

**Local Mandate Fiscal Impact Estimate  
Kentucky Legislative Research Commission  
2017 Regular Session**

**Part I: Measure Information**

**Bill Request #:** 822

**Bill #:** SB 5 GA

**Bill Subject/Title:** AN ACT relating to abortion and declaring an emergency

**Sponsor:** Senator Brandon Smith

Unit of Government:    x  City                       x  County                       x  Urban-County  
    x       x  Unified Local  
    x  Charter County         Consolidated Local         Government

Office(s) Impacted: Sheriffs, jailers, county attorneys

Requirement:    x  Mandatory         Optional

Effect on

Powers & Duties:    x  Modifies Existing         Adds New         Eliminates Existing

**Part II: Purpose and Mechanics**

The purpose of SB 5 GA is to prohibit abortion of a fetus more than 20 weeks after fertilization and to impose additional requirements for reporting abortions. Sections 2 and 3 of the bill would create new sections of KRS 311.710 to 311.830 to require that physicians make a determination of the probable post-fertilization age of the fetus. Section 2 would prohibit abortion of a fetus more than 20 weeks after fertilization unless certified beforehand by two physicians that abortion is necessary to prevent death of the pregnant woman or to avoid serious risk of substantial and irreversible impairment to a major bodily function of the pregnant woman. No abortion is “necessary” if based on a claim or diagnosis that the woman will injure or kill herself or on any reason related to her mental health. Violation of the provisions of Section 2 and other sections of the bill by a physician would result in license revocation by the state board of medical licensure. Section 5 would create the Kentucky pain-capable unborn child protection litigation fund, consisting of appropriations, donations, gifts, or grants to the fund for use by the state to pay costs incurred by the state in defending provisions of the bill. Section 9 of the bill would create additional reporting requirements and a late fee of five hundred dollars (\$500) for any person or institution failing to timely submit the required reports.

Section 8 of SB 5 GA would amend KRS 311.990 to classify any intentional violation of Section 2 of the bill a Class D felony, and intentional violation of the requirement in Section 3 that the physician first determine the unborn child's probable post-fertilization age as a Class B misdemeanor. Section 9 of the bill would classify intentional falsification of a required report a Class A misdemeanor.

### **Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost**

#### **The fiscal impact of SB 5 GA on local governments will be minimal.**

Publicly-owned hospitals, including county hospitals, are prohibited from performing abortions except in an emergency so should incur no to minimal additional costs under SB 5 GA. The bill would have little or no fiscal impact on local jails because of the very few criminal prosecutions that would likely occur under the affected statutes. Abortion of a fetus after it may reasonably be expected to have reached viability, except when necessary to preserve the life or health of the woman, is already prohibited under KRS 311.780. The Kentucky Administrative Office of the Court reports that, from Calendar Year (CY) 2011 through CY 2015 there were no prosecutions for violation of that requirement, currently punishable as a Class C felony. Creating a new Class B and Class A misdemeanor also is unlikely to result in substantial additional prosecutions.

Local jails are responsible for housing defendants who are not granted bail. A Class A misdemeanor is punishable by up to 12 months incarceration; a Class B misdemeanor by up to 90 days. Misdemeanants are housed in one of Kentucky's 76 full service jails or five life safety jails. While the expense of housing inmates varies by jail, this estimated impact is based on \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average of \$31.34 per day.

When a court denies bail to a Class D felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 76 full service jails or five life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility cost by an estimated average of \$31.34 per day. A person convicted of a Class D felony violation of the bill would be subject to 1 to 5 years' incarceration. Upon sentencing, Class D felons are housed in one of Kentucky's full service jails for the duration of their sentence, and the Department of Corrections pays the local jail \$31.34 per day for their keep. Since the per diem pays the estimated average cost of housing a Class D felon the per diem may be less than, equal to, or more than the actual housing cost.

The bill would also have little or no fiscal impact on the local county attorneys' offices for the same reason; however, if a case for violation of any of the provisions of the bill did go to trial it would be likely to have a fiscal impact on those offices because of the need for expert witness testimony. Expert witness testimony averages \$3,000 to \$5,000 per trial.

**Data Source(s):** LRC staff; Kentucky County Attorneys' Association; Administrative Office of the Courts

**Preparer:** Mary Stephens      **Reviewer:** JWN      **Date:** 1/5/17