



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.

Bill Number: H. 3774 Introduced on January 24, 2023
Author: McCravy
Subject: Abortion Ban with Exceptions
Requestor: House Judiciary
RFA Analyst(s): Boggs, Gardner, and Tipton
Impact Date: February 7, 2023

Fiscal Impact Summary

This bill prohibits abortions except to protect the life or health of the pregnant woman, in the case of rape or incest within the first trimester, or in the case of a fatal fetal anomaly. The bill creates a new felony offense 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. This bill specifies that the pregnant woman may not be criminally prosecuted or found civilly liable for the violation of any of the provisions within the bill. The bill places certain financial responsibilities on the biological father of an unborn child, with additional financial responsibilities in cases of rape or incest. Additionally, 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.

This bill specifies that an abortion may be performed if the pregnancy is a result of either rape or incest but must be performed within the first trimester. In these instances, the physician who performs the abortion must preserve a DNA sample from the fetal remains and notify the sheriff in the county in which the abortion was performed. The sheriff must transmit the sample into evidence within ninety days of the notification. This bill also specifies that for abortions performed because a fatal fetal anomaly exists, the fetal anomaly must be confirmed by two physicians specializing in obstetrics or in the area of medicine in which the anomaly is diagnosed. Additionally, this bill provides a list of medical conditions that are presumed to cause a substantial risk of death or substantial physical impairment to the pregnant woman for purposes of legally performing an abortion. In this circumstance, the physician must make every reasonable effort to save the life of the unborn child while preserving the life and health of the mother.

The bill further specifies that the State Health Plan must cover contraceptives for dependents, with no cost sharing provisions. All individual and group health insurance must also include coverage for contraceptives for all insured. Also, no state funds appropriated for employer contributions to the State Health Plan may be used to reimburse a state employee for an abortion unless the pregnancy is a result of rape or incest or for an abortion due to a fatal fetal anomaly. Also, no state funds may be used by any political subdivision of the State to purchase fetal tissue

or remains from an abortion, nor used by Planned Parenthood for abortions or abortion-related services, procedures, or administrative functions related to abortions.

The bill will have no fiscal impact on the Department of Health and Environmental Control (DHEC); the Department of Health and Human Services (DHHS); the Public Employee Benefit Authority (PEBA); the University of South Carolina School of Medicine; Judicial; the Probation, Parole, and Pardon Services; the Commission on Indigent Defense; the Commission on Prosecution Coordination; or the Office of the Attorney General because these agencies will manage any costs related to implementation of the bill within their existing appropriations.

This bill will have no expenditure impact on the Department of Insurance (DOI), as it does not operationally change the agency's responsibilities. DOI further reports that contraceptive coverage is considered an essential health benefit under the Affordable Care Act (ACA) of 2010 and coverage of contraceptives by private insurers became federally mandated in 2017.

The bill requires the Board of Medical Examiners under the Department of Labor, Licensing and Regulation (LLR) to revoke the license of a physician who violates the provisions of the bill. While the agency currently has a review process in place for complaints, the number of complaints that will be received from this bill is unknown. If the number of complaints increases significantly, the agency may incur additional expenses; however, the amount of the potential impact is undetermined. Additionally, 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. Therefore, General Fund revenue may also increase by an undetermined amount.

The bill creates a new felony offense for violations of Section 44-41-820 punishable by up to two years of imprisonment, a fine of \$10,000, or both. The Department of Corrections reports the annual average cost to house an inmate in FY 2021-22 was \$32,247, of which \$30,044 was state funded, and the marginal cost per inmate was \$4,836.28, of which \$4,829.76 was state funded. Therefore, we anticipate 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.

This bill will increase General Fund expenditures for the Medical University of South Carolina (MUSC) by up to \$542,500 per year beginning in FY 2023-24 for additional medical compliance and legal personnel and services and out-of-state training operations. The institution anticipates needing an additional 0.3 FTEs for General Counsel with annual salary and fringe of \$25,000, 0.2 FTEs for a Maternal Fetal Medicine MD with annual salary and fringe of \$87,500, and 0.1 FTEs for an Ethics Physician with annual salary and fringe of \$25,000. In addition, MUSC reports that ancillary or external legal expenses related to the review and defense of its physicians will total up to \$130,000 annually. Costs for the out-of-state training are expected total \$275,000. The institution indicates that additional General Fund appropriations will be requested to cover these expenses.

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.

This bill requires coverage of prescription contraceptives for all individual and group health insurance and health maintenance organization policies in the state. DOI indicates that this requirement was federally mandated in 2017, and that any resulting premium increases have likely already been realized. Therefore, this bill will have no impact on insurance premiums tax revenue.

Additionally, the Revenue and Fiscal Affairs Office (RFA) anticipates this bill may result in an undetermined increase to General Fund revenue, Other Funds revenue, and local revenue due to the potential increase in fines and fees collected in court.

Explanation of Fiscal Impact

Introduced on January 24, 2023

State Expenditure

This bill prohibits abortions except within the first trimester in the case of rape or incest, when a fatal fetal anomaly exists, or 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 life or health of the mother must declare in a written document that the medical procedure was necessary. In the case of rape or incest the abortion must be performed within the first trimester and the physician must report within twenty-four hours of the abortion the allegation of rape or incest to the sheriff in the county in which the abortion was performed. In the case of a fatal fetal anomaly, the anomaly must be diagnosed by two physicians from separate medical practices.

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. This bill specifies that the pregnant woman may not be criminally prosecuted or found civilly liable under the provisions of this bill.

Also, beginning with the date of conception, a biological father of a child must pay the mother of the child fifty percent of the mother's pregnancy expenses and child support payment obligations in an amount determined pursuant to Section 63-17-470. In the case of rape or incest, the biological father is also responsible for the full cost of any expenses incurred by the mother for mental health counseling arising out of the rape or incest.

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 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. While this bill includes exceptions related to the life of the mother, rape, and incest, the exceptions for rape and incest are only for the first trimester of a pregnancy. Therefore, abortions in cases of rape and incest that occur after the first trimester of a pregnancy would be illegal in South Carolina and not coverable by DHHS. This change is anticipated to have a minimal fiscal impact to DHHS. DHHS anticipates it can comply with this bill and remain compliant with current Medicaid regulations using assisting appropriations.

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.

Public Employee Benefit Authority. This bill requires PEBA to provide coverage of contraceptives to dependents under the SHP without applying patient cost sharing provisions. According to PEBA, the annual expense to the SHP of routine birth control coverage for members covered as children without cost sharing is approximately \$3,153,000. In prior years, the SHP covered dependents' contraceptives based on medical need and with patient cost sharing. However, PEBA has included the cost of routine coverage of dependent contraceptives, with no patient cost sharing, in its budget request for FY 2023-24. If this bill takes effect prior to July 1, 2023, PEBA anticipates being able to manage the cost of covering dependents with existing appropriations.

Department of Insurance. This bill requires coverage of contraceptives by all individual and group health insurance and health maintenance organization policies in the state, regulated by DOI. The agency indicates that this bill does operationally change the agency's responsibilities and will have no expenditure impact. DOI further reports that contraceptive coverage is considered an essential health benefit under the ACA and coverage of contraceptives by private insurers is federally mandated. Therefore, this bill is not anticipated to impact private insurance premium rates.

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.

Department of Labor, Licensing and Regulation. The bill requires the Board of Medical Examiners under the Department of Labor, Licensing and Regulation (LLR) to revoke the license of a physician who violates the provisions of the bill. While the agency currently has a review process in place for complaints, the number of complaints that will be received from this bill is unknown. If the number of complaints increases significantly, the agency may incur additional expenses; however, the amount of the potential impact is undetermined.

Medical University of South Carolina. MUSC educates and employs physicians in the state who will be required to adhere to the requirements of this bill, and the university indicates additional medical compliance and legal personnel may be required. The institution anticipates needing an additional 0.3 FTEs for General Counsel at an annual cost of \$25,000, 0.2 FTEs for a Maternal Fetal Medicine MD with annual salary and fringe of \$87,500, and 0.1 FTEs for an Ethics Physician with annual salary and fringe of \$25,000. In addition, MUSC reports that ancillary or external legal expenses related to the review and defense of its physicians will total up to \$130,000 annually. Finally, MUSC indicates that this bill will require some physician training activities to take place out-of-state. The institution reports that fees for out-of-state training will total \$200,000 annually, in addition to \$50,000 in annual transportation and housing costs and \$25,000 in annual training equipment costs. In total, this bill will increase expenses for MUSC by up to \$542,500 per year beginning in FY 2023-24. The institution indicates that additional General Fund appropriations will be requested to cover these expenses.

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 anticipates being able to manage any additional costs associated with enactment of the bill using existing resources. Therefore, this bill will have no expenditure impact for the commission.

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.

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.

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.

Judicial. This bill states the circumstances under which abortion is unlawful to all cases except in the case of rape or incest or to protect the life or health of the pregnant woman. The bill creates a felony offense for violations of the provisions prohibiting abortion. 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. Further, the bill places additional financial responsibilities on the biological father that may impact family court cases. Finally, this bill limits abortions in the case of rape or incest to within the first trimester of pregnancy. Judicial anticipates enactment of the bill will increase caseloads in general session, common pleas, and family courts but believes resultant costs can be managed using existing General Fund resources.

Department of Corrections. The bill may add instances of a felony offense for violations of Section 44-41-820. This felony is punishable by up to two years of imprisonment, a fine of \$10,000, or both. The Department of Corrections reports the annual total cost per inmate in FY 2021-22 was \$32,247, of which \$30,044 was state funded, and the marginal cost per inmate was \$4,836.28, of which \$4,829.76 was state funded. If there is a substantial increase in the inmate population due to this bill, SCDC will request a General Fund appropriation increase. However, the amount of the request, if a request is necessary, is dependent upon the potential increase of convictions under the felony and the duration of any imprisonment.

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.

This bill requires coverage of prescription contraceptives for all individual and group health insurance and health maintenance organization policies in the state. DOI indicates that this requirement was federally mandated in 2017, and that any resulting premium increases have likely already been realized. Therefore, this bill will have no impact on insurance premiums tax 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.

Additionally, this bill creates a new felony with a potential fine of up to \$10,000. This may result in an increase in the fines and fees collected in court. Further, the bill may create additional family court cases due to the expansion of responsibility for biological fathers. 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 increase to General Fund revenue, Other Funds revenue, and local revenue due to the potential increase in fines and fees collections in court.

Local Expenditure

This bill requires the physician who performs an abortion due to rape or incest to preserve a DNA sample from the fetal remains and notify the sheriff in the county in which the abortion was performed. The sheriff must transmit the sample into evidence within ninety days of the notification and hold the sample in accordance with the Preservation of Evidence Act, beginning with Section 17-28-300. We anticipate that the collection and storage of any additional samples due to this bill is within the normal responsibilities of a sheriff's offices and can be managed with existing resources.

Local Revenue

This bill creates a new felony with a potential fine of up to \$10,000. This may result in an increase 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 increase to General Fund revenue, Other Funds revenue, and local revenue due to the potential increase in fines and fees collections in court.



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