



Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 254*

131st General Assembly

(As Reported by S. Government Oversight and Reform)

Sens. Uecker, Hite, Jordan, Burke, Beagle, Coley, Faber

BILL SUMMARY

- Requires the final disposition of fetal remains from a surgical abortion to be by cremation or interment.
- Grants a pregnant woman who has a surgical abortion the right to determine (1) whether the disposition of the fetal remains will be by cremation or interment, and (2) the location for the final disposition.
- 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.
- Provides that if the woman chooses not to exercise her rights, the abortion facility who performed the surgical abortion will determine whether the final disposition will be by cremation or interment.
- Requires parental consent by a parent, guardian, or custodian 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 until the facility obtains a final disposition determination or if applicable, parental consent to the determination.

* This analysis was prepared before the report of the Senate Government Oversight & Reform Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Permits an abortion facility to arrange for the cremation or interment of fetal remains if the final disposition determination has been made or, if applicable, consented to.
- 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 the attending physician for the abortion, when completing an "abortion report" required under continuing law to include the method of final disposition of the fetal remains from a surgical abortion.
- Requires an abortion facility to maintain evidentiary documentation demonstrating 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 from surgical abortions performed or induced in the facility.
- Requires an abortion facility to develop and maintain a written list of locations at which it provides or arranges for the final disposition of fetal remains from surgical abortions.
- Requires an abortion facility to pay for the cremation or interment of the fetal remains.
- Provides that if the pregnant woman's final disposition determination specifies a location for final disposition that is not provided by the facility, she is responsible for the costs related to the disposition at her chosen location.
- Requires the Director of Health to adopt rules necessary to carry out the bill's provisions within 90 days of the effective date, including rules that prescribe the following:
 - The method in which pregnant women who seek surgical abortions are informed of the right to determine the final disposition of fetal remains and the available methods and locations for such disposition;
 - A notification form for final disposition determinations and the consent form;
 - A detachable supplemental form to the abortion informed consent form on which a pregnant woman is to make a final disposition determination;

- 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 above detachable supplemental form to the abortion informed consent form to include the following information:
 - Whether the pregnant woman has indicated a method of disposition, and the preferred method selected;
 - Whether the pregnant woman has indicated a preference as to the location of disposition of the fetal remains;
 - 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 cremation of fetal remains from a surgical abortion to be performed in a crematory facility subject to state regulation.
- Prohibits an operator of a crematory facility from disposing of, or arranging for the transfer or disposal of, cremated fetal remains anywhere other than in a grave, crypt, or niche.
- Prohibits persons from failing to comply with the bill's requirements regarding disposition of fetal remains (other than the grave, crypt, or niche prohibition) and provides that a person who knowingly violates the prohibition is guilty of failure to dispose of fetal remains humanely, a misdemeanor of the first degree.
- Provides that a woman who has a surgical abortion is not guilty of failure to dispose of fetal remains humanely if the fetal remains are not disposed of in compliance with the bill's cremation or interment provisions.
- Provides that a person who buries or cremates fetal remains from a surgical abortion is not liable for or subject to damages in a civil action, prosecution in a criminal proceeding, or professional disciplinary action related to the disposal of fetal remains if the person does all of the following:
 - Acts in good faith compliance with the bill's cremation or interment provisions;
 - Receives a copy of a properly executed detachable supplemental form;

- Acts in furtherance of the final disposition of the fetal remains.
- Delays the application of the prohibition regarding failure to dispose of fetal remains humanely and the grave, crypt, or niche prohibition until the Director adopts the rules required under the bill.

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CONTENT AND OPERATION

General requirement for cremation or interment

The bill requires that the final disposition of fetal remains from a surgical abortion at an abortion facility be by cremation or interment.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, irrespective of the duration of the pregnancy. Under continuing law unchanged by the bill, "abortion" means the

¹ R.C. 3728.02.

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

Disposition determination

Pregnant woman's right

The bill grants a pregnant woman who has a surgical abortion the right to determine the following, regarding the fetal remains:

- (1) Whether the final disposition shall be by cremation or interment; and
- (2) The final location for the final disposition.⁷

Requirements for women to exercise right

To exercise the final disposition right, a pregnant woman must express the determination in writing, using a form prescribed by the Director of Health (see "**Supplemental detachable form to abortion informed consent**," below).⁸

² R.C. 3728.01(C); 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(D).

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

⁷ R.C. 3728.03.

⁸ R.C. 3728.04(A)(1).



If the woman does not desire to exercise the final disposition right, the bill requires the abortion facility to determine whether final disposition will be by cremation or interment.⁹

Requirements for minor women to exercise right

Under the bill, a pregnant woman who is under 18, unmarried, and unemancipated may exercise the final disposition right by using the detachable supplemental form to abortion informed consent, if she also obtains parental consent or a court has issued an order authorizing the abortion without parental consent.

Parental consent

The bill requires that the parental consent must be made in writing using a form prescribed by the Director of Health. The bill permits parental consent to be made by one of the woman's parents, guardian, or custodian.¹⁰

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.¹¹ Under continuing law unchanged by the bill, a pregnant woman who is under 18, unmarried, and unemancipated generally needs consent of a parent, guardian, or custodian for her abortion. But, if one or both of the following applies to her, 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.¹²

⁹ R.C. 3728.04(A)(2).

¹⁰ R.C. 3728.04(B)(1).

¹¹ R.C. 3728.04(B)(2).

¹² R.C. 2151.85(A) and 2919.12, neither in the bill.



Supplemental detachable form to abortion informed consent

The bill appends the final disposition determination to the abortion informed consent requirements under current law. Under continuing law unchanged by the bill, a woman must sign a form consenting to the abortion and certifying 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 the abortion is to be performed surgically and she desires to exercise her right to make a final disposition, she has completed the final disposition determination using a supplemental detachable form.¹³

Form must include

The bill requires the Director of Health to prescribe the detachable supplemental form to meet the following requirements:

- Indicates whether the pregnant woman indicated a preference for the method of disposition of the fetal remains and the preferred method selected;
- Indicates whether the pregnant woman indicated a preference for the location of disposition of the fetal remains;
- Provides for the signature of the physician who is to perform or induce the abortion;
- Provides for a medical identification number for the pregnant woman but does not provide for the pregnant woman's printed name or signature.¹⁴

Medical emergency

The bill also requires the Director to prescribe procedures for when a medical emergency or medical necessity prevents the pregnant woman from completing 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.¹⁵

¹³ R.C. 2317.56(B)(4)(c).

¹⁴ R.C. 3728.14(C)(1).

¹⁵ R.C. 3728.14(C)(2).



Abortion facility requirements

Limitations on releasing remains

Under the bill, an abortion facility is prohibited from releasing the fetal remains from a surgical abortion, or arranging for their cremation or interment, until it obtains a final disposition determination and, if applicable, parental consent.¹⁶

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.¹⁷ A facility also must maintain evidentiary documentation demonstrating the date and method of the disposition of all fetal remains from surgical abortions performed or induced in the facility.¹⁸

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 surgical abortions performed or induced in its facility.¹⁹

List of locations

An abortion facility must also develop and maintain a written list of locations at which it provides or arranges for the final disposition of fetal remains from surgical abortions.²⁰

Financial responsibility

Under the bill, an abortion facility must pay for the cremation or interment of fetal remains from a surgical abortion performed at that facility. However, if the disposition determination identifies a location for final disposition other than one

¹⁶ R.C. 3728.05.

¹⁷ R.C. 3728.10.

¹⁸ R.C. 3728.11.

¹⁹ R.C. 3728.12.

²⁰ R.C. 3728.13.



provided by the abortion facility, the pregnant woman is responsible for the costs related to the final disposition of the fetal remains at her chosen location.²¹

Abortion report

The bill requires the attending physician for a surgical abortion, when completing an "abortion report" under current law, to also include the method of final disposition of the fetal remains. Under continuing law unchanged by the bill, this report must be completed for each abortion the physician performs. The report must be confidential and not contain the woman's name. Not later than October 1 of each year, the Department must issue an annual report of the abortion data reported for the previous calendar year. The bill does not require, or prohibit, the Department's annual report from including the newly required information on the method of final disposition of fetal remains.²²

Additional requirements for cremation

Crematory facility

The bill requires that the cremation of fetal remains from a surgical abortion at an abortion facility must be performed in a crematory facility, in compliance with Chapter 4717.²³

Chapter 4717. contains the professional regulations for crematory facilities. A "crematory facility" is defined as the physical location at which a cremation chamber is located and the cremation process takes place. "Crematory facility" does not include an infectious waste incineration facility for which a license is held under division (B) of section [3734.05](#) of the Revised Code, or a solid waste incineration facility for which a license is held under division (A) of that section that includes a notation pursuant to division (B)(3) of that section authorizing the facility to also treat infectious wastes, in connection with the incineration of body parts other than dead human bodies that were donated to science for purposes of medical education or research.²⁴

Grave, crypt, or niche

The bill prohibits the operator of a crematory facility that cremates fetal remains for an abortion facility regulated by the bill from disposing of the cremated fetal

²¹ R.C. 3728.09.

²² R.C. 3701.79.

²³ R.C. 3728.02(B).

²⁴ R.C. 3728.02(C); R.C. 4717.01(K), not in the bill.

remains anywhere other than in a grave, crypt, or niche. It also prohibits an operator from arranging for the transfer or disposal of the remains other than in a grave, crypt, or niche.²⁵

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, not later than 90 days after the bill's effective date. Specifically, the Director must adopt rules that prescribe the following:²⁶

- The method in which pregnant women who seek surgical abortions are informed of the right to determine final disposition of fetal remains, and the available options for locations and methods for such disposition;
- The notification form for final disposition determinations and the parental consent form (see COMMENT).
- The detachable supplemental form to abortion informed consent on which a pregnant woman is to make a final disposition determination (see COMMENT)
- Procedures for subsequent completion of the detachable supplemental form in cases of medical emergency or necessity.

Under current 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 requirements for cremation and interment.²⁷

Prohibition and penalty

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

- The requirement that final disposition of fetal remains from a surgical abortion must be by cremation or interment.
- The requirement that cremation of fetal remains must be in a crematory facility, in compliance with Chapter 4717.

²⁵ R.C. 4717.271.

²⁶ R.C. 3728.14.

²⁷ R.C. 3701.341.



- The limitation that an abortion facility may not release fetal remains, or arrange for their cremation or interment, until it obtains a final disposition determination made, and if applicable, the parental consent.
- The requirement that an abortion facility must document in the pregnant woman's medical record the final disposition determination made, and if applicable, the parental consent made.
- The requirement that 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.²⁸

Delayed enforcement

The bill provides that the prohibitions described under "**Prohibition and penalty**" and "**Grave, crypt, or niche**" will not apply until the Director adopts the rules required under the bill.²⁹

Immunity

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 violation of the bill's prohibition under "**Prohibition and penalty**" (above), if she has a surgical abortion and the fetal remains are not disposed of in compliance with the bill's provisions.³⁰

General immunity

The bill provides that, notwithstanding any conflicting provision of the Revised Code or procedure of any agency or board, a person who buries or cremates fetal remains from a surgical abortion is not liable for or subject to damages in a civil action, prosecution in a criminal proceeding, or professional disciplinary action related to the disposal of fetal remains if the person does all of the following:

²⁸ R.C. 3728.99.

²⁹ Section 3.

³⁰ R.C. 3728.95.

- Acts in good faith compliance with the bill's cremation and interment requirements;
- Receives a copy of a properly executed detachable supplemental form;
- Acts in furtherance of the final disposition of the fetal remains.³¹

COMMENT

The bill requires the Director of Health to adopt rules that prescribe, among other things, (1) the *notification form* for final disposition determinations and (2) a *detachable supplemental form* to the "abortion consent" form.³² The bill requires the woman to complete the detachable supplemental form to exercise her rights.³³ There is no express requirement, however, that the pregnant woman use the notification form.

HISTORY

ACTION	DATE
Introduced	12-14-15
Reported, S. Gov't Oversight & Reform	---

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³¹ R.C. 3728.15.

³² R.C. 3728.14(B) and (C).

³³ R.C. 3728.04(A).

