

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 21, 2017

TO: Honorable Dan Patrick, Lieutenant Governor, Senate

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB8 by Schwertner (Relating to certain prohibited abortions and the treatment and disposition of a human fetus, human fetal tissue, and embryonic and fetal tissue remains; creating a civil cause of action; imposing a civil penalty; creating criminal offenses.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would prohibit certain partial-birth abortions, would classify the violation of that prohibition as a state jail felony, and would authorize civil action against a physician who conducted the prohibited procedure. The bill would allow a physician to seek a hearing before the Texas Medical Board to determine medical necessity of the procedure. The bill would add partial-birth abortions to the list of prohibited actions applicable to physicians or applicants for a license to practice medicine, making them subject to disciplinary action by the Texas Medical Board or the revoking of their license. The bill would prohibit certain dismemberment abortions and would establish a criminal penalty (state jail felony) for a violation of the prohibition. The bill would add dismemberment abortions to the list of prohibited actions applicable to physicians or applicants for a license to practice medicine, making them subject to disciplinary action by the Texas Medical Board or the revoking of their license. The bill would establish requirements governing the donation of human fetal tissue and would create a Class A misdemeanor offense for committing certain acts related to fetal tissue donation. The Department of State Health Services (DSHS) would be required to develop a standardized consent form for the donation of human fetal tissue. The bill would require certain facilities to submit annual reports to DSHS regarding fetal tissue donations. The bill would prohibit the sale or trade of human fetal tissue and would classify the knowing violation of that prohibition as a state jail felony. The bill would authorize the Attorney General to assist in certain investigations and prosecute certain offenses related to donation or trade/sale of fetal tissue. The bill would require health care facilities to dispose of fetal remains following certain criteria. DSHS would be required to create and maintain a registry of certain entities that can assist with costs associated with burial or cremation of fetal remains. Additionally, DSHS would be required to make the registry information available to certain parties on request. DSHS would be required to develop a grant program that uses private donations to provide financial assistance for the costs associated with fetal remains disposition by October 1, 2017 and begin to award grants by February 1, 2018. DSHS would be permitted to suspend or revoke the licenses of health care facilities that do not comply with fetal remains disposition criteria. The non-complying facility would be liable for a civil penalty for each violation and, at the request of DSHS, the Attorney General would be allowed to file a suit to collect the penalty. The bill would amend various sections of the Health and Safety Code and the Family Code to update the definition of abortion. The bill would amend Chapter 245 of the Health and Safety Code and require certain physicians that perform abortions to submit monthly reports to DSHS,

rather than on an annual basis. DSHS would be required to establish an electronic reporting system for report submissions. DSHS would be required to notify the Texas Medical Board of any physicians that violate the reporting requirement. DSHS would be required to publish a monthly report of aggregated data from the reports on its Internet website. The executive commissioner of the Health and Human Services Commission (HHSC) would be required to adopt any rules necessary to implement certain provisions of the bill by December 1, 2017.

According to DSHS, implementing and maintaining the grant program will require additional staffing. It is assumed the cost of providing grants under the grant program would be dependent on the level of donations received, which cannot be estimated at this time; however, it is assumed there would be no net fiscal impact as all donations would be distributed as grants. According to DSHS, technology costs will be required to create the electronic reporting system for physicians report submissions. According to DSHS, additional staff will be required to validate data with abortion providers on a monthly basis and to prepare the monthly reports to be published on their Internet website. It is assumed that these costs can be absorbed by the agency.

According to HHSC, the University of Texas System, the Office of Court Administration, the Texas Medical Board, the Texas Department of Criminal Justice, and the Office of Attorney General, the provisions of the bill can be implemented within existing resources. This analysis assumes the provisions of the bill addressing felony sanctions for criminal offenses would not result in a significant impact on state correctional agencies.

Local Government Impact

According to the Texas Association of Counties, the fiscal impact to counties to implement the provisions of the bill would not be significant.

Under the provisions of the bill, an offense would be a Class A misdemeanor, punishable by a fine of not more than \$10,000. Costs associated with enforcement and prosecution could likely be absorbed within existing resources. Revenue gain from fines imposed and collected is not anticipated to have a significant fiscal implication.

Certain hospitals that are units of local government reported via survey by the Texas Hospital Association (THA) estimates of costs associated with implementing the provisions of the bill: In the survey, Texas hospital number 1 indicated 1680 fetal remains specimens per year. For each burial, costs range between \$130-\$390 depending on which funeral home is used. Thus, THA reported the burial costs per year per hospital range between \$218,400-\$655,200.

In the same survey, THA indicated that Texas hospital number 2 reported that their existing funeral home contract specifies a cost of \$1,060 for cremation and \$1,400 for burial. In the last 12 months, hospital number 2 handled 100 fetuses of less than 350 grams not including specimens of fetal tissue, which are not currently tracked.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 503 Texas Medical Board, 529 Health and Human Services Commission, 537 State Health Services, Department of, 696 Department of Criminal Justice, 720 The University of Texas System Administration

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