February 18, 2011

HOUSE BILL No. 1210

DIGEST OF HB 1210 (Updated February 17, 2011 11:13 am - DI 104)

Citations Affected: IC 16-18; IC 16-34; IC 27-8.

Synopsis: Various abortion matters. States public policy findings concerning a fetus feeling pain and a compelling state interest in protecting the fetus. Sets requirements for performing an abortion after

(Continued next page)

Effective: July 1, 2011.

Turner, Cheatham, Culver, Burton, Cherry, Davis, Davisson, Dembowski, Bacon, Battles, Behning, Clere, Borders, Bosma, Dodge, Ellspermann, Espich, Foley, Friend, Frizzell, Frye R, Goodin, Gutwein, Heaton, Heuer, Hinkle, Karickhoff, Knollman, Koch, Kubacki, Lehe, Lehman, Lutz, Mahan, McClain, McMillin, Messmer, Morris, Neese, Noe, Pond, Rhoads, Smith M, Soliday, Speedy, Steuerwald, Thompson, Truitt, Ubelhor, VanNatter, Welch, Wesco, Wolkins, Yarde

January 12, 2011, read first time and referred to Committee on Public Health.
February 3, 2011, reassigned to Committee on Public Policy.
February 17, 2011, amended, reported — Do Pass.

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the first trimester but before the earlier of viability of the fetus or 20 weeks of postfertilization age of the fetus (current law requirements are based on viability of the fetus). Requires that a physician determine the postfertilization age of a fetus before performing an abortion, and allows for the discipline of a physician who fails to do this in certain circumstances. Adds information that a pregnant woman must be informed of orally and in writing (current law requires that the information be given only orally) before an abortion may be performed concerning the physician, risks involved, information concerning the fetus, available assistance, and existing law. Requires a pregnant woman seeking an abortion to view fetal ultrasound imaging unless the pregnant woman states in writing that the pregnant woman does not want to view the fetal ultrasound imaging. Requires a physician who performs an abortion to: (1) have admitting privileges at a hospital in the county or in a contiguous county to the county where the abortion is performed; or (2) enter into an agreement with a physician who has admitting privileges in the county or contiguous county; and notify the patient of the hospital location where the patient can receive follow-up care by the physician. Requires the state department of health to develop materials to be provided to a pregnant woman setting forth certain information and to post the materials on the state department's web site. Creates a cause of action for a pregnant woman or the biological father of the fetus for actual and punitive damages if a physician recklessly, knowingly, or intentionally performs or attempts to perform an abortion in violation of the law. Provides for injunctive relief for specified individuals against a physician to prevent the physician from performing further abortions that violate the law. Creates the special litigation defense fund to provide reimbursement of the costs and expenses incurred by the attorney general in defending the constitutionality of this act, and continuously appropriates the fund. Provides for severability of provisions if a court determines that any of the law is unconstitutional, and specifies prior law returns to effect if the amended law is found by the court to be unconstitutional. Prohibits qualified health plans under the federal health care reform law from providing coverage for abortion.

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February 18, 2011

First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1210

A BILL FOR AN ACT to amend the Indiana Code concerning health and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 16-18-2-128.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 128.3. "Fertilization", for purposes of IC 16-34, means the fusion of a human spermatozoon with a human ovum.**

SECTION 2. IC 16-18-2-287.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 287.5. "Postfertilization age", for purposes of IC 16-34, means the age of the fetus calculated from the date of the fertilization of the ovum.**

SECTION 3. IC 16-34-1-8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 8. A qualified health plan (as defined in IC 27-8-33-3) offered under Subtitle D of Title 1 of the federal Patient Protection and Affordable Care Act (P.L. 111-148) may not provide coverage for abortion.**

SECTION 4. IC 16-34-1-9 IS ADDED TO THE INDIANA CODE

AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 9. (a) The general assembly finds the following:**

(1) There is substantial medical evidence that a fetus at twenty (20) weeks of postfertilization age has the physical structures necessary to experience pain.

(2) There is substantial medical evidence that a fetus of at least twenty (20) weeks of postfertilization age seeks to evade certain stimuli in a manner similar to an infant's or adult's response to pain.

(3) Anesthesia is routinely administered to a fetus of at least twenty (20) weeks of postfertilization age when prenatal surgery is performed.

(4) A fetus has been observed to exhibit hormonal stress responses to painful stimuli earlier than at twenty (20) weeks of postfertilization age.

(b) Indiana asserts a compelling state interest in protecting the life of a fetus from the state at which substantial medical evidence indicates that the fetus is capable of feeling pain.

SECTION 5. IC 16-34-2-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec 0.5. A medical emergency, for purposes of this chapter, does not include a patient's claim or diagnosis that the patient would engage in conduct that would result in the patient's death or substantial physical impairment. Under the circumstances described in this section and unless the following would pose a great risk of death or substantial physical impairment of the patient, the physician shall terminate the patient's pregnancy in a manner that, in a physician's reasonable medical judgment, would result in the best opportunity for the fetus to survive.**

SECTION 6. IC 16-34-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) Abortion shall in all instances be a criminal act, except when performed under the following circumstances:

(1) During the first trimester of pregnancy for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) the abortion is performed by the physician;

(B) the woman submitting to the abortion has filed her consent with her physician. However, if in the judgment of the physician the abortion is necessary to preserve the life of the woman, her consent is not required; and

(C) the woman submitting to the abortion has filed with her

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physician the written consent of her parent or legal guardian if required under section 4 of this chapter.

(2) After the first trimester of pregnancy and before **the earlier of** viability **of the fetus or twenty (20) weeks of postfertilization age,** for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) all the circumstances and provisions required for legal abortion during the first trimester are present and adhered to; and

(B) the abortion is performed in a hospital or ambulatory outpatient surgical center (as defined in IC 16-18-2-14).

(3) Except as provided in subsection (b), **at the earlier of viability of the fetus or twenty (20) weeks of postfertilization age and any time** after, ~~viability of the fetus~~, for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) all the circumstances and provisions required for legal abortion before **the earlier of** viability **of the fetus or twenty (20) weeks of postfertilization age** are present and adhered to;

(B) the abortion is performed in compliance with section 3 of this chapter; and

(C) before the abortion the attending physician shall certify in writing to the hospital in which the abortion is to be performed, that in the attending physician's professional, medical judgment, after proper examination and review of the woman's history, the abortion is necessary to prevent a substantial permanent impairment of the life or physical health of the pregnant woman. All facts and reasons supporting the certification shall be set forth by the physician in writing and attached to the certificate.

(b) A person may not knowingly or intentionally perform a partial birth abortion unless a physician reasonably believes that:

(1) performing the partial birth abortion is necessary to save the mother's life; and

(2) no other medical procedure is sufficient to save the mother's life.

SECTION 7. IC 16-34-2-1.1, AS AMENDED BY P.L.44-2009, SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1.1. (a) An abortion shall not be performed except with the voluntary and informed consent of the pregnant woman upon whom the abortion is to be performed. Except in the case of a medical

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emergency, consent to an abortion is voluntary and informed only if the following conditions are met:

(1) At least eighteen (18) hours before the abortion and in the presence of the pregnant woman, the physician who is to perform the abortion, the referring physician or a physician assistant (as defined in IC 25-27.5-2-10), an advanced practice nurse (as defined in IC 25-23-1-1(b)), or a midwife (as defined in IC 34-18-2-19) to whom the responsibility has been delegated by the physician who is to perform the abortion or the referring physician has ~~orally~~ informed the pregnant woman **orally and in writing** of the following:

(A) The name of the physician performing the abortion, **the physician's medical license number, and an emergency telephone number where the physician or the physician's designee may be contacted on a twenty-four (24) hour a day, seven (7) day a week basis.**

(B) That follow-up care by the physician or the physician's designee is available on an appropriate and timely basis when clinically necessary.

~~(B)~~ **(C)** The nature of the proposed procedure. ~~or treatment.~~

~~(C)~~ **(D)** The risks of and alternatives to the procedure, ~~or treatment.~~ **including:**

(i) the risk of infection and hemorrhage;

(ii) the potential danger to a subsequent pregnancy;

(iii) the potential danger of infertility; and

(iv) the possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer.

(E) That human physical life begins when a human ovum is fertilized by a human sperm.

~~(D)~~ **(F)** The probable gestational age of the fetus **at the time the abortion is to be performed,** including: ~~an offer to provide:~~

(i) a picture or drawing of a fetus;

(ii) the dimensions of a fetus; and

(iii) relevant information on the potential survival of an unborn fetus;

at this stage of development.

(G) That medical evidence shows that a fetus can feel pain at or before twenty (20) weeks of postfertilization age.

~~(E)~~ **(H)** The medical risks associated with carrying the fetus to

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term.

~~(F)~~ **(I)** The availability of fetal ultrasound imaging and auscultation of fetal heart tone services to enable the pregnant woman to view the image and hear the heartbeat of the fetus and how to obtain access to these services.

(J) That the pregnancy of a child less than fifteen (15) years of age may constitute child abuse under Indiana law and must be reported to the department of child services or the local law enforcement agency under IC 31-33-5.

(2) At least eighteen (18) hours before the abortion, the pregnant woman will be ~~orally~~ informed **orally and in writing** of the following:

(A) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care from the county office of the division of family resources.

(B) That the father of the unborn fetus is legally required to assist in the support of the child. In the case of rape, the information required under this clause may be omitted.

(C) That adoption alternatives are available and that adoptive parents may legally pay the costs of prenatal care, childbirth, and neonatal care.

(D) That there are physical risks to the pregnant woman in having an abortion, both during the abortion procedure and after.

(E) That Indiana has enacted the safe haven law under IC 31-34-2.5.

(F) That materials developed by the state department in section 1.5 of this chapter:

(i) will be provided to the pregnant woman by the physician providing the abortion as a hard copy;

(ii) are available on the state department's Internet web site;

(iii) provide scientific information about the unborn child; and

(iv) list agencies in the area that offer alternatives to abortion, including agencies that offer alternatives to abortion at no cost to the pregnant woman.

(3) The pregnant woman certifies in writing, before the abortion is performed, that:

(A) the information required by subdivisions (1) and (2) has been provided **to the pregnant woman;**

(B) the pregnant woman has been offered the opportunity

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to view the fetal ultrasound imaging and hear the auscultation of the fetal heart tone if the fetal heart tone is audible and that the woman has:

(i) viewed or refused to view the offered fetal ultrasound imaging; and

(ii) listened to or refused to listen to the offered auscultation of the fetal heart tone if the fetal heart tone is audible; and

(C) the pregnant woman has been given a written copy of the printed materials described in section 1.5 of this chapter.

(b) Before an abortion is performed, the pregnant woman ~~may, upon the pregnant woman's request,~~ **shall** view the fetal ultrasound imaging and hear the auscultation of the fetal heart tone if the fetal heart tone is audible **unless the pregnant woman certifies in writing, before the abortion is performed, that the pregnant woman does not want to view the fetal ultrasound imaging.**

SECTION 8. IC 16-34-2-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1.5. (a) The state department shall develop and post the materials described in this section on the state department's Internet web site.**

(b) The state department shall develop materials that include the following:

(1) Objective scientific information concerning the probable anatomical and physiological characteristics of a fetus every two (2) weeks of gestational age, including the following:

(A) Realistic pictures in color for each age of the fetus, including the dimensions of the fetus.

(B) Whether there is any possibility of the fetus surviving outside the womb.

(2) Information concerning the medical risks associated with each abortion procedure, including the following when medically accurate:

(A) The risks of infection and hemorrhaging.

(B) The potential danger:

(i) to a subsequent pregnancy; or

(ii) of infertility.

(C) The possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer.

(3) Information concerning the medical risks associated with

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carrying the child to term.

(4) Information that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care.

(5) Information that the biological father is liable for assistance in support of the child, regardless of whether the biological father has offered to pay for an abortion.

(6) A list of public and private agencies that provide assistance to women throughout pregnancy, childbirth, and a child's dependency. For purposes of this subdivision, "assistance" includes pregnancy prevention counseling and medical referrals for obtaining pregnancy prevention medications or devices. The list must include the following:

(A) Geographically indexed materials to allow a pregnant woman to find the services available near the pregnant woman's residence.

(B) Identification of services that are provided at no cost to the pregnant woman.

(C) The following information about each adoption agency in Indiana:

(i) A description of the services provided by the agency.

(ii) Contact information for the adoption agency, including the agency's telephone number.

(D) Information regarding telephone 211 dialing code services for accessing human services as described in IC 8-1-19.5, and the types of services that are available through this service.

(c) In complying with subsection (b)(6)(C), the state department shall consult with the recognized 211 service providers and the Indiana utility regulatory commission as required by IC 8-1-19.5-9.

SECTION 9. IC 16-34-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. **(a)** It shall be the responsibility of the attending physician to do the following:

(1) Determine in accordance with accepted medical standards **the postfertilization age of the fetus and** which trimester the pregnant woman receiving the abortion is in.

(2) Determine whether the fetus is viable.

(3) Certify that determination as part of any written reports required of the attending physician by the state department or the facility in which the abortion is performed.

(b) In making a determination under this section of the postfertilization age of the fetus, the attending physician shall do the following:

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(1) Question the patient concerning the date of fertilization.

(2) Perform or cause to be performed medical examinations and tests that a reasonably prudent physician would conduct to accurately diagnose the postfertilization age of the fetus.

(c) Except in the case of a medical emergency (as described in section 0.5 of this chapter), a physician that violates this section is subject to disciplinary action under IC 25-1-9.

SECTION 10. IC 16-34-2-3, AS AMENDED BY P.L.146-2008, SECTION 445, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) All abortions performed ~~after~~ **on and after the earlier of the time** a fetus is viable **or the time the postfertilization age of the fetus is at least twenty (20) weeks** shall be:

(1) governed by section 1(a)(3) and 1(b) of this chapter;

(2) performed in a hospital having premature birth intensive care units, unless compliance with this requirement would result in an increased risk to the life or health of the mother; and

(3) performed in the presence of a second physician as provided in subsection (b).

(b) An abortion may be performed after **the earlier of the time** a fetus is viable **or the time the postfertilization age of the fetus is at least twenty (20) weeks** only if there is in attendance a physician, other than the physician performing the abortion, who shall take control of and provide immediate care for a child born alive as a result of the abortion. During the performance of the abortion, the physician performing the abortion, and after the abortion, the physician required by this subsection to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the viable unborn child. However, this subsection does not apply if compliance would result in an increased risk to the life or health of the mother.

(c) Any fetus born alive shall be treated as a person under the law, and a birth certificate shall be issued certifying the child's birth even though the child may subsequently die, in which event a death certificate shall be issued. Failure to take all reasonable steps, in keeping with good medical practice, to preserve the life and health of the live born person shall subject the responsible persons to Indiana laws governing homicide, manslaughter, and civil liability for wrongful death and medical malpractice.

(d) If, before the abortion, the mother, and if married, her husband, has or have stated in writing that she does or they do not wish to keep the child in the event that the abortion results in a live birth, and this

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writing is not retracted before the abortion, the child, if born alive, shall immediately upon birth become a ward of the department of child services.

SECTION 11. IC 16-34-2-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 4.5. (a) A physician may not perform an abortion unless the physician:**

(1) has admitting privileges at a hospital located in the county where abortions are provided or a contiguous county; or

(2) has entered into an agreement with a physician who has admitting privileges at a hospital in the county or contiguous county concerning the management of possible complications of the services provided.

(b) A physician who performs an abortion shall notify the patient of the location of the hospital at which the physician or a physician with whom the physician has entered into an agreement under subsection (a)(2) has admitting privileges and where the patient may receive follow-up care by the physician if complications arise.

SECTION 12. IC 16-34-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) Every medical facility where abortions may be performed shall be supplied with forms drafted by the state department, the purpose and function of which shall be the improvement of maternal health and life through the compilation of relevant maternal life and health factors and data, and a further purpose and function shall be to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law. Such forms shall include, among other things, the following:

(1) The age of the woman who is aborted.

(2) The place where the abortion is performed.

(3) The full name and address of the physicians performing the abortion.

(4) The name of the father if known.

(5) **The postfertilization age of the fetus, the manner in which the postfertilization age was determined, and** if after **the earlier of the time the fetus obtains** viability **or the time the postfertilization age of the fetus is at least twenty (20) weeks,** the medical reason for the abortion.

(6) The medical procedure employed to administer the abortion, **and if the medical procedure performed on a fetus who is viable or has a postfertilization age of at least twenty (20)**

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weeks:

(A) whether the method of abortion used was a method, that in the reasonable judgment of a physician, would provide the best opportunity for the fetus to survive; and

(B) the basis for the determination that the pregnant woman had a condition described in this chapter that required the abortion to avert the death of or serious impairment to the pregnant woman.

(7) The mother's obstetrical history, including dates of other abortions, if any.

(8) The results of pathological examinations if performed.

(9) Information as to whether the fetus was delivered alive.

(10) Records of all maternal deaths occurring within the health facility where the abortion was performed.

(b) The form provided for in subsection (a) shall be completed by the physician performing the abortion and shall be transmitted to the state department not later than July 30 for each abortion performed in the first six (6) months of that year and not later than January 30 for each abortion performed for the last six (6) months of the preceding year. Each failure to file the form on time as required is a Class B misdemeanor.

(c) Not later than June 30 of each year, the state department shall compile a public report providing the following:

(1) Statistics for the previous calendar year from the information submitted under this section.

(2) Statistics for previous calendar years compiled by the state department under this subsection, with updated information for the calendar year that was submitted to the state department after the compilation of the statistics.

The state department shall ensure that no identifying information of a pregnant woman is contained in the report.

SECTION 13. IC 16-34-2-8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 8. (a) A pregnant woman or the biological father of the fetus may file a cause of action for actual and punitive damages against a physician who recklessly, knowingly, or intentionally performs or attempts to perform an abortion on the pregnant woman in violation of this chapter.**

(b) The following may file an action for injunctive relief against a physician who violates this chapter to prevent the physician from performing further abortions in violation of this chapter:

(1) A pregnant woman who has an abortion or attempts to

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have an abortion performed by a physician who violates this chapter.

(2) A spouse, parent, sibling, guardian, or health care provider of a pregnant woman described in subdivision (1).

(3) The attorney general.

(4) A county attorney with appropriate jurisdiction.

(c) If a judgment is rendered in favor of the plaintiff in an action described in this section, the court shall also order the defendant to render reasonable attorney's fees on behalf of the plaintiff.

(d) If a judgment is rendered in favor of the defendant in an action described in this section and the court determines that the lawsuit was frivolous and brought in bad faith, the court shall order the plaintiff to render reasonable attorney's fees on behalf of the defendant.

SECTION 14. IC 16-34-2-9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 9. (a) The special litigation defense fund is established for the purpose of providing reimbursement of the costs and expenses incurred by the attorney general in defending the constitutionality of actions taken in the 2011 session of the general assembly to the statutes specified in subsection (b).**

(b) The fund must be used to defend the constitutionality of actions taken in the 2011 session of the general assembly amending or adding the following sections of this chapter:

(1) Section 0.5.

(2) Section 1.

(3) Section 2.

(4) Section 3.

(5) Section 5.

(6) Section 8.

(7) Section 10.

(c) The fund shall be administered by the treasurer of state.

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(e) The expenses of administering the fund shall be paid from money in the fund.

(f) Money to be deposited into the fund consists of the following:

(1) Appropriations made by the general assembly.

(2) Donations, gifts, or grants made by persons for carrying out the purposes of the fund.

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(g) Money in the fund at the end of a state fiscal year does not revert to the state general fund. Money in the fund is continually appropriated.

SECTION 15. IC 16-34-2-10 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 10. (a) If any provision of this chapter is found by the courts to be unconstitutional or invalid, the unconstitutional or invalid provision shall be considered severable in the manner provided by IC 1-1-1-8(b).**

(b) If a court determines that any of the following sections of this chapter resulting from the actions taken by the 2011 session of the general assembly are unconstitutional, the amendments found by the court to be unconstitutional are void, and the language in effect before the amendments returns to effect:

(1) Section 0.5.
(2) Section 1.
(3) Section 2.
(4) Section 3.
(5) Section 5.

SECTION 16. IC 27-8-33 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 33. Health Care Exchanges and Abortion

Sec. 1. As used in this chapter, "abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

Sec. 2. As used in this chapter, "federal Patient Protection and Affordable Care Act" includes amendments made by the federal Health Care and Education Reconciliation Act of 2010 (P.L. 111-152).

Sec. 3. As used in this chapter, "qualified health plan" has the meaning set forth in Section 1301 of the federal Patient Protection and Affordable Care Act (P.L. 111-148).

Sec. 4. A qualified health plan offered under Subtitle D of Title 1 of the federal Patient Protection and Affordable Care Act may not provide coverage for abortion.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, to which was referred House Bill 1210, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning health and to make an appropriation.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 16-18-2-128.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 128.3. "Fertilization", for purposes of IC 16-34, means the fusion of a human spermatozoon with a human ovum.**

SECTION 2. IC 16-18-2-287.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 287.5. "Postfertilization age", for purposes of IC 16-34, means the age of the fetus calculated from the date of the fertilization of the ovum.**".

Page 1, between lines 6 and 7, begin a new paragraph and insert:

"SECTION 4. IC 16-34-1-9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 9. (a) The general assembly finds the following:**

(1) There is substantial medical evidence that a fetus at twenty (20) weeks of postfertilization age has the physical structures necessary to experience pain.

(2) There is substantial medical evidence that a fetus of at least twenty (20) weeks of postfertilization age seeks to evade certain stimuli in a manner similar to an infant's or adult's response to pain.

(3) Anesthesia is routinely administered to a fetus of at least twenty (20) weeks of postfertilization age when prenatal surgery is performed.

(4) A fetus has been observed to exhibit hormonal stress responses to painful stimuli earlier than at twenty (20) weeks of postfertilization age.

(b) Indiana asserts a compelling state interest in protecting the life of a fetus from the state at which substantial medical evidence indicates that the fetus is capable of feeling pain.

SECTION 5. IC 16-34-2-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1, 2011]: **Sec 0.5. A medical emergency, for purposes of this chapter, does not include a patient's claim or diagnosis that the patient would engage in conduct that would result in the patient's death or substantial physical impairment. Under the circumstances described in this section and unless the following would pose a great risk of death or substantial physical impairment of the patient, the physician shall terminate the patient's pregnancy in a manner that, in a physician's reasonable medical judgment, would result in the best opportunity for the fetus to survive.**

SECTION 6. IC 16-34-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) Abortion shall in all instances be a criminal act, except when performed under the following circumstances:

(1) During the first trimester of pregnancy for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) the abortion is performed by the physician;

(B) the woman submitting to the abortion has filed her consent with her physician. However, if in the judgment of the physician the abortion is necessary to preserve the life of the woman, her consent is not required; and

(C) the woman submitting to the abortion has filed with her physician the written consent of her parent or legal guardian if required under section 4 of this chapter.

(2) After the first trimester of pregnancy and before **the earlier of** viability **of the fetus or twenty (20) weeks of postfertilization age,** for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) all the circumstances and provisions required for legal abortion during the first trimester are present and adhered to; and

(B) the abortion is performed in a hospital or ambulatory outpatient surgical center (as defined in IC 16-18-2-14).

(3) Except as provided in subsection (b), **at the earlier of viability of the fetus or twenty (20) weeks of postfertilization age and any time** after, ~~viability of the fetus~~, for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) all the circumstances and provisions required for legal abortion before **the earlier of** viability **of the fetus or twenty (20) weeks of postfertilization age** are present and adhered to;

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(B) the abortion is performed in compliance with section 3 of this chapter; and

(C) before the abortion the attending physician shall certify in writing to the hospital in which the abortion is to be performed, that in the attending physician's professional, medical judgment, after proper examination and review of the woman's history, the abortion is necessary to prevent a substantial permanent impairment of the life or physical health of the pregnant woman. All facts and reasons supporting the certification shall be set forth by the physician in writing and attached to the certificate.

(b) A person may not knowingly or intentionally perform a partial birth abortion unless a physician reasonably believes that:

(1) performing the partial birth abortion is necessary to save the mother's life; and

(2) no other medical procedure is sufficient to save the mother's life.".

Page 2, line 4, strike "orally".

Page 2, line 4, after "woman" insert "**orally and in writing**".

Page 2, line 6, delete "." and insert ", **the physician's medical license number, and an emergency telephone number where the physician or the physician's designee may be contacted on a twenty-four (24) hour a day, seven (7) day a week basis.**

(B) That follow-up care by the physician or the physician's designee is available on an appropriate and timely basis when clinically necessary.".

Page 2, line 7, strike "(B)" and insert "**(C)**".

Page 2, line 7, after "procedure" insert ".".

Page 2, line 7, strike "or treatment.".

Page 2, line 8, strike "(C)" and insert "**(D)**".

Page 2, line 8, after "procedure" insert ",".

Page 2, line 8, strike "or treatment." and insert "**including:**

(i) the risk of infection and hemorrhage;

(ii) the potential danger to a subsequent pregnancy;

(iii) the potential danger of infertility; and

(iv) the possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer.

(E) That human physical life begins when a human ovum is fertilized by a human sperm.".

Page 2, line 9, strike "(D)" and insert "**(F)**".

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Page 2, line 9, delete "," and insert "**at the time the abortion is to be performed,**".

Page 2, line 9, after "including" insert ":".

Page 2, line 9, strike "an".

Page 2, strike line 10.

Page 2, between lines 15 and 16, begin a new line double block indented and insert:

"**(G) That medical evidence shows that a fetus can feel pain at or before twenty (20) weeks of postfertilization age.**".

Page 2, line 16, strike "(E)" and insert "**(H)**".

Page 2, line 18, strike "(F)" and insert "**(I)**".

Page 2, delete line 22, begin a new line double block indented, and insert:

"**(J) That the pregnancy of a child less than fifteen (15) years of age may constitute child abuse under Indiana law and must be reported to the department of child services or the local law enforcement agency under IC 31-33-5.**".

Page 2, line 24, strike "orally".

Page 2, line 24, after "informed" insert "**orally and in writing**".

Page 2, between lines 33 and 34, begin a new line double block indented and insert:

"**(D) That there are physical risks to the pregnant woman in having an abortion, both during the abortion procedure and after.**

(E) That Indiana has enacted the safe haven law under IC 31-34-2.5.

(F) That materials developed by the state department in section 1.5 of this chapter:

(i) will be provided to the pregnant woman by the physician providing the abortion as a hard copy;

(ii) are available on the state department's Internet web site;

(iii) provide scientific information about the unborn child; and

(iv) list agencies in the area that offer alternatives to abortion, including agencies that offer alternatives to abortion at no cost to the pregnant woman.".

Page 2, line 35, after "that" insert ":

(A)".

Page 2, line 36, delete "." and insert "**to the pregnant woman;**

(B) the pregnant woman has been offered the opportunity to view the fetal ultrasound imaging and hear the

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auscultation of the fetal heart tone if the fetal heart tone is audible and that the woman has:

(i) viewed or refused to view the offered fetal ultrasound imaging; and

(ii) listened to or refused to listen to the offered auscultation of the fetal heart tone if the fetal heart tone is audible; and

(C) the pregnant woman has been given a written copy of the printed materials described in section 1.5 of this chapter.".

Page 2, after line 42, begin a new paragraph and insert:

"SECTION 7. IC 16-34-2-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1.5. (a) The state department shall develop and post the materials described in this section on the state department's Internet web site.**

(b) The state department shall develop materials that include the following:

(1) Objective scientific information concerning the probable anatomical and physiological characteristics of a fetus every two (2) weeks of gestational age, including the following:

(A) Realistic pictures in color for each age of the fetus, including the dimensions of the fetus.

(B) Whether there is any possibility of the fetus surviving outside the womb.

(2) Information concerning the medical risks associated with each abortion procedure, including the following when medically accurate:

(A) The risks of infection and hemorrhaging.

(B) The potential danger:

(i) to a subsequent pregnancy; or

(ii) of infertility.

(C) The possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer.

(3) Information concerning the medical risks associated with carrying the child to term.

(4) Information that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care.

(5) Information that the biological father is liable for assistance in support of the child, regardless of whether the biological father has offered to pay for an abortion.

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(6) A list of public and private agencies that provide assistance to women throughout pregnancy, childbirth, and a child's dependency. For purposes of this subdivision, "assistance" includes pregnancy prevention counseling and medical referrals for obtaining pregnancy prevention medications or devices. The list must include the following:

(A) Geographically indexed materials to allow a pregnant woman to find the services available near the pregnant woman's residence.

(B) Identification of services that are provided at no cost to the pregnant woman.

(C) The following information about each adoption agency in Indiana:

(i) A description of the services provided by the agency.

(ii) Contact information for the adoption agency, including the agency's telephone number.

(D) Information regarding telephone 211 dialing code services for accessing human services as described in IC 8-1-19.5, and the types of services that are available through this service.

(c) In complying with subsection (b)(6)(C), the state department shall consult with the recognized 211 service providers and the Indiana utility regulatory commission as required by IC 8-1-19.5-9.

SECTION 7. IC 16-34-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. **(a)** It shall be the responsibility of the attending physician to do the following:

(1) Determine in accordance with accepted medical standards **the postfertilization age of the fetus and** which trimester the pregnant woman receiving the abortion is in.

(2) Determine whether the fetus is viable.

(3) Certify that determination as part of any written reports required of the attending physician by the state department or the facility in which the abortion is performed.

(b) In making a determination under this section of the postfertilization age of the fetus, the attending physician shall do the following:

(1) Question the patient concerning the date of fertilization.

(2) Perform or cause to be performed medical examinations and tests that a reasonably prudent physician would conduct to accurately diagnose the postfertilization age of the fetus.

(c) Except in the case of a medical emergency (as described in section 0.5 of this chapter), a physician that violates this section is

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subject to disciplinary action under IC 25-1-9.

SECTION 8. IC 16-34-2-3, AS AMENDED BY P.L.146-2008, SECTION 445, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) All abortions performed ~~after~~ **on and after the earlier of the time** a fetus is viable **or the time the postfertilization age of the fetus is at least twenty (20) weeks** shall be:

(1) governed by section 1(a)(3) and 1(b) of this chapter;

(2) performed in a hospital having premature birth intensive care units, unless compliance with this requirement would result in an increased risk to the life or health of the mother; and

(3) performed in the presence of a second physician as provided in subsection (b).

(b) An abortion may be performed after **the earlier of the time** a fetus is viable **or the time the postfertilization age of the fetus is at least twenty (20) weeks** only if there is in attendance a physician, other than the physician performing the abortion, who shall take control of and provide immediate care for a child born alive as a result of the abortion. During the performance of the abortion, the physician performing the abortion, and after the abortion, the physician required by this subsection to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the viable unborn child. However, this subsection does not apply if compliance would result in an increased risk to the life or health of the mother.

(c) Any fetus born alive shall be treated as a person under the law, and a birth certificate shall be issued certifying the child's birth even though the child may subsequently die, in which event a death certificate shall be issued. Failure to take all reasonable steps, in keeping with good medical practice, to preserve the life and health of the live born person shall subject the responsible persons to Indiana laws governing homicide, manslaughter, and civil liability for wrongful death and medical malpractice.

(d) If, before the abortion, the mother, and if married, her husband, has or have stated in writing that she does or they do not wish to keep the child in the event that the abortion results in a live birth, and this writing is not retracted before the abortion, the child, if born alive, shall immediately upon birth become a ward of the department of child services.".

Page 3, line 4, delete "physician" and insert "**physician:**

(1)".

Page 3, line 4, delete "located:" and insert "**located in the county**

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where abortions are provided or a contiguous county; or

(2) has entered into an agreement with a physician who has admitting privileges at a hospital in the county or contiguous county concerning the management of possible complications of the services provided.".

Page 3, delete lines 5 through 7.

Page 3, line 9, delete "has" and insert "**or a physician with whom the physician has entered into an agreement under subsection (a)(2) has admitting**".

Page 3, between lines 11 and 12, begin a new paragraph and insert:

"SECTION 9. IC 16-34-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) Every medical facility where abortions may be performed shall be supplied with forms drafted by the state department, the purpose and function of which shall be the improvement of maternal health and life through the compilation of relevant maternal life and health factors and data, and a further purpose and function shall be to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law. Such forms shall include, among other things, the following:

(1) The age of the woman who is aborted.

(2) The place where the abortion is performed.

(3) The full name and address of the physicians performing the abortion.

(4) The name of the father if known.

(5) **The postfertilization age of the fetus, the manner in which the postfertilization age was determined, and** if after **the earlier of the time the fetus obtains** viability **or the time the postfertilization age of the fetus is at least twenty (20) weeks,** the medical reason for the abortion.

(6) The medical procedure employed to administer the abortion, **and if the medical procedure performed on a fetus who is viable or has a postfertilization age of at least twenty (20) weeks:**

(A) whether the method of abortion used was a method, that in the reasonable judgment of a physician, would provide the best opportunity for the fetus to survive; and

(B) the basis for the determination that the pregnant woman had a condition described in this chapter that required the abortion to avert the death of or serious impairment to the pregnant woman.

(7) The mother's obstetrical history, including dates of other

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abortions, if any.

(8) The results of pathological examinations if performed.

(9) Information as to whether the fetus was delivered alive.

(10) Records of all maternal deaths occurring within the health facility where the abortion was performed.

(b) The form provided for in subsection (a) shall be completed by the physician performing the abortion and shall be transmitted to the state department not later than July 30 for each abortion performed in the first six (6) months of that year and not later than January 30 for each abortion performed for the last six (6) months of the preceding year. Each failure to file the form on time as required is a Class B misdemeanor.

(c) Not later than June 30 of each year, the state department shall compile a public report providing the following:

(1) Statistics for the previous calendar year from the information submitted under this section.

(2) Statistics for previous calendar years compiled by the state department under this subsection, with updated information for the calendar year that was submitted to the state department after the compilation of the statistics.

The state department shall ensure that no identifying information of a pregnant woman is contained in the report.

SECTION 10. IC 16-34-2-8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 8. (a) A pregnant woman or the biological father of the fetus may file a cause of action for actual and punitive damages against a physician who recklessly, knowingly, or intentionally performs or attempts to perform an abortion on the pregnant woman in violation of this chapter.**

(b) The following may file an action for injunctive relief against a physician who violates this chapter to prevent the physician from performing further abortions in violation of this chapter:

(1) A pregnant woman who has an abortion or attempts to have an abortion performed by a physician who violates this chapter.

(2) A spouse, parent, sibling, guardian, or health care provider of a pregnant woman described in subdivision (1).

(3) The attorney general.

(4) A county attorney with appropriate jurisdiction.

(c) If a judgment is rendered in favor of the plaintiff in an action described in this section, the court shall also order the defendant to render reasonable attorney's fees on behalf of the plaintiff.

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(d) If a judgment is rendered in favor of the defendant in an action described in this section and the court determines that the lawsuit was frivolous and brought in bad faith, the court shall order the plaintiff to render reasonable attorney's fees on behalf of the defendant.

SECTION 11. IC 16-34-2-9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 9. (a) The special litigation defense fund is established for the purpose of providing reimbursement of the costs and expenses incurred by the attorney general in defending the constitutionality of actions taken in the 2011 session of the general assembly to the statutes specified in subsection (b).**

(b) The fund must be used to defend the constitutionality of actions taken in the 2011 session of the general assembly amending or adding the following sections of this chapter:

(1) Section 0.5.
(2) Section 1.
(3) Section 2.
(4) Section 3.
(5) Section 5.
(6) Section 8.
(7) Section 10.

(c) The fund shall be administered by the treasurer of state.

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(e) The expenses of administering the fund shall be paid from money in the fund.

(f) Money to be deposited into the fund consists of the following:

(1) Appropriations made by the general assembly.
(2) Donations, gifts, or grants made by persons for carrying out the purposes of the fund.

(g) Money in the fund at the end of a state fiscal year does not revert to the state general fund. Money in the fund is continually appropriated.

SECTION 12. IC 16-34-2-10 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 10. (a) If any provision of this chapter is found by the courts to be unconstitutional or invalid, the unconstitutional or invalid provision shall be considered severable in the manner provided by IC 1-1-1-8(b).**

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(b) If a court determines that any of the following sections of this chapter resulting from the actions taken by the 2011 session of the general assembly are unconstitutional, the amendments found by the court to be unconstitutional are void, and the language in effect before the amendments returns to effect:

(1) Section 0.5.
(2) Section 1.
(3) Section 2.
(4) Section 3.
(5) Section 5.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1210 as introduced.)

DAVIS, Chair

Committee Vote: yeas 8, nays 4.

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