

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**S. B. No. 164**

**Senator LaRose**

**Cosponsors: Senators Jordan, Uecker, Lehner, Huffman**

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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 17

to perform or induce an abortion on a pregnant woman if the 18  
person has knowledge that the pregnant woman is seeking the 19  
abortion, in whole or in part, because of any of the following: 20

(1) A test result indicating Down syndrome in an unborn 21  
child; 22

(2) A prenatal diagnosis of Down syndrome in an unborn 23  
child; 24

(3) Any other reason to believe that an unborn child has 25  
Down syndrome. 26

(C) Whoever violates division (B) of this section is 27  
guilty of performing or attempting to perform an abortion that 28  
was being sought because of Down syndrome, a felony of the 29  
fourth degree. 30

(D) The state medical board shall revoke a physician's 31  
license to practice medicine in this state if the physician 32  
violates division (B) of this section. 33

(E) Any physician who violates division (B) of this 34  
section is liable in a civil action for compensatory and 35  
exemplary damages and reasonable attorney's fees to any person, 36  
or the representative of the estate of any person, who sustains 37  
injury, death, or loss to person or property as the result of 38  
the performance or inducement or the attempted performance or 39  
inducement of the abortion. In any action under this division, 40  
the court also may award any injunctive or other equitable 41  
relief that the court considers appropriate. 42

(F) A pregnant woman on whom an abortion is performed or 43  
induced or attempted to be performed or induced in violation of 44  
division (B) of this section is not guilty of violating division 45  
(B) of this section or of attempting to commit, conspiring to 46

commit, or complicity in committing a violation of division (B)  
of this section.

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

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

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

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

(2) A prenatal diagnosis of Down syndrome in an unborn 77  
child; 78

(3) Any other reason to believe that an unborn child has 79  
Down syndrome. 80

(B) Within ninety days of the effective date of this 81  
section, the department of health shall adopt rules pursuant to 82  
section 111.15 of the Revised Code to assist in compliance with 83  
this section. 84

**Sec. 3701.79.** (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 103  
office that is used to provide medical or surgical services to 104

the physician's patients. "Physician's office" does not mean an 105  
ambulatory surgical facility, a hospital, or a hospital 106  
emergency department. 107

(7) "Postabortion care" means care given after the uterus 108  
has been evacuated by abortion. 109

(B) The department shall be responsible for collecting and 110  
collating abortion data reported to the department as required 111  
by this section. 112

(C) The attending physician shall complete an individual 113  
abortion report for each abortion the physician performs upon a 114  
woman. The report shall be confidential and shall not contain 115  
the woman's name. The report shall include, but is not limited 116  
to, all of the following, insofar as the patient makes the data 117  
available that is not within the physician's knowledge: 118

(1) Patient number; 119

(2) The name and address of the facility in which the 120  
abortion was performed, and whether the facility is a hospital, 121  
ambulatory surgical facility, physician's office, or other 122  
facility; 123

(3) The date of the abortion; 124

(4) All of the following regarding the woman on whom the 125  
abortion was performed: 126

(a) Zip code of residence; 127

(b) Age; 128

(c) Race; 129

(d) Marital status; 130

(e) Number of previous pregnancies; 131

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| (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<br>abortion.                                                                                                            | 141<br>142        |
| (5) The type of abortion procedure performed;                                                                                                                                   | 143               |
| (6) Complications by type;                                                                                                                                                      | 144               |
| (7) <u>Written acknowledgment by the attending physician that<br/>the pregnant woman is not seeking the abortion, in whole or in<br/>part, because of any of the following:</u> | 145<br>146<br>147 |
| <u>(a) A test result indicating Down syndrome in an unborn<br/>child;</u>                                                                                                       | 148<br>149        |
| <u>(b) A prenatal diagnosis of Down syndrome in an unborn<br/>child;</u>                                                                                                        | 150<br>151        |
| <u>(c) Any other reason to believe that an unborn child has<br/>Down syndrome.</u>                                                                                              | 152<br>153        |
| <u>(8) Type of procedure performed after the abortion;</u>                                                                                                                      | 154               |
| <del>(8)</del> <u>(9) Type of family planning recommended;</u>                                                                                                                  | 155               |

~~(9)~~ (10) Type of additional counseling given; 156

~~(10)~~ (11) Signature of attending physician. 157

(D) The physician who completed the abortion report under 158  
division (C) of this section shall submit the abortion report to 159  
the department within fifteen days after the woman is 160  
discharged. 161

(E) The appropriate vital records report or certificate 162  
shall be made out after the twentieth week of gestation. 163

(F) A copy of the abortion report shall be made part of 164  
the medical record of the patient of the facility in which the 165  
abortion was performed. 166

(G) Each hospital shall file monthly and annual reports 167  
listing the total number of women who have undergone a post- 168  
twelve-week-gestation abortion and received postabortion care. 169  
The annual report shall be filed following the conclusion of the 170  
state's fiscal year. Each report shall be filed within thirty 171  
days after the end of the applicable reporting period. 172

(H) Each case in which a physician treats a post abortion 173  
complication shall be reported on a postabortion complication 174  
form. The report shall be made upon a form prescribed by the 175  
department, shall be signed by the attending physician, and 176  
shall be confidential. 177

(I) (1) Not later than the first day of October of each 178  
year, the department shall issue an annual report of the 179  
abortion data reported to the department for the previous 180  
calendar year as required by this section. The annual report 181  
shall include at least the following information: 182

(a) The total number of induced abortions; 183

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| (b) The number of abortions performed on Ohio and out-of-state residents;                                                                                                                                                                                                                                                                                                                | 184 |
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| (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 |
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| (ii) The race and Hispanic ethnicity of the woman on whom the abortion was performed;                                                                                                                                                                                                                                                                                                    | 195 |
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| (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 |
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| (iv) The marital status of the woman on whom the abortion was performed;                                                                                                                                                                                                                                                                                                                 | 201 |
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| (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 |
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| (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 |
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| (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 212  
woman on whom the abortion was performed; 213

(x) The type of facility in which the abortion was 214  
performed; 215

(xi) For Ohio residents, the county of residence of the 216  
woman on whom the abortion was performed. 217

(2) The report also shall indicate the number and type of 218  
the abortion complications reported to the department either on 219  
the abortion report required under division (C) of this section 220  
or the postabortion complication report required under division 221  
(H) of this section. 222

(3) In addition to the annual report required under 223  
division (I)(1) of this section, the department shall make 224  
available, on request, the number of abortions performed by zip 225  
code of residence. 226

(J) The director of health shall implement this section 227  
and shall apply to the court of common pleas for temporary or 228  
permanent injunctions restraining a violation or threatened 229  
violation of its requirements. This action is an additional 230  
remedy not dependent on the adequacy of the remedy at law. 231

**Section 2.** That existing section 3701.79 of the Revised 232  
Code is hereby repealed. 233