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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/29/11

SPONSOR     Roch     LAST UPDATED                      HB     179    

SHORT TITLE     Pain-Capable Unborn Child Protection Act     SB                     

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ANALYST     Hanika-Ortiz    

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	\$5.0-\$15.0	\$1.0-\$10.0	Recurring	pain-capable unborn child protection act litigation fund

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates, Relates to, Conflicts with, Companion to

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$5.0 - \$50.0	\$5.0 - \$50.0	\$10.0-\$100.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates Senate Bill 222

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Health (DOH)

Health Policy Commission (HPC)

### SUMMARY

#### Synopsis of Bill

House Bill 179 enacts the “pain-capable unborn child protection act” (act). Specific provisions within the act:

Section 1: cites the act;

Section 2: provides for definitions including “unborn child” to mean an organism at fertilization until live birth;

Section 3: declares as “unprofessional conduct” the failure of a physician to determine probable post-fertilization age before attempting an abortion;

Section 4: prohibits the abortion of an unborn child that is 20 or more weeks gestational age; if termination is necessary to protect the physical health of the woman, requires the physician to terminate the pregnancy with a method that ensures the best survival for the unborn child;

Section 5: requires physicians to report abortions or abortion attempts to DOH; requires DOH to provide public statistical reports; subjects physicians to late fees, civil contempt, and be guilty of “unprofessional conduct” for no, incomplete, or overdue reports;

Section 6: establishes a third degree felony for violations of the act;

Section 7: enables a woman and certain other interested parties to pursue civil actions against abortion providers who violate the act;

Section 8: establishes a litigation defense fund;

Section 9: protects a women’s privacy in court proceedings; and

Section 10: provides for severability if any provision is found to be unconstitutional.

## **FISCAL IMPLICATIONS**

The bill subjects a physician who fails to submit a report to a late fee of \$500 for each 30-day period a report is overdue. The revenue estimate above assumes that in FY 12 more physicians will inadvertently incur penalties until they become more competent conforming to the act.

The bill creates the “pain-capable unborn child protection act litigation fund” to pay for expenses incurred by the Attorney General’s Office in defense of the act. This bill creates a new fund and provides for continuing appropriations from the legislature, grants and/or donations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities. The bill does not state whether or not any unexpended funds revert to the GF.

It is uncertain if the late fees will cover the costs incurred by the AGO to defend the act. It is also likely that these activities will require a GF appropriation to support the additional operating budget costs for DOH.

## **SIGNIFICANT ISSUES**

The bill will require that no abortion be performed, attempted, or induced unless the physician first determines the probable post-fertilization age of the fetus or relies on the determination of the age by another physician.

The bill will prohibit the abortion of an unborn child that is 20 or more weeks gestational age, unless the woman’s physical health is at risk.

## **PERFORMANCE IMPLICATIONS**

Federal law protects doctors who set out to perform a legal abortion that by accident becomes a banned procedure. It is unknown if this act will conflict with those protections.

The Vital Records Act (section 24-14-1 NMSA 1978) currently has statistical reporting requirements for abortions performed in New Mexico.

### **ADMINISTRATIVE IMPLICATIONS**

The bill will require a physician who performs an abortion to report to DOH in accordance with forms and rules adopted and promulgated by the department.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB179 relates to the following bills:

- SB 222 enacts the “pain-capable unborn child protection act” which also states that there is substantial medical evidence that an unborn child is capable of experiencing pain by 20 weeks after fertilization.
- SB 230 enacts the “parent notification act” to require the notification of a parent, guardian or conservator before an abortion is performed on an unemancipated female.
- SB 239 amends the Partial-Birth Abortion Ban Act to prohibit abortions after 20 weeks gestation unless the woman’s health is at risk.

### **TECHNICAL ISSUES**

The bill defines gestational age from the time of fertilization as opposed to the time of implantation.

The bill gives rights to a number of individuals to seek injunctive relief that may have no legal authority over a pregnant woman.

The bill allows for abortions after 20 weeks if the woman’s physical health is at risk, but it is unclear how the bill would impact a woman’s decision to abort an unborn child who at 20 weeks or more develops a severe fetal anomaly.

“Medical emergency” is defined as “...serious risk of ...physical impairment...” and does not appear to apply to a severe behavioral health disorder.

### **OTHER SUBSTANTIVE ISSUES**

DOH reports that in New Mexico, of 4,771 abortions performed in 2009, 85 were performed on fetuses reported to be of 20 weeks or more gestation. One hundred and sixty-six (166) were performed on fetuses with an unknown or undetermined gestational age.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Women in New Mexico will continue to make their own health decisions about the need for a second semester abortion in consultation with their families and doctors.