

FETAL PARTS: PROHIBIT CERTAIN ACTS AND COLLECTION FEES

**House Bill 4652 (Substitute H-1)
First Analysis (9-26-03)**

**Sponsor: Rep. Matt Milosch
Committee: Health Policy**

THE APPARENT PROBLEM:

Though Michigan law prohibits an individual, facility, or company from selling, transferring, distributing, or giving away an embryo, fetus, or neonate for certain uses prohibited by the state health code, some believe that a loophole may still exist in the law by which a profit could be made by collecting and selling the body parts of aborted fetuses.

In March of 2000, the television news show 20/20 did an exposé on the trafficking of fetal body parts for profit. According to an article about the 20/20 show by the National Right to Life (available on the Internet), abortion providers, body procurers or “harvesters”, and medical researchers sidestep a federal ban on acquiring, receiving, or transferring human fetal tissue for “valuable consideration” by a system of donations and service fees. First, the abortion providers “donate” the fetuses to the procurers who instead pay a “site fee”. The site fee allows the company to place technicians in the facility where the abortions are performed. The technicians then harvest those body parts requested by medical researchers and “donate” the specimens to the researchers. Instead of payment for the specimens so to speak, researchers pay “retrieval fees” via a formal price list. According to this and other articles on the Internet, some companies charge a flat fee per specimen, whereas at least one charges per body part, for instance, \$320 for a spinal cord or \$550 for a reproductive organ. In the article on the 20/20 show, one harvester reportedly said that though he paid “just \$50 plus overhead” per specimen and generally charged an average of \$250 per specimen, he could “make up to \$2,500 on a single fetus”.

Though few dispute the need or the validity of legitimate scientific research in the pursuit of curing or preventing human disease, the 20/20 investigation suggested that the high profitability associated with fetal body parts may have led to the use of deceptive practices in obtaining the consent of the mothers for the aborted fetuses to be used for research and may have influenced the procedures used to perform some

abortions. Reportedly, some abortion procedures produce a more intact fetus than some standard procedures, but may result in increased pain and risk to the mother. The suggestion is that since an intact organ will produce a bigger profit, and since some companies give annual bonuses to providers that produce desirable organs, a financial incentive exists for an abortion provider to choose a procedure based on the type and condition of fetal body parts wanted by researchers that day rather than choosing the procedure based on what is best for the patient.

Some believe also that the federal ban on receiving “valuable consideration” is rarely enforced and that the current Michigan law may not stop the sale or trafficking of fetal tissue. To address these concerns, legislation has been offered to eliminate any loophole regarding fetal tissue, and to remove any incentive for influencing abortion based on financial gain.

THE CONTENT OF THE BILL:

Currently, the Public Health Code prohibits a person from selling, transferring, distributing, or giving away an embryo, fetus, or neonate for a use which is in violation of Sections 2685 to 2689 of the code. Those provisions include a ban on using an embryo, fetus, or neonate for nontherapeutic research; a parental consent requirement before conducting research on a dead embryo, fetus, or neonate; and a prohibition on performing an abortion if part or all of the consideration for the abortion procedure is for the embryo, fetus, or neonate to be used for research or study. A person who violates any of the above is guilty of a felony punishable by up to five years imprisonment.

House Bill 4652 would add a prohibition on collecting a fee in connection with any of the activities listed above. The bill would also amend the health code to prohibit a person from financially benefiting from or receiving any type of compensation for the distribution or transfer of any

portion of an embryo, fetus, or neonate – including any organs, tissues, or cells that were obtained as the result of an elective abortion.

The bill would define “elective abortion” as the intentional use of an instrument, drug, or other substance or device to terminate a 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 dead fetus.

The term “elective abortion” would not include the prescription of or use of a drug or device intended as a contraceptive. It also would not include the intentional use of a drug, instrument, or other substance or device used by a physician to terminate a pregnancy if the woman’s physical condition – in the physician’s reasonable medical judgment – necessitated the termination of the pregnancy to avert her death.

MCL 333.2690

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on state or local government. (9-19-03)

ARGUMENTS:

For:

The bill would not interfere or impinge on medical research for therapeutic purposes or reproductive care for the infertile. Input from infertility experts and medical researchers was considered so that the bill’s language would not have a chilling effect on infertility treatments and practices, authorized stem cell research and other medical research, or providing emergency care for women with problem pregnancies or who were presenting with spontaneous abortions (miscarriages). The bill would prohibit “collecting any fee” when engaging in activities already prohibited by the health code.

The bill would not erode abortion rights and would not apply to procedures used to save the life of the mother. However, it would curtail the activities of those who would seek to profit from the distribution or transfer of fetal body parts from elected abortions by making it illegal to financially benefit from or receive any type of compensation from those activities. Therefore, the bill should end the practice of using euphemistic terms such as “donate” instead of sell, and accepting “retrieval fees” or “site fees”

instead of payment, as a means to get around current state and federal laws.

For:

State and federal law protect a woman’s choice to have an abortion, but state and federal laws also regulate what happens to the aborted fetuses. Currently, aborted fetuses, as well as embryos and neonates, may be used in whole or part for therapeutic research with parental consent. Selling the body parts of aborted fetuses for profit is supposed to be illegal, but apparently some have found a way to circumvent current laws. The concerns are that a loophole might exist in Michigan law regarding the sale of fetal tissue and also that potential profits may act as an incentive for abortion providers to mislead or pressure women into signing consent forms for using the fetuses for research purposes. According to one article on the subject, a survey conducted by the Joint Centre for Bioethics at the University of Toronto revealed that among those who would consider an abortion, 17 percent “would be more likely to undergo an abortion if the fetal tissue could be donated for medical use.” The decision to donate an aborted fetus to research should be for altruistic reasons; therefore, it is important to remove any financial incentive for an abortion provider to pressure or coerce a woman into signing a consent form.

Further, the 20/20 report and other articles have also implied that the high profit margin in trafficking fetal body parts, which include fetal tissues, may influence the choice of abortion procedure used. Researchers often request specific parts, such as leg bones, a particular organ, or whole eyes. Some even specify that the body part be acquired within a certain time frame after the abortion, for instance, within 10 minutes. For example, one researcher reported in a *National Journal* article (as quoted in the National Right to Life article on the 20/20 news story) that he had acquired 1,000 specimens of fetal brain tissue from fetuses aborted using a 10 millimeter tube; the size of the tube increased the chances of recovering usable specimens. However, the article went on to report that leading abortion providers say that abortions should be performed with a smaller tube, that use of the bigger tubes result in more pain and increased risk to the patient.

In addition, it has been implied by at least one former medical technician who worked for two different procurement companies that live births have resulted from providers trying to provide the most intact fetuses as possible and trying to stay within the requested time frame. If such accounts are accurate,

then it is all the more imperative that financial incentives be removed so that abuses be eliminated. The bill would do so by prohibiting an individual or company from financially benefiting or receiving any compensation from trafficking in fetal body parts derived from elected abortions.

Against:

Federal laws banning the sale of fetal or embryonic tissue prohibit receiving “valuable consideration” for the activity. According to Planned Parenthood Advocates of Michigan (PPAM), the term does not preclude reasonable charges for such things as transportation, implantation, processing, preservation, quality control, or storage of human fetal or adult tissues and organs. However, the bill’s prohibition on “receiving any compensation” for tissues or organs obtained from elected abortions may prevent the collection of these federally allowable charges. Unfortunately, if enacted in its current form, the bill may end the ability of researchers to use any tissue or organs from aborted fetuses if done by election, as many abortion providers could not absorb the cost of transporting the fetuses to a research facility, and research facilities could not realistically hire staff to retrieve the fetuses from the providers. Yet, ironically, the bill would preserve the right of women who had a miscarriage or an emergency abortion to donate the fetus to science.

Medical research on human subjects (especially fetal tissue and embryos) is governed by federal laws and regulations, as well as by internationally accepted standards and guidelines adopted by scientific and medical societies. Medical research holds the promise of more effective treatments and cures for life-threatening and/or debilitating illnesses and should be allowed to continue within those legal and ethical parameters. Current laws are adequate to prosecute individuals engaging in those types of activities highlighted by Right to Life and other concerned citizens. At the very least, the bill should be amended to allow for reasonable charges to be accessed and collected to cover the costs of transporting the specimens.

Against:

The bill is unnecessary as no evidence has been presented that the scenarios articulated by proponents of the bill are occurring in Michigan. Also, much of the information being used to support adoption of the bill dates from articles and television news shows published or aired in the late 1990s and in the spring of 2000. It is reasonable to assume that if the problem were as widespread and as heinous as

presented, the issue would have continued to receive coverage and follow-up by the press.

Further, Planned Parenthood Advocates of Michigan (PPAM) reports that the two Planned Parenthood clinics that provide abortions have not provided fetal tissue for research, though the organization does support “research using fetal tissue in accordance with legal and ethical guidelines.” According to PPAM, “federal and state laws have been specifically written to ensure that a woman’s choice to donate tissue from her abortion to medical research is made in an informed and ethical manner.” A woman cannot be paid for donating tissue or fetal parts, nor can she know or designate a specific recipient. Some seem to believe that more women will choose abortion if they know they can donate the aborted fetus to science; however, PPAM maintains that there is no evidence to support the belief that the option of donating the fetus to medical research would induce a woman to terminate a pregnancy that she otherwise would carry to term.

Lastly, the day after the 20/20 investigative report aired in March of 2000, a Congressional subcommittee of the Commerce Committee held a hearing on the issue regarding fetal tissue being sold for profit. According to PPAM, no evidence was found.

POSITIONS:

Right to Life of Michigan supports the bill. (9-23-03)

A representative from the Michigan Catholic Conference testified in support of the bill. (9-23-03)

A representative from the Michigan Osteopathic Association indicated support for the bill. (9-23-03)

Planned Parenthood Advocates of Michigan oppose the bill. (9-25-03)

A representative from MARAL Pro-Choice Michigan indicated opposition to the bill. (9-23-03)

Analyst: S. Stutzky

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