

PROHIBIT CERTAIN ABORTION PROCEDURES

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Senate Bill 229 as passed by the Senate
Sponsor: Sen. Tom Barrett

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

Senate Bill 230 as passed by the Senate
Sponsor: Sen. Kimberly LaSata

House Committee: Judiciary
Senate Committee: Judiciary and Public Safety
Complete to 12-9-19

SUMMARY:

Senate Bill 229 would define the term *dismemberment abortion*, prohibit such a procedure, and apply to a violation the same criminal penalty and civil remedies as currently provided for a partial-birth abortion. Senate Bill 230 would revise the sentencing guidelines for a violation of the prohibition on partial-birth abortions to also include a dismemberment abortion.

Currently, section 90h of the Michigan Penal Code, entitled the “Partial-birth Abortion Ban Act,” does all of 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 fine of up to \$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 is a minor, her parents, to bring a civil action against the person who performed a partial-birth abortion.

Senate Bill 229 would rename the section as the “Partial-birth Abortion and Dismemberment Abortion Ban Act.” The bill would apply all of the above provisions to both a dismemberment abortion and a partial-birth abortion.

Dismemberment abortion would 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. It would not include an abortion that uses suction to dismember and remove the body of a fetus from the uterus.

The bill also contains language regarding the severability and construction of its provisions.¹

MCL 750.90h

¹ All Michigan statutes are severable. See MCL 8.5: <http://legislature.mi.gov/doc.aspx?mcl-8-5>

Senate Bill 230 would amend the sentencing guidelines chapter 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. Senate Bill 230 is tie-barred to SB 229, which means that it could not take effect unless SB 229 were also enacted.

MCL 777.16d

The bills would take effect January 1, 2021.

BACKGROUND INFORMATION:

The procedure the bills would prohibit is generally known as a dilation and evacuation or D&E. A surgical procedure typically used in the second trimester of pregnancy (between 13 and 24 weeks), it is the most commonly performed second trimester procedure because it is considered the safest option. According to the Michigan Department of Health and Human Services, 1,908 such procedures were performed in Michigan in 2018, accounting for 7.1% of all abortions, 39.9% of those performed between 13 and 16 weeks of pregnancy, 79.3% between 17 and 20 weeks, and 81.6% between 21 and 24 weeks. The majority of abortions in Michigan in 2018—92.8%—were performed using either medication or suction curettage, with most of those performed during the first trimester.

The bills are identical to House Bills 4320 and 4321, which passed the House on May 14, 2019, and were referred to the Senate Committee on Judiciary and Public Safety. The bills are also a reintroduction of House Bills 4833 and 4834 of the 2015-16 legislative session, which were reported from committee but failed to pass the House.

FISCAL IMPACT:

Senate Bill 229 would have an indeterminate fiscal impact on the state and on local units of government. The number of persons who might be convicted under provisions of the bill is unknown. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2018, the average cost of prison incarceration in a state facility was roughly \$38,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,700 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Any fiscal impact on the judiciary and local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

Senate Bill 230 is a companion bill to SB 229 and amends sentencing guidelines. The bill would not have a direct fiscal impact on the state or on local units of government.

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■ 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.