COMMITTEE REPORT

March 22, 2017

**H. 3548**

Introduced by Reps. Bennett, Delleney, Yow, Stringer, Hardee, Erickson, Long, Fry, Daning, S. Rivers, Davis, Allison, Hill, Crosby, B. Newton, McCoy, West, McCravy, Tallon, Elliott, Henderson, V.S. Moss and G.R. Smith

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Read the first time January 24, 2017.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3548) to amend the Code of Laws of South Carolina, 1976, to enact the “South Carolina Unborn Child Protection from Dismemberment Abortion Act” by adding Article 6 to Chapter 41, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Chapter 41, Title 44 of the 1976 Code is amended by adding:

“Article 6

South Carolina Unborn Child Protection from Dismemberment Abortion Act

Section 44‑41‑610. This article may be cited as the South Carolina Unborn Child Protection from Dismemberment Abortion Act.

(A) Notwithstanding any other provision of law, a physician who knowingly performs or attempts to perform a dismemberment abortion and thereby kills an unborn child unless necessary to prevent serious health risk to the unborn child’s mother is guilty of a felony and upon conviction must be fined ten thousand dollars or imprisoned for two years or both. ‘Serious health risk to the unborn child’s mother’ means that in reasonable medical judgment she has a condition that so complicates her medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such condition may be determined to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

(B) As used in this section:

(1) ‘Dismemberment abortion’ means, with the intention of causing the death of an unborn child, knowingly to dismember a living unborn child and extract him or her one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors or similar instruments that, through the convergence of two rigid levers, slice, crush, and/or grasp a portion of the unborn child’s body to cut or rip it off.

(2) The term ‘physician’ means a physician, surgeon, or osteopath authorized to practice medicine in this State and licensed pursuant to Chapter 47, Title 40. However, an individual who is not a physician, but who directly and knowingly performs a dismemberment abortion is also subject to the provisions of this section.

(3) The term ‘dismemberment abortion’ does not include an abortion which uses suction to dismember the body of the unborn child by sucking fetal parts into a collection container, although it does include an abortion in which a dismemberment abortion, as defined in item (1) is used to cause the death of an unborn child but suction is subsequently used to extract fetal parts after the death of the unborn child.

(C)(1) The father, if married to the mother at the time she receives a dismemberment abortion, and if the mother has not attained the age of eighteen years at the time of the abortion, the maternal grandparents of the fetus have a cause of action against the physician or other person unlawfully performing a dismemberment abortion and may obtain appropriate relief, unless the pregnancy resulted from the plaintiff’s criminal conduct or the plaintiff consented to the abortion.

(2) Such relief includes, but is not limited to:

(a) actual damages which shall be trebled;

(b) punitive damages for all injuries, psychological and physical, occasioned by the violation of this section; and

(c) reasonable costs and attorney’s fees.

(D) A woman upon whom a dismemberment abortion is performed may not be prosecuted for a violation of this section, for a conspiracy to violate this section, or for any other offense which is based on a violation of this section.

(E) This article does not prevent abortion for any reason including rape and incest by any other method.

Section 44‑41‑620. (A) A cause of action for injunctive relief against a person who has performed or attempted to perform a dismemberment abortion in violation of Section 44‑41‑610 may be maintained by:

(1) a woman upon whom such a dismemberment abortion was performed;

(2) if the woman is a minor, a person who is the parent or guardian of a woman upon whom such a dismemberment abortion was performed; or

(3) a prosecuting attorney with appropriate jurisdiction.

(B) The injunction shall prevent the defendant from performing further dismemberment abortions in violation of Section 44‑41‑610 in this State.

(C) A cause of action may not be maintained by a plaintiff if the pregnancy resulted from the plaintiff’s criminal conduct.

Section 44‑41‑630. Nothing in this article shall be construed as creating or recognizing a right to abortion, nor a right to a particular method of abortion.”

SECTION 2. 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 3. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “SOUTH CAROLINA UNBORN CHILD PROTECTION FROM DISMEMBERMENT ABORTION ACT” BY ADDING ARTICLE 6 TO CHAPTER 41, TITLE 44 SO AS TO PROHIBIT DISMEMBERMENT ABORTIONS, WITH EXCEPTIONS, AND TO DEFINE RELEVANT TERMS; TO PROVIDE FOR INJUNCTIVE RELIEF AND CIVIL REMEDIES TO ENFORCE THE PROVISIONS OF THE ARTICLE; TO CREATE CRIMINAL PENALTIES; AND FOR OTHER PURPOSES.

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

SECTION 1. Chapter 41, Title 44 of the 1976 Code is amended by adding:

“Article 6

South Carolina Unborn Child Protection from Dismemberment Abortion Act

Section 44‑41‑610. This act may be cited as the South Carolina Unborn Child Protection from Dismemberment Abortion Act.

Section 44‑41‑620. For the purposes of this article:

(1) ‘Abortion’ means the use or prescription of any instrument, medicine, drug, or any other substance or device to:

(a) purposely kill the unborn child of a woman known to be pregnant; or

(b) purposely terminate the pregnancy of a woman known to be pregnant, with a purpose other than:

(i) after viability to produce a live birth and preserve the life and health of the child born alive; or

(ii) to remove a dead unborn child.

(2) ‘Attempt to perform an abortion’ means to do or omit to do anything that, under the circumstances as the actor believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in oneself performing an abortion. Such substantial steps include, but are not limited to:

(a) agreeing with an individual to perform an abortion on that individual or on some other person, whether or not the term abortion is used in the agreement, and whether or not the agreement is contingent on another factor such as receipt of payment or a determination of pregnancy; or

(b) scheduling or planning a time to perform an abortion on an individual, whether or not the term abortion is used, and whether or not the performance is contingent on another factor such as receipt of payment or a determination of pregnancy.

This definition shall not be construed to require that an abortion procedure actually must be initiated for an attempt to occur.

(3)(a) ‘Dismemberment abortion’ means, with the purpose of causing the death of an unborn child, purposely to dismember a living unborn child and extract him or her one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors or similar instruments that, through the convergence of two rigid levers, slice, crush, and/or grasp a portion of the unborn child’s body to cut or rip it off.

(b) The term ‘dismemberment abortion’ does not include an abortion which uses suction to dismember the body of the unborn child by sucking fetal parts into a collection container, although it does include an abortion in which a dismemberment abortion, as defined in subitem (a), is used to cause the death of an unborn child but suction is subsequently used to extract fetal parts after the death of the unborn child.

(4) ‘Physician’ means a person licensed to practice medicine and surgery or osteopathic medicine and surgery, or otherwise legally authorized to perform an abortion.

(5) ‘Purposely’ means the following: A person acts purposely with respect to a material element of an offense when:

(a) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

(b) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.

(6) ‘Serious health risk to the unborn child’s mother’ means that in reasonable medical judgment she has a condition that so complicates her medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such condition may be determined to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

(7) ‘Woman’ means a female human being whether or not she has reached the age of majority.

Section 44‑41‑630. (A) Notwithstanding any other provision of law, it shall be unlawful for any person to purposely perform or attempt to perform a dismemberment abortion and thereby kill an unborn child unless necessary to prevent serious health risk to the unborn child’s mother.

(B) A person accused in any proceeding of unlawful conduct pursuant to subsection (A) may seek a hearing before the South Carolina Board of Medical Examiners on whether the dismemberment abortion was necessary to prevent serious health risk to the unborn child’s mother. The board’s findings are admissible on that issue at any trial in which such unlawful conduct is alleged. Upon a motion of the person accused, the court shall delay the beginning of the trial for not more than thirty days to permit such a hearing to take place.

(C) No woman upon whom an abortion is performed or attempted to be performed shall be thereby liable for performing or attempting to perform a dismemberment abortion. No nurse, technician, secretary, receptionist or other employee or agent who is not a physician but who acts at the direction of a physician, and no pharmacist or other individual who is not a physician but who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician shall be thereby liable for performing or attempting to perform a dismemberment abortion.

(D) This article does not prevent abortion for any reason including rape and incest by any other method.

Section 44‑41‑640. (A) A cause of action for injunctive relief against a person who has performed or attempted to perform a dismemberment abortion in violation of Section 44‑41‑630 may be maintained by:

(1) a woman upon whom such a dismemberment abortion was performed or attempted to be performed;

(2) a person who is the spouse, parent or guardian of, or a current or former licensed health care provider of, a woman upon whom such a dismemberment abortion was performed or attempted to be performed; or

(3) a prosecuting attorney with appropriate jurisdiction.

(B) The injunction shall prevent the defendant from performing or attempting to perform further dismemberment abortions in violation of Section 44‑41‑630 in this State.

Section 44‑41‑650. (A) A cause of action for civil damages against a person who has performed a dismemberment abortion in violation of Section 44‑41‑630 may be maintained by:

(1) any woman upon whom a dismemberment abortion has been performed in violation of Section 44‑41‑630;

(2) The father of the unborn child, if married to the woman at the time the dismemberment abortion was performed; or

(3) If the woman had not attained the age of eighteen years at the time of the dismemberment abortion or has died as a result of the abortion, the maternal grandparents of the unborn child.

(B) No damages may be awarded a plaintiff if the pregnancy resulted from the plaintiff’s criminal conduct.

(C) Damages awarded in such an action shall include:

(1) money damages for all injuries, psychological and physical, occasioned by the dismemberment abortion; and

(2) statutory damages equal to three times the cost of the dismemberment abortion.

Section 44‑41‑660. (A) If judgment is rendered in favor of the plaintiff in an action described in Section 44‑41‑640 or 44‑41‑650, the court also shall render judgment for a reasonable attorney’s fee in favor of the plaintiff against the defendant.

(B) If judgment is rendered in favor of the defendant in an action described in Section 44‑41‑640 or 44‑41‑650 and the court finds that the plaintiff’s suit was frivolous and brought in bad faith, the court shall render judgment for a reasonable attorney’s fee in favor of the defendant against the plaintiff.

(C) No attorney’s fee may be assessed against the woman upon whom an abortion was performed or attempted to be performed except in accordance with subsection (B).

Section 44‑41‑670. A person who violates Section 44‑41‑630 shall be fined ten thousand dollars or imprisoned for not more than two years, or both.

Section 44‑41‑680. In every civil, criminal, or administrative proceeding or action brought pursuant to this article, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted to be performed shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her 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 attempted to be performed, anyone other than a public official who brings an action pursuant to Section 44‑41‑640 or 44‑41‑650 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 44‑41‑690. Nothing in this article shall be construed as creating or recognizing a right to abortion, nor a right to a particular method of abortion.”

SECTION 2. This act takes effect upon approval by the Governor.

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