



STATE ABORTION TRIGGER LAWS

POTENTIAL IMPLICATIONS FOR
REPRODUCTIVE MEDICINE



asrm
Center for Policy
and Leadership

Table of Contents

Introduction	1
Analysis of States' Abortion Trigger Laws	4
Arkansas	5
Idaho	6
Kentucky.....	8
Louisiana	9
Mississippi	11
Missouri.....	12
North Dakota.....	14
Oklahoma	15
South Dakota.....	17
Tennessee	18
Texas	19
Utah.....	21
Wyoming.....	22
About the CPL & Acknowledgement	25

The Potential Impact of States' Abortion Trigger Laws on Reproductive Medicine

Last revised: July 1, 2022

Introduction

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 of *Roe v. Wade* (410 U.S. 113, 1973), which conferred a Constitutional right to abortion, and has sparked a litany of changes in state laws across the nation. In thirteen states, so-called "trigger" laws have and are set to take effect which ban or severely restrict abortion care.

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, as overly broad statutory language and definitions *could*, intentionally or not, implicate and even ban such procedures. This 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.

The ASRM Center for Policy and Leadership (CPL), with the pro bono support of Hogan Lovells, LLP, prepared this report to provide professionals, patients, and other members of the public with this high-level overview of states' abortion "trigger" laws and their impact on reproductive medicine, and assisted reproductive technology (ART) procedures, including in vitro fertilization (IVF).

What's in This Report

This report provides background and limited analysis, focused on the potential impact on reproductive medicine, regarding thirteen states' "trigger laws" which effectively or directly ban abortion now that *Roe* has been overturned.

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

- ❖ What the trigger law does;
- ❖ What the law says, if anything, about reproductive medicine;
- ❖ Key definitions (e.g., "embryo", "fertilization"); and
- ❖ Where you can find the provisions of law in state code.

Notably, the impact of these laws will vary state-by-state and often hinge on things such as 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 is intended to address the impact of states’ trigger laws on procedures performed prior to embryo transfer, including performing an IVF procedure and pre-implantation genetic testing. It does *not* refer to the impact of abortion law on potential pregnancy-related complications. IVF may put patients at increased risk for ectopic and heterotopic pregnancy, and trigger laws may have consequences on the management of these and other pregnancy complications that are not addressed in this analysis.

This report is the first in a series to come from the CPL, as we continue to monitor state activity. For example, 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 discarding of unused embryos to legal challenge and 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 trigger laws and their potential impact on reproductive medicine, 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 the date of publication. Periodic updates will be made, so please check back for the latest version, as date stamped.

ANALYSIS:

State Abortion Trigger Laws' Potential Implications for Reproductive Medicine

ARKANSAS	
Trigger Law Statutory Cite(s)	Acts of 2019, Act 180, SB 194
Does this law have a potential impact on IVF/Reproductive medicine? Why or why not?	<ul style="list-style-type: none"> Seemingly no impact on IVF or other ART procedures because the law prohibits abortion, which is defined as acting to terminate the pregnancy of a woman. The statute does define “unborn child” to apply from fertilization to live birth, but this term is only used in the context of defining abortion to mean termination of a pregnancy causing the death of an unborn child.
Does this law explicitly reference IVF, assisted reproductive technology or reproductive medicine?	There are no explicit references to IVF or reproductive medicine services.
Are there any penalties in this law that could apply to ART procedures?	N/A
Relevant definitions	<ul style="list-style-type: none"> “Abortion” means using or administering any instrument, drug, or other substance or device with the purpose to terminate the pregnancy of a woman. “Fertilization” means the fusion of human spermatozoon with a human ovum. “Unborn child” means an individual organism of the species Homo sapiens from fertilization until live birth.
Do the definitions/terms of the trigger law apply to other areas of state code?	N/A
What is the “trigger” for this law to take effect?	The trigger law is effective upon: <ul style="list-style-type: none"> Certification by the Attorney General that the Supreme Court overrules, in whole or in part, the central holding of <i>Roe v.</i>

	<p><i>Wade</i>, thereby restoring to the State of Arkansas the authority to prohibit abortion; or</p> <ul style="list-style-type: none"> Adoption of an amendment to the Constitution that, in whole or in part, restores to the State the authority to prohibit abortion.
Key provisions: What does the law prohibit and when does it apply?	The law prohibits a person purposely performing or attempting to perform an abortion except to save the life of a pregnant woman in a medical emergency.

IDAHO	
Trigger Law Statutory Cite(s)	Trigger law: Criminal Abortion Idaho Code Ann sec. 18-622 Definitions section: Idaho Code Ann. § 18-604.
Does this law have a potential impact on IVF/Reproductive medicine?	<ul style="list-style-type: none"> The law should not affect IVF or other reproductive medicine services occurring outside the context of a pregnancy. In defining pregnancy, the statute states that “the reproductive condition of having a developing fetus in the body commences with fertilization.” That creates some ambiguity, but presumably that would require both fertilization and the fetus being in the body.
Does this law explicitly reference IVF, assisted reproductive technology or reproductive medicine?	There are no explicit references to IVF or reproductive medicine services.
Are there any penalties in this law that could apply to ART procedures?	N/A
Relevant definitions	The trigger law does not have its own definitions section. The chapter definitions section defines terms relevant to reproductive care: <ul style="list-style-type: none"> “Abortion” is defined as “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.” The definitions section explicitly exempts the use of an IUD or birth control pill to prevent ovulation, fertilization, or implantation of a fertilized ovum from the definition of abortion.

	<ul style="list-style-type: none"> • “Fetus” and “unborn child” are both defined to mean “an individual organism of the species Homo sapiens from fertilization until live birth.” • “Medical emergency” is defined to mean “a condition that, on the basis of the physician’s good faith clinical judgement, 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.” • “Pregnant” and “pregnancy” are defined as “the reproductive condition of having a developing fetus in the body and commences with fertilization.”
<p>Do the definitions/terms of the trigger law apply to other areas of state code?</p>	<p>The definitions apply throughout the chapter, which is part of the criminal code.</p>
<p>What is the “trigger” for this law to take effect?</p>	<p>Trigger law takes effect 30 days after either:</p> <ul style="list-style-type: none"> • The Supreme Court issues an opinion restoring the authority to prohibit abortion in the state; or • The Constitution is amended to similarly return authority over the regulation of abortion to the states.
<p>Key provisions: What does the law prohibit and when does it apply?</p>	<ul style="list-style-type: none"> • The Act criminalizes the activity of “every person who performs or attempts to perform an abortion.” Abortion is defined to mean 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.” • Individuals who perform or attempt to perform an abortion with the intent to terminate a pregnancy have committed the crime of “criminal abortion.” • The act outlines several affirmative defenses including an abortion performed by a physician who determined that the “abortion was medically necessary to prevent the death of the pregnant woman.” Such an abortion must be performed in such a “manner” that “provided the best opportunity for the unborn child to survive, unless... termination of a pregnancy in that manner would have posed a greater risk of death of the pregnant woman.” • It is also an affirmative defense if the abortion was performed on a woman or minor child who “reported the act of rape or incest” to the authorities. • Women who undergo or attempt to undergo abortions are shielded from any criminal conviction and penalty.

KENTUCKY

Trigger Law Statutory Cite(s)	Human Life Protection Act, Ky. Rev. Stat. § 311.772.
Does this law have a potential impact on IVF/Reproductive medicine? Why or why not?	<ul style="list-style-type: none"> • Seemingly no impact on IVF or other ART procedures. • The definitions of “fertilization” and “unborn human being” could theoretically apply to the process of creating in vitro embryos, but the law only criminalizes activities performed upon a <i>pregnant woman</i> with the <i>specific intent</i> of causing or abetting the termination. • As written, the law would not directly impact IVF and reproductive medicine.
Does this law explicitly reference IVF, assisted reproductive technology or reproductive medicine?	There are no explicit references to IVF or reproductive medicine services.
Are there any penalties in this law that could apply to ART procedures?	N/A
Relevant definitions	<ul style="list-style-type: none"> • “Fertilization” means the point in time when a male sperm penetrates the zona pellucida of a female human ovum. • “Pregnant” means the human female reproductive condition of having a living unborn human being within her body throughout the entire embryonic and fetal stages of the unborn child from fertilization to full gestation and childbirth. • “Unborn human being” means an individual living member of the species homo sapiens throughout the entire embryonic and fetal stages of the unborn child from fertilization to full gestation and childbirth.
Do the definitions/terms of the trigger law apply to other areas of state code?	N/A
What is the “trigger” for this law to take effect?	<p>The trigger law takes effect upon:</p> <ul style="list-style-type: none"> • Any decision which reverses, in whole or in part, <i>Roe v. Wade</i>, “thereby restoring” to the state the “authority to prohibit abortion”. • Adoption of an amendment to the U.S. Constitution which, in whole or in part, gives Kentucky the “authority to prohibit abortion”.

Key provisions: What does the law prohibit and when does it apply?	<ul style="list-style-type: none"> • No person may knowingly administer to, prescribe for, procure for, or sell to any pregnant woman any medicine, drug, or other substance with the intent of causing or abetting the termination of the life of an unborn human. • No person may knowingly use or employ any instrument or procedure upon a pregnant woman with the specific intent of causing or abetting the termination of the life of an unborn human. • <i>Exceptions:</i> <ul style="list-style-type: none"> ○ A 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. The physician must make a reasonable medical effort under the circumstances to preserve the life of the mother and life of the unborn human being consistent with reasonable medical practice. ○ Medical treatment provided to a mother which results in the accidental or unintentional injury or death to the unborn human being. • The law shall not be construed to subject the pregnant woman to any criminal conviction or penalty. • The law does not prohibit the sale, use, prescription, or administration of a contraceptive if it is administered prior to a time when a pregnancy could be determined through conventional medical testing.
---	---

LOUISIANA	
Trigger Law Statutory Cite(s)	Human Life Protection Act, La. Stat. Ann. § 40:1061
Does this law have a potential impact on IVF/Reproductive medicine? Why or why not?	<p>The law does not appear to be applicable to IVF and reproductive medicine services prior to an established pregnancy.</p> <p>The definitions of “fertilization” and “unborn human being” could theoretically apply to the process of creating in vitro embryos, but the law only criminalizes activities performed upon a <i>pregnant woman</i> with the <i>specific intent</i> of causing or abetting the termination.</p>
Does this law explicitly reference IVF, assisted reproductive technology or reproductive medicine?	<ul style="list-style-type: none"> • There are no explicit references to IVF or reproductive medicine services. • As written, the law would not directly impact IVF and reproductive medicine.

<p>Are there any penalties in this law that could apply to ART procedures?</p>	<p>N/A</p>
<p>Relevant definitions</p>	<ul style="list-style-type: none"> • "Fertilization" means that point in time when a male human sperm penetrates the zona pellucida of a female human ovum. • "Pregnant" means the human female reproductive condition, of having a living unborn human being within her body throughout the entire embryonic and fetal stages of the unborn child from fertilization to full gestation and childbirth. • "Unborn human being" means an individual living member of the species, homo sapiens, throughout the entire embryonic and fetal stages of the unborn child from fertilization to full gestation and childbirth.
<p>Do the definitions/terms of the trigger law apply to other areas of state code?</p>	<p>N/A</p>
<p>What is the "trigger" for this law to take effect?</p>	<p>The trigger law takes effect upon:</p> <ul style="list-style-type: none"> • Any decision that reverses, in whole or in part, Roe v. Wade "thereby restoring" to the state the "authority to prohibit abortion" • Adoption of an amendment to the U.S. Constitution which, in whole or in part, gives Louisiana the "authority to prohibit abortion"
<p>Key provisions: What does the law prohibit and when does it apply?</p>	<ul style="list-style-type: none"> • No person may knowingly administer to, prescribe for, procure for, or sell to any pregnant woman any medicine, drug, or other substance with the intent of causing or abetting the termination of the life of an unborn human. • No person may knowingly use or employ any instrument or procedure upon a pregnant woman with the specific intent of causing or abetting the termination of the life of an unborn human <p><i>Exceptions:</i></p> <ul style="list-style-type: none"> ○ A 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. The physician must make a reasonable medical effort under the circumstances to preserve the life of the mother and life of the unborn human being consistent with reasonable medical practice. ○ Medical treatment provided to a mother which results in the accidental or unintentional injury or death to the unborn human being. <ul style="list-style-type: none"> • The law shall not be construed to subject the pregnant woman cannot to any criminal conviction or penalty.

	<ul style="list-style-type: none"> The law does not prohibit the sale, use, prescription, or administration of a contraceptive if it is administered prior to a time when a pregnancy could be determined through conventional medical testing.
--	--

MISSISSIPPI	
Trigger Law Statutory Cite(s)	Miss. Code Ann. § 41-41-45.
Does this law have a potential impact on IVF/Reproductive medicine?	<ul style="list-style-type: none"> Seemingly no impact on IVF or other ART procedures. Abortion only refers to an action on a pregnant woman and there are no restrictions that apply outside the context of abortion.
Does this law explicitly reference IVF, assisted reproductive technology or reproductive medicine?	There are no explicit references to IVF or reproductive medicine services in the trigger law.
Are there any penalties in this law that could apply to ART procedures?	N/A
Relevant definitions	<ul style="list-style-type: none"> “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.
Do the definitions/terms of the trigger law apply to other areas of state code?	The law does not explicitly reference or apply to other areas of the state code.
What is the “trigger” for this law to take effect?	<p>The trigger law takes effect:</p> <ul style="list-style-type: none"> From and after 10 days following the date of publication by the Attorney General of Mississippi that the Attorney General has determined that the U.S. Supreme Court has overruled <i>Roe v. Wade</i>, and that it is reasonably probable that this section would be upheld by the Court as constitutional.

Key provisions: What does the law prohibit and when does it apply?	<ul style="list-style-type: none"> No abortion shall be performed or induced in Mississippi, except where necessary for the preservation of the mother’s life or where the pregnancy was caused by rape. Rape shall be an exception only if a formal charge has been filed with an appropriate law enforcement official.
---	--

<h2 style="margin: 0;">MISSOURI</h2>	
Trigger Law Statutory Cite(s)	Right to Life of the Unborn Child Act, Mo. Ann. Stat. §§ 188.015, 188.017.
Does this law have a potential impact on IVF/Reproductive medicine? Why or why not?	<ul style="list-style-type: none"> Seemingly no impact on IVF or other ART procedures. The statute does not appear to be applicable to IVF and reproductive medicine services prior to implantation of embryos. The first sub-section defines abortion as the act of prescribing or using any means with the intent of destroying the life of an embryo or fetus in its mother’s womb. The second section of the definition explicitly defines abortion as the “intentional termination of the pregnancy of a mother... with an intention other than to increase the probability of a live birth or to remove a dead unborn child.” An unborn child is defined to include everything the moment of conception including a zygote, morula, blastocyst, embryo, and fetus, but this term is used in the context of abortion.
Does this law explicitly reference IVF, assisted reproductive technology or reproductive medicine?	There are no explicit references to IVF or reproductive medicine services.
Are there any penalties in this law that could apply to ART procedures?	The law does not appear to be applicable to ART procedures.
Relevant definitions	<ul style="list-style-type: none"> “Abortion” 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.” “Conception” is defined as “the fertilization of the ovum of a female by sperm of a male.”

	<ul style="list-style-type: none"> • An “unborn child” 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.” • A “medical emergency” is defined as “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 delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman.” • “Reasonable medical judgment” is defined as “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.” • However, a separate part of the code states that “[t]he life of each human being begins at conception” (Mo. Rev. Stat. § 1.205). • The section further defines the terms “unborn child” 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.”
<p>Do the definitions/terms of the trigger law apply to other areas of state code?</p>	<p>The definitions apply throughout the chapter of Missouri law entitled “Regulation of Abortions”.</p>
<p>What is the “trigger” for this law to take effect?</p>	<p>The trigger law will become effective if one of three actions occurs:</p> <ul style="list-style-type: none"> • The Attorney General of Missouri notifies the revisor of statutes that the Supreme Court has overruled Roe and that it is “reasonably probable” that the section would be upheld as constitutional or by way of constitutional amendment or Congressional action the state’s authority to regulate abortion in accordance with the trigger law has been restored or granted. • Alternatively, the law can become effective if either the Governor of Missouri issues a proclamation, or • The Missouri General Assembly adopts a concurrent resolution recognizing that the authority to regulate abortion in accordance with the trigger law has been restored either by the Supreme Court, constitutional amendment, or Congressional action.
<p>Key provisions: What does the law prohibit and when does it apply?</p>	<ul style="list-style-type: none"> • The law provides that “no abortion shall be performed or induced upon a woman, except in cases of medical emergency.” • The Act explicitly shields women who undergo abortions in violation of the law from liability for conspiracy: “[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.”

NORTH DAKOTA

Trigger Law Statutory Cite(s)	N.D. Cent. Code §§ 12.1-31-12, 12.1-31-20
Does this law have a potential impact on IVF/Reproductive medicine?	<ul style="list-style-type: none"> Seemingly no impact on IVF or other ART procedures. The trigger law defines abortion to mean “the use or prescription of any substance, device, instrument, medicine, or drug to intentionally terminate the pregnancy of an individual known to be pregnant.” This applies to the termination of the pregnancy of a person who is known to be pregnant.
Does this law explicitly reference IVF, assisted reproductive technology or reproductive medicine?	There are no explicit references to IVF or reproductive medicine services.
Are there any penalties in this law that could apply to ART procedures?	The law does not appear to be applicable to ART procedures.
Relevant definitions	<ul style="list-style-type: none"> “Abortion” is defined as the “use or prescription of any substance, device, instrument, medicine, or drug to intentionally terminate the pregnancy of an individual known to be pregnant, but 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.”
Do the definitions/terms of the trigger law apply to other areas of state code?	The trigger law is part of the North Dakota criminal code, but the definitions referenced only apply to the abortion section.
What is the “trigger” for this law to take effect?	<p>The trigger law is effective when:</p> <ul style="list-style-type: none"> The Attorney General certifies to the legislative council (the North Dakota legislature’s legislative service agency) the issuance of the judgement in any decision of the U.S. Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion.

<p>Key provisions: What does the law prohibit and when does it apply?</p>	<ul style="list-style-type: none"> • The law makes it a “class C felony for a person, other than the pregnant female upon whom the abortion was performed, to perform an abortion.” • Abortion is defined to mean “the use or prescription of any substance, device, instrument, medicine, or drug to intentionally terminate the pregnancy of an individual known to be pregnant.” • There are three affirmative defenses under the Act: <ul style="list-style-type: none"> ○ The “abortion was necessary in professional judgment and was intended to prevent the death of the pregnant female.” The section defines “[p]rofessional judgment” to mean “a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.” ○ 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.” ○ 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.” A physician is defined as “an individual licensed to practice medicine” in North Dakota. This defense protects workers who work under physician delegation from liability for performing an abortion.
--	--

<h2 style="color: #FFC000;">OKLAHOMA</h2>	
<p>Trigger Law Statutory Cite(s)</p>	<p>S.B. 918 (2021), as amended by S.B. 1555 (2022). <i>See also</i> the Oklahoma Attorney General’s certification regarding the Supreme Court’s decision, as required by these laws. Other recently enacted abortion restrictions, including H.B. 4327 (2022) are technically not “trigger bills” but limit access to abortion in the state.</p>
<p>Does this law have a potential impact on IVF/Reproductive medicine? Why or why not?</p>	<ul style="list-style-type: none"> • Seemingly no impact on IVF or other ART procedures because the criminal law (Okla. Stat. Tit. 21, § 861) authorized by the trigger bill applies only in the context of a pregnancy and, therefore, would not apply to embryos created in vitro. The trigger laws expressly permit the enforcement of an existing criminal law (Okla. Stat. Tit. 21, § 861) which prohibits abortion in the state and is analyzed in more detail below. The laws also repeal numerous existing

	<p>statutes related to the performance of abortion in Oklahoma, which we have described here.</p>
<p>Does this law explicitly reference IVF, assisted reproductive technology or reproductive medicine?</p>	<p>There are no explicit references to IVF or reproductive medicine services in the trigger law.</p>
<p>Are there any penalties in this law that could apply to ART procedures?</p>	<p>N/A</p>
<p>Relevant definitions</p>	<p>Neither the trigger laws repealing various state statutes nor the criminal law permitted by these laws include definitions.</p>
<p>Do the definitions/terms of the trigger law apply to other areas of state code?</p>	<p>N/A</p>
<p>What is the “trigger” for this law to take effect?</p>	<p>Upon certification from the Attorney General that <i>Roe v. Wade</i> has been overruled by the U.S. Supreme Court, the law permits the enforcement of Okla. Stat. tit. 21, §861, and the repeal of various statutes related to the performance of abortion.</p>
<p>Key provisions: What does the law prohibit and when does it apply?</p>	<p>The criminal law (Okla. Stat. tit. 21, § 861) prohibits prescribing, advising, procuring, or administering any medicine, drug, substance, instrument, or other means to any woman with the intent “to procure miscarriage of such woman” unless it is “necessary to preserve her life.”</p>

SOUTH DAKOTA

Trigger Law Statutory Cite(s)	S.D. Codified Laws § 22-17-5.1 , <i>see also</i> S.D. Codified Laws § 22-12 .
Does this law have a potential impact on IVF/Reproductive medicine?	Seemingly no impact on IVF or other ART procedures because the law only prohibits abortion in situations involving a pregnant female.
Does this law explicitly reference IVF, assisted reproductive technology or reproductive medicine?	There are no explicit references to IVF or reproductive medicine services.
Are there any penalties in this law that could apply to ART procedures?	The law does not appear to be applicable to ART procedures.
Relevant definitions	<ul style="list-style-type: none"> • The trigger law does not have a definitions section. • The definitions section for the title defines “[u]nborn child” as “an individual organism of the species homo sapiens from fertilization until live birth.”
Do the definitions/terms of the trigger law apply to other areas of state code?	The trigger law is part of the criminal code, and the definitions from the title’s definitions section apply throughout the title.
What is the “trigger” for this law to take effect?	The trigger law is effective when the date states are recognized by the United States Supreme Court to have the authority to prohibit abortion at all stages of pregnancy.
Key provisions: What does the law prohibit and when does it apply?	<ul style="list-style-type: none"> • The law provides that “[a]ny person who administers to any pregnant female or who prescribes or procures for any pregnant female any medicine, drug, or uses or employs any instrument or other means with intent thereby to procure an abortion” is guilty of a felony • There is an exception for a medical emergency endangering the life of the pregnant female.

TENNESSEE

Trigger Law Statutory Cite(s)	Senate Bill No. 1257- “Human Life Protection Act” § 39-15-213. Criminal abortion
Does this law have a potential impact on IVF/Reproductive medicine? Why or why not?	<ul style="list-style-type: none"> • This bill will likely have no impact on IVF and reproductive medicine services before a pregnancy is established. • In Tennessee, abortion is specifically related to “terminat[ing] the pregnancy of a woman known to be pregnant.” As pregnancy requires “a living unborn child within [the pregnant woman’s] body” a fertilized embryo that is not within a pregnant woman’s body would likely not be subject to the law. • While the statute defines an “unborn child” as existing from fertilization until birth, the prohibited conduct is abortion, which is defined as the termination of the pregnancy of a woman.
Does this law explicitly reference IVF, assisted reproductive technology or reproductive medicine?	N/A
Are there any penalties in this law that could apply to ART procedures?	The law does not appear to relate to ART procedures. The penalty under this law would be a Class C felony.
Relevant definitions	<ul style="list-style-type: none"> • “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. • “Fertilization” means that point in time when a male human sperm penetrates the zona pellucida of a female human ovum. • “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. • “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.
Do the definitions/terms of the trigger law apply to other areas of state code?	<p>“For purposes of this section, a person is deemed to be conceived at the moment of fertilization, as that term is defined in 39-15-23.”</p> <p>- § 29-34-212.</p>

<p>What is the “trigger” for this law to take effect?</p>	<p>The trigger law is effective upon:</p> <ul style="list-style-type: none"> • The 30th day after the issuance of a judgement overruling, in whole or in part, <i>Roe v. Wade</i>, 410 U.S. 113 (1973), as modified by <i>Planned Parenthood of Southeastern Pennsylvania v. Casey</i>, thereby restoring state authority to prohibit abortion; or • On the 30th day after the adoption of an amendment to the United States Constitution restoring, in whole or in part, state authority to prohibit abortion.
<p>Key provisions: What does the law prohibit and when does it apply?</p>	<ul style="list-style-type: none"> • The law prohibits a person from performing or attempting to perform a criminal abortion. Any person that provides or attempts an abortion will be charged with a Class C felony. However, the pregnant woman upon whom an abortion is performed or attempted is not subject to criminal conviction or penalty. • An affirmative defense to prosecution, which must be shown by preponderance of the evidence, occurs if: <ul style="list-style-type: none"> (1) The abortion was performed by a licensed physician; (2) The physician determined that the abortion was necessary to prevent death of the pregnant woman or to prevent serious risk to the pregnant woman’s body; and (3) The physician performs an abortion in the manner which provides the best opportunity for the unborn child to survive.

<h2 style="color: #FFD700;">TEXAS</h2>	
<p>Trigger Law Statutory Cite(s)</p>	<p>House Bill 1280- “Human Life Protection Act of 2021”</p> <p>Texas Statutes & Court Rules Chapter 170A. Performance of Abortion</p> <p>Health & Safety Code</p>
<p>Does this law have a potential impact on IVF/Reproductive medicine?</p>	<p>The statute does not appear to be applicable to IVF and reproductive medicine services prior to implantation of embryos.</p>
<p>Does this law explicitly reference IVF, assisted reproductive technology or reproductive medicine?</p>	<p>There are no explicit references to IVF or reproductive medicine services.</p> <ul style="list-style-type: none"> • “Abortion” is specifically defined as an act intending cause the death of an unborn child of a woman known to be pregnant.” • As pregnancy requires “a living unborn child within [the pregnant woman’s] body” a fertilized embryo that is not within a pregnant woman’s body would likely not be within the scope of this law. • The statute does define an unborn child as existing from fertilization until birth, but the prohibition is limited to abortion of an unborn child of a woman known to be pregnant.

<p>Are there any penalties in this law that could apply to ART procedures?</p>	<p>The law does not appear to be applicable to ART procedures.</p>
<p>Relevant definitions</p>	<ul style="list-style-type: none"> • “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 it is done with the intent to: <ul style="list-style-type: none"> ○ Save the life or preserve the health of an unborn child; ○ Remove a dead, unborn child whose death was caused by spontaneous abortion; or ○ Remove an ectopic pregnancy. • “Fertilization” means the point in time when a male human sperm penetrates the zona pellucida of a female human ovum. • “Pregnant” means the female human reproductive condition of having a living or unborn child within the female’s body during the entire embryonic and fetal stages of the unborn child’s development from fertilization until birth. • “Unborn child” means an individual living member of the homo sapiens species from fertilization until birth, including the entire embryonic and fetal stages of development.
<p>Do the definitions/terms of the trigger law apply to other areas of state code?</p>	<p>Abortion is defined with the same meaning as Section 245.002 regarding licensure of abortion facilities.</p>
<p>What is the “trigger” for this law to take effect?</p>	<p>Trigger law takes effect:</p> <ul style="list-style-type: none"> • 30 days after <i>Roe v. Wade</i> is overturned without further action required; • The issuance of a Supreme Court judgment that recognizes the authority of the states to prohibit abortion; or • Adoption of an amendment to the United States Constitution that restores to states the authority to prohibit abortion.
<p>Key provisions: What does the law prohibit and when does it apply?</p>	<ul style="list-style-type: none"> • Anyone who performs or attempts to perform an abortion is subject to a second-degree felony offense or a first-degree felony if the unborn child dies as a result. • A person will also be subjected to a civil penalty of no less than \$100,000 for each violation. • A civil suit may also be brought against them. • There is an exception for a pregnant person whose life is in danger or at serious risk of substantial and irreversible bodily function.

UTAH

Trigger Law Statutory Cite(s)	<p>SB 174- Abortion Prohibition Amendments</p> <p>§ 76-7a-101. Definitions</p> <p>§ 76-7a-201. Abortion prohibition--Exceptions--Penalties</p> <p>§ 76-7a-301. Superseding clause</p>
Does this law have a potential impact on IVF/Reproductive medicine? Why or why not?	<ul style="list-style-type: none"> • This bill could be interpreted to have an impact on ART under the provision that defines abortion to include “[any] intentional killing or attempted killing of a live unborn child through a medical procedure carried out by a physician or through a substance used under the direction of a physician.” • Most of the provisions of the statute address termination of a woman’s pregnancy, but the term “live unborn child” is not defined, and one could argue that discarding an embryo or donating an embryo for research use is an intentional or attempted killing of a live unborn child and constitutes an abortion under this definition.
Does this law explicitly reference IVF, assisted reproductive technology or reproductive medicine?	N/A
Are there any penalties in this law that could apply to ART procedures?	While the statute doesn’t include any specific references to ART, performing an abortion in violation of the provision is a second degree felony, and the Department of Health is to report a physician’s violation of any provision to the state agency that regulates physician licensure.
Relevant definitions	<ul style="list-style-type: none"> • "Abortion" means: <ul style="list-style-type: none"> ○ (i) the intentional termination or attempted termination of human pregnancy after implantation through a substance used under the direction of a physician; ○ (ii) The intentional killing or attempted killing of a live unborn child through a medical procedure carried out by a physician or through a substance used under the direction of a physician; or ○ The intentional causing or attempted causing of a miscarriage through a medical procedure carried out by a physician or through a substance used under the direction of a physician. • Abortion does <i>not</i> include: <ul style="list-style-type: none"> ○ Removal of a dead unborn child; ○ Removal of an ectopic pregnancy; or

	<ul style="list-style-type: none"> ○ The killing or attempted killing of an unborn child without the consent of the pregnant woman: <ul style="list-style-type: none"> ▪ The killing or attempted killing is done through a medical procedure carried out by a physician or through a substance used under the direction of a physician; and ▪ The physician is unable to obtain consent due to a medical emergency.
Do the definitions/terms of the trigger law apply to other areas of state code?	N/A
What is the “trigger” for this law to take effect?	The trigger law is contingently effective “on the date that the legislative general counsel certifies to the Legislative Management Committee that a court of binding authority has held that a state may prohibit the abortion of an unborn child at any time during the gestational period.”
Key provisions: What does the law prohibit and when does it apply?	<ul style="list-style-type: none"> • Abortion may be performed in the state only if: <ul style="list-style-type: none"> ○ The abortion is necessary to prevent death or substantial impairment of a major bodily function of the pregnant person; ○ Two physicians concur that the child has a lethal fetal defect or severe brain abnormality; or ○ The person is a victim of rape or incest which has previously been reported to law enforcement. • A person will be charged with a second-degree felony; an abortion clinic may lose their license; and a physician will be reported if they perform an abortion that does not meet an exception.

WYOMING	
Trigger Law Statutory Cite(s)	<p>HB0092- Abortion prohibition- Supreme Court decision</p> <p>§ 35-6-102. Abortion restrictions; exception</p> <p>§ 35-6-117. Use of appropriated funds for abortion prohibited; exceptions</p> <p>The trigger law only repeals two sections of the Abortion chapter.</p>
Does this law have a potential impact on IVF/Reproductive medicine?	<ul style="list-style-type: none"> • This bill will likely have no impact on IVF and ART services prior to establishment of a pregnancy. • In Wyoming, abortion is specifically related to a pregnant woman who intends to terminate their pregnancy.

	<ul style="list-style-type: none"> • Pregnancy requires a human embryo to be inside a woman as a result of conception. Actions regarding an embryo that is not within a pregnant woman’s body would likely not be considered violating this law. • The statute does define “conception”, but the term is used only in the context of defining “pregnant” and the prohibition is limited to abortion of a pregnancy.
Does this law explicitly reference IVF, assisted reproductive technology or reproductive medicine?	N/A
Are there any penalties in this law that could apply to ART procedures?	The law does not appear to be applicable to ART procedures. However, violation would be a felony punishable by no more than 14 years imprisonment.
Relevant definitions	<ul style="list-style-type: none"> • “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. • “Conception” means the fecundation of the ovum by the spermatozoa. • “Pregnant” means that condition of a woman who has a human embryo or fetus within her as the result of conception.
Do the definitions/terms of the trigger law apply to other areas of state code?	The trigger law repeals certain sections of existing State law regulating abortion.
What is the “trigger” for this law to take effect?	<p>Trigger law takes effect:</p> <ul style="list-style-type: none"> • Five 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 <i>Roe v. Wade</i>; or • Has otherwise authorized the enforcement of this subsection in accordance with that decision and without violating any conditions, rights, or restrictions recognized by the Supreme Court.
Key provisions: What does the law prohibit and when does it apply?	<ul style="list-style-type: none"> • An abortion should not be performed except when necessary to: <ul style="list-style-type: none"> ○ (1) prevent serious risk of death or of substantial and irreversible impairment of bodily function, not for psychological or mental conditions; or ○ (2) pregnancy is a result of incest or sexual assault.

- No state appropriated funds are to be used for an abortion unless one of the exceptions applies.
- Anyone that violates W.S. § 35-6-102 is guilty of a felony that is punishable for not more than 14 years.

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



Acknowledgement

The CPL thanks the firm of [Hogan Lovells, LLP](#), for its support in the research and analysis of these laws.

