



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 417 of the 131st G.A. (LSC 131 1725-8) **Date:** April 13, 2016
Status: In House Health and Aging **Sponsor:** Reps. McColley and Koehler

Local Impact Statement Procedure Required: No

Contents: Regarding the humane disposition of fetal remains

State Fiscal Highlights

- State government-owned hospitals may experience an increase in costs for interment, cremation, or humane individual incineration. However, the number of abortions performed in these hospitals each year is small; thus, any costs should be minimal. These hospitals could also incur administrative costs to develop written procedures and create and maintain evidentiary documentation.
- The Ohio Department of Commerce might realize a gain in fee revenue if burial permits are needed.
- The Ohio Department of Health (ODH) may experience an increase in survey costs to ensure facilities that perform abortions are in compliance with the bill.
- ODH may experience minimal administrative costs to adopt rules and create a supplemental form required under the bill.
- ODH and/or the Attorney General could experience an increase in administrative costs if any injunctions are sought.

Local Fiscal Highlights

- Local government-owned hospitals may experience an increase in costs for interment, cremation, or humane individual incineration. However, the number of abortions performed in these hospitals each year is small; thus, any costs should be minimal. These hospitals could also incur administrative costs to develop written procedures, maintain the required supplemental form, and create and maintain evidentiary documentation.
- Local registrars of vital statistics, which include local health departments, could incur additional administrative costs and collect additional revenue if burial permits are needed.

- Local governments could realize an increase in court costs and fine revenue for any violations associated with the bill. However, the number of violations is anticipated to be few, if any.
 - The appropriate county prosecuting attorney or city or township director of law could experience an increase in administrative costs if any injunctions are sought.
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Detailed Fiscal Analysis

The bill requires an abortion facility to do either of the following with fetal remains it possesses: (1) dispose or arrange for the disposal of fetal remains by interment, cremation, or humane individual incineration, or (2) under specified conditions to provide the fetal remains to the woman who had the abortion for her to dispose of the fetal remains by interment, cremation, or humane individual incineration. The bill requires that the humane individual incineration of fetal remains is to be performed in a sterile incinerator. The bill specifies that no other remains shall be simultaneously incinerated with other fetal remains belonging to another fetus. The bill also specifies that fetal remains shall be incinerated separately from any other items or medical waste.

The bill grants a pregnant woman who has an abortion the following rights: (1) to determine whether final disposition of the fetal remains shall be by interment, cremation, or humane individual incineration, (2) to have the abortion facility perform or arrange for the interment, cremation, or humane individual incineration, or (3) to personally arrange for the interment, cremation, or humane incineration. To exercise these rights, the woman must express the determination in writing, using a form prescribed by the Director of the Ohio Department of Health (ODH). The bill specifies that if a pregnant woman does not desire to exercise these rights, the abortion facility is required to determine whether final disposition will be by interment, cremation, or humane individual incineration. A minor woman may exercise these rights after first obtaining parental consent or after a court has issued an order authorizing the abortion without parental consent. The bill requires that a pregnant woman who is under 18 years of age, unmarried, and unemancipated must obtain parental consent to the final disposition determination she makes.

The Director of Health must adopt rules to create a detachable supplemental form to the informed consent form described in R.C. 2317.56 which meets the following requirements: (1) indicates whether the pregnant woman has indicated a preference as to the method of disposal of the fetal remains and the preferred method selected, (2) provides for the signature of the physician who is to perform or induce the abortion, and (3) provides for a medical identification number for the pregnant woman but does not provide for the pregnant woman's printed name or signature. The Director is also to adopt rules to prescribe the parental consent form. ODH must adopt rules pertaining to other provisions of the bill as well. For instance, ODH must also prescribe the method

in which pregnant women who seek abortions are informed of the following: the right to determine final disposition of fetal remains and the available options for disposition. As a result, ODH may experience minimal administrative costs. Currently, ODH is responsible for conducting on-site inspections/surveys of ambulatory surgical centers for compliance with state and federal rules and regulations. If ODH needs to ensure compliance with the bill's requirements regarding fetal disposition, ODH could do so through the current survey process at minimal additional costs. However, ODH does not license or survey hospitals. According to ODH, 115 hospitals in Ohio provide obstetrics and gynecology units or maternity units. The cost to survey each of these hospitals is estimated to be approximately \$600 per hospital.

The bill prohibits an abortion facility from releasing fetal remains, or arranging for the interment, cremation, or humane individual incineration of the remains until it obtains or makes a final disposition determination, and if applicable, parental consent. Additionally, the abortion facility is required to document in the pregnant woman's medical record the final disposition determination, and if applicable, parental consent. The abortion facility is also required to maintain evidentiary documentation demonstrating the date and method of the disposition of all fetal remains from the facility. Finally, the facility is required to have written policies and procedures regarding interment, cremation, or humane individual incineration of fetal remains. Government-owned hospitals¹ may experience a minimal increase in administrative costs to maintain this documentation and to develop written procedures.

The bill requires an abortion facility to pay the costs of the interment, cremation, or humane individual incineration of fetal remains, unless the disposition determination indicates a method or process of interment, cremation, or incineration that is not offered by the abortion facility. If the pregnant woman wants a final disposition that involves a method or process that is not offered by the abortion facility, she is required to pay for those expenses. Government-owned hospitals could experience an increase in costs to pay for cremation, interment, or incineration of fetal remains. However, less than 0.4% of abortions in Ohio occurred in hospitals in 2014.² This percentage includes abortions performed in all hospitals in Ohio, both government-owned and nongovernment-owned, so the percentage of abortions performed in government-owned hospitals would be smaller. Thus, LSC assumes that any costs that would be incurred by government-owned hospitals should be minimal.

The bill requires an abortion facility in possession of fetal remains to file the final disposition form with the local registrar or sub-registrar of vital statistics for purposes of obtaining a burial permit. As a result of the bill, local registrars of vital statistics, which include local health departments, could incur additional administrative costs and

¹ According to ODH's hospital registry, there are currently 15 government-owned hospitals.

² According to ODH's report entitled "Induced Abortions in Ohio," 84 of the total 21,186 abortions were performed in hospitals in 2014. In 2013, 89 of the total 23,216 abortions were performed in hospitals and in 2012, 112 of the total 25,473 abortions were performed in hospitals.

collect additional revenue associated with the issuance of burial permits. A portion of any burial permit fee revenue would be deposited in the state treasury to the credit of the Ohio Department of Commerce. Government-owned hospitals could also incur additional costs to obtain such documents. However, any such costs would be negligible.

The bill specifies that either the Director of Health or a government attorney may apply to the court of common pleas for temporary or permanent injunctions restraining a violation or threatened violation of the rules. The bill states that this action is an additional remedy not dependent on the adequacy of the remedy at law. Additionally, the bill states that none of the bill's provisions shall be construed to limit the law governing fetal death certificates. As a result, it is possible that ODH, the Attorney General, appropriate county prosecuting attorney or city or township director of law, and the court of common pleas could experience an increase in administrative costs if any injunctions are sought.

The bill prohibits any person from failing to comply with certain specified provisions. Whoever knowingly violates any of these is guilty of failure to dispose of fetal remains humanely, a misdemeanor of the first degree. The bill specifies that this prohibition shall not apply to any failure to comply with the specified provisions until ODH adopts the required rules. The bill also specifies that a pregnant woman who has an abortion is not guilty of committing, attempting to commit, complicity in the commission of, or conspiracy in the commission of a violation of the bill's prohibition if the fetal remains are not disposed of in compliance with the bill. There could be local costs, such as court costs for any possible violations. However, there might also be fine revenues collected.

Synopsis of Fiscal Effect Changes

The substitute bill, LSC 131 1725-8, specifies that the abortion facility is to pay the costs of the interment, cremation, or humane individual incineration of fetal remains, unless the final disposition determination indicates a method or process of interment, cremation, or incineration that is not offered by the abortion facility. If the pregnant woman wants a final disposition that involves a method or process that is not offered by the abortion facility, she is required to pay for those expenses. The As Introduced version of the bill specified that an abortion facility shall pay the costs of the cremation or interment of fetal remains (humane individual incineration was not included in the As Introduced version of the bill) unless the final disposition determination indicated a method or process of cremation or interment that involves extraordinary expense. Any extraordinary expense would have been paid by the pregnant woman.

In addition, the substitute bill requires that the humane individual incineration of fetal remains is to be performed in a sterile incinerator. The bill specifies that no other remains shall be simultaneously incinerated with other fetal remains belonging to another fetus. The bill also specifies that fetal remains shall be incinerated separately

from any other items or medical waste. Under the As Introduced version of the bill, individual incineration was not specified.

The substitute bill requires an abortion facility in possession of fetal remains to file the final disposition form with the local registrar or sub-registrar of vital statistics for purposes of obtaining a burial permit. While the As Introduced version of the bill did not specifically require a facility to obtain a burial permit, LSC assumed in its fiscal note that a permit would be required.³ As a result, there are no changes in the fiscal effect regarding this provision.

The substitute bill specifies that either the Director of Health or a government attorney may apply to the court of common pleas for temporary or permanent injunction restraining a violation or threatened violation of the rules. The As Introduced version of the bill did not include this provision. As a result, it is possible that ODH, the Attorney General, appropriate county prosecuting attorney or city or township director of law, and the court of common pleas could experience an increase in administrative costs if any injunctions are sought.

The substitute bill also specifies that a pregnant woman who has an abortion is not guilty of committing, attempting to commit, complicity in the commission of, or conspiracy in the commission of a violation of the bill's prohibition if the fetal remains are not disposed of in compliance with the bill. The As Introduced version of the bill did not specify this.

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³ 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.