

SENATE BILL No. 314

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-34-2; IC 35-46-5.

Synopsis: Fetal tissue. Requires that a pregnant woman be informed before an abortion, orally and in writing, that fetal tissue obtained or collected during the abortion may not be collected for the purposes of providing, selling, or transferring the fetal tissue to another person for a purpose other than disposal of the fetal tissue. Requires the attending physician of an abortion to certify that the physician who performed the abortion did not alter the timing, method, or procedure used to terminate a pregnancy for the purpose of obtaining or collecting fetal tissue. Prohibits a person from altering the timing, method, or procedure used to terminate a pregnancy for the purpose of obtaining or collecting fetal tissue. Defines fetal tissue. Prohibits an individual from acquiring, receiving, selling, or transferring fetal tissue. Makes it a Level 5 felony to unlawfully: (1) transfer; and (2) collect fetal tissue.

Effective: July 1, 2016.

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January 7, 2016, read first time and referred to Committee on Health & Provider Services.



Second Regular Session 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

SENATE BILL No. 314

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 16-34-2-1.1, AS AMENDED BY P.L.113-2015,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 1.1. (a) An abortion shall not be performed except
4 with the voluntary and informed consent of the pregnant woman upon
5 whom the abortion is to be performed. Except in the case of a medical
6 emergency, consent to an abortion is voluntary and informed only if the
7 following conditions are met:

8 (1) At least eighteen (18) hours before the abortion and in the
9 presence of the pregnant woman, the physician who is to perform
10 the abortion, the referring physician or a physician assistant (as
11 defined in IC 25-27.5-2-10), an advanced practice nurse (as
12 defined in IC 25-23-1-1(b)), or a certified nurse midwife (as
13 defined in IC 34-18-2-6.5) to whom the responsibility has been
14 delegated by the physician who is to perform the abortion or the
15 referring physician has informed the pregnant woman orally and
16 in writing of the following:

17 (A) The name of the physician performing the abortion, the



- 1 physician's medical license number, and an emergency
 2 telephone number where the physician or the physician's
 3 designee may be contacted on a twenty-four (24) hour a day,
 4 seven (7) day a week basis.
- 5 (B) That follow-up care by the physician or the physician's
 6 designee (if the designee is licensed under IC 25-22.5) and is
 7 available on an appropriate and timely basis when clinically
 8 necessary.
- 9 (C) The nature of the proposed procedure or information
 10 concerning the abortion inducing drug.
- 11 (D) Objective scientific information of the risks of and
 12 alternatives to the procedure or the use of an abortion inducing
 13 drug, including:
- 14 (i) the risk of infection and hemorrhage;
 - 15 (ii) the potential danger to a subsequent pregnancy; and
 - 16 (iii) the potential danger of infertility.
- 17 (E) That human physical life begins when a human ovum is
 18 fertilized by a human sperm.
- 19 (F) The probable gestational age of the fetus at the time the
 20 abortion is to be performed, including:
- 21 (i) a picture of a fetus;
 - 22 (ii) the dimensions of a fetus; and
 - 23 (iii) relevant information on the potential survival of an
 24 unborn fetus;
- 25 at this stage of development.
- 26 (G) That objective scientific information shows that a fetus
 27 can feel pain at or before twenty (20) weeks of postfertilization
 28 age.
- 29 (H) The medical risks associated with carrying the fetus to
 30 term.
- 31 (I) The availability of fetal ultrasound imaging and
 32 auscultation of fetal heart tone services to enable the pregnant
 33 woman to view the image and hear the heartbeat of the fetus
 34 and how to obtain access to these services.
- 35 (J) That the pregnancy of a child less than fifteen (15) years of
 36 age may constitute child abuse under Indiana law if the act
 37 included an adult and must be reported to the department of
 38 child services or the local law enforcement agency under
 39 IC 31-33-5.
- 40 (2) At least eighteen (18) hours before the abortion, the pregnant
 41 woman will be informed orally and in writing of the following:
- 42 (A) That medical assistance benefits may be available for



- 1 prenatal care, childbirth, and neonatal care from the county
 2 office of the division of family resources.
- 3 (B) That the father of the unborn fetus is legally required to
 4 assist in the support of the child. In the case of rape, the
 5 information required under this clause may be omitted.
- 6 (C) That adoption alternatives are available and that adoptive
 7 parents may legally pay the costs of prenatal care, childbirth,
 8 and neonatal care.
- 9 (D) That there are physical risks to the pregnant woman in
 10 having an abortion, both during the abortion procedure and
 11 after.
- 12 (E) That Indiana has enacted the safe haven law under
 13 IC 31-34-2.5.
- 14 (F) The:
- 15 (i) Internet web site address of the state department of
 16 health's web site; and
- 17 (ii) description of the information that will be provided on
 18 the web site and that are;
- 19 described in section 1.5 of this chapter.
- 20 (G) For the facility in which the abortion is to be performed,
 21 an emergency telephone number that is available and
 22 answered on a twenty-four (24) hour a day, seven (7) day a
 23 week basis.
- 24 (H) On a form developed by the state department and as
 25 described in IC 16-34-3, that the pregnant woman has a right
 26 to determine the final disposition of the remains of the aborted
 27 fetus.
- 28 (I) On a form developed by the state department, information
 29 concerning the available options for disposition of the aborted
 30 fetus.
- 31 (J) On a form developed by the state department, information
 32 concerning any counseling that is available to a pregnant
 33 woman after having an abortion.
- 34 **(K) That fetal tissue (as defined in IC 35-46-5-1.5) obtained**
 35 **or collected during the abortion may not be collected for**
 36 **the purposes of providing, selling, or transferring the fetal**
 37 **tissue to another person for a use other than proper**
 38 **disposal of the fetal tissue.**
- 39 The state department shall develop and distribute the forms
 40 required by clauses (H) through (J).
- 41 (3) The pregnant woman certifies in writing, on a form developed
 42 by the state department, before the abortion is performed, that:



- 1 (A) the information required by subdivisions (1) and (2) has
 2 been provided to the pregnant woman;
- 3 (B) the pregnant woman has been offered by the provider the
 4 opportunity to view the fetal ultrasound imaging and hear the
 5 auscultation of the fetal heart tone if the fetal heart tone is
 6 audible and that the woman has:
- 7 (i) viewed or refused to view the offered fetal ultrasound
 8 imaging; and
- 9 (ii) listened to or refused to listen to the offered auscultation
 10 of the fetal heart tone if the fetal heart tone is audible; and
- 11 (C) the pregnant woman has been given a written copy of the
 12 printed materials described in section 1.5 of this chapter.
- 13 (4) At least eighteen (18) hours before the abortion and in the
 14 presence of the pregnant woman, the physician who is to perform
 15 the abortion, the referring physician or a physician assistant (as
 16 defined in IC 25-27.5-2-10), an advanced practice nurse (as
 17 defined in IC 25-23-1-1(b)), or a **certified nurse** midwife (as
 18 defined in ~~IC 34-18-2-19~~ **IC 34-18-2-6.5**) to whom the
 19 responsibility has been delegated by the physician who is to
 20 perform the abortion or the referring physician has provided the
 21 pregnant woman with a color copy of the informed consent
 22 brochure described in section 1.5 of this chapter by printing the
 23 informed consent brochure from the state department's Internet
 24 web site and including the following information on the back
 25 cover of the brochure:
- 26 (A) The name of the physician performing the abortion and the
 27 physician's medical license number.
- 28 (B) An emergency telephone number where the physician or
 29 the physician's designee may be contacted twenty-four (24)
 30 hours a day, seven (7) days a week.
- 31 (C) A statement that follow-up care by the physician or the
 32 physician's designee who is licensed under IC 25-22.5 is
 33 available on an appropriate and timely basis when clinically
 34 necessary.
- 35 (b) Before an abortion is performed, the provider shall perform, and
 36 the pregnant woman shall view, the fetal ultrasound imaging and hear
 37 the auscultation of the fetal heart tone if the fetal heart tone is audible
 38 unless the pregnant woman certifies in writing, on a form developed by
 39 the state department, before the abortion is performed, that the
 40 pregnant woman:
- 41 (1) does not want to view the fetal ultrasound imaging; and
 42 (2) does not want to listen to the auscultation of the fetal heart



1 tone if the fetal heart tone is audible.

2 SECTION 2. IC 16-34-2-2, AS AMENDED BY P.L.193-2011,
3 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2016]: Sec. 2. (a) It shall be the responsibility of the attending
5 physician to do the following:

6 (1) Determine in accordance with accepted medical standards the
7 postfertilization age of the fetus and which trimester the pregnant
8 woman receiving the abortion is in.

9 (2) Determine whether the fetus is viable.

10 (3) Certify that determination as part of any written reports
11 required of the attending physician by the state department or the
12 facility in which the abortion is performed.

13 **(4) Certify that the physician who performed the abortion did**
14 **not alter the timing, method, or procedure used to terminate**
15 **the pregnancy for the purpose of obtaining or collecting fetal**
16 **tissue.**

17 (b) In making a determination under this section of the
18 postfertilization age of the fetus, the attending physician shall do the
19 following:

20 (1) Question the patient concerning the date of fertilization.

21 (2) Perform or cause to be performed medical examinations and
22 tests that a reasonably prudent physician would conduct to
23 accurately diagnose the postfertilization age of the fetus.

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

27 SECTION 3. IC 35-46-5-1, AS AMENDED BY P.L.158-2013,
28 SECTION 570, IS AMENDED TO READ AS FOLLOWS
29 [EFFECTIVE JULY 1, 2016]: Sec. 1. ~~(a) As used in this section, "fetal~~
30 ~~tissue" means tissue from an infant or a fetus who is stillborn or~~
31 ~~aborted.~~

32 ~~(b)~~ (a) As used in this section, "human organ" means the kidney,
33 liver, heart, lung, cornea, eye, bone marrow, bone, pancreas, or skin of
34 a human body.

35 ~~(c)~~ (b) As used in this section, "item of value" means money, real
36 estate, funeral related services, and personal property. "Item of value"
37 does not include:

38 (1) the reasonable payments associated with the removal,
39 transportation, implantation, processing, preservation, quality
40 control, and storage of a human organ; or

41 (2) the reimbursement of travel, housing, lost wages, and other
42 expenses incurred by the donor of a human organ related to the



1 donation of the human organ.

2 ~~(d)~~ (c) A person who intentionally acquires, receives, sells, or
3 transfers, in exchange for an item of value,

4 ~~(1)~~ a human organ for use in human organ transplantation ~~or~~

5 ~~(2)~~ fetal tissue;

6 commits unlawful transfer of human ~~tissue~~; **organs**, a Level 5 felony.

7 SECTION 4. IC 35-46-5-1.5 IS ADDED TO THE INDIANA CODE
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 2016]: **Sec. 1.5. (a) As used in this section, "aborted" means the**

10 **termination of human pregnancy with an intention other than to**
11 **produce a live birth or to remove a dead fetus. The term includes**
12 **abortions by surgical procedures and by abortion inducing drugs.**

13 **(b) As used in this section, "fetal tissue" includes tissue, organs,**
14 **or any other part of an aborted fetus.**

15 **(c) This section does not apply to the proper medical disposal of**
16 **fetal tissue.**

17 **(d) A person who intentionally acquires, receives, sells, or**
18 **transfers fetal tissue commits unlawful transfer of fetal tissue, a**
19 **Level 5 felony.**

20 **(e) A person may not alter the timing, method, or procedure**
21 **used to terminate a pregnancy for the purpose of obtaining or**
22 **collecting fetal tissue. A person who violates this subsection**
23 **commits the unlawful collection of fetal tissue, a Level 5 felony.**

