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Summary: Abortion

**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[5/5/2010](file:///p:\pprever\2009-10\1421_20100505.docx)

**A** **BILL**

TO AMEND SECTION 44‑41‑10 OF THE 1976 CODE, RELATING TO DEFINITIONS CONCERNING ABORTIONS, TO REMOVE CERTAIN DEFINITIONS; TO AMEND CHAPTER 41, TITLE 44, RELATING TO ABORTIONS, BY ADDING SECTION 44‑41‑15, TO PROVIDE FINDINGS CONCERNING FETAL PAIN, FETAL VIABILITY, AND AN ASSERTION OF THE STATE’S COMPELLING INTEREST IN PROTECTING THE LIVES OF VIABLE UNBORN CHILDREN; TO AMEND SECTION 44‑41‑20, RELATING TO WHEN AN ABORTION MAY LEGALLY BE PERFORMED, TO PROVIDE THAT ABORTIONS PERFORMED PRIOR TO THE END OF TWENTY‑TWO WEEKS AFTER CONCEPTION REQUIRE A WOMAN’S INFORMED CONSENT, AND THAT NO ABORTIONS MAY BE PERFORMED AFTER TWENTY‑TWO WEEKS AFTER CONCEPTION UNLESS THE WOMAN HAS A MEDICAL 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; TO AMEND SECTION 44‑41‑320, RELATING TO DEFINITIONS CONCERNING A WOMAN’S INFORMED CONSENT TO AN ABORTION, TO DEFINE NECESSARY TERMS; TO AMEND SECTION 44‑41‑330, RELATING TO A WOMAN’S INFORMED CONSENT TO AN ABORTION, TO INCREASE THE REFLECTION PERIOD TO TWENTY‑FOUR HOURS, TO CLARIFY PROVISIONS CONCERNING ULTRASOUNDS PERFORMED PRIOR TO AN ABORTION, TO PROVIDE THAT INFORMATION CONCERNING FETAL PAIN, AND TO MAKE OTHER TECHNICAL AMENDMENTS; AND TO AMEND SECTION 44‑41‑340, RELATING TO INFORMATION THAT MUST BE PROVIDED TO A WOMAN PRIOR TO AN ABORTION, TO PROVIDE THAT THE INFORMATION MUST INCLUDE MATERIAL CONCERNING FETAL PAIN, A LIST OF HEALTHCARE PROVIDERS, FACILITIES, AND CLINICS THAT OFFER TO PERFORM ULTRASOUNDS FREE OF CHARGE, A PLAINLY WORDED EXPLANATION OF HOW A WOMAN MAY CALCULATE THE GESTATIONAL AGE OF HER EMBRYO OR FETUS, A SCIENTIFICALLY ACCURATE STATEMENT CONCERNING THE CONTRIBUTION THAT EACH PARENT MAKES TO THE GENETIC CONSTITUTION OF THEIR BIOLOGICAL CHILD, AND FORMS FOR NOTIFICATIONS, CERTIFICATIONS, AND VERIFICATIONS REQUIRED BY SECTION 44‑41‑330.

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

SECTION 1. Section 44‑41‑10 of the 1976 Code is amended to read:

“Section 44‑41‑10. As used in this chapter:

~~(a)~~(1) ‘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)~~(2) ‘Physician’ means a person licensed to practice medicine in this State.

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

~~(d)~~(4) ‘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)~~(5) ‘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)~~(6) ‘Pregnancy’ means the condition of a woman carrying a fetus or embryo within her body as the result of conception.

~~(g)~~(7) ‘Conception’ means the fecundation of the ovum by the spermatozoa.

~~(h)~~(8) ‘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)~~(9) ‘Minor’ means a female under the age of seventeen.

~~(n)~~(10) ‘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)~~(11) ‘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.”

SECTION 2. Article 1, Chapter 41, Title 44 of the 1976 Code is amended by adding:

“Section 44‑41‑15. The General Assembly finds:

(1) The State has legitimate interests from the outset of pregnancy in protecting the health of a woman and the life of an embryo or fetus.

(2) A woman has a right to choose an abortion before fetal viability without undue interference from the State but, to promote the state’s profound interest in the health of a woman and the life of an embryo or fetus, the State may take measures to ensure that a woman’s choice is informed.

(3) After fetal viability, the State may regulate and even proscribe abortion, except where it is necessary, in the appropriate medical judgment, for the preservation of life or health of the mother.

(4) Fetal 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.

(5) Advances in maternal health care and in neonatal care have continued to advance fetal liability earlier in the pregnancy.

(6) There is general acceptance in the medical community that an unborn child reaches fetal viability approximately twenty‑four weeks after conception.

(7) There is compelling medical evidence that advances in neonatology has advanced fetal viability to twenty‑two weeks after conception.

(8) The National Institute of Child Health and Human Development recognizes and calculates survival statistics beginning with unborn children born twenty‑two weeks after conception.

(9) Some medical scholars have posited that an unborn child may reach viability as early as twenty weeks after conception.

(10) At least twenty weeks after conception, there is substantial evidence that an unborn child has the physical structures necessary to experience pain.

(11) There is substantial evidence that, by twenty weeks after conception, unborn children seek to evade certain stimuli in a manner in which a reasonable adult would interpret as a response to pain.

(12) Anesthesia is routinely administered to unborn children who have developed twenty weeks or more past conception who undergo prenatal surgery.

(13) Even prior to twenty weeks after conception, unborn children have been observed to exhibit hormonal stress responses to painful stimuli and those responses were reduced when pain medication was administered directly to the unborn children.

(14) It is the purpose of this State to assert its compelling state interest in protecting the lives of viable unborn children.”

SECTION 3. Section 44‑41‑20 of the 1976 Code is amended to read:

“Section 44‑41‑20. (A) ~~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.~~ No person may perform an abortion prior to the end of the twenty‑second week after conception unless the abortion is performed by the woman’s attending physician with the pregnant woman’s informed consent.

(B) No person may perform or induce an abortion after the twenty‑second week after conception unless the woman has a medical 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.”

SECTION 4. Section 44‑41‑320 of the 1976 Code is amended by adding an appropriately numbered new item to read:

“( ) ‘Anesthesia’ or ‘analgesic’ means a drug administered for medical or surgical purposes that induces a partial or total loss of sensation.”

SECTION 5. Section 44‑41‑330 of the 1976 Code is amended to read:

“Section 44‑41‑330. (A) Except in the case of a medical emergency and in addition to any other consent required by the laws of this State, no abortion may be performed or induced unless the following conditions have been satisfied:

(1)(a) At least twenty‑four hours prior to an abortion, the woman must be notifiedof the following in writing: ‘You have the right to review written materials prepared by the State of South Carolina which describe fetal development, explain how the gestational age of her embryo of fetus is calculated, list agencies which offer alternatives to abortion, list healthcare providers, facilities, or clinics that perform ultrasounds free of charge, information concerning fetal pain, and describe medical assistance benefits which may be available for prenatal care, childbirth, and neonatal care. You have the right to an ultrasound prior to an abortion and to view your ultrasound image.’

(b) If the woman chooses to exercise her right to an obstetric ultrasound prior to an abortion, then no abortion procedure may be performed or induced until at least twenty‑four hours have elapsed since the completion of that ultrasound. An ultrasound performed pursuant to this item must be used to at least verify the probable gestational age of the embryo or fetus and the woman must be informed of the probable gestational age of the embryo or fetus by the person performing the ultrasound. However, the verification of probable gestational age required by this subitem does not satisfy the requirement in item (2) of this subsection. If the ultrasound is performed by a healthcare provider, facility, or clinic that offers to perform ultrasounds free of charge, information concerning the probable gestational age of the embryo or fetus and any images produced may only be provided to the woman choosing to have the ultrasound.

(c) The certification required by subitem (3) relating to an an ultrasound performed pursuant to this item and any image produced from an ultrasound performed pursuant to this item may not be used for or relied upon for any purpose other than to establish the date and time that an ultrasound was performed. A healthcare provider, facility, or clinic that performs an ultrasound free of charge as provided in this subitem may not be held liable for any injuries or damages that arise from the misuse of the certification required by subitem (3) of this section. Providing ultrasounds pursuant to this item may not be the basis for any new or additional regulation of the healthcare provider, facility, or clinic performing the ultrasound.

(2) The woman must be informed by the physician who is to perform or induce the abortion or by an allied health professional working in conjunction with the physician of the procedure to be involved and, for women choosing an abortion during the time period during which a fetus may feel pain, that anesthetic or analgesic is available to eliminate or alleviate pain to the fetus caused by the particular method of abortion performed or induced. The ~~by the~~ physician who is to perform or induce the abortion must inform the woman of the probable gestational age of the embryo or fetus at the time the abortion is to be performed or induced. ~~If an ultrasound is performed, an abortion may not be performed sooner than sixty minutes following completion of the ultrasound. The physician who is to perform the abortion or an allied health professional working in conjunction with the physician must inform the woman before the ultrasound procedure of her right to view the ultrasound image at her request during or after the ultrasound procedure.~~

(a) Whether or not she exercises her right to an ultrasound as provided in item (1)(b), the physician who is to perform or induce the abortion or an allied health professional may perform any medical procedure necessary to aid the safe performance or inducement of the abortion or to provide the woman information required by this subitem. Medical procedures performed pursuant to this subitem do not subject the woman to any further waiting period.

(b) At the woman’s request, the physician who is to perform or induce the abortion or by an allied health professional working in conjunction with the physician must administer anesthetic or analgesic to eliminate or alleviate pain to the fetus caused by the particular method of abortion to be performed or induced.

~~(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 to her, that she has been informed of her right to have an ultrasound prior to the abortion, that she has been informed that she has a right to view images produced during that ultrasound, and that she has been informed of her opportunity to review the information referred to in item (1) of this section. The certification must also indicate whether the woman chose to exercise her right to an ultrasound prior to the abortion. If she chose to exercise her right to an ultrasound prior to the abortion, the woman must also certify that at least twenty‑four hours have elapsed since the ultrasound procedure was completed.

(4) Before performing or inducing 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 (C) or (D) has been signed. This subsection does not apply in the case where an abortion is performed or induced pursuant to a court order.

(B) Nothing herein limits ~~the information provided by~~ the physician who is to perform or induce the abortion or allied health professional from providing to the ~~person upon whom the abortion procedure is to be performed~~ woman any additional information beyond that required to be provided by this section.

(C) ~~No~~ In cases where the information described in item (A)(1) are provided in person to the woman by the clinic or other facility where the abortion is to be performed or induced, no abortion may be performed or induced sooner than ~~one hour~~ 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 or electronically transmits the information described in ~~Section 44‑41‑10,~~ item (A)(1), in written form, 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 or downloads the information from the Department of Health and Environmental Control’s Internet website and if the woman ~~verifies~~ certifiesin writing, before the abortion, that the printed materials were received by her more than ~~one hour~~ twenty‑four hours before the abortion is scheduled to be performed or induced, that the information described in item (A)(1) has been provided to her, ~~and that she has been informed of her opportunity to review the information referred to in item (A)(2)~~ that she has been informed of her right to have an ultrasound prior to the abortion, and that she has been informed that she has a right to view images produced during that ultrasound, then the ~~waiting period required pursuant to subsection (C) does not apply~~ abortion may be performed or induced twenty‑four hours after the time the woman certifiesas being when she received all the required information.

(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.”

SECTION 6. Section 44‑41‑340(A) is amended by adding appropriately numbered new subitems to read:

“( ) a list of healthcare 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 healthcare 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;

( ) information concerning fetal pain that includes, but is not limited, to:

( ) that by twenty weeks, an unborn child possesses all anatomical links in its nervous system, including a spinal cord, nerve tracts, thalamus, and cerebral cortex, that are necessary to feel pain;

( ) that an unborn child who is twenty weeks gestation or more is fully capable of experiencing pain;

( ) a description of the actual steps in abortion procedures that cause fetal pain;

( ) that maternal anesthesia generally offers little pain prevention for the unborn child; and

( ) that an anesthetic or analgesic is available in or to reduce or alleviate pain to the fetus during an abortion;

( ) a plainly worded explanation of how a woman may calculate the gestational age of her embryo or fetus;

( )a scientifically accurate statement concerning the contribution that each parent makes to the genetic constitution of their biological child;

( ) forms for notifications, certifications, and verifications required by Section 44‑41‑330.”

SECTION 7. The provisions of this act are severable. If any section, subsection, paragraph, item, subitem, 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 the act, the General Assembly hereby declaring that it would have passed each and every section, subsection, item, subitem, 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 8. This act takes effect upon approval by the Governor.

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