

House Bill 3512

Sponsored by Representative FREEMAN; Representatives BENTZ, BREWER, CAMERON, CONGER, ESQUIVEL, GARRARD, GILLIAM, HANNA, HICKS, HUFFMAN, JOHNSON, KENNEMER, KRIEGER, LINDSAY, MCLANE, OLSON, RICHARDSON, SHEEHAN, G SMITH, SPRENGER, THATCHER, THOMPSON, WEIDNER, WHISNANT

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; creating new provisions; and amending ORS 677.190.

3 Whereas pain receptors are present throughout the unborn child's entire body by 16 weeks after
4 fertilization and nerves link these receptors to the brain's thalamus and subcortical plate by 20
5 weeks after fertilization; and

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

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

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

13 Whereas for the purposes of surgery on unborn children, fetal anesthesia is routinely adminis-
14 tered and is associated with a decrease in stress hormones compared to their level when painful
15 stimuli are applied without anesthesia; and

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

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

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

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

26 Whereas substantial evidence indicates that structures used for pain processing in early devel-
27 opment differ from those of adults, using different neural elements available at specific times during

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 development, such as the subcortical plate, to fulfill the role of pain processing; and

2 Whereas there is substantial medical evidence that an unborn child is capable of experiencing
3 pain by 20 weeks after fertilization; and

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

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

8 **SECTION 1. As used in sections 1 to 5 of this 2011 Act:**

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

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

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

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

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

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

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

33 (7) **“Probable post-fertilization age” means what, in reasonable medical judgment, will
34 with reasonable probability be the post-fertilization age of the unborn child at the time the
35 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 made a determination of the probable post-fertilization**

1 age of the unborn child.

2 (2) In making the determination required by subsection (1) of this section, the physician
 3 shall make the inquiries of the woman and perform or cause to be performed the medical
 4 examinations and tests that a reasonably prudent physician who is knowledgeable about the
 5 case and the medical conditions involved would make and perform to make an accurate di-
 6 agnosis with respect to post-fertilization age.

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

10 (2) When a physician terminates a pregnancy that is not prohibited under this section
 11 because of a medical emergency, the physician shall terminate the pregnancy in the manner
 12 that, in reasonable medical judgment, provides the best opportunity for the unborn child to
 13 survive, unless, in reasonable medical judgment, termination of the pregnancy in that man-
 14 ner would pose a greater risk of the death of the pregnant woman or of the substantial and
 15 irreversible physical impairment of a major bodily function of the woman, other than psy-
 16 chological or emotional functions, than other available methods. The likelihood that the
 17 woman will engage in conduct that would result in her death or in substantial and irrevers-
 18 ible physical impairment of a major bodily function does not constitute a greater risk under
 19 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 2011 Act.

41 (b) Statistics for all previous calendar years in which reports were submitted under sec-
 42 tion 4 of this 2011 Act, adjusted to reflect any additional information from late or corrected
 43 reports.

44 (2) The authority may not include individually identifiable information in the report.

45 **SECTION 6.** ORS 677.190 is amended to read:

1 677.190. The Oregon Medical Board may refuse to grant, or may suspend or revoke a license to
 2 practice for any of the following reasons:

3 (1)(a) Unprofessional or dishonorable conduct.

4 (b) For purposes of this subsection, the use of an alternative medical treatment shall not by it-
 5 self constitute unprofessional conduct. For purposes of this paragraph:

6 (A) "Alternative medical treatment" means:

7 (i) A treatment that the treating physician, based on the physician's professional experience, has
 8 an objective basis to believe has a reasonable probability for effectiveness in its intended use even
 9 if the treatment is outside recognized scientific guidelines, is unproven, is no longer used as a gen-
 10 erally recognized or standard treatment or lacks the approval of the United States Food and Drug
 11 Administration;

12 (ii) A treatment that is supported for specific usages or outcomes by at least one other physician
 13 licensed by the Oregon Medical Board; and

14 (iii) A treatment that poses no greater risk to a patient than the generally recognized or
 15 standard treatment.

16 (B) "Alternative medical treatment" does not include use by a physician of controlled substances
 17 in the treatment of a person for chemical dependency resulting from the use of controlled sub-
 18 stances.

19 (2) Employing any person to solicit patients for the licensee. However, a managed care organ-
 20 ization, independent practice association, preferred provider organization or other medical service
 21 provider organization may contract for patients on behalf of physicians.

22 (3) Representing to a patient that a manifestly incurable condition of sickness, disease or injury
 23 can be cured.

24 (4) Obtaining any fee by fraud or misrepresentation.

25 (5) Willfully or negligently divulging a professional secret without the written consent of the
 26 patient.

27 (6) Conviction of any offense punishable by incarceration in a Department of Corrections insti-
 28 tution or in a federal prison, subject to ORS 670.280. A copy of the record of conviction, certified
 29 to by the clerk of the court entering the conviction, shall be conclusive evidence of the conviction.

30 (7) Impairment as defined in ORS 676.303.

31 (8) Fraud or misrepresentation in applying for or procuring a license to practice in this state,
 32 or in connection with applying for or procuring registration.

33 (9) Making statements that the licensee knows, or with the exercise of reasonable care should
 34 know, are false or misleading, regarding skill or the efficacy or value of the medicine, treatment or
 35 remedy prescribed or administered by the licensee or at the direction of the licensee in the treat-
 36 ment of any disease or other condition of the human body or mind.

37 (10) Impersonating another licensee licensed under this chapter or permitting or allowing any
 38 person to use the license.

39 (11) Aiding or abetting the practice of medicine or podiatry by a person not licensed by the
 40 board, when the licensee knows, or with the exercise of reasonable care should know, that the per-
 41 son is not licensed.

42 (12) Using the name of the licensee under the designation "doctor," "Dr.," "D.O." or "M.D.,"
 43 "D.P.M.," "Acupuncturist," "P.A." or any similar designation in any form of advertising that is
 44 untruthful or is intended to deceive or mislead the public.

45 (13) Gross negligence or repeated negligence in the practice of medicine or podiatry.

1 (14) Incapacity to practice medicine or podiatry. If the board has evidence indicating incapacity,
 2 the board may order a licensee to submit to a standardized competency examination. The licensee
 3 shall have access to the result of the examination and to the criteria used for grading and evaluat-
 4 ing the examination. If the examination is given orally, the licensee shall have the right to have the
 5 examination recorded.

6 (15) Disciplinary action by another state of a license to practice, based upon acts by the licensee
 7 similar to acts described in this section. A certified copy of the record of the disciplinary action of
 8 the state is conclusive evidence thereof.

9 (16) Failing to designate the degree appearing on the license under circumstances described in
 10 ORS 677.184 (3).

11 (17) Willfully violating any provision of this chapter or any rule adopted by the board, board
 12 order, or failing to comply with a board request pursuant to ORS 677.320.

13 (18) Failing to report the change of the location of practice of the licensee as required by ORS
 14 677.172.

15 (19) Imprisonment as provided in ORS 677.225.

16 (20) Making a fraudulent claim.

17 (21)(a) Performing psychosurgery.

18 (b) For purposes of this subsection and ORS 426.385, “psychosurgery” means any operation de-
 19 signed to produce an irreversible lesion or destroy brain tissue for the primary purpose of altering
 20 the thoughts, emotions or behavior of a human being. “Psychosurgery” does not include procedures
 21 which may produce an irreversible lesion or destroy brain tissues when undertaken to cure well-
 22 defined disease states such as brain tumor, epileptic foci and certain chronic pain syndromes.

23 (22) Refusing an invitation for an informal interview with the board requested under ORS
 24 677.415.

25 (23) Violation of the federal Controlled Substances Act.

26 (24) Prescribing controlled substances without a legitimate medical purpose, or prescribing
 27 controlled substances without following accepted procedures for examination of patients, or pre-
 28 scribing controlled substances without following accepted procedures for record keeping.

29 (25) Failure by the licensee to report to the board any adverse action taken against the licensee
 30 by another licensing jurisdiction or any peer review body, health care institution, professional or
 31 medical society or association, governmental agency, law enforcement agency or court for acts or
 32 conduct similar to acts or conduct that would constitute grounds for disciplinary action as described
 33 in this section.

34 (26) Failure by the licensee to notify the board of the licensee’s voluntary resignation from the
 35 staff of a health care institution or voluntary limitation of a licensee’s staff privileges at the insti-
 36 tution if that action occurs while the licensee is under investigation by the institution or a com-
 37 mittee thereof for any reason related to medical incompetence, unprofessional conduct, physical
 38 incapacity or impairment.

39 **(27) Violation of section 2 or 3 of this 2011 Act.**

40 **SECTION 7. Sections 1 to 5 of this 2011 Act and the amendments to ORS 677.190 by sec-**
 41 **tion 6 of this 2011 Act apply to abortions that are performed or induced, or attempted to be**
 42 **performed or induced, on or after the effective date of this 2011 Act.**