**South Carolina General Assembly**

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**H. 4538**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Hicks, Lucas, Delleney, G.M. Smith, Brannon, Bedingfield, Burns, Chumley, Corley, H.A. Crawford, Daning, Erickson, Gambrell, Goldfinch, Hamilton, Henderson, Hill, Hiott, Hixon, Huggins, Kennedy, Norman, Pitts, Putnam, Rivers, G.R. Smith, Taylor, Thayer, Toole, Merrill, Yow, Hardee, Tallon and Atwater

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Introduced in the House on January 12, 2016

Currently residing in the House Committee on **Judiciary**

Summary: Defunding the Abortion Industry and Advancing Women's Health Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/10/2015 House Prefiled

12/10/2015 House Referred to Committee on **Judiciary**

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**VERSIONS OF THIS BILL**

[12/10/2015](file:///p:\pprever\2015-16\4538_20151210.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 7 TO CHAPTER 41, TITLE 44 SO AS TO ENACT THE “DEFUNDING THE ABORTION INDUSTRY AND ADVANCING WOMEN’S HEALTH ACT” TO PROVIDE FINDINGS, PURPOSES, AND DEFINITIONAL TERMS, TO PROHIBIT THE USE OF PUBLIC FUNDS BY CERTAIN ENTITIES PERFORMING ABORTIONS OR CONDUCTING ABORTION‑RELATED ACTIVITIES INCLUDING, BUT NOT LIMITED TO, PUBLIC HOSPITALS AND HEALTH FACILITIES, PUBLIC INSTITUTIONS OF HIGHER LEARNING, RESEARCH INSTITUTIONS, NONPUBLIC FAMILY PLANNING CONTRACTORS, AND LEGAL ADVOCATES, TO CREATE CIVIL AND CRIMINAL PENALTIES FOR NONPUBLIC FAMILY PLANNING CONTRACTORS THAT VIOLATE PROVISIONS OF THE ARTICLE, AND FOR OTHER PURPOSES.

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

SECTION 1. This act may be cited as the “Defunding the Abortion Industry and Advancing Women’s Health Act”.

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

“Article 7

Defunding the Abortion Industry

and Advancing Women’s Health Act

Section 44‑41‑710. (A) The South Carolina General Assembly finds that:

(1) South Carolina voluntarily participates in several federal programs that provide funds for family planning services. Among these programs are Title X of the Public Health Service Act which provides project grants to public and private agencies for family planning services and Title XX of the Social Security Actwhich provides block grants to the states for social services, including family planning.

(2) Title X funds may not be used to finance abortions or abortion‑related activity. Specifically, Title X provides that none of the funds appropriated shall be used in programs where abortion is a method of family planning.

(3) Title XX funds may not be used for the provision of medical care. Moreover, any Title XX funds used to match Title X funds may not be used to finance abortions or abortion‑related activity.

(4) South Carolina also provides state funds for family planning services.

(5) The South Carolina Department of Health and Human Services distributes both federal and state funds for family planning services to qualifying contractors, individuals, organizations, or entities.

(6) Certain state laws prohibit the use of public funds for abortions.

(7) Left unrestricted or unregulated, federal and state funds for family planning services can, in some cases, effectively and indirectly subsidize contractors, individuals, organizations, or entities performing or inducing abortions, referring for abortions, or counseling in favor of abortions through shared administrative costs, overhead, employee salaries, rent, utilities, and various other expenses.

(8) When the federal or a state government administers public funds to establish a program, it is entitled to define the limits of that program. Rust v. Sullivan, 500 U.S. 173, 194 (1991).

(9) The decision not to fund abortion places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy. Rust v. Sullivan, 500 U.S. 173, 201 (1991).

(10) The government may rationally distinguish between abortion and other medical procedures because ‘no other procedure involves the purposeful termination of a potential life.’ Harris v. McRae, 448 U.S. 297, 325 (1980).

(11) It is permissible for the State of South Carolina to engage in unequal subsidization of abortion and other medical services to encourage alternative activity deemed in the public interest. Rust v. Sullivan, 500 U.S. 173, 201 (1991).

(12) Requiring abortion‑related activity to be completely separate from other activities that receive federal or state funding in no way denies any right to engage abortion‑related activities. Rust v. Sullivan, 500 U.S. 173, 198 (1991).

(13) Women are best served by family planning providers who can address their comprehensive healthcare needs. Some family planning providers are not equipped to address these needs. For example, Planned Parenthood’s internal surveys show that approximately seventy percent of women who visit their clinics do not follow up with referrals to other medical facilities to have important health needs addressed.

(B) Based on the findings in subsection (A), the purposes of this article are to:

(1) advance the state’s policy that normal childbirth is in the best interests of the well‑being and common good of South Carolina’s citizens and should be given preference, encouragement, and support by law and state action;

(2) ensure that public funds are not used to subsidize abortions directly or indirectly;

(3) ensure that no federal family planning funds administered or disbursed by the State are used to pay the direct or indirect costs including, but not limited to, administrative costs or expenses, overhead, employee salaries, rent, telephone and other utilities of abortion procedures, abortion referrals, or abortion counseling provided by family planning service providers;

(4) ensure recipients of federal family planning funds that, as permitted by current law, affiliate with an independent, unsubsidized entity that performs or provides abortions, abortion referrals, or abortion counseling, do not use public funds to subsidize, either directly or indirectly, the provision of abortions, abortion counseling, or abortion referrals; and

(5) guarantee that no state family planning funds administered or disbursed pursuant to state or federal law, are administered or disbursed to individuals, organizations, entities, or affiliates of individuals, organizations, or entities that perform, induce, refer for, or counsel on behalf of abortions.

Section 44‑41‑720. As used in this article:

(1) ‘Abortion’ means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with the knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:

(a) save the life or preserve the health of the unborn child;

(b) remove a dead unborn child caused by spontaneous abortion; or

(c) remove an ectopic pregnancy.

(2) ‘Affiliate’ means an organization that owns or controls or is owned or controlled, in whole or in part, by the other; related by shareholdings or other means of control; or a subsidiary, parent, or sibling corporation.

(3) ‘Department of Health and Human Services’ means the South Carolina Department of Health and Human Services.

(4) ‘Facility’ or ‘medical facility’ means any public or private hospital, clinic, center, medical school, medical training institution, healthcare facility, physician’s office, infirmary, dispensary, ambulatory surgical treatment facility, or other institution or location wherein medical care is provided to any person.

(5) ‘Family planning contractor’ or ‘contractor’ means an individual, organization, or entity that enters into a contract or agreement with the Department of Health and Human Services to receive funds for and to provide family planning services.

(6) ‘Family planning services’ means a range of acceptable methods to prevent, delay, space, or otherwise time pregnancy including, but not limited to, natural family planning methods and infertility services. Family planning services do not include abortion, abortion referrals, or counseling in favor of abortion.

(7) ‘Federal family planning funds’ means any federal money administered or disbursed by any state official, branch, department, or agency, in whole or in part, for family planning services including, but not limited to, funds under Title X and Title XX or other federal money accepted by the State, in whole or in part, for family planning services.

(8) ‘Human cloning’ means human asexual reproduction accomplished by:

(a) introducing the genetic material from one or more human somatic or embryonic cells into a fertilized or unfertilized oocyte whose nuclear material has been removed or inactivated before or after introduction, so as to produce an organism at any stage of development with a human or predominantly human genetic constitution;

(b) artificially subdividing a human embryo at any time from the two‑cell stage onward, such that more than one human organism results; or

(c) introducing pluripotent cells from any source into a human embryo, nonhuman embryo, or artificially manufactured human embryo or trophoblast, under conditions where the introduced cells generate all or most of the body tissues of the developing organism.

(9) ‘Physician’ means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery in this State or any other individual legally authorized by the State to perform abortions.

(10) ‘Prohibited human research’ means:

(a) medical procedures, scientific or laboratory research, or other kinds of investigation that kill or injure the human subject, at any stage of development, of such research; or

(b) scientific or laboratory research or other kinds of investigation conducted on fetal tissue obtained from an abortion, unless the research is done to obtain forensic or other evidence in a rape or incest investigation.

‘Prohibited human research’ does not include:

(a) in vitrofertilization and accompanying embryo transfer to a woman’s body;

(b) research in the use of nuclear transfer or other cloning techniques to produce molecules; deoxyribonucleic acid; or cells other than human embryos, tissues, organs, plants, or animals other than humans; or

(c) a diagnostic procedure that benefits the human subject of such tests.

(11) ‘State family planning funds’ means funds disbursed by the Department of Health and Human Services for family planning programs and services.

(12) ‘Unborn child’ means the offspring of human beings from conception until birth.

Section 44‑41‑730. (A) Notwithstanding any other provision of law to the contrary, no public funds made available to any institution, board, commission, department, agency, official, or employee of the State of South Carolina or of any local political subdivision thereof, whether the funds are made available by the government of the United States, the State of South Carolina, or a local governmental subdivision or are from any other public source, or monies paid by students as part of tuition or fees to an institution of higher learning may be used in any way for, to assist in, or to provide facilities for an abortion or for training to perform an abortion.

(B) It is unlawful for a person employed by the State or an agency or political subdivision of the State, within the scope of the person’s employment, to perform or assist in the performance of an abortion.

(C) No fund or committee authorized pursuant to state law for the special protection of women or children may be authorized to use or distribute public funds for the payment of abortions, abortion referrals, abortion counseling, or abortion‑related services.

(D) No organization that receives funds authorized or appropriated by the State may use those funds to perform or promote abortions, provide counseling in favor of abortion, or to make referrals for abortions.

(E) The limitations in subsections (A) through (D) do not apply to an abortion performed when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life‑endangering physical condition caused by or arising from the pregnancy itself.

Section 44‑41‑740. (A) It is unlawful for a public institution, public facility, public equipment, or other physical asset owned, leased, or controlled by the State, or an agency or political subdivision of the State, to be used for the purpose of performing or assisting in the performance of an abortion. This limitation does not apply to an abortion performed when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life‑endangering physical condition caused by or arising from the pregnancy itself.

(B) It is unlawful for a public institution or facility to lease or sell its facilities or property or permit the subleasing of its facilities or property to a physician or health facility for use in the provision or performance of abortion. This limitation does not apply to an abortion performed when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life‑endangering physical condition caused by or arising from the pregnancy itself.

Section 44‑41‑750. No applicant, student, teacher, or employee of a public school or public institution of higher learning may be required to pay fees that would, in whole or in part, fund an abortion or provide insurance coverage for an abortion for any other applicant, student, teacher, or employee of that school or institution.

Section 44‑41‑760. No hospital, clinic, or other health facility owned or operated by the State, a county, a city, or other governmental entity, except the government of the United States, another state, or a foreign nation, shall enter into a contract with a physician or health facility under the terms of which the physician or health facility agrees to provide or perform abortions, except when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life‑endangering physical condition caused by or arising from the pregnancy itself.

Section 44‑41‑770. (A) Public funds must not be expended, paid, or granted to or on behalf of an existing or proposed research project that involves the performance of abortion, human cloning, or prohibited human research.

(B) No monies derived from an award of public funds may be passed through to any other research project, person, or entity involved with the provision or performance of abortion, human cloning, or prohibited human research.

(C) A research project that receives an award of public funds shall maintain financial records that demonstrate strict compliance with this section.

(D) An audit conducted pursuant to a grant or contract awarding public funds also must certify whether there is compliance with this section and must note any noncompliance as a material audit finding.

Section 44‑41‑780. (A) No facility operated on public school property or operated by a public school district, and no employee of any such facility acting within the scope of the employee’s employment, shall provide any of the following services to public school students:

(1) provision or performance of an abortion;

(2) counseling in favor of an abortion;

(3) referral for an abortion; or

(4) dispensing drugs classified as ‘emergency contraception’ by the federal Food and Drug Administration.

(B) The Department of Health and Environmental Control and local units of administration are prohibited from utilizing state funds for the procurement of abortions or distribution of drugs classified as ‘emergency contraception’ by the federal Food and Drug Administration.

Section 44‑41‑790. (A) No federal or state funds which are appropriated by the State for the provision of legal services by private agencies, as authorized by statute previously or subsequently enacted, may be used, directly or indirectly, to:

(1) advocate for a legal ‘right’ to abortion;

(2) provide legal assistance with respect to any proceeding or litigation which seeks to procure an abortion or to procure public funding for an abortion; or

(3) provide legal assistance with respect to any proceeding or litigation which seeks to compel the performance or assistance in the performance of an abortion or the provision of facilities for the performance of an abortion.

(B) Nothing in this section may be construed to require or prevent the expenditure of funds pursuant to a court order awarding fees for attorney’s services under the Civil Rights Attorney’s Fees Awards Act of 1976,Public law 94‑559, or be construed to prevent the use of public funds to provide court‑appointed counsel in any proceeding relating to Section 44‑41‑32.

Section 44‑41‑800. Revenues generated from the Interest on Lawyers Trust Accounts may not be used, directly or indirectly, to:

(1) advocate for a legal ‘right’ to abortion;

(2) provide legal assistance with respect to any proceeding or litigation which seeks to procure public funding for an abortion; or

(3) provide legal assistance with respect to any proceeding or litigation which seeks to compel the performance or assistance in the performance of an abortion or the provision of facilities for the performance of an abortion.

Section 44‑41‑810. (A) No federal or state family planning funds may be used by contractors of the Department of Health and Human Services to pay the direct or indirect costs including, but not limited to, administrative costs and expenses, overhead, employee salaries, rent, and telephone and other utilities of performing, inducing, referring for, or counseling in favor of abortions.

(B) No state family planning funds may be granted, appropriated, or distributed to individuals or organizations that perform, induce, refer for, or counsel in favor of abortions, or that have affiliates that perform, induce, refer for, or counsel in favor of abortions.

Section 44‑41‑820. If the Department of Health and Human Services concludes that compliance with Section 44‑41‑810(B) would result in a significant reduction in family planning services in any public health region of the State, the department may waive the requirements of Section 44‑41‑810(B) for the affected region to the extent necessary to avoid a significant reduction in family planning services to the region. This waiver expires December 31, 2016, and no waiver may extend beyond that date.

Section 44‑41‑830. (A) A family planning contractor, individual, organization, or entity applying for federal family planning funds administered or distributed by the Department of Health and Human Services shall certify in writing on forms provided by the Department of Health and Human Services that it will not, directly or indirectly, use the funds to perform, induce, refer for, or counsel in favor of abortions. Recipients of federal family planning funds administered or distributed through the Department of Health and Human Services annually shall submit a written certification of continued compliance. Funds must not be granted to a family planning contractor, individual, organization, or entity until the required certification has been received.

(B) A family planning contractor, individual, organization, or entity applying for state family planning funds shall certify in writing on forms provided by the Department of Health and Human Services that it will not perform, induce, refer for, or counsel in favor of abortions, and that it does not have affiliates that perform, induce, refer for, or counsel in favor of abortions. Recipients of state family planning funds through the Department of Health and Human Services shall submit an annual written certification of continued compliance. Funds must not be granted to a family planning contractor, individual, organization, or entity until required certification has been received.

(C) The Department of Health and Human Services shall include in its financial audit a review of the use of appropriated federal and state family planning funds to ensure compliance with this article.

Section 44‑41‑840. (A) A family planning contractor that receives any federal or state family planning funds and is found not to be in compliance with the requirements of Sections 44‑41‑810 and 44‑41‑830 are enjoined from receiving any future federal and state family planning funds and shall return to the State the full amount of federal and state family planning funds received.

(B) Any violation of this article may subject the family planning contractor to a civil penalty or fine up to one thousand dollars imposed by the Department of Health and Human Services.

(C) The Office of the Attorney General and the Office of the Solicitor for the county in which the violation occurred may institute legal action to enforce:

(1) recoupment, collection, or reimbursement of federal and state family planning funds; and

(2) collection of civil penalties or fines.

Section 44‑41‑850. (A) Notwithstanding any other provision of law, federal family planning funds and state family planning funds must be awarded to eligible individuals, organizations, or entities applying to be family planning contractors in the following order of descending priority:

(1) public entities that provide family planning services, including state, county, and local community health clinics and federally qualified health centers;

(2) nonpublic entities that provide comprehensive primary and preventive health services, as described in 42 U.S.C. 254b(b)(1)(A), in addition to family planning services; and

(3) nonpublic entities that provide family planning services but do not provide comprehensive primary and preventive health services.

(B) The Department of Health and Human Services, in compliance with federal law, shall ensure distribution of federal family planning funds in a manner that does not severely limit or eliminate access to family planning services in any region of the State.

(C) The Department of Health and Health and Human Services shall submit an annual report to the General Assembly listing any family planning entities provided for in subsection (A)(3), and the amount of federal or state family planning funds these entities received. The report must provide a detailed explanation of the need to award family planning funds to these entities, including how the State determined that there were an insufficient number of entities meeting the requirements of subsections (A)(1) and (A)(2) to meet the family planning service needs of the region.

Section 44‑41‑860. (A) Nothing in this article shall be construed as creating or recognizing a right to abortion.

(B) Nothing in this article shall be construed as creating or recognizing a right to federal or state funds for family planning services.

Section 44‑41‑870. A sponsor of the act enacting this article may request the presiding officer of the sponsor’s house for permission to file a petition in a court of competent jurisdiction for the right to file an amicus brief in any case in which the constitutionality of this article is challenged.”

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor.

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