AMENDED

August 30, 2022

**H. 5399**

Introduced by Reps. Lucas, G.M. Smith, McCravy, T. Moore, White, Ligon, Long, Gilliam, Chumley, Burns, Hardee, Bailey, J.E. Johnson, B. Newton, Hewitt, Bustos, Jordan, M.M. Smith, Davis, Hyde, Hixon, West, Hiott, Jones, Caskey, Fry, Thayer, Pope, Forrest, Oremus, Trantham, Bennett, McGarry, Felder, Allison, D.C. Moss, Brittain, Nutt, Haddon, Huggins, G.R. Smith, Magnuson, May, Wooten, B. Cox, Yow, Murphy, Crawford, Bryant and Robbins

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Read the first time May 12, 2022.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill prohibits abortions except to prevent the following:

 the death of the pregnant woman,

 a substantial risk of death for the pregnant woman because of a physical condition, or

 the substantial and irreversible physical impairment of a major bodily function of the pregnant woman.

Any physician who performs an abortion for the above exceptions must declare in a written document that the medical procedure was necessary.

The bill creates a felony for anyone who performs or abets an abortion or who uses force or the threat of force to injure or intimidate a person for the purpose of coercing an abortion. It also creates a new civil cause of action against a person for violation of the provisions of the bill and clarifies that the pregnant woman may not be criminally prosecuted. Lastly, this legislation gives the South Carolina House of Representatives, the South Carolina Senate, the South Carolina Governor, and/or the South Carolina Attorney General the right to intervene in any case in which the constitutionality or enforceability of any provision of the bill is challenged.

**Department of Health and Environmental Control.** DHEC is responsible for the licensing and regulation of abortion clinics in the state. The agency indicates that any expenditures related to the enactment of the bill will be managed within its current appropriations.

**Department of Health and Human Services.** DHHS operates South Carolina Healthy Connections (Medicaid), which pays medical bills for eligible low-income families and individuals. This includes bills for Family Planning services. Currently, the federal Hyde Amendment allows the use of federal funds to pay for abortion-related services in cases of rape, incest, and danger to the life of the mother. This bill authorizes the use of federal funds only for abortions to protect the life or health of the mother. To account for these changes, DHHS will require a review of policies to remove coverage for abortion-related services in cases of rape or incest and a review of policies to include stated timeframes for physicians’ statements. The agency will manage additional costs associated with these policy reviews within its existing appropriations.

**Public Employee Benefit Authority.** PEBA administers the state’s employee insurance programs for South Carolina's public workforce. The agency reports that the bill will have no fiscal impact on the State Health Plan. Because the bill does not operationally affect PEBA, it will have no impact on the agency.

**Department of Labor, Licensing and Regulation.** Proposed Section 44-41-870 will require the Board of Medical Examiners, which is under the authority of LLR, to revoke the license of a physician who violates the provisions of the bill after due process according to the rules and regulations. This proposed section will also authorize complaints to be filed for violations of these provisions and will authorize the Board of Medical Examiners to assess costs of the investigation, fines, and other disciplinary actions it deems appropriate.

LLR and the licensing boards, including the Board of Medical Examiners, currently have a process for accepting and processing complaints that may result from the bill. However, the fiscal impact on the agency is undetermined because the potential increase in the number of complaints that may be filed with the agency is unknown.

Additionally, the Board of Medical Examiners falls under the Division of Professional and Occupational Licensing, within LLR. Pursuant to Proviso 81.3 of the FY 2022-23 Appropriations Act, LLR is required to remit annually to the general fund an amount equal to 10 percent of expenditures of the Division of Professional and Occupational Licensing. Because expenditures of the Board of Medical Examiners are undetermined, the increase in general fund revenue is also undetermined.

**Medical University of South Carolina.** We have contacted the agency for its estimate of fiscal impact and are awaiting a response.

**University of South Carolina.** USC School of Medicine indicates that the provisions of this bill can be managed within the university’s existing appropriations and will have no fiscal impact.

**Judicial.** This bill expands the circumstances under which abortion is unlawful to all cases except to protect the life or health of the pregnant woman.  Additionally, the bill creates a new civil cause of action that may be brought by enumerated persons against persons who violate the provisions of the bill and allows for actions for injunctive relief.  Judicial anticipates enactment of the bill will increase caseloads in general session and common pleas courts but believes resultant costs can be managed using existing general fund resources.

**Commission on Indigent Defense.** This bill creates a new cause of action, which may increase the number of cases to be filed by circuit solicitors.  The commission indicates it can manage any additional costs associated with enactment of the bill using existing general fund resources.

**Commission on Prosecution Coordination.** This bill creates a new cause of action, which may increase the number of cases to be filed by circuit solicitors.  The commission indicates it can manage any additional costs associated with enactment of the bill using existing general fund resources.

**Department of Corrections.** The bill creates a new felony offense punishable by up to two years of imprisonment. The department reports the annual average cost to house an inmate in FY 2021-22 was $30,187, of which $27,883 is state funded. Therefore, this bill may result in an undetermined increase in expenses for Corrections as the impact is dependent upon the number of convictions under this new felony and the duration of any imprisonment.

**Probation, Parole & Pardon Services.** The implementation of this bill will have no expenditure impact on the department as the department expects to manage any increase in caseloads within its current resources.

**Office of the Attorney General.** This bill enables the Attorney General to file civil or criminal charges against persons who violate the provisions of the bill.  The Attorney General may also intervene in any case in which the constitutionality or enforceability of the bill is challenged. The Attorney General’s Office indicates that the bill will have no general fund expenditure impact since any costs associated with actions the office may take will be managed within normal operating expenses.

**House of Representatives and Senate.** The House of Representatives and the Senate report that in the event the General Assembly elects to intervene in any action related to the constitutionality of the language within the current version of the bill, they anticipate that existing funds can be utilized to cover any expenses associated with such an intervention.

**Governor’s Office.** The Governor’s Office will use current appropriations to cover any expenses associated with intervening in any action related to the constitutionality of the language in the current bill.

**State Revenue**

DHEC currently licenses three abortion clinics in the state, which generated $1,625 in revenue in FY 2021-22. It is undetermined whether the bill will affect this revenue.

The bill may increase complaints that are filed with the Board of Medical Examiners, which falls under LLR’s Division of Professional and Occupational Licensing. Pursuant to Proviso 81.3 of the FY 2022-23 Appropriations Act, LLR is required to remit annually to the general fund an amount equal to 10 percent of expenditures of the Division of Professional and Occupational Licensing. Because expenditures of the Board of Medical Examiners are undetermined, the increase in general fund revenue is also undetermined.

This bill creates a new felony with a potential fine of up to $10,000. This may result in a change in the fines and fees collected in court. Court fines and fees are distributed to the general fund, other funds, and local funds. Therefore, RFA anticipates this bill may result in an undetermined impact to general fund revenue, other funds revenue, and local revenue due to the modifications in fines and fees collections in court.

**Local Revenue**

This bill creates a new felony with a potential fine of up to $10,000. This may result in a change in the fines and fees collected in court. Court fines and fees are distributed to the general fund, other funds, and local funds. Therefore, RFA anticipates this bill may result in an undetermined impact to general fund revenue, other funds revenue, and local revenue due to the modifications in fines and fees collections in court.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44‑41‑05 SO AS TO PROHIBIT ABORTIONS IN THE STATE OF SOUTH CAROLINA.

Amend Title To Conform

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

SECTION 1. This act may be cited and shall be known as the “South Carolina Human Life Protection Act”.

SECTION 2. The General Assembly hereby finds all of the following:

(1) All human beings are created equal, and endowed by their Creator with certain unalienable rights, the foremost of which is the right to life.

(2) Section 3, Article I of the Constitution of the State of South Carolina, 1895, guarantees that no person may be deprived of life, liberty, or property without due process of law or be denied the equal protection of the laws, and a preborn child is deserving of that protection.

(3) In the exercise of its constitutional duties and powers, the South Carolina General Assembly has a fundamental duty to provide equal protection for the life, health, and welfare of all persons, including preborn children from conception.

(4) It is undisputed that the life of every human being begins at conception.

(5) South Carolina maintains a fundamental interest in protecting the life of every human being from conception.

SECTION 3. Chapter 41, Title 44 of the 1976 Code is amended by adding:

“Article 7

South Carolina Human Life Protection Act

Section 44‑41‑810. For purposes of 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 knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn human being. Such use, prescription, or means is not an abortion if done with the intent to save the life or preserve the health of the preborn human being, or to remove a dead unborn human being.

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

(3) ‘Female’ means a biological female as assigned at the time of birth or an intersexed person capable of producing an ovum at birth.

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

(5) ‘Pregnant woman’ means the human biological female reproductive condition of having a living unborn child within her body, whether or not she has reached the age of majority.

(6) ‘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.

(7) ‘Unborn human being’ or ‘unborn child’ or ‘preborn child’ or ‘preborn human being’ or ‘fetus’ each mean an individual organism of the species homo sapiens from conception until live birth.

Section 44‑41‑820. (A) No person may knowingly administer to, prescribe for, procure for, or sell to any pregnant woman any medicine, drug, or other substance with the specific intent of causing an abortion.

(B) No person may knowingly use or employ any instrument, device, means, or procedure upon a pregnant woman with the specific intent of causing an abortion.

Section 44‑41‑825. (A) Notwithstanding another provision of law, a physician may perform, induce, or attempt to perform or induce an abortion on a pregnant woman if the pregnancy is the result of rape or incest, and the probable post‑fertilization age of the fetus is fewer than twelve weeks.

(B) A physician who performs or induces an abortion on a pregnant woman based on the exceptions in subsection (A) must report the allegation of rape or incest to the sheriff in the county in which the abortion was performed. The report must be made no later than twenty‑four hours after performing or inducing the abortion, may be made orally or otherwise, and shall include the name and contact information of the pregnant woman making the allegation. Prior to performing or inducing an abortion, a physician who performs or induces an abortion based upon an allegation of rape or incest must notify the pregnant woman that the physician will report the allegation of rape or incest to the sheriff. The physician shall make written notations in the pregnant woman's medical records that the abortion was performed pursuant to the applicable exception, that the doctor timely notified the sheriff of the allegation of rape or incest, and that the woman was notified prior to the abortion that the physician would notify the sheriff of the allegation of rape or incest.

Section 44‑41‑830. (A) It is not a violation of Section 44‑41‑820 for a licensed physician to perform a medical procedure necessary in reasonable medical judgment to prevent:

(1) the death of the pregnant woman;

(2) a substantial risk of death for the pregnant woman because of a physical condition; or

(3) the substantial physical impairment of a major bodily function of the pregnant woman, not including psychological or emotional conditions.

However, the physician shall make reasonable medical efforts under the circumstances to preserve the life of the pregnant woman’s unborn child, to the extent it does not substantially risk the death or physical impairment of a major bodily function of the pregnant woman, not including psychological or emotional conditions and in a manner consistent with reasonable medical practice. A medical procedure shall not be considered necessary if based on a claim or diagnosis that a woman will engage in conduct that she intends to result in her death or in a substantial physical impairment of a major bodily function.

(B) A physician who performs a medical procedure as described in subsection (A) shall declare, in a written document, that the medical procedure was necessary, by reasonable medical judgment, to prevent the death of the pregnant woman, to prevent a substantial risk of death for the pregnant woman because of a physical condition, or to prevent the substantial risk of a substantial physical impairment of a major bodily function of the pregnant woman, not including psychological or emotional conditions. In the document, the physician shall specify the pregnant woman’s medical condition that the medical procedure was asserted to address and the medical rationale for the physician’s conclusion that the medical procedure was necessary to prevent the death of the pregnant woman, to prevent a substantial risk of death for the pregnant woman because of a physical condition, or to prevent the serious risk of a substantial impairment of a major bodily function of the pregnant woman and that all reasonable efforts were made to save the fetus in the event it was living and in utero. Such documentation must be included in the woman’s medical records within thirty days from the date of the procedure. The physician’s exercise of reasonable medical judgement for a permitted medical procedure is presumed within the applicable standard of care.

(C) It is presumed that the following medical conditions constitute a substantial risk of death or substantial risk of a substantial physical impairment of a major bodily function of a pregnant woman: molar pregnancy, partial molar pregnancy, blighted ovum, ectopic pregnancy, severe preeclampsia, HELLP syndrome, abruptio placentae, severe physical maternal trauma, uterine rupture, intrauterine fetal demise, and miscarriage.However, when an unborn child is alive in utero, the physician must make all reasonable efforts to deliver and save the life of an unborn child during the process of separating the unborn child from the pregnant woman, to the extent it does not adversely affect the life or physical health of the pregnant woman, and in a manner consistent with reasonable medical practice. The enumeration of the medical conditions in this subsection is not intended to exclude or abrogate other conditions that satisfy the exclusions of subsection (A) or prevent other procedures that are not included in the definition of abortion in Section 44‑41‑810.

(D) Medical treatment provided to the pregnant woman by a licensed physician which results in the accidental or unintentional injury to or the death of her unborn child is not a violation of Section 44‑41‑820.

(E) It is not a violation of Section 44‑41‑820, and nothing in this article may be construed to prohibit the use, sale, prescription, or administration of a contraceptive measure, drug, chemical, or device if the contraceptive measure, drug, chemical, or device is used, sold, prescribed, or administered in accordance with manufacturer instructions and is not used, sold, prescribed, or administered to cause or induce an abortion of a clinically diagnosable pregnancy.

(F) Nothing in this article shall be construed to prohibit in vitro fertilization or assisted reproductive technology procedures accepted as standard of care by the reproductive medical community. No part of the in vitro fertilization procedures or assisted reproductive procedures considered normal standard of care will be considered an abortion procedure. Notwithstanding the above, the practice of ‘selective reduction,’ (defined as a procedure to stop the development of one or more fetuses in utero*)* shall constitute an abortion in violation of Section 44-41-820, above, except, when necessary, in reasonable medical judgment, to prevent a substantial risk of death for another fetus, or the substantial and irreversible physical impairment of a major bodily function of another fetus.

Section 44‑41‑840. (A) A person who violates Section 44‑41‑820 is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned not more than two years, or both.

(B) Any person who uses force or the threat of force to intentionally injure or intimidate any person, for the purpose of coercing an abortion in violation of Section 44‑41‑820 is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned not more than two years, or both.

(C) Notwithstanding the provisions of Section 44‑41‑830, any person who is not a physician licensed in this State, who prescribes any means of abortion as defined in this article, for the purpose of facilitating an abortion inside the borders of this State, violates Section 44‑41‑820, is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned not more than two years, or both.

Section 44‑41‑850. (A) In addition to whatever remedies are available under the common or statutory law of this State, failure to comply with the requirements of this article shall provide the basis for a civil action as described in this section.

(B) Any pregnant woman upon whom an abortion has been performed, induced, or coerced in violation of this article may maintain an action against the person or persons who violated this article for actual and punitive damages. In addition to all other damages, and separate and distinct from all other damages, each plaintiff is entitled to statutory damages of ten thousand dollars for each violation of this article to be imposed on each defendant of each such violation.

(C) A separate and distinct cause of action for injunctive relief against any person or persons who have violated this article may be maintained by:

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

(2) the parent or guardian of the pregnant woman if the woman had not attained the age of eighteen years at the time of the abortion or has died as a result of the abortion;

(3) a solicitor or prosecuting attorney with proper jurisdiction; or

(4) the Attorney General.

The injunction prevents the person or persons who violated the article from further violation of this article in this State.

(D) If judgment is rendered in favor of the plaintiff(s) in an action described in this section, the court also shall render judgment for reasonable costs and attorney’s fees in favor of the plaintiff(s) against the defendant(s).

(E) No damages, costs, or attorney’s fee may be assessed against the woman upon whom an abortion was performed or induced.

(F) In no case may civil damages be awarded to any plaintiff if the pregnancy resulted from the plaintiff’s criminal conduct.

(G) A civil cause of action under this section must be brought within three years from the date of the abortion and is not subject to the limitations and requirements of Chapter 79, Title 15.

Section 44‑41‑860. 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 this article or for attempting to commit, conspiring to commit, or acting complicitly 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 this article.

Section 44‑41‑870. In addition to any other penalties imposed by law, a physician or any other professionally licensed person who intentionally, knowingly, or recklessly violates the prohibition in Section 44‑41‑820 commits an act of unprofessional conduct and the person’s license to practice in the State of South Carolina immediately shall be revoked by the State Board of Medical Examiners for South Carolina, after due process according to the rules and procedures of the State Board of Medical Examiners. A complaint may be originated by any person or sua sponte. In addition, the State Board of Medical Examiners may assess costs of the investigation, fines, and other disciplinary actions it may deem appropriate.

Section 44‑41‑880. In every civil or criminal proceeding or action brought under this article, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or induced shall be preserved from public disclosure if the woman does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that the woman’s anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or induced, anyone, other than a public official, who brings an action pursuant to Section 44‑41‑820 shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

Section 44‑41‑890. 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 or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.”

Section 44-41-900. (A) Notwithstanding any other provision of law, a biological father of a child has a duty to pay the mother of the child the following financial obligations beginning with the date of conception:

(1) child support payment obligations in an amount determined pursuant to Section 63-17-470;

(2) fifty percent of the mother’s pregnancy expenses.

(a) Any portion of a mother’s pregnancy expenses paid by the mother or the biological father reduces that parent’s fifty percent obligation regardless of when the mother or biological father pays the pregnancy expenses.

(b) Pregnancy expenses must include fifty percent of the mother’s insurance premiums that are not paid by her employer or governmental program beginning from the date of conception and before the pregnancy ends, unless otherwise ordered by the court.

(c) item (2) does not apply if a court apportions pregnancy expenses as part of an award of child support in item (1).

(B) In the case of a mother who becomes pregnant as a result of rape or incest, the biological father, in addition to the duties imposed by subsection (A), also is responsible for the full cost of any expenses incurred by the mother for mental health counseling arising out of the rape or incest.

(C) The duties imposed by this section accrue at the time of conception and must be applied retroactively when paternity is contested and medical evidence establishes the paternity of the child. Interest accrues on any retroactive obligations beginning with conception until either the obligations are brought current or paid in full whichever happens first. The rate of interest must be calculated based on the applicable interest rate for money decrees and judgments in this state established annually by the South Carolina Supreme Court.

Section 44-41-910. There is allowed as a deduction in computing South Carolina taxable income of an individual, a South Carolina unborn child dependent exemption equal to three thousand dollars for each eligible unborn dependent of the taxpayer, who is not born during the income tax year and has reached a gestational age of at least six weeks.

SECTION 4. The South Carolina House of Representatives, the South Carolina Senate, the South Carolina Governor and/or the South Carolina Attorney General may intervene as a matter of right in any case in which the constitutionality or enforceability of any SECTION of this act is challenged. The General Assembly may appoint one or more of its members to intervene as a matter of right in any case in which the constitutionality or enforceability of any SECTION of this act is challenged.

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

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