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BILL ANALYSIS

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House Bill 4798 (Substitute H-1 as passed by the House)
House Bill 4799 (Substitute H-1 as passed by the House)
House Bill 5134 (Substitute H-1 as passed by the House)
House Bill 5181 (as passed by the House)
House Bill 5182 (Substitute H-1 as passed by the House)
Sponsor: Representative Bruce Rendon (H.B. 4798)
Representative Paul Opsommer (H.B. 4799)
Representative Nancy E. Jenkins (H.B. 5134)
Representative Margaret E. O'Brien (H.B. 5181 & 5182)
House Committee: Families, Children, and Seniors
Senate Committee: Judiciary

Date Completed: 4-24-12

CONTENT

House Bill 4799 (H-1) would amend the Michigan Penal Code to prohibit and prescribe criminal penalties for both of the following:

- Committing, attempting, or threatening stalking, aggravated stalking, or an assaultive crime with the intent to coerce a pregnant female to have an abortion.
- Taking other coercive actions after being informed by a pregnant female that she did not want to obtain an abortion.

House Bill 4798 (H-1) would amend the sentencing guidelines in the Code of Criminal Procedure to include coercing a female to have an abortion against her will.

House Bills 5134 (H-1) and 5182 (H-1) would amend the Public Health Code to do the following:

- Require a physician or qualified person assisting a physician to screen a patient orally regarding coercion to abort at the time she first presented at a facility for an abortion.

- Require a physician or assistant to take certain actions if the patient disclosed that she was the victim of domestic violence or coercion to abort.
- Require a facility in which abortions were performed to post and make available information regarding violence against women and coercion to abort.
- Require the Department of Community Health (DCH) to develop, draft, and print or make available information regarding domestic violence and coercion to abort.
- Require the DCH to develop, draft, and print screening and training tools regarding coercion to abort.
- Require a physician or assistant to give an abortion patient a physical copy of the prescreening summary on prevention of coercion to abort, at least 24 hours before the physician performed the abortion.
- Require a physician to confirm with the patient that the coercion-to-abort screening was performed, before she signed an acknowledgment and consent form.

House Bill 5181 would amend the Revised Judicature Act to allow an

action to be brought by or on behalf of an individual injured by an act prohibited by House Bill 4799 (H-1).

House Bill 4798 (H-1) is tie-barred to House Bill 4799. House Bill 5134 (H-1) is tie-barred to House Bills 4798, 4799, 5182, and 5183 (which would amend the Income Tax Act to eliminate the sunset on a venture investment credit). House Bills 5181 and 5182 (H-1) are tie-barred to each other and House Bills 4798, 4799, and 5134.

House Bills 5134 (H-1), 5181, and 5182 (H-1) would take effect on October 1, 2012.

House Bills 4798 (H-1) and 4799 (H-1) would take effect on January 1, 2013.

House Bill 4799 (H-1)

Under the bill, a person having actual knowledge that a female was pregnant could not commit, attempt to commit, or maliciously threaten to commit stalking, aggravated stalking, or an assaultive crime against her or any other person with the intent to coerce the pregnant female to have an abortion against her will. A violation would be punishable in the same manner as for the underlying offense committed, attempted, or maliciously threatened.

("Maliciously threaten" would mean to make two or more statements or to engage in a course of conduct that would cause a reasonable person to believe that the individual is likely to act in accordance with the statements or the course of conduct. The term would not include constitutionally protected speech or any generalized statement regarding a lawful pregnancy option. "Course of conduct" would refer to a series of two or more separate noncontinuous acts evidencing a continuity of purpose.)

Also, under the bill, after being informed by a pregnant female that she did not want to obtain an abortion, a person could not do any of the following with the intent to coerce her to have an abortion against her will:

- Discontinue, attempt to discontinue, or maliciously threaten to discontinue support that the person had a legal responsibility to provide, or reduce that support to a level below his or her legal responsibility.

- Withdraw, attempt to withdraw, or maliciously threaten to withdraw from a contract or agreement or otherwise violate the terms of a contract or agreement, having previously entered into a contract or other legally binding agreement to which the pregnant female was a party or beneficiary.
- Discharge or threaten to discharge her from employment.

For purposes of this prohibition, information that a pregnant female did not want to obtain an abortion would include any statement or act, including inaction, that would clearly demonstrate to a reasonable person that she was unwilling to comply with a request or demand to have an abortion.

This offense would be a misdemeanor punishable by a maximum fine of \$5,000. If the offender were the father or putative father of the unborn child and at least 18 years old at the time of the violation, and the pregnant female were under 18 at the time, the maximum fine would be \$10,000. ("Unborn child" would mean a live human being in utero, regardless of gestational stage of development.)

The bill would not prohibit an offender from being charged with, convicted of, or punished for any other violation of law committed while violating the bill. The court could order a term of imprisonment imposed under the bill to be served consecutively to any other term of imprisonment imposed for a violation of law committed while violating the bill.

House Bill 4798 (H-1)

Under the bill, coercing a female to have an abortion against her will that included stalking, aggravated stalking, or an assaultive crime would be included in the sentencing guidelines as a felony against a person with a variable classification and variable statutory maximum penalty. For such a violation, the sentencing court would have to determine the offense class, offense variable level, and prior record variable level based on the underlying offense.

House Bill 5134 (H-1)

Under the bill, at the time a patient first presented at a private office, freestanding surgical outpatient facility, or other facility

or clinic in which abortions were performed, for the purpose of obtaining an abortion, the physician or qualified person assisting the physician would have to screen the patient orally for coercion to abort. The screening would have to use the screening tools developed by the DCH under House Bill 5182 (H-1).

If a patient disclosed that she was the victim of domestic violence that did not include coercion to abort, or if she disclosed coercion to abort, the physician or assistant would have to follow the protocols developed by the DCH under House Bill 5182 (H-1).

If a patient who was under 18 disclosed domestic violence or coercion to abort by an individual responsible for her health or welfare, the physician or assistant would have to report that to a local child protective services office.

Before performing an abortion, a physician would have to comply with the requirements described above.

A private office, freestanding surgical outpatient facility, or other facility or clinic in which abortions were performed would have to post the notice required by House Bill 5182 (H-1) in a conspicuous place in an area of its facility that was accessible to patients, employees, and visitors. The facility also would have to make publications that contained information about violence against women available in an area of the facility that was accessible to patients, employees, and visitors.

The bill specifies that it would not create a right to abortion, and that a person could not perform an abortion that was prohibited by law.

House Bill 5182 (H-1)

Notice & Training Materials

The bill would require the DCH to take the actions described below after considering the standards and recommendations of the Joint Commission on Accreditation of Healthcare Organizations, the Michigan Domestic Violence Prevention and Treatment Board, the Michigan Coalition Against Domestic and Sexual Violence or successor

organization, and the American Medical Association.

The Department would have to develop, draft, and print or make available in printable format, in nontechnical English, Arabic, and Spanish, a notice that would have to be posted in facilities and clinics under House Bill 5134 (H-1). The notice would have to be at least 8.5 inches by 14 inches, be printed in at least 44-point type, and contain at least all of the following:

- A statement that it was illegal under Michigan law to coerce a woman to have an abortion.
- A statement that help was available if a woman was being threatened or intimidated; was being physically, emotionally, or sexually harmed; or felt afraid for any reason.
- The telephone number of at least one domestic violence hotline and one sexual assault hotline.

The Department also would have to develop, draft, and print or make available in printable format, in nontechnical English, Arabic, and Spanish, a prescreening summary on prevention of coercion to abort that, at a minimum, contained the information required in the notice described above and notified the patient that an oral screening for coercion to abort would be conducted before she gave written consent to obtain an abortion.

In addition, the DCH would have to develop, draft, and print screening and training tools and accompanying training materials to be used by a physician or qualified person assisting the physician while performing the coercion-to-abort screening required under House Bill 5134 (H-1). The screening tools would have to instruct the physician or assistant to do at least all of the following:

- Orally inform the patient that coercion to abort was illegal and was grounds for a civil action, but clarifying that discussions about pregnancy options, including personal or intensely emotional expressions about those options, were not necessarily coercion to abort.
- Orally ask the patient if her husband, parents, siblings, relatives, or employer or the father or putative father of the fetus, the parents of the father or putative father, or any other individual

had engaged in coercion to abort and coerced her into seeking an abortion.

- Orally ask the patient if an individual was taking harmful actions against her, including intimidating her, threatening her, physically hurting her, or forcing her to engage in sexual activities against her wishes.
- Document the findings from the coercion-to-abort screening in the patient's medical record.

The Department also would have to develop, draft, and print protocols and accompanying training materials to be used by a physician or a qualified person assisting the physician if a patient disclosed during the coercion-to-abort screening, that coercion to abort or domestic violence, or both, was occurring. The protocols would have to instruct the physician or assistant to do at least all of the following:

- Follow the requirements of House Bill 5134 (H-1), as applicable.
- Assess the patient's current level of danger.
- Explore safety options with the patient.
- Provide referral information to the patient regarding law enforcement and domestic violence and sexual assault support organizations.
- Document any referrals in the patient's medical record.

24-Hour & Consent Requirements

The Public Health Code lists actions that a physician or a qualified person assisting a physician must take at least 24 hours before the physician performs an abortion. The bill would include in that list providing the patient with a physical copy of the prescreening summary on prevention of coercion to abort.

Before obtaining a patient's signature on an acknowledgment and consent form, a physician must do certain things personally and in the presence of the patient, including giving her the physician's name, and informing the patient of her right to withhold or withdraw her consent to an abortion at any time before the abortion is performed. The bill also would require the physician to confirm with the patient that the coercion-to-abort screening was performed.

House Bill 5181

The bill would allow an action to be brought by or on behalf of an individual injured by a "coercive act" (an act prohibited by House Bill 4799 (H-1)). A plaintiff in such an action could recover damages for emotional distress and other damages allowed by law. ("Emotional distress" would mean significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.)

If the damages awarded to a plaintiff for noneconomic loss exceeded \$5,000, and damages awarded for economic loss were \$5,000 or less, the court would have to reduce the award for noneconomic loss to \$5,000.

A person could not bring or maintain an action under the bill unless it were commenced within either of the following periods:

- Three years after the claim first accrued to the individual injured by the coercive act.
- If the injured individual were under 18 at the time the claim first accrued, one year after she reached 18.

The bill specifies that it would not create a right to abortion, and that a person could not perform an abortion that was prohibited by law.

MCL 777.16l (H.B. 4798)
Proposed MCL 750.213a (H.B. 4799)
MCL 333.17515 et al. (H.B. 5134)
Proposed MCL 600.2977 (H.B. 5181)
MCL 333.17015 (H.B. 5182)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bills 4798 (H-1) and 4799 (H-1)

The bills would have an indeterminate fiscal impact on State and local government. If the coercion prohibited under the bills were in the form of stalking or an assaultive crime, the violator would be punished according to the law that applies to that category of offense. Therefore, these provisions would be unlikely to result in any incarceration in addition to what would be allowed under current law, assuming that

the violator was prosecuted for the underlying offense and the terms of imprisonment were concurrent. (Note: The screening process outlined in House Bill 5134 (H-1) could result in additional instances of assault being discovered and prosecuted, which could result in increased incarceration costs.) For violations of the proposed offense other than stalking and assault, the violator could be charged with a misdemeanor from which penal fine revenue of up to \$5,000 (or \$10,000 in some circumstances) would benefit public libraries.

House Bill 5134

The bill would have no fiscal impact on State or local government.

House Bill 5181

The bill could result in a marginal increase in civil caseload for local courts, which would have an indeterminate, but minor, fiscal impact.

House Bill 5182 (H-1)

The bill would result in minor indeterminate administrative costs for the Department of Community Health.

Fiscal Analyst: Steve Angelotti
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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.