
SENATE BILL No. 290

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2; IC 16-21; IC 16-31-6.5-2; IC 16-34; IC 16-34.2; IC 16-40-5-2; IC 25-36.1-2-1; IC 31-39; IC 34-23-2-1.

Synopsis: Prohibition of abortion. Prohibits abortion in Indiana unless a physician determines, based on sound medical practice, that the abortion is necessary to save the life of a pregnant woman. Creates a Class C felony for a person who knowingly, intentionally, or recklessly performs an abortion. Removes references to abortion clinics. Repeals current statutes governing the performance of abortions.

Effective: July 1, 2011.

Tomes, Kruse

January 6, 2011, read first time and referred to Committee on Health and Provider Services.

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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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SENATE BILL No. 290



A BILL FOR AN ACT to amend the Indiana Code concerning health.

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

- 1 SECTION 1. IC 16-18-2-179, AS AMENDED BY P.L.99-2007,
- 2 SECTION 154, IS AMENDED TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2011]: Sec. 179. (a) "Hospital", except as
- 4 provided in subsections (b) through (g); (f), means a hospital that is
- 5 licensed under IC 16-21-2.
- 6 (b) "Hospital", for purposes of IC 16-21, means an institution, a
- 7 place, a building, or an agency that holds out to the general public that
- 8 it is operated for hospital purposes and that it provides care,
- 9 accommodations, facilities, and equipment, in connection with the
- 10 services of a physician, to individuals who may need medical or
- 11 surgical services. The term does not include the following:
- 12 (1) Freestanding health facilities.
- 13 (2) Hospitals or institutions specifically intended to diagnose,
- 14 care, and treat the following:
- 15 (A) Individuals with a mental illness (as defined in
- 16 IC 12-7-2-117.6).
- 17 (B) Individuals with developmental disabilities (as defined in



1 IC 12-7-2-61).

2 (3) Offices of physicians where patients are not regularly kept as

3 bed patients.

4 (4) Convalescent homes, boarding homes, or homes for the aged.

5 (c) "Hospital", for purposes of IC 16-22-8, has the meaning set forth

6 in IC 16-22-8-5.

7 (d) "Hospital", for purposes of IC 16-23.5, has the meaning set forth

8 in IC 16-23.5-1-9.

9 (e) "Hospital" or "tuberculosis hospital", for purposes of IC 16-24,

10 means an institution or a facility for the treatment of individuals with

11 tuberculosis.

12 (f) "Hospital", for purposes of ~~IC 16-34~~, means a hospital (as

13 defined in subsection (b)) that:

14 (1) is required to be licensed under ~~IC 16-21-2~~; or

15 (2) is operated by an agency of the United States.

16 (g) (f) "Hospital", for purposes of IC 16-41-12, has the meaning set

17 forth in IC 16-41-12-6.

18 SECTION 2. IC 16-18-2-223.5 IS AMENDED TO READ AS

19 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 223.5. "Medical

20 emergency", for purposes of ~~IC 16-34~~, **IC 16-34.2**, means a condition

21 that, on the basis of the attending physician's good faith clinical

22 judgment, complicates the medical condition of a pregnant woman so

23 that it necessitates the immediate termination of her pregnancy to avert

24 her death or for which a delay would create serious risk of substantial

25 and irreversible impairment of a major bodily function.

26 SECTION 3. IC 16-21-1-7, AS AMENDED BY P.L.96-2005,

27 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

28 JULY 1, 2011]: Sec. 7. (a) Except as provided in subsection (b), the

29 council shall propose and the executive board may adopt rules under

30 IC 4-22-2 necessary to protect the health, safety, rights, and welfare of

31 patients, including the following:

32 (1) Rules pertaining to the operation and management of

33 hospitals, ambulatory outpatient surgical centers, ~~abortion clinics~~,

34 and birthing centers.

35 (2) Rules establishing standards for equipment, facilities, and

36 staffing required for efficient and quality care of patients.

37 (b) The state department may request the council to propose a new

38 rule or an amendment to an existing rule necessary to protect the

39 health, safety, rights, and welfare of patients. If the council does not

40 propose a rule within ninety (90) days of the department's request, the

41 department may propose its own rule.

42 (c) The state department shall consider the rules proposed by the

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1 council and may adopt, modify, remand, or reject specific rules or parts
2 of rules proposed by the council.

3 SECTION 4. IC 16-21-2-1, AS AMENDED BY P.L.96-2005,
4 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2011]: Sec. 1. (a) Except as provided in subsection (b), this
6 chapter applies to all hospitals, ambulatory outpatient surgical centers,
7 ~~abortion clinics~~, and birthing centers.

8 (b) This chapter does not apply to a hospital operated by the federal
9 government.

10 (c) This chapter does not affect a statute pertaining to the placement
11 and adoption of children.

12 SECTION 5. IC 16-21-2-2, AS AMENDED BY P.L.96-2005,
13 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2011]: Sec. 2. The state department shall license and regulate:

- 15 (1) hospitals;
- 16 (2) ambulatory outpatient surgical centers; **and**
- 17 (3) birthing centers. ~~and~~
- 18 ~~(4) abortion clinics.~~

19 SECTION 6. IC 16-21-2-2.5, AS ADDED BY P.L.96-2005,
20 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2011]: Sec. 2.5. (a) The state department shall adopt rules
22 under IC 4-22-2 to do the following concerning birthing centers: ~~and~~
23 ~~abortion clinics:~~

- 24 (1) Establish minimum license qualifications.
- 25 (2) Establish the following requirements:
 - 26 (A) Sanitation standards.
 - 27 (B) Staff qualifications.
 - 28 (C) Necessary emergency equipment.
 - 29 (D) Procedures to provide emergency care.
 - 30 (E) Quality assurance standards.
 - 31 (F) Infection control.
- 32 (3) Prescribe the operating policies, supervision, and maintenance
33 of medical records.
- 34 (4) Establish procedures for the issuance, renewal, denial, and
35 revocation of licenses under this chapter. The rules adopted under
36 this subsection must address the following:
 - 37 (A) The form and content of the license.
 - 38 (B) The collection of an annual license fee.
- 39 (5) Prescribe the procedures and standards for inspections.
- 40 (b) A person who knowingly or intentionally:
 - 41 (1) operates a birthing center ~~or an abortion clinic~~ that is not
42 licensed under this chapter; or

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1 (2) advertises the operation of a birthing center ~~or an abortion~~
2 ~~clinic~~ that is not licensed under this chapter;
3 commits a Class A misdemeanor.

4 SECTION 7. IC 16-21-2-10, AS AMENDED BY P.L.96-2005,
5 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2011]: Sec. 10. A:

- 7 (1) person;
- 8 (2) state, county, or local governmental unit; or
- 9 (3) division, a department, a board, or an agency of a state,
10 county, or local governmental unit;

11 must obtain a license from the state health commissioner under
12 IC 4-21.5-3-5 before establishing, conducting, operating, or
13 maintaining a hospital, an ambulatory outpatient surgical center, ~~an~~
14 ~~abortion clinic~~, or a birthing center.

15 SECTION 8. IC 16-21-2-11, AS AMENDED BY P.L.96-2005,
16 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2011]: Sec. 11. (a) An applicant must submit an application
18 for a license on a form prepared by the state department showing that:

- 19 (1) the applicant is of reputable and responsible character;
- 20 (2) the applicant is able to comply with the minimum standards
21 for a hospital, an ambulatory outpatient surgical center, ~~an~~
22 ~~abortion clinic~~, or a birthing center, and with rules adopted under
23 this chapter; and
- 24 (3) the applicant has complied with section 15.4 of this chapter.

25 (b) The application must contain the following additional
26 information:

- 27 (1) The name of the applicant.
- 28 (2) The type of institution to be operated.
- 29 (3) The location of the institution.
- 30 (4) The name of the person to be in charge of the institution.
- 31 (5) If the applicant is a hospital, the range and types of services to
32 be provided under the general hospital license, including any
33 service that would otherwise require licensure by the state
34 department under the authority of IC 16-19.
- 35 (6) Other information the state department requires.

36 SECTION 9. IC 16-21-2-14, AS AMENDED BY P.L.96-2005,
37 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2011]: Sec. 14. A license to operate a hospital, an ambulatory
39 outpatient surgical center, ~~an abortion clinic~~, or a birthing center:

- 40 (1) expires one (1) year after the date of issuance;
- 41 (2) is not assignable or transferable;
- 42 (3) is issued only for the premises named in the application;

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- 1 (4) must be posted in a conspicuous place in the facility; and
- 2 (5) may be renewed each year upon the payment of a renewal fee
- 3 at the rate adopted by the council under IC 4-22-2.

4 SECTION 10. IC 16-21-2-16, AS AMENDED BY P.L.96-2005,
 5 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2011]: Sec. 16. A hospital, an ambulatory outpatient surgical
 7 center, ~~an abortion clinic~~, or a birthing center that provides to a patient
 8 notice concerning a third party billing for a service provided to the
 9 patient shall ensure that the notice:

- 10 (1) conspicuously states that the notice is not a bill;
- 11 (2) does not include a tear-off portion; and
- 12 (3) is not accompanied by a return mailing envelope.

13 SECTION 11. IC 16-31-6.5-2, AS AMENDED BY P.L.96-2005,
 14 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2011]: Sec. 2. This chapter does not apply to the following:

- 16 (1) A licensed physician.
- 17 (2) A hospital, an ambulatory outpatient surgical center, ~~an~~
 18 ~~abortion clinic~~, or a birthing center.
- 19 (3) A person providing health care in a hospital, an ambulatory
 20 outpatient surgical center, ~~an abortion clinic~~, or a birthing center
 21 licensed under IC 16-21.
- 22 (4) A person or entity certified under IC 16-31-3.

23 SECTION 12. IC 16-34.2 IS ADDED TO THE INDIANA CODE
 24 AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY
 25 1, 2011]:

26 **ARTICLE 34.2. PROHIBITION ON ABORTION**

27 **Chapter 1. Prohibition on Abortion**

28 **Sec. 1. (a) Except as provided in subsection (b), an abortion may**
 29 **not be performed in Indiana.**

30 **(b) A physician licensed under IC 25-22.5 may perform an**
 31 **abortion only after the physician has determined, based on sound**
 32 **medical practice, that there is a medical emergency and the**
 33 **abortion is necessary to save the life of a pregnant woman.**

34 **Sec. 2. A person who knowingly, intentionally, or recklessly**
 35 **performs an abortion in violation of this chapter commits illegal**
 36 **performance of an abortion, a Class C felony.**

37 SECTION 13. IC 16-40-5-2, AS ADDED BY P.L.101-2007,
 38 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2011]: Sec. 2. As used in this chapter, "health care facility"
 40 includes the following:

- 41 ~~(1) An abortion clinic licensed under IC 16-21-2.~~
- 42 ~~(2)~~ **(1) An ambulatory outpatient surgical center licensed under**

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- 1 IC 16-21-2.
- 2 ~~(3)~~ (2) A birthing center licensed under IC 16-21-2.
- 3 ~~(4)~~ (3) A hospital licensed under IC 16-21-2.
- 4 ~~(5)~~ (4) An office-based setting under IC 25-22.5-2-7(10)
- 5 including a facility, clinic, center, office or other setting where
- 6 procedures are performed that require moderate sedation, deep
- 7 sedation, general anesthesia, or regional anesthesia.

8 SECTION 14. IC 25-36.1-2-1, AS ADDED BY P.L.97-2009,
 9 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2011]: Sec. 1. As used in this chapter, "health care facility"
 11 means the following:

- 12 (1) A hospital that is licensed under IC 16-21-2.
- 13 (2) An ambulatory outpatient surgical center licensed under
- 14 IC 16-21-2.
- 15 (3) A birthing center licensed under IC 16-21-2.
- 16 ~~(4) An abortion clinic licensed under IC 16-21-2.~~

17 SECTION 15. IC 31-39-1-1 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) This chapter
 19 applies to all records of the juvenile court except the following:

- 20 (1) Records involving an adult charged with a crime or criminal
- 21 contempt of court.
- 22 (2) Records involving a pregnant minor or her physician seeking
- 23 a waiver of the requirement under IC 35-1-58.5-2.5 (before its
- 24 repeal) or IC 16-34-2-4 (**before its repeal**) that a physician who
- 25 performs an abortion on an unemancipated minor first obtain the
- 26 written consent of the minor's parent or guardian.
- 27 (b) The legal records subject to this chapter include the following:
- 28 (1) Chronological case summaries.
- 29 (2) Index entries.
- 30 (3) Summonses.
- 31 (4) Warrants.
- 32 (5) Petitions.
- 33 (6) Orders.
- 34 (7) Motions.
- 35 (8) Decrees.

36 SECTION 16. IC 31-39-2-1 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) This chapter
 38 applies to all records of the juvenile court except the following:

- 39 (1) Records involving an adult charged with a crime or criminal
- 40 contempt of court.
- 41 (2) Records involving a pregnant minor or her physician seeking
- 42 a waiver of the requirement under IC 35-1-58.5-2.5 (before its

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- 1 repeal) or IC 16-34-2-4 (**before its repeal**) that a physician who
 2 performs an abortion on an unemancipated minor first obtain the
 3 written consent of the minor's parent or guardian.
- 4 (b) The legal records subject to this chapter include the following:
- 5 (1) Chronological case summaries.
 - 6 (2) Index summaries.
 - 7 (3) Summonses.
 - 8 (4) Warrants.
 - 9 (5) Petitions.
 - 10 (6) Orders.
 - 11 (7) Motions.
 - 12 (8) Decrees.
- 13 SECTION 17. IC 34-23-2-1, AS AMENDED BY P.L.129-2009,
 14 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2011]: Sec. 1. (a) This section does not apply to an abortion
 16 performed in compliance with:
- 17 (1) IC 16-34 (**before its repeal**); ~~or~~
 - 18 (2) **IC 16-34.2**; or
 - 19 ~~(2)~~ (3) IC 35-1-58.5 (before its repeal).
- 20 (b) As used in this section, "child" means an unmarried individual
 21 without dependents who is:
- 22 (1) less than twenty (20) years of age; or
 - 23 (2) less than twenty-three (23) years of age and is enrolled in a
 24 postsecondary educational institution or a career and technical
 25 education school or program that is not a postsecondary
 26 educational program.
- 27 The term includes a fetus that has attained viability (as defined in
 28 IC 16-18-2-365).
- 29 (c) An action may be maintained under this section against the
 30 person whose wrongful act or omission caused the injury or death of a
 31 child. The action may be maintained by:
- 32 (1) the father and mother jointly, or either of them by naming the
 33 other parent as a codefendant to answer as to his or her interest;
 - 34 (2) in case of divorce or dissolution of marriage, the person to
 35 whom custody of the child was awarded; and
 - 36 (3) a guardian, for the injury or death of a protected person.
- 37 (d) In case of death of the person to whom custody of a child was
 38 awarded, a personal representative shall be appointed to maintain the
 39 action for the injury or death of the child.
- 40 (e) In an action brought by a guardian for an injury to a protected
 41 person, the damages inure to the benefit of the protected person.
- 42 (f) In an action to recover for the death of a child, the plaintiff may

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1 recover damages:

2 (1) for the loss of the child's services;

3 (2) for the loss of the child's love and companionship; and

4 (3) to pay the expenses of:

5 (A) health care and hospitalization necessitated by the

6 wrongful act or omission that caused the child's death;

7 (B) the child's funeral and burial;

8 (C) the reasonable expense of psychiatric and psychological

9 counseling incurred by a surviving parent or minor sibling of

10 the child that is required because of the death of the child;

11 (D) uninsured debts of the child, including debts for which a

12 parent is obligated on behalf of the child; and

13 (E) the administration of the child's estate, including

14 reasonable attorney's fees.

15 (g) Damages may be awarded under this section only with respect

16 to the period of time from the death of the child until:

17 (1) the date that the child would have reached:

18 (A) twenty (20) years of age; or

19 (B) twenty-three (23) years of age, if the child was enrolled in

20 a postsecondary educational institution or in a career and

21 technical education school or program that is not a

22 postsecondary educational program; or

23 (2) the date of the child's last surviving parent's death;

24 whichever first occurs.

25 (h) Damages may be awarded under subsection (f)(2) only with

26 respect to the period of time from the death of the child until the date

27 of the child's last surviving parent's death.

28 (i) Damages awarded under subsection (f)(1), (f)(2), (f)(3)(C), and

29 (f)(3)(D) inure to the benefit of:

30 (1) the father and mother jointly if both parents had custody of the

31 child;

32 (2) the custodial parent, or custodial grandparent, and the

33 noncustodial parent of the deceased child as apportioned by the

34 court according to their respective losses; or

35 (3) a custodial grandparent of the child if the child was not

36 survived by a parent entitled to benefit under this section.

37 However, a parent or grandparent who abandoned a deceased child

38 while the child was alive is not entitled to any recovery under this

39 chapter.

40 (j) This section does not affect or supersede any other right, remedy,

41 or defense provided by any other law.

42 SECTION 18. IC 35-42-1-0.5 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 0.5. Sections 1, 3, and
2 4 of this chapter do not apply to an abortion performed in compliance
3 with:

- 4 (1) IC 16-34 **(before its repeal)**; or
- 5 **(2) IC 16-34.2; or**
- 6 ~~(2)~~ **(3) IC 35-1-58.5** (before its repeal).

7 SECTION 19. IC 35-42-1-6, AS AMENDED BY P.L.40-2009,
8 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2011]: Sec. 6. A person who knowingly or intentionally
10 terminates a human pregnancy with an intention other than to produce
11 a live birth or to remove a dead fetus commits feticide, a Class B
12 felony. This section does not apply to an abortion performed in
13 compliance with:

- 14 (1) IC 16-34 **(before its repeal)**; or
- 15 **(2) IC 16-34.2; or**
- 16 ~~(2)~~ **(3) IC 35-1-58.5** (before its repeal).

17 SECTION 20. THE FOLLOWING ARE REPEALED [EFFECTIVE
18 JULY 1, 2011]: IC 16-18-2-1.5; IC 16-18-2-69; IC 16-18-2-267;
19 IC 16-18-2-293.5; IC 16-18-2-355; IC 16-18-2-365; IC 16-34.

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