



## **Missouri abortion law after the Supreme Court's decision in *Dobbs*: Sidney Watson and SLU LAW student Mary Quandt publish primer analyzing Missouri's criminal laws**

On June 24, 2022, the United States Supreme Court decision in *Dobbs v Jackson Women Health Organization* overruled *Roe v Wade*. This primer lays out Missouri's criminal laws regulating abortions, both those that take effect as a result of the *Dobbs* decision and those already in effect.

### I. Missouri Criminal Laws on the Books Enjoined or Not Enforced Under *Roe*

#### A. Trigger Law - Complete Ban

In 2019 the Missouri legislature passed HB 126, a **complete ban on abortion except in a medical emergency** to take effect upon notice from the state attorney general, governor, or General Assembly that *Roe v. Wade* is overruled in whole or in part. A violation of HB 126 is a **class B felony punishable by 5-15 years in prison**. See MO. REV. STAT. 188.017. The attorney general and governor have provided the notice needed to trigger HB 126.

MO. REV. STAT. 188.017.2 provides:

Notwithstanding any other provision of law to the contrary, **no abortion shall be performed or induced upon a woman, except in cases of a 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.

A **medical emergency** is a life-threatening condition or one that poses a serious risk of "substantial and irreversible" physical harm. MO. REV. STAT. 188.015(7). The existence of a medical emergency is an **affirmative defense**, and the "defendant shall have the burden of persuasion that the defense is more probably true than not." MO. REV. STAT. 188.017.3.

This criminal ban on abortions **does not outlaw contraceptives** that prevent pregnancy, including IUDs and emergency birth control which prevent the implantation of a fertilized egg. See MO. REV. STAT. 188.015(1)(a)-(b). Abortion is defined as the "intent to destroy the life of an **embryo or fetus** in his or her mother's womb" or the "intentional termination of the **pregnancy** of a mother." MO. REV. STAT. 188.015(1).

The attorney general has concurrent jurisdiction to commence actions for violations of this and other abortion regulations. MO. REV. STAT. 188.075.3. See Section III, below.

B. Enjoined Under *Roe* - prohibitions at or after 8, 14, 18 weeks, and at 20 weeks

HB 126 also enacted provisions making it a **class B felony** to perform or induce an abortion at or after 8, 14, 18, or 20 weeks gestational age, except in the case of a medical emergency. MO. REV. STAT. 188.056 (8 weeks), 188.057 (14 weeks), 188.058 (18 weeks), 188.375 (20 weeks). As with the trigger law's complete ban on abortion, medical necessity is an affirmative defense, and the woman upon whom the abortion is performed or induced may not be prosecuted for conspiracy.

HB 126 also prohibits all abortions where the pregnant woman's reason to abort is based solely on sex, race, or prospective Down Syndrome. MO. REV. STAT. 188.038. Violation by a physician or other person who performs the abortion is subject to civil penalties, including professional discipline. MO. REV. STAT. 188.038.4. Medical necessity is not a defense.

All five provisions were enjoined under a preliminary injunction entered in *Planned Parenthood v. Parson*, pending before the Eighth Circuit en banc. 1 F.4th 552 (8th Cir. 2021), opinion vacated. On June 24, 2022, in response to the decision in *Dobbs*, plaintiffs filed a notice of voluntary dismissal and moved to dismiss the appeal.

II. Missouri Law Criminalizing Abortion in Effect Pre-*Dobbs*

Under the pre-*Dobbs* statutory framework, except in a medical emergency, Missouri **prohibits abortions of a viable fetus** unless necessary to preserve the life of the pregnant woman or when continuation of the pregnancy will create a serious risk of substantial and irreversible physical impairment of a major bodily function. MO. REV. STAT. 188.030.1. A violation is a **class D felony**, punishable by imprisonment for at least one year and a fine of \$10,000 to \$50,000. MO. REV. STAT. 188.030.3. The person upon whom the abortion is performed may not be prosecuted for conspiracy. MO. REV. STAT. 188.030.7.

MO. REV. STAT. 565.300 also criminalizes the abortion procedure referred to as "**partial-birth abortion.**" A violation is a **class A felony**. The U.S. Supreme Court let stand a prior version of this law. *See Nixon v. Reproductive Health Services*, 127 S. Ct. 2120 (2007).

It is a **class A misdemeanor** punishable by up to a year imprisonment and a fine of \$2,000 to **knowingly aid in the performance or inducing of an abortion** contrary to the provisions of Chapter 188 regulating abortions, including failing to complete all legally required procedural steps. *See* MO. REV. STAT. 188.075.1; *see also* MO. REV. STAT. 188.020-.070. **This "knowingly aid" provision now applies to Missouri's trigger law prohibiting all abortions.**

Since 2017 the **attorney general has had concurrent jurisdiction** with local prosecutors to commence actions for violations of any Missouri state law regulating abortion, both civil and criminal. MO. REV. STAT. 188.075.3. The attorney general and local prosecutors "may seek injunctive or other relief" against a person or entity who violates Missouri law regulating abortion. *Id.*

III. Missouri Fetal Personhood Law

In 1986, Missouri passed a law regulating abortion that contained a preamble, §1.205, stating that "the life of each human being begins at conception" and "unborn children have protectable interests in life,

health, and well-being." The U.S. Supreme Court in *Webster vs. Reproductive Health Services* allowed the preamble to stand as constitutional, finding that it expressed a value judgment but did not regulate or limit access to abortion by its terms. 492 U.S. 490, 505 (1989).

HB 126, enacted in 2019, also includes fetal personhood language setting forth the findings of the General Assembly that "[a]t conception, a new genetically distinct human being is formed." MO. REV. STAT. 188.026.2(1). The preamble also notes that the "fact that the life of an individual human being begins at conception has long been recognized in Missouri law" and "the general assembly has recognized that the life of each human being begins at conception and that unborn children have protectable interests in life, health, and wellbeing." MO. REV. STAT. 188.026.2(2).

*Published June 29, 2022, Mary Quandt and Sidney D. Watson, SLU Law Center for Health Law Studies. For more information, contact Sidney Watson at [watsons@slu.edu](mailto:watsons@slu.edu) or 314-807-4792.*