

As Passed by the Senate

133rd General Assembly

Regular Session

2019-2020

Am. S. B. No. 155

Senator Lehner

Cosponsors: Senators Uecker, Roegner, Blessing, Burke, Coley, Eklund, Hackett, Hoagland, Huffman, M., Huffman, S., Johnson, McColley, Obhof, Schaffer, Wilson

A BILL

To amend section 2317.56 and to enact sections 1
2919.124, 2919.125, 2919.126, and 2919.127 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
2919.124, 2919.125, 2919.126, and 2919.127 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 2919.124 of the Revised Code. 17
18

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

(B) Except when there is a medical emergency or medical 24
necessity, an abortion shall be performed or induced only if all 25
of the following conditions are satisfied: 26

(1) At least twenty-four hours prior to the performance or 27
inducement of the abortion, a physician meets with the pregnant 28
woman in person in an individual, private setting and gives her 29
an adequate opportunity to ask questions about the abortion that 30
will be performed or induced. At this meeting, the physician 31
shall inform the pregnant woman, verbally or, if she is hearing 32
impaired, by other means of communication, of all of the 33
following: 34

(a) The nature and purpose of the particular abortion 35
procedure to be used and the medical risks associated with that 36
procedure; 37

(b) The probable gestational age of the embryo or fetus; 38

(c) The medical risks associated with the pregnant woman 39
carrying the pregnancy to term. 40

The meeting need not occur at the facility where the 41
abortion is to be performed or induced, and the physician 42
involved in the meeting need not be affiliated with that 43
facility or with the physician who is scheduled to perform or 44
induce the abortion. 45

(2) At least twenty-four hours prior to the performance or 46
inducement of the abortion, the physician who is to perform or 47
induce the abortion or the physician's agent does each of the 48
following in person, by telephone, by certified mail, return 49
receipt requested, or by regular mail evidenced by a certificate 50
of mailing: 51

(a) Inform the pregnant woman of the name of the physician 52
who is scheduled to perform or induce the abortion; 53

(b) Give the pregnant woman copies of the published 54
materials described in ~~division~~ divisions (C) (1) and (2), and if 55
a mifepristone abortion, division (C) (3), of this section; 56

(c) Inform the pregnant woman that the materials given 57
pursuant to division (B) (2) (b) of this section are published by 58
the state and that they describe the embryo or fetus and list 59
agencies that offer alternatives to abortion. The pregnant woman 60
may choose to examine or not to examine the materials. A 61
physician or an agent of a physician may choose to be 62
disassociated from the materials and may choose to comment or 63
not comment on the materials. 64

(3) If it has been determined that the unborn human 65
individual the pregnant woman is carrying has a detectable 66
heartbeat, the physician who is to perform or induce the 67
abortion shall comply with the informed consent requirements in 68
section 2919.192 of the Revised Code in addition to complying 69
with the informed consent requirements in divisions (B) (1), (2), 70
(4), and (5) of this section. 71

(4) Prior to the performance or inducement of the 72
abortion, the pregnant woman signs a form consenting to the 73
abortion and certifies both of the following on that form: 74

(a) She has received the information and materials 75
described in divisions (B) (1) and (2) of this section, and her 76
questions about the abortion that will be performed or induced 77
have been answered in a satisfactory manner. 78

(b) She consents to the particular abortion voluntarily, 79
knowingly, intelligently, and without coercion by any person, 80
and she is not under the influence of any drug of abuse or 81
alcohol. 82

The form shall contain the name and contact information of 83
the physician who provided to the pregnant woman the information 84
described in division (B) (1) of this section. 85

(5) Prior to the performance or inducement of the 86
abortion, the physician who is scheduled to perform or induce 87
the abortion or the physician's agent receives a copy of the 88
pregnant woman's signed form on which she consents to the 89
abortion and that includes the certification required by 90
division (B) (4) of this section. 91

(C) The department of health shall publish in English and 92
in Spanish, in a typeface large enough to be clearly legible, 93
and in an easily comprehensible format, the following materials 94
on the department's web site: 95

(1) Materials that inform the pregnant woman about family 96
planning information, of publicly funded agencies that are 97
available to assist in family planning, and of public and 98
private agencies and services that are available to assist her 99
through the pregnancy, upon childbirth, and while the child is 100
dependent, including, but not limited to, adoption agencies. The 101
materials shall be geographically indexed; include a 102
comprehensive list of the available agencies, a description of 103

the services offered by the agencies, and the telephone numbers 104
and addresses of the agencies; and inform the pregnant woman 105
about available medical assistance benefits for prenatal care, 106
childbirth, and neonatal care and about the support obligations 107
of the father of a child who is born alive. The department shall 108
ensure that the materials described in division (C)(1) of this 109
section are comprehensive and do not directly or indirectly 110
promote, exclude, or discourage the use of any agency or service 111
described in this division. 112

(2) Materials that inform the pregnant woman of the 113
probable anatomical and physiological characteristics of the 114
zygote, blastocyte, embryo, or fetus at two-week gestational 115
increments for the first sixteen weeks of pregnancy and at four- 116
week gestational increments from the seventeenth week of 117
pregnancy to full term, including any relevant information 118
regarding the time at which the fetus possibly would be viable. 119
The department shall cause these materials to be published only 120
after it consults with the Ohio state medical association and 121
the Ohio section of the American college of obstetricians and 122
gynecologists relative to the probable anatomical and 123
physiological characteristics of a zygote, blastocyte, embryo, 124
or fetus at the various gestational increments. The materials 125
shall use language that is understandable by the average person 126
who is not medically trained, shall be objective and 127
nonjudgmental, and shall include only accurate scientific 128
information about the zygote, blastocyte, embryo, or fetus at 129
the various gestational increments. If the materials use a 130
pictorial, photographic, or other depiction to provide 131
information regarding the zygote, blastocyte, embryo, or fetus, 132
the materials shall include, in a conspicuous manner, a scale or 133
other explanation that is understandable by the average person 134

and that can be used to determine the actual size of the zygote, 135
blastocyte, embryo, or fetus at a particular gestational 136
increment as contrasted with the depicted size of the zygote, 137
blastocyte, embryo, or fetus at that gestational increment. 138

(3) Both of the following: 139

(a) Materials designed to inform the pregnant woman of the 140
possibility of reversing the effects of an abortion that 141
utilizes mifepristone if she changes her mind; 142

(b) Information on and assistance with the resources that 143
may be available to help reverse the effects of an abortion that 144
utilizes mifepristone. 145

The materials required under division (C) (3) of this 146
section shall be developed in accordance with rules that the 147
department shall adopt in accordance with section 111.15 of the 148
Revised Code. 149

(D) Upon the submission of a request to the department of 150
health by any person, hospital, physician, or medical facility 151
for one copy of the materials published in accordance with 152
division (C) of this section, the department shall make the 153
requested copy of the materials available to the person, 154
hospital, physician, or medical facility that requested the 155
copy. 156

(E) If a medical emergency or medical necessity compels 157
the performance or inducement of an abortion, the physician who 158
will perform or induce the abortion, prior to its performance or 159
inducement if possible, shall inform the pregnant woman of the 160
medical indications supporting the physician's judgment that an 161
immediate abortion is necessary. Any physician who performs or 162
induces an abortion without the prior satisfaction of the 163

conditions specified in division (B) of this section because of 164
a medical emergency or medical necessity shall enter the reasons 165
for the conclusion that a medical emergency or medical necessity 166
exists in the medical record of the pregnant woman. 167

(F) If the conditions specified in division (B) of this 168
section are satisfied, consent to an abortion shall be presumed 169
to be valid and effective. 170

(G) The performance or inducement of an abortion without 171
the prior satisfaction of the conditions specified in division 172
(B) of this section does not constitute, and shall not be 173
construed as constituting, a violation of division (A) of 174
section 2919.12 of the Revised Code. The failure of a physician 175
to satisfy the conditions of division (B) of this section prior 176
to performing or inducing an abortion upon a pregnant woman may 177
be the basis of both of the following: 178

(1) A civil action for compensatory and exemplary damages 179
as described in division (H) of this section; 180

(2) Disciplinary action under section 4731.22 of the 181
Revised Code. 182

(H) (1) Subject to divisions (H) (2) and (3) of this 183
section, any physician who performs or induces an abortion with 184
actual knowledge that the conditions specified in division (B) 185
of this section have not been satisfied or with a heedless 186
indifference as to whether those conditions have been satisfied 187
is liable in compensatory and exemplary damages in a civil 188
action to any person, or the representative of the estate of any 189
person, who sustains injury, death, or loss to person or 190
property as a result of the failure to satisfy those conditions. 191
In the civil action, the court additionally may enter any 192

injunctive or other equitable relief that it considers	193
appropriate.	194
(2) The following shall be affirmative defenses in a civil	195
action authorized by division (H)(1) of this section:	196
(a) The physician performed or induced the abortion under	197
the circumstances described in division (E) of this section.	198
(b) The physician made a good faith effort to satisfy the	199
conditions specified in division (B) of this section.	200
(3) An employer or other principal is not liable in	201
damages in a civil action authorized by division (H)(1) of this	202
section on the basis of the doctrine of respondeat superior	203
unless either of the following applies:	204
(a) The employer or other principal had actual knowledge	205
or, by the exercise of reasonable diligence, should have known	206
that an employee or agent performed or induced an abortion with	207
actual knowledge that the conditions specified in division (B)	208
of this section had not been satisfied or with a heedless	209
indifference as to whether those conditions had been satisfied.	210
(b) The employer or other principal negligently failed to	211
secure the compliance of an employee or agent with division (B)	212
of this section.	213
(4) Notwithstanding division (E) of section 2919.12 of the	214
Revised Code, the civil action authorized by division (H)(1) of	215
this section shall be the exclusive civil remedy for persons, or	216
the representatives of estates of persons, who allegedly sustain	217
injury, death, or loss to person or property as a result of a	218
failure to satisfy the conditions specified in division (B) of	219
this section.	220

(I) The department of job and family services shall 221
prepare and conduct a public information program to inform women 222
of all available governmental programs and agencies that provide 223
services or assistance for family planning, prenatal care, child 224
care, or alternatives to abortion. 225

Sec. 2919.124. As used in sections 2919.124 to 2919.127 of 226
the Revised Code: 227

(A) "Dangerous drug" has the same meaning as in section 228
4729.01 of the Revised Code. 229

(B) "Medical emergency" has the same meaning as in section 230
2919.16 of the Revised Code. 231

(C) "Mifepristone abortion" means an abortion that 232
involves a regimen of taking mifepristone first, then one or 233
more subsequent dangerous drugs. 234

Sec. 2919.125. (A) No physician shall knowingly perform or 235
induce a mifepristone abortion in a pregnant woman without the 236
physician or an agent of that physician doing both of the 237
following: 238

(1) Informing the woman, at least twenty-four hours prior 239
to providing the woman with mifepristone, of both of the 240
following: 241

(a) It may be possible to reverse the intended effects of 242
a mifepristone abortion if she changes her mind, but that time 243
is of the essence. 244

(b) Information on and assistance with reversing the 245
effects of the mifepristone abortion is available on the 246
department of health's web site. The physician or agent shall 247
give the woman the link to the page on the web site of the 248

department of health where the information and assistance is 249
available. 250

(2) Immediately prior to providing the woman with the 251
mifepristone, providing her with printed materials that include 252
the following statement: 253

"Recent developing research has indicated that 254
mifepristone alone is not always effective in ending a 255
pregnancy. It may be possible to avoid, cease, or even to 256
reverse the intended effects of an abortion utilizing 257
mifepristone if the second pill has not been taken. Please 258
consult with a health care professional immediately." 259

(B) Division (A) of this section does not apply to a 260
physician who performs or induces the mifepristone abortion if 261
the physician determines, based upon the physician's reasonable 262
medical judgment, that a medical emergency exists that prevents 263
compliance with that division. 264

(C) The department of health shall adopt rules in 265
accordance with section 111.15 of the Revised Code governing the 266
information, assistance, and materials required to be provided 267
under division (A) of this section. 268

(D) Whoever violates division (A) of this section is 269
guilty of failure to disclose the reversibility of a 270
mifepristone abortion, a misdemeanor of the first degree on a 271
first offense and a felony of the fourth degree on each 272
subsequent offense. 273

(E) Nothing in this section shall be construed to permit a 274
physician to delegate the performance or inducement of an 275
abortion. 276

Sec. 2919.126. A pregnant woman on whom a mifepristone 277

abortion is performed or induced in violation of section 278
2919.125 of the Revised Code is not guilty of violating that 279
section; is not guilty of attempting to commit, conspiring to 280
commit, or complicity in committing a violation of that section; 281
and is not subject to a civil penalty based on the mifepristone 282
abortion being performed or induced in violation of that 283
section. 284

Sec. 2919.127. A woman on whom a mifepristone abortion is 285
performed or induced in violation of section 2919.125 of the 286
Revised Code may file a civil action for the wrongful death of 287
the woman's unborn child and may receive at the mother's 288
election at any time prior to final judgment damages in an 289
amount equal to ten thousand dollars or an amount determined by 290
the trier of fact after consideration of the evidence subject to 291
the same defenses and requirements of proof, except any 292
requirement of live birth, as would apply to a suit for the 293
wrongful death of a child who had been born alive. 294

Section 2. That existing section 2317.56 of the Revised 295
Code is hereby repealed. 296

Section 3. The prohibition under section 2919.125 of the 297
Revised Code shall not apply until the Department of Health has 298
placed on its web site information on reversing a mifepristone 299
abortion, as required under division (C) (3) of section 2317.56 300
of the Revised Code. 301