



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-2 as passed by the Senate)
Senate Bill 54 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 12-9-11

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-2) would amend the Public Health Code to do the following:

- Provide that, if a dead fetus that had completed at least 20 weeks of gestation were delivered in an institution, the person in charge of the institution or his or her representative would have to arrange for the final disposition of the fetus in accordance with a section that requires authorization for the final disposition of a body.
- Provide that, if a physician became aware of a fetal death or miscarriage that had occurred outside of an institution, the physician would have to inform the parent or parents that State law requires parental authorization for the final disposition of the dead fetus or fetal remains.

- **Require a fetal death report to be filed if a dead fetus had completed at least 20 weeks of gestation.**

Senate Bill 54 (S-2) would amend the Public Health Code to do the following:

- **Require all fetal remains resulting from abortions to be disposed of by means lawful for other dead bodies, including burial, cremation, or interment.**
- **Specify that, if fetal remains resulting from an abortion were disposed of by cremation, they would have to be incinerated separately from other medical waste.**
- **Require a funeral director, or another person responsible for the final disposition, to obtain authorization from the parents or parent before final disposition of fetal remains resulting from a miscarriage (as currently required for a dead fetus).**
- **Require a funeral director, individual in charge of an institution, or another person making the final disposition of a dead fetus or fetal remains to take into account the express wishes of the parent or parents.**
- **Provide that a person who failed to dispose of fetal remains resulting from an abortion as required, or failed to obtain the proper authorization for final disposition of a dead body, would be responsible for a State civil infraction, and prescribe a maximum fine of \$1,000 per violation.**

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

Senate Bill 25 (S-2)

Under Section 2834 of 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, this would apply if the fetus had completed at least 20 weeks of gestation, and the person filing the report also would have to make arrangements for the final disposition of the dead fetus in accordance with Section 2848 (which Senate Bill 54 (S-2) would amend, as described below).

Currently, 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 would apply if the fetus had completed at least 20 weeks of gestation. Also, if a physician became aware of a fetal death or miscarriage that had occurred outside an institution, he or she would have to inform the parents, or parent in the case of an unmarried mother, that State law requires the parents or parent to authorize the final disposition of the dead fetus or fetal remains.

Also, under Section 2834, if a fetal death occurs without medical attendance at or after the delivery or if the medical examiner requires an inquiry, the attendant, mother, or other person who knows of the death must notify the medical examiner, who must investigate the cause and prepare and file the report.

The bill provides that Sections 2834 and 2848 would not apply to a miscarriage that occurred outside an institution, except as otherwise specifically provided.

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 would define the term as the burial, cremation, or interment of a dead body or fetal remains.

The bill would define "fetal remains" as a dead fetus or part of a dead fetus that has completed at least 10 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 that has completed less than 20 weeks of gestation.

"Products of conception" would mean that term as defined in Part 138 (which Senate Bill 54 (S-2) would amend).

Senate Bill 54 (S-2)

Disposition of Remains from Abortion

The bill would add Section 2836 to the Public Health Code to require all fetal remains resulting from abortions to be disposed of by means lawful for other dead bodies, including burial, cremation, or interment. 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 products of conception or other fetal remains resulting from an abortion.

The bill states that Section 2836 would not require a physician to discuss the final disposition of the fetal remains with the mother before performing the abortion, or to obtain the mother's authorization for the final disposition of the remains 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 or person assuming responsibility for final disposition 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, the provisions concerning a fetus would apply unless written consent for research were obtained in accordance with the Code. The bill would require a funeral director or person assuming responsibility to obtain parental authorization before final disposition of either a dead fetus or 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 fetus was delivered or miscarried, or an institution or agency authorized to accept fetal remains.

The bill would require the funeral director, individual in charge of the institution, or other person making the final disposition to take into account the express 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.

The bill states that nothing in Section 2848, as amended, would require a religious service or ceremony as part of the final disposition of fetal remains.

Violations & Fine

Under the bill, a person who failed to dispose of fetal remains resulting from an abortion as prescribed in Section 2836, or failed to obtain the proper authorization for final disposition of a dead body as provided in Section 2848, would be responsible for a State civil infraction as provided under the Revised Judicature Act. The person could be ordered to pay a maximum civil fine of \$1,000 per violation.

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)
333.2848 et al. (S.B. 54)

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, fetal remains resulting from an abortion would have to be disposed of in a manner that is legal for other dead bodies, and could not be incinerated with medical waste. 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. 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, and this requirement would be extended to remains from a miscarriage. Also, the person making final disposition would have to consider the wishes of the parents, or the mother if she were unmarried. A person who failed to properly dispose of fetal remains resulting from an abortion, or failed to obtain proper

authorization for final disposition of a dead body, would be responsible for a State civil infraction, and could be fined up to \$1,000 for each violation.

These changes would help ensure that all fetal remains, including aborted fetuses, were treated with dignity, 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 legislation would require institutions where a dead fetus was delivered to make arrangements for disposition, and also would require physicians who were aware of a fetal death or miscarriage outside an institution to inform the parents 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.

Fine revenue from a State civil infraction would benefit public libraries.

Fiscal Analyst: Steve Angelotti

A1112\§25b.

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.