



Ohio Legislative Service Commission

Bill Analysis

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H.B. 417

131st General Assembly
(As Introduced)

Reps. McColley and Koehler, Antani, Becker, Burkley, Conditt, Retherford, Terhar, Vitale, Young, Patmon, Brinkman

BILL SUMMARY

- Requires the final disposition of fetal remains from an abortion to be by cremation or interment.
- Grants a pregnant woman who has an abortion the right to determine whether the disposition of the fetal remains will be by cremation or interment.
- Requires parental consent for a final disposition determination if the pregnant woman is under 18 years of age, unmarried, and unemancipated, unless a court order authorizing consent to the abortion was issued.
- Prohibits an abortion facility from releasing fetal remains or arranging for their cremation or interment until the facility obtains a final disposition determination or if applicable, parental consent to the determination.
- Permits an abortion facility to arrange for the cremation or interment of fetal remains if the final disposition determination (1) has been made or, if applicable, consented to, or (2) has not been made or consented to within a reasonable time after the abortion.
- Requires an abortion facility to document in the woman's medical record the final disposition determination, and if applicable, parental consent to the determination.
- Requires an abortion facility to create and maintain evidentiary documentation of the final disposition determination and the date and method of the disposition of all fetal remains from abortions performed or induced there.

- Requires an abortion facility to have written policies and procedures for cremation or interment of fetal remains performed or induced in the facility.
- Requires an abortion facility to pay for the cremation or interment of the fetal remains.
- Requires the pregnant woman to pay for any extraordinary expenses if her final disposition determination specifies a method or process of cremation or interment that involves extraordinary expense.
- Requires the Director of Health to adopt rules necessary to carry out the bill's provision, including rules that prescribe the following:
 - The method in which pregnant women who seek abortions are informed of the right to determine the final disposition of fetal remains and the available options for such disposition;
 - The final disposition determination and parental consent forms.
- Creates the crime of failure to dispose of fetal remains humanely, a misdemeanor of the first degree.

CONTENT AND OPERATION

General requirement for cremation or interment

The bill requires that the final disposition of fetal remains from an abortion be by cremation or interment. This requirement applies to any person, because, under the bill, no "person" may fail to comply with this provision. Other provisions of the bill specifically apply to an "abortion facility." See "**Penalty**," below.¹

The bill defines "fetal remains" as the entire fetus or any of its parts removed from the pregnant woman's uterus by an abortion. Under continuing law, "abortion" means the purposeful termination of a human pregnancy by any person, including the pregnant woman herself, with an intention other than to produce a live birth or to remove a dead fetus or embryo.²

The bill defines "abortion facility" as a facility in which abortions are induced or performed that is an ambulatory surgical facility or any other facility in which abortion

¹ R.C. 3728.02.

² R.C. 2919.11, not in the bill.

is legally provided.³ Ambulatory surgical facilities are those that provide outpatient surgery or anesthesia, both of which (1) function separately from a hospital's inpatient surgical services and from private physician, podiatrist, and dentist offices, and (2) are in a building distinct from another that provides inpatient care.⁴ "Interment" means the burial or entombment of fetal remains.⁵ "Cremation" means the technical process of using heat and flame to reduce human or animal remains to bone fragments or ashes or any combination thereof. "Cremation" includes processing and may include the pulverization of bone fragments.⁶

Disposition determination

Determination made by adult women

The bill grants a pregnant woman who has an abortion the right to determine whether the disposition of the fetal remains shall be by cremation or interment.⁷ To exercise this right, the woman must express the determination in writing, using a form prescribed by the Director of Health.⁸

Requirements for minor women

Under the bill, a minor woman may exercise the right to determine the final disposition of the fetal remains after first obtaining parental consent or after a court has issued an order authorizing the abortion without parental consent.

Parental consent

A pregnant woman who is under 18, unmarried, and unemancipated must obtain parental consent to the final disposition determination. The parental consent must be made in writing using a form prescribed by the Director of Health.⁹

³ R.C. 3728.01(A).

⁴ R.C. 3702.30, not in the bill.

⁵ R.C. 3728.01(D).

⁶ R.C. 3728.01(B) and R.C. 4717.01, not in the bill.

⁷ R.C. 3728.03.

⁸ R.C. 3728.04(A).

⁹ R.C. 3728.04(B).



Court order

The bill also provides that parental consent to a final disposition is not required if the abortion was authorized by a court without parental consent.¹⁰ Under continuing law, a pregnant minor generally needs consent of a parent, guardian, or custodian for her abortion. But, if one or both of the following applies to the pregnant minor, a juvenile court may authorize the abortion:

(1) She is sufficiently mature and well enough informed to intelligently decide whether to have an abortion without the notification of her parents, guardian, or custodian;

(2) That one or both of her parents, her guardian, or her custodian was engaged in a pattern of physical, sexual, or emotional abuse against her, or that the notification of her parents, guardian, or custodian otherwise is not in her best interest.¹¹

Abortion facility requirements

Under the bill, an abortion facility is prohibited from releasing the fetal remains until it obtains a final disposition determination and, if applicable, parental consent. The bill also prohibits the facility from arranging for the cremation or interment of the remains unless:

- The facility obtains a final disposition determination form and, if applicable, a parental consent form (see "**Disposition Determination**"); or
- No final disposition determination is made and a reasonable time has elapsed after the abortion was performed or induced.¹²

Required documentation

The bill requires an abortion facility to document in the pregnant woman's medical record the final disposition determination made, and if applicable, the parental consent for the disposition determination.¹³ A facility also must maintain evidentiary

¹⁰ R.C. 3728.04(B)(2).

¹¹ R.C. 2151.85(A) and 2919.12, neither in the bill.

¹² R.C. 3728.05 and 3728.08.

¹³ R.C. 3728.10.



documentation demonstrating the date and method of the disposition of all fetal remains from abortions performed or induced in the facility.¹⁴

Facility written policies and procedures

The bill requires an abortion facility to have written policies and procedures for cremation or interment of fetal remains from abortions performed or induced in its facility.¹⁵

Financial responsibility

Under the bill, an abortion facility must pay for the cremation or interment of fetal remains, unless the disposition determination indicates a method or process of cremation or interment that involves extraordinary expenses. If the pregnant woman wants a final disposition that involves some extraordinary expense, she is required to pay for those expenses.¹⁶

Rules

The bill requires the Director of Health, in accordance with the Administrative Procedure Act (R.C. Chapter 119.), to adopt certain rules necessary to carry out the bill's provisions. Specifically, the Director must adopt rules that prescribe the following:¹⁷

- The method in which pregnant women who seek abortions are informed of the right to determine final disposition of fetal remains, and the available options for such disposition;
- The notification form for final disposition determinations and the parental consent form described in "**Disposition determination.**"

Under continuing law, the Director must adopt rules relating to abortions and the humane disposition of the product of human conception. The bill requires these rules to be consistent with the bill's specific requirements for cremation and interment.¹⁸

¹⁴ R.C. 3728.11.

¹⁵ R.C. 3728.12.

¹⁶ R.C. 3728.09.

¹⁷ R.C. 3728.14.

¹⁸ R.C. 3701.341.

Penalty

The bill prohibits any person from failing to comply with the following provisions:

- The final disposition of fetal remains from an abortion must be by cremation or interment.
- An abortion facility may not release fetal remains until it obtains a final disposition determination made, and if applicable, the parental consent.
- An abortion facility may not arrange for the cremation or interment of fetal remains unless either (1) a disposition determination is made or consented to, or (2) a reasonable time has passed after the abortion was induced or performed and no final disposition has been made or consented to.
- An abortion facility must document in the woman's medical record the final disposition determination made, and if applicable the parental consent.
- An abortion facility must maintain evidentiary documentation demonstrating the date and method of the disposition of all fetal remains.

Whoever knowingly violates any of these provisions is guilty of failure to dispose of fetal remains humanely, a misdemeanor of the first degree.

COMMENT

1. Continuing law prohibits a person in charge of any premises in which interments or cremations are made from interring or cremating a body, unless it is accompanied by a burial permit.¹⁹ A burial permit may not be issued until a satisfactory death, fetal death, or provisional death certificate is filed with the local registrar or subregistrar. The provisions to apply for a fetal death certificate for the product of human conception prior to 20 weeks of gestation exclude the purposeful termination of a pregnancy (an abortion) as a fetal death.²⁰ The bill, however, requires the Director of Health to adopt rules necessary to carry out the bill's provisions, which rules could address fetal death certificate requirements regarding the product of human conception that were aborted prior to 20 weeks of gestation.

¹⁹ R.C. 3705.17, not in the bill.

²⁰ R.C. 3705.20, 3727.16(A)(2), and 4731.82(A)(1)(b), none in the bill.



2. The bill's penalty provisions would take effect before any rules, necessary to carry out the bill's provisions, may be adopted.²¹

3. Under continuing law, the parents, guardian, or custodian of a pregnant woman who is unmarried, under 18 years old, and unemancipated may consent to the woman's abortion.²² The bill, however, does not provide for consent by such a woman's guardian or custodian regarding a disposition determination for the fetal remains.²³

HISTORY

ACTION	DATE
Introduced	12-17-15

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²¹ R.C. 3728.14.

²² R.C. 2919.12(B)(1)(a)(ii), not in the bill.

²³ R.C. 3728.04(B).

