



OFFICE OF THE CITY ADMINISTRATOR



London N. Breed, Mayor
Naomi M. Kelly, City Administrator

MEMORANDUM

TO: Department Heads
City Financial Officers
Contracting Officers

FROM: Naomi M. Kelly, City Administrator *N.K.*

CC: Alaric Degrafinried, Purchaser and Director of Office of Contract Administration
Dr. Emily Murase, Director, Department on the Status of Women
Clair Farley, Executive Director, Office of Transgender Initiatives

SUBJECT: Ban on City Contracts and Travel to States with Certain Laws -
Addition of States with Abortion-Restrictive Laws

DATE: October 16, 2019

This memorandum addresses recent legislative changes to Chapter 12X of the Administrative Code concerning prohibitions on City-funded travel and contracting in certain states, and updates the list of states falling within the scope of Chapter 12X's prohibitions.

On October 14, 2016, the Board of Supervisors enacted Chapter 12X of the Administrative Code (Ordinance No. 189-16, file No. 160425), which prohibits city-funded travel and City contracts involving states with certain anti-LGBT laws. Administrative Code Section 12X.3 requires the City Administrator to create and maintain a list of states with laws meeting the definition of a "Covered State."

On August 9, 2019, the Board of Supervisors enacted an ordinance amending Chapter 12X (Ordinance No. 200-19, [file No. 190658](#)). The ordinance moved the existing provisions concerning states with anti-LGBT laws into Article I and created a new Article II, which prohibits city-funded travel and City contracts involving states with laws that prohibit abortion prior to the viability of the fetus. Administrative Code Section 12X.13 requires the Department on the Status of Women to submit a recommendation to the City Administrator concerning which states have enacted abortion prohibitions meeting the definition of a Covered State under Article II, and requires the City Administrator to create and maintain the Covered State List based on the recommendation.

On October 8, 2019, the Department on the Status of Women submitted its recommendation of states meeting the definition of a Covered State under Article II. That recommendation is attached, and the City Administrator concurs in the recommendation.

Generally:

Subject to certain exceptions, Chapter 12X prohibits the City from funding travel to states on the Covered State List under Article I or under Article II. Chapter 12X provides that the City shall not enter into any Contract with a Contractor that has its United States headquarters in a state or where any or all of the work on the Contract will be performed in a state on the Covered State List under Article I or Article II. Unless otherwise exempted, this contracting ban applies to all contracts entered into by the City. (See Administrative Code Sec. 12X.5(b) and 12X.15(b) for specific circumstances where the contracting prohibition is not applicable, exempted, or eligible for a waiver). However, please note that the contracting ban only applies to the prime contractor and does not extend to lower tier subcontractors, suppliers, or vendors.

Update to the Covered State List:

Under Chapter 12X, Article II, the following states are added to the Covered State List. Under Section 12X.15(d), the addition of these states applies only to contracts that were first advertised, solicited, or initiated on or after January 1, 2020, and does not apply to amendments to pre-existing contracts:

- Arkansas
- Florida
- Georgia
- Indiana
- Louisiana
- Massachusetts
- Nebraska
- Nevada
- North Dakota
- Ohio
- Pennsylvania
- West Virginia
- Wisconsin

The list below indicates the states currently on the Covered State List. States with an asterisk have anti-LGBT laws meeting the definition of a Covered State under Article I of Chapter 12X and also have anti-abortion laws meeting the definition of a Covered State under Article II of Chapter 12X.

- Alabama (effective 6/30/2017)*
- Iowa (effective 10/4/2019) *
- Kansas (effective 2/11/2017)*
- Kentucky (effective 6/30/2017)*
- Mississippi (effective 2/11/2017)*
- North Carolina (effective 2/11/2017)
- Oklahoma (effective 11/1/2018)*
- South Carolina (effective 04/15/2019)*
- South Dakota (effective 3/14/2017)*
- Tennessee (effective 2/ 11/2017)
- Texas (effective 9/1/2017)*

The Covered State List is reviewed on a semiannual basis. When a state is removed or added the Office of the City Administrator will make that information public and post the updated list on its website, available at <http://sfgsa.org/chapter-12x-anti-lgbt-state-ban-list>.

If you have questions or require further clarification on City-funded travel, please contact your Financial Officer or accountant representative.



City and County of San Francisco
Department on the Status of Women

Emily M. Murase, PhD
 Director



London N. Breed
 Mayor

DATE: Wednesday, October 9, 2019
TO: Naomi Kelly, City Administrator
FROM: Elizabeth Newman, MPP, Policy and Projects Director
THROUGH: Emily M. Murase, PhD, Director
SUBJECT: Ban on City Contracts Involving and Travel to States with Restrictive Abortion Laws – Recommendation of States that Satisfy Definition of Covered States

On July 30, 2019, the San Francisco Board of Supervisors passed Ordinance No. 200-19 ([file No. 190658](#)) (“Ordinance”), which bans City-funded travel to states that have enacted laws that prohibit abortion prior to the viability of the fetus and which prohibits City contracting involving such states.

Covered states are defined in the Ordinance under Administrative Code 12X.12 as those that have, “enacted a law that prohibits abortion prior to the Viability of the fetus, regardless of whether there are exceptions to such prohibition.” Viability refers to the point in a pregnancy when a fetus can sustain survival outside the uterus without the assistance of extraordinary medical measures and may vary on an individual basis. A fetus typically reaches viability between 24 and 28 weeks (gestational age) after the start of the pregnant person’s last menstrual period (LMP), whereas an average pregnancy lasts approximately 40 weeks from LMP.¹ Because a ban on abortion at 24 weeks could prohibit a person from terminating a pregnancy of a non-viable fetus, such states are included in the list below.

In accordance with the Ordinance, the Department on the Status of Women recommends the following states that have enacted a law prohibiting abortion prior to the viability of the fetus. This does not include states that have such laws which are repealed or enjoined by court order.

States that prohibit abortion before viability:

- | | |
|-------------------|--------------------|
| 1. Alabama | 12. Nebraska |
| 2. Arkansas | 13. Nevada |
| 3. Florida | 14. North Dakota |
| 4. Georgia | 15. Ohio |
| 5. Indiana | 16. Oklahoma |
| 6. Iowa | 17. Pennsylvania |
| 7. Kansas | 18. South Carolina |
| 8. Kentucky | 19. South Dakota |
| 9. Louisiana | 20. Texas |
| 10. Massachusetts | 21. West Virginia |
| 11. Mississippi | 22. Wisconsin |

¹ Roe v. Wade, 410 U.S. 113, 163 (1973).

STATE	STATUTORY LIMIT	STATUTE
Alabama	Conception	HB 314
	22 weeks LMP	HB 18; AL Code 26-23B-5
Arkansas	22 weeks LMP	HB 1037 (Act 171); Ark. Code Ann 20-16-1405
Florida	24 weeks LMP	Fla. Stat. Ann. § 390.0111
Georgia	20 weeks LMP	HB 954; Ga. Code Ann. § 16-12-141(c)
	22 weeks LMP	Ga. Code Ann. § 16-12-141
Indiana	22 weeks LMP	HEA 1210; Ind. Code Ann. §§ 16-34-2-1
Iowa	22 weeks LMP	SF 471; Iowa Code Ann. §146B.2
Kansas	22 weeks LMP	HB 2218; K.S.A. 65-6703
Kentucky	22 weeks LMP	SB 5; Ky. Rev. Stat. Ann. § 311.782
Louisiana	6 weeks LMP	SB 184
	22 weeks LMP	SB 766; La. Rev. Stat. Ann. § 40:1061.1
Massachusetts	24 weeks LMP	MGL c.112, § 12M
Mississippi	20 weeks LMP	HB 1400; Miss. Code Ann. § 41-41-137
Nebraska	22 weeks LMP	LB 1103; Neb. Rev. Stat. §§ 28-3,102 to 111
Nevada	24 weeks LMP	NRS 442.250
North Dakota	22 weeks LMP	SB 2368; N.D. Cent. Code § 14-02.1-05.3
Ohio	22 weeks LMP	SB 127; Ohio RC 2919.201
Oklahoma	22 weeks LMP	HB 1888; Okla. Stat. Ann. tit. 63, § 1-745.5
Pennsylvania	24 weeks LMP	18 Pa. Cons. Stat. Ann. § 3211
South Carolina	22 weeks LMP	H 3114; S.C. Code Ann. § 44-41-450
South Dakota	22 weeks LMP	SB 72; S.D. Codified Laws §§ 34-23A-70
Texas	22 weeks LMP	HB 2; Tex. Health & Safety Code Ann. §171.044
West Virginia	22 weeks LMP	HB 2568; W. VA. Code Ann. §16-2M-4
Wisconsin	22 weeks LMP	SB 179; Wis. Stat. Ann. §253.107

Last menstrual period (LMP) is typically used to determine the gestational age of a fetus. A fetus usually reaches viability between 24 and 28 weeks, whereas an average pregnancy lasts approximately 40 weeks from LMP.