

**As Introduced**

**134th General Assembly**

**Regular Session**

**2021-2022**

**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**

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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 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
<b>Section 2.</b> This act shall be known as the "Human Life Protection Act."	199 200