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S.B. 208
133rd General Assembly

Bill Analysis

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Version: As Passed by the Senate

Primary Sponsor: Sen. Johnson

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SUMMARY

- Expands the crime of abortion manslaughter to include failure to take measures to preserve the health of a child born alive after abortion.
- Authorizes an affected woman to sue a person guilty of abortion manslaughter.
- Requires a physician who performs or attempts an abortion in an ambulatory surgical facility or other location that is not a hospital and in which a child is born alive to immediately provide certain newborn care.
- Requires the Director of Health to develop a child survival form that an attending physician must complete each time a child is born alive after an abortion or attempted abortion.
- Specifies that a completed child survival form becomes part of the medical record an abortion facility maintains on the woman who is the subject of the form, and is not a public record.
- Requires each facility in which a child was born alive following an abortion or attempted abortion to submit monthly and annual reports to the Department of Health.
- Requires the Department to issue annual reports summarizing the data in the facility reports.
- Specifies criminal penalties for failure to comply with the bill's child survival form and reporting requirements.
- Authorizes an affected woman to sue a physician or facility for failure to comply with the bill's child survival form and reporting requirements.

DETAILED ANALYSIS

Abortion manslaughter

Under existing law, a person who does either of the following is guilty of abortion manslaughter, a first degree felony:

1. Purposely takes the life of a child born by attempted abortion who is alive when removed from the uterus of the pregnant woman; or
2. When performing an abortion, fails to take the measures required by the exercise of medical judgment in light of the attending circumstances to preserve the life of a child who is alive when removed from the uterus of the pregnant woman.

The bill modifies the second basis for this offense by (a) requiring that the failure be *purposely* done and (b) specifying that this offense also applies to a failure to take the measures required to preserve the *health* of the child who is born alive.

The bill authorizes a woman on whom an abortion is performed or attempted to file a lawsuit against a person who commits abortion manslaughter. A woman who prevails in such a lawsuit must receive compensatory and exemplary damages in an amount determined by the trier of fact, court costs, and reasonable attorney's fees.¹

Post-birth physician care requirements

The bill requires a physician who performs or attempts an abortion in an ambulatory surgical facility or other location that is not a hospital and in which a child is born alive to immediately take the following steps upon the child's birth:²

- Provide post-birth care to the newborn in accordance with prevailing and acceptable standards of care;
- Call for assistance from an emergency medical services provider; and
- Arrange for the transfer of the newborn to a hospital.

A physician who fails to comply with this requirement is subject to disciplinary action by the State Medical Board.³

Child survival form

Development

The bill requires the Director of Health to develop a child survival form to be submitted to the Department of Health each time a child is born alive after an abortion or attempted

¹ R.C. 2919.13.

² R.C. 4731.92.

³ R.C. 4731.22(B)(53).

abortion. In developing the form, the Director may consult with obstetricians, maternal-fetal specialists, and any other professionals the Director considers appropriate. The form must include areas for all of the following to be provided:⁴

- The patient number for the woman on whom the abortion was performed or attempted;
- The name, primary business address, and signature of the attending physician who performed or attempted to perform the abortion;
- The name and address of the facility in which the abortion was performed or attempted, and whether the facility is a hospital, ambulatory surgical facility, physician's office, or other facility;
- The date the abortion was performed or attempted;
- The type of abortion procedure that was performed or attempted;
- The gestational age of the child who was born;
- Complications, by type, for both the woman and child; and
- Any other information the Director considers appropriate.

Physician duties

The bill requires the attending physician who performed or attempted an abortion in which a child was born alive to complete a child survival form. The physician must submit the completed form to the Department of Health not later than 15 days after the woman is discharged from the facility.⁵ If enacted, this requirement would be in addition to the existing requirement that a physician who performs an abortion must complete an individual abortion report for each abortion the physician performs.⁶

Confidentiality; medical record

The bill specifies that a completed child survival form is confidential and not a public record.⁷ It must be made part of the medical record maintained for the woman by the facility in which the abortion was performed or attempted.⁸

Abortion facility reports

The bill requires each facility in which an abortion is performed or attempted and in which a child was born alive to submit monthly and annual reports to the Department of Health

⁴ R.C. 3701.792(A).

⁵ R.C. 3701.792(B).

⁶ R.C. 3701.79(C).

⁷ R.C. 149.43(A)(1)(nn) and 3701.792(B).

⁸ R.C. 3701.792(C).

listing the total number of women on whom an abortion was performed or attempted at the facility in which a child was born alive, delineated by the type of abortion procedure that was performed or attempted. The facility must submit the annual report after the end of the state's fiscal year.⁹ Each monthly or annual report must be submitted not later than 30 days after the end of the applicable reporting period.¹⁰

Criminal penalties

A person who purposely fails to comply with the child survival form or abortion facility report submission requirements is guilty of a third degree felony.¹¹

Civil action

The bill authorizes a woman on whom an abortion is performed or attempted to file a civil lawsuit against a physician or facility that violates the bill's requirements regarding child survival forms and reporting. If she prevails, she must receive from that physician or facility \$10,000, court costs, and reasonable attorney's fees.¹²

Department of Health annual reports

The bill requires the Department of Health, not later than October 1 each year, to issue a report regarding data that it has received in the previous year through the submission of abortion facility reports as described above. At a minimum, the annual report must specify the number of women on whom an abortion was performed or attempted and in which a child was born alive after that event, delineated by the type of abortion procedure performed or attempted and the facility in which the procedure was performed or attempted. The bill prohibits the report from containing any information from which the identity of a woman on which an abortion was performed or attempted or any child could be ascertained.¹³

HISTORY

Action	Date
Introduced	10-02-19
Reported, S. Health, Human Services & Medicaid	11-06-19
Passed Senate (24-9)	11-06-19

S0208-PS-133/ks

⁹ Each state fiscal year ends on June 30.

¹⁰ R.C. 3701.792(D).

¹¹ R.C. 3701.792(F) and (G) and 3701.99(D).

¹² R.C. 3701.792(H).

¹³ R.C. 3701.792(E).