As Reported by the Senate Health Committee

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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

Senators Romanchuk, Manchester, Johnson, Roegner, Huffman

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

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

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

Sec. 2305.11. (A) An action for libel, slander, malicious prosecution, or false imprisonment, an action for malpractice other than an action upon a medical, dental, optometric, or chiropractic claim, an action for legal malpractice against an attorney or a law firm or legal professional association, or an action upon a statute for a penalty or forfeiture shall be commenced within one year after the cause of action accrued, provided that an action by an employee for the payment of unpaid

minimum wages, unpaid overtime compensation, or liquidated damages by reason of the nonpayment of minimum wages or overtime compensation shall be commenced within two years after the cause of action accrued.

(B) A civil action for unlawful abortion pursuant to section 2919.12 of the Revised Code, a civil action authorized by division (H) of section 2317.56 of the Revised Code, a civil action authorized by division (G) of section 2317.58 of the Revised Code, a civil action pursuant to division (B) of section 2307.52 of the Revised Code for terminating or attempting to terminate a human pregnancy after viability in violation of division (A) of section 2919.17 of the Revised Code, and a civil action for terminating or attempting to terminate a human pregnancy of a pain-capable unborn child in violation of division (E) of section 2919.201 of the Revised Code shall be commenced within one year after the performance or inducement of the abortion or within one year after the attempt to perform or induce the abortion in violation of division (A) of section 2919.17 of the Revised Code or division (E) of section 2919.201 of the Revised Code.

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

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

Sec. 2307.46. (A) In any civil action based on or related

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The deceased woman's estate;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

understands, based on her ability to understand according to her own individual circumstances:

(a) Inform the pregnant woman of any medical assistance benefits that may be available for prenatal care, childbirth, and neonatal care;

(b) Except in the case that the pregnancy is the result of rape or incest, inform the pregnant woman that the unborn child's father has a child support obligation, even if the father has offered to pay for the elective abortion;

(c) Inform the pregnant woman that she is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment or the status of any state or federally funded benefits to which she is or may be entitled;

(d) For an abortion being performed or induced by abortion-inducing drugs, inform the pregnant woman that it may be possible to reverse the effects of the abortion-inducing drug if she changes her mind, but that time is of the essence.

(3) Prior to the performance or inducement of the abortion, the pregnant woman signs a form providing her informed consent to the abortion and certifies all of the following on that form:

(a) She has received the information described in divisions (B)(1) and (2) of this section, and her questions about the abortion that will be performed or induced have been answered in a complete, accurate, and satisfactory manner and in a manner that she understands.

(b) She consents to the particular abortion voluntarily, knowingly, intelligently, and without coercion by any person,

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

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

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

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

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

be the basis of both of the following:

(1) A civil action for compensatory and exemplary damages as described in division (G) of this section;

(2) Disciplinary action under section 4731.22 of the Revised Code.

(F) No payment shall be required for any service provided in relation to an elective abortion until the informed consent requirements are met in accordance with this section.

(G)(1) Subject to divisions (G)(3) and (4) 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 or who causes any person to sustain injury, death, or loss to person or property as a result of negligent, reckless, or intentional conduct is liable in statutory, compensatory, and exemplary damages, court costs, and attorney's fees in a civil action to any interested party.

(2)(a) In the event the claimant prevails in an action brought under this section, the court shall award the following:

(i) Statutory damages in the amount of at least one hundred thousand dollars for each claim brought by the interested party in which the interested party prevailed;

(ii) Compensatory damages authorized under section 2315.18 of the Revised Code;

(iii) Punitive or exemplary damages authorized under section 2315.21 of the Revised Code;

(iv) Court costs and attorney's fees.

(b) The court additionally may enter any injunctive or other equitable relief that it considers appropriate.

(c) Notwithstanding any other provision of law to the contrary, no court shall award costs or attorney's fees to a defendant in an action brought under this section.

(3) The following shall be affirmative defenses in a civil action authorized under this section:

(a) The physician performed or induced the abortion under the circumstances described in division (C) of this section.

(b) The physician made an objectively reasonable and good faith effort to satisfy the conditions specified in division (B) of this section.

(c) For an action brought in relation to a drug-induced abortion in which informed consent requirements were not met, the defendant reasonably believed, after conducting a reasonable investigation, that the drug was intended for lawful, on-label use rather than for the purpose of inducing an abortion.

(4) The following are not affirmative defenses in a civil action authorized under this section:

(a) Ignorance or mistake of the law;

(b) A defendant's belief that the requirements under this section are or were unconstitutional;

(c) A defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

(d) Non-mutual issue preclusion or non-mutual claim preclusion;

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

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

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

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

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

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

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

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

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

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

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

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

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