AS PASSED BY THE SENATE

September 8, 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 September 6, 2022.

**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. Section 44-41-710 of the 1976 Code is amended to read:

“Section 44-41-710. ~~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 or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.”

B. Section 44-41-480 of the 1976 Code is amended to read:

“Section 44-41-480. ~~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.”

C. Section 44-41-20 of the 1976 Code is repealed.

D. Section 44-41-70(b) of the 1976 Code is amended to read:

“(b) The department shall promulgate and enforce regulations for the licensing and certification of facilities other than hospitals as defined in Section 44‑41‑10(d) wherein abortions are to be performed ~~as provided for in Section 44‑41‑20(a) and (b)~~.”

SECTION 2. Section 44-41-680 of the 1976 Code is amended to read:

“Section 44-41-680. (A) Except as provided in subsection (B), no person shall perform, 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 44‑41‑630.

(B) A physician may perform, induce, or attempt to perform or induce an abortion on a pregnant woman after a fetal heartbeat has been detected in accordance with Section 44‑41‑630 only if:

(1) the pregnancy is the result of rape defined in Section 44-41-610, and is in the first trimester of pregnancy ~~the probable post‑fertilization age of the fetus is fewer than twenty weeks~~;

(2) the pregnancy is the result of incest, and is in the first trimester of pregnancy ~~the probable post‑fertilization age of the fetus is fewer than twenty weeks~~;

(3) the physician is acting in accordance with Section 44‑41‑690; or

(4) there exists a fetal anomaly, as defined in Section 44-41-610 ~~44‑41‑430~~, provided that the fetal anomaly has been confirmed by two physicians specializing in obstetrics or the area of medicine in which the anomaly is diagnosed.

(C)(1) A physician who performs or induces an abortion on a pregnant woman based on the exception in either subsection (B)(1) or (2) 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.

(2) The physician shall preserve a DNA sample from the fetal remains and notify the sheriff in the county in which the abortion was performed. The sheriff shall transmit the sample into evidence within ninety days of the notification. The sample shall be held as evidence as provided by the Preservation of Evidence Act beginning with Section 17-28-300.

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

SECTION 3. Section 44-41-610 of the 1976 Code is amended by adding appropriately numbered new items to read:

“( ) ‘Fetal anomaly’ means that, in reasonable medical judgment, the unborn child has a profound and irremediable congenital or chromosomal anomaly that, with or without the provision of life‑preserving treatment, would be incompatible with sustaining life after birth.

( ) ‘Rape’ has the same meaning as criminal sexual conduct, regardless of the degree of criminal sexual conduct.”

SECTION 4. Article 1, Chapter 41, Title 44 of the 1976 Code is amended by adding:

“Section 44-41-90. (A) No funds appropriated by the State for employer contributions to the State Health Insurance Plan may be expended to reimburse the expenses of an abortion, except as provided in Section 44-41-680.

(B) No funds appropriated or authorized by the State may be used by any political subdivision of the State to purchase fetal tissue obtained from an abortion or fetal remains, nor may any political subdivision of the State accept donated fetal remains.

(C) No state funds may, directly or indirectly, be utilized by Planned Parenthood for abortions, abortion services or procedures, or administrative functions related to abortions.”

SECTION 5. This act takes effect upon approval by the Governor.

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