

Legislative Analysis



PROHIBIT RESEARCH ON EMBRYONIC OR FETAL TISSUES OR CELLS OBTAINED FROM ABORTION

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<http://www.house.mi.gov/hfa>

House Bill 5558 (proposed substitute H-1)
Sponsor: Rep. Thomas A. Albert

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

House Bill 5559 as introduced
Sponsor: Rep. Bronna Kahle

1st Committee: Health Policy
2nd Committee: Judiciary
Complete to 12-6-21

SUMMARY:

House Bill 5558 would amend Part 26 (Data, Information, and Research) of the Public Health Code to do the following:

- Prohibit, with some exceptions, research from being knowingly performed on an organ, tissue, or cell taken from a dead embryo, fetus, or neonate obtained from an abortion.
- Eliminate an exemption to a ban on compensation to a physician who performed an elective abortion and who transfers possession of or allows access to the embryo, fetus, or neonate to another unless that other person is performing research as currently allowed under the code.
- Eliminate a provision prohibiting a physician who performed an abortion from arranging the final disposition of fetal remains if the mother had provided written consent for research on the fetal remains.

Research on a dead embryo, fetus, or neonate

Currently under the code, research may not knowingly be performed on a dead embryo, fetus, or neonate unless consent from the mother is first obtained. The bill would, except as otherwise provided in section 27 of Article I of the state constitution,¹ prohibit research from being knowingly performed on an organ, tissue, or cell taken from a dead embryo, fetus, or neonate obtained from an **abortion**. A violation would be a felony punishable by imprisonment for up to five years.

Abortion, as used in this provision, is defined 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. The term does not include the use or prescription of a drug or device intended as a contraceptive.

¹ This section pertains to allowing human embryo and embryonic stem cell research to be conducted in Michigan as allowed under federal law and limits such research to human embryos created for the purpose of fertility treatment if those embryos meet certain conditions. See <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-chap1.pdf>

Financial benefit pertaining to embryo, fetus, or neonate from elective abortion

Currently, with some exceptions, a physician or person associated with a physician who possesses a dead embryo, fetus, or neonate after performing an ***elective abortion*** is prohibited from knowingly financially benefitting from or receiving any type of compensation for allowing access to, or transferring possession and control of, the embryo, fetus, or neonate (including the organs, tissues, or cells of the embryo, fetus, or neonate) to a person that was not involved with the elective abortion. One of the exceptions to this prohibition is if the other person is conducting research on the dead embryo, fetus, or neonate from an elected abortion in which the mother's consent for research had been obtained. The bill would remove this exception.

Elective abortion is defined similarly to ***abortion***, as described above. However, 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.

Disposal of fetal remains

The code provides that a physician who performs an abortion is required to arrange for the final disposition of the ***fetal remains***, unless the mother has provided written consent for research on the fetal remains. The bill would remove that exception.

Fetal remains is defined in the code as a dead fetus or part of a dead fetus that has completed at least ten weeks of gestation or has reached the stage of development that, upon visual inspection of the fetus or part of the fetus, the head, torso, or extremities appear to be supported by skeletal or cartilaginous structures. The term does not include the umbilical cord or placenta.

MCL 333.2688, 333.2690, and 333.2836

House Bill 5559 would amend the sentencing guidelines provisions of the Code of Criminal Procedure to classify the violation described in HB 5558 as a class E felony against a person with a statutory maximum penalty of five years.

The bill is tie-barred to HB 5558, which means that it could not take effect unless HB 5558 were also enacted.

MCL 777.13k

Each bill would take effect 90 days after its enactment.

FISCAL IMPACT:

House Bill 5558 would have an indeterminate fiscal impact on the state and on local units of government. To the extent provisions of the bill result in an increase in felony convictions, the bill would result in increased costs related to state prisons and state probation supervision. In fiscal year 2020, the average cost of prison incarceration in a state facility was roughly \$42,200 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$4,300 per supervised

offender in the same year. Those costs are financed with state general fund/general purpose revenue.

Any fiscal impact on the judiciary and local court systems would depend on how provisions of the bill affect court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts, due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases.

House Bill 5559 is a companion bill to HB 5558 and amends sentencing guidelines to include performing research on dead embryo, fetus, or neonate obtained from an abortion as a felony. The bill would not have a direct fiscal impact on the state or on local units of government.

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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.