As Introduced

134th General Assembly
Regular Session 2021-2022

Senators Roegner, O'Brien
Cosponsors: Senators Johnson, Antani, Romanchuk, Lang, Schaffer, Rulli, Wilson, Cirino

A BILL

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

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

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

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

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

(2) The adoption of an amendment to the United States Constitution that authorizes, in whole or in part, a state to prohibit an abortion.
(B) Once either condition precedent in division (A) of this section has occurred:

(1) This chapter supersedes all conflicting provisions of the Revised Code; and

(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.

Sec. 2904.02. As used in this chapter:

(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.

(B) "Drug" has the same meaning as in section 4729.01 of the Revised Code.

(C) "Physician" has the same meaning as in section 2305.113 of the Revised Code.

(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.

(E) "Unborn child" means an individual organism of the species homo sapiens from fertilization until live birth.

Sec. 2904.03. (A) No person shall purposely cause or induce an abortion by either of the following:

(i) Prescribing, administering, or personally furnishing a drug or substance;
(2) Using an instrument or other means.

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

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

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

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

(A) The physician who purposely performs or induces or purposely attempts to perform or induce the abortion certifies
in writing that, in the physician's reasonable medical judgment,

based on the facts known to the physician at that time, the

abortion is necessary to prevent the death of the pregnant woman

or a serious risk of the substantial and irreversible impairment

of a major bodily function of the pregnant woman.

(B) A different physician not professionally related to

the physician described in division (A) of this section

certifies in writing that, in that different physician's

reasonable medical judgment, based on the facts known to that

different physician at that time, the abortion is necessary to

prevent the death of the pregnant woman or a serious risk of the

substantial and irreversible impairment of a major bodily

function of the pregnant woman.

(C) The physician purposely performs or induces or

purposely attempts to perform or induce the abortion in a

hospital or other health care facility that has appropriate

neonatal services for premature infants.

(D) The physician who purposely performs or induces or

purposely attempts to perform or induce the abortion terminates

or attempts to terminate the pregnancy in the manner that

provides the best opportunity for the unborn child to survive,

unless that physician determines, in the physician's reasonable

medical judgment, based on the facts known to the physician at

that time, that the termination of the pregnancy in that manner

poses a greater risk of the death of the pregnant woman or a

greater risk of the substantial and irreversible impairment of a

major bodily function of the pregnant woman than would other

available methods of abortion.

(E) The physician certifies in writing the available

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

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

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

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

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

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

(B) This section does not prohibit a manufacturer or distributor of drugs or surgical supplies, or a pharmacist or physician, from lawfully manufacturing, possessing, selling, or distributing, in the usual course of that person's business or
profession, any drug, medicine, instrument, or thing intended
for any lawful medical purpose, including an abortion that meets
the affirmative defense as provided in sections 2904.031 and
2904.032 of the Revised Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The court finds that the defendant was adversely affected by the frivolous conduct.
Sec. 2904.40. Notwithstanding any other provision of the Revised Code, the following offenses shall be punished as described:

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

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

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