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BILL ANALYSIS



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Senate Bill 25 (as introduced 1-19-11)
Senate Bills 54 and 55 (as introduced 1-20-11)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 2-16-11

CONTENT

Senate Bill 25 would amend the Public Health Code to do both of 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 the delivery of a dead fetus outside an institution and a health professional who was present or aware of a miscarriage outside an institution to inform the parents that their authorization was required for the final disposition of the fetal remains.

Senate Bill 54 would amend the Public Health Code to do all of the following:

- Require a physician who performed an abortion to arrange for the final disposition of the fetal remains, and prescribe a felony penalty for a violation.
- Prescribe regulations for the proper disposal of fetal remains resulting from an abortion.
- 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 violated the requirement to obtain authorization.
- Include a definition of "products of conception" in Part 138 (Medical Waste) of the Code.

Senate Bill 55 would amend the sentencing guidelines in the Code of Criminal Procedure to add the felony proposed by Senate Bill 54. 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. Senate Bills 25 and 54 would take effect on July 1, 2011.

Senate Bills 25 and 54 are described below in further detail.

Senate Bill 25

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. The bill also 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 a dead fetus resulting from a stillbirth and that the parents or parent have a right to determine the final disposition. If a miscarriage occurred outside an institution and a health professional were present or immediately aware of the miscarriage, he or she would have to inform the parents.

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. The bill provides that the term would include a stillbirth.

Currently, "final disposition" means the burial, cremation, or other disposition of a dead body or fetus. The bill would refer to fetal remains, rather than a fetus. "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 the 20th week of gestation.

Senate Bill 54

Authorization for Final Disposition

Under 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. None of these provisions, as amended by the bill, would require a religious service or ceremony as part of the final disposition of fetal remains.

Disposition of Remains: Abortion

Under the bill, unless the mother provided written consent for research on the fetal remains, a physician who performed an abortion would have to arrange for their final disposition. If the remains were disposed of by cremation, they would have to be incinerated separately from any other medical waste; they could be cremated, however, with other fetal remains resulting from an abortion.

A physician would not be required to discuss the final disposition of the fetal remains with the mother before performing the abortion, nor would the physician have to obtain the mother's authorization for the final disposition.

Violations & Penalties

A physician who failed to arrange for the final disposition of the fetal remains resulting from an abortion in compliance with the bill would be guilty of a felony punishable by up to three years' imprisonment and/or a maximum fine of \$5,000.

In addition, a person who failed to obtain the proper authorization for final disposition 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 suffered injury or damages as a result of a violation of the requirement to obtain proper authorization, he or she 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". Under the bill, "products of conception" would mean 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)
777. 13k (S.B. 55)

Legislative Analyst: Patrick Affholter

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.

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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.