



February 24, 2017

SENATE BILL No. 404

DIGEST OF SB 404 (Updated February 22, 2017 5:01 pm - DI 106)

Citations Affected: IC 16-34; IC 25-1; IC 25-22.5.

Synopsis: Abortion, child abuse, and sexual trafficking. 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. Provides that a parent or legal guardian of a pregnant minor; (1) is an interested party with respect to a petition to waive the parental consent requirement; and (2) shall be served notice of any hearing on the petition. Specifies who may bring a cause of action for performing an unlawful abortion on an unemancipated pregnant woman. Provides that the court may not rule on the petition unless proof of service of the notice to a parent or legal guardian is filed with the court. Provides that the parent or legal guardian is entitled to an opportunity to submit evidence to the court. Provides that a court may waive the requirement of parental consent if the court finds by clear and convincing evidence that the minor is mature enough to make the abortion decision independently or that an abortion would be in the minor's best interests. (Current law does not specify a standard of proof.) 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 under certain circumstances, and authorizes the award of civil damages for a violation. Authorizes certain persons to seek an injunction for certain acts that would aid or assist an unemancipated pregnant woman in
(Continued next page)

Effective: July 1, 2017.

**Houchin, Holdman, Raatz, Crane,
Zay**

January 10, 2017, read first time and referred to Committee on Judiciary.
February 23, 2017, amended, reported favorably — Do Pass.

SB 404—LS 7145/DI 92



Digest Continued

obtaining an abortion without parental consent. Specifies reporting requirements and the consequences of failing to comply with reporting requirements. Permits suspension of a physician's license under certain circumstances. Provides that a health care practitioner is subject to disciplinary sanctions for failure to report suspected child abuse or sexual trafficking. Permits the medical licensing board to revoke a physician's license if the physician: (1) fails to transmit a form regarding an abortion performed on a female who is less than 16 years of age; and (2) performs an abortion with the intent to avoid the requirements of state law.

SB 404—LS 7145/DI 92



February 24, 2017

First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

SENATE BILL No. 404

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, 2017]: 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**

SB 404—LS 7145/DI 92



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 shall be served with notice in conformity**
 25 **with Indiana Trial Rules 4.1(a)(2) and 4.12 of any hearing on the**
 26 **petition. The court may not rule on the petition unless proof of**
 27 **service of the notice to a parent or legal guardian is filed with the**
 28 **court. The parent or legal guardian is entitled to an opportunity to**
 29 **submit evidence to the court.** Before ruling on the petition, the court
 30 shall consider **evidence submitted by the parent or legal guardian**
 31 **of the pregnant minor and** the concerns expressed by the pregnant
 32 minor and her physician. The requirement of parental consent under
 33 this section shall be waived by the juvenile court if the court finds by
 34 **clear and convincing evidence** that the minor is mature enough to
 35 make the abortion decision independently or that an abortion would be
 36 in the minor's best interests.

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



1 (f) A minor, ~~or her~~ **the minor's physician, or the minor's parent**
 2 **or legal guardian** who desires to appeal an adverse judgment of the
 3 juvenile court in a waiver proceeding under subsection (b) or (c) is
 4 entitled to an expedited appeal, under rules to be adopted by the
 5 supreme court.

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

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

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

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

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

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

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

28 SECTION 2. IC 16-34-2-4.2 IS ADDED TO THE INDIANA CODE
 29 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 30 1, 2017]: **Sec. 4.2. (a) This section applies only if consent is required**
 31 **under section 4 of this chapter and has not been given.**

32 (b) **This section does not apply to a person who aids or assists an**
 33 **unemancipated pregnant woman who has obtained or is seeking to**
 34 **obtain:**

35 (1) **parental consent; or**

36 (2) **a waiver of parental consent;**

37 **under section 4 of this chapter.**

38 (c) **A person may not knowingly or intentionally aid or assist an**
 39 **unemancipated pregnant woman in obtaining an abortion without**
 40 **the consent required by section 4 of this chapter.**

41 (d) **A person who violates subsection (c) is civilly liable to the**
 42 **unemancipated pregnant woman and the parent or legal guardian**



1 of the unemancipated pregnant woman. A court may award
 2 damages to the unemancipated pregnant woman or the parent or
 3 guardian of the unemancipated pregnant woman who is adversely
 4 affected by a violation of this section, including the following
 5 damages:

- 6 (1) Compensation for physical or emotional injury, without
 7 the need of being physically present at the act or event.
 8 (2) Attorney's fees.
 9 (3) Court costs.
 10 (4) Punitive damages.

11 However, an adult who engaged in or consented to another person
 12 engaging in a sex act with a minor in violation of IC 35-42-4-3(a)
 13 or IC 35-42-4-9 that resulted in the pregnancy may not be awarded
 14 damages under this subsection.

15 (e) An unemancipated pregnant woman does not have the
 16 capacity to consent to any action in violation of this section or
 17 section 4 of this chapter. A person may not use as a defense to a
 18 violation of subsection (c) that the abortion was performed or
 19 induced with consent of the unemancipated pregnant woman and
 20 otherwise met the requirements of this chapter.

21 (f) The parent or guardian of the unemancipated pregnant
 22 woman may petition a court to enjoin conduct that would violate
 23 this section if the parent or guardian can show that the conduct is
 24 reasonably anticipated to occur in the future. A court may enjoin
 25 conduct that would violate this section.

26 SECTION 3. IC 16-34-2-5, AS AMENDED BY P.L.213-2016,
 27 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2017]: Sec. 5. (a) Every health care provider who performs a
 29 surgical abortion or provides, prescribes, administers, or dispenses an
 30 abortion inducing drug for the purposes of inducing an abortion shall
 31 report the performance of the abortion or the provision, prescribing,
 32 administration, or dispensing of an abortion inducing drug on a form
 33 drafted by the state department, the purpose and function of which shall
 34 be the improvement of maternal health and life through the compilation
 35 of relevant maternal life and health factors and data, and a further
 36 purpose and function shall be to monitor all abortions performed in
 37 Indiana to assure the abortions are done only under the authorized
 38 provisions of the law. For each abortion performed and abortion
 39 inducing drug provided, prescribed, administered, or dispensed, the
 40 report shall include, among other things, the following:

- 41 (1) The age of the patient.
 42 (2) The date and location the abortion was performed or the



- 1 abortion inducing drug was provided, prescribed, administered,
2 or dispensed.
- 3 (3) The health care provider's full name and address, including the
4 name of the physicians performing the abortion or providing,
5 prescribing, administering, or dispensing the abortion inducing
6 drug.
- 7 (4) The name of the father if known.
- 8 (5) The age of the father, or the approximate age of the father if
9 the father's age is unknown.
- 10 (6) The following information concerning the abortion or the
11 provision, prescribing, administration, or dispensing of the
12 abortion inducing drug:
- 13 (A) The postfertilization age of the fetus.
- 14 (B) The manner in which the postfertilization age was
15 determined.
- 16 (C) The gender of the fetus, if detectable.
- 17 (D) Whether the fetus has been diagnosed with or has a
18 potential diagnosis of having Down syndrome or any other
19 disability.
- 20 (E) If after the earlier of the time the fetus obtains viability or
21 the time the postfertilization age of the fetus is at least twenty
22 (20) weeks, the medical reason for the performance of the
23 abortion or the provision, prescribing, administration, or
24 dispensing of the abortion inducing drug.
- 25 (7) For a surgical abortion, the medical procedure used for the
26 abortion and, if the fetus was viable or had a postfertilization age
27 of at least twenty (20) weeks:
- 28 (A) whether the procedure, in the reasonable judgment of the
29 health care provider, gave the fetus the best opportunity to
30 survive; and
- 31 (B) the basis for the determination that the pregnant woman
32 had a condition described in this chapter that required the
33 abortion to avert the death of or serious impairment to the
34 pregnant woman.
- 35 (8) For a nonsurgical abortion, the precise drugs provided,
36 prescribed, administered, or dispensed, and the means of delivery
37 of the drugs to the patient.
- 38 (9) For an early pre-viability termination, the medical indication
39 by diagnosis code for the fetus and the mother.
- 40 (10) The mother's obstetrical history, including dates of other
41 abortions, if any.
- 42 (11) The results of pathological examinations if performed.



- 1 (12) For a surgical abortion, whether the fetus was delivered
 2 alive, and if so, how long the fetus lived.
- 3 (13) Records of all maternal deaths occurring at the location
 4 where the abortion was performed or the abortion inducing drug
 5 was provided, prescribed, administered, or dispensed.
- 6 (14) The date the form was transmitted to the state department
 7 and, if applicable, separately to the department of child services.
- 8 (b) The health care provider shall complete the form provided for in
 9 subsection (a) and shall transmit the completed form to the state
 10 department, in the manner specified on the form, not later than July 30
 11 for each abortion occurring in the first six (6) months of that year and
 12 not later than January 30 for each abortion occurring in the last six (6)
 13 months of the preceding year. However, if an abortion is for a female
 14 who is less than ~~fourteen (14)~~ **sixteen (16)** years of age, the health care
 15 provider shall transmit the form to the state department of health and
 16 separately to the department of child services within three (3) days after
 17 the abortion is performed.
- 18 (c) The dates supplied on the form may not be redacted for any
 19 reason before the form is transmitted as provided in this section.
- 20 (d) Each failure to complete or timely transmit a form, as required
 21 under this section, for each abortion performed or abortion inducing
 22 drug that was provided, prescribed, administered, or dispensed, is a
 23 Class B misdemeanor.
- 24 (e) Not later than June 30 of each year, the state department shall
 25 compile a public report providing the following:
- 26 (1) Statistics for the previous calendar year from the information
 27 submitted under this section.
- 28 (2) Statistics for previous calendar years compiled by the state
 29 department under this subsection, with updated information for
 30 the calendar year that was submitted to the state department after
 31 the compilation of the statistics.
- 32 The state department shall ensure that no identifying information of a
 33 pregnant woman is contained in the report.
- 34 SECTION 4. IC 25-1-9-4, AS AMENDED BY P.L.197-2007,
 35 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2017]: Sec. 4. (a) A practitioner shall conduct the
 37 practitioner's practice in accordance with the standards established by
 38 the board regulating the profession in question and is subject to the
 39 exercise of the disciplinary sanctions under section 9 of this chapter if,
 40 after a hearing, the board finds:
- 41 (1) a practitioner has:
- 42 (A) engaged in or knowingly cooperated in fraud or material



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



- 1 (8) a practitioner has diverted:
 2 (A) a legend drug (as defined in IC 16-18-2-199); or
 3 (B) any other drug or device issued under a drug order (as
 4 defined in IC 16-42-19-3) for another person;
 5 (9) a practitioner, except as otherwise provided by law, has
 6 knowingly prescribed, sold, or administered any drug classified
 7 as a narcotic, addicting, or dangerous drug to a habitue or addict;
 8 (10) a practitioner has failed to comply with an order imposing a
 9 sanction under section 9 of this chapter;
 10 (11) a practitioner has engaged in sexual contact with a patient
 11 under the practitioner's care or has used the practitioner-patient
 12 relationship to solicit sexual contact with a patient under the
 13 practitioner's care;
 14 (12) a practitioner who is a participating provider of a health
 15 maintenance organization has knowingly collected or attempted
 16 to collect from a subscriber or enrollee of the health maintenance
 17 organization any sums that are owed by the health maintenance
 18 organization; ~~or~~
 19 (13) a practitioner has assisted another person in committing an
 20 act that would be grounds for disciplinary sanctions under this
 21 chapter; **or**
 22 **(14) a practitioner has failed to report suspected child abuse**
 23 **or sexual trafficking to law enforcement.**
 24 (b) A practitioner who provides health care services to the
 25 practitioner's spouse is not subject to disciplinary action under
 26 subsection (a)(11).
 27 (c) A certified copy of the record of disciplinary action is conclusive
 28 evidence of the other jurisdiction's disciplinary action under subsection
 29 (a)(7).
 30 SECTION 5. IC 25-22.5-8-6 IS ADDED TO THE INDIANA CODE
 31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 32 1, 2017]: **Sec. 6. (a) As used in this section, "abortion" has the**
 33 **meaning set forth in IC 16-18-2-1.**
 34 **(b) Notwithstanding IC 25-1-9, the board may revoke the license**
 35 **of a physician if, after appropriate notice and an opportunity for**
 36 **a hearing, the attorney general proves by a preponderance of the**
 37 **evidence that the physician:**
 38 **(1) failed to transmit the form to the state department of**
 39 **health as described in IC 16-34-2-5(b); or**
 40 **(2) performed an abortion in violation of IC 16-34-2-7(a)**
 41 **through IC 16-34-2-7(c) with the intent to avoid the**
 42 **requirements of IC 16-34-2.**



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 404, 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 3, line 30, delete "does not apply" and insert "**applies only**".

Page 3, line 30, after "is" delete "not".

Page 3, line 31, delete "." and insert "**and has not been given.**".

Page 3, line 32, after "(b)" insert "**This section does not apply to a person who aids or assists an unemancipated pregnant woman who has obtained or is seeking to obtain:**

(1) parental consent; or

(2) a waiver of parental consent;

under section 4 of this chapter.

(c)".

Page 3, line 35, delete "(c)" and insert "**(d)**".

Page 3, line 35, delete "(b)" and insert "**(c)**".

Page 3, line 38, delete "a person" and insert "**the unemancipated pregnant woman or the parent or guardian of the unemancipated pregnant woman who is**".

Page 4, line 7, delete "(d)" and insert "**(e)**".

Page 4, line 10, delete "(b)" and insert "**(c)**".

Page 4, line 13, delete "(e) The attorney general, a prosecuting attorney, the" and insert "**(f) The**".

Page 4, line 14, delete "woman, or any person" and insert "**woman**".

Page 4, line 15, delete "who may be adversely affected by the conduct".

Page 4, line 16, delete "person" and insert "**parent or guardian**".

Page 4, line 17, delete ":".

Page 4, line 18, delete "(1)".

Page 4, line 18, delete "future; or" and insert "**future.**".

Page 4, delete lines 19 through 21.

Page 4, run in lines 17 through 22.

Page 6, delete lines 17 through 25.

Page 6, line 26, reset in roman "(d)".

Page 6, line 26, delete "(e)".

Page 6, line 26, reset in roman "Each failure".

Page 6, line 26, delete "A person who recklessly fails".

Page 6, line 29, reset in roman "is".

Page 6, line 29, delete "commits".

Page 6, line 29, reset in roman "Class B".



Page 6, line 29, delete "Class A".

Page 6, line 31, reset in roman "(e)".

Page 6, line 31, delete "(f)".

Page 6, delete lines 41 through 42.

Page 7, delete lines 1 through 17.

Page 9, line 18, delete "shall" and insert "**may**".

Page 9, line 22, delete "negligently".

Page 9, line 25, delete "." and insert "**with the intent to avoid the requirements of IC 16-34-2.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 404 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 6, Nays 4.

