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Summary: Abortion

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12/1/2010 Senate Referred to Committee on **Medical Affairs**

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**VERSIONS OF THIS BILL**

[12/1/2010](file:///p:\pprever\2011-12\98_20101201.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 PROVIDE THAT A WOMAN CHOOSING AN ABORTION IS INFORMED CONCERNING FETAL PAIN; 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.

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(A) of the 1976 Code is amended to read:

“(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, 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 cause by the particular method of abortion performed or induced. ~~by the~~ 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. 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, explain how the gestational age of her embryo or 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 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.

(5) At the woman’s request, the physician who is to perform or induce the abortion, or 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.”

SECTION 6. Section 44‑41‑340(A) of the 1976 Code is amended to read:

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

(a) 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;

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

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

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

(e) that an anesthetic or analgesic is available to reduce or alleviate pain to the fetus during an abortion.”

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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