



*Dennis M. Papp*

***Bill Analysis***  
*Legislative Service Commission*

**S.B. 102**  
123rd General Assembly  
(As Introduced)

**Sen. Ray**

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**BILL SUMMARY**

- Prohibits a person from willfully and knowingly cloning or attempting to clone a human being and from purchasing, selling, or attempting to purchase or sell an ovum, zygote, embryo, or fetus for the purpose of cloning a human being.
- Provides that a violation of either prohibition is "cloning a human being" and is subject to a civil penalty in an amount not to exceed \$500,000 per violation, to be deposited in the State Treasury's new Cloning Enforcement Fund.
- Permits anyone with knowledge of an alleged violation of either prohibition to report the alleged violation to the Attorney General and, unless the report is frivolous conduct, requires the Attorney General to investigate the alleged violation and, if a violation has occurred, bring a civil action for appropriate relief.
- Specifies that its prohibitions and the related provisions it contains do not give any person a private cause of action or substantive legal right against any person who violates either prohibition and do not prohibit or restrict biomedical research using cloning technology in the cloning of human cells, human genes, human tissue, or human organs that would not result in the replication of an entire human being.
- Repeals its prohibitions and the related provisions it contains five years after its effective date.

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## CONTENT AND OPERATION

The bill prohibits, for the five-year period commencing on the bill's effective date, a person from willfully and knowingly: (1) "cloning" (see below) or attempting to clone a human being, or (2) purchasing, selling, or attempting to purchase or sell an ovum, zygote, embryo, or fetus for the purpose of cloning a human being. A person who violates either of these prohibitions is guilty of "cloning a human being" and is subject to a civil penalty in an amount not to exceed \$500,000 per violation. Moneys collected from civil penalties so imposed are to be deposited in the State Treasury to the credit of the Cloning Enforcement Fund, which the bill creates. Moneys in the Fund must be used to pay the Attorney General's (the AG's) costs incurred in enforcing the above-described prohibitions and the related provisions of the bill. (R.C. 109.112 and 2927.28(B) and (C).)

The bill specifies that anyone with knowledge of an alleged violation of either of the above-described prohibitions may report the alleged violation to the AG. Unless the AG determines that the report is frivolous conduct under R.C. 2323.51 (see **COMMENT**), the AG must investigate the alleged violation and, if the AG determines that a violation has occurred, must bring a civil action for appropriate relief, including a temporary restraining order, preliminary or permanent injunction, and civil penalties in any court of competent jurisdiction. The AG may decline to investigate the report if the AG determines that the submission of the report is frivolous conduct under R.C. 2323.51 (see **COMMENT**). (R.C. 2927.28(C) and (D).)

The bill specifies that the above-described prohibitions and the related provisions it contains do not do either of the following: (1) give any person a private cause of action or substantive legal right against any person who violates either of the prohibitions, or (2) prohibit or restrict biomedical research using cloning technology in the cloning of human cells, human genes, human tissue, or human organs that would not result in the replication of an entire human being (R.C. 2927.28(E)).

For the purpose of the bill's proposed prohibitions and its related provisions discussed above, "clone" means willfully and knowingly creating a human being by transferring the nucleus from a human cell into a human egg cell from which the nucleus has been removed and using the resulting product to initiate a pregnancy that could result in the birth of a human being (R.C. 2927.28(A)).

All of the bill's provisions are repealed five years after the bill's effective date (Section 2).

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## COMMENT

Existing R.C. 2323.51 provides remedies regarding *frivolous conduct* related to a civil action. It specifies that, generally, at any time prior to the commencement of the trial in a civil action, within 21 days after the entry of judgment in a civil action, at any time prior to the hearing in an appeal of a civil action filed by an inmate against a government entity or employee, or within 21 days after the entry of judgment in an appeal of that nature, the court may award court costs, reasonable attorney's fees, and other reasonable expenses incurred in connection with the civil action or appeal to a party to the civil action or appeal *who was adversely affected by frivolous conduct*. A frivolous conduct award may be made under this provision upon the motion of a party to a civil action or an appeal of the specified nature or on the court's own initiative, after the court has complied with specified procedures, conducted a hearing, and made specified findings. The amount of a frivolous conduct award is determined in accordance with specified criteria and guidelines. The above-described provisions do not affect or limit the application of any provision of the Rules of Civil Procedure, the Rules of Appellate Procedure, or another court rule or section of the Revised Code to the extent that the provision prohibits an award of court costs, attorney's fees, or other expenses incurred in connection with a particular civil action or appeal or authorizes an award of such items incurred in connection with a particular civil action or appeal in a specified manner, generally, or subject to limitations.

For purposes of the above-described provisions:

(1) "Frivolous conduct" means either of the following:

(a) Conduct of an inmate or other party to a civil action, of an inmate who has filed an appeal of the type described below in clause (b) of paragraph (2), or of the inmate's or other party's counsel of record that satisfies any of the following: (i) it obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation, (ii) it is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law, (iii) allegations or other factual contentions have no evidentiary support or, if

specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, or (iv) denials or factual contentions are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief.

(b) An inmate's commencement of a civil action or appeal against a government entity or employee when any of the following applies: (i) the claim that is the basis of the civil action fails to state a claim or the issues of law that are the basis of the appeal fail to state any issues of law, (ii) it is clear that the inmate cannot prove material facts in support of the claim that is the basis of the civil action or in support of the issues of law that are the basis of the appeal, or (iii) the claim that is the basis of the civil action is substantially similar to a claim in a previous civil action commenced by the inmate or the issues of law that are the basis of the appeal are substantially similar to issues of law raised in a previous appeal commenced by the inmate, in that the claim that is the basis of the current civil action or the issues of law that are the basis of the current appeal involve the same parties or arise from the same operative facts as the claim or issues of law in the previous civil action or appeal.

(2) "Conduct" means any of the following: (a) the filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, filing a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes, or the taking of any other action in connection with a civil action, or (b) the filing by an inmate of a civil action or appeal against a government entity or employee, the assertion of a claim, defense or other position in connection with a civil action of that nature or the assertion of issues of law in an appeal of that nature, or the taking of any other action in connection with a civil action or appeal of that nature.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-11-99	p. 192

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