

**H O U S E
A M E N D M E N T**

**THIS AMENDMENT
ADOPTED**

CLERK OF THE HOUSE

PROPOSES THE FOLLOWING AMENDMENT NO. TO H. 5399:

REFERENCE IS TO THE BILL AS INTRODUCED.

**AMEND THE BILL, AS AND IF AMENDED, BY
STRIKING ALL AFTER THE ENACTING WORDS AND
INSERTING:**

SECTION 1. This act may be cited and shall be known as the “South Carolina Human Life Protection Act.”

SECTION 2. The General Assembly hereby finds all of the following:

(1) All human beings are created equal, and endowed by their Creator with certain unalienable rights, the foremost of which is the right to life.

(2) Section 3, Article I of the Constitution of the State of South Carolina, 1895, guarantees that no person may be deprived of life, liberty, or property without due process of law or be denied the equal protection of the laws, and a preborn child is deserving of that protection.

(3) In the exercise of its constitutional duties and powers, the South Carolina General Assembly has a fundamental duty to provide equal protection for the life, health, and welfare of all persons, including preborn children from conception.

(4) It is undisputed that the life of every human being begins at conception.

(5) South Carolina maintains a fundamental interest in protecting the life of every human being from conception.

SECTION 3. Chapter 41, Title 44 of the 1976 Code is amended by adding:

“Article 7

South Carolina Human Life Protection Act

Section 44-41-810. For purposes of 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 human being. Such use, prescription, or means

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is not an abortion if done with the intent to save the life or preserve the health of the preborn human being, or to remove a dead unborn human being.

(2) ‘Contraceptive’ means a drug, device, or chemical that prevents conception.

(3) ‘Female’ means a biological female as assigned at the time of birth or an intersexed person capable of producing an ovum at birth.

(4) ‘Physician’ means any person licensed to practice medicine and surgery, or osteopathic medicine and surgery, in this State.

(5) ‘Pregnant Woman’ means the human biological female reproductive condition of having a living unborn child within her body throughout the entire embryonic and fetal stages of the unborn child from fertilization to full gestation and childbirth, whether or not she has reached the age of majority.

(6) ‘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.

(7) ‘Unborn human being’ or ‘unborn child’ or ‘preborn child’ or ‘preborn human being’ or ‘fetus’ each mean an individual organism of the species homo sapiens from conception until live birth.

Section 44-41-820. (A) No person may knowingly administer to, prescribe for, procure for, pay for, or sell to any pregnant woman any medicine, drug, or other substance with the specific intent of causing or abetting an abortion.

(B) No person may knowingly use or employ any instrument, device, means, or procedure upon a pregnant woman with the specific intent of causing or abetting an abortion.

Section 44-41-830. (A) It is not a violation of Section 44-41-820 for a licensed physician to perform a medical procedure necessary in reasonable medical judgment to prevent:

(1) the death of the pregnant woman;

(2) a substantial risk of death for the pregnant woman because of a physical condition; or

(3) the substantial and irreversible physical impairment of a major bodily function of the pregnant woman, not including psychological or emotional conditions.

However, the physician shall make reasonable medical efforts under the circumstances to preserve the life of the pregnant woman’s unborn child, to the extent it does not substantially risk the death or 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 practice. A medical procedure shall not be considered necessary 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.

(B) A physician who performs a medical procedure as described in subsection (A) shall declare, in a written document, that the medical procedure was necessary, by reasonable medical judgment, to prevent the death of the pregnant woman, a substantial risk of death for the pregnant woman because of a physical condition; or to prevent the substantial risk of a substantial and irreversible physical impairment of a major bodily function of the pregnant woman, not including psychological or emotional conditions. In the document, the physician shall specify the pregnant woman’s medical condition that the medical procedure was asserted to address and the medical rationale for the physician’s conclusion that the medical procedure was necessary to prevent the death of the pregnant woman, a substantial risk of death for the pregnant woman because of a physical condition; or to prevent the serious risk of a substantial and irreversible impairment of a major bodily function of the pregnant woman and that all reasonable efforts were made to save the fetus in the event it was living and *in utero*. Such documentation must be included in the woman’s medical records within thirty days from the date of the procedure. The physician’s determination is prima facie evidence for a permitted abortion within the applicable standard of care.

(C) It is presumed that the following medical conditions constitute a substantial risk of death or substantial risk of a substantial and irreversible physical impairment of a major bodily function of a pregnant woman: molar pregnancy, partial molar pregnancy, blighted ovum, ectopic pregnancy, severe preeclampsia, HELLP syndrome, abruptio placentae, severe 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 it does not adversely affect the life or health of the pregnant woman, and in a manner consistent with reasonable medical practice. The enumeration of the medical conditions in this subsection is not intended to exclude or abrogate other conditions that satisfy the exclusions of subsection (A) or prevent other procedures that are not included in the definition of abortion in Section 44-41-810.

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(D) Medical treatment provided to the pregnant woman by a licensed physician which results in the accidental or unintentional injury to or the death of her unborn child is not a violation of Section 44-41-820.

(E) It is not a violation of Section 44-41-820, and nothing in this article may be construed to prohibit the use, sale, prescription, or administration of 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 instructions and is not used, sold, prescribed, or administered to cause or induce an abortion of a clinically diagnosable pregnancy.

(F) Nothing in this article shall be construed to prohibit in vitro fertilization or assisted reproductive technology procedures accepted as standard of care by the reproductive medical community. No part of the in vitro fertilization procedures or assisted reproductive procedures considered normal standard of care will be considered an abortion procedure. Notwithstanding the above, the practice of “selective reduction,” (defined as a procedure to stop the development of one or more fetuses *in utero*) shall constitute an abortion in violation of Section 4, above, except, when necessary, in reasonable medical judgment, to prevent a substantial risk of death for another fetus, or the substantial and irreversible physical impairment of a major bodily function of another fetus.

Section 44-41-840. (A) A person who violates Section 44-41-820 is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned not more than two years, or both.

(B) Any person who uses force or the threat of force to intentionally injure or intimidate any person, for the purpose of coercing an abortion in violation of Section 44-41-820 is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned not more than two years, or both.

(C) Notwithstanding the provisions of Section 44-41-830, any person who is not a physician licensed in this State, who prescribes any means of abortion as defined in this article, for the purpose of facilitating an abortion inside the borders of this State, violates Section 44-41-820, is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned not more than two years, or both.

Section 44-41-850. (A) In addition to whatever remedies are available under the common or statutory law of this State, failure to comply with the requirements of this article shall provide the basis for a civil action as described in this section.

(B) Any pregnant woman upon whom an abortion has been performed, induced, or coerced in violation of this article, the father of the unborn child who was the subject of such an abortion, or the maternal and paternal aunt, uncle, or grandparent of the unborn child may maintain an action against the person or persons violated this article for actual and punitive damages. In addition to all other damages, and separate and distinct from all other damages, each plaintiff is entitled to statutory damages of ten thousand dollars for each violation of this article to be imposed on each defendant of each such violation.

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

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

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

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

(4) the Attorney General.

The injunction prevents the person or persons who violated the article from further violation of this article in this State.

(D) If judgment is rendered in favor of the plaintiff(s) in an action described in this section, the court also shall render judgment for reasonable costs and attorney’s fees in favor of the plaintiff(s) against the defendant(s).

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

(F) In no case may civil damages be awarded to any plaintiff if the pregnancy resulted from the plaintiff’s criminal conduct.

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

Section 44-41-860. 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, conspiring to commit, or acting complicitly in committing 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.

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Section 44-41-870. 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 in Section 44-41-820 commits an act of unprofessional conduct and the person's license to practice in the State of South Carolina immediately shall be revoked by the State Board of Medical Examiners for South Carolina, after due process according to the rules and procedures of the State Board of Medical Examiners. A complaint may be originated by any person or sua sponte. In addition, the State Board of Medical Examiners may assess costs of the investigation, fines, and other disciplinary actions it may deem appropriate.

Section 44-41-880. In every civil or criminal proceeding or action brought under this article, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or induced or attempted to be performed or induced shall be preserved from public disclosure if the woman does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that the woman's anonymity should 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 such order shall 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. In the absence of written consent of the woman upon whom an abortion has been performed or induced or attempted to be performed or induced, anyone, other than a public official, who brings an action pursuant to Section 44-41-820 shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

Section 44-41-890. This article must not be construed to repeal, by implication or otherwise, Sections 44-41-630 through 650, 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 or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect."

SECTION 4. The South Carolina House of Representatives, the South Carolina Senate, the South Carolina Governor and/or the South Carolina Attorney General may intervene as a matter of right in any case in which the constitutionality or enforceability of any SECTION of this act is challenged. The General Assembly may appoint one or more of its members to intervene as a matter of right in any case in which the constitutionality or enforceability of any SECTION of this act is challenged.

SECTION 5. 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 6. This act takes effect upon approval by the Governor. /

RENUMBER SECTIONS TO CONFORM.

AMEND TITLE TO CONFORM.