

**As Reported by the House Health Committee**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**S. B. No. 164**

**Senator LaRose**

**Cosponsors: Senators Jordan, Uecker, Lehner, Huffman, Hottinger, Burke,  
Eklund, Obhof, Terhar Representatives Huffman, Antani, Butler, Ginter, Johnson,  
Merrin, Romanchuk**

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**A BILL**

To amend section 3701.79 and to enact sections 1  
2919.10 and 2919.101 of the Revised Code to 2  
prohibit a person from performing, inducing, or 3  
attempting to perform or induce an abortion on a 4  
pregnant woman who is seeking the abortion 5  
because an unborn child has or may have Down 6  
Syndrome. 7

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

**Section 1.** That section 3701.79 be amended and sections 8  
2919.10 and 2919.101 of the Revised Code be enacted to read as 9  
follows: 10

**Sec. 2919.10.** (A) As used in this section: 11

(1) "Down syndrome" means a chromosome disorder associated 12  
either with an extra chromosome twenty-one, in whole or in part, 13  
or an effective trisomy for chromosome twenty-one. 14

(2) "Physician," "pregnant," and "unborn child" have the 15  
same meanings as in section 2919.16 of the Revised Code. 16

(B) No person shall purposely perform or induce or attempt to perform or induce an abortion on a pregnant woman if the person has knowledge that the pregnant woman is seeking the abortion, in whole or in part, because of any of the following: 17  
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(1) A test result indicating Down syndrome in an unborn child; 21  
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(2) A prenatal diagnosis of Down syndrome in an unborn child; 23  
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(3) Any other reason to believe that an unborn child has Down syndrome. 25  
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(C) Whoever violates division (B) of this section is guilty of performing or attempting to perform an abortion that was being sought because of Down syndrome, a felony of the fourth degree. 27  
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(D) The state medical board shall revoke a physician's license to practice medicine in this state if the physician violates division (B) of this section. 31  
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(E) Any physician who violates division (B) of this section is liable in a civil action for compensatory and exemplary damages and reasonable attorney's fees to any person, or the representative of the estate of any person, who sustains injury, death, or loss to person or property as the result of the performance or inducement or the attempted performance or inducement of the abortion. In any action under this division, the court also may award any injunctive or other equitable relief that the court considers appropriate. 34  
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(F) A pregnant woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of division (B) of this section is not guilty of violating division 43  
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(B) of this section or of attempting to commit, conspiring to 46  
commit, or complicity in committing a violation of division (B) 47  
of this section. 48

(G) If any provision of this section is held invalid, or 49  
if the application of any provision of this section to any 50  
person or circumstance is held invalid, the invalidity of that 51  
provision does not affect any other provisions or applications 52  
of this section and sections 2919.11 to 2919.193 of the Revised 53  
Code that can be given effect without the invalid provision or 54  
application, and to this end the provisions of this section and 55  
sections 2919.11 to 2919.193 of the Revised Code are severable 56  
as provided in section 1.50 of the Revised Code. In particular, 57  
it is the intent of the general assembly that any invalidity or 58  
potential invalidity of a provision of this section is not to 59  
impair the immediate and continuing enforceability of any other 60  
provisions of this section and sections 2919.11 to 2919.193 of 61  
the Revised Code. It is furthermore the intent of the general 62  
assembly that the provisions of this section are not to have the 63  
effect of repealing or limiting any other laws of this state. 64

(H) The general assembly may, by joint resolution, appoint 65  
one or more of its members who sponsored or cosponsored ...B... 66  
of the 132nd general assembly to intervene as a matter of right 67  
in any case in which the constitutionality of this section is 68  
challenged. 69

**Sec. 2919.101.** (A) In the abortion report required under 70  
section 3701.79 of the Revised Code, the attending physician 71  
shall indicate that the attending physician does not have 72  
knowledge that the pregnant woman was seeking the abortion , in 73  
whole or in part, because of any of the following: 74

(1) A test result indicating Down syndrome in an unborn 75

<u>child;</u>	76
<u>(2) A prenatal diagnosis of Down syndrome in an unborn</u>	77
<u>child;</u>	78
<u>(3) Any other reason to believe that an unborn child has</u>	79
<u>Down syndrome.</u>	80
<u>(B) Within ninety days of the effective date of this</u>	81
<u>section, the department of health shall adopt rules pursuant to</u>	82
<u>section 111.15 of the Revised Code to assist in compliance with</u>	83
<u>this section.</u>	84
<b>Sec. 3701.79.</b> (A) As used in this section:	85
(1) "Abortion" has the same meaning as in section 2919.11	86
of the Revised Code.	87
(2) "Abortion report" means a form completed pursuant to	88
division (C) of this section.	89
(3) "Ambulatory surgical facility" has the same meaning as	90
in section 3702.30 of the Revised Code.	91
(4) "Department" means the department of health.	92
(5) "Hospital" means any building, structure, institution,	93
or place devoted primarily to the maintenance and operation of	94
facilities for the diagnosis, treatment, and medical or surgical	95
care for three or more unrelated individuals suffering from	96
illness, disease, injury, or deformity, and regularly making	97
available at least clinical laboratory services, diagnostic x-	98
ray services, treatment facilities for surgery or obstetrical	99
care, or other definitive medical treatment. "Hospital" does not	100
include a "home" as defined in section 3721.01 of the Revised	101
Code.	102

(6) "Physician's office" means an office or portion of an office that is used to provide medical or surgical services to the physician's patients. "Physician's office" does not mean an ambulatory surgical facility, a hospital, or a hospital emergency department.

(7) "Postabortion care" means care given after the uterus has been evacuated by abortion.

(B) The department shall be responsible for collecting and collating abortion data reported to the department as required by this section.

(C) The attending physician shall complete an individual abortion report for each abortion the physician performs upon a woman. The report shall be confidential and shall not contain the woman's name. The report shall include, but is not limited to, all of the following, insofar as the patient makes the data available that is not within the physician's knowledge:

(1) Patient number;

(2) The name and address of the facility in which the abortion was performed, and whether the facility is a hospital, ambulatory surgical facility, physician's office, or other facility;

(3) The date of the abortion;

(4) All of the following regarding the woman on whom the abortion was performed:

(a) Zip code of residence;

(b) Age;

(c) Race;

(d) Marital status;	130
(e) Number of previous pregnancies;	131
(f) Years of education;	132
(g) Number of living children;	133
(h) Number of previously induced abortions;	134
(i) Date of last induced abortion;	135
(j) Date of last live birth;	136
(k) Method of contraception at the time of conception;	137
(l) Date of the first day of the last menstrual period;	138
(m) Medical condition at the time of the abortion;	139
(n) Rh-type;	140
(o) The number of weeks of gestation at the time of the abortion.	141 142
(5) The type of abortion procedure performed;	143
(6) Complications by type;	144
(7) <u>Written acknowledgment by the attending physician that the pregnant woman is not seeking the abortion, in whole or in part, because of any of the following:</u>	145 146 147
<u>(a) A test result indicating Down syndrome in an unborn child;</u>	148 149
<u>(b) A prenatal diagnosis of Down syndrome in an unborn child;</u>	150 151
<u>(c) Any other reason to believe that an unborn child has Down syndrome.</u>	152 153

<u>(8)</u> Type of procedure performed after the abortion;	154
<del>(8)</del> <u>(9)</u> Type of family planning recommended;	155
<del>(9)</del> <u>(10)</u> Type of additional counseling given;	156
<del>(10)</del> <u>(11)</u> Signature of attending physician.	157
(D) The physician who completed the abortion report under division (C) of this section shall submit the abortion report to the department within fifteen days after the woman is discharged.	158 159 160 161
(E) The appropriate vital records report or certificate shall be made out after the twentieth week of gestation.	162 163
(F) A copy of the abortion report shall be made part of the medical record of the patient of the facility in which the abortion was performed.	164 165 166
(G) Each hospital shall file monthly and annual reports listing the total number of women who have undergone a post- twelve-week-gestation abortion and received postabortion care. The annual report shall be filed following the conclusion of the state's fiscal year. Each report shall be filed within thirty days after the end of the applicable reporting period.	167 168 169 170 171 172
(H) Each case in which a physician treats a post abortion complication shall be reported on a postabortion complication form. The report shall be made upon a form prescribed by the department, shall be signed by the attending physician, and shall be confidential.	173 174 175 176 177
(I) (1) Not later than the first day of October of each year, the department shall issue an annual report of the abortion data reported to the department for the previous calendar year as required by this section. The annual report	178 179 180 181

shall include at least the following information:	182
(a) The total number of induced abortions;	183
(b) The number of abortions performed on Ohio and out-of-state residents;	184 185
(c) The number of abortions performed, sorted by each of the following:	186 187
(i) The age of the woman on whom the abortion was performed, using the following categories: under fifteen years of age, fifteen to nineteen years of age, twenty to twenty-four years of age, twenty-five to twenty-nine years of age, thirty to thirty-four years of age, thirty-five to thirty-nine years of age, forty to forty-four years of age, forty-five years of age or older;	188 189 190 191 192 193 194
(ii) The race and Hispanic ethnicity of the woman on whom the abortion was performed;	195 196
(iii) The education level of the woman on whom the abortion was performed, using the following categories or their equivalents: less than ninth grade, ninth through twelfth grade, one or more years of college;	197 198 199 200
(iv) The marital status of the woman on whom the abortion was performed;	201 202
(v) The number of living children of the woman on whom the abortion was performed, using the following categories: none, one, or two or more;	203 204 205
(vi) The number of weeks of gestation of the woman at the time the abortion was performed, using the following categories: less than nine weeks, nine to twelve weeks, thirteen to nineteen weeks, or twenty weeks or more;	206 207 208 209

(vii) The county in which the abortion was performed;	210
(viii) The type of abortion procedure performed;	211
(ix) The number of abortions previously performed on the woman on whom the abortion was performed;	212 213
(x) The type of facility in which the abortion was performed;	214 215
(xi) For Ohio residents, the county of residence of the woman on whom the abortion was performed.	216 217
(2) The report also shall indicate the number and type of the abortion complications reported to the department either on the abortion report required under division (C) of this section or the postabortion complication report required under division (H) of this section.	218 219 220 221 222
(3) In addition to the annual report required under division (I)(1) of this section, the department shall make available, on request, the number of abortions performed by zip code of residence.	223 224 225 226
(J) The director of health shall implement this section and shall apply to the court of common pleas for temporary or permanent injunctions restraining a violation or threatened violation of its requirements. This action is an additional remedy not dependent on the adequacy of the remedy at law.	227 228 229 230 231
<b>Section 2.</b> That existing section 3701.79 of the Revised Code is hereby repealed.	232 233