

As Introduced

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H. B. No. 598

Representative Schmidt

Cosponsors: Representatives Gross, Hall, Loychik, Brinkman, Creech, Manchester, Stoltzfus, Bird, Riedel, John, Merrin, Click, Jordan, Richardson, Miller, K., Kick, Johnson, Baldrige, Abrams, Powell, Ferguson, Carruthers

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 individual or a serious risk of the substantial and 55
irreversible impairment of a major bodily function of the 56
pregnant individual. 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 individual will engage in conduct 60
that would result in the pregnant individual's death or a 61
substantial and irreversible impairment of a major bodily 62
function of the pregnant individual or based on any reason 63
related to the individual's 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 76
individual or a serious risk of the substantial and irreversible 77
impairment of a major bodily function of the pregnant 78
individual. 79

(B) A different physician not professionally related to 80
the physician described in division (A) of this section 81
certifies in writing that, in that different physician's 82
reasonable medical judgment, based on the facts known to that 83
different physician at that time, the abortion is necessary to 84
prevent the death of the pregnant individual or a serious risk 85
of the substantial and irreversible impairment of a major bodily 86
function of the pregnant individual. 87

(C) The physician purposely performs or induces or 88
purposely attempts to perform or induce the abortion in a 89
hospital or other health care facility that has appropriate 90
neonatal services for premature infants. 91

(D) The physician who purposely performs or induces or 92
purposely attempts to perform or induce the abortion terminates 93
or attempts to terminate the pregnancy in the manner that 94
provides the best opportunity for the unborn child to survive, 95
unless that physician determines, in the physician's reasonable 96
medical judgment, based on the facts known to the physician at 97
that time, that the termination of the pregnancy in that manner 98
poses a greater risk of the death of the pregnant individual or 99
a greater risk of the substantial and irreversible impairment of 100
a major bodily function of the pregnant individual than would 101
other available methods of abortion. 102

(E) The physician certifies in writing the available 103
methods or techniques considered and the reasons for choosing 104
the method or technique employed. 105

(F) The physician who purposely performs or induces or 106
purposely attempts to perform or induce the abortion has 107
arranged for the attendance in the same room in which the 108
abortion is to be performed or induced or attempted to be 109
performed or induced at least one other physician who is to take 110
control of, provide immediate medical care for, and take all 111
reasonable steps necessary to preserve the life and health of 112
the unborn child immediately upon the child's complete expulsion 113
or extraction from the pregnant individual. 114

Sec. 2904.04. (A) No person shall purposely manufacture, 115
possess for sale or distribution, advertise, or hold one's self 116
out as possessing for sale or distribution, or sell or 117
distribute, any drugs, medicine, instrument, or device, when any 118
of the following apply: 119

(1) The person knows or has reasonable cause to believe 120
that such drug, medicine, instrument, or device is capable of 121
causing an abortion and is used primarily for that purpose. 122

(2) The person knows or has reasonable cause to believe 123
that the recipient to whom the person sells or distributes such 124
drug, medicine, instrument, or device intends to use it to cause 125
an abortion. 126

(3) The person directly or indirectly represents that such 127
drug, medicine, instrument, or device is effective in causing an 128
abortion, regardless of whether it is effective as represented. 129

(B) This section does not prohibit a manufacturer or 130
distributor of drugs or surgical supplies, or a pharmacist or 131

physician, from lawfully manufacturing, possessing, selling, or 132
distributing, in the usual course of that person's business or 133
profession, any drug, medicine, instrument, or thing intended 134
for any lawful medical purpose, including an abortion that meets 135
the affirmative defense as provided in sections 2904.031 and 136
2904.032 of the Revised Code. 137

(C) Whoever violates this section is guilty of promoting 138
abortion, a misdemeanor of the first degree. 139

Sec. 2904.05. (A) No person shall purposely take the life 140
of a child born by attempted abortion who is alive when removed 141
from the uterus of the pregnant individual. 142

(B) No person who performs an abortion shall purposely 143
fail to use reasonable medical judgment to preserve the life of 144
a child who is alive when removed from the uterus of the 145
pregnant individual. 146

(C) Whoever violates this section is guilty of abortion 147
manslaughter, a felony of the first degree. 148

Sec. 2904.22. An individual on whom an abortion was 149
induced or attempted shall be immune from prosecution for any 150
violation of sections 2904.03 to 2904.05 of the Revised Code. 151

Sec. 2904.30. The state medical board shall revoke a 152
physician's license to practice medicine in this state if the 153
physician is guilty, or pleads no contest to and is convicted, 154
of any violations of sections 2904.03 to 2904.05 of the Revised 155
Code. The board may reinstate a physician's license if a 156
conviction is overturned by direct appeal. 157

Sec. 2904.35. (A) An individual on whom an abortion was 158
performed in violation of sections 2904.03, 2904.04, or 2904.05 159
of the Revised Code may file a civil action for the wrongful 160

death of her unborn child if the violation was a proximate cause 161
of the death of her unborn child. 162

(B) An individual who prevails in an action filed under 163
division (A) of this section shall receive both of the following 164
from the person who committed the one or more acts described in 165
that division: 166

(1) Damages in an amount equal to ten thousand dollars or 167
an amount determined by the trier of fact after consideration of 168
the evidence, at the mother's election at any time prior to 169
final judgment subject to the same defenses and requirements of 170
proof, except any requirement of live birth, as would apply to a 171
suit for the wrongful death of a child who had been born alive; 172

(2) Court costs and reasonable attorney's fees. 173

(C) If the defendant in an action filed under division (A) 174
of this section prevails and all of the following apply, the 175
court shall award reasonable attorney's fees to the defendant in 176
accordance with section 2323.51 of the Revised Code: 177

(1) The court finds that the commencement of the action 178
constitutes frivolous conduct, as defined in section 2323.51 of 179
the Revised Code. 180

(2) The court's finding in division (C) (1) of this section 181
is not based on that court or another court determining that 182
section 2904.03, 2904.04, or 2904.05 of the Revised Code is 183
unconstitutional. 184

(3) The court finds that the defendant was adversely 185
affected by the frivolous conduct. 186

Sec. 2904.40. Notwithstanding any other provision of the 187
Revised Code, the following offenses shall be punished as 188

<u>described:</u>	189
<u>(A) As used in section 2904.05 of the Revised Code, a</u>	190
<u>felony of the first degree shall be punishable by a minimum of</u>	191
<u>four, five, six, or seven years and a maximum of twenty-five</u>	192
<u>years of imprisonment and a fine of not more than ten thousand</u>	193
<u>dollars.</u>	194
<u>(B) As used in section 2904.03 of the Revised Code, a</u>	195
<u>felony of the fourth degree shall be punishable by a minimum of</u>	196
<u>one-half, one, one and one-half, or two years of imprisonment</u>	197
<u>and a fine of not more than two thousand five hundred dollars.</u>	198
Section 2. This act shall be known as the "Human Life Protection Act."	199 200