

Tennessee Abortion Policy Summary

With the U.S. Supreme Court anticipated to overturn the 1973 *Roe v. Wade* decision (and the modifications to that decision by *Planned Parenthood of Southeastern Pennsylvania v. Casey* from 1992), the protection, regulation, or prohibition of abortion would likely default to state laws and state constitutions. Therefore, to understand how this upcoming Supreme Court decision could impact access to abortion in Tennessee, it is useful to examine both key current state laws in effect related to abortion access, as well as the current state of access to abortion in Tennessee. This brief intends only to summarize current Tennessee state laws and does not speculate on what additional legislative action may be taken after a final Supreme Court decision is rendered.

Current state of abortion access in Tennessee

\$500 Median Cost of an Abortion

The median cost of an abortion is \$500. Health plans offered in the state's health exchange under the Affordable Care Act (ACA) may not provide coverage for abortion. Public funding is available for abortion only in cases of life endangerment, rape, or incest.

6 Total Clinics in Tennessee

There is a total of 6 clinics across Tennessee that offer abortion services that are currently open and accepting patients.

48 Hours

Tennessee requires a pregnant person to visit their clinician for in-person counseling and then wait 48 hours before returning to get an abortion. This waiting period can be waived if the health of the person is at risk because of the pregnancy.

24-28 Weeks

Abortion is available up to "viability," which is the stage of pregnancy when a fetus has developed enough that it is likely to survive outside the uterus. A fetus is generally not considered viable until at least 24-28 weeks, but some exceptions may allow abortion to be performed later such as if the life or health of the pregnant person is at risk.

26 Miles Away

The average one-way driving distance to an abortion clinic for a woman of reproductive age (15-44) in Tennessee is 26 miles.

- The use of telemedicine to administer medication for abortion is prohibited.
- Minors cannot receive abortion services without parental consent.
- Tennessee prohibits abortions performed for the purpose of race or sex selection, or in response to a genetic anomaly.

Laws related to abortion access currently in effect in Tennessee

Article 1 of the Tennessee Constitution

State constitutional amendment that explicitly states that the Tennessee Constitution does not protect a right to abortion and that state representatives and senators can enact, amend, or repeal statutes regarding abortion.

Background & Specifics

In 2000 a Tennessee Supreme Court ruling in *Planned Parenthood v. Sundquist* struck down multiple laws regulating abortion. As part of the Court's ruling, the Tennessee Constitution was cited with an implication that many interpreted to mean that the Tennessee Constitution included stronger protections for privacy and, therefore, abortion (following the example of the U.S. Supreme Court in the *Roe v. Wade* decision). To remove potential ambiguity about abortion protections within the Tennessee Constitution, the state legislature drafted Amendment 1, a potential Tennessee Constitutional amendment stating that the Constitution does not protect a right to abortion. This drafted amendment was approved by the legislature and was included on the November 4, 2014 gubernatorial ballot for Tennessee citizens to vote on. The amendment passed with 52.6% of voters voting "Yes" to include the language as an amendment to the Tennessee Constitution.

Impact if *Roe v. Wade* is Overturned?

If *Roe v. Wade* is overturned this constitutional amendment will likely ensure that the Tennessee Constitution will not be an obstacle to placing restrictions on or banning access to abortions.

HB-2416

The law prohibiting the prescribing or distribution of pills to produce a medication abortion via telehealth or mail.

Background & Specifics

A bill passed and signed in 2016 required all drugs intended to cause a medication abortion (sometimes called a medical abortion or a chemical abortion) to be administered or dispensed only in the physical presence of a physician. In 2022 a bill was passed and signed that also required a follow-up in-person visit with a physician from 7-14 days after the medication abortion. This bill also specified that providing the drugs to induce a medication abortion outside of an in-person physician visit constitutes a Class E felony, punishable by a fine of up to \$50,000. Note that mifepristone and misoprostol are the drugs that are used to induce medication abortions. This law does not apply to emergency contraception aka "morning-after pills" such as Plan B or Ella.

Impact if *Roe v. Wade* is Overturned?

If *Roe v. Wade* is overturned and the provision of medication abortions is outlawed in Tennessee, this may make it more difficult for Tennessee residents to acquire a medication abortion via telehealth from providers outside of Tennessee. However, because HB-2416 does not hold guilty a person who receives drugs for a medication abortion, it may be possible for Tennessee residents to access these drugs via telehealth from a provider in a state/territory that does not similarly prohibit the provision of medication abortion drugs via telehealth. In addition, it would likely require Tennessee residents to travel out-of-state, use online pharmacies, or mail forwarding to procure a medication abortion.

SB-1257

This is often referred to as a "trigger law." It is currently a law in the state of Tennessee that does not have any impact, but would only go into effect if it is triggered by the overturning of *Roe v. Wade* or the passing of an amendment to the U.S. Constitution that allows states to prohibit abortion. This law would effectively make abortions illegal in Tennessee with few exceptions if it is triggered by either of the above conditions.

Background & Specifics

This law was passed by the Tennessee state legislature and signed by the Governor in 2019. It stipulates that if the power to prohibit abortions is granted to states, either by overturning *Roe v. Wade* or by an amendment to the U.S. Constitution, the Tennessee attorney general would announce the impending law change. Abortion would become illegal in Tennessee 30 days later with a few exceptions. The exceptions include scenarios where an 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." Under this law, a person who performs an abortion outside of these exceptions would be guilty of a Class C felony. People receiving abortions would not be guilty of a crime under this law.

Impact if *Roe v. Wade* is Overturned?

If *Roe v. Wade* is overturned then the authority to prohibit abortion would almost certainly rest with the states. Therefore, this law would be triggered, and providing nearly all abortions would be prohibited in Tennessee 30 days after an announcement by the state attorney general.

Laws related to abortion that have been passed in Tennessee, but are not currently being enforced due to an injunction while a lawsuit makes its way through the federal court system

HB-2263

This law would require clinicians to check for a fetal heartbeat prior to providing an abortion and ban abortions after a fetal heartbeat is detected.

Background & Specifics

This law was passed by the Tennessee legislature and signed by the Governor in 2020. It stipulates that clinicians who provide abortions who do not check for a fetal heartbeat among pregnancies of six weeks gestation or more prior to providing an abortion are guilty of a Class C felony. Furthermore, any provider who performs or induces an abortion after a fetal heartbeat is detected would be guilty of a Class C felony. People receiving abortions would not be guilty of a crime under this law. Upon the passing of this law, Planned Parenthood, the American Civil Liberties Union, and the Center for Reproductive Rights challenged the law's constitutionality in federal court. A federal judge issued a temporary injunction, preventing the law from going into effect until the legal case has been resolved.

Impact if *Roe v. Wade* is Overturned?

If *Roe v. Wade* is overturned, the injunction against the implementation of this law would likely be lifted. This would most likely take place prior to the end of the 30-day period preceding the implementation of SB-1257. This would result in HB-2263 being the most restrictive abortion regulation in Tennessee, but being superseded by SB-1257 (which would be more restrictive) within days or weeks.

So, what does this all mean?

Although legal, currently abortion in Tennessee is not accessible to all residents. The institution of mandatory waiting periods, high financial cost, geographic isolation, and the limited number of active clinics make it difficult for residents across the state to access abortion services in Tennessee.

If *Roe v. Wade* is overturned by the U.S. Supreme Court, the injunction against HB-2263 may be lifted. If this happens within 30 days of the U.S. Supreme Court's decision, HB-2263 would make performing or inducing abortions after a fetal heartbeat is detected a felony. However, once 30 days have passed since the U.S. Supreme Court's decision (and the subsequent announcement by the Tennessee attorney general) performing nearly any abortion in Tennessee would be a felony.

Additionally, HB-2416 prohibits Tennessee providers from prescribing or dispensing the drugs to induce a medication abortion without an in-person visit between a physician and the patient before and after the medication abortion. Physicians will not be able to provide the medication abortion drugs in Tennessee but because HB-2416 does not hold guilty a person who receives drugs for a medication abortion, Tennessee residents may have to travel out-of-state, receive medication abortion drugs via telehealth from a provider in a state/territory that does not similarly prohibit the provision of medication abortion drugs via telehealth, use online pharmacies, or mail forwarding to receive a medication abortion. Finally, if there are no Federal limits to Tennessee's ability to prohibit abortions, Article 1 of the Tennessee Constitution seeks to ensure that there are no state constitutional roadblocks for additional efforts to limit access to abortion within Tennessee.



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This brief was compiled by Dr. Michael G. Smith and Molly Sharp.

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