

As Introduced

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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
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(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
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(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
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(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
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(a) The nature and purpose of the particular abortion procedure to be used and the medical risks associated with that procedure; 36
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(b) The probable gestational age of the zygote, blastocyte, embryo, or fetus; 39
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(c) The medical risks associated with the pregnant woman carrying the pregnancy to term. 41
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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
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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

Section 3. 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