

House File 2140 - Introduced

HOUSE FILE 2140

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A BILL FOR

1 An Act relating to fetal deaths, prohibitions against the
2 buying, selling, or experimentation on an unborn infant or
3 bodily remains, providing penalties, and including effective
4 date provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 144.1, subsections 7 and 9, Code 2016,
2 are amended to read as follows:

3 7. "*Fetal death*" means death prior to the complete
4 expulsion or extraction from its mother of ~~a product of human~~
5 conception an unborn infant, irrespective of the duration of
6 pregnancy. Death is indicated by the fact that after expulsion
7 or extraction the ~~fetus~~ unborn infant does not breathe or
8 show any other evidence of life such as beating of the heart,
9 pulsation of the umbilical cord, or definite movement of
10 voluntary muscles. In determining a fetal death, heartbeats
11 shall be distinguished from transient cardiac contractions, and
12 respirations shall be distinguished from fleeting respiratory
13 efforts or gasps.

14 9. "*Final disposition*" means the burial, interment,
15 cremation, removal from the state, or other disposition of a
16 dead body or ~~fetus~~ unborn infant.

17 Sec. 2. Section 144.1, Code 2016, is amended by adding the
18 following new subsections:

19 NEW SUBSECTION. 1A. "*Bodily remains*" means the physical
20 remains, corpse, or body parts of a dead unborn infant that
21 has reached the stage of development in which there are
22 cartilaginous structures or fetal or skeletal parts, which
23 remains were extracted or expelled following a fetal death.
24 "*Bodily remains*" does not include medical waste.

25 NEW SUBSECTION. 9A. "*Health care provider*" means an
26 individual licensed or registered under chapter 148, 148C,
27 148D, or 152, or any individual who provides medical services
28 under the authorization of the licensee.

29 NEW SUBSECTION. 9B. "*Inducing of a termination of pregnancy*"
30 means the use of any means to terminate the pregnancy of a
31 woman known to be pregnant with the intent other than to
32 produce a live birth or to remove a dead unborn infant.

33 NEW SUBSECTION. 11A. "*Medical waste*" means discarded
34 biologic product such as blood, tissue, or body parts removed
35 from medical facilities as well as bedding, bandages, syringes,

1 and similar materials that have been used in treating patients,
2 but does not include bodily remains.

3 NEW SUBSECTION. 12A. "*Spontaneous termination of pregnancy*"
4 means the occurrence of an unintended termination of pregnancy
5 at any time during the period from conception to twenty weeks
6 gestation.

7 NEW SUBSECTION. 13A. "*Stillbirth*" means an unintended fetal
8 death occurring after a gestation period of twenty completed
9 weeks, or an unintended fetal death of an unborn infant with a
10 weight of three hundred fifty or more grams.

11 NEW SUBSECTION. 14A. "*Unborn infant*" means the offspring of
12 a human being from conception until birth.

13 Sec. 3. Section 144.29, Code 2016, is amended to read as
14 follows:

15 **144.29 Fetal deaths.**

16 1. A fetal death certificate for each fetal death of an
17 unborn infant that has reached the stage of development at
18 which bodily remains are evident which occurs in this state
19 ~~after a gestation period of twenty completed weeks or greater,~~
20 ~~or for a fetus with a weight of three hundred fifty grams or~~
21 ~~more~~ shall be filed as directed by the state registrar within
22 three days after delivery and prior to final disposition of the
23 fetus dead unborn infant. The certificate shall be registered
24 if it has been completed and filed in accordance with this
25 chapter.

26 2. The county in which a dead ~~fetus~~ unborn infant is found
27 is the county of death. The certificate shall be filed within
28 three days after the ~~fetus~~ dead unborn infant is found. If
29 a fetal death occurs in a moving conveyance, the county in
30 which the ~~fetus~~ dead unborn infant is first removed from the
31 conveyance is the county of death.

32 Sec. 4. Section 144.29A, subsection 7, Code 2016, is amended
33 by striking the subsection.

34 Sec. 5. NEW SECTION. **144.29B Final disposition of bodily**
35 **remains after fetal death — release to mother or authorized**

1 **representative — alternative authorization.**

2 1. *a.* When a fetal death occurs, the individual in charge
3 of the institution where the bodily remains were expelled
4 or extracted from the mother shall release to the mother or
5 the mother's authorized representative, upon the request of
6 the mother, the bodily remains for final disposition in the
7 following manner:

8 (1) When the bodily remains are not the result of a
9 spontaneous termination of pregnancy or a stillbirth, only by
10 burial, interment, or cremation.

11 (2) In addition to the means specified in subparagraph
12 (1), when the bodily remains are the result of a spontaneous
13 termination of pregnancy or a stillbirth, by means in
14 compliance with chapter 142C.

15 *b.* A request by the mother or her authorized representative
16 under paragraph "a" may be made prior to or within seventy-two
17 hours after the expulsion or extraction of the bodily remains.

18 *c.* A release of bodily remains to a mother or the mother's
19 authorized representative made under this subsection shall
20 comply with section 144.32.

21 2. *a.* When a fetal death occurs, if the mother or her
22 authorized representative does not request the release of
23 the bodily remains under subsection 1, the funeral director,
24 the individual in charge of the institution where the bodily
25 remains were expelled or extracted, or a person assuming
26 responsibility for the final disposition of the bodily remains
27 shall obtain from the mother or her authorized representative
28 a written authorization for final disposition on a form
29 prescribed and furnished or approved by the department.

30 (1) The authorization may allow final disposition to be by
31 a funeral director, the individual in charge of the institution
32 where the bodily remains were expelled or extracted, or another
33 person assuming responsibility for the final disposition of the
34 bodily remains.

35 (2) The mother or her authorized representative may direct,

1 in the written authorization, that the final disposition of the
2 bodily remains be by one of the following:

3 (a) When the bodily remains are not the result of a
4 spontaneous termination of pregnancy or a stillbirth, only by
5 burial, interment, or cremation.

6 (b) In addition to the means specified in subparagraph
7 division (a), when the bodily remains are the result of a
8 spontaneous termination of pregnancy or a stillbirth, by means
9 in compliance with chapter 142C.

10 *b.* The funeral director, the individual in charge of
11 the institution where the bodily remains were expelled or
12 extracted, or the person assuming responsibility for the final
13 disposition of the bodily remains shall ensure that the final
14 disposition of the bodily remains is performed in compliance
15 with the authorization for final disposition.

16 *c.* After final disposition, the funeral director, the
17 individual in charge of the institution where the bodily
18 remains were expelled or extracted, or the person assuming
19 responsibility for the final disposition of the bodily remains,
20 shall retain the authorization for not less than seven years.

21 3. The final disposition of the bodily remains shall not be
22 by incineration.

23 4. If the final disposition of the bodily remains is by
24 cremation, the medical examiner of the county in which the
25 fetal death occurred shall sign the authorization for final
26 disposition.

27 5. Bodily remains may be moved from the place of death to be
28 prepared for final disposition with the consent of the person
29 who certified the death.

30 6. A permit for final disposition issued under the laws of
31 another state that accompanies bodily remains brought into Iowa
32 is authorization for final disposition of the bodily remains
33 in Iowa.

34 Sec. 6. Section 144.30, Code 2016, is amended to read as
35 follows:

1 **144.30 Funeral director's duty — fetal death certificate.**

2 The funeral director who first assumes custody of a fetus
3 dead unborn infant shall file the fetal death certificate. In
4 the absence of such a person, the physician or other person in
5 attendance at or after the delivery shall file the certificate
6 of fetal death. The person filing the certificate shall obtain
7 the personal data from the next of kin or the best qualified
8 person or source available and shall obtain the medical
9 certification of cause of death from the person responsible
10 for completing the certification. When a person other than a
11 funeral director assumes custody of a fetus dead unborn infant,
12 the person shall be responsible for carrying out the provisions
13 of [this section](#).

14 Sec. 7. Section 144.31A, subsection 1, Code 2016, is amended
15 to read as follows:

16 1. As used in [this section](#):

17 ~~a. "Certificate, "certificate of birth resulting in~~
18 ~~stillbirth"~~ means a document issued based upon a properly filed
19 fetal death certificate to record the birth of a stillborn
20 fetus unborn infant.

21 ~~b. "Stillbirth" means stillbirth as defined in section~~
22 ~~136A.2.~~

23 Sec. 8. Section 144.32, subsections 1, 2, and 3, Code 2016,
24 are amended to read as follows:

25 1. If a person other than a funeral director, medical
26 examiner, or emergency medical service assumes custody of a
27 dead body or fetus dead unborn infant, the person shall secure
28 a burial transit permit. To be valid, the burial transit
29 permit must be issued by the county medical examiner, a funeral
30 director, or the state registrar. The permit shall be obtained
31 prior to the removal of the body or fetus dead unborn infant
32 from the place of death and the permit shall accompany the body
33 or fetus dead unborn infant to the place of final disposition.

34 2. To transfer a dead body or fetus dead unborn infant
35 outside of this state, the funeral director who first assumes

1 custody of the dead body or ~~fetus~~ dead unborn infant shall
2 obtain a burial transit permit prior to the transfer. The
3 permit shall accompany the dead body or ~~fetus~~ dead unborn
4 infant to the place of final disposition.

5 3. A dead body or ~~fetus~~ dead unborn infant brought into this
6 state for final disposition shall be accompanied by a burial
7 transit permit under the law of the state in which the death
8 occurred.

9 Sec. 9. Section 144.33, Code 2016, is amended to read as
10 follows:

11 **144.33 Bodies brought into state.**

12 A burial transit permit issued under the law of another
13 state which accompanies a dead body or ~~fetus~~ dead unborn
14 infant brought into this state shall be authority for final
15 disposition of the body or ~~fetus~~ dead unborn infant in this
16 state.

17 Sec. 10. Section 144.49, Code 2016, is amended to read as
18 follows:

19 **144.49 Additional record by funeral director.**

20 A funeral director or other person who removes from the place
21 of death or transports or finally disposes of a dead body or
22 ~~fetus~~ dead unborn infant, in addition to filing any certificate
23 or other form required by **this chapter**, shall keep a record
24 which shall identify the body, and information pertaining to
25 the funeral director's or other person's receipt, removal, and
26 delivery of the body as prescribed by the department.

27 Sec. 11. Section 144.52, subsection 7, Code 2016, is amended
28 to read as follows:

29 7. Knowingly violates a provision of **section 144.29A** or
30 144.29B.

31 Sec. 12. NEW SECTION. **146B.1 Prohibitions on buying,**
32 **selling, or experimentation relating to an unborn infant or the**
33 **bodily remains resulting from an abortion — criminal and civil**
34 **penalties — state funding prohibited.**

35 1. A person shall not experiment upon an unborn infant

1 intended to be aborted unless the experimentation is
2 therapeutic to the unborn infant.

3 2. A person shall not perform or offer to perform an
4 abortion if the justification or reason for the abortion
5 is that the bodily remains may be used for animal or human
6 research, experimentation, or transplantation.

7 3. A person shall not knowingly sell, transfer, distribute,
8 give away, accept, use, or attempt to use an unborn infant or
9 the bodily remains resulting from an abortion.

10 4. A person shall not aid or abet any prohibited action
11 specified in subsection 3.

12 5. A person shall not use an unborn infant or the bodily
13 remains resulting from an abortion in animal or human research,
14 experimentation, or study, or for transplantation, except under
15 any of the following circumstances:

16 a. For diagnostic or remedial tests, procedures, or
17 observations which have the purpose of determining the life or
18 health of the unborn infant, or preserving the life or health
19 of the unborn infant or pregnant woman.

20 b. For pathological study.

21 6. In addition to other remedies available, failure to
22 comply with the requirements of this section shall provide
23 a basis for recovery for the pregnant woman, or the parent
24 or guardian of the pregnant woman if the pregnant woman is a
25 minor, for the unlawful disposition of or experimentation upon
26 an unborn infant or bodily remains. Such relief may include
27 all of the following:

28 a. Monetary damages for all psychological injuries
29 occasioned by such violation.

30 b. Statutory damages equal to three times the cost of the
31 pregnant woman's delivery or abortion.

32 c. A basis for professional disciplinary action under
33 chapter 148.

34 d. Upon conviction of a violation of this section, the
35 automatic suspension of the license of the physician for at

1 least one year.

2 7. A person who violates this section is guilty of a class
3 "C" felony for each violation.

4 8. State funding shall not be appropriated to or expended by
5 any state agency, state institution, or program administered by
6 the state including but not limited to the medical assistance
7 program if such entity or program is found in violation of this
8 section.

9 9. For purposes of this section:

10 a. "*Abortion*" means abortion as defined in section 146.1.

11 b. "*Bodily remains*" means bodily remains as defined in
12 section 144.1.

13 c. "*Experiment*" or "*experimentation*" means the use of bodily
14 remains in any trial, test, procedure, or observation carried
15 out with the goal of verifying, refuting, or establishing the
16 validity of a hypothesis, but does not include diagnostic or
17 remedial tests, procedures, or observations which have the
18 purpose of determining the life or health of the unborn infant,
19 preserving the life or health of the unborn infant or the
20 pregnant woman, or pathological study.

21 d. "*Pathological study*" means the examination of body tissue
22 for diagnostic or forensic purposes.

23 e. "*Therapeutic*" means intended to treat or cure a disease
24 or disorder by remedial agents or methods.

25 f. "*Unborn infant*" means unborn infant as defined in section
26 144.1.

27 Sec. 13. STATUTORY CONSTRUCTION.

28 1. Nothing in this Act shall be construed to affect existing
29 federal or state law regarding abortion.

30 2. Nothing in this Act shall be construed as creating or
31 recognizing a right to abortion.

32 3. Nothing in this Act shall be construed to alter generally
33 accepted medical standards.

34 Sec. 14. SEVERABILITY. If any provision of this Act or
35 the application thereof to any person or circumstances is held

1 invalid, the invalidity shall not affect other provisions or
2 applications of the Act which can be given effect without
3 the invalid provisions or application and, to this end, the
4 provisions of this Act are severable.

5 Sec. 15. RIGHT OF INTERVENTION. The general assembly,
6 by joint resolution, may appoint one or more of its members,
7 who sponsored or cosponsored this Act in the member's official
8 capacity to intervene as a matter of right in any case in which
9 the constitutionality of this Act is challenged.

10 Sec. 16. EFFECTIVE UPON ENACTMENT. This Act, being deemed
11 of immediate importance, takes effect upon enactment.

12 EXPLANATION

13 The inclusion of this explanation does not constitute agreement with
14 the explanation's substance by the members of the general assembly.

15 This bill relates to fetal deaths and prohibitions against
16 the buying or selling of or experimentation on an unborn infant
17 or bodily remains. The bill includes definitions used in the
18 bill.

19 The bill amends provisions in Code chapter 144 (vital
20 statistics) relating to fetal deaths, and provides that a fetal
21 death certificate is to be filed for all fetal deaths occurring
22 at the stage of an unborn infant's development at which bodily
23 remains are evident, not only for those after a gestation
24 period of 20 completed weeks or greater, or for a dead unborn
25 infant with a weight of 350 grams or more.

26 The bill also establishes a process for the release to a
27 mother or her authorized representative of fetal bodily remains
28 following a fetal death, or in the alternative, provides
29 for the disposition of fetal bodily remains by the funeral
30 director, the individual in charge of the institution where
31 the bodily remains were expelled or extracted, or by a person
32 assuming responsibility for the bodily remains, in the manner
33 authorized by the woman or her authorized representative.
34 If the fetal death is not a spontaneous termination of
35 pregnancy or a stillbirth, disposition may only be by burial,

1 interment, or cremation. If the fetal death is a spontaneous
2 termination of pregnancy or a stillbirth, disposition may
3 also be made in accordance with the uniform anatomical gift
4 Act (Code chapter 142C). Final disposition shall not be by
5 incineration. If final disposition of the bodily remains is
6 by cremation, the medical examiner of the county in which the
7 fetal death occurred is required to sign the authorization
8 for final disposition. If bodily remains are assumed by the
9 mother or her authorized representative, they must secure
10 a burial transit permit as provided in current law under
11 Code section 144.32. Bodily remains may be moved from the
12 place of death to be prepared for final disposition with the
13 consent of the person who certified the death. A permit for
14 final disposition issued under the laws of another state that
15 accompanies bodily remains brought into Iowa is authorization
16 for final disposition of the bodily remains in Iowa. A
17 person who knowingly violates these provisions is guilty of a
18 serious misdemeanor. A serious misdemeanor is punishable by
19 confinement for no more than one year and a fine of at least
20 \$315 but not more than \$1,875.

21 The bill also establishes prohibitions on the buying or
22 selling of or experimentation on an unborn infant or the bodily
23 remains resulting from an abortion. The bill prohibits a
24 person from experimenting upon an unborn infant intended to
25 be aborted unless the experimentation is therapeutic to the
26 unborn infant; performing or offering to perform an abortion
27 if the justification or reason for the abortion is that the
28 bodily remains may be used for animal or human research,
29 experimentation, or transplantation; knowingly selling,
30 transferring, distributing, giving away, accepting, using,
31 or attempting to use an unborn infant or the bodily remains
32 resulting from an abortion; or aiding or abetting any of these
33 prohibited actions.

34 Additionally, under the bill a person is prohibited from
35 using an unborn infant or the bodily remains resulting from

1 an abortion in animal or human research, experimentation,
2 or study, or for transplantation, unless an exception is
3 met. The exceptions include for diagnostic or remedial
4 tests, procedures, or observations which have the purpose
5 of determining the life or health of the unborn infant, or
6 preserving the life or health of the unborn infant or pregnant
7 woman; and for pathological study.

8 The bill provides for civil relief in the form of monetary
9 and statutory damages, professional disciplinary action
10 against a physician, and criminal penalties for failure to
11 comply with the prohibitions relating to buying, selling,
12 or experimentation in regard to an unborn infant or bodily
13 remains.

14 The bill provides that upon conviction of a violation of
15 these prohibitions, a person is guilty of a class "C" felony.
16 A class "C" felony is punishable by confinement of no more
17 than 10 years and a fine of at least \$1,000 but not more than
18 \$10,000.

19 The bill provides that state funding shall not be
20 appropriated to or expended by a state institution, state
21 agency, or program administered by the state if the entity or
22 program is found in violation of the prohibitions.

23 The bill provides that nothing in the bill shall be construed
24 to affect existing federal or state law regarding abortion,
25 as creating or recognizing a right to abortion, or to alter
26 generally accepted medical standards.

27 The provisions of the bill are severable and the bill also
28 provides for the right of intervention by members of the
29 general assembly who sponsored or cosponsored the bill in their
30 official capacity, appointed by joint resolution, to intervene
31 as a matter of right in any case in which the constitutionality
32 of the bill is challenged.

33 The bill makes conforming changes in Code chapter 144 to
34 replace the term "fetus" with the term "unborn infant" and
35 defines "unborn infant" as the offspring of a human being from

1 conception until birth.

2 The bill takes effect upon enactment.