COMMITTEE REPORT

MR. SPEAKER:

Your Committee on Public Policy, to which was referred House Bill 1210, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning health and to make an appropriation.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 16-18-2-128.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 128.3. "Fertilization", for purposes of IC 16-34, means the fusion of a human spermatozoon with a human ovum.

SECTION 2. IC 16-18-2-287.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 287.5. "Postfertilization age", for purposes of IC 16-34, means the age of the fetus calculated from the date of the fertilization of the ovum."
"SECTION 4. IC 16-34-1-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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.

SECTION 5. IC 16-34-2-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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.

SECTION 6. IC 16-34-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) Abortion shall in all instances be a criminal act, except when performed under the following circumstances:

(1) 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.

(2) 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), at the earlier of viability of the fetus or twenty (20) weeks of postfertilization age and any time after, viability of the fetus, 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."

Page 2, line 4, strike "orally".
Page 2, line 4, after "woman" insert "orally and in writing".

Page 2, line 6, delete "." and insert ", 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 is available on an appropriate and timely basis
when clinically necessary.".

Page 2, line 7, strike "(B)" and insert "(C)".
Page 2, line 7, after "procedure" insert ".".

Page 2, line 8, strike "or treatment.".

Page 2, line 8, strike "(C)" and insert "(D)".

Page 2, line 8, after "procedure" insert ".".

Page 2, line 8, strike "or treatment." and insert "including:

(i) the risk of infection and hemorrhage;

(ii) the potential danger to a subsequent pregnancy;

(iii) the potential danger of infertility; and

(iv) the possibility of increased risk of breast cancer
following an induced abortion and the natural protective
effect of a completed pregnancy in avoiding breast
cancer.

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

Page 2, line 9, strike "(D)" and insert "(F)".

Page 2, line 9, delete ",," and insert "at the time the abortion is to
be performed,".

Page 2, line 9, after "including" insert ";".

Page 2, line 9, strike "an".

Page 2, strike line 10.

Page 2, between lines 15 and 16, begin a new line double block
indented and insert:

"(G) That medical evidence shows that a fetus can feel pain
at or before twenty (20) weeks of postfertilization age."

Page 2, line 16, strike "(E)" and insert "(H)".

Page 2, line 18, strike "(F)" and insert "(I)".

Page 2, delete line 22, begin a new line double block indented, and insert:

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

Page 2, line 24, strike "orally".

Page 2, line 24, after "informed" insert "orally and in writing".

Page 2, between lines 33 and 34, begin a new line double block indented and insert:

"(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) That materials developed by the state department in section 1.5 of this chapter:

(i) will be provided to the pregnant woman by the physician providing the abortion as a hard copy;

(ii) are available on the state department’s Internet web site;

(iii) provide scientific information about the unborn child; and

(iv) list agencies in the area that offer alternatives to abortion, including agencies that offer alternatives to abortion at no cost to the pregnant woman."

Page 2, line 35, after "that" insert ":

(A)"

Page 2, line 36, delete "." and insert "to the pregnant woman;

(B) the pregnant woman has been offered 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."

Page 2, after line 42, begin a new paragraph and insert:

"SECTION 7. IC 16-34-2-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1.5. (a) The state department shall develop and post the materials described in this section on the state department's Internet web site.

(b) The state department shall develop materials that include 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) Information concerning the medical risks associated with each abortion procedure, including the following when medically accurate:

(A) The risks of infection and hemorrhaging.

(B) The potential danger:

(i) to a subsequent pregnancy; or

(ii) of infertility.

(C) The possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer.

(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) A list of public and private agencies that provide assistance to women throughout pregnancy, childbirth, and a child's dependency. For purposes of this subdivision, "assistance" includes pregnancy prevention counseling and medical referrals for obtaining pregnancy prevention medications or devices. The list must include the following:

(A) Geographically indexed materials to allow a pregnant woman to find the services available near the pregnant woman's residence.

(B) Identification of services that are provided at no cost to the pregnant woman.

(C) The following information about each adoption agency in Indiana:

(i) A description of the services provided by the agency.

(ii) Contact information for the adoption agency, including the agency's telephone number.

(D) 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)(C), 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.

SECTION 7. IC 16-34-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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.

SECTION 8. IC 16-34-2-3, AS AMENDED BY P.L.146-2008,
SECTION 445, IS AMENDED TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2011]: Sec. 3. (a) All abortions performed after
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."

Page 3, line 4, delete "physician" and insert "physician:
(1)"

Page 3, line 4, delete "located:" and insert "located in the county
where abortions are provided or a contiguous county; or
(2) has entered into an agreement with a physician who has
admitting privileges at a hospital in the county or contiguous
county concerning the management of possible complications
of the services provided."

Page 3, delete lines 5 through 7.

Page 3, line 9, delete "has" and insert "or a physician with whom
the physician has entered into an agreement under subsection
(a)(2) has admitting"

Page 3, between lines 11 and 12, begin a new paragraph and insert:
"SECTION 9. IC 16-34-2-5 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) Every medical
facility where abortions may be performed shall be supplied with forms
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. Such forms shall include, among other things, the
following:

(1) The age of the woman who is aborted.
(2) The place where the abortion is performed.
(3) The full name and address of the physicians performing the
abortion.
(4) The name of the father if known.
(5) The postfertilization age of the fetus, the manner in which
the postfertilization age was determined, and 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 abortion.
(6) The medical procedure employed to administer the abortion, and if the medical procedure performed on a fetus who is viable or has a postfertilization age of at least twenty (20) weeks:

(A) whether the method of abortion used was a method, that in the reasonable judgment of a physician, would provide the best opportunity for the fetus 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.

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

(8) The results of pathological examinations if performed.

(9) Information as to whether the fetus was delivered alive.

(10) Records of all maternal deaths occurring within the health facility where the abortion was performed.

(b) The form provided for in subsection (a) shall be completed by the physician performing the abortion and shall be transmitted to the state department not later than July 30 for each abortion performed in the first six (6) months of that year and not later than January 30 for each abortion performed for the last six (6) months of the preceding year. Each failure to file the form on time as required is a Class B misdemeanor.

(c) 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.

SECTION 10. IC 16-34-2-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) A pregnant woman or the biological father of the fetus may file a cause of action for actual and punitive damages
against a physician who recklessly, knowingly, or intentionally
performs or attempts to perform an abortion on the pregnant
woman in violation of this chapter.

(b) The following may file an action for injunctive relief against
a physician who violates this chapter to prevent the physician from
performing further abortions in violation of this chapter:

(1) A pregnant woman who has an abortion or attempts to
have an abortion performed by a physician who violates this
chapter.

(2) A spouse, parent, sibling, guardian, or health care
provider of a pregnant woman described in subdivision (1).

(3) The attorney general.

(4) A county attorney with appropriate jurisdiction.

(c) If a judgment is rendered in favor of the plaintiff in an action
described in this section, the court shall also order the defendant
to render reasonable attorney’s fees on behalf of the plaintiff.

(d) If a judgment is rendered in favor of the defendant in an
action described in this section and the court determines that the
lawsuit was frivolous and brought in bad faith, the court shall
order the plaintiff to render reasonable attorney’s fees on behalf of
the defendant.

SECTION 11. IC 16-34-2-9 IS ADDED TO THE INDIANA CODE
AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
1, 2011]: Sec. 9. (a) The special litigation defense fund is established
for the purpose of providing reimbursement of the costs and
expenses incurred by the attorney general in defending the
constitutionality of actions taken in the 2011 session of the general
assembly to the statutes specified in subsection (b).

(b) The fund must be used to defend the constitutionality of
actions taken in the 2011 session of the general assembly amending
or adding the following sections of this chapter:

(1) Section 0.5.

(2) Section 1.

(3) Section 2.

(4) Section 3.

(5) Section 5.

(6) Section 8.

(7) Section 10.
(c) The fund shall be administered by the treasurer of state.

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(e) The expenses of administering the fund shall be paid from money in the fund.

(f) Money to be deposited into the fund consists of the following:

(1) Appropriations made by the general assembly.

(2) Donations, gifts, or grants made by persons for carrying out the purposes of the fund.

(g) Money in the fund at the end of a state fiscal year does not revert to the state general fund. Money in the fund is continually appropriated.

SECTION 12. IC 16-34-2-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) If any provision of this chapter is found by the courts to be unconstitutional or invalid, the unconstitutional or invalid provision shall be considered severable in the manner provided by IC 1-1-1-8(b).

(b) If a court determines that any of the following sections of this chapter resulting from the actions taken by the 2011 session of the general assembly are unconstitutional, the amendments found by the court to be unconstitutional are void, and the language in effect before the amendments returns to effect:

(1) Section 0.5.

(2) Section 1.

(3) Section 2.
(4) Section 3.
(5) Section 5."

Renumber all SECTIONS consecutively.
(Reference is to HB 1210 as introduced.)

and when so amended that said bill do pass.

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Representative Davis