

As Introduced

134th General Assembly

Regular Session

2021-2022

H. B. No. 480

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 1
2919.08, 2919.081, 2919.082, 2919.083, 2919.084, 2
2919.085, 2919.086, 2919.087, 2919.088, 3
2919.089, 2919.0810, and 2919.0811 of the 4
Revised Code to enact the 2363 Act to authorize 5
a private right of action against a person for 6
performing or inducing an abortion or engaging 7
in conduct that aids or abets the performance or 8
inducement of an abortion. 9

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

Section 1. That section 1.59 be amended and sections 10
2919.08, 2919.081, 2919.082, 2919.083, 2919.084, 2919.085, 11
2919.086, 2919.087, 2919.088, 2919.089, 2919.0810, and 2919.0811 12
of the Revised Code be enacted to read as follows: 13

Sec. 1.59. As used in any statute, unless another 14
definition is provided in that statute or a related statute: 15

(A) "Child" includes child by adoption.	16
(B) "Oath" includes affirmation, and "swear" includes affirm.	17 18
(C) "Person" includes an individual <u>a born or unborn human being at any stage of development</u> , corporation, business trust, estate, trust, partnership, and association.	19 20 21
(D) "Population" means that shown by the most recent regular federal census.	22 23
(E) "Property" means real and personal property.	24
(F) "Rule" includes regulation.	25
(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.	26 27 28 29 30
(H) "United States" includes all the states.	31
(I) "Will" includes codicil.	32
(J) "Written" or "in writing" includes any representation of words, letters, symbols, or figures; this provision does not affect any law relating to signatures.	33 34 35
(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.	36 37 38 39
<u>Sec. 2919.08. As used in sections 2919.081 to 2919.0811 of the Revised Code:</u>	40 41
<u>(A) "Abortion" means the act of using, prescribing,</u>	42

administering, procuring, or selling of any instrument, 43
medicine, drug, or any other substance, device, or means with 44
the purpose to terminate the pregnancy of a woman, with 45
knowledge that the termination by any of those means will, with 46
reasonable likelihood, cause the death of the unborn child. 47

(B) "Fertilization" means the fusion of a human 48
spermatozoon with a human ovum. 49

(C) "Unborn child" means an individual organism of the 50
species homo sapiens from fertilization until live birth. 51

Sec. 2919.081. All human beings are created equal and 52
endowed by their creator with certain unalienable rights; among 53
these are life, liberty, and the pursuit of happiness; to secure 54
these rights, governments are instituted, deriving their just 55
powers from the consent of the governed. The legislature may 56
define, by law, the scope of protections afforded by this 57
section to unborn persons. Any prohibition of conduct with 58
regard to unborn persons shall be prescribed by the legislature 59
by law. 60

Sec. 2919.082. Notwithstanding any other provision of law 61
to the contrary, no person shall purposely perform or attempt to 62
perform an abortion. 63

Sec. 2919.083. (A) Notwithstanding any other provision of 64
law to the contrary, section 2919.082 of the Revised Code shall 65
be enforced exclusively through the private civil actions 66
described in section 2919.084 of the Revised Code. 67

(B) No enforcement of section 2919.082 of the Revised Code 68
other than that described under division (A) of this section 69
shall be taken or threatened by this state, a political 70
subdivision, a district or county attorney, or an executive or 71

administrative officer or employee of this state or a political 72
subdivision. 73

(C) (1) Notwithstanding any other provision of law to the 74
contrary, this state, a state official, or a district or county 75
attorney shall not intervene in an action brought under this 76
section. 77

(2) This state, a state official, or a district or county 78
attorney are not prohibited from filing an amicus curiae brief 79
in the action. 80

Sec. 2919.084. (A) Except as provided under division (B) 81
of this section, any person may bring a civil action against any 82
person who: 83

(1) Performs or induces an abortion in violation of 84
section 2919.082 of the Revised Code; 85

(2) Knowingly engages in conduct that aids or abets the 86
performance or inducement of an abortion for a woman who the 87
person knows to be pregnant, including paying for or reimbursing 88
the costs of an abortion through insurance or otherwise, if the 89
abortion is performed or induced in violation of section 90
2919.082 of the Revised Code; 91

(3) Has taken action or made statements that demonstrate 92
to a reasonable person that the person intends to engage in the 93
conduct described by division (A) (1) or (2) of this section. 94

(B) Notwithstanding any other provision of law to the 95
contrary, a civil action under this section shall not be brought 96
by any of the following: 97

(1) Any officer or employee of a state or local 98
governmental entity in this state; 99

(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. 100
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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: 103
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(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; 107
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(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; 110
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(3) Costs and attorney's fees. 114

(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. 115
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(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. 123
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Sec. 2919.086. (A) The following shall not be a defense to an action brought under section 2919.084 of the Revised Code: 126
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<u>(1) Ignorance or mistake of law;</u>	128
<u>(2) A defendant's belief that the requirements of sections 2919.08 to 2919.0810 of the Revised Code are unconstitutional or were unconstitutional;</u>	129 130 131
<u>(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;</u>	132 133 134 135
<u>(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;</u>	136 137 138
<u>(5) Non-mutual issue preclusion or non-mutual claim preclusion;</u>	139 140
<u>(6) The consent of the unborn child's mother to the abortion;</u>	141 142
<u>(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.</u>	143 144 145 146 147
<u>(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:</u>	148 149 150 151 152
<u>(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</u>	153 154 155

court as a matter of federal constitutional law. 156

(2) The defendant has standing to assert the rights of 157
women seeking an abortion under the tests for third-party 158
standing established by the United States supreme court. 159

Sec. 2919.087. (A) Any of the following shall be an 160
affirmative defense to an action under section 2919.084 of the 161
Revised Code: 162

(1) A licensed physician performed or induced an abortion 163
to which either of the following apply: 164

(a) It was designed or intended to prevent the death of a 165
pregnant mother and the physician made reasonable medical 166
efforts under the circumstances to preserve both the life of the 167
mother and the life of her unborn child in a manner consistent 168
with conventional medical practice. 169

(b) It resulted in the accidental or unintentional injury 170
or death to the unborn child. 171

(2) A person sued under division (A) (2) or (3) of section 172
2919.084 of the Revised Code reasonably believed, after 173
conducting a reasonable investigation, that the physician 174
performing or inducing the abortion had complied, would comply, 175
or will comply with division (A) (1) of this section. 176

(3) An undue burden defense in accordance with section 177
2919.088 of the Revised Code. 178

(B) The defendant has the burden of proving an affirmative 179
defense under this section by a preponderance of evidence. 180

(C) This section shall not be construed to impose 181
liability on any speech or conduct protected by the First 182
Amendment to the United States Constitution, as made applicable 183

to the states through the United States supreme court's 184
interpretation of the Fourteenth Amendment to the United States 185
Constitution. 186

Sec. 2919.088. (A) A defendant in an action brought under 187
section 2919.084 of the Revised Code may assert an affirmative 188
defense to liability under this section if both of the following 189
apply: 190

(1) The defendant has standing to assert the third-party 191
rights of a woman or group of women seeking an abortion in 192
accordance with division (B) of section 2919.086 of the Revised 193
Code. 194

(2) The defendant demonstrates that the relief sought by 195
the claimant will impose an undue burden on that woman or that 196
group of women seeking an abortion. 197

(B) A court may not find an undue burden under division 198
(A) (2) of this section unless the defendant introduces evidence 199
proving either of the following: 200

(1) An award of relief will prevent a woman or a group of 201
women from obtaining an abortion. 202

(2) An award of relief will place a substantial obstacle 203
in the path of a woman or a group of women who are seeking an 204
abortion. 205

(C) A defendant may not establish an undue burden under 206
division (A) (2) of this section by either of the following: 207

(1) Merely demonstrating that an award of relief will 208
prevent women from obtaining support or assistance, financial or 209
otherwise, from others in their effort to obtain an abortion; 210

(2) Arguing or attempting to demonstrate that an award of 211

relief against other defendants or other potential defendants 212
will impose an undue burden on women seeking an abortion. 213

(D) The affirmative defense under division (A)(2) of this 214
section is not available if the United States supreme court 215
overrules *Roe v. Wade*, 410 U.S. 113 (1973) or *Planned* 216
Parenthood v. Casey, 505 U.S. 833 (1992), regardless of whether 217
the conduct on which the cause of action is based under section 218
2919.084 of the Revised Code occurred before the United States 219
supreme court overruled either of those decisions. 220

(E) Nothing in this section shall be construed to limit or 221
preclude a defendant from asserting the defendant's personal 222
constitutional rights as a defense to liability, and a court may 223
not award relief under section 2919.085 of the Revised Code if 224
the conduct for which the defendant has been sued was an 225
exercise of state or federal constitutional rights that 226
personally belong to the defendant. 227

Sec. 2919.089. Notwithstanding any other provision of law 228
to the contrary, an action shall be brought under this section 229
not later than four years after the cause of action accrues. 230

Sec. 2919.0810. (A) Notwithstanding any other provision of 231
law to the contrary, a civil action brought under section 232
2919.084 of the Revised Code shall be brought in: 233

(1) The county in which all or a substantial part of the 234
events or omissions giving rise to the claim occurred; 235

(2) The county of residence for any one of the natural 236
person defendants at the time the cause of action accrued; 237

(3) The county of the principal office in this state of 238
any one of the defendants that is not a natural person; 239

(4) The county of residence for the claimant if the 240
claimant is a natural person residing in this state. 241

(B) If a civil action is brought under section 2919.084 of 242
the Revised Code in any one of the venues described under 243
division (A) of this section, the action shall not be 244
transferred to a different venue without the written consent of 245
all parties. 246

Sec. 2919.0811. Nothing in sections 2919.08 to 2919.0810 247
of the Revised Code shall be construed as doing any of the 248
following: 249

(A) Authorizing the charge or conviction of a woman with 250
any criminal offense in the death of her own unborn child; 251

(B) Legalizing the conduct prohibited by section 2919.082 252
of the Revised Code; 253

(C) Limiting in any way or affecting the availability of a 254
remedy established by section 2919.084 of the Revised Code; 255

(D) Limiting the enforceability of any other laws that 256
regulate or prohibit abortion; 257

(E) Restricting a political subdivision from regulating or 258
prohibiting abortion in a manner that is at least as stringent 259
as the laws of this state. 260

Section 2. This act is entitled the 2363 Act for the two 261
thousand three hundred sixty-three children lost to abortion 262
every day in the United States. 263

Section 3. That existing section 1.59 of the Revised Code 264
is hereby repealed. 265