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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 23  
(I\_133-1050-3)  
133rd General Assembly

## Fiscal Note & Local Impact Statement

[Click here for S.B. 23's Bill Analysis](#)

**Version:** In House Health

**Primary Sponsor:** Sen. Roegner

**Local Impact Statement Procedure Required:** No

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### Highlights

- **State Medical Board.** The State Medical Board could experience an increase in administrative and possibly assessment and investigative costs related to the bill. However, it is assumed that the number of violators would be small. Thus, any increase in costs would likely be minimal.
- **Ohio Department of Medicaid (ODM).** The Medicaid Program currently pays abortion costs for enrollees in cases involving life endangerment, incest, and rape. The bill could result in fewer abortions. According to ODM, the Medicaid Program paid for four abortions in FY 2016 and six abortions in FY 2017.
- **Ohio Department of Job and Family Services (ODJFS).** Moneys from forfeitures assessed by the State Medical Board would be deposited into the Foster Care and Adoption Initiatives Fund, which is created by the bill. ODJFS would use half of the moneys in the fund for foster care services and initiatives and half for adoption services and initiatives
- **Ohio Department of Health (ODH).** ODH could realize a minimal increase in rule promulgation costs.
- **Local courts.** As a result of any violations, additional felony criminal cases may be generated for county criminal justice systems to process, potentially increasing the costs to investigate, prosecute, adjudicate, and sanction violators. However, the court could impose court costs and fines to be paid by violators to help offset some of these costs.
- **Local courts.** It is also possible that additional civil cases may be generated for county municipal or common pleas courts. However, the courts could impose court costs to help offset some of these costs.

- **Public hospitals.** It is possible that public hospitals may realize an increase in costs relating to the bill's reporting requirements. However, only a small percentage of abortions are performed in hospitals and the majority of those are due to medical emergencies, so any increase should be minimal.

## Detailed Analysis

### Abortion prohibitions and offenses

The bill generally prohibits a person from knowingly and purposefully performing or inducing an abortion of an unborn human individual whose fetal heartbeat has been detected. The bill provides that this is a felony of the fifth degree. However, the bill provides that a person or physician is not in violation if a fetal heartbeat is not revealed during an examination or a medical procedure is performed to prevent the death of a pregnant woman or to prevent a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman. The bill also requires certain written documentation be placed in the pregnant woman's medical records in specified instances in which an abortion has been performed or induced.

Additionally, the bill provides that a person who knowingly and purposefully performs or induces an abortion before determining if there is a fetal heartbeat is guilty of performing or inducing an abortion before determining whether there is a detectable fetal heartbeat. The bill provides that this is a felony of the fifth degree. However, the bill provides that a physician or person does not commit the offense if the abortion is performed or induced due to a medical emergency or if an examination has not revealed a fetal heartbeat.

The bill requires the Director of Health, no later than 120 days after the bill's effective date, to adopt rules specifying the appropriate methods of determining the presence of a fetal heartbeat. The bill specifies that the rules are not to exclude transvaginal ultrasound as a method of detection, nor exclude any other current or new technology or procedure, so long as the method, technology, or procedure conforms with standard medical practices. Current law specifies that the Director may promulgate rules based on standard medical practice and that the rules are to require an examination be performed externally.

The bill requires a physician or person to fulfill certain documentation requirements when the person or physician performs an abortion relating to the bill's provisions. In addition, the bill requires that a physician, who performs or induces an abortion, or a person maintaining records on the physician's behalf, report certain information.

Currently, induced abortions must be reported to the Ohio Department of Health (ODH) by the physician who performed the abortion. According to ODH's 2017 report on "Induced Abortions in Ohio,"<sup>1</sup> 20,893 abortions were performed in 2017. Of this number, 93.9% (19,615) were performed on Ohio residents. The majority of abortions (99.1%) were performed in ambulatory surgical facilities. About 0.5% of abortions were performed in hospitals and 0.4% were performed in nonsurgical clinics. Since a small percentage of abortions are performed in

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<sup>1</sup> <https://odh.ohio.gov/wps/portal/gov/odh/know-our-programs/vital-statistics/resources/vs-abortionreport2017>.

hospitals and the majority of those are medical emergencies, it appears that there will be little fiscal impact to public hospitals. There are currently fewer than 20 such hospitals in Ohio. Thus, any increases in administrative costs to public hospitals relating to the reporting requirements of the bill would likely be minimal. ODH could realize an increase in costs to promulgate rules.

The Medicaid Program currently pays abortion costs for enrollees in cases involving life endangerment, incest, and rape. If the bill results in fewer abortions performed, then abortion costs for the Medicaid Program could decrease. However, there could be an increase in birth - related costs. According to the Department of Medicaid, the Medicaid Program paid for four abortions in FY 2016 and six abortions in FY 2017. It is unknown how many of these were conducted due to life endangerment versus incest or rape.

As a result of any violations, additional felony criminal cases may be generated for county criminal justice systems to process, potentially increasing the costs to investigate, prosecute, adjudicate, and sanction violators. However, the court could impose court costs and fines to be paid by violators to help offset some of these costs. The number of cases that could be generated annually would likely be small. Therefore, any related fiscal effect on local criminal justice systems would likely be minimal. Dependent upon the number of successful prosecutions, the state could realize a gain in court cost revenues generated annually to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). The state could also realize an increase in prison costs if any felony violations resulted in a prison sentence.

## **Wrongful death actions**

The bill permits an action to be brought if the abortion was knowingly or purposely performed or induced under certain circumstances. The bill requires a woman to be awarded court costs and reasonable attorney's fees if she prevails in a civil action for the wrongful death of her unborn child. In addition, the bill provides that a defendant be awarded reasonable attorney fees if the action was frivolous and the defendant was adversely affected.

It is possible that additional civil cases may be generated for county municipal or common pleas courts, which would increase costs for these entities. However, the courts may impose court costs to help offset some of these costs. Any impact would depend on the number of civil cases brought forward.

## **Disciplinary action**

The bill permits the State Medical Board to take disciplinary action for failure to comply with documentation requirements. Thus, the Board could experience an increase in administrative and investigative costs. However, it is assumed that the number of violators would be small. Thus, any increase in costs would likely be minimal.

The State Medical Board may also assess a forfeiture of up to \$10,000 against a person for each violation or failure to comply with certain provisions of the bill. The bill specifies that the forfeiture may be in addition to criminal penalties, and that moneys collected are to be deposited into the Foster Care and Adoption Initiatives Fund, which is created by the bill. The bill also specifies that actions to recover forfeitures are to be brought in the Franklin County Court of Common Pleas and prosecuted by the Ohio Attorney General when directed by the Board. There may be court costs and costs associated with prosecution for the Attorney General's Office related to these forfeitures. The amount will depend on the number of cases.

## **Foster Care and Adoption Initiatives Fund**

Funds deposited from the abovementioned forfeitures are to be used to provide funding for foster care and adoption services and initiatives. The bill requires the Ohio Department of Job and Family Services to use half of the moneys in the fund for foster care services and initiatives and half for adoption services and initiatives. The amount of funding available will depend on the number of forfeitures assessed.

## **Declaratory judgments and court orders**

The bill permits the Attorney General to apply to a state or federal court for a declaration that the bill's provisions are constitutional, or an order lifting an injunction if one exists, if federal abortion law changes. The bill also permits a county prosecutor, with standing, to apply to a state or federal court for the same relief if the Attorney General fails to act within 30 days of the change.

## **Joint committee**

The bill creates the Joint Legislative Committee on Adoption Promotion and Support, comprised of three House of Representatives members and three Senate members. The bill permits the Committee to review or study any matter that it considers relevant to the adoption process in Ohio. There could be costs, such as travel and other necessary reimbursements, associated with performing Committee duties.

## **Synopsis of Fiscal Effect Changes**

The substitute bill, I\_133\_1050-3, provides that the State Medical Board can assess a forfeiture of up to \$10,000 against a person for violations of the bill, and that the forfeitures are to be deposited into a newly created Foster Care and Adoption Initiatives Fund. The bill also specifies that cases are to be brought in the Franklin County Court of Common Pleas and prosecuted by the Ohio Attorney General when directed by the Board.

The substitute bill, I\_133\_1050-3, requires the Ohio Department of Job and Family Services to use half of the moneys in the abovementioned fund for foster care services and initiatives and half for adoption services and initiatives.

These provisions were not included in the As Passed by the Senate version of the bill. Thus, there may be additional costs for the Franklin County Court of Common Pleas and the Ohio Attorney General's Office related to these forfeitures. The amount deposited into the Foster Care and Adoption Initiatives Fund will depend on the number of forfeitures assessed.

The bill requires the Director of Health, no later than 120 days after the bill's effective date, to adopt rules specifying the appropriate methods of determining the presence of a fetal heartbeat, which could result in a minimal increase in costs.