

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 ENROLLED ACT No. 1211

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AN ACT to amend the Indiana Code concerning health.

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

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

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

SECTION 2. IC 16-18-2-327.9 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 327.9. "Serious health risk", for purposes of IC 16-34-2-1(c), means that in reasonable medical judgment, a condition exists that has complicated the mother's medical condition and necessitates an abortion to prevent death or a serious risk of substantial and irreversible physical impairment of a major bodily function. The term does not include psychological or emotional conditions. A medical condition may not be determined to exist based on a claim or diagnosis that the woman**

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**will engage in conduct that she intends to result in her death or in physical harm.**

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

(1) Except as prohibited in IC 16-34-4, 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.

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

(2) Except as prohibited by IC 16-34-4, 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:

(A) all the circumstances and provisions required for legal abortion during the first trimester are present and adhered to; and

(B) the abortion is performed in a hospital or ambulatory outpatient surgical center (as defined in IC 16-18-2-14).

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(3) Except as provided in subsection (b) or as prohibited by IC 16-34-4, at the earlier of viability of the fetus or twenty (20) weeks of postfertilization age and any time after, for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) all the circumstances and provisions required for legal abortion before the earlier of viability of the fetus or twenty (20) weeks of postfertilization age are present and adhered to; (B) the abortion is performed in compliance with section 3 of this chapter; and

(C) before the abortion the attending physician shall certify in writing to the hospital in which the abortion is to be performed, that in the attending physician's professional, medical judgment, after proper examination and review of the woman's history, the abortion is necessary to prevent a substantial permanent impairment of the life or physical health of the pregnant woman. All facts and reasons supporting the certification shall be set forth by the physician in writing and attached to the certificate.

(b) A person may not knowingly or intentionally perform a partial birth abortion unless a physician reasonably believes that:

- (1) performing the partial birth abortion is necessary to save the mother's life; and
- (2) no other medical procedure is sufficient to save the mother's life.

**(c) A person may not knowingly or intentionally perform a dismemberment abortion unless reasonable medical judgment dictates that performing the dismemberment abortion is necessary:**

- (1) to prevent any serious health risk to the mother; or**
- (2) to save the mother's life.**

SECTION 4. IC 16-34-2-4.7, AS ADDED BY P.L.205-2018, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4.7. (a) As used in this section, "abortion complication" means **any adverse only the following** physical or psychological ~~condition~~ **conditions** arising from the induction or performance of an abortion: ~~The term includes the following:~~

- (1) Uterine perforation.
- (2) Cervical ~~perforation:~~ **laceration.**
- (3) Infection.
- (4) ~~Hemorrhaging:~~ **Vaginal bleeding that qualifies as a Grade 2 or higher adverse event according to the Common Terminology Criteria for Adverse Events (CTCAE).**

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- (5) ~~Blood clots~~ **Pulmonary embolism.**
- (6) Deep vein thrombosis.**
- ~~(6)~~ (7) Failure to terminate the pregnancy.
- ~~(7)~~ **(8) Incomplete abortion (retained tissue).**
- ~~(8)~~ **(9) Pelvic inflammatory disease.**
- ~~(9)~~ **(10) Missed ectopic pregnancy.**
- ~~(10)~~ **(11) Cardiac arrest.**
- ~~(11)~~ **(12) Respiratory arrest.**
- ~~(12)~~ **(13) Renal failure.**
- ~~(13) Metabolic disorder.~~
- (14) Shock.
- ~~(15) Embolism.~~ **Amniotic fluid embolism.**
- (16) Coma.
- (17) Placenta previa in subsequent pregnancies.
- (18) Pre-term delivery in subsequent pregnancies.
- (19) Free fluid in the abdomen.
- (20) Hemolytic reaction due to the administration of ABO-incompatible blood or blood products.
- (21) Hypoglycemia occurring while the patient is being treated at the abortion facility.
- ~~(22) Physical injury associated with treatment performed at the abortion facility.~~
- ~~(23)~~ **(22) Adverse Allergic** reaction to anesthesia or ~~other~~ **abortion inducing** drugs.
- ~~(24)~~ **(23) Psychological or emotional** complications, including depression, suicidal ideation, anxiety, and sleeping disorders.
- ~~(25)~~ **(24) Death.**
- ~~(26)~~ **(25) Any other adverse event as defined by criteria provided in the Food and Drug Administration Safety Information and Adverse Event Reporting Program.**

(b) The following persons shall report to the state department each case in which the person treated a patient suffering from an abortion complication:

- (1) A physician licensed under IC 25-22.5.
- (2) A hospital licensed under IC 16-21.
- (3) An abortion clinic licensed under IC 16-21-2-2.5.

(c) The state department shall develop a process for the submission of a report under this section.

(d) A report under this section shall be submitted to the state department in the manner prescribed by the state department.

(e) The report under this section must include the following information concerning the abortion complication:

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- (1) The date the patient presented for treatment for the abortion complication.
- (2) The age of the patient.
- (3) The race of the patient.
- (4) The county and state of the patient's residence.
- (5) The type of abortion obtained by the patient.
- (6) The date of abortion obtained by the patient.
- (7) The name of the:
  - (A) abortion clinic;
  - (B) medical facility; or
  - (C) hospital;
 where the patient obtained the abortion.
- (8) Whether the patient obtained abortion medication via mail order or Internet web site, and if so, information identifying the source of the medication.
- (9) Whether the complication was previously managed by the abortion provider or the abortion provider's required back-up physician.
- (10) The name of the medications taken by the patient as part of the pharmaceutical abortion regimen, if any.
- (11) A list of each diagnosed complication.
- (12) A list of each treated complication, with a description of the treatment provided.
- (13) Whether the patient's visit to treat the complications was the original visit or a follow-up visit.
- (14) The date of each follow-up visit, if any.
- (15) A list of each complication diagnosed at a follow-up visit, if any.
- (16) A list of each complication treated at a follow-up visit, if any.

(f) Before February 1, ~~2019~~; **2020**, the state department shall inform in writing all providers described in subsection (b) of the new reporting requirements for abortion complications. This subsection expires December 31, ~~2019~~; **2020**.

(g) Not later than June 30 of each year, the state department shall compile a public report summarizing the information collected under this section. The report must include statistics for the previous calendar year, with updated information for the most recent calendar year.

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

(i) The state department shall ensure that no identifying information

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of a pregnant woman is included in the report described in subsection (g).

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

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

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

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

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

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

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

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

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

- (1) A nurse.**
- (2) A technician.**
- (3) A secretary.**
- (4) A receptionist.**
- (5) An employee or agent who is not a physician but acts at the direction of a physician.**
- (6) A pharmacist or other individual who is not a physician but who fills a prescription or provides instruments or materials used in the dismemberment abortion.**

SECTION 7. IC 16-34-2-9 IS ADDED TO THE INDIANA CODE

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AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 9. (a) The following may petition a court for an injunction against a person who performed a dismemberment abortion in violation of section 1(c) of this chapter:**

- (1) A woman upon whom the person performed a dismemberment abortion.**
- (2) The parent or guardian of a female upon whom a dismemberment abortion was performed who was less than eighteen (18) years of age at the time the person performed the dismemberment abortion.**
- (3) A prosecuting attorney in the jurisdiction where:**
  - (A) the dismemberment abortion was performed; or**
  - (B) the female upon whom a dismemberment abortion was performed resides.**

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

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

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

- (1) A woman upon whom a dismemberment abortion has been performed.**
- (2) The father of the unborn child.**
- (3) If a female was less than eighteen (18) years of age at the time of the dismemberment abortion or if she has died as a result of the abortion, the maternal grandparents of the unborn child on whose mother a dismemberment abortion was performed.**

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

**(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.**

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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.**





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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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