



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 474 (Substitute S-3 as passed by the Senate)
Senate Bill 475 (Substitute S-1 as passed by the Senate)
Senate Bill 476 (Substitute S-1 as passed by the Senate)
Senate Bill 477 (Substitute S-1 as passed by the Senate)
Senate Bill 593 (as passed by the Senate)
Sponsor: Senator Sarah Anthony (S.B. 474)
Senator Stephanie Chang (S.B. 475)
Senator Erika Geiss (S.B. 476 & S.B. 593)
Senator Mary Cavanagh (S.B. 477)
Committee: Housing and Human Services

Date Completed: 10-30-23

INTRODUCTION

The bills would amend, repeal, or codify provisions related to abortion in various acts. Senate Bill 474 (S-3) would repeal several sections of the Public Health Code governing pre-abortion screenings and post-abortion reporting requirements, among others. It also would delete rulemaking requirements of the Department of Health and Human Services (DHHS) related to freestanding surgical outpatient facilities providing abortions. Senate Bill 475 (S-1) would delete sentencing guidelines related to felonies for violations of some of those repealed sections, among other felony violations. Senate Bill 477 (S-1) would delete a provision prohibiting a pregnant and parenting student services office at an institution of higher education from providing referrals for abortion services. Senate Bill 593 would largely codify Section 28 of Article I of the State Constitution of 1963 (see **BACKGROUND**).

BRIEF RATIONALE

The passage of Proposal 22-3, which enshrined the individual right to reproductive freedom in the Michigan Constitution, invalidated State laws that conflicted with the Proposal's amendments. According to testimony before the Senate Committee on Housing and Human Services, there are still barriers to reproductive healthcare that exist, and it has been suggested that various State laws be amended or repealed to agree with the Proposal's provisions.

BRIEF FISCAL IMPACT

The bills likely would have an indeterminate, minor fiscal impact on State government. The repeal of the certificate of need exception under Senate Bill 474 (S-3) could result in increased fee revenue and decreased administrative costs for the DHHS. Senate Bill 593 could result in a potential increase in litigation costs for the Attorney General but also could increase civil filing fee revenue that supports various State departments. It also could result in fewer arrests and convictions, which would reduce costs for State and local governments in relation to law enforcement, courts, and corrections facilities. Local health departments could lose funding due to the loss of grant award priority, but the fiscal impact on any given unit likely would be of moderate magnitude.

MCL 333.2690 et al. (S.B. 474)
762.10d et al. (S.B. 475)
333.1071 (S.B. 476)
390.1595 (S.B. 477)

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CONTENT

Senate Bill 474 (S-3) would amend the Public Health Code to do the following:

- Replace the definition of "elective abortion" with the definition of "abortion" within provisions related to the disposal of fetal remains, among other provisions.
- Delete a prohibition against the DHHS awarding ultrasound equipment grant money if the equipment were to be used in assisting an elective abortion.
- Delete various rule promulgation requirements for rules related to abortions.

Additionally, the bill would repeal Sections 2835, 2836, 2837, 17014, 17015, 17015a, 17017, 17515, 17517, and 22224.

Senate Bill 475 (S-1) would amend the Code of Criminal Procedure to delete sentencing guidelines for violations of disclosing confidential information regarding abortion and performing an abortion resulting in death.

Senate Bill 476 (S-1) would amend the Born Alive Infant Protection Act to modify the definition of "abortion".

Senate Bill 477 (S-1) would amend the Pregnant and Parenting Student Services Act to delete a prohibition against a pregnant and parenting student services office at an institution of higher education from providing referrals for abortion services.

Senate Bill 593 would create a new Act to do the following:

- Codify Section 28 of Article I of the State Constitution of 1963.
- Prohibit a governmental entity from violating Section 28 of Article I of the State Constitution of 1963.
- Specify that an individual or entity could bring a civil action for injunctive relief, damages, or any other appropriate remedy for a violation of Section 28 or Article I of the State Constitution of 1963.
- Repeal Section 323 of the Michigan Penal Code, which specifies that any person who administers to a woman pregnant with a quick child any medicine, drugs, or instrument with the intention to terminate the pregnancy could be charged with manslaughter.
- Repeal the Legal Birth Definition Act which defines legal birth and legal personhood.
- Repeal Public Act 360 of 2002, which prioritizes the allocation of funding through grants or contracts for educational and other programs and services pertaining to family planning and reproductive health services.
- Repeal the Abortion Insurance Opt-Out Act, which requires the purchase of coverage for elective abortion in a health care plan to be an optional rider only with an additional premium and requires notice to employees for whom elective abortion coverage is purchased by their employer.

Senate Bill 475 is tie-barred to Senate Bill 474.

Senate Bill 474 (S-3)

Financial Benefit from Fetal Remains

Generally, the Public Health Code prohibits a physician or a person, such as an employee of a physician or a private physician practice, from knowingly financially benefitting from performing an elective abortion.

The Code defines "elective abortion" as the intentional use of an instrument, drug, or other substance or device to terminate a woman's pregnancy for a purpose other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a fetus that has died because of natural causes, accidental trauma, or a criminal assault on the pregnant woman. Generally, the term does not include the use of a prescription drug, the use of an instrument to terminate a woman's pregnancy for the safety of the woman, or treatment for a miscarriage. The bill would delete this definition and replace references to "elective abortion" in the provision above to "abortion" as defined below.

Under the bill, "abortion" would mean a medical treatment that is intended to terminate a diagnosable intrauterine pregnancy for a purpose other than to produce a live birth. The term would not include the use or prescription of a drug or device that prevented pregnancy or a medical treatment used to remove a dead fetus or embryo whose death was the result of a spontaneous abortion.

Ultrasound Equipment Grants and Abortions

The Code requires the DHHS to establish and administer a grant program to provide grants for the purchase of ultrasound equipment. The Code prohibits the DHHS from awarding a grant if the equipment would be used to assist in the performance of an elective abortion. The bill would delete this prohibited use of grant-awarded ultrasound equipment.

Repealed Sections

Section 17014 of the Code provides Legislative findings related to the enactment of Sections 17015 and 17515. Section 17015 prohibits a physician from performing an abortion otherwise permitted without the patient's informed written consent. Section 17015a generally requires a physician to orally screen a patient for coercion to abort a pregnancy. Section 17017 previously prohibited a physician from prescribing an abortion without personally performing a physical examination on the patient. Sections 17515 and 17517 require a physician to comply with the provisions described above before performing an abortion.

Section 2835 of the Code requires a physician who performs an abortion to report such to the DHHS and prescribes the information that the report must include, such as the age of the individual at the time of the abortion, the individual's race, and the individual's general residence; however, the report cannot contain identifying information of the individual. Section 2836 of the Code generally requires all remains resulting from abortions to be disposed of by interment or cremation and allows the disposal to occur without the supervision of a funeral director. Section 2837 of the Code requires a written report to the DHHS for each patient who comes into a physician's care and who suffers a physical complication or death resulting from an abortion. Section 22224 of the Code specifies that a health facility required to be licensed as a freestanding surgical outpatient facility due to performance of abortions at the facility does not need to obtain a certificate of need to be granted a license.

The bill would repeal all these sections. In addition, the bill would delete all references to these sections in the provisions described below.

Disposal of Fetal Remains

The Code requires a funeral director or person assuming responsibility of a dead fetus to obtain from the parents an authorization for final disposition before the disposition of the dead fetus unless the mother has provided written consent for research on the dead fetus and except as provided by Section 2836.

The Code specifies that a person who violates the requirement to dispose of fetal remains resulting from an abortion as prescribed by Section 2836 or by failing to obtain the proper authorization for final disposition of a dead body is responsible for a State civil infraction and may be ordered to pay a fine of not more than \$1,000.

Grounds for Disciplinary Subcommittee Action

Under the Code, the Department of Licensing and Regulatory Affairs (LARA) must investigate any allegation that one or more grounds for disciplinary subcommittee action exist against a licensed health professional. Among other grounds, the disciplinary subcommittee must proceed on any of the following grounds:

- A violation of Section 17015.
- A violation of Section 17015a.
- A violation of Section 17017.
- A violation of Section 17515
- A violation of Section 17517.

After finding the existence of one or more grounds for disciplinary subcommittee action as described above, the Code allows the subcommittee to impose sanctions, such as licensure revocation, denial, and victim restitution.

The bill would delete these grounds for disciplinary subcommittee action and their sanctions.

Departmental Rules

The Code requires the DHHS to promulgate rules to differentiate a freestanding surgical outpatient facility from a private office of a physician, dentist, podiatrist, or other health professional. In those rules it must specify that a facility including a private practice office must be licensed under the Code as a freestanding surgical outpatient facility if that facility performs 120 or more surgical abortions per year and publicly advertises outpatient abortion services. The DHHS must promulgate rules that in effect republish other specified rules, but the rules must set standards for a freestanding surgical outpatient facility or private practice office that performs 120 or more surgical abortions per year and that publicly advertises outpatient abortion services. The DHHS must assure that the standards are consistent with the most recent United States Supreme Court decisions regarding state regulation of abortions. The Code allows the DHHS to modify some of these rules for specified facilities.

The Code also requires the DHHS to provide to LARA by January 15 of each year specified information concerning abortions in the State, such as the name and location of facilities performing abortions, the total number of abortions performed in that calendar year, and whether a facility performing abortions publicly advertises its services.

The bill would delete all the provisions described above.

Senate Bill 475 (S-1)

The Code of Criminal Procedure prescribes the following sentencing guidelines for felony convictions for violations of Section 2835(9) of the Public Health Code and Section 323 of the Michigan Penal Code:

Violation	Category	Class	Statutory Max
Disclosing confidential information – abortion (333.2835(9))	Public Trust	C	3
Abortion resulting in death (750.323)	Person	C	15

The bill would delete these sentencing guidelines.

Senate Bill 476 (S-1)

The Born Alive Infant Protection Act requires that, if an abortion results in a live birth and the mother expresses a desire not to assume custody, the newborn must be considered surrendered to an emergency service provider. The Act defines "abortion" as that term is defined in Section 17015 of the Public Health Code, which Senate Bill 474 would repeal.

Instead, under the bill, "abortion" would mean a medical treatment that is intended to terminate a diagnosable intrauterine pregnancy for a purpose other than to produce a live birth. The term would not include the use or prescription of a drug or device that prevented pregnancy or a medical treatment used to remove a dead fetus or embryo whose death was the result of a spontaneous abortion.

Senate Bill 477 (S-1)

Generally, the Pregnant and Parenting Student Services Act allows an institution of higher education to establish a pregnant and parenting student services office that must meet specified requirements, such as identifying public and private service providers qualified to provide health and parenting services and providing referrals on prenatal care, foster care, and family planning. The Act prohibits an office from providing referrals for abortion services. The bill would delete this prohibition.

BACKGROUND

During the 2022 election cycle, a group called Reproductive Freedom for All circulated petitions and collected enough signatures for a proposed constitutional amendment to be placed on the 2022 November general election ballot. The amendment establishes an individual right to reproductive freedom, including the right to make and carry out all decisions about pregnancy, such as prenatal care, childbirth, postpartum care, contraception, sterilization, abortion, miscarriage management, and infertility; allows the State to prohibit abortion after fetal viability unless needed to protect a patient's life or physical or mental health; prohibits State discrimination in enforcement of the right; prohibits the prosecution of an individual, or a person helping a pregnant individual, for exercising rights established by the amendment; and invalidates State laws that conflict with the proposed amendment.¹ Proposal 22-3 passed with 56.66% of electors in favor of the proposal.²

FISCAL IMPACT

Senate Bills 474 (S-3) through 477 (S-1) would not have a significant fiscal impact LARA. The Department conducts investigations and may hold hearings in relation to licensee violations such as those proposed to be eliminated under the bill. As a result of the changes, LARA could experience a reduction in the number of cases that require investigation or disciplinary action; however, this reduction would be unlikely to have a significant impact on LARA's costs or staffing levels.

Senate Bill 474 (S-3) could result in a positive fiscal impact on the DHHS, although the impact would likely be minimal. The bill would repeal MCL 333.22224, which created the certificate of need exception for freestanding surgical outpatient facilities that provide 120 or more

¹ "November 2022 Ballot Proposal 22-3", Senate Fiscal Agency.

² "2022 Michigan Election Results", The Office of Secretary of State Jocelyn Benson. Available at: https://mielections.us/election/results/2022GEN_CENR.html. Retrieved on 2-28-2023.

abortion procedures towards the minimum number of procedures required to obtain a certificate of need. Repealing the exception could increase the number of freestanding surgical outpatient facilities that meet the minimum number of procedures. An increase in applications would result in an increase in certificate of need fee revenue for the State. The Fiscal Year 2023-2024 DHHS budget includes \$3.1 million of certificate of need fee revenue. Additionally, the DHHS could see a minor positive fiscal impact because of the bill from reduced information sharing and reporting requirements which would reduce the administrative burden on the DHHS.

Senate Bill 593 would have no fiscal impact on the DHHS but could have a negative fiscal impact on local units of government. The Allocation of Funds to Family Planning Services Act requires the DHHS to give priority for the allocation of funds for family planning or reproductive health services to entities that perform or allow the performance of elective abortions, refer a pregnant woman for an elective abortion, or maintain a policy that includes elective abortion as a part of the continuum of family planning or reproductive health services. This prioritization has generally made it harder for non-State entities that provide elective abortions or abortion services to be awarded grants over local health departments. By repealing this Act, local health departments would no longer be given priority and the bill could potentially result in a reduction in awarded grant funding to local health departments.

The bill would have a minor fiscal impact on the Department of Attorney General, which could see an increase in litigation to pursue actions under Section 28, Article I of the State Constitution of 1963. Likewise, civil filing fee revenue could result in minor increases for the Justice System Fund, which supports a multitude of Departments within State government. Any fiscal impact is expected to be minor. While the bill does affirmatively state that a person, or the Attorney General (AG), can pursue a civil action for a violation of Section 28, Article I of the State Constitution of 1963, this was already true, regardless of the language of the bill. Any person, entity, or the AG can pursue a civil action for a violation of constitutional rights. As the bill would not add or change this status, any fiscal impact is expected to be minor.

The repeal of certain fines and felonies could have a positive fiscal impact on the State and local governments. The elimination of certain felony arrests and convictions under the proposed bill could decrease resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities; however, it is unknown how many people would no longer be prosecuted with the repeal of sections as required under the bill. The potential savings would include the average cost to State government for felony probation supervision at approximately \$4,200 per probationer per year. Additional savings could be realized from no longer having to house a violator at an average annual cost of \$45,700. Savings from the per diem rates, ranging from \$98 to \$192 per day, depending on the security level of the facility, also could be realized. The repealed sections also could decrease fine revenue which would decrease funding to public libraries.

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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.