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House Bill 4109 (Substitute S-1 as reported)
House Bill 4110 (as reported without amendment)
Sponsor: Representative Kevin Daley (H.B. 4109)
Representative Ben Glarden (H.B. 4110)
House Committee: Families, Children, and Seniors
Senate Committee: Judiciary

CONTENT

House Bill 4109 (S-1) would add the "Partial-Birth Abortion Ban Act" to the Michigan Penal Code to provide that a physician, an individual performing under the delegatory authority of a physician, or any other individual who was not a physician or not otherwise legally authorized to perform an abortion, who knowingly performed a partial-birth abortion and killed a human fetus, would be guilty of a felony punishable by imprisonment for up to two years and/or a maximum fine of \$50,000.

It would not be a violation if, in the physician's reasonable medical judgment, a partial-birth abortion were necessary to save the life of a mother whose life was endangered by a physical disorder, physical illness, or physical injury. A woman who obtained or sought to obtain a partial-birth abortion would not be a conspirator to commit a violation of the proposed Act.

The spouse of the mother, or either of her parents if she were under 18 at the time of the partial-birth abortion, could file a civil action against the individual who performed the procedure unless the plaintiff consented to it or the pregnancy were a result of the plaintiff's criminal conduct. A plaintiff who prevailed could recover actual damages, including damages for emotional distress, and treble damages for the cost of the abortion.

"Partial-birth abortion" would mean an abortion in which the physician, an individual acting under the delegatory authority of the physician, or any other individual performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a headfirst presentation, the entire fetal head is outside the body of the mother, or in the case of a breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus, and performs the overt act, other than completion of delivery, that kills the partially delivered living fetus.

The bill specifies that it would not create a right to abortion and that it could not be construed to repeal or amend, explicitly or by implication, any provision of law prohibiting or regulating abortion. The bill also would prohibit a person from performing an abortion that is prohibited by law.

The bill includes language regarding the construction and severability of the proposed Act.

The bill would repeal the Legal Birth Definition Act (MCL 333.1081-333.1085) and Sections 17016 and 17516 of the Public Health Code (all of which address partial-birth abortion but have been ruled unconstitutional).

House Bill 4110 would amend the Code of Criminal Procedure to include performing or assisting in a partial-birth abortion in the sentencing guidelines as a Class G felony against a person with a statutory maximum sentence of two years' imprisonment.

House Bill 4110 is tie-barred to House Bill 4109. Both bills would take effect on January 1, 2012.

Proposed MCL 750.90h (H.B. 4109)
MCL 777.16d (H.B. 4110)

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 offenders would be convicted of the proposed offense. An offender convicted of the Class G offense under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 7-23 months, with a maximum sentence of two 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.

Date Completed: 9-28-11

Fiscal Analyst: Matthew Grabowski

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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.