



DEBUNKING PRO-ABORTION PROPAGANDIST MISINFORMATION ABOUT MISCARRIAGE, ECTOPIC PREGNANCY, AND PRO-LIFE STATE LAWS

INTRODUCTION

Largely in response to the Supreme Court’s majority opinion in *Dobbs v. Jackson Women’s Health Organization*, abortion supporters have launched a new line of misinformation about abortion and laws governing abortion in pro-life states. The most common claim now being pushed by pro-abortion activists is that in states that ban abortion, miscarriage and ectopic pregnancies will also be considered “abortions.” For example, one doctor claimed on Twitter that “Just so we’re clear: the pregnancy that ends up in the wrong spot, like the fallopian tube? The one that will NEVER turn into a baby and will rupture and kill your wife, daughter, or sister? Termination that fetus is also an abortion, and they want to ban those, too.”¹ An article alleges that “[t]here are . . . gray areas the law doesn’t address. In some very early pregnancies, the fertilized egg lodges outside the uterus – most commonly in a fallopian tube – a potentially life-threatening situation called an ectopic pregnancy. If that type of pregnancy proceeds, the woman can bleed to death.”² The article also goes on to state that “[p]atients who have a miscarriage also *sometimes* need to take abortion medication or have dilation and curettage surgery – known as a D&C – to remove tissue that lingers inside the uterus.”³ And the article cites a professor of

¹ Graham Walker, MD @grahamwalker, TWITTER (May 3, 2022, 12:17 AM), <https://twitter.com/grahamwalker/status/1521343045777575939>.

² Victoria Knight et al., *Five Things to Know Now that the Supreme Court Has Overturned Roe v. Wade*, KAISER HEALTH NEWS (June 24, 2022), <https://khn.org/news/article/five-things-to-know-now-that-the-supreme-court-has-overturned-roe-v-wade/>.

³ *Id.*

obstetrics and gynecology as stating that “the treatment for an abortion and the treatment for a miscarriage are exactly the same.”⁴

However, the claims that are being made by pro-abortion activists are disingenuous, misleading, or completely incorrect. There is no state in which a pro-life law would prohibit or criminalize medical treatment for a miscarriage or ectopic pregnancy. Moreover, there is a very distinct and obvious difference between both miscarriages and ectopic pregnancies and abortions. The following memo disproves the narrative being pushed by the pro-abortion community.

A. Trigger Laws and Definition of Abortion

Now that *Roe v. Wade* has been overturned by the Supreme Court, trigger laws in thirteen states have already or will soon go into effect – absent any legal challenges – to ban abortion. These thirteen states are: Alabama,⁵ Arkansas,⁶ Idaho,⁷ Kentucky,⁸ Mississippi,⁹ Missouri,¹⁰ North Dakota,¹¹ Ohio,¹² Oklahoma,¹³ South Dakota,¹⁴ Texas,¹⁵ Tennessee,¹⁶ and Wyoming.¹⁷ At least five other states are expected to soon ban abortion as well, while many other states have bans on abortion that will now be effective, such as Florida’s 15-week abortion ban.

Pro-abortion groups are targeting these thirteen states by alleging that now seeking or

⁴ *Id.* (emphasis added).

⁵ Ala. Code § 26-23H-4.

⁶ Ark. Code Ann. §§ 5-61-301 et seq; 2019 Ark. Acts 180, § 2.

⁷ Idaho Code § 18-622.

⁸ Ky. Rev. Stat. § 311.772.

⁹ Miss. Code Ann. § 41-41-45.

¹⁰ Mo. Rev. Stat. § 188.017.

¹¹ N.D. Cent. Code § 12.1-31-12.

¹² H. B. No. 598 (this bill has not yet been passed into law and is still making its way through the legislative process), *available at* https://search-prod.lis.state.oh.us/solarapi/v1/general_assembly_134/bills/hb598/IN/00/hb598_00_IN?format=pdf.

¹³ S.B. 918 of 2021.

¹⁴ S.D. Codified Laws § 22-17-5.1.

¹⁵ Tex. Health & Safety Code § 170A.002; H.B. No. 1280, 87th Legislature § 3 (2021).

¹⁶ Tenn. Code § 39-15-213.

¹⁷ Wyo. Stat. Ann. § 35-6-102(b).

providing medical care for miscarriages and ectopic pregnancies may be hindered out of fear of prosecution – or even that these state laws are unclear and could actually be used to target women and medical providers. There are, however, several reasons that these claims are untrue.

First, each state’s trigger law contains specific language that serves to make abortion illegal in each respective state. The triggering language, however, is not independent from the rest of the state law governing abortion. Thus, nothing in the triggering language alters the definition of abortion that has already been in place to govern abortion pre-*Dobbs*. For example, pre-*Dobbs*, under Wyoming law:

“Abortion” means an act, procedure, device or prescription administered to or prescribed for a pregnant woman by any person with knowledge of the pregnancy, including the pregnant woman herself, *with the intent* of producing the premature expulsion, removal or termination of a human embryo or fetus, **except that in cases in which the viability of the embryo or fetus is threatened by continuation of the pregnancy, early delivery after viability by commonly accepted obstetrical practices shall not be construed as an abortion . . .**¹⁸

Post-*Dobbs*, this language remains the same. The language part of Wyoming law that does change because of the trigger law is the language regarding *when* abortions are permissible. Prior to *Dobbs*, the prohibited abortions after viability:

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.¹⁹

Post-*Dobbs*, the law now prevents abortion, even before viability, but still with certain exceptions:

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

¹⁸ Wyo. Stat. Ann. § 35-6-101(emphasis added).

¹⁹ Wyo. Stat. Ann. § 35-6-102(a) (emphasis added).

“Abortion” means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female 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, to remove an ectopic pregnancy, or to remove a dead unborn child who died as the result of a spontaneous miscarriage, accidental trauma, or a criminal assault on the pregnant female or her unborn child.²³

As can be seen in both of these examples, the laws take into account naturally occurring events such as miscarriage and ectopic pregnancies.

B. Miscarriage

For the average person, there may be some confusion as to whether a state law criminalizes “miscarriage,” because the term is used in some state statutes in conjunction with the term “abortion.” In addition, within the medical community, miscarriages are often referred to as “spontaneous abortions.”²⁴ There are, however, several reasons that these state laws do not, in fact, criminalize miscarriages, or medical treatment following a miscarriage.

First, what is clear from the context of the state laws is that *intent* matters. For instance, in Tennessee’s code, abortion

means the administration to any woman pregnant with child, whether the child be quick or not, of any medicine, drug, or substance whatever, or the use or employment of any instrument, or other means whatever, *with the intent* to destroy the child, thereby destroying the child before the child’s birth²⁵

The law also addresses “attempt[s] to procure a miscarriage,”²⁶ and defines the term as meaning “the administration of any substance *with the intention* to produce the miscarriage of a woman or the use or employment of any instrument or other means with such intent.”²⁷ Alabama’s law is similar, as it criminalizes the *willful*

²³ Okla. Stat. tit. 63, § 1-730

²⁴ Clark Alves & Amanda Rapp, *Spontaneous Abortion*, PubMed, <https://pubmed.ncbi.nlm.nih.gov/32809356/> (last visited June 29, 2022) (“Colloquially, spontaneous abortion is referred to as a ‘miscarriage’ to avoid association with induced abortion.”).

²⁵ Tenn. Code Ann. § 39-15-201 (emphasis added).

²⁶ *Id.*

²⁷ *Id.* (emphasis added).

administ[ion] 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 purpose²⁸

Thus, it is clear that it is the *intent* to destroy or otherwise jeopardize an preborn child's life that is prohibited.

Second, a natural miscarriage occurs without any intent – indeed, often in spite of the intent of the woman to keep the baby. There is nothing within any state law that would punish a woman for having or prohibit her from seeking medical attention following a spontaneous miscarriage. Moreover, there is no state law that would punish healthcare providers for or prohibit them from giving medical attention to a woman seeking medical care for a miscarriage. In these instances, the woman is seeking medical care *following* a miscarriage, not seeking assistance to *induce* a miscarriage (or abortion). In these instances, there has been no intent to destroy the life of a preborn human being. In fact, even Planned Parenthood states: “It can be difficult to know exactly why a miscarriage happened, but it’s almost never caused by something the pregnant person did.”²⁹

Third, pro-abortionists distort medical terms and experiences. As discussed in the introduction, some medical professionals claim that women who have natural (spontaneous) miscarriages have to undergo abortion procedures in order to have proper medical treatment. While the claims that D&C procedures, or the prescription of medication, are often necessary to treat the complications of a miscarriage are true, the medical treatment a woman receives following a miscarriage is *not* an abortion. At the time a woman undergoes these procedures, the preborn baby has already died. Again, Planned Parenthood itself describes the different kinds of

²⁸ Ala. Code § 13A-13-7

²⁹ *What is a Miscarriage?*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/learn/pregnancy/miscarriage> (June 28, 2022).

miscarriages that can occur:

Threatened miscarriage — You have vaginal bleeding and may have mild cramps, but your cervix stays closed. Half of the time, the bleeding stops and your pregnancy goes on normally. The other half of threatened miscarriages become inevitable miscarriages, and end in pregnancy loss.

Inevitable miscarriage — You have increasing bleeding, and your cervix opens. If this happens, there's no chance for your pregnancy to continue.

Incomplete miscarriage — Some of the pregnancy tissue comes out of your uterus, and some stays inside. You may need follow-up treatment to remove the remaining tissue.

Complete miscarriage — All the pregnancy tissue comes out of your uterus. You usually don't need any extra treatment.

Missed miscarriage — You have no cramps or bleeding. But ultrasound shows an embryo without a heartbeat or an empty pregnancy sac without an embryo. Usually the tissue passes on its own, but you may need treatment.³⁰

Only two of the miscarriages described above potentially require a medical procedure for the health of the woman. And, in both scenarios, there is no life to take or to destroy. Rather, the purpose of – or intention behind – the procedures are to treat the miscarriage and heal the woman, not to take the life of her preborn child. Thus, the *intent* of the procedure is entirely different and easily distinguishable (even by Planned Parenthood) from the intent that is criminalized in some state statutes. As such, any argument from Planned Parenthood that miscarriage treatment may somehow be considered “abortion” is disingenuous at best.

Finally, there are some claims from pro-abortionists that, regardless of the intent, the very fact that a woman experiences a spontaneous miscarriage opens her up to potential (wrongful) criminal charges. Some proponents of this theory have cited cases in which such charges occurred. However, in these very rare and obscure cases that have been cited, the charges occurred because some evidence existed that the woman caused a self-induced abortion, and did

³⁰ *Id.*

not experience a miscarriage. In addition, in the cases all the cases cited, the charges were overturned. Moreover, there is practically no support for criminal charges to be brought against women having abortions, rather, the laws are directed against those providing abortions. Thus, this last claim has no actual merit.

Notably, thirty-four “states explicitly explain that miscarriage management is not part of their legal definition of abortion.”³¹ The remainder of “states that don’t specify are pro-choice, meaning elective abortion is legal and so there’s no reason to be concerned miscarriage management would not be.”³²

C. Ectopic Pregnancy

Pro-abortion advocates are also using the fact that ectopic pregnancies occur to push the fear that seeking and providing treatment for such pregnancies would be criminalized in the thirteen states with trigger laws to ban abortion. Again, none of these states do anything remotely close to either preventing or punishing medical treatment for ectopic pregnancies. This is true both pre and post-*Dobbs*. As with miscarriages, ectopic pregnancies are a well-known medical occurrence. According to AAPLOG:

Ectopic pregnancy refers to any pregnancy that is implanted outside the uterus, most commonly in the fallopian tube. By the time an ectopic pregnancy has been discovered (usually by 7 to 8 weeks gestation) the embryo has died in the majority of cases. However, the supporting tissues for the pregnancy often continue to grow and can cause life-threatening bleeding, either through rupture of the fallopian tube or other mechanisms. In a small number of cases a living embryo can be observed in the ectopic pregnancy. **Unfortunately, this embryo will die in the near future if observation is continued, and the mother’s life remains in imminent danger from a life-threatening hemorrhage, before and after the death of the embryo. Continuation of such a pregnancy cannot result in the survival of a baby and entails a very substantial risk of maternal death or disability.** Hence treatment is commenced to end the pregnancy surgically or

³¹ *Responding to 16 Pro-Choice Claims About Dobbs, the Pro-Life Movement, and Abortion Bans*, Secular Pro-Life (June 27, 2022), <https://secularprolife.org/2022/06/responding-to-16-pro-choice-claims-about-dobbs-the-pro-life-movement-and-abortion-bans/>.

³² *Id.*

medically. In certain cases, an additional benefit of early treatment may be preservation of fertility potential.³³

Thus, medical treatment for an ectopic pregnancy is *not* an abortion. Clearly, medical treatment for ectopic pregnancies is necessary to preserve the life and health of the woman, and is not *intended* to take the life of a pre-born baby.

Planned Parenthood itself notes that:

[t]reating an ectopic pregnancy isn't the same thing as getting an abortion. Abortion is a medical procedure that when done safely, ends a pregnancy that's in your uterus. Ectopic pregnancies are unsafely outside of your uterus (usually in the fallopian tubes), and are removed with a medicine called methotrexate or through a laparoscopic surgical procedure. The medical procedures for abortions are not the same as the medical procedures for an ectopic pregnancy.³⁴

Moreover, twenty-two states directly reference ectopic pregnancies, indicating that medical treatment of those pregnancies is not abortion.³⁵ A majority of the remaining states that do not directly reference ectopic pregnancies in their laws are pro-abortion states.³⁶

Finally, the same pro-abortion community that is now crying out about the dangers of ectopic pregnancies and the need for medical treatments is the community that has purposefully disregarded the dangers of ectopic pregnancies that can be exacerbated by the prescription of medical abortions without an in-person physician visit and ultrasound to determine that the woman taking the abortion pills is not experiencing an ectopic pregnancy. As is documented, “ectopic pregnancy occurs in 1-2% of U.S. pregnancies,³⁷ but accounts for between 4-10% of pregnancy-related deaths.”³⁸

³³ *What is AAPLOG's Position on Treatment of Ectopic Pregnancy?*, AAPLOG, <https://aaplog.org/what-is-aaplogs-position-on-treatment-of-ectopic-pregnancy/> (last visited June 29, 2022) (emphasis added).

³⁴ *Ectopic Pregnancy*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/learn/pregnancy/ectopic-pregnancy> (last visited June 28, 2022).

³⁵ *Responding to 16 Pro-Choice Claims About Dobbs*, *supra* note 31

³⁶ *Id.*

³⁷ “Ectopic Pregnancies,” Voyage of Life (Charlotte Lozier Institute). Available at: <https://lozierinstitute.org/dive-deeper/ectopic-pregnancies/>.

³⁸ Laura L Marion , George Rodney Meeks. Clin Obstet Gynecol. (June 2012) 55(2):376-86. Doi:

The abortion pill poses a serious health risk to women, which is why it is regulated in the first place. Administration of the drug is not recommended past 10-weeks gestation, and it is especially unsafe if there is an ectopic pregnancy. To avoid some of the potential complications, an ultrasound is necessary to determine the current stage of pregnancy and eliminate the possibility of an ectopic pregnancy. Even under those regulations, the abortion pill does not work in safe or effective ways nearly twenty-five percent of the time that it is used. Complications from the administration of the pill include, but are not limited to, ruptured ectopic pregnancies, hemorrhage, infection, and retained fetal or other tissue, which require surgery in as many as one in twenty women.

Eliminating the requirement of an in-person visit with a doctor and an ultrasound and allowing the abortion pill to be administered unsupervised only serves to further endanger women. However, that's exactly what the pro-abortion community requested that the FDA allow, and what the pro-abortion Biden Administration has done. Thus, the lament from pro-abortion groups regarding the dangers that ectopic pregnancies pose to women are augmented by state abortion laws cannot be taken seriously, and is clearly motivated by the desire to expand abortion – not to protect women.

CONCLUSION

The pro-life community values life and supports laws that serve to protect all innocent human life – which includes the lives of preborn children *and* of women. The laws in the thirteen states that have language triggering restrictions on abortion in a post-*Dobbs* world are intended to, and do, serve to protect preborn children *and* women. The false narrative that is being pushed by the pro-abortion community is nothing more than an extension of its continuous abortion distortion. No state prevents or punishes medical treatment of miscarriages or ectopic

pregnancies, and each state values the lives of women and the pre-born children they carry.

**APPENDIX: THE THIRTEEN STATE TRIGGER LAWS
PLUS EACH STATE'S DEFINITION OF "ABORTION"**

ALABAMA

Trigger Law: Ala. Code § 26-23H-4

(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.

Definitions: Ala. Code § 26-23H-3

(1) Abortion. The use or prescription of any instrument, medicine, drug, or any other substance or device with the intent to terminate the pregnancy of a woman known to be pregnant with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. The term does not include these activities if done with the intent to save the life or preserve the health of an unborn child, remove a dead unborn child, to deliver the unborn child prematurely to avoid a serious health risk to the unborn child's mother, or to preserve the health of her unborn child. The term does not include a procedure or act to terminate the pregnancy of a woman with an ectopic pregnancy, nor does it include the procedure or act to terminate the pregnancy of a woman when the unborn child has a lethal anomaly.

(2) Ectopic pregnancy. Any pregnancy resulting from either a fertilized egg that has implanted or attached outside the uterus or a fertilized egg implanted inside the cornu of the uterus.

(3) Lethal anomaly. A condition from which an unborn child would die after birth or shortly thereafter or be stillborn.

(4) Medical emergency. A condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that her pregnancy must be terminated to avoid a serious health risk as defined in this chapter.

(5) Physician. A person licensed to practice medicine and surgery or osteopathic medicine and surgery in Alabama.

(6) Serious health risk to the unborn child's mother. In reasonable medical judgment, the child's mother has a condition that so complicates her medical condition that it necessitates the termination of her pregnancy to avert her death or to avert serious risk of substantial physical impairment of a major bodily function. This term does not include a condition based

on a claim that the woman is suffering from an emotional condition or a mental illness which will cause her to engage in conduct that intends to result in her death or the death of her unborn child. However, the condition may exist if a second physician who is licensed in Alabama as a psychiatrist, with a minimum of three years of clinical experience, examines the woman and documents that the woman has a diagnosed serious mental illness and because of it, there is reasonable medical judgment that she will engage in conduct that could result in her death or the death of her unborn child. If the mental health diagnosis and likelihood of conduct is confirmed as provided in this chapter, and it is determined that a termination of her pregnancy is medically necessary to avoid the conduct, the termination may be performed and shall be only performed by a physician licensed in Alabama in a hospital as defined in the Alabama Administrative Code and to which he or she has admitting privileges.

(7) Unborn child, child or person. A human being, specifically including an unborn child in utero at any stage of development, regardless of viability.

(8) Woman. A female human being, whether or not she has reached the age of majority.

ARKANSAS

Trigger Law: 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.

Definitions: Ark. Code Ann. § 5-61-303

(A) “Abortion” means the act of using, prescribing, administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the pregnancy of a woman, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of the unborn child.

(B) An act under subdivision (1)(A) of this section is not an abortion if the act is performed with the purpose to:

- (i) Save the life or preserve the health of the unborn child;
- (ii) Remove a dead unborn child caused by spontaneous abortion; or
- (iii) Remove an ectopic pregnancy;

(2) “Fertilization” means the fusion of a human spermatozoon with a human ovum;

(3) “Medical emergency” means a condition in which an abortion is necessary to preserve the life of a 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; and

(4) “Unborn child” means an individual organism of the species *Homo sapiens* from fertilization until live birth.

IDAHO

Trigger Law: Idaho Code § 18-622

(1) Notwithstanding any other provision of law, this section shall become effective thirty (30) days following the occurrence of either of the following circumstances:

- (a) The issuance of the judgment in any decision of the United States supreme court that restores to the states their authority to prohibit abortion; or
- (b) Adoption of an amendment to the United States constitution that restores to the states their authority to prohibit abortion.

(2) 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 (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.

(3) It shall be an affirmative defense to prosecution under subsection (2) of this section and to any disciplinary action by an applicable licensing authority, which must be proven by a preponderance of the evidence, that:

(a)

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

(ii) 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

(iii) 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)

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

(ii) If the woman is not a minor or subject to a 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;

(iii) 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 the act of rape or incest to a law enforcement agency or child protective services and a copy of such report has been provided to the physician who is to perform the abortion; and

(iv) The physician who performed the abortion complied with the requirements of paragraph (a)(iii) of this subsection regarding the method of abortion.

(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.

Definitions: Idaho Code § 18-604

(1) “Abortion” means the use of any means to intentionally 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 ovulations, fertilization or the implantation of a fertilized ovum within the uterus.

(5) “Fetus” and “unborn child.” Each term means an individual organism of the species *Homo sapiens* from fertilization until live birth.

(8) “Informed consent” means a voluntary and knowing decision to undergo a specific procedure or treatment. To be voluntary, the decision must be made freely after sufficient time for contemplation and without coercion by any person. To be knowing, the decision must be based on the physician’s accurate and substantially complete explanation of:

(a) A description of any proposed treatment or procedure;

(b) Any reasonably foreseeable complications and risks to the patient from such procedure, those related to reproductive health; and

(c) The manner in which such procedure and its foreseeable complications and risks compare with those of each readily available alternative to such procedure, including childbirth and adoption. The physician must provide the information in terms that can be understood by the person making the decision, with consideration of age, level of maturity and intellectual capability.

(9) “Medical emergency” means a condition that, on the basis of the physician’s good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

KENTUCKY

Trigger Law: Ky. Rev. Stat. § 311.772

(2) The provisions of this section shall become effective immediately upon, and to the extent permitted, by the occurrence of any of the following circumstances:

(a) Any decision of the United States Supreme Court which reverses, in whole or in part, *Roe v. Wade*, 410 U.S. 113 (1973), thereby restoring to the Commonwealth of Kentucky the authority to prohibit abortion; or

(b) Adoption of an amendment to the United States Constitution which, in whole or in part, restores to the Commonwealth of Kentucky the authority to prohibit abortion.

(3)

(a) 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.

(5) 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.

(6) 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.

Definitions: Ky. Rev. Stat. § 311.720

(1) “Abortion” means the use of any means whatsoever to terminate the pregnancy of a woman known to be pregnant with intent to cause fetal death;

(2) “Accepted medical procedures” means procedures of the type performed in the manner and in a facility with equipment sufficient to meet the standards of medical care which

physicians engaged in the same or similar lines of work, would ordinarily exercise and devote to the benefit of their patients;

(9) “Medical emergency” means any condition which, on the basis of the physician’s good-faith clinical judgment, so complicates the medical condition of a pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function;

(10) “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.

MISSISSIPPI

Trigger Law: Miss. Code Ann. § 41-41-45

[From and after ten days following the date of publication by the Attorney General of Mississippi that the Attorney General has determined that the United States Supreme Court has overruled the decision of Roe v. Wade, and that it is reasonably probable that this section would be upheld by the Court as constitutional, this section will read as follows:]

(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.

Definitions: Miss. Code Ann. § 41-41-31

The following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) “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.

(b) “Medical emergency” means that condition which, on the basis of the physician’s best clinical judgment, so complicates a pregnancy as to necessitate an immediate abortion to avert the death of the mother or for which a twenty-four-hour delay will create grave peril of immediate and irreversible loss of major bodily function.

(c) “Probable gestational age of the unborn child” means what, in the judgment of the attending physician, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed.

MISSOURI

Trigger Law: 188.017. 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.

Definitions: Mo. Rev. Stat. § 188.015

(1) “Abortion”:

(a) The act of using or prescribing any instrument, device, medicine, drug, or any other means or substance with the intent to destroy the life of an embryo or fetus in his or her mother’s womb; or

(b) The intentional termination of the pregnancy of a mother by using or prescribing any instrument, device, medicine, drug, or other means or substance with an intention other than to increase the probability of a live birth or to remove a dead unborn child;

(7) “Medical emergency”, a condition which, based on reasonable medical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman;

NORTH DAKOTA

Trigger Law & Definitions: N.D. Cent. Code § 12.1-31-12.

Effective Date.

Section 2 of chapter 132, S.L. 2007, as amended by S.L. 2019, ch. 126, § 2, provides: “This section becomes effective on the thirtieth day after:

1. The adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states the authority to prohibit abortion; or

2. The attorney general certifies to the legislative council the issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion.”

1. As used in this section:

a. “Abortion” means the use or prescription of any substance, device, instrument, medicine, or drug to intentionally terminate the pregnancy of an individual known to be pregnant. The term does not include an act made with the intent to increase the probability of a live birth; preserve the life or health of a child after live birth; or remove a dead, unborn child who died as a result of a spontaneous miscarriage, an accidental trauma, or a criminal assault upon the pregnant female or her unborn child.

2. It is a class C felony for a person, other than the pregnant female upon whom the abortion was performed, to perform an abortion.

3. The following are affirmative defenses under this section:

a. That the abortion was necessary in professional judgment and was intended to prevent

the death of the pregnant female.

b. That the abortion was 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.

c. That the individual was acting within the scope of that individual's regulated profession and under the direction of or at the direction of a physician.

OHIO

Proposed Trigger Law: H.B. No. 598

Sec. 2904.01. (A) This chapter applies only upon the occurrence of either of the following conditions precedent: (1) The supreme court of the United States issuing an opinion that upholds, in whole or in part, a state's authority to prohibit abortion; (2) The adoption of an amendment to the United States Constitution that authorizes, in whole or in part, a state to 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 H. B. No. 598 Page 2 As Introduced prohibit an abortion. (B) Once either condition precedent in division (A) of this section has occurred: (1) This chapter supersedes all conflicting provisions of the Revised Code.

Definitions: H.B. No. 598

Sec. 2904.02. As used in this chapter:

(A) "Abortion" means the purposeful termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus or embryo.

(D) "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.

OKLAHOMA

Trigger Law: S. B. NO. 918

SECTION 18. This act shall become effective on and after the certification of the Attorney General that: 1. The United States Supreme Court overrules the central holding of *Roe v. Wade*, 410 U.S. 113 (1973), reaffirmed by *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), thereby restoring to the State of Oklahoma the authority to prohibit abortion; or 2. An amendment to the United States Constitution is adopted that restores to the State of Oklahoma the authority to prohibit abortion. ENR. S. B. NO. 918.

Definitions: Okla. Stat. tit. 63, § 1-730

A. As used in this article:

1. “Abortion” means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female 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, to remove an ectopic pregnancy, or to remove a dead unborn child who died as the result of a spontaneous miscarriage, accidental trauma, or a criminal assault on the pregnant female or her unborn child;

2. “Attempt to perform an abortion” means 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 of an abortion;

SOUTH DAKOTA

Trigger Law: S.D. Codified Laws § 22-17-5.1

§ 1, provides: “This Act is effective on the date that the states are recognized by the United States Supreme Court to have the authority to prohibit abortion at all stages of pregnancy.”

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.

TEXAS

Exceptions to Abortion Law: Tex. Health & Safety Code § 170A.002

(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.

Definitions: Tex. Health & Safety Code § 245.002

In this chapter:

(1) "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to:

(A) save the life or preserve the health of an unborn child;

(B) remove a dead, unborn child whose death was caused by spontaneous abortion; or

(C) remove an ectopic pregnancy.

TENNESSEE

Trigger Law & Definitions: Tenn. Code Ann. § 39-15-213

Acts 2019, ch. 351, § 3 provided: "(a) This act shall take effect on the thirtieth day following the occurrence of either of the following circumstances, the public welfare requiring it:

"(1) The issuance of the judgment in any decision of the United States Supreme Court overruling, in whole or in part, *Roe v. Wade*, 410 U.S. 113 (1973), as modified by *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), thereby restoring to the states their authority to prohibit abortion; or

"(2) Adoption of an amendment to the United States Constitution that, in whole or in part, restores to the states their authority to prohibit abortion.

“(b) The attorney general and reporter shall notify in writing the Tennessee code commission of the occurrence of either of the circumstances in (a)(1) or (a)(2) and what date is the thirtieth day following such occurrence.”

(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, 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) It is an affirmative defense to prosecution under subsection (b), which must be proven by a preponderance of the evidence, that:

(1) The abortion was performed or attempted by a licensed physician;

(2) The physician determined, in the physician's good faith 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. No abortion shall be deemed authorized under this subdivision (c)(2) if performed on the basis of a claim or a diagnosis that the woman will engage in conduct that would result in her death or substantial and irreversible impairment of a major bodily function or for any reason relating to her mental health; and

(3) The physician performs or attempts to perform the abortion in the manner which, in the physician's good faith medical judgment, based upon the facts known to the physician at the time, provides the best opportunity for the unborn child to survive, unless in the physician's good faith medical judgment, termination of the pregnancy in that manner would pose a greater risk of the death of the pregnant woman or substantial and irreversible impairment of a major bodily function. 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 that

would result in her death or substantial and irreversible impairment of a major bodily function or for any reason relating to her 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.

WYOMING³⁹

Trigger Law: Wyo. Stat. Ann. § 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.

Definitions: Wyo. Stat. Ann. § 35-6-101

(a) As used in the act, unless the context otherwise requires:

(i) “Abortion” means an act, procedure, device or prescription administered to or prescribed for a pregnant woman by any person with knowledge of the pregnancy,

³⁹ Wyo. Stat. Ann. § 35-6-102(b).

including the pregnant woman herself, with the intent of producing the premature expulsion, removal or termination of a human embryo or fetus, except that in cases in which the viability of the embryo or fetus is threatened by continuation of the pregnancy, early delivery after viability by commonly accepted obstetrical practices shall not be construed as an abortion;

(ii) "Accepted medical procedures" means procedures of the type and performed in a manner and in a facility which is equipped with surgical, anaesthetic, resuscitation and laboratory equipment sufficient to meet the standards of medical care which physicians engaged in the same or similar lines of work in the community would ordinarily exercise and devote to the benefit of their patients