As Introduced

134th General Assembly
Regular Session                                      H. B. No. 480
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Representatives Powell, Hall

Cosponsors: Representatives Ferguson, Click, Brinkman, Gross, Riedel, Fowler
Arthur, Creech, Miller, K., Schmidt, Manchester, Swearingen, Dean, Ghanbari,
Loychik, Bird, Young, B., Wiggam, Johnson, Jordan, Cross, Merrin, Stoltzfus,
Young, T., Ginter, Kick, McClain, Koehler, John, Carruthers, Zeltwanger,
Richardson, Grendell, Cutrona

A BILL

To amend section 1.59 and to enact sections

2919.08, 2919.081, 2919.082, 2919.083, 2919.084,
2919.085, 2919.086, 2919.087, 2919.088,
2919.089, 2919.0810, and 2919.0811 of the
Revised Code to enact the 2363 Act to authorize
a private right of action against a person for
performing or inducing an abortion or engaging
in conduct that aids or abets the performance or
inducement of an abortion.

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

Section 1. That section 1.59 be amended and sections
2919.08, 2919.081, 2919.082, 2919.083, 2919.084, 2919.085,
2919.086, 2919.087, 2919.088, 2919.089, 2919.0810, and 2919.0811
of the Revised Code be enacted to read as follows:

Sec. 1.59. As used in any statute, unless another
definition is provided in that statute or a related statute:
(A) "Child" includes child by adoption.

(B) "Oath" includes affirmation, and "swear" includes affirm.

(C) "Person" includes an individual born or unborn human being at any stage of development, corporation, business trust, estate, trust, partnership, and association.

(D) "Population" means that shown by the most recent regular federal census.

(E) "Property" means real and personal property.

(F) "Rule" includes regulation.

(G) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legislative authority of the United States of America. "This state" or "the state" means the state of Ohio.

(H) "United States" includes all the states.

(I) "Will" includes codicil.

(J) "Written" or "in writing" includes any representation of words, letters, symbols, or figures; this provision does not affect any law relating to signatures.

(K) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork known as the world wide web.

Sec. 2919.08. As used in sections 2919.081 to 2919.0811 of the Revised Code:

(A) "Abortion" means the act of using, prescribing,
administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the pregnancy of a woman, with knowledge that the termination by any of those means will, with reasonable likelihood, cause the death of the unborn child.

(B) "Fertilization" means the fusion of a human spermatozoon with a human ovum.

(C) "Unborn child" means an individual organism of the species homo sapiens from fertilization until live birth.

Sec. 2919.081. All human beings are created equal and endowed by their creator with certain unalienable rights; among these are life, liberty, and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed. The legislature may define, by law, the scope of protections afforded by this section to unborn persons. Any prohibition of conduct with regard to unborn persons shall be prescribed by the legislature by law.

Sec. 2919.082. Notwithstanding any other provision of law to the contrary, no person shall purposely perform or attempt to perform an abortion.

Sec. 2919.083. (A) Notwithstanding any other provision of law to the contrary, section 2919.082 of the Revised Code shall be enforced exclusively through the private civil actions described in section 2919.084 of the Revised Code.

(B) No enforcement of section 2919.082 of the Revised Code other than that described under division (A) of this section shall be taken or threatened by this state, a political subdivision, a district or county attorney, or an executive or
administrative officer or employee of this state or a political subdivision.

(C)(1) Notwithstanding any other provision of law to the contrary, this state, a state official, or a district or county attorney shall not intervene in an action brought under this section.

(2) This state, a state official, or a district or county attorney are not prohibited from filing an amicus curiae brief in the action.

Sec. 2919.084. (A) Except as provided under division (B) of this section, any person may bring a civil action against any person who:

(1) Performs or induces an abortion in violation of section 2919.082 of the Revised Code;

(2) Knowingly engages in conduct that aids or abets the performance or inducement of an abortion for a woman who the person knows to be pregnant, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of section 2919.082 of the Revised Code;

(3) Has taken action or made statements that demonstrate to a reasonable person that the person intends to engage in the conduct described by division (A)(1) or (2) of this section.

(B) Notwithstanding any other provision of law to the contrary, a civil action under this section shall not be brought by any of the following:

(1) Any officer or employee of a state or local governmental entity in this state;
(2) A person who impregnated the abortion patient through an act of rape, sexual battery, gross sexual imposition, or any other act prohibited by Title XXIX of the Revised Code.

Sec. 2919.085. (A) Except as provided in division (B) of this section, if a claimant prevails in an action brought under section 2919.084 of the Revised Code, the court shall award all of the following:

(1) Injunctive relief sufficient to prevent the defendant from violating or engaging in acts that aid or abet violations of section 2919.082 of the Revised Code;

(2) Statutory damages in an amount of not less than ten thousand dollars for each abortion that the defendant performed or induced, and for each abortion performed or induced that the defendant aided or abetted;

(3) Costs and attorney's fees.

(B) A court shall not award relief under this section in response to a violation of division (A)(1) or (2) of section 2919.084 of the Revised Code if the defendant demonstrates that the defendant previously paid the full amount of statutory damages under division (A)(2) of this section in a previous action for that particular abortion performed or induced or for the particular conduct that aided or abetted an abortion performed or induced.

(C) Notwithstanding any other provision of law to the contrary, a court shall not award costs or attorney's fees to a defendant in an action brought under this section.

Sec. 2919.086. (A) The following shall not be a defense to an action brought under section 2919.084 of the Revised Code:
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(1) Ignorance or mistake of law;

(2) A defendant's belief that the requirements of sections 2919.08 to 2919.0810 of the Revised Code are unconstitutional or were unconstitutional;

(3) A defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violates section 2919.082 of the Revised Code;

(4) 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;

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

(6) The consent of the unborn child's mother to the abortion;

(7) Except as provided under section 2151.087 of the Revised Code, any claim that the enforcement of section 2919.084 of the Revised Code or the imposition of civil liability against the defendant will violate the constitutional rights of third parties.

(B) A defendant against whom an action is brought under section 2919.084 of the Revised Code does not have standing to assert the rights of women seeking an abortion as a defense to liability under that section unless either of the following apply:

(1) The United States supreme court holds that the courts of this state must confer standing on that defendant to assert the third-party rights of women seeking an abortion in state
court as a matter of federal constitutional law.

(2) The defendant has standing to assert the rights of women seeking an abortion under the tests for third-party standing established by the United States supreme court.

Sec. 2919.087. (A) Any of the following shall be an affirmative defense to an action under section 2919.084 of the Revised Code:

(1) A licensed physician performed or induced an abortion to which either of the following apply:

(a) It was designed or intended to prevent the death of a pregnant mother and the physician made reasonable medical efforts under the circumstances to preserve both the life of the mother and the life of her unborn child in a manner consistent with conventional medical practice.

(b) It resulted in the accidental or unintentional injury or death to the unborn child.

(2) A person sued under division (A)(2) or (3) of section 2919.084 of the Revised Code reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion had complied, would comply, or will comply with division (A)(1) of this section.

(3) An undue burden defense in accordance with section 2919.088 of the Revised Code.

(B) The defendant has the burden of proving an affirmative defense under this section by a preponderance of evidence.

(C) This section shall not 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 the United States supreme court's interpretation of the Fourteenth Amendment to the United States Constitution.

Sec. 2919.088. (A) A defendant in an action brought under section 2919.084 of the Revised Code may assert an affirmative defense to liability under this section if both of the following apply:

(1) The defendant has standing to assert the third-party rights of a woman or group of women seeking an abortion in accordance with division (B) of section 2919.086 of the Revised Code.

(2) The defendant demonstrates that the relief sought by the claimant will impose an undue burden on that woman or that group of women seeking an abortion.

(B) A court may not find an undue burden under division (A)(2) of this section unless the defendant introduces evidence proving either of the following:

(1) An award of relief will prevent a woman or a group of women from obtaining an abortion.

(2) An award of relief will place a substantial obstacle in the path of a woman or a group of women who are seeking an abortion.

(C) A defendant may not establish an undue burden under division (A)(2) of this section by either of the following:

(1) Merely demonstrating that an award of relief will prevent women from obtaining support or assistance, financial or otherwise, from others in their effort to obtain an abortion;

(2) Arguing or attempting to demonstrate that an award of
relief against other defendants or other potential defendants will impose an undue burden on women seeking an abortion.

(D) The affirmative defense under division (A)(2) of this section is not available if the United States supreme court overrules Roe v. Wade, 410 U.S. 113 (1973) or Planned Parenthood v. Casey, 505 U.S. 833 (1992), regardless of whether the conduct on which the cause of action is based under section 2919.084 of the Revised Code occurred before the United States supreme court overruled either of those decisions.

(E) Nothing in this section shall be construed to limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability, and a court may not award relief under section 2919.085 of the Revised Code if the conduct for which the defendant has been sued was an exercise of state or federal constitutional rights that personally belong to the defendant.

Sec. 2919.089. Notwithstanding any other provision of law to the contrary, an action shall be brought under this section not later than four years after the cause of action accrues.

Sec. 2919.0810. (A) Notwithstanding any other provision of law to the contrary, a civil action brought under section 2919.084 of the Revised Code shall be brought in:

(1) The county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2) The county of residence for any one of the natural person defendants at the time the cause of action accrued;

(3) The county of the principal office in this state of any one of the defendants that is not a natural person;
(4) The county of residence for the claimant if the claimant is a natural person residing in this state.

(B) If a civil action is brought under section 2919.084 of the Revised Code in any one of the venues described under division (A) of this section, the action shall not be transferred to a different venue without the written consent of all parties.

Sec. 2919.0811. Nothing in sections 2919.08 to 2919.0810 of the Revised Code shall be construed as doing any of the following:

(A) Authorizing the charge or conviction of a woman with any criminal offense in the death of her own unborn child;

(B) Legalizing the conduct prohibited by section 2919.082 of the Revised Code;

(C) Limiting in any way or affecting the availability of a remedy established by section 2919.084 of the Revised Code;

(D) Limiting the enforceability of any other laws that regulate or prohibit abortion;

(E) Restricting a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state.

Section 2. This act is entitled the 2363 Act for the two thousand three hundred sixty-three children lost to abortion every day in the United States.

Section 3. That existing section 1.59 of the Revised Code is hereby repealed.