

Dear Members of the Legislative Management Committee,

This email advises you about the effect of the United States Supreme Court opinion issued today in the case of *Dobbs v. Jackson Women's Health Organization*. That decision affects the effective date of two pieces of legislation: all of S.B. 174, Abortion Prohibition Amendments, 2020 Annual General Session; and part of H.B. 166, Down Syndrome Nondiscrimination Abortion Act, 2019 Annual General Session. Based upon the contingent effective date requirements established by the Legislature in those bills, I conclude that the relevant statutory provisions in both bills are now in effect.

I. Senate Bill 174, Abortion Prohibition Amendments, 2020 Annual General Session, Senator McCay, Representative Lisonbee

S.B. 174, Abortion Prohibition Amendments, was enacted by the Legislature and signed by the governor in 2020. The bill, which bans abortion in Utah with certain exceptions, did not take effect because the bill had a contingent effective date. The text of the bill provided that the provisions banning abortion in Utah would take effect “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, subject to the exceptions enumerated in this bill.” The bill also defines specifically the meaning of “a court of binding authority.”

The United States Supreme Court issued an opinion today in *Dobbs v. Jackson Women's Health Organization* addressing whether existing United States Supreme Court precedent continues to restrict a state's ability to regulate or prohibit abortion. The Court held that “The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion.” Justice Alito wrote the majority opinion; Justices Thomas, Gorsuch, Kavanaugh, and Barrett joined that opinion. Chief Justice Roberts concurred in the court's judgment and authored a concurring opinion; Justices Thomas and Kavanaugh also wrote concurring opinions. Justice Breyer authored the dissenting opinion, which Justices Sotomayor and Kagan joined.

Because the United States Supreme Court is a court of binding authority, and because its majority opinion authorizes a state to prohibit the abortion of an unborn child at any time during the gestational period, the contingency required by the Legislature in S.B. 174 has been met. Specifically, Sections 76-7a-101, 76-7a-201, and 76-7a-301, enacted by S.B.174, 2020 annual general session, are now in effect, beginning today, June 24 , 2022, at the time that this email was sent.

II. House Bill 166, Down Syndrome Nondiscrimination Abortion Act, 2019 Annual General Session, Representative Lisonbee, Senator Bramble

H.B.166, Down Syndrome Nondiscrimination Abortion Act, was enacted by the Legislature and signed by the governor in 2019. The bill, among other provisions that have already taken effect, prohibited a provider from performing an abortion if “the pregnant mother's sole reason for the abortion is that the unborn child has or may have Down syndrome” with certain exceptions. That bill contained a contingent effective date, which mandated that the prohibition would take effect “on the date that the legislative general counsel certifies to the Legislative Management Committee that a court of binding authority holds that a state may prohibit the abortion of an unborn child before the unborn child is viable outside of the mother if the sole reason for the abortion is that the unborn child has or may have Down syndrome.”

Because the United States Supreme Court is a court of binding authority, and because its majority opinion today in *Dobbs v. Jackson Women's Health Organization* authorizes a state to prohibit the abortion of an unborn child at any time during the gestational period, the contingency required by the Legislature in H. B. 166 has been met. Specifically, Section 76-7-302.4, enacted by H.B.166, 2019 annual general session, is now in effect, beginning today, June 24, 2022, at the time that this email was sent.

Best,

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