CHAPTER 41

Abortions

ARTICLE 1

Abortions Generally

**SECTION 44‑41‑10.** Definitions.

 As used in this chapter:

 (a) “Abortion” means the use of an instrument, medicine, drug, or other substance or device with intent to terminate the pregnancy of a woman known to be pregnant for reasons other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

 (b) “Physician” means a person licensed to practice medicine in this State.

 (c) “Department” means the South Carolina Department of Health and Environmental Control.

 (d) “Hospital” means those institutions licensed for hospital operation by the department in accordance with Article 3, Chapter 7 of this title and which have also been certified by the department to be suitable facilities for the performance of abortions.

 (e) “Clinic” shall mean any facility other than a hospital as defined in subsection (d) which has been licensed by the Department, and which has also been certified by the Department to be suitable for the performance of abortions.

 (f) “Pregnancy” means the condition of a woman carrying a fetus or embryo within her body as the result of conception.

 (g) “Conception” means the fecundation of the ovum by the spermatozoa.

 (h) “Consent” means a signed and witnessed voluntary agreement to the performance of an abortion.

 (i) “First trimester of pregnancy” means the first twelve weeks of pregnancy commencing with conception rather than computed on the basis of the menstrual cycle.

 (j) “Second trimester of pregnancy” means that portion of a pregnancy following the twelfth week and extending through the twenty‑fourth week of gestation.

 (k) “Third trimester of pregnancy” means that portion of a pregnancy beginning with the twenty‑fifth week of gestation.

 (l) “Viability” means that stage of human development when the fetus is potentially able to live outside of the mother’s womb with or without the aid of artificial life support systems. For the purposes of this chapter, a legal presumption is hereby created that viability occurs no sooner than the twenty‑fourth week of pregnancy.

 (m) “Minor” means a female under the age of seventeen.

 (n) “Emancipated minor” means a minor who is or has been married or has by court order been freed from the care, custody, and control of her parents.

 (o) “In loco parentis” means any person over the age of eighteen who has placed himself or herself in the position of a lawful parent by assuming obligations which are incidental to the parental relationship and has so served for a period of sixty days.

HISTORY: 1962 Code Section 32‑681; 1974 (58) 2837; 1990 Act No. 341, Sections 2, 3; 1995 Act No. 1, Section 2.

CROSS REFERENCES

Physicians and surgeons, generally, see Sections 40‑47‑10 et seq.

State Certification of Need and Health Facility Licensure Act, see Sections 44‑7‑110 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 9, The Establishment of the Right to Privacy and the South Carolina Response.

S.C. Jur. Abortion Section 10, Abortions in the Case of Minors.

S.C. Jur. Abortion Section 12, Post‑Viability Abortions.

S.C. Jur. Abortion Section 15, Regulation of Abortion Facilities.

S.C. Jur. Clerks of Court Section 13, Duties.

S.C. Jur. Hospitals Section 31, Abortions.

LAW REVIEW AND JOURNAL COMMENTARIES

State v. Ard: Statutory Aggravating Circumstances and the Emergence of Fetal Personhood in South Carolina. 50 S.C. L. Rev. 887 (Summer 1999).

United States Supreme Court Annotations

Supreme Court’s views as to validity of laws restricting or prohibiting sale or distribution to minors of particular types of goods or services otherwise available to adults. 52 L Ed 2d 892.

Supreme Court’s views as to validity, under Federal Constitution, of abortion laws. 111 L Ed 2d 879.

NOTES OF DECISIONS

Physician 1

1. Physician

The State may define the term “physician,” to mean only a physician currently licensed by the State, and may proscribe any abortion by a person who is not a physician as so defined (decided under former Code 1962 Section 16‑83). State v. Lawrence (S.C. 1973) 261 S.C. 18, 198 S.E.2d 253.

**SECTION 44‑41‑20.** Legal Abortions.

 Abortion shall be a criminal act except when performed under the following circumstances:

 (a) During the first trimester of pregnancy the abortion is performed with the pregnant woman’s consent by her attending physician pursuant to his professional medical judgment.

 (b) During the second trimester of pregnancy the abortion is performed with the pregnant woman’s consent by her attending physician in a hospital or clinic certified by the Department.

 (c) During the third trimester of pregnancy, the abortion is performed with the pregnant woman’s consent, and if married and living with her husband the consent of her husband, in a certified hospital, and only if the attending physician and one additional consulting physician, who shall not be related to or engaged in private practice with the attending physician, certify in writing to the hospital in which the abortion is to be performed that the abortion is necessary based upon their best medical judgment to preserve the life or health of the woman. In the event that the preservation of the woman’s mental health is certified as the reason for the abortion, an additional certification shall be required from a consulting psychiatrist who shall not be related to or engaged in private practice with the attending physician. All facts and reasons supporting such certification shall be set forth by the attending physician in writing and attached to such certificate.

HISTORY: 1962 Code Section 32‑682; 1974 (58) 2837.

CROSS REFERENCES

South Carolina Pain‑Capable Unborn Child Protection Act, construction against implicit repeal of existing law, see Section 44‑41‑480.

Library References

Abortion and Birth Control 102.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 4 to 6.

C.J.S. Constitutional Law Section 757.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 11, Consent Requirements for Adults.

S.C. Jur. Abortion Section 12, Post‑Viability Abortions.

S.C. Jur. Abortion Section 15, Regulation of Abortion Facilities.

S.C. Jur. Hospitals Section 31, Abortions.

LAW REVIEW AND JOURNAL COMMENTARIES

Supreme Court is Undecided on Parental Notification Requirement for Minor’s Abortion, Bellotti v Baird. 99 S Ct 3035 (1979), 31 S.C. L. Rev. 604.

United States Supreme Court Annotations

Due process, privacy rights, abortion, ban on partial‑birth abortion procedure, absence of health exception, vagueness, see Gonzales v. Carhart, 2007, 127 S.Ct. 1610, 550 U.S. 124, 167 L.Ed.2d 480.

Supreme Court’s views as to validity, under Federal Constitution, of abortion laws. 111 L Ed 2d 879.

Validity, under Federal Constitution, of abortion laws. 35 L Ed 2d 735.

Attorney General’s Opinions

A post‑viability partial birth abortion is illegal unless absolutely necessary to preserve the life or health of the mother. S.C. Op.Atty.Gen. (January 10, 1997) 1997 WL 87887.

NOTES OF DECISIONS

In general 2

Constitutional issues 3

Validity 1

1. Validity

South Carolina anti‑abortion statute 1962 Code Section 32‑682(b) and (c) [Section 44‑41‑30(b) and (c) (1976)] requiring that physician, before performing abortion, consult other physicians, and requiring consent of husband of married woman and of parents or guardian of minor, is unconstitutional. Floyd v. Anders (D.C.S.C. 1977) 440 F.Supp. 535, vacated 99 S.Ct. 1200, 440 U.S. 445, 59 L.Ed.2d 442, rehearing denied 99 S.Ct. 2043, 441 U.S. 928, 60 L.Ed.2d 403. Abortion And Birth Control 110; Abortion And Birth Control 114

2. In general

Viability of fetus is medical concept to be determined by attending physician, and legislature may not place it at a specific point in gestation period. Floyd v. Anders (D.C.S.C. 1977) 440 F.Supp. 535, vacated 99 S.Ct. 1200, 440 U.S. 445, 59 L.Ed.2d 442, rehearing denied 99 S.Ct. 2043, 441 U.S. 928, 60 L.Ed.2d 403. Abortion And Birth Control 106

If state may not legislate for protection and preservation of life of nonviable fetus, it surely cannot make surgical severance of fetus from womb murder under state law. Floyd v. Anders (D.C.S.C. 1977) 440 F.Supp. 535, vacated 99 S.Ct. 1200, 440 U.S. 445, 59 L.Ed.2d 442, rehearing denied 99 S.Ct. 2043, 441 U.S. 928, 60 L.Ed.2d 403.

After first trimester of pregnancy, state may regulate conditions under which abortions may be performed, but only as those conditions relate to health mother. Floyd v. Anders (D.C.S.C. 1977) 440 F.Supp. 535, vacated 99 S.Ct. 1200, 440 U.S. 445, 59 L.Ed.2d 442, rehearing denied 99 S.Ct. 2043, 441 U.S. 928, 60 L.Ed.2d 403.

For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman’s attending physician, but for the stage subsequent to approximately the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health and for the stage subsequent to viability the State, in promoting its interest in the potentiality of human life, may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother (decided under former Code 1962 Section 16‑83). State v. Lawrence (S.C. 1973) 261 S.C. 18, 198 S.E.2d 253.

3. Constitutional issues

Texas law’s requirement that providers have admitting privileges at local hospital located no more than 30 miles from their abortion facility imposed undue burden on women’s right to seek previability abortions, where, under prior law requiring providers to have admitting privileges or to have working arrangement with physician having such privileges, abortion was extremely safe in Texas, with particularly low rates of serious complications and virtually no deaths due to procedure, which made it so few providers would have such privileges, as they were typically based on number of admissions per year, and new law caused number of abortion facilities in Texas to drop from about 40 to about 20, thus resulting in longer drives and longer wait times for women to obtain services. Whole Woman’s Health v. Hellerstedt, 2016, 136 S.Ct. 2292, 195 L.Ed.2d 665, revised, on remand 833 F.3d 565. Abortion and Birth Control 110

Texas law’s requirement that any abortion facility satisfy minimum standards for ambulatory surgical center did not benefit patients and was not necessary, and thus it imposed undue burden on women’s right to seek previability abortions, where complications arising from abortions produced through medication would not arise until patient had left facility, abortions taking place in facility were significantly safer than many other procedures for which state did not impose similar requirement, state declined to grandfather or waive requirement with respect abortion facilities, though it had for other facilities, and requirement would reduce number of clinics in state to seven or eight, requiring women to travel farther and wait longer to obtain services and requiring these clinics to expend significant resources in order to meet demand. Whole Woman’s Health v. Hellerstedt, 2016, 136 S.Ct. 2292, 195 L.Ed.2d 665, revised, on remand 833 F.3d 565. Abortion and Birth Control 110

Health and Human Service regulations limiting ability of Federal Title X fund recipients to engage to abortion related activities were permissible construction of Title X, did not impose viewpoint‑discriminatory conditions on government subsidy so as to violate First Amendment free speech rights of either private health care organizations that received Title X funds, their staffs, or their patients, and did not violate women’s rights under due process clause of Fifth Amendment. Rust v. Sullivan, U.S.N.Y.1991, 111 S.Ct. 1759, 500 U.S. 173, 114 L.Ed.2d 233.

State statute requiring that all second trimester abortions be performed in general acute care facilities is unconstitutional, since it unreasonably infringes upon women’s constitutional right to obtain abortion; however, requirements that pathology report be made, that minor secure parental or judicial consent, and that second physician be present are constitutional. Planned Parenthood Ass’n of Kansas City, Mo., Inc. v. Ashcroft, U.S.Mo.1983, 103 S.Ct. 2517, 462 U.S. 476, 76 L.Ed.2d 733.

Statutes such as South Carolina’s, which proscribes abortion after 24th week of conception, are unconstitutional in application if aborted fetus is not viable. Floyd v. Anders (D.C.S.C. 1977) 440 F.Supp. 535, vacated 99 S.Ct. 1200, 440 U.S. 445, 59 L.Ed.2d 442, rehearing denied 99 S.Ct. 2043, 441 U.S. 928, 60 L.Ed.2d 403. Abortion And Birth Control 106

**SECTION 44‑41‑30.** Persons from whom consent is required.

 (A) Consent is required before the performance of an abortion from the pregnant woman in every case and in the case of a minor, it must be obtained pursuant to the provisions of Section 44‑41‑31.

 (B) In the case of a woman who is under adjudication of mental incompetency by a court of competent jurisdiction, consent must be obtained from her spouse or a legal guardian if she is married; if she is not married, from one parent or a legal guardian.

 (C) Notwithstanding the consent required in subsections (A) and (B) consent must be waived if:

 (1) a physician determines that a medical emergency exists involving the life of or grave physical injury to the pregnant woman; or

 (2) the pregnancy is the result of incest.

 (D) In cases of incest the physician performing the abortion shall report the alleged incest to the local county department of social services or to a law enforcement agency in the county where the child resides or is found. Failure to report is a violation punishable under the child abuse laws of this State.

 (E) Nothing in this section permits a physician to perform an abortion without first obtaining the consent of the pregnant woman if she is capable of giving consent.

HISTORY: 1962 Code Section 32‑683; 1974 (58) 2837; 1990 Act No. 341, Section 4.

CROSS REFERENCES

Consent of minor sixteen years old or over to health services other than operations, see Section 63‑5‑340.

Health services which may be rendered to minor of any age without consent of parent or guardian, see Section 63‑5‑350.

Library References

Abortion and Birth Control 116.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 19 to 26.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 10, Abortions in the Case of Minors.

S.C. Jur. Abortion Section 11, Consent Requirements for Adults.

S.C. Jur. Abortion Section 12, Post‑Viability Abortions.

S.C. Jur. Hospitals Section 31, Abortions.

LAW REVIEW AND JOURNAL COMMENTARIES

Constitutional Law ‑ Supreme Court is Undecided on Parental Notification Requirement for Minor’s Abortion, Bellotti v Baird, 99 S Ct 3035 (1979). 31 S.C. L. Rev. 604.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

City ordinance requiring all second trimester abortions to be performed in hospital violates due process clause, and provisions of ordinance dealing with parental consent, informed consent, 24‑hour waiting period, and disposal of fetal remains are unconstitutional. City of Akron v. Akron Center for Reproductive Health, Inc., 06‑15‑1983, 103 S.Ct. 2481, 462 U.S. 416, 76 L.Ed.2d 687.

**SECTION 44‑41‑31.** Abortion upon minors; consent requirements; support obligations of parent or legal guardian who refuses to give consent for minor’s abortion; penalty for false representation.

 (A) No person may perform an abortion upon a minor unless consent is obtained in accordance with one of the following provisions:

 (1) the attending physician or his agent or the referring physician or his agent has secured the informed written consent, signed and witnessed, of the pregnant minor and:

 (a) one parent of the minor; or

 (b) a legal guardian of the minor; or

 (c) a grandparent of the minor; or

 (d) any person who has been standing in loco parentis to the minor for a period not less than sixty days;

 (2) the minor is emancipated and the attending physician or his agent has received the informed signed written consent of the minor; or

 (3) the attending physician or his agent has obtained the informed signed written consent of the minor and has received the order of the court obtained by the minor pursuant to this chapter.

 (B) If a parent or legal guardian refuses to give the informed written consent for the minor’s abortion and there has been a judicial finding of refusal of consent, and the minor has a child or children as a result of that pregnancy, the duty imposed by law of supporting the child or children extends to the minor and jointly and severally to the refusing parent or legal guardian and the natural father until the minor reaches the age of eighteen years or is emancipated.

 (C) Any person standing in loco parentis and who consents to the abortion of the minor as permitted in subsection (A)(1) of this section shall sign an affidavit indicating the nature and length of his or her relationship with the minor. The affidavit must state the penalties for wilfully or knowingly making a false representation. Anyone who knowingly or wilfully makes a false representation in the affidavit shall be guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than one year.

HISTORY: 1990 Act No. 341, Section 1.

Library References

Abortion and Birth Control 115, 116.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 5, 19 to 26.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 10, Abortions in the Case of Minors.

S.C. Jur. Hospitals Section 31, Abortions.

United States Supreme Court Annotations

Supreme Court’s views as to validity of laws restricting or prohibiting sale or distribution to minors of particular types of goods or services otherwise available to adults. 52 L Ed 2d 892.

Supreme Court’s views as to validity, under Federal Constitution, of abortion laws. 111 L Ed 2d 879.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

Fourteenth Amendment was not violated by state statute prohibiting abortion on minor absent either parental notice, parental consent, judicial bypass, or judicial inaction. Ohio v. Akron Center for Reproductive Health, 06‑25‑1990, 110 S.Ct. 2972, 497 U.S. 502, 111 L.Ed.2d 405.

State’s two‑parent notification requirement for minor’s abortion, without judicial bypass provision, did not reasonably further any legitimate state interest, therefore violated Federal Constitution, whereas with judicial bypass such requirement would be valid. Hodgson v. Minnesota, U.S.Minn.1990, 110 S.Ct. 2926, 497 U.S. 417, 111 L.Ed.2d 344.

State statute requiring that all second trimester abortions be performed in general acute care facilities is unconstitutional, since it unreasonably infringes upon women’s constitutional right to obtain abortion; however, requirements that pathology report be made, that minor secure parental or judicial consent, and that second physician be present are constitutional. Planned Parenthood Ass’n of Kansas City, Mo., Inc. v. Ashcroft, U.S.Mo.1983, 103 S.Ct. 2517, 462 U.S. 476, 76 L.Ed.2d 733.

City ordinance requiring all second trimester abortions to be performed in hospital violates due process clause, and provisions of ordinance dealing with parental consent, informed consent, 24‑hour waiting period, and disposal of fetal remains are unconstitutional. City of Akron v. Akron Center for Reproductive Health, Inc., 06‑15‑1983, 103 S.Ct. 2481, 462 U.S. 416, 76 L.Ed.2d 687.

**SECTION 44‑41‑32.** Petitioning court for right to obtain abortion without consent of parent or legal guardian.

 Every minor has the right to petition the court for an order granting her the right to obtain an abortion without the consent required in Section 44‑41‑31(1). In seeking this relief the following procedures apply:

 (1) The minor may prepare and file a petition in either the circuit or family court. The petition may be filed in the name of Jane Doe to protect the anonymity of the minor.

 (2) The Adoption and Birth Parent Services Division of the Department of Social Services, upon request of the minor, must provide assistance to the minor in preparing and filing the petition. Preparation and filing of the petition must be completed within forty‑eight hours after the request. The Department of Social Services shall promulgate regulations establishing the procedures to be followed in providing this assistance.

 (3) Upon the filing of the petition, the court shall appoint a guardian ad litem for the minor, taking into consideration the preference of the minor. The minor may participate in court proceedings on her own behalf, but the court shall advise her that she has a right to court‑appointed counsel and shall provide her with counsel upon her request.

 (4) All proceedings pursuant to this section must be given precedence over other matters pending before the court.

 (5) The court shall hold a hearing and rule on the merits of the petition within seventy‑two hours of the filing of the petition. This time may be extended upon the request of the minor. The court shall consider the emotional development, maturity, intellect, and understanding of the minor; the nature and possible consequences of the abortion and of the alternatives to the abortion; and other evidence that the court may find useful in determining whether the minor should be granted the right on her own behalf to consent to the abortion or whether the abortion is in the best interest of the minor.

HISTORY: 1990 Act No. 341, Section 1.

CROSS REFERENCES

Regulations pertaining to legal assistance to minors seeking abortions, see S.C. Code of Regulations R. 114‑4000 et seq.

Library References

Abortion and Birth Control 116.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 19 to 26.

RESEARCH REFERENCES

ALR Library

163 ALR 1358 , Governmental Control of Actions or Speech of Public Officers or Employees in Respect of Matters Outside the Actual Performance of Their Duties.

Encyclopedias

22 Am. Jur. Proof of Facts 3d 203, Termination or Demotion of a Public Employee in Retaliation for Speaking Out as a Violation of Right of Free Speech.

77 Am. Jur. Trials 1, Representing Law Enforcement Officers in Personnel Disputes and Employment Litigation.

S.C. Jur. Abortion Section 10, Abortions in the Case of Minors.

S.C. Jur. Abortion Section 13, Government Funding of Abortions and the Use of Government Facilities to Perform Abortions.

**SECTION 44‑41‑33.** Court order granting or denying minor right to obtain abortion.

 (A) The court shall enter a written order stating findings of fact and conclusions of law in support of its decision to:

 (1) grant the minor the right on her own behalf to consent to the abortion if the court finds that the minor is mature and well‑informed enough to make the abortion decision on her own;

 (2) grant consent for the abortion if the court finds that the performance of the abortion would be in the minor’s best interest; or

 (3) deny the petition if the court finds that the minor is immature and that performance of the abortion would not be in the minor’s best interest. If the father of the child born after the denial of the petition is identified by adjudication, he shall share in the expenses of the delivery and rearing of the child as determined by the court. Orders issued under this item shall specify that the minor shall have the right to counseling services, appropriate prenatal care, delivery, neonatal, and post‑natal care, the cost of which may be paid by the State. Additionally, the State shall have subrogation rights against the father for payments made by the State on behalf of the child.

 (B) The court shall immediately issue a written order to the minor, her guardian ad litem, attorney, or other person designated by the minor to receive notice on her behalf.

HISTORY: 1990 Act No. 341, Section 1.

Library References

Abortion and Birth Control 123.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 24, 26.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 10, Abortions in the Case of Minors.

S.C. Jur. Appeal and Error Section 9, Exclusive Appellate Jurisdiction of the Supreme Court.

**SECTION 44‑41‑34.** Appeals; hearings closed to public; records to be sealed; Supreme Court to adopt rules.

 (A) A minor has the right to appeal to the Supreme Court a decision rendered pursuant to Section 44‑41‑33. She is entitled to an anonymous and expeditious appellate review which takes precedence over other matters pending before the court.

 (B) A minor who declares she has insufficient funds to pursue the procedures provided in this section or in Section 44‑41‑32 must not be required to pay the costs associated with these procedures.

 (C) The notice of intent to appeal must be filed with the court issuing the order described in Section 44‑41‑33 within seventy‑two hours from the date the order is received. The record on appeal must be completed and the appeal must be perfected within ten days from the filing of the notice of intent to appeal. These filing requirements are not considered jurisdictional and may be extended by the Supreme Court upon request of the minor for good cause shown.

 (D) All hearings conducted under Sections 44‑41‑32 and 44‑41‑34 must be closed to the public. All records related to these sections and Section 44‑41‑33 are not open to public examination and must be sealed by the court.

 (E) The Supreme Court shall adopt rules governing the administration of the courts or practice and procedure before such courts necessary to carry out the provisions of Sections 44‑41‑32, 44‑41‑33, and 44‑41‑34.

HISTORY: 1990 Act No. 341, Section 1.

Library References

Abortion and Birth Control 123.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 24, 26.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 10, Abortions in the Case of Minors.

**SECTION 44‑41‑35.** Failure to obtain required consent.

 Failure to obtain required consent constitutes prima facie evidence of interference with family relations in appropriate civil actions. The law of this State does not preclude the award of exemplary damages in an appropriate civil action relevant to violations concerning a minor. Nothing in this chapter may be construed to limit the common law rights of parents.

HISTORY: 1990 Act No. 341, Section 1.

Library References

Abortion and Birth Control 127.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 33 to 36.

**SECTION 44‑41‑36.** Penalty for failing to conform with requirements of Sections 44‑41‑10 through 44‑41‑36 when performing abortion on minor; justified reliance on representations of minors or other persons.

 (A) A person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement in Sections 44‑41‑10 through 44‑41‑36 is guilty of a misdemeanor and, upon conviction, must be fined not less than two thousand dollars nor more than ten thousand dollars or imprisoned for not more than three years, or both. No part of the minimum fine may be suspended. For conviction of a third or subsequent offense, the sentence must be imprisonment for not less than sixty days nor more than three years, none of which may be suspended.

 (B) A physician or any person employed or connected with a physician, hospital, or health care facility performing abortions who acts in good faith is justified in relying on the representations of the unemancipated minor or of any other person providing the information required under this chapter. A physician or other person who furnishes professional services related to an act authorized or required by this chapter and who relies upon the information furnished pursuant to this chapter may not be held to have violated any criminal law or to be civilly liable for the reliance, provided that the physician or other person acted in good faith.

HISTORY: 1990 Act No. 341, Section 1.

Library References

Abortion and Birth Control 127.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 33 to 36.

United States Supreme Court Annotations

Supreme Court’s views as to validity, under Federal Constitution, of abortion laws. 111 L Ed 2d 879.

**SECTION 44‑41‑37.** Disclosure of consent requirements when counseling or discussing abortion with minor; brochure for use in counseling pregnant minors.

 A physician or other professional person or agency counseling or discussing with a minor the question of her obtaining an abortion shall fully inform her of the procedures she must follow under law to obtain an abortion without the consent required in Section 44‑41‑31(1).

 The Adoption and Birth Parent Services Division of the Department of Social Services shall develop and distribute brochures to health and education professionals for use in counseling pregnant minors. This brochure shall include the following:

 (1) how to access her local health department for prenatal care;

 (2) how to access her local Adoption and Birth Parent Services Division of the Department of Social Services or any private not for profit adoption service;

 (3) the parental consent requirement as outlined in this bill;

 (4) the judicial by‑pass procedure as referred in Sections 44‑41‑32, 44‑41‑33, and 44‑41‑34; and

 (5) how to access her local mental health center for counseling services.

HISTORY: 1990 Act No. 341, Section 1.

Library References

Abortion and Birth Control 116.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 19 to 26.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 10, Abortions in the Case of Minors.

S.C. Jur. Abortion Section 13, Government Funding of Abortions and the Use of Government Facilities to Perform Abortions.

United States Supreme Court Annotations

Supreme Court’s views as to validity, under Federal Constitution, of abortion laws. 111 L Ed 2d 879.

**SECTION 44‑41‑40.** Certain hospitals or clinics may refuse to perform abortions.

 No private or nongovernmental hospital or clinic shall be required to admit any patient for the purpose of terminating a pregnancy, nor shall such institutions be required to permit their facilities to be utilized for the performance of abortions. No cause of action shall arise against any such hospital or clinic for refusal to perform or to allow the performance of an abortion if the institution has adopted a policy not to admit patients for the purpose of terminating pregnancies; provided, that no hospital or clinic shall refuse an emergency admittance.

HISTORY: 1962 Code Section 32‑684; 1974 (58) 2837.

Library References

Abortion and Birth Control 110.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 3, 13.

C.J.S. Social Security and Public Welfare Section 30.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 13, Government Funding of Abortions and the Use of Government Facilities to Perform Abortions.

United States Supreme Court Annotations

Supreme Court’s views as to validity, under Federal Constitution, of abortion laws. 111 L Ed 2d 879.

**SECTION 44‑41‑50.** Medical employees not required to aid in abortions; providing necessary aftercare following abortion.

 (a) No physician, nurse, technician or other employee of a hospital, clinic or physician shall be required to recommend, perform or assist in the performance of an abortion if he advises the hospital, clinic or employing physician in writing that he objects to performing, assisting or otherwise participating in such procedures. Such notice will suffice without specification of the reason therefor.

 (b) No physician, nurse, technician or other person who refuses to perform or assist in the performance of an abortion shall be liable to any person for damages allegedly arising from such refusal.

 (c) No physician, nurse, technician or other person who refuses to perform or assist in the performance of an abortion shall because of that refusal be dismissed, suspended, demoted, or otherwise disciplined or discriminated against by the hospital or clinic with which he is affiliated or by which he is employed. A civil action for damages or reinstatement of employment, or both, may be prosecuted by any person whose employment or affiliation with a hospital or clinic has been altered or terminated in violation of this chapter.

 (d) Any physician who performs an abortion shall also provide, for proper compensation, necessary aftercare for his patient unless released by the patient in writing. The extent of aftercare required shall be that care customarily provided by physicians in such cases in accordance with accepted medical practice.

HISTORY: 1962 Code Section 32‑685; 1974 (58) 2837.

Library References

Abortion and Birth Control 110.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 3, 13.

C.J.S. Social Security and Public Welfare Section 30.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 13, Government Funding of Abortions and the Use of Government Facilities to Perform Abortions.

United States Supreme Court Annotations

Supreme Court’s views as to validity, under Federal Constitution, of abortion laws. 111 L Ed 2d 879.

**SECTION 44‑41‑60.** Abortions must be reported.

 Any abortion performed in this State must be reported by the performing physician on the standard form for reporting abortions to the state registrar, Department of Health and Environmental Control, within seven days after the abortion is performed. The names of the patient and physician may not be reported on the form or otherwise disclosed to the state registrar. The form must indicate from whom consent was obtained or circumstances waiving consent.

HISTORY: 1975 (59) 187; 1978 Act No. 587 Section 4; 1990 Act No. 341, Section 5; 1995 Act No. 1, Section 12.

CROSS REFERENCES

Applicability to Legislative Audit Council staff members of provisions relative to confidentiality of agency records, see Section 2‑15‑62.

Library References

Abortion and Birth Control 124.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Section 17.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 10, Abortions in the Case of Minors.

S.C. Jur. Abortion Section 14, Recordkeeping and Reporting of Abortions.

United States Supreme Court Annotations

Supreme Court’s views as to validity, under Federal Constitution, of abortion laws. 111 L Ed 2d 879.

**SECTION 44‑41‑70.** Promulgation of rules and regulations for certification of hospitals and other facilities.

 (a) The department shall promulgate and enforce regulations for the certification of hospitals as defined in Section 44‑41‑10(d) as suitable facilities for the performance of abortions.

 (b) The department shall promulgate and enforce regulations for the licensing and certification of facilities other than hospitals as defined in Section 44‑41‑10(d) wherein abortions are to be performed as provided for in Section 44‑41‑20(a) and (b).

HISTORY: 1962 Code Section 32‑686; 1974 (58) 2837; 1995 Act No. 1, Section 3.

CROSS REFERENCES

Department of Health and Environmental Control regulations, see S.C. Code of Regulations R. 61‑1 et seq.

Library References

Abortion and Birth Control 103.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 2, 7, 9 to 10, 18.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 15, Regulation of Abortion Facilities.

United States Supreme Court Annotations

Supreme Court’s views as to validity, under Federal Constitution, of abortion laws. 111 L Ed 2d 879.

**SECTION 44‑41‑75.** Licensing of certain abortion facilities; regulations.

 (A) A facility in which any second trimester or five or more first trimester abortions are performed in a month must be licensed by the department to operate as an abortion clinic and must comply with the provisions of Article 3.

 (B) The department shall promulgate regulations concerning sanitation, housekeeping, maintenance, staff qualifications, emergency equipment and procedures to provide emergency care, medical records and reports, laboratory, procedure and recovery rooms, physical plant, quality assurance, infection control, and information on and access to patient follow‑up care necessary to carry out the purposes of this section.

HISTORY: 1995 Act No. 1, Section 1.

CROSS REFERENCES

ARTICLE 3 of this chapter, see Section 44‑41‑310 et seq.

License requirements, see S.C. Code of Regulations R. 61‑12.102.

Library References

Abortion and Birth Control 103.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 2, 7, 9 to 10, 18.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 15, Regulation of Abortion Facilities.

Attorney General’s Opinions

Discussion of proposed regulations relating to sonograms and complaint procedures. S.C. Op.Atty.Gen. (November 27, 1995) 1995 WL 805868.

**SECTION 44‑41‑80.** Performing or soliciting unlawful abortion; testimony of woman may be compelled.

 (a) Any person, except as permitted by this chapter, who provides, supplies, prescribes or administers any drug, medicine, prescription or substance to any woman or uses or employs any device, instrument or other means upon any woman, with the intent to produce an abortion shall be deemed guilty of a felony and, upon conviction, shall be punished by imprisonment for a term of not less than two nor more than five years or fined not more than five thousand dollars, or both. Provided, that the provisions of this item shall not apply to any woman upon whom an abortion has been attempted or performed.

 (b) Except as otherwise permitted by this chapter, any woman who solicits of any person or otherwise procures any drug, medicine, prescription or substance and administers it to herself or who submits to any operation or procedure or who uses or employs any device or instrument or other means with intent to produce an abortion, unless it is necessary to preserve her life, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment for a term of not more than two years or fined not more than one thousand dollars, or both.

 (c) Any woman upon whom an abortion has been performed or attempted in violation of the provisions of this chapter may be compelled to testify in any criminal prosecution initiated pursuant to subsection (a) of this section; provided, however, that such testimony shall not be admissible in any civil or criminal action against such woman and she shall be forever immune from any prosecution for having solicited or otherwise procured the performance of the abortion or the attempted performance of the abortion upon her.

HISTORY: 1962 Code Section 32‑687; 1974 (58) 2837.

Library References

Abortion and Birth Control 174.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Section 31.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 9, The Establishment of the Right to Privacy and the South Carolina Response.

S.C. Jur. Clerks of Court Section 13, Duties.

NOTES OF DECISIONS

Review 1

1. Review

Defendant’s contention that the criminal abortion statute was the more specific statute and that it, rather than the homicide by child abuse statute, controlled her prosecution was not raised in the trial court, and thus, issue was not preserved for appellate review, even though defendant argued generally in the trial court that the homicide by child abuse statute was inapplicable. State v. McKnight (S.C. 2003) 352 S.C. 635, 576 S.E.2d 168, certiorari denied, certiorari denied 124 S.Ct. 101, 540 U.S. 819, 157 L.Ed.2d 36, denial of post‑conviction relief reversed 378 S.C. 33, 661 S.E.2d 354. Criminal Law 1030(3)

**SECTION 44‑41‑85.** Performance of partial‑birth abortion by physician; felony; cause of action against physician.

 (A) A physician who knowingly performs a partial‑birth abortion and thereby kills a human fetus is guilty of a felony and, upon conviction, must be fined not less than five thousand dollars or imprisoned for not less than five years, or both. This section shall not apply to a partial‑birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, a physical illness, or a physical injury if no other medical procedure would suffice for that purpose.

 (B) As used in this section:

 (1) the term “partial‑birth abortion” means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

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

 (C)(1) The father, if married to the mother at the time she receives a partial‑birth 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 partial‑birth 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 partial‑birth 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.

HISTORY: 1997 Act No. 11, Section 1.

Library References

Abortion and Birth Control 141.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 27 to 28.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 12.5, Partial‑Birth Abortions.

LAW REVIEW AND JOURNAL COMMENTARIES

South Carolina bans partial birth abortions. 49 S.C. L. Rev. 1041 (Summer 1998).

ARTICLE 3

Woman’s Right to Know

**SECTION 44‑41‑310.** Short title.

 This article may be cited as the “Woman’s Right to Know Act”.

HISTORY: 1995 Act No. 1, Section 8.

**SECTION 44‑41‑320.** Definitions.

 As used in this article:

 (1) “Medical emergency” means that condition which, on the basis of the physician’s good faith judgment, so complicates a pregnancy as to necessitate an immediate abortion to avert the risk of her death or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function.

 (2) “Probable gestational age of the embryo or fetus” 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.

HISTORY: 1995 Act No. 1, Section 8.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 16, The “Woman’s Right to Know Act”.

**SECTION 44‑41‑330.** Conditions for performance; information requirements; waiting period; minors or mentally incompetent persons; retention of records.

 (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. 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.

 (2) 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 the right to view your ultrasound image.” 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.

 (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) 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 twenty‑four hours 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 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 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, as defined in Section 44‑41‑10, the information described in Section 44‑41‑330(A)(1) and (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(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(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 that the information was so provided and the printed materials were so offered. 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 section 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.

HISTORY: 1995 Act No. 1, Section 8; 2008 Act No. 222, Section 1, eff May 14, 2008; 2010 Act No. 268, Section 1, eff June 24, 2010.

Library References

Abortion and Birth Control 112.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 11 to 12.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 16, The “Woman’s Right to Know Act”.

**SECTION 44‑41‑340.** Publication of materials regarding available assistance.

 (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;

 (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 44‑41‑330.

 (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.

 (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.

HISTORY: 1995 Act No. 1, Section 8; 2010 Act No. 268, Sections 2, 3 eff June 24, 2010.

Library References

Abortion and Birth Control 112.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 11 to 12.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 16, The “Woman’s Right to Know Act”.

**SECTION 44‑41‑350.** Penalties for noncompliance with this article.

 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. No term of imprisonment may be imposed for a first or second offense.

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

HISTORY: 1995 Act No. 1, Section 8.

Library References

Abortion and Birth Control 112, 141.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 11 to 12, 27 to 28.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 16, The “Woman’s Right to Know Act”.

**SECTION 44‑41‑360.** Preservation of anonymity of woman having abortion.

 In every proceeding or action brought under this article, the court shall rule whether the anonymity of any woman upon whom an abortion is performed or attempted shall be preserved from public disclosure if she does not give her consent to such a disclosure. The court, upon motion of any person or upon its own motion, shall make such a ruling and, upon determining that her anonymity 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 order under this section must 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. This section may not be construed to conceal the identity of the plaintiff or of the prosecutrix or of witnesses from the defendant or to abridge or deny the defendant’s ability to conduct discovery under applicable rules of court or the defendant’s right to a trial by jury or to cross examination.

HISTORY: 1995 Act No. 1, Section 8.

Library References

Abortion and Birth Control 124.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Section 17.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 16, The “Woman’s Right to Know Act”.

**SECTION 44‑41‑370.** Applicability of article.

 This article applies only to facilities in which any second trimester or five or more first trimester abortions are performed in a month.

HISTORY: 1995 Act No. 1, Section 8.

CROSS REFERENCES

Definition of “facilities wherein abortions are performed”, see Section 44‑7‑130.

Library References

Abortion and Birth Control 102.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 4 to 6.

C.J.S. Constitutional Law Section 757.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 16, The “Woman’s Right to Know Act”.

**SECTION 44‑41‑380.** Severability of provisions of article.

 If any provision, word, phrase, or clause of Article 3, Chapter 41, Title 44 of the 1976 Code, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions, words, phrases, clauses, or applications of Article 3, Chapter 41, Title 44 which can be given effect without the invalid provision, word, phrase, clause, or application, and, to this end, the provisions, words, phrases, and clauses of Article 3, Chapter 41, Title 44 are declared to be severable.

HISTORY: 1995 Act No. 1, Section 10; 2010 Act No. 268, Section 4, eff June 24, 2010.

ARTICLE 5

South Carolina Pain‑Capable Unborn Child Protection Act

**SECTION 44‑41‑410.** Short title.

 This article may be cited as the “South Carolina Pain‑Capable Unborn Child Protection Act”.

HISTORY: 2016 Act No. 183 (H.3114), Section 1, eff May 25, 2016.

**SECTION 44‑41‑420.** Legislative findings.

 The General Assembly makes the following findings:

 (1) Pain receptors (nociceptors) are present throughout the unborn child’s entire body and nerves link these receptors to the brain’s thalamus and subcortical plate by no later than twenty weeks.

 (2) By eight weeks after fertilization, the unborn child reacts to touch. After twenty weeks, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example, by recoiling.

 (3) In the unborn child, application of such painful stimuli is associated with significant increases in stress hormones known as the stress response.

 (4) Subjection to such painful stimuli is associated with long‑term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral, and learning disabilities later in life.

 (5) For the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their levels when painful stimuli are applied without such anesthesia.

 (6) The position, asserted by some medical experts, that the unborn child is incapable of experiencing pain until a point later in pregnancy than twenty weeks after fertilization predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex. However, recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain.

 (7) Substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain.

 (8) In adults, stimulation or ablation of the cerebral cortex does not alter pain perception, while stimulation or ablation of the thalamus does.

 (9) Substantial evidence indicates that structures used for pain processing in early development differ from those of adults, using different neural elements available at specific times during development, such as the subcortical plate, to fulfill the role of pain processing.

 (10) The position, asserted by some medical experts, that the unborn child remains in a coma‑like sleep state that precludes the unborn child experiencing pain is inconsistent with the documented reaction of unborn children to painful stimuli and with the experience of fetal surgeons who have found it necessary to sedate the unborn child with anesthesia to prevent the unborn child from thrashing about in reaction to invasive surgery.

 (11) Consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain by twenty weeks after fertilization.

 (12) It is the purpose of the State to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain.

 (13) South Carolina’s compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain is intended to be separate from and independent of South Carolina’s compelling state interest in protecting the lives of unborn children from the stage of viability, and neither state interest is intended to replace the other.

 (14) Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion, the United States Supreme Court noted that an explicit statement of legislative intent specifically made applicable to a particular statute is of greater weight than a general savings or severability clause, it is the intent of the State that if any one or more provisions, sections, subsections, sentences, clauses, phrases or words of this article or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this article shall remain effective notwithstanding such unconstitutionality. Moreover, the State declares that it would have passed this article, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases or words, or any of their applications, were to be declared unconstitutional.

HISTORY: 2016 Act No. 183 (H.3114), Section 1, eff May 25, 2016.

**SECTION 44‑41‑430.** Definitions.

 For the purposes of this article:

 (1) “Abortion” means the use or prescription of any instrument, medicine, drug, or any other substance or device:

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

 (b) to intentionally prematurely terminate the pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of a live birth or of preserving the life or health of the child after live birth.

 (2) “Attempt to perform or induce an abortion” means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this State in violation of this article.

 (3) “Department” means the South Carolina Department of Health and Environmental Control.

 (4) “Fertilization” means the fusion of a human spermatozoon with a human ovum.

 (5) “Fetal anomaly” means that, in reasonable medical judgment, the unborn child has a profound and irremediable congenital or chromosomal anomaly that, with or without the provision of life‑preserving treatment, would be incompatible with sustaining life after birth.

 (6) “Medical emergency” means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates the immediate abortion of her pregnancy without first determining post‑fertilization age to avert her death or for which the delay necessary to determine post‑fertilization age will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition must be considered a medical emergency if 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) “Physician” means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in this State.

 (8) “Post‑fertilization age” means the age of the unborn child as calculated from the fusion of a human spermatozoon with a human ovum.

 (9) “Probable post‑fertilization age of the unborn child” means what, in reasonable medical judgment, will with reasonable probability be the post‑fertilization age of the unborn child at the time the abortion is planned to be performed or induced.

 (10) “Reasonable medical judgment” means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

 (11) “Unborn child” or “fetus” each means an individual organism of the species homo sapiens from fertilization until live birth.

 (12) “Woman” means a female human being whether or not she has reached the age of majority.

HISTORY: 2016 Act No. 183 (H.3114), Section 1, eff May 25, 2016.

**SECTION 44‑41‑440.** Determination of probable post‑fertilization age of unborn child.

 Except in the case of a medical emergency or fetal anomaly, no abortion must be performed or induced or be attempted to be performed or induced unless the physician performing or inducing it has first made a determination of the probable post‑fertilization age of the unborn child or relied upon such a determination made by another physician. In making such a determination, the physician shall make such inquiries of the woman and perform or cause to be performed such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to post‑fertilization age.

HISTORY: 2016 Act No. 183 (H.3114), Section 1, eff May 25, 2016.

CROSS REFERENCES

Penalties for noncompliance with Sections 44‑41‑440 and 44‑41‑450, see Section 44‑41‑470.

Library References

Abortion and Birth Control 141.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 27 to 28.

**SECTION 44‑41‑450.** Abortion prohibited when probable post‑fertilization age of unborn child is twenty or more weeks; exceptions.

 (A) No person shall perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing or attempting to perform or induce the abortion or by another physician upon whose determination that physician relies, that the probable post‑fertilization age of the woman’s unborn child is twenty or more weeks, except in the case of fetal anomaly, or in reasonable medical judgment, she has a condition which so complicates her medical condition as to necessitate 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 greater risk must be considered 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) When an abortion upon a woman whose unborn child has been determined to have a probable post‑fertilization age of twenty or more weeks is not prohibited by subsection (A), the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive, unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the woman than would other available methods. No such greater risk must be considered 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.

HISTORY: 2016 Act No. 183 (H.3114), Section 1, eff May 25, 2016.

CROSS REFERENCES

Penalties for noncompliance with Sections 44‑41‑440 and 44‑41‑450, see Section 44‑41‑470.

Report of abortion performed pursuant to Section 44‑41‑450, patient privacy, department to issue public report, late fee for failure of facility to report, regulations, see Section 44‑41‑460.

Library References

Abortion and Birth Control 141.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 27 to 28.

**SECTION 44‑41‑460.** Report of abortion performed pursuant to Section 44‑41‑450; patient privacy; department to issue public report; late fee for failure of facility to report; regulations.

 (A) Any abortion performed in this State pursuant to Section 44‑41‑450 must be reported by the licensed facility on the standard form for reporting abortions to the state registrar, Department of Health and Environmental Control, within seven days after the abortion is performed. The names of the patient and physician may not be reported on the form or otherwise disclosed to the state registrar. The form must indicate from whom consent was obtained or circumstances waiving consent and must include:

 (1) Post‑fertilization age:

 (a) if a determination of probable post‑fertilization age was made, whether ultrasound was employed in making the determination, and the week of probable post‑fertilization age determined; or

 (b) if a determination of probable post‑fertilization age was not made, the basis of the determination that a medical emergency existed.

 (2) Method of abortion, of which the following was employed:

 (a) medication abortion such as, but not limited to, mifepristone/misoprostol or methotrexate/misoprostol;

 (b) manual vacuum aspiration;

 (c) electrical vacuum aspiration;

 (d) dilation and evacuation;

 (e) combined induction abortion and dilation and evacuation;

 (f) induction abortion with prostaglandins;

 (g) induction abortion with intra‑amniotic instillation such as, but not limited to, saline or urea;

 (h) induction abortion; and

 (i) intact dilation and extraction (partial‑birth).

 (3) Whether an intrafetal injection was used in an attempt to induce fetal demise such as, but not limited to, intrafetal potassium chloride or digoxin.

 (4) Age of the patient.

 (5) If the probable post‑fertilization age was determined to be twenty or more weeks, whether the reason for the abortion was a medical emergency or fetal anomaly, and if the reason was a medical emergency, the basis of the determination that the pregnant woman had a condition which so complicated her medical condition as to necessitate 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.

 (6) If the probable post‑fertilization age was determined to be twenty or more weeks, whether or not the method of abortion used was one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive and, if such a method was not used, the basis of the determination that termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the woman than would other available methods.

 (B) Reports required by subsection (A) shall not contain the name or the address of the patient whose pregnancy was terminated, nor shall the report contain any other information identifying the patient, except that each report shall contain a unique medical record identifying number, to enable matching the report to the patient’s medical records. Such reports must be maintained in strict confidence by the department, must not be available for public inspection, and must not be made available except:

 (1) to the Attorney General or solicitor with appropriate jurisdiction pursuant to a criminal investigation;

 (2) to the Attorney General or solicitor pursuant to a civil investigation of the grounds for an action under Section 44‑41‑480(B); or

 (3) pursuant to court order in an action under Section 44‑41‑480.

 (C) By June thirtieth of each year, the department shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection (A). Each such report also shall provide the statistics for all previous calendar years during which this section was in effect, adjusted to reflect any additional information from late or corrected reports. The department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any pregnant woman upon whom an abortion was performed, induced, or attempted.

 (D) Any facility that fails to submit a report by the end of thirty days following the due date must be subject to a late fee of one thousand dollars for each additional thirty‑day period or portion of a thirty‑day period the report is overdue. Any facility required to report in accordance with this article that has not submitted a report, or has submitted only an incomplete report, more than six months following the due date, may, in an action brought by the department, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to civil contempt. Intentional or reckless falsification of any report required under this section is a misdemeanor punishable by not more than one year in prison.

 (E) Within ninety days of the effective date of this article, the Department of Health and Environmental Control shall adopt and promulgate forms and regulations to assist in compliance with this section. Subsection (A) shall take effect so as to require reports regarding all abortions performed or induced on and after the first day of the first calendar month following the effective date of such rules.

HISTORY: 2016 Act No. 183 (H.3114), Section 1, eff May 25, 2016.

Library References

Abortion and Birth Control 141.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 27 to 28.

**SECTION 44‑41‑470.** Penalties for noncompliance with Sections 44‑41‑440 and 44‑41‑450.

 Any physician who intentionally or knowingly fails to conform to any requirement in Section 44‑41‑440 and Section 44‑41‑450 is guilty of a misdemeanor and, upon conviction, must be fined not less than two thousand dollars nor more than ten thousand dollars or imprisoned for not more than three years, or both. No part of the minimum fine may be suspended. For conviction of a third or subsequent offense, the sentence must be imprisonment for not less than sixty days nor more than three years, no part of which may be suspended.

HISTORY: 2016 Act No. 183 (H.3114), Section 1, eff May 25, 2016.

Library References

Abortion and Birth Control 141.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 27 to 28.

**SECTION 44‑41‑480.** Construction against implicit repeal of existing law.

 This article must not be construed to repeal, by implication or otherwise, Section 44‑41‑20 or any otherwise applicable provision of South Carolina law regulating or restricting abortion. An abortion that complies with this article but violates the provisions of Section 44‑41‑20 or any otherwise applicable provision of South Carolina law must be considered unlawful as provided in such provision. An abortion that complies with the provisions of Section 44‑41‑20 or any otherwise applicable provision of South Carolina law regulating or restricting abortion but violates this article must be considered unlawful as provided in this article. If some or all of the provisions of this article are ever temporarily or permanently restrained or enjoined by judicial order, all other provisions of South Carolina law regulating or restricting abortion must be enforced as though such restrained or enjoined provisions had not been adopted; provided, however, that whenever such temporary or permanent restraining order of injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

HISTORY: 2016 Act No. 183 (H.3114), Section 1, eff May 25, 2016.

CROSS REFERENCES

Report of abortion performed pursuant to Section 44‑41‑450, patient privacy, department to issue public report, late fee for failure of facility to report, regulations, see Section 44‑41‑460.

Library References

Abortion and Birth Control 141.

Westlaw Topic No. 4.

C.J.S. Abortion and Birth Control; Family Planning Sections 27 to 28.