



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Brian D. Malachowsky

H.B. 149

132nd General Assembly
(As Introduced)

Reps. Patmon and Conditt, Antani, Becker, Brinkman, Dean, Ginter, Goodman, Hambley, Henne, Hill, Hood, Huffman, Keller, Koehler, LaTourette, McColley, Riedel, Roegner, Romanchuk, Slaby, R. Smith, Thompson, Faber, Sprague

BILL SUMMARY

- Prohibits an abortionist or person associated with the abortionist from financially benefitting from, or receiving any compensation or reimbursement for either:
 - Allowing a person who was not involved in performing the abortion to have access to the product of human conception that is aborted in order to take possession and control of that product;
 - Transferring possession and control of the product of human conception that is aborted to a person who was not involved in performing the abortion.
- Makes violation of the financial benefit, compensation, or reimbursement prohibition the crime of abortion trafficking, a third degree felony.
- Increases the penalty for violating the existing law prohibition against experimenting on or selling the product of human conception that is aborted (which is the crime of abortion trafficking under current law) to a third degree felony, from a first degree misdemeanor.
- Provides that whoever knowingly violates the prohibitions commits the crime of abortion trafficking.
- Permits a person to continue to charge a reasonable amount for removing, processing, or taking other actions regarding an individual's body parts under Ohio law governing anatomical gifts, except as provided in the law governing the crime of abortion trafficking.

CONTENT AND OPERATION

Changes to crime of abortion trafficking

Expansion of crime to include a new prohibition

The bill expands the crime of abortion trafficking to also prohibit an abortionist or person associated with the abortionist from financially benefitting from or receiving any type of compensation for either:

- Allowing a person who was not involved in the performance of the abortion to have access to the product of human conception that is aborted for the purpose of the person taking possession and control of that product of human conception; or
- Transferring possession and control of the product of human conception that is aborted to a person who was not involved in the performance of the abortion.¹

The bill provides that whoever knowingly violates the above prohibition is guilty of abortion trafficking, a third degree felony.² (See **COMMENT**.)

The bill does not prohibit compensation in situations that do not involve the access or transfer as described above. In addition, a person is not prohibited from paying an outside company to dispose of remains from abortions.

Definitions

The bill defines several terms, including:

- "Abortionist" means a person who performs or induces an abortion. A "person associated with the abortionist" means either of the following:
 - An individual who assists the abortionist in performing the abortion, regardless of whether the individual is employed by the abortionist;
 - A private physician practice, professional corporation, or ambulatory surgical facility that (1) is owned or operated by the

¹ R.C. 2919.14(B)(2).

² R.C. 2919.14(C).

abortionist and the abortion is performed there or (2) employs or contracts with the abortionist to perform the abortion.

- "Product of human conception" includes organs, tissues, and cells.³

Modification of existing crime and penalty

The bill increases the penalty for the existing crime of abortion trafficking to a third degree felony, from a first degree misdemeanor, and requires the violation to be done knowingly.⁴ (See **COMMENT.**) Under the existing offense a person is prohibited from experimenting upon or selling the product of human conception that is aborted.⁵

Mens rea background: knowingly

A person acts knowingly, regardless of the person's purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that those circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.⁶

R.C. 2901.20, enacted in S.B. 361, requires every act enacted on or after March 23, 2015, that creates a new criminal offense to specify the degree of mental culpability required to commit the offense. A criminal offense for which no degree of mental culpability is specified that is enacted in violation of the restriction is void.⁷ The restriction does not apply to the amendment of a criminal offense that existed on March 23, 2015, but it does apply to a new criminal offense added to a statute that existed on that date.⁸

Anatomical gifts: exception for charging a reasonable amount

The bill creates an exception to Ohio law governing anatomical gifts. Under that law, a person may charge a reasonable amount for the removal, processing,

³ R.C. 2919.14(A).

⁴ R.C. 2919.14(C).

⁵ R.C. 2919.14(B)(1).

⁶ R.C. 2901.22(B).

⁷ R.C. 2901.20(A).

⁸ R.C. 2901.20(B).

preservation, quality control, storage, transportation, implantation, or disposal of a body part. The bill retains that authority, but limits it by adding the qualification: "except as provided in" the law establishing the crime of abortion trafficking.⁹

COMMENT

The bill adds the "knowingly" mens rea requirement in the penalty provision instead of the prohibition provisions under the bill. As a result, it is possible that the penalty might only be imposed on whoever commits a violation knowing it is a violation instead of on whoever knowingly commits the prohibited act.

HISTORY

ACTION	DATE
Introduced	03-22-17

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⁹ R.C. 2108.18(B).

