~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

March 24, 2010

**H. 3245**

Introduced by Reps. Delleney, Nanney, Simrill, G.R. Smith, G.M. Smith, Lucas, Cooper, Stringer, Parker, Allison, Pinson, Hamilton, Erickson, J.R. Smith, Clemmons, Bedingfield, E.H. Pitts, Owens, Rice, Hiott, Littlejohn, Stewart, Viers, Willis, Loftis, Toole, Wylie, Vick, Millwood, Haley, Duncan, Ballentine, Frye and Barfield

S. Printed 3/24/09--S.

Read the first time March 3, 2009.

**A** **BILL**

TO AMEND SECTION 44‑41‑330, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING, AMONG OTHER THINGS, TO PREREQUISITES TO PERFORMING AN ABORTION, SO AS TO PROVIDE THAT IF AN ULTRASOUND IS PERFORMED, AN ABORTION MUST NOT BE PERFORMED SOONER THAN TWENTY‑FOUR HOURS, RATHER THAN SIXTY MINUTES, FOLLOWING THE COMPLETION OF THE ULTRASOUND, TO REQUIRE THE WOMAN TO BE INFORMED OF THE PROCEDURE TO BE INVOLVED AND THE PROBABLE GESTATIONAL AGE OF THE EMBRYO OR FETUS, AND TO PROVIDE THAT AN ABORTION MAY NOT BE PERFORMED SOONER THAN TWENTY‑FOUR HOURS, RATHER THAN ONE HOUR, AFTER THE WOMAN RECEIVES CERTAIN WRITTEN MATERIALS.

Amend Title To Conform

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

SECTION 1. Section 44‑41‑330 (A), (B), (C), and (D) 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)(i) 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, 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.”

(ii) 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 has 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.

(iii) The certification required by subitem (3) related to 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 by the physician who is to perform or induce the abortion of the probable gestational age of the embryo or fetus at the time the abortion is to be performed or induced. Whether or not she exercises her right to an ultrasound as provided in item (1)(ii), 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. ~~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 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 has 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~~ woman ~~upon whom the abortion procedure is to be performed~~ any additional information beyond that required to be provided by this section.

(C) 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 ~~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, 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, ~~and that she has been informed of her opportunity to review the information referred to in item (A)(2)~~, then the abortion may be performed or induced twenty four hours after the time the woman certifiesas being when she received all the required information ~~waiting period required pursuant to subsection (C) does not apply~~.”

SECTION 2. Amend Section 44-41-340(A) to include 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;

( ) 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 3. Amend Section 44-41-340 by adding an appropriately numbered new subsection to read:

“(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 must also provide a link to the internet website maintained by healthcare providers, facilities, and clinics that offer to perform ultrasounds free of charge that have requested to placed on the list maintained by the department.”

SECTION 4. Section 44-41--380 of the 1976 Code is amended to read:

“Section 44-41-380. If any provision, word, phrase, or clause of Article 3, Chapter 41, Title 44 of the 1976 Code ~~as added by this act [1995 Act No. 1]~~, 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.”

SECTION 5. Section 44-41-320 of the 1976 Code is amended by adding an appropriately numbered new item to read:

“( ) “Medical necessity” means a diagnosis based on a physician’s good faith judgment that the embryo or fetus has or will inevitably suffer an intrauterine natural death.”

SECTION 6. 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 7. This act takes effect upon approval of the Governor.

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