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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 343
135th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Somani and Liston

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SUMMARY

Repealed statutes

Abortion prohibitions

- Repeals the entirety of the “Human Rights and Heartbeat Protection Act” (Heartbeat Act), which generally prohibits a person from performing or inducing an abortion on a pregnant woman (1) with the intent to terminate an unborn human individual’s life whose fetal heartbeat has been detected, or (2) without determining whether there is a detectable fetal heartbeat.
- Repeals laws that generally prohibit a person from performing or inducing an abortion on a pregnant woman when the probable post-fertilization age of the unborn child is 20 weeks or greater, including associated criminal, civil, and professional liabilities; the Ohio Pain-Capable Unborn Child Protection Act Litigation Fund; and related reporting requirements.

Limitations on medication abortion

- Repeals laws that prohibit a physician from personally furnishing or providing an abortion-inducing drug to a pregnant woman unless the physician is physically present where and when the initial dose of the drug is consumed, including associated criminal, civil, and professional liabilities.

Abortion-related informed consent requirements

- Repeals laws that prohibit an abortion being performed or induced (absent a medical emergency or medical necessity) unless certain conditions are satisfied and state-published materials are provided to the pregnant woman.

- Repeals laws that require the Department of Health (ODH) to publish materials that inform the pregnant woman of family planning information and the probable anatomical and physiological characteristics of the zygote, blastocyte, embryo, or fetus.
- Repeals laws that require the Department of Job and Family Services (ODJFS) to prepare and conduct a public information program on available governmental programs and agencies that provide services or assistance for family planning, prenatal care, child care, or alternatives to abortion.
- Repeals the law that requires a physician, if an obstetric ultrasound examination is performed before an abortion, to provide the woman an opportunity to view the active ultrasound image and offer to provide her with a physical picture of the ultrasound image.

Ambulatory surgical facility requirements

- Repeals various provisions related to ambulatory surgical facilities, including inspections for license renewal, written transfer agreement requirements, and variance procedures.

Public facility prohibition

- Repeals the law that prohibits any public facility from being used for the purpose of performing or inducing a nontherapeutic abortion.

Disposition of fetal remains

- Repeals laws that require the final disposition of fetal remains from a surgical abortion to be by cremation or internment, including all related provisions regarding making the disposition determination, requirements on abortion facilities and crematory operators, and criminal penalties.

Abortion reporting and notices

- Repeals laws requiring ODH to collect and collate abortion data.
- Repeals laws requiring attending physicians and hospitals to report various abortion data to ODH, including related to abortion complications.
- Repeals a requirement that an office or facility where abortions are performed or induced must post a notice that no one can force an individual to have an abortion.

Intervention in legal actions

- Repeals the law that allows the General Assembly to intervene in any case challenging the constitutionality of the laws prohibiting an abortion related to a finding of Down syndrome.

Telehealth

- Permits reproductive health care and related services to be provided as telehealth services.

Qualified immunity for reproductive health care

- Grants qualified immunity from civil liability, criminal liability, and professional discipline to a health care provider or reproductive health care helper for providing reproductive health care or to an individual for seeking reproductive health care.
- Specifies that the qualified immunity does not apply if the act or omission constitutes willful or wanton misconduct or reckless disregard for the consequences.

Data privacy for reproductive or sexual health information

- Prohibits, generally, a regulated entity from collecting, retaining, using, or disclosing personal reproductive or sexual health information, including disclosure to third parties such as other states and law enforcement.
- Establishes causes of civil actions for individuals and the Ohio Attorney General against regulated entities who fail to comply with the bill's requirements or violate its prohibitions.

Prohibition on abusive litigation

- Prohibits any person from taking part in abusive litigation against any reproductive health care provider, reproductive health care helper, or any individual accessing or seeking lawful reproductive health care in Ohio.
- Establishes a civil cause of action against any person who violates the bill's prohibition against abusive litigation.

Testimonial privilege

- Prohibits a patient from testifying about that patient's own reproductive health care, including miscarriage and abortion history, unless that patient consents to testifying.

Protection of patient records from out-of-state third parties

- Prohibits a health care provider or facility from being required or compelled to provide patient records to any out-of-state third party.

Employment discrimination

- Makes it an unlawful discriminatory practice under Ohio's Civil Rights Law for an employer to discriminate against a person because of any reproductive health decision made by the person, including a decision to use a particular drug, device, or medical service, including abortion and services related to a miscarriage or family planning.
- Adds abortion, miscarriage, and family planning to the definition of "because of sex" and "on the basis of sex" for purposes of the employment-related protections under Ohio's Civil Rights Law.
- Expands a provision of Ohio's Civil Rights Law that requires women affected by pregnancy, childbirth, or related medical conditions to be treated the same for all employment-

related purposes as other individuals similar in their ability or inability to work to include women affected by abortion, miscarriage, or family planning.

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DETAILED ANALYSIS

Article I, Section 22

On November 7, 2023, Ohio voters approved Issue 1, a citizen-initiated ballot issue entitled “The Right to Reproductive Freedom with Protections for Health and Safety.”¹ At present, the impact of this new constitutional provision on existing and future Revised Code provisions is unclear. The bill, entitled the Reproductive Care Act,² makes changes to Ohio’s abortion laws, as discussed below.

Repealed statutes

Abortion prohibitions

Fetal heartbeat abortion prohibition

The bill repeals S.B. 23 of the 133rd General Assembly, the “Human Rights and Heartbeat Protection Act” (Heartbeat Act). Under that law, a person is generally prohibited from knowingly and purposefully performing or inducing an abortion on a pregnant woman (1) 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 law, or (2) without determining whether there is a detectable fetal heartbeat.

Additionally, the bill repeals the Heartbeat Act’s abortion documentation requirements, reporting requirements (see below, “**Abortion reporting and notices**”), the associated criminal, civil, and professional liabilities for violating or failing to comply with the Act’s prohibitions and requirements, and the provisions that establish and govern the Joint Legislative Committee on Adoption Promotion and Support and the Foster Care and Adoption Initiatives Fund. The Committee, established “to ensure that citizens are informed of available options in this state,” is allowed to review or study any matter that it considers relevant to the adoption process in Ohio, especially mechanisms intended to increase awareness of the process, increase its effectiveness, or both. The fund is to consist of moneys collected by the State Medical Board for forfeitures assessed against persons who violate or fail to comply with requirements established in the Heartbeat Act.³ Since the bill repeals those requirements, it also repeals this fund.

For a complete analysis of the Heartbeat Act repealed by the bill, see [LSC’s Final Analysis of S.B. 23 \(PDF\)](#), which is available on the General Assembly’s website: legislature.ohio.gov.

¹ Ohio Constitution, Article I, Section 22.

² Section 9.

³ R.C. 2919.171, 2919.19 to 2919.1913, and 5103.11 (repealed), with conforming changes in R.C. 2919.10 and 4731.22(B)(46).

S.B. 23 was permanently enjoined by the Hamilton County Court of Common Pleas. That injunction is under appeal.⁴

Post-20 weeks abortion prohibition

The bill repeals the law that generally prohibits a person from purposely performing or inducing, or purposely attempting to perform or induce, an abortion on a pregnant woman when the probable post-fertilization age of the unborn child is 20 weeks or greater. The bill also repeals the associated criminal, civil, and professional liabilities for violating or failing to comply with the prohibition, the provision that establishes and governs the Ohio Pain-Capable Unborn Child Protection Act Litigation Fund, and the requirements for related abortion reporting to, and a public report issued by, the Department of Health (ODH).⁵

For a complete analysis of the repealed provisions, see LSC's [Final Analysis of S.B. 127 of the 131st General Assembly \(PDF\)](#), which is available on the General Assembly's website: legislature.ohio.gov.

Limitations on medication abortion

The bill repeals the prohibition on a physician personally furnishing or otherwise providing an abortion-inducing drug to a pregnant woman unless the physician is physically present at the location where the initial dose of the drug or regimen of drugs is consumed at the time the dose is consumed. The bill also repeals the associated criminal and professional liabilities for failing to comply with the prohibition.⁶

For a complete analysis of the repealed provision, see LSC's [Final Analysis of S.B. 260 of the 133rd General Assembly \(PDF\)](#), which is available on the General Assembly's website: legislature.ohio.gov. S.B. 260 is currently enjoined by the Hamilton County Court of Common Pleas pending resolution of a lawsuit scheduled for trial in March 2026.⁷

Abortion-related informed consent requirements

Continuing law prohibits a person from performing or inducing an abortion without the informed consent of the pregnant woman.⁸ The bill repeals the prohibition against an abortion

⁴ *Preterm-Cleveland v. Yost*, Hamilton C.P. No. A2203203 (October 24, 2024). See also *Preterm-Cleveland v. Yost*, Appeal No. C-2400668 (1st Dist. Ct. App. November 25, 2024).

⁵ R.C. 2307.54 and 2919.20 to 2919.205 (repealed), with conforming changes in R.C. 2305.11 and 4731.22(B)(43).

⁶ R.C. 2919.124 (repealed), with conforming changes in R.C. 109.572, 2953.25, 4729.291, 4731.22(C) and (I), and 4731.223.

⁷ *Planned Parenthood SW. Ohio Region v. Ohio Dep't of Health*, Hamilton C.P. No. A2101148 (August 29, 2024).

⁸ R.C. 2919.12(A).

being performed or induced, absent medical emergency or medical necessity, unless the following conditions are satisfied:⁹

- At least 24 hours before the abortion procedure, a physician meets with the pregnant woman in person in a private setting, gives her adequate opportunity to ask questions about the abortion, and informs her of specified information relating to the abortion and pregnancy.
- At least 24 hours before the abortion procedure, the physician or physician's agent must provide the pregnant woman with specified information on the physician who is scheduled to perform or induce the abortion and the ODH-published materials described below.
- Prior to the abortion procedure, the pregnant woman signs the statutorily regulated consent form and the physician or physician's agent receives a copy of the signed consent form.

The bill also repeals the requirements that ODH publish on its website, and make a copy available on request, materials that inform the pregnant woman of the following:

- Family planning information, publicly funded agencies available to assist in family planning, and public and private agencies and services available to assist her through the pregnancy, upon childbirth, and while the child is dependent, including adoption agencies.
- The probable anatomical and physiological characteristics of the zygote, blastocyte, embryo, or fetus, including any relevant information regarding the time when the fetus possibly would be viable.

The bill repeals the requirement that the Department of Job and Family Services (ODJFS) prepare and conduct a public information program to inform women of all available governmental programs and agencies that provide services or assistance for family planning, prenatal care, child care, or alternatives to abortion.

The associated civil and professional liabilities for a physician's failure to satisfy the required conditions related to informed consent are also repealed by the bill.¹⁰

24-hour parental notice before abortion

As described above, the bill repeals informed consent requirements that establish a 24-hour waiting period before a pregnant woman may obtain an abortion. The bill also eliminates the 24-hour specification in the continuing law requirement that an unemancipated minor's

⁹ The Franklin County Court of Common Pleas recently issued a preliminary injunction regarding the requirement that a physician meet with a woman seeking an abortion in person at least 24 hours prior to an abortion being performed or induced to provide state-mandated information. *Pre-term Cleveland v Yost*, Case No. 24 CV 2634 (August 23, 2024).

¹⁰ R.C. 2317.56 (repealed), with conforming changes in R.C. 2305.11, 3701.341, and 4731.22(B)(23).

parent be given at least 24-hours' notice before an abortion is performed or induced on the minor.¹¹ The bill maintains the parental notification requirement and the process under which a judge can excuse this requirement.¹²

Required ultrasound before abortion

The bill repeals the requirement that, if an obstetric ultrasound is performed prior to an abortion procedure, the physician performing or inducing the abortion must do both of the following prior to the abortion, at no additional charge to the pregnant woman:

- Provide her the opportunity to view the active ultrasound image;
- Offer to provide her with a physical picture of the ultrasound image.¹³

Ambulatory surgical facility requirements

The bill repeals numerous provisions related to ambulatory surgical facilities, which are generally considered outpatient surgical facilities under current law maintained by the bill.¹⁴

The bill repeals the following:

- A requirement that the ODH Director inspect ambulatory surgical facilities at the time of license renewal.¹⁵
- A requirement that an ambulatory surgical facility have a written transfer agreement with a local hospital that specifies a procedure for the safe and immediate transfer of patients from the facility to the hospital when medical care beyond the care that can be provided at the ambulatory surgical facility is necessary.¹⁶
- A requirement that a local hospital with which an ambulatory surgical facility has a transfer agreement cannot be further than 30 miles from the ambulatory surgical facility.¹⁷
- A process by which the ODH Director may grant a variance from the transfer agreement requirement described above, and related provisions, including (1) that a consulting physician with admitting privileges at a hospital within a 25-mile radius of the ambulatory surgical facility agree to provide back-up coverage when medical care beyond the level

¹¹ R.C. 2919.12(B)(1)(a)(i).

¹² R.C. 2919.12(B) through (E) in the bill and R.C. 2919.121, 2151.85, and 2505.073, not in the bill.

¹³ R.C. 2317.561 (repealed), with conforming changes in R.C. 4731.22(B)(37).

¹⁴ See R.C. 3702.30(A)(1).

¹⁵ R.C. 3702.302 (repealed).

¹⁶ R.C. 3702.303 (repealed).

¹⁷ R.C. 3702.3010 (repealed).

the facility can provide is necessary and (2) an authorization to impose conditions on a variance.¹⁸

- A prohibition on public hospitals (1) entering into transfer agreements with ambulatory surgical facilities where nontherapeutic abortions are performed or induced and (2) authorizing physicians with staff membership or professional privileges to use such membership or privileges for purposes of a variance application.¹⁹
- A requirement that an ambulatory surgical facility notify the ODH Director when there are changes to a transfer agreement or variance, or when an ambulatory surgical facility becomes aware of an event that may affect a consulting physician’s license to practice or ability to admit patients.²⁰
- A provision stating that the provisions described above are severable, and that if one is enjoined, it does not affect the remaining provisions.²¹

The bill does not repeal provisions related to quality standards for health care facilities generally, including the licensure requirements that apply to all ambulatory surgical facilities regardless of whether a facility is an abortion provider.²²

Public facility prohibition

The bill repeals the prohibition on any public facility being used for the purpose of performing or inducing a nontherapeutic abortion.²³ A “nontherapeutic abortion” is an abortion that is performed or induced when the life of the mother would not be endangered if the fetus were carried to term or when the pregnancy was not the result of rape or incest reported to a law enforcement agency.²⁴

Disposition of fetal remains from surgical abortion

The bill repeals the laws that require the final disposition of fetal remains from a surgical abortion to be by cremation or internment, including all related provisions regarding making the

¹⁸ R.C. 3702.304, 3702.305, 3702.306, 3702.309, and 3702.3011 (repealed). Note that portions of this law are currently enjoined. See *Women’s Med Dayton v. Vanderhoff*, No. A2200704 (Ohio C.C.P. April 15, 2022); see also Second Motion for Preliminary Injunction granted June 17, 2022, and the Plaintiff’s First Amended Complaint for Declaratory and Injunctive Relief filed on April 15, 2024.

¹⁹ R.C. 3727.60 (repealed).

²⁰ R.C. 3702.307 (repealed).

²¹ R.C. 3702.308 (repealed).

²² R.C. 3702.30.

²³ R.C. 5101.57 (repealed).

²⁴ A cross-reference error in R.C. 5101.57 refers to the definition of “nontherapeutic abortion” in R.C. 124.85. That section was renumbered to R.C. 9.04 by H.B. 153 of the 129th General Assembly (September 29, 2011).

disposition determination, requirements on abortion facilities and crematory operators, and criminal penalties.²⁵

More detailed information on the repealed provisions can be found in [LSC's Final Analysis of S.B. 27 \(PDF\)](#) of the 133rd General Assembly, which is available on the General Assembly's website: legislature.ohio.gov.

Abortion reporting and notices

The bill repeals laws requiring ODH to collect and collate abortion data and requiring specified reporting to ODH.²⁶ This includes eliminating the following requirements:

- That an attending physician complete an individual abortion report within 15 days after a woman is discharged;
- That the abortion report be made part of the medical record of the patient of the facility where the abortion was performed;
- That an attending physician includes in the abortion report a statement that the physician does not have knowledge that the abortion is being sought for reasons related to Down syndrome of the unborn child (note that the prohibition on abortion if the reason for seeking the abortion is related to Down syndrome of the unborn child is not repealed;²⁷ only the requirement relating to the abortion report is repealed);²⁸
- That physicians complete post abortion complication forms each time they treat post abortion complications;
- That each hospital file monthly and annual reports listing the total number of women who have undergone an abortion after 12 weeks and received post abortion care;
- That ODH issue annual reports of abortion data, including related to complications.

The bill eliminates the associated professional disciplinary authority against physicians who fail to comply with the reporting described above. It also eliminates a requirement that

²⁵ R.C. 3726.01, 3726.02, 3726.03, 3726.04, 3726.041, 3726.042, 3726.05, 3726.09, 3726.10, 3726.11, 3726.12, 3726.13, 3726.14, 3726.15, 3726.16, 3726.95, 3726.99, and 4717.271 (repealed). Note that these laws are currently enjoined. See *Planned Parenthood Southwest Ohio Region v. Ohio Dept. of Health*, S.D. Ohio No. 1:21-cv-00189, 2021 U.S. Dist. LEXIS 59159 (March 29, 2021); see also Second Motion for Preliminary Injunction granted January 31, 2022, and the Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief filed on April 15, 2024.

²⁶ R.C. 2919.202, 2919.171, and 3701.79 (repealed), with conforming changes in R.C. 3701.792 and 3702.30.

²⁷ R.C. 2919.10.

²⁸ R.C. 2919.101 (repealed).

certain Medical Board renewal notices inform applicants of the repealed reporting requirements.²⁹

Notice posted where abortions performed

The bill repeals a requirement that an office or facility at which abortions are performed or induced must post a notice published on ODH's website that no one can force an individual to have an abortion. The repealed law specifies that the notice must be in a conspicuous location in an area of the office or facility that is accessible to all patients, employees, and visitors, and that it be certain dimensions and in certain typeface. The bill eliminates the associated professional disciplinary authority against physicians who fail to comply with the requirement described above.³⁰

Intervention in legal actions

The bill repeals the provision that allows the General Assembly, by joint resolution, to appoint one or more of its members to intervene in any case that challenges the constitutionality of the continuing law prohibiting abortion related to a finding of Down syndrome.³¹

Telehealth

The bills adds to Ohio's existing telehealth law, which generally permits various health care professionals to provide telehealth services, a provision that authorizes reproductive health care and related services to be provided as telehealth services.³² Under continuing law, "telehealth services" are health care services provided through the use of information and communication technology by a health care professional, within the professional's scope of practice, who is located at a site other than the site where the patient or health care professional is located.³³

Qualified immunity for reproductive health care

The bill grants qualified immunity to health care providers providing reproductive health care, reproductive health care helpers, and individuals seeking reproductive health care. The bill specifies that, except as otherwise provided in continuing laws that govern abortion, a health care provider providing reproductive health care, a health care facility where reproductive health care is provided, an individual seeking or accessing reproductive health care, or a reproductive health care helper is not liable for injury, death, or loss to person or property that allegedly arises from an act or omission associated with providing reproductive health care. This qualified civil immunity applies to all of the following:

- Damages in a civil action;

²⁹ R.C. 4731.22(B)(21) and 4731.293(E)(1) and R.C. 4731.281(E) (repealed).

³⁰ R.C. 3701.791 and 4731.22(B)(39) (repealed), with conforming changes in R.C. 3702.30(G).

³¹ R.C. 2919.10(H) (repealed).

³² R.C. 4743.09(H).

³³ R.C. 4743.09(A)(6).

- Prosecution in a criminal proceeding; or
- Professional disciplinary action.

The immunity does not apply if the act or omission constitutes willful or wanton misconduct or reckless disregard for the consequences so as to affect the life or health of the patient.³⁴ The bill defines the following terms:

- “Reproductive health care” is all medical, surgical, counseling, or referral services that are lawful in Ohio or the receipt of products relating to the human reproductive system that is lawful in Ohio, including services or products relating to the use or intended use of a particular medicine or device, medical service or procedure, practice, or similar intervention, that are related to the human reproductive system, including fertility-related medical procedures or medicines; sexually transmitted disease prevention, testing, or treatment; gender affirming care; and family planning services and counseling, such as those related to birth control medication or supplies, other contraception methods, sterilization procedures, pregnancy testing, or the intended or actual initiation or termination of a pregnancy.³⁵
- “Reproductive health care helper” is a person who facilitates or otherwise has supported or is supporting an individual in seeking or receiving reproductive health care in Ohio, including a person who provides funding, lodging, transportation, doula services, information, data sharing services such as electronic medical records programs, or other financial or practical support to an individual seeking or receiving reproductive health care.³⁶

Data privacy for reproductive or sexual health information

The bill adds new privacy protections related to reproductive or sexual health information that apply to entities that are not covered under current state and federal laws that protect patient health information.

Data restrictions

Under the bill, a regulated entity cannot collect, retain, use, or disclose personal reproductive or sexual health information, except in either of the following circumstances:

- With the express consent of the individual to whom the information relates;
- As is strictly necessary to provide a product or service that the individual has requested.

The regulated entity must restrict access to personal reproductive or sexual health information to its employees or service providers for which access is necessary to provide a requested product or service to the individual.

³⁴ R.C. 2305.2312.

³⁵ R.C. 3732.07(E).

³⁶ R.C. 3732.07(F).

For purposes of compliance with the bill's data restriction requirements by a service provider of a regulated entity, a request from an individual to the regulated entity for a product or service, and an express consent from the individual to the regulated entity, must be treated as having also been provided to the service provider.³⁷

Mechanisms to access and delete data

The bill requires a regulated entity to make available a reasonable mechanism by which an individual, upon a verified request, may do the following:

1. Access both of the following:
 - a. The individual's personal reproductive or sexual health information that is retained by the regulated entity, including how and from which third parties the regulated entity collected any information and information that the regulated entity inferred about the individual;
 - b. A list of the third parties to which the regulated entity disclosed the individual's personal reproductive or sexual health information.
2. Request the deletion of any retained personal reproductive or sexual health information related to the individual, including any information that the entity collected from a third party or inferred from other retained information.

The information described in (1) above must be made available in both a human-readable format and a structured, interoperable, and machine-readable format. The regulated entity is required to comply with a verified request without undue delay, but no later than 15 days after the date the verified request was received. The entity cannot charge the individual a fee for the request.

Nothing in the bill's provisions can be construed to require a regulated entity to do any of the following:

- Take an action that would convert information that is not personal information into personal information;
- Collect or retain personal information that the regulated entity would otherwise not collect or retain;
- Retain personal information longer than the regulated entity would otherwise retain the information.

The bill defines "reasonable mechanism," with respect to a regulated entity and a right described under (2) above, as a mechanism to which both of the following apply:

- Is equivalent in availability and ease of use to that of other mechanisms for communicating or interacting with the regulated entity;

³⁷ R.C. 3732.02.

- Includes an online means of exercising the right described under (2) above.³⁸

Privacy policy

Under the bill, a regulated entity must maintain a privacy policy relating to the entity's practices regarding the collecting, retaining, using, and disclosing of personal reproductive or sexual health information. If the entity has a website, it must prominently publish the privacy policy on its website. The privacy policy must be clear and conspicuous and include all of the following:

- A description of the entity's practices regarding the collecting, retaining, using, and disclosing of personal reproductive or sexual health information;
- A clear and concise statement of the categories of the information collected, retained, used, or disclosed;
- A clear and concise statement of the entity's purposes for the collecting, retaining, using, or disclosing of the information;
- A list of the third parties to which the entity discloses the information, and a clear and concise statement of the purposes for disclosing the information, including how the information may be used by each third party;
- A list of the third parties from which the entity has collected the information, and a clear and concise statement of the purposes for which the information is collected;
- A clear and concise statement describing the extent to which individuals may exercise control over the collecting, retaining, using, and disclosing of personal reproductive or sexual health information, and the steps an individual must take to implement control;
- A clear and concise statement describing the efforts of the entity to protect personal reproductive or sexual health information from unauthorized disclosure.³⁹

Enforcement mechanisms

Individual civil action

The bill allows any individual alleging a violation of its provisions governing data privacy to bring a civil action in any court of competent jurisdiction. If the individual prevails, the court may award the following:

- An amount not less than \$100 and not greater than \$1,000 per violation per day, or actual damages, whichever is greater;
- Punitive damages;
- Reasonable attorneys' fees and litigation costs;

³⁸ R.C. 3732.03.

³⁹ R.C. 3732.04.

- Any other relief, including equitable or declaratory relief, that the court determines appropriate.

A violation of the bill's data privacy requirements constitutes a concrete and particularized injury in fact to the individual to whom the information relates. No pre-dispute arbitration agreement or pre-dispute joint-action waiver is valid or enforceable with respect to a dispute arising from a data privacy violation. Any determination as to whether or how the bill's provision governing pre-dispute arbitration agreements and joint-action waivers applies must be made by a court, rather than an arbitrator, without regard to whether the agreement purports to delegate the determination to an arbitrator.

The bill defines the following terms for purposes of its individual civil action provisions:

- "Pre-dispute arbitration agreement" is any agreement to arbitrate a dispute that has not arisen at the time of the making of the agreement.
- "Pre-dispute joint-action waiver" means an agreement that would prohibit a party from participating in a joint, class, or collective action in a judicial, arbitral, administrative, or other forum, concerning a dispute that has not yet arisen at the time of the making of the agreement.⁴⁰

Unfair or deceptive act or practice

The bill additionally provides that a violation of the bill's data privacy requirements is an unfair or deceptive act or practice in violation of Ohio's existing Consumer Sales Practices Act. The Attorney General is required to ensure compliance with the bill's data privacy act requirements in the same manner, by the same means, and with the same jurisdiction, powers, and duties as are applicable for violations of the Consumer Sales Practices Act. The Attorney General may adopt related rules in accordance with the Administrative Procedure Act.⁴¹

A person injured by a violation of the bill's data privacy requirements has a cause of action and is entitled to the same relief available to a consumer under the Consumer Sales Practices Act.⁴²

Data privacy definitions

The bill defines the following terms for purposes of its data privacy provisions:

- "Collect" means for a regulated entity to obtain personal reproductive or sexual health information in any manner.
- "Commerce" means commerce among the several states or with foreign nations, or in any territory of the United States or in the District of Columbia, or between any such

⁴⁰ R.C. 3732.05.

⁴¹ R.C. 3732.06; R.C. 1345.02 to 1345.13, not in the bill.

⁴² See R.C. 1345.09, not in the bill.

territory and another, or between any such territory and any state or foreign nation, or between the District of Columbia and any state or territory or foreign nation.⁴³

- “Disclose” means for a regulated entity to release, transfer, sell, provide access to, license, or divulge personal reproductive or sexual health information in any manner to a third party, including the federal government, the state, any political subdivision, or a law enforcement agency.
- “Express consent” means informed, opt-in, voluntary, specific, and unambiguous written consent, including by electronic means, to collecting, retaining, using, or disclosing personal reproductive or sexual health information.

“Express consent” does not include any of the following:

- Consent secured without first providing to the individual a clear and conspicuous disclosure, apart from any privacy policy, terms of service, terms of use, general release, user agreement, or other similar document, of all information material to the provision of consent;
 - Hovering over, muting, pausing, or closing a given piece of content;
 - Agreement obtained through the use of a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision-making, or choice.
- “Personal information” means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly to, a particular individual.
 - “Personal reproductive or sexual health information” means personal information relating to the past, present, or future reproductive or sexual health of an individual, including any of the following:
 - Efforts to research or obtain reproductive or sexual information, services, or supplies, including location information that might indicate an attempt to acquire or receive such information, services, or supplies;
 - Reproductive or sexual health conditions, status, diseases, or diagnoses, including pregnancy, menstruation, ovulation, and the ability to conceive a pregnancy, regardless of whether the individual is sexually active and engaging in unprotected sex;
 - Reproductive and sexual health-related surgeries or procedures, including the termination of a pregnancy;
 - Use or purchase of contraceptives, birth control, or any medication related to reproductive health, including abortifacients;

⁴³ “Federal Trade Commission Act,” 15 United States Code (U.S.C.) 44, not in the bill.

- Bodily functions, vital signs, measurements, or symptoms related to menstruation or pregnancy, such as basal temperature, cramps, bodily discharge, or hormone levels;
 - Any information about diagnoses or diagnostic testing, treatment, medications, or the use of any product or service relating to the matters described above;
 - Any information described above that is derived or extrapolated from nonhealth information, including proxy, derivative, inferred, emergent, or algorithmic data.
 - “Regulated entity” means any entity, to the extent the entity is engaged in activities in or affecting commerce, that is either:
 - A person, partnership, or corporation subject to the jurisdiction of the Federal Trade Commission;
 - Notwithstanding federal law governing the Commission’s powers to investigate and prevent certain entities from using unfair or deceptive methods to affect commerce⁴⁴ or any jurisdictional limitation of the Commission, either of the following:
 - ❖ A common carrier subject to the “Communications Act of 1934”;⁴⁵
 - ❖ An organization not organized to carry on business for its own profit or that of its members.
- “Regulated entity” does not include any of the following:
- A covered entity or business associate under the HIPAA privacy regulations;⁴⁶
 - An entity that is subject to records disclosure restrictions under the “Public Health Service Act.”⁴⁷
- “Service provider” means a person to whom both of the following apply:
 - Collects, retains, uses, or discloses personal reproductive or sexual health information for the sole purpose of, and only to the extent that the person is, conducting business activities on behalf of, for the benefit of, under instruction of, and under contractual agreement with a regulated entity and not any other individual or entity;
 - Does not divulge personal reproductive or sexual health information to any individual or entity other than the regulated entity or a contractor to the service provider bound to information processing terms not less restrictive than terms to which the service provider is bound.

⁴⁴ Section 4, 5(a)(2), or 6 of the “Federal Trade Commission Act,” 15 U.S.C. 44; 45(a)(2); and 46, not in the bill.

⁴⁵ 47 U.S.C. 151 *et seq.*, not in the bill.

⁴⁶ Section 1180(b)(3) of the “Social Security Act,” 42 U.S.C. 1320d-9(b)(3), not in the bill.

⁴⁷ Section 543 of the “Public Health Service Act,” 42 U.S.C. 290dd-2, not in the bill.

A person shall only be considered a service provider in the course of the collection, retention, use, or disclosure activities described above.

- “Third party” means any person who is not any of the following:
 - The regulated entity that is disclosing or collecting personal reproductive or sexual health information;
 - The individual to whom the personal reproductive or sexual health information relates;
 - A service provider.⁴⁸

Prohibition on abusive litigation

Against reproductive health care patients, providers, and helpers

Under the bill, no person can take part in abusive litigation against any Ohio reproductive health care patient that the person knows or should know will constitute a wrongful action where liability, in whole or in part, is based on an individual seeking or receiving lawful reproductive health care in Ohio. Additionally, the bill generally prohibits a person from taking part in abusive litigation against a reproductive health care provider or reproductive health care helper that the person knows or should know will constitute a wrongful action where liability, in whole or in part, is related to either of the following:

- The alleged provision of, the alleged seeking of, or an individual allegedly receiving reproductive health care in Ohio;
- The alleged aiding or assisting in the provision, seeking, or receipt of lawful reproductive health care in Ohio.

The provision prohibiting abusive litigation against a reproductive health care provider or reproductive health care helper does not apply to either of the following:

- A tort, contract, or statute-based litigation, if a similar claim would exist under Ohio law if brought by the individual who received the reproductive health care service on which the original lawsuit was based, or if brought by the individual’s authorized legal representative, for damages suffered from harm to the individual or another’s loss of consortium with the individual;
- A breach of contract litigation, if a similar claim would exist under Ohio law if brought or sought to be enforced by a party with a contractual relationship with the person that is the subject of the action in another state.

Any person aggrieved by a violation of the provisions governing abusive litigation may bring a civil action in a court of competent jurisdiction against an abusive litigant and may recover, for each violation, the following:

⁴⁸ R.C. 3732.01.

- Actual damages created by the wrongful action, including money damages and reasonable attorneys' fees and costs incurred to defend against such wrongful action, whether or not a judgment was awarded;
- Reasonable attorneys' fees and costs incurred to bring the action;
- Any other legal or equitable relief as the court may determine appropriate to remedy the violation.⁴⁹

Construction and interpretation of statutes

Nothing in the bill's abusive litigation provisions can be construed to do the following:

- Apply to a lawsuit brought in another jurisdiction where no part of the acts that formed the basis for liability occurred in Ohio or application of the bill's abusive litigation provisions would result in the extraterritorial application of those sections in a manner that is not incidental;
- Limit the rights of an aggrieved person to recover damages or seek legal protection under any other applicable law or legal theory.

Further, the bill requires that the provisions governing the prohibition against abusive litigation be interpreted consistently with the U.S. Constitution and other applicable laws and must not unlawfully prohibit constitutionally protected activity.⁵⁰

Abusive litigation definitions

The bill defines the following terms:

- "Abusive litigant" is a person who voluntarily initiates or intervenes in abusive litigation.
- "Abusive litigation" is litigation or other legal action, whether civil or criminal, that is intended to deter, prevent, sanction, or punish any person providing or obtaining reproductive health care, or assisting another to receive or provide reproductive health care by either of the following:
 - Filing or prosecuting any action where liability, in whole or in part, is based on reproductive health care that occurred in Ohio, was provided in Ohio, or was intended to be obtained or provided in Ohio, including any action in which liability is based on any theory of vicarious, joint, or several liability derived therefrom;
 - Attempting to enforce any order or judgment issued in connection with any action described above against an Ohio protected party.
- "Contraception" is any medication, device, procedure, or practice designed or employed to prevent pregnancy, the use of which is lawful in Ohio.

⁴⁹ R.C. 3732.08.

⁵⁰ R.C. 3732.09.

- “Protected party” is a reproductive health care provider, a reproductive health care helper, or an individual accessing or seeking to access reproductive health care in Ohio.
- “Reproductive health care” and “reproductive health care helper” have the same meanings as used in the bill’s provisions regarding **“Qualified immunity for reproductive health care,”** above.
- “Take part in abusive litigation” means to voluntarily engage in abusive litigation without legal compulsion in a manner that is intended to deter, prevent, sanction, or punish a protected party for such party’s connection to reproductive health care in Ohio.
- “Wrongful action” is the procurement, initiation, or continuation of abusive litigation that causes harm to a protected party where any of the following apply:
 - An Ohio court definitively concludes that the abusive litigation is plainly baseless as a matter of law;
 - The abusive litigation at issue was voluntarily withdrawn or dismissed or dismissed by the court and there was no objective basis to conclude the abusive litigation would result in an enforceable judgment against the protected party;
 - An abusive litigant has obtained a judgment in a foreign state through abusive litigation and sought to enforce that judgment in Ohio, but enforcement has been refused because the judgment is penal in nature or proscribes future conduct, the original court lacked jurisdiction, or the court has otherwise recognized an exception to recognition of such judgment, and there was no objective basis to conclude the judgment would be enforceable against the protected party in Ohio;
 - An abusive litigant has collected on a judgment obtained through abusive litigation predicated, in whole or in material part, on conduct that occurred in Ohio and to which all of the following apply:
 - ❖ The conduct was lawful in Ohio at the time it took place;
 - ❖ There is no comparable cause of action or liability under Ohio law;
 - ❖ There is no law or legal principle that prevents the recoupment of damages for the harm caused to the protected party aggrieved by the abusive litigation.⁵¹

Testimonial privilege

The bill prohibits a patient from testifying about that patient’s own reproductive health care, including miscarriage and abortion history, unless that patient consents to testifying.⁵² Testimonial privilege is a right granted by law not to testify, or in some instances to prevent another from testifying.

⁵¹ R.C. 3732.07.

⁵² R.C. 2317.02(M).

Protection of patient records from out-of-state third party

Under the bill, no health care provider or health care facility can be required or compelled to provide patient records to any out-of-state third party, including the federal government, another state, any political subdivision, or a law enforcement agency.

The bill defines the following terms:

- “Health care facility” is a hospital, clinic, ambulatory surgical treatment center, other center, medical school, office of a physician, infirmary, dispensary, medical training institution, or other institution or location in or at which medical care, treatment, or diagnosis is provided to a person.
- “Health care provider” is an advanced practice registered nurse, a registered nurse, a pharmacist, a dentist, an optometrist, a physician, a physician assistant, or a hospital.⁵³

Employment discrimination

The bill expands Ohio’s Civil Rights Law⁵⁴ to make it an unlawful discriminatory practice for an employer to discriminate against a person because of any reproductive health decision made by the person, including a decision to use a particular drug, device, or medical service, including abortion and services related to a miscarriage or family planning. Under continuing law, it is an unlawful discriminatory practice for an employer to discharge without just cause, to refuse to hire, or otherwise to discriminate against a person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of the person’s race, color, religion, sex, military status, national origin, disability, age, or ancestry. An “employer” means the state, any Ohio political subdivision, any person employing four or more persons within Ohio, and any agent of the state, political subdivision, or person.⁵⁵

The bill adds abortion, miscarriage, and family planning to the definition of “because of sex” and “on the basis of sex” for purposes of the employment-related protections under Ohio’s Civil Rights Law. Ohio’s Civil Rights Law currently specifies that employment-related discrimination “because of sex” or “on the basis of sex” includes discrimination because of or on the basis of pregnancy, an illness arising out of and occurring during the course of a pregnancy, childbirth, or related medical conditions.

Additionally, the bill expands a provision of Ohio’s Civil Rights Law that requires women affected by pregnancy, childbirth, or related medical conditions to be treated the same for all employment-related purposes as other individuals similar in their ability or inability to work to include women affected by abortion, miscarriage, and family planning.⁵⁶

⁵³ R.C. 3732.11; R.C. 2925.11 and 2305.2311, not in the bill.

⁵⁴ R.C. Chapter 4112.

⁵⁵ R.C. 4112.01 and 4112.02.

⁵⁶ R.C. 4112.01(B).

Continuing law enforcement

Under continuing law, a person may file a charge alleging an unlawful discriminatory practice relating to employment under Ohio’s Civil Rights Law with the Ohio Civil Rights Commission (OCRC). The OCRC may also conduct, on its own initiative and independent of the filing of any charge, a preliminary investigation relating to any alleged unlawful discriminatory practice relating to employment. A person may also sue based on an alleged unlawful discriminatory practice relating to employment under certain circumstances, but generally the person must file a charge with the OCRC and receive a right to sue notice before filing suit. Remedies available for a violation of Ohio’s Civil Rights Law include injunctive relief, damages, including back pay, and other affirmative action necessary to effectuate the law, including requiring an employer to hire, reinstate, or promote an individual adversely affected by the unlawful discriminatory practice.⁵⁷

HISTORY

Action	Date
Introduced	11-29-23

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⁵⁷ R.C. 4112.051 and 4112.052, not in the bill.