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Bill Analysis
Legislative Service Commission

H.B. 280

127th General Assembly
(As Passed by the House)

Reps. Schneider, Aslanides, Setzer, Uecker, Brinkman, Flowers, Combs, Huffman, Zehringer, Widener, Adams, Hite, Jones, Hottinger, Wachtmann, Seitz, Evans, Latta, Bulp, J. McGregor, Fessler, Wagner, Wagoner, Collier, Schindel, Wolpert, Coley, Gibbs, Patton, DeGeeter, White, Bolon, Blessing, J. Hagan, Mandel, Goodwin, Batchelder, Distel, Oelslager, Brady, Barrett, Sears, Mecklenborg, Bacon, Daniels, Dodd, Dolan, Domenick, Driehaus, Gardner, Hughes, Reinhard, Schlichter

BILL SUMMARY

- Provides that the penalty for the offense of "domestic violence," in circumstances in which the offender knew the victim was pregnant at the time of the violation, is one of the following: (1) if the violation involved knowingly causing or attempting to cause physical harm to a family or household member or involved recklessly causing serious physical harm to a family or household member, the offense is a felony of the fifth degree, and (2) if the violation involved knowingly causing a family or household member, by threat of force, to believe that the offender will cause imminent physical harm to the family or household member, the offense is a misdemeanor of the third degree.
- Requires each office or facility at which abortions are performed or induced, unless the office or facility performs or induces abortions due only to a medical emergency, to post a specified notice of a specified size in a conspicuous location in an area of the office or facility that is accessible to all patients, employees, and visitors.
- Requires the Department of Health to publish the notice on its Internet web site in a manner that can be copied and produced in poster form and specifies that the notice must state: (1) that no one can force another person to have an abortion, (2) that an abortion cannot be legally performed on anyone, regardless of her age, unless she voluntarily consents to having the abortion, (3) that before an abortion can legally be

performed, the pregnant female must sign a form indicating that she consents to having the abortion voluntarily and without coercion by any person, and (4) that if someone is trying to force another person to have an abortion against the other person's will, the other person should not sign a consent form, and, if the other person is at an abortion facility, should tell an employee of the facility that someone is trying to force the other person to have an abortion.

- Provides that, in addition to the reasons for a revocation, suspension, denial, etc., of a certificate specified under existing law, the State Medical Board, by an affirmative vote of not fewer than six members and to the extent permitted by law, must limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for performing or inducing an abortion at an office or facility with knowledge that the office or facility fails to post the notice required under the bill as described above.

CONTENT AND OPERATION

Penalty for domestic violence when the victim is pregnant

Prohibitions

Existing law prohibits a person from doing any of the following: (1) knowingly causing or attempting to cause "physical harm" to a "family or household member," (2) recklessly causing "serious physical harm" to a family or household member, or (3) by threat of force, knowingly causing a family or household member to believe that the offender will cause imminent physical harm to the family or household member (see *Definitions*," below for definitions of terms in quotation marks). A violation of any of the prohibitions is the offense of "domestic violence." (R.C. 2919.25(A) to (D).)

Penalties

Operation of the bill. Currently, the penalty for the offense of "domestic violence" depends upon the prohibition violated and whether the offender is a first-time, or a repeat, offender (see *Existing law*," below). The bill provides a new penalty for the offense of "domestic violence" that applies in specified circumstances. Under the bill, if the offender knew the victim of the violation was pregnant at the time of the violation, a violation of the prohibition described above in clause (1) or (2) under *Prohibitions* " is a felony of the fifth degree, and a

violation of the prohibition described above in clause (3) under "**Prohibitions**" is a misdemeanor of the third degree. (R.C. 2919.25(D)(2) and (5).)

Existing law. The existing penalty for the offense of "domestic violence" is as follows (R.C. 2919.25(D)):

(1) Except as otherwise described in paragraphs (2) or (3), below, a violation of the prohibition described above in clause (3) under "**Prohibitions**" is a misdemeanor of the fourth degree, and a violation of the prohibition described above in clause (1) or (2) under "**Prohibitions**" is a misdemeanor of the first degree.

(2) Except as otherwise provided in paragraph (3), below, if the offender previously has pleaded guilty to or been convicted of domestic violence, a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially similar to domestic violence, a violation of R.C. 2903.14, 2909.06, 2909.07, 2911.12, 2911.211, or 2919.22 if the victim of the violation was a family or household member at the time of the violation, a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially similar to any of those sections if the victim of the violation was a family or household member at the time of the commission of the violation, or any offense of violence if the victim of the offense was a family or household member at the time of the commission of the offense, a violation of the prohibition described above in clause (1) or (2) under "**Prohibitions**" is a felony of the fourth degree, and a violation of the prohibition described above in clause (3) under "**Prohibitions**" is a misdemeanor of the second degree.

(3) If the offender previously has pleaded guilty to or been convicted of two or more offenses of domestic violence or two or more violations or offenses of the type described in clause (2), above, involving a person who was a family or household member at the time of the violations or offenses, a violation of the prohibition described above in clause (1) or (2) under "**Prohibitions**" is a felony of the third degree, and a violation of the prohibition described above in clause (3) under "**Prohibitions**" is a misdemeanor of the first degree.

Definitions

The following definitions apply regarding the domestic violence provisions described above:

(1) "**Family or household member**" means any of the following: (a) any of the following who is residing or has resided with the offender: (i) a spouse, a "person living as a spouse" (see below), or a former spouse of the offender, (ii) a

parent or a child of the offender, or another person related by consanguinity or affinity to the offender, or (iii) a parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender, or (b) the natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent (R.C. 2919.25(F)).

(2) "**Person living as a spouse**" means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question (R.C. 2919.25(F)).

(3) "**Physical harm to persons**" means any injury, illness, or other physiological impairment, regardless of its gravity or duration (R.C. 2901.01, not in the bill).

(4) "**Serious physical harm to persons**" means any of the following: (a) any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment, (b) any physical harm that carries a substantial risk of death, (c) any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity, (d) any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement, or (e) any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain (R.C. 2901.01, not in the bill).

Display of specified notice by offices or facilities at which abortions are performed or induced

The bill requires each office or facility at which "abortions" (see **COMMENT 1**) are performed or induced, subject to the exception described in the next paragraph, to post the notice described in the third succeeding paragraph in a conspicuous location in an area of the office or facility that is accessible to all patients, employees, and visitors. The notice must be displayed on a poster with dimensions of at least 17 inches by 11 inches. The first two sentences of the notice must be printed in at least a 44-point typeface and the remaining lines must be in at least a 30-point typeface.

The notice-posting requirement described in the preceding paragraph does not apply to an office or facility at which abortions are performed or induced due only to a "medical emergency." As used in this provision, "medical emergency" means a condition of a pregnant woman that, in the reasonable judgment of the

physician who is attending the woman, creates an immediate threat of serious risk to the life or physical health of the woman from the continuation of the pregnancy necessitating the immediate performance or inducement of an abortion. (R.C. 3701.791(A), (B), and (D).)

The bill explicitly requires an "ambulatory surgical facility" (see **COMMENT 2**) that performs or induces abortions to comply with the notice-posting requirement described in the second preceding paragraph (R.C. 3702.30(G)).

The bill requires the Department of Health to publish the following notice on its Internet web site in a manner that can be copied and produced in poster form (R.C. 3701.791(C)):

"NO ONE CAN FORCE YOU TO HAVE AN ABORTION.

NO ONE – NOT A PARENT, NOT A HUSBAND, NOT A BOYFRIEND
– NO ONE.

Under Ohio law, an abortion cannot be legally performed on anyone, regardless of her age, unless she **VOLUNTARILY CONSENTS** to having the abortion.

Ohio law requires that, before an abortion can legally be performed, the pregnant female must sign a form indicating that she consents to having the abortion "voluntarily" and "WITHOUT COERCION BY ANY PERSON."

IF SOMEONE IS TRYING TO FORCE YOU TO HAVE AN ABORTION
AGAINST YOUR WILL:

DO NOT SIGN THE CONSENT FORM

IF YOU ARE AT AN ABORTION FACILITY, TELL AN EMPLOYEE
OF THE FACILITY THAT SOMEONE IS TRYING TO FORCE YOU TO
HAVE AN ABORTION."

State Medical Board--revocation, suspension, or denial of certificate

Existing law

Existing law requires the State Medical Board, by an affirmative vote of not fewer than six members and to the extent permitted by law, to limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for any of a list of specified reasons. Among the specified reasons are

the violation of R.C. 3701.79 or of any abortion rule adopted by the Public Health Council pursuant to R.C. 3701.341, or the violation of R.C. 2919.12 or the performance or inducement of an abortion upon a pregnant woman with actual knowledge that the conditions specified in R.C. 2317.56(B) have not been satisfied or with a heedless indifference as to whether those conditions have been satisfied, unless an affirmative defense as specified in R.C. 2317.56(H)(2) would apply in a civil action authorized by R.C. 2317.56(H)(1). Existing R.C. 3701.79, not in the bill, requires, in relevant part, the attending physician to complete an individual abortion report for each abortion the physician performs upon a woman and to submit the report to the Department of Health within 15 days after the woman is discharged. Existing R.C. 2919.12, not in the bill, prohibits a person from performing or inducing an abortion without the informed consent of the pregnant woman and from knowingly performing or inducing an abortion upon a woman who is pregnant, unmarried, under 18 years of age, and unemancipated unless any of a list of specified criteria regarding parental notification, parental consent, or judicial oversight are satisfied. Existing R.C. 2317.56(B), not in the bill, generally requires that a meeting be held with, information be provided to, and a consent form be signed by, the pregnant woman prior to the performance or inducement of an abortion. The other specified reasons for a revocation, suspension, denial, etc., are listed in pages 9 through 19 of the bill. (R.C. 4731.22(B).)

Disciplinary actions taken by the Board under this provision must be taken pursuant to an adjudication under the Administrative Procedure Act, except that, in lieu of an adjudication, the Board may enter into a consent agreement with an individual to resolve an allegation of a violation of R.C. Chapter 4731. or any rule adopted under it. A consent agreement, when ratified by an affirmative vote of not fewer than six Board members, constitutes the findings and order of the Board with respect to the matter addressed in the agreement. (R.C. 4731.22(C).)

The Board is required to investigate evidence that appears to show that a person has violated any provision of R.C. Chapter 4731. or any rule adopted under it. Any person may report to the Board in a signed writing any information that the person may have that appears to show a violation of any such provision or rule. The law provides procedures that apply regarding any such investigation. It also provides for the suspension of a person's certificate to practice without a prior hearing, if there is clear and convincing evidence that the person has violated any of the specified reasons for revocation, suspension, denial, etc., set forth in R.C. 4731.22(B). (R.C. 4731.22(F) and (G).)

Operation of the bill

Under the bill, in addition to the reasons specified under existing law, the State Medical Board, by an affirmative vote of not fewer than six members and to the extent permitted by law, must limit, revoke, or suspend an individual's

certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for performing or inducing an "abortion" (see COMMENT 1) at an office or facility with knowledge that the office or facility fails to post the notice required under the bill, as described above in "Display of specified notice by offices or facilities at which abortions are performed or induced." (R.C. 4731.22(B)(38).)

COMMENT

1. Existing R.C. 2919.11, not in the bill, provides that, as used in the Revised Code, "abortion" means the purposeful termination of a human pregnancy by any person, including the pregnant woman herself, with an intention other than to produce a live birth or to remove a dead fetus or embryo. "Abortion" is the practice of medicine or surgery for the purposes of R.C. 4731.41.

2. Existing R.C. 3702.30(A) provides that, as used in R.C. 3702.30:

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

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

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

(c) The facility applies to be certified by the United States Centers for Medicare and Medicaid Services as an ambulatory surgical center for purposes of reimbursement under Part B of the Medicare program, Part B of Title XVIII of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C.A. 1395, as amended.

(d) The facility applies to be certified by a national accrediting body approved by the Centers for Medicare and Medicaid Services for purposes of deemed compliance with the conditions for participating in the Medicare program as an ambulatory surgical center.

(e) The facility bills or receives from any third-party payer (as defined in existing R.C. 3901.38, not in the bill), governmental health care program (as defined in existing R.C. 4731.65, not in the bill), or other person or government

entity any ambulatory surgical facility fee that is billed or paid in addition to any fee for professional services.

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

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

HISTORY

ACTION	DATE
Introduced	06-27-07
Reported, H. Health	05-22-08
Passed House (89-7)	05-28-08

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