

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 258
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Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Social convention in the United States dictates that humans be shown the respect of a proper and decent disposition upon death. In fact, this decency is guaranteed by state law even for those without the means to procure a proper burial or cremation. However, current state law makes no provision for the proper disposition of an unborn human. Today, the remains of unborn humans may be disposed of through a garbage disposal draining into sewage lines or by placement into a sanitary landfill. It has also been revealed that some unborn humans have been donated by medical facilities for uses such as medical research and cosmetics. Interested parties contend that unborn humans have inadvertently been excluded from the right to a proper disposition. In an effort to remedy this exclusion, last session the legislature passed H.B. 635 (84R) - which passed the Texas Senate 31-0; the law requires a hospital to release the remains of an unintended, intrauterine fetal death upon the request of a parent of an unborn child. Despite this change to law, the victims of intentional abortion are not afforded the same chance at a decent disposition.

C.S.S.B. 258 changes the requirements on the manner in which medical facilities dispose of embryonic and fetal tissue remains that result from medical care provided to a pregnant woman. Under this bill, medical facilities must inter, cremate, incinerate, or steam disinfect and inter the remains of an unborn human that does not warrant a death certificate. These requirements would not apply to remains that are expelled outside of a health care facility, sent to a research laboratory, sent to a forensic laboratory, or legally donated for research. Medical providers that violate these requirements may have their facility license suspended or revoked by the Department of State Health Services (DSHS).

C.S.S.B. 258 also creates a pathway for DSHS to obtain, on behalf of the public, injunctive relief from a facility it determines is in violation of these requirements. Any facility that violates these requirements would be subject to a \$1,000 penalty for every day it is out of compliance. C.S.S.B. 258 gives mothers, by way of the informed consent process, the opportunity to choose the method of disposition for their unborn child. Additionally, a mother may defer to the facility's protocol on disposition or may opt to make private arrangements at her own expense. C.S.S.B. 258 will allow charities to partner with DSHS to provide financial assistance to cover any potential costs associated with dispositions. The act would take effect on September 1, 2017, but would not implement disposition requirements until February 1, 2018.

Key Points:

- Our state can no longer abide the practice of placing unborn babies down garbage disposals or throwing them out with the daily trash.
- C.S.S.B. 258 restores some modicum of human decency and dignity to the most innocent among us.
- This legislation, in no way, will be an impediment to a pregnant woman procuring an abortion.
- At least one prominent statewide charity has already voiced its commitment to facilitating these dispositions in an effort to offset costs.

C.S.S.B. 258 amends current law relating to the disposition of embryonic and fetal tissue remains and imposes a civil penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 6 (Section 171.0161, Health and Safety Code), SECTION 7 (Section 697.005, Health and Safety Code), and SECTION 8 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 171.012(a), Health and Safety Code, as follows:

(a) Provides that consent to an abortion is voluntary and informed only if:

(1)-(3) makes no changes to these subdivisions;

(4) the physician who is to perform the abortion or the physician's agent:

(A) provides the pregnant woman with a disposition of remains form described by Section 171.0161, and;

(B) informs the pregnant woman that the form:

(i) is provided by the Department of State Health Services (DSHS);

(ii) is accessible on DSHS's Internet website;

(iii) describes the options for the disposition of the embryonic and fetal tissue remains; and

(iv) must be completed by the pregnant woman and received by the physician before the abortion is performed;

(5)-(6) redesignates existing Subdivisions (4) and (5) as Subdivisions (5) and (6). Makes conforming and nonsubstantive changes;

(7) redesignates existing Subdivision (6) as Subdivision (7) and includes a copy of the completed disposition of remains form required by Subdivision (4) among certain documents the physician who is to perform the abortion must receive before the abortion is performed; and

(8) redesignates existing Subdivision (7) as Subdivision (8) and makes no further changes.

SECTION 2. Amends Section 171.0121, Health and Safety Code, as follows:

Sec. 171.0121. MEDICAL RECORD. (a) Requires a copy of both the completed disposition of remains form required under Section 171.012(a)(4) and the signed, written certification received by the physician under Section 171.012(a)(7), rather than Section 171.012(a)(6), to be placed in the pregnant woman's medical records before the abortion begins.

(b) Requires a copy of the signed, written certification required under Sections 171.012(a)(6) and (7), rather than Sections 171.012(a)(5) and (6), to be retained by the facility where the abortion is performed for a certain time.

SECTION 3. Amends Sections 171.0122(b), (c), and (d), Health and Safety Code, as follows:

(b) Authorizes a pregnant woman to choose not to view the sonogram images required to be provided to and reviewed with the pregnant woman under Section 171.012(a)(5), rather than Section 171.012(a)(4).

(c) Authorizes a pregnant woman to choose not to hear the heart auscultation required to be provided to and reviewed with the pregnant woman under Section 171.012(a)(5), rather than Section 171.012(a)(4).

(d) Authorizes a pregnant woman to choose not to receive the verbal explanation of the results of the sonogram images under Section 171.012(a)(5)(C), rather than Section 171.012(a)(4)(C), under certain circumstances.

SECTION 4. Amends the heading to Section 171.013, Health and Safety Code, to read as follows:

Sec. 171.013. DISTRIBUTION OF STATE MATERIALS AND FORM.

SECTION 5. Amends Section 171.013(a), Health and Safety Code, as follows:

(a) Requires the physician or the physician's agent to furnish copies of the materials described by Section 171.014 (Informational Materials) and the form described by Section 171.0161 to the pregnant woman at least 24 hours before the abortion is to be performed and direct the pregnant woman to the website required to be published under Section 171.014(e) (relating to a website to display certain information). Makes conforming changes.

SECTION 6. Amends Subchapter B, Chapter 171, Health and Safety Code, by adding Section 171.0161, as follows:

Sec. 171.0161. DISPOSITION OF EMBRYONIC AND FETAL TISSUE REMAINS: FORM; NONPROFIT ORGANIZATION ASSISTANCE REGISTRY; RULES. (a) Authorizes a pregnant woman to decide to inter or cremate the embryonic and fetal tissue remains of an unborn child who is aborted.

(b) Requires DSHS to develop and maintain a form for a pregnant woman to select the method of disposition of the embryonic and fetal tissue remains.

(c) Requires the form to include:

(1) burial and cremation as methods of disposition of the embryonic and fetal tissue remains of an unborn child;

(2) a statement that the pregnant woman may elect to have the abortion provider dispose of the embryonic and fetal tissue remains in accordance with Section 697.005; and

(3) a statement that the pregnant woman may privately dispose of the embryonic and fetal tissue remains of an unborn child in a manner that complies with Section 697.005 but may be held financially responsible for the abortion provider's reasonable costs of preparing the remains for transport.

(d) Requires the form to be: in English and Spanish; easily comprehensible; and in a large, clearly legible typeface.

(e) Requires DSHS to post the form on the DSHS website.

(f) Requires DSHS to:

(1) establish and maintain a registry of:

(A) participating funeral homes and cemeteries willing to provide free common burial or low-cost private burial; and

(B) private nonprofit organizations that register with DSHS to provide financial assistance for the costs associated with burial or cremation of the embryonic and fetal tissue remains of an unborn child; and

(2) make the registry information available on request to certain persons.

(g) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules to implement this section.

SECTION 7. Amends Subtitle B, Title 8, Health and Safety Code, by adding Chapter 697, as follows:

CHAPTER 697. DISPOSITION OF EMBRYONIC AND FETAL TISSUE REMAINS

Sec. 697.001. PURPOSE. Provides that the purpose of this chapter is to express the state's profound respect for the life of the unborn by providing for a dignified final disposition of embryonic and fetal tissue remains.

Sec. 697.002. DEFINITIONS. Defines "cremation," "department," "embryonic and fetal tissue remains," "executive commissioner," "incineration," "interment," and "steam disinfection."

Sec. 697.003. APPLICABILITY OF CHAPTER. Provides that this chapter does not apply to certain embryonic and fetal tissue remains.

Sec. 697.004. APPLICABILITY OF OTHER LAW. Provides that embryonic and fetal tissue remains are not pathological waste. Provides that except as otherwise provided by this chapter, Chapters 711 (General Provisions Relating to Cemeteries) and 716 (Crematories) of this code and Chapter 651 (Cemetery and Crematory Services, Funeral Directing, and Embalming), Occupations Code, do not apply to the disposition of embryonic and fetal tissue remains.

Sec. 697.005. DISPOSITION OF EMBRYONIC AND FETAL TISSUE REMAINS. (a) Requires a health care facility in this state that provides health or medical care to a pregnant woman to dispose of embryonic and fetal tissue remains related to that care by interment, cremation or incineration, or steam disinfection followed by interment.

(b) Authorizes the ashes resulting from the cremation or incineration of embryonic and fetal tissue remains to be interred or scattered in any manner as authorized by law for human remains and prohibits them from being placed in a landfill.

(c) Authorizes a health care facility responsible for disposing of embryonic and fetal tissue remains to coordinate with an entity in the registry established under Section 171.0161 in an effort to offset the cost associated with burial or cremation of the embryonic and fetal tissue remains of an unborn child.

(d) Requires the executive commissioner to adopt rules to implement this section, including rules relating to certain matters.

Sec. 697.006. SUSPENSION OR REVOCATION OF LICENSE. Authorizes DSHS to suspend or revoke the license of a health care facility that violates Section 697.005 or a rule adopted under this chapter.

Sec. 697.007. SUIT BY ATTORNEY GENERAL. (a) Authorizes the attorney general, at the request of DSHS, to file suit against a health care facility that violates Section 697.005 or a rule adopted under this chapter for certain injunctive relief and civil penalties.

(b) Requires a suit filed under this section to be filed in a district court in Travis County or the county in which the health care facility described by Subsection (a) is located.

Sec. 697.008. INJUNCTIVE RELIEF. Authorizes the attorney general to obtain injunctive relief in a suit filed under Section 697.007. Provides that injunctive relief provided by this section is in addition to any other action, proceeding, or remedy authorized by law. Provides that it is not necessary to allege or prove in a suit filed under Section 697.007 seeking injunctive relief that an adequate remedy at law does not exist or that substantial or irreparable harm would result from the continued violation.

Sec. 697.009. CIVIL PENALTY. (a) Provides that a health care facility that violates Section 697.005 or a rule adopted under this chapter is liable for a civil penalty in an amount of \$1,000 for each violation. Provides that each day of a continuing violation constitutes a separate violation.

(b) Authorizes the attorney general to file suit under Section 697.007 to collect the civil penalty. Authorizes the attorney general to recover certain reasonable expenses.

SECTION 8. Requires the executive commissioner to adopt the rules required to implement this Act and DSHS to adopt the forms and procedures necessary to implement this Act not later than December 1, 2017.

SECTION 9. (a) Makes application of Chapter 171, Health and Safety Code, as amended by this Act, prospective to February 1, 2018.

(b) Makes application of Chapter 697, Health and Safety Code, as added by this Act, prospective to February 1, 2018.

SECTION 10. Effective date: September 1, 2017.