



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Fiscal Note & Local Impact Statement

**Bill:** S.B. 28 of the 132nd G.A.

**Status:** As Passed by the Senate

**Sponsor:** Sen. Uecker

**Local Impact Statement Procedure Required:** No

**Subject:** Regarding the final disposition of fetal remains from surgical abortions

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### State & Local Fiscal Highlights

- State and local government-owned hospitals may experience an increase in costs for cremation or interment. These hospitals could also incur administrative costs to develop written procedures, create and maintain evidentiary documentation, and to include certain information in the abortion report.
- The Ohio Department of Health (ODH) may experience an increase in survey costs to ensure facilities that perform surgical abortions are in compliance with the bill.
- ODH may experience minimal administrative costs to adopt rules.
- 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.

### Detailed Fiscal Analysis

#### Disposition determination

The bill requires that the final disposition of fetal remains from a surgical abortion at an abortion facility be by cremation or interment. The bill grants a pregnant woman who has a surgical abortion the rights to determine whether the disposition of the fetal remains shall be by cremation or interment and the location for the final disposition. To exercise these rights, the woman must express the determination in writing, using a form prescribed by the Director of Health. The bill specifies that if the woman is carrying more than one zygote, blastocyte, embryo, or fetus, a form must be signed for each zygote, blastocyte, embryo, or fetus to be aborted. A minor woman may exercise these rights after first obtaining consent of a parent, guardian, or custodian, or after a court has issued an order authorizing the abortion without parental consent. The Director of Health is required to prescribe a notification form for final disposition determinations, a consent form, and a detachable supplemental form to the existing informed consent form, which shall indicate whether the pregnant woman has indicated a preference as to the method and location of disposition. Prior to the performance of a surgical abortion, the bill requires the pregnant woman, if she desires

to exercise these rights, to certify that she made a determination in writing using the prescribed form. ODH must adopt rules pertaining to the provisions of the bill not later than 90 days after the effective date.

As a result of these provisions, ODH may experience an increase in administrative costs. Currently, ODH is responsible for conducting onsite 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, approximately 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. ODH would also realize administrative costs relating to rule promulgation.

### **Abortion facility requirements**

The bill prohibits an abortion facility from releasing fetal remains from a surgical abortion, or arrange for the cremation or interment of such fetal remains, until it obtains a final disposition determination, and if applicable, parental consent. The bill specifies that if a pregnant woman does not desire to exercise the rights under the bill, the abortion facility is required to determine whether final disposition is to be by cremation or interment. An abortion facility is required to document in the pregnant woman's medical record the final disposition determination made, and if applicable, the parental consent made. Additionally, the abortion facility is required to maintain evidentiary documentation demonstrating the date and method of the disposition of fetal remains from surgical abortions performed or induced in the facility. The facility is required to have written policies and procedures regarding cremation or interment of fetal remains from surgical abortions and is also required to develop and maintain a written list of locations at which it provides or arranges for the final disposition.

The bill requires an abortion facility to pay for and provide for the cremation or interment of the fetal remains from a surgical abortion, unless the disposition determination identifies a location for final disposition other than the one provided by the abortion facility, in which case the woman is responsible for the costs related to the disposition at her chosen location.

Government-owned hospitals<sup>1</sup> may experience a minimal increase in administrative costs to maintain this documentation, to develop written procedures, and to include certain information in the abortion report. Additionally, government-owned hospitals could experience an increase in costs to pay for cremation or interment of fetal remains. However, less than 0.6% of abortions in Ohio occurred in

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<sup>1</sup> According to ODH's hospital registry, there are currently 17 state or local government-owned hospitals. Of these, nine had beds for obstetric care.

hospitals in 2016.<sup>2</sup> 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 cremation and interment costs that would be incurred by government-owned hospitals should be minimal. However, the total costs will depend on the number of surgical abortions performed in government-owned hospitals and the interment or cremation costs required by the bill versus the current costs related to final dispositions.

## **Prohibitions**

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. There could be local costs, such as court costs for any possible violations. However, there might also be fine revenues collected. The bill also specifies that a person who buries or cremates fetal remains from a surgical abortion is not liable for or subject to damages in any civil action, prosecution, or professional disciplinary action if that person acts in good faith, receives a copy of a properly executed detachable supplemental form, and acts in furtherance of the final disposition of the fetal remains.

The bill specifies that a pregnant woman who has a surgical abortion, the fetal remains from which are not disposed of in compliance with the bill, is not guilty of violating provisions of the bill. The bill also prohibits the operator of a crematory facility that cremates fetal remains for an abortion facility from disposing of or arranging for the transfer or disposal of the cremated fetal remains anywhere other than (1) in a grave, crypt, or niche, (2) scattering them in any dignified manner, or (3) any other lawful manner. Additionally, an operator is prohibited from cremating fetal remains without receiving a copy of a properly executed detachable supplemental form, as discussed above.

The bill specifies that the previously mentioned prohibitions do not apply until rules are adopted by ODH, as required by the bill.

The bill specifies that a crematory operator is not required to secure a death certificate, a burial or burial-transit permit, or a cremation authorization form to cremate fetal remains.

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<sup>2</sup> According to ODH's report entitled "Induced Abortions in Ohio," 122 of the total 20,672 abortions were performed in hospitals in 2016. In 2015, 114 of the total 20,976 abortions were performed in hospitals and in 2014, 84 of the total 21,186 abortions were performed in hospitals.