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BILL ANALYSIS

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Senate Bill 593 (as introduced 10-17-23)
Sponsor: Senator Erika Geiss
Committee: Housing and Human Services

Date Completed: 10-17-23

CONTENT

The bill would create a new Act to do the following:

-- Codify Section 28 of Article I of the State Constitution of 1963.
-- Prohibit a governmental entity from violating Section 28 of Article I of the State Constitution of 1963.
-- Specify that an individual or entity could bring a civil action for injunctive relief, damages, or any other appropriate remedy for a violation of Section 28 or Article I of the State Constitution of 1963.
-- Repeal Section 323 of the Michigan Penal Code, which specifies that any person who administers to a woman pregnant with a quick child any medicine, drugs, or instrument with the intention to terminate the pregnancy could be charged with manslaughter.
-- Repeal the Legal Birth Definition Act which defines legal birth and legal personhood (see BACKGROUND).
-- Repeal Public Act 360 of 2002, which prioritizes the allocation of funding through grants or contracts for educational and other programs and services pertaining to family planning and reproductive health services.
-- Repeal the Abortion Insurance Opt-Out Act, which requires the purchase of coverage for elective abortion in a health care plan to be an optional rider only with an additional premium and requires notice to employees for whom elective abortion coverage is purchased by their employer.

Under the bill, as provided in Section 28 of Article I of the State Constitution of 1963, the following would apply:

-- Every individual would have a fundamental right to reproductive freedom, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including, but not limited to, prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care.
-- An individual's right to reproductive freedom would not be denied, burdened, nor infringed upon unless justified by a compelling State interest achieved by the least restrictive means.
-- Notwithstanding the above, the State could regulate the provision of abortion care after fetal viability, provided that in no circumstance must the State prohibit an abortion that, in the professional judgment of an attending health care professional, was medically indicated to protect the life or physical or mental health of the pregnant individual.
-- The State could not penalize, prosecute, or otherwise take adverse action against an individual based on the individual's actual, potential, perceived, or alleged pregnancy outcomes, including, but not limited to, miscarriage, stillbirth, or abortion.

-- The State could not penalize, prosecute, or otherwise take adverse action against someone for aiding or assisting a pregnant individual in exercising the individual's right to reproductive freedom with the individual's voluntary consent.

"Fetal viability" would mean the point in pregnancy when, in the professional judgement of any attending health care professional and based on the particular facts of the case, there is significant likelihood of the fetus' sustained survival outside the uterus without the application of extraordinary medical measures.

A State interest being "compelling" would mean only if it is for the limited purpose of protecting the health of an individual seeking care, consistent with accepted clinical standards of practice and evidence-based medicine, and does not infringe on that individual's autonomous decision-making

In determining whether an abortion was medically indicated to protect the life or physical or mental health of a pregnant individual under the bill, the attending health care professional could consider any factor that the attending health care professional considered relevant to the well-being of the pregnant individual, including, but not limited to, the pregnant individual's age and physical, emotional, psychological, and familial considerations.

The bill would specify that a governmental entity could not violate Section 28 of Article I of the State Constitution of 1963. "Governmental entity" would mean any of the following:

-- The State and its agencies, departments, commissions, courts, boards, councils, and statutorily created task forces.
-- A county, city, village, township, school district, or other political subdivision of the State.
-- A county, city, village, township, school district, or other political described above.
-- An official of any of the entities described above.

An individual or entity, or the individual's or entity's legal representative, who alleged a violation of the individual's or entity's rights under Section 28 of Article I of the State Constitution of 1963 or by a governmental entity could bring a civil action for injunctive relief, damages, or any other appropriate remedy, in the appropriate State or Federal court. The Attorney General could enforce governmental entity prohibition through a civil action for injunctive relief, damages, or any other appropriate remedy. A court would have to award reasonable costs and attorney fees to a plaintiff who prevailed in an action brought under the bill. A court would have to award reasonable costs and attorney fees to a plaintiff who prevailed in an action brought under these provisions.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

Senate Bill 593 is a similar companion bill to House Bill 4949.

BACKGROUND

In 1973, the United States Supreme Court issued its decision in *Roe v. Wade*, in which the Court struck down a Texas law making abortion illegal except when necessary to save the mother's life.[1] Following this decision, the abortion ban under Section 14 of the Michigan Penal Code went dormant. In June 2022, the US Supreme Court issued its opinion in *Dobbs v. Jackson Women's Health Organization*, which overruled *Roe* on the grounds that the US Constitution makes no reference to abortion, and the right is not implicitly protected by any

[1] 410 US 113 (1973)

constitutional provision, including the Fourteenth Amendment.[2] Following the *Dobbs* decision, Michigan's abortion ban went back into effect; however, a lawsuit was filed seeking to block the enforcement of the law and that lawsuit resulted in a court of claims judge ruling that the abortion ban was unconstitutional.

Proposal 22-3 establishes an individual right to reproductive freedom, including the right to make and carry out all decisions about pregnancy, such as prenatal care, childbirth, postpartum care, contraception, sterilization, abortion, miscarriage management, and infertility; allows the State to prohibit abortion after fetal viability unless needed to protect a patient's life or physical or mental health; prohibits State discrimination in enforcement of the right; prohibits the prosecution of an individual, or a person helping a pregnant individual, for exercising rights established by the amendment; and invalidates State laws that conflict with the proposed amendment.[3] Proposal 22-3 passed with 56.66% of electors in favor of the proposal.[4]

Additionally, the Legal Birth Definition Act was held unconstitutional by the U.S. 6th Circuit Court of Appeals, affirming the U.S. District Court's decision in Northland Family Planning v Cox[5].

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

The bill would have no fiscal impact on the Department of Health and Human Services but could have a negative fiscal impact on local units of government. The Allocation of Funds to Family Planning Services Act requires the Department to give priority for the allocation of funds for family planning or reproductive health services to entities that perform or allow the performance of elective abortions, refer a pregnant woman for an elective abortion, or maintain a policy that includes elective abortion as a part of the continuum of family planning or reproductive health services. This prioritization has generally made it harder for non-State entities that provide elective abortions or abortion services to be awarded grants over local health departments. By repealing this Act, local health departments would no longer be given priority and the bill could potentially result in a reduction in awarded grant funding to local health departments.

The bill would have a minor fiscal impact on the Department of Attorney General, which could see an increase in litigation to pursue actions under Section 28, Article I of the State Constitution. Likewise, civil filing fee revenue could result in minor increases for the Justice System Fund, which supports a multitude of Departments within State government.

Any fiscal impact is expected to be minor. While the bill does affirmatively state that a person, or the Attorney General (AG), can pursue a civil action for a violation of Section 28, Article I of the State Constitution of 1963, this was already true, regardless of the language of the bill. Any person, entity, or the AG can pursue a civil action for a violation of constitutional rights. As the bill would not add or change this status, any fiscal impact is expected to be minor.

The repeal of certain fines and felonies could have a positive fiscal impact on the State and local governments. The elimination of certain felony arrests and convictions under the proposed bill could decrease resource demands on law enforcement, court systems,

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[2] 597 US ___.
[3] "November 2022 Ballot Proposal 22-3", Senate Fiscal Agency.
[4] "2022 Michigan Election Results", The Office of Secretary of State Jocelyn Benson. Available at: https://mielections.us/election/results/2022GEN_CENR.html. Retrieved on 2-28-2023.
[5] 487 F.3d 323.

community supervision, jails, and correctional facilities; however, it is unknown how many people would no longer be prosecuted with the repeal of sections as required under the bill. The potential savings would include the average cost to State government for felony probation supervision at approximately $4,200 per probationer per year. Additional savings could be realized from no longer having to house a violator at an average annual cost of $45,700. Savings from the per diem rates, ranging from $98 to $192 per day, depending on the security level of the facility, also could be realized. The repealed sections also could decrease fine revenue which would decrease funding to public libraries.

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