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BILL



ANALYSIS

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Senate Bills 564 and 565 (as introduced 10-15-15)

Sponsor: Senator Phil Pavlov

Committee: Oversight

Date Completed: 2-9-16

### **CONTENT**

**Senate Bill 564 would amend the Public Health Code to make it a felony for a person to knowingly receive any compensation for the distribution or transfer of any portion of an embryo, fetus, or neonate that was obtained as the result of an elective abortion.**

**Senate Bill 565 would amend the sentencing guidelines in the Code of Criminal Procedure to include the offense proposed by Senate Bill 564.**

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

### **Senate Bill 564**

The bill would 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. (A neonate is a newborn infant, usually within the first month of life.)

For this purpose, the bill would define "elective abortion" as 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 "elective abortion" 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 (a pregnancy in which a fertilized egg implants somewhere other than the main cavity of the uterus).

The Public Health Code prohibits a person from knowingly selling, transferring, distributing, or giving away an embryo, fetus, or neonate for a use that violates Sections 2685 to 2690 of the Code. (Those sections prohibit a person from using a live human embryo, fetus, or neonate for nontherapeutic research that substantially jeopardizes the life or health of the embryo, fetus, or neonate; performing nontherapeutic research on an embryo or fetus known

to be the subject of a planned abortion being performed for any purpose other than to protect the life of the mother; knowingly performing research on a dead embryo, fetus, or neonate without the prior consent of the mother; or performing or offering to perform an abortion for which any of the consideration is that the living or dead embryo or fetus may be used for research or study.) 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 imprisonment for up to five years. The same penalty would apply to a violation of the prohibition proposed by the bill.

### **Senate Bill 565**

Under the bill, the offense proposed by Senate Bill 564 would be included in the sentencing guidelines 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 sentencing guidelines' descriptions of current offenses involving the use of, research on, or sale or delivery of a fetus or embryo.

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

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

#### **Senate Bill 564**

The bill 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**

The bill 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.

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.