

# AN ACT

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

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That section 3701.79 be amended and sections 2919.10 and 2919.101 of the Revised Code be enacted to read as follows:

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

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

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

(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:

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

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

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

(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.

(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.

(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 an action under this division, the court also may award any injunctive or other equitable relief that the court considers appropriate.

(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 (B) of this section or of attempting to commit, conspiring to 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 child;
- (3) Any other reason to believe that an unborn child has Down syndrome.

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

Sec. 3701.79. (A) As used in this section:

- (1) "Abortion" has the same meaning as in section 2919.11 of the Revised Code.
- (2) "Abortion report" means a form completed pursuant to division (C) of this section.
- (3) "Ambulatory surgical facility" has the same meaning as in section 3702.30 of the Revised

Code.

(4) "Department" means the department of health.

(5) "Hospital" means any building, structure, institution, or place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, and medical or surgical care for three or more unrelated individuals suffering from illness, disease, injury, or deformity, and regularly making available at least clinical laboratory services, diagnostic x-ray services, treatment facilities for surgery or obstetrical care, or other definitive medical treatment. "Hospital" does not include a "home" as defined in section 3721.01 of the Revised Code.

(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;
  - (e) Number of previous pregnancies;
  - (f) Years of education;
  - (g) Number of living children;
  - (h) Number of previously induced abortions;
  - (i) Date of last induced abortion;
  - (j) Date of last live birth;
  - (k) Method of contraception at the time of conception;
  - (l) Date of the first day of the last menstrual period;
  - (m) Medical condition at the time of the abortion;
  - (n) Rh-type;
  - (o) The number of weeks of gestation at the time of the abortion.
- (5) The type of abortion procedure performed;
- (6) Complications by type;
- (7) 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:
  - (a) A test result indicating Down syndrome in an unborn child;
  - (b) A prenatal diagnosis of Down syndrome in an unborn child;
  - (c) Any other reason to believe that an unborn child has Down syndrome.
- ~~(8)~~ Type of procedure performed after the abortion;
- ~~(9)~~ Type of family planning recommended;
- ~~(9)~~ ~~(10)~~ Type of additional counseling given;
- ~~(10)~~ ~~(11)~~ Signature of attending physician.
- (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.
- (E) The appropriate vital records report or certificate shall be made out after the twentieth week of gestation.
- (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.
- (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.
- (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.

(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 shall include at least the following information:

- (a) The total number of induced abortions;
- (b) The number of abortions performed on Ohio and out-of-state residents;
- (c) The number of abortions performed, sorted by each of the following:
  - (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;
  - (ii) The race and Hispanic ethnicity of the woman on whom the abortion was performed;
  - (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;
  - (iv) The marital status of the woman on whom the abortion was performed;
  - (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;
  - (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;
  - (vii) The county in which the abortion was performed;
  - (viii) The type of abortion procedure performed;
  - (ix) The number of abortions previously performed on the woman on whom the abortion was performed;
  - (x) The type of facility in which the abortion was performed;
  - (xi) For Ohio residents, the county of residence of the woman on whom the abortion was performed.

(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.

(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.

(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.

SECTION 2. That existing section 3701.79 of the Revised Code is hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_