



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** [Sub. H.B. 248 of the 130th G.A.](#)      **Date:** December 3, 2014  
**Status:** As Reported by House Health and Aging      **Sponsor:** Reps. C. Hagan and Wachtmann

**Local Impact Statement Procedure Required:** No

**Contents:** Generally prohibits an abortion of an unborn human individual with a detectable heartbeat and creates the Joint Legislative Committee on Adoption Promotion and Support

### State Fiscal Highlights

- **Department of Medicaid.** The Medicaid Program pays abortion costs for enrollees in cases involving life endangerment, incest, and rape. The bill would likely result in fewer abortions. As a result, abortion costs for the Medicaid Program would likely decrease.
- **Department of Health.** The Department of Health may realize an increase in costs to inspect the medical records from any facility that performs abortions to ensure that individuals who perform abortions are in compliance with the reporting requirements of the bill.
- **State Medical Board of Ohio.** The State Medical Board of Ohio would likely experience an increase in administrative and possible investigative costs related to the bill. However, it is assumed that the number of violators would be small. Thus, any increase in costs would likely be minimal.

### Local Fiscal Highlights

- **Local courts.** As a result of any violations, additional felony criminal cases may be generated for county criminal justice systems to process, potentially increasing the costs to investigate, prosecute, adjudicate, and sanction violators. However, the court could impose court costs and fines to be paid by violators to help offset some of these costs.
- **Local courts.** It is also possible that additional civil cases may be generated for county municipal or common pleas courts. However, the courts could impose court costs to help offset some of these costs.

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## Detailed Fiscal Analysis

### Abortion prohibition and fetal heart examination

The bill generally prohibits a person from knowingly and purposefully performing or inducing an abortion on a pregnant woman before determining whether the unborn human individual the pregnant woman is carrying has a detectable heartbeat. Under the bill, whoever violates this is guilty of performing or inducing an abortion before determining whether there is a detectable heartbeat, a felony of the fifth degree. A violation may also be the basis of either a civil action for compensatory and exemplary damages or disciplinary action. This provision does not apply to a physician who performs or induces the abortion if the physician believes that a medical emergency exists that prevents compliance with the provision.

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 the pregnant woman is carrying and whose fetal heartbeat has been detected. Whoever violates this is guilty of performing or inducing an abortion after the detection of a fetal heartbeat, a felony of the fifth degree. This provision does not apply to a physician who performs a medical procedure that, in the physician's reasonable medical judgment, is designed or intended 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. If the procedure is done under these circumstances, the physician performing the procedure is required to declare in writing, that the 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 written document must be placed in the pregnant woman's medical records and a copy must be maintained in the physician's files for at least seven years. Furthermore, the physician is not in violation if an examination has been performed and a fetal heartbeat was not revealed.

The bill requires a person who performs or induces an abortion on a pregnant women to do whichever is applicable: (1) if the reason for the abortion purportedly is to preserve the health of the pregnant woman, the person is to specify in a written document the medical condition that the abortion is asserted to address and the medical rationale for the person's conclusion that the abortion is necessary to address that condition, or (2) if the reason for the abortion is other than to preserve the health of the pregnant woman, the person shall specify in a written document that maternal health is not the purpose of the abortion. This document must be placed in the pregnant woman's medical records and a copy must be maintained in the person's own records for seven years.

The Ohio Department of Health (ODH) is required under the bill to inspect the medical records from any facility that performs abortions to ensure that physicians or other persons who perform abortions are in compliance with the reporting requirements of the bill. The facility is required to make those records available to ODH, but shall not release any personal medical information that is prohibited by law.

The physician may be subject to disciplinary action by the State Medical Board of Ohio if the physician fails to comply with the bill's requirements for making or maintaining medical records or documents.

After a fetal heartbeat is detected, the bill also requires a pregnant woman to sign a form acknowledging that she has received information, from the person intending to perform or induce the abortion, that the unborn human individual she is carrying has a fetal heartbeat and that she is aware of the statistical probability of bringing the unborn human individual she is carrying to term.

The bill specifies that a pregnant woman upon whom an abortion is performed or induced in violation of the prohibitions is not subject to criminal or civil penalties. If an abortion was performed in violation of the bill, if the woman was not given the information required by the bill, or if the woman did not sign the form acknowledging that she had received certain information, the woman on whom an abortion was performed or induced may file a civil action for the wrongful death of her unborn child. A woman who prevails in an action shall receive damages from the person who performed the abortion in an amount equal to \$10,000 or an amount determined by the trier of fact, as well as court costs and reasonable attorney's fees. However, a determination by a court finding that provisions of the bill are unconstitutional is considered a defense to civil action brought against a defendant. The bill also specifies that if a defendant prevails, the court is to award reasonable attorney's fees to the defendant under certain conditions.

The bill specifies that it is the intent of the General Assembly that if a court judgment or order suspends enforcement of certain provisions of the bill, that action is not to be regarded as tantamount to repeal of that provision. After the issuance of a decision by the Supreme Court of the United States overruling *Roe v. Wade*, or any other court order, judgment, or amendment to the Constitution of the United States restores, expands, or clarifies the authority of states to prohibit or regulate abortion, the bill allows the Attorney General to apply to a pertinent court for a declaration that certain provisions of the bill are constitutional or a judgment or order lifting an injunction against the enforcement of those provisions. Any county prosecutor may apply to an appropriate court for such relief if the Attorney General fails to apply for the relief within a 30-day period after one of the abovementioned events. Additionally, the bill provides that if any provision of the bill is held invalid, the invalidity does not affect other provisions or applications of the bill that can be given effect without the invalid provision or application, and to this end the provisions of the bill are severable.

## **Joint Legislative Committee on Adoption Promotion and Support**

The bill creates the Joint Legislative Committee on Adoption Promotion and Support, which may 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 Committee will consist of three members of the House of Representatives and three members of the Senate. The bill specifies that the committee has the same powers as other standing or select committees of the General Assembly.

### **Background information**

According to the ODH's 2013 report on "Induced Abortions in Ohio," 23,216 abortions were performed in Ohio in 2013. Of these abortions, 22,011 (94.8%) were performed on Ohio residents. The majority of abortions, 13,128 (56.5%), were performed at less than nine weeks gestation. Between nine and 12 weeks, 6,624 (28.5%) abortions were performed, 2,925 (12.6%) abortions were performed between 13 to 18 weeks, and 359 (1.5%) were performed between 19 and 20 weeks of gestation. A total of 173 abortions (0.7%) were performed at 21 weeks of gestation or over. Currently, induced abortions must be reported to ODH by the physician who performed the abortion.

### **Fiscal impact**

The Medicaid Program pays abortion costs for enrollees in cases involving life endangerment, incest, and rape. The bill would likely result in fewer abortions. As a result, abortion costs for the Medicaid Program would likely decrease.

ODH may realize an increase in costs to inspect the medical records from any facility that performs abortions to ensure that individuals who perform abortions are in compliance with the reporting requirements of the bill.

The State Medical Board would likely experience an increase in administrative and possible investigative costs related to the bill. However, it is assumed that the number of violators would be small. Thus, any increase in costs would likely be minimal.

As a result of any violations, additional felony criminal cases may be generated for county criminal justice systems to process, potentially increasing the costs to investigate, prosecute, adjudicate, and sanction violators. However, the court could impose court costs and fines to be paid by violators to help offset some of these costs. The number of cases that could be generated annually would likely be small. Therefore, any related fiscal effect on local criminal justice systems would likely be minimal. Dependent upon the number of successful prosecutions, the state could realize a gain in court cost revenues generated annually to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

It is also possible that additional civil cases may be generated for county municipal or common pleas courts. However, the courts could impose court costs to help offset some of these costs. The number of cases that could be generated annually

would likely be small. Therefore, any related fiscal effect on local civil justice systems would likely be minimal.

A small percentage of abortions are performed in hospitals and the majority of those are medical emergencies, so it appears that there will be little fiscal impact to public hospitals. There are currently 19 such hospitals in Ohio. Any increases in administrative costs to hospitals relating to the requirements of the bill, would likely be minimal.

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