

As Introduced

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H. B. No. 538

Representative Becker

Cosponsors: Representatives Brinkman, Kick, Cross, Riedel, Lang, Antani, Dean, Hood, Keller, Ginter, Vitale, Romanchuk, Grendell, Wiggam, Hillyer, Koehler, McClain, Manchester, Smith, T., Jordan, Powell, Reineke, Stoltzfus

A BILL

To enact sections 2904.01, 2904.02, 2904.03, 1
2904.031, 2904.032, 2904.04, 2904.05, 2904.22, 2
2904.30, 2904.35, and 2904.40 of the Revised 3
Code to enact the Human Life Protection Act to 4
prohibit abortions based upon a condition 5
precedent. 6

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

Section 1. That sections 2904.01, 2904.02, 2904.03, 7
2904.031, 2904.032, 2904.04, 2904.05, 2904.22, 2904.30, 2904.35, 8
and 2904.40 of the Revised Code be enacted to read as follows: 9

Sec. 2904.01. (A) This chapter applies only upon the 10
occurrence of either of the following conditions precedent: 11

(1) The supreme court of the United States issuing an 12
opinion that upholds, in whole or in part, a state's authority 13
to prohibit abortion; 14

(2) The adoption of an amendment to the United States 15
Constitution that authorizes, in whole or in part, a state to 16

prohibit an abortion. 17

(B) Once either condition precedent in division (A) of
this section has occurred: 18
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(1) This chapter supersedes all conflicting provisions of
the Revised Code; and 20
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(2) No state funds shall be disbursed that would support a
violation of this chapter. No contract that is executed after
this chapter becomes applicable shall be enforced, if that
enforcement would require or support a violation of this
chapter. 22
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Sec. 2904.02. As used in this chapter: 27

(A) "Abortion" means the purposeful termination of a human
pregnancy with an intention other than to produce a live birth
or to remove a dead fetus or embryo. 28
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(B) "Drug" has the same meaning as in section 4729.01 of
the Revised Code. 31
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(C) "Physician" has the same meaning as in section
2305.113 of the Revised Code. 33
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(D) "Reasonable medical judgment" means a medical judgment
that would be made by a reasonably prudent physician,
knowledgeable about the case and the treatment possibilities
with respect to the medical conditions involved. 35
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(E) "Unborn child" means an individual organism of the
species homo sapiens from fertilization until live birth. 39
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Sec. 2904.03. (A) No person shall purposely cause or
induce an abortion by either of the following: 41
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(1) Prescribing, administering, or personally furnishing a 43

drug or substance; 44

(2) Using an instrument or other means. 45

(B) Whoever violates division (A) of this section is 46
guilty of criminal abortion, a felony of the fourth degree. 47

Sec. 2904.031. (A) It is an affirmative defense to a 48
charge under section 2904.03 of the Revised Code that the 49
abortion was purposely performed or induced or purposely 50
attempted to be performed or induced by a physician and that the 51
physician determined, in the physician's reasonable medical 52
judgment, based on the facts known to the physician at that 53
time, that the abortion was necessary to prevent the death of 54
the pregnant woman or a serious risk of the substantial and 55
irreversible impairment of a major bodily function of the 56
pregnant woman. 57

(B) No abortion shall be considered necessary under 58
division (A) of this section on the basis of a claim or 59
diagnosis that the pregnant woman will engage in conduct that 60
would result in the pregnant woman's death or a substantial and 61
irreversible impairment of a major bodily function of the 62
pregnant woman or based on any reason related to the woman's 63
mental health. 64

Sec. 2904.032. Except when a medical emergency exists that 65
prevents compliance with one or more of the following 66
conditions, the affirmative defense set forth in section 67
2904.031 of the Revised Code does not apply unless the physician 68
who purposely performs or induces or purposely attempts to 69
perform or induce the abortion complies with all of the 70
following conditions: 71

(A) The physician who purposely performs or induces or 72

purposely attempts to perform or induce the abortion certifies 73
in writing that, in the physician's reasonable medical judgment, 74
based on the facts known to the physician at that time, the 75
abortion is necessary to prevent the death of the pregnant woman 76
or a serious risk of the substantial and irreversible impairment 77
of a major bodily function of the pregnant woman. 78

(B) A different physician not professionally related to 79
the physician described in division (A) of this section 80
certifies in writing that, in that different physician's 81
reasonable medical judgment, based on the facts known to that 82
different physician at that time, the abortion is necessary to 83
prevent the death of the pregnant woman or a serious risk of the 84
substantial and irreversible impairment of a major bodily 85
function of the pregnant woman. 86

(C) The physician purposely performs or induces or 87
purposely attempts to perform or induce the abortion in a 88
hospital or other health care facility that has appropriate 89
neonatal services for premature infants. 90

(D) The physician who purposely performs or induces or 91
purposely attempts to perform or induce the abortion terminates 92
or attempts to terminate the pregnancy in the manner that 93
provides the best opportunity for the unborn child to survive, 94
unless that physician determines, in the physician's reasonable 95
medical judgment, based on the facts known to the physician at 96
that time, that the termination of the pregnancy in that manner 97
poses a greater risk of the death of the pregnant woman or a 98
greater risk of the substantial and irreversible impairment of a 99
major bodily function of the pregnant woman than would other 100
available methods of abortion. 101

(E) The physician certifies in writing the available 102

methods or techniques considered and the reasons for choosing 103
the method or technique employed. 104

(F) The physician who purposely performs or induces or 105
purposely attempts to perform or induce the abortion has 106
arranged for the attendance in the same room in which the 107
abortion is to be performed or induced or attempted to be 108
performed or induced at least one other physician who is to take 109
control of, provide immediate medical care for, and take all 110
reasonable steps necessary to preserve the life and health of 111
the unborn child immediately upon the child's complete expulsion 112
or extraction from the pregnant woman. 113

Sec. 2904.04. (A) No person shall purposely manufacture, 114
possess for sale or distribution, advertise, or hold one's self 115
out as possessing for sale or distribution, or sell or 116
distribute, any drugs, medicine, instrument, or device, when any 117
of the following apply: 118

(1) The person knows or has reasonable cause to believe 119
that such drug, medicine, instrument, or device is capable of 120
causing an abortion and is used primarily for that purpose. 121

(2) The person knows or has reasonable cause to believe 122
that the recipient to whom the person sells or distributes such 123
drug, medicine, instrument, or device intends to use it to cause 124
an abortion. 125

(3) The person directly or indirectly represents that such 126
drug, medicine, instrument, or device is effective in causing an 127
abortion, regardless of whether it is effective as represented. 128

(B) This section does not prohibit a manufacturer or 129
distributor of drugs or surgical supplies, or a pharmacist or 130
physician, from lawfully manufacturing, possessing, selling, or 131

distributing, in the usual course of that person's business or 132
profession, any drug, medicine, instrument, or thing intended 133
for any lawful medical purpose, including an abortion that meets 134
the affirmative defense as provided in sections 2904.031 and 135
2904.032 of the Revised Code. 136

(C) Whoever violates this section is guilty of promoting 137
abortion, a misdemeanor of the first degree. 138

Sec. 2904.05. (A) No person shall purposely take the life 139
of a child born by attempted abortion who is alive when removed 140
from the uterus of the pregnant woman. 141

(B) No person who performs an abortion shall purposely 142
fail to use reasonable medical judgment to preserve the life of 143
a child who is alive when removed from the uterus of the 144
pregnant woman. 145

(C) Whoever violates this section is guilty of abortion 146
manslaughter, a felony of the first degree. 147

Sec. 2904.22. A woman on whom an abortion was induced or 148
attempted shall be immune from prosecution for any violation of 149
sections 2904.03 to 2904.05 of the Revised Code. 150

Sec. 2904.30. The state medical board shall revoke a 151
physician's license to practice medicine in this state if the 152
physician is guilty of any violations of sections 2904.03 to 153
2904.05 of the Revised Code. 154

Sec. 2904.35. (A) A woman on whom an abortion was 155
performed in violation of sections 2904.03, 2904.04, or 2904.05 156
of the Revised Code may file a civil action for the wrongful 157
death of her unborn child if the violation was a proximate cause 158
of the death of her unborn child. 159

(B) A woman who prevails in an action filed under division 160
(A) of this section shall receive both of the following from the 161
person who committed the one or more acts described in that 162
division: 163

(1) Damages in an amount equal to ten thousand dollars or 164
an amount determined by the trier of fact after consideration of 165
the evidence, at the mother's election at any time prior to 166
final judgment subject to the same defenses and requirements of 167
proof, except any requirement of live birth, as would apply to a 168
suit for the wrongful death of a child who had been born alive; 169

(2) Court costs and reasonable attorney's fees. 170

(C) A determination by a court of record that section 171
2904.03, 2904.04, or 2904.05 of the Revised Code is 172
unconstitutional shall be a defense to an action filed under 173
division (A) of this section alleging that the defendant 174
violated the division that was determined to be 175
unconstitutional. 176

(D) If the defendant in an action filed under division (A) 177
of this section prevails and all of the following apply, the 178
court shall award reasonable attorney's fees to the defendant in 179
accordance with section 2323.51 of the Revised Code: 180

(1) The court finds that the commencement of the action 181
constitutes frivolous conduct, as defined in section 2323.51 of 182
the Revised Code. 183

(2) The court's finding in division (D)(1) of this section 184
is not based on that court or another court determining that 185
section 2904.03, 2904.04, or 2904.05 of the Revised Code is 186
unconstitutional. 187

(3) The court finds that the defendant was adversely 188

affected by the frivolous conduct. 189

Sec. 2904.40. Notwithstanding any other provision of the 190
Revised Code, the following offenses shall be punished as 191
described: 192

(A) As used in section 2904.05 of the Revised Code, a 193
felony of the first degree shall be punishable by a minimum of 194
four, five, six, or seven years and a maximum of twenty-five 195
years of imprisonment and a fine of not more than ten thousand 196
dollars. 197

(B) As used in section 2904.03 of the Revised Code, a 198
felony of the fourth degree shall be punishable by a minimum of 199
one-half, one, one and one-half, or two years of imprisonment 200
and a fine of not more than two thousand five hundred dollars. 201

Section 2. This act shall be known as the "Human Life 202
Protection Act." 203