**A** **BILL**

TO AMEND CHAPTER 41, TITLE 44 OF THE 1976 CODE, RELATING TO ABORTIONS, TO ENACT THE “SOUTH CAROLINA PAIN‑CAPABLE UNBORN CHILD PROTECTION ACT”, TO PROVIDE FOR FINDINGS OF THE GENERAL ASSEMBLY, TO PROVIDE THAT A PHYSICIAN OR ALLIED HEALTH PROFESSIONAL MUST CALCULATE THE PROBABLE POST CONCEPTION AGE OF THE EMBRYO OR FETUS PRIOR TO PERFORMING OR INDUCING AN ABORTION, TO PROVIDE THAT AN ABORTION MAY NOT BE PERFORMED AFTER THE PROBABLE POST CONCEPTION AGE OF THE EMBRYO OR FETUS IS TWENTY OR MORE WEEKS, TO PROVIDE FOR EXCEPTIONS, TO PROVIDE FOR EDUCATIONAL MATERIALS TO BE PRODUCED AND DISTRIBUTED, TO PROVIDE THAT THE SECTION DOES NOT IMPLICITLY OR OTHERWISE REPEAL ANOTHER SECTION OF LAW, AND TO DEFINE NECESSARY TERMS.

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

SECTION 1. This act may referred to and cited as the “South Carolina Pain‑Capable Unborn Child Protection Act.”

SECTION 2. The South Carolina General Assembly finds that:

(1) Pain receptors, known as nociceptors, are present throughout an unborn child’s entire body no later than sixteen weeks after conception, and nerves link these receptors to the brain’s thalmus and subcortical plate by no later than twenty weeks.

(2) By eight weeks after conception, the unborn child reacts to touch; and by twenty weeks after conception, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human being.

(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 those levels when painful stimuli are applied without fetal 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 conception predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalmus 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 thalmus does.

(9) Substantial evidence indicates that structures used for pain processing in early development differ from those of adults and use different neural elements available at specific times during development, such as the subcortical plate, to fulfill the role of pain processing. Consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain by twenty weeks after conception.

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

(11) The General Assembly has narrowly tailored this act to protect the compelling state interest.

SECTION 3. Section 44‑41‑10 of the 1976 Code is amended by adding appropriately lettered new items to read:

“( ) ‘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.

( ) ‘Post‑conception age’ means the age of a fetus or embryo as calculated from the conception.

( ) ‘Probable post‑conception age of a fetus or embryo’ means what, in reasonable medical judgment, will, with reasonable probability, be the post‑conception age of a fetus or embryo at the time the abortion is planned to be performed or induced.”

SECTION 4. Chapter 41, Title 44 of the 1976 Code is amended by adding:

“Section 44‑41‑27. Effective July 1, 2015, the provisions contained in this section shall govern the time period during which an abortion may be legally performed.

(A) Prior to performing or inducing an abortion, a physician or allied health professional working in conjunction with the physician must determine the probable post‑conception age of the fetus or embryo.

(B)(1) It is unlawful to perform or induce an abortion if the probable post‑conception age of the fetus or embryo is determined to be twenty or more weeks.

(2) A violation of this section, as determined by the State Board of Medical Examiners, shall result in the revocation of the medical license of the physician performing or inducing the abortion. The penalty provided in this item is in addition to any other penalties provided by law.

(C) The provisions contained in this section do not apply in the case of a medical emergency or if the pregnancy the woman seeks to terminate resulted from rape or incest.

(D) The department must develop plainly worded written materials designed to inform the woman of the pain capabilities of embryos and fetuses. The materials required by this subsection must be provided to women at the same time and in the same manner as the written material required by Section 44‑41‑330.

(E) For purposes of this section, the term ‘medical emergency’ shall have the same meaning as in Section 44‑41‑320.”

SECTION 5. Chapter 41, Title 44 of the 1976 Code is amended by adding:

“Section 44‑41‑29. It is the intent of the General Assembly to assert, and protect by narrowly tailored means, separate and distinct compelling state interests in this chapter; protecting lives of viable unborn children and protecting the lives of unborn children from the state of development at which substantial medical evidence indicates that they are capable of feeling pain. Therefore, Section 44‑41‑27 does not repeal by implication, or otherwise, any other provision contained in this chapter.”

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

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