



February 18, 2019

HOUSE BILL No. 1211

DIGEST OF HB 1211 (Updated February 18, 2019 12:25 pm - DI 107)

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

Synopsis: Abortion matters. Provides that a person may not knowingly or intentionally perform a dismemberment abortion unless reasonable medical judgment dictates that performing the dismemberment abortion is necessary to: (1) prevent serious health risks to the mother; or (2) save the mother's life. Provides that the penalty for performing a dismemberment abortion is a Level 5 felony. Provides that certain individuals: (1) may petition for an injunction; (2) may bring an action for the recovery of damages; and (3) are entitled to attorney's fees; if a dismemberment abortion is performed. Provides anonymity safeguards in court or administrative actions for a woman on whom a dismemberment abortion was performed. Amends the definition of "abortion complication".

Effective: July 1, 2019.

**Mayfield, Stutzman, Smaltz,
Lindauer**

January 10, 2019, read first time and referred to Committee on Public Health. Reassigned to the Committee on Public Policy.
February 18, 2019, amended, reported — Do Pass.

HB 1211—LS 6995/DI 107



February 18, 2019

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1211

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 16-18-2-96.4 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2019]: **Sec. 96.4. (a) "Dismemberment**
4 **abortion" means an abortion with the purpose of killing a living**
5 **fetus in which the living fetus is extracted one (1) piece at a time**
6 **from the uterus through clamps, grasping forceps, tongs, scissors,**
7 **or another similar instrument that, through the convergence of two**
8 **(2) rigid levers, slices, crushes, or grasps a portion of the fetus's**
9 **body to cut or rip it off.**

10 (b) **"Dismemberment abortion" does not include an abortion**
11 **that uses suction to dismember a fetus by sucking fetal parts into**
12 **a collection container.**

13 SECTION 2. IC 16-18-2-327.9 IS ADDED TO THE INDIANA
14 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2019]: **Sec. 327.9. "Serious health risk", for**
16 **purposes of IC 16-34-2-1(c), means that in reasonable medical**
17 **judgment, a condition exists that has complicated the mother's**

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1 **medical condition and necessitates an abortion to prevent death or**
 2 **a serious risk of substantial and irreversible physical impairment**
 3 **of a major bodily function. The term does not include psychological**
 4 **or emotional conditions. A medical condition may not be**
 5 **determined to exist based on a claim or diagnosis that the woman**
 6 **will engage in conduct that she intends to result in her death or in**
 7 **physical harm.**

8 SECTION 3. IC 16-34-2-1, AS AMENDED BY P.L.205-2018,
 9 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2019]: Sec. 1. (a) Abortion shall in all instances be a criminal
 11 act, except when performed under the following circumstances:

12 (1) Except as prohibited in IC 16-34-4, during the first trimester
 13 of pregnancy for reasons based upon the professional, medical
 14 judgment of the pregnant woman's physician if:

15 (A) the abortion is performed by the physician;

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

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

23 However, an abortion inducing drug may not be dispensed,
 24 prescribed, administered, or otherwise given to a pregnant woman
 25 after nine (9) weeks of postfertilization age unless the Food and
 26 Drug Administration has approved the abortion inducing drug to
 27 be used for abortions later than nine (9) weeks of postfertilization
 28 age. A physician shall examine a pregnant woman in person
 29 before prescribing or dispensing an abortion inducing drug. In
 30 accordance with FDA guidelines, the physician shall provide the
 31 pregnant woman with a copy of the manufacturer's instruction
 32 sheets and require that the pregnant woman sign the
 33 manufacturer's patient agreement form. The physician shall retain
 34 a copy of the signed patient agreement form, and the signed
 35 physician's agreement form required by the manufacturer, in the
 36 patient's file. As used in this subdivision, "in person" does not
 37 include the use of telehealth or telemedicine services.

38 (2) Except as prohibited by IC 16-34-4, after the first trimester of
 39 pregnancy and before the earlier of viability of the fetus or twenty
 40 (20) weeks of postfertilization age, for reasons based upon the
 41 professional, medical judgment of the pregnant woman's
 42 physician if:



- 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) or as prohibited by
 7 IC 16-34-4, at the earlier of viability of the fetus or twenty (20)
 8 weeks of postfertilization age and any time after, for reasons
 9 based upon the professional, medical judgment of the pregnant
 10 woman's 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 to;
 14 (B) the abortion is performed in compliance with section 3 of
 15 this chapter; and
 16 (C) before the abortion the attending physician shall certify in
 17 writing to the hospital in which the abortion is to be
 18 performed, that in the attending physician's professional,
 19 medical judgment, after proper examination and review of the
 20 woman's history, the abortion is necessary to prevent a
 21 substantial permanent impairment of the life or physical health
 22 of the pregnant woman. All facts and reasons supporting the
 23 certification shall be set forth by the physician in writing and
 24 attached to the certificate.
- 25 (b) A person may not knowingly or intentionally perform a partial
 26 birth abortion unless a physician reasonably believes that:
- 27 (1) performing the partial birth abortion is necessary to save the
 28 mother's life; and
 29 (2) no other medical procedure is sufficient to save the mother's
 30 life.
- 31 **(c) A person may not knowingly or intentionally perform a**
 32 **dismemberment abortion unless reasonable medical judgment**
 33 **dictates that performing the dismemberment abortion is necessary:**
 34 **(1) to prevent any serious health risk to the mother; or**
 35 **(2) to save the mother's life.**
- 36 SECTION 4. IC 16-34-2-4.7, AS ADDED BY P.L.205-2018,
 37 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2019]: Sec. 4.7. (a) As used in this section, "abortion
 39 complication" means ~~any adverse~~ **only the following** physical or
 40 psychological ~~condition~~ **conditions** arising from the induction or
 41 performance of an abortion: ~~The term includes the following:~~
 42 (1) Uterine perforation.



- 1 (2) Cervical ~~perforation~~: **laceration**.
 2 (3) Infection.
 3 (4) ~~Hemorrhaging~~: **Vaginal bleeding that qualifies as a Grade**
 4 **2 or higher adverse event according to the Common**
 5 **Terminology Criteria for Adverse Events (CTCAE).**
 6 (5) ~~Blood clots~~ **Pulmonary embolism.**
 7 **(6) Deep vein thrombosis.**
 8 ~~(6)~~ (7) Failure to terminate the pregnancy.
 9 ~~(7)~~ **(8) Incomplete abortion (retained tissue).**
 10 ~~(8)~~ **(9) Pelvic inflammatory disease.**
 11 ~~(9)~~ **(10) Missed ectopic pregnancy.**
 12 ~~(10)~~ **(11) Cardiac arrest.**
 13 ~~(11)~~ **(12) Respiratory arrest.**
 14 ~~(12)~~ **(13) Renal failure.**
 15 ~~(13) Metabolic disorder.~~
 16 (14) Shock.
 17 ~~(15) Embolism~~: **Amniotic fluid embolism.**
 18 (16) Coma.
 19 (17) Placenta previa in subsequent pregnancies.
 20 (18) Pre-term delivery in subsequent pregnancies.
 21 (19) Free fluid in the abdomen.
 22 (20) Hemolytic reaction due to the administration of
 23 ABO-incompatible blood or blood products.
 24 (21) Hypoglycemia occurring while the patient is being treated at
 25 the abortion facility.
 26 ~~(22) Physical injury associated with treatment performed at the~~
 27 ~~abortion facility.~~
 28 ~~(23)~~ **(22) Adverse Allergic reaction to anesthesia or other**
 29 **abortion inducing drugs.**
 30 ~~(24)~~ **(23) Psychological or emotional complications, including**
 31 **depression, suicidal ideation, anxiety, and sleeping disorders.**
 32 ~~(25)~~ **(24) Death.**
 33 ~~(26)~~ **(25) Any other adverse event as defined by criteria provided**
 34 **in the Food and Drug Administration Safety Information and**
 35 **Adverse Event Reporting Program.**
 36 (b) The following persons shall report to the state department each
 37 case in which the person treated a patient suffering from an abortion
 38 complication:
 39 (1) A physician licensed under IC 25-22.5.
 40 (2) A hospital licensed under IC 16-21.
 41 (3) An abortion clinic licensed under IC 16-21-2-2.5.
 42 (c) The state department shall develop a process for the submission



- 1 of a report under this section.
- 2 (d) A report under this section shall be submitted to the state
3 department in the manner prescribed by the state department.
- 4 (e) The report under this section must include the following
5 information concerning the abortion complication:
- 6 (1) The date the patient presented for treatment for the abortion
7 complication.
- 8 (2) The age of the patient.
- 9 (3) The race of the patient.
- 10 (4) The county and state of the patient's residence.
- 11 (5) The type of abortion obtained by the patient.
- 12 (6) The date of abortion obtained by the patient.
- 13 (7) The name of the:
- 14 (A) abortion clinic;
- 15 (B) medical facility; or
- 16 (C) hospital;
- 17 where the patient obtained the abortion.
- 18 (8) Whether the patient obtained abortion medication via mail
19 order or Internet web site, and if so, information identifying the
20 source of the medication.
- 21 (9) Whether the complication was previously managed by the
22 abortion provider or the abortion provider's required back-up
23 physician.
- 24 (10) The name of the medications taken by the patient as part of
25 the pharmaceutical abortion regimen, if any.
- 26 (11) A list of each diagnosed complication.
- 27 (12) A list of each treated complication, with a description of the
28 treatment provided.
- 29 (13) Whether the patient's visit to treat the complications was the
30 original visit or a follow-up visit.
- 31 (14) The date of each follow-up visit, if any.
- 32 (15) A list of each complication diagnosed at a follow-up visit, if
33 any.
- 34 (16) A list of each complication treated at a follow-up visit, if any.
- 35 (f) Before February 1, ~~2019~~, **2020**, the state department shall inform
36 in writing all providers described in subsection (b) of the new reporting
37 requirements for abortion complications. This subsection expires
38 December 31, ~~2019~~. **2020**.
- 39 (g) Not later than June 30 of each year, the state department shall
40 compile a public report summarizing the information collected under
41 this section. The report must include statistics for the previous calendar
42 year, with updated information for the most recent calendar year.



1 (h) The state department shall summarize the aggregate data from
 2 the data submitted under this section and submit the data, on or before
 3 June 30 of each year, to the United States Centers for Disease Control
 4 and Prevention for its inclusion in the annual Vital Statistics Report.

5 (i) The state department shall ensure that no identifying information
 6 of a pregnant woman is included in the report described in subsection
 7 (g).

8 (j) This subsection applies after August 31, ~~2019~~ **2020**. Each failure
 9 to report an abortion complication as required under this section is a
 10 Class B misdemeanor.

11 (k) Before January 1, ~~2019~~ **2020**, the state department shall adopt
 12 rules under IC 4-22-2 to implement this section.

13 SECTION 5. IC 16-34-2-7, AS AMENDED BY P.L.158-2013,
 14 SECTION 235, IS AMENDED TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) Except as provided in
 16 subsections (b) and (c), a person who knowingly or intentionally
 17 performs an abortion not expressly provided for in this chapter commits
 18 a Level 5 felony.

19 (b) A physician who performs an abortion intentionally or
 20 knowingly in violation of section 1(a)(1)(C) or 4 of this chapter
 21 commits a Class A misdemeanor.

22 (c) A person who knowingly or intentionally performs an abortion
 23 in violation of section 1.1 of this chapter commits a Class A infraction.

24 (d) A woman upon whom a partial birth abortion is performed may
 25 not be prosecuted for violating or conspiring to violate section 1(b) of
 26 this chapter.

27 **(e) A woman upon whom a dismemberment abortion is**
 28 **performed may not be prosecuted for violating or conspiring to**
 29 **violate section 1(c) of this chapter.**

30 SECTION 6. IC 16-34-2-8 IS ADDED TO THE INDIANA CODE
 31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 32 1, 2019]: Sec. 8. **(a) A woman upon whom a dismemberment**
 33 **abortion was performed is not liable for any damages related to the**
 34 **dismemberment abortion.**

35 **(b) The following individuals who worked at the direction of a**
 36 **physician who performed a dismemberment abortion are not liable**
 37 **for damages for the dismemberment abortion:**

38 (1) A nurse.

39 (2) A technician.

40 (3) A secretary.

41 (4) A receptionist.

42 (5) An employee or agent who is not a physician but acts at



1 the direction of a physician.

2 **(6) A pharmacist or other individual who is not a physician**
 3 **but who fills a prescription or provides instruments or**
 4 **materials used in the dismemberment abortion.**

5 SECTION 7. IC 16-34-2-9 IS ADDED TO THE INDIANA CODE
 6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 7 1, 2019]: **Sec. 9. (a) The following may petition a court for an**
 8 **injunction against a person who performed a dismemberment**
 9 **abortion in violation of section 1(c) of this chapter:**

10 **(1) A woman upon whom the person performed a**
 11 **dismemberment abortion.**

12 **(2) The parent or guardian of a female upon whom a**
 13 **dismemberment abortion was performed who was less than**
 14 **eighteen (18) years of age at the time the person performed**
 15 **the dismemberment abortion.**

16 **(3) A prosecuting attorney in the jurisdiction where:**

17 **(A) the dismemberment abortion was performed; or**

18 **(B) the female upon whom a dismemberment abortion was**
 19 **performed resides.**

20 **(b) An injunction issued under this section shall prohibit the**
 21 **defendant from performing or attempting to perform further**
 22 **dismemberment abortions in violation of section 1(c) of this**
 23 **chapter.**

24 **(c) An injunction may not be obtained by a plaintiff under this**
 25 **section if the pregnancy resulted from the plaintiff's criminal**
 26 **conduct.**

27 SECTION 8. IC 16-34-2-10 IS ADDED TO THE INDIANA CODE
 28 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 29 1, 2019]: **Sec. 10. (a) The following may bring an action for the**
 30 **recovery of damages against a person who has performed a**
 31 **dismemberment abortion in violation of section 1(c) of this**
 32 **chapter:**

33 **(1) A woman upon whom a dismemberment abortion has been**
 34 **performed.**

35 **(2) The father of the unborn child.**

36 **(3) If a female was less than eighteen (18) years of age at the**
 37 **time of the dismemberment abortion or if she has died as a**
 38 **result of the abortion, the maternal grandparents of the**
 39 **unborn child on whose mother a dismemberment abortion**
 40 **was performed.**

41 **(b) No damages may be awarded to a plaintiff if the pregnancy**
 42 **resulted from the plaintiff's criminal conduct.**



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- (c) Damages awarded under this section shall include:**
 - (1) damages for all injuries, including psychological and physical injuries, caused by the dismemberment abortion; and**
 - (2) damages equal to three (3) times the cost of the dismemberment abortion.**

SECTION 9. IC 16-34-2-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 11. (a) If a judgment is rendered in favor of a plaintiff under section 9 or 10 of this chapter, the court shall order reasonable attorney's fees in favor of the plaintiff.**

(b) If a judgment is rendered in favor of a defendant under section 9 or 10 of this chapter and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall order reasonable attorney's fees in favor of the defendant.

SECTION 10. IC 16-34-2-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 12. (a) In every civil, criminal, or administrative action brought under section 1(c), 9, 10, or 11 of this chapter, the identity of any woman upon whom a dismemberment abortion has been performed or was attempted to have been performed shall be preserved from public disclosure.**

(b) Anyone other than a prosecuting attorney who brings an action under section 9 or 10 of this chapter shall use a pseudonym for the woman.

(c) This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or the attorneys for the defendant.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, to which was referred House Bill 1211, 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:

Page 1, line 4, delete "in which a fetus" and insert "**with the purpose of killing a living fetus in which the living fetus**".

Page 1, line 17, delete "because of" and insert "**to prevent death or**".

Page 3, line 31, delete "a physician reasonably believes" and insert "**reasonable medical judgment dictates**".

Page 3, line 42, strike "perforation." and insert "**laceration.**".

Page 4, line 2, delete "Heavy bleeding from the vagina that soaks" and insert "**Vaginal bleeding that qualifies as a Grade 2 or higher adverse event according to the Common Terminology Criteria for Adverse Events (CTCAE).**".

Page 4, delete lines 3 through 4.

Page 4, delete line 15.

Page 4, line 16, reset in roman "(14)".

Page 4, line 16, delete "(15)".

Page 4, line 17, reset in roman "(15)".

Page 4, line 17, delete "(16)".

Page 4, line 17, strike "Embolism." and insert "**Amniotic fluid embolism.**".

Page 4, line 18, reset in roman "(16)".

Page 4, line 18, delete "(17)".

Page 4, line 19, reset in roman "(17)".

Page 4, line 19, delete "(18)".

Page 4, line 20, reset in roman "(18)".

Page 4, line 20, delete "(19)".

Page 4, line 21, reset in roman "(19)".

Page 4, line 21, delete "(20)".

Page 4, line 22, reset in roman "(20)".

Page 4, line 22, delete "(21)".

Page 4, line 24, reset in roman "(21)".

Page 4, line 24, delete "(22)".

Page 4, line 28, strike "(23)" and insert "**(22)**".

Page 4, line 30, strike "(24)" and insert "**(23)**".

Page 4, line 32, strike "(25)" and insert "**(24)**".

Page 4, line 33, strike "(26)" and insert "**(25)**".

Page 5, line 35, strike "2019," and insert "**2020,**".



Page 5, line 38, strike "2019." and insert "**2020.**".

Page 6, line 8, strike "2019." and insert "**2020.**".

Page 6, line 11, strike "2019," and insert "**2020,**".

Page 7, line 16, delete "attorney." and insert "**attorney in the jurisdiction where:**

(A) the dismemberment abortion was performed; or

(B) the female upon whom a dismemberment abortion was performed resides."

Page 8, line 16, delete "court or administrative body shall rule whether the".

Page 8, line 17, delete "anonymity" and insert "**identity**".

Page 8, line 19, delete "disclosure if she does not give" and insert "**disclosure.**".

Page 8, delete lines 20 through 31.

Page 8, line 32, delete "(d) In the absence of written consent of the woman upon whom" and insert "**(b) Anyone**".

Page 8, delete line 33.

Page 8, line 34, delete "to have been performed, anyone".

Page 8, line 37, delete "(e)" and insert "**(c)**".

and when so amended that said bill do pass.

(Reference is to HB 1211 as introduced.)

SMALTZ

Committee Vote: yeas 9, nays 4.

