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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

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Office

S.B. 260  
133<sup>rd</sup> General Assembly

## Bill Analysis

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**Version:** As Passed by the Senate

**Primary Sponsor:** Sen. S. Huffman

Jason Hoskins, Attorney

### SUMMARY

- Prohibits a physician from personally furnishing or providing an abortion-inducing drug to a pregnant woman unless the physician is physically present where and when the initial dose of the drug is consumed.
- Makes knowingly violating the prohibition a fourth degree felony for the first offense and a third degree felony for the second and subsequent offenses.

### DETAILED ANALYSIS

#### Physical presence requirement for abortion-inducing drugs

The bill prohibits a physician from personally furnishing or providing an abortion-inducing drug to a pregnant woman unless the physician is physically present at the location where and when the initial dose of the drug is consumed.<sup>1</sup> "Abortion-inducing drug" is defined as a drug or regimen of drugs that causes termination of a clinically diagnosable pregnancy. It includes RU-486 (mifepristone), which is regulated by federal and Ohio law for inducing abortions (see "**Background on mifepristone**," below).<sup>2</sup>

#### Penalties and other sanctions

Knowingly failing to comply with the prohibition described above is a fourth degree felony unless the offender has previously been convicted of violating the prohibition or other

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<sup>1</sup> R.C. 2919.124(B).

<sup>2</sup> R.C. 2919.124(A)(1) and 2919.123; see also U.S. Food & Drug Administration, *Mifeprex (mifepristone) Information*, <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/mifeprex-mifepristone-information>.

abortion laws. In that case, it is a third degree felony.<sup>3</sup> Additionally, if the offender is a professionally licensed person,<sup>4</sup> the offender is subject to sanctioning by the offender's regulatory or licensing board.<sup>5</sup>

If the offender is a physician, the following also apply:

- Disciplinary action taken for a second or subsequent violation of the bill's prohibition or existing law regarding the unlawful distribution of mifepristone<sup>6</sup> must include a suspension of the physician's license for at least one year;<sup>7</sup>
- The physician's license is automatically suspended as of the date of the second or subsequent plea or conviction related to a violation of the bill's prohibition or existing law regarding the unlawful distribution of mifepristone,<sup>8</sup> and the suspension cannot be lifted through the issuance of a certificate of qualification for employment (a process under current law for lifting collateral sanctions that bar convicted individuals from employment in certain fields);<sup>9</sup>
- A prosecutor must promptly notify the State Medical Board regarding a licensee's second or subsequent plea or conviction related to a violation of the bill's prohibition or existing law regarding the unlawful distribution of mifepristone.<sup>10</sup>

### **Criminal records checks**

Violation of the bill's prohibition is added to the list in current law of offenses investigated as part of a criminal records check for certain Medicaid and other providers, including direct care providers, independent providers, and waiver agencies.<sup>11</sup>

### **No right to abortion**

The bill states that its provisions must not be construed as creating or recognizing a right to abortion or affirming the lawfulness of an abortion that would otherwise be unlawful.<sup>12</sup>

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<sup>3</sup> R.C. 2919.124(C) and (E).

<sup>4</sup> R.C. 2919.124(A)(3), citing R.C. 2925.01, not in the bill.

<sup>5</sup> R.C. 2919.124(E).

<sup>6</sup> R.C. 2919.123.

<sup>7</sup> R.C. 4731.22(C).

<sup>8</sup> R.C. 4731.22(I).

<sup>9</sup> R.C. 2953.25(C)(7)(d).

<sup>10</sup> R.C. 4731.223(B).

<sup>11</sup> R.C. 109.572(A)(3)(a).

<sup>12</sup> R.C. 2919.124(D).

## Prescribing mifepristone

The bill removes existing references to prescribing RU-486 (mifepristone).<sup>13</sup> Under Ohio law, prescribing and prescription generally refer to an order for drugs issued by a prescriber that is interpreted and dispensed by a pharmacist to an individual patient.<sup>14</sup> It appears that the U.S. Food and Drug Administration (FDA) requires mifepristone to be dispensed in clinics, medical offices, and hospitals by or under the supervision of a certified healthcare provider.<sup>15</sup> Accordingly, references to prescribing mifepristone are removed from Ohio law, but related references, including giving, selling, dispensing, administering, personally furnishing, and otherwise providing mifepristone, are maintained.

## Background on mifepristone

Mifepristone is approved by the FDA, in a regimen with another medication called misoprostol, to end a pregnancy within 70 days of the first day of a woman's last menstrual period. The approved dosing regimen is as follows – on day one, 200 mg of mifepristone taken by mouth and, 24 to 48 hours after taking mifepristone, 800 mcg of misoprostol taken buccally (in the cheek pouch). About 7 to 14 days after taking mifepristone, a healthcare provider must conduct a follow-up evaluation of the patient.<sup>16</sup> The current FDA protocol for mifepristone was adopted in March, 2016. Before then, Ohio physicians had to follow an earlier protocol that was more restrictive.

## HISTORY

Action	Date
Introduced	01-21-20
Reported, S. Health, Human Services & Medicaid	02-27-20
Passed Senate (20-9)	03-04-20

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<sup>13</sup> R.C. 2919.123(A) and 4729.291(B).

<sup>14</sup> R.C. 4729.01, not in the bill.

<sup>15</sup> *Mifeprex (mifepristone) Information*.

<sup>16</sup> *Mifeprex (mifepristone) Information*.