

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

House Bill 1179 (Delegate Cox)
Health and Government Operations

Public Health - Unborn Human Beings and Infants (Humane Disposition of
Human Remains Act)

This bill requires a health care facility or an abortion clinic and a parent of a deceased “unborn human being” to follow certain procedures following the death of an unborn human being. The bill prohibits various actions regarding an infant born alive in the course of an abortion procedure or the bodily remains of an unborn human being. The bill also establishes penalties. **The bill takes effect October 1, 2021.**

Fiscal Summary

State Effect: General fund revenues increase to the extent fines are collected from cases heard in the District Court. General fund expenditures increase to the extent individuals are imprisoned in State correctional facilities. It is anticipated that any additional workload for the State Board of Physicians (MBP) can be handled with existing resources. Likewise, the Maryland Department of Health (MDH) can handle the bill’s requirements with existing resources.

Local Effect: Local government revenues increase to the extent fines are collected from cases heard in the circuit courts. Expenditures increase to the extent individuals are imprisoned in local facilities.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “Unborn human being” means the offspring of human beings from conception until birth. “Born alive” or “live birth” means that, after the complete expulsion

or extraction of a human being (regardless of the gestational development of the human being) from the mother, the human being shows evidence of life. That evidence of life includes breathing, a heartbeat, umbilical cord pulsation, and definite movement of voluntary muscles (1) whether or not the umbilical cord was cut or the placenta was attached at the time of expulsion or extraction and (2) whether the expulsion or extraction occurred as a result of natural or induced labor, cesarean section, or induced abortion.

“Experiment” or “experimentation” means using a human being or bodily remains of a deceased unborn human being in any trial, test, procedure, or observation carried out with the goal of verifying, refuting, or establishing the validity of a hypothesis. “Experiment” or “experimentation” does not include:

- the examination of body tissue for diagnostic or forensic purposes and any related activities necessary to perform a diagnostic or forensic study, including any study or test, genetic or otherwise, to determine paternity or the cause of death; or
- any treatment, medication, diagnostic or remedial tests, procedures, or observations that have the purpose of determining the health of the human being or unborn human being or preserving the life or health of the human being, the unborn human being, or the human being’s mother.

“Final disposition” means the burial, interment, cremation, or other legal disposition of a deceased unborn human being. “Interment” means all final disposition of bodily remains, including earth burial, mausoleum entombment, and niche or columbarium interment.

Requirements for Final Disposition

Notice Regarding Final Disposition: In general, a health care facility or an abortion clinic at which the death of an unborn human being occurs – either before or within a reasonable time after the bodily remains of a deceased unborn human being are expelled or extracted from the mother – must:

- disclose, both orally and in writing, to a parent of the unborn human being the parent’s right to determine the final disposition of the bodily remains;
- provide the parent with written information on a form prescribed by MDH concerning the available options for final disposition of the bodily remains; and
- inform the parent of counseling that may be available concerning the death of the unborn human being.

When the parent is a minor who has not received a waiver of parental consent, the abortion clinic or facility must provide that information to the minor's parent or legal guardian.

Parental Duties – Authorization for and Costs of Final Disposition: A parent of the deceased unborn human being must authorize the final disposition of the bodily remains, including the method of final disposition, in writing and on a form prescribed by MDH within a specified time period.

The parent of the unborn human being *must* be responsible for the costs related to the final disposition of the bodily remains in the manner and location *chosen* by the parent. The parent *may* be responsible for the costs related to the final disposition if (1) the manner or location of the final disposition of the bodily remains is *required by law* or (2) the parent chooses the location of final disposition that is *usual and customary* for the health care facility or abortion clinic.

Other Duties Related to Final Disposition: The individual in charge of the health care facility or abortion clinic in which the death of the unborn human being occurred must ensure that, within 10 business days after the bodily remains of a deceased unborn human being were expelled or extracted from the mother, the bodily remains are disposed of humanely, as specified. The bill establishes that the bodily remains of an unborn human being may not be disposed of as or in combination with infectious or medical waste.

The health care facility or abortion clinic must document the decision on the final disposition of the deceased unborn human being in the mother's medical record and maintain the record and any other documents provided by or given to a parent of the deceased unborn human being for at least seven years after the final disposition occurred.

Penalties: An individual in charge of a health care facility or abortion clinic where bodily remains of an unborn human being were expelled or extracted who violates these requirements is guilty of a misdemeanor and subject to imprisonment for up to five years and/or a fine of up to \$10,000 for each violation.

Effectuating the Final Disposition

The bill specifies the means of effectuating final disposition of the bodily remains of an unborn human being expelled or extracted from the mother at a health care facility or an abortion clinic. A person may transfer, distribute, give away, or accept those remains for the purpose of humane disposition only in accordance with the bill.

The final disposition of the bodily remains of the deceased unborn human being may occur by (1) interment; (2) cremation, if the medical examiner of the county in which the death of the unborn human being occurred signed the authorization for final disposition; or

(3) donation under specified circumstances. If the final disposition chosen is interment, the local health officer may issue a permit for the disposition of the bodily remains of the unborn human being to the appropriate person in charge of interment. Nevertheless, the bill establishes that a burial-transit permit (as required under current law after a death or a delivery in a fetal death) is required to transfer or relocate the bodily remains of an unborn human being for final disposition.

The individual in charge of the health care facility or abortion clinic in which the death of the unborn human being occurred must release to the parent or the authorizing agent of the parent the bodily remains for final disposition if the requirements of the bill are met. Otherwise, the individual is guilty of a misdemeanor and subject to imprisonment for up to five years and/or a fine of up to \$10,000 for each violation.

Prohibitions and Related Penalties

Distribution and Use: Except as otherwise allowed in the bill, a person may not:

- sell, transfer, distribute, give away, accept, use, attempt to use, or solicit the use of an infant born alive in the course of an abortion procedure or the bodily remains of an unborn human being; or
- aid or abet a sale, transfer, distribution, acceptance, use, attempted use, or other unlawful disposition of an infant born alive in the course of an abortion procedure or the bodily remains of an aborted unborn human being.

A person who violates these prohibitions is guilty of a misdemeanor and subject to imprisonment for up to three years and/or a fine of up to \$50,000 for each violation.

Experimentation: The bill establishes three prohibitions related to experimentation. Specifically, a person may not:

- use an infant born alive in the course of an abortion procedure or the bodily remains of an aborted unborn human being in any animal or human research, experimentation, or study or for transplantation except under specified circumstances;
- experiment upon an unborn human being when the mother intends to have an abortion, unless the experimentation is intended to treat or cure a disease or disorder by remedial agents or methods for the unborn human being; or

- perform or offer to perform an abortion where part or all of the justification for the abortion is that the bodily remains may be used for animal or human research, experimentation, or transplantation.

A person who violates these prohibitions is guilty of a felony and subject to imprisonment for up to 10 years and/or a fine of up to \$200,000 for each violation.

Other Prohibitions: A person may not (1) alter the timing, method, or procedure typically used to terminate a pregnancy solely for the purpose of obtaining the bodily remains; (2) use an unborn human being or the bodily remains of an unborn human being to conduct or attempt to conduct human cloning as prohibited by State law; or (3) acquire, receive, or accept bodily remains obtained from an unborn human being that was gestated in the uterus of a nonhuman animal or in an artificial uterus or womb.

The bill does not establish a penalty specific to these prohibitions; however, the existing penalty for human cloning applies, as appropriate. A human cloning violation is a felony, subject to imprisonment for up to 10 years and/or a fine of up to \$200,000.

Additional Penalties and Remedies for Violations of the Bill

In addition to any other remedies available under the law, the parent of an infant, an unborn human being, or a deceased unborn human being (or the parent's parent or legal guardian if the parent of the infant or unborn human being is a minor) may use any final disposition of or experimentation on an infant, an unborn human being, or bodily remains in violation of the bill as a basis for recovery in a civil action. Recovery may include (1) damages for psychological injuries caused by the violation and (2) damages equal to 10 times the cost of the mother's delivery or abortion.

MBP or any other applicable health occupations board may use a violation of the bill as a basis for disciplinary action, including the suspension or revocation of the license of the person who violated the bill.

If a person licensed or certified by a health occupations board is convicted of specified prohibitions under the bill, the appropriate board must (1) suspend the license of the person for at least one year and (2) reinstate the person's license only under conditions that the board determines are necessary to ensure the person complies with the bill.

Construction of Bill and Severability

The bill may not be construed to (1) affect existing federal or State law regarding abortion; (2) create or recognize a right to abortion; or (3) alter generally accepted medical standards. The bill contains a severability provision.

Current Law: The State may not interfere with a woman’s decision to end a pregnancy before the fetus is viable, or at any time during a woman’s pregnancy, if the procedure is necessary to protect the life or health of the woman, or if the fetus is affected by a genetic defect or serious deformity or abnormality. This is consistent with the U.S. Supreme Court’s holding in *Roe v. Wade*, 410 U.S. 113 (1973). A viable fetus is one that has a reasonable likelihood of surviving outside of the womb. MDH may adopt regulations consistent with established medical practice if they are necessary and the least intrusive method to protect the life and health of the woman.

If an abortion is provided, it must be performed by a licensed physician. A physician is not liable for civil damages or subject to a criminal penalty for a decision to perform an abortion made in good faith and in the physician’s best medical judgment using accepted standards of medical practice.

Section 4-215 of the Health-General Article requires that, within 72 hours after death or after delivery in a fetal death and before final disposition or removal of the body or fetus from this State, the mortician who first takes custody of the body or fetus must obtain a burial-transit permit. A person in charge of a cemetery may not permit the final disposition of a body or fetus unless it is accompanied by a burial-transit permit.

Fetal Tissue Laws

Under the federal National Institutes of Health (NIH) Revitalization Act of 1993, it is unlawful for any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration if the transfer affects interstate commerce. “Valuable consideration” does not include reasonable payment associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue.

In a June 5, 2019, press release, the U.S. Department of Health and Human Services announced that it will undertake changes to its regulations and NIH grants policy to adopt or strengthen safeguards and program integrity requirements applicable to research conducted outside NIH involving human fetal tissue.

As of 2016, 12 states prohibit profiting from fetal tissue donation or procurement, 8 require consent before fetal tissue is donated, and 5 ban all fetal tissue research.

Small Business Effect: Small business health care facilities and abortion clinics must comply with the bill’s requirements; individuals in charge of those facilities and clinics face penalties of up to 5 years imprisonment and/or \$10,000 per violation. Small businesses involved in procuring or distributing human fetal tissue, including for research purposes, may no longer do so; violators face penalties of up to 3 years imprisonment and/or \$50,000 per violation. Small businesses involved in human fetal tissue research no longer have

access to human fetal tissue and may no longer conduct such research; other forms of experimentation are also prohibited. Violators face significant penalties – up to 10 years imprisonment and/or \$200,000 per violation. Litigation costs may increase for health care facilities, abortion clinics, physicians, and individuals (such as researchers) against whom civil actions are brought under the bill. Physicians also face disciplinary action for any violations of the bill and must have their license suspended for at least 1 year for certain convictions under the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Association of County Health Officers; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Maryland Department of Labor; Congressional Research Service; Guttmacher Institute; National Institutes of Health; U.S. Department of Health and Human Services; Department of Legislative Services

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mr/jc

Analysis by: Hillary J. Cleckler

Direct Inquiries to:
(410) 946-5510
(301) 970-5510