

**As Reported by the Senate Health, Human Services and Medicaid
Committee**

132nd General Assembly

**Regular Session
2017-2018**

S. B. No. 164

Senator LaRose

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

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) 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
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
(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</u> <u>the pregnant woman is not seeking the abortion, in whole or in</u> <u>part, because of any of the following:</u>	145 146 147
(a) <u>A test result indicating Down syndrome in an unborn</u> <u>child;</u>	148 149
(b) <u>A prenatal diagnosis of Down syndrome in an unborn</u> <u>child;</u>	150 151
(c) <u>Any other reason to believe that an unborn child has</u> <u>Down syndrome.</u>	152 153

<u>(8)</u> Type of procedure performed after the abortion;	154
(8) <u>(9)</u> Type of family planning recommended;	155
(9) <u>(10)</u> Type of additional counseling given;	156
(10) <u>(11)</u> 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

(b) The number of abortions performed on Ohio and out-of- 184
state residents; 185

(c) The number of abortions performed, sorted by each of 186
the following: 187

(i) The age of the woman on whom the abortion was 188
performed, using the following categories: under fifteen years 189
of age, fifteen to nineteen years of age, twenty to twenty-four 190
years of age, twenty-five to twenty-nine years of age, thirty to 191
thirty-four years of age, thirty-five to thirty-nine years of 192
age, forty to forty-four years of age, forty-five years of age 193
or older; 194

(ii) The race and Hispanic ethnicity of the woman on whom 195
the abortion was performed; 196

(iii) The education level of the woman on whom the 197
abortion was performed, using the following categories or their 198
equivalents: less than ninth grade, ninth through twelfth grade, 199
one or more years of college; 200

(iv) The marital status of the woman on whom the abortion 201
was performed; 202

(v) The number of living children of the woman on whom the 203
abortion was performed, using the following categories: none, 204
one, or two or more; 205

(vi) The number of weeks of gestation of the woman at the 206
time the abortion was performed, using the following categories: 207
less than nine weeks, nine to twelve weeks, thirteen to nineteen 208
weeks, or twenty weeks or more; 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
Section 2. That existing section 3701.79 of the Revised Code is hereby repealed.	232 233