

SENATE BILL No. 522

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2; IC 16-34.

Synopsis: Prohibition on abortion after 20 weeks. Sets public policy findings concerning when a fetus can feel pain. Sets requirements for performing an abortion after 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. 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.

Effective: July 1, 2011.

Walker

January 18, 2011, read first time and referred to Committee on Health and Provider Services.

C
o
p
y



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.

C
o
p
y

SENATE BILL No. 522



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:

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

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

11 SECTION 3. IC 16-34-1-8 IS ADDED TO THE INDIANA CODE
12 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2011]: **Sec. 8. (a) The general assembly finds the following:**

- 14 (1) **There is substantial medical evidence that a fetus at twenty**
- 15 **(20) weeks of postfertilization age has the physical structures**
- 16 **necessary to experience pain.**
- 17 (2) **There is substantial medical evidence that a fetus of at**



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

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 4. 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 5. 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:

C
o
p
y



1 (A) all the circumstances and provisions required for legal
 2 abortion during the first trimester are present and adhered to;
 3 and
 4 (B) the abortion is performed in a hospital or ambulatory
 5 outpatient surgical center (as defined in IC 16-18-2-14).
 6 (3) Except as provided in subsection (b), **at the earlier of**
 7 **viability of the fetus or twenty (20) weeks of postfertilization**
 8 **age and any time** after, ~~viability of the fetus~~, for reasons based
 9 upon the professional, medical judgment of the pregnant woman's
 10 physician if:
 11 (A) all the circumstances and provisions required for legal
 12 abortion before **the earlier of viability of the fetus or twenty**
 13 **(20) weeks of postfertilization age** are present and adhered
 14 to;
 15 (B) the abortion is performed in compliance with section 3 of
 16 this chapter; and
 17 (C) before the abortion the attending physician shall certify in
 18 writing to the hospital in which the abortion is to be
 19 performed, that in the attending physician's professional,
 20 medical judgment, after proper examination and review of the
 21 woman's history, the abortion is necessary to prevent a
 22 substantial permanent impairment of the life or physical health
 23 of the pregnant woman. All facts and reasons supporting the
 24 certification shall be set forth by the physician in writing and
 25 attached to the certificate.
 26 (b) A person may not knowingly or intentionally perform a partial
 27 birth abortion unless a physician reasonably believes that:
 28 (1) performing the partial birth abortion is necessary to save the
 29 mother's life; and
 30 (2) no other medical procedure is sufficient to save the mother's
 31 life.
 32 SECTION 6. IC 16-34-2-2 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) It shall be the
 34 responsibility of the attending physician to do the following:
 35 (1) Determine in accordance with accepted medical standards **the**
 36 **postfertilization age of the fetus and** which trimester the
 37 pregnant woman receiving the abortion is in.
 38 (2) Determine whether the fetus is viable.
 39 (3) Certify that determination as part of any written reports
 40 required of the attending physician by the state department or the
 41 facility in which the abortion is performed.
 42 (b) **In making a determination under this section of the**

COPY



1 **postfertilization age of the fetus, the attending physician shall do**
 2 **the following:**

- 3 **(1) Question the patient concerning the date of fertilization.**
 4 **(2) Perform or cause to be performed medical examinations**
 5 **and tests that a reasonably prudent physician would conduct**
 6 **to accurately diagnose the postfertilization age of the fetus.**

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

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

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

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

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

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

C
O
P
Y



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 SECTION 8. IC 16-34-2-5 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) Every medical
8 facility where abortions may be performed shall be supplied with forms
9 drafted by the state department, the purpose and function of which shall
10 be the improvement of maternal health and life through the compilation
11 of relevant maternal life and health factors and data, and a further
12 purpose and function shall be to monitor all abortions performed in
13 Indiana to assure the abortions are done only under the authorized
14 provisions of the law. Such forms shall include, among other things, the
15 following:

- 16 (1) The age of the woman who is aborted.
- 17 (2) The place where the abortion is performed.
- 18 (3) The full name and address of the physicians performing the
19 abortion.
- 20 (4) The name of the father if known.
- 21 (5) **The postfertilization age of the fetus, the manner in which**
22 **the postfertilization age was determined, and if after the**
23 **earlier of the time the fetus obtains viability or the time the**
24 **postfertilization age of the fetus is at least twenty (20) weeks,**
25 **the medical reason for the abortion.**
- 26 (6) The medical procedure employed to administer the abortion,
27 **and if the medical procedure performed on a fetus who is**
28 **viable or has a postfertilization age of at least twenty (20)**
29 **weeks:**
 - 30 **(A) whether the method of abortion used was a method,**
31 **that in the reasonable judgment of a physician, would**
32 **provide the best opportunity for the fetus to survive; and**
33 **(B) the basis for the determination that the pregnant**
34 **woman had a condition described in this chapter that**
35 **required the abortion to avert the death of or serious**
36 **impairment to the pregnant woman.**
- 37 (7) The mother's obstetrical history, including dates of other
38 abortions, if any.
- 39 (8) The results of pathological examinations if performed.
- 40 (9) Information as to whether the fetus was delivered alive.
- 41 (10) Records of all maternal deaths occurring within the health
42 facility where the abortion was performed.

C
o
p
y



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

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

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

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

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

18 SECTION 9. IC 16-34-2-8 IS ADDED TO THE INDIANA CODE
19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
20 1, 2011]: **Sec. 8. (a) A pregnant woman or the biological father of
21 the fetus may file a cause of action for actual and punitive damages
22 against a physician who recklessly, knowingly, or intentionally
23 performs or attempts to perform an abortion on the pregnant
24 woman in violation of this chapter.**

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

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

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

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

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

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

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

C
O
P
Y



1 SECTION 10. IC 16-34-2-9 IS ADDED TO THE INDIANA CODE
 2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 2011]: **Sec. 9. (a) The special litigation defense fund is established
 4 for the purpose of providing reimbursement of the costs and
 5 expenses incurred by the attorney general in defending the
 6 constitutionality of actions taken in the 2011 session of the general
 7 assembly to the statutes specified in subsection (b).**

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

11 **(1) Section 0.5.**

12 **(2) Section 1.**

13 **(3) Section 2.**

14 **(4) Section 3.**

15 **(5) Section 5.**

16 **(6) Section 8.**

17 **(7) Section 10.**

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

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

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

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

26 **(1) Appropriations made by the general assembly.**

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

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

32 SECTION 11. IC 16-34-2-10 IS ADDED TO THE INDIANA
 33 CODE AS A NEW SECTION TO READ AS FOLLOWS
 34 [EFFECTIVE JULY 1, 2011]: **Sec. 10. (a) If any provision of this
 35 chapter is found by the courts to be unconstitutional or invalid, the
 36 unconstitutional or invalid provision shall be considered severable
 37 in the manner provided by IC 1-1-1-8(b).**

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

**C
 O
 P
 Y**



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

**C
o
p
y**

