

PROHIBIT DISMEMBERMENT ABORTIONS

Phone: (517) 373-8080
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House Bills 4833 and 4834 as introduced

Sponsor: Rep. Laura Cox
Committee: Criminal Justice
Complete to 10-12-15

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

SUMMARY:

House Bill 4833 will prohibit a dismemberment abortion, define the term, apply the same criminal penalty for a violation and civil remedies as currently provided for a partial-birth abortion, and make each provision in the bill and every application of those provisions severable from each other. House Bill 4834 will revise the sentencing guidelines for a violation of the prohibition on partial-birth abortions to also include a dismemberment abortion.

The bills are tie-barred to each other, meaning neither can take effect unless both are enacted. If enacted, the bills would take effect January 1, 2016.

Specifically, House Bill 4833 will amend Section 90h of the Michigan Penal Code, entitled the "Partial-birth Abortion Ban Act" and rename the section as the "Partial-birth Abortion and Dismemberment Abortion Ban Act" (MCL 750.90h). Briefly, the Partial-birth Abortion Ban does the following:

- Provides that a person who performs a partial-birth abortion is guilty of a felony punishable by imprisonment for up to two years and/or a maximum fine of \$50,000.
- Makes an exception for a partial-birth abortion that is necessary to save the mother's life.
- Provides that a woman who obtains a partial-birth abortion is not guilty of a violation.
- Allows the mother's spouse or, if the mother were a minor, her parents, to bring a civil action against the person who performed a partial-birth abortion.

The bill would apply the above provisions to both a dismemberment abortion and a partial-birth abortion.

Definition of "Dismemberment Abortion"

"Dismemberment abortion" is defined to mean an abortion in which the physician, an individual acting under the delegatory authority of the physician, or any other individual performing the abortion deliberately and intentionally uses any instrument, device, or object to dismember a living fetus by disarticulating limbs or decapitating the head from the fetal torso and removing the dismembered fetal body parts from the uterus regardless of whether the fetal body parts are removed by the same instrument, device, or object or by suction or other means. The term would not include an abortion that uses suction to dismember and remove the body of a fetus from the uterus.

Severability of Provisions

Further, the bill contains an enacting section that is virtually identical to one contained in the Partial-birth Abortion Ban Act. Essentially, Enacting Section 3 provides for severability. This means that if one or more provisions or applications of a provision are found by a court to be invalid, the remainder of the bill's provisions and the application to other circumstances will remain in force. Under the bill, all constitutionally valid applications are to be severed from any applications that a court finds to be invalid, thereby leaving the valid applications in force because, as stated in the bill, it is the legislature's intent and priority that the valid applications be allowed to stand alone.

Construction of Law

The bill's provisions would have to be construed, as a matter of state law, to be enforceable up to but no further than the maximum possible extent consistent with federal constitutional requirements, even if that construction is not readily apparent, as such constructions are authorized only to the extent necessary to save the bill from judicial invalidation. If any court determines that any provision of the bill is unconstitutionally vague, the court must interpret the bill, as a matter of state law, in a manner that avoids the vagueness problem while enforcing the bill's provisions to the maximum possible extent consistent with federal constitutional requirements. (An identical provision was contained in the Partial-birth Abortion Ban Act.)

Sentencing Guidelines

House Bill 4834 amends the sentencing guidelines portion of the Code of Criminal Procedure to specify that performing or assisting in performance of a partial-birth abortion *or dismemberment abortion* is a Class G felony against a person with a maximum term of imprisonment of two years (MCL 777.16d).

BACKGROUND INFORMATION:

The procedure prohibited by the bill is generally known as a dilation and evacuation or D&E and is used in the second trimester. The following information was obtained from information posted on the Michigan Department of Health and Human Services website:

This is a procedure generally used after 12 weeks of pregnancy. The procedure will generally be done on an outpatient basis but may sometimes require hospitalization.

To prepare for the procedure, the physician will enlarge (dilate) the cervix (the opening to the uterus). This may be done over a period of several hours by inserting a small rod or sponge into the cervix which swells as the sponge absorbs moisture. The doctor may choose to enlarge the cervix right before the abortion by inserting and withdrawing larger and larger smooth metal rods until the cervix has been opened to the necessary size.

The uterus may be scraped with a curette (a sharp, spoon-like instrument). The fetus and placenta are extracted, using forceps or other instruments. This procedure will take approximately 30 minutes.

FISCAL IMPACT:

House Bill 4833: The bill could increase costs on the state's correctional system. Information is not available on the number of persons that might be convicted under the provisions of the bill. New felony convictions would result in increased costs related to state prisons and state probation supervision. The average cost of prison incarceration in a state facility is roughly \$34,800 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision average about \$3,760 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

House Bill 4834: The bill amends sentencing guidelines and does not have a direct fiscal impact on the state or on local units of government.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ 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.