

As Introduced

136th General Assembly

Regular Session

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H. B. No. 237

Representatives Somani, Piccolantonio

Cosponsors: Representatives Upchurch, Brennan, Brownlee, Russo, McNally

A BILL

To enact sections 2305.2312, 3732.01, 3732.02,
3732.03, 3732.04, 3732.05, 3732.06, 3732.08,
3732.09, 3732.11, 3732.13, and 3732.14 of the
Revised Code to protect assisted reproduction
care.

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

Section 1. That sections 2305.2312, 3732.01, 3732.02,
3732.03, 3732.04, 3732.05, 3732.06, 3732.08, 3732.09, 3732.11,
3732.13, and 3732.14 of the Revised Code be enacted to read as
follows:

Sec. 2305.2312. (A) As used in this section:

(1) "Assisted reproduction," "donor," and "human
reproductive material" have the same meanings as in section
2907.13 of the Revised Code;

(2) "Assisted reproduction care" means all medical,
surgical, counseling, or referral services that are lawful in
Ohio or the receipt of products relating to assisted
reproduction that is lawful in Ohio, including services,
procedures, or medicines relating to assisted reproduction and

the provision of human reproductive material by a donor. 19

(3) "Assisted reproduction care helper" means a person who 20
facilitates or otherwise has supported or is supporting an 21
individual in seeking or receiving assisted reproduction care in 22
Ohio, including a person who provides funding, lodging, 23
transportation, doula services, information, data sharing 24
services such as electronic medical records programs, or other 25
financial or practical support to an individual seeking or 26
receiving assisted reproduction care. 27

(4) "Health care provider" has the same meaning as in 28
section 2305.2311 of the Revised Code. 29

(B) Except as provided in sections 2907.13, 2907.14, 30
4731.861, and 4731.864 of the Revised Code, a health care 31
provider providing assisted reproduction care, a health care 32
facility where assisted reproduction care is provided, an 33
individual seeking or accessing assisted reproduction care, 34
including a donor, or an assisted reproduction care helper is 35
not liable for or subject to damages in a civil action, 36
prosecution in a criminal proceeding, or professional 37
disciplinary action for any of the following: 38

(1) A claim of injury to or death of any human 39
reproductive material as an unborn human individual; 40

(2) Providing, accessing, or utilizing assisted 41
reproduction care. 42

(C) (1) This section does not apply if the act or omission 43
associated with providing assisted reproduction care constitutes 44
negligence, willful or wanton misconduct, or reckless disregard 45
for loss to person or property or the consequences so as to 46
affect the life or health of the patient. 47

(2) Nothing in this section shall be construed to permit a 48
wrongful death action related to a loss of human reproductive 49
material. 50

Sec. 3732.01. As used in sections 3732.01 to 3732.14 of 51
the Revised Code: 52

(A) "Assisted reproduction," "donor," and "human 53
reproductive material" have the same meanings as in section 54
2907.13 of the Revised Code. 55

(B) "Collect" means for a regulated entity to obtain 56
personal assisted reproduction or donor information in any 57
manner. 58

(C) "Commerce" has the same meaning as in the "Federal 59
Trade Commission Act," 15 U.S.C. 44. 60

(D) "Disclose" means for a regulated entity to release, 61
transfer, sell, provide access to, license, or divulge personal 62
assisted reproduction or donor information in any manner to a 63
third party, including the federal government, the state, any 64
political subdivision, or a law enforcement agency. 65

(E) (1) "Express consent" means informed, opt-in, 66
voluntary, specific, and unambiguous written consent, including 67
by electronic means, to collecting, retaining, using, or 68
disclosing personal assisted reproduction or donor information. 69

(2) "Express consent" does not include any of the 70
following: 71

(a) Consent secured without first providing to the 72
individual a clear and conspicuous disclosure, apart from any 73
privacy policy, terms of service, terms of use, general release, 74
user agreement, or other similar document, of all information 75

material to the provision of consent; 76

(b) Hovering over, muting, pausing, or closing a given 77
piece of content; 78

(c) Agreement obtained through the use of a user interface 79
designed or manipulated with the substantial effect of 80
subverting or impairing user autonomy, decision-making, or 81
choice. 82

(F) "Personal information" means information that 83
identifies, relates to, describes, is reasonably capable of 84
being associated with, or could reasonably be linked, directly 85
or indirectly to, a particular individual. 86

(G) "Personal assisted reproduction or donor information" 87
means personal information relating to the past, present, or 88
future use of assisted reproduction by an individual or the 89
past, present, or future provision of human reproductive 90
material by a donor, including any of the following: 91

(1) Efforts to research or obtain assisted reproduction- 92
related or donor-related information, services, or supplies, 93
including location information that might indicate an attempt to 94
acquire or receive such information, services, or supplies; 95

(2) The provision of human reproductive material by a 96
donor or the use of human reproductive material for assisted 97
reproduction; 98

(3) Fertility-related conditions, status, diseases, or 99
diagnoses, including pregnancy, menstruation, ovulation, the use 100
of assisted reproduction procedures, and the ability to conceive 101
a pregnancy, regardless of whether such individual is sexually 102
active, and whether such individual is engaging in unprotected 103
sex; 104

<u>(4) Fertility-related or assisted reproduction-related</u>	105
<u>surgeries or procedures;</u>	106
<u>(5) Use or purchase of any medication related to</u>	107
<u>fertility, including medicine for assisted reproduction;</u>	108
<u>(6) Bodily functions, vital signs, measurements, or</u>	109
<u>symptoms related to menstruation or pregnancy, such as basal</u>	110
<u>temperature, cramps, bodily discharge, or hormone levels;</u>	111
<u>(7) Any information about diagnoses or diagnostic testing,</u>	112
<u>treatment, medications, or the use of any product or service</u>	113
<u>relating to the matters described in divisions (G) (1) to (6) of</u>	114
<u>this section;</u>	115
<u>(8) Any information described in divisions (G) (1) to (7)</u>	116
<u>of this section that is derived or extrapolated from non-health</u>	117
<u>information, including proxy, derivative, inferred, emergent, or</u>	118
<u>algorithmic data.</u>	119
<u>(H) (1) "Regulated entity" means any entity, to the extent</u>	120
<u>the entity is engaged in activities in or affecting commerce,</u>	121
<u>that is either:</u>	122
<u>(a) A person, partnership, or corporation subject to the</u>	123
<u>jurisdiction of the federal trade commission under section 5(a)</u>	124
<u>(2) of the "Federal Trade Commission Act," 15 U.S.C. 45(a) (2);</u>	125
<u>(b) Notwithstanding section 4, 5(a) (2), or 6 of the</u>	126
<u>"Federal Trade Commission Act," 15 U.S.C. 44; 45(a) (2); 46, or</u>	127
<u>any jurisdictional limitation of the commission, either of the</u>	128
<u>following:</u>	129
<u>(i) A common carrier subject to the "Communications Act of</u>	130
<u>1934," 47 U.S.C. 151 et seq.;</u>	131
<u>(ii) An organization not organized to carry on business</u>	132

for its own profit or that of its members. 133

(2) "Regulated entity" does not include any of the 134
following: 135

(a) An entity that is a covered entity, as defined in 45 136
C.F.R. 160.103, to the extent the entity is acting as a covered 137
entity under the HIPAA privacy regulations, as defined in 138
section 1180(b) (3) of the "Social Security Act," 42 U.S.C. 139
1320d-9(b) (3); 140

(b) An entity that is a business associate, as defined in 141
45 C.F.R. 160.103, to the extent the entity is acting as a 142
business associate under the HIPAA privacy regulations, as 143
defined in section 1180(b) (3) of the "Social Security Act," 42 144
U.S.C. 1320d-9(b) (3); 145

(c) An entity that is subject to restrictions on 146
disclosure of records under section 543 of the "Public Health 147
Service Act," 42 U.S.C. 290dd-2, to the extent the entity is 148
acting in a capacity subject to the restrictions. 149

(I) (1) "Service provider" means a person to whom both of 150
the following apply: 151

(a) Collects, retains, uses, or discloses personal 152
assisted reproduction or donor information for the sole purpose 153
of, and only to the extent that the person is, conducting 154
business activities on behalf of, for the benefit of, under 155
instruction of, and under contractual agreement with a regulated 156
entity and not any other individual or entity; 157

(b) Does not divulge personal assisted reproduction or 158
donor information to any individual or entity other than such 159
regulated entity or a contractor to such service provider bound 160
to information processing terms not less restrictive than terms 161

to which the service provider is bound. 162

(2) A person shall only be considered a service provider 163
in the course of activities described in division (I) (1) (a) of 164
this section. 165

(J) "Third party" means any person who is not any of the 166
following: 167

(1) The regulated entity that is disclosing or collecting 168
personal assisted reproduction or donor information; 169

(2) The individual to whom the personal assisted 170
reproduction or donor information relates; 171

(3) A service provider. 172

Sec. 3732.02. (A) A regulated entity shall not collect, 173
retain, use, or disclose personal assisted reproduction or donor 174
information, except under either of the following circumstances: 175

(1) With the express consent of the individual to whom 176
such information relates; 177

(2) As is strictly necessary to provide a product or 178
service that the individual to whom the information relates has 179
requested from the regulated entity. 180

(B) A regulated entity shall restrict access to personal 181
assisted reproduction or donor information to the employees or 182
service providers of the regulated entity for which access is 183
necessary to provide a product or service that the individual to 184
whom the information relates has requested from the regulated 185
entity. 186

(C) For purposes of compliance with this section by a 187
service provider of a regulated entity, a request from an 188

individual to the regulated entity for a product or service, and 189
an express consent from the individual to the regulated entity, 190
shall be treated as having also been provided to the service 191
provider. 192

Sec. 3732.03. (A) (1) A regulated entity shall make 193
available a reasonable mechanism by which an individual, upon a 194
verified request, may access both of the following: 195

(a) Any personal assisted reproduction or donor 196
information relating to the individual that is retained by the 197
regulated entity, including both of the following: 198

(i) In the case of the information that the regulated 199
entity collected from third parties, how and from which specific 200
third parties the regulated entity collected the information; 201

(ii) The information that the regulated entity inferred 202
about the individual. 203

(b) A list of the specific third parties to which the 204
regulated entity has disclosed any personal assisted 205
reproduction or donor information relating to such individual. 206

(2) A regulated entity shall make the information 207
described in division (A) (1) of this section available in both a 208
human-readable format and a structured, interoperable, and 209
machine-readable format. 210

(B) (1) A regulated entity shall make available a 211
reasonable mechanism by which an individual, upon a verified 212
request, may request the deletion of any personal assisted 213
reproduction or donor information relating to the individual 214
that is retained by the regulated entity, including any 215
information that the regulated entity collected from a third 216
party or inferred from other information retained by the 217

regulated entity. 218

(2) A regulated entity shall comply with a verified 219
request received under this section without undue delay but not 220
later than fifteen days after the date on which such regulated 221
entity receives the verified request. 222

(3) A regulated entity shall not charge a fee to an 223
individual for a request made under this section. 224

(C) Nothing in this section shall be construed to require 225
a regulated entity to do any of the following: 226

(1) Take an action that would convert information that is 227
not personal information into personal information; 228

(2) Collect or retain personal information that the 229
regulated entity would otherwise not collect or retain; 230

(3) Retain personal information longer than the regulated 231
entity would otherwise retain the information. 232

(D) For purposes of this section, "reasonable mechanism" 233
means, with respect to a regulated entity and a right under 234
division (B) of this section, a mechanism to which both of the 235
following apply: 236

(1) It is equivalent in availability and ease of use to 237
that of other mechanisms for communicating or interacting with 238
the regulated entity. 239

(2) It includes an online means of exercising the right 240
described under division (B) of this section. 241

Sec. 3732.04. (A) A regulated entity shall maintain a 242
privacy policy relating to the practices of the regulated entity 243
regarding the collecting, retaining, using, and disclosing of 244

personal assisted reproduction or donor information. 245

(B) If a regulated entity has a web site, it shall 246
prominently publish the privacy policy on the web site. 247

(C) The privacy policy shall be clear and conspicuous and 248
shall include all of the following: 249

(1) A description of the practices of the regulated entity 250
regarding the collecting, retaining, using, and disclosing of 251
personal assisted reproduction and donor information; 252

(2) A clear and concise statement of the categories of the 253
information collected, retained, used, or disclosed by the 254
regulated entity; 255

(3) A clear and concise statement of the purposes of the 256
regulated entity for the collecting, retaining, using, or 257
disclosing of the information; 258

(4) A list of the specific third parties to which the 259
regulated entity discloses the information, and a clear and 260
concise statement of the purposes for which the regulated entity 261
discloses the information, including how the information may be 262
used by each such third party; 263

(5) A list of the specific third parties from which the 264
regulated entity has collected the information, and a clear and 265
concise statement of the purposes for which the regulated entity 266
collects the information; 267

(6) A clear and concise statement describing the extent to 268
which individuals may exercise control over the collecting, 269
retaining, using, and disclosing of personal assisted 270
reproduction or donor information by the regulated entity, and 271
the steps an individual must take to implement such controls; 272

(7) A clear and concise statement describing the efforts 273
of the regulated entity to protect personal assisted 274
reproduction or donor information from unauthorized disclosure. 275

Sec. 3732.05. (A) Any individual alleging a violation of 276
sections 3732.02 to 3732.04 of the Revised Code may bring a 277
civil action in any court of competent jurisdiction. 278

(B) In a civil action brought under this section in which 279
the plaintiff prevails, the court may award the following: 280

(1) An amount not less than one hundred dollars and not 281
greater than one thousand dollars per violation per day, or 282
actual damages, whichever is greater; 283

(2) Punitive damages; 284

(3) Reasonable attorneys' fees and litigation costs; 285

(4) Any other relief, including equitable or declaratory 286
relief, that the court determines appropriate. 287

(C) A violation of sections 3732.02 to 3732.04 of the 288
Revised Code constitutes a concrete and particularized injury in 289
fact to the individual to whom such information relates. 290

(D) (1) Notwithstanding any other provision of law, no pre- 291
dispute arbitration agreement or pre-dispute joint-action waiver 292
is valid or enforceable with respect to a dispute arising under 293
sections 3732.02 to 3732.04 of the Revised Code. 294

(2) Any determination as to whether or how division (D) of 295
this section applies to any dispute shall be made by a court, 296
rather than an arbitrator, without regard to whether the 297
agreement purports to delegate the determination to an 298
arbitrator. 299

<u>(E) For purposes of this section:</u>	300
<u>(1) "Pre-dispute arbitration agreement" means any</u>	301
<u>agreement to arbitrate a dispute that has not arisen at the time</u>	302
<u>of the making of the agreement.</u>	303
<u>(2) "Pre-dispute joint-action waiver" means an agreement</u>	304
<u>that would prohibit a party from participating in a joint,</u>	305
<u>class, or collective action in a judicial, arbitral,</u>	306
<u>administrative, or other forum, concerning a dispute that has</u>	307
<u>not yet arisen at the time of the making of the agreement.</u>	308
<u>Sec. 3732.06. (A) A violation of sections 3732.02 to</u>	309
<u>3732.04 of the Revised Code is an unfair or deceptive act or</u>	310
<u>practice in violation of section 1345.02 of the Revised Code. A</u>	311
<u>person injured by a violation of those sections has a cause of</u>	312
<u>action and is entitled to the same relief available to a</u>	313
<u>consumer under section 1345.09 of the Revised Code.</u>	314
<u>(B) The attorney general shall enforce sections 3732.02 to</u>	315
<u>3732.04 of the Revised Code in the same manner, by the same</u>	316
<u>means, and with the same jurisdiction, powers, and duties as</u>	317
<u>applicable for violations of sections 1345.01 to 1345.13 of the</u>	318
<u>Revised Code. Any regulated entity that violates those sections</u>	319
<u>is subject to the provisions, including penalties, of Chapter</u>	320
<u>1345. of the Revised Code.</u>	321
<u>(C) The attorney general may adopt rules as necessary to</u>	322
<u>implement and enforce sections 3732.02 to 3732.04 of the Revised</u>	323
<u>Code. Any rules shall be adopted in accordance with Chapter 119.</u>	324
<u>of the Revised Code.</u>	325
<u>Sec. 3732.08. (A) As used in sections 3732.08 to 3732.14</u>	326
<u>of the Revised Code, "assisted reproduction health care</u>	327
<u>provider" means any entity or individual, including any</u>	328

physician, nurse practitioner, physician assistant, or 329
pharmacist, who is engaged or seeks to engage in assisted 330
reproduction care, such as through the provision of evidence- 331
based information, counseling, or items and services related to 332
fertility treatment. 333

(B) No political subdivision of this state, or official or 334
employee of this state, shall prohibit or unreasonably limit, 335
for reasons other than to enforce health and safety regulations, 336
any of the following: 337

(1) Any individual from doing any of the following: 338

(a) Accessing assisted reproduction; 339

(b) Continuing or completing an ongoing assisted 340
reproduction treatment or procedure pursuant to a written plan 341
or agreement with an assisted reproduction health care provider; 342

(c) Using or controlling the use of the individual's human 343
reproductive material. 344

(2) Any assisted reproduction health care provider from 345
doing either of the following: 346

(a) Performing assisted reproduction treatments or 347
procedures; 348

(b) Providing evidence-based information related to 349
assisted reproduction. 350

(3) Any insurance provider from covering assisted 351
reproduction treatments or procedures. 352

(C) Nothing in this section shall be construed as 353
preempting any written agreement or contract regarding an 354
individual's human reproductive material. 355

Sec. 3732.09. (A) All of the following may bring a civil 356
action against any political subdivision of this state, or any 357
official or employee of this state, for the violation of, or the 358
enactment, implementation, or enforcement of a limitation or 359
requirement that violates, section 3732.08 of the Revised Code: 360

(1) The attorney general; 361

(2) Any individual or entity adversely affected by the 362
violation; 363

(3) An assisted reproduction health care provider on the 364
provider's own behalf, on behalf of the provider's staff, and on 365
behalf of the provider's patients who are or may be adversely 366
affected by the violation. 367

(B) The court may award appropriate equitable relief, 368
including temporary, preliminary, or permanent injunctive 369
relief. 370

(C) (1) The court shall award costs of litigation and 371
reasonable attorney's fees to any prevailing plaintiff. 372

(2) A plaintiff is not liable to a defendant for costs or 373
attorney's fees in any non-frivolous action filed under this 374
section. 375

(D) Notwithstanding any other provision of law, no 376
political subdivision of this state, or official or employee of 377
this state, is immune from an action brought under this section 378
in a court of competent jurisdiction. 379

(E) Nothing in section 3732.08 of the Revised Code or this 380
section shall be construed to do either of the following: 381

(1) Prohibit the enforcement of health and safety 382
regulations that apply to assisted reproduction health care 383

providers or health care facilities that provide assisted 384
reproduction care, if the regulations do both of the following: 385

(a) Advance the safety of health care services or the 386
health of patients; 387

(b) Cannot be advanced by a less restrictive alternative 388
measure or action. 389

(2) Modify, supersede, or otherwise affect any law 390
regarding insurance coverage of assisted reproduction. 391

Sec. 3732.11. (A) No assisted reproduction health care 392
provider or health care facility that provides assisted 393
reproduction care shall be required or compelled to provide 394
patient records to any out-of-state third party, including the 395
federal government, another state, any political subdivision, or 396
a law enforcement agency. 397

(B) For purposes of this section, "health care facility" 398
has the same meaning as in section 2925.11 of the Revised Code. 399

Sec. 3732.13. For the purposes of the Revised Code and 400
notwithstanding any other provision of law, no human 401
reproductive material that exists outside of a human uterus 402
shall be considered an unborn human individual, an unborn child, 403
a fetus, a natural person, or any other term that connotes or 404
designates personhood. 405

Sec. 3732.14. (A) Assisted reproduction health care shall 406
be performed or provided only if the assisted reproduction 407
health care provider has obtained the informed consent of each 408
patient. The health care provider shall provide written copies 409
to each patient of the provider's and health care facility's 410
assisted reproduction-related policies and services applicable 411
to the patient. 412

<u>(B) Each patient shall sign a form acknowledging that the</u>	413
<u>patient has received the information and consents to the</u>	414
<u>policies and applicable services described in division (A) of</u>	415
<u>this section.</u>	416