



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 25 (Substitute S-1 as reported)
Senate Bill 54 (Substitute S-1 as reported)
Senate Bill 55 (Substitute S-1 as reported)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 4-11-11

RATIONALE

An incident that occurred in 2010 has raised concerns about the handling of fetal remains that result from an abortion. According to news reports, an individual discovered trash bags containing the remains of 17 aborted fetuses in a dumpster outside a women's health clinic in Delta Township. Evidently, because the remains had been treated with formaldehyde, the authorities determined that they were properly handled as medical or solid waste and there were no grounds for criminal prosecution. Many people find this unacceptable, and believe that State law should govern the disposition of fetal remains.

CONTENT

Senate Bill 25 (S-1) would amend the Public Health Code to do the following:

- Require the person in charge of an institution where a dead fetus was delivered to arrange for the final disposition of the fetus, taking into account the parent's wishes.
- Require a physician who attended a miscarriage or the delivery of a dead fetus outside an institution to inform the parents that their authorization was required for the final disposition of the fetal remains.

Senate Bill 54 (S-1) would amend the Public Health Code to do the following:

- Require fetal remains disposed of by cremation to be incinerated separately from other medical

waste, except other fetal remains resulting from an abortion.

- Prescribe a felony penalty for failure to incinerate fetal remains separately from other medical waste.
- Require a funeral director, before final disposition of fetal remains resulting from a miscarriage, to obtain authorization from the parents (as currently required regarding disposition of a dead fetus).
- Designate failure to obtain authorization for final disposition of fetal remains a State civil infraction, and prescribe a fine.
- Allow a person to bring a civil action against someone who was found responsible for the State civil infraction.

Senate Bill 55 (S-1) would amend the sentencing guidelines in the Code of Criminal Procedure to add the felony proposed by Senate Bill 54 (S-1). Specifically, violating the requirements for disposition of fetal remains would be a Class F felony against a person with a statutory maximum sentence of three years' imprisonment.

All of the bills are tie-barred, and would take effect 90 days after their enactment.

Senate Bills 25 (S-1) and 54 (S-1) are described in detail below.

Senate Bill 25 (S-1)

Fetal Death: Stillbirth or Miscarriage

Under the Public Health Code, a fetal death occurring in Michigan must be reported to the State Registrar within five days of delivery. If a dead fetus is delivered in an institution, the individual in charge of the institution or an authorized representative must prepare and file the report. Under the bill, that person also would have to make arrangements for the final disposition of the dead fetus (as described below), taking into account the expressed wishes of the parents, or parent in the case of an unmarried mother, as long as those wishes did not conflict with any State or Federal law, rule, or regulation.

If a dead fetus is delivered outside an institution, the Code requires the physician in attendance to prepare and file the report. Under the bill, this also would apply if a miscarriage occurred outside an institution. In addition, in either case, the bill would require the physician to inform the parents, or parent in the case of an unmarried mother, that State law requires authorization to be obtained before the final disposition of fetal remains resulting from a miscarriage or stillbirth and that the parents or parent have a right to determine the final disposition.

The Code defines "institution" as a public or private establishment that provides inpatient medical, surgical, or diagnostic care or treatment or nursing, custodial, or domiciliary care to two or more unrelated individuals, including an establishment to which individuals are committed by law.

"Fetal death" means the death of a fetus that has completed at least 20 weeks of gestation or weighs at least 400 grams.

"Final disposition" means the burial, cremation, or other disposition of a dead body or fetus. The bill defines the term as the burial, cremation, or interment of a dead body or fetal remains.

"Fetal remains" would mean a dead fetus or part of a dead fetus that has completed at least eight weeks of gestation or has reached the stage of development at which, upon visual inspection, the head, torso, or extremities appear to be supported by

skeletal or cartilaginous structures. The term would not include the umbilical cord or placenta.

"Miscarriage" would mean the spontaneous expulsion of a nonviable fetus before 20 weeks gestation.

Senate Bill 54 (S-1)

Disposition of Remains from Abortion

The bill would add Section 2836 to the Code to provide that, if fetal remains resulting from an abortion were disposed of by cremation, they would have to be incinerated separately from any other medical waste. The fetal remains could be cremated, however, with other fetal remains resulting from an abortion.

Section 2836 would not require a physician to discuss the final disposition of the fetal remains with the mother before performing the abortion, or obtain the mother's authorization for the final disposition upon completing the abortion.

Authorization for Final Disposition

Under Section 2848 of the Code, a funeral director who first assumes custody of a dead body must obtain authorization for the final disposition of the body within 72 hours after death occurred or the body was found. Before final disposition of a dead fetus, irrespective of the duration of pregnancy, the funeral director must obtain from the parents or parent, as applicable, an authorization for final disposition. The authorization may allow final disposition by a funeral director, the individual in charge of the institution where the fetus was delivered, or an institution or agency authorized to accept donated bodies or fetuses.

Under the bill, these provisions would apply unless written consent for research were obtained in accordance with the Code. The bill also would require a funeral director to obtain parental authorization before final disposition of fetal remains resulting from a miscarriage. The authorization could allow final disposition by a funeral director, the individual in charge of the institution where the products of conception or fetal remains were miscarried, or an institution or agency authorized to accept fetal remains.

Nothing in Section 2848, as amended by the bill, would require a religious service or ceremony as part of the final disposition of fetal remains.

Violations & Penalties

A person who violated Section 2836 (i.e., failed to incinerate aborted fetal remains separately from other medical waste, if they were disposed of by cremation) would be guilty of a felony punishable by up to three years' imprisonment and/or a maximum fine of \$5,000.

A person who failed to obtain the proper authorization for final disposition as required under Section 2848 would be responsible for a State civil infraction as provided under the Revised Judicature Act, and could be ordered to pay a maximum civil fine of \$1,000 per violation.

If a person were found responsible for the State civil infraction, any other person who suffered injury or damage as a result of that violation could bring a civil cause of action against the violator to secure damages, including damages for emotional distress, or other appropriate relief.

Products of Conception

Part 138 of the Code, which also is known as the Medical Waste Regulatory Act, governs the disposal of medical waste, which includes pathological waste. The definition of "pathological waste" includes products of conception. The bill would define "products of conception" as any tissues or fluids, placenta, umbilical cord, or other uterine contents resulting from a pregnancy. The term would not include a fetus or fetal body parts.

MCL 333.2803 et al. (S.B. 25)
333.2828 et al. (S.B. 54)
777.13k (S.B. 55)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Fetal remains resulting from an abortion should not be treated as garbage. This is precisely what was discovered in February

2010, however, when an antiabortion activist found fetal remains in a dumpster outside an abortion clinic, after seeing staff toss out garbage bags and observing that no biohazard vehicles visited the site. After a seven-month investigation, the county prosecutor and the Attorney General's office evidently concluded that the Public Health Code had not been violated and no criminal charges would be brought.

This incident revealed a gap in Michigan law, which the bills would close. Specifically, the individual in charge of a facility where a dead fetus was delivered would be required to arrange for the final disposition of the remains as provided in the Public Health Code, and "final disposition" would be limited to burial, cremation, or interment. The individual in charge also would have to consider the wishes of the parents, or the parent if she were an unwed mother. As currently required, before disposing of a dead fetus, the funeral director or other responsible person would have to obtain authorization for final disposition from the parents or the unwed mother. A person who failed to do so would be responsible for a State civil infraction, and could be sued by someone who suffered injury or damage as a result.

In addition, if fetal remains from an abortion were cremated, they could not be incinerated with other medical waste. A person who violated this prohibition could be charged with a felony and imprisoned for up to three years.

These changes would help ensure that fetal remains were treated with dignity, whether they resulted from an abortion, a miscarriage, or a stillbirth, and that the parents' wishes were respected.

Response: The Michigan section of the American Congress of Obstetricians and Gynecologists (ACOG) has raised concerns that some of the terms used in the legislation are ambiguous or medically inaccurate, which would make it difficult for practitioners to know whether they were violating the law.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local

government. There are no data to indicate how many individuals would be convicted of the proposed criminal offense. An offender convicted of the Class F offense under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 17-30 months, with a maximum sentence of three years. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,500, as well as the cost of incarceration in a State facility at an average annual cost of \$35,000. Additional penal fine revenue would benefit public libraries.

The legislation would require institutions where a dead fetus was delivered to make arrangements for disposition and also would require physicians who attended delivery of a dead fetus to inform the family that State law requires their authorization of disposition arrangements. Public hospitals and publicly affiliated physician offices would be affected by this legislation. The additional requirements would impose costs on those entities, thereby marginally increasing State and local government expenditures.

Fiscal Analyst: Steve Angelotti
Matthew Grabowski

A1112\s25a.

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.