



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 564 and 565 (as enacted)
Sponsor: Senator Phil Pavlov
Senate Committee: Oversight
House Committee: Health Policy

PUBLIC ACTS 386 & 387 of 2016

Date Completed: 1-5-17

CONTENT

Senate Bill 564 amends the Public Health Code to make it a felony for a physician or a person associated with the physician, as a result of an elective abortion performed by the physician, to knowingly receive any financial benefit or compensation for giving another person access to, or transferring control and possession of, the embryo, fetus, or neonate, including the organs, tissues, or cells, subject to various exceptions.

Senate Bill 565 amends the sentencing guidelines in the Code of Criminal Procedure to include the offense created by Senate Bill 564 as a class E felony against a person with a statutory maximum of five years.

Each bill was enacted on December 28, 2016, and will take effect 90 days after that date.

A more detailed description of Senate Bill 564 follows.

The bill prohibits a physician, or a person associated with the physician, who, as a result of the physician's performing an elective abortion, possesses a dead embryo, fetus, or neonate, from knowingly financially benefitting from or receiving any type of compensation for either of the following:

- Allowing a person that was not involved in the performance of the abortion to have access to the embryo, fetus, or neonate for the purpose of taking possession and control of the embryo, fetus, or neonate, including the organs, tissues, or cells of the embryo, fetus, or neonate.
- Transferring possession and control of the embryo, fetus, or neonate, including the organs, tissues, or cells, to a person that was not involved in the performance of the abortion.

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

The prohibition does not apply to any of the following:

- A hospital licensed under Article 17 of the Public Health Code.
- A person that is performing an activity as part of the person's employment with a hospital or a contract with a hospital.
- A person that performs an activity under Section 2688 or 2836 of the Code.

(Section 2688 prohibits research from being performed upon a dead embryo, fetus, or neonate unless the consent of the mother has been obtained first. Section 2836 requires fetal remains resulting from abortions to be disposed of by interment, cremation, or incineration.)

As used in the bill, "elective abortion" is defined 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. "Elective abortion" does 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 bill defines "person associated with the physician" as any of the following:

- An employee of the physician or other individual who assists the physician in performing an elective abortion.
- A private physician practice, professional corporation, or freestanding surgical outpatient facility licensed under Article 17, that is owned or operated by the physician and in which an elective abortion is performed.
- A private physician practice, professional corporation, or freestanding surgical outpatient facility licensed under Article 17, that employs or contracts with the physician to perform 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 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 prohibits 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 will apply to a violation of the prohibition enacted by the bill.

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

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 564

The bill may 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 prohibits a person from collecting any fee for an embryo, fetus, or neonate, or knowingly financially benefitting or receiving any type of compensation for the transfer of any portion of an embryo, fetus, or neonate. It is unknown how many new prosecutions, if any, will result due to this prohibition.

An increase in felony prosecutions and convictions may 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 will 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 will 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 will not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction will depend on judicial decisions.

Fiscal Analyst: Ryan Bergan