CHAPTER 41

Abortions

ARTICLE 1

Abortions Generally

**SECTION 44‑41‑10.** Definitions.

 As used in this chapter:

 (a) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to save the life or preserve the health of the unborn child, or to remove a dead unborn child.

 (b) "Physician" means a person licensed to practice medicine in this State.

 (c) "Department" means the South Carolina Department of Health and Environmental Control.

 (d) "Hospital" means those institutions licensed for hospital operation by the department in accordance with Article 3, Chapter 7 of this title and which have also been certified by the department to be suitable facilities for the performance of abortions.

 (e) "Clinic" shall mean any facility other than a hospital as defined in subsection (d) which has been licensed by the department, and which has also been certified by the department to be suitable for the performance of abortions.

 (f) "Pregnant" means the human biological female reproductive condition of having a living unborn child within her body, whether or not she has reached the age of majority.

 (g) "Conception" means the fertilization of an ovum by a sperm.

 (h) "Consent" means a signed and witnessed voluntary agreement to the performance of an abortion.

 (i) "First trimester of pregnancy" means the first twelve weeks of pregnancy commencing with conception rather than computed on the basis of the menstrual cycle.

 (j) "Second trimester of pregnancy" means that portion of a pregnancy following the twelfth week and extending through the twenty‑fourth week of gestation.

 (k) "Third trimester of pregnancy" means that portion of a pregnancy beginning with the twenty‑fifth week of gestation.

 (l) "Minor" means a female under the age of seventeen.

 (m) "Emancipated minor" means a minor who is or has been married or has by court order been freed from the care, custody, and control of her parents.

 (n) "In loco parentis" means any person over the age of eighteen who has placed himself or herself in the position of a lawful parent by assuming obligations which are incidental to the parental relationship and has so served for a period of sixty days.

HISTORY: 1962 Code Section 32‑681; 1974 (58) 2837; 1990 Act No. 341, Sections 2, 3; 1995 Act No. 1, Section 2; 2023 Act No. 70 (S.474), Section 6, eff May 25, 2023.

Editor's Note

2023 Act No. 70, Sections 11 and 12, provide as follows:

"SECTION 11. The Public Employee Benefit Authority and the State Health Plan shall cover prescribed contraceptives for dependents under the same terms and conditions that the Plan provides contraceptive coverage for employees and spouses. The State Health Plan shall not apply patient cost sharing provisions to covered contraceptives.

"SECTION 12. The President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives have an unconditional right to intervene on behalf of their respective bodies in a state court action and may provide evidence or argument, written or oral, if a party to that court action challenges the constitutionality of this act. In a federal court action that challenges the constitutionality of this act the Legislature may seek to intervene, to file an amicus brief, or to present arguments in accordance with federal rules of procedure. Intervention by the Legislature pursuant to this provision does not limit the duty of the Attorney General to appear and prosecute legal actions or defend state agencies, officers or employees as otherwise provided. In any action in which the Legislature intervenes or participates, the Senate and the House of Representatives shall function independently from each other in the representation of their respective clients."

Effect of Amendment

2023 Act No. 70, Section 6, rewrote (a) and (f), in (g), substituted "fertilization of an ovum by a sperm" for "fecundation of the ovum by the spermatozoa", deleted (l), which had related to the definition of "Viability", and redesignated former (m) to (o) as (l) to (n).

**SECTION 44‑41‑20.** Repealed.

HISTORY: Former Section, titled Legal Abortions, had the following history: 1962 Code Section 32‑682; 1974 (58) 2837. Repealed by 2023 Act No. 70, Section 13.A, eff May 25, 2023.

**SECTION 44‑41‑30.** Persons from whom consent is required.

 (A) Consent is required before the performance of an abortion from the pregnant woman in every case and in the case of a minor, it must be obtained pursuant to the provisions of Section 44‑41‑31.

 (B) In the case of a woman who is under adjudication of mental incompetency by a court of competent jurisdiction, consent must be obtained from her spouse or a legal guardian if she is married; if she is not married, from one parent or a legal guardian.

 (C) Notwithstanding the consent required in subsections (A) and (B) consent must be waived if:

 (1) a physician determines that a medical emergency exists involving the life of or grave physical injury to the pregnant woman; or

 (2) the pregnancy is the result of incest.

 (D) In cases of incest the physician performing the abortion shall report the alleged incest to the local county department of social services or to a law enforcement agency in the county where the child resides or is found. Failure to report is a violation punishable under the child abuse laws of this State.

 (E) Nothing in this section permits a physician to perform an abortion without first obtaining the consent of the pregnant woman if she is capable of giving consent.

HISTORY: 1962 Code Section 32‑683; 1974 (58) 2837; 1990 Act No. 341, Section 4.

**SECTION 44‑41‑31.** Abortion upon minors; consent requirements; support obligations of parent or legal guardian who refuses to give consent for minor's abortion; penalty for false representation.

 (A) No person may perform an abortion upon a minor unless consent is obtained in accordance with one of the following provisions:

 (1) the attending physician or his agent or the referring physician or his agent has secured the informed written consent, signed and witnessed, of the pregnant minor and:

 (a) one parent of the minor; or

 (b) a legal guardian of the minor; or

 (c) a grandparent of the minor; or

 (d) any person who has been standing in loco parentis to the minor for a period not less than sixty days;

 (2) the minor is emancipated and the attending physician or his agent has received the informed signed written consent of the minor; or

 (3) the attending physician or his agent has obtained the informed signed written consent of the minor and has received the order of the court obtained by the minor pursuant to this chapter.

 (B) If a parent or legal guardian refuses to give the informed written consent for the minor's abortion and there has been a judicial finding of refusal of consent, and the minor has a child or children as a result of that pregnancy, the duty imposed by law of supporting the child or children extends to the minor and jointly and severally to the refusing parent or legal guardian and the natural father until the minor reaches the age of eighteen years or is emancipated.

 (C) Any person standing in loco parentis and who consents to the abortion of the minor as permitted in subsection (A)(1) of this section shall sign an affidavit indicating the nature and length of his or her relationship with the minor. The affidavit must state the penalties for wilfully or knowingly making a false representation. Anyone who knowingly or wilfully makes a false representation in the affidavit shall be guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than one year.

HISTORY: 1990 Act No. 341, Section 1.

**SECTION 44‑41‑32.** Petitioning court for right to obtain abortion without consent of parent or legal guardian.

 Every minor has the right to petition the court for an order granting her the right to obtain an abortion without the consent required in Section 44‑41‑31(1). In seeking this relief the following procedures apply:

 (1) The minor may prepare and file a petition in either the circuit or family court. The petition may be filed in the name of Jane Doe to protect the anonymity of the minor.

 (2) The Adoption and Birth Parent Services Division of the Department of Social Services, upon request of the minor, must provide assistance to the minor in preparing and filing the petition. Preparation and filing of the petition must be completed within forty‑eight hours after the request. The Department of Social Services shall promulgate regulations establishing the procedures to be followed in providing this assistance.

 (3) Upon the filing of the petition, the court shall appoint a guardian ad litem for the minor, taking into consideration the preference of the minor. The minor may participate in court proceedings on her own behalf, but the court shall advise her that she has a right to court‑appointed counsel and shall provide her with counsel upon her request.

 (4) All proceedings pursuant to this section must be given precedence over other matters pending before the court.

 (5) The court shall hold a hearing and rule on the merits of the petition within seventy‑two hours of the filing of the petition. This time may be extended upon the request of the minor. The court shall consider the emotional development, maturity, intellect, and understanding of the minor; the nature and possible consequences of the abortion and of the alternatives to the abortion; and other evidence that the court may find useful in determining whether the minor should be granted the right on her own behalf to consent to the abortion or whether the abortion is in the best interest of the minor.

HISTORY: 1990 Act No. 341, Section 1.

**SECTION 44‑41‑33.** Court order granting or denying minor right to obtain abortion.

 (A) The court shall enter a written order stating findings of fact and conclusions of law in support of its decision to:

 (1) grant the minor the right on her own behalf to consent to the abortion if the court finds that the minor is mature and well‑informed enough to make the abortion decision on her own;

 (2) grant consent for the abortion if the court finds that the performance of the abortion would be in the minor's best interest; or

 (3) deny the petition if the court finds that the minor is immature and that performance of the abortion would not be in the minor's best interest. If the father of the child born after the denial of the petition is identified by adjudication, he shall share in the expenses of the delivery and rearing of the child as determined by the court. Orders issued under this item shall specify that the minor shall have the right to counseling services, appropriate prenatal care, delivery, neonatal, and post‑natal care, the cost of which may be paid by the State. Additionally, the State shall have subrogation rights against the father for payments made by the State on behalf of the child.

 (B) The court shall immediately issue a written order to the minor, her guardian ad litem, attorney, or other person designated by the minor to receive notice on her behalf.

HISTORY: 1990 Act No. 341, Section 1.

**SECTION 44‑41‑34.** Appeals; hearings closed to public; records to be sealed; Supreme Court to adopt rules.

 (A) A minor has the right to appeal to the Supreme Court a decision rendered pursuant to Section 44‑41‑33. She is entitled to an anonymous and expeditious appellate review which takes precedence over other matters pending before the court.

 (B) A minor who declares she has insufficient funds to pursue the procedures provided in this section or in Section 44‑41‑32 must not be required to pay the costs associated with these procedures.

 (C) The notice of intent to appeal must be filed with the court issuing the order described in Section 44‑41‑33 within seventy‑two hours from the date the order is received. The record on appeal must be completed and the appeal must be perfected within ten days from the filing of the notice of intent to appeal. These filing requirements are not considered jurisdictional and may be extended by the Supreme Court upon request of the minor for good cause shown.

 (D) All hearings conducted under Sections 44‑41‑32 and 44‑41‑34 must be closed to the public. All records related to these sections and Section 44‑41‑33 are not open to public examination and must be sealed by the court.

 (E) The Supreme Court shall adopt rules governing the administration of the courts or practice and procedure before such courts necessary to carry out the provisions of Sections 44‑41‑32, 44‑41‑33, and 44‑41‑34.

HISTORY: 1990 Act No. 341, Section 1.

**SECTION 44‑41‑35.** Failure to obtain required consent.

 Failure to obtain required consent constitutes prima facie evidence of interference with family relations in appropriate civil actions. The law of this State does not preclude the award of exemplary damages in an appropriate civil action relevant to violations concerning a minor. Nothing in this chapter may be construed to limit the common law rights of parents.

HISTORY: 1990 Act No. 341, Section 1.

**SECTION 44‑41‑36.** Penalty for failing to conform with requirements of Sections 44‑41‑10 through 44‑41‑36 when performing abortion on minor; justified reliance on representations of minors or other persons.

 (A) A person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement in Sections 44‑41‑10 through 44‑41‑36 is guilty of a misdemeanor and, upon conviction, must be fined not less than two thousand dollars nor more than ten thousand dollars or imprisoned for not more than three years, or both. No part of the minimum fine may be suspended. For conviction of a third or subsequent offense, the sentence must be imprisonment for not less than sixty days nor more than three years, none of which may be suspended.

 (B) A physician or any person employed or connected with a physician, hospital, or health care facility performing abortions who acts in good faith is justified in relying on the representations of the unemancipated minor or of any other person providing the information required under this chapter. A physician or other person who furnishes professional services related to an act authorized or required by this chapter and who relies upon the information furnished pursuant to this chapter may not be held to have violated any criminal law or to be civilly liable for the reliance, provided that the physician or other person acted in good faith.

HISTORY: 1990 Act No. 341, Section 1.

**SECTION 44‑41‑37.** Disclosure of consent requirements when counseling or discussing abortion with minor; brochure for use in counseling pregnant minors.

 A physician or other professional person or agency counseling or discussing with a minor the question of her obtaining an abortion shall fully inform her of the procedures she must follow under law to obtain an abortion without the consent required in Section 44‑41‑31(1).

 The Adoption and Birth Parent Services Division of the Department of Social Services shall develop and distribute brochures to health and education professionals for use in counseling pregnant minors. This brochure shall include the following:

 (1) how to access her local health department for prenatal care;

 (2) how to access her local Adoption and Birth Parent Services Division of the Department of Social Services or any private not for profit adoption service;

 (3) the parental consent requirement as outlined in this bill;

 (4) the judicial by‑pass procedure as referred in Sections 44‑41‑32, 44‑41‑33, and 44‑41‑34; and

 (5) how to access her local mental health center for counseling services.

HISTORY: 1990 Act No. 341, Section 1.

**SECTION 44‑41‑40.** Certain hospitals or clinics may refuse to perform abortions.

 No private or nongovernmental hospital or clinic shall be required to admit any patient for the purpose of terminating a pregnancy, nor shall such institutions be required to permit their facilities to be utilized for the performance of abortions. No cause of action shall arise against any such hospital or clinic for refusal to perform or to allow the performance of an abortion if the institution has adopted a policy not to admit patients for the purpose of terminating pregnancies; provided, that no hospital or clinic shall refuse an emergency admittance.

HISTORY: 1962 Code Section 32‑684; 1974 (58) 2837.

**SECTION 44‑41‑50.** Medical employees not required to aid in abortions; providing necessary aftercare following abortion.

 (A) No physician, nurse, technician, medical student, or other employee of a hospital, clinic or physician shall be required to recommend, perform or assist in the performance of an abortion if he advises the hospital, clinic or employing physician in writing that he objects to performing, assisting or otherwise participating in such procedures. Such notice will suffice without specification of the reason therefor.

 (B) No physician, nurse, technician, medical student, or other person who refuses to perform or assist in the performance of an abortion shall be liable to any person for damages allegedly arising from such refusal.

 (C) No physician, nurse, technician, medical student, or other person who refuses to perform or assist in the performance of an abortion shall because of that refusal be dismissed, suspended, demoted, or otherwise disciplined or discriminated against by the hospital or clinic with which he is affiliated or by which he is employed. A civil action for damages or reinstatement of employment, or both, may be prosecuted by any person whose employment or affiliation with a hospital or clinic has been altered or terminated in violation of this chapter.

 (D) Any physician who performs an abortion shall also provide, for proper compensation, necessary aftercare for his patient unless released by the patient in writing. The extent of aftercare required shall be that care customarily provided by physicians in such cases in accordance with accepted medical practice.

HISTORY: 1962 Code Section 32‑685; 1974 (58) 2837; 2022 Act No. 235 (H.4776), Section 3, eff June 17, 2022.

Effect of Amendment

2022 Act No. 235, Section 3, redesignated (a) to (d) as (A) to (D), and in (A), (B), and (C), inserted ", medical student," following "technician".

**SECTION 44‑41‑60.** Abortions must be reported.

 Any abortion performed in this State must be reported by the performing physician on the standard form for reporting abortions to the State Registrar, Department of Health and Environmental Control, within seven days after the abortion is performed. The names of the patient and physician may not be reported on the form or otherwise disclosed to the State Registrar. The form must indicate from whom consent was obtained, circumstances waiving consent, and, if an exception was exercised pursuant to Section 44‑41‑640, 44‑41‑650, or 44‑41‑660, which exception the physician relied upon in performing or inducing the abortion.

HISTORY: 1975 (59) 187; 1978 Act No. 587 Section 4; 1990 Act No. 341, Section 5; 1995 Act No. 1, Section 12; 2021 Act No. 1 (S.1), Section 6, eff February 18, 2021; 2023 Act No. 70 (S.474), Section 7, eff May 25, 2023.

Editor's Note

2021 Act No. 1, Section 1, provides as follows:

"SECTION 1. This act shall be known and may be cited as the 'South Carolina Fetal Heartbeat and Protection from Abortion Act'."

2023 Act No. 70, Sections 11 and 12, provide as follows:

"SECTION 11. The Public Employee Benefit Authority and the State Health Plan shall cover prescribed contraceptives for dependents under the same terms and conditions that the Plan provides contraceptive coverage for employees and spouses. The State Health Plan shall not apply patient cost sharing provisions to covered contraceptives.

"SECTION 12. The President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives have an unconditional right to intervene on behalf of their respective bodies in a state court action and may provide evidence or argument, written or oral, if a party to that court action challenges the constitutionality of this act. In a federal court action that challenges the constitutionality of this act the Legislature may seek to intervene, to file an amicus brief, or to present arguments in accordance with federal rules of procedure. Intervention by the Legislature pursuant to this provision does not limit the duty of the Attorney General to appear and prosecute legal actions or defend state agencies, officers or employees as otherwise provided. In any action in which the Legislature intervenes or participates, the Senate and the House of Representatives shall function independently from each other in the representation of their respective clients."

Effect of Amendment

2021 Act No. 1, Section 6, in the first and second sentences, substituted "State Registrar" for "state registrar", and in the third sentence, substituted "obtained, circumstances waiving consent, and, if an exception was exercised pursuant to Section 44‑41‑660, which exception the physician relied upon in performing or inducing the abortion" for "obtained or circumstances waiving consent".

2023 Act No. 70, Section 7, in the third sentence, inserted "44‑41‑640, 44‑41‑650, or".

**SECTION 44‑41‑70.** Promulgation of rules and regulations for certification of hospitals and other facilities.

 (a) The department shall promulgate and enforce regulations for the certification of hospitals as defined in Section 44‑41‑10(d) as suitable facilities for the performance of abortions.

 (b) The department shall promulgate and enforce regulations for the licensing and certification of facilities other than hospitals as defined in Section 44‑41‑10(d) wherein abortions are to be performed.

HISTORY: 1962 Code Section 32‑686; 1974 (58) 2837; 1995 Act No. 1, Section 3; 2023 Act No. 70 (S.474), Section 8, eff May 25, 2023.

Editor's Note

2023 Act No. 70, Sections 11 and 12, provide as follows:

"SECTION 11. The Public Employee Benefit Authority and the State Health Plan shall cover prescribed contraceptives for dependents under the same terms and conditions that the Plan provides contraceptive coverage for employees and spouses. The State Health Plan shall not apply patient cost sharing provisions to covered contraceptives.

"SECTION 12. The President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives have an unconditional right to intervene on behalf of their respective bodies in a state court action and may provide evidence or argument, written or oral, if a party to that court action challenges the constitutionality of this act. In a federal court action that challenges the constitutionality of this act the Legislature may seek to intervene, to file an amicus brief, or to present arguments in accordance with federal rules of procedure. Intervention by the Legislature pursuant to this provision does not limit the duty of the Attorney General to appear and prosecute legal actions or defend state agencies, officers or employees as otherwise provided. In any action in which the Legislature intervenes or participates, the Senate and the House of Representatives shall function independently from each other in the representation of their respective clients."

Effect of Amendment

2023 Act No. 70, Section 8, in (b), deleted "as provided for in Section 44‑41‑20(a) and (b)" from the end.

**SECTION 44‑41‑75.** Licensing of certain abortion facilities; regulations.

 (A) A facility in which any second trimester or five or more first trimester abortions are performed in a month must be licensed by the department to operate as an abortion clinic and must comply with the provisions of Article 3.

 (B) The department shall promulgate regulations concerning sanitation, housekeeping, maintenance, staff qualifications, emergency equipment and procedures to provide emergency care, medical records and reports, laboratory, procedure and recovery rooms, physical plant, quality assurance, infection control, and information on and access to patient follow‑up care necessary to carry out the purposes of this section.

HISTORY: 1995 Act No. 1, Section 1.

**SECTION 44‑41‑80.** Performing or soliciting unlawful abortion; testimony of woman may be compelled.

 (a) Any person, except as permitted by this chapter, who provides, supplies, prescribes or administers any drug, medicine, prescription or substance to any woman or uses or employs any device, instrument or other means upon any woman, with the intent to produce an abortion shall be deemed guilty of a felony and, upon conviction, shall be punished by imprisonment for a term of not less than two nor more than five years or fined not more than five thousand dollars, or both. Provided, that the provisions of this item shall not apply to any woman upon whom an abortion has been attempted or performed.

 (b) Any woman upon whom an abortion has been performed or attempted in violation of the provisions of this chapter may be compelled to testify in any criminal prosecution initiated pursuant to subsection (a) of this section; provided, however, that such testimony shall not be admissible in any civil or criminal action against such woman and she shall be forever immune from any prosecution for having solicited or otherwise procured the performance of the abortion or the attempted performance of the abortion upon her.

HISTORY: 1962 Code Section 32‑687; 1974 (58) 2837; 2023 Act No. 70 (S.474), Section 9, eff May 25, 2023.

Editor's Note

2023 Act No. 70, Sections 11 and 12, provide as follows:

"SECTION 11. The Public Employee Benefit Authority and the State Health Plan shall cover prescribed contraceptives for dependents under the same terms and conditions that the Plan provides contraceptive coverage for employees and spouses. The State Health Plan shall not apply patient cost sharing provisions to covered contraceptives.

"SECTION 12. The President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives have an unconditional right to intervene on behalf of their respective bodies in a state court action and may provide evidence or argument, written or oral, if a party to that court action challenges the constitutionality of this act. In a federal court action that challenges the constitutionality of this act the Legislature may seek to intervene, to file an amicus brief, or to present arguments in accordance with federal rules of procedure. Intervention by the Legislature pursuant to this provision does not limit the duty of the Attorney General to appear and prosecute legal actions or defend state agencies, officers or employees as otherwise provided. In any action in which the Legislature intervenes or participates, the Senate and the House of Representatives shall function independently from each other in the representation of their respective clients."

Effect of Amendment

2023 Act No. 70, Section 9, deleted (b), which related to penalties for any woman who solicited or submitted to an unlawful abortion, and redesignated former (c) as (b).

**SECTION 44‑41‑85.** Performance of partial‑birth abortion by physician; felony; cause of action against physician.

 (A) A physician who knowingly performs a partial‑birth abortion and thereby kills a human fetus is guilty of a felony and, upon conviction, must be fined not less than five thousand dollars or imprisoned for not less than five years, or both. This section shall not apply to a partial‑birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, a physical illness, or a physical injury if no other medical procedure would suffice for that purpose.

 (B) As used in this section:

 (1) the term "partial‑birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

 (2) the term "physician" means a physician, surgeon, or osteopath authorized to practice medicine in this State and licensed pursuant to Chapter 47 of Title 40. However, an individual who is not a physician, but who directly and knowingly performs a partial‑birth abortion is also subject to the provisions of this section.

 (C)(1) The father, if married to the mother at the time she receives a partial‑birth abortion, and if the mother has not attained the age of eighteen years at the time of the abortion, the maternal grandparents of the fetus have a cause of action against the physician or other person unlawfully performing a partial‑birth abortion and may obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

 (2) Such relief includes, but is not limited to:

 (a) actual damages which shall be trebled;

 (b) punitive damages for all injuries, psychological and physical, occasioned by the violation of this section; and

 (c) reasonable costs and attorney's fees.

 (D) A woman upon whom a partial‑birth abortion is performed may not be prosecuted for a violation of this section, for a conspiracy to violate this section, or for any other offense which is based on a violation of this section.

HISTORY: 1997 Act No. 11, Section 1.

**SECTION 44‑41‑90.** State funding.

 (A) No funds appropriated by the State for employer contributions to the State Health Insurance Plan may be expended to reimburse the expenses of an abortion, except as provided in Sections 44‑41‑640, 44‑41‑650, and 44‑41‑660.

 (B) No funds appropriated or authorized by the State may be used by any political subdivision of the State to purchase fetal tissue obtained from an abortion or fetal remains, nor may any political subdivision of the State accept donated fetal remains.

 (C) No state funds may, directly or indirectly, be utilized by Planned Parenthood for abortions, abortion services or procedures, or administrative functions related to abortions.

HISTORY: 2023 Act No. 70 (S.474), Section 3, eff May 25, 2023.

Editor's Note

2023 Act No. 70, Sections 11 and 12, provide as follows:

"SECTION 11. The Public Employee Benefit Authority and the State Health Plan shall cover prescribed contraceptives for dependents under the same terms and conditions that the Plan provides contraceptive coverage for employees and spouses. The State Health Plan shall not apply patient cost sharing provisions to covered contraceptives.

"SECTION 12. The President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives have an unconditional right to intervene on behalf of their respective bodies in a state court action and may provide evidence or argument, written or oral, if a party to that court action challenges the constitutionality of this act. In a federal court action that challenges the constitutionality of this act the Legislature may seek to intervene, to file an amicus brief, or to present arguments in accordance with federal rules of procedure. Intervention by the Legislature pursuant to this provision does not limit the duty of the Attorney General to appear and prosecute legal actions or defend state agencies, officers or employees as otherwise provided. In any action in which the Legislature intervenes or participates, the Senate and the House of Representatives shall function independently from each other in the representation of their respective clients."

ARTICLE 3

Woman's Right to Know

**SECTION 44‑41‑310.** Short title.

 This article may be cited as the "Woman's Right to Know Act".

HISTORY: 1995 Act No. 1, Section 8.

**SECTION 44‑41‑320.** Definitions.

 As used in this article:

 (1) "Medical emergency" means that condition which, on the basis of the physician's good faith judgment, so complicates a pregnancy as to necessitate an immediate abortion to avert the risk of her death or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function.

 (2) "Probable gestational age of the embryo or fetus" means what, in the judgment of the attending physician based upon the attending physician's examination and the woman's medical history, is with reasonable probability the gestational age of the embryo or fetus at the time the abortion is planned to be performed.

HISTORY: 1995 Act No. 1, Section 8.

**SECTION 44‑41‑330.** Conditions for performance; information requirements; waiting period; minors or mentally incompetent persons; retention of records.

 (A) Except in the case of a medical emergency and in addition to any other consent required by the laws of this State, no abortion may be performed or induced without the voluntary and informed written consent of the pregnant woman and unless the following conditions have been satisfied:

 (1)(a) While physically present in the same room, the woman must be informed by the physician who is to perform the abortion, an allied health professional working in conjunction with the physician, or the referring physician of the procedure to be involved, including:

 (i) the nature and risks of undergoing or not undergoing the proposed procedure that a reasonable patient would consider material to making a knowing and wilful decision of whether to have an abortion;

 (ii) the probable gestational age of the unborn child, verified by an ultrasound, at the time the abortion is to be performed;

 (iii) the presence of the unborn child's fetal heartbeat, if present and viewable.

 (b) If an ultrasound is required to be performed, an abortion may not be performed sooner than sixty minutes following completion of the ultrasound. The ultrasound must be performed by the physician who is to perform the abortion or by a person having documented evidence that he or she is a certified sonographer under South Carolina law and who is working in conjunction with the physician. The physician who is to perform the abortion or an allied health professional working in conjunction with the physician must inform the woman before the ultrasound procedure of her right to view the live ultrasound images and hear the unborn child's fetal heartbeat, if present, at her request during or after the ultrasound procedure and to have them explained to her.

 (c) If the woman accepts the opportunity to view the images and hear the explanation, a physician or a registered nurse, licensed practical nurse, or physician assistant working in conjunction with the physician must contemporaneously review and explain the images to the woman before the woman gives informed consent to having an abortion procedure performed.

 (d) The woman has a right to decline to view and hear the explanation of the live ultrasound images after she is informed of her right and offered an opportunity to view the images and hear the explanation. If the woman declines, the woman shall complete a form acknowledging that she was offered an opportunity to view and hear the explanation of the images but that she declined that opportunity. The form also must indicate that the woman's decision was not based on any undue influence from any person to discourage her from viewing the images or hearing the explanation and that she declined of her own free will.

 (e) If the physician who intends to perform or induce an abortion on a pregnant woman has determined pursuant to Sections 44‑41‑620, 44‑41‑630, and 44‑41‑330(A) that the unborn child the pregnant woman is carrying has a detectable fetal heartbeat, then that physician shall inform the pregnant woman in writing that the unborn child the pregnant woman is carrying has a fetal heartbeat. The physician shall further inform the pregnant woman, to the best of the physician's knowledge, of the statistical probability, absent an induced abortion, of bringing the human fetus possessing a detectable fetal heartbeat to term based on the gestational age of the human fetus or, if the director of the department has specified statistical probability information, shall provide to the pregnant woman that information. The department may promulgate regulations that specify information regarding the statistical probability of bringing an unborn child possessing a detectable fetal heartbeat to term based on the gestational age of the unborn child. Any regulations must be based on available medical evidence.

 (2) The woman must be presented by the physician who is to perform the abortion or by an allied health professional working in conjunction with the physician a written form containing the following statement: "You have the right to review printed materials prepared by the State of South Carolina which describe fetal development, list agencies which offer alternatives to abortion, and describe medical assistance benefits which may be available for prenatal care, childbirth, and neonatal care. You have the right to view your ultrasound image." This form must be signed and dated by both the physician who is to perform the procedure and the pregnant woman upon whom the procedure is to be performed.

 (3) The woman must certify in writing, before the abortion, that the information described in item (1) of this subsection has been furnished her, and that she has been informed of her opportunity to review the information referred to in item (2) of this subsection.

 (4) Before performing the abortion, the physician who is to perform or induce the abortion must determine that the written certification prescribed by item (3) of this subsection or the certification required by subsection (D) has been signed. This subsection does not apply in the case where an abortion is performed pursuant to a court order.

 (B) Nothing herein limits the information provided by the physician who is to perform the abortion or allied health professional to the person upon whom the abortion procedure is to be performed.

 (C) No abortion may be performed sooner than twenty‑four hours after the woman receives the written materials and certifies this fact to the physician or the physician's agent.

 (D) If the clinic or other facility where the abortion is to be performed or induced mails the printed materials described in Section 44‑41‑340 to the woman upon whom the abortion is to be performed or induced or if the woman obtains the information at the county health department and if the woman verifies in writing, before the abortion, that the printed materials were received by her more than twenty‑four hours before the abortion is scheduled to be performed or induced, that the information described in item (A)(1) has been provided to her, and that she has been informed of her opportunity to review the information referred to in item (A)(2), then the waiting period required pursuant to subsection (C) does not apply.

 (E) In the event the person upon whom the abortion is to be performed or induced is an unemancipated minor, as defined in Section 44‑41‑10, the information described in Section 44‑41‑330(A)(1) and (2) must be furnished and offered respectively to a parent of the minor, a legal guardian of the minor, a grandparent of the minor, or any person who has been standing in loco parentis to the minor for a period of not less than sixty days. The parent, legal guardian, grandparent, or person who has been standing in loco parentis, as appropriate, must make the certification required by Section 44‑41‑330(A)(3). In the event the person upon whom the abortion is to be performed is under adjudication of mental incompetency by a court of competent jurisdiction, the information must be furnished and offered respectively to her spouse or a legal guardian if she is married; if she is not married, from one parent or a legal guardian. The spouse, legal guardian, or parent, as appropriate, must make the certification required by Section 44‑41‑330(A)(3). This subsection does not apply in the case of an abortion performed pursuant to a court order.

 (F) A clinic or other facility must maintain, for three years after the abortion is performed or induced, the woman's written verification that the information was so provided and the printed materials were so offered. In the case of an unemancipated minor or mentally incompetent person, the clinic or other facility is required to maintain a copy of the court order or the medical records and written consent for three years after the procedure is performed.

 (G) This section does not apply if a clinic or other facility where abortions are performed or induced does not have, through no fault of the clinic or facility and if the clinic or facility can demonstrate through written evidence the unavailability of the materials described in Section 44‑41‑340.

HISTORY: 1995 Act No. 1, Section 8; 2008 Act No. 222, Section 1, eff May 14, 2008; 2010 Act No. 268, Section 1, eff June 24, 2010; 2021 Act No. 1 (S.1), Section 5, eff February 18, 2021; 2023 Act No. 70 (S.474), Section 10, eff May 25, 2023.

Editor's Note

2021 Act No. 1, Section 1, provides as follows:

"SECTION 1. This act shall be known and may be cited as the 'South Carolina Fetal Heartbeat and Protection from Abortion Act'."

2023 Act No. 70, Sections 11 and 12, provide as follows:

"SECTION 11. The Public Employee Benefit Authority and the State Health Plan shall cover prescribed contraceptives for dependents under the same terms and conditions that the Plan provides contraceptive coverage for employees and spouses. The State Health Plan shall not apply patient cost sharing provisions to covered contraceptives.

"SECTION 12. The President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives have an unconditional right to intervene on behalf of their respective bodies in a state court action and may provide evidence or argument, written or oral, if a party to that court action challenges the constitutionality of this act. In a federal court action that challenges the constitutionality of this act the Legislature may seek to intervene, to file an amicus brief, or to present arguments in accordance with federal rules of procedure. Intervention by the Legislature pursuant to this provision does not limit the duty of the Attorney General to appear and prosecute legal actions or defend state agencies, officers or employees as otherwise provided. In any action in which the Legislature intervenes or participates, the Senate and the House of Representatives shall function independently from each other in the representation of their respective clients."

Effect of Amendment

2021 Act No. 1, Section 5, in (A)(1), inserted the (a) designator, and added (b).

2023 Act No. 70, Section 10, rewrote (A).

**SECTION 44‑41‑340.** Publication of materials regarding available assistance.

 (A) The South Carolina Department of Health and Environmental Control shall cause to be published the following printed materials:

 (1) geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies, which include a comprehensive list of the agencies available, a description of the services they offer, and a description of the manner, including telephone numbers, in which they may be contacted;

 (2) materials designed to inform the woman of the probable anatomical and physiological characteristics of the embryo or fetus at two‑week gestational increments from the time when a woman can be known to be pregnant to full term. Any photograph, drawing or other depiction must state in bold letters, which are easily legible, stating the magnification of the photograph, drawing or depiction if it is not the actual size of the embryo or fetus at the age indicated. The materials must be objective, nonjudgmental, and designed to convey only accurate scientific information about the embryo or fetus at the various gestational ages;

 (3) materials designed to inform the woman of the principal types of abortion procedures and the major risks associated with each procedure, as well as the major risks associated with carrying a fetus to full‑term;

 (4) materials designed to inform the woman that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care by providing the names, addresses, and phone numbers of appropriate agencies that provide or have information available on these benefits;

 (5) materials designed to inform the woman of the mechanisms available for obtaining child support payments;

 (6) a list of health care providers, facilities, and clinics that offer to perform ultrasounds free of charge. The list must be arranged geographically and shall include the name, address, hours of operation, and telephone number of each entity listed. A health care provider, facility, or clinic that would like to be included on this list may contact the department and provide the required information. The department must update this list annually before September first;

 (7) a plainly worded explanation of how a woman may calculate the gestational age of her embryo or fetus;

 (8) a scientifically accurate statement concerning the contribution that each parent makes to the genetic constitution of their biological child;

 (9) forms for notifications, certifications, and verifications required by Section 44‑41‑330.

 (B) The materials must be easily comprehendible and must be printed in a typeface large enough to be clearly legible.

 (C) The materials required under this section must be available from the South Carolina Department of Health and Environmental Control upon request and in appropriate number to any person, facility, or hospital.

 (D)(1) The materials required under this section must be available on the department's Internet website in a format suitable for downloading. The website must be capable of permitting the user to print a time and date stamped certification identifying when the materials are downloaded.

 (2) The department's Internet website also must provide a link to the Internet website maintained by health care providers, facilities, and clinics that offer to perform ultrasounds free of charge that have requested to be placed on the list maintained by the department.

HISTORY: 1995 Act No. 1, Section 8; 2010 Act No. 268, Sections 2, 3 eff June 24, 2010.

**SECTION 44‑41‑350.** Penalties for noncompliance with this article.

 A physician who performs an abortion when the physician knows or should know that the provisions of this article have not been complied with before the abortion is guilty of a misdemeanor and, upon conviction:

 (1) for a first or second offense, must be fined not more than one thousand dollars. No term of imprisonment may be imposed for a first or second offense.

 (2) for a third or subsequent offense, must be imprisoned not more than three years or fined not more than five thousand dollars, or both.

HISTORY: 1995 Act No. 1, Section 8.

**SECTION 44‑41‑360.** Preservation of anonymity of woman having abortion.

 In every proceeding or action brought under this article, the court shall rule whether the anonymity of any woman upon whom an abortion is performed or attempted shall be preserved from public disclosure if she does not give her consent to such a disclosure. The court, upon motion of any person or upon its own motion, shall make such a ruling and, upon determining that her anonymity be preserved, shall issue orders to the parties, witnesses, and counsel, and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each order under this section must be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable, less restrictive alternative exists. This section may not be construed to conceal the identity of the plaintiff or of the prosecutrix or of witnesses from the defendant or to abridge or deny the defendant's ability to conduct discovery under applicable rules of court or the defendant's right to a trial by jury or to cross examination.

HISTORY: 1995 Act No. 1, Section 8.

**SECTION 44‑41‑370.** Applicability of article.

 This article applies only to facilities in which any second trimester or five or more first trimester abortions are performed in a month.

HISTORY: 1995 Act No. 1, Section 8.

**SECTION 44‑41‑380.** Severability of provisions of article.

 If any provision, word, phrase, or clause of Article 3, Chapter 41, Title 44 of the 1976 Code, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions, words, phrases, clauses, or applications of Article 3, Chapter 41, Title 44 which can be given effect without the invalid provision, word, phrase, clause, or application, and, to this end, the provisions, words, phrases, and clauses of Article 3, Chapter 41, Title 44 are declared to be severable.

HISTORY: 1995 Act No. 1, Section 10; 2010 Act No. 268, Section 4, eff June 24, 2010.

ARTICLE 5

South Carolina Pain‑Capable Unborn Child Protection Act

Editor's Note

2023 Act No. 70, Section 13.B, provides as follows:

"[SECTION 13.]B. Article 5, Chapter 41, Title 44 of the S.C. Code is repealed. However, if some or all of the provisions contained in SECTION 2 of this act are ever temporarily or permanently restrained or enjoined by judicial order, or are held to be unconstitutional or invalid, then all of the provisions of Article 5, Chapter 41, Title 44 are reenacted retroactively to the date the judicial order either temporarily or permanently restraining or enjoining some or all of the provisions contained in SECTION 2 or declaring some or all of the provisions contained in SECTION 2 unconstitutional or invalid is entered."

**SECTION 44‑41‑410.** Short title.

For the repeal of this section, see 2023 Act No. 70, Section 13.B.

 This article may be cited as the "South Carolina Pain‑Capable Unborn Child Protection Act".

HISTORY: 2016 Act No. 183 (H.3114), Section 1, eff May 25, 2016.

Editor's Note

2023 Act No. 70, Section 13.B, provides as follows:

"[SECTION 13.]B. Article 5, Chapter 41, Title 44 of the S.C. Code is repealed. However, if some or all of the provisions contained in SECTION 2 of this act are ever temporarily or permanently restrained or enjoined by judicial order, or are held to be unconstitutional or invalid, then all of the provisions of Article 5, Chapter 41, Title 44 are reenacted retroactively to the date the judicial order either temporarily or permanently restraining or enjoining some or all of the provisions contained in SECTION 2 or declaring some or all of the provisions contained in SECTION 2 unconstitutional or invalid is entered."

**SECTION 44‑41‑420.** Legislative findings.

For the repeal of this section, see 2023 Act No. 70, Section 13.B.

 The General Assembly makes the following findings:

 (1) Pain receptors (nociceptors) are present throughout the unborn child's entire body and nerves link these receptors to the brain's thalamus and subcortical plate by no later than twenty weeks.

 (2) By eight weeks after fertilization, the unborn child reacts to touch. After twenty weeks, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example, by recoiling.

 (3) In the unborn child, application of such painful stimuli is associated with significant increases in stress hormones known as the stress response.

 (4) Subjection to such painful stimuli is associated with long‑term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral, and learning disabilities later in life.

 (5) For the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their levels when painful stimuli are applied without such anesthesia.

 (6) The position, asserted by some medical experts, that the unborn child is incapable of experiencing pain until a point later in pregnancy than twenty weeks after fertilization predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex. However, recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain.

 (7) Substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain.

 (8) In adults, stimulation or ablation of the cerebral cortex does not alter pain perception, while stimulation or ablation of the thalamus does.

 (9) Substantial evidence indicates that structures used for pain processing in early development differ from those of adults, using different neural elements available at specific times during development, such as the subcortical plate, to fulfill the role of pain processing.

 (10) The position, asserted by some medical experts, that the unborn child remains in a coma‑like sleep state that precludes the unborn child experiencing pain is inconsistent with the documented reaction of unborn children to painful stimuli and with the experience of fetal surgeons who have found it necessary to sedate the unborn child with anesthesia to prevent the unborn child from thrashing about in reaction to invasive surgery.

 (11) Consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain by twenty weeks after fertilization.

 (12) It is the purpose of the State to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain.

 (13) South Carolina's compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain is intended to be separate from and independent of South Carolina's compelling state interest in protecting the lives of unborn children from the stage of viability, and neither state interest is intended to replace the other.

 (14) Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion, the United States Supreme Court noted that an explicit statement of legislative intent specifically made applicable to a particular statute is of greater weight than a general savings or severability clause, it is the intent of the State that if any one or more provisions, sections, subsections, sentences, clauses, phrases or words of this article or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this article shall remain effective notwithstanding such unconstitutionality. Moreover, the State declares that it would have passed this article, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases or words, or any of their applications, were to be declared unconstitutional.

HISTORY: 2016 Act No. 183 (H.3114), Section 1, eff May 25, 2016.

Editor's Note

2023 Act No. 70, Section 13.B, provides as follows:

"[SECTION 13.]B. Article 5, Chapter 41, Title 44 of the S.C. Code is repealed. However, if some or all of the provisions contained in SECTION 2 of this act are ever temporarily or permanently restrained or enjoined by judicial order, or are held to be unconstitutional or invalid, then all of the provisions of Article 5, Chapter 41, Title 44 are reenacted retroactively to the date the judicial order either temporarily or permanently restraining or enjoining some or all of the provisions contained in SECTION 2 or declaring some or all of the provisions contained in SECTION 2 unconstitutional or invalid is entered."

**SECTION 44‑41‑430.** Definitions.

For the repeal of this section, see 2023 Act No. 70, Section 13.B.

 For the purposes of this article:

 (1) "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device:

 (a) to intentionally kill the unborn child of a woman known to be pregnant; or

 (b) to intentionally prematurely terminate the pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of a live birth or of preserving the life or health of the child after live birth.

 (2) "Attempt to perform or induce an abortion" means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this State in violation of this article.

 (3) "Department" means the South Carolina Department of Health and Environmental Control.

 (4) "Fertilization" means the fusion of a human spermatozoon with a human ovum.

 (5) "Fetal anomaly" means that, in reasonable medical judgment, the unborn child has a profound and irremediable congenital or chromosomal anomaly that, with or without the provision of life‑preserving treatment, would be incompatible with sustaining life after birth.

 (6) "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates the immediate abortion of her pregnancy without first determining post‑fertilization age to avert her death or for which the delay necessary to determine post‑fertilization age will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition must be considered a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

 (7) "Physician" means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in this State.

 (8) "Post‑fertilization age" means the age of the unborn child as calculated from the fusion of a human spermatozoon with a human ovum.

 (9) "Probable post‑fertilization age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the post‑fertilization age of the unborn child at the time the abortion is planned to be performed or induced.

 (10) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

 (11) "Unborn child" or "fetus" each means an individual organism of the species homo sapiens from fertilization until live birth.

 (12) "Woman" means a female human being whether or not she has reached the age of majority.

HISTORY: 2016 Act No. 183 (H.3114), Section 1, eff May 25, 2016.

Editor's Note

2023 Act No. 70, Section 13.B, provides as follows:

"[SECTION 13.]B. Article 5, Chapter 41, Title 44 of the S.C. Code is repealed. However, if some or all of the provisions contained in SECTION 2 of this act are ever temporarily or permanently restrained or enjoined by judicial order, or are held to be unconstitutional or invalid, then all of the provisions of Article 5, Chapter 41, Title 44 are reenacted retroactively to the date the judicial order either temporarily or permanently restraining or enjoining some or all of the provisions contained in SECTION 2 or declaring some or all of the provisions contained in SECTION 2 unconstitutional or invalid is entered."

**SECTION 44‑41‑440.** Determination of probable post‑fertilization age of unborn child.

For the repeal of this section, see 2023 Act No. 70, Section 13.B.

 Except in the case of a medical emergency or fetal anomaly, no abortion must be performed or induced or be attempted to be performed or induced unless the physician performing or inducing it has first made a determination of the probable post‑fertilization age of the unborn child or relied upon such a determination made by another physician. In making such a determination, the physician shall make such inquiries of the woman and perform or cause to be performed such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to post‑fertilization age.

HISTORY: 2016 Act No. 183 (H.3114), Section 1, eff May 25, 2016.

Editor's Note

2023 Act No. 70, Section 13.B, provides as follows:

"[SECTION 13.]B. Article 5, Chapter 41, Title 44 of the S.C. Code is repealed. However, if some or all of the provisions contained in SECTION 2 of this act are ever temporarily or permanently restrained or enjoined by judicial order, or are held to be unconstitutional or invalid, then all of the provisions of Article 5, Chapter 41, Title 44 are reenacted retroactively to the date the judicial order either temporarily or permanently restraining or enjoining some or all of the provisions contained in SECTION 2 or declaring some or all of the provisions contained in SECTION 2 unconstitutional or invalid is entered."

**SECTION 44‑41‑450.** Abortion prohibited when probable post‑fertilization age of unborn child is twenty or more weeks; exceptions.

For the repeal of this section, see 2023 Act No. 70, Section 13.B.

 (A) No person shall perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing or attempting to perform or induce the abortion or by another physician upon whose determination that physician relies, that the probable post‑fertilization age of the woman's unborn child is twenty or more weeks, except in the case of fetal anomaly, or in reasonable medical judgment, she has a condition which so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such greater risk must be considered to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

 (B) When an abortion upon a woman whose unborn child has been determined to have a probable post‑fertilization age of twenty or more weeks is not prohibited by subsection (A), the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive, unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the woman than would other available methods. No such greater risk must be considered to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

HISTORY: 2016 Act No. 183 (H.3114), Section 1, eff May 25, 2016.

Editor's Note

2023 Act No. 70, Section 13.B, provides as follows:

"[SECTION 13.]B. Article 5, Chapter 41, Title 44 of the S.C. Code is repealed. However, if some or all of the provisions contained in SECTION 2 of this act are ever temporarily or permanently restrained or enjoined by judicial order, or are held to be unconstitutional or invalid, then all of the provisions of Article 5, Chapter 41, Title 44 are reenacted retroactively to the date the judicial order either temporarily or permanently restraining or enjoining some or all of the provisions contained in SECTION 2 or declaring some or all of the provisions contained in SECTION 2 unconstitutional or invalid is entered."

**SECTION 44‑41‑460.** Report of abortion performed pursuant to Section 44‑41‑450; patient privacy; department to issue public report; late fee for failure of facility to report; regulations.

For the repeal of this section, see 2023 Act No. 70, Section 13.B.

 (A) Any abortion performed in this State pursuant to Section 44‑41‑450 must be reported by the licensed facility on the standard form for reporting abortions to the state registrar, Department of Health and Environmental Control, within seven days after the abortion is performed. The names of the patient and physician may not be reported on the form or otherwise disclosed to the state registrar. The form must indicate from whom consent was obtained or circumstances waiving consent and must include:

 (1) Post‑fertilization age:

 (a) if a determination of probable post‑fertilization age was made, whether ultrasound was employed in making the determination, and the week of probable post‑fertilization age determined; or

 (b) if a determination of probable post‑fertilization age was not made, the basis of the determination that a medical emergency existed.

 (2) Method of abortion, of which the following was employed:

 (a) medication abortion such as, but not limited to, mifepristone/misoprostol or methotrexate/misoprostol;

 (b) manual vacuum aspiration;

 (c) electrical vacuum aspiration;

 (d) dilation and evacuation;

 (e) combined induction abortion and dilation and evacuation;

 (f) induction abortion with prostaglandins;

 (g) induction abortion with intra‑amniotic instillation such as, but not limited to, saline or urea;

 (h) induction abortion; and

 (i) intact dilation and extraction (partial‑birth).

 (3) Whether an intrafetal injection was used in an attempt to induce fetal demise such as, but not limited to, intrafetal potassium chloride or digoxin.

 (4) Age of the patient.

 (5) If the probable post‑fertilization age was determined to be twenty or more weeks, whether the reason for the abortion was a medical emergency or fetal anomaly, and if the reason was a medical emergency, the basis of the determination that the pregnant woman had a condition which so complicated her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.

 (6) If the probable post‑fertilization age was determined to be twenty or more weeks, whether or not the method of abortion used was one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive and, if such a method was not used, the basis of the determination that termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the woman than would other available methods.

 (7) The information related to fetal heartbeat testing required pursuant to Sections 44‑41‑630, 44‑41‑660, and 44‑41‑690, as applicable.

 (8) Whether the reason for the abortion was to preserve the health of the pregnant woman and, if so, the medical condition that the abortion was asserted to address and the medical rationale for the conclusion that an abortion was necessary to address that condition. If the reason for the abortion was other than to preserve the health of the pregnant woman, then the report must specify that maternal health was not the purpose of the abortion. This information must also be placed in the pregnant woman's medical records and maintained for at least seven years thereafter.

 (B) Reports required by subsection (A) shall not contain the name or the address of the patient whose pregnancy was terminated, nor shall the report contain any other information identifying the patient, except that each report shall contain a unique medical record identifying number, to enable matching the report to the patient's medical records. Such reports must be maintained in strict confidence by the department, must not be available for public inspection, and must not be made available except:

 (1) to the Attorney General or solicitor with appropriate jurisdiction pursuant to a criminal investigation;

 (2) to the Attorney General or solicitor pursuant to a civil investigation of the grounds for an action under Section 44‑41‑480(B); or

 (3) pursuant to court order in an action under Section 44‑41‑480.

 (C) By June thirtieth of each year, the department shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection (A). Each such report also shall provide the statistics for all previous calendar years during which this section was in effect, adjusted to reflect any additional information from late or corrected reports. The department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any pregnant woman upon whom an abortion was performed, induced, or attempted.

 (D) Any facility that fails to submit a report by the end of thirty days following the due date must be subject to a late fee of one thousand dollars for each additional thirty‑day period or portion of a thirty‑day period the report is overdue. Any facility required to report in accordance with this article that has not submitted a report, or has submitted only an incomplete report, more than six months following the due date, may, in an action brought by the department, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to civil contempt. Intentional or reckless falsification of any report required under this section is a misdemeanor punishable by not more than one year in prison.

 (E) Within ninety days of the effective date of this article, the Department of Health and Environmental Control shall adopt and promulgate forms and regulations to assist in compliance with this section. Subsection (A) shall take effect so as to require reports regarding all abortions performed or induced on and after the first day of the first calendar month following the effective date of such rules.

HISTORY: 2016 Act No. 183 (H.3114), Section 1, eff May 25, 2016; 2021 Act No. 1 (S.1), Section 4, eff February 18, 2021.

Editor's Note

2021 Act No. 1, Section 1, provides as follows:

"SECTION 1. This act shall be known and may be cited as the 'South Carolina Fetal Heartbeat and Protection from Abortion Act'."

2023 Act No. 70, Section 13.B, provides as follows:

"[SECTION 13.]B. Article 5, Chapter 41, Title 44 of the S.C. Code is repealed. However, if some or all of the provisions contained in SECTION 2 of this act are ever temporarily or permanently restrained or enjoined by judicial order, or are held to be unconstitutional or invalid, then all of the provisions of Article 5, Chapter 41, Title 44 are reenacted retroactively to the date the judicial order either temporarily or permanently restraining or enjoining some or all of the provisions contained in SECTION 2 or declaring some or all of the provisions contained in SECTION 2 unconstitutional or invalid is entered."

Effect of Amendment

2021 Act No. 1, Section 4, in (A), added (7) and (8).

**SECTION 44‑41‑470.** Penalties for noncompliance with Sections 44‑41‑440 and 44‑41‑450.

For the repeal of this section, see 2023 Act No. 70, Section 13.B.

 Any physician who intentionally or knowingly fails to conform to any requirement in Section 44‑41‑440 and Section 44‑41‑450 is guilty of a misdemeanor and, upon conviction, must be fined not less than two thousand dollars nor more than ten thousand dollars or imprisoned for not more than three years, or both. No part of the minimum fine may be suspended. For conviction of a third or subsequent offense, the sentence must be imprisonment for not less than sixty days nor more than three years, no part of which may be suspended.

HISTORY: 2016 Act No. 183 (H.3114), Section 1, eff May 25, 2016.

Editor's Note

2023 Act No. 70, Section 13.B, provides as follows:

"[SECTION 13.]B. Article 5, Chapter 41, Title 44 of the S.C. Code is repealed. However, if some or all of the provisions contained in SECTION 2 of this act are ever temporarily or permanently restrained or enjoined by judicial order, or are held to be unconstitutional or invalid, then all of the provisions of Article 5, Chapter 41, Title 44 are reenacted retroactively to the date the judicial order either temporarily or permanently restraining or enjoining some or all of the provisions contained in SECTION 2 or declaring some or all of the provisions contained in SECTION 2 unconstitutional or invalid is entered."

**SECTION 44‑41‑480.** Construction against implicit repeal of existing law.

For the repeal of this section, see 2023 Act No. 70, Section 13.B.

 This article must not be construed to repeal, by implication or otherwise, Section 44‑41‑20 or any otherwise applicable provision of South Carolina law regulating or restricting abortion. An abortion that complies with this article but violates the provisions of Section 44‑41‑20 or any otherwise applicable provision of South Carolina law must be considered unlawful as provided in such provision. An abortion that complies with the provisions of Section 44‑41‑20 or any otherwise applicable provision of South Carolina law regulating or restricting abortion but violates this article must be considered unlawful as provided in this article. If some or all of the provisions of this article are ever temporarily or permanently restrained or enjoined by judicial order, all other provisions of South Carolina law regulating or restricting abortion must be enforced as though such restrained or enjoined provisions had not been adopted; provided, however, that whenever such temporary or permanent restraining order of injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

HISTORY: 2016 Act No. 183 (H.3114), Section 1, eff May 25, 2016.

Editor's Note

2023 Act No. 70, Section 13.B, provides as follows:

"[SECTION 13.]B. Article 5, Chapter 41, Title 44 of the S.C. Code is repealed. However, if some or all of the provisions contained in SECTION 2 of this act are ever temporarily or permanently restrained or enjoined by judicial order, or are held to be unconstitutional or invalid, then all of the provisions of Article 5, Chapter 41, Title 44 are reenacted retroactively to the date the judicial order either temporarily or permanently restraining or enjoining some or all of the provisions contained in SECTION 2 or declaring some or all of the provisions contained in SECTION 2 unconstitutional or invalid is entered."

ARTICLE 6

Fetal Heartbeat and Protection from Abortion

Editor's Note

2021 Act No. 1, Section 1, provides as follows:

"SECTION 1. This act shall be known and may be cited as the 'South Carolina Fetal Heartbeat and Protection from Abortion Act'."

**SECTION 44‑41‑610.** Definitions.

 As used in this article:

 (1) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to save the life or preserve the health of the unborn child, or to remove a dead unborn child.

 (2) "Clinically diagnosable pregnancy" means the point in time when it is possible to determine that a woman is pregnant due to the detectible presence of human chorionic gonadotropin (hCG).

 (3) "Conception" means fertilization of an ovum by sperm.

 (4) "Contraceptive" means a drug, device, or chemical that prevents ovulation, conception, or the implantation of a fertilized ovum in a woman's uterine wall after conception.

 (5) "Fatal fetal anomaly" means that, in reasonable medical judgment, the unborn child has a profound and irremediable congenital or chromosomal anomaly that, with or without the provision of life‑preserving treatment, would be incompatible with sustaining life after birth.

 (6) "Fetal heartbeat" means cardiac activity, or the steady and repetitive rhythmic contraction of the fetal heart, within the gestational sac.

 (7) "Gestational age" means the age of an unborn child as calculated from the first day of the last menstrual period of a pregnant woman.

 (8) "Gestational sac" means the structure that comprises the extraembryonic membranes that envelop the unborn child and that is typically visible by ultrasound after the fourth week of pregnancy.

 (9) "Medical emergency" means in reasonable medical judgment, a condition exists that has complicated the pregnant woman's medical condition and necessitates an abortion to prevent death or serious risk of a substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. A condition must not be considered a medical emergency if based on a claim or diagnosis that a woman will engage in conduct that she intends to result in her death or in a substantial and irreversible physical impairment of a major bodily function.

 (10) "Physician" means a person licensed to practice medicine in this State.

 (11) "Pregnant" means the human biological female reproductive condition of having a living unborn child within her body, whether or not she has reached the age of majority.

 (12) "Rape" has the same meaning as criminal sexual conduct, regardless of the degree.

 (13) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

 (14) "Unborn child" means an individual organism of the species homo sapiens from conception until live birth.

HISTORY: 2021 Act No. 1 (S.1), Section 3, eff February 18, 2021; 2023 Act No. 70 (S.474), Section 2, eff May 25, 2023.

Validity

For the validity of the previous version of this section, see Planned Parenthood South Atlantic v. State, 882 S.E.2d 770 (S.C. 2023); see Dobbs v. Jackson Women's Health Org., 142 S.Ct. 2228 (U.S. 2022).

Editor's Note

2023 Act No. 70, Sections 11 and 12, provide as follows:

"SECTION 11. The Public Employee Benefit Authority and the State Health Plan shall cover prescribed contraceptives for dependents under the same terms and conditions that the Plan provides contraceptive coverage for employees and spouses. The State Health Plan shall not apply patient cost sharing provisions to covered contraceptives.

"SECTION 12. The President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives have an unconditional right to intervene on behalf of their respective bodies in a state court action and may provide evidence or argument, written or oral, if a party to that court action challenges the constitutionality of this act. In a federal court action that challenges the constitutionality of this act the Legislature may seek to intervene, to file an amicus brief, or to present arguments in accordance with federal rules of procedure. Intervention by the Legislature pursuant to this provision does not limit the duty of the Attorney General to appear and prosecute legal actions or defend state agencies, officers or employees as otherwise provided. In any action in which the Legislature intervenes or participates, the Senate and the House of Representatives shall function independently from each other in the representation of their respective clients."

Effect of Amendment

2023 Act No. 70, Section 2, rewrote the section.

**SECTION 44‑41‑620.** Voluntary and informed written consent required for an abortion.

 An abortion may not be performed or induced without the voluntary and informed written consent of the pregnant woman or, in the case of incapacity to consent, the voluntary and informed written consent of her court‑appointed guardian, and without compliance with the provisions of Section 44‑41‑330(A).

HISTORY: 2021 Act No. 1 (S.1), Section 3, eff February 18, 2021; 2023 Act No. 70 (S.474), Section 2, eff May 25, 2023.

Validity

For the validity of the previous version of this section, see Planned Parenthood South Atlantic v. State, 882 S.E.2d 770 (S.C. 2023); see Dobbs v. Jackson Women's Health Org., 142 S.Ct. 2228 (U.S. 2022).

Editor's Note

2023 Act No. 70, Sections 11 and 12, provide as follows:

"SECTION 11. The Public Employee Benefit Authority and the State Health Plan shall cover prescribed contraceptives for dependents under the same terms and conditions that the Plan provides contraceptive coverage for employees and spouses. The State Health Plan shall not apply patient cost sharing provisions to covered contraceptives.

"SECTION 12. The President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives have an unconditional right to intervene on behalf of their respective bodies in a state court action and may provide evidence or argument, written or oral, if a party to that court action challenges the constitutionality of this act. In a federal court action that challenges the constitutionality of this act the Legislature may seek to intervene, to file an amicus brief, or to present arguments in accordance with federal rules of procedure. Intervention by the Legislature pursuant to this provision does not limit the duty of the Attorney General to appear and prosecute legal actions or defend state agencies, officers or employees as otherwise provided. In any action in which the Legislature intervenes or participates, the Senate and the House of Representatives shall function independently from each other in the representation of their respective clients."

Effect of Amendment

2023 Act No. 70, Section 2, rewrote the section.

**SECTION 44‑41‑630.** Obstetric ultrasound; display of images; recording written medical description of images of fetal heartbeat; penalties.

 (A) An abortion provider who is to perform or induce an abortion, a certified technician, or another agent of the abortion provider who is competent in ultrasonography shall:

 (1) perform an obstetric ultrasound on the pregnant woman, using whichever method the physician and pregnant woman agree is best under the circumstances;

 (2) during the performance of the ultrasound, display the ultrasound images so that the pregnant woman may view the images; and

 (3) record a written medical description of the ultrasound images of the unborn child's fetal heartbeat, if present and viewable.

 (B) Except as provided in Section 44‑41‑640, Section 44‑41‑650, and Section 44‑41‑660, no person shall perform or induce an abortion on a pregnant woman with the specific intent of causing or abetting an abortion if the unborn child's fetal heartbeat has been detected in accordance with Section 44‑41‑330(A). A person who violates this subsection is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned for not more than two years, or both.

HISTORY: 2021 Act No. 1 (S.1), Section 3, eff February 18, 2021; 2023 Act No. 70 (S.474), Section 2, eff May 25, 2023.

Validity

For the validity of the previous version of this section, see Planned Parenthood South Atlantic v. State, 882 S.E.2d 770 (S.C. 2023); see Dobbs v. Jackson Women's Health Org., 142 S.Ct. 2228 (U.S. 2022).

Editor's Note

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"SECTION 11. The Public Employee Benefit Authority and the State Health Plan shall cover prescribed contraceptives for dependents under the same terms and conditions that the Plan provides contraceptive coverage for employees and spouses. The State Health Plan shall not apply patient cost sharing provisions to covered contraceptives.

"SECTION 12. The President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives have an unconditional right to intervene on behalf of their respective bodies in a state court action and may provide evidence or argument, written or oral, if a party to that court action challenges the constitutionality of this act. In a federal court action that challenges the constitutionality of this act the Legislature may seek to intervene, to file an amicus brief, or to present arguments in accordance with federal rules of procedure. Intervention by the Legislature pursuant to this provision does not limit the duty of the Attorney General to appear and prosecute legal actions or defend state agencies, officers or employees as otherwise provided. In any action in which the Legislature intervenes or participates, the Senate and the House of Representatives shall function independently from each other in the representation of their respective clients."

Effect of Amendment

2023 Act No. 70, Section 2, inserted the (A) designator, and added (B).

**SECTION 44‑41‑640.** Exceptions for medical emergencies or to prevent the death of the pregnant woman; written notations in medical records.

 (A) It is not a violation of Section 44‑41‑630 if an abortion is performed or induced on a pregnant woman due to a medical emergency or is performed to prevent the death of the pregnant woman or to prevent the serious risk of a substantial and irreversible impairment of a major bodily function, not including psychological or emotional conditions, of the pregnant woman.

 (B)(1) Section 44‑41‑630 does not apply to a physician who performs or induces an abortion if the physician determines according to standard medical practice that a medical emergency exists or is performed to prevent the death of the pregnant woman or to prevent the serious risk of a substantial or irreversible impairment of a major bodily function, not including psychological or emotional conditions, that prevents compliance with the section.

 (2) A physician who performs or induces an abortion on a pregnant woman based on the exception in item (1) shall make written notations in the pregnant woman's medical records of the following:

 (a) the physician's belief that a medical emergency necessitating the abortion existed;

 (b) the medical condition of the pregnant woman that assertedly prevented compliance with Section 44‑41‑630; and

 (c) the medical rationale to support the physician's or person's conclusion that the pregnant woman's medical condition necessitated the immediate abortion of her pregnancy to avert her death and a medical emergency necessitating the abortion existed.

 (3) A physician performing a medical procedure pursuant to item (1) shall make reasonable medical efforts under the circumstances to preserve the life of the pregnant woman's unborn child, to the extent that it does not risk the death of the pregnant woman or the serious risk of a substantial and irreversible physical impairment of a major bodily function of the pregnant woman, not including psychological or emotional conditions and in a manner consistent with reasonable medical practices. A medical procedure shall not be considered necessary if it is performed based upon a claim or diagnosis that the woman will engage in conduct that she intends to result in her death or in a substantial physical impairment of a major bodily function.

 (4)(a) For at least seven years from the date the notations are made in the pregnant woman's medical records, the physician owner of the pregnant woman's medical records shall maintain a record of the notations and in his own records a copy of the notations.

 (b) A person, if he is the owner of the pregnant woman's medical records, who violates this subsection is guilty of a felony and must be fined up to ten thousand dollars, imprisoned for not more than two years, or both.

 (c) An entity with ownership of the pregnant woman's medical records that violates item (3) must be fined up to fifty thousand dollars.

 (C)(1) It is not a violation of Section 44‑41‑630 for a physician to perform a medical procedure necessary in his reasonable medical judgment to prevent the death of a pregnant woman or the serious risk of a substantial and irreversible physical impairment of a major bodily function of the pregnant woman, not including psychological or emotional conditions.

 (2) It is presumed that the following medical conditions constitute a risk of death or serious risk of a substantial and irreversible physical impairment of a major bodily function of a pregnant woman, not including psychological or emotional conditions: molar pregnancy, partial molar pregnancy, blighted ovum, ectopic pregnancy, severe preeclampsia, HELLP syndrome, abruptio placentae, severe physical maternal trauma, uterine rupture, intrauterine fetal demise, and miscarriage. However, when an unborn child is alive in utero, the physician must make all reasonable efforts to deliver and save the life of an unborn child during the process of separating the unborn child from the pregnant woman, to the extent that it does not adversely affect the life or physical health of the pregnant woman, and in a manner that is consistent with reasonable medical practice. The enumeration of the medical conditions in this item is not intended to exclude or abrogate other conditions that satisfy the exclusions contained in item (1) or prevent other procedures that are not included in the definition of abortion.

 (3) A physician who performs a medical procedure pursuant to item (1) shall declare, in a written document maintained with the woman's medical records, that the medical procedure was necessary, the woman's medical condition necessitating the procedure, the physician's rationale for his conclusion that the procedure was necessary, and that all reasonable efforts were made to save the unborn child in the event it was living prior to the procedure. The declaration required by this item must be placed in the woman's medical records not later than thirty days after the procedure was completed. A physician's exercise of reasonable medical judgment in relation to a medical procedure undertaken pursuant to this subsection is presumed to be within the applicable standard of care.

 (D) Medical treatment provided to a pregnant woman by a physician which results in the accidental or unintentional injury or death of her unborn child is not a violation of Section 44‑41‑630.

 (E) It is not a violation of Section 44‑41‑630 to use, sell, or administer a contraceptive measure, drug, chemical, or device if the contraceptive measure, drug, chemical, or device is used, sold, prescribed or administered in accordance with manufacturer's instructions and is not used, sold, prescribed or administered to cause or induce an abortion.

HISTORY: 2021 Act No. 1 (S.1), Section 3, eff February 18, 2021; 2023 Act No. 70 (S.474), Section 2, eff May 25, 2023.

Validity

For the validity of the previous version of this section, see Planned Parenthood South Atlantic v. State, 882 S.E.2d 770 (S.C. 2023); see Dobbs v. Jackson Women's Health Org., 142 S.Ct. 2228 (U.S. 2022).

Editor's Note

2023 Act No. 70, Sections 11 and 12, provide as follows:

"SECTION 11. The Public Employee Benefit Authority and the State Health Plan shall cover prescribed contraceptives for dependents under the same terms and conditions that the Plan provides contraceptive coverage for employees and spouses. The State Health Plan shall not apply patient cost sharing provisions to covered contraceptives.

"SECTION 12. The President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives have an unconditional right to intervene on behalf of their respective bodies in a state court action and may provide evidence or argument, written or oral, if a party to that court action challenges the constitutionality of this act. In a federal court action that challenges the constitutionality of this act the Legislature may seek to intervene, to file an amicus brief, or to present arguments in accordance with federal rules of procedure. Intervention by the Legislature pursuant to this provision does not limit the duty of the Attorney General to appear and prosecute legal actions or defend state agencies, officers or employees as otherwise provided. In any action in which the Legislature intervenes or participates, the Senate and the House of Representatives shall function independently from each other in the representation of their respective clients."

Effect of Amendment

2023 Act No. 70, Section 2, rewrote the section.

**SECTION 44‑41‑650.** Exceptions for rape and incest; physician required to notify law enforcement.

 (A) A physician may perform, induce, or attempt to perform or induce an abortion on a pregnant woman after the fetal heartbeat has been detected in accordance with Section 44‑41‑630 if:

 (1) the pregnancy is the result of rape, and the probable gestational age of the unborn child is not more than twelve weeks; or

 (2) the pregnancy is the result of incest, and the probable gestational age of the unborn child is not more than twelve weeks.

 (B) A physician who performs or induces an abortion on a pregnant woman based on an exception contained in this section must report the allegation of rape or incest to the sheriff in the county in which the abortion was performed. The report must be made no later than twenty‑four hours after performing or inducing the abortion, may be made orally or otherwise, and shall include the name and contact information of the pregnant woman making the allegation. Prior to performing or inducing an abortion, the physician who performs or induces an abortion based on an allegation of rape or incest must notify the pregnant woman that the physician will report the allegation of rape or incest to the sheriff. The physician shall make written notations in the pregnant woman's medical records that the abortion was performed pursuant to the applicable exception, that the doctor notified the sheriff of the allegation of rape or incest in a timely manner, and that the woman was notified prior to the abortion that the physician would notify the sheriff of the allegation of rape or incest.

 (C) A person who violates this section is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned for not more than two years, or both.

HISTORY: 2021 Act No. 1 (S.1), Section 3, eff February 18, 2021; 2023 Act No. 70 (S.474), Section 2, eff May 25, 2023.

Validity

For the validity of the previous version of this section, see Planned Parenthood South Atlantic v. State, 882 S.E.2d 770 (S.C. 2023); see Dobbs v. Jackson Women's Health Org., 142 S.Ct. 2228 (U.S. 2022).

Editor's Note

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"SECTION 12. The President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives have an unconditional right to intervene on behalf of their respective bodies in a state court action and may provide evidence or argument, written or oral, if a party to that court action challenges the constitutionality of this act. In a federal court action that challenges the constitutionality of this act the Legislature may seek to intervene, to file an amicus brief, or to present arguments in accordance with federal rules of procedure. Intervention by the Legislature pursuant to this provision does not limit the duty of the Attorney General to appear and prosecute legal actions or defend state agencies, officers or employees as otherwise provided. In any action in which the Legislature intervenes or participates, the Senate and the House of Representatives shall function independently from each other in the representation of their respective clients."

Effect of Amendment

2023 Act No. 70, Section 2, rewrote the section.

**SECTION 44‑41‑660.** Exception for fatal fetal anomaly; written notations in medical records.

 (A) It is not a violation of Section 44‑41‑630 if an abortion is performed or induced on a pregnant woman due to the existence of a fatal fetal anomaly. Section 44‑41‑630 does not apply to a physician who performs or induces an abortion if the physician or person determines according to standard medical practice that there exists a fatal fetal anomaly.

 (B)(1) A person who performs or induces an abortion based upon the existence of a fatal fetal anomaly shall make written notations in the pregnant woman's medical records of:

 (a) the presence of a fatal fetal anomaly;

 (b) the nature of the fatal fetal anomaly;

 (c) the medical rationale for making the determination that with or without the provision of life‑preserving treatment life after birth would be unsustainable.

 (2) For at least seven years from the date the notations are made in the woman's medical records, the owner of the pregnant woman's medical records shall maintain a record of the notations.

 (C) A person who violates this section is guilty of a felony and, upon conviction, must be fined up to ten thousand dollars, imprisoned for not more than two years, or both.

 (D) An entity with ownership of the pregnant woman's medical records that violates item (2) must be fined up to fifty thousand dollars.

HISTORY: 2021 Act No. 1 (S.1), Section 3, eff February 18, 2021; 2023 Act No. 70 (S.474), Section 2, eff May 25, 2023.

Validity

For the validity of the previous version of this section, see Planned Parenthood South Atlantic v. State, 882 S.E.2d 770 (S.C. 2023); see Dobbs v. Jackson Women's Health Org., 142 S.Ct. 2228 (U.S. 2022).

Editor's Note

2023 Act No. 70, Sections 11 and 12, provide as follows:

"SECTION 11. The Public Employee Benefit Authority and the State Health Plan shall cover prescribed contraceptives for dependents under the same terms and conditions that the Plan provides contraceptive coverage for employees and spouses. The State Health Plan shall not apply patient cost sharing provisions to covered contraceptives.

"SECTION 12. The President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives have an unconditional right to intervene on behalf of their respective bodies in a state court action and may provide evidence or argument, written or oral, if a party to that court action challenges the constitutionality of this act. In a federal court action that challenges the constitutionality of this act the Legislature may seek to intervene, to file an amicus brief, or to present arguments in accordance with federal rules of procedure. Intervention by the Legislature pursuant to this provision does not limit the duty of the Attorney General to appear and prosecute legal actions or defend state agencies, officers or employees as otherwise provided. In any action in which the Legislature intervenes or participates, the Senate and the House of Representatives shall function independently from each other in the representation of their respective clients."

Effect of Amendment

2023 Act No. 70, Section 2, rewrote the section.

**SECTION 44‑41‑670.** Criminal prosecution of pregnant women prohibited.

 A pregnant woman on whom an abortion is performed or induced in violation of this article may not be criminally prosecuted for violating any of the provisions of this article or for attempting to commit, or conspiring to commit a violation of any of the provisions of the article and is not subject to a civil or criminal penalty based on the abortion being performed or induced in violation of any of the provisions of this article.

HISTORY: 2021 Act No. 1 (S.1), Section 3, eff February 18, 2021; 2023 Act No. 70 (S.474), Section 2, eff May 25, 2023.

Validity

For the validity of the previous version of this section, see Planned Parenthood South Atlantic v. State, 882 S.E.2d 770 (S.C. 2023); see Dobbs v. Jackson Women's Health Org., 142 S.Ct. 2228 (U.S. 2022).

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"SECTION 12. The President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives have an unconditional right to intervene on behalf of their respective bodies in a state court action and may provide evidence or argument, written or oral, if a party to that court action challenges the constitutionality of this act. In a federal court action that challenges the constitutionality of this act the Legislature may seek to intervene, to file an amicus brief, or to present arguments in accordance with federal rules of procedure. Intervention by the Legislature pursuant to this provision does not limit the duty of the Attorney General to appear and prosecute legal actions or defend state agencies, officers or employees as otherwise provided. In any action in which the Legislature intervenes or participates, the Senate and the House of Representatives shall function independently from each other in the representation of their respective clients."

Effect of Amendment

2023 Act No. 70, Section 2, rewrote the section.

**SECTION 44‑41‑680.** Civil action; damages; attorney's fees.

 (A) In addition to all other remedies available under common or statutory law, failure to comply with the requirements of this article shall provide the basis for a civil action further described in this section.

 (B) A pregnant woman upon whom an abortion has been performed, induced, or coerced in violation of this article may maintain an action against the person who violated this article for actual and punitive damages. In addition to all other damages, and separate and distinct from all other damages, a plaintiff is entitled to statutory damages of ten thousand dollars for each violation of this article to be imposed on each defendant found to have violated this article.

 (C) A separate and distinct cause of action for injunctive relief against any person who has violated this article may be maintained by:

 (1) the woman upon whom the abortion was performed or induced in violation of this article;

 (2) the parent or guardian of the pregnant woman if she had not attained the age of eighteen years at the time of the abortion or died as a result of the abortion;

 (3) a solicitor or prosecuting attorney with proper jurisdiction; or

 (4) the Attorney General.

 (D) If a plaintiff prevails in an action initiated pursuant to this section the court shall award the plaintiff reasonable costs and attorney's fees.

 (E) No damages, costs, or attorney's fees may be assessed against the woman upon whom an abortion was performed or induced.

 (F) Under no circumstances may civil damages be awarded to a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct.

 (G) A civil cause of action pursuant to this section must be brought within three years of the date of the abortion and is not subject to the limitations and requirements contained in Chapter 79, Title 15.

HISTORY: 2021 Act No. 1 (S.1), Section 3, eff February 18, 2021; 2023 Act No. 70 (S.474), Section 2, eff May 25, 2023.

Validity

For the validity of the previous version of this section, see Planned Parenthood South Atlantic v. State, 882 S.E.2d 770 (S.C. 2023); see Dobbs v. Jackson Women's Health Org., 142 S.Ct. 2228 (U.S. 2022).

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Effect of Amendment

2023 Act No. 70, Section 2, rewrote the section.

**SECTION 44‑41‑690.** Unprofessional conduct; revocation of physician's license.

 In addition to any other penalties imposed by law, a physician or any other professionally licensed person who intentionally, knowingly, or recklessly violates the prohibition on abortion contained in this article commits an act of unprofessional conduct. A physician's license to practice in this State immediately shall be revoked by the State Board of Medical Examiners, after due process according to the board's rules and procedures. Any other licensed person's professional license shall be immediately revoked by the appropriate licensing board, after due process according to that board's rules and procedures. A complaint may be originated by any person or by the board sua sponte. A licensing board acting pursuant to this section may assess costs of the investigation, fines, and other disciplinary actions as it may deem appropriate.

HISTORY: 2021 Act No. 1 (S.1), Section 3, eff February 18, 2021; 2023 Act No. 70 (S.474), Section 2, eff May 25, 2023.

Validity

For the validity of the previous version of this section, see Planned Parenthood South Atlantic v. State, 882 S.E.2d 770 (S.C. 2023); see Dobbs v. Jackson Women's Health Org., 142 S.Ct. 2228 (U.S. 2022).

Editor's Note

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Effect of Amendment

2023 Act No. 70, Section 2, rewrote the section.

**SECTION 44‑41‑700.** Reserved.

HISTORY: Former Section, titled No violation of Section 44‑41‑680 if no fetal heartbeat detected, had the following history: 2021 Act No. 1 (S.1), Section 3, eff February 18, 2021. Reserved by 2023 Act No. 70, Section 2, eff May 25, 2023.

**SECTION 44‑41‑710.** Reserved.

HISTORY: Former Section, titled Construction and application of article, had the following history: 2021 Act No. 1 (S.1), Section 3, eff February 18, 2021. Reserved by 2023 Act No. 70, Section 2, eff May 25, 2023.

**SECTION 44‑41‑720.** Reserved.

HISTORY: Former Section, titled Contraceptives not affected by this article, had the following history: 2021 Act No. 1 (S.1), Section 3, eff February 18, 2021. Reserved by 2023 Act No. 70, Section 2, eff May 25, 2023.

**SECTION 44‑41‑730.** Reserved.

HISTORY: Former Section, titled Pregnant woman not subject to criminal prosecution for violating any provisions of this article, had the following history: 2021 Act No. 1 (S.1), Section 3, eff February 18, 2021. Reserved by 2023 Act No. 70, Section 2, eff May 25, 2023.

**SECTION 44‑41‑740.** Reserved.

HISTORY: Former Section, titled Civil action; damages; attorney's fees, had the following history: 2021 Act No. 1 (S.1), Section 3, eff February 18, 2021. Reserved by 2023 Act No. 70, Section 2, eff May 25, 2023.