



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 255

131st General Assembly  
(As Introduced)

**Reps.** Brinkman and Hagan, Hood, Vitale, Zeltwanger, Becker, McColley, Blessing, Romanchuk, Kraus, Koehler, Hill, Antani, Roegner, Ruhl, Retherford, Pelanda, LaTourette

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## BILL SUMMARY

### Applying RU-486 provisions to all abortion-inducing drugs

- Applies existing requirements, prohibitions, penalties, and other regulations for inducing an abortion with RU-486 (mifepristone), to inducing an abortion with any abortion-inducing drug.
- Defines "abortion-inducing drug" as a drug or regimen of drugs that causes the termination of a clinically diagnosable pregnancy, including RU-486 (mifepristone) and the mifeprex regimen.
- Provides the same penalty for the continuing and new provisions: (1) professional discipline and (2) that the first violation is a fourth degree felony and a third degree felony if the offender previously has been convicted of or pleaded guilty to the offense or certain other abortion-related offenses.

### Physician protocols

- Requires a physician to abide by protocols authorized by the F.D.A. when providing an abortion-inducing drug to a pregnant woman.
- Requires the physician to do the following before inducing an abortion with a drug:
  - Personally examine the pregnant woman to determine whether the fetus is attached to the placenta within the woman's uterus;
  - Record the estimated gestational age of the fetus in the woman's medical file;

--Provide the woman with a copy of the abortion-inducing drug's label;

--Provide the woman with a copy of the physician's name and telephone number, or the name and telephone number of another physician who has agreed to provide emergency care;

--Have the woman sign a form, certifying that the physician has (1) examined her, (2) provided her with a copy of the drug's label, and (3) has provided her with a copy of the physician's name and telephone number, or the substitute physician for emergency care.

- Requires the physician to maintain the above signed form in the physician's own records for at least seven years, and place a copy in the pregnant woman's medical records.

### **Admitting privileges at a qualified local hospital**

- Prohibits the physician who will provide the abortion-inducing drug from knowingly failing to either:

--Maintain admitting privileges and gynecological and surgical privileges at a local hospital equipped to care for emergency complications associated with abortion-inducing drugs;

--Have a signed contract with a physician who has such admitting privileges, who agrees to provide care during emergency complications.

- Requires the above local hospital to be able to enter into a written transfer agreement with an ambulatory surgical facility, which would exclude a public hospital.

### **Civil liability**

- Establishes that violations of the bill's provisions are a basis for civil actions for actual and punitive or exemplary damages, and an action for wrongful death if the pregnant woman dies.
- Permits a court, if requested, to allow a plaintiff to proceed using solely the woman's initials or a pseudonym, and to close any proceeding in the case and enter other protective orders to preserve the privacy of the woman upon whom the abortion was performed.

- Requires a court to award court costs and reasonable attorney's fees to a plaintiff who prevails, and reasonable attorney's fees to the defendant if the defendant prevails and the action was found to constitute frivolous conduct.

### **Immunity from liability**

- Continues to exempt from liability under the bill's provisions a pregnant woman who possesses an abortion-inducing drug for the purpose of terminating her own pregnancy, the legal transport of those drugs, and the distribution, provision, or sale of those drugs by a legal manufacturer or distributor of the drug.
- Provides that the woman upon whom the abortion is performed with an abortion-inducing drug is not subject to criminal, civil, or professional liability.

### **Other provisions**

- Prohibits the physician from knowingly failing to report adverse drug events to the F.D.A. MedWatch reporting system.
- Provides that the bill's provisions shall not be construed as creating or recognizing a right to abortion or the lawfulness of an abortion that would otherwise be unlawful.

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## **CONTENT AND OPERATION**

### **Regulation for abortion-inducing drugs**

The bill takes the current law requirements, prohibitions, penalties, and other regulations that exist for RU-486 (mifepristone) and generally applies them to abortion-inducing drugs.<sup>1</sup>

#### **Existing law governing RU-486**

Under current law, a person is:

- Prohibited from knowingly giving, selling, dispensing, administering, or otherwise providing or prescribing RU-486 to another for the purpose of inducing an abortion or enabling the other person to induce an abortion, unless the person is a physician, the physician satisfies all the criteria established by federal law that a physician must satisfy in order to provide RU-486 for inducing abortions, and the physician provides

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<sup>1</sup> R.C. 109.572, 2919.123 (recodified in the bill), 2919.20, 2919.201, 2919.203, 2919.204, 2919.206, 2953.25, 4729.291, 4731.22, and 4731.223.

RU-486 for the purpose of inducing an abortion in accordance with all provisions of federal law governing the use of the drug for inducing abortions.<sup>2</sup>

- Prohibited from knowingly failing to comply with the applicable requirements of federal law pertaining to follow-up examinations or care for persons to whom or for whom the drug is provided for the purpose of inducing an abortion.<sup>3</sup>
- Required to promptly provide a written report to the State Medical Board if the physician knows that the person who uses the drug experiences an incomplete abortion, severe bleeding, or an adverse reaction to the drug or is hospitalized, receives a transfusion, or experiences any other serious event. (The bill also adds a requirement that the physician notify the F.D.A. (U.S. Food and Drug Administration) through the MedWatch device reporting system.) The person is also prohibited from knowingly failing to file a report.<sup>4</sup>
- Guilty of a crime and subject to professional discipline for violating these provisions (see "**Liability**" below).<sup>5</sup>

### **"Abortion-inducing drug" and other terms defined**

The bill defines "abortion-inducing drug" to mean a drug or regimen of drugs that cause the termination of a clinically diagnosable pregnancy, including RU-486 (mifepristone) and the mifeprex regimen. "Mifeprex regimen" means the abortion-inducing drug regimen approved by the F.D.A. that consists of administering mifepristone and misoprostol. The definition of "federal law" under current law is also expanded to provide that for "purposes of RU-486 (mifepristone) or the mifeprex regimen, federal law includes the mifepristone treatment protocols articulated by the Ohio Supreme Court in *Cordray v. Planned Parenthood Cincinnati Region*, 122 Ohio St.3d 361 (2009)." The bill also extends the current definitions of "personal identifying information," "physician," and "professionally licensed person" to abortion-inducing

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<sup>2</sup> R.C. 2919.201(A) (renumbered from 2919.123(A) under the bill).

<sup>3</sup> R.C. 2919.201(C) (renumbered from 2919.123(B) under the bill).

<sup>4</sup> R.C. 2919.203 (renumbered from 2919.123(C) under the bill). The State Medical Board's responsibilities regarding reports are unchanged.

<sup>5</sup> R.C. 2919.204 (renumbered from 2919.123(E) under the bill).



drugs and creates a definition for the term "final printed labeling" that is not used regarding the bill's provisions for the regulation of abortion-inducing drugs.<sup>6</sup>

## Physician protocols

The bill also adds the requirement that a physician abide by protocols authorized by the F.D.A. when providing a pregnant woman with an abortion-inducing drug. It also requires a physician to do all of the following, before providing an abortion-inducing drug to induce an abortion:

- Personally examine the pregnant woman to determine whether the fetus is attached to the placenta within the woman's uterus;
- Record the estimated gestational age of the fetus in the woman's medical file;
- Provide the woman with a copy of the abortion-inducing drug's label;
- Provide the woman with a copy of the physician's name and telephone number, or a copy of the name and telephone number for the physician who has agreed to provide emergency care as provided under the bill (see "**Admitting privileges**," below);
- Have the woman sign a form, certifying that the physician has examined her, provided her with a copy of the drug's label, and has provided her with a copy of the physician's name and telephone number, or the name and telephone number of the other physician who has agreed to provide emergency care.<sup>7</sup>

The physician must maintain the above signed form in the physician's own records for at least seven years, and place a copy in the pregnant woman's medical records.

## Admitting privileges

### Direct or indirect privileges

The bill prohibits a physician who provides an abortion-inducing drug to another for the purpose of inducing an abortion from knowingly failing to do either of the following:

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<sup>6</sup> R.C. 2919.20 (some terms transferred from R.C. 2919.123(F)).

<sup>7</sup> R.C. 2919.201(B).



- Maintain admitting privileges and gynecological and surgical privileges at a local qualified hospital equipped to care for emergency complications associated with abortion-inducing drugs;
- Have a signed contract with a physician who agrees to provide care during emergency complications. The physician who provides emergency care must have active admitting privileges and gynecological and surgical privileges at a local qualified hospital equipped to care for emergencies associated with an abortion-inducing drug.

Upon request, the physician who induces such abortions must provide proof of admitting privileges or a copy of the contract to a patient or the State Medical Board.<sup>8</sup>

### **Qualified hospital**

Under the bill, a qualified hospital must be able to enter into a written transfer agreement with an ambulatory surgical facility (ASF). Under current law, the only type of hospital that cannot enter into such a written transfer agreement is a public hospital (that is, a hospital owned, leased, or controlled by the state or any agency, institution, instrumentality, or political subdivision of the state, including any state university hospital, state medical college hospital, joint hospital, or public hospital agency), but only if nontherapeutic abortions are performed at the ASF. "Nontherapeutic abortion" means an abortion performed or induced when the mother's life would not be endangered if the fetus were carried to term or when the pregnancy of the mother was not the result of rape or incest reported to a law enforcement agency.<sup>9</sup> As a result, this definition does not appear to be a limitation of much substance--all hospitals may enter into a transfer agreement with an ASF. It is a characteristic of an ASF that would prohibit any specific agreement, but not the power to enter into agreements in general.

## **Liability**

### **Criminal and professional**

Like the requirements and prohibitions extended under the bill, the bill also extends the criminal liability for all abortion-inducing drugs rather than just RU-486. The continuing penalty has been amended to also apply to the bill's new requirements described in "**Physician protocols**" and "**Admitting privileges.**" A physician who violates these provisions would be guilty of unlawful distribution of an abortion-inducing drug, a felony of the fourth degree. If the physician has been convicted of or

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<sup>8</sup> R.C. 2919.202.

<sup>9</sup> R.C. 2919.202(A); R.C. 9.04 and 3727.60 (neither in the bill).

pleaded guilty to a violation of any of the prohibitions or another abortion-related offense, the violation is a third degree felony. The physician, as a professionally licensed person, is also subject to license sanctioning from the State Medical Board.<sup>10</sup>

### **Civil**

The bill provides that violations of the above new and continuing requirements and prohibitions are a basis for civil actions for actual and punitive or exemplary damages, and an action for wrongful death if the woman dies.<sup>11</sup>

The bill also permits a court, if requested, to allow a plaintiff to proceed using solely the woman's initials or a pseudonym. It may also close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the abortion was performed.<sup>12</sup>

The court must award court costs and reasonable attorney's fees to a plaintiff who prevails in a suit described above. Conversely, if the defendant prevails and the action constitutes frivolous conduct, the court must grant reasonable attorney's fees to the defendant.<sup>13</sup>

### **Immunity from liability**

The bill provides that a pregnant woman on whom an abortion is performed with an abortion-inducing drug is not subject to criminal, civil, or professional liability for any of the above requirements or prohibitions as extended under the bill.<sup>14</sup>

The bill also provides that the requirements and prohibitions as extended under the bill still do not apply to any of the following:

- A pregnant woman who obtains or possesses an abortion-inducing drug for the purpose of inducing an abortion to terminate her own pregnancy;
- The legal transport of an abortion-inducing drug by any person or entity and the legal delivery of the abortion-inducing drug by any person to the recipient;

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<sup>10</sup> R.C. 2919.204 and 4731.22.

<sup>11</sup> R.C. 2919.205(A).

<sup>12</sup> R.C. 2919.205(B).

<sup>13</sup> R.C. 2919.205(C) and (D).

<sup>14</sup> R.C. 2919.207.

- The distribution, provision, or sale of an abortion-inducing drug by any legal manufacturer or distributor of an abortion-inducing drug, provided the manufacturer or distributor made a good faith effort to comply with any applicable requirements of federal law regarding the distribution, provision, or sale.<sup>15</sup>

## Right to abortion not created or recognized

The bill states that its provisions in R.C. 2919.20 to 2918.208<sup>16</sup> shall not be construed as creating or recognizing a right to abortion or the lawfulness of an abortion that would otherwise be unlawful.<sup>17</sup>

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## HISTORY

ACTION	DATE
Introduced	06-10-15

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<sup>15</sup> R.C. 2919.206 (renumbered from 2919.123(D) under the bill).

<sup>16</sup> This section, as it appears in the bill, contains a technical error. The reference to R.C. 2918.208 should actually be a reference to R.C. 2919.208.

<sup>17</sup> R.C. 2919.208.

