

BAN ON PAYMENT FOR FETAL TISSUE

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Senate Bills 564 (H-1) & 565 (H-1)
As reported from House committee
Sponsor: Sen. Phil Pavlov
House Committee: Health Policy
Senate Committee: Oversight
Complete to 12-13-16

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: Senate Bill 564 would add language to the Public Health Code specifying that one may not financially benefit from or receive compensation in exchange for fetal tissue. Senate Bill 565 would prescribe penalties for that act in the Code of Criminal Procedure.

FISCAL IMPACT:

Senate Bill 564 would have an indeterminate fiscal impact on the state and local units of government. It is anticipated that the fiscal impact would be nominal, if any. It is unknown how many persons, if any, would be convicted under the provisions of the bill. In the event of new felony convictions, there would be increased costs related to state prisons and state probation supervision. The average cost of prison incarceration in a state facility is roughly \$34,900 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision average about \$3,400 per supervised offender per year. The fiscal impact on local court systems would depend on how the provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

Senate Bill 565 amends sentencing guidelines and does not have a direct fiscal impact on the state or on local units of government.

THE APPARENT PROBLEM:

The bills were introduced in response to viral internet videos made by anti-abortion activists purporting to show abortion clinics attempting to sell the remains of aborted fetuses.

The Harris County District Attorney's office (in Texas) announced in January of 2016 that Planned Parenthood Gulf Coast had been cleared after a two-month investigation of those charges. Planned Parenthood maintained throughout the process that it does not profit from the sale of fetal tissue but only recovers its costs. Following the video controversy, Planned Parenthood announced that it would no longer accept reimbursement from medical researchers at any of its three health centers which facilitate donations for fetal tissue research (those centers are in Washington, Oregon, and California).

Proponents of the bills state that the bill would make clear that Michigan does not allow financial benefit in return for fetal tissue.

THE CONTENT OF THE BILL:

Senate Bill 564 would add language to the Public Health Code (MCL 333.2690) providing that, after a physician performs an elective abortion, the physician or a person associated with the physician may not knowingly financially benefit from or receive compensation for transferring possession and control of the embryo, fetus, or neonate to a person who was not involved in the abortion (or allow a person access in order to obtain possession and control).

[Note: A prohibition on selling, collecting any fee for, transferring, distributing or giving away an embryo, fetus, or neonate is already found in Section 2690 of the Code (MCL 333.2690).]

This prohibition would not apply to a hospital or person employed or contracted by a hospital, research performed upon the fetus after the abortion with the consent of the mother, or to the burial or cremation of the fetus, as required under Section 2836 of the Code.

The bill defines **elective abortion** as the intentional use of an instrument, drug, or other substance or device to terminate a woman's pregnancy for a purpose other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a fetus that has died as a result of natural causes, accidental trauma, or a criminal assault on the pregnant woman. An elective abortion does not include the use of contraceptives, termination of a pregnancy to save the woman's life, or treatment of a woman who is experiencing a miscarriage or has been diagnosed with an ectopic pregnancy.

A **person associated with the physician** is defined in the bill as an employee or other individual who assists the physician in performing the abortion, or a private practice, professional corporation, or freestanding outpatient facility either owned or operated by the physician or which employs or contracts the physician to perform an abortion.

Senate Bill 565 would classify the action described in SB 564 as a class E felony against a person with a statutory maximum penalty of five years. Additionally, the bill would add "neonate" to the guidelines' description of offenses involving the use of, research on, or sale or delivery of a fetus or embryo for certain purposes.

The bill would add language that a person may not financially benefit from granting certain persons access to an embryo, fetus, or neonate or from transferring possession of an embryo, fetus, or neonate to certain persons.

Senate Bill 565 is tie-barred to SB 564, meaning that it would not take effect unless SB 564 is also enacted. Both bills would take effect 90 days after enactment.

HOUSE COMMITTEE ACTION:

The members of the House Health Policy committee reported the bills out with H-1 substitutes, which amend the description of the prohibited acts. SB 564 as introduced and reported from the Senate provided that a person may not knowingly financially benefit from, or receive any type of compensation for, "the distribution or transfer of any portion of an embryo, fetus, or neonate..." The H-1 substitute replaces that description with a prohibition against allowing a person not involved in the elective abortion to have access to the embryo, fetus, or neonate for the purpose of taking possession and control, or transferring possession and control to such a person.

The H-1 substitute also states that the bill does not apply to a hospital or person employed or contracted by a hospital, research performed upon the fetus after the abortion with the consent of the mother, or to the burial or cremation of the fetus. The H-1 substitute for SB 565 reflects the new language in SB 564.

ARGUMENTS:

For:

These bills would make clear that Michigan does not allow the provision of fetal tissue for compensation, according to proponents.

Against:

Opponents argue that the Planned Parenthood videos that motivated this and similar legislative proposals were extensively edited, that they were found to show no illegal activity, and that the actions to be prohibited by the bill are already barred under Michigan law.

POSITIONS:

The following positions are in regards to the Senate-passed versions of the bills

A representative of Right to Life of Michigan testified in support of the bills. (11-9-16)

Citizens for Traditional Values supports the bills. (11-9-16)

Michigan Catholic Conference supports the bills. (11-9-16)

Michigan Family Forum supports the bills. (12-6-16)

A representative of the Michigan Section of the American Congress of Obstetricians and Gynecologists testified in opposition to the bill. (12-9-16)

American Association of University Women opposes the bills.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.