

# TEXAS

RANKING: 7

As a result of aggressive legislative action over the past several years, Texas has become one of the most protective states in the nation. It maintains fairly comprehensive protections for women and the unborn and has appropriated millions of dollars to supporting abortion alternatives. However, the state has yet to ban human cloning or destructive embryo research.



## ABORTION:

- A physician may not perform an abortion on a woman until at least 24 hours after obtaining her informed consent and after informing her of the nature and risks of the proposed abortion procedure, including the gestational development of the unborn child and available assistance from both public and private agencies.
- The state also explicitly requires a physician to inform a woman seeking abortion of the abortion-breast cancer link.
- Texas requires the performance of an ultrasound before an abortion.
- Texas prohibits insurance companies from restraining or dominating a woman's abortion decision through force or by threatening adverse alteration to an insurance plan.
- A physician may not perform an abortion on an unemancipated minor under the age of 18 without the written, notarized consent of one parent or a guardian, unless there is a medical emergency or the minor obtains a court order. In addition, agencies that receive state funding must obtain parental consent before providing minors with contraception.
- Texas requires that physicians providing "medical abortion" be able to do the following: accurately date a pregnancy; determine that the pregnancy is not ectopic; and provide surgical intervention or provide for the patient to receive a surgical abortion. The abortion facility is to ensure that the attending physician, advance practice nurse, or physician assistant has obtained and documented a pre-procedure history, physical exam, and laboratory studies (including verification of pregnancy). The patient must be informed of the risks and benefits of the procedure and the possibility that a surgical abortion may be required.
- Texas follows the federal standard for Medicaid funding for abortions, only permitting



the use of federal or state matching Medicaid funds for abortions necessary to preserve the life of the woman or when the pregnancy is the result of rape or incest

- The Texas Supreme Court has upheld a law limiting taxpayer assistance for abortion to cases where the abortion is necessary to preserve a woman's life or when the pregnancy is the result of rape or incest.
- Funds administered under the "Maternal and Infant Health Improvement Program for Women and Children" cannot be used for abortions, except in cases of life endangerment.
- State agencies may not contract with entities that perform or promote elective abortions or are affiliates of entities that perform or promote elective abortions under a "Women's Health Care Services" project (family planning funding).
- In 2011, Texas enacted new laws prohibiting contracts with entities that perform elective abortions.
- Texas has enacted comprehensive health and safety regulations for abortion clinics. These regulations are based on national abortion care standards and cover such areas as clinic administration, sanitation standards, patient care, post-operative recovery, and proper maintenance of patient records. Further, abortion providers must maintain admitting privileges.
- Only a physician licensed in Texas may perform an abortion.
- Texas possesses an enforceable abortion prohibition should the U.S. Constitution be amended or certain U.S. Supreme Court decisions be reversed or modified.
- A third-trimester abortion may not be performed on a viable fetus unless necessary to preserve the woman's life or prevent a "substantial risk of serious impairment" to her physical or mental health, or if the fetus has a severe and irreversible abnormality. Additionally, a second law provides that a third-trimester abortion may not be performed on a viable fetus unless necessary to prevent "severe, irreversible brain damage" to the woman, paralysis, or if the fetus has a severe and irreversible "brain impairment."
- Texas continues to allocate millions of dollars to the mission of pregnancy care centers and others providing abortion alternatives.
- The state maintains a "Choose Life" license plate program, the proceeds of which benefit abortion alternatives.



- The state has an enforceable abortion reporting law, but does not require the reporting of information to the Centers for Disease Control (CDC). The measure pertains to both surgical and nonsurgical abortions and requires abortion providers to report deaths that occur in their facilities as a result of abortion, as well as short-term complications.

#### LEGAL RECOGNITION OF UNBORN AND NEWLY BORN:

- Under Texas law, the killing of an unborn child at any stage of gestation is defined as a form of homicide.
- Texas defines a nonfatal assault on an unborn child as a criminal offense.
- Texas allows parents and other relatives to bring a wrongful death (civil) lawsuit when an unborn child at any stage of development is killed through the negligence or criminal act of another.
- Under Texas law, a “living human child born alive after an abortion or premature birth is entitled to the same rights, powers and privileges as are granted by the laws of [Texas] to any other child born alive after the normal gestational period.” Thus, the state has created a specific affirmative duty of physicians to provide medical care and treatment to born-alive infants at any stage of development.
- The state defines substance abuse during pregnancy as child abuse under civil child-welfare statutes. The state has also created a task force charged, in part, with advising on potential criminal liability for a woman who exposes her unborn child to controlled substances.

#### BIOETHICS LAWS:

- Texas does not prohibit human cloning or destructive embryo research. Further, it does not prohibit fetal experimentation outright, but it does include “fetal issue” in its ban on the sale or transfer of “human organs.”
- The Department of State Health Services publishes a brochure related to umbilical cord blood donation, and physicians are to provide the brochure to their pregnant patients. Further, in 2009, Texas appropriated \$5 million in state funding for adult stem-cell research.
- Texas maintains no meaningful regulation of assisted reproductive technologies, but the “Uniform Parentage Act” does include “donation of embryos” in its definition of “assisted reproduction.”



## END OF LIFE LAWS:

- Assisted suicide is a felony in Texas.

## HEALTHCARE

### RIGHTS OF CONSCIENCE LAWS:

#### Participation in Abortions:

- A physician, nurse, staff member, or employee of a hospital who objects to participating directly or indirectly in an abortion may not be required to participate in an abortion.
- A healthcare provider's conscientious objection to participating in abortions may not be a basis for discrimination in employment or education. A person whose rights are violated may bring an action for relief, including back pay and reinstatement.
- A private hospital or healthcare facility is not required to make its facilities available for the performance of an abortion unless a physician determines that the woman's life is immediately endangered.

#### Participation in Research Harmful to Human Life

- Texas currently provides no protection for the rights of healthcare providers who conscientiously object to participation in human cloning, destructive embryo research, or other forms of immoral medical research.

## WHAT HAPPENED IN 2011:

- To better protect women, AUL assisted Texas with requiring in-person, pre-abortion counselling with the abortion provider for women who live within 100 miles of the abortion facility. The state now also requires the performance of an ultrasound before an abortion.
- Texas enacted new laws prohibiting contracts with entities that perform elective abortions.
- Texas allocated funds for alternatives-to-abortion services in fiscal years 2012 and 2013 and now also authorizes "Choose Life" license plates. Further, the state adopted AUL's resolution commending the work of pregnancy care centers.
- Additionally, Texas enacted new reporting requirements.



- Among other measures also considered by the state, Texas considered legislation regulating abortion-inducing drugs like RU-486, limiting insurance coverage of abortion, preventing coercion, and amending existing parental consent requirements.
- Texas considered measures designed to curb substance abuse by pregnant women and authorizing a death certificate when an infant is stillborn.
- Texas considered a number of measures related to bioethics, including measures banning only cloning-to-produce-children, regulating destructive embryo research, relating to gestational agreements, promoting ethical alternatives to destructive forms of embryo research, and providing a statutory framework for the licensing and regulation of genetic counselors.
- Texas also considered measures related to life-sustaining treatment. One would prohibit the use of a do-not-resuscitate (DNR) order for withholding nutrition or hydration. Another would ensure that a physician who does not want to provide life-sustaining treatment for a patient must continue to provide that care until the patient is transferred.
- Prompted by the “Patient Protection and Affordable Care Act,” the state considered a resolution urging the U.S. Congress to enact comprehensive legislation protecting the conscience rights of individuals accessing and providing healthcare.



# RECOMMENDATIONS FOR TEXAS

## TOP PRIORITIES:

- Personhood Preamble
- Abortion Mandate Opt-Out Act
- Abortion Subsidy Prohibition Act
- Women's Health Defense Act
- Abortion Patients' Enhanced Safety Act
- Abortion-Inducing Drugs Safety Act

## OTHER PRIORITIES:

### *Abortion*

- o Child Protection Act

### *Bioethics:*

- o Human Cloning Prohibition Act
- o Destructive Embryo Research Act
- o Prohibition on Public Funding of Human Cloning and Destructive Embryo Research Act

### *Healthcare Freedom of Conscience:*

- o Healthcare Freedom of Conscience Act

