

**Department of Legislative Services**  
 Maryland General Assembly  
 2004 Session

**FISCAL AND POLICY NOTE**

Senate Bill 265 (Senator Greenip, *et al.*)  
 Education, Health, and Environmental Affairs

**Abortion - The Women's Health Protection Act**

This bill requires women seeking abortions to be screened for their physical and mental health and changes some of the conditions under which a physician may perform an abortion on a minor without getting parental or guardian consent. The bill establishes three new civil causes of action and allows for the recovery of damages.

**Fiscal Summary**

**State Effect:** General fund expenditures could increase by \$1.1 million in FY 2005. Future year expenditures reflect annualization and inflation. General fund revenues could increase by \$623,700 in FY 2005. Future year revenues reflect triennial licensure renewal.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
GF Revenue	\$623,700	\$0	\$0	\$623,700	\$0
GF Expenditure	1,090,000	1,304,900	1,377,300	1,454,900	1,538,100
Net Effect	(\$466,300)	(\$1,304,900)	(\$1,377,300)	(\$831,200)	(\$1,538,100)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** Potential increase in expenditures to the extent the bill results in additional lawsuits being filed in circuit court. Minimal increase in circuit court filing fees.

**Small Business Effect:** Meaningful for small businesses that would have to be licensed as abortion providers and carry at least \$2 million in insurance coverage.

## Analysis

**Bill Summary:** The bill defines an abortion provider as a physician or entity that performs or provides abortions. This definition includes an entity that refers individuals for abortions as a normal course of business at least 10 times a year. An abortion provider that performs more than 10 abortions annually must file with the Department of Health and Mental Hygiene (DHMH) proof of insurance coverage of at least \$2 million for malpractice, negligence, and battery related to providing an abortion. An abortion is defined as the use or prescription of an instrument, medicine, drug, or other device to terminate a woman's pregnancy for a reason other than to increase the probability of a live birth, preserve the life or health of a child after birth, or to remove a dead fetus.

The bill expands the definition of a freestanding ambulatory care facility to include a facility, excluding a hospital, that provides abortion services.

### *Risk-factor Screening*

Before an abortion can be performed, a qualified individual must screen the pregnant woman by evaluating the presence of known or suspected risk factors including: (1) gonorrhea or chlamydia infection; (2) a family history of breast cancer; (3) a prior history of gestational trophoblastic tumor; (4) a history of Caesarean section; (5) a history of prior abortion; (6) adolescence; (7) feelings of being pressured to have an abortion; (8) feelings of emotional attachment to the unborn child; (9) history of prior psychological illness or emotional instability; (10) a lack of support from a partner or parents; (11) moral or religious convictions against abortion; (12) a second or third trimester pregnancy; or (13) low expectations of coping well.

The qualified individual must notify the woman and the abortion provider in writing of the evaluation's results. If risk factors are identified, the qualified individual must provide the woman with information that explains the potential adverse reactions.

### *Abortion Information Depository*

DHMH must maintain an abortion information depository that contains proof of abortion providers' malpractice insurance certificates and at least one copy of each edition of any document submitted by an individual, organization, or other entity regarding: (1) the known or claimed adverse effects of abortion; (2) predisposing risk factors to post-abortion occurrences; (3) alternative management techniques for crisis pregnancies; (4) reports of monetary awards and settlement costs in civil actions against abortion providers, used to determine the adequate proof of insurance; and (5) other relevant

information. DHMH must maintain an index of the depository documents. All documents must be available for public inspection.

### *Civil Damages Established*

Upon establishing by a preponderance of the evidence that an individual who is not a licensed physician provided, distributed, or sold medical advice with the intent to assist others to perform illegal or self-induced abortions, the woman or her survivors is entitled to liquidated damages of at least \$400,000 for battery or reckless endangerment. Proof of injury is not required to recover damages.

Upon establishing by a preponderance of the evidence that an individual who has attempted or completed an abortion on a woman was not a licensed physician, the woman is entitled to a minimum of \$800,000 for battery or reckless endangerment. Proof of injury is not required to recover damages.

A woman may recover actual damages or \$10,000 for each violation, plus punitive damages and reasonable attorney's fees and costs, for a violation of the requirement that an abortion must be performed by a licensed physician or that an abortion provider must screen a pregnant woman for risk factors before recommending or performing an abortion. Damages may be recovered if an individual can prove by a preponderance of the evidence that the abortion provider knew or should have known the woman's consent was either not voluntary or was obtained in violation of the risk-factor screening requirements. An action to recover damages must be filed within four years after the injured woman's death. This may not be construed as affecting any other cause of action a woman may have arising out of the abortion.

**Current Law:** If an abortion is provided, it must be performed by a licensed physician.

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 the fetus is affected by a genetic defect or serious deformity or abnormality. A viable fetus is one that has a reasonable likelihood of surviving outside of the womb.

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 following accepted standards of medical practice.

### *Parental/Guardian Notification*

A physician may not perform an abortion on an unmarried minor unless the physician first gives notice to a parent or guardian of the minor. The physician may perform the abortion without notice to a parent or guardian if the minor does not live with the parent or guardian and a reasonable effort to give notice to the parent or guardian is unsuccessful.

The physician may perform the abortion, without notifying the parent or guardian, under certain circumstances, such as notice may lead to physical or emotional abuse of the minor or the minor is mature and capable of giving informed consent to an abortion. A physician may not provide notice to the parent or guardian if the minor decides not to have an abortion.

**Background:** After remaining fairly steady for most of the 1980s, the number of abortions in the U.S. declined from a high of 1.61 million in 1990 to 1.31 million in 2000. For women ages 15-44, the abortion rate declined from its highest rate (29.3 per 1,000 women) in 1981 to 21.3 per 1,000 women in 2000. Six states that account for 40% of women ages 15-44 (California, Florida, Illinois, New Jersey, New York, and Texas) accounted for 55% of all abortions in 2000. In Maryland, however, the abortion rate has increased, from 26.2 abortions per 1,000 women in 1996 to 29.0 abortions per 1,000 women in 2000. There were 34,560 abortions performed in Maryland in 2000. Approximately one-fifth of all abortions performed in the U.S. are provided to women younger than 20.

Doctors' offices and free-standing health care clinics, where abortions may be performed, are not required to be licensed by DHMH's Office of Health Care Quality.

**State Revenues:** General fund revenues could increase by \$623,700 in fiscal 2005 as 891 licensed physicians who perform or provide abortions through surgeries or prescription drugs or refer more than 10 people for abortions annually would be required to each pay a \$700 freestanding ambulatory care facility license fee. Future years reflect triennial licensure.

### **State Expenditures:**

#### *Office of Health Care Quality*

General fund expenditures could increase by an estimated \$973,327 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. This estimate reflects the cost of hiring 17 health facility nurse surveyors to license and inspect 891 physicians who would

be required to be licensed as freestanding ambulatory care facilities under the bill and three office secretaries to support the nurse surveyors. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- 891 licensed physicians would require licensure as freestanding ambulatory care facilities because women may seek abortion services from them at their offices or at free-standing health clinics where they work (all 672 licensed obstetricians/gynecologists plus 5% of the 865 licensed general family practitioners and the 3,509 licensed general internists); and
- a ratio of six health facility nurse surveyors to 52.5 new licenses.

Salaries and Fringe Benefits	\$787,814
Travel	58,013
Operating Expenses	<u>127,500</u>
<b>Total FY 2005 State Expenditures</b>	<b>\$973,327</b>

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

*Family Health Administration*

General fund expenditures could increase by an estimated \$116,707 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. This estimate reflects the cost of hiring one full-time program administrator and one part-time database specialist to create and maintain the abortion information depository and one full-time administrative officer to provide support. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$97,520
Travel	525
Operating Expenses	<u>18,662</u>
<b>Total FY 2005 State Expenditures</b>	<b>\$116,707</b>

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

**Local Fiscal Effect:** The bill creates three new civil causes of action. Any increase in circuit court expenditures would depend on the number of new cases filed and cannot be reliably estimated at this time. Revenues from filing fees could increase minimally. The bill could significantly affect local expenditures if the penalty amounts encourage an increase in civil cases.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 1156 (Delegate Frank, *et al.*) – Health and Government Operations.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Department of Health and Mental Hygiene; “Abortion Incidence and Services in the United States in 2000,” in *Perspectives on Sexual and Reproductive Health*, January/February 2003; Department of Legislative Services

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Analysis by: Lisa A. Daigle

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