



Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 417

131st General Assembly
(As Reported by H. Health and Aging)

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

BILL SUMMARY

- Requires the final disposition of fetal remains from an abortion to be by interment, cremation, or humane individual incineration.
- Provides that the pregnant woman having the abortion has the right to determine which of the three methods of final disposition is to be used and whether to have the abortion facility perform or arrange for the disposition or to personally arrange for the disposition herself.
- Requires the pregnant woman, if she desires to exercise these rights, to certify prior to the performance of an abortion that she made a determination in writing using the bill's detachable supplemental form to the abortion informed consent form.
- Requires that the detachable supplemental form to the abortion informed consent form include the following information:
 - Whether the pregnant woman has indicated a method of disposition, and the preferred method selected;
 - The signature of the physician inducing or performing the abortion;
 - A medical identification number for the woman (but not the pregnant woman's printed name or signature).
- Requires the abortion facility to file the detachable supplemental form with a local registrar or sub-registrar of vital statistics to obtain a burial permit, and allows the registrar or sub-registrar to grant that permit.

- Requires parental, guardian, or custodian consent in writing to the written final disposition determination made on the detachable supplemental form by the pregnant woman if she is under 18 years of age, unmarried, and unemancipated, unless a court order authorizing consent to the abortion was issued.
- Requires humane individual incineration of fetal remains to be performed in a sterile incinerator and prohibits the remains of an individual fetus from simultaneously being incinerated with remains belonging to another fetus or any other items or medical waste.
- Prohibits an abortion facility from releasing fetal remains or arranging for their final disposition until the facility obtains or makes a final disposition determination or, if applicable, obtains parental, guardian, or custodian consent to the determination.
- Requires an abortion facility to document in the woman's medical record the final disposition determination, and if applicable, the parental, guardian, or custodian consent to the determination.
- Requires an abortion facility to maintain evidentiary documentation of the final disposition determination and the date and method of the disposition of all fetal remains from the facility.
- Requires an abortion facility to have written policies and procedures for the interment, cremation, or humane individual incineration of fetal remains from the facility.
- Generally requires an abortion facility to pay for the interment, cremation, or humane individual incineration of the fetal remains.
- Requires the pregnant woman to pay for any expenses if her final disposition determination specifies a method or process of interment, cremation, or humane individual incineration that is not provided by the facility.
- Requires the Director of Health to adopt rules necessary to carry out the bill's provision within six months of the effective date, 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 detachable supplemental form in which a woman makes a disposition determination and the parental, guardian, or custodian consent form;

- Procedures to complete the detachable supplemental form a reasonable time after a medical emergency or necessity has ended, when the emergency or necessity prevented the form's completion.
- Requires the Director to implement the rules adopted under the bill, and allows the following to file injunctions to restrain a violation or threat of violation of the rules:
 - The Director;
 - The Attorney General;
 - The county prosecutor;
 - The city director of law, township director of law, or legal counsel for a village.
- Provides that the bill does not limit the provisions regarding fetal death certificates for the product of human conception of at least 20 weeks of gestation.
- Prohibits the violation of certain provisions of the bill and makes knowing violation of the prohibition the criminal offense of failure to dispose of fetal remains humanely, a first degree misdemeanor.
- Provides that a woman who had an abortion is not guilty of a violation of the prohibition if the fetal remains are not disposed of in compliance with the bill's provisions.
- Delays the application of the prohibition until the Director adopts the rules to carry out the bill's provisions.

CONTENT AND OPERATION

Requirement for interment, cremation, or humane individual incineration

The bill requires that an abortion facility possessing fetal remains to either (1) dispose or arrange for the disposal of the remains through interment, cremation, or humane individual incineration, or (2) provide the remains to the woman who had the abortion and who made a disposition determination (see "**Disposition determination**," below) for the woman to dispose of the fetal remains by interment, cremation, or humane individual incineration.¹

¹ R.C. 3728.02.

The bill defines "fetal remains" as the entire fetus or any of its parts removed from the pregnant woman's uterus by an abortion, irrespective of the duration of the pregnancy. 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 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

Additionally, the bill requires that if the disposition of "humane individual incineration" is to be performed it must be done in a sterile incinerator and the fetal remains cannot be simultaneously incinerated with other remains belonging to another fetus or medical waste.⁷

Disposition determination

Pregnant woman's rights

The bill grants a pregnant woman who has an abortion has the following rights regarding the fetal remains:

(1) The right to determine whether the final disposition will be by interment, cremation, or humane individual incineration;

² R.C. 2919.11, not in the bill.

³ R.C. 3728.01(A).

⁴ R.C. 3702.30, not in the bill.

⁵ R.C. 3728.01(E).

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

⁷ R.C. 3728.03.



(2) To have the abortion facility perform or arrange for the interment, cremation, or humane individual incineration;

(3) To personally arrange for the interment, cremation, or humane incineration.⁸

To exercise these rights, the woman must express the determination in writing, using a detachable supplemental form prescribed by the Director of Health (see "**Supplemental form to abortion informed consent form**," below).⁹

If the woman does not desire to exercise these rights, the bill requires the abortion facility to determine whether final disposition will be by interment, cremation, or humane individual incineration.¹⁰

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 consent from one of her parents, her guardian, or her custodian or after a court has issued an order authorizing the abortion without consent.

Consent for a minor

A pregnant woman who is under 18, unmarried, and unemancipated must obtain consent from one of her parents, her guardian, or her custodian to the final disposition determination she makes using the detachable supplemental form, as described above. The parental, guardian, or custodian consent to the disposition also must be made in writing using a form prescribed by the Director of Health (see "**Other rules**," below).¹¹

Court order

The bill also provides that consent to a final disposition is not required if the abortion was authorized by a court without consent from one of the woman's parents, her guardian, or her custodian.¹² Under continuing law, a pregnant minor generally needs consent of a parent, guardian, or custodian for her abortion. But, if one or both of

⁸ R.C. 3728.04.

⁹ R.C. 3728.05(A)(1).

¹⁰ R.C. 3728.05(A)(2).

¹¹ R.C. 3728.05(B)(1).

¹² R.C. 3728.05(B)(2).

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.¹³

Supplemental form to abortion informed consent form

The bill adds the disposition determination to the procedures that must be followed prior to a woman having an abortion. Under continuing law, a woman must sign a form consenting to the abortion and that she certifies that she received certain information and materials and that she consents to the particular abortion voluntarily, knowingly, intelligently, and without coercion. The bill adds that she must also certify that if she desires to exercise her rights (see "**Pregnant woman's rights**," above) the applicable requirements for the disposition determination have been met.¹⁴

Form must include

The bill requires the Director of Health to adopt rules under the Administrative Procedure Act (R.C. Chapter 119.), not later than six months after the bill's effective date, that prescribe a detachable supplemental form to the above abortion informed consent form that:

- Is consistent with the abortion informed consent law;
- Indicates whether the pregnant woman indicated a preference for the method of disposal of the fetal remains and the preferred method selected;
- Provides for the signature of the physician who is to perform or induce the abortion; and
- Provides for a medical identification number for the pregnant woman but does not provide for the pregnant woman's printed name or signature.¹⁵

¹³ R.C. 2151.85(A) and 2919.12, neither in the bill.

¹⁴ R.C. 2317.56(B)(4)(c).

¹⁵ R.C. 2317.56 and 3728.14(C)(1).



Medical emergency

The bill, as part of the rules adopted for the detachable supplemental form, also requires the Director to prescribe procedures for when a medical emergency or medical necessity prevents the pregnant woman from signing the detachable supplemental form. The procedures must provide for completion of the form a reasonable time after the medical emergency or medical necessity has ended.¹⁶

Abortion facility requirements

Under the bill, an abortion facility is prohibited from releasing the fetal remains, or arranging for their interment, cremation, or humane individual incineration until it obtains or makes a final disposition determination and, if applicable, parental, guardian, or custodian consent for a minor.¹⁷

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, guardian, or custodian consent for the disposition determination.¹⁸ A facility also must maintain evidentiary documentation demonstrating the date and method of the disposition of all fetal remains from the facility.¹⁹

Facility written policies and procedures

The bill requires an abortion facility to have written policies and procedures for interment, cremation, or humane individual incineration of fetal remains from the facility.²⁰

Burial permits

The bill requires an abortion facility in possession of fetal remains to file the supplemental detachable form with the local registrar or sub-registrar of vital statistics to obtain a burial permit. Likewise, the bill permits a local registrar or sub-registrar to

¹⁶ R.C. 3728.14(C)(2). A corrective amendment is needed to change the signature requirement to a completion requirement regarding the pregnant woman because the form prescribed by the Director is not to have the woman's name or signature.

¹⁷ R.C. 3728.06.

¹⁸ R.C. 3728.10.

¹⁹ R.C. 3728.11.

²⁰ R.C. 3728.12.



issue a burial permit after receiving a properly executed supplemental form (see "**Informed consent**," above). Continuing law prohibits a funeral director from interring, cremating, or otherwise disposing of a body without a burial permit.²¹

Financial responsibility

Under the bill, an abortion facility must pay for 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 humane individual incineration that is not offered at the facility. If the pregnant woman chooses a final disposition that is not offered by the facility, she is required to pay for those expenses.²²

Other rules

The bill requires the Director of Health, in accordance with the Administrative Procedure Act (R.C. Chapter 119.), to adopt certain other rules that must be consistent with the abortion informed consent laws and also necessary to carry out the bill's provisions not later than six months after the bill's effective date. Specifically, the Director must adopt rules that prescribe the following:²³

- 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 parental, guardian, or custodian consent form described in "**Consent for a minor.**"

Injunctive powers to enjoin rules violations

The bill requires the Director of Health to implement the rules adopted under the bill. The bill also allows the Director or a government attorney to apply for injunctions with the court of common pleas to restrain a violation or threat of violation of the rules. The bill further provides that the action is an additional remedy not dependent on the adequacy of the remedy at law.²⁴

A "government attorney" under the bill is any of the following:

²¹ R.C. 3705.17 and 3728.13.

²² R.C. 3728.09.

²³ R.C. 2317.56, 3701.341, and 3728.14(A) and (B).

²⁴ R.C. 3701.3412(B).



- The Attorney General;
- The county prosecuting attorney with proper jurisdiction;
- The city director of law, township director of law, or legal counsel for a village with proper jurisdiction.²⁵

Prohibition and 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 interment, cremation, or humane individual incineration.
- The requirements for the performance of humane individual incineration of fetal remains.
- An abortion facility may not release fetal remains, or arrange for their interment, cremation, or humane individual incineration, until it obtains or makes a final disposition determination, and if applicable, the consent.
- An abortion facility must document in the woman's medical record the final disposition determination made, and if applicable the parental, guardian, or custodian 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.

Delayed enforcement

The bill provides that its penalty will not apply until the Director adopts the rules required under the bill.²⁶

Pregnant woman not liable

The bill provides that a pregnant woman is not guilty of committing, attempting to commit, complicity in the commission of, or conspiracy in the commission of a

²⁵ R.C. 3701.3412(A).

²⁶ Section 3.

violation of the bill's prohibition, if she had an abortion and the fetal remains are not disposed of in compliance with the bill's provisions.²⁷

No limitation on fetal death certificates

The bill states that nothing in its provisions governing disposition of fetal remains will be construed to limit the continuing law provisions regarding fetal death certificates for the product of human conception of at least 20 weeks of gestation.²⁸ The bill defines "fetal death" as death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which after such expulsion or extraction does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.²⁹

HISTORY

ACTION	DATE
Introduced	12-17-15
Reported, H. Health & Aging	04-13-16

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²⁷ R.C. 3728.95.

²⁸ R.C. 3728.18.

²⁹ R.C. 3728.01(C) and R.C. 3705.01, not in the bill.

