

# House Bill 3017

Sponsored by Representative SPRENGER, Senator THATCHER, Representative STARK; Representatives BARRETO, ESQUIVEL, HACK, HAYDEN, HEARD, HUFFMAN, KENNEMER, NEARMAN, NOBLE, POST, RESCHKE, SMITH DB, SMITH G, WHISNANT, WILSON, Senators BAERTSCHIGER JR, BOQUIST, GIROD, HANSELL, KNOPP, KRUSE, LINTHICUM

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits abortion unless physician has first determined probable post-fertilization age of unborn child, except in case of medical emergency.

Prohibits abortion of unborn child with probable post-fertilization age of 20 or more weeks, except in case of medical emergency.

Requires physician who performs or attempts abortion to file report with Oregon Health Authority.

Requires authority to publish statistics relating to abortion.

## A BILL FOR AN ACT

1  
2 Relating to abortion.

3       Whereas by 16 weeks after fertilization, pain receptors are present throughout an unborn child's  
4 entire body; and

5       Whereas by 20 weeks after fertilization, nerves link these pain receptors to the brain's thalamus  
6 and subcortical plate; and

7       Whereas by eight weeks after fertilization, an unborn child reacts to stimuli that would be re-  
8 cognized as painful if applied to an adult human, for example by recoiling; and

9       Whereas in an unborn child, application of such painful stimuli is associated with significant  
10 increases in stress hormones known as the stress response; and

11       Whereas subjection to such painful stimuli is associated with long-term harmful  
12 neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral and  
13 learning disabilities later in life; and

14       Whereas anesthesia is routinely administered when conducting surgery on unborn children; and

15       Whereas administering anesthesia is associated with a decrease in stress hormones compared  
16 to when painful stimuli are applied without administering anesthesia; and

17       Whereas the position, asserted by some medical experts, that an unborn child is incapable of  
18 experiencing pain until a point later in pregnancy than 20 weeks after fertilization predominantly  
19 rests on the assumption that the ability to experience pain depends on the cerebral cortex and re-  
20 quires nerve connections between the thalamus and the cerebral cortex; and

21       Whereas recent medical research and analysis conducted since 2007 provides strong evidence  
22 for the conclusion that a functioning cerebral cortex is not necessary to experience pain; and

23       Whereas substantial evidence indicates that children born missing the bulk of the cerebral  
24 cortex, such as those with hydranencephaly, nevertheless experience pain; and

25       Whereas in adults, stimulation or ablation of the cerebral cortex does not alter pain perception,  
26 while stimulation or ablation of the thalamus does; and

27       Whereas substantial evidence indicates that structures used for pain processing in early devel-

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 opment differ from those of adults, using different neural elements available at specific times during  
 2 development, such as the subcortical plate, to fulfill the role of processing pain; and

3 Whereas substantial medical evidence demonstrates that an unborn child is capable of experi-  
 4 encing pain by 20 weeks after fertilization; and

5 Whereas it is the purpose of the Legislative Assembly to assert a compelling state interest in  
 6 protecting the lives of unborn children from the stage at which substantial medical evidence indi-  
 7 cates that they are capable of feeling pain; now, therefore,

8 **Be It Enacted by the People of the State of Oregon:**

9 **SECTION 1. As used in sections 1 to 5 of this 2017 Act:**

10 (1) **“Abortion” means the use or prescription of an instrument, medicine, drug or other**  
 11 **substance or device to terminate the pregnancy of a woman known to be pregnant, if the**  
 12 **intention is other than to increase the probability of a live birth, to preserve the life or**  
 13 **health of a child after live birth or to remove a dead unborn child who died as the result of**  
 14 **natural causes in utero, accidental trauma or a criminal assault on a pregnant woman or the**  
 15 **unborn child, and that use or prescription causes the premature termination of the preg-**  
 16 **nancy.**

17 (2) **“Attempt to perform or induce an abortion” means an act, or an omission of a**  
 18 **statutorily required act, that, under the circumstances as the actor believes them to be,**  
 19 **constitutes a substantial step in a course of conduct planned to culminate in the perform-**  
 20 **ance or induction of an abortion.**

21 (3) **“Fertilization” means the fusion of a human spermatozoon with a human ovum.**

22 (4)(a) **“Medical emergency” means a condition that, in reasonable medical judgment, so**  
 23 **complicates the medical condition of a pregnant woman as to necessitate the immediate**  
 24 **termination of her pregnancy to avert her death or for which a delay necessary to determine**  
 25 **probable post-fertilization age will create serious risk of substantial and irreversible physical**  
 26 **impairment of a major bodily function, not including psychological or emotional functions.**

27 (b) **“Medical emergency” does not include the likelihood that a pregnant woman will en-**  
 28 **gage in conduct that would result in her death or in substantial and irreversible physical**  
 29 **impairment of a major bodily function.**

30 (5) **“Physician” means a person licensed by the Oregon Medical Board to practice medi-**  
 31 **cine and surgery.**

32 (6) **“Post-fertilization age” means the age of an unborn child as calculated from the**  
 33 **fertilization of the human ovum.**

34 (7) **“Probable post-fertilization age” means, in reasonable medical judgment, the post-**  
 35 **fertilization age of an unborn child at the time that an abortion is planned to be performed.**

36 (8) **“Reasonable medical judgment” means a medical judgment that would be made by a**  
 37 **reasonably prudent physician who is knowledgeable about the case and the treatment possi-**  
 38 **bilities with respect to the medical conditions involved.**

39 (9) **“Unborn child” means an individual organism of the species Homo sapiens from**  
 40 **fertilization until live birth.**

41 (10) **“Woman” means a female human being, whether or not she has reached the age of**  
 42 **maturity.**

43 **SECTION 2. (1) Except in the case of a medical emergency that prevents compliance with**  
 44 **this section, a person may not perform or induce, or attempt to perform or induce, an**  
 45 **abortion unless a physician has first determined the probable post-fertilization age of the**

1 unborn child.

2 (2) In making the determination required by subsection (1) of this section, a physician  
3 must:

4 (a) Make inquiries of the pregnant woman; and

5 (b) Perform or cause to be performed medical examinations and tests that a reasonably  
6 prudent physician who is knowledgeable about the case and the medical conditions involved  
7 would perform.

8 **SECTION 3.** (1) Except in the event of a medical emergency, a person may not perform  
9 or induce, or attempt to perform or induce, an abortion when a physician has determined  
10 that the probable post-fertilization age of the unborn child is 20 or more weeks.

11 (2) When a physician terminates a pregnancy that is not prohibited under this section  
12 because of a medical emergency, the physician shall terminate the pregnancy in the manner  
13 that, in reasonable medical judgment, provides the best opportunity for the unborn child to  
14 survive, unless, in reasonable medical judgment, terminating the pregnancy in that manner  
15 would pose a greater risk of death or of substantial and irreversible physical impairment of  
16 a major bodily function, other than psychological or emotional functions, to the pregnant  
17 woman than other available methods. The likelihood that a pregnant woman will engage in  
18 conduct that would result in her death or in substantial and irreversible physical impairment  
19 of a major bodily function does not constitute a greater risk under this subsection.

20 **SECTION 4.** Within 30 days after a physician performs or induces, or attempts to per-  
21 form or induce, an abortion, the physician shall report to the Oregon Health Authority in  
22 accordance with rules adopted by the authority. The report must include:

23 (1) If a determination of probable post-fertilization age was made, the probable post-  
24 fertilization age determined and the method and basis of the determination;

25 (2) If a determination of probable post-fertilization age was not made or the probable  
26 post-fertilization age was determined to be 20 or more weeks, the basis of the determination  
27 that a medical emergency existed; and

28 (3) The method used for the abortion and, in the case of a termination performed when  
29 the probable post-fertilization age was determined to be 20 or more weeks:

30 (a) Whether the method used was one that, in reasonable medical judgment, provided the  
31 best opportunity for the unborn child to survive; or

32 (b) If the method used did not provide the best opportunity for the unborn child to sur-  
33 vive, the basis of the determination that termination of the pregnancy in that manner would  
34 pose a greater risk of the death of the pregnant woman or of the substantial and irreversible  
35 physical impairment of a major bodily function of the woman, other than psychological or  
36 emotional functions, than other available methods.

37 **SECTION 5.** (1) On or before June 30 of each year, the Oregon Health Authority shall  
38 issue a public report of statistics relating to abortion. The report must include:

39 (a) Statistics for the previous calendar year compiled from the reports submitted under  
40 section 4 of this 2017 Act.

41 (b) Statistics for all previous calendar years in which reports were submitted under sec-  
42 tion 4 of this 2017 Act, adjusted to reflect any additional information from reports submitted  
43 late or that have been corrected.

44 (2) The authority may not include individually identifiable information in the report re-  
45 quired by this section.

1        **SECTION 6.** Sections 1 to 5 of this 2017 Act apply to abortions that are performed or  
2 induced, or attempted to be performed or induced, on or after the effective date of this 2017  
3 Act.

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