



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

HB 18-1120

FINAL FISCAL NOTE

Drafting Number: LLS 18-0555 Date: August 2, 2018
Prime Sponsors: Rep. Neville P. Bill Status: Postponed Indefinitely
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Bill Topic: THE PROHIBITION OF DISMEMBERMENT ABORTIONS

- Summary of Fiscal Impact:
- State Revenue
- State Expenditure (minimal)
- State Transfer
- TABOR Refund
- Local Government (minimal)
- Statutory Public Entity

This bill would have prohibited abortions that involve the dismemberment of a fetus and made such a procedure a new misdemeanor offense. The bill would have increased state and local government revenue and workload on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under HB 18-1120

Table with 4 columns: Revenue, Expenditures, Transfers, FY 2018-19, FY 2019-20. Rows show impacts for General Fund and Cash Funds, with values less than \$2,500 or zero.

Summary of Legislation

This bill prohibits abortions that intentionally involve the dismemberment of a fetus, unless such a procedure is performed during a medical emergency. Any person that perform such a procedure commits a misdemeanor offense. Any physician conducting the procedure commits unprofessional conduct and must have their license suspended for one year. A woman on whom a dismemberment abortion is performed is not criminally liable. The bill describes the prohibited procedure and includes various provisions concerning the interpretation and enforcement of the measure if challenged in court.

Comparable Crime and Assumptions

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. This bill creates a new misdemeanor offense, and as such, there is not a readily comparable crime from which conviction and offender demographic data can be estimated.

According to the Guttmacher Institute, there were approximately 13,160 abortions performed in Colorado in 2014, the most recent year for which data were available. The fiscal note assumes that a dilation and extraction method is used in up to 10 percent (1,300) of these abortions, based on the number of abortions performed after the start of the second trimester of pregnancy. It is assumed that abortion providers, as licensed medical professionals, will have a high rate of compliance with the bill and that, in place of the banned procedure, abortion providers will use alternative methods, some women will instead carry a child to term, and other women will seek treatment out-of-state. Overall, the fiscal note assumes five or fewer misdemeanor convictions per year under the bill.

Federal law requires that state health programs receiving federal funding provide coverage for abortion services if the pregnancy results from rape or incest or if continuing the pregnancy would put the woman's life in danger. Colorado's Medicaid and Children's Health Plan Plus (CHP+) programs are subject to these requirements.

State Revenue

Beginning in FY 2018-19, this bill is anticipated to increase state revenue by less than \$2,500 per year, as described below.

Criminal fines. The bill is anticipated to increase state revenue by less than \$2,500 per year starting in FY 2018-19, credited to the Fines Collection Cash Fund in the Judicial Department. The bill sets a fine penalty between \$50 and \$500 for the new misdemeanor offense of performing a dismemberment abortion. Because the courts have the discretion in the amount of the fine, the precise impact to state revenue cannot be determined. However, based on the low number of fines imposed by the courts and an assumed high level of compliance by physicians, the fiscal note assumes that any revenue generated is likely to be less than \$2,500.

Court and administrative fees. The bill will also increase state fee revenue by a minimal amount, credited to the General Fund and various cash funds, starting in FY 2018-19. Fees are imposed for a variety of court-related costs, which vary based on the offense but may include

probation supervision, drug or sex offender surcharges, victim compensation, and late fees, among others. Some fee revenue is shared with local governments; refer to the Local Government section for additional information.

TABOR Refund

The bill increases state revenue subject to TABOR by less than \$2,500 per year in FY 2018-19 and FY 2019-20. State revenue is not currently expected to exceed the TABOR limit in either year and no refund is required. Therefore, the bill is not expected to impact TABOR refunds in these years. However, refunds in future years when the state next collects a TABOR surplus will be increased.

State Expenditures

Starting in FY 2018-19, the bill increases workload and costs for several state agencies and departments as described below.

Judicial Department. The trial courts in the Judicial Department will have an increase in workload to hear misdemeanor cases involving the prohibited procedure. It is assumed that this workload can be accomplished within existing appropriations.

Agencies providing representation to indigent persons. Workload and costs for the Office of the State Public Defender and the Office of the Alternate Defense Counsel will increase if any persons charged with conducting a prohibited abortion are indigent. Given that abortion providers are medical professionals, any increase in indigent representation is assumed to be minimal.

Department of Regulatory Agencies. The State Medical Board in the Department of Regulatory Agencies may have additional workload and legal service costs to address unprofessional conduct by physicians performing prohibited abortions. It will also have a one-time increase in workload to update rules to reflect the prohibited behavior and to communicate this change to physicians. Concerning unprofessional conduct, it is assumed that conviction of the misdemeanor offense will initiate proceedings against a physician and serve as evidence of the offense; therefore, given this and the specific punishment provided in the bill, these cases are assumed not to require a significant amount of time for the State Medical Board to address. Should additional funding for legal services be required, it is assumed that it will be requested through the annual budget process.

Medicaid. The bill may increase costs for the Medicaid program in several ways. To the extent that women require an abortion prohibited under this bill but otherwise available under federal law, the Department of Health Care Policy and Financing may have additional costs for the patient to travel to another state for the procedure. Alternately, to the extent the bill reduces abortions and results in additional births under Medicaid that would not have occurred otherwise, costs will increase for labor and delivery, and potentially to provide health coverage for the child. Overall, these Medicaid impacts are assumed to be minimal, and can be addressed through the annual budget process if additional appropriations are required.

Department of Law. The Department of Law will be impacted in two main areas under the bill. As mentioned above, it may be required to provide additional legal services to DORA in cases concerning unprofessional conduct by physicians. Second, the bill requires the Attorney General to defend the constitutionality of certain provisions of this bill if they are challenged. As a matter of Legislative Council Staff policy, legal expenses concerning challenges to enacted legislation are generally not included in the fiscal note and should be addressed within existing agency appropriations or through the annual budget process.

Local Government

Overall, this bill is expected to increase local government revenue, workload, and costs as described below. The exact impact to a particular local government will vary depending on the number of offenses committed within its jurisdiction, but overall is assumed to be minimal.

District attorneys. The bill increases workload and costs for district attorneys to prosecute any new offenses under the bill.

Denver County Court. If the new misdemeanor offense under the bill is committed in Denver County, workload and revenue will increase for the Denver County Court, which is managed and funded by the City and County of Denver. Specifically, the court will try additional misdemeanor cases under the bill, and criminal fine and court fee revenue collected by Denver County Court will increase. Because the court has discretion on the amount of the fine imposed, the precise impact to Denver County has not been estimated. Please refer to the State Revenue section above for information about fine penalty ranges and court fees.

Effective Date

The bill was postponed indefinitely by the House State, Veterans, and Military Affairs Committee on February 28, 2018.

State and Local Government Contacts

Counties
Health Care Policy And Financing
Judicial
Law

District Attorneys
Information Technology
Public Health And Environment
Regulatory Agencies