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Summary: SC Fetal Heartbeat Protection from Abortion Act

**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[12/12/2018](file:///p:\pprever\2019-20\32_20181212.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “SOUTH CAROLINA FETAL HEARTBEAT PROTECTION FROM ABORTION ACT” BY ADDING ARTICLE 6 TO CHAPTER 41, TITLE 44 SO AS TO REQUIRE TESTING FOR A DETECTABLE FETAL HEARTBEAT BEFORE AN ABORTION IS PERFORMED ON A PREGNANT WOMAN AND TO PROHIBIT THE PERFORMANCE OF AN ABORTION WHEN A FETAL HEARTBEAT IS DETECTED, BOTH WITH MEDICAL EMERGENCY EXCEPTIONS, TO REQUIRE CERTAIN DOCUMENTATION AND RECORDKEEPING BY PHYSICIANS PERFORMING ABORTIONS, TO CREATE A CIVIL ACTION FOR A PREGNANT WOMAN UPON WHOM AN ABORTION IS PERFORMED, TO CREATE CRIMINAL PENALTIES, AND FOR OTHER PURPOSES; TO AMEND SECTION 44‑41‑460, RELATING TO REQUIRED REPORTING OF ABORTION DATA TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, SO AS TO ADD REPORTING OF FETAL HEARTBEAT TESTING AND PATIENT MEDICAL CONDITION DATA; AND TO AMEND SECTION 44‑41‑330, RELATING TO A PREGNANT WOMAN’S RIGHT TO KNOW CERTAIN PREGNANCY INFORMATION, SO AS TO REQUIRE NOTIFICATION OF THE DETECTION OF A FETAL HEARTBEAT.

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

SECTION 1. This act shall be known and may be cited as the “South Carolina Fetal Heartbeat Protection from Abortion Act.”

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

“ARTICLE 6

South Carolina Fetal Heartbeat Protection From Abortion Act

Section 44‑41‑610. As used in this article:

(1) ‘Conception’ means fertilization.

(2) ‘Contraceptive’ means a drug, device, or chemical that prevents conception.

(3) ‘Fetal heartbeat’ means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(4) ‘Gestational age’ means the age of an unborn human individual as calculated from the first day of the last menstrual period of a pregnant woman.

(5) ‘Gestational sac’ means the structure that comprises the extraembryonic membranes that envelop the human fetus and that is typically visible by ultrasound after the fourth week of pregnancy.

(6) ‘Human fetus’ or ‘unborn child’ each means an individual organism of the species homo sapiens from fertilization until live birth.

(7) ‘Intrauterine pregnancy’ means a pregnancy in which the human fetus is attached to the placenta within the uterus of the pregnant woman.

(8) ‘Medical emergency’ means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates the immediate abortion of her pregnancy to avert her death without first determining whether there is a detectable fetal heartbeat or for which the delay necessary to determine whether there is a detectable fetal heartbeat will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition must be considered a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

(9) ‘Physician’ means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in this State.

(10) ‘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.

(11) ‘Spontaneous miscarriage’ means the natural or accidental termination of a pregnancy and the expulsion of the human fetus, typically caused by genetic defects in the human fetus or physical abnormalities in the pregnant woman.

Section 44‑41‑620. (A) It is the intent of the legislature that a court judgment or order suspending enforcement of any provision of this article or of Sections 44‑41‑10 through 44‑41‑480 is not to be regarded as tantamount to repeal of that provision.

(B) After the issuance of a decision by the United States Supreme Court overruling Roe v. Wade, 410 U.S. 113 (1973), the issuance of any other court order or judgment restoring, expanding, or clarifying the authority of states to prohibit or regulate abortion entirely or in part, or the effective date of an amendment to the Constitution of the United States restoring, expanding, or clarifying the authority of states to prohibit or regulate abortion entirely or in part, the Attorney General may apply to the pertinent state or federal court for either or both of the following:

(1) a declaration that any one or more of the statutory provisions specified in subsection (A) are constitutional;

(2) a judgment or order lifting an injunction against the enforcement of any one or more of the statutory provisions specified in subsection (A).

(C) If the Attorney General fails to apply for the relief described in subsection (B) within the thirty‑day period after an event described in that subsection occurs, any county prosecutor may apply to the appropriate state or federal court for such relief.

Section 44‑41‑630. The General Assembly hereby finds, according to contemporary medical research, all of the following:

(1) As many as thirty percent of natural pregnancies end in spontaneous miscarriage.

(2) Fewer than five percent of all natural pregnancies end in spontaneous miscarriage after detection of fetal cardiac activity.

(3) Over ninety percent of in vitro pregnancies survive the first trimester if cardiac activity is detected in the gestational sac.

(4) Nearly ninety percent of in vitro pregnancies do not survive the first trimester where cardiac activity is not detected in the gestational sac.

(5) Fetal heartbeat is a key medical predictor that an unborn human individual will reach live birth.

(6) Cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac.

(7) The State of South Carolina has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of an unborn human individual who may be born.

(8) In order to make an informed choice about whether to continue a pregnancy, a pregnant woman has a legitimate interest in knowing the likelihood of the human fetus surviving to full‑term birth based upon the presence of cardiac activity.

Section 44‑41‑640. This article applies only to intrauterine pregnancies.

Section 44‑41‑650. The abortion provider who is to perform or induce the abortion, a certified technician, or other agent of the abortion provider who is competent in ultrasonography shall:

(1) perform an obstetric ultrasound on the pregnant woman, using whichever method the physician and patient agree is best under the circumstance;

(2) during the performance of the ultrasound, display the ultrasound images so that the pregnant woman may view the images; and

(3) record a written medical description of the ultrasound images of the unborn child’s cardiac activity, if present and viewable.

Section 44‑41‑660. If the pregnancy is at least eight weeks after fertilization, the abortion provider who is to perform or induce the abortion, or an agent of the abortion provider, shall tell the woman that it may be possible to make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear and ask the woman if she would like to hear the heartbeat. If the woman would like to hear the heartbeat, the abortion provider shall, using whichever method the physician and patient agree is best under the circumstance, make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear.

Section 44‑41‑670. (A) Except as provided in Section 44‑41‑680, no person shall perform or induce or attempt to perform or induce an abortion on a pregnant woman before a physician determines in accordance with Section 44‑41‑650 whether the human fetus the pregnant woman is carrying has a detectable heartbeat.

(B) Whoever violates subsection (A) is guilty of a felony and, upon conviction, must be fined ten thousand dollars or imprisoned not more than two years, or both.

Section 44‑41‑680. (A) Section 44‑41‑670 does not apply to a physician who performs or induces the abortion if the physician determines according to standard medical practice that a medical emergency exists that prevents compliance with that section.

(B) A physician who performs or induces an abortion on a pregnant woman based on the exception in subsection (A) shall make written notations in the pregnant woman’s medical records of both of the following:

(1) the physician’s belief that a medical emergency necessitating the abortion existed; and

(2) the medical condition of the pregnant woman that assertedly prevented compliance with Section 44‑41‑670.

(C) For at least seven years from the date the notations are made, the physician shall maintain in the physician’s own records a copy of the notations.

Section 44‑41‑690. A physician is not in violation of Section 44‑41‑670 if the physician acts in accordance with Section 44‑41‑650 and the method used to test for the presence of a fetal heartbeat does not reveal a fetal heartbeat.

Section 44‑41‑700. (A) Except as provided in Section 44‑41‑710, no person shall perform or induce or attempt to perform or induce an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the human fetus the pregnant woman is carrying and whose fetal heartbeat has been detected in accordance with Section 44‑41‑650.

(B) Whoever violates subsection (A) is guilty of a felony, and upon conviction, must be fined ten thousand dollars, or imprisoned not more than two years, or both.

Section 44‑41‑710. (A) Section 44‑41‑700 does not apply to a physician who performs a medical procedure that, in reasonable medical judgment, is designed or intended to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

(B) A physician who performs a medical procedure as described in subsection (A) shall declare, in a written document, that the medical procedure is necessary, in reasonable medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible physical impairment of a major bodily function of the pregnant woman. In the document, the physician shall specify the pregnant woman’s medical condition that the medical procedure is asserted to address and the medical rationale for the physician’s conclusion that the medical procedure is necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

(C) A physician who performs a medical procedure as described in subsection (A) shall place the written document required by subsection (B) in the pregnant woman’s medical records. For at least seven years from the date the document is created, the physician shall maintain a copy of the document in the physician’s own records.

Section 44‑41‑720. A physician is not in violation of Section 44‑41‑700 if the physician acts in accordance with Section 44‑41‑650 and the method used to test for the presence of a fetal heartbeat does not reveal a fetal heartbeat.

Section 44‑41‑730. This article must not be construed to repeal, by implication or otherwise, Section 44‑41‑20 or any otherwise applicable provision of South Carolina law regulating or restricting abortion. An abortion that complies with this article but violates the provisions of Section 44‑41‑20 or any otherwise applicable provision of South Carolina law must be considered unlawful as provided in such provision. An abortion that complies with the provisions of Section 44‑41‑20 or any otherwise applicable provision of South Carolina law regulating or restricting abortion but violates this article must be considered unlawful as provided in this article. If some or all of the provisions of this article are ever temporarily or permanently restrained or enjoined by judicial order, all other provisions of South Carolina law regulating or restricting abortion must be enforced as though such restrained or enjoined provisions had not been adopted; provided, however, that whenever such temporary or permanent restraining order of injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

Section 44‑41‑740. Nothing in this article prohibits the sale, use, prescription, or administration of a drug, device, or chemical that is designed for contraceptive purposes.

Section 44‑41‑750. A pregnant woman on whom an abortion is performed or induced in violation of this article may not be criminally prosecuted for violating any of the provisions of the article or for attempting to commit, conspiring to commit, or complicity in committing a violation of any of the provisions of the article; and is not subject to a civil or criminal penalty based on the abortion being performed or induced in violation of any of the provisions of the article.

Section 44‑41‑760. (A) A woman who meets any one or more of the following criteria may file a civil action in a court of competent jurisdiction:

(1) a woman on whom an abortion was performed or induced in violation of this article;

(2) a woman on whom an abortion was performed or induced who was not given the information as provided in Section 44‑41‑330.

(B) A woman who prevails in an action filed pursuant to subsection (A) shall receive both of the following from the person who committed the one or more acts described in subsection (A):

(1) damages in an amount equal to ten thousand dollars or an amount determined by the trier of fact after consideration of the evidence; and

(2) court costs and reasonable attorney’s fees.

(C) If the defendant in an action filed pursuant to subsection (A) prevails and the court finds that the commencement of the action constitutes frivolous conduct and that the defendant was adversely affected by the frivolous conduct, the court shall award reasonable attorney’s fees to the defendant, provided, however, that a conclusion of frivolousness cannot rest upon the unconstitutionality of the provision that was allegedly violated.”

SECTION 3. Section 44‑41‑460(A) of the 1976 Code is amended by adding appropriately numbered items at the end to read:

“( ) The information related to fetal heartbeat testing required pursuant to Sections 44‑41‑650, 44‑41‑680, and 44‑41‑710, as applicable.

( ) Whether the reason for the abortion was to preserve the health of the pregnant woman and, if so, the medical condition that the abortion was asserted to address and the medical rationale for the conclusion that the abortion was necessary to address that condition. If the reason for the abortion was other than to preserve the health of the pregnant woman, the report must specify that maternal health was not the purpose of the abortion. This information also must be placed in the pregnant woman’s medical records and maintained for at least seven years thereafter.”

SECTION 4. Section 44‑41‑330(A)(1) of the 1976 Code is amended to read:

“(1)(a) 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 by the physician who is to perform the abortion 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.

(b) If the physician who intends to perform or induce an abortion on a pregnant woman has determined pursuant to Section 44‑41‑650 that the human fetus the pregnant woman is carrying has a detectable heartbeat, that physician shall inform the pregnant woman in writing that the human fetus the pregnant woman is carrying has a fetal heartbeat. The physician intending to perform or induce the abortion shall further inform the pregnant woman, to the best of the physician’s knowledge, of the statistical probability, absent an induced abortion, of bringing the human fetus possessing a detectable fetal heartbeat to term based on the gestational age of the human fetus or, if the director of the department has specified statistical probability information, shall provide to the pregnant woman that information. The department may promulgate regulations that specify information regarding the statistical probability of bringing an unborn human individual possessing a detectable heartbeat to term based on the gestational age of the unborn human individual. Any regulations must be based on available medical evidence.”

SECTION 5. 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 , 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 6. The repeal or amendment by this act of any law, whether temporary, permanent, civil, or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

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

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