



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Bill Rowland, Director

Office of Research
and Drafting

Legislative Budget
Office

S.B. 309*
136th General Assembly

Occupational Regulation Report

[Click here for S.B. 309's Bill Analysis / Fiscal Note](#)

Primary Sponsor: Sen. Kyle Koehler

Impacted Profession: Healthcare providers

Kendal Harris, LSC Fellow

LSC is required by law to issue a report for each introduced bill that substantially changes or enacts an occupational regulation. The report must: (1) explain the bill's regulatory framework in the context of Ohio's statutory policy of using the least restrictive regulation necessary to protect consumers, (2) compare the regulatory schemes governing the same occupation in other states, and (3) examine the bill's potential impact on employment, consumer choice, market competition, and cost to government.¹

LEAST RESTRICTIVE REGULATION COMPARISON

Ohio's general regulatory policy

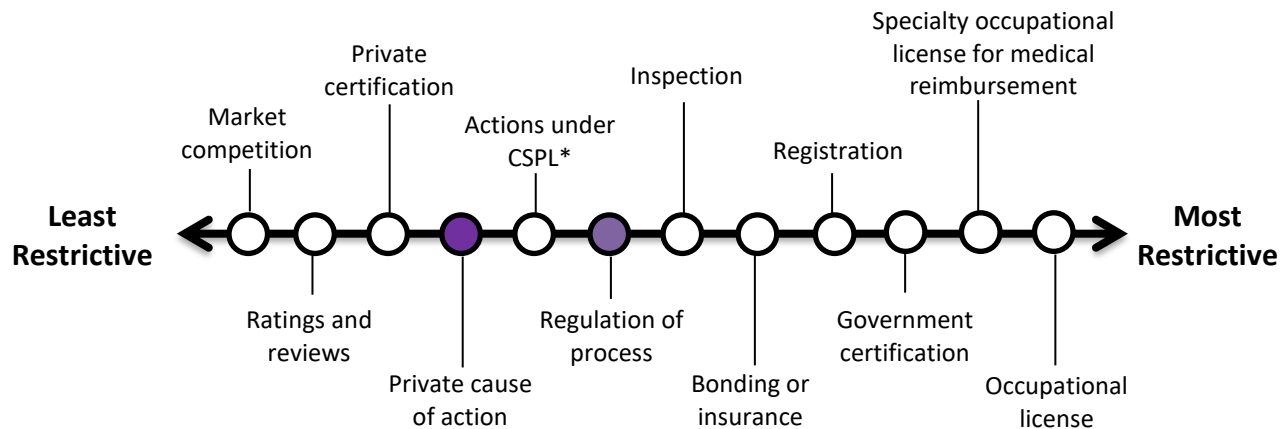
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect consumers from "present, significant, and substantiated harms that threaten health, safety, or welfare," the state's expressed intent is to enact the "least restrictive regulation that will adequately protect consumers from such harms."²

The degree of "restrictiveness" of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state's policy by least to most restrictive:

* This report addresses the "As Introduced" version of S.B. 309. It does not account for changes that may have been adopted after the bill's introduction.

¹ R.C. 103.26, not in the bill.

² R.C. 4798.01 and 4798.02, neither in the bill.



*CSPL – The Consumer Sales Practices Law

S.B. 309, named the Abortion Pill Provider Liability Education (APPLE) Act, requires health care providers to ensure that specified conditions involving informed consent are met, except in a medical emergency, before prescribing an abortion-inducing drug. Under the bill, if this requirement is violated, the provider, the provider’s agent, and the health care facility are subject to liability for damages in a lawsuit and to civil penalties.³

The bill defines “health care provider” as any provider authorized to prescribe an abortion-inducing drug in accordance with state and federal law.⁴ Currently in Ohio, physicians are the only such statutorily authorized prescribers. However, due to an injunction issued during pending litigation, physician assistants, nurse practitioners, and certified nurse-midwives also may prescribe abortion-inducing drugs at this time.⁵

Necessity of regulations

In his sponsor testimony for S.B. 309, Senator Kyle Koehler stated that, in 2023, chemical abortions accounted for 63% of all abortions performed in the U.S., and he asserted that they have a higher rate of complications compared to surgical abortions. He cited findings from the Food and Drug Administration (FDA) that, from November 2012 to December 2024, more than three dozen women died, 114 experienced infections, 288 were hospitalized, and 190 required blood transfusion after taking mifepristone, an abortion-inducing drug. He further asserted that documented complications include excessive bleeding, infections, and rupture of previously undiscovered ectopic pregnancies.

³ R.C. 2317.57(B), (D), and (E).

⁴ R.C. 2317.57(A)(2).

⁵ R.C. 2919.123, 4723.50, and 4730.02, none in the bill; (*Planned Parenthood Southwest Ohio Region v. Ohio Dept. of Health*, Hamilton C.P. No. A2101148 (April 19, 2021)); see also Second Motion for Preliminary Injunction granted August 29, 2024, and Third Motion for Preliminary injunction granted July 8, 2025.

Senator Koehler testified that, in addition to these FDA findings, the largest study on chemical abortion performed by the Ethics and Public Policy Center found the failure rate and percentage of patients experiencing a serious adverse event to be much higher than prior U.S. clinical trials. He explained that the study found that at least 5.26%, one in 19 cases, result in a failed abortion and 13.51%, one in seven women, experienced at least one serious adverse event or a repeated abortion attempt within 45 days of the first chemical abortion attempt. He stated that it is necessary to educate women on the risks associated with chemical abortion and that it is their right to hold accountable those who are involved with manufacturing, dispensing, and prescribing these drugs. He indicated that S.B. 309 provides an opportunity for providers to ensure their patients are fully informed and to evaluate the potential liability associated with offering abortion-inducing drugs.

Senator Koehler explained that the bill is a patient protection policy. He said that “[w]e know much more about the dangers associated with chemical abortion today than we ever have in the past,” and he argued that the women who are being prescribed the medication also have every right to know. He concluded that the bill ensures that patients are fully educated about the risks associated with these drugs and about their families’ right to seek recourse should complications arise.⁶

Restrictiveness of regulations

Regulation of process

The state’s policy does not provide specific guidance as to when a regulation of process is the best means of protecting the health, safety, and welfare of consumers. However, the policy as a whole suggests that regulations of process are the most preferred method of regulation when market competition, ratings and reviews, private certifications, private causes of action, and actions under the state’s Consumer Sales Practices Law do not provide sufficient protection.⁷ Whether these mechanisms are a sufficient means of protecting consumers is a policy decision.

Current law establishes certain informed consent requirements for abortions, including those performed via abortion-inducing drugs, except in the case of a medical emergency or medical necessity.⁸ The bill appears to increase restrictiveness by establishing additional requirements, as described directly below, that a health care provider must ensure are met, except in a medical emergency, before prescribing an abortion-inducing drug to terminate a pregnancy:

- The health care provider or the provider’s agent must provide the patient with written instructions and information on the drug, including known complications and a statement

⁶ See [Sponsor Testimony of Senator Kyle Koehler \(PDF\)](#), which is accessible on the General Assembly’s website, legislature.ohio.gov, by searching “SB 309” and clicking “Committee Activity.”

⁷ R.C. 4798.01, not in the bill.

⁸ R.C. 2317.56, not in the bill.

that the patient and the patient's family may hold the provider and certain other entities liable under specified circumstances;

- The health care provider must obtain, in writing, a statement from the patient certifying she received and had the opportunity to review the written instructions and information;
- The health care provider or the provider's agent must receive a copy of the pregnant woman's certification.⁹

In addition, the bill appears to increase restrictiveness by requiring health care providers or their agents to retain a copy of the certification in the woman's medical file for a specified time period.¹⁰

Private cause of action

The state's policy does not provide specific guidance as to when a private cause of action is the best means of protecting the health, safety, and welfare of consumers. However, the policy as a whole suggests that a private cause of action is the most preferred method of regulation when market competition, ratings and reviews, and private certifications do not provide sufficient protection.¹¹ Whether these mechanisms are a sufficient means of protecting consumers is a policy decision.

The bill appears to increase restrictiveness by specifying that any health care provider, health care provider's agent, or health care facility that prescribes an abortion-inducing drug to a pregnant woman without meeting the bill's requirements is liable for damages in a lawsuit. An action may be brought by the pregnant woman and, in certain circumstances, by the father or other specified family member of the unborn child.¹²

Additional penalty: state action

The bill also appears to increase restrictiveness by specifying that any health care provider, provider's agent, or health care facility that is alleged to have violated the informed consent requirements in the bill may be subject to an investigation by the Attorney General or a prosecutor with the appropriate jurisdiction. Those who are found to be in violation of the requirements are liable for a civil penalty of up to \$5,000 for each day of violation. The court may impose an additional civil penalty, not to exceed \$10,000 for each violation, against any health care provider or health care facility found by the court to have knowingly violated the bill's requirements. Penalties include statutory interest. Each violation may be treated separately or may be combined.¹³

For a complete explanation of the bill, see the [LSC bill analysis \(PDF\)](#).

⁹ R.C. 2317.57(B).

¹⁰ R.C. 2317.57(C).

¹¹ R.C. 4798.01, not in the bill.

¹² R.C. 2317.57(D).

¹³ R.C. 2317.57(E).

IMPACT STATEMENT

Opportunities for employment

For the health care providers impacted by the bill (potentially including those authorized to prescribe abortion-inducing drugs under the court injunction discussed in “**Ohio’s general regulatory policy**”), the bill would not be expected to impact opportunities for employment if the providers comply with the bill’s new informed consent requirements. For those providers who do not comply with the bill’s informed consent requirements, opportunities for employment may be decreased due to any private or state action taken against them.

Consumer choice and market competition

To the extent health care providers impacted by the bill comply with the bill’s informed consent requirements, the bill would not be expected to lead to significant changes in consumer choice for patients or market competition among health care providers. If the bill’s new informed consent requirements cause health care providers to exit the profession, the bill could decrease consumer choice between, and market competition among, those providers who followed the bill’s requirements and continued working in their health profession.

Cost to government

For costs to government, see the [LSC fiscal note \(PDF\)](#).

COMPARISON TO OTHER STATES

The FDA requires authorized providers of abortion-inducing drugs to comply with its Risk Evaluation and Mitigation Strategies (REMS) program for abortion-inducing drugs, including informing patients of the potential risk associated with abortion procedures.¹⁴ Additionally, states have adopted statutes that require a healthcare provider to inform patients of potential side effects associated with medication abortion. While some states, such as Indiana and Kentucky, have informed consent provisions that specifically apply to abortion-inducing drugs, most states' provisions apply to any abortion, regardless of method.

The table below compares statutes in surrounding states that require health care providers to inform patients of the potential risks of abortion. Michigan is the only state bordering Ohio that does not have such a requirement.¹⁵ Please note, the table does not provide a comprehensive description of each state's provisions governing abortion, only those related to informing patients of potential risks.

State Statutes on Informed Consent for Medication Abortion Risk		
State	Description	Penalties
Ohio (under the bill)	Requires health care providers to provide patients with written instructions and information on the abortion-inducing drug, including all known complications Providers must obtain a written statement from the patient certifying that she received the information. The provider or provider's agent must retain a copy of this certification (R.C. 2317.57(B))	Any provider, provider's agent, or facility that violates the bill's informed consent requirements is liable for damages in a lawsuit or for civil penalties up to \$10,000 in an action brought by the state (R.C. 2317.57(E))

¹⁴ See the FDA's [Information About Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation](#), which may be accessed by conducting a keyword "mifepristone REMS" search on the FDA's website: fda.gov.

¹⁵ See [Informed Consent for Abortion](#), which may be accessed by conducting a keyword "abortion informed consent" search on the Michigan Department of Health & Human Services' website: michigan.gov.

State Statutes on Informed Consent for Medication Abortion Risk		
State	Description	Penalties
Indiana	Requires the performing or referring professional to inform the patient of objective scientific information related to the effects, risks, and alternatives to use of the abortion-inducing drug (Ind. Code 16-34-2-1.1(a))	A person who performs an abortion without meeting the requirements has committed a Class A infraction, punishable by a fine up to \$10,000 (Ind. Code 16-34-2-7(c) and 34-28-5-4)
Kentucky	Requires the qualified physician to obtain consent using the approved form that includes topics such as: <ul style="list-style-type: none"> ▪ A detailed list of the risks related to the specific abortion-inducing drug or drugs to be used, including potential complications and adverse events; ▪ That it may be possible to reverse the effects of the abortion-inducing drugs if desired; and ▪ Relevant information concerning potential implications of reversing the effects of the abortion-inducing drug (Ky. Rev. Stat. 311.7735(4))	Failure to comply with medication abortion guidelines, including informed consent, may provide a basis for: <ul style="list-style-type: none"> ▪ A civil malpractice action for actual and punitive damages; ▪ Professional disciplinary action; and ▪ Recovery for wrongful death of the patient (Ky. Rev. Stat. 311.7739(1))
Pennsylvania	Requires the performing or referring physician to orally inform the woman of the relevant material risks and alternatives to abortion (18 Pa. Cons. Stat. 3205(a))	Any physician who violates the informed consent provisions is guilty of the following: <ul style="list-style-type: none"> ▪ “Unprofessional conduct,” punishable by license suspension or revocation; ▪ For a first offense: a summary offense, punishable by up to a \$300 fine and 90 days imprisonment; and

State Statutes on Informed Consent for Medication Abortion Risk		
State	Description	Penalties
		<ul style="list-style-type: none"> ▪ For each subsequent offense: a third degree misdemeanor, punishable by up to a \$2,500 fine and a year imprisonment. <p>Any physician who complies with the provisions may not be held civilly liable.</p> <p>(18 Pa. Cons. Stat. 1101, 1104, 1105, and 3205(c) and (d))</p>
West Virginia	<p>Requires the physician or delegated licensed medical professional to inform patients of the following:</p> <ul style="list-style-type: none"> ▪ Medical risks associated with the abortion; and ▪ Information about how to counteract the intended effects of a chemical abortion <p>(W. Va. Code 16-2i-2)</p>	<p>Any physician or agent who violates the informed consent provisions may be subject to sanctions levied by the licensing board governing the offender's profession</p> <p>(W. Va. Code 16-2i-8)</p>