



Reprinted
February 15, 2011

SENATE BILL No. 328

DIGEST OF SB 328 (Updated February 14, 2011 4:53 pm - DI 104)

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

Synopsis: Abortion matters and physician privileges. Defines contraception and specifies that contraception is not subject to or governed by the abortion laws. Specifies additional information that must be given to a pregnant woman by the physician in order for consent to an abortion to be voluntary and informed. Specifies certain notices that must be given to a pregnant woman in writing at least 18 hours before an abortion. Requires the state department of health to have specified Internet website links on the department's website concerning abortion and the fetus. Requires a physician who performs an abortion to: (1) have admitting privileges at a hospital in the county or in a county adjacent to the county where the abortion is performed; and (2) notify the patient of the hospital location where the patient can receive follow-up care by the physician. Specifies that a minor who objects to having to obtain the written consent of her parent or legal guardian or whose parent or legal guardian refuses to consent to an abortion may file a petition in the county in which the pregnant woman resides or in which the abortion is to be performed for a waiver of the parental consent requirement. Prohibits a physician or a provider of abortion services, a representative of the physician or provider, or another person that may receive a direct financial benefit from the performance of an abortion, from filing on behalf of the minor as next friend, the petition for a waiver of the parental consent requirement.

Effective: July 1, 2011.

Miller, Kruse, Banks

January 10, 2011, read first time and referred to Committee on Health and Provider Services.
February 10, 2011, amended, reported favorably — Do Pass.
February 14, 2011, read second time, amended, ordered engrossed.

SB 328—LS 6207/DI 104+



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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. 328

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 16-18-2-69.3 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2011]: **Sec. 69.3. "Contraception", for**
4 **purposes of IC 16-34, means the use of a drug or device intended**
5 **to prevent fertilization of a human ovum with a human sperm.**

6 SECTION 2. IC 16-34-1-0.5 IS ADDED TO THE INDIANA CODE
7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 2011]: **Sec. 0.5. Contraception is not subject to or governed by**
9 **this article.**

10 SECTION 3. IC 16-34-2-1.1, AS AMENDED BY P.L.44-2009,
11 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2011]: Sec. 1.1. (a) An abortion shall not be performed except
13 with the voluntary and informed consent of the pregnant woman upon
14 whom the abortion is to be performed. Except in the case of a medical
15 emergency, consent to an abortion is voluntary and informed only if the
16 following conditions are met:

17 (1) At least eighteen (18) hours before the abortion and in the

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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 another physician or nurse designated by the physician, 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 another physician or nurse designated by the physician, 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.

~~(E)~~ (G) The medical risks associated with carrying the fetus to term.

~~(F)~~ (H) The availability of fetal ultrasound imaging and auscultation of fetal heart tone services to enable the pregnant

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woman to view the image and hear the heartbeat of the fetus and how to obtain access to an offer to receive these services.

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

(J) That the pregnancy of a child less than fifteen (15) years of age may constitute child abuse under Indiana law if the act included an adult 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, **that there are many couples who are willing and waiting to adopt a child, and that, under certain circumstances, and that** adoptive parents may legally pay the costs of prenatal care, childbirth, and neonatal care.

(D) That there are physical risks to the 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 there is information available on the state department's Internet web site concerning abortion and the fetus and that the state department's Internet web site address will be provided to the pregnant woman by the physician providing the abortion or the physician's designee.

(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 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

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- 1 **imaging; and**
- 2 **(ii) listened to or refused to listen to the offered**
- 3 **auscultation of the fetal heart tone if the fetal heart tone**
- 4 **is audible; and**
- 5 **(C) the pregnant woman has been given by the physician**
- 6 **providing the abortion or the physician's designee the state**
- 7 **department's Internet web site address to information**
- 8 **concerning abortion and the fetus.**

9 (b) Before an abortion is performed, the pregnant woman may, upon
 10 the pregnant woman's request, view the fetal ultrasound imaging and
 11 hear the auscultation of the fetal heart tone if the fetal heart tone is
 12 audible.

13 SECTION 4. IC 16-34-2-1.5 IS ADDED TO THE INDIANA CODE
 14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 15 1, 2011]: **Sec. 1.5. (a) The state department shall post the following**
 16 **Internet web site links on the state department's Internet web site:**

- 17 **(1) Internet web site links to information concerning abortion**
- 18 **and the fetus, including an Internet web site link to the Texas**
- 19 **Department of State Health Services Woman's Right to Know**
- 20 **page.**
- 21 **(2) An Internet web site link to the Indiana 211 services**
- 22 **partnership Internet web site.**

23 (b) To comply with subsection (a), the state department may
 24 provide Internet web site links to information concerning abortion
 25 and the fetus that have been developed by other state and federal
 26 agencies.

27 SECTION 5. IC 16-34-2-4 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 4. (a) No physician**
 29 **shall perform an abortion on an unemancipated pregnant woman less**
 30 **than eighteen (18) years of age without first having obtained the written**
 31 **consent of one (1) of the parents or the legal guardian of the minor**
 32 **pregnant woman.**

- 33 (b) A minor:
- 34 (1) who objects to having to obtain the written consent of her
- 35 parent or legal guardian under this section; or
- 36 (2) whose parent or legal guardian refuses to consent to an
- 37 abortion;

38 may petition, on her own behalf or by next friend, the juvenile court **in**
 39 **the county in which the pregnant woman resides or in which the**
 40 **abortion is to be performed**, for a waiver of the parental consent
 41 requirement under subsection (a). **A next friend may not be a**
 42 **physician or a provider of abortion services, a representative of the**

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1 **physician or provider, or another person that may receive a direct**
2 **financial benefit from the performance of an abortion.**

3 (c) A physician who feels that compliance with the parental consent
4 requirement in subsection (a) would have an adverse effect on the
5 welfare of the pregnant minor or on her pregnancy may petition the
6 juvenile court within twenty-four (24) hours of the abortion request for
7 a waiver of the parental consent requirement under subsection (a).

8 (d) The juvenile court must rule on a petition filed by a pregnant
9 minor under subsection (b) or by her physician under subsection (c)
10 within forty-eight (48) hours of the filing of the petition. Before ruling
11 on the petition, the court shall consider the concerns expressed by the
12 pregnant minor and her physician. The requirement of parental consent
13 under this section shall be waived by the juvenile court if the court
14 finds that the minor is mature enough to make the abortion decision
15 independently or that an abortion would be in the minor's best interests.

16 (e) Unless the juvenile court finds that the pregnant minor is already
17 represented by an attorney, the juvenile court shall appoint an attorney
18 to represent the pregnant minor in a waiver proceeding brought by the
19 minor under subsection (b) and on any appeals. The cost of legal
20 representation appointed for the minor under this section shall be paid
21 by the county.

22 (f) A minor or her physician who desires to appeal an adverse
23 judgment of the juvenile court in a waiver proceeding under subsection
24 (b) or (c) is entitled to an expedited appeal, under rules to be adopted
25 by the supreme court.

26 (g) All records of the juvenile court and of the supreme court or the
27 court of appeals that are made as a result of proceedings conducted
28 under this section are confidential.

29 (h) A minor who initiates legal proceedings under this section is
30 exempt from the payment of filing fees.

31 (i) This section shall not apply where there is an emergency need for
32 a medical procedure to be performed such that continuation of the
33 pregnancy provides an immediate threat and grave risk to the life or
34 health of the pregnant woman and the attending physician so certifies
35 in writing.

36 SECTION 6. IC 16-34-2-4.5 IS ADDED TO THE INDIANA CODE
37 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
38 1, 2011]: **Sec. 4.5. (a) A physician may not perform an abortion**
39 **unless the physician has admitting privileges at a hospital located:**
40 **(1) in the county; or**
41 **(2) in a county adjacent to the county;**
42 **in which the abortion is performed.**

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1 **(b) A physician who performs an abortion shall notify the**
2 **patient of the location of the hospital at which the physician has**
3 **privileges and where the patient may receive follow-up care by the**
4 **physician if complications arise.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 328, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

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

"SECTION 1. IC 16-18-2-69.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 69.3. "Contraception", for purposes of IC 16-34, means the use of a drug or device that has been approved by the federal Food and Drug Administration to prevent pregnancy.**

SECTION 2. IC 16-34-1-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 0.5. Contraception is not subject to or governed by this article."**

Page 1, line 3, strike "(a)".

Page 1, line 15, strike "orally".

Page 1, line 15, after "woman" insert "orally and in writing".

Page 1, line 17, delete "." and insert ", the physician's medical license number, and an emergency telephone number where the physician, or another physician or nurse designated by the physician, 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 another physician or nurse designated by the physician, is available on an appropriate and timely basis when clinically necessary."

Page 2, line 1, strike "(B)" and insert "(C)".

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

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

Page 2, line 2, 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

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is fertilized by a human sperm."

Page 2, line 3, strike "(D)" and insert "(F)".

Page 2, line 3, delete "," and insert "**at the time the abortion is to be performed,**".

Page 2, line 3, delete "including" and insert "including:".

Page 2, line 3, strike "an".

Page 2, strike line 4.

Page 2, line 10, strike "(E)" and insert "(G)".

Page 2, line 12, strike "(F)" and insert "(H)".

Page 2, line 15, strike "how to obtain access to" and insert "**an offer to receive**".

Page 2, delete lines 16 through 17, begin a new line double block indented and insert:

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

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

Page 2, line 19, strike "orally".

Page 2, line 19, after "informed" insert "**orally and in writing**".

Page 2, line 26, reset in roman "(C) That adoption alternatives are available".

Page 2, line 26, after "available" insert ", **that there are many couples who are willing and waiting to adopt a child, and that, under certain circumstances,**".

Page 2, line 26, reset in roman "adoptive".

Page 2, reset in roman lines 27 through 28.

Page 2, delete lines 29 through 35.

Page 2, line 36, delete "(B)" and insert "(D)".

Page 2, delete lines 38 through 42, begin a new line double block indented and insert:

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

(F) That there is information available on the state department's Internet web site concerning abortion and the fetus and that the state department's Internet web site address will be provided to the pregnant woman by the physician providing the abortion or the physician's designee."

Page 3, line 1, reset in roman "(3)".

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Page 3, line 1, delete "(4)".

Page 3, line 2, after "that" insert ":

(A)".

Page 3, line 3, reset in roman "and (2)".

Page 3, line 3, delete "through (3)".

Page 3, line 3, 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 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 by the physician providing the abortion or the physician's designee the state department's Internet web site address to information concerning abortion and the fetus."

Page 3, strike lines 4 through 7.

Page 3, between lines 7 and 8, begin a new paragraph and insert:

"SECTION 4. 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 post the following Internet web site links on the state department's Internet web site:**

(1) Internet web site links to information concerning abortion and the fetus, including an Internet web site link to the Texas Department of State Health Services Woman's Right to Know page.

(2) An Internet web site link to the Indiana 211 services partnership Internet web site.

(b) To comply with subsection (a), the state department may provide Internet web site links to information concerning abortion and the fetus that have been developed by other state and federal agencies.

SECTION 5. IC 16-34-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 4. (a) No physician shall perform an abortion on an unemancipated pregnant woman less than eighteen (18) years of age without first having obtained the written consent of one (1) of the parents or the legal guardian of the minor pregnant woman.**

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(b) A minor:

- (1) who objects to having to obtain the written consent of her parent or legal guardian under this section; or
- (2) whose parent or legal guardian refuses to consent to an abortion;

may petition, on her own behalf or by next friend, the juvenile court **in the county in which the pregnant woman resides or in which the abortion is to be performed**, for a waiver of the parental consent requirement under subsection (a). **A next friend may not be a physician or a provider of abortion services, a representative of the physician or provider, or another person that may receive a direct financial benefit from the performance of an abortion.**

(c) A physician who feels that compliance with the parental consent requirement in subsection (a) would have an adverse effect on the welfare of the pregnant minor or on her pregnancy may petition the juvenile court within twenty-four (24) hours of the abortion request for a waiver of the parental consent requirement under subsection (a).

(d) The juvenile court must rule on a petition filed by a pregnant minor under subsection (b) or by her physician under subsection (c) within forty-eight (48) hours of the filing of the petition. Before ruling on the petition, the court shall consider the concerns expressed by the pregnant minor and her physician. The requirement of parental consent under this section shall be waived by the juvenile court if the court finds that the minor is mature enough to make the abortion decision independently or that an abortion would be in the minor's best interests.

(e) Unless the juvenile court finds that the pregnant minor is already represented by an attorney, the juvenile court shall appoint an attorney to represent the pregnant minor in a waiver proceeding brought by the minor under subsection (b) and on any appeals. The cost of legal representation appointed for the minor under this section shall be paid by the county.

(f) A minor or her physician who desires to appeal an adverse judgment of the juvenile court in a waiver proceeding under subsection (b) or (c) is entitled to an expedited appeal, under rules to be adopted by the supreme court.

(g) All records of the juvenile court and of the supreme court or the court of appeals that are made as a result of proceedings conducted under this section are confidential.

(h) A minor who initiates legal proceedings under this section is exempt from the payment of filing fees.

(i) This section shall not apply where there is an emergency need for a medical procedure to be performed such that continuation of the

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pregnancy provides an immediate threat and grave risk to the life or health of the pregnant woman and the attending physician so certifies in writing."

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 328 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 7, Nays 2.

SENATE MOTION

Madam President: I move that Senate Bill 328 be amended to read as follows:

Page 1, line 4, delete "that has" and insert "**intended to prevent fertilization of a human ovum with a human sperm.**".

Page 1, delete lines 5 through 6.

(Reference is to SB 328 as printed February 11, 2011.)

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