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BILL



ANALYSIS

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Senate Bills 564 and 565 (as reported without amendment)
Sponsor: Senator Phil Pavlov
Committee: Oversight

CONTENT

Senate Bill 564 would amend the Public Health Code to prohibit a person from knowingly benefitting financially 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 Code prohibits a person from knowingly selling, transferring, distributing, or giving away an embryo, fetus, or neonate for a use that violates the Code (e.g., using a live human embryo, fetus, or neonate for nontherapeutic research that substantially jeopardizes the life or health of the embryo, fetus, or neonate; or knowingly performing research on a dead embryo, fetus, or neonate without the prior consent of the mother). The bill also would prohibit a person from knowingly collecting a fee for this activity.

A violation of the current prohibition is a felony punishable by up to five years' imprisonment. The bill would extend this to a violation of the proposed prohibition.

As used in the bill, "elective abortion" would mean 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 would not include any of the following:

- The use or prescription of a drug or device intended as a contraceptive.
- The intentional use of an instrument, drug, or other substance or device by a physician to terminate a woman's pregnancy if the woman's physical condition, in the physician's reasonable medical judgment, necessitates the termination of the pregnancy to avert the woman's death.
- Treatment on a pregnant woman who is experiencing a miscarriage or has been diagnosed with an ectopic pregnancy.

Senate Bill 565 would amend the sentencing guidelines in the Code of Criminal Procedure to include the offense proposed by Senate Bill 564 as a class E felony against a person with a statutory maximum of five years. In addition, Senate Bill 565 would include references to "neonate" in the guidelines' descriptions of current offenses involving the use of, research on, or sale or delivery of a fetus or embryo.

Each bill would take effect 90 days after enactment. Senate Bill 565 is tie-barred to Senate Bill 564.

MCL 333.2690 (S.B. 564)
777.13k (S.B. 565)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 564 could have a negative, though likely small, fiscal impact on State and local government. Section 2690 of the Penal Code prohibits a person from knowingly selling, transferring, distributing, or giving away an embryo, fetus, or neonate for a use that is in violation of the Code. There have been no felony dispositions under this section since at least 1999. The bill also would prohibit a person from collecting any fee for an embryo, fetus, or neonate, or knowingly financially benefitting or receiving any type of compensation for the distribution or transfer of any portion of an embryo, fetus, or neonate. It is unknown how many new prosecutions, if any, would result due to this prohibition.

An increase in felony prosecutions and convictions could increase resource demands on local court systems, law enforcement, and jails and prisons. For any increase in prison intakes, in the short term, the marginal cost to State government would be approximately \$3,764 per prisoner per year. In the long term, if the increased intake of prisoners increased the total prisoner population enough to require the Department of Corrections to open a housing unit or an entire facility, the marginal cost to State government would be approximately \$34,550 per prisoner per year.

Senate Bill 565 would have no fiscal impact of local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge* (in which the Court struck down portions of the sentencing guidelines law). According to one interpretation of that decision, the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction would depend on judicial decisions.

Date Completed: 2-11-16

Fiscal Analyst: Ryan Bergan

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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.