**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “UNBORN INFANTS DIGNITY ACT” BY ADDING ARTICLE 5 TO CHAPTER 41, TITLE 44 SO AS TO PROVIDE FINDINGS, PURPOSES, AND DEFINITIONAL TERMS; TO PROVIDE IN THE CASE OF FETAL DEATHS FOR THE RIGHT OF A MOTHER TO RECEIVE THE BODILY REMAINS OF HER CHILD FOR FINAL DISPOSITION; TO ESTABLISH REQUIREMENTS FOR THE FINAL DISPOSITION IF THE MOTHER DOES NOT REQUEST RELEASE OF THE BODILY REMAINS; TO REQUIRE COMPLETION AND FILING OF FETAL DEATH CERTIFICATES; TO REQUIRE A “CERTIFICATE OF BIRTH RESULTING IN STILLBIRTH”; TO PROHIBIT THE SALE, TRANSFER, AND OTHER CONDUCT RELATED TO THE USE OF INFANTS, UNBORN INFANTS, OR BODILY REMAINS RESULTING FROM AN ABORTION; TO ESTABLISH REQUIREMENTS TO ALLOW MOTHERS TO DONATE BODILY REMAINS FROM AN ABORTION FOR RESEARCH, INCLUDING CONSENT REQUIREMENTS; AND TO CREATE CIVIL AND CRIMINAL PENALTIES AND PROVIDE FOR PROFESSIONAL DISCIPLINE FOR VIOLATION OF THE ARTICLE; TO AMEND SECTION 44‑63‑55, AS AMENDED, RELATING TO CERTIFICATES OF BIRTH RESULTING IN STILLBIRTH, SO AS TO CONFORM TO THE REQUIREMENTS OF ARTICLE 5, CHAPTER 41, TITLE 44; 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 “Unborn Infants Dignity Act”.

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

“Article 5

Unborn Infants Dignity Act

Section 44‑41‑510. (A) The South Carolina General Assembly finds that:

(1) deceased unborn infants deserve the same respect and dignity as other human beings;

(2) the laws of South Carolina do not ensure that miscarried, stillborn, or aborted infants receive proper burials or final disposition;

(3) South Carolina also fails to require fetal death reporting or the issuance of fetal death certificates except pursuant to Section 44‑41‑60 and Section 44‑63‑55;

(4) while the loss of an unborn infant at any stage of development is often devastating to parents, South Carolina only offers Certificates of Birth Resulting in Stillbirth to parents for fetal deaths whose delivery resulted in a fetal death of twenty completed weeks of gestation or more or a weight of three hundred fifty grams or more;

(5) South Carolina does not explicitly prohibit the sale, transfer, distribution, or donation of bodily remains of unborn infants resulting from abortion for experimentation; and

(6) it is the public policy of South Carolina to promote childbirth over abortion, and permitting the sale, transfer, distribution, or donation of the bodily remains of unborn infants resulting from abortion, particularly for pecuniary gain, and the use of the bodies of aborted infants for experimentation violates this public policy.

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

(1) ensure that the mother of a deceased unborn infant is given the opportunity to bury or dispose of the bodily remains of her infant with dignity;

(2) require institutions where deceased unborn infants are delivered or where unborn infants are aborted to provide a dignified final disposition of the bodily remains of these infants;

(3) require fetal death reports for all fetal deaths as defined in this article;

(4) ensure that parents of all stillborn infants are offered the opportunity to obtain a Certificate of Birth Resulting in Stillbirth;

(5) prohibit the sale, transfer, distribution, or other unlawful disposition of an infant, an unborn infant, or bodily remains resulting from an abortion;

(6) prohibit the use of bodily remains resulting from an abortion for experimentation; and

(7) ensure that the bodily remains of an unborn infant resulting from an occurrence other than an abortion are not sold, transferred, or distributed for experimentation without the mother’s informed, written consent.

Section 44‑41‑520. 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 the knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn infant. 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 infant;

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

(c) remove an ectopic pregnancy.

(2) ‘Bodily remains’ means the physical remains, corpse, or body parts of a dead unborn infant who has been expelled or extracted from the mother and who has reached a stage of development so that there are cartilaginous structures or fetal or skeletal parts, whether or not the remains have been obtained by induced, spontaneous, or accidental means. The death is indicated by the fact that, after the expulsion or extraction, the unborn infant does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(3) ‘Infant’ means a human being who has been completely expelled or extracted from the mother, regardless of the state of gestational development, that, after expulsion or extraction, whether or not the umbilical cord has been cut or the placenta is attached, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion, shows any evidence of life including, but not limited to, one or more of the following:

(a) breathing;

(b) a heartbeat;

(c) umbilical cord pulsation; or

(d) definite movement of voluntary muscles.

(4) ‘Experiment’ or ‘experimentation’ means the use of bodily remains in any trial, test, procedure, or observation carried out with the goal of verifying, refuting, or establishing the validity of a hypothesis, but does not include diagnostic or remedial tests, procedures, or observations which have the purpose of determining the life or health of the unborn infant or preserving the life or health of the infant, unborn infant, or the infant’s mother, or pathological study.

(5) ‘Fetal death’ means death prior to expulsion or extraction from the mother of an unborn infant who has reached a stage of development so that there are cartilaginous structures or fetal or skeletal parts. The death is indicated by the fact that, after expulsion or extraction, the unborn infant does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(6) ‘Final disposition’ means the burial, interment, cremation, or other legal disposition of a dead unborn infant.

(7) ‘Miscarriage’ means the spontaneous or accidental death of an unborn infant before the unborn infant is able to survive independently that does not result in the birth of a live infant. The death is indicated by the fact that, after the expulsion of the unborn infant, the unborn infant does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

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

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

(10) ‘Stillbirth’ means the birth of a human being that has died in the uterus. The death is indicated by the fact that, after the expulsion of the unborn infant, the unborn infant does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(11) ‘Therapeutic’ means intended to treat or cure a disease or disorder by remedial agents or methods.

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

Section 44‑41‑530. In every instance of fetal death, irrespective of the duration of pregnancy, the individual in charge of the institution where the bodily remains were expelled or extracted, upon request of the mother, shall release to the mother or the mother’s authorized representative the bodily remains for final disposition in accordance with applicable law. The request may be made by the mother or her authorized representative prior to or shortly after the expulsion or extraction of the bodily remains.

Section 44‑41‑540. (A) In every instance of fetal death, irrespective of the duration of pregnancy, where a mother does not request the release of her dead unborn infant, the funeral director or other person assuming responsibility for the final disposition of the bodily remains shall obtain from the mother or her authorized representative a written authorization for final disposition on a form prescribed and furnished or approved by the Department of Health and Environmental Control. The authorization may allow final disposition to be by a funeral director or the individual in charge of the institution where the bodily remains were expelled or extracted.

(B) The mother or her authorized representative may direct the final disposition of the bodily remains to be burial, interment, or cremation. After final disposition, the funeral director, the individual in charge of the institution, or other person making the final disposition shall retain the authorization for not less than seven years.

(C) Irrespective of the duration of pregnancy, the individual in charge of the institution where the bodily remains were expelled or extracted shall ensure that the final disposition of the bodily remains is by burial, interment, or cremation.

(D) If final disposition of the bodily remains is by cremation, the medical examiner of the county in which fetal death occurred shall sign the authorization for final disposition.

(E) If final disposition of the bodily remains is cremation by the institution where the bodily remains were expelled or extracted, the bodily remains must be cremated separately from any medical waste.

(F) Bodily remains may be moved from the place of death to be prepared for final disposition with the consent of the physician or county medical examiner who certifies the cause of death.

(G) A permit for final disposition issued under the laws of another state that accompanies bodily remains brought into South Carolina is authorization for final disposition of the bodily remains in this State.

Section 44‑41‑550. (A) A fetal death certificate for each fetal death which occurs in this State must be filed with the state registrar, within five days after delivery, miscarriage, or abortion.

(B) The funeral director or person assuming responsibility for the final disposition of the bodily remains shall file the fetal death certificate. In the absence of such a person, the physician in attendance at or after the expulsion or extraction of bodily remains shall file the certificate of fetal death. The physician shall obtain the personal data from the next of kin or the best qualified person or source available, complete the certificate as to personal data, and deliver the certificate to the person responsible for completing the medical certification of the cause of death within twenty‑four hours after the expulsion or extraction of bodily remains.

(C) The medical certification must be completed and signed within forty‑eight hours after delivery by the physician in attendance at or after the expulsion or extraction, except when inquiry into the cause of death is required by state law.

Section 44‑41‑560. The Department of Health and Environmental Control shall establish a Certificate of Birth Resulting in Stillbirth to be offered to the parents of a stillborn infant. The medical staff treating the stillbirth shall notify the parents or their authorized representative of the ability to request the certificate. The certificate must be available to any parent of a stillborn infant upon proper application. This certificate may not be used as evidence of live birth or for identification purposes.

Section 44‑41‑570. (A) No person shall knowingly sell, transfer, distribute, give away, accept, use, or attempt to use an infant, unborn infant, or bodily remains resulting from an abortion in violation of this section.

(B) No person shall aid or abet any such sale, transfer, distribution, other unlawful disposition, acceptance, use, or attempted use of an infant, unborn infant, or bodily remains resulting from an abortion in violation of this section.

(C) No person shall use an infant, unborn infant, or bodily remains resulting from an abortion in animal or human research, experimentation, or study, or for transplantation, except for:

(1) diagnostic or remedial procedures which have the purpose of determining the life or health of the infant, unborn infant, or the infant’s mother or preserving the life or health of the infant, unborn infant, or the infant’s mother; or

(2) pathological study.

(D) No person shall experiment on an unborn infant who is intended to be aborted unless the experimentation is therapeutic to the unborn infant.

(E) No person shall perform or offer to perform an abortion where part or all of the justification or reason for the abortion is that the bodily remains may be used for animal or human research, experimentation, or transplantation.

Section 44‑41‑580. (A) Bodily remains resulting from an abortion may be used for animal or human research, experimentation, study, or transplantation only if the mother makes a signed, written statement declaring that:

(1) the mother donates the specific bodily remains for animal or human research, experimentation, study, or transplantation;

(2) the donation is made without any restriction regarding the identity of individuals who may be the recipients of transplantations of any bodily remains;

(3) the mother has not been informed of the identity of any individuals who may be recipients of transplantations of bodily remains;

(4) the mother has been informed of any known medical risks to her or risks to her privacy that might be associated with the donation of the bodily remains;

(5) the mother understands her right to obtain the bodily remains for final disposition in accordance with state law;

(6) the consent of the mother for the abortion was obtained before requesting or obtaining consent for a donation of the bodily remains for use in such research, experimentation, study, or transplantation;

(7) no alterations to the timing, method, or procedures used to terminate the pregnancy will be made solely for the purpose of obtaining the bodily remains; and

(8) the abortion was performed in accordance with applicable state law.

(B) Bodily remains resulting from a miscarriage or stillbirth may be used for animal or human research, experimentation, study, or transplantation only if the mother makes a signed, written statement declaring that:

(1) the mother donates the specific bodily remains for animal or human research, experimentation, study, or transplantation;

(2) the donation is made without any restriction regarding the identity of individuals who may be the recipients of transplantations of any bodily remains;

(3) the mother has not been informed of the identity of any individuals who may be recipients of transplantations of bodily remains; and

(4) the mother understands her right to obtain the bodily remains for final disposition in accordance with state law.

(C) In animal or human research, experimentation, study, and transplantation, bodily remains may be used only if the attending physician with respect to obtaining the bodily remains from the mother makes a signed, written statement declaring:

(1) the bodily remains have been donated by the mother in accordance with this article; and

(2) full disclosure has been provided to the mother with regard to the attending physician’s interest, if any, in the research, experimentation, study, or transplantation to be conducted with the specific bodily remains.

Section 44‑41‑590. (A) An individual in charge of an institution where bodily remains were expelled or extracted who violates Section 44‑41‑530 is guilty of a felony and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than sixty days, or both, for each violation.

(B) The person assuming responsibility for the final disposition of bodily remains or an individual in charge of an institution where bodily remains were expelled or extracted who violates Section 44‑41‑540 is guilty of a felony and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than sixty days, or both, for each violation.

(C) A person who knowingly sells, transfers, distributes, gives away, accepts, uses, or attempts to use an infant, unborn infant, or bodily remains resulting from an abortion in violation of this section or who aids or abets any such sale, transfer, distribution, other unlawful disposition, acceptance, use, or attempted use of an infant, unborn infant, or bodily remains resulting from an abortion in violation of Section 44‑41‑570 is guilty of a felony and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than sixty days, or both, for each violation.

(D) A person who experiments on an infant, unborn infant, or bodily remains resulting from an abortion; experiments on an unborn infant who is intended to be aborted; or performs or offers to perform an abortion where part or all of the justification or reason for the abortion is that the bodily remains may be used for animal or human research, experimentation, study, or transplantation, in violation of Section 44‑41‑570, is guilty of a felony and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than sixty days, or both, for each violation.

(E) A person who fails to obtain informed consent as required in Section 44‑41‑580 is guilty of a felony and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than sixty days, or both, for each violation.

Section 44‑41‑600. (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) recovery for the parents of the infant or unborn infant or the parents or guardians of the mother, if the mother is a minor, for the unlawful disposition of or experimentation on an infant, unborn infant, or bodily remains. Relief includes damages for all psychological injuries occasioned by a violation of this article and damages equal to three times the cost of the mother’s delivery or abortion; and

(2) professional disciplinary action pursuant to Title 40 for the suspension or revocation of any license for physicians, licensed vocational and registered nurses, or other licensed or regulated healthcare providers.

(B) The conviction of a healthcare provider for failure to comply with the requirements of this article results in the automatic suspension of his license for a period of at least one year. The license must be reinstated after that time only under the conditions as the licensing board requires to ensure compliance with this article.

Section 44‑41‑610. (A) Nothing in this article shall be construed to affect existing federal or state law regarding abortion.

(B) Nothing in this article shall be construed as creating or recognizing a right to abortion.

(C) Nothing in this article shall be construed to alter generally accepted medical standards.

Section 44‑41‑620. 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. Section 44‑63‑55(A) of the 1976 Code, as last amended by Act 203 of 2004, is further amended to read:

“(A) The state registrar shall develop a form entitled ‘Certificate of Birth Resulting in Stillbirth’ for distribution to all South Carolina delivering hospitals. The hospital shall provide and offer to complete this form, prior to discharge, for mothers whose delivery resulted in a fetal death ~~of twenty completed weeks of gestation or more or a weight of three hundred fifty grams or more~~. The ‘Certificate of Birth Resulting in Stillbirth’ must be filed with the county registrar within five days following the delivery. The ‘Certificate of Birth Resulting in Stillbirth’ does not constitute proof of a live birth and does not replace the requirement to file a Report of Fetal Death as required in Regulation 61‑19, Section 21.”

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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