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SFA**BILL ANALYSIS**

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Senate Bill 888 (as introduced 2-17-98)
Sponsor: Senator Joel D. Gougeon
Committee: Families, Mental Health and Human Services

Date Completed: 2-18-98

CONTENT

The bill would amend the Public Health Code to provide that a person who was being prosecuted for performing a partial-birth abortion could seek a medical board's opinion on whether it was reasonable to perform the abortion. The bill also includes legislative findings concerning partial birth abortions. In addition, the bill would revise the definition of "partial-birth abortion" by defining the phrase "partially vaginally delivers a living fetus before killing the fetus".

Board Opinion

The Code prohibits a physician or an individual performing under the delegatory authority of a physician from performing a partial-birth abortion, unless he or she reasonably believes that it is necessary to save the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, and that no other medical procedure will accomplish that purpose.

Under the bill, if a physician or other individual were criminally prosecuted for performing a partial-birth abortion, he or she could petition the Board of Medicine or the Board of Osteopathic Medicine and Surgery for a hearing on the issue of whether it was reasonable for the physician or other individual to believe that performing the partial-birth abortion was necessary to save the life of the pregnant woman and that no other medical procedure would have saved the woman's life.

The Board would have to hold a hearing as soon as possible upon receiving the petition, and would have to render an opinion on the issue within 14 days after the hearing. The Board's opinion would be admissible in evidence in the criminal prosecution. Upon motion of the defendant, the court with jurisdiction over the prosecution would have to postpone the trial for at least 30 days in order to give the defendant an opportunity to file a petition under the bill.

Legislative Findings

The bill contains the following legislative findings:

- "That, as of 1997, the American Medical Association had determined that no medical circumstances exist that necessitate the performance of a partial-birth abortion, also commonly referred to as an 'intact dilation and extraction'."
- "That scientific research has shown that a fetus can feel pain at 12 weeks of gestation, and that the partial-birth abortion procedure involves delivering the fetus feet first until all but the head is showing, then thrusting scissors or another sharp object into the fetus's skull and suctioning out the brain so that the skull collapses and the rest of the fetus can be removed."
- "That by enacting this section and the amendatory act that added this section, the legislature

intends to prohibit only the partial-birth abortion procedure, also commonly known as an ‘intact dilation and extraction’.”

- “That testimony from physicians indicates that sufficient, safe alternative abortion procedures, other than partial-birth abortion, exist for women seeking previability abortions.”

“Partial-Birth Abortion”

The Code defines “partial-birth abortion” as an abortion in which the physician or an individual acting under the delegatory authority of the physician performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery. The bill would define “partially vaginally delivers a living fetus before killing the fetus” as “the deliberate and intentional delivery into the vagina of a living fetus or a substantial portion of the living fetus for the purpose of performing a procedure that the physician or other individual knows will kill the fetus, and subsequently killing the fetus”.

MCL 333.17016 & 333.17516

Legislative Analyst: S. Lowe

FISCAL IMPACT

According to the Department of Consumer and Industry Services, the fiscal impact of this bill is indeterminate for the main reason that neither the Board of Medicine nor the Board of Osteopathic Medicine and Surgery conducts hearings, so it is difficult to determine what the cost of conducting one would be to the Department. It is also important to note that complaints of this type are very rare.

Fiscal Analyst: M. Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.