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OHIO LEGISLATIVE SERVICE COMMISSION

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H.J.R. 5
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Lepore-Hagan and Miranda

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SUMMARY

- Proposes to amend the Ohio Constitution to guarantee the right to reproductive freedom, which entails the right to make and effectuate decisions about all pregnancy matters, including prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care.

DETAILED ANALYSIS

Constitutional right to reproductive freedom

The resolution proposes to amend the Ohio Constitution to guarantee every individual a fundamental right to reproductive freedom, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including, but not limited to, prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care. An individual's right to reproductive freedom cannot be denied, burdened, nor infringed upon unless justified by a compelling state interest achieved by the least restrictive means.¹

For purposes of the amendment, a state interest is compelling only if it is for the limited purpose of protecting the health of an individual seeking care, consistent with accepted clinical standards of practice and evidence-based medicine, and does not infringe on that individual's autonomous decision making.²

Notwithstanding the above, the state is permitted to regulate the provision of abortion care after fetal viability, provided that in no circumstance can the state prohibit an abortion

¹ Article I, Section 22(A).

² Art. I, sec. 22(D)(1).

that, in the professional judgment of an attending health care professional, is medically indicated to protect the life or physical or mental health of the pregnant individual. “Fetal viability” is defined in the amendment as the point in pregnancy when, in the professional judgment of an attending health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus’s sustained survival outside the uterus without the application of extraordinary medical measures.³

The amendment prohibits the state from discriminating in the protection or enforcement of this fundamental right. Further, the state cannot penalize, prosecute, or otherwise take adverse action against an individual based on the individual’s actual, potential, perceived, or alleged pregnancy outcomes, including, but not limited to, miscarriage, stillbirth, or abortion, nor can the state penalize, prosecute, or otherwise take adverse action against someone for aiding or assisting a pregnant individual in exercising the individual’s right to reproductive freedom with the individual’s voluntary consent.⁴

The amendment states that it is self-executing and if any of its provisions are held invalid, they are severable from the remaining amendment portions.⁵

Election and effective date

The resolution specifies that the amendment will be submitted to the electors at the general election to be held on November 8, 2022. If adopted by a majority of electors voting on it, the amendment takes effect immediately.

HISTORY

Action	Date
Introduced	05-31-22

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³ Art. I, sec. 22(A) and (D)(2).

⁴ Art. I, sec. 22(B) and (C).

⁵ Art. I, sec. 22(E).