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S.B. 23
133rd General Assembly

Bill Analysis

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Version: As Reported by House Health

Primary Sponsor: Sen. Roegner

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Summary

Bill name

- Provides that most of the R.C. sections amended and enacted in the bill are to be known as the “Human Rights and Heartbeat Protection Act” and alters the bill title to reference that name.

Abortion prohibited when there is a fetal heartbeat

- Generally prohibits a person from knowingly and purposefully performing or inducing an abortion with the specific intent of causing or abetting the termination of the life of an unborn human individual whose fetal heartbeat has been detected.
- Provides that a person who violates the above prohibition is guilty of performing or inducing an abortion after the detection of a fetal heartbeat, a felony of the fifth degree.
- Provides that a physician is not in violation of the above prohibition if that physician performs a medical procedure designed to or intended to prevent the death of a pregnant woman or prevent a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman.
- Provides that a person is not in violation of the prohibition if that person has performed an examination for the presence of a fetal heartbeat and the method used does not reveal a fetal heartbeat.
- Provides that the prohibition does not repeal or limit any other provision of law that restricts or regulates the performance or inducement of an abortion by a particular method or during a particular stage of pregnancy.

Offense of abortion before determining fetal heart beat

- 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

abortion before determining whether there is a detectable fetal heartbeat, a felony of the fifth degree.

- Provides that a physician does not commit the offense if the physician performs or induces an abortion believing that a medical emergency exists.
- Provides that a person does not commit the offense if that person has performed an examination for the presence of a fetal heartbeat and the method used does not reveal a fetal heartbeat.

Wrongful death actions

- 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.
- Provides that a determination of unconstitutionality is a defense, if the suit is based on a provision that a court of record has deemed unconstitutional.
- Requires that a defendant be awarded reasonable attorney fees if the action was frivolous and the defendant was adversely affected.

Adoption promotion and support

- Creates the Joint Legislative Committee on Adoption Promotion and Support, comprised of three House of Representative members and three Senate members, to ensure citizens are informed of available adoption options in Ohio.
- Permits the Committee to review or study any matter that it considers relevant to the adoption process in Ohio and grants the Committee the same powers as other standing or select committees of the General Assembly.

State Medical Board enforcement

- Allows the State Medical Board to take disciplinary action for failure to comply with the bill's requirements to make or maintain certain medical records or documents for a pregnant woman regarding an abortion.
- Allows the State Medical Board to assess against a person a forfeiture of not more than \$20,000 for each abortion prohibition violation the bill specifies.

Declaratory judgments and court orders

- 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.
- Permits a county prosecutor with standing to apply to a state or federal court for the above relief if the Attorney General fails to act within 30 days of the change.

Foster Care and Adoption Initiatives Fund

- Creates the custodial Foster Care and Adoption Initiatives Fund, comprised of the State Medical Board forfeitures required to be imposed and collected under the bill, to provide funding for foster care and adoption services and initiatives as determined by the Department of Job and Family Services.

Other provisions

- Requires the Department of Health to consult with independent health care experts when producing materials that the Department must publish on its website to inform pregnant women of the probable anatomical and physiological characteristics of a zygote, blastocyte, embryo, or fetus at various gestational increments.
- Provides that the bill’s provisions apply only to intrauterine pregnancies.
- Requires the Director of Health to adopt rules specifying the appropriate methods for determining the presence of a fetal heartbeat based on standard medical practice, no later than 120 days after the effective date of the bill.
- Repeals the limitation that the rules specifying the appropriate method for determining the presence of a fetal heartbeat “shall require only that an examination be performed externally.”
- Requires a person to fulfill certain documentation requirements when the person performs an abortion relating to the bill’s provisions.
- Provides that nothing in the bill prohibits the sale, use, prescription, or administration of a drug, device, or chemical for contraceptive purposes.

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Detailed Analysis

Bill name

The bill provides that most of the R.C. provisions amended and enacted in the bill are to be known as the “Human Rights and Heartbeat Protection Act” and references the name in the title.¹

¹ R.C. 2919.1913.

Abortion prohibited when there is a fetal heartbeat

The bill generally prohibits a person from knowingly and purposefully performing or inducing an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn human individual that the pregnant woman is carrying and whose fetal heartbeat has been detected in accordance with the requirements of the bill. Whoever violates this prohibition is guilty of performing or inducing an abortion after the detection of a fetal heartbeat, a felony of the fifth degree.²

Exceptions to prohibition

As described below, there are two circumstances in which the fetal heartbeat prohibition does not apply or is not violated.

1. Medical procedures to prevent a woman's death or bodily impairment

The prohibition does not apply to a physician who performs a medical procedure designed or intended, in that physician's reasonable medical judgment, to prevent the death of a pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.³ Continuing law defines a "serious risk of the substantial and irreversible impairment of a major bodily function" as any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function. A medically diagnosed condition that constitutes a "serious risk of the substantial and irreversible impairment of a major bodily function" includes pre-eclampsia, inevitable abortion, and premature rupture of the membranes, may include, but is not limited to, diabetes and multiple sclerosis, and does not include a condition related to the woman's mental health.⁴

A physician in this circumstance must declare in writing that the medical procedure is necessary, to the best of that physician's reasonable medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. The physician must also provide in the written document the medical condition that the procedure will assertedly address and the medical rationale for the conclusion that the procedure is necessary. The physician must place the written documentation in the pregnant woman's medical records and maintain a copy of the written documentation in the physician's own records for at least seven years.⁵

² R.C. 2919.195(A).

³ R.C. 2919.195(B).

⁴ R.C. 2919.19(A)(12); R.C. 2919.16(K), not in the bill.

⁵ R.C. 2919.195(B).

2. No fetal heartbeat revealed

A person who has performed an examination for the presence of a fetal heartbeat, in accordance with the person's good-faith understanding of standard medical practice, that does not reveal a fetal heartbeat, is not in violation of the prohibition.⁶

Abortions performed to preserve a woman's health

Additional documentation requirement

After a fetal heartbeat has been detected pursuant to the bill's requirements, if a purported reason for performing or inducing an abortion is to *preserve the health* of the pregnant woman, the person performing or inducing the abortion is required to specify in a written document the medical condition that the abortion will address and the medical rationale for the conclusion that the abortion is necessary to address the condition.⁷ If this purported reason does not apply, the person performing or inducing the abortion must specify in a written document that the purpose was not maternal health.⁸ The person must place either written document in the pregnant woman's medical records and maintain a copy in the person's own records for at least seven years.⁹ This documentation requirement appears to be independent of continuing law and the bill's requirements regarding detection of a fetal heartbeat and prohibitions relating to abortions before or after determining a fetal heartbeat.¹⁰

Although the bill refers to the performance of an abortion to preserve a pregnant woman's health, the bill does not contain an express exception that would authorize an abortion to be performed for this purpose after a fetal heartbeat has been detected.

Relationship to other abortion laws

The bill declares that the prohibition against knowingly and purposefully performing or inducing an abortion when there is a fetal heartbeat does not repeal or limit any other provision of the Revised Code that restricts or regulates the performance or inducement of an abortion by a particular method or during a particular state of a pregnancy.¹¹ Under continuing law, "pregnancy" is defined as the human female reproductive condition that begins with fertilization, when the woman is carrying the developing human offspring, and that is calculated from the first day of the last menstrual period of the woman.¹²

⁶ R.C. 2919.192(A) and 2919.195(C).

⁷ R.C. 2919.196(A)(1).

⁸ R.C. 2919.196(A)(2).

⁹ R.C. 2919.196(B).

¹⁰ R.C. 2919.192 through 2919.195 and 2919.196(A).

¹¹ R.C. 2919.195(D).

¹² R.C. 2919.19(A)(11).

Acknowledgment by pregnant woman

If the person who intends to perform or induce an abortion on a pregnant woman detects a fetal heartbeat in the unborn human individual that the pregnant woman is carrying, the pregnant woman must sign a form acknowledging that the pregnant woman has received information from the person intending to perform or induce the abortion that the unborn human individual that the pregnant woman is carrying has a fetal heartbeat and that the pregnant woman is aware of the statistical probability of bringing the unborn human individual that the pregnant woman is carrying to term. Notwithstanding this requirement, the person who intends to perform or induce an abortion cannot do so without at least 24 hours elapsing after meeting this requirement, as well as requirements in continuing law that the person must notify the pregnant woman of the existence of a fetal heartbeat and the statistical probability of the unborn human individual being brought to term.¹³

Abortion before determining fetal heartbeat

The bill provides that, except when prevented by a medical emergency in certain cases, whoever knowingly and purposefully performs or induces an abortion without determining whether there is a detectable fetal heartbeat is guilty of a felony of the fifth degree.¹⁴ Continuing law prohibits such an abortion before determining the presence of a fetal heartbeat already, but only provides for a civil action for compensatory and exemplary damages or disciplinary action by the State Medical Board for a violation.¹⁵ “Medical emergency” under continuing law means a condition that in the physician’s good faith medical judgment, based upon the facts known to the physician at that time, so complicates the woman’s pregnancy as to necessitate the immediate performance or inducement of an abortion in order to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman that delay in the performance or inducement of the abortion would create.¹⁶

Exceptions

1. Medical emergency

Under the bill, if a medical emergency prevents a physician from determining the presence of a fetal heartbeat, the physician must note the belief that the medical emergency necessitated the abortion and the medical condition that caused the emergency in the pregnant woman’s medical records. The physician also must maintain this record for at least

¹³ R.C. 2919.194(A)(1) to (3).

¹⁴ R.C. 2919.193(A).

¹⁵ R.C. 4731.22(B)(47) and 2919.191(E) (under current law).

¹⁶ R.C. 2919.19(A)(9) and 2919.16, not in the bill.

seven years in the physician’s own records. Current law provides for the same exception and notation requirements, but applies them broadly to “any person” and not just physicians.¹⁷

2. No fetal heartbeat revealed

In addition, a person who has performed an examination for the presence of a fetal heartbeat, in accordance with the person’s good faith understanding of standard medical practice, that does not reveal a fetal heartbeat, does not commit the offense.¹⁸

Rulemaking requirements

The bill requires the Director of Health to adopt rules specifying the appropriate methods of performing an examination to determine the presence of a fetal heartbeat of an unborn individual, based on standard medical practice. Under current law, the Director of Health has the option to promulgate these rules, but is not required to do so. The bill also eliminates the current law limitation that the “rules shall require only that an examination shall be performed externally.” The rules must be adopted not later than 120 days after the effective date of this bill.¹⁹

No prohibitions regarding contraception

Nothing in the bill prohibits the sale, use, prescription, or administration of a drug, device, or chemical for contraceptive purposes.²⁰ “Contraceptive” means a drug, device, or chemical that prevents conception and “conception” means fertilization.²¹

Findings by the General Assembly

Under the bill, the General Assembly declares that it finds, according to contemporary medical research, all of the following:²²

1. As many as 30% of natural pregnancies end in spontaneous miscarriage (defined as the natural or accidental termination of a pregnancy and the expulsion of the fetus, typically because of fetal genetic defects or physical abnormalities in the woman);²³
2. Less than 5% of all natural pregnancies end in spontaneous miscarriage after detection of fetal cardiac activity;

¹⁷ R.C. 2919.193(B) and (C) and 2919.191(B) (under current law).

¹⁸ R.C. 2919.193(D).

¹⁹ R.C. 2919.192(B) (renumbered from 2919.191(C) under the bill).

²⁰ R.C. 2919.197.

²¹ R.C. 2919.19(A)(1) and (2).

²² Section 3.

²³ R.C. 2919.19(A)(13). This definition is in the Revised Code, but the term itself is used nowhere except in the uncodified law in the bill.

3. Over 90% of in vitro pregnancies survive the first trimester if cardiac activity is detected in the gestational sac;
4. Nearly 90% of in vitro pregnancies do not survive the first trimester where cardiac activity is not detected in the gestational sac;
5. Fetal heartbeat, therefore, has become a key medical predictor that an unborn human individual will reach live birth;
6. Cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac;
7. The state of Ohio has a valid interest in protecting the health of the woman and a compelling interest in protecting the life of the unborn human individual who may be born;
8. In order to make an informed choice about whether to continue her pregnancy, the pregnant woman has a valid interest in knowing the likelihood of the fetus surviving to full-term birth based upon the presence of cardiac activity;
9. The state of Ohio finds that the detection of a fetal heartbeat can be accomplished through standard medical practices;
10. At fertilization, a human being emerges as a whole, genetically distinct, living human organism and needs only the proper environment to fully develop into a human;
11. Cardiac activity shows that tissues have come together to form organs and the developing central nervous system signals the heart to autonomically beat;
12. When a heartbeat is visualized at seven weeks or less, 91.5% will survive the first trimester and 95% of those will deliver live-born infants;
13. After the detection of a fetal heartbeat there is a 95 to 98% certainty that the new life will develop full term;
14. A human being at an embryonic age and a human being at an adult age are naturally the same, with the only biological differences being due to the differences in maturity.

Applicability of the bill

The bill states that provisions in existing law and the bill apply only to intrauterine pregnancies.²⁴ “Intrauterine pregnancy” is defined to mean a pregnancy in which the fetus is attached to the placenta within the uterus of the pregnant woman.²⁵

Severability

The bill contains two severability provisions.

²⁴ R.C. 2919.191.

²⁵ R.C. 2919.19(A)(8).

Fetal heartbeat severability

The bill provides that if any provision of R.C. 2919.171 or 2919.19 to 2919.1913 or their application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of those sections that can be given effect without the invalid provision or application, and to this end those provisions are severable. Moreover, the bill expresses that the General Assembly's intent is to continue the immediate and continuing enforcement of the remainder of the provisions in those sections, should any individual provision of those sections be held invalid or if any provision is potentially invalid.²⁶ The General Assembly also intends a court judgment or order suspending any provision of those sections not to be regarded as tantamount to a repeal of that provision.²⁷ Finally, nothing in R.C. 2919.171 or 2919.191 to 2919.1913 is intended to repeal or limit any other Ohio laws, except as provided in those sections.²⁸

Universal severability

The bill contains an uncodified severability provision that covers all sections of the bill (including the heartbeat provisions covered by the other severability clause). It provides that if any provisions of a section that are amended or enacted by the bill, or their application to a person or circumstance is held invalid, that invalidity does not affect other provisions or applications of the section or related sections that can be given effect without the invalid provision or application, and to that end they are severable.²⁹

Consultation with independent experts

The bill requires the Department of Health to consult with *independent health care experts* with regard to materials that the Department must publish on its website that inform pregnant women of the probable anatomical and physiological characteristics of a zygote, blastocyte, embryo, or fetus at various gestational increments.³⁰

Current law requires consultation with the Ohio State Medical Association and the Ohio section of the American College of Obstetricians and Gynecologists when producing these materials for pregnant women on its website.

Reporting requirement

The bill requires a physician who performs or induces abortions or attempts to do so, in addition to the reports to the Department of Health required under continuing law relating to written certifications and determinations regarding viability, to also provide all of the

²⁶ R.C. 2919.19(B)(4).

²⁷ R.C. 2919.19(B)(1).

²⁸ R.C. 2919.19(B)(4).

²⁹ Section 4.

³⁰ R.C. 2317.56(C)(2).

information the physician is required to certify in writing or determine with respect to abortions and the provisions of existing law and the bill relating to fetal heartbeat detection. The bill provides that if a person other than the physician described above makes or maintains records relating to abortions and fetal heartbeat detection on the physician's behalf or at the physician's direction, that person must comply with the reporting requirements.³¹

State Medical Board enforcement

Documentation requirements for disciplinary action

The bill permits the State Medical Board to take disciplinary action for failure to comply with the requirements to make or maintain the following medical records or documents for a pregnant woman regarding an abortion procedure:

- Fetal heartbeat determination test results, date and time of test, test method used, and gestational age;
- Notations of the physician's belief regarding the medical emergency and the woman's medical condition preventing compliance with the requirement to determine the presence of a fetal heartbeat;
- Written declaration that the abortion is necessary to prevent the death of, or serious risk of substantial and irreversible impairment of a major bodily function of, the pregnant woman, in situations in which a fetal heartbeat is present;
- Written documentation regarding medical condition and medical rationale, in situations in which preservation of the pregnant woman's health is a purported reason for the abortion;
- Written documentation that maternal health is not a reason of the abortion, in situations in which preservation of the pregnant woman's health is not a purported reason for the abortion.

Current law permits disciplinary action for (1) failure to comply with the requirements for maintaining notes in the medical records of the emergency necessitating the abortion prior to detecting a fetal heartbeat and the medical condition of the woman that required the abortion, and (2) failure to satisfy all the requirements under law for determining the presence of fetal heartbeat prior to performing or inducing an abortion. Disciplinary action permitted under current law includes revoking or suspending an individual's certificate to practice or reprimanding or placing a certificate holder on probation.³²

Forfeitures

The bill also allows the State Medical Board to assess against a person a forfeiture of not more than \$20,000 for each separate violation or failure of the person to comply with the bill's

³¹ R.C. 2919.171(A).

³² R.C. 2919.192(A), 2919.193(C), 2919.195(B), 2919.196(A), and 4731.22(B)(47).

requirements. When assessing forfeitures, the Board must comply with the adjudication requirements under Chapter 119 of the Revised Code. These forfeitures may be in addition to the criminal penalties that may be imposed under the bill and other provisions of law.³³

An action to recover a forfeiture must be prosecuted in the name of the state and must be brought in the Franklin County Court of Common Pleas. The action must be commenced and prosecuted by the Attorney General, when directed by the Board.³⁴

Money that is collected by the Board or recovered by the Attorney General must be paid to the State Treasurer for deposit into the Foster Care and Adoption Initiatives Fund (see “**Foster Care Adoption and Initiatives Fund**,” below).³⁵

Declaratory judgments and court orders

The bill permits the Attorney General to take certain legal action if either of the following restores, expands, or clarifies the authority of states to prohibit or regulate abortion entirely or in part:

- Any court order or judgment;
- An amendment to the U.S. Constitution.³⁶

The bill permits the Attorney General to seek either or both of the following from a federal or state court:

1. A declaration that any of the bill’s provisions are constitutional (see **Comment**);
2. A judgment or order lifting an injunction if one has been placed on provisions contained in the bill.

The bill permits any 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.³⁷

Wrongful death action

Circumstances supporting action

The bill makes changes to existing law permitting a woman who received an abortion to bring a wrongful death action for her unborn child. The bill permits an action to be brought if the abortion was knowingly and purposely performed or induced (1) with the specific intent of causing or abetting the termination of the unborn human individual whose fetal heartbeat has been detected, or (2) without the woman’s signature on an acknowledgment that the woman

³³ R.C. 2919.1912(A).

³⁴ R.C. 2919.1912(B).

³⁵ R.C. 2919.1912(C).

³⁶ R.C. 2919.19(B)(2).

³⁷ R.C. 2919.19(B)(3).

received the information (a) that there was a fetal heart beat and (b) about the statistical probability of the unborn human individual with a fetal heartbeat being brought to term. These circumstances for supporting the wrongful death action are in addition to those under continuing law regarding abortions done:

- Before determining the existence of a fetal heartbeat;
- Without notifying the woman that there was a fetal heartbeat and the statistical probability of the unborn human individual with a fetal heartbeat being brought to term; and
- Without informed consent required under R.C. 2317.56(B).³⁸

Recovery of court costs and attorney's fees

The bill requires the court to award the woman court costs and reasonable attorney's fees if she prevails in the action. This is in addition to damages as permitted under current law. But, if the defendant prevails, the bill requires the court to award reasonable attorney's fees to the defendant if both of the following apply:

- Commencement of the action was frivolous conduct and the defendant was adversely affected by it;
- The court's decision is not based on a finding that the law on which the action is based is unconstitutional.³⁹

Unconstitutionality defense

The bill provides that a determination by a court of record of the unconstitutionality of the law under which the wrongful death action is brought shall be a defense to the action.⁴⁰

Pregnant woman not liable

The bill provides that a pregnant woman on whom an abortion is performed in violation of any of the following crimes is not guilty of the crimes or of attempting to commit, conspiring to commit, or complicity in committing the crimes:

1. Performing or inducing an abortion before determining whether there is a fetal heartbeat;
2. Performing or inducing an abortion after the detection of a fetal heartbeat; or
3. Performing or inducing an abortion without informed consent when there is a detectable fetal heartbeat (in the situation in which the woman did not sign the acknowledgment form stating that the woman received the information (a) that there

³⁸ R.C. 2919.199(A); R.C. 2919.193(A), 2919.194(A), and 2919.195(A); and R.C. 2317.56(G).

³⁹ R.C. 2919.199(B) and (D).

⁴⁰ R.C. 2919.199(C).

was a fetal heartbeat and (b) about the statistical probability of the unborn human individual with a fetal heartbeat being brought to term).

Further, the pregnant woman is not subject to a civil penalty based on the violations.⁴¹

Joint Legislative Committee on Adoption Promotion and Support

The bill creates the Joint Legislative Committee on Adoption Promotion and Support to ensure citizens are informed of adoption options in Ohio. The bill permits the Committee to review or study any matter that it considers relevant to the adoption process in Ohio, with priority given to the study or review of mechanisms intended to increase awareness of the process, increase its effectiveness, or both. The bill grants the Committee the same powers as other standing or select committees of the General Assembly.⁴²

Committee membership

The committee is to consist of three members of the House of Representatives appointed by the Speaker of the House and three members of the Senate appointed by the Senate President. Not more than two members appointed by the Speaker and not more than two members appointed by the President may be of the same political party.

Terms of office

Each member of the Committee is to hold office during the general assembly in which the member is appointed and until a successor has been appointed, notwithstanding the adjournment sine die of the general assembly in which the member was appointed or the expiration of the member's term as a member of the General Assembly.

Filling of vacancies

The bill requires any vacancies occurring among the members of the Committee to be filled in the manner of the original appointment.⁴³

Foster Care and Adoption Initiatives Fund

The bill creates the Foster Care and Adoption Initiatives Fund, to provide funding for foster care and adoption services and initiatives. The fund is to be under the custody of the Treasurer of State, but is not a part of the state treasury, and will consist of money collected from State Medical Board forfeitures provided for in the bill (see "**Forfeitures**," above). All interest earned on the fund must be credited to the fund.

⁴¹ R.C. 2919.198.

⁴² R.C. 2919.1910(A) and (C).

⁴³ R.C. 2910.1910(B).

The Department of Job and Family services must allocate 50% of the money in the fund towards foster care services and initiatives and the other 50% towards adoption services and initiatives.⁴⁴

Background: current Ohio law regarding abortion

Determination of fetal heartbeat before an abortion

Ohio law requires a person who intends to perform or induce an abortion on a pregnant woman to determine whether there is a detectable fetal heartbeat of the unborn human individual the pregnant woman is carrying. The method of determining the presence of a fetal heartbeat must be consistent with the person's good faith understanding of standard medical practice.⁴⁵ The person who performs the examination for the presence of a fetal heartbeat must give the pregnant woman the option to view or hear the fetal heartbeat.⁴⁶

Abortion procedure in case of fetal heartbeat

Current law permits abortions after a fetal heartbeat has been detected, prior to (1) reaching the probable post-fertilization age of 20 weeks or greater or (2) viability.⁴⁷ "Viable" is defined as the stage of development of a human fetus at which in the determination of a physician, based on the particular facts of a woman's pregnancy that are known to the physician and in light of medical technology and information reasonably available to the physician, there is a realistic possibility of the maintaining and nourishing of a life outside of the womb with or without temporary artificial life-sustaining support.⁴⁸ Viability is presumed to begin at 24 weeks gestation.⁴⁹ The bill does not amend these provisions of law.

Continuing law requires the person intending to perform or induce the abortion to inform the pregnant woman if there is a fetal heartbeat and of the statistical probability of bringing the unborn human individual, for which the fetal heartbeat was detected, to term.⁵⁰ After satisfying the informed consent requirements, the person would also need to wait at least 24 hours before performing or inducing the abortion.⁵¹ These provisions do not apply when a physician believes that a medical emergency exists.⁵²

⁴⁴ R.C. 5103.11.

⁴⁵ R.C. 2919.192 (renumbered from R.C. 2919.191 under the bill).

⁴⁶ R.C. 2919.192(A).

⁴⁷ R.C. 2919.194 (renumbered from R.C. 2919.192 under the bill); R.C. 2919.17(A) and 2919.201, neither in the bill.

⁴⁸ R.C. 2919.16(M), not in the bill.

⁴⁹ R.C. 2919.17(E), not in the bill.

⁵⁰ R.C. 2919.194(A)(1) and (2) (renumbered from R.C. 2919.192 under the bill).

⁵¹ R.C. 2919.194(A) (renumbered from R.C. 2919.192 under the bill).

⁵² R.C. 2919.194(B) (renumbered from R.C. 2919.192 under the bill).

Comment

Article III of the U.S. Constitution limits the jurisdiction of federal courts to “cases” and “controversies.”⁵³ Absent any case or controversy, federal courts have no authority to issue advisory opinions that declare the constitutionality of a law.⁵⁴ The Ohio Constitution has a similar requirement. Ohio courts require litigants to show that they have suffered an injury that is traceable to the defendant’s allegedly unlawful conduct, which is likely to be redressed by the requested relief.⁵⁵ It is unclear whether the Attorney General or county prosecutors applying to federal or state courts for a declaration that Ohio law is constitutional, as provided in the bill, would involve a case or controversy.

History

Action	Date
Introduced	02-12-19
Reported, S. Health, Human Services & Medicaid	03-13-19
Passed Senate (19-13)	03-13-19
Reported, H. Health	04-09-19

S0023-RH-133/ts

⁵³ U.S. Const., art. III, § 2.

⁵⁴ See *Veith v. Jubelirer*, 541 U.S. 267, 302 (2004) (Justice Scalia, writing for the court, provides a history of refusing to issue advisory opinions, beginning in 1793).

⁵⁵ *Prograssohio.org, Inc. v. Jobsohio*, 139 Ohio St.3d 520, 521 (2014) (interpreting art. IV, Ohio Const.).