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**S. 366**

**STATUS INFORMATION**

General Bill

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Summary: Abortion During First Trimester

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 1/10/2023 Senate Introduced and read first time (Senate Journal‑page 208)

 1/10/2023 Senate Referred to Committee on **Medical Affairs** (Senate Journal‑page 208)

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**VERSIONS OF THIS BILL**

[01/10/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/366_20230110.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 44‑41‑10, RELATING TO DEFINITIONS CONCERNING ABORTIONS, SO AS TO PROVIDE DEFINITIONS FOR FATAL FETAL ANOMALY AND MEDICAL EMERGENCY AND TO REMOVE DEFINITIONS THAT ARE NO LONGER NECESSARY; BY AMENDING SECTION 44‑41‑20, RELATING TO LEGAL ABORTIONS, SO AS TO PROVIDE THAT IT IS UNLAWFUL TO PERFORM ABORTIONS AFTER THE FIRST TRIMESTER OF PREGNANCY WITH CERTAIN EXCEPTIONS and to provide for immunity from civil and criminal liability for medical personnel acting consistently with the current standard of care; BY AMENDING SECTION 44‑41‑30(C), RELATING TO PERSONS FROM WHOM CONSENT IS REQUIRED, SO AS TO PROVIDE THAT CONSENT IS NOT NECESSARY IN A MEDICAL EMERGENCY AND A WOMAN IS INCAPABLE OF GIVING CONSENT; BY AMENDING SECTION 44‑41‑30(D), RELATING TO PERSONS FROM WHOM CONSENT IS REQUIRED, SO AS TO PROVIDE THAT CRIMINAL SEXUAL CONDUCT RESULTING IN A PREGNANCY MUST BE REPORTED; BY AMENDING SECTION 44‑41‑80, RELATING TO PERFORMING OR SOLICITING UNLAWFUL ABORTION; TESTIMONY OF a WOMAN MAY BE COMPELLED, SO AS TO REPEAL PROVISIONS THAT COULD LEAD TO A WOMAN BEING PROSECUTED FOR AN ABORTION AND TO REMOVE PROVISIONS REQUIRING A WOMAN TO TESTIFY IN CRIMINAL PROSECUTIONS INITIATED PURSUANT TO CHAPTER 41, TITLE 44; AND TO REPEAL ARTICLE 5 AND ARTICLE 6, CHAPTER 41, TITLE 44.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Sections 44‑41‑10 through 44‑41‑20 of the S.C. Code are amended to read:

 Section 44‑41‑10. As used in this chapter:

 (a)1) “Abortion” means the use of an instrument, medicine, drug, or other substance or device with intent to terminate the pregnancy of a woman known to be pregnant for reasons other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

 (b)2) “Physician” means a person licensed to practice medicine in this State.

 (c)3) “Department” means the South Carolina Department of Health and Environmental Control.

 (d)4) “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)5) “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)6) “Pregnancy” means the condition of a woman carrying a fetus or embryo within her body as the result of conception.

 (g)7) “Conception” means the fecundation of the ovum by the spermatozoa.

 (h)8) “Consent” means a signed and witnessed voluntary agreement to the performance of an abortion.

 (i)9) “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) “Viability” means that stage of human development when the fetus is potentially able to live outside of the mother's womb with or without the aid of artificial life support systems. For the purposes of this chapter, a legal presumption is hereby created that viability occurs no sooner than the twenty‑fourth week of pregnancy.

 (m)10) “Minor” means a female under the age of seventeen.

 (n)11) “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.

 (o)12) “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.

 (13) “Fatal fetal anomaly” means a profound and irremediable congenital or chromosomal anomaly that, in reasonable medical judgement, would be incompatible with sustaining life after birth with or without the provision of life‑preserving treatment.

 (14) “Medical emergency” means a condition that, in reasonable medical judgement, so complicates the medical condition of a pregnant woman that it necessitates the immediate termination of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function, not including psychological or emotional conditions. No condition must be considered a medical emergency if, based upon a claim or diagnosis, the woman will engage in conduct which she intends to result in her death or in substantial irreversible physical impairment of a major bodily function.

 Section 44‑41‑20. (A) It is unlawful to perform or induce an abortion after the first trimester of pregnancy. Abortion shall be a criminal act except when performed under the following circumstances:

 (a) During the first trimester of pregnancy the abortion is performed with the pregnant woman's consent by her attending physician pursuant to his professional medical judgment.

 (b)B) During the second trimester of pregnancy the abortion is performed with the pregnant woman's consent by her attending physician in a hospital or clinic certified by the Department.The prohibition on abortions performed or induced on a pregnant woman after the first trimester of pregnancy contained in subsection (A) do not apply if:

 (1) the pregnancy is the result of an act of criminal sexual conduct, regardless of the degree of criminal sexual conduct;

 (2) the pregnancy is the result of incest;

 (3) there exists a fatal fetal anomaly; or

 (4) there exists a medical emergency.

 (c)C) During the third trimester of pregnancy, the abortion is performed with the pregnant woman's consent, and if married and living with her husband the consent of her husband, in a certified hospital, and only if the attending physician and one additional consulting physician, who shall not be related to or engaged in private practice with the attending physician, certify in writing to the hospital in which the abortion is to be performed that the abortion is necessary based upon their best medical judgment to preserve the life or health of the woman. In the event that the preservation of the woman's mental health is certified as the reason for the abortion, an additional certification shall be required from a consulting psychiatrist who shall not be related to or engaged in private practice with the attending physician. All facts and reasons supporting such certification shall be set forth by the attending physician in writing and attached to such certificate.A physician who performs or induces an abortion pursuant to the provisions of this section is immune from civil action or criminal prosecution regarding medical procedures and treatments administered to the pregnant woman if those medical procedures and treatments are consistent with the current standard of care for the physician’s specialty under the circumstances. Immunity from civil or criminal liability as provided in this subsection extends to any nurse, technician, or other person who participates in the medical procedure or treatment with or at the direction of the physician.

SECTION 2. Section 44‑41‑30(C) of the S.C. Code is amended to read:

 (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 womanand the woman is incapable of providing consent; or

 (2) the pregnancy is the result of incest.

SECTION 3. Section 44‑41‑30(D) of the S.C. Code is amended to read:

 (D) In cases of incest or criminal sexual conduct that results in the pregnancy, the physician performing the abortion shall report the alleged incest or criminal sexual conduct 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.

SECTION 4. Section 44‑41‑80 of the S.C. Code is amended to read:

 Section 44‑41‑80. (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 perform or induce 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) Except as otherwise permitted by this chapter, any woman who solicits of any person or otherwise procures any drug, medicine, prescription or substance and administers it to herself or who submits to any operation or procedure or who uses or employs any device or instrument or other means with intent to produce an abortion, unless it is necessary to preserve her life, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment for a term of not more than two years or fined not more than one thousand dollars, or both.

 (c) 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.

SECTION 5. Article 5, Chapter 41, Title 44 of the S.C. Code, relating to the South Carolina Pain‑Capable Unborn Child Protection Act, is repealed.

SECTION 6. Article 6, Chapter 41, Title 44 of the S.C. Code, relating to the Fetal Heartbeat and Protection from Abortion Act, is repealed.

SECTION 7. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 8. This act takes effect upon approval by the Governor.

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