

As Introduced

135th General Assembly

Regular Session

2023-2024

H. B. No. 502

Representatives Somani, Piccolantonio

**Cosponsors: Representatives Grim, McNally, Miller, A., Denson, Russo, Brent,
Weinstein**

A BILL

To enact sections 2305.2312, 3732.01, 3732.02, 1
3732.03, 3732.04, 3732.05, 3732.06, 3732.08, 2
3732.09, 3732.11, 3732.13, and 3732.14 of the 3
Revised Code to protect assisted reproduction 4
care. 5

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

Section 1. That sections 2305.2312, 3732.01, 3732.02, 6
3732.03, 3732.04, 3732.05, 3732.06, 3732.08, 3732.09, 3732.11, 7
3732.13, and 3732.14 of the Revised Code be enacted to read as 8
follows: 9

Sec. 2305.2312. (A) As used in this section: 10

(1) "Assisted reproduction," "donor," and "human 11
reproductive material" have the same meanings as in section 12
2907.13 of the Revised Code; 13

(2) "Assisted reproduction care" means all medical, 14
surgical, counseling, or referral services that are lawful in 15
Ohio or the receipt of products relating to assisted 16
reproduction that is lawful in Ohio, including services, 17

procedures, or medicines relating to assisted reproduction and 18
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

<u>sex;</u>	104
<u>(4) Fertility-related or assisted reproduction-related surgeries or procedures;</u>	105 106
<u>(5) Use or purchase of any medication related to fertility, including medicine for assisted reproduction;</u>	107 108
<u>(6) Bodily functions, vital signs, measurements, or symptoms related to menstruation or pregnancy, such as basal temperature, cramps, bodily discharge, or hormone levels;</u>	109 110 111
<u>(7) Any information about diagnoses or diagnostic testing, treatment, medications, or the use of any product or service relating to the matters described in divisions (G) (1) to (6) of this section;</u>	112 113 114 115
<u>(8) Any information described in divisions (G) (1) to (7) of this section that is derived or extrapolated from non-health information, including proxy, derivative, inferred, emergent, or algorithmic data.</u>	116 117 118 119
<u>(H) (1) "Regulated entity" means any entity, to the extent the entity is engaged in activities in or affecting commerce, that is either:</u>	120 121 122
<u>(a) A person, partnership, or corporation subject to the jurisdiction of the federal trade commission under section 5(a) (2) of the "Federal Trade Commission Act," 15 U.S.C. 45(a) (2);</u>	123 124 125
<u>(b) Notwithstanding section 4, 5(a) (2), or 6 of the "Federal Trade Commission Act," 15 U.S.C. 44; 45(a) (2); 46, or any jurisdictional limitation of the commission, either of the following:</u>	126 127 128 129
<u>(i) A common carrier subject to the "Communications Act of 1934," 47 U.S.C. 151 et seq.;</u>	130 131

<u>(ii) An organization not organized to carry on business</u>	132
<u>for its own profit or that of its members.</u>	133
<u>(2) "Regulated entity" does not include any of the</u>	134
<u>following:</u>	135
<u>(a) An entity that is a covered entity, as defined in 45</u>	136
<u>C.F.R. 160.103, to the extent the entity is acting as a covered</u>	137
<u>entity under the HIPAA privacy regulations, as defined in</u>	138
<u>section 1180(b) (3) of the "Social Security Act," 42 U.S.C.</u>	139
<u>1320d-9(b) (3);</u>	140
<u>(b) An entity that is a business associate, as defined in</u>	141
<u>45 C.F.R. 160.103, to the extent the entity is acting as a</u>	142
<u>business associate under the HIPAA privacy regulations, as</u>	143
<u>defined in section 1180(b) (3) of the "Social Security Act," 42</u>	144
<u>U.S.C. 1320d-9(b) (3);</u>	145
<u>(c) An entity that is subject to restrictions on</u>	146
<u>disclosure of records under section 543 of the "Public Health</u>	147
<u>Service Act," 42 U.S.C. 290dd-2, to the extent the entity is</u>	148
<u>acting in a capacity subject to the restrictions.</u>	149
<u>(I) (1) "Service provider" means a person to whom both of</u>	150
<u>the following apply:</u>	151
<u>(a) Collects, retains, uses, or discloses personal</u>	152
<u>assisted reproduction or donor information for the sole purpose</u>	153
<u>of, and only to the extent that the person is, conducting</u>	154
<u>business activities on behalf of, for the benefit of, under</u>	155
<u>instruction of, and under contractual agreement with a regulated</u>	156
<u>entity and not any other individual or entity;</u>	157
<u>(b) Does not divulge personal assisted reproduction or</u>	158
<u>donor information to any individual or entity other than such</u>	159
<u>regulated entity or a contractor to such service provider bound</u>	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

<u>regarding the collecting, retaining, using, and disclosing of</u>	244
<u>personal assisted reproduction or donor information.</u>	245
<u>(B) If a regulated entity has a web site, it shall</u>	246
<u>prominently publish the privacy policy on the web site.</u>	247
<u>(C) The privacy policy shall be clear and conspicuous and</u>	248
<u>shall include all of the following:</u>	249
<u>(1) A description of the practices of the regulated entity</u>	250
<u>regarding the collecting, retaining, using, and disclosing of</u>	251
<u>personal assisted reproduction and donor information;</u>	252
<u>(2) A clear and concise statement of the categories of the</u>	253
<u>information collected, retained, used, or disclosed by the</u>	254
<u>regulated entity;</u>	255
<u>(3) A clear and concise statement of the purposes of the</u>	256
<u>regulated entity for the collecting, retaining, using, or</u>	257
<u>disclosing of the information;</u>	258
<u>(4) A list of the specific third parties to which the</u>	259
<u>regulated entity discloses the information, and a clear and</u>	260
<u>concise statement of the purposes for which the regulated entity</u>	261
<u>discloses the information, including how the information may be</u>	262
<u>used by each such third party;</u>	263
<u>(5) A list of the specific third parties from which the</u>	264
<u>regulated entity has collected the information, and a clear and</u>	265
<u>concise statement of the purposes for which the regulated entity</u>	266
<u>collects the information;</u>	267
<u>(6) A clear and concise statement describing the extent to</u>	268
<u>which individuals may exercise control over the collecting,</u>	269
<u>retaining, using, and disclosing of personal assisted</u>	270
<u>reproduction or donor information by the regulated entity, and</u>	271

<u>the steps an individual must take to implement such controls;</u>	272
<u>(7) A clear and concise statement describing the efforts</u>	273
<u>of the regulated entity to protect personal assisted</u>	274
<u>reproduction or donor information from unauthorized disclosure.</u>	275
<u>Sec. 3732.05. (A) Any individual alleging a violation of</u>	276
<u>sections 3732.02 to 3732.04 of the Revised Code may bring a</u>	277
<u>civil action in any court of competent jurisdiction.</u>	278
<u>(B) In a civil action brought under this section in which</u>	279
<u>the plaintiff prevails, the court may award the following:</u>	280
<u>(1) An amount not less than one hundred dollars and not</u>	281
<u>greater than one thousand dollars per violation per day, or</u>	282
<u>actual damages, whichever is greater;</u>	283
<u>(2) Punitive damages;</u>	284
<u>(3) Reasonable attorneys' fees and litigation costs;</u>	285
<u>(4) Any other relief, including equitable or declaratory</u>	286
<u>relief, that the court determines appropriate.</u>	287
<u>(C) A violation of sections 3732.02 to 3732.04 of the</u>	288
<u>Revised Code constitutes a concrete and particularized injury in</u>	289
<u>fact to the individual to whom such information relates.</u>	290
<u>(D) (1) Notwithstanding any other provision of law, no pre-</u>	291
<u>dispute arbitration agreement or pre-dispute joint-action waiver</u>	292
<u>is valid or enforceable with respect to a dispute arising under</u>	293
<u>sections 3732.02 to 3732.04 of the Revised Code.</u>	294
<u>(2) Any determination as to whether or how division (D) of</u>	295
<u>this section applies to any dispute shall be made by a court,</u>	296
<u>rather than an arbitrator, without regard to whether the</u>	297
<u>agreement purports to delegate the determination to an</u>	298

<u>arbitrator.</u>	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.</u> (A) <u>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.</u> (A) <u>As used in sections 3732.08 to 3732.14</u>	326
<u>of the Revised Code, "assisted reproduction health care</u>	327

provider" means any entity or individual, including any 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 regulations that apply to assisted reproduction health care providers or health care facilities that provide assisted reproduction care, if the regulations do both of the following: 382
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(a) Advance the safety of health care services or the health of patients; 386
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(b) Cannot be advanced by a less restrictive alternative measure or action. 388
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(2) Modify, supersede, or otherwise affect any law regarding insurance coverage of assisted reproduction. 390
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Sec. 3732.11. (A) No assisted reproduction health care provider or health care facility that provides assisted reproduction care shall be required or compelled to provide patient records to any out-of-state third party, including the federal government, another state, any political subdivision, or a law enforcement agency. 392
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(B) For purposes of this section, "health care facility" has the same meaning as in section 2925.11 of the Revised Code. 398
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Sec. 3732.13. For the purposes of the Revised Code and notwithstanding any other provision of law, no human reproductive material that exists outside of a human uterus shall be considered an unborn human individual, an unborn child, a fetus, a natural person, or any other term that connotes or designates personhood. 400
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Sec. 3732.14. (A) Assisted reproduction health care shall be performed or provided only if the assisted reproduction health care provider has obtained the informed consent of each patient. The health care provider shall provide written copies to each patient of the provider's and health care facility's 406
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assisted reproduction-related policies and services applicable 411
to the patient. 412

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