

As Introduced

**129th General Assembly
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H. B. No. 7

Representative Fende

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A B I L L

To amend sections 2305.11, 2307.52, and 2919.16, to 1
enact new sections 2919.17 and 2919.18, and to 2
repeal sections 2919.17 and 2919.18 of the Revised 3
Code to revise the criminal laws governing 4
post-viability abortions. 5

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

Section 1. That sections 2305.11, 2307.52, and 2919.16 be 6
amended and new sections 2919.17 and 2919.18 of the Revised Code 7
be enacted to read as follows: 8

Sec. 2305.11. (A) An action for libel, slander, malicious 9
prosecution, or false imprisonment, an action for malpractice 10
other than an action upon a medical, dental, optometric, or 11
chiropractic claim, or an action upon a statute for a penalty or 12
forfeiture shall be commenced within one year after the cause of 13
action accrued, provided that an action by an employee for the 14
payment of unpaid minimum wages, unpaid overtime compensation, or 15
liquidated damages by reason of the nonpayment of minimum wages or 16
overtime compensation shall be commenced within two years after 17
the cause of action accrued. 18

(B) A civil action for unlawful abortion pursuant to section 19
2919.12 of the Revised Code, a civil action authorized by division 20

(H) of section 2317.56 of the Revised Code, a civil action 21
pursuant to division (B)(1) or (2) of section 2307.51 of the 22
Revised Code for performing a dilation and extraction procedure or 23
attempting to perform a dilation and extraction procedure in 24
violation of section 2919.15 of the Revised Code, and a civil 25
action pursuant to division (B)~~(1) or (2)~~ of section 2307.52 of 26
the Revised Code for terminating or attempting to terminate a 27
human pregnancy after viability in violation of division (A) ~~or~~ 28
~~(B)~~ of section 2919.17 of the Revised Code shall be commenced 29
within one year after the performance or inducement of the 30
abortion, within one year after the attempt to perform or induce 31
the abortion in violation of division (A) ~~or (B)~~ of section 32
2919.17 of the Revised Code, within one year after the performance 33
of the dilation and extraction procedure, or, in the case of a 34
civil action pursuant to division (B)(2) of section 2307.51 of the 35
Revised Code, within one year after the attempt to perform the 36
dilation and extraction procedure. 37

(C) As used in this section, "medical claim," "dental claim," 38
"optometric claim," and "chiropractic claim" have the same 39
meanings as in section 2305.113 of the Revised Code. 40

Sec. 2307.52. (A) As used in this section: 41

(1) "Frivolous conduct" has the same meaning as in section 42
2323.51 of the Revised Code. 43

(2) "Viable" has the same meaning as in section 2919.16 of 44
the Revised Code. 45

(B)~~(1)~~ A woman upon whom an abortion is purposely performed 46
or induced or attempted to be performed or induced in violation of 47
division (A) of section 2919.17 of the Revised Code has and may 48
commence a civil action for compensatory damages, punitive or 49
exemplary damages if authorized by section 2315.21 of the Revised 50
Code, and court costs and reasonable attorney's fees against the 51

person who purposely performed or induced or attempted to perform 52
or induce the abortion in violation of division (A) of section 53
2919.17 of the Revised Code. 54

~~(2) A woman upon whom an abortion is purposely performed or 55
induced or attempted to be performed or induced in violation of 56
division (B) of section 2919.17 of the Revised Code has and may 57
commence a civil action for compensatory damages, punitive or 58
exemplary damages if authorized by section 2315.21 of the Revised 59
Code, and court costs and reasonable attorney's fees against the 60
person who purposely performed or induced or attempted to perform 61
or induce the abortion in violation of division (B) of section 62
2919.17 of the Revised Code. 63~~

(C) If a judgment is rendered in favor of the defendant in a 64
civil action commenced pursuant to division (B)~~(1) or (2)~~ of this 65
section and the court finds, upon the filing of a motion under 66
section 2323.51 of the Revised Code, that the commencement of the 67
civil action constitutes frivolous conduct and that the defendant 68
was adversely affected by the frivolous conduct, the court shall 69
award in accordance with section 2323.51 of the Revised Code 70
reasonable attorney's fees to the defendant. 71

Sec. 2919.16. As used in sections 2919.16 to 2919.18 of the 72
Revised Code: 73

(A) "Fertilization" means the fusion of a human spermatozoon 74
with a human ovum. 75

(B) "Gestational age" or "gestation" means the age of an 76
unborn ~~human~~ child as calculated from the first day of the last 77
menstrual period of a pregnant woman. 78

(C) "Health care facility" means a hospital, clinic, 79
ambulatory surgical treatment center, other center, medical 80
school, office of a physician, infirmary, dispensary, medical 81

training institution, or other institution or location in or at 82
which medical care, treatment, or diagnosis is provided to a 83
person. 84

(D) "Hospital" has the same meanings as in sections 3701.01, 85
3727.01, and 5122.01 of the Revised Code. 86

(E) "Live birth" has the same meaning as in division (A) of 87
section 3705.01 of the Revised Code. 88

(F) "Medical emergency" means a condition that ~~a pregnant~~ 89
~~woman's physician determines,~~ in the physician's good faith ~~and in~~ 90
~~the exercise of reasonable~~ medical judgment, based upon the facts 91
known to the physician at that time, so complicates the woman's 92
pregnancy as to necessitate the immediate performance or 93
inducement of an abortion in order to prevent the death of the 94
pregnant woman or to avoid a serious risk of the substantial and 95
irreversible impairment of a major bodily function of the pregnant 96
woman that delay in the performance or inducement of the abortion 97
would create. 98

(G) "Physician" has the same meaning as in section 2305.113 99
of the Revised Code. 100

(H) "Pregnant" means the human female reproductive condition, 101
that commences with fertilization, of having a developing fetus. 102

(I) "Pregnancy" means the condition of being pregnant. 103

(J) "Premature infant" means a human whose live birth occurs 104
prior to thirty-eight weeks of gestational age. 105

~~(J)~~(K) "Serious risk of the substantial and irreversible 106
impairment of a major bodily function" means any medically 107
diagnosed condition that so complicates the pregnancy of the woman 108
as to directly or indirectly cause the substantial and 109
irreversible impairment of a major bodily function, ~~including, but~~ 110
~~not limited to, the following conditions:~~ 111

(1) Pre-eclampsia;	112
(2) Inevitable abortion;	113
(3) Prematurely ruptured membrane;	114
(4) Diabetes;	115
(5) Multiple sclerosis. A medically diagnosed condition that	116
constitutes a "serious risk of the substantial and irreversible	117
impairment of a major bodily function" includes pre-eclampsia,	118
inevitable abortion, and premature rupture of the membranes, may	119
include, but is not limited to, diabetes and multiple sclerosis,	120
and does not include a condition related to the woman's mental	121
health.	122
(K)(L) "Unborn human child" means an individual organism of	123
the species homo sapiens from fertilization until live birth.	124
(L)(M) "Viable" means the stage of development of a human	125
fetus at which in the determination of a physician, based on the	126
particular facts of a woman's pregnancy that are known to the	127
physician and in light of medical technology and information	128
reasonably available to the physician, there is a realistic	129
possibility of the maintaining and nourishing of a life outside of	130
the womb with or without temporary artificial life-sustaining	131
support.	132
<u>Sec. 2919.17. (A) No person shall purposely perform or induce</u>	133
<u>or attempt to perform or induce an abortion on a pregnant woman</u>	134
<u>when the unborn child is viable.</u>	135
<u>(B)(1) It is an affirmative defense to a charge under</u>	136
<u>division (A) of this section that the abortion was performed or</u>	137
<u>induced or attempted to be performed or induced by a physician and</u>	138
<u>that the physician determined, in the physician's good faith</u>	139
<u>medical judgment, based on the facts known to the physician at</u>	140
<u>that time, that either of the following applied:</u>	141

<u>(a) The unborn child was not viable.</u>	142
<u>(b) The abortion was necessary to prevent the death of the pregnant woman or a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.</u>	143 144 145 146
<u>(2) No abortion shall be considered necessary under division (B)(1)(b) of this section on the basis of a claim or diagnosis that the woman will engage in conduct that would result in the woman's death or a substantial and irreversible impairment of a major bodily function of the woman or based on any reason related to the woman's mental health.</u>	147 148 149 150 151 152
<u>(C) Except when a medical emergency exists that prevents compliance with section 2919.18 of the Revised Code, the affirmative defense set forth in division (B)(1)(a) of this section does not apply unless the physician who performs or induces or attempts to perform or induce the abortion performs the viability testing required by division (A) of section 2919.18 of the Revised Code and certifies in writing, based on the results of the tests performed, that in the physician's good faith medical judgment the unborn child is not viable.</u>	153 154 155 156 157 158 159 160 161
<u>(D) Except when a medical emergency exists that prevents compliance with one or more of the following conditions, the affirmative defense set forth in division (B)(1)(b) of this section does not apply unless the physician who performs or induces or attempts to perform or induce the abortion complies with all of the following conditions:</u>	162 163 164 165 166 167
<u>(1) The physician who performs or induces or attempts to perform or induce the abortion certifies in writing that, in the physician's good faith medical judgment, based on the facts known to the physician at that time, the abortion is necessary to prevent the death of the pregnant woman or a serious risk of the</u>	168 169 170 171 172

substantial and irreversible impairment of a major bodily function 173
of the pregnant woman. 174

(2) Another physician who is not professionally related to 175
the physician who intends to perform or induce the abortion 176
certifies in writing that, in that physician's good faith medical 177
judgment, based on the facts known to that physician at that time, 178
the abortion is necessary to prevent the death of the pregnant 179
woman or a serious risk of the substantial and irreversible 180
impairment of a major bodily function of the pregnant woman. 181

(3) The physician performs or induces or attempts to perform 182
or induce the abortion in a hospital or other health care facility 183
that has appropriate neonatal services for premature infants. 184

(4) The physician who performs or induces or attempts to 185
perform or induce the abortion terminates or attempts to terminate 186
the pregnancy in the manner that provides the best opportunity for 187
the unborn child to survive, unless that physician determines, in 188
the physician's good faith medical judgment, based on the facts 189
known to the physician at that time, that the termination of the 190
pregnancy in that manner poses a greater risk of the death of the 191
pregnant woman or a greater risk of the substantial and 192
irreversible impairment of a major bodily function of the pregnant 193
woman than would other available methods of abortion. 194

(5) The physician certifies in writing the available method 195
or techniques considered and the reasons for choosing the method 196
or technique employed. 197

(6) The physician who performs or induces or attempts to 198
perform or induce the abortion has arranged for the attendance in 199
the same room in which the abortion is to be performed or induced 200
or attempted to be performed or induced at least one other 201
physician who is to take control of, provide immediate medical 202
care for, and take all reasonable steps necessary to preserve the 203

life and health of the unborn child immediately upon the child's 204
complete expulsion or extraction from the pregnant woman. 205

(E) For purposes of this section, there is a rebuttable 206
presumption that an unborn child of at least twenty-four weeks 207
gestational age is viable. 208

(F) Whoever violates this section is guilty of terminating or 209
attempting to terminate a human pregnancy after viability, a 210
felony of the fourth degree. 211

(G) The state medical board shall revoke a physician's 212
license to practice medicine in this state if the physician 213
violates this section. 214

(H) Any physician who performs or induces an abortion or 215
attempts to perform or induce an abortion with actual knowledge 216
that neither of the affirmative defenses set forth in division 217
(B)(1) of this section applies, or with a heedless indifference as 218
to whether either affirmative defense applies, is liable in a 219
civil action for compensatory and exemplary damages and reasonable 220
attorney's fees to any person, or the representative of the estate 221
of any person, who sustains injury, death, or loss to person or 222
property as the result of the performance or inducement or the 223
attempted performance or inducement of the abortion. In any action 224
under this division, the court also may award any injunctive or 225
other equitable relief that the court considers appropriate. 226

(I) A pregnant woman on whom an abortion is performed or 227
induced or attempted to be performed or induced in violation of 228
division (A) of this section is not guilty of violating division 229
(A) of this section or of attempting to commit, conspiring to 230
commit, or complicity in committing a violation of division (A) of 231
this section. 232

Sec. 2919.18. (A) Except in a medical emergency that prevents 233

compliance with this division, no physician shall perform or 234
induce or attempt to perform or induce an abortion on a pregnant 235
woman after the beginning of the twenty-second week of gestation 236
unless, prior to the performance or inducement of the abortion or 237
the attempt to perform or induce the abortion, the physician 238
determines, in the physician's good faith medical judgment, that 239
the unborn child is not viable, and the physician makes that 240
determination after performing a medical examination of the 241
pregnant woman and after performing or causing to be performed 242
those tests for assessing gestational age, weight, lung maturity, 243
or other tests that a reasonable physician, in making a 244
determination as to whether an unborn child is viable, would 245
perform or cause to be performed. 246

(B) Except in a medical emergency that prevents compliance 247
with this division, no physician shall perform or induce or 248
attempt to perform or induce an abortion on a pregnant woman after 249
the beginning of the twenty-second week of gestation without first 250
entering the determination made in division (A) of this section 251
and the associated findings of the medical examination and tests 252
in the medical record of the pregnant woman. 253

(C) Whoever violates this section is guilty of failure to 254
perform viability testing, a misdemeanor of the fourth degree. 255

(D) The state medical board shall suspend a physician's 256
license to practice medicine in this state for a period of not 257
less than six months if the physician violates this section. 258

Section 2. That existing sections 2305.11, 2307.52, and 259
2919.16 and sections 2919.17 and 2919.18 of the Revised Code are 260
hereby repealed. 261