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House Bill 5713 (Substitute H-1 as passed by the House)
House Bill 5714 (as passed by the House)
House Bill 5715 (as passed by the House)
House Bill 5716 (Substitute H-3 as passed by the House)
House Bill 5717 (Substitute H-1 as passed by the House)
Sponsor: Representative Karen Whitsett (H.B. 5713)
Representative Bronna Kahle (H.B. 5714)
Representative Kelly Breen (H.B. 5715)
Representative John R. Roth (H.B. 5716 & 5717)
House Committee: Health Policy
Judiciary
Senate Committee: Heath Policy and Human Services

Date Completed: 11-29-22

CONTENT

House Bill 5716 (H-3) would add Section 219g to the Michigan Penal Code to do the following:

- **Prescribe a felony for knowingly, intentionally, or willfully engaging in a practice or act the person believed would provide false or misleading information related to an assisted reproduction procedure.**
- **Prescribe a felony for a health professional who knowingly or recklessly used or provided a human embryo or gametes, including his or her own, for assisted reproduction other than the specific embryo or gamete to which the patient expressly consented in writing.**
- **Specify that the use of an anonymous donor would not be a defense to a violation of Section 219g committed by a health professional.**

House Bill 5713 (H-1) would amend the Code of Criminal Procedure to prescribe the statute of limitations for an indictment for a violation of Section 219g of the Penal Code.

House Bill 5714 would add Section 2980 to the Revised Judicature Act (RJA) to prescribe damages that a person who engaged in a false representation in assisted reproduction would be liable for to an individual who was injured by a false representation in assisted reproduction, and to allow any individual who was injured by a false representation to bring certain causes of action.

House Bill 5715 would amend Part 161 (General Provisions) of the Public Health Code to include a violation of Section 219g or the Penal Code and a final order or judgment against a licensee or registrant under Section 2980 of the RJA as grounds for disciplinary action, and to prescribe probation, limitation, denial, suspension, revocation, permanent revocation, restitution, or fine as a disciplinary action.

House Bill 5717 (H-1) would include the felonies prescribed in House Bill 5716 (H-3) in the sentencing guidelines in the Code of Criminal Procedure.

House Bills 5713 (H-1), 5714, 5716 (H-3), and 5717 (H-1) are tie-barred to House Bill 5716. House Bill 5715 is tie-barred to House Bills 5714 and 5716. House Bills 5713 (H-1), 5716 (H-3), and 5717 (H-1) would take effect 90 days after their enactment.

House Bill 5716 (H-3)

Definitions

The bill would define "anonymous donor" as a donor about which all of the following facts are known but whose identity is not provided to the patient:

- Present illness of the donor at time of donation.
- Any past illnesses of the donor.
- Any history of diagnosed mental illness.
- The social history of the donor.
- Any known genetic defects of the donor.
- The family medical history of the donor.
- The donor's level of education.

"Donor" would mean an individual who provides gametes intended for use in assisted reproduction, regardless of whether or not the individual receives financial compensation for the donation. "Gamete" would mean sperm, egg, or any part of a sperm or egg.

"Assisted reproduction" would mean a method of causing pregnancy other than sexual intercourse.

"Family medical history of the donor" would mean the complete medical history of the first-degree, second-degree, and third-degree relatives of the donor.

"Health professional" would mean an individual licensed, registered, certified, or otherwise authorized to engage in a health profession under Article 15 (Occupations) of the Public Health Code.

"Human embryo" would mean a human organism at any stage of development from fertilized ovum to embryo.

"Identity" would mean legal name.

"Know" or "knowingly" would mean that a health professional or other person undertook an action with knowledge and not because of mistake, accident, or other innocent reason.

"Patient" would mean an individual under the care of a health professional.

"Social history of the donor" would mean the personal and sexual history of the donor pertaining to risk factors for relevant communicable disease transmissible via gamete donation.

Fraudulent Assisted Reproduction

Under the bill, a person who knowingly, intentionally, or willfully engaged in a practice or act the person knew or reasonably believed provided false or misleading information related to

an assisted reproduction procedure, including by making a false or misleading representation that related to any the following, would be guilty of a felony punishable by up to five years' imprisonment or a maximum fine of \$50,000, or both:

- The human embryo or gamete used or provided for assisted reproduction.
- The identity of a donor of the human embryo or gamete used or provided for assisted reproduction including the donor's name, birthdate, or address at the time of the donation.
- The donor's medical history, including present illness of the donor, any history of diagnosed mental illness, the social history of the donor, any known genetic defects of the donor, the family medical history of the donor, or the donor's level of education.

A health professional who knowingly or recklessly used or provided a human embryo or gamete, including his or her own human embryo or gamete, for assisted reproduction other than the specific human embryo or gamete to which the patient had expressly consented in writing would be guilty of a felony punishable by up to 15 years' imprisonment or a maximum fine of \$100,000, or both.

The use of an anonymous donor, if requested by the patient, would not be a defense to a violation of Section 219g committed by a health professional.

House Bill 5713 (H-1)

The bill would amend the Code of Criminal Procedure to specify that an indictment for a violation of Section 219g of the Michigan Penal Code, which House Bill 5716 (H-3) would add, could be found and filed as follows:

- Within 15 years after the offense.
- Any time after the offense was committed if evidence of the offense was obtained and that evidence contained DNA that was determined to be from an unidentified individual; however, after the individual was identified, the indictment could be found and filed within 15 years after the individual was identified.

House Bill 5714

The bill would add Section 2980 to the RJA to specify that a person who engaged in a false representation in assisted reproduction would be liable to an individual who was injured by the representation for one or more of the following:

- Economic and noneconomic damages.
- Punitive damages.
- Reasonable attorney fees and damages.

"False representation in assisted reproduction" would mean conduct or a practice of conduct described in Section 219g of the Penal Code.

Any individual who was injured by a false representation in assisted reproduction could bring an action including any of the following:

- The patient who gave birth to a child conceived through assisted reproduction as a result of the false representation in assisted reproduction.
- The patient's spouse at the time the patient used the assisted reproduction services.
- An individual conceived through assisted reproduction as the result of a false representation in assisted reproduction.

-- A donor whose gamete or human embryo resulted in the birth of a child as a result of false representation in assisted reproduction.

"Gamete", "human embryo", and "patient" would mean those terms as defined in Section 219g of the Penal Code.

A person who brought action under Section 2980 would have a separate cause of an action for each child born as a result of the false representation. The action would have to be brought within three years after the person bringing the action discovered the false representation. The action would be in addition to any other penalties or remedies provided by the law.

House Bill 5715

The Public Health Code requires the Department of Licensing and Regulatory Affairs to investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The Department may hold hearings, administer oaths, and order the taking of relevant testimony. After its investigation, the Department must provide a copy of the administrative complaint to the appropriate disciplinary subcommittee. If one or more grounds for disciplinary subcommittee action exist, the disciplinary subcommittee must impose sanctions.

Under the bill, grounds for disciplinary action would include a conviction of a violation of Section 219g of the Michigan Penal Code and a final order or judgment against a licensee or registrant under Section 2980 of the RJA. A certified copy of the court record would be conclusive evidence of the conviction or final order or judgment, as applicable. The bill also would prescribe probation, limitation, denial, suspension, revocation, permanent revocation, restitution or fine as a disciplinary action.

House Bill 5717 (H-1)

Under the bill, false representation with regard to specific circumstances regarding an assisted reproduction procedure would be a Class E felony against a person with a statutory maximum sentence of five years' imprisonment.

A health professional knowingly or recklessly using a human embryo or gamete other than the human embryo or gamete agreed to by the patient in assisted reproduction procedure would be a Class E felony against a person with a statutory maximum sentence of 15 years' imprisonment.

MCL 767.24 (H.B. 5713)
Proposed MCL 600.2980 (H.B. 5714)
MCL 333.16221 & 333.16226 (H.B. 5715)
Proposed MCL 750.219g (H.B. 5716)
MCL 777.16l (H.B. 5717)

Legislative Analyst: Stephen P. Jackson

FISCAL IMPACT

House Bill 5713 (H-1)

The bill would have no fiscal impact on State or local government, as it would set a statute of limitations for the offenses proposed under House Bill 5716 (H-3).

House Bill 5714

The bill would provide a means for civil recovery for an individual harmed by the actions criminalized under House Bill 5716 (H-3). While some circuit courts could see increased filings as a result of this proposed cause of action, an exact accounting of the costs to local court systems is not available.

House Bill 5715

The bill would have no fiscal impact on State or local government.

House Bill 5716 (H-3)

The bill would have an unknown, but likely negative, fiscal impact on the Department of Corrections and local units of government. Increased costs for the Department of Corrections would depend on the number of felony convictions under the bill. Currently, the average annual cost to house a prisoner in an MDOC facility is an estimated \$43,000, which includes fixed administrative and operational costs (which are funded with General Fund/General Purpose revenue). Local courts could incur additional costs as a result of increased caseloads from convictions resulting from the bill's proposed changes. Those costs, particularly administrative costs, would depend on the increase in caseloads resulting from cases prosecuted in those courts.

House Bill 5717 (H-1)

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco, Jr.
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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.