**South Carolina General Assembly**

118th Session, 2009-2010

**H. 3198**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Delleney, Nanney, Simrill, G.R. Smith, G.M. Smith, Lucas, Cooper, Stringer, Owens, Bingham, Hamilton, E.H. Pitts, Rice, Hiott, Littlejohn and Millwood

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Introduced in the House on January 13, 2009

Currently residing in the House Committee on **Judiciary**

Summary: Abortion

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/16/2008 House Prefiled

12/16/2008 House Referred to Committee on **Judiciary**

1/13/2009 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2009\01-13-09.docx)‑86

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1/28/2009 House Member(s) request name added as sponsor: E.H.Pitts, Rice, Hiott, Littlejohn

5/14/2009 House Member(s) request name added as sponsor: Millwood

**VERSIONS OF THIS BILL**

[12/16/2008](file:///p:\pprever\2009-10\3198_20081216.docx)

**A** **BILL**

TO AMEND SECTION 44‑41‑330, AS AMENDED CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PREREQUISITES FOR THE PERFORMANCE OF AN ABORTION, INFORMATION TO BE PROVIDED, CERTIFICATION, WAITING PERIOD, SPECIAL PROVISIONS FOR MINORS OR MENTALLY INCOMPETENT PERSONS, RETENTION OF RECORDS, AND UNAVAILABILITY OF RECORDS, SO AS TO PROVIDE THAT A PHYSICIAN WHO PERFORMS AN ULTRASOUND PRIOR TO PERFORMING AN ABORTION MUST INFORM THE WOMAN OF THE PROBABLE GESTATIONAL AGE OF THE EMBRYO OR FETUS AND THAT THE WOMAN HAS THE RIGHT TO VIEW THE ULTRASOUND IMAGES; TO PROVIDE THAT UPON REQUEST THE PHYSICIAN MUST SHOW THE IMAGES TO THE WOMAN AND PROVIDE A MEDICAL EXPLANATION OF THE IMAGES, INCLUDING THE PRESENCE OF ORGANS AND EXTERNAL MEMBERS; TO PROVIDE THAT THE WOMAN MUST CERTIFY IN WRITING BEFORE THE ABORTION IS PERFORMED THAT SHE HAS BEEN INFORMED OF HER RIGHT TO VIEW THE IMAGES; TO PROVIDE THAT AN ABORTION MAY NOT BE PERFORMED SOONER THAN ONE HOUR AFTER AN ULTRASOUND IS PERFORMED; TO PROVIDE THAT THE PARENTS OF AN UNEMANCIPATED MINOR MUST MAKE THE CERTIFICATION REGARDING, AMONG OTHER THINGS, THE RIGHT TO VIEW ULTRASOUND IMAGES; AND TO FURTHER PROVIDE THAT THE PROVISIONS RELATING TO VIEWING ULTRASOUND IMAGES DO NOT APPLY TO A PERSON ADJUDICATED TO BE INCOMPETENT; AND TO AMEND SECTION 44‑41‑340, RELATING TO MATERIALS THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL MUST PUBLISH REGARDING ABORTIONS AND ASSISTANCE FOR PREGNANT WOMEN, SO AS TO REQUIRE THAT THE MATERIAL INCLUDE A LIST OF FACILITIES THAT PROVIDE ULTRASOUNDS FREE OF CHARGE.

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

SECTION 1. Section 44‑41‑330 of the 1976 Code, as last amended by Act 222 of 2008, is further amended to read:

“Section 44‑41‑330. (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 unless the following conditions have been satisfied:

(1) The woman must be informed by the physician who is to perform the abortion or by an allied health professional working in conjunction with the physician of the procedure to be involved and by the physician who is to perform the abortion of the probable gestational age of the embryo or fetus at the time the abortion is to be performed.

(2)(a) If the physician or allied health professional working in conjunction with the physician performs an ultrasound on a woman seeking an abortion, the physician or allied health professional must describe the ultrasound procedure to her and inform the woman that she has the right to view the ultrasound images at the time the ultrasound is being performed or at any time upon her request. At the woman’s request, the physician or allied health professional must permit the woman to view the ultrasound images and provide a medical description of the images she is viewing.

(b) All ultrasound images viewed by a woman pursuant to this subsection must be of a quality consistent with standard medical practice in the industry. A medical description of the ultrasound image of an embryo or fetus provided to a woman must include, but is not limited to, the dimensions of the embryo or fetus and the presence of external members and internal organs, if present and viewable.

~~(2)~~(3) 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 a right to view ultrasound images produced during your ultrasound with a medical explanation of the images. You may view the images during the ultrasound procedure and at any time after the ultrasound has been completed.’ 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. (4) If an obstetric ultrasound is performed, the woman also must be informed by the physician who is to perform the abortion, or by an allied health professional working in conjunction with the physician, of the procedure to be involved and by the physician who is to perform the abortion of the probable gestational age of the embryo or fetus, as verified by the obstetric ultrasound.

~~(3)~~(5) The woman must certify in writing, before the abortion, that the information described in item ~~(1)~~(4) of this subsection has been furnished her, ~~and~~ that she has been informed of her right to view ultrasound images of the embryo or fetus, and that she has been informed of her opportunity to review the information referred to in item ~~(2)~~(3) of this subsection.

~~(4)~~(6) Before performing the abortion, the physician who is to perform or induce the abortion must determine that the written certification prescribed by item ~~(3)~~(5) 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 one hour after the woman receives the ~~written materials and certifies this fact to the physician or physician’s agent~~ printed materials pursuant to Section 44‑41‑340, and if the physician or allied health professional working in conjunction with the physician performs an obstetric ultrasound, no abortion may be performed sooner than an hour after the completion of the ultrasound and certification of these facts as provided for in item (5) of subsection (A).

(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 one hour 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~~3), 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~~ a minor, but is not an emancipated minor, as defined in Section 44‑41‑10, the information described in Section 44‑41‑330(A)(1), (3), and ~~(2)~~(4) 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~~5). 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~~5). This subsection does not apply in the case of an abortion performed pursuant to a court order. The provisions contained in this section related to viewing ultrasound images do not apply to a person under adjudication of mental incompetency.

(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, that she was informed of her right to view ultrasound images of the embryo or fetus, and the printed materials were ~~so~~ offered to her. 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~~ The requirement in this section related to presenting the woman the materials described in Section 44‑41‑340 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~~.”

SECTION 2. Section 44‑41‑340 of the 1976 Code is amended to read:

“Section 44‑41‑340. (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~~.~~ and;

(6) a list of health care providers, facilities, and clinics that provide ultrasounds free of charge. The list must be arranged geographically by county and include the name, address, telephone number, and hours of operation of each listed entity.

(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.”

SECTION 3. 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 4. This act takes effect upon approval by the Governor. The Department of Health and Environmental Control must compile the list required in Section 44‑41‑340(A)(6) of the 1976 Code, as added by SECTION 2 of this act within six months of the effective date. The list compiled by the department must be made available as a supplement to all other written materials required by Section 44‑41‑340(A)(6) already in print and in use as of the effective date of this act. The list must be included in all future written materials as required by this act.

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