



Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 419

131st General Assembly
(As Reported by H. Health and Aging)

Reps. Sears and Ginter, Sprague

BILL SUMMARY

- Requires the Department of Health to adopt rules that do the following:
 - Require any facility authorized to perform abortions or any persons or entities that contract with the facility to dispose of fetal remains by interment, cremation, or incineration;
 - Establish guidelines for the incineration of fetal remains, including whether more than one fetus may be incinerated at a time;
 - Create a detachable supplemental form to the abortion informed consent form under existing law to indicate the method of disposition of the fetal remains;
 - Provide that the health care facility must file the supplemental form with the local registrar or sub-registrar of vital statistics for purposes of obtaining a burial permit, if the woman selects burial or cremation as her preferred method of disposition.
- Requires that the supplemental form to the abortion informed consent form include the following information:
 - Whether the pregnant woman has indicated a method of disposition, and the preferred method selected;
 - The signature of the physician inducing or performing the abortion;

- A medical identification number for the woman (but not the pregnant woman's printed name or signature).
- Provides that nothing in the bill prevents a woman from submitting tissue samples from an abortion for pathological testing.
- Requires the Director to implement the rules adopted under the bill, and allows the following to file injunctions to restrain a violation or threat of violation of the rules:
 - The Director;
 - The Attorney General;
 - The county prosecutor;
 - The city director of law, township director of law, or legal counsel for a village.
- Provides that the bill does not limit other laws, including fetal death certificates law.

CONTENT AND OPERATION

Disposition of fetal remains

Rules for disposition

The bill removes from the Revised Code the requirement that the Director of Health adopt rules relating to the "[h]umane disposition of the product of human conception."¹ Instead, the bill requires the Director to adopt rules pursuant to the Administrative Procedure Act (R.C. Chapter 119) that do the following:

- Require facilities authorized to perform abortions and any persons or entities that contract with those facilities to dispose of fetal remains by one of the following methods: interment, cremation, or incineration.
- Establish guidelines for the incineration of fetal remains, including whether more than one fetus may be incinerated at one time.
- Create a detachable, supplemental form to the abortion informed consent form under existing law that indicates the pregnant woman's selected method of disposition, and other information (see "**Supplemental form**," below).

¹ R.C. 3701.341.



- Provide that the health care facility must file the supplemental form with the local registrar or sub-registrar of vital statistics, for purposes of obtaining a burial permit, if the woman has indicated burial or cremation as the preferred method of disposal.²

The rules adopted under the bill must be consistent with R.C. 2317.56, which imposes various "informed consent" requirements for abortions and provides for the publication on the Department of Health's website of abortion information as well as information about family planning, prenatal care, child care, and abortion alternatives.³

Supplemental form

The detachable, supplemental form the Director of Health is required to adopt by rules must meet the following requirements:

(1) Indicate whether the pregnant woman has indicated a preference as to the method of disposal of the fetal remains and the preferred method selected (see **COMMENT 1**);

(2) Provide for the signature of the physician who is to induce or perform the abortion;

(3) Provide for a medical identification number for the pregnant woman but does not provide for the woman's printed name or signature.⁴

This form must be filed in order to obtain a burial permit for the fetal remains, if the pregnant woman selects burial or cremation as the preferred method of disposal (see **COMMENT 2**). The health care facility is responsible for filing this form with the registrar or sub-registrar of vital statistics.⁵

Pathological testing

The bill provides that nothing in the bill or rules adopted under the bill prevents a woman from submitting tissue samples from fetal remains for pathological testing.

² R.C. 3701.3411(A) to (D).

³ R.C. 2317.56, not in the bill.

⁴ R.C. 3701.3411(C)(1) to (3).

⁵ R.C. 3701.3411(D) and 3705.17.

Tissue samples that have undergone pathological testing are exempt from the rules regarding disposition of fetal remains.⁶

Definitions

The bill defines "fetal remains" to mean the entire fetus or any of its parts that are removed from the pregnant woman's uterus by abortion, irrespective of the duration of the pregnancy. "Cremation" is defined to mean the technical process of using heat and flame to reduce human or animal remains to bone fragments or ashes and may include processing and pulverization of bone fragments and "internment" means the burial or entombment of fetal remains.⁷

Injunctive powers to enjoin rules violations

The bill requires the Director of Health to implement the rules adopted under the bill. The bill also allows the Director or a government attorney to apply for injunctions with the court of common pleas to restrain a violation or threat of violation of the rules. The bill further provides that the action is an additional remedy not dependent on the adequacy of the remedy at law.⁸

A government attorney is any of the following:

- The Attorney General;
- The county prosecuting attorney with proper jurisdiction;
- The city director of law, township director of law, or legal counsel for a village with proper jurisdiction.⁹

Limits on other law

The bill provides that its provisions do not limit other laws, including the fetal death certificates law.¹⁰

⁶ R.C. 3701.3413.

⁷ R.C. 3701.3410(A) to (C).

⁸ R.C. 3701.3412(B).

⁹ R.C. 3701.3412(A).

¹⁰ R.C. 3701.3414.

COMMENT

1. The pregnant woman is not required to select a disposition method. Although failure to make a selection would likely prevent the issuance of a burial permit, the bill does not specify, otherwise, what is to be done if the woman does not make a selection.

2. The bill indicates that the health care facility must file the detachable supplemental form with the local registrar or sub-registrar of vital statistics for purposes of obtaining a burial permit if the woman has selected burial or cremation as her preferred method of disposal.¹¹ However, the three valid disposition methods under the bill are interment, cremation, and incineration and not, specifically, burial.¹²

HISTORY

ACTION	DATE
Introduced	12-23-15
Reported, H. Health & Aging	04-13-16

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¹¹ R.C. 3701.3411(D).

¹² R.C. 3701.3411(A).

