

As Reported by the House Health and Aging Committee

131st General Assembly

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Sub. H. B. No. 417

Representatives McColley, Koehler

**Cosponsors: Representatives Antani, Becker, Burkley, Conditt, Retherford,
Terhar, Vitale, Young, Patmon, Brinkman, Sprague**

A BILL

To amend sections 2317.56, 3701.341, and 3705.17 1
and to enact sections 3701.3412, 3728.01, 2
3728.02, 3728.03, 3728.04, 3728.05, 3728.06, 3
3728.09, 3728.10, 3728.11, 3728.12, 3728.13, 4
3728.14, 3728.18, 3728.95, and 3728.99 of the 5
Revised Code regarding the humane disposition of 6
fetal remains. 7

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

Section 1. That sections 2317.56, 3701.341, and 3705.17 be 8
amended and sections 3701.3412, 3728.01, 3728.02, 3728.03, 9
3728.04, 3728.05, 3728.06, 3728.09, 3728.10, 3728.11, 3728.12, 10
3728.13, 3728.14, 3728.18, 3728.95, and 3728.99 of the Revised 11
Code be enacted to read as follows: 12

Sec. 2317.56. (A) As used in this section: 13

(1) "Medical emergency" has the same meaning as in section 14
2919.16 of the Revised Code. 15

(2) "Medical necessity" means a medical condition of a 16
pregnant woman that, in the reasonable judgment of the physician 17

who is attending the woman, so complicates the pregnancy that it 18
necessitates the immediate performance or inducement of an 19
abortion. 20

(3) "Probable gestational age of the embryo or fetus" 21
means the gestational age that, in the judgment of a physician, 22
is, with reasonable probability, the gestational age of the 23
embryo or fetus at the time that the physician informs a 24
pregnant woman pursuant to division (B) (1) (b) of this section. 25

(B) Except when there is a medical emergency or medical 26
necessity, an abortion shall be performed or induced only if all 27
of the following conditions are satisfied: 28

(1) At least twenty-four hours prior to the performance or 29
inducement of the abortion, a physician meets with the pregnant 30
woman in person in an individual, private setting and gives her 31
an adequate opportunity to ask questions about the abortion that 32
will be performed or induced. At this meeting, the physician 33
shall inform the pregnant woman, verbally or, if she is hearing 34
impaired, by other means of communication, of all of the 35
following: 36

(a) The nature and purpose of the particular abortion 37
procedure to be used and the medical risks associated with that 38
procedure; 39

(b) The probable gestational age of the embryo or fetus; 40

(c) The medical risks associated with the pregnant woman 41
carrying the pregnancy to term. 42

The meeting need not occur at the facility where the 43
abortion is to be performed or induced, and the physician 44
involved in the meeting need not be affiliated with that 45
facility or with the physician who is scheduled to perform or 46

induce the abortion. 47

(2) At least twenty-four hours prior to the performance or 48
inducement of the abortion, the physician who is to perform or 49
induce the abortion or the physician's agent does each of the 50
following in person, by telephone, by certified mail, return 51
receipt requested, or by regular mail evidenced by a certificate 52
of mailing: 53

(a) Inform the pregnant woman of the name of the physician 54
who is scheduled to perform or induce the abortion; 55

(b) Give the pregnant woman copies of the published 56
materials described in division (C) of this section; 57

(c) Inform the pregnant woman that the materials given 58
pursuant to division (B) (2) (b) of this section are published by 59
the state and that they describe the embryo or fetus and list 60
agencies that offer alternatives to abortion. The pregnant woman 61
may choose to examine or not to examine the materials. A 62
physician or an agent of a physician may choose to be 63
disassociated from the materials and may choose to comment or 64
not comment on the materials. 65

(3) If it has been determined that the unborn human 66
individual the pregnant woman is carrying has a detectable 67
heartbeat, the physician who is to perform or induce the 68
abortion shall comply with the informed consent requirements in 69
section 2919.192 of the Revised Code in addition to complying 70
with the informed consent requirements in divisions (B) (1), (2), 71
(4), and (5) of this section. 72

(4) Prior to the performance or inducement of the 73
abortion, the pregnant woman signs a form consenting to the 74
abortion and certifies ~~both~~ all of the following on that form: 75

(a) She has received the information and materials 76
described in divisions (B) (1) and (2) of this section, and her 77
questions about the abortion that will be performed or induced 78
have been answered in a satisfactory manner. 79

(b) She consents to the particular abortion voluntarily, 80
knowingly, intelligently, and without coercion by any person, 81
and she is not under the influence of any drug of abuse or 82
alcohol. 83

(c) If she desires to exercise her rights under section 84
3728.04 of the Revised Code, that the applicable requirements 85
under section 3728.05 of the Revised Code have been met. 86

The form shall contain the name and contact information of 87
the physician who provided to the pregnant woman the information 88
described in division (B) (1) of this section. 89

(5) Prior to the performance or inducement of the 90
abortion, the physician who is scheduled to perform or induce 91
the abortion or the physician's agent receives a copy of the 92
pregnant woman's signed form on which she consents to the 93
abortion and that includes the certification required by 94
division (B) (4) of this section. 95

(C) The department of health shall publish in English and 96
in Spanish, in a typeface large enough to be clearly legible, 97
and in an easily comprehensible format, the following materials 98
on the department's web site: 99

(1) Materials that inform the pregnant woman about family 100
planning information, of publicly funded agencies that are 101
available to assist in family planning, and of public and 102
private agencies and services that are available to assist her 103
through the pregnancy, upon childbirth, and while the child is 104

dependent, including, but not limited to, adoption agencies. The 105
materials shall be geographically indexed; include a 106
comprehensive list of the available agencies, a description of 107
the services offered by the agencies, and the telephone numbers 108
and addresses of the agencies; and inform the pregnant woman 109
about available medical assistance benefits for prenatal care, 110
childbirth, and neonatal care and about the support obligations 111
of the father of a child who is born alive. The department shall 112
ensure that the materials described in division (C) (1) of this 113
section are comprehensive and do not directly or indirectly 114
promote, exclude, or discourage the use of any agency or service 115
described in this division. 116

(2) Materials that inform the pregnant woman of the 117
probable anatomical and physiological characteristics of the 118
zygote, blastocyte, embryo, or fetus at two-week gestational 119
increments for the first sixteen weeks of pregnancy and at four- 120
week gestational increments from the seventeenth week of 121
pregnancy to full term, including any relevant information 122
regarding the time at which the fetus possibly would be viable. 123
The department shall cause these materials to be published only 124
after it consults with the Ohio state medical association and 125
the Ohio section of the American college of obstetricians and 126
gynecologists relative to the probable anatomical and 127
physiological characteristics of a zygote, blastocyte, embryo, 128
or fetus at the various gestational increments. The materials 129
shall use language that is understandable by the average person 130
who is not medically trained, shall be objective and 131
nonjudgmental, and shall include only accurate scientific 132
information about the zygote, blastocyte, embryo, or fetus at 133
the various gestational increments. If the materials use a 134
pictorial, photographic, or other depiction to provide 135

information regarding the zygote, blastocyte, embryo, or fetus, 136
the materials shall include, in a conspicuous manner, a scale or 137
other explanation that is understandable by the average person 138
and that can be used to determine the actual size of the zygote, 139
blastocyte, embryo, or fetus at a particular gestational 140
increment as contrasted with the depicted size of the zygote, 141
blastocyte, embryo, or fetus at that gestational increment. 142

(D) Upon the submission of a request to the department of 143
health by any person, hospital, physician, or medical facility 144
for one copy of the materials published in accordance with 145
division (C) of this section, the department shall make the 146
requested copy of the materials available to the person, 147
hospital, physician, or medical facility that requested the 148
copy. 149

(E) If a medical emergency or medical necessity compels 150
the performance or inducement of an abortion, the physician who 151
will perform or induce the abortion, prior to its performance or 152
inducement if possible, shall inform the pregnant woman of the 153
medical indications supporting the physician's judgment that an 154
immediate abortion is necessary. Any physician who performs or 155
induces an abortion without the prior satisfaction of the 156
conditions specified in division (B) of this section because of 157
a medical emergency or medical necessity shall enter the reasons 158
for the conclusion that a medical emergency or medical necessity 159
exists in the medical record of the pregnant woman. 160

(F) If the conditions specified in division (B) of this 161
section are satisfied, consent to an abortion shall be presumed 162
to be valid and effective. 163

(G) The performance or inducement of an abortion without 164
the prior satisfaction of the conditions specified in division 165

(B) of this section does not constitute, and shall not be 166
construed as constituting, a violation of division (A) of 167
section 2919.12 of the Revised Code. The failure of a physician 168
to satisfy the conditions of division (B) of this section prior 169
to performing or inducing an abortion upon a pregnant woman may 170
be the basis of both of the following: 171

(1) A civil action for compensatory and exemplary damages 172
as described in division (H) of this section; 173

(2) Disciplinary action under section 4731.22 of the 174
Revised Code. 175

(H) (1) Subject to divisions (H) (2) and (3) of this 176
section, any physician who performs or induces an abortion with 177
actual knowledge that the conditions specified in division (B) 178
of this section have not been satisfied or with a heedless 179
indifference as to whether those conditions have been satisfied 180
is liable in compensatory and exemplary damages in a civil 181
action to any person, or the representative of the estate of any 182
person, who sustains injury, death, or loss to person or 183
property as a result of the failure to satisfy those conditions. 184
In the civil action, the court additionally may enter any 185
injunctive or other equitable relief that it considers 186
appropriate. 187

(2) The following shall be affirmative defenses in a civil 188
action authorized by division (H) (1) of this section: 189

(a) The physician performed or induced the abortion under 190
the circumstances described in division (E) of this section. 191

(b) The physician made a good faith effort to satisfy the 192
conditions specified in division (B) of this section. 193

(3) An employer or other principal is not liable in 194

damages in a civil action authorized by division (H) (1) of this 195
section on the basis of the doctrine of respondeat superior 196
unless either of the following applies: 197

(a) The employer or other principal had actual knowledge 198
or, by the exercise of reasonable diligence, should have known 199
that an employee or agent performed or induced an abortion with 200
actual knowledge that the conditions specified in division (B) 201
of this section had not been satisfied or with a heedless 202
indifference as to whether those conditions had been satisfied. 203

(b) The employer or other principal negligently failed to 204
secure the compliance of an employee or agent with division (B) 205
of this section. 206

(4) Notwithstanding division (E) of section 2919.12 of the 207
Revised Code, the civil action authorized by division (H) (1) of 208
this section shall be the exclusive civil remedy for persons, or 209
the representatives of estates of persons, who allegedly sustain 210
injury, death, or loss to person or property as a result of a 211
failure to satisfy the conditions specified in division (B) of 212
this section. 213

(I) The department of job and family services shall 214
prepare and conduct a public information program to inform women 215
of all available governmental programs and agencies that provide 216
services or assistance for family planning, prenatal care, child 217
care, or alternatives to abortion. 218

Sec. 3701.341. (A) The director of health, pursuant to 219
Chapter 119. and consistent with section 2317.56 of the Revised 220
Code, shall adopt rules relating to abortions and the following 221
subjects: 222

(1) Post-abortion procedures to protect the health of the 223

pregnant woman;	224
(2) Pathological reports;	225
(3) Humane disposition of the product of human conception;	226
(4) Counseling.	227
(B) The director of health shall implement the rules and	228
shall apply to the court of common pleas for temporary or	229
permanent injunctions restraining a violation or threatened	230
violation of the rules. This action is an additional remedy not	231
dependent on the adequacy of the remedy at law.	232
<u>Sec. 3701.3412. (A) As used in this section, "government</u>	233
<u>attorney" means:</u>	234
<u>(1) The attorney general;</u>	235
<u>(2) The county prosecuting attorney with proper</u>	236
<u>jurisdiction;</u>	237
<u>(3) The city director of law, township director of law, or</u>	238
<u>legal counsel for a village with proper jurisdiction.</u>	239
<u>(B) The director of health shall implement the rules</u>	240
<u>adopted under section 3728.14 of the Revised Code. Either the</u>	241
<u>director or government attorney may apply to the court of common</u>	242
<u>pleas for temporary or permanent injunctions restraining a</u>	243
<u>violation or threatened violation of the rules. This action is</u>	244
<u>an additional remedy not dependent on the adequacy of the remedy</u>	245
<u>at law.</u>	246
Sec. 3705.17. The body of a person whose death occurs in	247
this state shall not be interred, deposited in a vault or tomb,	248
cremated, or otherwise disposed of by a funeral director until a	249
burial permit is issued by a local registrar or sub-registrar of	250

vital statistics. No such permit shall be issued by a local 251
registrar or sub-registrar until a satisfactory death, fetal 252
death, or provisional death certificate or a properly executed 253
form created under division (C) of section 3728.14 of the 254
Revised Code is filed with the local registrar or sub-registrar. 255
When the medical certification as to the cause of death cannot 256
be provided by the attending physician or coroner prior to 257
burial, for sufficient cause, as determined by rule of the 258
director of health, the funeral director may file a provisional 259
death certificate with the local registrar or sub-registrar for 260
the purpose of securing a burial or burial-transit permit. When 261
the funeral director files a provisional death certificate to 262
secure a burial or burial-transit permit, the funeral director 263
shall file a satisfactory and complete death certificate within 264
five days after the date of death. The director of health, by 265
rule, may provide additional time for filing a satisfactory 266
death certificate. A burial permit authorizing cremation shall 267
not be issued upon the filing of a provisional certificate of 268
death. 269

When a funeral director or other person obtains a burial 270
permit from a local registrar or sub-registrar, the registrar or 271
sub-registrar shall charge a fee of three dollars for the 272
issuance of the burial permit. Two dollars and fifty cents of 273
each fee collected for a burial permit shall be paid into the 274
state treasury to the credit of the division of real estate in 275
the department of commerce to be used by the division in 276
discharging its duties prescribed in Chapter 4767. of the 277
Revised Code and the Ohio cemetery dispute resolution commission 278
created by section 4767.05 of the Revised Code. A local 279
registrar or sub-registrar shall transmit payments of that 280
portion of the amount of each fee collected under this section 281

to the treasurer of state on a quarterly basis or more 282
frequently, if possible. The director of health, by rule, shall 283
provide for the issuance of a burial permit without the payment 284
of the fee required by this section if the total cost of the 285
burial will be paid by an agency or instrumentality of the 286
United States, the state or a state agency, or a political 287
subdivision of the state. 288

The director of commerce may by rule adopted in accordance 289
with Chapter 119. of the Revised Code reduce the total amount of 290
the fee required by this section and that portion of the amount 291
of the fee required to be paid to the credit of the division of 292
real estate for the use of the division and the Ohio cemetery 293
dispute resolution commission, if the director determines that 294
the total amount of funds the fee is generating at the amount 295
required by this section exceeds the amount of funds the 296
division of real estate and the commission need to carry out 297
their powers and duties prescribed in Chapter 4767. of the 298
Revised Code. 299

No person in charge of any premises in which interments or 300
cremations are made shall inter or cremate or otherwise dispose 301
of a body, unless it is accompanied by a burial permit. Each 302
person in charge of a cemetery, crematory, or other place of 303
disposal shall indorse upon a burial permit the date of 304
interment, cremation, or other disposal and shall retain such 305
permits for a period of at least five years. The person in 306
charge shall keep an accurate record of all interments, 307
cremations, or other disposal of dead bodies, made in the 308
premises under the person's charge, stating the name of the 309
deceased person, place of death, date of burial, cremation, or 310
other disposal, and name and address of the funeral director. 311
Such record shall at all times be open to public inspection. 312

<u>Sec. 3728.01. As used in this chapter:</u>	313
<u>(A) "Abortion facility" means any of the following in which abortions are induced or performed:</u>	314
<u>(1) Ambulatory surgical facility as defined in section 3702.30 of the Revised Code;</u>	315
<u>(2) Any other facility in which abortion is legally provided.</u>	316
<u>(B) "Cremation" has the same meaning as in section 4717.01 of the Revised Code.</u>	317
<u>(C) "Fetal death" has the same meaning as in section 3705.01 of the Revised Code.</u>	318
<u>(D) "Fetal remains" means the entire fetus or any of its parts that are removed from the pregnant woman's uterus by an abortion, irrespective of the duration of the pregnancy.</u>	319
<u>(E) "Interment" means the burial or entombment of fetal remains.</u>	320
<u>Sec. 3728.02. An abortion facility shall do either of the following with fetal remains it possesses:</u>	321
<u>(A) Dispose or arrange for the disposal of fetal remains by interment, cremation, or humane individual incineration;</u>	322
<u>(B) If the disposition determination under division (A)(1) of section 3728.05 of the Revised Code indicates that the woman who had the abortion exercises the right under division (C) of section 3728.04 of the Revised Code, provide the fetal remains to the woman, for the woman to dispose of the fetal remains by interment, cremation, or humane individual incineration.</u>	323
<u>Sec. 3728.03. The humane individual incineration of fetal</u>	324
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remains shall be performed in a sterile incinerator. No other 340
remains shall be simultaneously incinerated with other fetal 341
remains belonging to another fetus. Fetal remains shall be 342
incinerated separately from any other items or medical waste. 343

Sec. 3728.04. A pregnant woman who has an abortion has the 344
following rights regarding the fetal remains: 345

(A) To determine whether final disposition shall be by 346
interment, cremation, or humane individual incineration; 347

(B) To have the abortion facility perform or arrange for 348
the interment, cremation, or humane individual incineration; 349

(C) To personally arrange for the interment, cremation, or 350
humane incineration. 351

Sec. 3728.05. (A) (1) If a pregnant woman desires to 352
exercise the rights under section 3728.04 of the Revised Code, 353
she shall make the determination in writing using a form 354
prescribed by the director of health under division (C) of 355
section 3728.14 of the Revised Code. 356

(2) If a pregnant woman does not desire to exercise the 357
rights under section 3728.04 of the Revised Code, the abortion 358
facility shall determine whether final disposition shall be by 359
interment, cremation, or humane individual incineration. 360

(B) (1) A pregnant woman who is under eighteen years of 361
age, unmarried, and unemancipated shall obtain consent from one 362
of the woman's parents, her guardian, or her custodian to the 363
final disposition determination she makes in writing under 364
division (A) (1) of this section. The consent shall be made in 365
writing using a form prescribed by the director under division 366
(B) of section 3728.14 of the Revised Code. 367

(2) The consent under division (B) (1) of this section is 368
not required if an order authorizing consent for an abortion was 369
issued under section 2151.85 of the Revised Code. 370

Sec. 3728.06. An abortion facility may not release fetal 371
remains, or arrange for the interment, cremation, or humane 372
individual incineration of the remains until it obtains or makes 373
a final disposition determination made under division (A) (1) or 374
(2) of section 3728.05 of the Revised Code, and if applicable, 375
the consent made under division (B) (1) of that section. 376

Sec. 3728.09. An abortion facility shall pay the costs of 377
the interment, cremation, or humane individual incineration of 378
fetal remains, unless the final disposition determination 379
indicates a method or process of interment, cremation, or 380
incineration that is not offered by the abortion facility. 381

Any expenses for a method or process of interment, 382
cremation, or humane individual incineration chosen by the 383
pregnant woman that is not offered by the facility shall be paid 384
by the pregnant woman. 385

Sec. 3728.10. An abortion facility shall document in the 386
pregnant woman's medical record the final disposition 387
determination made under division (A) of section 3728.05 of the 388
Revised Code, and if applicable, the consent made under division 389
(B) (1) of that section. 390

Sec. 3728.11. An abortion facility shall maintain 391
evidentiary documentation demonstrating the date and method of 392
the disposition of all fetal remains from the facility. 393

Sec. 3728.12. An abortion facility shall have written 394
policies and procedures regarding interment, cremation, or 395
humane individual incineration of fetal remains from the 396

facility. 397

Sec. 3728.13. An abortion facility in possession of fetal 398
remains shall file the form described in division (C) of section 399
3728.14 of the Revised Code with the local registrar or sub- 400
registrar of vital statistics for purposes of obtaining a burial 401
permit under section 3705.17 of the Revised Code. 402

Sec. 3728.14. Not later than six months after the 403
effective date of this section, the director of health, in 404
accordance with Chapter 119. of the Revised Code, and consistent 405
with section 2317.56 of the Revised Code, shall adopt rules 406
necessary to carry out sections 3728.01 to 3728.13 of the 407
Revised Code, including rules that prescribe the following: 408

(A) The method in which pregnant women who seek abortions 409
are informed of the following: 410

(1) The right to determine final disposition of fetal 411
remains under section 3728.04 of the Revised Code; 412

(2) The available options for disposition of fetal 413
remains. 414

(B) The consent form for purposes of division (B) (1) of 415
section 3728.05 of the Revised Code; 416

(C) (1) A detachable supplemental form to the form 417
described in division (B) (4) of section 2317.56 of the Revised 418
Code that meets the following requirements: 419

(a) Indicates whether the pregnant woman has indicated a 420
preference as to the method of disposal of the fetal remains and 421
the preferred method selected; 422

(b) Provides for the signature of the physician who is to 423
perform or induce the abortion; 424

(c) Provides for a medical identification number for the pregnant woman but does not provide for the pregnant woman's printed name or signature. 425
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(2) If a medical emergency or medical necessity prevents the pregnant woman from signing the detachable supplemental form, procedures to complete that form a reasonable time after the medical emergency or medical necessity has ended. 428
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Sec. 3728.18. Nothing in this chapter shall be construed to limit the provisions regarding fetal death certificates for the product of human conception of at least twenty weeks of gestation in section 3705.20 of the Revised Code. 432
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Sec. 3728.95. A pregnant woman who has an abortion, the fetal remains from which are not disposed of in compliance with this chapter, is not guilty of committing, attempting to commit, complicity in the commission of, or conspiracy in the commission of a violation of section 3728.99 of the Revised Code. 436
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Sec. 3728.99. (A) No person shall fail to comply with sections 3728.02, 3728.03, 3728.06, 3728.10, and 3728.11 of the Revised Code. 441
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(B) Whoever knowingly violates division (A) of this section is guilty of failure to dispose of fetal remains humanely, a misdemeanor of the first degree. 444
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Section 2. That existing sections 2317.56, 3701.341, and 3705.17 of the Revised Code are hereby repealed. 447
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Section 3. The prohibition under section 3728.99 of the Revised Code shall not apply to any failure to comply in violation of that section until rules are adopted under section 3728.14 of the Revised Code. 449
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