

SENATE BILL No. 392

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-34-2; IC 25-1-9-4; IC 25-22.5-8-6.

Synopsis: Abortion. Requires that certain information must be provided by the parent or legal guardian of an unemancipated pregnant woman when giving written consent for the unemancipated pregnant woman to have an abortion. Requires a physician who receives written consent for an unemancipated pregnant woman to have an abortion to execute an affidavit for inclusion in the unemancipated pregnant woman's medical record. Prohibits a person from aiding or assisting an unemancipated pregnant woman in obtaining an abortion without the consent of the minor's parent or guardian. Provides that a parent or legal guardian of a pregnant minor is an interested party with respect to a petition to waive the parental consent requirement and is entitled to notice of any hearing on the petition and an opportunity to submit evidence to the court. Authorizes the award of civil damages for a violation. Authorizes certain persons to seek an injunction from acts that would aid or assist the unemancipated pregnant woman in obtaining an abortion without parental consent. Provides that a health care provider shall transmit the pregnancy termination form to the state department of health (state department) and separately to the department of child services if the woman having the abortion is less than 15 years of age (rather than if the woman is less than 14 years of age as provided by current law). Requires the state department to notify and provide a copy of the form to the department of child services when it has received a form notifying the state department that a female less than 15 years of age had an abortion. Raises the penalty for the failure to file certain forms regarding performed abortions from a Class B misdemeanor to a Class A misdemeanor. Makes it a Class A (Continued next page)

Effective: July 1, 2016.

Houchin

January 12, 2016, read first time and referred to Committee on Health & Provider Services.



Digest Continued

misdemeanor for a physician to perform an abortion on a female who is less than 15 years of age and recklessly fail to transmit the pregnancy termination form to the state department. Provides that a practitioner is subject to disciplinary sanctions for failure to report suspected sexual trafficking or child abuse. Requires the medical licensing board to revoke a physician's license if the physician: (1) negligently failed to transmit a form regarding an abortion performed on a female who is less than 15 years of age; and (2) performed an abortion in violation of state law.



Introduced

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. 392

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 16-34-2-4, AS AMENDED BY P.L.193-2011,
2 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 4. (a) No physician shall perform an abortion on
4 an unemancipated pregnant woman less than eighteen (18) years of age
5 without first having obtained:
6 (1) the **notarized** written consent of **the unemancipated**
7 **pregnant woman and** one (1) of the parents or the legal guardian
8 of the ~~minor unemancipated~~ pregnant woman;
9 (2) **government issued proof of identification of the parent or**
10 **the legal guardian of the unemancipated pregnant woman;**
11 **and**
12 (3) **written documentation that establishes that the parent or**
13 **legal guardian is the lawful parent or legal guardian of the**
14 **unemancipated pregnant woman.**
15 **The physician shall keep records of the documents required under**



1 **this subsection in the unemancipated pregnant woman's medical**
 2 **file for at least seven (7) years.**

3 (b) A minor:

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

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

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

20 (d) The juvenile court must rule on a petition filed by a pregnant
 21 minor under subsection (b) or by her physician under subsection (c)
 22 within forty-eight (48) hours of the filing of the petition. **A parent or**
 23 **legal guardian of the pregnant minor is an interested party with**
 24 **respect to the petition and is entitled to notice of any hearing on the**
 25 **petition and an opportunity to submit evidence to the court.** Before
 26 ruling on the petition, the court shall consider **evidence submitted by**
 27 **the parent or legal guardian of the pregnant minor and** the
 28 concerns expressed by the pregnant minor and her physician. The
 29 requirement of parental consent under this section shall be waived by
 30 the juvenile court if the court finds **by clear and convincing evidence**
 31 that the minor is mature enough to make the abortion decision
 32 independently or that an abortion would be in the minor's best interests.

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

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



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

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

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

11 **(j) A physician receiving parental consent under subsection (a)
12 shall execute an affidavit for inclusion in the unemancipated
13 pregnant woman's medical record. The affidavit must contain the
14 following information:**

15 **(1) The physician's name.**

16 **(2) Certification that, to the physician's best information and
17 belief, a reasonable person under similar circumstances would
18 rely on the information provided by the unemancipated
19 pregnant woman and the unemancipated pregnant woman's
20 parent or legal guardian as sufficient evidence of identity and
21 relationship.**

22 **(3) The physician's signature.**

23 SECTION 2. IC 16-34-2-4.2 IS ADDED TO THE INDIANA CODE
24 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
25 1, 2016]: **Sec. 4.2. (a) This section does not apply if consent is not
26 required under section 4 of this chapter.**

27 **(b) A person may not knowingly or intentionally aid or assist an
28 unemancipated pregnant woman in obtaining an abortion without
29 the consent required by section 4 of this chapter.**

30 **(c) A person who violates subsection (b) is civilly liable to the
31 unemancipated pregnant woman and the parent or legal guardian
32 of the unemancipated pregnant woman. A court may award
33 damages to a person adversely affected by a violation of this
34 section, including the following damages:**

35 **(1) Compensation for physical or emotional injury, without
36 the need of being physically present at the act or event.**

37 **(2) Attorney's fees.**

38 **(3) Court costs.**

39 **(4) Punitive damages.**

40 **However, an adult who engaged in or consented to another person
41 engaging in a sex act with a minor in violation of IC 35-42-4-3(a)
42 or IC 35-42-4-9 that resulted in the pregnancy may not be awarded**



1 **damages under this subsection.**

2 **(d) An unemancipated pregnant woman does not have the**
 3 **capacity to consent to any action in violation of this section or**
 4 **section 4 of this chapter. A person may not use as a defense to a**
 5 **violation of subsection (b) that the abortion was performed or**
 6 **induced with consent of the unemancipated pregnant woman and**
 7 **otherwise met the requirements of this chapter.**

8 **(e) The attorney general, a prosecuting attorney, the parent or**
 9 **guardian of the unemancipated pregnant woman, or any person**
 10 **who may be adversely affected by the conduct may petition a court**
 11 **to enjoin conduct that would violate this section if the person can**
 12 **show that the conduct:**

- 13 **(1) is reasonably anticipated to occur in the future; or**
 14 **(2) has occurred in the past, whether with the same**
 15 **unemancipated pregnant woman or others, and that it is not**
 16 **unreasonable to expect that the conduct may be repeated.**

17 **A court may enjoin conduct that would violate this section.**

18 SECTION 3. IC 16-34-2-5, AS AMENDED BY P.L.92-2015,
 19 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2016]: Sec. 5. (a) Every health care provider who performs a
 21 surgical abortion or provides, prescribes, administers, or dispenses an
 22 abortion inducing drug for the purposes of inducing an abortion shall
 23 report the performance of the abortion or the provision, prescribing,
 24 administration, or dispensing of an abortion inducing drug on a form
 25 drafted by the state department, the purpose and function of which shall
 26 be the improvement of maternal health and life through the compilation
 27 of relevant maternal life and health factors and data, and a further
 28 purpose and function shall be to monitor all abortions performed in
 29 Indiana to assure the abortions are done only under the authorized
 30 provisions of the law. For each abortion performed and abortion
 31 inducing drug provided, prescribed, administered, or dispensed, the
 32 report shall include, among other things, the following:

- 33 (1) The age of the patient.
 34 (2) The date and location the abortion was performed or the
 35 abortion inducing drug was provided, prescribed, administered,
 36 or dispensed.
 37 (3) The health care provider's full name and address, including the
 38 name of the physicians performing the abortion or providing,
 39 prescribing, administering, or dispensing the abortion inducing
 40 drug.
 41 (4) The name of the father if known.
 42 (5) The age of the father, or the approximate age of the father if



- 1 the father's age is unknown.
- 2 (6) The postfertilization age of the fetus, the manner in which the
- 3 postfertilization age was determined, and, if after the earlier of the
- 4 time the fetus obtains viability or the time the postfertilization age
- 5 of the fetus is at least twenty (20) weeks, the medical reason for
- 6 the performance of the abortion or the provision, prescribing,
- 7 administration, or dispensing of the abortion inducing drug.
- 8 (7) For a surgical abortion, the medical procedure used for the
- 9 abortion and, if the fetus was viable or had a postfertilization age
- 10 of at least twenty (20) weeks:
- 11 (A) whether the procedure, in the reasonable judgment of the
- 12 health care provider, gave the fetus the best opportunity to
- 13 survive; and
- 14 (B) the basis for the determination that the pregnant woman
- 15 had a condition described in this chapter that required the
- 16 abortion to avert the death of or serious impairment to the
- 17 pregnant woman.
- 18 (8) For a nonsurgical abortion, the precise drugs provided,
- 19 prescribed, administered, or dispensed, and the means of delivery
- 20 of the drugs to the patient.
- 21 (9) The mother's obstetrical history, including dates of other
- 22 abortions, if any.
- 23 (10) The results of pathological examinations if performed.
- 24 (11) For a surgical abortion, whether the fetus was delivered
- 25 alive, and if so, how long the fetus lived.
- 26 (12) Records of all maternal deaths occurring at the location
- 27 where the abortion was performed or the abortion inducing drug
- 28 was provided, prescribed, administered, or dispensed.
- 29 (13) The date the form was transmitted to the state department
- 30 and, if applicable, separately to the department of child services.
- 31 (b) The health care provider shall complete the form provided for in
- 32 subsection (a) and shall transmit the completed form to the state
- 33 department, in the manner specified on the form, not later than July 30
- 34 for each abortion occurring in the first six (6) months of that year and
- 35 not later than January 30 for each abortion occurring in the last six (6)
- 36 months of the preceding year. However, if an abortion is for a female
- 37 who is less than ~~fourteen (14)~~ **fifteen (15)** years of age, the health care
- 38 provider shall transmit the form to the state department of health and
- 39 separately to the department of child services within three (3) days after
- 40 the abortion is performed.
- 41 (c) The dates supplied on the form may not be redacted for any
- 42 reason before the form is transmitted as provided in this section.



1 **(d) Upon receipt of a form regarding an abortion for a female**
 2 **who is less than fifteen (15) years of age as described in subsections**
 3 **(a) and (b), the state department shall:**

4 **(1) notify the department of child services that it received the**
 5 **form; and**

6 **(2) provide a copy of the form to the department of child**
 7 **services.**

8 **The department of child services shall acknowledge to the state**
 9 **department that it has received a copy of the form.**

10 ~~(d)~~ **(e) Each failure A person who recklessly fails** to complete or
 11 timely transmit a form, as required under this section, for each abortion
 12 performed or abortion inducing drug that was provided, prescribed,
 13 administered, or dispensed, **is commits a Class B Class A**
 14 **misdemeanor.**

15 ~~(e)~~ **(f) Not later than June 30 of each year, the state department shall**
 16 **compile a public report providing the following:**

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

19 **(2) Statistics for previous calendar years compiled by the state**
 20 **department under this subsection, with updated information for**
 21 **the calendar year that was submitted to the state department after**
 22 **the compilation of the statistics.**

23 The state department shall ensure that no identifying information of a
 24 pregnant woman is contained in the report.

25 SECTION 4. IC 16-34-2-7, AS AMENDED BY P.L.158-2013,
 26 SECTION 235, IS AMENDED TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2016]: Sec. 7. (a) Except as provided in
 28 subsections (b) and (c), a person who knowingly or intentionally
 29 performs an abortion not expressly provided for in this chapter commits
 30 a Level 5 felony.

31 (b) A physician who:

32 **(1) performs an abortion intentionally or knowingly in violation**
 33 **of section 1(a)(1)(C) or 4 of this chapter; or**

34 **(2) performs an abortion on a female who is less than fifteen**
 35 **(15) years of age and recklessly fails to transmit the form to**
 36 **the state department of health as described in section 5(b) of**
 37 **this chapter;**

38 commits a Class A misdemeanor.

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

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



1 this chapter.

2 SECTION 5. IC 25-1-9-4, AS AMENDED BY P.L.197-2007,
 3 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2016]: Sec. 4. (a) A practitioner shall conduct the
 5 practitioner's practice in accordance with the standards established by
 6 the board regulating the profession in question and is subject to the
 7 exercise of the disciplinary sanctions under section 9 of this chapter if,
 8 after a hearing, the board finds:

- 9 (1) a practitioner has:
- 10 (A) engaged in or knowingly cooperated in fraud or material
 - 11 deception in order to obtain a license to practice, including
 - 12 cheating on a licensing examination;
 - 13 (B) engaged in fraud or material deception in the course of
 - 14 professional services or activities;
 - 15 (C) advertised services in a false or misleading manner; or
 - 16 (D) been convicted of a crime or assessed a civil penalty
 - 17 involving fraudulent billing practices, including fraud under:
 - 18 (i) Medicaid (42 U.S.C. 1396 et seq.);
 - 19 (ii) Medicare (42 U.S.C. 1395 et seq.);
 - 20 (iii) the children's health insurance program under
 - 21 IC 12-17.6; or
 - 22 (iv) insurance claims;
- 23 (2) a practitioner has been convicted of a crime that:
- 24 (A) has a direct bearing on the practitioner's ability to continue
 - 25 to practice competently; or
 - 26 (B) is harmful to the public;
- 27 (3) a practitioner has knowingly violated any state statute or rule,
 28 or federal statute or regulation, regulating the profession in
 29 question;
- 30 (4) a practitioner has continued to practice although the
 31 practitioner has become unfit to practice due to:
- 32 (A) professional incompetence that:
 - 33 (i) may include the undertaking of professional activities
 - 34 that the practitioner is not qualified by training or experience
 - 35 to undertake; and
 - 36 (ii) does not include activities performed under
 - 37 IC 16-21-2-9;
 - 38 (B) failure to keep abreast of current professional theory or
 - 39 practice;
 - 40 (C) physical or mental disability; or
 - 41 (D) addiction to, abuse of, or severe dependency upon alcohol
 - 42 or other drugs that endanger the public by impairing a



- 1 practitioner's ability to practice safely;
- 2 (5) a practitioner has engaged in a course of lewd or immoral
- 3 conduct in connection with the delivery of services to the public;
- 4 (6) a practitioner has allowed the practitioner's name or a license
- 5 issued under this chapter to be used in connection with an
- 6 individual who renders services beyond the scope of that
- 7 individual's training, experience, or competence;
- 8 (7) a practitioner has had disciplinary action taken against the
- 9 practitioner or the practitioner's license to practice in any state or
- 10 jurisdiction on grounds similar to those under this chapter;
- 11 (8) a practitioner has diverted:
- 12 (A) a legend drug (as defined in IC 16-18-2-199); or
- 13 (B) any other drug or device issued under a drug order (as
- 14 defined in IC 16-42-19-3) for another person;
- 15 (9) a practitioner, except as otherwise provided by law, has
- 16 knowingly prescribed, sold, or administered any drug classified
- 17 as a narcotic, addicting, or dangerous drug to a habitue or addict;
- 18 (10) a practitioner has failed to comply with an order imposing a
- 19 sanction under section 9 of this chapter;
- 20 (11) a practitioner has engaged in sexual contact with a patient
- 21 under the practitioner's care or has used the practitioner-patient
- 22 relationship to solicit sexual contact with a patient under the
- 23 practitioner's care;
- 24 (12) a practitioner who is a participating provider of a health
- 25 maintenance organization has knowingly collected or attempted
- 26 to collect from a subscriber or enrollee of the health maintenance
- 27 organization any sums that are owed by the health maintenance
- 28 organization; **or**
- 29 (13) a practitioner has assisted another person in committing an
- 30 act that would be grounds for disciplinary sanctions under this
- 31 chapter; **or**
- 32 **(14) a practitioner has failed to report suspected child abuse**
- 33 **or sexual trafficking to law enforcement.**
- 34 (b) A practitioner who provides health care services to the
- 35 practitioner's spouse is not subject to disciplinary action under
- 36 subsection (a)(11).
- 37 (c) A certified copy of the record of disciplinary action is conclusive
- 38 evidence of the other jurisdiction's disciplinary action under subsection
- 39 (a)(7).
- 40 SECTION 6. IC 25-22.5-8-6 IS ADDED TO THE INDIANA CODE
- 41 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 42 1, 2016]: **Sec. 6. (a) As used in this section, "abortion" has the**



1 **meaning set forth in IC 16-18-2-1.**
2 **(b) Notwithstanding IC 25-1-9, the board shall revoke the**
3 **license of a physician if, after appropriate notice and an**
4 **opportunity for a hearing, the attorney general proves by a**
5 **preponderance of the evidence that the physician:**
6 **(1) negligently failed to transmit the form to the state**
7 **department of health as described in IC 16-34-2-5(b); or**
8 **(2) performed an abortion in violation of IC 16-34-2-7(a)**
9 **through IC 16-34-2-7(c).**

