



asrm
Center for Policy
and Leadership

STATES' ABORTION LAWS:
POTENTIAL IMPLICATIONS
FOR REPRODUCTIVE MEDICINE

OCTOBER 2022 | PART 2 IN SERIES

State Abortion Laws: Potential Implications for Reproductive Medicine

Table of Contents

Introduction 2

Analysis of States’ Abortion Laws 4

 Arizona 4

 Indiana 6

 Kansas 8

 Louisiana 10

 Missouri 12

 Nebraska 14

 North Carolina 16

 Ohio 18

 Pennsylvania 20

 South Carolina 22

 Texas 24

 Virginia 26

About the ASRM Center for Policy & Leadership..... 4

Acknowledgement 27

Introduction

This report is the second in a series from the ASRM Center for Policy and Leadership (CPL), a non-partisan think tank focused on the delivery of fact-driven, science-based information to inform decision making of relevance to the field and patients of reproductive medicine.

As noted in the CPL's first report in this series, *State Abortion Trigger Laws: Potential Implications for Reproductive Medicine* (July, 2022), the U.S. Supreme Court's opinion in *Dobbs v. Jackson Women's Health Organization* (597 U.S. ___, 2022), overturned the nearly 50-year precedent set by *Roe v. Wade* (410 U.S. 113, 1973), which had recognized a constitutional right to abortion. The *Dobbs* decision has sparked a litany of changes in state laws across the nation, and more are expected. The CPL's initial report focused on thirteen states where "trigger" laws were set to take effect and ban or severely restrict abortion care if *Roe v. Wade* was overturned.

Since publication of our initial report, developed with the generous pro bono support of Hogan Lovells, LLP, the CPL has monitored a spate of abortion restriction bills introduced across the nation. To fully grasp the potential implications of these laws for the field of reproductive medicine and patients seeking care and treatment for diseases including infertility, it is important to understand the current legal landscape. This report reflects that landscape in several states as of October 1, 2022. As state policymakers continue to propose statutory and regulatory reforms relative to abortion, and courts issue rulings to interpret various state laws and constitutions, readers are strongly advised to cross-reference the information in this report against any pending or newly enacted reforms.

As we also noted in our first such report, while the overturn of *Roe v. Wade* does not necessarily restrict access to assisted reproductive technology (ART) procedures, including in vitro fertilization (IVF), the details of state law are critical to understand. While most of the abortion laws identified below are applicable in the context of a pregnancy, many of the state laws also include definitions stating that "personhood" begins at fertilization. Overly broad statutory language and definitions *could*, intentionally or not, implicate and even ban IVF and certain other ART procedures. The *Dobbs* decision and related state actions in its wake have the potential to severely limit the ability to provide high-quality, patient-centered maternal health care.

What's in This Report

This report provides background and a brief analysis of twelve states' current laws with a focus on the potential impact on reproductive medicine, and ART procedures, including IVF.

Herein, you will find an overview for each state designed to explain:

- ❖ Current state laws regulating abortion;
- ❖ What these laws say, if anything, about reproductive medicine;

- ❖ Key definitions (e.g., “embryo”, “unborn child”, and “fertilization”); and
- ❖ Where you can find the provisions of law in state code.

Notably, the impact of these laws varies state-by-state and often hinge on how terms like, “fertilization” and “unborn child” are defined and used. For example, in some states, the law defines life as beginning at any point after fertilization. This has potential implications for those practicing IVF.

What’s Not in This Report

This analysis, like the first in our series, is intended to address the impact of current state law on procedures performed prior to embryo transfer, including performing an IVF procedure and pre-implantation genetic testing. It does *not* attempt to address the impact of abortion law on potential pregnancy-related complications. IVF may put patients at increased risk for ectopic and heterotopic pregnancy, and state abortion laws may have consequences on the management of these and other pregnancy complications that are not addressed in this analysis.

Importantly, in addition to explicit abortion bans, “fetal personhood” legislation - which confer fetuses and embryos the same legal standing as a human being outside the womb - may become more common in the post-*Roe* world, exposing routine ART procedures such as IVF, preimplantation genetic testing, and the donation for research or discarding of unused embryos to legal challenge, and exposing ART providers who practice them to potential liability.

Disclaimers

Prepared by attorneys at the firm of Hogan Lovells, LLP, the following summaries are intended to provide an overview of state laws, which are rapidly evolving, and their potential impact on reproductive medicine procedures performed prior to embryo transfer, including IVF.

The information provided in this report does not, and is not intended to, constitute legal advice. All information and content herein are intended for general informational purposes only. This information is accurate as of publication date, with laws subject to change, revision and interpretation by the legislature, the courts, and state agencies at any point in time. Consult a local attorney for specific advice and counsel.

The statutory information in this report is current through October 1, 2022.

ANALYSIS:

State Abortion Laws: Potential Implications for Reproductive Medicine

| ARIZONA | |
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| Summary of Current (and Most Recent) Abortion and Personhood Laws | <ul style="list-style-type: none"> • On September 22, 2022, an Arizona court ruled that an anti-abortion criminal law first enacted in 1864 is still enforceable. The court did not explain how the restrictions in that law should be reconciled with other abortion restrictions passed more recently, as described below. This pre-Roe law prohibits intentionally providing the means to cause a miscarriage: A.R.S. § 13-3603; See <i>Under Advisement Ruling in Planned Parenthood Center of Tucson, Inc v. Brnovich</i>, No. C127867, 2022 WL 4487408, at *1 (Ariz. Super. Sep. 22, 2022) <ul style="list-style-type: none"> ○ On October 3, 2022 the Arizona Medical Association and an Arizona physician filed an action seeking to require the courts to clarify how to reconcile enforcement of this law with the more recently passed law restricting abortions after 15 weeks • Arizona recently passed S.B. 1164, effective September 24, 2022, which generally prohibits abortion at 15 weeks after the first day of the last menstrual period, except in a medical emergency. S.B. 1164, 55th Leg., 2nd Reg. Sess. (2022). • In 2021, Arizona enacted an “Interpretation Policy” that would grant all rights, privileges, and immunities to an “unborn child” beginning at conception, but the courts have enjoined the State from enforcing this law on the basis of it being unconstitutionally vague. (A.R.S. § 1-219). See <i>Isaacson v. Brnovich</i>, No. CV-21-01417-PHX-DLR, 2022 WL 2665932 (D. Ariz. July 11, 2022). <ul style="list-style-type: none"> ○ This statute specifies it does not create a cause of action against a person who performs IVF procedures as authorized under Arizona law. |
| Potential impact of the law on and references to IVF and reproductive medicine if any | <ul style="list-style-type: none"> • Neither the law restricting abortion after 15 weeks nor the pre-Roe statute appear to affect IVF or other reproductive medicine procedures outside of the context of a pregnancy. • The “Interpretation Policy” statute passed in 2021, establishing personhood rights beginning at conception is currently enjoined by the courts. If it goes into effect, it could affect ART procedures, although it specifically states that it does not create a cause of action against a person who performs IVF procedures as authorized under the laws of the state. (A.R.S. § 1-219). See <i>Isaacson v. Brnovich</i>, No. CV-21-01417-PHX-DLR, 2022 WL 2665932 (D. Ariz. July 11, 2022). |

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| | <ul style="list-style-type: none"> ○ This statute specifies it does not create a cause of action against a person who performs IVF procedures as authorized under Arizona law. |
| <p>Relevant definitions</p> | <ul style="list-style-type: none"> • "<i>Abortion</i>" means "the use of any means to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will cause, with reasonable likelihood, the death of the unborn child. Abortion does not include birth control devices, oral contraceptives used to inhibit or prevent ovulation, conception, or the implantation of a fertilized ovum in the uterus or the use of any means to save the life or preserve the health of the unborn child, to preserve the life or health of the child after a live birth, to terminate an ectopic pregnancy or to remove a dead fetus." A. R. S. § 36-2151 (as referenced in S.B. 1164, 55th Leg., 2nd Reg. Sess. (2022)). • "<i>Attempt to perform or induce an abortion</i>" means "to do or to omit doing anything that, under the circumstances as the physician believes them to be, is an act or omission that constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in violation of this article." S.B. 1164, 55th Leg., 2nd Reg. Sess. (2022). • "<i>Unborn child</i>" means the offspring of human beings from conception until birth (for the purpose of barring termination of a "clinically diagnosable pregnancy"). A.R.S. § 36-2151. |
| <p>Penalties for violations of the applicable abortion restrictions</p> | <ul style="list-style-type: none"> • A physician who knowingly and intentionally violates the abortion restrictions may be subject to criminal and civil penalties, and be found to have engaged in unprofessional conduct. A.R.S. § 36-2156; A.R.S. § 36-2152; S.B. 1164, 55th Leg., 2nd Reg. Sess. (2022). <ul style="list-style-type: none"> ○ Under the pre-Roe statute, any person who intentionally provides the means to procure the miscarriage of a woman, shall be punished by imprisonment for 2 to 5 years, unless necessary to save the woman's life. A.R.S. § 13-3603. It remains unclear how this law is to be reconciled with more recent laws restricting abortion. |

INDIANA

Summary of Current (and Most Recent) Abortion and Personhood Laws

- A recently enacted law, effective September 15, 2022, significantly restricts abortion in Indiana. It revokes abortion clinics' licenses (permitting abortions to only be performed at hospitals) and contains limited exceptions for rape and incest up to 10 weeks gestation, and for certain risks to the pregnant woman and lethal fetal anomalies up to 20 weeks. [Senate Bill 1](#) (amending [Ind. Code tit. 16 art. 34](#)). However, on September 22, 2022, an Indiana court issued a preliminary injunction, pending a decision on the merits regarding a challenge under Indiana's constitution. *Planned Parenthood Northwest v. Members of the Med. Licensing Bd. of Ind.* (Case No. 53C06-2208-PL-001756).
- With the law suspended, abortion clinics are permitted to remain open and maintain their licenses, but the previously effective restrictions, which generally prohibit abortions after 20 weeks postfertilization (with certain exceptions), remain in effect.
- If it goes into effect, the law that is currently enjoined also:
 - Prohibits the provision of abortion pills after 8 weeks of postfertilization age, and requires that they be dispensed in person, and taken in the presence of the physician. [Ind. Code § 16-34-2-1](#).
 - States (and requires the pregnant person to be informed) that "human physical life begins when a human ovum is fertilized by a human sperm." [Ind. Code § 16-34-2-1.1\(a\)\(1\)\(E\)](#).
 - Requires information about each abortion performed to be reported to the state. [Ind. Code § 16-34-2-5](#).

Potential impact of the law on and references to IVF and reproductive medicine if any

- It does not appear that current abortion restrictions in Indiana will apply to IVF or other reproductive medicine services outside the context of a pregnancy.
- The recently enacted law expressly states it does not apply to in vitro fertilization. [Ind. Code § 16-34-1-0.5](#).
- Indiana law criminalizes "a person who knowingly or intentionally purchases or sells a human ovum, zygote, embryo, or fetus commits unlawful transfer of a human organism," but this does not apply to in vitro fertilization. [Ind. Code § 35-46-5-2](#)

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| Relevant definitions | Neither Indiana's current nor recently amended abortion statutes define fetus, fertilization, embryo, viability, or conception. |
| Penalties for violations of the applicable abortion restrictions | A physician who violates the abortion restrictions or fails to comply with the requirements related to a lawful abortion may be subject to civil and criminal penalties. See Ind. Code tit. 16 art. 34 . |

KANSAS

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| Summary of Current (and Most Recent) Abortion and Personhood Laws | <ul style="list-style-type: none">• Kansas prohibits or restricts abortion in various ways, including:<ul style="list-style-type: none">○ Prohibiting abortion both after viability and after 22 weeks, unless necessary to save life of the pregnant woman or prevent major damage to bodily function.○ Imposing additional restrictions on certain abortion techniques and on abortions based on the sex of the fetus. Kan. Stat. Ann. §§ 65-6703; -6721; -6724; -6743; -6726.• Kansas codified a legislative declaration that life begins at fertilization and accords the same rights to unborn children beginning at fertilization as are available to other residents of the state, subject to other State laws and the constitutions of the U.S. and Kansas. Kan. Stat. Ann. § 65-6732. |
| Potential impact of the law on and references to IVF and reproductive medicine if any | <ul style="list-style-type: none">• It does not appear that current abortion restrictions in Kansas will apply to IVF or other reproductive medicine services outside the context of a pregnancy.• A legislative declaration that life begins “at fertilization” and stating that the laws of Kansas shall be interpreted and construed to “acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges and immunities available to other persons, citizens and residents of this state” could theoretically be interpreted to impact IVF and ART procedures by imposing restrictions on the disposition of embryos. Kan. Stat. Ann. § 65-6732. However, there is currently a carve-out provision in Kansas law for disposition of products of in vitro fertilization before implantation. Kan. Stat. Ann. § 65-6702.• Current law relating to rights of children conceived through ART includes a provision stating that “the technique of heterologous artificial insemination may be performed in this state” with consent of married couple wanting to conceive children. Kan. Stat. Ann. § 23-2301.• Current law in Kansas includes a provision stating that the “disposition of the product of in vitro fertilization prior to implantation” is lawful in the state. Kan. Stat. Ann. § 65-6702. |
| Relevant definitions | <ul style="list-style-type: none">• “<i>Abortion</i>” is defined as “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 unborn child who died as the result of natural causes in utero, accidental trauma or a criminal assault on the |

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| | <p>pregnant woman or her unborn child, and which causes the premature termination of the pregnancy.” Kan. Stat. Ann. §65-6701.</p> <ul style="list-style-type: none"> • “<i>Pregnant</i>” or “<i>pregnancy</i>” means “that female reproductive condition of having an unborn child in the mother’s body.” Kan. Stat. Ann. §65-6701; See also § 65-6723 • In a legislative declaration that life begins at fertilization, “<i>fertilization</i>” means “the fusion of a human spermatozoon with a human ovum” and “unborn child” means “all unborn children or the offspring of human beings from the moment of fertilization until birth at every stage of biological development.” Kan. Stat. Ann. § 65-6732. • The Kansas law setting forth required information to be provided prior to performing an abortion defines “<i>human being</i>” as “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.” Kan. Stat. Ann. § 65-6709. |
| <p>Penalties for violations of the applicable abortion restrictions</p> | <ul style="list-style-type: none"> ○ A person who violates the state’s abortion restrictions may be subject to civil and criminal penalties. Kan. Stat. Ann. §§ 65-6703; -6721; -6724; -6746. • Any physician who intentionally, knowingly or recklessly fails to provide information required prior to abortion is “guilty of unprofessional conduct.” Kan. Stat. Ann. § 65-6712. |

LOUISIANA

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| Summary of Current (and Most Recent) Abortion and Personhood Laws | <ul style="list-style-type: none">• Louisiana law currently prohibits abortion, including abortion-inducing drugs, at any stage of gestation, with limited exceptions.• The state recently enacted Senate Bills 342 and 388, which update its abortion laws following the <i>Dobbs</i> decision. Human Life Protection Act, La. Stat. Ann. § 40:1061, 2022 LA S.B. 342 (NS), effective June 17, 2022.• Abortion is defined as any act with the intent to terminate a clinically diagnosable “pregnancy” with the knowledge that the termination will cause the death of the “unborn child.” Under Louisiana law, pregnancy commences at fertilization and implantation. |
| Potential impact of the law on and references to IVF and reproductive medicine if any | <ul style="list-style-type: none">• It does not appear that current abortion restrictions in Louisiana will apply to IVF or other reproductive medicine services outside the context of a pregnancy.• There are no explicit references to IVF and reproductive medicine services in the current Louisiana laws regulating abortion.• The definition of abortion involves termination of a “pregnancy,” which is defined as specifically commencing at fertilization and implantation.• Further, under Louisiana law, “unborn child” means any individual of the human species from fertilization <u>and</u> implantation until birth. Thus, laws protecting the rights of an “unborn child” would not apply to pre-implantation scenarios. |
| Relevant definitions | <ul style="list-style-type: none">• “<i>Abortion</i>” is defined as “the performance of any act with the intent to terminate a clinically diagnosable pregnancy with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child by one or more of the following means:<ul style="list-style-type: none">○ “Administering, prescribing, or providing any abortion-inducing drug, potion, medicine, or any substance, device, or means to a pregnant female.”○ “Using an instrument or external force on a pregnant female.” La. Stat. Ann. § 14:87.1, 2022 LA S.B. 342 (NS).• “<i>Conception</i>” or “<i>fertilization</i>” is defined as “the fusion of a human spermatozoon with a human ovum.” La. Stat. Ann. § 14:87.1, 2022 LA S.B. 342 (NS). |

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| | <ul style="list-style-type: none"> • “<i>Pregnant</i>” is defined as “that female reproductive condition of having a developing embryo or fetus in the uterus which commences at fertilization and implantation.” La. Stat. Ann. § 14:87.1, 2022 LA S.B. 342 (NS). • “<i>Unborn child</i>” is defined as “any individual of the human species from fertilization and implantation until birth.” La. Stat. Ann. §14:2. |
| <p>Penalties for violations of the applicable abortion restrictions</p> | <p>Any person who “commits the crime of abortion” or who knowingly performs an abortion “by means of an abortion-inducing drug” shall be subject to criminal penalties. La. Stat. Ann. § 14:87, 2022 LA S.B. 388 (NS).</p> |

MISSOURI

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| <p>Summary of Current (and Most Recent) Abortion and Personhood Laws</p> | <ul style="list-style-type: none"> • Missouri law currently prohibits abortion except in cases of a “medical emergency.” Mo. Rev. Stat. § 188.017. • Missouri has not amended its abortion statute since the <i>Dobbs</i> decision; however, the Missouri Attorney General issued an opinion letter on June 24, 2022, which “triggered” the total prohibition on abortion noted above. 22 Op. Att’y. Gen. 2022 (2022) (providing notification that <i>Roe</i> was overturned and putting into effect Section 188.017). |
| <p>Potential impact of the law on and references to IVF and reproductive medicine if any</p> | <ul style="list-style-type: none"> • It does not appear that current abortion restrictions in Missouri will apply to IVF or other reproductive medicine services outside the context of a pregnancy. • There are no explicit references to IVF or reproductive medicine services in the state’s abortion statutes. • The statutes defining “abortion” refer to “an embryo or fetus in its mother’s womb” and “the “intentional termination of the pregnancy.” |
| <p>Relevant definitions</p> | <ul style="list-style-type: none"> • “<i>Abortion</i>” is defined as “[t]he act of using or prescribing any instrument, device, medicine, drug, or any other means or substance with the intent to destroy the life of the embryo or fetus in his or her mother’s womb” or “[t]he intentional termination of the pregnancy of a mother by using or prescribing any instrument, device, medicine, drug, or other means with an intention other than to increase the probability of a live birth or to remove a dead unborn child.” Mo. Rev. Stat. § 188.015 (1). • “<i>Conception</i>” is defined as “the fertilization of the ovum of a female by sperm of a male.” Mo. Rev. Stat. § 188.015 (3). • An “<i>unborn child</i>” is defined as “the offspring of human beings from the moment of conception until birth and at every stage of its biological development, including the human conceptus, zygote, morula, blastocyst, embryo, and fetus.” Mo. Rev. Stat. § 188.015 (10). • A separate part of the code states that “[t]he life of each human being begins at conception.” Mo. Rev. Stat. § 1.205 (1). • The section further defines the terms “<i>unborn child</i>” and “unborn children” to “include all unborn child or children or the offspring of human beings from the moment of conception until birth at every stage of biological development.” Mo. Rev. Stat. § 1.205 (3). |

**Penalties for violations
of the applicable
abortion restrictions**

“Any person who knowingly performs or induces an abortion” may be subject to criminal and civil penalties, and a licensed provider may be “subject to suspension or revocation of his or her professional license by his or her professional licensing board.” [Mo. Rev. Stat. §§ 188.017 \(2\), 188.058 \(1\), 188.375\(3\)](#)

NEBRASKA

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| Summary of Current (and Most Recent) Abortion and Personhood Laws | <ul style="list-style-type: none">• Nebraska law prohibits performing or inducing an abortion after 20 weeks post-fertilization except as necessary to avert the woman’s death or serious risk of substantial and irreversible physical impairment of a major bodily function. Neb. Rev. Stat. §§ 28-3, 102-111.• The law also includes reporting requirements applicable to physicians who perform abortions.• Nebraska prohibits telemedicine abortions by requiring the physician performing the abortion to be “physically present in the same room with the patient” when “prescribe[ing] any instrument, device, medicine, drug, or other substance to perform, induce, or attempt [an] abortion.” Neb. Rev. Stat. § 28-335. |
| Potential impact of the law on and references to IVF and reproductive medicine if any | <ul style="list-style-type: none">• It does not appear that current abortion restrictions in Nebraska will apply to IVF or other reproductive medicine services outside the context of a pregnancy.• Nebraska’s abortion law currently does not include references to IVF or other reproductive medicine procedures.• Current law restricting abortion defines “unborn child” as “an individual or organism of the species homo sapiens from fertilization until live birth,” but the term is used only in the context of abortion to end a pregnancy. |
| Relevant definitions | <ul style="list-style-type: none">• “<i>Abortion</i>” is defined as “the use or prescription of any instrument, medicine, drug, or 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 unborn child who died as the result of natural causes in utero, accidental trauma, or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy.”• “<i>Attempt to perform or induce an abortion</i>” is defined as “an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this state in violation of the Pain-Capable Unborn Child Protection Act.”• “<i>Fertilization</i>” is defined as “the fusion of a human spermatozoon with a human ovum.” |

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| | <ul style="list-style-type: none">• “<i>Unborn child</i>” and “<i>fetus</i>” are each defined as “an individual organism of the species homo sapiens from fertilization until live birth.” Neb. Rev. Stat. § 28-3,103 |
| Action for damages; action for injunctive relief; attorney's fees | A physician who violates the abortion restrictions may be subject to criminal and civil penalties and may be found to have engaged in unprofessional conduct. Neb. Rev. Stat. §§ 28-3,108, 38-2021 . The law also provides for damages, injunctive relief, and attorney’s fees. Neb. Rev. Stat. § 28-3,109 . |

NORTH CAROLINA

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| <p>Summary of Current (and Most Recent) Abortion and Personhood Laws</p> | <ul style="list-style-type: none"> • North Carolina law prohibits abortion after 20 weeks of pregnancy except in the case of medical emergency. N.C. Gen. Stat. §§ 14-44, 14-45, 14-45.1. • Current law also criminalizes certain acts causing the death of an unborn child, but provides exceptions for lawful abortion. N.C. Gen. Stat. § 14-23.1 to -23.7. • Current law does not specifically address legal status of embryos, fetuses, or assisted reproductive technology procedures. |
| <p>Potential impact of the law on IVF and reproductive medicine if any</p> | <ul style="list-style-type: none"> • It does not appear that current abortion restrictions in North Carolina will apply to IVF or other reproductive medicine services outside the context of a pregnancy. • There are no explicit references to IVF or reproductive medicine services in current North Carolina laws. |
| <p>Relevant definitions</p> | <ul style="list-style-type: none"> • The North Carolina criminal statutes define “<i>unborn child</i>” as a “member of the species homo sapiens, at any stage of development, who is carried in the womb.” N.C. Gen. Stat. § 14-23.1. • The North Carolina criminal statutes do not specifically define “abortion,” but makes it a crime if, in violation of the law: <ul style="list-style-type: none"> ○ “[A]ny person shall willfully administer to any woman, either pregnant or quick with child, or prescribe for any such woman, or advise or procure any such woman to take any medicine, drug or other substance whatever, or shall use or employ any instrument or other means with intent thereby to destroy such child” N.C. Gen. Stat. § 14-44. ○ “[A]ny person shall administer to any pregnant woman, or prescribe for any such woman, or advise and procure such woman to take any medicine, drug or anything whatsoever, with intent thereby to procure the miscarriage of such woman, or to injure or destroy such woman, or shall use any instrument or application for any of the above purposes.” N.C. Gen. Stat. § 14-45. • For an abortion to be voluntary and informed, certain information must be provided to the woman seeking an abortion at least 72 hours in advance, except in case of medical emergency. N.C. Gen. Stat. § 90-21.82. |

Penalties for violations of the applicable abortion restrictions

- Any individual who “advises,” “procures” or “performs” an abortion in violation of the law may be subject to civil and criminal penalties. [N.C. Gen. Stat. §§ 14-44, 14-45, 90-21.10, 14-23.2.](#)
- Civil suit for damages and injunctive relief prohibiting provider from performing or inducing further abortions in North Carolina can be brought against providers performing abortion that does not comply with informed consent requirements. [N.C. Gen. Stat. § 90-21.88.](#)

OHIO

Summary of Current (and Most Recent) Abortion and Personhood Laws

- Ohio has multiple criminal laws restricting abortion, the strictest of which is currently enjoined by a court (as explained below).
- The strictest law was passed in 2019, when the Ohio Legislature adopted the Human Rights and Heartbeat Protection Act, which subjects medical providers to potential prosecution for performing abortions after the detection of a fetal heartbeat, approximately six weeks after the patient's last menstrual period. Ohio Rev. Code §§ [2919.193](#), [2919.195](#).
 - A federal court enjoined the Act's effective date until the Supreme Court's ruling in *Dobbs*. [PreTerm-Cleveland v. Yost](#), 394 F. Supp.3d 796 (S.D. Ohio 2019).
 - After *Dobbs*, a new legal challenge was brought to the Act. On September 14, 2022, an Ohio judge granted a temporary injunction against the enforcement of the Act based on the Ohio Constitution. On Monday, September 19, 2022, the court extended the injunction to October 12, 2022.
 - Notably, in his ruling, the judge declared his view that Ohio's Constitution provides a fundamental right to an abortion.
- Other Ohio laws restrict abortion by:
 - Prohibiting abortion after viability, with limited exceptions for the life or health of the pregnant woman. Ohio Rev. Code § [2919.17](#).
 - Prohibiting abortion "when the probable post-fertilization age of the unborn child is twenty weeks or greater." [Ohio Rev. Code § 2919.201](#).
 - Prohibiting "partial birth" abortion. [Ohio Rev. Code § 2919.151](#).
 - Prohibiting abortion based on a test result or other reason indicating that the "unborn child" may have Down syndrome. [Ohio Rev. Code § 2919.10](#).

Potential impact of the law on IVF and reproductive medicine if any

- It does not appear that current abortion restrictions in Ohio will apply to IVF or other reproductive medicine services outside the context of a pregnancy.
- There are no explicit references to IVF or reproductive medicine services in Ohio abortion laws.

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| | <ul style="list-style-type: none"> • Notably, in 2019, an Ohio appeals court held that Ohio law conferred no rights on frozen embryos prior to implantation, and thus patients could not bring wrongful death action against a hospital based on its accidental destruction of frozen embryos, even though a patients’ doctor determined the embryos to be viable prior to freezing them. The court concluded that civil and criminal statutory definitions of a person did not extend to embryos, but, rather, only to unborn human offspring developing during pregnancy. Penniman v. Univ. Hosp. Health System, 103 N.E.ed 333 (Ohio Ct. App. 2019). |
| Relevant definitions | <ul style="list-style-type: none"> • “<i>Abortion</i>” is defined as “the purposeful termination of a human pregnancy by any person, including the pregnant woman herself, with an intention other than to produce a life birth or to remove a dead fetus or embryo.” Ohio Rev. Code § 2919.11. • “<i>Unborn child</i>” is defined as “an individual organism of the species homo sapiens from fertilization until live birth.” Ohio Rev. Code § 2919.16. • Ohio criminal law defines “<i>unborn human</i>” as “an individual organism of the species Homo sapiens from fertilization until live birth.” Ohio Rev. Code §2901.01(B)(1)(c)(i). NB: This law only applies to the termination of a pregnancy. • The definitions of “<i>unborn child</i>” and “<i>unborn human</i>” are used only in the context of abortion of a pregnancy. |
| Penalties for violations of the applicable abortion restrictions | <p>A person who performs an illegal abortion may be subject to criminal and civil penalties and health care providers may be subject to disciplinary action. Ohio Rev. Code § 2919.193.</p> |

PENNSYLVANIA

Summary of Current (and Most Recent) Abortion and Personhood Laws

- Pennsylvania Abortion Control Act prohibits abortion after 24 or more weeks gestational age unless a physician reasonably believes that an 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. [18 PA. CONS. STAT. Ch. 32.](#)
- In a section restricting “fetal experimentation,” the law states that it shall not be “construed to condone or prohibit the performance of in vitro fertilization and accompanying embryo transfer.” [18 PA. CONS. STAT. § 3216.](#)
- Pennsylvania has not amended the Abortion Control Act since the *Dobbs* decision.

Potential impact of the law on and references to IVF and reproductive medicine

- It does not appear that current abortion restrictions in Pennsylvania will apply to IVF or other reproductive medicine services outside the context of a pregnancy.
- The Abortion Control Act requires all persons conducting, or experimenting in, in vitro fertilization to file quarterly reports with the Pennsylvania Department of Health.
 - Reports must include: (1) names of all persons conducting or assisting in the fertilization or experimentation process; (2) locations where the fertilization or experimentation is conducted; (3) name and address of any person, facility, agency or organization sponsoring the fertilization or experimentation except that names of any persons who are donors or recipients of sperm or eggs shall not be disclosed; (4) number of eggs fertilized; (5) number of fertilized eggs destroyed or discarded; and (6) number of women implanted with a fertilized egg. [18 PA. CONS. STAT. § 3213\(e\).](#)
- The Abortion Control Act prohibits certain types of “fetal experimentation” (e.g., any person who knowingly performs any type of nontherapeutic experimentation upon an unborn child commits a third-degree felony). However, the law states that nothing in this section shall be “construed to condone or prohibit the performance of in vitro fertilization and accompanying embryo transfer.” [18 PA. CONS. STAT. § 3216\(c\).](#)

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| <p>Relevant definitions</p> | <ul style="list-style-type: none"> • “<i>Abortion</i>” is defined as “[t]he use of any means to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child except that, for the purposes of this chapter, abortion shall not mean the use of an intrauterine device or birth control pill to inhibit or prevent ovulation, fertilization or the implantation of a fertilized ovum within the uterus.” 18 PA. CONS. STAT. § 3203. • “<i>Conception</i>” and “<i>fertilization</i>” are both defined as “the fusion of a human spermatozoon with a human ovum.” 18 PA. CONS. STAT. § 3203. • “<i>Fetus</i>” is defined as “an individual organism of the species homo sapiens from fertilization until live birth.” 18 PA. CONS. STAT. § 3203. • “<i>In vitro fertilization</i>” is defined as “[t]he purposeful fertilization of a human ovum outside the body of a living human female.” 18 PA. CONS. STAT. § 3203. • “<i>Unborn child</i>” is defined as “an individual organism of the species homo sapiens from fertilization until live birth.” 18 PA. CONS. STAT. § 3203. |
| <p>Penalties for violations of the applicable abortion restrictions</p> | <p>The Abortion Control Act provides penalties for the performance of an unlawful abortion and for failure to file reports related to “experimentation in in vitro fertilization.” 18 PA. CONS. STAT. §§ 3211(d), 3213(e).</p> |

SOUTH CAROLINA

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| <p>Summary of Current (and Most Recent) Abortion and Personhood Laws</p> | <ul style="list-style-type: none"> • South Carolina law prohibits abortions after 20 weeks unless there is a “fetal anomaly” or a physician determines “in reasonable medical judgment” that the woman “has a condition which so complicates her medical condition as to necessitate an abortion . . . to avert her death or avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.” South Carolina Pain-Capable Unborn Child Protection Act. • The state’s health code also describes the general requirements for abortion and the facilities at which abortions may be lawfully performed. 44 S.C. CODE ANN. § 44-41-20. • However, in 2021, the Governor signed into law a “trigger ban” which would ban most abortions once a fetal heartbeat is detected (i.e., around 6 weeks), subject to limited exceptions for rape, incest, the health of the mother, and fetal anomalies. South Carolina Fetal Heartbeat and Protection from Abortion Act. This Act took effect when <i>Roe v. Wade</i> was overturned. But on August 17, 2022, the South Carolina Supreme Court temporarily enjoined South Carolina from enforcing the Act while it continues to hear a Planned Parenthood challenge to the Act based on the State constitution. Therefore, the 20-week abortion ban under the South Carolina Pain-Capable Unborn Child Protection Act still applies. • On August 30, 2022, the South Carolina legislature initiated debate on a restrictive abortion bill, first introduced as House Bill 5399, the <i>South Carolina Human Life Protection Act</i>. The House and Senate have each passed a version of the bill but have not yet reached agreement on the final language. |
| <p>Potential impact of the law on and references to IVF and reproductive medicine</p> | <ul style="list-style-type: none"> • It does not appear that current abortion restrictions in South Carolina will apply to IVF or other reproductive medicine services outside the context of a pregnancy. • There are no explicit references to IVF or reproductive medicine services in the state’s abortion statutes. |
| <p>Relevant definitions</p> | <p>In the general abortion statute (44 S.C. CODE ANN. 44-41-10 et seq.):</p> <ul style="list-style-type: none"> • “<i>Abortion</i>” is defined as “the use of an instrument, medicine, drug, or other substance or device with intent to terminate the pregnancy of a woman known to be pregnant for reasons 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.” 44 S.C. CODE ANN. § 44-41-10(a). |

- "*Conception*" is defined as "the fecundation of the ovum by the spermatozoa." [44 S.C. CODE ANN. § 44-41-10\(g\)](#).

In the South Carolina Pain-Capable Unborn Child Protection Act (44 S.C. CODE ANN. 44-41-410 et seq.):

- "*Abortion*" is defined as "the use or prescription of any instrument, medicine, drug, or any other substance or device: (a) to intentionally kill the unborn child of a woman known to be pregnant; or (b) to intentionally prematurely terminate the pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of a live birth or of preserving the life or health of the child after live birth." [44 S.C. CODE ANN. § 44-41-4300\(1\)](#).
- "*Fertilization*" is defined as "the fusion of a human spermatozoon with a human ovum." [44 S.C. CODE ANN. § 44-41-4300\(4\)](#).
- "*Post-fertilization age*" is defined as "the age of the unborn child as calculated from the fusion of a human spermatozoon with a human ovum." [44 S.C. CODE ANN. § 44-41-4300\(9\)](#).
- "*Unborn child*" and "*fetus*" are defined as "an individual organism of the species homo sapiens from fertilization until live birth." [44 S.C. CODE ANN. § 44-41-4300\(11\)](#).

In the South Carolina Fetal Heartbeat and Protection from Abortion Act, (44 S.C. CODE ANN. 44-41-610 et seq.):

- "*Conception*" is defined as "fertilization." [44 S.C. CODE ANN. § 44-41-610\(1\)](#).
- "*Human fetus*" and "*unborn child*" are defined as "an individual organism of the species homo sapiens from fertilization until live birth." [44 S.C. CODE ANN. § 44-41-610\(6\)](#).

Penalties for violations of the applicable abortion restrictions

A person who performs an illegal abortion may be subject to criminal and civil penalties. [44 S.C. CODE ANN. §§ 44-41-470, 44-41-680\(D\)](#).

TEXAS

Summary of Current (and Most Recent) Abortion and Personhood Laws

Abortion Prohibition

- The Texas Governor signed into law the Human Life Protection Act in 2021. This law was drafted to go into effect 30 days after official publication of a Supreme Court opinion overturning *Roe v. Wade*, so it became effective on August 25, 2022. Tex. Health & Safety Code, §§ 170A.001 to 170A.007.
 - The law prohibits performing, inducing, or attempting to perform an abortion unless a physician has determined that the pregnancy is life-threatening or poses a serious risk of substantial impairment of a major bodily function unless an abortion is performed or induced.

Civil Suits for Performing, Inducing or Aiding & Abetting Abortion

- The Texas Heartbeat Act (S.B. 8) went into effect in 2021 allowing private citizens to sue anyone who performs or induces an abortion, or knowingly engages in conduct that aids or abets the performance or inducement of an abortion after a “fetal heartbeat” has been detected, except in the case of a documented medical emergency.
 - The scope of conduct that “aids or abets” an abortion is unclear, except that the law specifically references paying for or reimbursing the costs of an abortion through insurance or otherwise.
 - If a citizen is successful in an action the court is instructed to award damages of not less than \$10,000 for each abortion, plus costs and attorney’s fees.
 - The Human Life Protection Act states that it does not abolish or impair any other remedy available in a civil suit, so presumably a private citizen could continue to pursue civil actions under Texas Heartbeat Act for aiding and abetting abortion.

Pre-Roe Abortion Prohibition

- Statutes that were in effect from 1925 (and earlier) until they were “impliedly repealed” by *Roe v. Wade* prohibited any person administering a drug or any means to procure an abortion. Following the *Dobbs* decision, the Texas Supreme Court ruled that this pre-Roe law was still enforceable. Considering the more recently passed laws described above, it’s not clear

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| | <p>whether or how prosecution and enforcement of this law might be reconciled with those. Texas Rev. Civil Stat. Tit. 4512.1-6</p> |
| <p>Potential impact of the law on and references to IVF and reproductive medicine</p> | <ul style="list-style-type: none"> • It does not appear that current abortion restrictions in Texas will apply to IVF or other reproductive medicine services outside the context of a pregnancy. • There are no explicit references to IVF or reproductive medicine services in current abortion laws. • The potential civil penalties in the Texas Heartbeat Act for aiding and abetting an abortion apply only to abortions performed after detection of fetal cardiac activity within the gestational sac, so it would not be applicable to any services or procedures related to an embryo pre-implantation. |
| <p>Relevant definitions</p> | <p>The Human Life Protection Act includes the following definitions:</p> <ul style="list-style-type: none"> • “<i>Abortion</i>” means using or prescribing any instrument, drug or other means with the intent to cause the death of an unborn child of a woman known to be pregnant. • “<i>Fertilization</i>” means the point in time when a male human sperm penetrates the zona pellucida of a female human ovum. • “<i>Unborn child</i>” means in individual living member of the homo sapiens species from fertilization until birth, including the entire embryonic and fetal stages of development. <p>The Texas Heartbeat Act includes the following definitions:</p> <ul style="list-style-type: none"> • “<i>Fetal heartbeat</i>” means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac. • “<i>Unborn child</i>” means a human fetus or embryo in any state of gestation from fertilization until birth. <p>Note, however, in both statutes the term “unborn child” is used only in the context of a pregnancy.</p> |
| <p>Penalties for violations of the applicable abortion restrictions</p> | <ul style="list-style-type: none"> • The Human Life Protection Act includes both criminal and civil penalties, as well as disciplinary action against the licensure or permit of a physician or other health care practitioner who performs, induces, or attempts an abortion in violation of the law. Texas Health & Safety Code §§ 170A.004, 170A.005, 170A.007. • The Texas Heartbeat Act provide for civil action by private citizens against individuals who perform or induce an abortion, or aid and abet the performance or inducement of an abortion, in violation of the law. Texas Health & Safety Code § 171.208. |

VIRGINIA

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| <p>Summary of Current (and Most Recent) Abortion and Personhood Laws</p> | <ul style="list-style-type: none"> • Virginia law permits licensed physicians and nurse practitioners acting within their scope of practice to perform abortions on any woman during the first trimester of pregnancy and later in pregnancy under certain circumstances. Va. Code § 18.2-71 through 18.2-76.1. • During the second trimester a licensed physician may perform an abortion only in a licensed hospital. • After the second trimester of pregnancy, a licensed physician may perform an abortion only if the following conditions are met: <ul style="list-style-type: none"> ○ The abortion is performed in a licensed hospital; ○ The physician and two consulting physicians certify that in their medical opinion the continuation of the pregnancy is likely to result in the death of the woman or substantially and irremediably impair the mental or physical health of the woman; and ○ Measures of life support must be available and utilized if there is any clearly visible evidence of viability. • Termination of a pregnancy is permitted on any woman if necessary to save her life, in the opinion of the physician so performing the abortion. |
| <p>Potential impact of the law on and references to IVF and reproductive medicine</p> | <ul style="list-style-type: none"> • It does not appear that current abortion restrictions in Virginia will apply to IVF or other reproductive medicine services outside the context of a pregnancy. • There are no explicit references to IVF or reproductive medicine services in the abortion laws. |
| <p>Relevant definitions</p> | <p>The abortion laws don't include definitions, except in the context of prohibiting "partial birth infanticide" (not relevant to this analysis), but abortion is described as administering, or causing to be <u>taken by a woman</u>, any drug or other thing with the intent to destroy her unborn child, or to produce an abortion or miscarriage.</p> |
| <p>Penalties for violations of the applicable abortion restrictions</p> | <p>Abortions not performed in compliance with the statutory provisions described above are punishable as a crime. Va. Code § 18.2-71.</p> |

About the ASRM Center for Policy & Leadership

The ASRM [Center for Policy and Leadership](#) (CPL), established in 2020, builds on ASRM’s longstanding role as a leading policy voice on Capitol Hill and in state capitals. The CPL is a non-partisan think-tank with a goal to advance reproductive medicine worldwide, through thoughtful investigation of administrative and legislative challenges facing our field, and to develop analyses to overcome these challenges.

Questions regarding this report and the CPL may be directed to Rebecca O’Connor, J.D., Director, ASRM Center for Policy and Leadership. cpl@asrm.org



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