5**

Any private office, freestanding outpatient clinic or other facility or clinic that fails to post a required sign in knowing, reckless, or negligent violation of this act shall be assessed an administrative fine of Ten Thousand Dollars (\$10,000.00). Each day on which an abortion, other than an abortion necessary to prevent the death of the pregnant female, is performed, induced, prescribed for, or where the means for an abortion are provided in a private office, freestanding outpatient clinic or other facility or clinic in which the required sign is not posted during any portion of business hours when patients or prospective patients are present is a separate violation.

**Okla. Stat. § 1-737.5(B)**

**Civil Remedies Re Signage in Abortion Facilities**

**Applies to Okla. Stat. § 1-737.5**

B. An action may be brought by or on behalf of an individual injured by the failure to post the required sign. A plaintiff in an action under this subsection may recover damages for emotional distress and any other damages allowed by law.

Relevant Related Statutes

Okla. Stat. § 1-737.4 Required Signage in Abortion Facilities

**Okla. Stat. § 1-731.2(D)**

**Professional Discipline for Abortion Based on Sex of Unborn Child**

**Applies to Okla. Stat. § 1-731.2**

D. An abortion provider who knowingly or recklessly performed an abortion in violation of this section shall be considered to have engaged in unprofessional conduct for which the certificate or license of the provider to provide health care services in this state shall be suspended or revoked by the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners.

**Okla. Stat. § 1-731.2(C)**

**Civil Remedies for Abortion Based on Sex of Unborn Child**

**Applies to Okla. Stat. § 1-731.2**

C. Any person who knowingly or recklessly violates a provision of this section shall be liable for damages as provided in this subsection and may be enjoined from such acts in accordance with this section in an appropriate court.

1. A cause of action for injunctive relief against any person who has knowingly or recklessly violated a provision of this section may be maintained by:

- a. the female upon whom an abortion was performed or attempted to be performed in violation of this section,
- b. any person who is the spouse, parent, sibling, or guardian of, or current or former licensed health care provider of, the female upon whom an abortion has been performed in violation of this section,
- c. a district attorney with appropriate jurisdiction, or
- d. the Attorney General.

2. The injunction shall prevent the abortion provider from performing further abortions in violation of this section in this state.

3. Any person who knowingly violates the terms of an injunction issued in accordance with this section shall be subject to civil contempt and shall be fined Ten Thousand Dollars (\$10,000.00) for the first violation, Fifty Thousand Dollars (\$50,000.00) for the second violation, and One Hundred Thousand Dollars (\$100,000.00) for the third violation and for each succeeding violation. The fines shall be the exclusive penalties for civil contempt pursuant to this paragraph. Each performance or attempted performance of an abortion in violation of the terms of an injunction is a separate violation. These fines shall be cumulative. No fine shall be assessed against the female upon whom an abortion is performed or attempted.

4. A pregnant female upon whom an abortion has been performed in violation of this section, or the parent or legal guardian of the female if she is an unemancipated minor, may commence a civil action against the abortion provider for any knowing or reckless violation of this section for actual and punitive damages.

## **Oregon**

Oregon has failed to protect Life, placing women and unborn children at risk. After *Roe*, Oregon's Reproductive Health Equity Act means abortion remains permitted at all gestational ages. The state does not have any commonsense abortion regulations.

The State Senate and House of Representatives are controlled by pro-abortion Democrats, which will make it incredibly difficult to pass Life-affirming legislation.

Oregon Supreme Court justices are selected through nonpartisan elections and serve six-year terms. Currently, the state's abortion and contraception insurance mandates are being litigated.

Governor Tina Kotek is openly pro-abortion and was endorsed by Planned Parenthood PAC of Oregon. While in the House of Representatives, she helped pass a bill that created a fund for in- and out-of-state women looking to get an abortion.

According to AUL's *Unsafe* project, Oregon appears to lack any regulatory framework for inspecting abortion businesses. AUL only received a few inspection reports in response to its public records request. However, federal certification inspection reports showed health and safety violations, and inadequate facility standards.

### Documentation and Data Requirements

#### **Or. Rev. Stat. § 435.496(1)**

Each induced termination of pregnancy which occurs in this state, regardless of the length of gestation, shall be reported to the Center for Health Statistics within 30 days by the person in charge of the institution in which the induced termination of pregnancy was performed. If the induced termination of pregnancy was performed outside an institution, the attending physician or the naturopathic physician shall prepare and file the report.

#### Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

#### Other:

State data available here: <https://visual-data.dhsosha.state.or.us/t/OHA/views/Inducedabortiondashboard/Inducedabortiondashboard?%3AisGuestRedirectFromVizportal=y&%3Aembed=y>.

## **Pennsylvania**

Following the overturn of *Roe*, abortion is legal in Pennsylvania up to 24 weeks of pregnancy, with exceptions for the life of the mother and the "substantial and irreversible impairment of a major bodily function." The state has some protections for women and preborn children, including prohibiting sex-based abortions, requiring parental consent before a minor obtains an abortion, and ensuring women are given a 24-hour reflection period prior to an abortion.

However, the state has seen a rising tide of pro-abortion policy in recent years, with pro-abortion advocates now seeking to repeal critical protections for women and preborn children. After pro-abortion Josh Shapiro was elected Governor of Pennsylvania in 2022, he launched a website for “reproductive health care resources,” promoting the use of chemical abortion drugs. In August 2023, Governor Shapiro announced that he intends to cancel the state’s contract with Real Alternatives, which administers Pennsylvania’s Pregnancy and Parenting Support Services program. This program funds pregnancy resource centers, maternity homes, and adoption agencies.

Republicans have narrow control of the State Senate, and the Democrats control the House of Representatives following the 2022 Mid-Term elections. Pennsylvania Supreme Court justices must run in partisan primaries followed by a general election. Justices serve for ten-year terms. The state supreme court is controlled by a pro-abortion majority. There is ongoing litigation in the Pennsylvania Supreme Court regarding whether the state “Hyde Amendment” is unconstitutional.

## Statutory Prohibitions

### **18 Pa. Cons. Stat. § 3211**

(a) Prohibition.--Except as provided in subsection (b), no person shall perform or induce an abortion upon another person when the gestational age of the unborn child is 24 or more weeks.

(b) Exceptions.--

(1) It shall not be a violation of subsection (a) if an abortion is performed by a physician and that physician reasonably believes that it is necessary to prevent either the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman. No abortion shall be deemed authorized under this paragraph if performed on the basis of a claim or a diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible impairment of a major bodily function.

(2) It shall not be a violation of subsection (a) if the abortion is performed by a physician and that physician reasonably believes, after making a determination of the gestational age of the unborn child in compliance with section 3210 (relating to determination of gestational age), that the unborn child is less than 24 weeks gestational age.

(c) Abortion regulated.--Except in the case of a medical emergency which, in the reasonable medical judgment of the physician performing the abortion, prevents compliance with a particular requirement of this subsection, no abortion which is authorized under subsection (b)(1) shall be performed unless each of the following conditions is met:

(1) The physician performing the abortion certifies in writing that, based upon his medical examination of the pregnant woman and his medical judgment, the abortion is necessary to prevent either the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman.

(2) Such physician's judgment with respect to the necessity for the abortion has been concurred in by one other licensed physician who certifies in writing that, based upon his or her separate personal medical examination of the pregnant woman and his or her medical judgment, the abortion is necessary to prevent either the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman.

(3) The abortion is performed in a hospital.

(4) The physician terminates the pregnancy in a manner which provides the best opportunity for the unborn child to survive, unless the physician determines, in his or her good faith medical judgment, that termination of the pregnancy in that manner poses a significantly greater risk either of the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman than would other available methods.

(5) The physician performing the abortion arranges for the attendance, in the same room in which the abortion is to be completed, of a second physician who shall take control of the child immediately after complete extraction from the mother and shall provide immediate medical care for the child, taking all reasonable steps necessary to preserve the child's life and health.

(d) Penalty.--Any person who violates subsection (a) commits a felony of the third degree. Any person who violates subsection (c) commits a misdemeanor of the second degree for the first offense and a misdemeanor of the first degree for subsequent offenses.

### Informed Consent

#### **Pennsylvania: 18 Pa. Cons. Stat. § 3205**

(a) General rule.--No abortion shall be performed or induced except with the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

(1) At least 24 hours prior to the abortion, the physician who is to perform the abortion or the referring physician has orally informed the woman of:

(i) The nature of the proposed procedure or treatment and of those risks and alternatives to the procedure or treatment that a reasonable patient would consider material to the decision of whether or not to undergo the abortion.

(ii) The probable gestational age of the unborn child at the time the abortion is to be performed.

(iii) The medical risks associated with carrying her child to term.

(2) At least 24 hours prior to the abortion, the physician who is to perform the abortion or the referring physician, or a qualified physician assistant, health care practitioner, technician or social worker to whom the responsibility has been delegated by either physician, has informed the pregnant woman that:



(i) The department publishes printed materials which describe the unborn child and list agencies which offer alternatives to abortion and that she has a right to review the printed materials and that a copy will be provided to her free of charge if she chooses to review it.

(ii) Medical assistance benefits may be available for prenatal care, childbirth and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials published by the department.

(iii) The father of the unborn child is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion. In the case of rape, this information may be omitted.

(3) A copy of the printed materials has been provided to the pregnant woman if she chooses to view these materials.

(4) The pregnant woman certifies in writing, prior to the abortion, that the information required to be provided under paragraphs (1), (2) and (3) has been provided.

(b) Emergency.--Where a medical emergency compels the performance of an abortion, the physician shall inform the woman, prior to the abortion if possible, of the medical indications supporting his judgment that an abortion is necessary to avert her death or to avert substantial and irreversible impairment of major bodily function.

(c) Penalty.--Any physician who violates the provisions of this section is guilty of “unprofessional conduct” and his license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under the act of October 5, 1978 (P.L. 1109, No. 261), known as the Osteopathic Medical Practice Act, 1 the act of December 20, 1985 (P.L. 457, No. 112), known as the Medical Practice Act of 1985, 2 or their successor acts. Any physician who performs or induces an abortion without first obtaining the certification required by subsection (a)(4) or with knowledge or reason to know that the informed consent of the woman has not been obtained shall for the first offense be guilty of a summary offense and for each subsequent offense be guilty of a misdemeanor of the third degree. No physician shall be guilty of violating this section for failure to furnish the information required by subsection (a) if he or she can demonstrate, by a preponderance of the evidence, that he or she reasonably believed that furnishing the information would have resulted in a severely adverse effect on the physical or mental health of the patient.

(d) Limitation on civil liability.--Any physician who complies with the provisions of this section may not be held civilly liable to his patient for failure to obtain informed consent to the abortion within the meaning of that term as defined by the act of October 15, 1975 (P.L.390, No.111), known as the Health Care Services Malpractice Act. 3

#### Interpretation:

Pennsylvania Department of Health enforces compliance, requiring consent forms and state materials.

#### History of Enforcement:



Enforced via health department inspections and reporting.

Relationship statutes/ regulations relating to the subject matter:

Pennsylvania's Abortion Control Act, ensuring access up to 24 weeks. Informed consent are restrictions are applicable up until that point and in exception cases.

Data and Documentation Requirements

**18 Pa. Cons. Stat. § 3214**

(a) . . . The report forms shall not identify the individual patient by name and shall include the following information:

- (1) Identification of the physician who performed the abortion, the concurring physician as required by section 3211(c)(2) (relating to abortion on unborn child of 24 or more weeks gestational age), the second physician as required by section 3211(c)(5) and the facility where the abortion was performed and of the referring physician, agency or service, if any.
- (2) The county and state in which the woman resides.
- (3) The woman's age.
- (4) The number of prior pregnancies and prior abortions of the woman.
- (5) The gestational age of the unborn child at the time of the abortion.
- (6) The type of procedure performed or prescribed and the date of the abortion.
- (7) Pre-existing medical conditions of the woman which would complicate pregnancy, if any, and, if known, any medical complication which resulted from the abortion itself.
- (8) The basis for the medical judgment of the physician who performed the abortion that the abortion was necessary to prevent either the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman, where an abortion has been performed pursuant to section 3211(b)(1).
- (9) The weight of the aborted child for any abortion performed pursuant to section 3211(b)(1).
- (10) Basis for any medical judgment that a medical emergency existed which excused the physician from compliance with any provision of this chapter.
- (11) The information required to be reported under section 3210(a) (relating to determination of gestational age).
- (12) Whether the abortion was performed upon a married woman and, if so, whether notice to her spouse was given. If no notice to her spouse was given, the report shall also indicate the reason for failure to provide notice.

Authoritative interpretation by state agencies or courts:

U.S. Supreme Court upheld reporting requirements in *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992).

Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

Other:

State reports available here: <https://www.pa.gov/agencies/health/health-statistics/birth-death-and-other-vital-statistics/vital-statistics-annual-report.html#accordion-69b2969aea-item-eeff9e7bd9>.

## Civil Liability Provisions

### **18 Pa. C.S. § 3217**

#### **Civil Remedies Under Necessary Abortions and Informed Consent Requirements**

##### **Applies to 18 Pa. C.S. §§ 3204 and 3205**

Any physician who knowingly violates any of the provisions of section 3204 (relating to medical consultation and judgment) or 3205 (relating to informed consent) shall, in addition to any other penalty prescribed in this chapter, be civilly liable to his patient for any damages caused thereby and, in addition, shall be liable to his patient for punitive damages in the amount of \$5,000, and the court shall award a prevailing plaintiff a reasonable attorney fee as part of costs.

### **18 Pa. C.S. § 3204(d)**

#### **Professional Discipline for Elective Abortions**

##### **Applies to 18 Pa. C.S. §§ 3204**

(d) Penalty.--Any person who intentionally, knowingly or recklessly violates the provisions of this section commits a felony of the third degree, and any physician who violates the provisions of this section is guilty of “unprofessional conduct” and his license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under the act of October 5, 1978 (P.L. 1109, No. 261), known as the Osteopathic Medical Practice Act, the act of December 20, 1985 (P.L. 457, No. 112), known as the Medical Practice Act of 1985, or their successor acts.

### **18 Pa. C.S. § 3205(c)**

#### **Professional Discipline Under Informed Consent Requirements**

##### **Applies to 18 Pa. C.S. § 3204**

(c) Penalty.--Any physician who violates the provisions of this section is guilty of “unprofessional conduct” and his license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under the act of October 5, 1978 (P.L. 1109, No. 261), known as the Osteopathic Medical Practice Act,<sup>1</sup> the act of December 20, 1985 (P.L. 457, No. 112), known as the Medical Practice Act of 1985,<sup>2</sup> or their successor acts. Any physician who performs or induces an abortion without first obtaining the certification required by subsection (a)(4) or with knowledge or reason to know that the informed consent of the woman has not been obtained shall for the first offense be guilty of a summary offense and for each subsequent offense be guilty

of a misdemeanor of the third degree. No physician shall be guilty of violating this section for failure to furnish the information required by subsection (a) if he or she can demonstrate, by a preponderance of the evidence, that he or she reasonably believed that furnishing the information would have resulted in a severely adverse effect on the physical or mental health of the patient.

### **18 Pa. C.S. § 3206(i)**

#### **Civil Remedies and Professional Discipline Under Parental Consent Requirements**

#### **Applies to 18 Pa. C.S. § 3206**

(i) **Penalty.**--Any person who performs an abortion upon a woman who is an unemancipated minor or incapacitated person to whom this section applies either with knowledge that she is a minor or incapacitated person to whom this section applies, or with reckless disregard or negligence as to whether she is a minor or incapacitated person to whom this section applies, and who intentionally, knowingly or recklessly fails to conform to any requirement of this section is guilty of “unprofessional conduct” and his license for the practice of medicine and surgery shall be suspended in accordance with procedures provided under the act of October 5, 1978 (P.L. 1109, No. 261), known as the Osteopathic Medical Practice Act,<sup>1</sup> the act of December 20, 1985 (P.L. 457, No. 112), known as the Medical Practice Act of 1985,<sup>2</sup> or their successor acts, for a period of at least three months. Failure to comply with the requirements of this section is prima facie evidence of failure to obtain informed consent and of interference with family relations in appropriate civil actions. The law of this Commonwealth shall not be construed to preclude the award of exemplary damages or damages for emotional distress even if unaccompanied by physical complications in any appropriate civil action relevant to violations of this section. Nothing in this section shall be construed to limit the common law rights of parents.

### **18 Pa. C.S. § 3209(e)**

#### **Civil Remedies and Professional Discipline Under Spousal Notice Requirement**

#### **Applies to 18 Pa. C.S. § 3200**

(e) **Penalty; civil action.**--Any physician who violates the provisions of this section is guilty of “unprofessional conduct,” and his or her license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under the act of October 5, 1978 (P.L. 1109, No. 261), known as the Osteopathic Medical Practice Act, the act of December 20, 1985 (P.L. 457, No. 112), known as the Medical Practice Act of 1985, or their successor acts. In addition, any physician who knowingly violates the provisions of this section shall be civilly liable to the spouse who is the father of the aborted child for any damages caused thereby and for punitive damages in the amount of \$5,000, and the court shall award a prevailing plaintiff a reasonable attorney fee as part of costs.

## **Rhode Island**

After *Roe*, abortion continues to be legal up to viability in Rhode Island, with exceptions for the mother’s life and health. Rhode Island has only minimal protections for women and minor girls considering abortion. The state requires abortion providers to obtain a woman’s written informed consent prior to an abortion and requires parental consent for minors seeking an abortion. However, the state has a pro-abortion “Reproductive Privacy Act,” which codified *Roe v. Wade* into law in 2019.

A supermajority of pro-abortion lawmakers controls both the State Senate and House of Representatives. In 2023, the Rhode Island legislature passed a law that allows the use of state tax dollars to pay for abortions. This new law repealed a long-standing statute that prohibited Rhode Island from “include[ing] in any health insurance contracts, plans, or policies covering employees, any provision which shall provide coverage for induced abortions.”

Rhode Island’s governor appoints justices to the state supreme court with help from a nominating commission. A majority vote of both the state house and senate must approve the Supreme Court nominee. According to Ballotpedia, the Rhode Island Supreme Court is controlled by Republican-appointed judges.

Governor Daniel McKee supports abortion. After the leak of the *Dobbs* opinion, he affirmed on social media that “Here in Rhode Island, we will always protect a woman’s right to choose.” On July 5, 2022, Governor McKee issued an executive order that prohibits executive agencies from cooperating with any investigation initiated by another state concerning an abortion that took place in Rhode Island. Under this executive order, the Office of the Governor can decline any request by another state to issue an arrest warrant for any person charged with a criminal violation of another state’s abortion law.

## Statutory Prohibitions

### **23 R.I. Gen. Laws § 23-4.13-2**

(a) Neither the state, nor any of its agencies, or political subdivisions shall:

- (1) Restrict an individual person from preventing, commencing, continuing, or terminating that individual's pregnancy prior to fetal viability;
- (2) Interfere with an individual person's decision to continue that individual's pregnancy after fetal viability;
- (3) Restrict an individual person from terminating that individual's pregnancy after fetal viability when necessary to preserve the health or life of that individual;
- (4) Restrict the use of evidence-based, medically recognized methods of contraception or abortion except in accordance with evidence-based medically appropriate standards that are in compliance with state and federal statutes enumerated in subsections (c)(1) and (c)(2), department of health regulations and standards referenced in subsection (c)(3), and subsection (d); or
- (5) Restrict access to evidence-based, medically recognized methods of contraception or abortion or the provision of such contraception or abortion except in accordance with evidence-based medically appropriate standards that are in compliance with state and federal statutes enumerated in subsections (c)(1) and (c)(2), department of health regulations and standards referenced in subsection (c)(3), and subsection (d).

(b) For purposes of this section, “fetal viability” means that stage of gestation where the attending physician, taking into account the particular facts of the case, has determined that there is a reasonable likelihood of the fetus' sustained survival outside of the womb with or without artificial support.

(c) Notwithstanding the foregoing, this section shall not be construed to:

(1) Abrogate the provisions of §§ 11-9-18 titled “Care of babies born alive during attempted abortions”, 11-54-1 titled “Experimentation on human fetuses”, 23-4.6-1 titled “Consent to medical and surgical care”, 23-4.7-1 through 23-4.7-8 titled “Informed consent for abortion”, 23-13-21 titled “Comprehensive reproductive health services”, 23-17-11 titled “Abortion and sterilization--Protection for nonparticipation--Procedure”, or 42-157-3(d) of the section titled “Rhode Island Health Benefit Exchange--General requirements”;

(2) Abrogate the provisions of 18 U.S.C. § 1531, titled “Partial-birth abortions prohibited” and cited as the “Partial-Birth Abortion Ban Act of 2003”;

(3) Prevent the department of health from applying to licensed healthcare facilities that provide abortion any generally applicable regulations or standards that are in accordance with evidence-based, medically recognized standards for the provision of abortion in compliance with state and federal statutes enumerated in subsections (c)(1) and (c)(2) and with subsection (d), provided that such application, adoption or enforcement is not a pretext for violating subsection (a) of this section.

(d) The termination of an individual's pregnancy after fetal viability is expressly prohibited except when necessary, in the medical judgment of the physician, to preserve the life or health of that individual.

(1) Any physician who knowingly violates the provisions of this subsection shall be deemed to have engaged in “unprofessional conduct” for the purpose of § 5-37-5.1.

(2) A physician who performs a termination after fetal viability shall be required to record in the patient's medical records the basis for the physician's medical judgment that termination was necessary to preserve the life or health of the patient and must comply with all other relevant requirements applicable to physicians in § 23-3-17.

(3) The director of the department of health is authorized to deny or revoke any license to practice allopathic or osteopathic medicine or otherwise discipline a licensee upon finding by the board that the person is guilty of unprofessional conduct under § 5-37-5.1(31).

## Informed Consent Laws

### **R.I. Gen. Laws § 23-4.7-3**

(a) Either the physician who is to perform the abortion or his or her authorized agent or another physician or his or her authorized agent shall:

(1) Inform the woman that she is pregnant and inform her of the estimated gestational age of the fetus at the time of the disclosure.

(2) Explain to the woman the medical nature of an abortion, including the probable gestational age of the fetus at the time the abortion is to be performed.

(3) Explain to the woman the medical or surgical procedure to be employed to perform the abortion.

(4) Explain to the woman all known material medical risks associated with the particular abortion procedure to be employed. In the event a physician or his or her authorized agent determines that the disclosure of a known material risk should not be made, that risk need not be disclosed, provided the medical basis for the nondisclosure is certified in writing in the patient's medical record.

(b) In addition, a physician or his or her authorized agent may inform the woman of any other material facts or opinions or otherwise state anything with respect to the disclosures required in this section which, in the exercise of his or her best medical judgment, is reasonably necessary to enable the woman to give her informed consent to the proposed abortion, with full knowledge of its nature and consequences.

Interpretation:

Upheld in *Women's Medical Center v. Cannon* (1980)

History of Enforcement:

Enforced through health facility inspections; no significant litigation noted.

Relationship statutes/ regulations relating to the subject matter:

2019 Reproductive Privacy Act, ensuring access up to viability.

Any other pertinent information:

Rhode Island's abortion laws are among the least restrictive, with no waiting period or ultrasound mandate.

Civil Liability Provisions

**R.I. Gen. Laws § 23-4.7-7**

**Civil Remedies and Professional Discipline Under Informed Consent Requirements**

**Applies to R.I. Gen. Laws §§ 23-4.7-1 through 23-4.7-8**

Any physician who knowingly violates the requirements of this chapter shall be deemed to have engaged in "unprofessional conduct" for the purposes of § 5-37-5.1. The willful failure to provide the woman with the substance of the information pursuant to the requirements of § 23-4.7-3 shall be prima facie evidence of failure to obtain informed consent in an action at law or in equity.

## South Carolina

Now that *Roe* is overturned, South Carolina is enforcing its “Fetal Heartbeat and Protection from Abortion Act,” although it is in litigation. The state’s prohibition on abortion after 20 weeks remains its strongest protection. South Carolina has a number of pro-life laws, including informed consent, parental consent for minors, and health and safety regulations for abortion businesses.

Pro-life conservatives control both the South Carolina House of Representatives and the State Senate.

Under South Carolina’s judicial appointment system, the legislature appoints justices to the state supreme court from a list prepared by the Judicial Merit Selection Commission. Justices serve 10-year terms. Pro-life conservatives are in the majority in the South Carolina Supreme Court, according to [Ballotpedia](#). South Carolina has asked the United States Supreme Court to review whether the state can remove abortion businesses as “qualified” Medicaid providers.

Governor Henry McMaster, re-elected in 2022 by a large margin, is a staunch defender of Life. In 2018, he signed an executive order limiting taxpayer funding of abortion, stating, “the preservation of life is the ultimate right to be protected and necessarily includes the life of unborn children.” Governor McMaster also filed an *amicus* brief in *Dobbs v. Jackson Women’s Health Organization*, arguing the Supreme Court should overturn *Roe*.

According to AUL’s *Unsafe* report, the state has a working regulatory framework that has been upheld by federal courts. AUL received 132 inspection reports, citing deficiencies for improper processing of pathogenic waste, inadequate infection control standards, and having expired medication.

### Statutory Prohibitions

#### **S.C. Code §§ 44-41-630**

(A) An abortion provider who is to perform or induce an abortion, a certified technician, or another agent of the abortion provider who is competent in ultrasonography shall:

- (1) perform an obstetric ultrasound on the pregnant woman, using whichever method the physician and pregnant woman agree is best under the circumstances;
- (2) during the performance of the ultrasound, display the ultrasound images so that the pregnant woman may view the images; and
- (3) record a written medical description of the ultrasound images of the unborn child's fetal heartbeat, if present and viewable.



(B) Except as provided in Section 44-41-640, Section 44-41-650, and Section 44-41-660, no person shall perform or induce an abortion on a pregnant woman with the specific intent of causing or abetting an abortion if the unborn child's fetal heartbeat has been detected in accordance with Section 44-41-330(A). A person who violates this subsection is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned for not more than two years, or both.

### In-Person Dispensing Requirements

#### **S.C. Code § 40-47-37**

(A) A licensee who provides care, renders a diagnosis, or otherwise engages in the practice of medicine as defined in Section 40-47-20(36) via telemedicine as defined in Section 40-47-20(53) shall:

- (1) adhere to the same standard of care as in-person medical care and be evaluated according to the standard of care applicable to the licensee's area of specialty. The failure of a licensee to conform to the appropriate standard of care is considered unprofessional conduct under Section 40-47-110(B)(9);
- (2) generate and maintain medical records for such telemedicine services in compliance with any applicable state and federal laws, rules, and regulations including this chapter, the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Economic and Clinical Health Act (HITECH). Such records timely must be made accessible to other practitioners and to the patient when lawfully requested by the patient or his lawfully designated representative;
- (3) prescribe in accordance with Section 40-47-113;
- (4) be licensed to practice medicine in this State; provided, however, a licensee need not reside in this State if he has a valid, current South Carolina medical license; further, provided, that a licensee who resides in this State and intends to practice medicine via telemedicine to treat or diagnose patients outside of this State shall comply with other applicable state licensing boards; and
  - (a) this requirement is not applicable to an informal consultation or second opinion, at the request of a physician licensed to practice medicine in this State, provided that the physician requesting the opinion retains the authority and responsibility for the patient's care; and
  - (b) where an in-person physician-patient relationship is established in another state for specialty care and treatment is ongoing by that out-of-state provider, care provided pursuant to an existing treatment plan via telehealth in this State by the out-of-state provider between in-person visits is considered acts incidental to the care of the patient in another state and the out-of-state provider is not required to be licensed in this State. This exception may not be construed to apply to:
    - (i) episodic care that is provided by an out-of-state provider;

- (ii)
- (iii) new health conditions that arise and are not connected to the condition being treated by the out-of-state provider; or
- (iv)
- (v) (care provided by an out-of-state provider for extended periods of time without intervening in-person visits; and

(c) for purposes of subitems (a) and (b), the care provided to the patient by the out-of-state provider is deemed to have occurred where the patient was located at the time health care services were provided to him by means of telehealth; and

(d) shall maintain a controlled substances registration with South Carolina's Bureau of Drug Control if prescribing controlled substances.

(B) Nothing in this section may be construed to prohibit electronic communications between:

- (1) a physician and patient with a preexisting physician-patient relationship;
- (2) a physician and another physician concerning a patient with whom the other physician has a physician-patient relationship; or
- (3) a provider and a patient when treatment is provided pursuant to an on-call situation or a cross-coverage situation.

(C) In addition to those requirements set forth in subsection (A), a licensee who establishes and/or maintains a physician-patient relationship, provides care, renders a diagnosis, or otherwise engages in the practice of medicine as defined in Section 40-47-20(36) solely via telemedicine as defined in Section 40-47-20(53) shall:

- (1) adhere to current standards for practice improvement and monitoring of outcomes and provide reports containing such information upon request of the board;
- (2) provide an appropriate evaluation prior to diagnosing and/or treating the patient, which need not be done in person if the licensee considers that he is able to accurately diagnose and treat the patient in conformity with the applicable standard of care via telehealth; provided that evaluations in which a licensee is at a distant site, but a practitioner who is acting within his scope is able to provide various physical findings the licensee needs to complete an adequate assessment, is permitted;
- (3) ensure the availability of appropriate follow-up care;
- (4) verify the identity and location of the patient and inform the patient of the licensee's name, location, and professional credentials;
- (5) maintain the confidentiality of a patient's records and disclose the records to the patient consistent with state and federal law; provided, that licensees practicing telemedicine must be held to the same standards of professionalism concerning medical records

transfer and communication with the primary care provider and medical home as licensees practicing via traditional means;

- (6) if applicable, discuss with the patient the value of having a primary care medical home and, if the patient requests, provide assistance in identifying available options for a primary care medical home;
- (7) prescribe in compliance with all relevant federal and state laws including, but not limited to, participation in the South Carolina Prescription Monitoring Program in Article 15, Chapter 53, Title 44 and the Ryan Haight Act, within a practice setting fully compliant with this section, and subject to the following limitations:
  - (a) at each encounter, threshold information necessary to make an accurate diagnosis must be obtained in a medical history interview conducted by the prescribing licensee;
  - (b) Schedule II-narcotic and Schedule III-narcotic prescriptions are not permitted except in the following instances:
    - (i) when the practice of telemedicine is being conducted while the patient is physically located in a hospital and being treated by a practitioner acting in the usual course of professional practice;
    - (ii) those Schedule II and Schedule III medications used specifically for patients actively enrolled in a Medication-Assisted Treatment (MAT) program with a provider who has an established physician-patient relationship when buprenorphine is being prescribed as a medication for opioid use disorder;
    - (iii) patients enrolled in palliative care or hospice; or
    - (iv) any other programs specifically authorized by the board; and
  - (c) prescribing abortion inducing drugs is not permitted; as used in this chapter “abortion inducing drug” means a medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with knowledge that the termination will with reasonable likelihood cause the death of the unborn child. This includes off label use of drugs known to have abortion-inducing properties that are prescribed specifically with the intent of causing an abortion, such as misoprostol (Cytotec) and methotrexate. This definition does not apply to drugs that may be known to cause an abortion, but which are prescribed for other medical indications including, but not limited to, chemotherapeutic

agents or diagnostic drugs. Use of such drugs to induce abortion is also known as “medical”, “drug induced”, or “chemical abortion”; and

(8) be prohibited from establishing a physician-patient relationship pursuant to Section 40-47-113(B) for the purpose of prescribing medication when an in-person physical examination is necessary for diagnosis.

(D) A licensee, practitioner, or any other person involved in a telemedicine encounter must be trained in the use of the telemedicine equipment and competent in its operation.

(E) Notwithstanding any of the provisions of this section, the board shall retain all authority with respect to telemedicine practice as granted in Section 40-47-10(I) of this chapter.

Authoritative interpretation by state agencies or courts:

Executive: When FDA permitted pharmacies to dispense abortion pills, the South Carolina Attorney General joined a [letter](#) sent to pharmacies that mentioned many states prohibit the mailing of abortion drugs, but did not include a cite to this statute.

Relationship between statute and other federal/state statutes relating to the subject matter:

Although South Carolina law does not expressly prohibit the mailing of chemical abortion drugs, it does prohibit abortionists from prescribing chemical abortion pills via telehealth. In doing so, S.C. Code § 40-47-37 helps to ensure that women receive chemical abortion pills directly from the abortionist rather than through the mail. This is consistent with federal law. The Comstock Act, 18 U.S.C. § 1461, prohibits the mailing of chemical abortion pills.

## Informed Consent Laws

### **S.C. Code Ann. § 44-41-330**

(A) Except in the case of a medical emergency and in addition to any other consent required by the laws of this State, no abortion may be performed or induced without the voluntary and informed written consent of the pregnant woman and unless the following conditions have been satisfied:

- (1) (a) While physically present in the same room, the woman must be informed by the physician who is to perform the abortion, an allied health professional working in conjunction with the physician, or the referring physician of the procedure to be involved, including:
  - (i) the nature and risks of undergoing or not undergoing the proposed procedure that a reasonable patient would consider material to making a knowing and wilful decision of whether to have an abortion;
  - (ii) the probable gestational age of the unborn child, verified by an ultrasound, at the time the abortion is to be performed;
  - (iii) the presence of the unborn child's fetal heartbeat, if present and viewable
- (b) If an ultrasound is required to be performed, an abortion may not be performed sooner than sixty minutes following completion of the ultrasound. The ultrasound must be performed by the physician who is to perform the abortion or by a person

having documented evidence that he or she is a certified sonographer under South Carolina law and who is working in conjunction with the physician. The physician who is to perform the abortion or an allied health professional working in conjunction with the physician must inform the woman before the ultrasound procedure of her right to view the live ultrasound images and hear the unborn child's fetal heartbeat, if present, at her request during or after the ultrasound procedure and to have them explained to her.

(c) If the woman accepts the opportunity to view the images and hear the explanation, a physician or a registered nurse, licensed practical nurse, or physician assistant working in conjunction with the physician must contemporaneously review and explain the images to the woman before the woman gives informed consent to having an abortion procedure performed.

(d) The woman has a right to decline to view and hear the explanation of the live ultrasound images after she is informed of her right and offered an opportunity to view the images and hear the explanation. If the woman declines, the woman shall complete a form acknowledging that she was offered an opportunity to view and hear the explanation of the images but that she declined that opportunity. The form also must indicate that the woman's decision was not based on any undue influence from any person to discourage her from viewing the images or hearing the explanation and that she declined of her own free will.

(e) If the physician who intends to perform or induce an abortion on a pregnant woman has determined pursuant to Sections 44-41-620, 44-41-630, and 44-41-330(A) that the unborn child the pregnant woman is carrying has a detectable fetal heartbeat, then that physician shall inform the pregnant woman in writing that the unborn child the pregnant woman is carrying has a fetal heartbeat. The physician shall further inform the pregnant woman, to the best of the physician's knowledge, of the statistical probability, absent an induced abortion, of bringing the human fetus possessing a detectable fetal heartbeat to term based on the gestational age of the human fetus or, if the director of the department has specified statistical probability information, shall provide to the pregnant woman that information. The department may promulgate regulations that specify information regarding the statistical probability of bringing an unborn child possessing a detectable fetal heartbeat to term based on the gestational age of the unborn child. Any regulations must be based on available medical evidence.

(2) The woman must be presented by the physician who is to perform the abortion or by an allied health professional working in conjunction with the physician a written form containing the following statement: "You have the right to review printed materials prepared by the State of South Carolina which describe fetal development, list agencies which offer alternatives to abortion, and describe medical assistance benefits which may be available for prenatal care, childbirth, and neonatal care. You have the right to view your ultrasound image." This form must be signed and dated by both the physician who is to perform the procedure and the pregnant woman upon whom the procedure is to be performed.

(3) The woman must certify in writing, before the abortion, that the information described in item (1) of this subsection has been furnished her, and that she has been informed of her opportunity to review the information referred to in item (2) of this subsection.

(4) Before performing the abortion, the physician who is to perform or induce the abortion must determine that the written certification prescribed by item (3) of this subsection or the certification required by subsection (D) has been signed. This subsection does not apply in the case where an abortion is performed pursuant to a court order.

(B) Nothing herein limits the information provided by the physician who is to perform the abortion or allied health professional to the person upon whom the abortion procedure is to be performed.

(C) No abortion may be performed sooner than twenty-four hours after the woman receives the written materials and certifies this fact to the physician or the physician's agent.

(D) If the clinic or other facility where the abortion is to be performed or induced mails the printed materials described in Section 44-41-340 to the woman upon whom the abortion is to be performed or induced or if the woman obtains the information at the county health department and if the woman verifies in writing, before the abortion, that the printed materials were received by her more than twenty-four hours before the abortion is scheduled to be performed or induced, that the information described in item (A)(1) has been provided to her, and that she has been informed of her opportunity to review the information referred to in item (A)(2), then the waiting period required pursuant to subsection (C) does not apply.

(E) In the event the person upon whom the abortion is to be performed or induced is an unemancipated minor, as defined in Section 44-41-10, the information described in Section 44-41-330(A)(1) and (2) must be furnished and offered respectively to a parent of the minor, a legal guardian of the minor, a grandparent of the minor, or any person who has been standing in loco parentis to the minor for a period of not less than sixty days. The parent, legal guardian, grandparent, or person who has been standing in loco parentis, as appropriate, must make the certification required by Section 44-41-330(A)(3). In the event the person upon whom the abortion is to be performed is under adjudication of mental incompetency by a court of competent jurisdiction, the information must be furnished and offered respectively to her spouse or a legal guardian if she is married; if she is not married, from one parent or a legal guardian. The spouse, legal guardian, or parent, as appropriate, must make the certification required by Section 44-41-330(A)(3). This subsection does not apply in the case of an abortion performed pursuant to a court order.

(F) A clinic or other facility must maintain, for three years after the abortion is performed or induced, the woman's written verification that the information was so provided and the printed materials were so offered. In the case of an unemancipated minor or mentally incompetent person, the clinic or other facility is required to maintain a copy of the court order or the medical records and written consent for three years after the procedure is performed.

(G) This section does not apply if a clinic or other facility where abortions are performed or induced does not have, through no fault of the clinic or facility and if the clinic or facility can demonstrate through written evidence the unavailability of the materials described in Section 44-41-340.

#### Interpretation:

Upheld in *Greenville Women's Clinic v. Bryant* (2000); The ultrasound requirement was affirmed in *Planned Parenthood v. State* (2023).

History of Enforcement:

Enforced via DHEC inspections and reporting.

Relationship statutes/ regulations relating to the subject matter:

S. 474 (2023), limiting abortions after cardiac activity.

Data and Documentation Requirements

**S.C. Code § 44-41-60**

Any abortion performed in this State must be reported by the performing physician on the standard form for reporting abortions to the State Registrar, Department of Health and Environmental Control, within seven days after the abortion is performed. The names of the patient and physician may not be reported on the form or otherwise disclosed to the State Registrar. The form must indicate from whom consent was obtained, circumstances waiving consent, and, if an exception was exercised pursuant to Section 44-41-640, 44-41-650, or 44-41-660, which exception the physician relied upon in performing or inducing the abortion.

Authoritative interpretation by state agencies or courts:

S.C. Code Ann. Regs. § 61-12-403 (2025).

Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

Other:

State reports available here: <https://dph.sc.gov/professionals/public-health-data/biostatistics-publications>.

Civil Liability Provisions

**S.C. Code. Ann. § 44-41-680**

**Civil Remedies Under Heartbeat Laws**

**Applies to S.C. Code Ann. §§ 44-41-610 through 44-41-690**

(A) In addition to all other remedies available under common or statutory law, failure to comply with the requirements of this article shall provide the basis for a civil action further described in this section.

(B) A pregnant woman upon whom an abortion has been performed, induced, or coerced in violation of this article may maintain an action against the person who violated this article for actual and punitive damages. In addition to all other damages, and separate and distinct from all other damages, a plaintiff is entitled to statutory damages of ten thousand dollars for each violation of this article to be imposed on each defendant found to have violated this article.



(C) A separate and distinct cause of action for injunctive relief against any person who has violated this article may be maintained by:

- (1) the woman upon whom the abortion was performed or induced in violation of this article;
- (2) the parent or guardian of the pregnant woman if she had not attained the age of eighteen years at the time of the abortion or died as a result of the abortion;
- (3) a solicitor or prosecuting attorney with proper jurisdiction; or
- (4) the Attorney General.

(D) If a plaintiff prevails in an action initiated pursuant to this section the court shall award the plaintiff reasonable costs and attorney's fees.

(E) No damages, costs, or attorney's fees may be assessed against the woman upon whom an abortion was performed or induced.

(F) Under no circumstances may civil damages be awarded to a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct.

(G) A civil cause of action pursuant to this section must be brought within three years of the date of the abortion and is not subject to the limitations and requirements contained in Chapter 79, Title 15.

**S.C. Code. Ann. § 44-41-690**

**Professional Discipline Under Heartbeat Laws**

**Applies to S.C. Code Ann. §§ 44-41-610 through 44-41-690**

In addition to any other penalties imposed by law, a physician or any other professionally licensed person who intentionally, knowingly, or recklessly violates the prohibition on abortion contained in this article commits an act of unprofessional conduct. A physician's license to practice in this State immediately shall be revoked by the State Board of Medical Examiners, after due process according to the board's rules and procedures. Any other licensed person's professional license shall be immediately revoked by the appropriate licensing board, after due process according to that board's rules and procedures. A complaint may be originated by any person or by the board sua sponte. A licensing board acting pursuant to this section may assess costs of the investigation, fines, and other disciplinary actions as it may deem appropriate.

**S.C. Code. Ann. § 44-41-35**

**Civil Remedies Under Parental Consent Requirements**

**S.C. Code Ann. §§ 44-41-30 through 44-41-37**

Failure to obtain required consent constitutes prima facie evidence of interference with family relations in appropriate civil actions. The law of this State does not preclude the award of exemplary damages in an appropriate civil action relevant to violations concerning a minor. Nothing in this chapter may be construed to limit the common law rights of parents.

## South Dakota

South Dakota recently rejected a pro-abortion ballot measure! If passed it would have: 1) prohibited the state from regulating abortion during the first trimester, 2) limited state regulations on abortion in the second trimester unless the regulation is “reasonably related to the physical health of the pregnant woman,” and 3) prohibited state regulations on third trimester abortions if the abortionist deems the abortion “necessary . . . to preserve the life and health of the pregnant woman.” Read AUL’s full [pro-life legal analysis on the 2024 South Dakota ballot initiative](#).

After *Roe*, South Dakota has a conditional law that restricts abortion at all gestational ages with an exception for the mother’s life.

There is a supermajority of conservative pro-life lawmakers in both the State Senate and House of Representatives. In 2024, the state passed legislation requiring the Department of Health to develop a video explaining the state’s abortion laws, common medical conditions that endanger pregnant women, and the standards of care for treating conditions.

South Dakota employs a Missouri-style judicial appointment system. The governor appoints state supreme court justices from a list of names prepared by the South Dakota Judicial Qualifications Commission. Conservatives control the South Dakota Supreme Court. There is ongoing litigation over South Dakota’s informed consent law and the state health department’s chemical abortion in-person dispensing rule.

Governor Kristi Noem, re-elected in 2022 by an overwhelming majority, is an outspoken pro-life advocate. She has signed many Life-affirming bills into law and has directed the state health department to promulgate health and safety rules requiring in-person dispensing of chemical abortion drugs.

## Statutory Prohibitions

### **S.D. Codified Laws § 22-17-5.1**

Any person who administers to any pregnant female or who prescribes or procures for any pregnant female any medicine, drug, or substance or uses or employs any instrument or other means with intent thereby to procure an abortion, unless there is appropriate and reasonable medical judgment that performance of an abortion is necessary to preserve the life of the pregnant female, is guilty of a Class 6 felony.

## In-Person Dispensing Requirements

**S.D. Exec. Order 2021-12:** <https://sdsos.gov/general-information/executive-actions/executive-orders/assets/2021-12.PDF>

Authoritative interpretation by state agencies or courts:

Executive: AG [confirmed](#) a Supreme Court decision regarding the FDA’s attempt to increase access to chemical abortion did not impact the state’s abortion laws. The Governor and AG also [announced](#)

they would prosecute pharmacists who dispense the abortion pill. Neither mentions this EO specifically, just SD law broadly.

Relationship between statute and other federal/state statutes relating to the subject matter:

South Dakota's prohibition on mailing chemical abortion drugs is consistent with federal law. The Comstock Act, 18 U.S.C. § 1461, explicitly prohibits the mailing of chemical abortion pills. South Dakota has a total ban on abortion (S.D. Codified Laws § 22-17-5.1).

## Informed Consent Laws

### **S.D. Codified Laws §§ 34-23A-10.1 through 34-23A-10.4**

No abortion may be performed unless the physician first obtains a voluntary and informed written consent of the pregnant woman upon whom the physician intends to perform the abortion, unless the physician determines that obtaining an informed consent is impossible due to a medical emergency and further determines that delaying in performing the procedure until an informed consent can be obtained from the pregnant woman or her next of kin in accordance with chapter 34-12C is impossible due to the medical emergency, which determinations shall then be documented in the medical records of the patient.

A consent to an abortion is not voluntary and informed, unless, in addition to any other information that must be disclosed under the common law doctrine, the physician provides that pregnant woman with the following information:

- (1) A statement in writing providing the following information:
  - (a) The name of the physician who will perform the abortion;
  - (b) That the abortion will terminate the life of a whole, separate, unique, living human being;
  - (c) That the pregnant woman has an existing relationship with that unborn human being and that the relationship enjoys protection under the United States Constitution and under the laws of South Dakota;
  - (d) That by having an abortion, her existing relationship and her existing constitutional rights with regards to that relationship will be terminated;
  - (e) A description of all known medical risks of the procedure and statistically significant risk factors to which the pregnant woman would be subjected, including:
    - (i) Depression and related psychological distress;
    - (ii) Increased risk of suicide ideation and suicide;
    - (iii) A statement setting forth an accurate rate of deaths due to abortions, including all deaths in which the abortion procedure was a substantial contributing factor; and

- (iv) All other known medical risks to the physical health of the woman, including the risk of infection, hemorrhage, danger to subsequent pregnancies, and infertility;
- (f) The probable gestational age of the unborn child at the time the abortion is to be performed, and a scientifically accurate statement describing the development of the unborn child at that age;
- (g) The statistically significant medical risks associated with carrying her child to term compared to undergoing an induced abortion;
- (h) That even after a pregnant mother takes Mifepristone, or another drug approved by the United States Food and Drug Administration for the same use, it is still possible to discontinue a drug-induced abortion by not taking the prescribed Misoprostol;
- (i) That information on discontinuing a drug-induced abortion is available on the Department of Health website;
- (j) A written statement that sex-selective abortions are illegal in the State of South Dakota and that a pregnant mother cannot have an abortion, either solely or partly, due to the unborn child's sex, regardless of whether that unborn child is a girl or a boy or whether it is of the pregnant mother's free will or the result of the use of pressure and coercion; and
- (k) A written notification, prepared and provided to each abortion facility by the Department of Health, that contains the name, text, and telephone number of an organization fighting to end sex trafficking and states the following: "If someone is sexually abusing you or causing you to exchange sex for something of value, and you want help, call 911, text, or call the number provided on this notice."

The disclosures set forth above shall be provided to the pregnant woman in writing and in person in full compliance with § 34-23A-56. The physician shall ensure that the pregnant woman signs each page of the written disclosure with the certification that she has read and understands all of the disclosures, prior to the patient signing a consent for the procedure. If the pregnant woman asks for a clarification or explanation of any particular disclosure, or asks any other question about a matter of significance to her, the explanation or answer shall be made in writing and be given to the pregnant woman before signing a consent for the procedure and shall be made part of the permanent medical record of the patient.

Prior to the pregnant woman signing a consent to the abortion, she shall sign a written statement that indicates that the requirements of this section have been complied with. Prior to the performance of the abortion, the physician who is to perform the abortion shall receive a copy of the written disclosure documents required by this section, and shall certify in writing that all of the information described in those subdivisions has been provided to the pregnant woman, that the physician is, to the best of his or her ability, satisfied that the pregnant woman has read the materials which are required to be disclosed, and that the physician believes she understands the information imparted;

(2) A statement by telephone or in person, by the physician who is to perform the abortion, or by the referring physician, or by an agent of both, at least twenty-four hours before the abortion, providing the following information:

(a) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(b) That the father of the unborn child is legally responsible to provide financial support for her child following birth, and that this legal obligation of the father exists in all instances, even in instances in which the father has offered to pay for the abortion;

(c) The name, address, and telephone number of a pregnancy help center in reasonable proximity of the abortion facility where the abortion will be performed; and

(d) That she has a right to review all of the material and information described in § 34-23A-1, §§ 34-23A-1.2 to 34-23A-1.7, inclusive, § 34-23A-10.1, and § 34-23A-10.3, as well as the printed materials described in § 34-23A-10.3, and the website described in § 34-23A-10.4. The physician or the physician's agent shall inform the pregnant woman, orally or in writing, that the materials have been provided by the State of South Dakota at no charge to the pregnant woman. If the pregnant woman indicates, at any time, that she wants to review any of the materials described, such disclosures shall be either given to her at least twenty-four hours before the abortion or mailed to her at least seventy-two hours before the abortion by certified mail, restricted delivery to addressee, which means the postal employee can only deliver the mail to the addressee;

(3) In the case of a pregnant woman who has been administered Mifepristone, or another drug approved by the United States Food and Drug Administration for the same use, the statement required by subsection (h) of subdivision (1) must also be duplicated and presented to the woman at the time of her release or discharge, immediately after the provision or administration of the first drug. The statement must be accompanied by a notice that includes:

(a) The following verbiage: "If you decide you want to give birth to your child, even after the abortion process has begun, seek the assistance of a physician immediately."; and

(b) The phone number, website, and any other contact information provided to the department by physicians or other entities, who or that have indicated their ability and willingness to provide assistance, twenty-four hours per day, seven days a week, to a woman seeking to discontinue an abortion.

#### Interpretation:

Upheld in *Planned Parenthood v. Rounds* (2008)

#### History of Enforcement:

Non-compliance risks penalties under S.D. Codified Laws § 34-23A-22.

Relationship statutes/ regulations relating to the subject matter:

Interacts with the 2005 trigger law (§ 22-17-5.1), limiting abortions to emergencies.

Any other pertinent information:

The 72-hour waiting period and counseling mandate are among the most extensive.

## Data and Documentation Requirements

### **S.D. Codified Laws §§ 34-23A-34 through 34-23A-44; *id.* § 34-23A-19**

Any facility or physician performing abortions in this state shall forward to the Department of Health:

- (1) The number of abortions performed;
- (2) The method of abortion used in each abortion performed;
- (3) Complete pathology reports including the period of gestation of fetuses, the presence of abnormality, and the measurements of fetuses, if the facility where the abortion is performed is equipped to complete the reports;
- (4) The number of maternal deaths due directly or indirectly to abortions;
- (5) Reports of all follow-up, including short-term and long-term complications due to abortion in the female who received an abortion;
- (6) The number of infants who survived an attempted abortion;
- (7) Medical action taken to preserve the life of an aborted child born alive;
- (8) The outcome for an aborted child born alive, including the child's survival, death, and location of death, if known; and
- (9) Any other information required by the department, as authorized by this section.

Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

Other:

State reports available here: <https://doh.sd.gov/health-data-reports/vital-statistics/induced-abortion-reports/>.

## Civil Liability Provisions

### **S.D. Codified Laws § 34-23A-61**

#### **Civil Remedies Under Abortion Chapter**

**Applies to S.D. Codified Laws §§ 34-23A-1 through 34-23A-94**

In any civil action presenting a claim arising from a failure to comply with any of the provisions of this chapter, the following shall apply:

- (1) The failure to comply with the requirements of this chapter relative to obtaining consent for the abortion shall create a rebuttable presumption that if the pregnant mother had been informed or assessed in accordance with the requirements of this chapter, she would have decided not to undergo the abortion;
- (2) If the trier of fact determines that the abortion was the result of coercion, and it is determined that if the physician acted prudently, the physician would have learned of the coercion, there is a nonrebuttable presumption that the mother would not have consented to the abortion if the physician had complied with the provisions of §§ 34-23A-53 to 34-23A-62, inclusive;
- (3) If evidence is presented by a defendant to rebut the presumption set forth in subdivision (1), then the finder of fact shall determine whether this particular mother, if she had been given all of the information a reasonably prudent patient in her circumstance would consider significant, as well as all information required by §§ 34-23A-53 to 34-23A-62, inclusive, to be disclosed, would have consented to the abortion or declined to consent to the abortion based upon her personal background and personality, her physical and psychological condition, and her personal philosophical, religious, ethical, and moral beliefs;
- (4) The pregnant mother has a right to rely upon the abortion doctor as her source of information, and has no duty to seek any other source of information, other than from a pregnancy help center as referenced in §§ 34-23A-56 and 34-23A-57, prior to signing a consent to an abortion;
- (5) No patient or other person responsible for making decisions relative to the patient's care may waive the requirements of this chapter, and any verbal or written waiver of liability for malpractice or professional negligence arising from any failure to comply with the requirements of this chapter is void and unenforceable.

#### **S.D. Codified Laws § 34-23A-41**

##### **Civil Remedies Under Reporting Requirements**

##### **Applies to S.D. Codified Laws §§ 34-23A-34 through 34-23A-45**

Any physician who fails to submit any report required by §§ 34-23A-34 to 34-23A-45, inclusive, within a grace period of thirty days following the due date is subject to a late fee of five hundred dollars for each additional thirty-day period, or portion of a thirty-day period, that each report is overdue. Any physician who has not submitted a report, or has submitted only an incomplete report, more than one year following the due date, is also subject to a civil action brought by the department. A court of competent jurisdiction may direct the physician to submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

#### **S.D. Codified Laws § 34-23A-1.7**

##### **Civil Remedies Under Informed Consent Requirements**

##### **Applies to S.D. Codified Laws §§ 34-23A-1 through 34-23A-10.3**



The South Dakota common law cause of action for medical malpractice informed consent claims based upon the reasonable patient standard is reaffirmed and is hereby expressly declared to apply to all abortion procedures. The duty of a physician to disclose all facts about the nature of the procedure, the risks of the procedure, and the alternatives to the procedure that a reasonable patient would consider significant to her decision of whether to undergo or forego the procedure applies to all abortions. Nothing in § 34-23A-1, §§ 34-23A-1.2 to 34-23A-1.7, inclusive, § 34-23A-10.1, and § 34-23A-10.3 may be construed to render any of the requirements otherwise imposed by common law inapplicable to abortion procedures or diminish the nature or the extent of those requirements. The disclosure requirements expressly set forth in § 34-23A-1, §§ 34-23A-1.2 to 34-23A-1.7, inclusive, § 34-23A-10.1, and § 34-23A-10.3 are an express clarification of, and are in addition to, those common law disclosure requirements.

#### **S.D. Codified Laws § 34-23A-22**

#### **Civil Remedies Under Informed Consent Prior to Medical Emergency; Parental Consent Applies to S.D. Codified Laws §§ 34-23A-2.1, 34-23A-7, 34-23A-10.1**

If any person performs an abortion willfully, wantonly, or maliciously in disregard to § 34-23A-2.1, 34-23A-7, or 34-23A-10.1, the person upon whom such an abortion has been performed, and the parent of a minor child upon whom such an abortion was performed, or any of them, may maintain an action against the person who performed the abortion not to exceed ten thousand dollars in punitive damages. Any person upon whom such an abortion has been attempted may maintain an action against the person who attempted to perform the abortion not to exceed five thousand dollars in punitive damages.

If judgment is rendered in favor of the plaintiff in any such action, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous or brought in bad faith, the court shall also render judgment for a reasonable attorney's fee in favor of the defendant against the plaintiff.

#### **S.D. Codified Laws § 34-23A-60**

#### **Civil Remedies Under In-Person Exam; Waiting Period; Signature Requirements Applies to S.D. Codified Laws §§ 34-23A-56 through 34-23A-57**

Any woman who undergoes an abortion, or her survivors, where there has been an intentional, knowing, or negligent failure to comply with the provisions of §§ 34-23A-56 and 34-23A-57 may bring a civil action, and obtain a civil penalty in the amount of ten thousand dollars, plus reasonable attorney's fees and costs, jointly and severally from the physician who performed the abortion and the abortion facility where the abortion was performed.

This amount shall be in addition to any damages that the woman or her survivors may be entitled to receive under any common law or statutory provisions, to the extent that she sustains any injury. This amount shall also be in addition to the amounts that the woman or other survivors of the deceased unborn child may be entitled to receive under any common law or statutory provisions, including but not limited to the wrongful death statutes of this state.

#### **S.D. Codified Laws § 34-23A-91**

#### **Civil Remedies for Abortion Due to Down Syndrome Diagnosis**

### **Applies to S.D. Codified Laws §§ 34-23A-89 through 34-23A-93**

Where there has been an intentional, knowing, or negligent failure to comply with the provisions of §§ 34-23A-89 to 34-23A-93, inclusive, a pregnant woman who undergoes an abortion, or her survivors, may bring a civil action, and obtain liquidated damages in the amount of ten thousand dollars, plus reasonable attorney's fees and costs jointly and severally from the physician who performed the abortion and the abortion facility where the abortion was performed.

This amount shall be in addition to any damages that the woman or survivors may be entitled to receive under any common law or statutory provisions, to the extent that she sustains any injury. This amount shall also be in addition to the amounts that the woman or other survivors of the deceased unborn child may be entitled to receive under any common law or statutory provisions, including the wrongful death statutes of this state.

## **Tennessee**

Tennessee is a vigorously pro-life state. After *Roe*, Tennessee's conditional law restricts abortion at all gestational ages with exceptions for the mother's life or to prevent "serious risk of substantial and irreversible impairment of a major bodily function." After the state supreme court manufactured a state constitutional "right to abortion", Tennesseans passed a constitutional amendment in 2014 declaring "[n]othing in this Constitution secures or protects a right to abortion or requires the funding of an abortion."

Pro-life conservatives hold a supermajority both the State Senate and House of Representatives. In the past couple of years, Tennessee has enacted a law requiring the humane disposal of aborted fetal remains and a comprehensive law with a fetal heartbeat protection, informed consent enhancements, and prenatal nondiscrimination provisions. Tennessee also enacted chemical abortion health and safety protections this year.

The judiciary is also firmly in pro-life hands, with the state supreme court controlled by pro-life conservatives. Judicial selection is by a hybrid form of gubernatorial selection, with the governor appointing candidates to the Tennessee Supreme Court and the state legislature confirming them. Tennessee is in ongoing litigation over its Heartbeat law, cascading gestational limits, and prenatal nondiscrimination law, most of which have been enjoined by courts. The state also is defending its required disclosure of the chemical abortion reversal procedure, and the provision is temporarily enjoined.

Governor Bill Lee, who was re-elected in the 2022 Mid-Terms by a large majority, supports Life and has signed many Life-affirming bills into law. While signing Tennessee's comprehensive 2020 abortion legislation, Governor Lee stated, "I believe that every human life is precious, and we have a responsibility to protect it."

According to AUL's *Unsafe* project, Tennessee licenses and inspects abortion businesses, but the scope of the inspections focus on the building and facility codes. Citations include unsanitary

environments in the procedure and sterilization rooms, as well as a surgical scrub being used for multiple patients.

### Constitutional Provision

#### **Tenn. Const. art. I, § 36**

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.

### Statutory Prohibitions

#### **Tenn. Code § 39-15-213**

(a) As used in this section:

(1) “Abortion” means the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a woman known to be pregnant with intent other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to terminate an ectopic or molar pregnancy, or to remove a dead fetus;

(2) “Fertilization” means that point in time when a male human sperm penetrates the zona pellucida of a female human ovum;

(3) “Pregnant” means the human female reproductive condition of having a living unborn child within her body throughout the entire embryonic and fetal stages of the unborn child from fertilization until birth; and

(4) “Unborn child” means an individual living member of the species, homo sapiens, throughout the entire embryonic and fetal stages of the unborn child from fertilization until birth.

(b) A person who performs or attempts to perform an abortion commits the offense of criminal abortion. Criminal abortion is a Class C felony.

(c) (1) Notwithstanding subsection (b), a person who performs or attempts to perform an abortion does not commit the offense of criminal abortion if the abortion is performed or attempted by a licensed physician in a licensed hospital or ambulatory surgical treatment center and the following conditions are met:

(A) The physician determined, using reasonable medical judgment, based upon the facts known to the physician at the time, that the abortion was necessary to prevent the death of the pregnant woman or to prevent serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman; and

(B) The physician performs or attempts to perform the abortion in the manner which, using reasonable medical judgment, based upon the facts known to the physician at the time, provides the best opportunity for the unborn child to survive, unless using reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk of death to the pregnant woman or substantial and irreversible impairment of a major bodily function.

(2) An abortion is not authorized under subdivision (c)(1)(A) and a greater risk to the pregnant woman does not exist under subdivision (c)(1)(B) if either determination is based upon a claim or a diagnosis that the pregnant woman will engage in conduct that would result in her death or the substantial and irreversible impairment of a major bodily function or for any reason relating to the pregnant woman's mental health.

(d) Medical treatment provided to the pregnant woman by a licensed physician which results in the accidental death of or unintentional injury to or death of the unborn child shall not be a violation of this section.

(e) This section does not subject the pregnant woman upon whom an abortion is performed or attempted to criminal conviction or penalty.

(f) While this section is in effect, this section supersedes §§ 39-15-211, 39-15-212, 39-15-214, 39-15-215, 39-15-216, 39-15-217, and 39-15-218.

### **Tenn. Code § 39-15-216**

(a) As used in this section:

(1) “Abortion” has the same meaning as defined in § 39-15-211;

(2) “Fetal heartbeat” means cardiac activity or the steady and repetitive rhythmic contraction of the heart of an unborn child;

(3) “Gestational age” or “gestation” has the same meaning as defined in § 39-15-211;

(4) “Medical emergency” has the same meaning as defined in § 39-15-211; provided, that a medical emergency does not include a claim or diagnosis related to the woman's mental health or a claim or diagnosis that the woman will engage in conduct which would result in her death or substantial and irreversible impairment of a major bodily function;

(5) “Unborn child” has the same meaning as defined in § 39-15-211; and

(6) “Viable” has the same meaning as defined in § 39-15-211.

(b) (1) Before performing or inducing, or attempting to perform or induce, an abortion, the physician shall determine the gestational age of the unborn child in accordance with generally accepted standards of medical practice.

(2) A violation of subdivision (b)(1) is a Class C felony.

- (c) (1) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child has a fetal heartbeat. A violation of this subdivision (c)(1) is a Class C felony.
- (2) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is six (6) weeks gestational age or older unless, prior to performing or inducing the abortion, or attempting to perform or induce the abortion, the physician affirmatively determines and records in the pregnant woman's medical record that, in the physician's good faith medical judgment, the unborn child does not have a fetal heartbeat at the time of the abortion. In making the good faith medical determination, the physician shall utilize generally accepted standards of medical practice using current medical technology and methodology applicable to the gestational age of the unborn child and reasonably calculated to determine the existence or non-existence of a fetal heartbeat. A violation of this subdivision (c)(2) is a Class C felony.
- (3) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is eight (8) weeks gestational age or older. A violation of this subdivision (c)(3) is a Class C felony.
- (4) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is ten (10) weeks gestational age or older. A violation of this subdivision (c)(4) is a Class C felony.
- (5) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is twelve (12) weeks gestational age or older. A violation of this subdivision (c)(5) is a Class C felony.
- (6) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is fifteen (15) weeks gestational age or older. A violation of this subdivision (c)(6) is a Class C felony.
- (7) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is eighteen (18) weeks gestational age or order. A violation of this subdivision (c)(7) is a Class C felony.
- (8) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is twenty (20) weeks gestational age or older. A violation of this subdivision (c)(8) is a Class C felony.
- (9) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is twenty-one (21) weeks gestational age or older. A violation of this subdivision (c)(9) is a Class C felony.
- (10) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is twenty-two (22) weeks gestational age or older. A violation of this subdivision (c)(10) is a Class C felony.

(11) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is twenty-three (23) weeks gestational age or older. A violation of this subdivision (c)(11) is a Class C felony.

(12) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is twenty-four (24) weeks gestational age or older. A violation of this subdivision (c)(12) is a Class C felony.

(d) (1) A person shall not be convicted of violating more than one (1) subdivision of subsection (c) for any one (1) abortion that the person performed, induced, or attempted to perform or induce.

(2) This section does not permit the abortion of a viable unborn child.

(e) (1) Subject to compliance with subdivision (e)(2), it is an affirmative defense to criminal prosecution for a violation of a provision of this section that, in the physician's reasonable medical judgment, a medical emergency prevented compliance with the provision.

(2) In order for the affirmative defense in subdivision (e)(1) to apply, a physician who performs or induces, or attempts to perform or induce, an abortion because of a medical emergency must comply with each of the following conditions unless the medical emergency also prevents compliance with the condition:

(A) The physician who performs or induces, or attempts to perform or induce, the abortion certifies in writing that, in the physician's good faith, reasonable medical judgment, based upon the facts known to the physician at the time, compliance with the provision was prevented by a medical emergency;

(B) The physician certifies in writing the available methods or techniques considered and the reasons for choosing the method or technique employed;

(C) If the unborn child is presumed to be viable under § 39-15-211 or determined to be viable under § 39-15-212, the physician performs or induces, or attempts to perform or induce, the abortion in a hospital. The hospital must have appropriate neonatal services for premature infants unless there is no hospital within thirty (30) miles with neonatal services and the physician who intends to perform or induce the abortion has admitting privileges at the hospital where the abortion is to be performed or induced;

(D) If the unborn child is presumed viable under § 39-15-211 or determined to be viable under § 39-15-212, the physician who performs or induces, or attempts to perform or induce, the abortion terminates or attempts to terminate the pregnancy in the manner that provides the best opportunity for the unborn child to survive, unless that physician determines, in the physician's good faith medical judgment, based upon the facts known to the physician at the time, that the termination of the pregnancy in that manner poses a significantly greater risk of the death of the pregnant woman or a significantly greater risk of the substantial and irreversible impairment of a major



bodily function of the pregnant woman than would other available methods of abortion; and

(E) If the unborn child is presumed viable under § 39-15-211 or determined to be viable under § 39-15-212, the physician who performs or induces, or attempts to perform or induce, the abortion has arranged for the attendance in the same room in which the abortion is to be performed or induced, or attempted to be performed or induced, at least one (1) other physician who is to take control of, provide immediate medical care for, and take all reasonable steps necessary to preserve the life and health of the unborn child immediately upon the child's complete expulsion or extraction from the pregnant woman.

(f) A pregnant woman upon whom an abortion is performed or induced, or attempted to be performed or induced, in violation of any provision of this section is not guilty of violating, or of attempting to commit or conspiring to commit a violation of, this section.

(g) When a physician is criminally charged with a violation of this section, the physician shall report the charge to the board of medical examiners in writing within seven (7) calendar days of acquiring knowledge of the charge. The report must include the jurisdiction in which the charge is pending, if known, and must also be accompanied by a copy of the charging documents, if available. A district attorney general shall promptly notify the board of medical examiners when a physician is charged with a violation of this section.

(h) If any provision or provisions of this section or the application thereof to any person, circumstance, or period of gestational age is found to be unenforceable, unconstitutional, or invalid by a court of competent jurisdiction, the same is hereby declared to be severable and the remainder of the section shall remain effective. The general assembly hereby declares that it would have enacted this section and each of its provisions, even if any provision of this section or the application thereof to any person, circumstance, or period of gestational age was later found to be unenforceable, unconstitutional, or invalid.

(i) (1) It is the specific intent of the general assembly in this section to exercise to the greatest extent permitted by law the legitimate, substantial, and compelling state interest in protecting maternal health, and in preserving, promoting, and protecting life and potential life throughout pregnancy by enacting more protective requirements than provided for under this part as it existed prior to July 13, 2020.

(2) When this section is in direct conflict with this part as it existed prior to July 13, 2020, the more protective requirements of this section control over any less protective provision of this part. This section shall not be construed as a repeal, either express or implied, of any provision of this part as it existed prior to July 13, 2020.

(3) The general assembly specifically intends that this part as it existed prior to July 13, 2020, shall remain and be enforceable if, and for so long as, any provisions of this section, or any part or parts thereof, are enjoined or otherwise barred by a court of competent jurisdiction.

(4) This section does not repeal or modify in any way § 39-15-213, as enacted by chapter 351 of the Public Acts of 2019, which shall control upon becoming effective. This section



shall remain and be enforceable if, and for so long as, any provisions of § 39-15-213, or any part or parts thereof, are enjoined or otherwise barred by a court of competent jurisdiction.

## In-Person Dispensing Requirements

### **Tenn. Code § 63-6-1103**

(a) An abortion-inducing drug may be provided only by a qualified physician following the procedures set forth in this part.

(b) A manufacturer, supplier, pharmacy, physician, qualified physician, or other person shall not provide an abortion-inducing drug to a patient via courier, delivery, or mail service.

### Authoritative interpretation by state agencies or courts:

Executive: When FDA permitted pharmacies to dispense abortion pills, the Attorney General sent a [letter](#) sent to pharmacies that mentioned many states prohibit the mailing of abortion drugs, and included a cite to this statute.

### Relationship between statute and other federal/state statutes relating to the subject matter:

Tennessee's prohibition on mailing chemical abortion drugs is consistent with federal law. The Comstock Act, 18 U.S.C. § 1461, explicitly prohibits the mailing of chemical abortion pills. Tennessee has a total ban on abortion (Tenn. Code § 39-15-213).

In 2024, Tennessee enacted a bill that protects minors from abortion trafficking, including prohibiting adults from obtaining chemical abortion pills for minors (S.B. 1971, 2024 Leg. Reg. Sess. (Tenn. 2024)). Although the law is temporarily enjoined, if it goes into effect, it will strengthen the state's current laws aimed at protecting women from the harm of chemical abortion.

## Informed Consent Laws

### **Tenn. Code Ann. § 39-15-202**

(a) Except in a medical emergency that prevents compliance with this subsection (a), no abortion shall be performed or induced upon a pregnant woman unless the woman has provided her informed written consent, given freely and without coercion. Such consent shall be treated as confidential.

(b) In order to ensure that a consent for an abortion is truly informed consent, except in a medical emergency that prevents compliance with this subsection (b) or any of the requirements of subdivisions (b)(1)-(5), no abortion shall be performed or induced upon a pregnant woman unless she has first been informed orally and in person by the attending physician who is to perform the abortion, or by the referring physician, of the following facts and has signed a consent form acknowledging that she has been informed as follows:

- (1) That according to the best judgment of her attending physician or referring physician she is pregnant;
- (2) (A) The probable gestational age of the unborn child at the time the abortion is to be performed, based upon the information provided by her as to the time of her last

menstrual period or after a history, physical examination, and appropriate laboratory tests;

(B) If an ultrasound is performed as part of the examination prior to performing the abortion, the person who performs the ultrasound shall offer the woman the opportunity to learn the results of the ultrasound. If the woman elects to learn the results of the ultrasound, the person who performs the ultrasound or a qualified healthcare provider in the facility performing the ultrasound shall, in addition to any other information provided, inform the woman of the presence or absence of a fetal heartbeat and document the patient has been informed;

(3) That if twenty-four (24) or more weeks have elapsed from the first day of her last menstrual period or twenty-two (22) or more weeks have elapsed from the time of conception, her unborn child may be viable, that is, capable of sustained survival outside of the womb, with or without medical assistance, and that if a viable child is prematurely born alive in the course of an abortion, the physician performing the abortion has a legal obligation to take steps to preserve the life and health of the child;

(4) That numerous public and private agencies and services are available to assist her during her pregnancy and after the birth of her child, if she chooses not to have the abortion, whether she wishes to keep her child or place the child for adoption, and that her attending physician or referring physician will provide her with a list of the agencies and the services available if she so requests; and

(5) The normal and reasonably foreseeable medical benefits, risks, or both of undergoing an abortion or continuing the pregnancy to term.

(c) Except in a medical emergency that prevents compliance with this subsection (c), at the same time the attending physician or referring physician provides the information required by subsection (b), that physician shall inform the pregnant woman of the particular risks associated with her pregnancy and continuing the pregnancy to term, based upon the information known to the physician, as well as the risks of undergoing an abortion, along with a general description of the method of abortion to be used and the medical instructions to be followed subsequent to the abortion.

(d) (1) Except in a medical emergency that prevents compliance with this subdivision (d)(1), no abortion shall be performed until a waiting period of forty-eight (48) hours has elapsed after the attending physician or referring physician has provided the information required by subsections (b) and (c), including the day on which the information was provided. After the forty-eight (48) hours have elapsed and prior to the performance of the abortion, the patient shall sign the consent form required by subsection (b).

(2) If any court temporarily, preliminarily, or permanently enjoins enforcement of subdivision (d)(1) or declares it unconstitutional, then the waiting period imposed by subdivision (d)(1) shall be twenty-four (24) hours, subject to the same medical emergency exception. If the injunction or declaration is subsequently vacated or reversed, the waiting period shall revert to forty-eight (48) hours.

(e) Except in a medical emergency that prevents compliance with subsection (b), the physician performing or inducing the abortion shall provide the pregnant woman with a duplicate copy of the consent form signed by her.

(f) (1) For purposes of subsections (a), (b), (c), (d), and (e), a medical emergency is a condition that, on the basis of the physician's good faith medical judgment, so complicates a medical condition of a pregnant woman as to necessitate an immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function.

(2) When a medical emergency compels the performance of an abortion, the physician shall inform the woman, prior to the abortion if possible, of the medical reasons supporting the physician's judgment that an abortion is necessary to avert her death or to avert substantial and irreversible impairment of major bodily function.

(3) In any case in which a physician has determined that a medical emergency exists that excuses compliance with subsection (a), (b), (c), or (d), the physician shall state in the pregnant woman's medical records the basis for such determination.

(g) For purposes of this section, "the physician", "the attending physician", or "the referring physician" means any person who is licensed to practice medicine or osteopathy in this state.

(h) (1) An intentional or knowing violation of subsection (a), (b), (c), or (d), or subdivision (f)(2) by a physician is a Class E felony.

(2) An intentional, knowing, or reckless violation of subsection (e) or subdivision (f)(3) by a physician is a Class A misdemeanor.

(3) In addition to subdivisions (h)(1) and (2), any physician who intentionally, knowingly, or recklessly violates this section is guilty of unprofessional conduct and such physician's license for the practice of medicine and surgery or osteopathy shall be subject to suspension or revocation in accordance with the procedures provided under title 63, chapters 6 and 9.

(i) (1)

(A) Any private physician's office, ambulatory surgical treatment center, or other facility or clinic in which abortions, other than abortions necessary to prevent the death of the pregnant female, are performed shall conspicuously post a sign in a location defined in subdivision (i)(1)(C) so as to be clearly visible to patients, which reads:

Notice: It is against the law for anyone, regardless of the person's relationship to you, to coerce you into having or to force you to have an abortion. By law, we cannot perform an abortion on you unless we have your freely given and voluntary consent. It is against the law to perform an abortion on you against your will. You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened criminal offense to coerce an abortion.

(B) The sign required pursuant to subdivision (i)(1)(A) shall be printed in languages appropriate for the majority of clients of the facility with lettering that is legible and that is Arial font, at least 40-point bold-faced type.

(C) A facility in which abortions are performed that is a private physician's office or an ambulatory surgical treatment center shall post the required sign in each patient waiting room and patient consultation room used by patients on whom abortions are performed. A hospital or any other facility in which abortions are performed that is not a private physician's office or ambulatory surgical treatment center shall post the required sign in the admissions or registration department used by patients on whom abortions are performed.

(2) (A) An ambulatory surgical treatment center or other licensed facility shall be assessed a civil penalty by the board for licensing health care facilities of two thousand five hundred dollars (\$2,500) for each day of violation in which:

(i) The sign required in subdivision (i)(1)(A) was not posted during business hours when patients or prospective patients were present; and

(ii) An abortion other than an abortion necessary to prevent the death of the pregnant female was performed in the ambulatory surgical treatment center or other licensed facility.

(B) A licensed physician shall be assessed a civil penalty by the physician's title 63 medical licensing board of one thousand dollars (\$1,000) for each day of violation in which:

(i) The sign required in subdivision (i)(1)(A) was not posted during business hours when patients or prospective patients were present at the private physician's office or clinic; and

(ii) The physician performed an abortion in the private physician's office.

(3) The penalty provided for in subdivision (i)(2) is in addition to any other remedies applicable under other law, and subdivision (i)(2) does not preclude prosecution and conviction under any applicable criminal law.

(j) (1) A physician may not perform an abortion unless the physician has admitting privileges at a hospital licensed under title 68 that is located:

(A) In the county in which the abortion is performed; or

(B) In a county adjacent to the county in which the abortion is performed.

(2) The physician who performs an abortion or a healthcare provider licensed pursuant to title 63 under the supervision of the physician shall notify the patient of the location of the hospital at which the physician has privileges and where the patient may receive follow-up care by the physician if complications arise.

Interpretation:

Upheld in *Planned Parenthood v. Sundquist* (2000); The 48-hour waiting period was affirmed in *Adams & Boyle v. Slatery* (2020).

History of Enforcement:

Enforced via health department inspections and reporting.

Relationship statutes/ regulations relating to the subject matter:

2022 trigger law (§ 39-15-213), limiting abortions to emergencies.

Data and Documentation Requirements**Tenn. Code Ann. § 39-15-203**

(a) A physician performing an abortion shall keep a record of each procedure and of the disposition of the aborted fetus or aborted fetal tissue. The physician shall make a report to the commissioner of health with respect thereto at the time and in the form as the commissioner may reasonably prescribe. If the procedure is solely a medication termination and the expulsion of the aborted fetus or aborted fetal tissue does not take place at the facility or clinic where the procedure took place, the physician shall not be required to keep a record of the disposition or report such disposition to the commissioner.

(b) (1) The physician shall note in the section regarding the disposition of the aborted fetus or aborted fetal tissue the method of disposition.

(2) If the aborted fetus or aborted fetal tissue is transferred to a third party for disposition, the name and address of that third party, and the date of the transfer, shall be included on the report.

(3) If an ultrasound was performed prior to the induced termination of pregnancy, the report shall also indicate whether or not a heartbeat was detected.

(c) The method of disposition of an aborted fetus or aborted fetal tissue must comply with [§ 39-15-219](#).

(d) Each record and report made pursuant to this section shall be confidential in nature and shall not be public record open for inspection.

(e) The department of health shall collect the reports submitted pursuant to this section and report quarterly the number of abortions performed in this state to the governor, the speaker of the senate, the speaker of the house of representatives, and the chairs of the health and welfare committee of the senate and the health committee of the house of representatives no later than January 1, April 1, July 1, and October 1 of each year. Any cost associated with implementing this subsection (e) must be provided from within existing resources of the department of health.

**Tenn. Code Ann. § 68-3-505**

Each induced termination of pregnancy that occurs in this state shall be reported to the office of vital records within ten (10) days after the procedure by the person in charge of the institution in which the induced termination of pregnancy was performed. If the induced termination of pregnancy was performed outside an institution, the attending physician shall prepare and file the report. Each such report shall indicate whether the abortion involved a surgical procedure and, if so, which method was employed, and shall indicate which method authorized by § 39-15-219 was employed to dispose of the aborted fetus or aborted fetal tissue. If the aborted fetus or aborted fetal tissue was transferred to a third party for disposition, the report shall indicate the name and address of the third party and the date of the transfer.

Authoritative interpretation by state agencies or courts:

Tenn. Comp. R. & Regs. 1200-07-01-.078 (2011); *id.* 1200-07-04-.903 (2013).

Relationship between statute and other federal/state statutes relating to the subject matter:  
State reports data to CDC.

Other:

2018 and earlier state reports available here: <https://www.tn.gov/health/health-program-areas/statistics/health-data/itop.html>.

Civil Liability Provisions

**Tenn. Code Ann. § 39-15-218(l)–(n)**  
**Civil Remedies for Abortion-Inducing Drugs**  
**Applies to Tenn. Code Ann. § 39-15-218**

(l) Any person upon whom an abortion has been performed that was not in compliance with this section, the father of the unborn child who was the subject of the abortion, or if the woman was younger than eighteen (18) years of age at the time of the chemical abortion or has died as a result of the chemical abortion, the grandparent of the unborn child may bring an action against the person who performed the abortion in knowing or reckless violation of chapter 764 of the Public Acts of 2020 for actual and punitive damages. Any person, upon whom an abortion that was in violation of this section has been attempted, may bring an action against the person who attempted to perform the abortion in knowing or reckless violation of chapter 764 of the Public Acts of 2020 for actual and punitive damages. A court shall not award damages to a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct.

(m) If judgment is rendered in favor of the plaintiff in any action brought pursuant to this section, then the court shall also award the plaintiff reasonable attorney's fees. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, then the court shall award the defendant reasonable attorney's fees.

(n) In each civil or criminal proceeding brought under this section, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted must be preserved from public disclosure if the woman does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that the woman's anonymity must be preserved, shall issue orders to the parties, witnesses, and counsel and direct the



sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. The order must be accompanied by specific written findings explaining why the anonymity of the woman must be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable, less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone who brings an action under subsection (I) shall do so under a pseudonym. This section must not be construed to conceal the identity of the plaintiff or witnesses from the defendant.

**Tenn. Code Ann. § 39-15-218(k)**

**Licensing Penalties Relating to Required Signage for Abortion-Inducing Drugs**

**Applies to Tenn. Code Ann. § 39-15-218**

(k) The department of health shall assess any private office, ambulatory surgical treatment center, or other facility or clinic that negligently fails to post a sign required by subsection (b) a civil penalty of ten thousand dollars (\$10,000). Each day on which an abortion, other than in the case of a medical emergency, is performed in any private office, ambulatory surgical treatment center, or other facility or clinic during which the required sign is not posted is a separate violation.

**Tenn. Code Ann. § 39-15-201(h)(3)**

**Professional Discipline Under Informed Consent Requirements**

**Applies to Tenn. Code Ann. § 39-15-201**

(3) In addition to subdivisions (h)(1) and (2), any physician who intentionally, knowingly, or recklessly violates this section is guilty of unprofessional conduct and such physician's license for the practice of medicine and surgery or osteopathy shall be subject to suspension or revocation in accordance with the procedures provided under title 63, chapters 6 and 9.

**Tenn. Code Ann. § 39-15-201(i)(2)**

**Licensing Penalties Relating to Informed Consent Requirements**

**Applies to Tenn. Code Ann. § 39-15-201**

(2) (A) An ambulatory surgical treatment center or other licensed facility shall be assessed a civil penalty by the board for licensing health care facilities of two thousand five hundred dollars (\$2,500) for each day of violation in which:

(i) The sign required in subdivision (i)(1)(A) was not posted during business hours when patients or prospective patients were present; and

(ii) An abortion other than an abortion necessary to prevent the death of the pregnant female was performed in the ambulatory surgical treatment center or other licensed facility.

(B) A licensed physician shall be assessed a civil penalty by the physician's title 63 medical licensing board of one thousand dollars (\$1,000) for each day of violation in which:

(i) The sign required in subdivision (i)(1)(A) was not posted during business hours when patients or prospective patients were present at the private physician's office or clinic; and



- (ii) The physician performed an abortion in the private physician's office.

**Tenn. Code Ann. § 39-15-201(i)(3)**

**Other Remedies Under Informed Consent Requirements**

**Applies to Tenn. Code Ann. § 39-15-201**

(3) The penalty provided for in subdivision (i)(2) is in addition to any other remedies applicable under other law, and subdivision (i)(2) does not preclude prosecution and conviction under any applicable criminal law.

**Tenn. Code Ann. § 39-15-201(e)**

**Civil Remedies for Trafficking of a Minor for an Abortion**

**Applies to Tenn. Code Ann. § 39-15-201**

(e) (1) A person who violates subsection (a) may be held liable in a civil action for the wrongful death of an unborn child who was aborted.

(2) The civil action may be brought on behalf of the unborn child by:

(A) The biological mother of the unborn child;

(B) The biological father of the unborn child, unless the pregnancy resulted from an act committed by the biological father that constitutes an act of:

(i) Aggravated rape, as defined in § 39-13-502;

(ii) Rape, as defined in § 39-13-503;

(iii) Statutory rape or aggravated statutory rape, as defined in § 39-13-506;

(iv) Rape of a child, as defined in § 39-13-522;

(v) Aggravated rape of a child, as defined in § 39-13-531;

(vi) Statutory rape by an authority figure, as defined in § 39-13-532;

(vii) Especially aggravated rape, as defined in § 39-13-534;

(viii) Especially aggravated rape of a child, as defined in § 39-13-535; or

(ix) Incest, as defined in § 39-15-302; or

(C) A parent or legal guardian of the unemancipated minor.

(3) In a civil action arising from a violation of this section, the plaintiff may recover from the person who violated subsection (a):

(A) Economic damages;

(B) Noneconomic damages;

(C) Punitive damages; and

(D) Reasonable attorney fees and court costs.

(4) As used in this subsection (e), “unborn child” means an individual living member of the species, *homo sapiens*, at any stage of gestation in utero.

(f) (1) This section does not apply to the provision of a medical diagnosis or consultation regarding pregnancy care of an unemancipated minor.

(2) As used in this subsection (f), a medical diagnosis or consultation regarding pregnancy care does not include performing or attempting to perform an abortion, as defined in § 39-15-213, or arranging for travel for the unemancipated minor to procure an abortion or an abortion-inducing drug without the consent of the unemancipated minor's parent or legal guardian.

(3) This section does not prohibit a licensed physician or another person from calling an ambulance for a minor patient if a medical emergency, as defined in § 39-15-218, exists.

## Texas

Now that *Roe* is overturned, Texas is successfully enforcing its conditional law which prohibits virtually all abortions. Texas has around 200 pregnancy resource centers working with state partners to serve women across the state, and the legislature has earmarked \$100 million for Alternatives to Abortion programs. In the wake of Texas’ Heartbeat law, activists have loudly proclaimed they plan to circumvent the law by purchasing abortion-inducing drugs in Mexico or flying women to other states.

The Texas Legislature has pro-life majorities in both chambers. Historically Texas has had a number of pro-life Democrats, but they have switched parties or retired in recent years. Texas is a part-time legislature that meets every other year, so members must be proactive about solving problems when they are in session.

Texas judges are elected in partisan elections and must run for re-election every four or six years, depending on the court. Texas is facing many lawsuits over SB 8, the “Heartbeat Law.” A number of other Texas laws are currently enjoined, but hopefully the state will be able to argue for the removal of injunctions now that *Roe* is overturned.

Re-elected in 2022 to his third term, Governor Greg Abbott is strongly pro-life, and he has signed every pro-life law that’s come to his desk, including extending Medicaid coverage to six months postpartum, and putting \$100 million into Texas’ Alternatives to Abortion program. He has called Texas a “pro-life state” and encouraged his Attorney General, Ken Paxton, to defend Texas’ laws in court. Texas inspects and regulates abortion clinics and AUL’s *Unsafe* project discovered there were

numerous violations, including one doctor's decision to cut costs and dispose of biohazardous waste in standard garbage bags.

## Statutory Prohibitions

### **Tex. Rev. Civ. Stat. arts. 4512.1–4512.4; 4512.6**

If any person shall designedly administer to a pregnant woman or knowingly procure to be administered with her consent any drug or medicine, or shall use towards her any violence or means whatever externally or internally applied, and thereby procure an abortion, he shall be confined in the penitentiary not less than two nor more than five years; if it be done without her consent, the punishment shall be doubled. By "abortion" is meant that the life of the fetus or embryo shall be destroyed in the woman's womb or that a premature birth thereof be caused.

### **Tex. Health & Safety Code §§ 170A.001 et. seq.**

(a) A person may not knowingly perform, induce, or attempt an abortion.

(b) The prohibition under Subsection (a) does not apply if:

(1) the person performing, inducing, or attempting the abortion is a licensed physician;

(2) in the exercise of reasonable medical judgment, the pregnant female on whom the abortion is performed, induced, or attempted has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced; and

(3) the person performs, induces, or attempts the abortion in a manner that, in the exercise of reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in the reasonable medical judgment, that manner would create:

(A) a greater risk of the pregnant female's death; or

(B) a serious risk of substantial impairment of a major bodily function of the pregnant female.

(c) A physician may not take an action authorized under Subsection (b) if, at the time the abortion was performed, induced, or attempted, the person knew the risk of death or a substantial impairment of a major bodily function described by Subsection (b)(2) arose from a claim or diagnosis that the female would engage in conduct that might result in the female's death or in substantial impairment of a major bodily function.

(d) Medical treatment provided to the pregnant female by a licensed physician that results in the accidental or unintentional injury or death of the unborn child does not constitute a violation of this section.

**Tex. Health & Safety Code § 171.204**

(a) Except as provided by Section 171.205, a physician may not knowingly perform or induce an abortion on a pregnant woman if the physician detected a fetal heartbeat for the unborn child as required by Section 171.203 or failed to perform a test to detect a fetal heartbeat.

(b) A physician does not violate this section if the physician performed a test for a fetal heartbeat as required by Section 171.203 and did not detect a fetal heartbeat.

(c) This section does not affect:

(1) the provisions of this chapter that restrict or regulate an abortion by a particular method or during a particular stage of pregnancy; or

(2) any other provision of state law that regulates or prohibits abortion.

**In-Person Dispensing Requirements****Tex. Health & Safety Code §§ 171.063(b-1)–(c)**

(b-1) A manufacturer, supplier, physician, or any other person may not provide to a patient any abortion-inducing drug by courier, delivery, or mail service.

(c) Before the physician provides an abortion-inducing drug, the physician must:

(1) examine the pregnant woman in person;

(2) independently verify that a pregnancy exists;

(3) document, in the woman's medical record, the gestational age and intrauterine location of the pregnancy to determine whether an ectopic pregnancy exists;

(4) determine the pregnant woman's blood type, and for a woman who is Rh negative, offer to administer Rh immunoglobulin (RhoGAM) at the time the abortion-inducing drug is administered or used or the abortion is performed or induced to prevent Rh incompatibility, complications, or miscarriage in future pregnancies;

(5) document whether the pregnant woman received treatment for Rh negativity, as diagnosed by the most accurate standard of medical care; and

(6) ensure the physician does not provide an abortion-inducing drug for a pregnant woman whose pregnancy is more than 49 days of gestational age.

**History of enforcement:**

Executive: AG [sued](#) a New York doctor for providing a TX resident with abortion pills via telemedicine which includes a reference to this statute. When FDA permitted pharmacies to dispense abortion pills, the Attorney General joined a [letter](#) sent to pharmacies that mentioned many states prohibit the mailing of abortion drugs, but did not include a cite to this statute.

Judicial: The court in *Planned Parenthood of Greater Texas Surgical Health Services v. Abbott*, 951 F.Supp.2d 891 (W.D. Tex. 2013), enjoined Tex. Health & Safety Code § 171.063(c), finding it unconstitutional.

Relationship between statute and other federal/state statutes relating to the subject matter:

Texas' prohibition on mailing chemical abortion drugs is consistent with federal law. The Comstock Act, 18 U.S.C. § 1461, explicitly prohibits the mailing of chemical abortion pills.

Texas has a total ban on abortion (Tex. Health & Safety Code § 170A.001 et seq.).

## Informed Consent Laws

### **Tex. Health & Safety Code §§ 171.011**

A person may not perform an abortion without the voluntary and informed consent of the woman on whom the abortion is to be performed.

### **Tex. Health & Safety Code §§ 171.012**

(a) Consent to an abortion is voluntary and informed only if:

(1) the physician who is to perform or induce the abortion informs the pregnant woman on whom the abortion is to be performed or induced of:

(A) the physician's name;

(B) the particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate:

(i) the risks of infection and hemorrhage;

(ii) the potential danger to a subsequent pregnancy and of infertility; and

(iii) the possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer;

(C) the probable gestational age of the unborn child at the time the abortion is to be performed or induced; and

(D) the medical risks associated with carrying the child to term;

(2) the physician who is to perform or induce the abortion or the physician's agent informs the pregnant woman that:

(A) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(B) the father is liable for assistance in the support of the child without regard to whether the father has offered to pay for the abortion; and

(C) public and private agencies provide pregnancy prevention counseling and medical referrals for obtaining pregnancy prevention medications or devices, including emergency contraception for victims of rape or incest;

(3) the physician who is to perform or induce the abortion or the physician's agent:

(A) provides the pregnant woman with the printed materials described by [Section 171.014](#); and

(B) informs the pregnant woman that those materials:

(i) have been provided by the commission;

(ii) are accessible on an Internet website sponsored by the commission;

(iii) describe the unborn child and list agencies that offer alternatives to abortion; and

(iv) include a list of agencies that offer sonogram services at no cost to the pregnant woman;

(4) before any sedative or anesthesia is administered to the pregnant woman and at least 24 hours before the abortion or at least two hours before the abortion if the pregnant woman waives this requirement by certifying that she currently lives 100 miles or more from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility that performs more than 50 abortions in any 12-month period:

(A) the physician who is to perform or induce the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers performs a sonogram on the pregnant woman on whom the abortion is to be performed or induced;

(B) the physician who is to perform or induce the abortion displays the sonogram images in a quality consistent with current medical practice in a manner that the pregnant woman may view them;

(C) the physician who is to perform or induce the abortion provides, in a manner understandable to a layperson, a verbal explanation of the results of the sonogram images, including a medical description of the dimensions of the embryo or fetus, the presence of cardiac activity, and the presence of external members and internal organs; and

(D) the physician who is to perform or induce the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers makes audible the heart auscultation for the pregnant woman to hear, if present, in a quality consistent with current medical practice and provides, in a

manner understandable to a layperson, a simultaneous verbal explanation of the heart auscultation;

(5) before receiving a sonogram under Subdivision (4)(A) and before the abortion is performed or induced and before any sedative or anesthesia is administered, the pregnant woman completes and certifies with her signature an election form that states as follows:

“ABORTION AND SONOGRAM ELECTION

(1) THE INFORMATION AND PRINTED MATERIALS DESCRIBED BY SECTIONS 171.012(a)(1)-(3), TEXAS HEALTH AND SAFETY CODE, HAVE BEEN PROVIDED AND EXPLAINED TO ME.

(2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF AN ABORTION.

(3) TEXAS LAW REQUIRES THAT I RECEIVE A SONOGRAM PRIOR TO RECEIVING AN ABORTION.

(4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW THE SONOGRAM IMAGES.

(5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR THE HEARTBEAT.

(6) I UNDERSTAND THAT I AM REQUIRED BY LAW TO HEAR AN EXPLANATION OF THE SONOGRAM IMAGES UNLESS I CERTIFY IN WRITING TO ONE OF THE FOLLOWING:

\_\_\_\_\_ I AM PREGNANT AS A RESULT OF A SEXUAL ASSAULT, INCEST, OR OTHER VIOLATION OF THE TEXAS PENAL CODE THAT HAS BEEN REPORTED TO LAW ENFORCEMENT AUTHORITIES OR THAT HAS NOT BEEN REPORTED BECAUSE I REASONABLY BELIEVE THAT DOING SO WOULD PUT ME AT RISK OF RETALIATION RESULTING IN SERIOUS BODILY INJURY.

\_\_\_\_\_ I AM A MINOR AND OBTAINING AN ABORTION IN ACCORDANCE WITH JUDICIAL BYPASS PROCEDURES UNDER CHAPTER 33, TEXAS FAMILY CODE.

\_\_\_\_\_ MY UNBORN CHILD HAS AN IRREVERSIBLE MEDICAL CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE DIAGNOSTIC PROCEDURES AND DOCUMENTED IN MY MEDICAL FILE.

(7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL AND WITHOUT COERCION.

(8) FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER 245, TEXAS HEALTH AND SAFETY CODE, OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD ONLY:

I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER 245 OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD, I WAIVE THE REQUIREMENT TO WAIT 24 HOURS AFTER THE SONOGRAM IS PERFORMED BEFORE RECEIVING THE ABORTION PROCEDURE. MY PLACE OF RESIDENCE IS: \_\_\_\_\_.

SIGNATURE

DATE”;

(6) before the abortion is performed or induced, the physician who is to perform or induce the abortion receives a copy of the signed, written certification required by Subdivision (5); and



(7) the pregnant woman is provided the name of each person who provides or explains the information required under this subsection.

(a-1) During a visit made to a facility to fulfill the requirements of Subsection (a), the facility and any person at the facility may not accept any form of payment, deposit, or exchange or make any financial agreement for an abortion or abortion-related services other than for payment of a service required by Subsection (a). The amount charged for a service required by Subsection (a) may not exceed the reimbursement rate established for the service by the executive commissioner for statewide medical reimbursement programs.

(b) The information required to be provided under Subsections (a)(1) and (2) may not be provided by audio or video recording and must be provided at least 24 hours before the abortion is to be performed:

(1) orally and in person in a private and confidential setting if the pregnant woman currently lives less than 100 miles from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility that performs more than 50 abortions in any 12-month period; or

(2) orally by telephone on a private call or in person in a private and confidential setting if the pregnant woman certifies that the woman currently lives 100 miles or more from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility that performs more than 50 abortions in any 12-month period.

(c) When providing the information under Subsection (a)(3), the physician or the physician's agent must provide the pregnant woman with the address of the Internet website on which the printed materials described by [Section 171.014](#) may be viewed as required by [Section 171.014\(e\)](#).

(d) The information provided to the woman under Subsection (a)(2)(B) must include, based on information available from the Office of the Attorney General and the United States Department of Health and Human Services Office of Child Support Enforcement for the three-year period preceding the publication of the information, information regarding the statistical likelihood of collecting child support.

(e) The department is not required to republish informational materials described by Subsection (a)(2)(B) because of a change in information described by Subsection (d) unless the statistical information in the materials changes by five percent or more.

(f) The physician who is to perform the abortion, or the physician's designee, shall in person hand to the pregnant woman a copy of the informational materials described by [Section 171.014](#):

(1) on the day of the consultation required under Subsection (a)(4) for a pregnant woman who lives less than 100 miles from the nearest abortion

provider that is a facility licensed under Chapter 245 or a facility in which more than 50 abortions are performed in any 12-month period; or

(2) before any sedative or anesthesia is administered to the pregnant woman on the day of the abortion and at least two hours before the abortion if the woman lives 100 miles or more from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility in which more than 50 abortions are performed in any 12-month period.

### **Tex. Health & Safety Code §§ 171.013**

(a) The physician or the physician's agent shall furnish copies of the materials described by [Section 171.014](#) to the pregnant woman at least 24 hours before the abortion is to be performed and shall direct the pregnant woman to the Internet website required to be published under [Section 171.014\(e\)](#). The physician or the physician's agent may furnish the materials to the pregnant woman by mail if the materials are mailed, restricted delivery to addressee, at least 72 hours before the abortion is to be performed.

(b) A physician or the physician's agent is not required to furnish copies of the materials if the woman provides the physician with a written statement that she chooses to view the materials on the Internet website sponsored by the department.

(c) The physician and the physician's agent may disassociate themselves from the materials and may choose to comment on the materials or to refrain from commenting.

### **Tex. Health & Safety Code §§ 171.014**

(a) The department shall publish informational materials that include:

(1) the information required to be provided under [Sections 171.012\(a\)\(1\)\(B\) and \(D\)](#) and [\(a\)\(2\)\(A\), \(B\), and \(C\)](#); and

(2) the materials required by [Sections 171.015](#) and [171.016](#).

(b) The materials shall be published in:

(1) English and Spanish;

(2) an easily comprehensible form; and

(3) a typeface large enough to be clearly legible.

(c) The materials shall be available at no cost from the department on request. The department shall provide appropriate quantities of the materials to any person.

(d) The department shall annually review the materials to determine if changes to the contents of the materials are necessary. The executive commissioner shall adopt rules necessary for considering and making changes to the materials.

(e) The department shall develop and maintain an Internet website to display the information required to be published under this section. In developing and maintaining the website the department shall, to the extent reasonably practicable, safeguard the website against alterations by anyone other than the department and shall monitor the website each day to prevent and correct tampering. The department shall ensure that the website does not collect or maintain information regarding access to the website.

(f) In addition to any other organization or entity, the department shall use the American College of Obstetricians and Gynecologists as the resource in developing information required to be provided under [Sections 171.012\(a\)\(1\)\(B\) and \(D\)](#), [Sections 171.012\(a\)\(2\)\(A\), \(B\), and \(C\)](#), and [Section 171.016](#), and in maintaining the department's Internet website.

### **Tex. Health & Safety Code §§ 171.015**

The informational materials must include:

(1) geographically indexed materials designed to inform the pregnant woman of public and private agencies and services that:

(A) are available to assist a woman through pregnancy, childbirth, and the child's dependency, including:

(i) a comprehensive list of adoption agencies;

(ii) a description of the services the adoption agencies offer;

(iii) a description of the manner, including telephone numbers, in which an adoption agency may be contacted; and

(iv) a comprehensive list of agencies and organizations that offer sonogram services at no cost to the pregnant woman;

(B) do not provide abortions or abortion-related services or make referrals to abortion providers; and

(C) are not affiliated with organizations that provide abortions or abortion-related services or make referrals to abortion providers; and

(2) a toll-free, 24-hour telephone number that may be called to obtain an oral list and description of agencies described by Subdivision (1) that are located near the caller and of the services the agencies offer.

### **Tex. Health & Safety Code §§ 171.016**

(a) The informational materials must include materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any relevant information on the possibility of the unborn child's survival.

(b) The materials must include color pictures representing the development of the child at two-week gestational increments. The pictures must contain the dimensions of the unborn child and must be realistic.

(c) The materials provided under this section must be objective and nonjudgmental and be designed to convey only accurate scientific information about the unborn child at the various gestational ages.

Interpretation:

Upheld in *Planned Parenthood v. Abbott* (2013); The ultrasound requirement was affirmed in *Texas Medical Providers v. Lakey* (2012)

History of Enforcement:

Enforced via HHSC inspections and reporting.

Relationship statutes/ regulations relating to the subject matter:

SB 8 (2021) and the 2022 trigger law (§ 171.208), limiting abortions.

Data and Documentation Requirements

**Tex. Health & Safety Code § 171.006**

(a) In this section, “abortion complication” or “adverse event” means any harmful event or adverse outcome with respect to a patient related to an abortion that is performed or induced on the patient and that is diagnosed or treated by a health care practitioner or at a health care facility and includes:

- (1) shock;
- (2) uterine perforation;
- (3) cervical laceration;
- (4) hemorrhage;
- (5) aspiration or allergic response;
- (6) infection;
- (7) sepsis;
- (8) death of the patient;
- (9) incomplete abortion;

- (10) damage to the uterus;
- (11) an infant born alive after the abortion;
- (12) blood clots resulting in pulmonary embolism or deep vein thrombosis;
- (13) failure to actually terminate the pregnancy;
- (14) pelvic inflammatory disease;
- (15) endometritis;
- (16) missed ectopic pregnancy;
- (17) cardiac arrest;
- (18) respiratory arrest;
- (19) renal failure;
- (20) metabolic disorder;
- (21) embolism;
- (22) coma;
- (23) placenta previa in subsequent pregnancies;
- (24) preterm delivery in subsequent pregnancies;
- (25) fluid accumulation in the abdomen;
- (26) hemolytic reaction resulting from the administration of ABO-incompatible blood or blood products;
- (27) adverse reactions to anesthesia or other drugs; or
- (28) any other adverse event as defined by the United States Food and Drug Administration's criteria provided by the MedWatch Reporting System.

(b) The reporting requirements of this section apply only to:

(1) a physician who:

(A) performs or induces at an abortion facility an abortion that results in an abortion complication diagnosed or treated by that physician; or

(B) diagnoses or treats an abortion complication that is the result of an abortion performed or induced by another physician; or

(2) a health care facility that is a hospital, abortion facility, freestanding emergency medical care facility, or health care facility that provides emergency medical care, as defined by [Section 773.003](#).

(c) A physician described by Subsection (b)(1) shall electronically submit to the commission in the form and manner prescribed by commission rule a report on each abortion complication diagnosed or treated by that physician not later than the end of the third business day after the date on which the complication is diagnosed or treated. Each health care facility described by Subsection (b)(2) shall electronically submit to the commission in the form and manner prescribed by commission rule a report on each abortion complication diagnosed or treated at the facility not later than the 30th day after the date on which the complication is diagnosed or treatment is provided for the complication.

(d) The commission shall develop a form for reporting an abortion complication under Subsection (c) and publish the form on the commission's Internet website. The executive commissioner by rule may adopt procedures to reduce duplication in reporting under this section.

(e) A report under this section may not identify by any means the physician performing an abortion, other than a physician described by Subsection (b)(1), or the patient on whom the abortion was performed.

(f) A report under this section must identify the name of the physician submitting the report or the name and type of health care facility submitting the report and must include, if known, for each abortion complication:

- (1) the date of the abortion that caused or may have caused the complication;
- (2) the type of abortion that caused or may have caused the complication;
- (3) the gestational age of the fetus at the time the abortion was performed;
- (4) the name and type of the facility in which the abortion was performed;
- (5) the date the complication was diagnosed or treated;
- (6) the name and type of any facility other than the reporting facility in which the complication was diagnosed or treated;
- (7) a description of the complication;
- (8) the patient's year of birth, race, marital status, and state and county of residence;
- (9) the date of the first day of the patient's last menstrual period that occurred before the date of the abortion that caused or may have caused the complication;

(10) the number of previous live births of the patient; and

(11) the number of previous induced abortions of the patient.

(g) Except as provided by [Section 245.023](#), all information and records held by the commission under this section are confidential and are not open records for the purposes of Chapter 552, Government Code. That information may not be released or made public on subpoena or otherwise, except release may be made:

(1) for statistical purposes, but only if a person, patient, or health care facility is not identified;

(2) with the consent of each person, patient, and facility identified in the information released;

(3) to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter; or

(4) to appropriate state licensing boards to enforce state licensing laws.

(h) A report submitted under this section must include the most specific, accurate, and complete reporting for the highest level of specificity.

(i) The commission shall develop and publish on the commission's Internet website an annual report that aggregates on a statewide basis each abortion complication required to be reported under Subsection (f) for the previous calendar year. The annual report may not include any duplicative data.

(j) A physician described by Subsection (b)(1) or health care facility that violates this section is subject to a civil penalty of \$500 for each violation. The attorney general, at the request of the commission or appropriate licensing agency, may file an action to recover a civil penalty assessed under this subsection and may recover attorney's fees and costs incurred in bringing the action. Each day of a continuing violation constitutes a separate ground for recovery.

(k) The third separate violation of this section constitutes cause for the revocation or suspension of a physician's or health care facility's license, permit, registration, certificate, or other authority or for other disciplinary action against the physician or facility by the appropriate licensing agency.

(l) The commission shall notify the Texas Medical Board of any violations of this section by a physician.

### **Tex. Health & Safety Code § 245.011**

(a) A physician who performs an abortion at an abortion facility must complete and submit a monthly report to the department on each abortion performed by the physician at the abortion facility. The report must be submitted on a form provided by the department. . . .

(c) The report must include:



- (1) whether the abortion facility at which the abortion is performed is licensed under this chapter;
- (2) the patient's year of birth, race, marital status, and state and county of residence;
- (3) the type of abortion procedure;
- (4) the date the abortion was performed;
- (5) whether the patient survived the abortion, and if the patient did not survive, the cause of death;
- (6) the probable post-fertilization age of the unborn child based on the best medical judgment of the attending physician at the time of the procedure;
- (7) the date, if known, of the patient's last menstrual cycle;
- (8) the number of previous live births of the patient;
- (9) the number of previous induced abortions of the patient;
- (10) whether the abortion was performed or induced because of a medical emergency and any medical condition of the pregnant woman that required the abortion . . . .

Authoritative interpretation by state agencies or courts:

26 Tex. Admin. Code §§ 504.4 to .5 (2024).

Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

Other:

State reports available here: <https://www.hhs.texas.gov/about/records-statistics/data-statistics/itop-statistics>.

## Civil Liability Provisions

### **Tex. Health & Safety Code § 170A.005**

#### **Civil Remedies for Elective Abortion**

#### **Applies to Tex. Health & Safety Code § 170A.002**

A person who violates Section 170A.002 is subject to a civil penalty of not less than \$100,000 for each violation. The attorney general shall file an action to recover a civil penalty assessed under this section and may recover attorney's fees and costs incurred in bringing the action.

### **Tex. Health & Safety Code § 170A.006**

#### **Civil Remedies for Elective Abortion**

#### **Applies to Tex. Health & Safety Code § 170A**

The fact that conduct is subject to a civil or criminal penalty under this chapter does not abolish or impair any remedy for the conduct that is available in a civil suit.

### **Tex. Health & Safety Code § 170A.007**

**Professional Discipline for Elective Abortion**  
**Applies to Tex. Health & Safety Code § 170A.002**

In addition to any other penalty that may be imposed under this chapter, the appropriate licensing authority shall revoke the license, permit, registration, certificate, or other authority of a physician or other health care professional who performs, induces, or attempts an abortion in violation of Section 170A.002.

**Tex. Health & Safety Code § 171.006(j)–(l)**  
**Licensing Penalties Under Reporting Complications Requirements**  
**Applies to Tex. Health & Safety Code § 171.006**

(j) A physician described by Subsection (b)(1) or health care facility that violates this section is subject to a civil penalty of \$500 for each violation. The attorney general, at the request of the commission or appropriate licensing agency, may file an action to recover a civil penalty assessed under this subsection and may recover attorney's fees and costs incurred in bringing the action. Each day of a continuing violation constitutes a separate ground for recovery.

(k) The third separate violation of this section constitutes cause for the revocation or suspension of a physician's or health care facility's license, permit, registration, certificate, or other authority or for other disciplinary action against the physician or facility by the appropriate licensing agency.

(l) The commission shall notify the Texas Medical Board of any violations of this section by a physician.

**Tex. Health & Safety Code § 171.064**  
**Professional Discipline for Abortion-Inducing Drugs**  
**Applies to Tex. Health & Safety Code §§ 171.061 through 171.066**

(a) The Texas Medical Board may take disciplinary action under Chapter 164, Occupations Code, or assess an administrative penalty under Subchapter A, Chapter 165, Occupations Code,<sup>1</sup> against a person who violates Section 171.063.

**Tex. Health & Safety Code § 171.208**  
**Civil Remedies Under Heartbeat Law**  
**Tex. Health & Safety Code §§ 171.201 through 171.212**

(a) Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against any person who:

(1) performs or induces an abortion in violation of this subchapter;

(2) knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of this subchapter, regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of this subchapter; or

(3) intends to engage in the conduct described by Subdivision (1) or (2).

(b) If a claimant prevails in an action brought under this section, the court shall award:

(1) injunctive relief sufficient to prevent the defendant from violating this subchapter or engaging in acts that aid or abet violations of this subchapter;

(2) statutory damages in an amount of not less than \$10,000 for each abortion that the defendant performed or induced in violation of this subchapter, and for each abortion performed or induced in violation of this subchapter that the defendant aided or abetted; and

(3) costs and attorney's fees.

(c) Notwithstanding Subsection (b), a court may not award relief under this section in response to a violation of Subsection (a)(1) or (2) if the defendant demonstrates that the defendant previously paid the full amount of statutory damages under Subsection (b)(2) in a previous action for that particular abortion performed or induced in violation of this subchapter, or for the particular conduct that aided or abetted an abortion performed or induced in violation of this subchapter.

(d) Notwithstanding Chapter 16, Civil Practice and Remedies Code, or any other law, a person may bring an action under this section not later than the fourth anniversary of the date the cause of action accrues.

(e) Notwithstanding any other law, the following are not a defense to an action brought under this section:

(1) ignorance or mistake of law;

(2) a defendant's belief that the requirements of this subchapter are unconstitutional or were unconstitutional;

(3) a defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violates this subchapter;

(4) a defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

(5) non-mutual issue preclusion or non-mutual claim preclusion;

(6) the consent of the unborn child's mother to the abortion; or

(7) any claim that the enforcement of this subchapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by Section 171.209.

(f) It is an affirmative defense if:

(1) a person sued under Subsection (a)(2) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion had complied or would comply with this subchapter; or

(2) a person sued under Subsection (a)(3) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion will comply with this subchapter.

(f-1) The defendant has the burden of proving an affirmative defense under Subsection (f)(1) or (2) by a preponderance of the evidence.

(g) This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by Section 8, Article I, Texas Constitution.

(h) Notwithstanding any other law, this state, a state official, or a district or county attorney may not intervene in an action brought under this section. This subsection does not prohibit a person described by this subsection from filing an amicus curiae brief in the action.

(i) Notwithstanding any other law, a court may not award costs or attorney's fees under the Texas Rules of Civil Procedure or any other rule adopted by the supreme court under Section 22.004, Government Code, to a defendant in an action brought under this section.

(j) Notwithstanding any other law, a civil action under this section may not be brought by a person who impregnated the abortion patient through an act of rape, sexual assault, incest, or any other act prohibited by Sections 22.011, 22.021, or 25.02, Penal Code.

### **Tex. Family Code § 33.012**

#### **Civil Remedies Under Parental Consent Requirements**

#### **Applies to Tex. Family Code §§ 33.001 through 33.014**

(a) A person who is found to have intentionally, knowingly, recklessly, or with gross negligence violated this chapter is liable to this state for a civil penalty of not less than \$2,500 and not more than \$10,000.

(b) Each performance or attempted performance of an abortion in violation of this chapter is a separate violation.

(c) A civil penalty may not be assessed against:

- (1) a minor on whom an abortion is performed or attempted; or
- (2) a judge or justice hearing a court proceeding conducted under Section 33.003 or 33.004.

(d) It is not a defense to an action brought under this section that the minor gave informed and voluntary consent.

(e) The attorney general shall bring an action to collect a penalty under this section.

## Utah

After *Roe*, Utah has a conditional law that will limit abortion at all gestational ages once it is able to go into effect. Currently, abortion is limited only to 18 weeks. Traditionally pro-life, Utah has further strengthened its protections for women and unborn children in recent years. The Utah legislature has resolved “that unborn children have inherent and inalienable rights that are entitled to protection by the state of Utah pursuant to the provisions of the Utah Constitution” and it will “protect and guarantee to unborn children their inherent and inalienable right to life.” Accordingly, Utah has comprehensive informed consent safeguards, including a 72-hour reflection period and informational disclosures. The state requires the dignified disposition of fetal remains and restricts public funding of abortion.

Utah employs a Missouri-style model for judicial selection, whereby the governor appoints supreme court justices from a list prepared by a nominating commission, and the Utah Senate approves the appointment. The Utah Supreme Court is controlled by conservative justices.

Utah Governor Spencer Cox is outspokenly pro-life and campaigned on protecting the right to life of unborn children. While in office, he signed a bill that amended the Utah Child Support Act to require an unmarried father to help pay for medical costs related to pregnancy. In response to the *Dobbs* decision, Governor Cox and Lieutenant Governor Deidre Henderson issued a joint statement in which they called themselves “pro-life advocates” and noted their “wholehearted[] support” for the ruling.

According to AUL’s *Unsafe* project, Utah has a regulatory framework in place for inspecting abortion businesses, although the scope of those regulations appears to be lacking. Most of the citations focused on building and facility safety codes. Some inspection reports show health and violations, such as improper authentication of patient files and failing to monitor water temperature.

### Statutory Prohibitions

#### **Utah Code Ann. § 76-7-302**

- (1) An abortion may be performed in this state only by a physician.
- (2) An abortion may be performed in this state only under the following circumstances:
  - (a) the unborn child has not reached 18 weeks gestational age;
  - (b) the unborn child has reached 18 weeks gestational age, and:
    - (i) the abortion is necessary to avert:
      - (A) the death of the woman on whom the abortion is performed; or

(B) a serious physical risk of substantial impairment of a major bodily function of the woman on whom the abortion is performed; or

(ii) subject to Subsection (4), two physicians who practice maternal fetal medicine concur, in writing, in the patient's medical record that the fetus has a fetal abnormality that in the physicians' reasonable medical judgment is incompatible with life; or

(c) the unborn child has not reached 18 weeks gestational age and:

(i) (A) the woman is pregnant as a result of:

(I) rape, as described in Section 76-5-402;

(II) rape of a child, as described in Section 76-5-402.1; or

(III) incest, as described in Subsection 76-5-406(2)(j) or Section 76-7-102; or

(B) the pregnant child is under the age of 14; and

(ii) before the abortion is performed, the physician who performs the abortion:

(A) for an abortion authorized under Subsection (2)(c)(i)(A), verifies that the incident described in Subsection (2)(c)(i)(A) has been reported to law enforcement; and

(B) if applicable, complies with the requirements of Section 80-2-602.

(3) An abortion may be performed only in an abortion clinic or a hospital, unless it is necessary to perform the abortion in another location due to a medical emergency.

(4) If the unborn child has been diagnosed with a fetal abnormality that is incompatible with life, at the time of the diagnosis, the physician shall inform the woman, both verbally and in writing, that perinatal hospice and perinatal palliative care services are available and are an alternative to abortion.

(5) A physician who performs an abortion under Subsection (2)(c) shall:

(a) maintain an accurate record as to the manner in which the physician conducted the verification under Subsection (2)(c)(ii)(A); and

(b) report the information described in Subsection (5)(a) to the department in accordance with Section 76-7-313.

## Informed Consent Laws

### **Utah Code Ann. §§ 76-7-305 through 76-7-305.5**

- (1) A person may not perform an abortion, unless, before performing the abortion, the physician who will perform the abortion obtains from the woman on whom the abortion is to be performed a voluntary and informed written consent that is consistent with:
  - (a) Section 8.08 of the American Medical Association's Code of Medical Ethics, Current Opinions; and
  - (b) the provisions of this section.
- (2) Except as provided in Subsection (8), consent to an abortion is voluntary and informed only if, at least 72 hours before the abortion:
  - (a) a staff member of an abortion clinic or a hospital, physician, registered nurse, nurse practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or physician's assistant presents the information module to the pregnant woman;
  - (b) the pregnant woman views the entire information module and presents evidence to the individual described in Subsection (2)(a) that the pregnant woman viewed the entire information module;
  - (c) after receiving the evidence described in Subsection (2)(b), the individual described in Subsection (2)(a):
    - (i) documents that the pregnant woman viewed the entire information module;
    - (ii) gives the pregnant woman, upon her request, a copy of the documentation described in Subsection (2)(c)(i); and
    - (iii) provides a copy of the statement described in Subsection (2)(c)(i) to the physician who is to perform the abortion, upon request of that physician or the pregnant woman;
  - (d) after the pregnant woman views the entire information module, the physician who is to perform the abortion, the referring physician, a physician, a registered nurse, nurse practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or physician's assistant, in a face-to-face consultation in any location in the state, orally informs the woman of:
    - (i) the nature of the proposed abortion procedure;
    - (ii) specifically how the procedure described in Subsection (2)(d)(i) will affect the fetus;
    - (iii) the risks and alternatives to the abortion procedure or treatment;



- (iv) the options and consequences of aborting a medication-induced abortion, if the proposed abortion procedure is a medication-induced abortion;
- (v) the probable gestational age and a description of the development of the unborn child at the time the abortion would be performed;
- (vi) the medical risks associated with carrying her child to term;
- (vii) the right to view an ultrasound of the unborn child, at no expense to the pregnant woman, upon her request; and
- (viii) when the result of a prenatal screening or diagnostic test indicates that the unborn child has or may have Down syndrome, the department's website, which contains the information described in Section 26B-7-106, including the information on the informational support sheet; and
- (e) after the pregnant woman views the entire information module, a staff member of the abortion clinic or hospital provides to the pregnant woman:
  - (i) on a document that the pregnant woman may take home:
    - (A) the address for the department's website described in Section 76-7-305.5; and
    - (B) a statement that the woman may request, from a staff member of the abortion clinic or hospital where the woman viewed the information module, a printed copy of the material on the department's website;
  - (ii) a printed copy of the material on the department's website described in Section 76-7-305.5, if requested by the pregnant woman; and
  - (iii) a copy of the form described in Subsection 26B-2-232(3)(a)(i) regarding the disposition of the aborted fetus.
- (3) Before performing an abortion, the physician who is to perform the abortion shall:
  - (a) in a face-to-face consultation, provide the information described in Subsection (2)(d), unless the attending physician or referring physician is the individual who provided the information required under Subsection (2)(d); and
  - (b)
    - (i) obtain from the pregnant woman a written certification that the information required to be provided under Subsection (2) and this Subsection (3) was provided in accordance with the requirements of Subsection (2) and this Subsection (3);
    - (ii) obtain a copy of the statement described in Subsection (2)(c)(i); and
    - (iii) ensure that:

- (A) the woman has received the information described in Subsections 26B-2-232(3) and (4); and
  - (B) if the woman has a preference for the disposition of the aborted fetus, the woman has informed the health care facility of the woman's decision regarding the disposition of the aborted fetus.
- (4) When a medical emergency compels the performance of an abortion, the physician shall inform the woman prior to the abortion, if possible, of the medical indications supporting the physician's judgment that an abortion is necessary.
- (5) If an ultrasound is performed on a woman before an abortion is performed, the individual who performs the ultrasound, or another qualified individual, shall:
  - (a) inform the woman that the ultrasound images will be simultaneously displayed in a manner to permit her to:
    - (i) view the images, if she chooses to view the images; or
    - (ii) not view the images, if she chooses not to view the images;
  - (b) simultaneously display the ultrasound images in order to permit the woman to:
    - (i) view the images, if she chooses to view the images; or
    - (ii) not view the images, if she chooses not to view the images;
  - (c) inform the woman that, if she desires, the person performing the ultrasound, or another qualified person shall provide a detailed description of the ultrasound images, including:
    - (i) the dimensions of the unborn child;
    - (ii) the presence of cardiac activity in the unborn child, if present and viewable; and
    - (iii) the presence of external body parts or internal organs, if present and viewable; and
  - (d) provide the detailed description described in Subsection (5)(c), if the woman requests it.
- (6) The information described in Subsections (2), (3), and (5) is not required to be provided to a pregnant woman under this section if the abortion is performed for a reason described in:
  - (a) Subsection 76-7-302(2)(b)(i), if the treating physician and one other physician concur, in writing, that the abortion is necessary to avert:

- (i) the death of the woman on whom the abortion is performed; or
  - (ii) a risk described in Subsection 76-7-302(2)(b)(i)(B); or
- (b) Subsection 76-7-302(2)(b)(ii).
- (7) In addition to the criminal penalties described in this part, a physician who violates the provisions of this section:
  - (a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102; and
  - (b) shall be subject to:
    - (i) suspension or revocation of the physician's license for the practice of medicine and surgery in accordance with Section 58-67-401 or 58-68-401; and
    - (ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.
- (8) A physician is not guilty of violating this section for failure to furnish any of the information described in Subsection (2) or (3), or for failing to comply with Subsection (5), if:
  - (a) the physician can demonstrate by a preponderance of the evidence that the physician reasonably believed that furnishing the information would have resulted in a severely adverse effect on the physical or mental health of the pregnant woman;
  - (b) in the physician's professional judgment, the abortion was necessary to avert:
    - (i) the death of the woman on whom the abortion is performed; or
    - (ii) a risk described in Subsection 76-7-302(2)(b)(i)(B);
  - (c) the pregnancy was the result of rape or rape of a child, as described in Sections 76-5-402 and 76-5-402.1;
  - (d) the pregnancy was the result of incest, as defined in Subsection 76-5-406(2)(j) and Section 76-7-102; or
  - (e) at the time of the abortion, the pregnant child was 14 years old or younger.
- (9) A physician who complies with the provisions of this section and Section 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain informed consent under Section 78B-3-406.4
- (10) (a) The department shall provide an ultrasound, in accordance with the provisions of Subsection (5)(b), at no expense to the pregnant woman.

(b) A local health department shall refer a pregnant woman who requests an ultrasound described in Subsection (10)(a) to the department.

(11) A physician is not guilty of violating this section if:

(a) the information described in Subsection (2) is provided less than 72 hours before the physician performs the abortion; and

(b) in the physician's professional judgment, the abortion was necessary in a case where:

(i) a ruptured membrane, documented by the attending or referring physician, will cause a serious infection; or

(ii) a serious infection, documented by the attending or referring physician, will cause a ruptured membrane.

Interpretation:

Upheld in *Utah Women's Clinic v. Leavitt* (1999); The 72-hour waiting period was affirmed in *Planned Parenthood v. Herbert* (2016)

History of Enforcement:

Enforced through health department inspections.

Relationship statutes/ regulations relating to the subject matter:

SB 174 (2020), limiting abortions to narrow exceptions.

Data and Documentation Requirements

**Utah Code Ann. § 76-7-313**

(1) In order for the department to maintain necessary statistical information and ensure enforcement of the provisions of this part:

(a) any physician performing an abortion must obtain and record in writing:

(i) the age, marital status, and county of residence of the woman on whom the abortion was performed;

(ii) the number of previous abortions performed on the woman described in Subsection (1)(a)(i);

(iii) the hospital or other facility where the abortion was performed;

(iv) the weight in grams of the unborn child aborted, if it is possible to ascertain;

(v) the pathological description of the unborn child;

(vi) the given gestational age of the unborn child;

(vii) the date the abortion was performed;

- (viii) the measurements of the unborn child, if possible to ascertain;
  - (ix) if applicable, the information obtained under Subsection 76-7-302(5) or 76-7a-201(7); and
  - (x) the medical procedure used to abort the unborn child; and
- (b) the department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Authoritative interpretation by state agencies or courts:

Utah Admin. Code r. 432-600(3)(h) (2017); *id.* r. 432-600-9(4)(f) (2017); *id.* r. 432-600-21(6)(g) (2017); *id.* rs. 436-19-1 to -3 (2024).

Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

Other:

State reports available here: <https://vitalrecords.utah.gov/uncategorized/itop-annual-report-published>.

**Utah Code Ann. § 76-7-305(7)**

**Professional Discipline Under Informed Consent Requirements**

**Utah Code Ann. §§ 76-7-305**

(7) In addition to the criminal penalties described in this part, a physician who violates the provisions of this section:

- (a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102; and
- (b) shall be subject to:
  - (i) suspension or revocation of the physician's license for the practice of medicine and surgery in accordance with Section 58-67-401 or 58-68-401; and
  - (ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.

**Utah Code Ann. § 76-7-314**

**Professional Discipline and Licensing Penalties Under Abortion Chapter**

**Applies to Utah Code Ann. §§ 76-7-301 through 76-7-332**

(5) The Department of Health and Human Services shall report a physician's violation of any provision of this part to the Medical Licensing Board, described in Section 58-67-201.

(6) Any person with knowledge of a physician's violation of any provision of this part may report the violation to the Medical Licensing Board, described in Section 58-67-201.

(7) In addition to the penalties described in this section, the department may take any action described in Section 26B-2-703 against a health care facility if a violation of this chapter occurs at the health care facility.

**Utah Code Ann. § 76-7-316**

**Civil Remedies Under Abortion Chapter**

**Applies to Utah Code Ann. §§ 76-7-301 through 76-7-332**

Nothing in this part shall preclude any person believing himself aggrieved by another under this part, from bringing any other action at common law or other statutory provision.

## Vermont

Vermont has an abysmal record on life, lacking pro-life laws and the most basic legal protections for women considering abortion and preborn children. After *Roe*, abortion remains legal throughout pregnancy in Vermont. Both the State Senate and House of Representatives are controlled by pro-abortion lawmakers; in 2019, the state enacted the “Freedom of Choice Act,” which regards abortion as a fundamental right. In the 2022 Mid-Term election, voters overwhelmingly approved Proposal 5, which amends the state constitution to protect “personal reproductive autonomy” and imposes a strict scrutiny standard of judicial review.

Despite Vermont’s hostility towards life, the state has eight pregnancy resource centers that are dedicated to serving women and families. However, recently the state enacted a law that threatens to penalize pro-life pregnancy resource centers if the attorney general believes they made “deceptive” statements about their services.

Vermont is also one of the few states that has legalized physician-assisted suicide. In 2022, the state legislature passed a law that allows vulnerable individuals to obtain lethal assisted suicide drugs through telemedicine. Only one year later, Vermont enacted a law that removed the residency requirement from the state’s physician-assisted suicide law, opening the state to suicide tourism.

Vermont employs a Missouri-style system for judicial appointment, whereby the governor appoints justices from a nominating commission’s list and the state senate confirms the appointee. In July 2023, pro-life plaintiffs filed a lawsuit in federal court challenging Vermont’s law that targets and harasses pregnancy resource centers for alleged “deceptive” statements.

Republican Governor Phil Scott is pro-abortion, stating, “I have consistently supported a woman’s right to choose.” In response to the *Dobbs* decision, Governor Scott reiterated this position when he called on Congress to “immediately work to codify the right to choose.” The new Attorney General, Charity Clark, voiced her support for abortion during her campaign, and shared her plan “to make Vermont a safe harbor for people seeking abortions and to protect healthcare providers.” Attorney General Clark also said she plans to use Vermont’s Consumer Protection Act to target pro-life pregnancy resource centers.

## Data and Documentation Requirements

### **Vt. Stat. Ann. tit. 18 § 5222**

(a) The following fetal deaths shall be reported by the hospital, physician, or funeral director directly to the Commissioner within seven days after delivery on forms prescribed by the Department: . . .

(2) All therapeutic or induced abortions, as legally authorized to be performed, of any length gestation or weight shall be reported. . . .

(b) The physician who treats a woman as a result of a miscarriage or abortion shall report the fetal death if it is not known to be previously reported under subsection (a) of this section. . . .

Relationship between statute and other federal/state statutes relating to the subject matter:  
State reports data to CDC.

### Other:

State reports available here: <https://www.healthvermont.gov/stats/vital-records-population-data/annual-vital-statistics-reports>.

## **Virginia**

Virginia is one of the states where pro-life laws do not protect human life after *Roe*, as the only gestational limitation in its law is a third-trimester prohibition with broad exceptions. Although Virginia historically had a strong tradition of protection for life, in recent years political changes have significantly eroded it. The Commonwealth enacted a “Reproductive Health Protection Act” in 2020 that eliminated several statutory protections for mothers and infants, including a 24-hour reflection period and informed consent requirements, and expanded abortion practice to nurse practitioners. Although voters ushered in a new pro-life administration in January 2022, the General Assembly remains closely divided, so pro-life advocates will need to think strategically and move prudentially to make gains in the next several years.

Virginia law prohibits partial-birth abortion and provides protection for infants born alive in an abortion, as a component of its conditions for third-trimester abortion. As noted above, as of 2020, informed consent for abortion is only required broadly, with specific protections such as a mandatory counseling period, ultrasound requirements, and information on gestational development, etc. excluded. Both parental notice and notarized consent are required. Licensed physicians and nurse practitioners can perform abortions in the first trimester, and second and third-trimester abortions are limited to physicians. Virginia requires reporting of fetal death including abortion. Currently, Virginia law prohibits the use of taxpayer funding for abortion or abortion referrals in most instances and prohibits insurance companies from covering elective abortion on state exchanges.

## Statutory Prohibitions

### **Va. Code § 18.2-72–8.2-74**



Notwithstanding any of the provisions of § 18.2-71, it shall be lawful for (i) any physician licensed by the Board of Medicine to practice medicine and surgery or (ii) any person jointly licensed by the Boards of Medicine and Nursing as an advanced practice registered nurse and acting within such person's scope of practice to terminate or attempt to terminate a human pregnancy or aid or assist in the termination of a human pregnancy by performing an abortion or causing a miscarriage on any woman during the first trimester of pregnancy.

Notwithstanding any of the provisions of § 18.2-71 and in addition to the provisions of § 18.2-72, it shall be lawful for any physician licensed by the Board of Medicine to practice medicine and surgery, to terminate or attempt to terminate a human pregnancy or aid or assist in the termination of a human pregnancy by performing an abortion or causing a miscarriage on any woman during the second trimester of pregnancy and prior to the third trimester of pregnancy provided such procedure is performed in a hospital licensed by the State Department of Health or operated by the Department of Behavioral Health and Developmental Services.

Notwithstanding any of the provisions of § 18.2-71 and in addition to the provisions of §§ 18.2-72 and 18.2-73, it shall be lawful for any physician licensed by the Board of Medicine to practice medicine and surgery to terminate or attempt to terminate a human pregnancy or aid or assist in the termination of a human pregnancy by performing an abortion or causing a miscarriage on any woman in a stage of pregnancy subsequent to the second trimester provided the following conditions are met:

- (a) Said operation is performed in a hospital licensed by the Virginia State Department of Health or operated by the Department of Behavioral Health and Developmental Services.
- (b) The physician and two consulting physicians certify and so enter in the hospital record of the woman, that in their medical opinion, based upon their best clinical judgment, the continuation of the pregnancy is likely to result in the death of the woman or substantially and irretrievably impair the mental or physical health of the woman.
- (c) Measures for life support for the product of such abortion or miscarriage must be available and utilized if there is any clearly visible evidence of viability.

In the event it is necessary for a licensed physician to terminate a human pregnancy or assist in the termination of a human pregnancy by performing an abortion or causing a miscarriage on any woman in order to save her life, in the opinion of the physician so performing the abortion or causing the miscarriage, §§ 18.2-71, 18.2-73 and 18.2-74 shall not be applicable.

## Informed Consent Laws

### **Va. Code Ann. § 18.2-76**

Before performing any abortion or inducing any miscarriage or terminating a pregnancy as provided in § 18.2-72, 18.2-73, or 18.2-74, the physician or, if such abortion, induction, or termination is to be performed pursuant to § 18.2-72, either the physician or the advanced practice registered nurse authorized pursuant to clause (ii) of § 18.2-72 to perform such abortion, induction, or termination shall obtain the informed written consent of the pregnant woman. However, if the woman has been adjudicated incapacitated by any court of competent jurisdiction or if the physician or, if the abortion, induction, or termination is to be performed pursuant to § 18.2-72, either the physician or the

advanced practice registered nurse authorized pursuant to clause (ii) of § 18.2-72 to perform such abortion, induction, or termination knows or has good reason to believe that such woman is incapacitated as adjudicated by a court of competent jurisdiction, then only after permission is given in writing by a parent, guardian, committee, or other person standing in loco parentis to the woman, may the physician or, if the abortion, induction, or termination is to be performed pursuant to § 18.2-72, either the physician or the advanced practice registered nurse authorized pursuant to clause (ii) of § 18.2-72 to perform such abortion, induction, or termination perform the abortion or otherwise terminate the pregnancy.

Interpretation:

Upheld in *Planned Parenthood v. Camblos* (1998); The ultrasound requirement was affirmed in *Richmond Medical Center v. Herring* (2011)

History of Enforcement:

Non-compliance risks fines under Va. Code Ann. § 18.2-76.1.

Relationship statutes/ regulations relating to the subject matter:

Interacts with Virginia’s 2020 Reproductive Health Protection Act, ensuring access up to 26 weeks.

Data and Documentation Requirements

**Va. Code Ann. § 32.1-264**

A. A fetal death report for each fetal death which occurs in this Commonwealth shall be filed, on a form furnished by the State Registrar, with the registrar of the district in which the delivery occurred or the abortion was performed within three days after such delivery or abortion and shall be registered with such registrar if it has been completed and filed in accordance with this section . . . .

Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

## Washington

Washington has an unfortunate history of opposition to Life, and after *Roe*, state law permits late-term abortion with exceptions for maternal life and health. Washington has failed to enact commonsense, publicly supported laws regarding informed consent, parental involvement, and health and safety standards for abortion businesses. The state has a Freedom of Choice Act which provides “that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions.”

Both the Washington Senate and the House of Representatives are controlled by pro-abortion lawmakers. Recently, Washington has enacted legislation that requires student health plans that cover maternity care to also cover abortion, and expanded abortion practice to physician assistants, advanced registered nurse practitioners, and “other health care provider[s] acting within the provider’s scope of practice.”

Washington Supreme Court justices are selected through a nonpartisan election process. Justices serve for six-year terms and must run for re-election when their terms expire. The state supreme court is comprised of a majority of pro-abortion justices. There is no ongoing abortion litigation in the state.

Governor Jay Inslee is an outspoken abortion advocate. In response to the *Dobbs* leak, he vowed Washington would be a “sanctuary” for women seeking abortion and he would explore how to protect abortion under the state constitution. After the *Dobbs* decision, Governor Inslee stated, “Washington state remains steadfast in our commitment to protecting the ability and right of every patient who comes to our state in need of abortion care, and we will fight like hell to restore that right to patients all across the country.” To this end, the Governor has directed \$1 million to abortion clinics, prohibited Washington State Police from complying with investigations into illegal abortions from other states, and noted interest in a constitutional amendment that would enshrine abortion.

According to AUL’s *Unsafe* project, Washington does not exercise real oversight over abortion businesses. In response to AUL’s public records request, the state health department revealed that Washington has only inspected one location three times since 2010.

## Statutory Prohibitions

### **Wash. Rev. Code § 9.02.110**

The state may not deny or interfere with a pregnant individual's right to choose to have an abortion prior to viability of the fetus, or to protect the pregnant individual's life or health.

A physician, physician assistant, \*advanced registered nurse practitioner, or other health care provider acting within the provider's scope of practice may terminate and a health care provider may assist a physician, physician assistant, \*advanced registered nurse practitioner, or other health care provider acting within the provider's scope of practice in terminating a pregnancy as permitted by this section.

### **Wash. Rev. Code § 9.02.120**

Unless authorized by [RCW 9.02.110](#), any person who performs an abortion on another person shall be guilty of a class C felony punishable under chapter 9A.20 RCW. The state shall not penalize, prosecute, or otherwise take adverse action against an individual based on their actual, potential, perceived, or alleged pregnancy outcomes. Nor shall the state penalize, prosecute, or otherwise take adverse action against someone for aiding or assisting a pregnant individual in exercising their right to reproductive freedom with their voluntary consent.

### **Wash. Rev. Code § 9.02.140**

Any regulation promulgated by the state relating to abortion shall be valid only if:

- (1) The regulation is medically necessary to protect the life or health of the pregnant individual who is terminating the pregnancy,
- (2) The regulation is consistent with established medical practice, and
- (3) Of the available alternatives, the regulation imposes the least restrictions on the pregnant individual's right to have an abortion as defined by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902.

### Data and Documentation Requirements

#### **Wash. Admin. Code § 246-490-100**

Each hospital and facility where lawful induced abortions are performed during the first, second, or third trimester of pregnancy shall, on forms prescribed and supplied by the secretary, report to the department during the following month the number and dates of induced abortions performed during the previous month, giving for each abortion the age of the patient, geographic location of patient's residence, patient's previous pregnancy history, the duration of the pregnancy, the method of abortion, any complications, such as perforations, infections, and incomplete evacuations, the name of the physician or physicians performing or participating in the abortion and such other relevant information as may be required by the secretary. All physicians performing abortions in nonapproved facilities when the physician has determined that termination of pregnancy was immediately necessary to meet a medical emergency, shall also report in the same manner, and shall additionally provide a clear and detailed statement of the facts upon which he or she based his or her judgment of medical emergency.

#### Authoritative interpretation by state agencies or courts:

State court of appeals held that individualized abortion data was exempt from disclosure under the Public Records Act. *Planned Parenthood of Great Nw. v. Bloedow*, 350 P.3d 660 (Wash. Ct. App. 2015).

#### Relationship between statute and other federal/state statutes relating to the subject matter:

State reports data to CDC.

#### Other:

State data available here: <https://doh.wa.gov/data-and-statistical-reports/health-statistics/abortion-and-pregnancy>.

## **West Virginia**

West Virginia has enacted strong pro-life laws that protect both women and preborn children. Following *Roe*, West Virginia restricts abortion at all gestational ages with an exception for the mother's life, and in cases of rape or incest. In 2018, West Virginia's constitution was amended to state, "Nothing in this Constitution secures or protects a right to abortion or requires the funding of abortion."

Pro-life lawmakers enjoy a supermajority in both the State Senate and House of Delegates. In the past few years, West Virginia has enacted legislation to protect born-alive infants, provide informed consent disclosures about chemical abortion, and protect preborn children with disabilities from discriminatory abortions.

Voters elect justices to the West Virginia Supreme Court of Appeals through nonpartisan elections. Justices serve for twelve-year terms. Recently, a federal judge in West Virginia dismissed part of a lawsuit brought by an abortion drug manufacturer, finding that the state's abortion ban does not conflict with the FDA's regulation and approval of chemical abortion pills. Governor Justice is a staunch defender of Life. While in office, he signed pro-life bills into law, and during his 2023 West Virginia State of the State Address, declared, "As long as I'm your governor, I will stand with life, period."

### Constitutional Provision

#### **W. Va. Const. art. VI, § 57**

Nothing in this Constitution secures or protects a right to abortion or requires the funding of abortion.

### Statutory Prohibitions

#### **W. Va. Code § 61-2-8**

(a) Any person other than a licensed medical professional, as defined in § 16-2R-2 of this code, who knowingly and willfully performs, induces, or attempts to perform or induce an abortion, as defined in § 16-2R-2 of this code, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than three nor more than 10 years.

(b) A person who was formerly a licensed medical professional, as defined in § 16-2R-2 of this code and whose license has been revoked pursuant to the provisions of § 16-2R-7 of this code, and who knowingly and willfully performs, induces, or attempts to perform or induce a subsequent abortion, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than three nor more than 10 years.

(c) This section shall not be construed to subject any pregnant female upon whom an abortion is performed or induced or attempted to be performed or induced to a criminal penalty for any violation of this section as a principal, accessory, accomplice, conspirator, or aider and abettor.

(d) The amendments to this section enacted during the third extraordinary session of the Legislature, 2022, shall be effective 90 days from passage.

### In-Person Dispensing Requirements

#### **W. Va. Code § 30-1-26(b)(9)**

Unless provided for by statute or legislative rule, a health care board, referred to in § 30-1-1 *et seq.* of this code, shall propose an emergency rule for legislative approval in accordance with the provisions of § 29A-3-15 *et seq.* of this code to regulate telehealth practice by a telehealth practitioner. The proposed rule shall consist of the following . . . .

A prohibition of prescribing or dispensing an abortifacient.

### **W. Va. Code § 30-3-13a(g)(5)**

A physician or health care provider may not prescribe any drug with the intent of causing an abortion.

### **W. Va. Code, § 30-14-12d**

A physician or health care provider may not prescribe any drug with the intent of causing an abortion.

#### Authoritative interpretation by state agencies or courts:

Executive: AG [defended](#) the state's pro-life laws, including the first two statutes, against an abortion pill manufacturer.

Judicial: In *GenBioPro v Sorsaia*, 2023 WL 549017, No. 3:23-0058 (S.D. W.V. Aug. 24, 2023), the court found that federal law preempted W. Va. Code §§ 30-3-13a(g)(5); 30-1-26(b)(9) and dismissed the defendant's motion to dismiss of those specific claims.

#### Relationship between statute and other federal/state statutes relating to the subject matter:

Although West Virginia law does not expressly prohibit the mailing of chemical abortion drugs, it prohibits the use of telemedicine to prescribe chemical abortion pills. These statutes help to ensure that women receive chemical abortion pills directly from the abortionist rather than through the mail. This is consistent with federal law. The Comstock Act, 18 U.S.C. § 1461, prohibits the mailing of chemical abortion pills. West Virginia has a total ban on abortion (W. Va. Code § 16-2R-3).

### Informed Consent Laws

#### **West Virginia: W. Va. Code §§ 16-2I-1 through 16-2I-5**

An abortion may not be performed in this state except with the voluntary and informed consent of the female upon whom the abortion is to be performed. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if, and only if:

(a) The female is told the following, by telephone or in person, by the physician or the licensed medical professional to whom the responsibility has been delegated by the physician who is to perform the abortion at least 24 hours before the abortion:

(1) The particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies, and infertility;

(2) The probable gestational age of the embryo or fetus at the time the abortion is to be performed;

(3) The medical risks associated with carrying her child to term; and

(4) If a chemical abortion involving the two-drug process of mifepristone is initiated and then a prostaglandin such as misoprostol is planned to be used at a later time, the female shall be informed that:

(A) Some suggest that it may be possible to counteract the intended effects of a mifepristone chemical abortion by taking progesterone if the female changes her mind, before taking the second drug, but this process has not been approved by the Food and Drug Administration.

(B) After the first drug involved in the two-drug process is dispensed in a mifepristone chemical abortion, the physician or agent of the physician shall provide written medical discharge instructions to the pregnant female which shall include the statement:

“If you change your mind and decide to try to counteract the intended effects of a mifepristone chemical abortion, if the second pill has not been taken, please consult with your physician.

(i) You might experience a complete abortion without ever taking misoprostol;

(ii) You might experience a missed abortion, which means the fetus is no longer viable, but the fetus did not leave your body; or

(iii) It is possible that your pregnancy may continue; and

(iv) You should consult with your physician.”

(C) The female shall certify, as part of the informed consent process for any medical procedure, that she has been informed about the above possibilities regarding a chemical abortion.

(D) Notwithstanding any law to the contrary, a physician acting in conformity with the informed consent provisions of this section relating to the possibility of counteracting the intended effects of a chemical abortion, or a physician prescribing a non-Food and Drug Administration approved drug therapy to counteract a chemical abortion is not liable for any loss, damage, physical injury, or death arising from any information provided by the physician related to counteracting the intended effects of a chemical abortion or arising from prescribing a non-Food and Drug Administration approved drug therapy to counteract a chemical abortion.

The information required by this subsection may be provided by telephone without conducting a physical examination or tests of the patient, in which case the information required to be provided may be based on facts supplied by the female to the physician or other licensed health care professional to whom the responsibility has been delegated by the physician and whatever other relevant information is reasonably available to the physician or other licensed health care professional to whom the responsibility has been delegated by the physician. It may not be provided



by a tape recording, but must be provided during a consultation in which the physician or licensed health care professional to whom the responsibility has been delegated by the physician is able to ask questions of the female and the female is able to ask questions of the physician or the licensed health care professional to whom the responsibility has been delegated by the physician.

If a physical examination, tests or the availability of other information to the physician or other licensed health care professional to whom the responsibility has been delegated by the physician subsequently indicate, in the medical judgment of the physician or the licensed health care professional to whom the responsibility has been delegated by the physician, a revision of the information previously supplied to the patient, that revised information may be communicated to the patient at any time before the performance of the abortion procedure.

Nothing in this section may be construed to preclude provision of required information in a language understood by the patient through a translator.

(b) The female is informed, by telephone or in person, by the physician who is to perform the abortion, or by an agent of the physician, at least 24 hours before the abortion procedure:

- (1) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care through governmental or private entities;
- (2) That the father, if his identity can be determined, is liable to assist in the support of her child based upon his ability to pay even in instances in which the father has offered to pay for the abortion;
- (3) That she has the right to review the printed materials described in § 16-2I-3 of this code, that these materials are available on a state-sponsored website and the website address; and
- (4) That the female will be presented with a form which she will be required to execute prior to the abortion procedure that is available pursuant to § 16-2I-3 of this code, and that the form to be presented will inform her of the opportunity to view the ultrasound image and her right to view or decline to view the ultrasound image, if an ultrasound is performed.

The physician or an agent of the physician shall orally inform the female that the materials have been provided by the State of West Virginia and that they describe the embryo or fetus and list agencies and entities which offer alternatives to abortion.

If the female chooses to view the materials other than on the website, then they shall either be provided to her at least 24 hours before the abortion or mailed to her at least 72 hours before the abortion by first class mail in an unmarked envelope.

The information required by this subsection may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to have the printed materials given or mailed to her.

(c) The form required pursuant to subdivision (b)(4) of this section shall include the following information:

- (1) It is a female's decision whether or not to undergo any ultrasound imaging procedure in consultation with her health care provider;
- (2) If an ultrasound is performed in conjunction with the performance of an abortion procedure, the female has the right to view or to decline to view the image; and
- (3) That the female has been previously informed of her opportunity to view the ultrasound image and her right to view or decline to view the ultrasound image. The female shall certify her choice on this form prior to the abortion procedure being performed.

The female shall certify in writing, before the abortion, that the information described in subsections (a) and (b) of this section has been provided to her and that she has been informed of her opportunity to review the information referred to in subdivision (b)(3) of this section.

Before performing the abortion procedure, the physician who is to perform the abortion or the physician's agent shall obtain a copy of the executed certification required by the provisions of subsections (b) and (c) of this section.

#### Interpretation:

Upheld in *West Virginia Women's Health Center v. Panepinto* (1993); The ultrasound requirement was affirmed in *Charleston Women's Medical Center v. Morris* (2018).

#### History of Enforcement:

Non-compliance risks penalties under W. Va. Code § 16-2I-6.

#### Relationship statutes/ regulations relating to the subject matter:

HB 302 (2022), limiting abortions to narrow exceptions.

### Data and Documentation Requirements

#### **W. Va. Code § 16-2M-5**

(a) Any physician who performs or induces an abortion shall report to the Bureau for Public Health. The reporting shall be on a schedule and on forms set forth by the Secretary of the Department of Health and Human Resources annually, no later than December 31. The reports shall include the following information:

- (1) Probable gestational age:

(A) If a determination of probable gestational age was made, whether ultrasound was employed in making the determination, and the week of probable gestational age determined.

(B) If a determination of probable gestational age was not made, the basis of the determination that a medical emergency existed or that there existed a nonmedically viable fetus.

(2) Method of abortion;

(3) If the probable gestational age was determined to have reached the pain capable gestational age, the basis of the determination that there existed a nonmedically viable fetus or that the patient had a condition which so complicated the medical condition of the patient that it necessitated the abortion of her pregnancy in order to avert her death or avert a serious risk of substantial and irreversible physical impairment of a major bodily function; and

(4) If the probable gestational age was determined to have reached the pain capable gestational age, whether the method of abortion used was one that, in reasonable medical judgment, provided the best opportunity for the fetus to survive and, if such a method was not used, the basis of the determination that termination of the pregnancy in that manner would pose a greater risk either of the death of the patient or of the substantial and irreversible physical impairment of a major bodily function of the patient than would other available methods.

(b) Reports required by subsection (a) of this section may not contain the name or the address of the patient whose pregnancy was terminated nor may the report contain any information identifying the patient. These reports shall be maintained in strict confidence by the department, may not be available for public inspection, and may not be made available except pursuant to court order.

(c) Beginning June 30, 2016, and annually after that, the Department of Health and Human Resources shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection (a) of this section. Each report shall provide the statistics for all previous calendar years from the effective date of this section, adjusted to reflect any additional information from late or corrected reports. The Department of Health and Human Resources shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any patient upon whom an abortion was performed or induced.

## **W. Va. Code § 16-2F-6**

(a) A physician performing an abortion upon an unemancipated minor shall provide the secretary a written report of the procedure within thirty days after having performed the abortion. The following information, in addition to any other information which may be required by the secretary, regarding an unemancipated minor receiving the abortion shall be included in the reporting form:

(1) Age;

(2) Educational level;

(3) Previous pregnancies;

- (4) Previous live births;
- (5) Previous abortions;
- (6) Complications, if any, of the abortion being reported;
- (7) Reason for waiver of notification, if such notice was waived; and
- (8) The city and county in which the abortion was performed.

(b) The report shall not contain the name, address or other information by which the unemancipated minor receiving the abortion may be identified.

**W. Va. Code 16-2I-7**

(a) Within ninety days of the effective date of this article, the secretary of the department of health and human resources shall prepare a reporting form for physicians containing a reprint of this article and listing:

- (1) The number of females to whom the information described in subsection (a), section two of this article was provided;
- (2) The number of females to whom the physician or an agent of the physician provided the information described in subsection (b), section two of this article;
- (3) The number of females who availed themselves of the opportunity to obtain a copy of the printed information described in section three of this article other than on the website;
- (4) The number of abortions performed in cases involving medical emergency; and
- (5) The number of abortions performed in cases not involving a medical emergency.

(b) The secretary of the department of health and human resources shall ensure that copies of the reporting forms described in subsection (a) of this section are provided:

- (1) Within one hundred twenty days after the effective date of this article to all physicians licensed to practice in this state;
- (2) To each physician who subsequently becomes newly licensed to practice in this state, at the same time as official notification to that physician that the physician is so licensed; and
- (3) By the first day of December of each year, other than the calendar year in which forms are distributed in accordance with subdivision (1) of this subsection, to all physicians licensed to practice in this state.

(c) By the twenty-eighth day of February of each year following a calendar year in any part of which this act was in effect, each physician who provided, or whose agent provided, information to one or more females in accordance with section two of this article during the previous calendar year shall submit to the secretary of the department of health and human resources a copy of the form described in subsection (a) of this section with the requested data entered accurately and completely.

(d) Reports that are not submitted by the end of a grace period of thirty days following the due date are subject to a late fee of five hundred dollars for each additional thirty-day period or portion of a thirty-day period they are overdue. Any physician required to report in accordance with this section who has not submitted a report, or has submitted only an incomplete report, more than one year following the due date may, in an action brought by the secretary of the department of health and human resources, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

(e) By the first day of August of each year, the secretary of the department of health and human resources shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection (a) of this section. Each report shall also provide the statistics for all previous calendar years, adjusted to reflect any additional information from late or corrected reports. The secretary of the department of health and human resources shall prevent any of the information from being included in the public reports that could reasonably lead to the identification of any physician who performed or treated an abortion, or any female who has had an abortion, in accordance with subsection (a), (b) or (c) of this section. Any information that could reasonably lead to the identification of any physician who performed or treated an abortion, or any female who has had an abortion, in accordance with subsection (a), (b) or (c) of this section is exempt from disclosure under the freedom of information act, article one, chapter twenty-nine-b of this code.

(f) The secretary of the department of health and human resources may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which alter the dates established by subdivision (3), subsection (b) of this section or subsection (c) or (e) of this section or consolidate the forms or reports described in this section with other forms or reports to achieve administrative convenience or fiscal savings or to reduce the burden of reporting requirements, so long as reporting forms are sent to all licensed physicians in the state at least once every year and the report described in subsection (e) of this section is issued at least once every year.

## **W. Va. Code § 16-5-22**

(a) Each abortion, as defined in § 16-2R-2 of this code, which occurs in this state, shall be reported to the section of vital registration no later than the 10th day of the month following the month the procedure was performed by the person in charge of the hospital in which the abortion was performed. The State Registrar shall prepare a form or provide a suitable electronic process for the transmission of the reports from the institution or physician to the section of vital registration. Information to be collected shall include:

- (1) The gestational age of the fetus;
- (2) The state and county of residence of the patient;
- (3) The age of the patient;
- (4) The type of medical or surgical procedure performed;
- (5) The method of payment for the procedure;
- (6) Whether birth defects were known, and if so, what birth defects;

- (7) The date the abortion was performed;
- (8) The exception contained in § 16-2R-3 of this code under which the abortion was performed; and
- (9) Related information as required by the commissioner, other applicable sections of this code, or by the legislative rule . . . .

Relationship between statute and other federal/state statutes relating to the subject matter:  
State reports data to CDC.

Other:

State reports available here:  
[https://dhhr.wv.gov/HSC/publications/recent\\_reports/Pages/recent\\_reports.aspx](https://dhhr.wv.gov/HSC/publications/recent_reports/Pages/recent_reports.aspx).

### Civil Liability Provisions

#### **W. Va. Code §§ 16-2Q-1(j)–(k)**

#### **Civil Remedies and Professional Discipline for Abortion Because of Disability**

#### **Applies to W. Va. Code § 16-2Q-1**

(j) A licensed medical professional who intentionally or recklessly performs or induces an abortion in violation of this section is considered to have acted outside the scope of practice permitted by law or otherwise in breach of the standard of care owed to a patient, and is subject to discipline from the applicable licensure board for that conduct, including, but not limited to, loss of professional license to practice.

(k) A person, not subject to subsection (f) of this section, who intentionally or recklessly performs or induces an abortion in violation of this article is considered to have engaged in the unauthorized practice of medicine in violation of § 30-3-13 of this code, and upon conviction, subject to the penalties contained in that section.

#### Relevant Related Statutes:

W. Va. Code. § 30-3-13: Licensing requirements for the practice of medicine; unauthorized practice of medicine

#### **W. Va. Code § 16-2R-7**

#### **Professional Discipline for Elective Abortion**

#### **Applies to W. Va. Code §§ 16-2R-1 through 16-2R-9**

A licensed medical professional who knowingly and willfully performs, induces, or attempts to perform or induce an abortion, with the intent to violate the provisions of § 16-2R-3 of this code, is subject to disciplinary action by his or her applicable licensing board. If the licensing board finds that the licensed medical professional has knowingly and willfully performed, induced, or attempted to perform or induce an abortion, with the intent to violate the provisions of § 16-2R-3 of this code, the licensing board shall revoke medical professional's license.

#### **W. Va. Code § 16-2F-8**

#### **Civil Remedies and Professional Discipline Under Parental Consent Requirements**

### **Applies to W. Va. Code §§ 16-2F-1 through 16-2F-9**

(a) Any physician or other licensed medical practitioner who intentionally or recklessly performs or induces an abortion in violation of this article is considered to have acted outside the scope of practice permitted by law or otherwise in breach of the standard of care owed to patients, and is subject to discipline from the applicable licensure board for that conduct, including, but not limited to, loss of professional license to practice.

(b) A person, not subject to subsection (a) of this section, who intentionally or recklessly performs or induces an abortion in violation of this article is considered to have engaged in the unauthorized practice of medicine in violation of section thirteen, article three, chapter thirty of this code, and upon conviction, subject to the penalties contained in that section.

(c) In addition to the penalties set forth in subsections (a) and (b) of this section, a patient may seek any remedy otherwise available to such patient by applicable law.

(d) No penalty may be assessed against any patient upon whom an abortion is performed or induced or attempted to be performed or induced.

### **W. Va. Code §§ 16-2i-6, 16-2i-8**

#### **Civil Remedies and Professional Discipline Under Informed Consent Requirements**

### **Applies to W. Va. Code §§ 16-2i-1 through 16-2i-9**

§ 16-2i-6: In every civil or criminal proceeding or action brought under this article, the court shall rule whether the anonymity of any female upon whom an abortion has been performed or attempted shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the female should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest and why no reasonable, less restrictive alternative exists. In the absence of written consent of the female upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings an action under section nine of this article shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

§ 16-2i-8: Any physician or agent thereof who willfully violates the provisions of this article may be subject to sanctions as levied by the licensing board governing his or her profession.

## **Wisconsin**

Wisconsin has a pre-*Roe* statute that limits abortion from the moment of conception. It is currently in litigation. In the meantime, the state prohibits abortions after 20 weeks. The state has comprehensive informed consent safeguards, including a 24-hour reflection period, informational disclosures, and an ultrasound provision. Only licensed physicians may perform abortions and



abortion providers cannot use telemedicine to administer chemical abortion drugs. Wisconsin provides criminal and civil law safeguards against the killing of an unborn child.

The Seventh Circuit affirmed a permanent injunction against a health and safety law requiring physicians to have admitting privileges at a hospital no more than 30 miles from the clinic where the abortion is performed. In light of *Stenberg v. Carhart*, the Seventh Circuit held Wisconsin's partial-birth abortion restriction was unconstitutional.

Wisconsin Supreme Court justices are elected through nonpartisan elections to serve 10-year terms. Justices must run for re-election to remain on the court. The Wisconsin Supreme Court is narrowly Republican-controlled and is considered pro-life leaning. The state's physician-only rule, a provision requiring the same physician who prescribes chemical abortion drugs to physically examine the woman, and a telemedicine restriction are all currently in litigation.

Recently re-elected Wisconsin Governor Tony Evers supports abortion and has publicly affirmed *Roe*. He has vetoed pro-life legislation, including bills to protect born-alive infants, give parents information about their baby's congenital condition, and prevent abortions based solely on the unborn baby's sex, race, or disability. Attorney General Josh Kaul, also re-elected in 2022, is likewise pro-abortion and has stated publicly that he would not investigate or prosecute anyone for having an abortion if the Supreme Court overturns *Roe*. He has also sued the Speaker and Majority Leader of the Legislature to challenge the state's pre-*Roe* law as unenforceable.

According to AUL's *Unsafe* project, Wisconsin appears to lack any regulatory framework for inspecting abortion businesses. After AUL submitted a public records request, the state health department informed AUL legal staff that it does not regulate abortion businesses.

## Statutory Prohibitions

### **Wis. Stat. § 940.15**

(1) In this section, “viability” means that stage of fetal development when, in the medical judgment of the attending physician based on the particular facts of the case before him or her, there is a reasonable likelihood of sustained survival of the fetus outside the womb, with or without artificial support.

(2) Whoever intentionally performs an abortion after the fetus or unborn child reaches viability, as determined by reasonable medical judgment of the woman's attending physician, is guilty of a Class I felony.

(3) Subsection (2) does not apply if the abortion is necessary to preserve the life or health of the woman, as determined by reasonable medical judgment of the woman's attending physician.

(4) Any abortion performed under sub. (3) after viability of the fetus or unborn child, as determined by reasonable medical judgment of the woman's attending physician, shall be performed in a hospital on an inpatient basis.

(5) Whoever intentionally performs an abortion and who is not a physician is guilty of a Class I felony.

(6) Any physician who intentionally performs an abortion under sub. (3) shall use that method of abortion which, of those he or she knows to be available, is in his or her medical judgment most likely to preserve the life and health of the fetus or unborn child. Nothing in this subsection requires a physician performing an abortion to employ a method of abortion which, in his or her medical judgment based on the particular facts of the case before him or her, would increase the risk to the woman. Any physician violating this subsection is guilty of a Class I felony.

(7) Subsections (2) to (6) and s. 939.05, 939.30 or 939.31 do not apply to a woman who obtains an abortion that is in violation of this section or otherwise violates this section with respect to her unborn child or fetus.

### In-Person Dispensing Requirements

#### **Wisconsin: Wis. Stat. § 253.105(2)(b)**

No person may give an abortion-inducing drug to a woman unless the physician who prescribed, or otherwise provided, the abortion-inducing drug for the woman: . . . Is physically present in the room when the drug is given to the woman.

#### Authoritative interpretation by state agencies or courts:

Executive: The AG supports access to chemical abortion. AG joined a [brief](#) supporting the FDA's decision to expand access. AG supports abortion access broadly: he [asked](#) the legislature to repeal the state's pre-*Roe* ban, and [intervened](#) in favor of establishing the Wisconsin Constitution protects access to abortion.

Judicial: *Planned Parenthood of Wis. v. Kaul*, (W.D. Wis. No. 3:19-cv-38) (ongoing litigation). Pro-abortion plaintiffs have challenged Wis. Stat. § 253.105(2)(b), arguing that the law violates the Fourteenth Amendment and Equal protection clause. The case is ongoing.

#### Relationship between statute and other federal/state statutes relating to the subject matter:

Although Wisconsin law does not expressly prohibit the mailing of chemical abortion drugs, Wis. Stat. § 253.105(2)(b) ensures that women receive chemical abortion pills directly from the abortionist rather than through the mail. This is consistent with federal law. The Comstock Act, 18 U.S.C. § 1461, prohibits the mailing of chemical abortion pills.

### Informed Consent Laws

#### **Wisconsin: Wis. Stat. § 253.10**

(1) Legislative findings and intent.

(a) The legislature finds that:

1. Many women now seek or are encouraged to undergo elective abortions without full knowledge of the medical and psychological risks of abortion, development of the unborn child or of alternatives to abortion. An abortion decision is often made under stressful circumstances.
2. The knowledgeable exercise of a woman's decision to have an elective abortion depends on the extent to which the woman receives sufficient information to make a voluntary and informed choice between 2 alternatives of great consequence: carrying a child to birth or undergoing an abortion.
3. The U.S. supreme court has stated: "In attempting to ensure that a woman apprehend the full consequences of her decision, the State furthers the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed." *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 112 U.S. 2791, 2823 (1992).
4. It is essential to the psychological and physical well-being of a woman considering an elective abortion that she receive complete and accurate information on all options available to her in dealing with her pregnancy.
5. The vast majority of elective abortions in this state are performed in clinics that are devoted solely to providing abortions and family planning services. Women who seek elective abortions at these facilities normally do not have a prior patient-physician relationship with the physician who is to perform or induce the abortion, normally do not return to the facility for post-operative care and normally do not continue a patient-physician relationship with the physician who performed or induced the abortion. In most instances, the woman's only actual contact with the physician occurs simultaneously with the abortion procedure, with little opportunity to receive personal counseling by the physician concerning her decision. Because of this, certain safeguards are necessary to protect a woman's right to know.
6. A reasonable waiting period is critical to ensure that a woman has the fullest opportunity to give her voluntary and informed consent before she elects to undergo an abortion.

(b) It is the intent of the legislature in enacting this section to further the important and compelling state interests in all of the following:

1. Protecting the life and health of the woman subject to an elective abortion and, to the extent constitutionally permissible, the life of her unborn child.
2. Fostering the development of standards of professional conduct in the practice of abortion.

3. Ensuring that prior to the performance or inducement of an elective abortion, the woman considering an elective abortion receive personal counseling by the physician and be given a full range of information regarding her pregnancy, her unborn child, the abortion, the medical and psychological risks of abortion and available alternatives to the abortion.

4. Ensuring that a woman who decides to have an elective abortion gives her voluntary and informed consent to the abortion procedure.

Interpretation:

Upheld in *Karlin v. Foust* (1999); The ultrasound requirement was affirmed in *Planned Parenthood v. Doyle* (2000).

History of Enforcement:

Non-compliance risks fines under Wis. Stat. § 253.10(5)

Relationship statutes/ regulations relating to the subject matter:

Wisconsin's 1849 ban (Wis. Stat. § 940.04), currently under litigation.

Data and Documentation Requirements

**Wis. Stat. Ann. § 69.186**

(1) On or before January 15 annually, each hospital, clinic or other facility in which an induced abortion is performed shall file with the department a report for each induced abortion performed in the hospital, clinic or other facility in the previous calendar year. Each report shall contain all of the following information with respect to each patient obtaining an induced abortion in the hospital, clinic or other facility:

- (a) The state and, if this state, the county, of residence.
- (b) Patient number.
- (c) Race.
- (d) Age.
- (e) Marital status.
- (f) Month and year in which the induced abortion was performed.
- (g) Education.
- (h) The number of weeks since the patient's last menstrual period.
- (hf) The probable postfertilization age of the unborn child . . . and whether an ultrasound was used to assist in making the determination of postfertilization age of the unborn child . . . .
- (hm) Whether the abortion was a chemically induced abortion, a surgical abortion or a surgical abortion following a failed or incomplete chemical abortion.
- (i) Complications, if any, resulting from performance of the induced abortion.

(j) If the patient is a minor, whether consent was provided . . . for the abortion and, if so, the relationship of the individual providing consent to the minor . . . .

(k) If the unborn child is considered to be capable of experiencing pain . . . the nature of the medical emergency . . . that the pregnant woman had.

(l) If the unborn child is considered to be capable of experiencing pain . . . , a statement whether the method of abortion used was one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive or, if such a method was not used, the basis of the determination that termination of the pregnancy in that manner posed a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the woman than other available methods.

Relationship between statute and other federal/state statutes relating to the subject matter:  
State reports data to CDC.

Other:

State reports available here: <https://www.dhs.wisconsin.gov/stats/itop.htm>.

### Civil Liability Provisions

**Wis. Stat. § 253.105(4)**

**Civil Remedies Under Abortion-Inducing Drugs Requirements**

**Applies to Wis. Stat. § 253.105**

(4) Civil remedies.

(a) Any of the following persons has a claim against a person who intentionally or recklessly violates sub. (2):

1. A woman to whom an abortion-inducing drug was given in violation of sub. (2).
2. If the abortion-inducing drug was given to a minor in violation of sub. (2), a parent or guardian of the minor.
3. The father of the unborn child aborted as the result of an abortion-inducing drug given in violation of sub. (2), unless the pregnancy of the person to whom the abortion-inducing drug was given was the result of sexual assault in violation of s. 940.225, 944.06, 948.02, 948.025, 948.06, 948.085, or 948.09 and the violation was committed by the father.

(b) A claim for relief under par. (a) may include:

1. Damages arising out of the inducement of the abortion, including damages for personal injury and emotional and psychological distress.
2. Punitive damages for a violation that satisfies the standard under s. 895.043(3).

(c) Notwithstanding s. 814.04(1), a person who recovers damages under this subsection may also recover reasonable attorney fees incurred in connection with the action.

(d) A conviction under sub. (3) is not a condition precedent to bringing an action, obtaining a judgment, or collecting a judgment under this subsection.

(e) A contract is not a defense to an action under this subsection.

(f) Nothing in this section limits the common law rights of a person that are not in conflict with sub. (2).

**Wis. Stat. § 253.10(5)–(6)**

**Civil Remedies and Professional Discipline Under Informed Consent Requirements**

**Applies to Wis. Stat. § 253.10**

(5) Penalty. Any person who violates sub. (3), (3g)(a), or (3m)(a)2. or (b)2. shall be required to forfeit not less than \$1,000 nor more than \$10,000. No penalty may be assessed against the woman upon whom the abortion is performed or induced or attempted to be performed or induced.

(6) Civil remedies.

(a) A person who violates sub. (3) or (3m)(a)2. or (b)2. is liable to the woman on or for whom the abortion was performed or induced for damages arising out of the performance or inducement of the abortion, including damages for personal injury and emotional and psychological distress.

(am) Any of the following individuals may bring a claim for damages, including damages for personal injury and emotional and psychological distress, against a person who attempts to perform or performs an abortion in violation of sub. (3g):

1. A woman on whom an abortion is performed or attempted.
2. The father of the aborted unborn child or the unborn child that is attempted to be aborted.
3. Any grandparent of the aborted unborn child or the unborn child that is attempted to be aborted.

(b) A person who has been awarded damages under par. (a) or (am) shall, in addition to any damages awarded under par. (a) or (am), be entitled to not less than \$1,000 nor more than \$10,000 in punitive damages for a violation that satisfies a standard under s. 895.043(3).

(c) A conviction under sub. (5) is not a condition precedent to bringing an action, obtaining a judgment or collecting the judgment under this subsection.

(d) Notwithstanding s. 814.04(1), a person who recovers damages under par. (a) or (b) may also recover reasonable attorney fees incurred in connection with the action.

(dm) A district attorney or the attorney general may institute an action for injunctive relief against any person who performs or attempts to perform an abortion in violation of sub. (3g).

(e) A contract is not a defense to an action under this subsection.

(f) Nothing in this subsection limits the common law rights of a person that are not in conflict with sub. (3).

(7) Affirmative defense. No person is liable under sub. (5) or (6) or under s. 441.07(1g)(f), 448.02(3)(a), or 457.26(2)(gm) for failure under sub. (3)(c)2.d. to provide the printed materials described in sub. (3)(d) to a woman or for failure under sub. (3)(c)2.d., e., f., fm., or g. to describe the contents of the printed materials if the person has made a reasonably diligent effort to obtain the printed materials under sub. (3)(e) and s. 46.245 and the department and the county department under s. 46.215, 46.22, or 46.23 have not made the printed materials available at the time that the person is required to give them to the woman.

## Wyoming

In 2022, Wyoming passed a conditional law that will prevent virtually all abortions now that *Roe* is overturned. Unfortunately, it is currently in litigation so the state can only protect life after viability. Although Wyoming has the lowest population density, it still has a dozen pregnancy resource centers serving women across the state, including on the Wind River reservation. The state has just two doctors prescribing chemical abortion, and one is reportedly planning to leave the state. However, abortion activists are seeking to expand abortion by mail. As a rural state, it has augmented concerns about the medical risks presented by chemical abortion related to complications and emergency care.

The Wyoming legislature is strongly conservative but, until 2017, it had not passed any pro-life laws for almost two decades. Wyoming's legislature is part-time, and every other year is a budget session which means a super-majority is required to pass any non-budget bill. The legislature has become significantly more pro-life in recent years, and that has translated to legislative victories, such as passing a born-alive infant protection act.

The Wyoming Supreme Court is selected through a hybrid judicial selection commission process, whereby the nominating commission provides the governor with a list of three names from which he chooses a candidate.

Governor Mark Gordon is pro-life and extremely popular, having won re-election in 2022 by over three-quarters of votes cast; he signed the conditional law into effect in 2022. Unfortunately, Wyoming does not regulate or inspect abortion clinics, so AUL did not receive any records from its request.

### Statutory Prohibitions

#### **Wyo. Stat. § 35-6-102**



(a) An abortion shall not be performed after the embryo or fetus has reached viability except when necessary to preserve the woman from an imminent peril that substantially endangers her life or health, according to appropriate medical judgment. This subsection is repealed on the date that subsection (b) of this section becomes effective.

(b) An abortion shall not be performed except when necessary to preserve the woman from a serious risk of death or of substantial and irreversible physical impairment of a major bodily function, not including any psychological or emotional conditions, or the pregnancy is the result of incest as defined by W.S. 6-4-402 or sexual assault as defined by W.S. 6-2-301. This subsection shall be effective five (5) days after the date that the governor, on advice of the attorney general, certifies to the secretary of state that the supreme court of the United States has overruled *Roe v. Wade*, 410 U.S. 113 (1973) in a manner that would authorize the enforcement of this subsection or has otherwise issued a final decision related to abortion that would authorize the enforcement of this subsection in accordance with that decision and without violating any conditions, rights or restrictions recognized by the supreme court.

(c) For purposes of subsection (b) of this section the attorney general shall review any final decisions of the supreme court of the United States related to *Roe v. Wade*, 410 U.S. 113 (1973) or otherwise related to abortion to determine whether the enforcement of subsection (b) of this section would be fully authorized under that decision. The attorney general shall, within thirty (30) days of the date of the final decision of the supreme court, report the results of each review under this subsection to the joint judiciary interim committee and the governor who may, if applicable, certify the results of the review to the office of the secretary of state.

### Data and Documentation Requirements

#### **Wyo. Stat. Ann. §§ 35-6-131 through 35-6-132**

(a) The state office of vital records services shall establish an abortion reporting form which shall be used after May 27, 1977 for the reporting of every abortion performed or prescribed in this state. The form shall include the following items in addition to the information necessary to complete the form subject to subsection (b) of this section:

- (i) The age of the pregnant woman;
- (ii) The type of procedure performed or prescribed;
- (iii) Complications, if any;
- (iv) A summary of the pregnant woman's obstetrical history regarding previous pregnancies, abortions and live births;
- (v) The length and weight of the aborted fetus or embryo, when measurable or the gestational age of the aborted fetus or embryo in completed weeks at the time of abortion;
- (vi) Type of facility where the abortion is performed (i.e., hospital, clinic, physician's office, or other).

#### Authoritative interpretation by state agencies or courts:

Held unconstitutional in *Johnson v. State*, No. 2023-CV-18853 (Wyo. Dist. Ct. Nov. 18, 2024).

Relationship between statute and other federal/state statutes relating to the subject matter:  
State reports data to CDC.

Other:

State reports available here: <https://health.wyo.gov/admin/vitalstatistics/reports/>.

### Civil Liability Provisions

**Wyo. Stat. Ann. §§ 35-6-126**

**Civil Remedies and Professional Discipline for Elective Abortion**

**Applies to Wyo. Stat. Ann. §§ 35-6-120 through 36-6-139**

***Currently Enjoined***

(a) In addition to any other penalties available under law, a physician or any other professionally licensed person who intentionally, knowingly or recklessly violates W.S. 35-6-123 commits an act of unprofessional conduct, and the physician's or person's license to practice in Wyoming shall be immediately revoked by the state board of medicine after due process in accordance with the rules and procedures of the state board of medicine. Any person may file a complaint against a physician or other licensed person under this section, or the state board of medicine may on its own accord initiate a complaint against a physician or other licensed person. The state board of medicine may assess or impose the costs of any investigation, fines not to exceed five thousand dollars (\$5,000.00) and any other disciplinary actions authorized by law that the board deems appropriate.

### History of Enforcement/Any Other Relevant Information

Wyo. Stat. Ann. §§ 35-6-120 through 36-6-139 (“Life Is a Human Right Act”) appears to be currently enjoined due to ongoing litigation in both federal and state courts (most recent district court opinion is outside of WestLaw plan; difficult to identify cite for it).

## ADDITIONAL RESOURCES

Americans United for Life has authored the following resources that focus on or include information about chemical abortion:

*Annual State Policy Reports*, Ams. United for Life, (last visited Apr. 15, 2025).

- Summarizing state legislative updates, including those related to chemical abortion.

Brief *Amici Curiae* of 145 Members of Congress in Support of Respondents and Affirmance, *Food & Drug Admin. v. All. for Hippocratic Med.*, 144 S. Ct. 1053 (2024) (No. 23-235), available at <https://aul.org/wp-content/uploads/2024/03/23-235-Amicus-Brief-of-145-Members-of-Congress-in-Support-of-Respondents-and-Affirmance.pdf>.

- Arguing that the FDA deregulated chemical abortion drugs in violation of the Food, Drug, and Cosmetic Act, as well as the Comstock Act.

Brief *Amicus Curiae* of Americans United for Life in Support of Respondents and Affirmance, *Food & Drug Admin. v. All. for Hippocratic Med.*, 144 S. Ct. 1053 (2024) (No. 23-235), available at <https://aul.org/wp-content/uploads/2024/03/23-235-Amicus-Brief-of-Americans-United-for-Life.pdf>.

- Arguing that the FDA's approval and deregulation of chemical abortion drugs has injured the practice of obstetrics and gynecology.

Carolyn McDonnell & Benjamin Ogilvie, *Food & Drug Administration v. Alliance for Hippocratic Medicine: Legal Implications for the Pro-life Movement*, Ams. United for Life (June 2024), <https://aul.org/wp-content/uploads/2024/06/FDA-v.-AHM-Decision-Analysis.pdf>.

- Analyzing the Supreme Court's decision in the recent chemical abortion case.

Carolyn McDonnell, *Debrief of the Supreme Court Oral Argument in Food and Drug Administration v. Alliance for Hippocratic Medicine*, Ams. United for Life (Apr. 2024), <https://aul.org/wp-content/uploads/2024/04/Debrief-of-Oral-Argument-in-FDA-v.-AHM.pdf>.

- Providing an overview of litigation that challenged the FDA’s deregulation of chemical abortion drugs, and discussing arguments and questions raised during oral argument in the case.

Carolyn McDonnell, *Understanding the Mail-order Abortion Rules Within the Federal “Comstock Act”*, Ams. United for Life (Aug. 2024), <https://aul.org/wp-content/uploads/2024/08/Federal-mail-order-abortion-rules-report.pdf>.

- Analyzing the statutory text and history of the Comstock Act’s restrictions on mailing abortifacient matter.

Carolyn McDonnell, *The Comstock Act: Why Federal Mail-Order Abortion Rules Are the Next Abortion Battleground*, Federalist Soc’y (Sept. 25, 2024), <https://fedsoc.org/commentary/fedsoc-blog/the-comstock-act-why-federal-mail-order-abortion-rules-are-the-next-abortion-battleground>.

- Summarizing the statutory text and history of the Comstock Act’s restrictions on mailing abortifacient matter.

Clarke D. Forsythe & Donna Harrison, *State Regulation of Chemical Abortion After Dobbs*, 16 Liberty U. L. Rev. 377 (2022), [https://digitalcommons.liberty.edu/cgi/viewcontent.cgi?article=1321&context=lu\\_law\\_review](https://digitalcommons.liberty.edu/cgi/viewcontent.cgi?article=1321&context=lu_law_review).

- Providing a legal and medical overview of chemical abortion and state pro-life laws that regulate it.

John Mize et al., *Stopping Pills that Kill: A Vision for Human Flourishing Free from Abortion Pills*, Ams. United for Life (Jan. 2025), [https://aul.org/wp-content/uploads/2025/01/abortion-pill-policy\\_formatted\\_web-ready.pdf](https://aul.org/wp-content/uploads/2025/01/abortion-pill-policy_formatted_web-ready.pdf).

- Discussing the dangers of chemical abortion drugs and how the pro-life movement can protect women and adolescents considering chemical abortions.

John Mize, CEO, Ams. United for Life et al., to Comm’r, U.S. Food & Drug Admin. (Jan. 22, 2025), [https://aul.org/wp-content/uploads/2025/01/AUL-FDA-LETTER\\_REMS\\_Final.pdf](https://aul.org/wp-content/uploads/2025/01/AUL-FDA-LETTER_REMS_Final.pdf).

- Urging the FDA Commissioner to reinstate safeguards on chemical abortion drugs.

John Mize, CEO, Ams. United for Life et al., to James McHenry, Acting Att’y Gen., U.S. Dep’t of Just. (Jan. 22, 2025), [https://aul.org/wp-content/uploads/2025/01/AUL-DOJ-LETTER\\_COMSTOCK.pdf](https://aul.org/wp-content/uploads/2025/01/AUL-DOJ-LETTER_COMSTOCK.pdf).

- Urging the Department of Justice to enforce the Comstock Act and rescind the 2022 Office of Legal Counsel Memorandum that misinterprets the Comstock Act.

*Life Litigation Reports*, Ams. United for Life, <https://aul.org/topics/life-litigation-reports/> (last visited Apr. 15, 2025).

- Listing ongoing bioethics litigation, including chemical abortion lawsuits.

*State Spotlight*, Ams. United for Life, <https://aul.org/law-and-policy/state-spotlight/> (last visited Apr. 15, 2025).

- Providing an overview of current bioethics laws and tracking legislation in each state.

Thomas J. Bliley et al., Citizen Petition to Center for Drug Evaluation and Research, Food and Drug Administration (Feb. 28, 1995).

- The Citizen Petition is available in an FDA Freedom of Information Act production. *Mifepristone (Mifeprex)*, U.S. Food & Drug Admin., at bates nos. 6,144–6,248 (June 20, 2016), <http://wayback.archive-it.org/7993/20161024033540/http://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm085168.htm>.
- Urging the FDA Commissioner to refuse any new drug applications for mifepristone.