

Adopted	Rejected
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## COMMITTEE REPORT

YES:	8
NO:	4

### 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:*

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 health and to make an appropriation.
- 4 Page 1, between the enacting clause and line 1, begin a new
- 5 paragraph and insert:
- 6 "SECTION 1. IC 16-18-2-128.3 IS ADDED TO THE INDIANA
- 7 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 8 [EFFECTIVE JULY 1, 2011]: **Sec. 128.3. "Fertilization", for**
- 9 **purposes of IC 16-34, means the fusion of a human spermatozoon**
- 10 **with a human ovum.**
- 11 SECTION 2. IC 16-18-2-287.5 IS ADDED TO THE INDIANA
- 12 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 13 [EFFECTIVE JULY 1, 2011]: **Sec. 287.5. "Postfertilization age", for**
- 14 **purposes of IC 16-34, means the age of the fetus calculated from**
- 15 **the date of the fertilization of the ovum."**

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

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

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

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

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

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

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

21 SECTION 5. IC 16-34-2-0.5 IS ADDED TO THE INDIANA CODE  
22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
23 1, 2011]: **Sec 0.5. A medical emergency, for purposes of this  
24 chapter, does not include a patient's claim or diagnosis that the  
25 patient would engage in conduct that would result in the patient's  
26 death or substantial physical impairment. Under the circumstances  
27 described in this section and unless the following would pose a  
28 great risk of death or substantial physical impairment of the  
29 patient, the physician shall terminate the patient's pregnancy in a  
30 manner that, in a physician's reasonable medical judgment, would  
31 result in the best opportunity for the fetus to survive.**

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

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

- 1 (A) the abortion is performed by the physician;  
 2 (B) the woman submitting to the abortion has filed her consent  
 3 with her physician. However, if in the judgment of the  
 4 physician the abortion is necessary to preserve the life of the  
 5 woman, her consent is not required; and  
 6 (C) the woman submitting to the abortion has filed with her  
 7 physician the written consent of her parent or legal guardian  
 8 if required under section 4 of this chapter.
- 9 (2) After the first trimester of pregnancy and before **the earlier of**  
 10 **viability of the fetus or twenty (20) weeks of postfertilization**  
 11 **age**, for reasons based upon the professional, medical judgment  
 12 of the pregnant woman's physician if:
- 13 (A) all the circumstances and provisions required for legal  
 14 abortion during the first trimester are present and adhered to;  
 15 and  
 16 (B) the abortion is performed in a hospital or ambulatory  
 17 outpatient surgical center (as defined in IC 16-18-2-14).
- 18 (3) Except as provided in subsection (b), **at the earlier of**  
 19 **viability of the fetus or twenty (20) weeks of postfertilization**  
 20 **age and any time** after, ~~viability of the fetus~~, for reasons based  
 21 upon the professional, medical judgment of the pregnant woman's  
 22 physician if:
- 23 (A) all the circumstances and provisions required for legal  
 24 abortion before **the earlier of** **viability of the fetus or twenty**  
 25 **(20) weeks of postfertilization age** are present and adhered  
 26 to;  
 27 (B) the abortion is performed in compliance with section 3 of  
 28 this chapter; and  
 29 (C) before the abortion the attending physician shall certify in  
 30 writing to the hospital in which the abortion is to be  
 31 performed, that in the attending physician's professional,  
 32 medical judgment, after proper examination and review of the  
 33 woman's history, the abortion is necessary to prevent a  
 34 substantial permanent impairment of the life or physical health  
 35 of the pregnant woman. All facts and reasons supporting the  
 36 certification shall be set forth by the physician in writing and  
 37 attached to the certificate.
- 38 (b) A person may not knowingly or intentionally perform a partial

- 1 birth abortion unless a physician reasonably believes that:
- 2 (1) performing the partial birth abortion is necessary to save the
- 3 mother's life; and
- 4 (2) no other medical procedure is sufficient to save the mother's
- 5 life."
- 6 Page 2, line 4, strike "orally".
- 7 Page 2, line 4, after "woman" insert "**orally and in writing**".
- 8 Page 2, line 6, delete "." and insert "**, the physician's medical**
- 9 **license number, and an emergency telephone number where the**
- 10 **physician or the physician's designee may be contacted on a**
- 11 **twenty-four (24) hour a day, seven (7) day a week basis.**
- 12 **(B) That follow-up care by the physician or the physician's**
- 13 **designee is available on an appropriate and timely basis**
- 14 **when clinically necessary."**
- 15 Page 2, line 7, strike "(B)" and insert "(C)".
- 16 Page 2, line 7, after "procedure" insert ".".
- 17 Page 2, line 7, strike "or treatment."
- 18 Page 2, line 8, strike "(C)" and insert "**(D)**".
- 19 Page 2, line 8, after "procedure" insert ",".
- 20 Page 2, line 8, strike "or treatment." and insert "**including:**
- 21 **(i) the risk of infection and hemorrhage;**
- 22 **(ii) the potential danger to a subsequent pregnancy;**
- 23 **(iii) the potential danger of infertility; and**
- 24 **(iv) the possibility of increased risk of breast cancer**
- 25 **following an induced abortion and the natural protective**
- 26 **effect of a completed pregnancy in avoiding breast**
- 27 **cancer.**
- 28 **(E) That human physical life begins when a human ovum**
- 29 **is fertilized by a human sperm."**
- 30 Page 2, line 9, strike "(D)" and insert "**(F)**".
- 31 Page 2, line 9, delete "," and insert "**at the time the abortion is to**
- 32 **be performed,**".
- 33 Page 2, line 9, after "including" insert ":".
- 34 Page 2, line 9, strike "an".
- 35 Page 2, strike line 10.
- 36 Page 2, between lines 15 and 16, begin a new line double block
- 37 indented and insert:
- 38 **"(G) That medical evidence shows that a fetus can feel pain**

- 1                   **at or before twenty (20) weeks of postfertilization age."**
- 2           Page 2, line 16, strike "(E)" and insert "**(H)**".
- 3           Page 2, line 18, strike "(F)" and insert "**(I)**".
- 4           Page 2, delete line 22, begin a new line double block indented, and
- 5           insert:
- 6                   **"(J) That the pregnancy of a child less than fifteen (15)**
- 7                   **years of age may constitute child abuse under Indiana law**
- 8                   **and must be reported to the department of child services**
- 9                   **or the local law enforcement agency under IC 31-33-5."**
- 10          Page 2, line 24, strike "orally".
- 11          Page 2, line 24, after "informed" insert "**orally and in writing**".
- 12          Page 2, between lines 33 and 34, begin a new line double block
- 13          indented and insert:
- 14                   **"(D) That there are physical risks to the pregnant woman**
- 15                   **in having an abortion, both during the abortion procedure**
- 16                   **and after.**
- 17                   **(E) That Indiana has enacted the safe haven law under**
- 18                   **IC 31-34-2.5.**
- 19                   **(F) That materials developed by the state department in**
- 20                   **section 1.5 of this chapter:**
- 21                    **(i) will be provided to the pregnant woman by the**
- 22                    **physician providing the abortion as a hard copy;**
- 23                    **(ii) are available on the state department's Internet web**
- 24                    **site;**
- 25                    **(iii) provide scientific information about the unborn**
- 26                    **child; and**
- 27                    **(iv) list agencies in the area that offer alternatives to**
- 28                    **abortion, including agencies that offer alternatives to**
- 29                    **abortion at no cost to the pregnant woman."**
- 30          Page 2, line 35, after "that" insert ":
- 31                   **(A)".**
- 32          Page 2, line 36, delete "." and insert "**to the pregnant woman;**
- 33                   **(B) the pregnant woman has been offered the opportunity**
- 34                   **to view the fetal ultrasound imaging and hear the**
- 35                   **auscultation of the fetal heart tone if the fetal heart tone is**
- 36                   **audible and that the woman has:**
- 37                    **(i) viewed or refused to view the offered fetal ultrasound**
- 38                    **imaging; and**

- 1           (ii) listened to or refused to listen to the offered  
2           auscultation of the fetal heart tone if the fetal heart tone  
3           is audible; and  
4           (C) the pregnant woman has been given a written copy of  
5           the printed materials described in section 1.5 of this  
6           chapter."

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

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

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

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

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

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

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

25                   **(A) The risks of infection and hemorrhaging.**

26                   **(B) The potential danger:**

27                           **(i) to a subsequent pregnancy; or**

28                           **(ii) of infertility.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30           **(2) Determine whether the fetus is viable.**

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

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

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

38           **(2) Perform or cause to be performed medical examinations**

1           **and tests that a reasonably prudent physician would conduct**  
 2           **to accurately diagnose the postfertilization age of the fetus.**

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

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

- 12           (1) governed by section 1(a)(3) and 1(b) of this chapter;  
 13           (2) performed in a hospital having premature birth intensive care  
 14           units, unless compliance with this requirement would result in an  
 15           increased risk to the life or health of the mother; and  
 16           (3) performed in the presence of a second physician as provided  
 17           in subsection (b).

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

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

38           (d) If, before the abortion, the mother, and if married, her husband,

1 has or have stated in writing that she does or they do not wish to keep  
 2 the child in the event that the abortion results in a live birth, and this  
 3 writing is not retracted before the abortion, the child, if born alive, shall  
 4 immediately upon birth become a ward of the department of child  
 5 services."

6 Page 3, line 4, delete "physician" and insert "**physician:**  
 7 **(1)**".

8 Page 3, line 4, delete "located:" and insert "**located in the county**  
 9 **where abortions are provided or a contiguous county; or**  
 10 **(2) has entered into an agreement with a physician who has**  
 11 **admitting privileges at a hospital in the county or contiguous**  
 12 **county concerning the management of possible complications**  
 13 **of the services provided.**".

14 Page 3, delete lines 5 through 7.

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

18 Page 3, between lines 11 and 12, begin a new paragraph and insert:  
 19 "SECTION 9. IC 16-34-2-5 IS AMENDED TO READ AS  
 20 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) Every medical  
 21 facility where abortions may be performed shall be supplied with forms  
 22 drafted by the state department, the purpose and function of which shall  
 23 be the improvement of maternal health and life through the compilation  
 24 of relevant maternal life and health factors and data, and a further  
 25 purpose and function shall be to monitor all abortions performed in  
 26 Indiana to assure the abortions are done only under the authorized  
 27 provisions of the law. Such forms shall include, among other things, the  
 28 following:

- 29 (1) The age of the woman who is aborted.
- 30 (2) The place where the abortion is performed.
- 31 (3) The full name and address of the physicians performing the  
 32 abortion.
- 33 (4) The name of the father if known.
- 34 (5) **The postfertilization age of the fetus, the manner in which**  
 35 **the postfertilization age was determined, and if after the**  
 36 **earlier of the time the fetus obtains viability or the time the**  
 37 **postfertilization age of the fetus is at least twenty (20) weeks,**  
 38 the medical reason for the abortion.

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

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

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

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

14 (8) The results of pathological examinations if performed.

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

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

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

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

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

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

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

35 SECTION 10. IC 16-34-2-8 IS ADDED TO THE INDIANA CODE  
 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 37 1, 2011]: **Sec. 8. (a) A pregnant woman or the biological father of**  
 38 **the fetus may file a cause of action for actual and punitive damages**

1       **against a physician who recklessly, knowingly, or intentionally**  
 2       **performs or attempts to perform an abortion on the pregnant**  
 3       **woman in violation of this chapter.**

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

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

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

12          **(3) The attorney general.**

13          **(4) A county attorney with appropriate jurisdiction.**

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

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

22       SECTION 11. IC 16-34-2-9 IS ADDED TO THE INDIANA CODE  
 23       AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 24       1, 2011]: **Sec. 9. (a) The special litigation defense fund is established**  
 25       **for the purpose of providing reimbursement of the costs and**  
 26       **expenses incurred by the attorney general in defending the**  
 27       **constitutionality of actions taken in the 2011 session of the general**  
 28       **assembly to the statutes specified in subsection (b).**

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

32           **(1) Section 0.5.**

33           **(2) Section 1.**

34           **(3) Section 2.**

35           **(4) Section 3.**

36           **(5) Section 5.**

37           **(6) Section 8.**

38           **(7) Section 10.**

- 1           **(c) The fund shall be administered by the treasurer of state.**
- 2           **(d) The treasurer of state shall invest the money in the fund not**  
3 **currently needed to meet the obligations of the fund in the same**  
4 **manner as other public money may be invested. Interest that**  
5 **accrues from these investments shall be deposited in the fund.**
- 6           **(e) The expenses of administering the fund shall be paid from**  
7 **money in the fund.**
- 8           **(f) Money to be deposited into the fund consists of the following:**
- 9               **(1) Appropriations made by the general assembly.**
- 10               **(2) Donations, gifts, or grants made by persons for carrying**  
11 **out the purposes of the fund.**
- 12           **(g) Money in the fund at the end of a state fiscal year does not**  
13 **revert to the state general fund. Money in the fund is continually**  
14 **appropriated.**
- 15           SECTION 12. IC 16-34-2-10 IS ADDED TO THE INDIANA  
16 CODE AS A NEW SECTION TO READ AS FOLLOWS  
17 [EFFECTIVE JULY 1, 2011]: **Sec. 10. (a) If any provision of this**  
18 **chapter is found by the courts to be unconstitutional or invalid, the**  
19 **unconstitutional or invalid provision shall be considered severable**  
20 **in the manner provided by IC 1-1-1-8(b).**
- 21           **(b) If a court determines that any of the following sections of**  
22 **this chapter resulting from the actions taken by the 2011 session of**  
23 **the general assembly are unconstitutional, the amendments found**  
24 **by the court to be unconstitutional are void, and the language in**  
25 **effect before the amendments returns to effect:**
- 26               **(1) Section 0.5.**
- 27               **(2) Section 1.**
- 28               **(3) Section 2.**

- 1           **(4) Section 3.**
- 2           **(5) Section 5."**
- 3           Renumber all SECTIONS consecutively.  
              (Reference is to HB 1210 as introduced.)

**and when so amended that said bill do pass.**

---

Representative Davis