

PROHIBIT RESEARCH ON EMBRYONIC OR FETAL TISSUES OR CELLS OBTAINED FROM ABORTION

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House Bill 5558 as enrolled and vetoed by the governor
Sponsor: Rep. Thomas A. Albert

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5559 as enrolled and vetoed by the governor
Sponsor: Rep. Bronna Kahle

1st House Committee: Health Policy

2nd House Committee: Judiciary

Senate Committee: Health Policy and Human Services [Discharged]

Complete to 12-16-22

BRIEF SUMMARY: House Bill 5558 would amend the Public Health Code to do all of the following, and House Bill 5559 would make complementary changes to sentencing guidelines:

- Prohibit, with some exceptions, research from being knowingly performed on an organ, tissue, or cell taken from a dead embryo, fetus, or neonate obtained from an abortion.
- Eliminate an exception from a ban on compensation to a physician who performed an elective abortion and who transfers possession of or allows access to the embryo, fetus, or neonate to another unless that other person is performing research as currently allowed under the code.
- Eliminate a provision prohibiting a physician who performed an abortion from arranging the final disposition of fetal remains if the mother had provided written consent for research on the fetal remains.

FISCAL IMPACT: House Bill 5558 would have an indeterminate fiscal impact, and House Bill 5559 would have no direct fiscal impact, on state and local government. (See **Fiscal Information**, below, for a detailed discussion.)

THE APPARENT PROBLEM:

Currently, Michigan law allows a mother who has already consented to undergo an abortion to then consent to donate the embryo, fetus, or neonate for medical research. It is unlawful for the physician performing the abortion to profit or receive compensation for transferring possession of the fetal remains to any other person. Research on human cells and tissues is heavily regulated under state and federal law, regardless of source, and research projects using human cells and tissues seeking federal funding must meet rigid protocols.

In 2019, the Trump administration essentially ended funding from the National Institutes of Health (NIH) for medical research using human fetal tissue by implementing restrictions prohibiting the use of federal funds to purchase fetal tissue for use in government research laboratories and requiring applications for federal grants or contracts with the NIH that involved fetal tissue to undergo additional screening by a new ethics advisory board. In early 2022, the Biden administration reversed those restrictions, restoring guidelines in place before the 2019 ban. According to media reports, this will allow researchers to obtain fetal tissue from previously approved sources and will reinstate projects that had been approved prior to the restrictions.

However, for several years, stories have circulated of what some refer to as the “commoditization” of fetal tissues derived from abortions. In addition, the University of Pittsburgh has been under scrutiny for a recent human skin research study in which tissues derived from the scalps of aborted fetuses (but not intact scalps) were sewn onto mice to grow human skin for the purpose of researching treatments for MRSA (methicillin-resistant *Staphylococcus aureus*) infections.

Such reports of how fetal parts from abortions are collected and used in medical research, coupled with the recent lifting of restrictions regarding procurement and use of fetal cells and tissues, have revived concerns of some regarding the ethical and moral use of human tissues derived from abortions. Legislation has been offered to ban most medical research using human tissues derived from abortions, even if the woman consents.

THE CONTENT OF THE BILLS:

Research on a dead embryo, fetus, or neonate

Currently under the code, research may not knowingly be performed on a dead embryo, fetus, or neonate unless consent from the mother is first obtained. House Bill 5558 would, except as otherwise provided in section 27 of Article I of the state constitution,¹ prohibit research from being knowingly performed on an organ, tissue, or cell taken from a dead embryo, fetus, or neonate obtained from an ***abortion***. Under House Bill 5559, a violation would be a felony punishable by imprisonment for up to five years.

Abortion, as defined in the bill, would mean the intentional use of an instrument, drug, or other substance or device to terminate a woman’s pregnancy for a purpose other than any of the following:

- To increase the probability of a live birth.
- To preserve the life or health of the child after live birth.
- To preserve the life of the mother.
- To remove a fetus that has died as a result of natural causes, accidental trauma, or a criminal assault on the pregnant woman.

[As written, it would appear that a woman could consent to research being performed on the fetal remains, and presumably research could be performed on the fetal remains, if the fetus did not survive the procedures exempted from the definition of ***abortion*** or if the fetus had died from natural causes, accidental trauma, or a criminal assault.]

In addition, the term ***abortion*** would not include the use or prescription of a drug or device intended as a contraceptive.

Financial benefit pertaining to embryo, fetus, or neonate from elective abortion

Currently, with some exceptions, a physician or person associated with a physician who possesses a dead embryo, fetus, or neonate after performing an ***elective abortion*** is prohibited from knowingly financially benefitting from or receiving any type of compensation for allowing access to, or transferring possession and control of, the embryo, fetus, or neonate

¹ This section pertains to allowing human embryo and embryonic stem cell research to be conducted in Michigan as allowed under federal law and limits such research to human embryos created for the purpose of fertility treatment if those embryos meet certain conditions. <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-chap1.pdf>

(including the organs, tissues, or cells of the embryo, fetus, or neonate) to a person that was not involved with the elective abortion. One of the exceptions to this prohibition is if the other person is conducting research on the dead embryo, fetus, or neonate from an elected abortion in which the mother's consent for research had been obtained. The bill would remove this exception.

Elective abortion is defined similarly to *abortion*, as described above, except that an *elective abortion* also expressly does not include treatment on a woman who is experiencing a miscarriage or has been diagnosed with an ectopic pregnancy.

Disposal of fetal remains

The code provides that a physician who performs an abortion is required to arrange for the final disposition of the *fetal remains*, unless the mother has provided written consent for research on the fetal remains. The bill would remove that exception.

Fetal remains is defined in the code as a dead fetus or part of a dead fetus that has completed at least ten weeks of gestation or has reached the stage of development that, upon visual inspection of the fetus or part of the fetus, the head, torso, or extremities appear to be supported by skeletal or cartilaginous structures. The term does not include the umbilical cord or placenta.

MCL 333.2688, 333.2690, and 333.2836

House Bill 5559 would amend the sentencing guidelines provisions of the Code of Criminal Procedure to classify the violation described in HB 5558 as a class E felony against a person with a statutory maximum penalty of five years.

The bill is tie-barred to HB 5558, which means that it could not take effect unless HB 5558 were also enacted.

MCL 777.13k

Each bill would take effect 90 days after its enactment.

FISCAL INFORMATION:

House Bill 5558 would have an indeterminate fiscal impact on the state and on local units of government. To the extent provisions of the bill result in an increase in felony convictions, the bill would result in increased costs related to state prisons and state probation supervision. In fiscal year 2020, the average cost of prison incarceration in a state facility was roughly \$42,200 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$4,300 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue.

Any fiscal impact on the judiciary and local court systems would depend on how provisions of the bill affect court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts, due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases.

House Bill 5559 is a companion bill to HB 5558 and amends sentencing guidelines to include performing research on a dead embryo, fetus, or neonate obtained from an abortion as a felony. The bill would not have a direct fiscal impact on the state or on local units of government.

ARGUMENTS:

For:

Proponents of the bills maintain that the proposed amendments are not anti-abortion and would not impact access to legal abortions in the state. What the bills would do, according to committee testimony, is ban research on aborted fetuses and limit a mother's ability to donate a fetus for research. The bills would not stop lawful abortions from being performed, but they would prevent the practice of harvesting the cells, tissues, and organs of aborted fetuses by what some believe to be inhumane methods and then using those cells, tissues, and organs in what some consider to be unethical and immoral research. Medical research could still be conducted using other scientific methods in use and those under development (such as gene-editing using CRISPR), established embryonic cell lines dating from the 1960s and 1970s, umbilical cord blood, adult stem cells, and post-mortem tissues. It is believed that using alternative methods can still reach the same goals of developing cures and treatments without subjecting aborted embryos and fetuses to indignities and disrespect.

Against:

Arguments offered against the bills include the following:

- The bills would essentially stop almost all medical research using fetal cells derived from fetuses, embryos, or neonates that meet the definition of *abortion* in HB 5558 from being conducted in the state whether the abortion was performed in Michigan or elsewhere and regardless of gestational age of the fetus or embryo. Elective abortions are typically performed in the first trimester; for example, elective abortions prior to 12 weeks accounted for 90% of procedures performed in 2021, according to Michigan Department of Health and Human Services data. (The exception allowed under the state constitution pertains to embryos created for in-vitro insemination that are no longer viable for implantation.)
- Donating fetal tissue for medical research is not linked to increasing abortions, as it is unlikely to be a reason for a woman to choose an abortion, and thus will not decrease the numbers of abortions.
- A strong legal and ethical framework around the donation of fetal tissue already exists. For example, state and federal law require that consent to donate can only be discussed and given after consent to undergo an abortion has been provided.
- Current state and federal law already prohibit a physician performing an abortion from financial benefit or profit for donating human tissue, although some compensation for reasonable payments for certain costs such as preservation of tissues, transportation, etc., may be allowed.
- The bills would prevent research that could lead to cures and more effective medical treatments for a wide range of diseases and medical conditions, as fetal cells have unique properties that adult cells do not have. For example, fetal cells have greater value to research as they divide, grow, and adapt to new environments more rapidly than adult cells, and adult cells have limited use due to biological processes such as those related to aging. According to a researcher testifying before a Pennsylvania legislative committee earlier in 2022, in response to a question regarding the number

of treatments or cures created from fetal cells over the past 15 years, “The number of drugs, treatments, genetic tests that have at some point been touched by fetal cells is nearly the entirety of medicine.”²

Against:

In her veto message dated July 21, 2022, Governor Whitmer stated that she did not approve the bills because they “are intended to politicize scientific, lifesaving research on conditions such as Parkinson’s, Alzheimer’s, ALS, leukemia, and more” and they “are not rooted in evidence-based policymaking.” The message included an encouragement to the legislature to “work together to support women and doctors instead of introducing legislation that endangers people” and included a reference to a recent bill that would “put nurses and doctors in jail for providing abortion care.”

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

² Presentation on Pro-Life/Abortion, Part IV-Fetal Experimentation, Health Committee, Commonwealth of Pennsylvania, May 4, 2021, page 52. https://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2021_0086T.pdf