

**As Introduced**

**134th General Assembly**

**Regular Session**

**2021-2022**

**H. B. No. 378**

**Representatives Koehler, Fowler Arthur**

**Cosponsors: Representatives Bird, Cutrona, White, Dean, Riedel, Kick, Merrin, Grendell, Pavliga, Click, Schmidt, Powell, Gross, Jordan, John, Johnson, Loychik, Stoltzfus, Carfagna, McClain, Wiggam, Hall, Ginter, Richardson**

---

**A BILL**

To amend section 2317.56 and to enact sections 1  
2919.125, 2919.126, 2919.127, and 2919.128 of 2  
the Revised Code regarding pretreatment notice 3  
about the possibility of reversing a 4  
mifepristone abortion. 5

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 2317.56 be amended and sections 6  
2919.125, 2919.126, 2919.127, and 2919.128 of the Revised Code 7  
be enacted to read as follows: 8

**Sec. 2317.56.** (A) As used in this section: 9

(1) "Medical emergency" has the same meaning as in section 10  
2919.16 of the Revised Code. 11

(2) "Medical necessity" means a medical condition of a 12  
pregnant woman that, in the reasonable judgment of the physician 13  
who is attending the woman, so complicates the pregnancy that it 14  
necessitates the immediate performance or inducement of an 15  
abortion. 16

(3) "Mifepristone abortion" has the same meaning as in section 2919.125 of the Revised Code. 17  
18

(4) "Probable gestational age of the zygote, blastocyte, embryo, or fetus" means the gestational age that, in the judgment of a physician, is, with reasonable probability, the gestational age of the zygote, blastocyte, embryo, or fetus at the time that the physician informs a pregnant woman pursuant to division (B) (1) (b) of this section. 19  
20  
21  
22  
23  
24

(B) Except when there is a medical emergency or medical necessity, an abortion shall be performed or induced only if all of the following conditions are satisfied: 25  
26  
27

(1) At least twenty-four hours prior to the performance or inducement of the abortion, a physician meets with the pregnant woman in person in an individual, private setting and gives her an adequate opportunity to ask questions about the abortion that will be performed or induced. At this meeting, the physician shall inform the pregnant woman, verbally or, if she is hearing impaired, by other means of communication, of all of the following: 28  
29  
30  
31  
32  
33  
34  
35

(a) The nature and purpose of the particular abortion procedure to be used and the medical risks associated with that procedure; 36  
37  
38

(b) The probable gestational age of the zygote, blastocyte, embryo, or fetus; 39  
40

(c) The medical risks associated with the pregnant woman carrying the pregnancy to term. 41  
42

The meeting need not occur at the facility where the abortion is to be performed or induced, and the physician involved in the meeting need not be affiliated with that 43  
44  
45

facility or with the physician who is scheduled to perform or 46  
induce the abortion. 47

(2) At least twenty-four hours prior to the performance or 48  
inducement of the abortion, the physician who is to perform or 49  
induce the abortion or the physician's agent does each of the 50  
following in person, by telephone, by certified mail, return 51  
receipt requested, or by regular mail evidenced by a certificate 52  
of mailing: 53

(a) Inform the pregnant woman of the name of the physician 54  
who is scheduled to perform or induce the abortion; 55

(b) Give the pregnant woman copies of the published 56  
materials described in ~~division (C)~~ divisions (C) (1) and (2), 57  
and if a mifepristone abortion, division (C) (3), of this 58  
section; 59

(c) Inform the pregnant woman that the materials given 60  
pursuant to division (B) (2) (b) of this section are published by 61  
the state and that they describe the zygote, blastocyte, 62  
embryo, or fetus and list agencies that offer alternatives to 63  
abortion. The pregnant woman may choose to examine or not to 64  
examine the materials. A physician or an agent of a physician 65  
may choose to be disassociated from the materials and may choose 66  
to comment or not comment on the materials. 67

(3) If it has been determined that the unborn human 68  
individual the pregnant woman is carrying has a detectable fetal 69  
heartbeat, the physician who is to perform or induce the 70  
abortion shall comply with the informed consent requirements in 71  
section 2919.194 of the Revised Code in addition to complying 72  
with the informed consent requirements in divisions (B) (1), (2), 73  
(4), and (5) of this section. 74

(4) Prior to the performance or inducement of the 75  
abortion, the pregnant woman signs a form consenting to the 76  
abortion and certifies all of the following on that form: 77

(a) She has received the information and materials 78  
described in divisions (B) (1) and (2) of this section, and her 79  
questions about the abortion that will be performed or induced 80  
have been answered in a satisfactory manner. 81

(b) She consents to the particular abortion voluntarily, 82  
knowingly, intelligently, and without coercion by any person, 83  
and she is not under the influence of any drug of abuse or 84  
alcohol. 85

(c) If the abortion will be performed or induced 86  
surgically, she has been provided with the notification form 87  
described in division (A) of section 3726.14 of the Revised 88  
Code. 89

(d) If the abortion will be performed or induced 90  
surgically and she desires to exercise the rights under division 91  
(A) of section 3726.03 of the Revised Code, she has completed 92  
the disposition determination under section 3726.04 or 3726.041 93  
of the Revised Code. 94

A form shall be completed for each zygote, blastocyte, 95  
embryo, or fetus to be aborted. If a pregnant woman is carrying 96  
more than one zygote, blastocyte, embryo, or fetus, she shall 97  
sign a form for each zygote, blastocyte, embryo, or fetus to be 98  
aborted. 99

The form shall contain the name and contact information of 100  
the physician who provided to the pregnant woman the information 101  
described in division (B) (1) of this section. 102

(5) Prior to the performance or inducement of the 103

abortion, the physician who is scheduled to perform or induce 104  
the abortion or the physician's agent receives a copy of the 105  
pregnant woman's signed form on which she consents to the 106  
abortion and that includes the certification required by 107  
division (B) (4) of this section. 108

(C) The department of health shall publish in English and 109  
in Spanish, in a typeface large enough to be clearly legible, 110  
and in an easily comprehensible format, the following materials 111  
on the department's web site: 112

(1) Materials that inform the pregnant woman about family 113  
planning information, of publicly funded agencies that are 114  
available to assist in family planning, and of public and 115  
private agencies and services that are available to assist her 116  
through the pregnancy, upon childbirth, and while the child is 117  
dependent, including, but not limited to, adoption agencies. The 118  
materials shall be geographically indexed; include a 119  
comprehensive list of the available agencies, a description of 120  
the services offered by the agencies, and the telephone numbers 121  
and addresses of the agencies; and inform the pregnant woman 122  
about available medical assistance benefits for prenatal care, 123  
childbirth, and neonatal care and about the support obligations 124  
of the father of a child who is born alive. The department shall 125  
ensure that the materials described in division (C) (1) of this 126  
section are comprehensive and do not directly or indirectly 127  
promote, exclude, or discourage the use of any agency or service 128  
described in this division. 129

(2) Materials that inform the pregnant woman of the 130  
probable anatomical and physiological characteristics of the 131  
zygote, blastocyte, embryo, or fetus at two-week gestational 132  
increments for the first sixteen weeks of pregnancy and at four- 133

week gestational increments from the seventeenth week of 134  
pregnancy to full term, including any relevant information 135  
regarding the time at which the fetus possibly would be viable. 136  
The department shall cause these materials to be published after 137  
it consults with independent health care experts relative to the 138  
probable anatomical and physiological characteristics of a 139  
zygote, blastocyte, embryo, or fetus at the various gestational 140  
increments. The materials shall use language that is 141  
understandable by the average person who is not medically 142  
trained, shall be objective and nonjudgmental, and shall include 143  
only accurate scientific information about the zygote, 144  
blastocyte, embryo, or fetus at the various gestational 145  
increments. If the materials use a pictorial, photographic, or 146  
other depiction to provide information regarding the zygote, 147  
blastocyte, embryo, or fetus, the materials shall include, in a 148  
conspicuous manner, a scale or other explanation that is 149  
understandable by the average person and that can be used to 150  
determine the actual size of the zygote, blastocyte, embryo, or 151  
fetus at a particular gestational increment as contrasted with 152  
the depicted size of the zygote, blastocyte, embryo, or fetus at 153  
that gestational increment. 154

(3) Both of the following: 155

(a) Materials designed to inform the pregnant woman of the 156  
possibility of reversing the effects of an abortion that 157  
utilizes mifepristone if she changes her mind; 158

(b) Information on and assistance with the resources that 159  
may be available to help reverse the effects of an abortion that 160  
utilizes mifepristone. 161

The materials required under division (C)(3) of this 162  
section shall be developed in accordance with rules that the 163

department shall adopt in accordance with section 111.15 of the 164  
Revised Code. 165

(D) Upon the submission of a request to the department of 166  
health by any person, hospital, physician, or medical facility 167  
for one copy of the materials published in accordance with 168  
division (C) of this section, the department shall make the 169  
requested copy of the materials available to the person, 170  
hospital, physician, or medical facility that requested the 171  
copy. 172

(E) If a medical emergency or medical necessity compels 173  
the performance or inducement of an abortion, the physician who 174  
will perform or induce the abortion, prior to its performance or 175  
inducement if possible, shall inform the pregnant woman of the 176  
medical indications supporting the physician's judgment that an 177  
immediate abortion is necessary. Any physician who performs or 178  
induces an abortion without the prior satisfaction of the 179  
conditions specified in division (B) of this section because of 180  
a medical emergency or medical necessity shall enter the reasons 181  
for the conclusion that a medical emergency or medical necessity 182  
exists in the medical record of the pregnant woman. 183

(F) If the conditions specified in division (B) of this 184  
section are satisfied, consent to an abortion shall be presumed 185  
to be valid and effective. 186

(G) The performance or inducement of an abortion without 187  
the prior satisfaction of the conditions specified in division 188  
(B) of this section does not constitute, and shall not be 189  
construed as constituting, a violation of division (A) of 190  
section 2919.12 of the Revised Code. The failure of a physician 191  
to satisfy the conditions of division (B) of this section prior 192  
to performing or inducing an abortion upon a pregnant woman may 193

be the basis of both of the following:	194
(1) A civil action for compensatory and exemplary damages as described in division (H) of this section;	195 196
(2) Disciplinary action under section 4731.22 of the Revised Code.	197 198
(H) (1) Subject to divisions (H) (2) and (3) of this section, any physician who performs or induces an abortion with actual knowledge that the conditions specified in division (B) of this section have not been satisfied or with a heedless indifference as to whether those conditions have been satisfied is liable in compensatory and exemplary damages in a civil action to any person, or the representative of the estate of any person, who sustains injury, death, or loss to person or property as a result of the failure to satisfy those conditions. In the civil action, the court additionally may enter any injunctive or other equitable relief that it considers appropriate.	199 200 201 202 203 204 205 206 207 208 209 210
(2) The following shall be affirmative defenses in a civil action authorized by division (H) (1) of this section:	211 212
(a) The physician performed or induced the abortion under the circumstances described in division (E) of this section.	213 214
(b) The physician made a good faith effort to satisfy the conditions specified in division (B) of this section.	215 216
(3) An employer or other principal is not liable in damages in a civil action authorized by division (H) (1) of this section on the basis of the doctrine of respondeat superior unless either of the following applies:	217 218 219 220
(a) The employer or other principal had actual knowledge	221



or, by the exercise of reasonable diligence, should have known 222  
that an employee or agent performed or induced an abortion with 223  
actual knowledge that the conditions specified in division (B) 224  
of this section had not been satisfied or with a heedless 225  
indifference as to whether those conditions had been satisfied. 226

(b) The employer or other principal negligently failed to 227  
secure the compliance of an employee or agent with division (B) 228  
of this section. 229

(4) Notwithstanding division (E) of section 2919.12 of the 230  
Revised Code, the civil action authorized by division (H) (1) of 231  
this section shall be the exclusive civil remedy for persons, or 232  
the representatives of estates of persons, who allegedly sustain 233  
injury, death, or loss to person or property as a result of a 234  
failure to satisfy the conditions specified in division (B) of 235  
this section. 236

(I) The department of job and family services shall 237  
prepare and conduct a public information program to inform women 238  
of all available governmental programs and agencies that provide 239  
services or assistance for family planning, prenatal care, child 240  
care, or alternatives to abortion. 241

Sec. 2919.125. As used in sections 2919.125 to 2919.128 of 242  
the Revised Code: 243

(A) "Dangerous drug" has the same meaning as in section 244  
4729.01 of the Revised Code. 245

(B) "Medical emergency" has the same meaning as in section 246  
2919.16 of the Revised Code. 247

(C) "Mifepristone abortion" means an abortion that 248  
involves a regimen of taking mifepristone first, then one or 249  
more subsequent dangerous drugs. 250

Sec. 2919.126. (A) No physician shall knowingly perform or 251  
induce a mifepristone abortion in a pregnant woman without the 252  
physician or an agent of that physician doing both of the 253  
following: 254

(1) Informing the woman, at least twenty-four hours prior 255  
to providing the woman with mifepristone, of both of the 256  
following: 257

(a) It may be possible to reverse the intended effects of 258  
a mifepristone abortion if she changes her mind, but that time 259  
is of the essence. 260

(b) Information on and assistance with reversing the 261  
effects of the mifepristone abortion is available on the 262  
department of health's web site. 263

(2) Immediately prior to providing the woman with the 264  
mifepristone, providing her with printed materials that include 265  
the following statement: 266

"Recent developing research has indicated that 267  
mifepristone alone is not always effective in ending a 268  
pregnancy. It may be possible to avoid, cease, or even to 269  
reverse the intended effects of an abortion utilizing 270  
mifepristone if the second pill has not been taken. Please 271  
consult with a health care professional immediately." 272

(B) Division (A) of this section does not apply to a 273  
physician who performs or induces the mifepristone abortion if 274  
the physician believes that a medical emergency exists that 275  
prevents compliance with that division. 276

(C) The department of health shall adopt rules in 277  
accordance with section 111.15 of the Revised Code governing the 278  
information, assistance, and materials required to be provided 279

under division (A) of this section. 280

(D) Whoever violates division (A) of this section is 281  
guilty of failure to disclose the reversibility of a 282  
mifepristone abortion, a misdemeanor of the first degree on a 283  
first offense and a felony of the fourth degree on each 284  
subsequent offense. 285

(E) Nothing in this section shall be construed to permit a 286  
physician to delegate the performance or inducement of an 287  
abortion. 288

**Sec. 2919.127.** A pregnant woman on whom a mifepristone 289  
abortion is performed or induced in violation of section 290  
2919.126 of the Revised Code is not guilty of violating that 291  
section; is not guilty of attempting to commit, conspiring to 292  
commit, or complicity in committing a violation of that section; 293  
and is not subject to a civil penalty based on the mifepristone 294  
abortion being performed or induced in violation of that 295  
section. 296

**Sec. 2919.128.** A woman on whom a mifepristone abortion is 297  
performed or induced in violation of section 2919.126 of the 298  
Revised Code may file a civil action for the wrongful death of 299  
the woman's unborn child and may receive at the mother's 300  
election at any time prior to final judgment damages in an 301  
amount equal to ten thousand dollars or an amount determined by 302  
the trier of fact after consideration of the evidence subject to 303  
the same defenses and requirements of proof, except any 304  
requirement of live birth, as would apply to a suit for the 305  
wrongful death of a child who had been born alive. 306

**Section 2.** That existing section 2317.56 of the Revised 307  
Code is hereby repealed. 308

<b>Section 3.</b> The prohibition under section 2919.126 of the	309
Revised Code shall not apply until the Department of Health has	310
placed on its web site information on reversing a mifepristone	311
abortion, as required under division (C) (3) of section 2317.56	312
of the Revised Code.	313