**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 9 TO CHAPTER 41, TITLE 44 SO AS TO ENACT THE “WOMAN’S ULTRASOUND RIGHT TO KNOW ACT”, TO PROVIDE FINDINGS, PURPOSES, AND DEFINITIONAL TERMS, TO REQUIRE PHYSICIANS TO INFORM PREGNANT WOMEN OF THE PROBABLE GESTATIONAL AGE OF AN EMBRYO OR FETUS BEFORE PERFORMING AN ABORTION, TO REQUIRE PHYSICIANS OR OTHER QUALIFIED PERSONS TO PERFORM AN ULTRASOUND ON A PREGNANT WOMAN BEFORE PERFORMING AN ABORTION, TO REQUIRE THE VOLUNTARY AND INFORMED CONSENT OF A PREGNANT WOMAN BEFORE PERFORMING AN ABORTION, TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO PUBLISH CERTAIN WRITTEN MATERIALS, TO CREATE CIVIL AND CRIMINAL PENALTIES, PROFESSIONAL DISCIPLINE, AND PRIVATE REMEDIES FOR VIOLATION OF THE ARTICLE; TO REPEAL ARTICLE 3, CHAPTER 41, TITLE 44 RELATING TO A WOMAN’S RIGHT TO VIEW AN ULTRASOUND IMAGE OF HER FETUS; AND FOR OTHER PURPOSES.

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

SECTION 1. This act may be cited as the “Woman’s Ultrasound Right to Know Act”.

SECTION 2. Chapter 41, Title 44 of the 1976 Code is amended by adding:

“Article 9

Woman’s Ultrasound Right to Know Act

Section 44‑41‑910. (A) The South Carolina General Assembly finds that:

(1) ultrasound requirements serve an essential medical purpose in confirming the presence, location, and gestational age of a pregnancy;

(2) ultrasound requirements also serve an essential medical purpose in diagnosing ectopic pregnancies which, if left undiagnosed, can result in infertility or even fatal blood loss;

(3) furthermore, it is critical to the psychological and physical well‑being of a woman considering an abortion that she receives complete and accurate information on the reality and status of her pregnancy and of her unborn child;

(4) the decision to abort ‘is an important, and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences’, as decided in Planned Parenthood v. Danforth, 428 U.S. 52, 67 (1976);

(5) the knowledgeable exercise of a woman’s decision to have an abortion depends on the extent to which the woman receives sufficient information to make an informed choice between two alternatives: giving birth or having an abortion.

(B) Based on the findings in subsection (A), the purposes of this article are to:

(1) protect the physical health and welfare of every woman considering an abortion;

(2) ensure that every woman considering an abortion receives complete information on the reality and status of her pregnancy and of her unborn child and that every woman submitting to an abortion does so only after giving her voluntary and informed consent to the abortion procedure;

(3) protect the unborn child from a woman’s uninformed decision to have an abortion;

(4) reduce ‘the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed’, as decided in Planned Parenthood v. Casey, 505 U.S. 833, 882 (1992); and

(5) adopt the construction of the term ‘medical emergency’ accepted by the U.S. Supreme Court in Planned Parenthood v. Casey, 505 U.S. 833 (1992).

Section 44‑41‑920. 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 child. Such use, prescription, or means is not an abortion if done with the intent to:

(a) save the life or preserve the health of the unborn child;

(b) remove a dead unborn child caused by spontaneous abortion; or

(c) remove an ectopic pregnancy.

(2) ‘Auscultation’ means the act of listening for sounds made by internal organs of the fetus, specifically for a fetal heartbeat, utilizing an ultrasound transducer and fetal heart rate (FHR) monitor.

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

(4) ‘Facility’ or ‘medical facility’ means any public or private hospital, clinic, center, medical school, medical training institution, health care facility, physician’s office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location wherein medical care is provided to any person.

(5) ‘Medical emergency’ means that condition which, on the basis of the physician’s good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(6) ‘Physician’ means any person licensed to practice medicine in this State. The term includes medical doctors and doctors of osteopathy.

(7) ‘Pregnant’ or ‘pregnancy’ means that female reproductive condition of having an unborn child in the woman’s uterus.

(8) ‘Probable gestational age’ 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.

(9) ‘Qualified person’ means an agent of the physician who is a psychologist, licensed social worker, licensed professional counselor, registered nurse, or physician.

(10) ‘Unborn child’ means the offspring of human beings from conception until birth.

(11) ‘Ultrasound’ means the use of ultrasonic waves for diagnostic or therapeutic purposes, specifically to monitor a developing fetus.

Section 44‑41‑930. Except in the case of a medical emergency, at least twenty‑four hours before the performance of an abortion, the physician who is to perform the abortion on the pregnant woman shall inform the pregnant woman of the probable gestational age of the embryo or fetus at the time the abortion is to be performed.

Section 44‑41‑940. Except in the case of a medical emergency, at least twenty‑four hours before the performance of an abortion, the physician who is to perform the abortion on the pregnant woman or a qualified person assisting the physician shall perform fetal ultrasound imaging and auscultation of fetal heart tone services on the patient undergoing the abortion.

Section 44‑41‑950. (A) An abortion must not be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if:

(1) at least twenty‑four hours before the abortion, the physician who is to perform the abortion on the pregnant woman or a qualified person assisting the physician has offered the woman, orally and in person, the opportunity to:

(a) view the active ultrasound image of the unborn child and hear the heartbeat of the unborn child if the heartbeat is audible; and

(b) receive a physical picture of the ultrasound image of the unborn child;

(2) at the woman’s request, the physician or qualified person assisting the physician, at least twenty‑four hours prior to the performance of the abortion, shall:

(a) provide the active ultrasound image to the pregnant woman for her to view and auscultation of fetal heart tone for her to hear; and

(b) provide a physical picture of the ultrasound image of the unborn child;

(3) at least twenty‑four hours prior to the performance of the abortion, a physician or qualified person assisting the physician shall obtain the woman’s signature on a certification form stating that:

(a) she has been offered the opportunity to view the active ultrasound image of the unborn child and to hear the heartbeat of the unborn child if the heartbeat is audible;

(b) she has been offered the opportunity to receive the physical picture of the ultrasound image of the unborn child; and

(c) either she:

(i) requested to view the active ultrasound imaging and hear auscultation of fetal heart tone and/or receive the physical picture of the ultrasound image; or

(ii) opted not to view the active ultrasound imaging and hear auscultation of fetal heart tone and/or receive the physical picture of the ultrasound image;

(4) before the abortion is performed or induced, the physician who is to perform or induce the abortion shall receive a copy of the written certification prescribed by item (3). The physician shall retain a copy of the signed certification form in the woman’s medical record.

(B) The department shall enforce the provisions of this article at all facilities and medical facilities that provide abortion services.

Section 44‑41‑960. (A) The active ultrasound image must be of a quality consistent with standard medical practice in the community, must contain the dimensions of the unborn child, and must accurately portray the presence of external members and internal organs of the unborn child, if present or viewable.

(B) The auscultation of fetal heart tone must be of a quality consistent with standard medical practice in the community.

Section 44‑41‑970. (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, 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 44‑41‑950.

(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 department 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.

Section 44‑41‑980. When a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion, if possible, of the medical indications supporting the physician’s judgment that an immediate abortion is necessary to avert her death or that a twenty‑four hour delay will cause substantial and irreversible impairment of a major bodily function.

Section 44‑41‑990. 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 and must not be imprisoned;

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

Section 44‑41‑1000. (A) In addition to any other remedies available under state law, failure to comply with the requirements of this article shall provide a basis for:

(1) a civil malpractice action for actual and punitive damages pursuant to Chapter 79, Title 15;

(2) a professional disciplinary action pursuant to Chapter 47, Title 40; and

(3) recovery for the woman for the wrongful death of her unborn child whether or not the unborn child was born alive or was viable at the time the abortion was performed.

(B) An intentional violation of this article is admissible in a civil suit filed pursuant to subsection (A)(1) as prima facie evidence of a failure to obtain informed consent, which, except in the case of a medical emergency as defined by this article, constitutes medical malpractice.

(C) When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the abortion was performed.

(D) If judgment is rendered in favor of the plaintiff, the court also shall render judgment for a reasonable attorney’s fee in favor of the plaintiff against the defendant.

(E) If judgment is rendered in favor of the defendant and the court finds that the plaintiff’s suit was frivolous and brought in bad faith, the court also shall render judgment for a reasonable attorney’s fee in favor of the defendant against the plaintiff.

Section 44‑41‑1010. (A) Nothing in this article shall be construed as creating or recognizing a right to abortion.

(B) It is not the intention of this law to make lawful an abortion that is currently unlawful.

Section 44‑41‑1020. A sponsor of the act enacting this article may request the presiding officer of the sponsor’s house for permission to file a petition in a court of competent jurisdiction for the right to file an amicus brief in any case in which the constitutionality of this article is challenged.”

SECTION 3. Article 3, Chapter 41, Title 44 of the 1976 Code is repealed.

SECTION 4. 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 5. This act takes effect upon approval by the Governor.

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