**South Carolina General Assembly**

125th Session, 2023-2024

**A70, R88, S474**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Grooms, Massey, Kimbrell and Adams

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Introduced in the House on February 14, 2023

Last Amended on May 16, 2023

Currently residing in the Senate

Summary: Abortion - Fetal Heartbeat

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 2/1/2023 Senate Introduced and read first time (Senate Journal‑page 3)

 2/1/2023 Senate Referred to Committee on **Medical Affairs** (Senate Journal‑page 3)

 2/2/2023 Scrivener's error corrected

 2/3/2023 Senate Polled out of committee **Medical Affairs** (Senate Journal‑page 1)

 2/3/2023 Senate Committee report: Favorable **Medical Affairs** (Senate Journal‑page 1)

 2/7/2023 Scrivener's error corrected

 2/7/2023 Senate Debate interrupted (Senate Journal‑page 19)

 2/8/2023 Senate Amended (Senate Journal‑page 53)

 2/8/2023 Senate Read second time (Senate Journal‑page 53)

 2/9/2023 Senate Amended (Senate Journal‑page 25)

 2/9/2023 Senate Read third time and sent to House (Senate Journal‑page 26)

 2/9/2023 Senate Roll call Ayes-28 Nays-12 (Senate Journal‑page 25)

 2/13/2023 Scrivener's error corrected

 2/14/2023 House Introduced and read first time (House Journal‑page 11)

 2/14/2023 House Referred to Committee on **Judiciary** (House Journal‑page 11)

 5/10/2023 House Committee report: Favorable with amendment **Judiciary** (House Journal‑page 43)

 5/11/2023 House Requests for debate-Rep(s). Hiott, Magnuson, McCravy, Pope, Felder, O'Neal, Ligon, T Moore, Nutt, Hayes, Guest, Erickson, Jordan, JE Johnson, W Newton, Atkins, BL Cox, Pace, Davis, MM Smith, Lawson, Harris, B Newton, Neese, Carter, Hixon, Oremus, Williams, Henegan, Gagnon, Chapman, West Thayer, Forrest, Cobb-Hunter, Henderson-Myers, King, McDaniel, JA Moore, Bauer, Tedder, Rivers, Kirby, Thigpen, Hosey, Clyburn, Anderson, Hewitt, Robbins, Bernstein, Jefferson, JL Johnson White, S Jones, Gilliam, Murphy, Brewer, Whitmire, Sandifer, Mitchell, Yow, Hager, May, Kilmartin, Long, Trantham, AM Morgan, Dilliard, W Jones, Wetmore, Caskey, Wooten, Weeks, Taylor (House Journal‑page 33)

 5/16/2023 House Amended (House Journal‑page 34)

 5/16/2023 House Read second time (House Journal‑page 301)

 5/16/2023 House Roll call Yeas-82 Nays-33 (House Journal‑page 301)

 5/17/2023 House Read third time and returned to Senate with amendments (House Journal‑page 14)

 5/17/2023 House Roll call Yeas-82 Nays-32 (House Journal‑page 14)

 5/18/2023 Scrivener's error corrected

 5/23/2023 Scrivener's error corrected

 5/23/2023 Senate Concurred in House amendment and enrolled (Senate Journal‑page 61)

 5/23/2023 Senate Roll call Ayes-27 Nays-19 (Senate Journal‑page 61)

 5/24/2023 Ratified R 88

 5/25/2023 Signed By Governor

 5/25/2023 Effective date 05/25/23

 5/25/2023 Act No. 70

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 5/16/2023 House Amended ([House Journal‑page 34](file:///h%3A%5Chj%5C20230516.docx))

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(A70, R88, S474)

AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING ARTICLE 6 of CHAPTER 41, TITLE 44, RELATING TO THE FETAL HEARTBEAT AND PROTECTION FROM ABORTION ACT, SO AS TO PROVIDE THAT ABORTIONS MAY NOT BE PERFORMED IN THIS STATE AFTER A FETAL HEARTBEAT HAS BEEN DETECTED, WITH EXCEPTIONS FOR MEDICAL EMERGENCIES, RAPE, INCEST, OR FATAL FETAL ANOMALIES; TO CHANGE CERTAIN DEFINITIONAL TERMS; TO CREATE CRIMINAL PENALTIES; TO ESTABLISH CERTAIN RECORDKEEPING AND RECORD RETENTION REQUIREMENTS FOR PHYSICIANS AND OWNERS OF MEDICAL RECORDS; TO REQUIRE PHYSICIANS TO REPORT CERTAIN ALLEGATIONS OF RAPE OR INCEST TO LAW ENFORCEMENT; TO PROHIBIT CRIMINAL PROSECUTION OF ANY WOMAN WHO SEEKS OR OBTAINS AN ABORTION; TO CREATE A CIVIL RIGHT OF ACTION BY CERTAIN INDIVIDUALS FOR VIOLATIONS OF THE ARTICLE; TO REQUIRE PROFESSIONAL DISCIPLINE AGAINST PHYSICIANS IN CERTAIN CIRCUMSTANCES; AND FOR OTHER PURPOSES; BY ADDING SECTIONS 44‑41‑90, 63‑17‑325, AND 38‑71‑146 SO AS TO PROHIBIT THE USE OF STATE FUNDING FOR ABORTION-RELATED EXPENSES, TO REQUIRE CHILD SUPPORT FROM THE DATE OF CONCEPTION, AND TO REQUIRE HEALTH INSURANCE PLANS TO PROVIDE COVERAGE FOR CONTRACEPTIVES, RESPECTIVELY; BY AMENDING SECTIONS 44‑41‑10, 44‑41‑60, 44‑41‑70, 44‑41‑80, AND 44-41-330, ALL RELATING TO ABORTION, SO AS TO MAKE CONFORMING CHANGES; BY REQUIRING THE PUBLIC EMPLOYEE BENEFIT AUTHORITY AND THE STATE HEALTH PLAN TO PROVIDE COVERAGE FOR CONTRACEPTIVES; BY AUTHORIZING THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES TO INTERVENE ON BEHALF OF THEIR RESPECTIVE BODY IN CERTAIN COURT ACTIONS; BY REPEALING SECTION 2 OF ACT 1 OF 2021, SECTION 44‑41‑20, and Article 5, CHapter 41, Title 44 all RELATING TO ABORTION; AND FOR OTHER PURPOSES.

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

Findings

SECTION 1. The General Assembly hereby finds all of the following:

 (1) A fetal heartbeat is a key medical predictor that an unborn child will reach live birth.

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

 (3) The State of South Carolina has a compelling interest from the outset of a woman’s pregnancy in protecting the health of the woman and the life of the unborn child.

Fetal Heartbeat and Protection from Abortion Act

SECTION 2. Article 6, Chapter 41, Title 44 of the S.C. Code is amended to read:

Article 6

Fetal Heartbeat and Protection from Abortion

 Section 44-41-610. 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 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 save the life or preserve the health of the unborn child, or to remove a dead unborn child.

 (2) “Clinically diagnosable pregnancy” means the point in time when it is possible to determine that a woman is pregnant due to the detectible presence of human chorionic gonadotropin (hCG).

 (3) “Conception” means fertilization of an ovum by sperm.

 (4) “Contraceptive” means a drug, device, or chemical that prevents ovulation, conception, or the implantation of a fertilized ovum in a woman’s uterine wall after conception.

 (5) “Fatal 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.

 (6) “Fetal heartbeat” means cardiac activity, or the steady and repetitive rhythmic contraction of the fetal heart, within the gestational sac.

 (7) “Gestational age” means the age of an unborn child as calculated from the first day of the last menstrual period of a pregnant woman.

 (8) “Gestational sac” means the structure that comprises the extraembryonic membranes that envelop the unborn child and that is typically visible by ultrasound after the fourth week of pregnancy.

 (9) “Medical emergency” means in reasonable medical judgment, a condition exists that has complicated the pregnant woman’s medical condition and necessitates an abortion to prevent death or serious risk of a substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. A condition must not be considered a medical emergency 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 and irreversible physical impairment of a major bodily function.

 (10) “Physician” means a person licensed to practice medicine in this State.

 (11) “Pregnant” 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.

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

 (13) “Reasonable medical judgment” means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

 (14) “Unborn child” means an individual organism of the species homo sapiens from conception until live birth.

 Section 44-41-620. An abortion may not be performed or induced without the voluntary and informed written consent of the pregnant woman or, in the case of incapacity to consent, the voluntary and informed written consent of her court‑appointed guardian, and without compliance with the provisions of Section 44‑41‑330(A).

 Section 44-41-630. (A) An abortion provider who is to perform or induce an abortion, a certified technician, or another 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 pregnant woman agree is best under the circumstances;

 (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 fetal heartbeat, if present and viewable.

 (B) Except as provided in Section 44-41-640, Section 44-41-650, and Section 44‑41‑660, no person shall perform or induce an abortion on a pregnant woman with the specific intent of causing or abetting an abortion if the unborn child’s fetal heartbeat has been detected in accordance with Section 44‑41‑330(A). A person who violates this subsection is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned for not more than two years, or both.

 Section 44-41-640. (A) It is not a violation of Section 44-41-630 if an abortion is performed or induced on a pregnant woman due to a medical emergency or is performed to prevent the death of the pregnant woman or to prevent the serious risk of a substantial and irreversible impairment of a major bodily function, not including psychological or emotional conditions, of the pregnant woman.

 (B)(1) Section 44-41-630 does not apply to a physician who performs or induces an abortion if the physician determines according to standard medical practice that a medical emergency exists or is performed to prevent the death of the pregnant woman or to prevent the serious risk of a substantial or irreversible impairment of a major bodily function, not including psychological or emotional conditions, that prevents compliance with the section.

 (2) A physician who performs or induces an abortion on a pregnant woman based on the exception in item (1) shall make written notations in the pregnant woman’s medical records of the following:

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

 (b) the medical condition of the pregnant woman that assertedly prevented compliance with Section 44‑41‑630; and

 (c) the medical rationale to support the physician’s or person’s conclusion that the pregnant woman’s medical condition necessitated the immediate abortion of her pregnancy to avert her death and a medical emergency necessitating the abortion existed.

 (3) A physician performing a medical procedure pursuant to item (1) shall make reasonable medical efforts under the circumstances to preserve the life of the pregnant woman’s unborn child, to the extent that it does not risk the death of the pregnant woman or the serious risk of a substantial and irreversible 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 practices. A medical procedure shall not be considered necessary if it is performed based upon a claim or diagnosis that the woman will engage in conduct that she intends to result in her death or in a substantial physical impairment of a major bodily function.

 (4)(a) For at least seven years from the date the notations are made in the pregnant woman’s medical records, the physician owner of the pregnant woman’s medical records shall maintain a record of the notations and in his own records a copy of the notations.

 (b) A person, if he is the owner of the pregnant woman’s medical records, who violates this subsection is guilty of a felony and must be fined up to ten thousand dollars, imprisoned for not more than two years, or both.

 (c) An entity with ownership of the pregnant woman’s medical records that violates item (3) must be fined up to fifty thousand dollars.

 (C)(1) It is not a violation of Section 44-41-630 for a physician to perform a medical procedure necessary in his reasonable medical judgment to prevent the death of a pregnant woman or the serious risk of a substantial and irreversible physical impairment of a major bodily function of the pregnant woman, not including psychological or emotional conditions.

 (2) It is presumed that the following medical conditions constitute a risk of death or serious risk of a substantial and irreversible physical impairment of a major bodily function of a pregnant woman, not including psychological or emotional conditions: 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 that it does not adversely affect the life or physical health of the pregnant woman, and in a manner that is consistent with reasonable medical practice. The enumeration of the medical conditions in this item is not intended to exclude or abrogate other conditions that satisfy the exclusions contained in item (1) or prevent other procedures that are not included in the definition of abortion.

 (3) A physician who performs a medical procedure pursuant to item (1) shall declare, in a written document maintained with the woman’s medical records, that the medical procedure was necessary, the woman’s medical condition necessitating the procedure, the physician’s rationale for his conclusion that the procedure was necessary, and that all reasonable efforts were made to save the unborn child in the event it was living prior to the procedure. The declaration required by this item must be placed in the woman’s medical records not later than thirty days after the procedure was completed. A physician’s exercise of reasonable medical judgment in relation to a medical procedure undertaken pursuant to this subsection is presumed to be within the applicable standard of care.

 (D) Medical treatment provided to a pregnant woman by a physician which results in the accidental or unintentional injury or death of her unborn child is not a violation of Section 44‑41‑630.

 (E) It is not a violation of Section 44-41-630 to use, sell, or administer 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’s instructions and is not used, sold, prescribed or administered to cause or induce an abortion.

 Section 44-41-650. (A) A physician may perform, induce, or attempt to perform or induce an abortion on a pregnant woman after the fetal heartbeat has been detected in accordance with Section 44‑41‑630 if:

 (1) the pregnancy is the result of rape, and the probable gestational age of the unborn child is not more than twelve weeks; or

 (2) the pregnancy is the result of incest, and the probable gestational age of the unborn child is not more than twelve weeks.

 (B) A physician who performs or induces an abortion on a pregnant woman based on an exception contained in this section 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, the physician who performs or induces an abortion based on 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 notified the sheriff of the allegation of rape or incest in a timely manner, and that the woman was notified prior to the abortion that the physician would notify the sheriff of the allegation of rape or incest.

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

 Section 44-41-660. (A) It is not a violation of Section 44‑41‑630 if an abortion is performed or induced on a pregnant woman due to the existence of a fatal fetal anomaly. Section 44‑41‑630 does not apply to a physician who performs or induces an abortion if the physician or person determines according to standard medical practice that there exists a fatal fetal anomaly.

 (B)(1) A person who performs or induces an abortion based upon the existence of a fatal fetal anomaly shall make written notations in the pregnant woman’s medical records of:

 (a) the presence of a fatal fetal anomaly;

 (b) the nature of the fatal fetal anomaly;

 (c) the medical rationale for making the determination that with or without the provision of life‑preserving treatment life after birth would be unsustainable.

 (2) For at least seven years from the date the notations are made in the woman’s medical records, the owner of the pregnant woman’s medical records shall maintain a record of the notations.

 (C) A person who violates this section is guilty of a felony and, upon conviction, must be fined up to ten thousand dollars, imprisoned for not more than two years, or both.

 (D) An entity with ownership of the pregnant woman’s medical records that violates item (2) must be fined up to fifty thousand dollars.

 Section 44-41-670. 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, or conspiring to commit 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 44-41-680. (A) In addition to all other remedies available under common or statutory law, failure to comply with the requirements of this article shall provide the basis for a civil action further described in this section.

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

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

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

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

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

 (4) the Attorney General.

 (D) If a plaintiff prevails in an action initiated pursuant to this section the court shall award the plaintiff reasonable costs and attorney’s fees.

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

 (F) Under no circumstances may civil damages be awarded to a plaintiff if the pregnancy resulted from the plaintiff’s criminal conduct.

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

 Section 44-41-690. 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 on abortion contained in this article commits an act of unprofessional conduct. A physician’s license to practice in this State immediately shall be revoked by the State Board of Medical Examiners, after due process according to the board’s rules and procedures. Any other licensed person’s professional license shall be immediately revoked by the appropriate licensing board, after due process according to that board’s rules and procedures. A complaint may be originated by any person or by the board sua sponte. A licensing board acting pursuant to this section may assess costs of the investigation, fines, and other disciplinary actions as it may deem appropriate.

 Section 44-41-700. Reserved.

 Section 44-41-710. Reserved.

 Section 44-41-720. Reserved.

 Section 44-41-730. Reserved.

 Section 44-41-740. Reserved.

State funding

SECTION 3. Article 1, Chapter 41, Title 44 of the S.C. 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 Sections 44‑41‑640, 44‑41‑650, and 44‑41‑660.

 (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.

Child support

SECTION 4. Article 3, Chapter 17, Title 63 of the S.C. Code is amended by adding:

 Section 63-17-325. (A) 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.

Health insurance

SECTION 5. Article 1, Chapter 71, Title 38 of the S.C. Code is amended by adding:

 Section 38-71-146. All individual and group health insurance and health maintenance organization policies in this State shall include coverage for contraceptives. For purposes of this section, “contraceptive” means the same as in Section 44-41-610(4). A contraceptive may prevent ovulation, fertilization, or implantation in the uterus. A contraceptive does not include any drug, device, or medication used with the intent of terminating a pregnancy of a woman known to be pregnant. This section does not apply if an individual or entity asserts a sincerely held religious belief regarding the use of contraception.

Definitions

SECTION 6. Section 44-41-10 of the S.C. Code is amended to read:

 Section 44-41-10. As used in this chapter:

 (a) “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 child. Such use, prescription, or means is not an abortion if done with the intent to save the life or preserve the health of the unborn child, or to remove a dead unborn child.

 (b) “Physician” means a person licensed to practice medicine in this State.

 (c) “Department” means the South Carolina Department of Health and Environmental Control.

 (d) “Hospital” means those institutions licensed for hospital operation by the department in accordance with Article 3, Chapter 7 of this title and which have also been certified by the department to be suitable facilities for the performance of abortions.

 (e) “Clinic” shall mean any facility other than a hospital as defined in subsection (d) which has been licensed by the department, and which has also been certified by the department to be suitable for the performance of abortions.

 (f) “Pregnant” 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.

 (g) “Conception” means the fertilization of an ovum by a sperm.

 (h) “Consent” means a signed and witnessed voluntary agreement to the performance of an abortion.

 (i) “First trimester of pregnancy” means the first twelve weeks of pregnancy commencing with conception rather than computed on the basis of the menstrual cycle.

 (j) “Second trimester of pregnancy” means that portion of a pregnancy following the twelfth week and extending through the twenty-fourth week of gestation.

 (k) “Third trimester of pregnancy” means that portion of a pregnancy beginning with the twenty‑fifth week of gestation.

 (l) “Minor” means a female under the age of seventeen.

 (m) “Emancipated minor” means a minor who is or has been married or has by court order been freed from the care, custody, and control of her parents.

 (n) “In loco parentis” means any person over the age of eighteen who has placed himself or herself in the position of a lawful parent by assuming obligations which are incidental to the parental relationship and has so served for a period of sixty days.

Abortion data

SECTION 7. Section 44-41-60 of the S.C. Code is amended to read:

 Section 44-41-60. Any abortion performed in this State must be reported by the performing physician on the standard form for reporting abortions to the State Registrar, Department of Health and Environmental Control, within seven days after the abortion is performed. The names of the patient and physician may not be reported on the form or otherwise disclosed to the State Registrar. The form must indicate from whom consent was obtained, circumstances waiving consent, and, if an exception was exercised pursuant to Section 44‑41‑640, 44-41-650, or 44‑41‑660, which exception the physician relied upon in performing or inducing the abortion.

Health care facility regulations

SECTION 8. Section 44-41-70(b) of the S.C. 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.

Criminal offenses

SECTION 9. Section 44-41-80 of the S.C. Code is amended to read:

 Section 44-41-80. (a) Any person, except as permitted by this chapter, who provides, supplies, prescribes or administers any drug, medicine, prescription or substance to any woman or uses or employs any device, instrument or other means upon any woman, with the intent to produce an abortion shall be deemed guilty of a felony and, upon conviction, shall be punished by imprisonment for a term of not less than two nor more than five years or fined not more than five thousand dollars, or both. Provided, that the provisions of this item shall not apply to any woman upon whom an abortion has been attempted or performed.

 (b) Any woman upon whom an abortion has been performed or attempted in violation of the provisions of this chapter may be compelled to testify in any criminal prosecution initiated pursuant to subsection (a) of this section; provided, however, that such testimony shall not be admissible in any civil or criminal action against such woman and she shall be forever immune from any prosecution for having solicited or otherwise procured the performance of the abortion or the attempted performance of the abortion upon her.

Consent and ultrasound requirements

SECTION 10. Section 44-41-330(A) of the S.C. Code is amended to read:

 (A) Except in the case of a medical emergency and in addition to any other consent required by the laws of this State, no abortion may be performed or induced without the voluntary and informed written consent of the pregnant woman and unless the following conditions have been satisfied:

 (1)(a) While physically present in the same room, the woman must be informed by the physician who is to perform the abortion, an allied health professional working in conjunction with the physician, or the referring physician of the procedure to be involved, including:

 (i) the nature and risks of undergoing or not undergoing the proposed procedure that a reasonable patient would consider material to making a knowing and wilful decision of whether to have an abortion;

 (ii) the probable gestational age of the unborn child, verified by an ultrasound, at the time the abortion is to be performed;

 (iii) the presence of the unborn child’s fetal heartbeat, if present and viewable.

 (b) If an ultrasound is required to be performed, an abortion may not be performed sooner than sixty minutes following completion of the ultrasound. The ultrasound must be performed by the physician who is to perform the abortion or by a person having documented evidence that he or she is a certified sonographer under South Carolina law and who is working in conjunction with the physician. 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 live ultrasound images and hear the unborn child’s fetal heartbeat, if present, at her request during or after the ultrasound procedure and to have them explained to her.

 (c) If the woman accepts the opportunity to view the images and hear the explanation, a physician or a registered nurse, licensed practical nurse, or physician assistant working in conjunction with the physician must contemporaneously review and explain the images to the woman before the woman gives informed consent to having an abortion procedure performed.

 (d) The woman has a right to decline to view and hear the explanation of the live ultrasound images after she is informed of her right and offered an opportunity to view the images and hear the explanation. If the woman declines, the woman shall complete a form acknowledging that she was offered an opportunity to view and hear the explanation of the images but that she declined that opportunity. The form also must indicate that the woman’s decision was not based on any undue influence from any person to discourage her from viewing the images or hearing the explanation and that she declined of her own free will.

 (e) If the physician who intends to perform or induce an abortion on a pregnant woman has determined pursuant to Sections 44‑41‑620, 44‑41‑630, and 44‑41‑330(A) that the unborn child the pregnant woman is carrying has a detectable fetal heartbeat, then that physician shall inform the pregnant woman in writing that the unborn child the pregnant woman is carrying has a fetal heartbeat. The physician 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 child possessing a detectable fetal heartbeat to term based on the gestational age of the unborn child. Any regulations must be based on available medical evidence.

 (2) The woman must be presented by the physician who is to perform the abortion or by an allied health professional working in conjunction with the physician a written form containing the following statement: “You have the right to review printed materials prepared by the State of South Carolina which describe fetal development, list agencies which offer alternatives to abortion, and describe medical assistance benefits which may be available for prenatal care, childbirth, and neonatal care. You have the right to view your ultrasound image.” This form must be signed and dated by both the physician who is to perform the procedure and the pregnant woman upon whom the procedure is to be performed.

 (3) The woman must certify in writing, before the abortion, that the information described in item (1) of this subsection has been furnished her, and that she has been informed of her opportunity to review the information referred to in item (2) of this subsection.

 (4) Before performing the abortion, the physician who is to perform or induce the abortion must determine that the written certification prescribed by item (3) of this subsection or the certification required by subsection (D) has been signed. This subsection does not apply in the case where an abortion is performed pursuant to a court order.

State Health Plan

SECTION 11. The Public Employee Benefit Authority and the State Health Plan shall cover prescribed contraceptives for dependents under the same terms and conditions that the Plan provides contraceptive coverage for employees and spouses. The State Health Plan shall not apply patient cost sharing provisions to covered contraceptives.

Right of intervention, civil court actions

SECTION 12. The President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives have an unconditional right to intervene on behalf of their respective bodies in a state court action and may provide evidence or argument, written or oral, if a party to that court action challenges the constitutionality of this act. In a federal court action that challenges the constitutionality of this act the Legislature may seek to intervene, to file an amicus brief, or to present arguments in accordance with federal rules of procedure. Intervention by the Legislature pursuant to this provision does not limit the duty of the Attorney General to appear and prosecute legal actions or defend state agencies, officers or employees as otherwise provided. In any action in which the Legislature intervenes or participates, the Senate and the House of Representatives shall function independently from each other in the representation of their respective clients.

Repeal

SECTION 13. A. SECTION 2 of Act 1 of 2021 and Section 44-41-20 of the S.C. Code are repealed.

B. Article 5, Chapter 41, Title 44 of the S.C. Code is repealed. However, if some or all of the provisions contained in SECTION 2 of this act are ever temporarily or permanently restrained or enjoined by judicial order, or are held to be unconstitutional or invalid, then all of the provisions of Article 5, Chapter 41, Title 44 are reenacted retroactively to the date the judicial order either temporarily or permanently restraining or enjoining some or all of the provisions contained in SECTION 2 or declaring some or all of the provisions contained in SECTION 2 unconstitutional or invalid is entered.

Time effective

SECTION 14. This act takes effect upon approval by the Governor.

Ratified the 24th day of May, 2023.

Approved the 25th day of May, 2023.

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