



Reprinted
February 24, 2015

SENATE BILL No. 334

DIGEST OF SB 334 (Updated February 23, 2015 4:27 pm - DI 104)

Citations Affected: IC 16-18; IC 16-34.

Synopsis: Abortion prohibition based on sex or disability. Prohibits a person from performing an abortion if the person knows that the pregnant woman is seeking the abortion solely because of: (1) the sex of the fetus; or (2) a diagnosis or potential diagnosis of the fetus having Down syndrome or any other disability. Provides for: (1) disciplinary sanctions; and (2) civil liability for wrongful death and medical malpractice; if a person knowingly or intentionally performs a sex selective abortion or an abortion conducted because of a diagnosis or potential diagnosis of Down syndrome or any other disability.

Effective: July 1, 2015.

Holdman, Brown L, Banks A, Kruse

January 8, 2015, read first time and referred to Committee on Health & Provider Services.
February 19, 2015, amended, reported favorably — Do Pass.
February 23, 2015, read second time, amended, ordered engrossed.

SB 334—LS 6701/DI 104



Reprinted
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First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 334

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 16-18-2-18.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2015]: **Sec. 18.5. "Any other disability", for**
4 **purposes of IC 16-34, has the meaning set forth in IC 16-34-3-1.**
5 SECTION 2. IC 16-18-2-100.5 IS ADDED TO THE INDIANA
6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2015]: **Sec. 100.5. "Down syndrome", for**
8 **purposes of IC 16-34, has the meaning set forth in IC 16-34-3-2.**
9 SECTION 3. IC 16-18-2-287.9 IS ADDED TO THE INDIANA
10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 2015]: **Sec. 287.9. "Potential diagnosis", for**
12 **purposes of IC 16-34, has the meaning set forth in IC 16-34-3-3.**
13 SECTION 4. IC 16-18-2-328.6 IS ADDED TO THE INDIANA
14 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2015]: **Sec. 328.6. "Sex selective abortion",**
16 **for purposes of IC 16-34-3, has the meaning set forth in**

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1 **IC 16-34-3-4.**

2 SECTION 5. IC 16-34-2-1, AS AMENDED BY P.L.136-2013,
 3 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2015]: Sec. 1. (a) Abortion shall in all instances be a criminal
 5 act, except when performed under the following circumstances:

6 (1) **Except as prohibited in IC 16-34-3**, during the first trimester
 7 of pregnancy for reasons based upon the professional, medical
 8 judgment of the pregnant woman's physician if:

9 (A) the abortion is performed by the physician;

10 (B) the woman submitting to the abortion has filed her consent
 11 with her physician. However, if in the judgment of the
 12 physician the abortion is necessary to preserve the life of the
 13 woman, her consent is not required; and

14 (C) the woman submitting to the abortion has filed with her
 15 physician the written consent of her parent or legal guardian
 16 if required under section 4 of this chapter.

17 However, an abortion inducing drug may not be dispensed,
 18 prescribed, administered, or otherwise given to a pregnant woman
 19 after nine (9) weeks of postfertilization age unless the Food and
 20 Drug Administration has approved the abortion inducing drug to
 21 be used for abortions later than nine (9) weeks of postfertilization
 22 age. A physician shall examine a pregnant woman in person
 23 before prescribing or dispensing an abortion inducing drug. As
 24 used in this subdivision, "in person" does not include the use of
 25 telehealth or telemedicine services.

26 (2) **Except as prohibited in IC 16-34-3**, for an abortion
 27 performed by a surgical procedure, after the first trimester of
 28 pregnancy and before the earlier of viability of the fetus or twenty
 29 (20) weeks of postfertilization age, for reasons based upon the
 30 professional, medical judgment of the pregnant woman's
 31 physician if:

32 (A) all the circumstances and provisions required for legal
 33 abortion during the first trimester are present and adhered to;
 34 and

35 (B) the abortion is performed in a hospital or ambulatory
 36 outpatient surgical center (as defined in IC 16-18-2-14).

37 (3) Except as provided in subsection (b) **or as prohibited in**
 38 **IC 16-34-3**, and for an abortion performed by a surgical
 39 procedure, at the earlier of viability of the fetus or twenty (20)
 40 weeks of postfertilization age and any time after, for reasons
 41 based upon the professional, medical judgment of the pregnant
 42 woman's physician if:



1 (A) all the circumstances and provisions required for legal
 2 abortion before the earlier of viability of the fetus or twenty
 3 (20) weeks of postfertilization age are present and adhered to;
 4 (B) the abortion is performed in compliance with section 3 of
 5 this chapter; and
 6 (C) before the abortion the attending physician shall certify in
 7 writing to the hospital in which the abortion is to be
 8 performed, that in the attending physician's professional,
 9 medical judgment, after proper examination and review of the
 10 woman's history, the abortion is necessary to prevent a
 11 substantial permanent impairment of the life or physical health
 12 of the pregnant woman. All facts and reasons supporting the
 13 certification shall be set forth by the physician in writing and
 14 attached to the certificate.

15 (b) A person may not knowingly or intentionally perform a partial
 16 birth abortion unless a physician reasonably believes that:

- 17 (1) performing the partial birth abortion is necessary to save the
 18 mother's life; and
 19 (2) no other medical procedure is sufficient to save the mother's
 20 life.

21 SECTION 6. IC 16-34-2-1.1, AS AMENDED BY P.L.98-2014,
 22 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2015]: Sec. 1.1. (a) An abortion shall not be performed except
 24 with the voluntary and informed consent of the pregnant woman upon
 25 whom the abortion is to be performed. Except in the case of a medical
 26 emergency, consent to an abortion is voluntary and informed only if the
 27 following conditions are met:

28 (1) At least eighteen (18) hours before the abortion and in the
 29 presence of the pregnant woman, the physician who is to perform
 30 the abortion, the referring physician or a physician assistant (as
 31 defined in IC 25-27.5-2-10), an advanced practice nurse (as
 32 defined in IC 25-23-1-1(b)), or a certified nurse midwife (as
 33 defined in IC 34-18-2-6.5) to whom the responsibility has been
 34 delegated by the physician who is to perform the abortion or the
 35 referring physician has informed the pregnant woman orally and
 36 in writing of the following:

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

42 (B) That follow-up care by the physician or the physician's



- 1 designee (if the designee is licensed under IC 25-22.5) and is
 2 available on an appropriate and timely basis when clinically
 3 necessary.
- 4 (C) The nature of the proposed procedure or information
 5 concerning the abortion inducing drug.
- 6 (D) Objective scientific information of the risks of and
 7 alternatives to the procedure or the use of an abortion inducing
 8 drug, including:
- 9 (i) the risk of infection and hemorrhage;
 10 (ii) the potential danger to a subsequent pregnancy; and
 11 (iii) the potential danger of infertility.
- 12 (E) That human physical life begins when a human ovum is
 13 fertilized by a human sperm.
- 14 (F) The probable gestational age of the fetus at the time the
 15 abortion is to be performed, including:
- 16 (i) a picture of a fetus;
 17 (ii) the dimensions of a fetus; and
 18 (iii) relevant information on the potential survival of an
 19 unborn fetus;
 20 at this stage of development.
- 21 (G) That objective scientific information shows that a fetus
 22 can feel pain at or before twenty (20) weeks of postfertilization
 23 age.
- 24 (H) The medical risks associated with carrying the fetus to
 25 term.
- 26 (I) The availability of fetal ultrasound imaging and
 27 auscultation of fetal heart tone services to enable the pregnant
 28 woman to view the image and hear the heartbeat of the fetus
 29 and how to obtain access to these services.
- 30 (J) That the pregnancy of a child less than fifteen (15) years of
 31 age may constitute child abuse under Indiana law if the act
 32 included an adult and must be reported to the department of
 33 child services or the local law enforcement agency under
 34 IC 31-33-5.
- 35 **(K) That Indiana does not allow a fetus to be aborted solely**
 36 **because of the fetus's sex or diagnosis or potential**
 37 **diagnosis of the fetus having Down syndrome or any other**
 38 **disability.**
- 39 (2) At least eighteen (18) hours before the abortion, the pregnant
 40 woman will be informed orally and in writing of the following:
- 41 (A) That medical assistance benefits may be available for
 42 prenatal care, childbirth, and neonatal care from the county



- 1 office of the division of family resources.
- 2 (B) That the father of the unborn fetus is legally required to
- 3 assist in the support of the child. In the case of rape, the
- 4 information required under this clause may be omitted.
- 5 (C) That adoption alternatives are available and that adoptive
- 6 parents may legally pay the costs of prenatal care, childbirth,
- 7 and neonatal care.
- 8 (D) That there are physical risks to the pregnant woman in
- 9 having an abortion, both during the abortion procedure and
- 10 after.
- 11 (E) That Indiana has enacted the safe haven law under
- 12 IC 31-34-2.5.
- 13 (F) The:
- 14 (i) Internet web site address of the state department of
- 15 health's web site; and
- 16 (ii) description of the information that will be provided on
- 17 the web site and that are;
- 18 described in section 1.5 of this chapter.
- 19 (G) For the facility in which the abortion is to be performed,
- 20 an emergency telephone number that is available and
- 21 answered on a twenty-four (24) hour a day, seven (7) day a
- 22 week basis.
- 23 (3) The pregnant woman certifies in writing, on a form developed
- 24 by the state department, before the abortion is performed, that:
- 25 (A) the information required by subdivisions (1) and (2) has
- 26 been provided to the pregnant woman;
- 27 (B) the pregnant woman has been offered by the provider the
- 28 opportunity to view the fetal ultrasound imaging and hear the
- 29 auscultation of the fetal heart tone if the fetal heart tone is
- 30 audible and that the woman has:
- 31 (i) viewed or refused to view the offered fetal ultrasound
- 32 imaging; and
- 33 (ii) listened to or refused to listen to the offered auscultation
- 34 of the fetal heart tone if the fetal heart tone is audible; and
- 35 (C) the pregnant woman has been given a written copy of the
- 36 printed materials described in section 1.5 of this chapter.
- 37 (4) At least eighteen (18) hours before the abortion and in the
- 38 presence of the pregnant woman, the physician who is to perform
- 39 the abortion, the referring physician or a physician assistant (as
- 40 defined in IC 25-27.5-2-10), an advanced practice nurse (as
- 41 defined in IC 25-23-1-1(b)), or a midwife (as defined in
- 42 IC 34-18-2-19) to whom the responsibility has been delegated by



1 the physician who is to perform the abortion or the referring
 2 physician has provided the pregnant woman with a color copy of
 3 the informed consent brochure described in section 1.5 of this
 4 chapter by printing the informed consent brochure from the state
 5 department's Internet web site and including the following
 6 information on the back cover of the brochure:

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

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

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

16 (b) Before an abortion is performed, the provider shall perform, and
 17 the pregnant woman shall view, the fetal ultrasound imaging and hear
 18 the auscultation of the fetal heart tone if the fetal heart tone is audible
 19 unless the pregnant woman certifies in writing, on a form developed by
 20 the state department, before the abortion is performed, that the
 21 pregnant woman:

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

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

25 SECTION 7. IC 16-34-2-5, AS AMENDED BY P.L.6-2012,
 26 SECTION 120, IS AMENDED TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) Every medical facility where
 28 abortions may be performed shall be supplied with forms drafted by the
 29 state department, the purpose and function of which shall be the
 30 improvement of maternal health and life through the compilation of
 31 relevant maternal life and health factors and data, and a further purpose
 32 and function shall be to monitor all abortions performed in Indiana to
 33 assure the abortions are done only under the authorized provisions of
 34 the law. Such forms shall include, among other things, the following:

35 (1) The age of the woman who is aborted.

36 (2) The place where the abortion is performed.

37 (3) The full name and address of the physicians performing the
 38 abortion.

39 (4) The name of the father if known.

40 (5) The age of the father, or the approximate age of the father if
 41 the father's age is unknown.

42 (6) The postfertilization age of the fetus, the manner in which the



1 postfertilization age was determined, **whether the fetus has been**
 2 **diagnosed with or has a potential diagnosis of having Down**
 3 **syndrome or any other disability**, and, if after the earlier of the
 4 time the fetus obtains viability or the time the postfertilization age
 5 of the fetus is at least twenty (20) weeks, the medical reason for
 6 the abortion.

7 (7) The medical procedure employed to administer the abortion
 8 and, if the medical procedure performed on a fetus who is viable
 9 or has a postfertilization age of at least twenty (20) weeks:

10 (A) whether the method of abortion used was a method that, in
 11 the reasonable judgment of a physician, would provide the best
 12 opportunity for the fetus to survive; and

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

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

19 (9) The results of pathological examinations if performed.

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

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

23 (12) The date of the pregnancy termination.

24 (13) The date the form was received by the state department.

25 (b) The form provided for in subsection (a) shall be completed by
 26 the physician performing the abortion and shall be transmitted to the
 27 state department not later than July 30 for each abortion performed in
 28 the first six (6) months of that year and not later than January 30 for
 29 each abortion performed for the last six (6) months of the preceding
 30 year. However, if an abortion is performed on a female who is less than
 31 fourteen (14) years of age, the physician performing the abortion shall
 32 transmit the form to the state department of health and the department
 33 of child services within three (3) days after the abortion is performed.

34 (c) The dates in subsection (a)(12) and (a)(13) may not be redacted
 35 for any use of the form.

36 (d) Each failure to file the completed form on time as required under
 37 this section is a Class B misdemeanor.

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

40 (1) Statistics for the previous calendar year from the information
 41 submitted under this section.

42 (2) Statistics for previous calendar years compiled by the state



- 1 department under this subsection, with updated information for
 2 the calendar year that was submitted to the state department after
 3 the compilation of the statistics.
 4 The state department shall ensure that no identifying information of a
 5 pregnant woman is contained in the report.
 6 SECTION 8. IC 16-34-3 IS ADDED TO THE INDIANA CODE AS
 7 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 8 1, 2015]:
 9 **Chapter 3. Sex Selective and Disability Abortion Ban**
 10 **Sec. 1. As used in this chapter, "any other disability" means any**
 11 **disease, defect, or disorder that is genetically inherited. The term**
 12 **includes the following:**
 13 (1) A physical disability.
 14 (2) A mental disability or retardation.
 15 (3) A physical disfigurement.
 16 (4) Scoliosis.
 17 (5) Dwarfism.
 18 (6) Down syndrome.
 19 (7) Albinism.
 20 (8) Amelia.
 21 (9) A physical or mental disease.
 22 **Sec. 2. As used in this chapter, "Down syndrome" means a**
 23 **chromosomal disorder associated with an extra chromosome 21 or**
 24 **an effective trisomy for chromosome 21.**
 25 **Sec. 3. As used in this chapter, "potential diagnosis" refers to**
 26 **the presence of some risk factors that indicate that a health**
 27 **problem may occur.**
 28 **Sec. 4. As used in this chapter, "sex selective abortion" means**
 29 **an abortion that is performed solely because of the sex of the fetus.**
 30 **Sec. 5. (a) A person may not intentionally perform or attempt to**
 31 **perform an abortion before the earlier of viability of the fetus or**
 32 **twenty (20) weeks of postfertilization age if the person knows that**
 33 **the pregnant woman is seeking a sex selective abortion.**
 34 **(b) A person may not intentionally perform or attempt to**
 35 **perform an abortion after viability of the fetus or twenty (20)**
 36 **weeks of postfertilization age if the person knows that the pregnant**
 37 **woman is seeking a sex selective abortion.**
 38 **(c) This section is severable as specified in IC 1-1-1-8.**
 39 **Sec. 6. (a) A person may not intentionally perform or attempt to**
 40 **perform an abortion before the earlier of viability of the fetus or**
 41 **twenty (20) weeks of postfertilization age if the person knows that**
 42 **the pregnant woman is seeking the abortion solely because the**



1 fetus has been diagnosed with Down syndrome or a potential
2 diagnosis of Down syndrome.

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

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

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

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

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

23 Sec. 8. (a) A person who knowingly or intentionally performs an
24 abortion in violation of this chapter may be subject to:

25 (1) disciplinary sanctions under IC 25-1-9; and

26 (2) civil liability for wrongful death and medical malpractice.

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



COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 334, 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 1, between lines 8 and 9, begin a new paragraph and insert:

"SECTION 3. IC 16-18-2-287.9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 287.9. "Potential diagnosis", for purposes of IC 16-34, has the meaning set forth in IC 16-34-3-3.**"

Page 1, line 13, delete "IC 16-34-3-3." and insert "**IC 16-34-3-4.**"

Page 8, between lines 20 and 21, begin a new paragraph and insert:

"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."

Page 8, line 21, delete "3." and insert "**4.**"

Page 8, line 23, delete "4." and insert "**5.**"

Page 8, line 32, delete "5." and insert "**6.**"

Page 8, line 36, delete "for" and insert "**diagnosis of**".

Page 8, line 42, delete "for" and insert "**diagnosis of**".

Page 9, line 2, delete "6." and insert "**7.**"

Page 9, line 6, delete "for" and insert "**diagnosis of**".

Page 9, line 12, delete "for" and insert "**diagnosis of**".

Page 9, line 15, delete "7." and insert "**8.**"

Page 9, line 16, delete "commits a Level 5 felony."

Page 9, delete line 17.

Page 9, line 18, delete "person who violates this chapter".

Page 9, run in lines 16 through 18.

Page 9, line 21, delete "(c)" and insert "**(b)**".

Page 9, line 24, delete "8." and insert "**9.**"

Page 9, delete lines 26 through 29.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 334 as introduced.)

MILLER PATRICIA, Chairperson

Committee Vote: Yeas 7, Nays 4.

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SENATE MOTION

Madam President: I move that Senate Bill 334 be amended to read as follows:

Page 9, delete lines 30 through 31.

(Reference is to SB 334 as printed February 20, 2015.)

HOLDMAN

