

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 734 (Delegate Grammer)
Health and Government Operations

Human Fetal Tissue - Prohibition

This bill prohibits a person from knowingly soliciting, acquiring, or receiving human fetal tissue obtained as the result of an “elective abortion” for research purposes. The bill also prohibits a person from knowingly offering or providing any monetary reimbursement or other valuable consideration to a person to (1) acquire or receive human fetal tissue obtained as a result of an elective abortion for research purposes or (2) incentivize the donation of human fetal tissue obtained as the result of an elective abortion for research purposes. Violators are guilty of a misdemeanor and on conviction are subject to a fine of up to \$10,000 and/or imprisonment for up to one year.

Fiscal Summary

State Effect: General fund revenues increase to the extent fines are collected from cases heard in the District Court. Expenditures are not materially affected.

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

Small Business Effect: Meaningful.

Analysis

Bill Summary: “Elective abortion” means the intentional use of an instrument, a drug, or any other substance or device to terminate a woman’s pregnancy for a purpose other than to (1) increase the probability of a live birth; (2) preserve the life or health of the child after live birth; or (3) 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 (1) the use of a drug or device intended as a contraceptive; (2) the intentional use of an instrument, a drug, or any other substance or device by a physician to terminate a woman’s pregnancy if the woman’s condition, in the physician’s reasonable medical judgment, necessitates the termination of the woman’s pregnancy to avert the death of the woman; or (3) treatment on a pregnant woman who is experiencing a miscarriage or has been diagnosed with an ectopic pregnancy.

Current Law: 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.

Fetal tissue used in research is mostly obtained from elective abortions. Though federal law also permits the collection of human fetal tissue from spontaneous abortions (*e.g.*, miscarriages) or stillbirths for subsequent use in federally funded research, these events often occur during unpredictable circumstances where it is difficult to preserve the tissue for research purposes. In addition, the tissue from spontaneous abortions or stillbirths is more likely to have genetic or other abnormalities that preclude its use for research purposes.

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: Due to the bill’s prohibitions, small businesses involved in human fetal tissue research no longer have access to human fetal tissue from elective abortions, the most prevalent means of obtaining such tissue. Those involved in procuring or distributing human fetal tissue for research purposes are likewise affected. These businesses must comply with the bill or face penalties.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Health; 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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