



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 15
135th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Gross and Lear

Amy L. Archer, Research Analyst

SUMMARY

“Abortion” definition change

- Amends the definition of “abortion” for purposes of the Revised Code to expressly include the purposeful termination of a pregnancy by use of an abortion-inducing drug, unless the context clearly requires otherwise.

Requirements before performing or inducing an abortion

- Adds the following to the conditions that must be satisfied before performing or inducing an abortion:
 - Providing ultrasound images and fetal heartbeat sounds.
 - Informing the woman about breast cancer and psychological risks related to abortion during the informed consent meeting required under existing law.
- Requires the physician who is to perform or induce the abortion or a qualified technician to meet several requirements for providing ultrasound images and fetal heartbeat sounds, including, for example, the following:
 - Setting up equipment so that ultrasound images are within reasonable viewing distance and heartbeat sounds are within reasonable hearing range from the pregnant woman;
 - Auscultating the fetal heartbeat so that the pregnant woman may hear the heartbeat, if audible;
 - Providing a medical description of ultrasound images.
- Requires the State Medical Board to take disciplinary action against a physician for failure to (1) provide the pregnant woman the opportunity to view ultrasound images, at no cost to the woman, or (2) offer to provide the pregnant woman with a physical picture of the ultrasound image.

- Requires, at the informed consent meeting, the physician to inform the pregnant woman of the possible increased risk of breast cancer associated with women who have undergone an abortion and of the risk of psychological or emotional harm that the woman may endure from undergoing an abortion.
- Requires the physician who provides the information described above to possess adequate training and education in the risks associated with abortion.

Informed consent materials

- Adds the possible increased risk of breast cancer and the risk of psychological or emotional harm to the informed consent materials the Department of Health (ODH) is required to publish on its website relating to pregnancy, family planning, available assistance, and adoption.
- Requires the informed consent materials to either be prominently featured on the main page of ODH's website or directly accessible through easily identified hyperlinks on the main page of ODH's website.

Statute of limitations on abortion civil actions

- Permits a person to commence a civil action for (1) unlawful abortion or (2) performing or inducing an abortion without satisfying certain pre-abortion conditions no later than one year after the person reasonably *should* have discovered the injury, death, or loss to person or property.
- Permits the defendant to use any affirmative defense available under the Revised Code or Common Law and specifies that the defendant has the burden of proving any defense by a preponderance of evidence.
- Specifies that when a person is imprisoned, the time of imprisonment cannot be included as any part of any period of limitation within which a person must bring an abortion civil action against the imprisoned person.

ODH requirements

- Requires ODH to annually audit all provider records to determine compliance with the informed consent and education and training requirements regarding abortion.
- Requires ODH to prescribe a form for the pregnant woman to certify that she has (1) viewed the ultrasound images and listened to the heartbeat, if audible, or declined to do so, and (2) been presented with the following information the bill requires.

Auditor of State rules

- Requires the Auditor of State to adopt rules to establish procedures for auditing ODH's records of ODH audits of provider records, penalties for noncompliance, and procedures for enforcing those penalties.

DETAILED ANALYSIS

“Abortion” definition change

The bill amends the definition of “abortion,” as used in the Revised Code, to include the purposeful termination of a pregnancy by use of an abortion-inducing drug, unless the context clearly requires otherwise. An “abortion-inducing drug,” under continuing law, is a drug or regimen of drugs that causes the termination of a clinically diagnosable pregnancy, including RU-486 (mifepristone). Under continuing law, “abortion” is still defined as the purposeful termination of a human pregnancy by any person, including the pregnant woman, with an intention other than to produce a live birth or to remove a dead fetus or embryo.¹

Requirements before performing or inducing an abortion

Under continuing law, an abortion can only be performed or induced if several conditions are first satisfied, unless there is a medical emergency or medical necessity.² The bill amends those conditions by (1) adding requirements about providing ultrasound images and fetal heartbeat sounds, as described below under “**Providing ultrasound images and fetal heartbeat sounds**,” and (2) adding to the information the physician must provide during the informed consent meeting required in continuing law, described below under “**Informed consent meeting with physician**,”

Providing ultrasound images and fetal heartbeat sounds

Under the bill, before a pregnant woman gives informed consent for an abortion, the physician who is to perform or induce the abortion or a qualified technician to whom the physician delegates responsibility must do all of the following:

- Set up ultrasound equipment in a manner so that ultrasound images are within reasonable viewing distance and heartbeat sounds are within reasonable hearing range from the woman;
- Explain to the pregnant woman that the ultrasound images and fetal heartbeat sounds, if the heartbeat is audible, will be provided to the pregnant woman during the examination, and that the pregnant woman has the option to avert her eyes from ultrasound images or request the volume of the heartbeat to be reduced or turned off;
- Provide a simultaneous explanation of what the ultrasound is depicting, which must include the presence and location of the embryo or fetus within the uterus, the number of embryos or fetuses depicted, and, if the ultrasound image indicates that fetal death has occurred, that information;
- Display the ultrasound images so that the pregnant woman may view the images;

¹ R.C. 2919.11; R.C. 2919.124(A)(1), not in the bill.

² R.C. 2317.56(B).

- Auscultate the fetal heartbeat of the embryo or fetus so that the pregnant woman may hear the heartbeat, if it is audible;
- Provide a medical description of ultrasound images, which must include the dimensions of the embryo or fetus and the presence of external members and internal organs, if present and viewable;
- Offer to provide the pregnant woman a physical picture of the ultrasound image of the embryo or fetus;
- Obtain the woman’s signature on the ODH-prescribed certification form (see below, “**Certification form**”), and retain the signed certification in the woman’s medical record, indicating that she was presented with the information the bill requires and has viewed the ultrasound images and listened to the heartbeat, if audible, or declined to do so.

The bill specifies that the requirement to provide an ultrasound so that the pregnant woman may view the active ultrasound images of the embryo or fetus must be performed at no additional charge to her.³

Under current law repealed by the bill, if an ultrasound is performed at any time before the performance or inducement of an abortion, or the physician performing or inducing the abortion determines that an ultrasound will be performed as part of the abortion procedure, the physician, before performing or inducing the abortion and at no charge to the pregnant woman, must provide the pregnant woman the opportunity to view the active ultrasound image of the embryo or fetus and offer to provide her with a physical picture of the ultrasound image.⁴

The bill defines the following terms:⁵

- “Auscultate” is to examine by listening for sounds made by internal organs of the fetus, specifically for a fetal heartbeat, utilizing an ultrasound transducer or a fetal heart rate monitor.
- “Qualified technician” is a medical imaging technologist who is certified in obstetrics and gynecology by the American Registry for Diagnostic Medical Sonography or a certified nurse-midwife or certified nurse practitioner in obstetrics with certification in obstetrical ultrasonography.
- “Ultrasound” is the use of ultrasonic waves for diagnostic or therapeutic purposes, specifically to monitor a developing fetus.

³ R.C. 2317.56(B)(1).

⁴ R.C. 2317.561, repealed by the bill.

⁵ R.C. 2317.56(A)(1), (5), and (6).

Disciplinary action for failure to comply with ultrasound requirement

Under the bill, the State Medical Board is required to take disciplinary action against a physician who fails to do either of the following:

- Provide the pregnant woman the opportunity to view ultrasound images, at no cost to the woman;
- Offer to provide the pregnant woman with a physical picture of the ultrasound image.⁶

The disciplinary action described above replaces the current one that applies when a physician fails to provide a pregnant woman the opportunity to view the active ultrasound image of the embryo or fetus or offer to provide her with a physical picture of the ultrasound image when conducting an ultrasound before performing or inducing an abortion.⁷

Under continuing law, disciplinary action requires an affirmative vote of at least six members of the Board. Those actions include, for example, limiting, revoking, suspending, or refusing to renew the physician's license or reprimanding or placing the physician on probation.⁸

Informed consent meeting with physician

Continuing law requires, at least 24 hours before an abortion is performed or induced, a physician to meet with the pregnant woman in person in an individual, private setting and give her adequate opportunity to ask questions about the abortion. At the meeting, the physician must inform the pregnant woman, verbally or, if she is hearing impaired, by other means of communication, of statutorily required information. That includes information about the particular abortion procedure to be used and associated medical risks; the probable gestational age of the zygote, blastocyte, embryo, or fetus; and the medical risks associated with carrying the pregnancy to term. Under the bill, the physician also must inform the pregnant woman of the following:

- The possible increased risk of breast cancer that is associated with women who have undergone an abortion;
- The short-term and long-term risk of psychological or emotional harm, including depression, suicidal ideation, post-traumatic stress disorder, and guilt, that the woman may endure from undergoing an abortion.

The bill requires that any physician who provides the new informed consent information the bill requires must possess adequate training and education in the categories of risk described in the new information, as well as any other risks associated with abortion. Evidence

⁶ R.C. 4731.22(B)(38).

⁷ R.C. 2317.561, repealed by the bill and 4731.22(B)(38).

⁸ R.C. 4731.22 (B).

of adequate training includes successful completion of continuing education and professional development courses or programs in the relevant subject areas.⁹

Informed consent materials

Continuing law requires the Department of Health (ODH) to publish on its website materials that inform pregnant women of information related to pregnancy, family planning, available assistance, and adoption. The bill requires the materials to also inform the pregnant woman of the possible increased risk of breast cancer and risk of psychological or emotional harm associated with abortion that must be discussed in the informed consent meeting with the physician.

Under the bill, all of the materials must either be prominently featured on the main page of ODH's website or directly accessible through easily identified hyperlinks on the main page of ODH's website. Additionally, continuing law requires the materials to be published (1) in English and in Spanish, (2) in a typeface large enough to be clearly legible, and (3) in an easily comprehensible format.¹⁰

Statute of limitations on abortion civil actions

The bill provides that if a person who commences a civil action under continuing law (described below) regarding an abortion, in the exercise of reasonable care and diligence, could not have discovered that the person has suffered injury, death, or loss to person or property resulting from the violation that is the basis of the action within one year as required under continuing law, that person is permitted to commence the action no later than one year after the person, with reasonable care and diligence, should have discovered the injury, death, or loss to person or property.

Further, under the bill, the person against whom the civil action is commenced is permitted to use any affirmative defense available under the Revised Code or Common Law, including the affirmative defense of the action being brought past the statute of limitations. The person has the burden of proving any defense that the person invokes by a preponderance of evidence.¹¹

The bill specifies that when a person is imprisoned for the commission of any offense, the time of the person's imprisonment cannot be included in the period within which a person must bring an action against the imprisoned person.¹²

Under continuing law, any physician who performs or induces an abortion with actual knowledge that the pre-conditions for performing an abortion (see above, "**Requirements before performing or inducing an abortion**"), have not been satisfied or with

⁹ R.C. 2317.56(B)(2), with conforming changes in R.C. 2317.56(B)(3) to (6) and 3726.14.

¹⁰ R.C. 2317.56(C).

¹¹ R.C. 2305.119; R.C. 2305.11, not in the bill.

¹² R.C. 2305.15.

heedless indifference as to whether those conditions have been satisfied is liable for compensatory and exemplary damages to any person, or the representative of any person's estate, who sustains injury, death, or loss to person or property as a result of the failure to satisfy those conditions. Additionally, a person who performs or induces an abortion without the informed consent of the pregnant woman or who knowingly performs or induces an abortion on a woman who is pregnant, unmarried, under 18 years of age, and unemancipated, unless certain conditions are met is liable to the pregnant woman and her parents, guardian, or custodian for civil compensatory and exemplary damages.¹³

ODH requirements

Audit of provider records

The bill requires ODH to annually audit all provider records to determine compliance with the informed consent and education and training requirements in accordance with the bill, as described above under **"Requirements before performing or inducing an abortion,"** and continuing law.¹⁴

Certification form

ODH must prescribe a certification form to be used for a pregnant woman to sign in order to certify that she has (1) viewed the ultrasound images and listened to the heartbeat, if audible, or declined to do so, and (2) been presented with the following information:¹⁵

- A simultaneous explanation of what the ultrasound is depicting, which must include the presence and location of the embryo or fetus within the uterus, the number of embryos or fetuses depicted, and, if the ultrasound image indicates that fetal death has occurred, that fact;
- A display of the ultrasound images so that the pregnant woman may view the images;
- An auscultation of the fetal heartbeat of the embryo or fetus so that the pregnant woman may hear it, if audible;
- A medical description of the ultrasound images, which must include the dimensions of the embryo or fetus and the presence of external members and internal organs, if present and viewable.

Auditor of State rules

The bill requires the Auditor of State, no later than 180 days after the bill's effective date, to adopt rules under the Administrative Procedure Act (R.C. Chapter 119) to establish all of the following:¹⁶

¹³ R.C. 2317.56(H); R.C. 2919.12(E), not in the bill.

¹⁴ R.C. 3701.793.

¹⁵ R.C. 2317.56(B)(1)(c) to (f) and (h) and 3701.394.

¹⁶ R.C. 117.56.

- Procedures for auditing ODH’s audit records described above under “**Audit of provider records**”;
- Penalties to be assessed against entities or providers for noncompliance with the informed consent and education and training requirements, as determined by the audits performed in accordance with the procedures established by rule;
- Procedures for enforcing those penalties.

HISTORY

Action	Date
Introduced	02-15-23