

# House Bill 2388

Sponsored by Representative OLSON (Pre-session filed.)

## 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 to perform 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 at eight weeks after fertilization, an unborn child reacts to stimuli that would be re-  
4 cognized as painful by an adult human; and

5 Whereas at 16 weeks after fertilization, an unborn child has pain receptors throughout the un-  
6 born child's entire body; and

7 Whereas at 20 weeks after fertilization, nerves link these pain receptors to the thalamus and  
8 subcortical plate; and

9 Whereas application of painful stimuli to an unborn child is associated with significant increases  
10 in stress hormones; and

11 Whereas subjecting an unborn child to painful stimuli is associated with harmful long-term  
12 neurodevelopmental side effects, such as altered pain sensitivity and possible emotional, behavioral  
13 and learning disabilities; and

14 Whereas for the purpose of performing surgery on unborn children, fetal anesthesia is routinely  
15 administered and is associated with significant decreases in stress hormones as compared to an un-  
16 born child's response to painful stimuli when anesthesia has not been administered; and

17 Whereas the position that an unborn child is incapable of experiencing pain until later than 20  
18 weeks after fertilization rests on the assumption that the ability to experience pain depends on the  
19 development of nerve connections between the thalamus and the cerebral cortex; and

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

22 Whereas substantial evidence indicates that children who are born without major portions of the  
23 cerebral cortex, such as children 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 the processing of pain during early development is  
27 different from the processing of pain during adulthood and that different neural anatomy, such as  
28 the subcortical plate, is used at different developmental stages to process pain; and

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

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

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

7       **SECTION 1. As used in sections 1 to 6 of this 2015 Act:**

8       **(1)(a) “Abortion” means the use of any instrument, medicine, prescribed drug or other**  
9 **device or substance to terminate the pregnancy of a woman known by an attending physician**  
10 **to be pregnant.**

11       **(b) “Abortion” does not include an act described in paragraph (a) of this subsection if the**  
12 **act is performed for the purpose of increasing the probability of a live birth, preserving the**  
13 **life or health of a child after live birth or removing an unborn child who died as a result of**  
14 **natural causes, accidental trauma or criminal assault committed against the pregnant**  
15 **woman or unborn child.**

16       **(2) “Attempt to perform or induce an abortion” means to perform an action, or to fail**  
17 **to perform a statutorily required action, that constitutes, under the circumstances as the**  
18 **actor believes them to be, a substantial step in a course of conduct intended to culminate in**  
19 **the performance 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, as determined by a physician acting with reasonable**  
22 **medical judgment:**

23       **(A) An occurrence that so complicates the medical condition of a pregnant woman as to**  
24 **necessitate the immediate termination of the pregnancy to avert the woman’s death; or**

25       **(B) An occurrence for which a delay in determining an unborn child’s probable post-**  
26 **fertilization age creates for a pregnant woman a serious risk of substantial and irreversible**  
27 **physical impairment of a major bodily function, not including psychological or emotional**  
28 **functions.**

29       **(b) “Medical emergency” does not include the likelihood that a pregnant woman will en-**  
30 **gage in conduct that may result in the woman’s death or substantial and irreversible phys-**  
31 **ical impairment of a major bodily function.**

32       **(5) “Physician” means a doctor of medicine or osteopathy licensed under ORS chapter**  
33 **677.**

34       **(6) “Probable post-fertilization age” means the age of an unborn child as calculated from**  
35 **the time of fertilization, as estimated by a physician acting with reasonable medical judg-**  
36 **ment.**

37       **(7) “Reasonable medical judgment” means a medical opinion that would be reached by a**  
38 **reasonably prudent physician who has knowledge of the medical matter and the treatment**  
39 **possibilities with respect to the medical conditions involved.**

40       **(8) “Unborn child” means an individual organism of the species Homo sapiens during the**  
41 **period between fertilization and termination of pregnancy or live birth.**

42       **SECTION 2. (1) Except in the case of a medical emergency, a person may not perform**  
43 **or induce or attempt to perform or induce an abortion unless:**

44       **(a) A physician has first made a determination of the probable post-fertilization age of**  
45 **the unborn child; and**

1 (b) A physician has determined that the probable post-fertilization age of the unborn  
2 child is not older than 19 weeks.

3 (2)(a) In making a determination required by subsection (1) of this section, a physician  
4 shall make inquiries and perform or cause to be performed medical examinations and tests  
5 to determine the unborn child's probable post-fertilization age.

6 (b) A physician must make inquiries and perform or cause to be performed medical ex-  
7 aminations and tests under this subsection in the manner in which a physician acting with  
8 reasonable medical judgment would act under the same circumstances.

9 **SECTION 3.** (1) When a physician terminates a pregnancy for reasons other than a  
10 medical emergency, the physician shall terminate the pregnancy in a manner that provides  
11 the best opportunity for the unborn child to survive, unless terminating the pregnancy in  
12 that manner would create a greater risk of death for the pregnant woman or of substantial  
13 and irreversible physical impairment of a major bodily function, other than psychological or  
14 emotional functions, of the pregnant woman than other available methods of terminating the  
15 pregnancy. The likelihood that a pregnant woman will engage in conduct that may result in  
16 the woman's death or substantial and irreversible physical impairment of a major bodily  
17 function does not constitute a greater risk under this section.

18 (2) A physician must act under this section in the manner in which a physician acting  
19 with reasonable medical judgment would act under the same circumstances.

20 **SECTION 4.** Within 30 days after a physician performs or induces or attempts to perform  
21 or induce an abortion, the physician shall report to the Oregon Health Authority, in a form  
22 and manner prescribed by the authority, the following information:

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

25 (2) If a determination of probable post-fertilization age was not made or if 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;

28 (3) The method used to terminate the pregnancy; and

29 (4) In the case of a termination performed when the probable post-fertilization age was  
30 not determined or was determined to be 20 or more weeks:

31 (a) Whether the method used to terminate the pregnancy provided the best opportunity  
32 for the unborn child to survive;

33 (b) Whether the unborn child survived the termination; and

34 (c) If the method used did not provide the best opportunity for the unborn child to sur-  
35 vive, the basis of the determination that termination of the pregnancy in that manner would  
36 have created a greater risk of death for the pregnant woman or of substantial and irrevers-  
37 ible physical impairment of a major bodily function, other than psychological or emotional  
38 functions, of the pregnant woman than other available methods of terminating the preg-  
39 nancy.

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

42 (a) Statistics for the previous calendar year compiled from the reports submitted under  
43 section 4 of this 2015 Act.

44 (b) Statistics for all previous calendar years in which reports were submitted under sec-  
45 tion 4 of this 2015 Act, adjusted to reflect any additional information from late or corrected

1 **reports.**

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

3 **SECTION 6. The Oregon Medical Board may suspend or revoke a license issued under**  
4 **ORS chapter 677 for violation of sections 2, 3 or 4 of this 2015 Act.**

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