

**As Concurred by the House**

**126th General Assembly  
Regular Session  
2005-2006**

**Sub. H. B. No. 287**

**Representatives Aslanides, Kearns, Carmichael, Gibbs, McGregor, J., Dolan,  
Collier, Hood, Reidelbach, Barrett, Daniels, Evans, D., Flowers, Hagan,  
Hughes, Law, Schlichter, Schneider, Stewart, J., Uecker, Wagoner  
Senators Coughlin, Gardner, Jacobson, Clancy, Amstutz, Cates, Grendell,  
Harris, Hottinger, Jordan, Mumper, Padgett, Schuler, Schuring, Spada,  
Wachtmann**

—

**A B I L L**

To amend sections 3702.30 and 3702.31 and to enact 1  
sections 2305.116 and 3702.301 of the Revised Code 2  
to exempt certain freestanding birthing centers 3  
from the requirement that a center obtain a health 4  
care facility license from the Director of Health 5  
and to provide that there is no cause of action on 6  
a medical claim that because of an act or omission 7  
an abortion was not performed. 8

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 3702.30 and 3702.31 be amended and 9  
sections 2305.116 and 3702.301 of the Revised Code be enacted to 10  
read as follows: 11

**Sec. 2305.116.** (A) No person has a civil action or may 12  
receive an award of damages in a civil action, and no other person 13  
shall be liable in a civil action, upon a medical claim that 14  
because of an act or omission by the other person the person was 15

not aborted. 16

(B) No person has a civil action or may receive an award of 17  
damages in a civil action, and no other person shall be liable in 18  
a civil action, upon a medical claim that because of an act or 19  
omission by the other person a child was not aborted. 20

(C) Nothing in this section shall preclude a person from 21  
bringing a civil action or from receiving an award of damages in a 22  
medical claim based upon an intentional or willful 23  
misrepresentation or omission of information related to medical 24  
diagnosis, care, or treatment. 25

(D) As used in this section, "medical claim" has the same 26  
meaning as in section 2305.113 of the Revised Code. 27

**Sec. 3702.30.** (A) As used in this section: 28

(1) "Ambulatory surgical facility" means a facility, whether 29  
or not part of the same organization as a hospital, that is 30  
located in a building distinct from another in which inpatient 31  
care is provided, and to which any of the following apply: 32

(a) Outpatient surgery is routinely performed in the 33  
facility, and the facility functions separately from a hospital's 34  
inpatient surgical service and from the offices of private 35  
physicians, podiatrists, and dentists. 36

(b) Anesthesia is administered in the facility by an 37  
anesthesiologist or certified registered nurse anesthetist, and 38  
the facility functions separately from a hospital's inpatient 39  
surgical service and from the offices of private physicians, 40  
podiatrists, and dentists. 41

(c) The facility applies to be certified by the United States 42  
~~health care financing administration~~ centers for medicare and 43  
medicaid services as an ambulatory surgical center for purposes of 44

reimbursement under Part B of the medicare program, Part B of 45  
Title XVIII of the "Social Security Act," 49 79 Stat. 620 286 46  
(~~1935~~ 1965), 42 U.S.C.A. ~~301~~ 1395, as amended. 47

(d) The facility applies to be certified by a national 48  
accrediting body approved by the ~~health care financing~~ 49  
~~administration~~ centers for medicare and medicaid services for 50  
purposes of deemed compliance with the conditions for 51  
participating in the medicare program as an ambulatory surgical 52  
center. 53

(e) The facility bills or receives from any third-party 54  
payer, governmental health care program, or other person or 55  
government entity any ambulatory surgical facility fee that is 56  
billed or paid in addition to any fee for professional services. 57

(f) The facility is held out to any person or government 58  
entity as an ambulatory surgical facility or similar facility by 59  
means of signage, advertising, or other promotional efforts. 60

"Ambulatory surgical facility" does not include a hospital 61  
emergency department. 62

(2) "Ambulatory surgical facility fee" means a fee for 63  
certain overhead costs associated with providing surgical services 64  
in an outpatient setting. A fee is an ambulatory surgical facility 65  
fee only if it directly or indirectly pays for costs associated 66  
with any of the following: 67

(a) Use of operating and recovery rooms, preparation areas, 68  
and waiting rooms and lounges for patients and relatives; 69

(b) Administrative functions, record keeping, housekeeping, 70  
utilities, and rent; 71

(c) Services provided by nurses, orderlies, technical 72  
personnel, and others involved in patient care related to 73  
providing surgery. 74

"Ambulatory surgical facility fee" does not include any additional payment in excess of a professional fee that is provided to encourage physicians, podiatrists, and dentists to perform certain surgical procedures in their office or their group practice's office rather than a health care facility, if the purpose of the additional fee is to compensate for additional cost incurred in performing office-based surgery.

(3) "Governmental health care program" has the same meaning as in section 4731.65 of the Revised Code.

(4) "Health care facility" means any of the following:

(a) An ambulatory surgical facility;

(b) A freestanding dialysis center;

(c) A freestanding inpatient rehabilitation facility;

(d) A freestanding birthing center;

(e) A freestanding radiation therapy center;

(f) A freestanding or mobile diagnostic imaging center.

(5) "Third-party payer" has the same meaning as in section 3901.38 of the Revised Code.

(B) By rule adopted in accordance with sections 3702.12 and 3702.13 of the Revised Code, the director of health shall establish quality standards for health care facilities. The standards may incorporate accreditation standards or other quality standards established by any entity recognized by the director.

(C) Every ambulatory surgical facility shall require that each physician who practices at the facility comply with all relevant provisions in the Revised Code that relate to the obtaining of informed consent from a patient.

(D) The director shall issue a license to each health care facility that makes application for a license and demonstrates to

the director that it meets the quality standards established by 104  
the rules adopted under division (B) of this section and satisfies 105  
the informed consent compliance requirements specified in division 106  
(C) of this section. 107

(E)(1) ~~No~~ Except as provided in section 3702.301 of the 108  
Revised Code, no health care facility shall operate without a 109  
license issued under this section. 110

(2) If the department of health finds that a physician who 111  
practices at a health care facility is not complying with any 112  
provision of the Revised Code related to the obtaining of informed 113  
consent from a patient, the department shall report its finding to 114  
the state medical board, the physician, and the health care 115  
facility. 116

(3) This division does not create, and shall not be construed 117  
as creating, a new cause of action or substantive legal right 118  
against a health care facility and in favor of a patient who 119  
allegedly sustains harm as a result of the failure of the 120  
patient's physician to obtain informed consent from the patient 121  
prior to performing a procedure on or otherwise caring for the 122  
patient in the health care facility. 123

(F) The rules adopted under division (B) of this section 124  
shall include all of the following: 125

(1) Provisions governing application for, renewal, 126  
suspension, and revocation of a license under this section; 127

(2) Provisions governing orders issued pursuant to section 128  
3702.32 of the Revised Code for a health care facility to cease 129  
its operations or to prohibit certain types of services provided 130  
by a health care facility; 131

(3) Provisions governing the imposition under section 3702.32 132  
of the Revised Code of civil penalties for violations of this 133

section or the rules adopted under this section, including a scale 134  
for determining the amount of the penalties. 135

Sec. 3702.301. (A) Except as provided in division (C) of this 136  
section, a freestanding birthing center is not required to obtain 137  
a license under section 3702.30 of the Revised Code if all of the 138  
following are the case: 139

(1) A religious denomination, sect, or group owns and 140  
operates the center. 141

(2) Requiring that the center be licensed significantly 142  
abridges or infringes on the religious practices or beliefs of 143  
that religious denomination, sect, or group. 144

(3) The center provides care only during low-risk pregnancy, 145  
delivery, and the immediate postpartum period exclusively to women 146  
who are members of that religious denomination, sect, or group. 147

(4) The center monitors and evaluates the care provided to 148  
its patients in accordance with at least the minimum patient 149  
safety monitoring and evaluation requirements established in rules 150  
adopted under division (D) of this section. 151

(5) The center meets the quality assessment and improvement 152  
standards established in rules adopted under division (D) of this 153  
section. 154

(B) If the director determines that a freestanding birthing 155  
center is no longer exempt from the requirement to obtain a 156  
license under section 3702.30 of the Revised Code because the 157  
center ceases to comply with division (A)(4) or (5) of this 158  
section, the director may order the center to come into 159  
compliance. In the order, the director may do all of the 160  
following: 161

(1) Identify what the center is not in compliance with and 162  
what the center needs to do to come into compliance; 163

(2) Require that the center come into compliance within a period of time specified in the order; 164  
165

(3) Require that the center provide the director a written notice within a period of time specified in the order that contains all of the following: 166  
167  
168

(a) Certification that the center has come into compliance; 169

(b) The signature of the center's administrator or medical director and certification that the administrator or medical director, whichever signs the notice, is the center's authorized representative; 170  
171  
172  
173

(c) Certification that the information contained in the notice and in any accompanying documentation is true and accurate; 174  
175

(d) Any other information or documentation that the director may require to verify that the center has come into compliance. 176  
177

(C) If the director issues an order to a freestanding birthing center under division (B) of this section and the center fails to comply with the order within the time specified in the order, the director may issue a second order that requires the center to cease operations until the center obtains a license under section 3702.30 of the Revised Code. 178  
179  
180  
181  
182  
183

(D) The director of health shall adopt rules in accordance with Chapter 119. of the Revised Code as necessary to implement this section. The rules shall establish all of the following: 184  
185  
186

(1) Minimum patient safety monitoring and evaluation requirements; 187  
188

(2) Quality assessment and improvement standards; 189

(3) Procedures for determining whether freestanding birthing centers are in compliance with the rules. 190  
191

**Sec. 3702.31.** (A) The quality monitoring and inspection fund 192

is hereby created in the state treasury. The director of health 193  
shall use the fund to administer and enforce this section and 194  
sections 3702.11 to 3702.20, 3702.30, 3702.301, and 3702.32 of the 195  
Revised Code and rules adopted pursuant to those sections. The 196  
director shall deposit in the fund any moneys collected pursuant 197  
to this section or section 3702.32 of the Revised Code. All 198  
investment earnings of the fund shall be credited to the fund. 199

(B) The director of health shall adopt rules pursuant to 200  
Chapter 119. of the Revised Code establishing fees for both of the 201  
following: 202

(1) Initial and renewal license applications submitted under 203  
section 3702.30 of the Revised Code. The fees established under 204  
division (B)(1) of this section shall not exceed the actual and 205  
necessary costs of performing the activities described in division 206  
(A) of this section. 207

(2) Inspections conducted under section 3702.15 or 3702.30 of 208  
the Revised Code. The fees established under division (B)(2) of 209  
this section shall not exceed the actual and necessary costs 210  
incurred during an inspection, including any indirect costs 211  
incurred by the department for staff, salary, or other 212  
administrative costs. The director of health shall provide to each 213  
health care facility or provider inspected pursuant to section 214  
3702.15 or 3702.30 of the Revised Code a written statement of the 215  
fee. The statement shall itemize and total the costs incurred. 216  
Within fifteen days after receiving a statement from the director, 217  
the facility or provider shall forward the total amount of the fee 218  
to the director. 219

(3) The fees described in divisions (B)(1) and (2) of this 220  
section shall meet both of the following requirements: 221

(a) For each service described in section 3702.11 of the 222  
Revised Code, the fee shall not exceed one thousand seven hundred 223



fifty dollars annually, except that the total fees charged to a health care provider under this section shall not exceed five thousand dollars annually.

(b) The fee shall exclude any costs reimbursable by the United States ~~health care financing administration~~ centers for medicare and medicaid services as part of the certification process for the medicare program established under Title XVIII of the "Social Security Act," ~~49~~ 79 Stat. ~~620~~ 286 (1935), 42 U.S.C.A. ~~301~~ 1395, as amended, and the medicaid program established under Title XIX of ~~that act~~ the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1396.

(4) The director shall not establish a fee for any service for which a licensure or inspection fee is paid by the health care provider to a state agency for the same or similar licensure or inspection.

**Section 2.** That existing sections 3702.30 and 3702.31 of the Revised Code are hereby repealed.