A BILL

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

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

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

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

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

(2) "Medical necessity" means a medical condition of a pregnant woman that, in the reasonable judgment of the physician who is attending the woman, so complicates the pregnancy that it necessitates the immediate performance or inducement of an abortion.
(3) "Mifepristone abortion" has the same meaning as in section 2919.125 of the Revised Code.

(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.

(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:

(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:

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

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

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

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

(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 agent does each of the
following in person, by telephone, by certified mail, return
receipt requested, or by regular mail evidenced by a certificate
of mailing:

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

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

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

(3) If it has been determined that the unborn human
individual the pregnant woman is carrying has a detectable fetal
heartbeat, the physician who is to perform or induce the
abortion shall comply with the informed consent requirements in
section 2919.194 of the Revised Code in addition to complying
with the informed consent requirements in divisions (B)(1), (2),
(4), and (5) of this section.
(4) Prior to the performance or inducement of the abortion, the pregnant woman signs a form consenting to the abortion and certifies all of the following on that form:

(a) She has received the information and materials 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 satisfactory manner.

(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.

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

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

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

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

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

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

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

(2) Materials that inform the pregnant woman of the
probable anatomical and physiological characteristics of the
zygote, blastocyte, embryo, or fetus at two-week gestational
increments for the first sixteen weeks of pregnancy and at four-
week gestational increments from the seventeenth week of pregnancy to full term, including any relevant information regarding the time at which the fetus possibly would be viable. The department shall cause these materials to be published after it consults with independent health care experts relative to the probable anatomical and physiological characteristics of a zygote, blastocyte, embryo, or fetus at the various gestational increments. The materials shall use language that is understandable by the average person who is not medically trained, shall be objective and nonjudgmental, and shall include only accurate scientific information about the zygote, blastocyte, embryo, or fetus at the various gestational increments. If the materials use a pictorial, photographic, or other depiction to provide information regarding the zygote, blastocyte, embryo, or fetus, the materials shall include, in a conspicuous manner, a scale or other explanation that is understandable by the average person and that can be used to determine the actual size of the zygote, blastocyte, embryo, or fetus at a particular gestational increment as contrasted with the depicted size of the zygote, blastocyte, embryo, or fetus at that gestational increment.

(3) Both of the following:

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

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

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

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

(E) If a medical emergency or medical necessity 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 or medical necessity shall enter the reasons for the conclusion that a medical emergency or medical necessity exists in the medical record of the pregnant woman.

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

(G) 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 (H) of this section;

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

(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.

(2) The following shall be affirmative defenses in a civil action authorized by division (H)(1) of this section:

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

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

(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:

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

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

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

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

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

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

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

(C) "Mifepristone abortion" means an abortion that  
involves a regimen of taking mifepristone first, then one or  
more subsequent dangerous drugs.
Sec. 2919.126. (A) No physician shall knowingly perform or induce a mifepristone abortion in a pregnant woman without the physician or an agent of that physician doing both of the following:

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

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

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

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

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

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

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

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

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

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

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

**Section 2.** That existing section 2317.56 of the Revised Code is hereby repealed.
Section 3. The prohibition under section 2919.126 of the Revised Code shall not apply until the Department of Health has placed on its web site information on reversing a mifepristone abortion, as required under division (C)(3) of section 2317.56 of the Revised Code.