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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Legislative Budget
Office

S.B. 155
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Reported by Senate Health, Human Services & Medicaid

Primary Sponsor: Sen. Lehner

Local Impact Statement Procedure Required: No

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Highlights

- The Ohio Department of Health (ODH) will experience an increase in costs to develop and publish informational materials regarding mifepristone on its website. In addition, ODH will also experience an increase in costs for rule promulgation.
- It is expected that violations of the bill's requirements will be infrequent, which means that there should be no discernible ongoing effect on the criminal and civil caseloads and related annual operating costs of common pleas, municipal, and county courts.
- The State Medical Board may also experience an increase in costs as a result of investigations and disciplinary actions related to the bill's provisions.

Detailed Analysis

Department of Health to publish materials

The bill requires ODH to develop and publish on its website both of the following: (1) materials designed to inform a pregnant woman who is seeking an abortion of the possibility of reversing the effects of an abortion that utilizes mifepristone if she changes her mind, and (2) information on and assistance with the resources that may be available to help reverse the effects of an abortion that utilizes mifepristone. ODH is also required to adopt rules regarding the development of the materials.

Fiscal effect

ODH will experience an increase in costs to develop and publish these materials and to promulgate any necessary rules.

Physician requirements regarding materials

The bill also requires a physician who is to perform or induce a mifepristone abortion, at least 24 hours prior to the performance or inducement of the abortion, to give the pregnant woman copies of the materials required to be published by ODH. The bill permits the materials to be provided in person; by telephone; by certified mail, return receipt requested; or by regular mail evidenced by a certificate of mailing.

Criminal penalties

The bill creates the crime of failure to disclose the reversibility of a mifepristone abortion. However, the bill specifies that the crime does not apply if the physician determines that a medical emergency exists that prevents compliance. A violation generally is a first degree misdemeanor subject to jail time of not more than 180 days, a fine of up to \$1,000, or both. A subsequent violation is a fourth degree felony subject to a definite prison term of 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months, a fine of up to \$5,000, or both. The average time served for those committing a fourth degree felony and released in calendar year 2016 was 1.08 years.

Civil penalties

The bill specifies, in circumstances related to a mifepristone abortion, when a pregnant woman is permitted: (1) to file a civil action for the wrongful death of the woman's unborn child, and (2) to file a civil action against a physician or facility that fails to give the woman the required materials or violates the bill's conditions.

The bill specifies that the employer or other principal of the physician is not liable in damages for a civil action unless the employer or principal had actual knowledge of, or, by the exercise of reasonable diligence, should have known that an employee or agent performed or induced the mifepristone abortion with actual knowledge that the bill's conditions had not been satisfied or with a heedless indifference as to whether the conditions had been satisfied. The employer or principal may be liable if the employer or principal negligently failed to secure the compliance of an employee or agent.

Fiscal effect

It is likely that violations of the bill's requirements will be few and infrequent, in particular in the case of physicians who would essentially be risking their careers by exposing themselves to the possibility of a criminal prosecution, civil action, and investigation by the State Medical Board. This suggests that violations will be infrequent, and there should be no discernible ongoing effect on the criminal and civil caseloads and related annual operating costs of common pleas, municipal, and county courts. The marginal annual cost of adding an offender to the prison system administered by the Department of Rehabilitation and Correction is \$3,000 to \$4,000. Additionally, it is possible that the State Medical Board may realize an increase in costs if it receives any questions regarding the bill's provisions, investigates or takes disciplinary action in any cases, or if it provides any education to physicians regarding these requirements.