



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Amy L. Archer

S.B. 164

132nd General Assembly
(As Reported by H. Health)

Sens. LaRose, Jordan, Uecker, Lehner, Huffman, Hottinger, Burke, Eklund, Obhof, Terhar

Reps. Huffman, Antani, Butler, Ginter, Johnson, Merrin, Romanchuk

BILL SUMMARY

- Prohibits any person from purposefully performing or inducing, or attempting to perform or induce, an abortion, if the person knows the pregnant woman is seeking the abortion, in whole or in part, because of a test result indicating Down syndrome in an unborn child, a prenatal diagnosis of Down syndrome in an unborn child, or due to any other reason to believe that the child has Down syndrome.
- Provides that a person who violates the prohibition is guilty of performing or attempting to perform an abortion that was being sought because of Down syndrome, a felony of the fourth degree.
- Requires the State Medical Board to revoke a physician's license to practice medicine if the physician violates the criminal prohibition.
- Provides that a physician who violates the criminal prohibition is civilly liable for compensatory and exemplary damages and reasonable attorney's fees to any person who sustains injury, death, or loss that results from the prohibited abortion.
- Provides criminal immunity for a pregnant woman on whom an abortion was performed, in violation of the criminal prohibition.
- Provides that the criminal prohibition does not repeal or limit any other provision of law that restricts or regulates the performance or inducement of an abortion.
- Requires physicians to indicate a lack of knowledge that the mother's intent to seek an abortion was, in whole or in part, because of a test result indicating Down syndrome, a prenatal diagnosis of Down syndrome, or due to any other reason to

believe the unborn child had Down syndrome, when complying with the continuing requirement to report to the Department of Health after each abortion.

- Permits the General Assembly, by a joint resolution, to appoint members who sponsored or cosponsored this bill to intervene as a matter of right in any case that challenges the constitutionality of the bill's provisions, except for the reporting requirements.

CONTENT AND OPERATION

Abortion prohibited when solely due to Down syndrome

The bill prohibits any person from purposefully performing or inducing, or attempting 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, for any of the following reasons:

- A test result indicating Down syndrome in an unborn child;
- A prenatal diagnosis of Down syndrome in an unborn child;
- Any other reason to believe that an unborn child has Down syndrome.

The bill does not specifically prohibit the *act* of aborting unborn children with Down syndrome. Rather, it looks at *why* the mother desires an abortion and whether the person who will perform the abortion knows the mother's reasons. Whoever violates this prohibition is guilty of performing or attempting to perform an abortion that was being sought because of Down syndrome, a felony of the fourth degree.¹

The bill defines "Down syndrome" to mean a chromosome disorder associated either with an extra chromosome 21, in whole or in part, or an effective trisomy for chromosome 21.² "Pregnant" means the human female reproductive condition, which commences with fertilization, of having a developing fetus. "Unborn child" means an individual organism of the species *Homo sapiens* from fertilization until live birth.³

Criminal immunity for pregnant woman

The bill provides that a pregnant woman on whom an abortion is performed or induced, or attempted to be performed or induced, in violation of the crime described

¹ R.C. 2919.10(B) and (C).

² R.C. 2919.10(A)(1).

³ R.C. 2919.10(A)(2); R.C. 2919.16, not in the bill.



above is not guilty of that crime, or of attempting to commit, conspiring to commit, or complicity in committing that crime.⁴

Physicians who perform Down syndrome abortions

Additional consequences for physicians

In addition to the criminal penalty described above, physicians are subject to further consequences for violating the criminal prohibition established by the bill. Under the bill, a "physician" means a person licensed to practice medicine and surgery or osteopathic medicine and surgery by the State Medical Board or a person who is otherwise authorized to practice medicine and surgery or osteopathic medicine and surgery in Ohio.⁵

Disciplinary action

The bill requires the State Medical Board to revoke a physician's license to practice medicine if the physician purposely performs or induces, or attempts to perform or induce an abortion prohibited by the bill.⁶

Civil action

The bill provides that a physician who purposely performs or induces, or attempts to perform or induce an abortion prohibited by the bill is liable in a civil action. The physician would be liable 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 prohibited abortion. The bill also permits a court to award injunctive and other equitable relief that it considers appropriate.⁷

Reporting requirement

The bill adds to the report physicians must submit to the Department of Health after performing each abortion, as required under continuing law. When making the report, the bill requires the attending physician to indicate that he or she does not have knowledge that the pregnant woman was seeking the abortion, in whole or in part, for any of the reasons prohibited by the bill. The attending physician also must provide

⁴ R.C. 2919.10(F).

⁵ R.C. 2919.10(A)(2); R.C. 2305.113 and 2919.16, not in the bill.

⁶ R.C. 2919.10(D).

⁷ R.C. 2919.10(E).



written acknowledgment in the abortion report that the pregnant woman is not seeking the abortion, in whole or in part, because of any of the reasons prohibited in the bill.⁸

The bill also requires the Department of Health to adopt rules under R.C. 111.15 to assist in compliance with the new reporting requirements. The Department must adopt the rules within 90 days of the bill's effective date.⁹

Intervention in legal actions

The bill permits the General Assembly, by joint resolution, to appoint one or more of its members to intervene as a matter of right in any case that challenges the constitutionality of any of the bill's provisions, other than the reporting requirement. The bill permits only members who have sponsored or cosponsored this bill to be appointed to intervene.¹⁰

Severability

The bill provides that if any provision of R.C. 2919.10 (the bill's prohibition) or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that section or 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 those provisions are severable. Moreover, the bill expresses that the General Assembly's intent is to continue the immediate and continuing enforcement of the remainder of the provisions in R.C. 2919.10 and R.C. 2919.11 to 2919.193 should any individual provision in R.C. 2919.10 be held invalid or if any provision is potentially invalid. Finally, nothing in R.C. 2919.10 is intended to repeal or limit any other Ohio laws.

HISTORY

ACTION	DATE
Introduced	06-13-17
Reported, S. Health, Human Services, & Medicaid	11-15-17
Passed Senate (20-12)	11-15-17
Reported, H. Health	12-07-17

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⁸ R.C. 2919.101(A) and 3701.79(C)(7).

⁹ R.C. 2919.101(B).

¹⁰ R.C. 2919.10(H).

