

**As Introduced**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**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**

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**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