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H. B. No. 347

Representatives Odioso, Williams

Cosponsors: Representatives Mathews, A., Craig, Deeter, John, Schmidt, Gross, King, Miller, M., Stewart, Barhorst, Bird, Callender, Claggett, Click, Creech, Dovilla, Ferguson, Fowler Arthur, Ghanbari, Hall, T., Hiner, Holmes, Hoops, Johnson, Klopfenstein, Lear, Mathews, T., McClain, Newman, Plummer, Richardson, Ritter, Robb Blasdel, Salvo, Swearingen, Thomas, D., Workman

To amend sections 2305.11 and 2307.46 and to enact 1
section 2317.58 of the Revised Code to enact the 2
Share the Health and Empower With Informed 3
Notices (SHE WINS) Act regarding abortion 4
informed consent. 5

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

Section 1. That sections 2305.11 and 2307.46 be amended 6
and section 2317.58 of the Revised Code be enacted to read as 7
follows: 8

Sec. 2305.11. (A) An action for libel, slander, malicious 9
prosecution, or false imprisonment, an action for malpractice 10
other than an action upon a medical, dental, optometric, or 11
chiropractic claim, an action for legal malpractice against an 12
attorney or a law firm or legal professional association, or an 13
action upon a statute for a penalty or forfeiture shall be 14
commenced within one year after the cause of action accrued, 15
provided that an action by an employee for the payment of unpaid 16
minimum wages, unpaid overtime compensation, or liquidated 17

damages by reason of the nonpayment of minimum wages or overtime 18
compensation shall be commenced within two years after the cause 19
of action accrued. 20

(B) A civil action for unlawful abortion pursuant to 21
section 2919.12 of the Revised Code, a civil action authorized 22
by division (H) of section 2317.56 of the Revised Code, a civil 23
action authorized by division (G) of section 2317.58 of the 24
Revised Code, a civil action pursuant to division (B) of section 25
2307.52 of the Revised Code for terminating or attempting to 26
terminate a human pregnancy after viability in violation of 27
division (A) of section 2919.17 of the Revised Code, and a civil 28
action for terminating or attempting to terminate a human 29
pregnancy of a pain-capable unborn child in violation of 30
division (E) of section 2919.201 of the Revised Code shall be 31
commenced within one year after the performance or inducement of 32
the abortion or within one year after the attempt to perform or 33
induce the abortion in violation of division (A) of section 34
2919.17 of the Revised Code or division (E) of section 2919.201 35
of the Revised Code. 36

(C) A civil action authorized by division (G) of section 37
2317.58 of the Revised Code shall be commenced within one year 38
after the performance or inducement of the abortion or within 39
one year after the reasonable discovery by the harmed party of 40
the harm incurred as a result of the breach of duties obligated 41
by that division, whichever is later. 42

(D) As used in this section, "medical claim," "dental 43
claim," "optometric claim," and "chiropractic claim" have the 44
same meanings as in section 2305.113 of the Revised Code. 45

Sec. 2307.46. (A) In any civil action based on or related 46
to any injury, death, or loss to person or property suffered as 47

a result of the performance or inducement of an abortion or 48
suffered as a result of an attempt to perform or induce an 49
abortion, the woman upon whom the abortion was allegedly 50
performed, induced, or attempted, at the time of the filing of 51
the complaint in the civil action, may file a motion with the 52
court requesting that her identity only be revealed to the 53
defendant and to the court and that in all other respects the 54
civil action be conducted in a manner that maintains her 55
confidentiality. The motion shall set forth the reasons for the 56
requested confidentiality. Prior to service of the complaint, 57
the court shall conduct an ex parte hearing in a timely manner 58
to determine whether sufficient cause exists to require that the 59
confidentiality of the movant be maintained in the civil action. 60
~~The decision of the court on the motion is final and is not~~ 61
~~subject to appeal.~~An order denying such a motion shall be a basis 62
for immediate interlocutory appeal. 63

(B) The supreme court shall prescribe rules to implement 64
division (A) of this section. 65

Sec. 2317.58. (A) As used in this section: 66

(1) "Abortion-inducing drug" has the same meaning as in 67
section 2919.124 of the Revised Code and includes any drug 68
prescribed or dispensed for off-label use to terminate a 69
pregnancy that is prescribed without a diagnosed pregnancy for 70
the purpose of terminating a pregnancy on a future date. 71

"Abortion-inducing drug" does not include any drug that 72
may be known to have the effect of terminating a pregnancy, but 73
that is prescribed for the purpose of treating a medical 74
condition and not for terminating a pregnancy, so long as the 75
medical indication is clearly specified on the prescription. 76

(2) "Complication" means any adverse physical or 77
psychological condition arising from the performance or 78
inducement of an abortion the state medical board may specify in 79
rules adopted under this section, including the following: 80
uterine perforation; cervical perforation; infection; bleeding; 81
hemorrhage; blood clots; failure to actually terminate the 82
pregnancy; incomplete abortion (retained tissue); pelvic 83
inflammatory disease; endometritis; missed ectopic pregnancy; 84
cardiac arrest; respiratory arrest; renal failure; metabolic 85
disorder; shock; embolism; coma; placenta previa in subsequent 86
pregnancies; preterm birth in subsequent pregnancies; free fluid 87
in the abdomen; adverse reactions to anesthesia and other drugs; 88
any psychological or emotional complications, such as 89
depression, anxiety, suicidal ideation, post-traumatic stress 90
disorder, and sleeping disorders; and any other adverse event as 91
defined under 21 C.F.R. 251.2. 92

(3) "Elective abortion" means the use of an instrument, 93
medicine, drug, or other substance or device with intent to 94
terminate the pregnancy of a woman known or believed to be 95
pregnant for purposes other than a medical emergency. 96

"Elective abortion" does not include any medical procedure 97
used to address or resolve a miscarriage, ectopic pregnancy, or 98
medical emergency. 99

(4) "Fertilization" has the same meaning as in section 100
2919.16 of the Revised Code. 101

(5) "Interested party" means all of the following: 102

(a) A woman on whom an elective abortion was performed or 103
induced; 104

(b) Except as provided in division (A) (5) (d) of this 105

section, in the case of the woman's death, any of the following 106
individuals: 107

(i) The deceased woman's estate; 108

(ii) The deceased woman's spouse or, if she was unmarried, 109
the biological father of the unborn child if the biological 110
father's relationship has been proven by a preponderance of 111
evidence; 112

(iii) The deceased woman's parent, custodian, or legal 113
guardian. 114

(c) If the woman has been determined to be an 115
incapacitated person, as defined in section 2305.41 of the 116
Revised Code, by a court of competent jurisdiction, her court- 117
appointed guardian; 118

(d) No individual described in division (A) (5) (b) of this 119
section shall be considered an interested party under this 120
section if the individual has been convicted of or pleaded 121
guilty to a violation of section 2903.01, 2903.02, 2903.03, 122
2903.04, 2903.041, 2903.05, 2903.06, 2903.08, 2903.11, 2903.12, 123
2903.13, 2903.14, 2903.18, 2903.21, 2903.211, 2903.216, 2903.22, 124
2905.01, 2905.02, 2905.03, 2905.11, 2905.12, 2905.32, 2917.21, 125
2919.22, 2919.25, 2925.02, a violation of any section in Chapter 126
2907. of the Revised Code, or a violation of an existing or 127
former municipal ordinance or law of this or any other state or 128
the United States that is substantially similar to any of those 129
sections, and the victim of the violation was the deceased 130
woman. 131

(6) "Medical emergency" means a condition which, based on 132
the physician's reasonable medical judgment, so complicates a 133
pregnant woman's medical condition as to necessitate the 134

immediate separation of the mother and her unborn child to 135
prevent the death of the pregnant woman or a serious risk of the 136
substantial and irreversible impairment of a major bodily 137
function of the pregnant woman. 138

(7) "Physician" has the same meaning as in section 139
2305.113 of the Revised Code. 140

(8) "Unborn child" has the same meaning as in section 141
2919.16 of the Revised Code. 142

(9) "Pregnant" has the same meaning as in section 2919.16 143
of the Revised Code. 144

(10) "Reasonable medical judgment" means a medical 145
judgment that would be made by a reasonably prudent physician 146
who is knowledgeable about the pregnant woman's case and the 147
treatment possibilities for her medical condition. 148

(11) "Serious risk of the substantial and irreversible 149
impairment of a major bodily function" has the same meaning as 150
in section 2919.16 of the Revised Code. 151

(B) Notwithstanding any other provision of the Revised 152
Code, and except when there is a medical emergency, an elective 153
abortion shall be performed or induced only if all of the 154
following conditions are satisfied: 155

(1) At least twenty-four hours prior to the performance or 156
inducement of the abortion, a physician meets with the pregnant 157
woman, in person, by telephone, or by virtual meeting, in a 158
manner that protects the pregnant woman's privacy and the 159
confidentiality of her decision, ensures the provided 160
information focuses on her individual circumstances and her 161
ability to understand the provided information, gives her an 162
adequate opportunity to ask questions about the abortion that 163

will be performed or induced, and provides her with complete, 164
accurate, and satisfactory answers to her questions. 165
Furthermore, at this meeting, the physician shall inform the 166
pregnant woman and document of all of the following: 167

(a) The name of the physician who is scheduled to perform 168
or induce the abortion; 169

(b) Medically accurate information that a reasonable 170
patient would consider material to the decision of whether to 171
undergo the elective abortion, including the following: 172

(i) The nature and purpose of the particular abortion 173
procedure to be used; 174

(ii) The immediate and long-term medical risks associated 175
with that procedure, including all possible complications. 176

(c) The medical risks associated with the pregnant woman 177
carrying the pregnancy to term; 178

(d) Alternatives to abortion, including adoption and 179
parenting; 180

(e) For a pregnant woman who is Rh negative, the need for 181
anti-Rh immune globulin therapy, the likely consequences of 182
refusing the therapy, and the cost of the therapy. 183

(2) At least twenty-four hours prior to the performance or 184
inducement of the abortion, the physician who is to perform or 185
induce the abortion or the physician's qualified agent does each 186
of the following verbally, in person, by telephone, or by 187
virtual meeting, and in writing, by certified mail, return 188
receipt requested, by regular mail evidenced by a certificate of 189
mailing, or by electronic mail to the pregnant woman's correct 190
electronic mail address, and in a manner the pregnant woman 191

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| <u>understands, based on her ability to understand according to her</u> | 192 |
| <u>own individual circumstances:</u> | 193 |
| <u>(a) Inform the pregnant woman of any medical assistance</u> | 194 |
| <u>benefits that may be available for prenatal care, childbirth,</u> | 195 |
| <u>and neonatal care;</u> | 196 |
| <u>(b) Except in the case that the pregnancy is the result of</u> | 197 |
| <u>rape or incest, inform the pregnant woman that the unborn</u> | 198 |
| <u>child's father has a child support obligation, even if the</u> | 199 |
| <u>father has offered to pay for the elective abortion;</u> | 200 |
| <u>(c) Inform the pregnant woman that she is free to withhold</u> | 201 |
| <u>or withdraw her consent to the abortion at any time without</u> | 202 |
| <u>affecting her right to future care or treatment or the status of</u> | 203 |
| <u>any state or federally funded benefits to which she is or may be</u> | 204 |
| <u>entitled;</u> | 205 |
| <u>(d) For an abortion being performed or induced by</u> | 206 |
| <u>abortion-inducing drugs, inform the pregnant woman that it may</u> | 207 |
| <u>be possible to reverse the effects of the abortion-inducing drug</u> | 208 |
| <u>if she changes her mind, but that time is of the essence.</u> | 209 |
| <u>(3) Prior to the performance or inducement of the</u> | 210 |
| <u>abortion, the pregnant woman signs a form providing her informed</u> | 211 |
| <u>consent to the abortion and certifies all of the following on</u> | 212 |
| <u>that form:</u> | 213 |
| <u>(a) She has received the information described in</u> | 214 |
| <u>divisions (B) (1) and (2) of this section, and her questions</u> | 215 |
| <u>about the abortion that will be performed or induced have been</u> | 216 |
| <u>answered in a complete, accurate, and satisfactory manner and in</u> | 217 |
| <u>a manner that she understands.</u> | 218 |
| <u>(b) She consents to the particular abortion voluntarily,</u> | 219 |
| <u>knowingly, intelligently, and without coercion by any person,</u> | 220 |

and she is not under the influence of any drug of abuse or 221
alcohol. 222

(4) Prior to the performance or inducement of the 223
abortion, the physician who is performing or inducing the 224
abortion or the physician's agent must receive a copy of the 225
pregnant woman's signed form on which she has knowingly and 226
voluntarily provided her informed consent to the abortion and 227
that includes the certification required by division (B) (3) of 228
this section. 229

(C) If a medical emergency compels the performance or 230
inducement of an abortion, the physician who will perform or 231
induce the abortion, prior to its performance or inducement if 232
possible, shall inform the pregnant woman of the medical 233
indications supporting the physician's judgment that an 234
immediate abortion is necessary. Any physician who performs or 235
induces an abortion without the prior satisfaction of the 236
conditions specified in division (B) of this section because of 237
a medical emergency shall enter the reasons for the conclusion 238
that a medical emergency exists in the medical record of the 239
pregnant woman. 240

(D) If the conditions specified in division (B) of this 241
section are satisfied, consent to an abortion shall be presumed 242
to be valid and effective. 243

(E) The performance or inducement of an abortion without 244
the prior satisfaction of the conditions specified in division 245
(B) of this section does not constitute, and shall not be 246
construed as constituting, a violation of division (A) of 247
section 2919.12 of the Revised Code. The failure of a physician 248
to satisfy the conditions of division (B) of this section prior 249
to performing or inducing an abortion upon a pregnant woman may 250

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| <u>be the basis of both of the following:</u> | 251 |
| <u>(1) A civil action for compensatory and exemplary damages</u> | 252 |
| <u>as described in division (G) of this section;</u> | 253 |
| <u>(2) Disciplinary action under section 4731.22 of the</u> | 254 |
| <u>Revised Code.</u> | 255 |
| <u>(F) No payment shall be required for any service provided</u> | 256 |
| <u>in relation to an elective abortion until the informed consent</u> | 257 |
| <u>requirements are met in accordance with this section.</u> | 258 |
| <u>(G) (1) Subject to divisions (G) (3) and (4) of this</u> | 259 |
| <u>section, any physician who performs or induces an abortion with</u> | 260 |
| <u>actual knowledge that the conditions specified in division (B)</u> | 261 |
| <u>of this section have not been satisfied or with a heedless</u> | 262 |
| <u>indifference as to whether those conditions have been satisfied</u> | 263 |
| <u>or who causes any person to sustain injury, death, or loss to</u> | 264 |
| <u>person or property as a result of negligent, reckless, or</u> | 265 |
| <u>intentional conduct is liable in statutory, compensatory, and</u> | 266 |
| <u>exemplary damages, court costs, and attorney's fees in a civil</u> | 267 |
| <u>action to any interested party.</u> | 268 |
| <u>(2) (a) In the event the claimant prevails in an action</u> | 269 |
| <u>brought under this section, the court shall award the following:</u> | 270 |
| <u>(i) Statutory damages in the amount of at least one</u> | 271 |
| <u>hundred thousand dollars for each claim brought by the</u> | 272 |
| <u>interested party in which the interested party prevailed;</u> | 273 |
| <u>(ii) Compensatory damages authorized under section 2315.18</u> | 274 |
| <u>of the Revised Code;</u> | 275 |
| <u>(iii) Punitive or exemplary damages authorized under</u> | 276 |
| <u>section 2315.21 of the Revised Code;</u> | 277 |
| <u>(iv) Court costs and attorney's fees.</u> | 278 |

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| <u>(b) The court additionally may enter any injunctive or</u> | 279 |
| <u>other equitable relief that it considers appropriate.</u> | 280 |
| <u>(c) Notwithstanding any other provision of law to the</u> | 281 |
| <u>contrary, no court shall award costs or attorney's fees to a</u> | 282 |
| <u>defendant in an action brought under this section.</u> | 283 |
| <u>(3) The following shall be affirmative defenses in a civil</u> | 284 |
| <u>action authorized under this section:</u> | 285 |
| <u>(a) The physician performed or induced the abortion under</u> | 286 |
| <u>the circumstances described in division (C) of this section.</u> | 287 |
| <u>(b) The physician made an objectively reasonable and good</u> | 288 |
| <u>faith effort to satisfy the conditions specified in division (B)</u> | 289 |
| <u>of this section.</u> | 290 |
| <u>(c) For an action brought in relation to a drug-induced</u> | 291 |
| <u>abortion in which informed consent requirements were not met,</u> | 292 |
| <u>the defendant reasonably believed, after conducting a reasonable</u> | 293 |
| <u>investigation, that the drug was intended for lawful, on-label</u> | 294 |
| <u>use rather than for the purpose of inducing an abortion.</u> | 295 |
| <u>(4) The following are not affirmative defenses in a civil</u> | 296 |
| <u>action authorized under this section:</u> | 297 |
| <u>(a) Ignorance or mistake of the law;</u> | 298 |
| <u>(b) A defendant's belief that the requirements under this</u> | 299 |
| <u>section are or were unconstitutional;</u> | 300 |
| <u>(c) A defendant's reliance on any state or federal court</u> | 301 |
| <u>decision that is not binding on the court in which the action</u> | 302 |
| <u>has been brought;</u> | 303 |
| <u>(d) Non-mutual issue preclusion or non-mutual claim</u> | 304 |
| <u>preclusion;</u> | 305 |

(e) If the informed consent requirements have not been 306
met, the voluntary consent of the unborn child's mother to the 307
elective abortion; 308

(f) Any claim that the enforcement of this chapter or the 309
imposition of civil liability against the defendant violates a 310
third party's constitutional rights. 311

(5) Nothing in this section shall preclude an interested 312
party from either of the following: 313

(a) Bringing any additional civil action or claim arising 314
out of the circumstances that are the basis for an action under 315
this section; 316

(b) Being awarded statutory damages pursuant to additional 317
civil actions or claims. 318

(6) Nothing in this section shall be construed to impose 319
liability on any speech or conduct protected by the first 320
amendment to the United States Constitution, as made applicable 321
to the states through interpretation of the Fourteenth Amendment 322
to the United States Constitution by the supreme court of the 323
United States, or by the Ohio Constitution. 324

(7) A pregnant woman on whom an elective abortion is 325
performed or induced or attempted to be performed or induced is 326
not liable under this section. 327

(H) Any provision of this section held to be invalid or 328
unenforceable by its terms, or as applied to any person or 329
circumstance held invalid or unenforceable by its terms, shall 330
be construed so as to give it the maximum effect permitted by 331
law. If such holding wholly invalidates or renders the provision 332
unenforceable, the provision is severable and does not affect 333
the remainder of the provisions of this section or how the 334

remainder of the provisions in this section apply to any other 335
person not similarly situated or to other, dissimilar 336
circumstances. 337

(I) To the extent that the provisions in section 2317.56 338
of the Revised Code conflict with this section, the provisions 339
of this section supersede the provisions under section 2317.56 340
of the Revised Code. 341

(J) The state medical board may adopt rules in accordance 342
with Chapter 119. of the Revised Code to specify any adverse 343
physical or psychological condition arising from the performance 344
or inducement of an abortion for the purpose of the definition 345
of complications as set forth in division (A) (2) of this 346
section. 347

Section 2. That existing sections 2305.11 and 2307.46 of 348
the Revised Code are hereby repealed. 349

Section 3. This act shall be known as the Share the Health 350
and Empower With Informed Notices (SHE WINS) Act. 351