

**IC 16-34**

**ARTICLE 34. ABORTION**

**IC 16-34-1**

**Chapter 1. Public Policy Concerning Performance of Abortions; Use of Public Funds; Civil Actions**

**IC 16-34-1-1**

**Childbirth preferred**

Sec. 1. Childbirth is preferred, encouraged, and supported over abortion.

*As added by P.L.2-1993, SEC.17.*

**IC 16-34-1-2**

**Public funds; payment restricted**

Sec. 2. Neither the state nor any political subdivision of the state may make a payment from any fund under its control for the performance of an abortion unless the abortion is necessary to preserve the life of the pregnant woman.

*As added by P.L.2-1993, SEC.17.*

**IC 16-34-1-3**

**Private or denominational hospitals; mandatory abortion services**

Sec. 3. No private or denominational hospital shall be required to permit its facilities to be utilized for the performance of abortions.

*As added by P.L.2-1993, SEC.17.*

**IC 16-34-1-4**

**Physician or employee; mandatory participation in abortion**

Sec. 4. No:

(1) physician; or

(2) employee or member of the staff of a hospital or other facility in which an abortion may be performed;

shall be required to perform an abortion or to assist or participate in the medical procedures resulting in or intended to result in an abortion, if that individual objects to such procedures on ethical, moral, or religious grounds.

*As added by P.L.2-1993, SEC.17.*

**IC 16-34-1-5**

**Participation as condition of training, promotion, or privileges; prohibition**

Sec. 5. No person shall be required, as a condition of training, employment, pay, promotion, or privileges, to agree to perform or participate in the performing of abortions.

*As added by P.L.2-1993, SEC.17.*

**IC 16-34-1-6**

**Discrimination based upon moral beliefs; prohibition**

Sec. 6. No hospital or other person shall discriminate against or discipline a person because of the person's moral beliefs concerning abortion.

*As added by P.L.2-1993, SEC.17.*

**IC 16-34-1-7**

**Civil actions**

Sec. 7. A civil action for damages or reinstatement of employment, or both, may be brought for any violation of sections 4 through 6 of this chapter.

*As added by P.L.2-1993, SEC.17.*

**IC 16-34-1-8**

**Prohibition on coverage of abortion by qualified health plan; exceptions**

Sec. 8. A qualified health plan (as defined in IC 27-8-33-3) offered under Subtitle D of Title 1 of the federal Patient Protection and Affordable Care Act (P.L. 111-148) may not provide coverage for abortion, except in the following cases:

- (1) The pregnant woman became pregnant through an act of rape or incest.
- (2) An abortion is necessary to avert the pregnant woman's death or a substantial and irreversible impairment of a major bodily function of the pregnant woman.

*As added by P.L.193-2011, SEC.5.*

**IC 16-34-1-9**

**Findings; compelling state interest**

Sec. 9. (a) The general assembly finds the following:

- (1) There is substantial medical evidence that a fetus at twenty (20) weeks of postfertilization age has the physical structures necessary to experience pain.
- (2) There is substantial medical evidence that a fetus of at least twenty (20) weeks of postfertilization age seeks to evade certain stimuli in a manner similar to an infant's or adult's response to pain.
- (3) Anesthesia is routinely administered to a fetus of at least twenty (20) weeks of postfertilization age when prenatal surgery is performed.
- (4) A fetus has been observed to exhibit hormonal stress responses to painful stimuli earlier than at twenty (20) weeks of postfertilization age.

(b) Indiana asserts a compelling state interest in protecting the life of a fetus from the state at which substantial medical evidence indicates that the fetus is capable of feeling pain.

*As added by P.L.193-2011, SEC.6.*

## **IC 16-34-2**

### **Chapter 2. Requirements for Performance of Abortion; Criminal Penalties**

#### **IC 16-34-2-0.5**

##### **Medical emergency**

Sec. 0.5. A medical emergency, for purposes of this chapter, does not include a patient's claim or diagnosis that the patient would engage in conduct that would result in the patient's death or substantial physical impairment. Under the circumstances described in this section and unless the following would pose a great risk of death or substantial physical impairment of the patient, the physician shall terminate the patient's pregnancy in a manner that, in a physician's reasonable medical judgment, would result in the best opportunity for the fetus to survive.

*As added by P.L.193-2011, SEC.7.*

#### **IC 16-34-2-1**

##### **Required circumstances of legal abortion**

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. 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, for an abortion performed by a surgical procedure, 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).

(3) Except as provided in subsection (b) or as prohibited by IC 16-34-4, and for an abortion performed by a surgical procedure, 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.

*As added by P.L.2-1993, SEC.17. Amended by P.L.145-1997, SEC.2; P.L.193-2011, SEC.8; P.L.136-2013, SEC.5; P.L.213-2016, SEC.13.*

#### **IC 16-34-2-1.1**

##### **Voluntary and informed consent required; viewing of fetal ultrasound and hearing auscultation of fetal heart tone; information required if a lethal fetal anomaly has been diagnosed**

Sec. 1.1. (a) An abortion shall not be performed except with the voluntary and informed consent of the pregnant woman upon whom the abortion is to be performed. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if the following conditions are met:

(1) At least eighteen (18) hours before the abortion and in the private, not group, presence of the pregnant woman, the physician who is to perform the abortion, the referring physician or a physician assistant (as defined in IC 25-27.5-2-10), an advanced practice nurse (as defined in

IC 25-23-1-1(b)), or a certified nurse midwife (as defined in IC 34-18-2-6.5) to whom the responsibility has been delegated by the physician who is to perform the abortion or the referring physician has informed the pregnant woman orally and in writing of the following:

(A) The name of the physician performing the abortion, the physician's medical license number, and an emergency telephone number where the physician or the physician's designee may be contacted on a twenty-four (24) hour a day, seven (7) day a week basis.

(B) That follow-up care by the physician or the physician's designee (if the designee is licensed under IC 25-22.5) is available on an appropriate and timely basis when clinically necessary.

(C) The nature of the proposed procedure or information concerning the abortion inducing drug.

(D) Objective scientific information of the risks of and alternatives to the procedure or the use of an abortion inducing drug, including:

- (i) the risk of infection and hemorrhage;
- (ii) the potential danger to a subsequent pregnancy; and
- (iii) the potential danger of infertility.

(E) That human physical life begins when a human ovum is fertilized by a human sperm.

(F) The probable gestational age of the fetus at the time the abortion is to be performed, including:

- (i) a picture of a fetus;
- (ii) the dimensions of a fetus; and
- (iii) relevant information on the potential survival of an unborn fetus;

at this stage of development.

(G) That objective scientific information shows that a fetus can feel pain at or before twenty (20) weeks of postfertilization age.

(H) The medical risks associated with carrying the fetus to term.

(I) The availability of fetal ultrasound imaging and auscultation of fetal heart tone services to enable the pregnant woman to view the image and hear the heartbeat of the fetus and how to obtain access to these services.

(J) That the pregnancy of a child less than fifteen (15) years of age may constitute child abuse under Indiana law if the act included an adult and must be reported to the department of child services or the local law enforcement agency under IC 31-33-5.

(K) That Indiana does not allow a fetus to be aborted solely because of the fetus's race, color, national origin, ancestry, sex, or diagnosis or potential diagnosis of the fetus having

Down syndrome or any other disability.

(2) At least eighteen (18) hours before the abortion, the pregnant woman will be informed orally and in writing of the following:

(A) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care from the county office of the division of family resources.

(B) That the father of the unborn fetus is legally required to assist in the support of the child. In the case of rape, the information required under this clause may be omitted.

(C) That adoption alternatives are available and that adoptive parents may legally pay the costs of prenatal care, childbirth, and neonatal care.

(D) That there are physical risks to the pregnant woman in having an abortion, both during the abortion procedure and after.

(E) That Indiana has enacted the safe haven law under IC 31-34-2.5.

(F) The:

(i) Internet web site address of the state department of health's web site; and

(ii) description of the information that will be provided on the web site and that are;

described in section 1.5 of this chapter.

(G) For the facility in which the abortion is to be performed, an emergency telephone number that is available and answered on a twenty-four (24) hour a day, seven (7) day a week basis.

(H) On a form developed by the state department and as described in IC 16-34-3, that the pregnant woman has a right to determine the final disposition of the remains of the aborted fetus.

(I) On a form developed by the state department, information concerning the available options for disposition of the aborted fetus.

(J) On a form developed by the state department, information concerning any counseling that is available to a pregnant woman after having an abortion.

The state department shall develop and distribute the forms required by clauses (H) through (J).

(3) The pregnant woman certifies in writing, on a form developed by the state department, before the abortion is performed, that:

(A) the information required by subdivisions (1) and (2) has been provided to the pregnant woman;

(B) the pregnant woman has been offered by the provider the opportunity to view the fetal ultrasound imaging and hear the auscultation of the fetal heart tone if the fetal heart tone

is audible and that the woman has:

- (i) viewed or refused to view the offered fetal ultrasound imaging; and
- (ii) listened to or refused to listen to the offered auscultation of the fetal heart tone if the fetal heart tone is audible; and

(C) the pregnant woman has been given a written copy of the printed materials described in section 1.5 of this chapter.

(4) At least eighteen (18) hours before the abortion and in the presence of the pregnant woman, the physician who is to perform the abortion, the referring physician or a physician assistant (as defined in IC 25-27.5-2-10), an advanced practice nurse (as defined in IC 25-23-1-1(b)), or a midwife (as defined in IC 34-18-2-19) to whom the responsibility has been delegated by the physician who is to perform the abortion or the referring physician has provided the pregnant woman with a color copy of the informed consent brochure described in section 1.5 of this chapter by printing the informed consent brochure from the state department's Internet web site and including the following information on the back cover of the brochure:

(A) The name of the physician performing the abortion and the physician's medical license number.

(B) An emergency telephone number where the physician or the physician's designee may be contacted twenty-four (24) hours a day, seven (7) days a week.

(C) A statement that follow-up care by the physician or the physician's designee who is licensed under IC 25-22.5 is available on an appropriate and timely basis when clinically necessary.

(5) At least eighteen (18) hours before an abortion is performed and at the same time that the pregnant woman receives the information required by subdivision (1), the provider shall perform, and the pregnant woman shall view, the fetal ultrasound imaging and hear the auscultation of the fetal heart tone if the fetal heart tone is audible unless the pregnant woman certifies in writing, on a form developed by the state department, before the abortion is performed, that the pregnant woman:

(A) does not want to view the fetal ultrasound imaging; and

(B) does not want to listen to the auscultation of the fetal heart tone if the fetal heart tone is audible.

(b) This subsection applies to a pregnant woman whose unborn child has been diagnosed with a lethal fetal anomaly. The requirements of this subsection are in addition to the other requirements of this section. At least eighteen (18) hours before an abortion is performed on the pregnant woman, the physician who will perform the abortion shall:

(1) orally and in person, inform the pregnant woman of the

availability of perinatal hospice services; and  
(2) provide the pregnant woman copies of the perinatal hospice brochure developed by the state department under IC 16-25-4.5-4 and the list of perinatal hospice providers and programs developed under IC 16-25-4.5-5, by printing the perinatal hospice brochure and list of perinatal hospice providers from the state department's Internet web site.

(c) If a pregnant woman described in subsection (b) chooses to have an abortion rather than continuing the pregnancy in perinatal hospice care, the pregnant woman shall certify in writing, on a form developed by the state department under IC 16-25-4.5-6, at least eighteen (18) hours before the abortion is performed, that the pregnant woman has been provided the information described in subsection (b) in the manner required by subsection (b).

*As added by P.L.187-1995, SEC.4. Amended by P.L.1-1998, SEC.118; P.L.36-2005, SEC.1; P.L.146-2008, SEC.444; P.L.44-2009, SEC.32; P.L.193-2011, SEC.9; P.L.136-2013, SEC.6; P.L.232-2013, SEC.2; P.L.98-2014, SEC.2; P.L.113-2015, SEC.5; P.L.213-2016, SEC.14.*

#### **IC 16-34-2-1.2**

##### **Physician's duty to inform women in medical emergency of necessity for abortion**

Sec. 1.2. When a medical emergency compels the performance of an abortion, the physician who will perform the abortion shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert:

- (1) the woman's death; or
- (2) a substantial and irreversible impairment of a major bodily function.

*As added by P.L.187-1995, SEC.5.*

#### **IC 16-34-2-1.5**

##### **Informed consent brochure; requirements**

Sec. 1.5. (a) The state department shall develop an informed consent brochure and post the informed consent brochure on the state department's Internet web site.

(b) The state department shall develop an informed consent brochure that includes the following:

- (1) Objective scientific information concerning the probable anatomical and physiological characteristics of a fetus every two (2) weeks of gestational age, including the following:
  - (A) Realistic pictures in color for each age of the fetus, including the dimensions of the fetus.
  - (B) Whether there is any possibility of the fetus surviving outside the womb.
- (2) Objective scientific information concerning the medical

risks associated with each abortion procedure or the use of an abortion inducing drug, including the following:

(A) The risks of infection and hemorrhaging.

(B) The potential danger:

(i) to a subsequent pregnancy; or

(ii) of infertility.

(3) Information concerning the medical risks associated with carrying the child to term.

(4) Information that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care.

(5) Information that the biological father is liable for assistance in support of the child, regardless of whether the biological father has offered to pay for an abortion.

(6) Information regarding telephone 211 dialing code services for accessing human services as described in IC 8-1-19.5, and the types of services that are available through this service.

(c) In complying with subsection (b)(6), the state department shall consult with the recognized 211 service providers and the Indiana utility regulatory commission as required by IC 8-1-19.5-9.

(d) In the development of the informed consent brochure described in this section, the state department shall use information and pictures that are available at no cost or nominal cost to the state department.

(e) The informed consent brochure must include the requirements specified in this chapter.

*As added by P.L.193-2011, SEC.10. Amended by P.L.136-2013, SEC.7.*

#### **IC 16-34-2-2**

#### **Responsibilities of attending physician; determination of postfertilization age; disciplinary action for violation**

Sec. 2. (a) It shall be the responsibility of the attending physician to do the following:

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

(2) Determine whether the fetus is viable.

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

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

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

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

(c) Except in the case of a medical emergency (as described in

section 0.5 of this chapter), a physician that violates this section is subject to disciplinary action under IC 25-1-9.

*As added by P.L.2-1993, SEC.17. Amended by P.L.193-2011, SEC.11.*

### **IC 16-34-2-3**

#### **Conditions for abortion after viability or 20 weeks; attendance of physician for preservation of life and health of viable unborn child; certificates of birth or death; offense for violation; ward**

Sec. 3. (a) All abortions performed on and after the earlier of the time a fetus is viable or the time the postfertilization age of the fetus is at least twenty (20) weeks shall be:

- (1) governed by section 1(a)(3) and 1(b) of this chapter;
- (2) performed in a hospital having premature birth intensive care units, unless compliance with this requirement would result in an increased risk to the life or health of the mother; and
- (3) performed in the presence of a second physician as provided in subsection (b).

(b) An abortion may be performed after the earlier of the time a fetus is viable or the time the postfertilization age of the fetus is at least twenty (20) weeks only if there is in attendance a physician, other than the physician performing the abortion, who shall take control of and provide immediate care for a child born alive as a result of the abortion. During the performance of the abortion, the physician performing the abortion, and after the abortion, the physician required by this subsection to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the viable unborn child. However, this subsection does not apply if compliance would result in an increased risk to the life or health of the mother.

(c) Any fetus born alive shall be treated as a person under the law, and a birth certificate shall be issued certifying the child's birth even though the child may subsequently die, in which event a death certificate shall be issued. Failure to take all reasonable steps, in keeping with good medical practice, to preserve the life and health of the live born person shall subject the responsible persons to Indiana laws governing homicide, manslaughter, and civil liability for wrongful death and medical malpractice.

(d) If, before the abortion, the mother, and if married, her husband, has or have stated in writing that she does or they do not wish to keep the child in the event that the abortion results in a live birth, and this writing is not retracted before the abortion, the child, if born alive, shall immediately upon birth become a ward of the department of child services.

*As added by P.L.2-1993, SEC.17. Amended by P.L.4-1993, SEC.243; P.L.5-1993, SEC.256; P.L.145-1997, SEC.3; P.L.146-2008, SEC.445; P.L.193-2011, SEC.12.*

**IC 16-34-2-4**

**Written consent of parent or guardian of unemancipated pregnant woman under 18 years of age; conditions of waiver; representation by attorney; appeal; confidential records; emergency abortions**

Sec. 4. (a) No physician shall perform an abortion on an unemancipated pregnant woman less than eighteen (18) years of age without first having obtained the written consent of one (1) of the parents or the legal guardian of the minor pregnant woman.

(b) A minor:

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

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

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

(d) The juvenile court must rule on a petition filed by a pregnant minor under subsection (b) or by her physician under subsection (c) within forty-eight (48) hours of the filing of the petition. Before ruling on the petition, the court shall consider the concerns expressed by the pregnant minor and her physician. The requirement of parental consent under this section shall be waived by the juvenile court if the court finds that the minor is mature enough to make the abortion decision independently or that an abortion would be in the minor's best interests.

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

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

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

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

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

*As added by P.L.2-1993, SEC.17. Amended by P.L.193-2011, SEC.13.*

#### **IC 16-34-2-4.5**

#### **Admitting privileges requirement; notification to patient of hospital location; confirmation of admitting privileges; redaction**

Sec. 4.5. (a) A physician may not perform an abortion unless the physician:

- (1) has admitting privileges in writing at a hospital located in the county where abortions are provided or in a contiguous county; or
- (2) has entered into a written agreement with a physician who has written admitting privileges at a hospital in the county or contiguous county concerning the management of possible complications of the services provided.

A written agreement described in subdivision (2) must be renewed annually.

(b) A physician who performs an abortion shall notify the patient of the location of the hospital at which the physician or a physician with whom the physician has entered into an agreement under subsection (a)(2) has admitting privileges and where the patient may receive follow-up care by the physician if complications arise.

(c) An abortion clinic shall:

- (1) keep at the abortion clinic a copy of the admitting privileges of a physician described in subsection (a)(1) and (a)(2); and
- (2) submit a copy of the admitting privileges described in subdivision (1) to the state department as part of the abortion clinic's licensure. The state department shall verify the validity of the admitting privileges document. The state department shall remove any identifying information from the admitting privileges document before releasing the document under IC 5-14-3.

(d) The state department shall annually submit a copy of the admitting privileges described in subsection (a)(1) and a copy of the written agreement described in subsection (a)(2) to:

- (1) each hospital located in the county in which the hospital granting the admitting privileges described in subsection (a) is located; and
- (2) each hospital located in a county that is contiguous to the county described in subdivision (1);

where abortions are performed.

(e) The state department shall confirm to a member of the public, upon request, that the admitting privileges required to be submitted under this section for an abortion clinic have been received by the state department.

(f) Notwithstanding IC 5-14-3-6 and IC 5-14-3-6.5, this section only allows for the redaction of information that is described in subsection (c). This section does not allow the state department to limit the disclosure of information in other public documents.

*As added by P.L.193-2011, SEC.14. Amended by P.L.98-2014, SEC.3; P.L.213-2016, SEC.15.*

#### **IC 16-34-2-5**

#### **Forms to be supplied to health care provider; purpose; completion by health care provider; offense of failing to complete or timely transmit; annual public report**

Sec. 5. (a) Every health care provider who performs a surgical abortion or provides, prescribes, administers, or dispenses an abortion inducing drug for the purposes of inducing an abortion shall report the performance of the abortion or the provision, prescribing, administration, or dispensing of an abortion inducing drug on a form drafted by the state department, the purpose and function of which shall be the improvement of maternal health and life through the compilation of relevant maternal life and health factors and data, and a further purpose and function shall be to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law. For each abortion performed and abortion inducing drug provided, prescribed, administered, or dispensed, the report shall include, among other things, the following:

- (1) The age of the patient.
- (2) The date and location the abortion was performed or the abortion inducing drug was provided, prescribed, administered, or dispensed.
- (3) The health care provider's full name and address, including the name of the physicians performing the abortion or providing, prescribing, administering, or dispensing the abortion inducing drug.
- (4) The name of the father if known.
- (5) The age of the father, or the approximate age of the father if the father's age is unknown.
- (6) The following information concerning the abortion or the provision, prescribing, administration, or dispensing of the abortion inducing drug:
  - (A) The postfertilization age of the fetus.
  - (B) The manner in which the postfertilization age was determined.
  - (C) The gender of the fetus, if detectable.
  - (D) Whether the fetus has been diagnosed with or has a

potential diagnosis of having Down syndrome or any other disability.

(E) If after the earlier of the time the fetus obtains viability or the time the postfertilization age of the fetus is at least twenty (20) weeks, the medical reason for the performance of the abortion or the provision, prescribing, administration, or dispensing of the abortion inducing drug.

(7) For a surgical abortion, the medical procedure used for the abortion and, if the fetus was viable or had a postfertilization age of at least twenty (20) weeks:

(A) whether the procedure, in the reasonable judgment of the health care provider, gave the fetus the best opportunity to survive; and

(B) the basis for the determination that the pregnant woman had a condition described in this chapter that required the abortion to avert the death of or serious impairment to the pregnant woman.

(8) For a nonsurgical abortion, the precise drugs provided, prescribed, administered, or dispensed, and the means of delivery of the drugs to the patient.

(9) For an early pre-viability termination, the medical indication by diagnosis code for the fetus and the mother.

(10) The mother's obstetrical history, including dates of other abortions, if any.

(11) The results of pathological examinations if performed.

(12) For a surgical abortion, whether the fetus was delivered alive, and if so, how long the fetus lived.

(13) Records of all maternal deaths occurring at the location where the abortion was performed or the abortion inducing drug was provided, prescribed, administered, or dispensed.

(14) The date the form was transmitted to the state department and, if applicable, separately to the department of child services.

(b) The health care provider shall complete the form provided for in subsection (a) and shall transmit the completed form to the state department, in the manner specified on the form, not later than July 30 for each abortion occurring in the first six (6) months of that year and not later than January 30 for each abortion occurring in the last six (6) months of the preceding year. However, if an abortion is for a female who is less than fourteen (14) years of age, the health care provider shall transmit the form to the state department of health and separately to the department of child services within three (3) days after the abortion is performed.

(c) The dates supplied on the form may not be redacted for any reason before the form is transmitted as provided in this section.

(d) Each failure to complete or timely transmit a form, as required under this section, for each abortion performed or abortion inducing drug that was provided, prescribed, administered, or dispensed, is a

Class B misdemeanor.

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

- (1) Statistics for the previous calendar year from the information submitted under this section.
- (2) Statistics for previous calendar years compiled by the state department under this subsection, with updated information for the calendar year that was submitted to the state department after the compilation of the statistics.

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

*As added by P.L.2-1993, SEC.17. Amended by P.L.74-2011, SEC.1; P.L.193-2011, SEC.15; P.L.6-2012, SEC.120; P.L.92-2015, SEC.5; P.L.213-2016, SEC.16.*

#### **IC 16-34-2-5.1**

##### **Documentation of signatures and credentials of physicians and other providers**

Sec. 5.1. Each form or other written document that must be completed or provided by a physician or other provider under this chapter, including a signed copy retained in the pregnant woman's patient file, must include the following:

- (1) A line for the signature of the physician or other provider.
- (2) A line for the professional credentials and license number of the physician or other provider.

*As added by P.L.213-2016, SEC.17.*

#### **IC 16-34-2-5.5**

##### **State department duty to develop electronic program concerning submission of forms completed by physicians**

Sec. 5.5. The state department shall develop a program enabling the report required by section 5 of this chapter to be completed, transmitted, and received in an electronic format.

*As added by P.L.177-2015, SEC.1.*

#### **IC 16-34-2-6**

##### **Prohibitions on performing experiments on and the transport of an aborted fetus; transport of aborted fetus for purpose of conducting final disposition of the aborted fetus permitted**

Sec. 6. (a) No experiments except pathological examinations may be conducted on any fetus aborted under this chapter. A person who conducts such an experiment commits a Class A misdemeanor.

(b) Except as provided by subsection (c), a person who knowingly transports an aborted fetus into, or out of, Indiana commits a Class A misdemeanor.

(c) A person may transport an aborted fetus into, or out of, Indiana for the sole purpose of conducting the final disposition of the aborted fetus by cremation or interment under IC 16-34-3-4.

*As added by P.L.2-1993, SEC.17. Amended by P.L.213-2016, SEC.18.*

**IC 16-34-2-7**

**Performance of unlawful abortion; offense**

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.

*As added by P.L.2-1993, SEC.17. Amended by P.L.187-1995, SEC.6; P.L.145-1997, SEC.4; P.L.158-2013, SEC.235.*

## **IC 16-34-3**

### **Chapter 3. Treatment of Aborted Remains**

#### **IC 16-34-3-1**

##### **Effective January 1, 2016**

Sec. 1. This chapter is effective beginning January 1, 2016.  
*As added by P.L.113-2015, SEC.6.*

#### **IC 16-34-3-2**

##### **Right to determine final disposition of aborted fetus; determination; parental consent; documentation**

Sec. 2. (a) A pregnant woman who has an abortion under this article has the right to determine the final disposition of the aborted fetus.

(b) After receiving the notification and information required by IC 16-34-2-1.1(2)(H) and IC 16-34-2-1.1(2)(I), the pregnant woman shall inform the abortion clinic or the health care facility:

(1) in writing; and

(2) on a form prescribed by the state department; of the pregnant woman's decision for final disposition of the aborted fetus before the aborted fetus may be discharged from the abortion clinic or the health care facility.

(c) If the pregnant woman is a minor, the abortion clinic or health care facility shall obtain parental consent in the disposition of the aborted fetus unless the minor has received a waiver of parental consent under IC 16-34-2-4.

(d) The abortion clinic or the health care facility shall document the pregnant woman's decision concerning disposition of the aborted fetus in the pregnant woman's medical record.

*As added by P.L.113-2015, SEC.6. Amended by P.L.213-2016, SEC.19.*

#### **IC 16-34-3-3**

##### **Responsibility for costs**

Sec. 3. If the pregnant woman chooses a location for final disposition other than the location of final disposition that is usual and customary for an abortion clinic or a health care facility, the pregnant woman is responsible for the costs related to the final disposition of the aborted fetus at the chosen location.

*As added by P.L.113-2015, SEC.6. Amended by P.L.213-2016, SEC.20.*

#### **IC 16-34-3-4**

##### **Disposition by cremation or interment; permits; confidential information**

Sec. 4. (a) An abortion clinic or health care facility having possession of an aborted fetus shall provide for the final disposition of the aborted fetus. The burial transit permit requirements of

IC 16-37-3 apply to the final disposition of an aborted fetus, which must be interred or cremated. However:

(1) a person is not required to designate a name for the aborted fetus on the burial transit permit and the space for a name may remain blank; and

(2) any information submitted under this section that may be used to identify the pregnant woman is confidential and must be redacted from any public records maintained under IC 16-37-3.

Aborted fetuses may be cremated by simultaneous cremation.

(b) The local health officer shall issue a permit for the disposition of the aborted fetus to the person in charge of interment for the interment of the aborted fetus. A certificate of stillbirth is not required to be issued for an aborted fetus with a gestational age of less than twenty (20) weeks of age.

(c) IC 23-14-31-26, IC 23-14-55-2, IC 25-15-9-18, and IC 29-2-19-17 concerning the authorization of disposition of human remains apply to this section.

*As added by P.L.113-2015, SEC.6. Amended by P.L.213-2016, SEC.21.*

#### **IC 16-34-3-5**

##### **Informed consent brochure**

Sec. 5. The state department shall make any changes necessary to the informed consent brochure under IC 16-34-2-1.5 that are necessary to comply with IC 16-34-2-1.1 and this chapter.

*As added by P.L.113-2015, SEC.6.*

#### **IC 16-34-3-6**

##### **Development and distribution of forms**

Sec. 6. The state department shall develop and distribute the forms required by section 2 of this chapter.

*As added by P.L.113-2015, SEC.6.*

## **IC 16-34-4**

### **Chapter 4. Sex Selective and Disability Abortion Ban**

#### **IC 16-34-4-1**

##### **"Any other disability"**

Sec. 1. (a) As used in this chapter, "any other disability" means any disease, defect, or disorder that is genetically inherited. The term includes the following:

- (1) A physical disability.
- (2) A mental or intellectual disability.
- (3) A physical disfigurement.
- (4) Scoliosis.
- (5) Dwarfism.
- (6) Down syndrome.
- (7) Albinism.
- (8) Amelia.
- (9) A physical or mental disease.

(b) The term does not include a lethal fetal anomaly.

*As added by P.L.213-2016, SEC.22.*

#### **IC 16-34-4-2**

##### **"Down syndrome"**

Sec. 2. As used in this chapter, "Down syndrome" means a chromosomal disorder associated with an extra chromosome 21 or an effective trisomy for chromosome 21.

*As added by P.L.213-2016, SEC.22.*

#### **IC 16-34-4-3**

##### **"Potential diagnosis"**

Sec. 3. As used in this chapter, "potential diagnosis" refers to the presence of some risk factors that indicate that a health problem may occur.

*As added by P.L.213-2016, SEC.22.*

#### **IC 16-34-4-4**

##### **"Sex selective abortion"**

Sec. 4. As used in this chapter, "sex selective abortion" means an abortion that is performed solely because of the sex of the fetus.

*As added by P.L.213-2016, SEC.22.*

#### **IC 16-34-4-5**

##### **Sex selective abortion prohibited**

Sec. 5. (a) A person may not intentionally perform or attempt to perform an abortion before the earlier of viability of the fetus or twenty (20) weeks of postfertilization age if the person knows that the pregnant woman is seeking a sex selective abortion.

(b) A person may not intentionally perform or attempt to perform an abortion after viability of the fetus or twenty (20) weeks of

postfertilization age if the person knows that the pregnant woman is seeking a sex selective abortion.

(c) This section is severable as specified in IC 1-1-1-8.

*As added by P.L.213-2016, SEC.22.*

#### **IC 16-34-4-6**

**Abortion prohibited if a person knows that the pregnant woman is seeking the abortion solely because the fetus has been diagnosed with Down syndrome or has a potential diagnosis of Down syndrome**

Sec. 6. (a) A person may not intentionally perform or attempt to perform an abortion before the earlier of viability of the fetus or twenty (20) weeks of postfertilization age if the person knows that the pregnant woman is seeking the abortion solely because the fetus has been diagnosed with Down syndrome or has a potential diagnosis of Down syndrome.

(b) A person may not intentionally perform or attempt to perform an abortion after viability of the fetus or twenty (20) weeks of postfertilization age if the person knows that the pregnant woman is seeking the abortion solely because the fetus has been diagnosed with Down syndrome or has a potential diagnosis of Down syndrome.

(c) This section is severable as specified in IC 1-1-1-8.

*As added by P.L.213-2016, SEC.22.*

#### **IC 16-34-4-7**

**Abortion prohibited if the person knows that the abortion is being sought solely because the fetus has been diagnosed with any other disability or has a potential diagnosis of any other disability**

Sec. 7. (a) A person may not intentionally perform or attempt to perform an abortion before the earlier of viability of the fetus or twenty (20) weeks of postfertilization age if the person knows that the pregnant woman is seeking the abortion solely because the fetus has been diagnosed with any other disability or has a potential diagnosis of any other disability.

(b) A person may not intentionally perform or attempt to perform an abortion after viability of the fetus or twenty (20) weeks of postfertilization age if the person knows that the pregnant woman is seeking the abortion solely because the fetus has been diagnosed with any other disability or has a potential diagnosis of any other disability.

(c) This section is severable as specified in IC 1-1-1-8.

*As added by P.L.213-2016, SEC.22.*

#### **IC 16-34-4-8**

**Abortion prohibited if the person knows that the abortion is being sought solely because of the race, color, national origin, or ancestry of the fetus**

Sec. 8. (a) A person may not intentionally perform or attempt to perform an abortion before the earlier of viability of the fetus or twenty (20) weeks of postfertilization age if the person knows that the pregnant woman is seeking the abortion solely because of the race, color, national origin, or ancestry of the fetus.

(b) A person may not intentionally perform or attempt to perform an abortion after viability of the fetus or twenty (20) weeks of postfertilization age if the person knows that the pregnant woman is seeking the abortion solely because of the race, color, national origin, or ancestry of the fetus.

(c) This section is severable as specified in IC 1-1-1-8.

*As added by P.L.213-2016, SEC.22.*

#### **IC 16-34-4-9**

#### **Penalties for performing a prohibited abortion; prohibition on prosecuting a woman on whom a prohibited abortion is performed**

Sec. 9. (a) A person who knowingly or intentionally performs an abortion in violation of this chapter may be subject to:

- (1) disciplinary sanctions under IC 25-1-9; and
- (2) civil liability for wrongful death.

(b) A pregnant woman upon whom an abortion is performed in violation of this chapter may not be prosecuted for violating or conspiring to violate this chapter.

*As added by P.L.213-2016, SEC.22.*