



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: [Am. Sub. H.B. 125 of the 129th G.A.](#) **Date:** December 7, 2011

Status: As Passed by the House **Sponsor:** Rep. Wachtmann

Local Impact Statement Procedure Required: No

Contents: To prohibit an abortion of an unborn human individual with a detectable fetal heartbeat

State Fiscal Highlights

- **Department of Job and Family Services.** The Medicaid Program currently pays for abortions for enrollees in cases of life endangerment, incest, and rape. The bill might result in reduced costs for abortions in cases of rape and incest. The number of abortions paid for by Medicaid each year is very small.
- **Department of Health.** The Department of Health may realize an increase in costs if the Department promulgates rules relating to the statistical probability of bringing an unborn human individual to term and the appropriate methods of performing an examination for the presence of a fetal heartbeat.
- **State Medical Board of Ohio.** The State Medical Board of Ohio would likely experience an increase in administrative and possible investigative costs related to the bill. However, it is assumed that the number of violators would be small. Thus, any increase in costs would be minimal.

Local Fiscal Highlights

- **Local courts.** As a result of any violations, additional felony criminal cases may be generated for county and municipal criminal justice systems to process, potentially increasing the costs to investigate, prosecute, adjudicate, and sanction violators. However, the court would generally impose court costs and fines to be paid by violators to help offset some of these costs.

Detailed Fiscal Analysis

Abortion prohibition and fetal heart examination

The bill generally prohibits a person from performing an abortion on a pregnant woman when a fetal heartbeat has been detected. Whoever violates this prohibition is guilty of a felony of the fifth degree. However, the bill specifies that a person is not in violation of this prohibition if the procedure is intended, in that person's reasonable medical judgment, to prevent the death of a pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. If the procedure is done under these circumstances, the person performing the procedure is required to declare in writing, that the procedure is necessary, to the best of that person's reasonable medical judgment. The person shall also provide in writing, under penalty of perjury, the medical condition of the pregnant woman and the medical rationale for the conclusion that the medical procedure is necessary to prevent the death or serious substantial and irreversible impairment of the pregnant woman. The document must be placed in the pregnant woman's medical records and a copy shall be maintained in the person's files that is performing the procedures for at least seven years. Furthermore, the person is not in violation if an examination has been performed and a fetal heartbeat was not revealed.

The bill requires any person performing an abortion on a pregnant woman, when a fetal heartbeat has been detected, to preserve the health of the pregnant woman must set forth in a separate document the medical condition that the abortion will assertedly address and the medical rationale for the conclusion that the abortion is necessary to address the condition. This act must be taken under penalty of perjury and must be maintained for seven years in the pregnant woman's medical records and in the person's own records.

The bill requires a person who intends to perform an abortion to determine if there is the presence of a fetal heartbeat. The prohibition does not apply when a medical emergency exists that would prevent a person from complying with the prohibition (if this occurs the person who performs an abortion must note in the pregnant woman's medical records that a medical emergency necessitating the abortion existed). This must be done according to standard medical practice. Additionally, the bill specifies that the Director of Health may promulgate rules regarding the appropriate methods of performing an examination for the presence of a fetal heartbeat. The fetal heartbeat examination must be done regardless of whether or not rules have been promulgated. If a physician performs an abortion prior to determining a detectable fetal heartbeat, the physician is subject to disciplinary action by the State Medical Board of Ohio. The bill requires the Board to either limit, revoke, or suspend a physician's certificate to practice or to refuse to reinstate a certificate or reprimand or place on probation the certificate holder.

The bill also requires a person who intends to perform an abortion on a pregnant woman after detecting a fetal heartbeat to provide the woman with certain specified information regarding the probability of bringing the unborn human individual to term. The pregnant woman is required to sign a form acknowledging that she has received this information. The bill allows the Director of Health to define and promulgate by rule the statistical probability of bringing an unborn human individual to term based on the gestational age of an unborn human individual who possesses a detectable fetal heartbeat.

The bill specifies that a pregnant woman upon whom an abortion is performed in violation of the prohibitions is not subject to criminal or civil penalties.

The bill provides that if a state or federal court of competent jurisdiction finds that a provision of the bill is unconstitutional, the effective date of that provision is tolled until either of the following occur: (1) an appellate tribunal finds that provision to be constitutional, (2) the Attorney General certifies in an opinion to the Governor that, due to a subsequent decision or decisions by the United States Supreme Court, it is reasonably probable that the provision would be upheld as constitutional by a court of competent jurisdiction. It also provides that if a provision of the bill is found constitutional by an appellate tribunal or the Attorney General issues an opinion as described above, the provision is prospective. Additionally, the bill provides that if any provision of the bill is held invalid, the invalidity does not affect other provisions or applications of the bill that can be given effect without the invalid provision or application, and to this end the provisions of the bill are severable.

Background Information

The American Pregnancy Association states that a fetal heartbeat may be detected at five and one-half to six and one-half weeks gestational age or four weeks fetal age. During pregnancy, gestational age refers to the amount of time from the last menstrual period, while fetal age is the age of the fetus. Cardiac activity is usually detected by a vaginal ultrasound at this age.

According to the Ohio Department of Health's (ODH's) 2009 report on "Induced Abortions in Ohio," 28,721 abortions were performed in Ohio in 2009. Of these abortions, 26,959, or 93.9%, were performed on Ohio residents. The majority of abortions (16,264 or 56.6%) were performed at less than nine weeks gestational age. Between nine and 12 weeks, 7,791 (27.8%) abortions were performed and 3,597 (12.5%) abortions were performed between 13 to 19 weeks of gestational age. Approximately 2.1%, or 613 abortions, were performed at 20 weeks or over of gestation. Currently, induced abortions must be reported to ODH by the physician who performed the abortion.

In 2008, according to the Guttmacher Institute there were 1,793 abortion providers in the United States. Of these providers, 34% were hospitals, 21% were clinics where over one-half of patient visits were for abortions, 26% were clinics where less than half of visits were for abortions, and 19% were private physicians' offices.

However, 70% of all abortions were provided at abortion clinics and 24% were performed at other clinics. The remainder were performed at hospitals (4%) and private physicians' offices (1%).

Fiscal impact

The Medicaid Program, which is administered by the Ohio Department of Job and Family Services, currently pays abortion costs for enrollees in cases involving life endangerment, incest, and rape. The bill might result in reduced costs for abortions in cases of rape and incest. The number of abortions paid for each year by Medicaid is very small.

ODH may realize an increase in costs if the Department chooses to promulgate rules relating to the statistical probability of bringing an unborn human individual to term and the appropriate methods of performing an examination for the presence of a fetal heartbeat.

The State Medical Board would likely experience an increase in administrative and possible investigative costs related to the bill. However, it is assumed that the number of violators would be small. Thus, any increase in costs would be minimal.

As a result of any violations, additional felony criminal cases may be generated for county and municipal criminal justice systems to process, potentially increasing the costs to investigate, prosecute, adjudicate, and sanction violators. However, the court would generally impose court costs and fines to be paid by violators to help offset some of these costs. The number of cases that could be generated annually would likely be small. Therefore, any related fiscal effect on local criminal justice systems would be minimal at most. Dependent upon the number of successful prosecutions, the state could realize a gain in court cost revenues generated annually to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

A small percentage of abortions are performed in hospitals and the majority of those are medical emergencies, so it appears that there will be little fiscal impact to government-owned hospitals. A government-owned hospital is a hospital that is owned by the state or a county. There are currently 20 such hospitals in Ohio. Any increases in administrative costs to hospitals relating to the requirements of the bill, would likely be minimal.