**South Carolina General Assembly**

118th Session, 2009-2010

**S. 437**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Massey, Bright, Bryant, Verdin and S. Martin

Document Path: l:\s-res\asm\00724ho.kmm.asm.docx

Companion/Similar bill(s): 3245

Introduced in the Senate on February 18, 2009

Currently residing in the Senate Committee on **Medical Affairs**

Summary: Abortion

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/18/2009 Senate Introduced and read first time [SJ](file:///h:\SJ%20Archive\2009\02-18-09.docx)‑4

2/18/2009 Senate Referred to Committee on **Medical Affairs** [SJ](file:///h:\SJ%20Archive\2009\02-18-09.docx)‑4

**VERSIONS OF THIS BILL**

[2/18/2009](file:///p:\pprever\2009-10\437_20090218.docx)

**A** **BILL**

TO AMEND SECTION 44‑41‑330 OF THE 1976 CODE, RELATING TO THE CONDITIONS FOR PERFORMANCE OF AN ABORTION, INFORMATION REQUIREMENTS, WAITING PERIOD, MINORS OR MENTALLY INCOMPETENT PERSONS, AND RETENTION OF RECORDS, TO PROVIDE THAT A WOMAN MUST BE PROVIDED WITH A TWENTY‑FOUR HOUR REFLECTION PERIOD BEFORE AN ABORTION PROCEDURE, TO PROVIDE THE NATURE AND SOURCE OF THE INFORMATION PROVIDED TO AND MADE AVAILABLE TO A WOMAN SEEKING AN ABORTION, AND TO PROVIDE THE LANGUAGE OF THE CERTIFICATION THAT A WOMAN MUST SIGN PRIOR TO AN ABORTION PROCEDURE.

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

SECTION 1. Section 44‑41‑330 of the 1976 Code is 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~~ except with the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Voluntary and informed consent may not be given unless at least twenty‑four hours prior to the abortion:

(1) ~~The~~ the physician who is to perform or induce the abortion has orally informed the woman of: ~~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. If an ultrasound is performed, an abortion may not be performed sooner than sixty minutes following completion of the ultrasound. 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 ultrasound image at her request during or after the ultrasound procedure.~~

(a) the nature of the proposed procedure or treatment and those risks and alternatives to the procedure or treatment that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;

(b) the probable gestational age of the embryo or fetus at the time the abortion is to be performed. The probable gestational age must be verified by an obstetric ultrasound if using an obstetric ultrasound to estimate the probable gestational age of an embryo or fetus is consistent with standard medical practice in the community. If an obstetric ultrasound is used to verify the probable gestational age of the embryo or fetus, or for any other reason, the physician who is to perform the abortion must inform the woman before the ultrasound procedure of her right to view the ultrasound image at her request during or after the ultrasound procedure; and

(c) the medical risks associated with carrying her child to term;

(2) the physician who is to perform or induce the abortion or an allied health professional working in conjunction with the physician has informed the woman that the department publishes the printed materials that are required in Section 44‑41‑340 and that she has a right to review the printed materials and that a copy will be provided to her free of charge if she chooses to review them; and

~~(2)~~(3) ~~The~~ the pregnant woman upon whom the procedure is to be performed or induced certifies that all of the requirements contained in items (1) and (2) have been met. ~~must be presented by~~ The woman, and the physician who is to perform or induce the abortion ~~or by an allied health professional working in conjunction with the physician a~~ must sign and date 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.’~~ ‘I certify that my physician told me about the nature of the procedure that he or she proposes to perform on me and the risks that are associated with that procedure or treatment, the probable gestational age of the embryo, and the medical risks associated with carrying a child to term. I further certify that I have been informed of my 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 and the right to view my ultrasound images.’ 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. The woman must be provided with a copy of the signed certification.

~~(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)(1) On the day of the abortion, the woman must certify in writing that she is giving her voluntary and informed consent to the abortion. The woman must be provided with a copy of the signed certification.

(2) Before performing the abortion, the physician who is to perform or induce the abortion must determine that the written certification prescribed by item (1) of this subsection has been signed. This subsection does not apply in the case where an abortion is performed pursuant to a court order.

~~(B)~~(C) Nothing ~~herein~~ in this section 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 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 ~~one hour~~ 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 woman has satisfied the requirements of subsection (A)(2). ~~waiting period required pursuant to subsection (C) does not apply~~ The woman must still satisfy the requirements contained in subsection (A)(1) before she may sign the certification required in subsections (A)(3) or (B)(1).

(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~~ subsections (A)(1) and (A)(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~~ subsection (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~~ subsection (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~~ certification that the information was ~~so~~ provided to her, ~~and~~ the printed materials were ~~so~~ offered to her, and that the applicable reflection period expired prior to the abortion being performed or induced. 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 provisions in this section relating to the printed materials ~~does~~ do 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. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑