



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: S. 0474 Amended by the Senate on February 8, 2023
Author: Grooms
Subject: Abortion- Fetal Heartbeat
Requestor: House Judiciary
RFA Analyst(s): Boggs, Gardner, and Tipton
Impact Date: May 9, 2023 - Updated for Additional Agency Response

Fiscal Impact Summary

This bill prohibits abortions after a fetal heartbeat has been detected, except in the case of rape or incest or if the mother is a minor with permission when the probable gestational age is not more than twelve weeks, when a fatal fetal anomaly exists, or to prevent the death or irreversible impairment of a major bodily function of the pregnant woman. A physician who performs or induces an abortion under accusations of rape or incest 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 the abortion and must include the name and contact information of the pregnant woman making the allegation. The physician shall make written notations in the pregnant woman's medical records that the abortion was performed pursuant to an exception, that the doctor notified the sheriff in a timely manner, and the women was notified prior to the abortion that the physician would notify the sheriff of the allegation of rape or incest. This bill also prohibits performing, inducing, or attempting to perform abortions on pregnant women before the determination can be made whether the unborn child being carried has a detectable heartbeat. It also creates a new felony for any person who violates the provisions of the bill that is punishable by a fine of \$10,000, imprisonment for not more than two years, or both.

This bill specifies that an abortion performed or induced on a pregnant woman due to the existence of a fatal fetal anomaly is not a violation. A physician or person who performs the abortion based on the existence of a fatal fetal anomaly shall notate the pregnant woman's medical records with the presence and nature of the fatal fetal anomaly and the medical rationale that with or without life-preserving treatment life after birth would be unsustainable. These notations must be maintained for at least seven years. A person who violates this is committing a felony that is punishable by a fine of \$10,000, imprisonment for not more than two years, or both. If an entity with ownership of the pregnant woman's medical records violates this provision, the facility is to be fined up to \$50,000. Further this bill clarifies that it is not a violation of these provisions to perform or induce an abortion on a pregnant woman due to a medical emergency or when the medical procedure is intended to prevent the death or irreversible 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.

This bill states that a physician may perform, induce, or attempt to perform an abortion on a minor who either has the consent of a parent or guardian or successfully petitions the court for an order granting her the right to obtain an abortion without the required consent if the probable gestational age of the unborn child is not more than twelve weeks or upon the final disposition of the petition, whichever occurs later.

Further this bill states that any abortion performed in this state must be reported by the licensed facility on the standard form and reported to the Department of Health and Environmental Control (DHEC) within seven days. Any facility that fails to submit a report by the end of thirty days following the due date must be subject to a late fee of \$1,000 for each additional thirty-day period or portion of a thirty-day period the report is overdue. Any facility that has not submitted a report, or has submitted only an incomplete report, more than six months following the due date, may be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to civil contempt. Intentional or reckless falsification of any report required under this section is a misdemeanor punishable by not more than one year in prison. By June thirteenth of each year, DHEC shall issue a public report providing statistics for the previous calendar year and all prior calendar years during which this bill was in effect.

The bill will have no fiscal impact on the Department of Health and Human Services (DHHS); Department of Labor, Licensing and Regulation (LLR); 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.

The bill requires DHEC to update its standard form for reporting abortions. This form is maintained by a third-party vendor requiring a one-time cost to update the proprietary system to conform to the bill. DHEC reports that the agency will request a General Fund appropriation increase of approximately \$30,000 to fund the expenses.

The bill creates a new felony offense punishable by up to two years of imprisonment, a fine of \$10,000, or both. The Department of Corrections (SCDC) 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, of which \$4,830 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 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 to total \$275,000. The institution indicates that additional General Fund appropriations will be requested to cover these expenses.

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.

This fiscal impact statement has been updated to include a response from DHEC.

Explanation of Fiscal Impact

Updated for Additional Agency Response on May 9, 2023

Amended by the Senate on February 8, 2023

State Expenditure

This bill prohibits abortions after a fetal heartbeat has been detected, except in the case of rape or incest or if the mother is a minor when the probable gestational age is not more than twelve weeks, when a fatal fetal anomaly exists, or to prevent the death or irreversible 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 when the probable gestational age is not more than twelve weeks, 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 notated in the pregnant woman's medical records with the presence and nature of the fatal fetal anomaly and the medical rationale that with or without life-preserving treatment life after birth would be unsustainable. These notations must be maintained for at least seven years. Further, a minor must have parental consent or approval from a court before a physician can perform an abortion.

This bill also creates a new felony for any person who violates the provisions of the bill that is punishable by a fine of \$10,000, imprisonment for not more than two years, or both. Further this bill states that any abortion performed in this State must be reported by the licensed facility on the standard form and reported to DHEC within seven days. Any facility that fails to submit a report by the end of thirty days following the due date must be subject to a late fee of \$1,000 for each additional thirty-day period or portion of a thirty-day period the report is overdue. Any facility that has not submitted a report, or has submitted only an incomplete report, more than six months following the due date, may be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to civil contempt. Intentional or reckless falsification of any report required under this section is a misdemeanor punishable by not more than one year in prison.

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 when the probable gestational age is not more than twelve weeks. Therefore, abortions in cases of rape and incest that occur after the probable gestational age is more than twelve weeks 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 bill requires DHEC to update its standard form for reporting abortions. This form is maintained by a third-party vendor requiring a one-time cost to update the proprietary system to conform to the bill. DHEC reports that the agency will request a General Fund appropriation increase of approximately \$30,000 to fund the expenses.

This section of the fiscal impact statement has been updated to include a response from DHEC.

Department of Labor, Licensing, and Regulation. LLR provides licenses to physicians in the state through the Board of Medical Examiners. This bill does not modify LLR's oversight or responsibilities of licensing physicians. Therefore, this bill will have no expenditure impact for LLR.

Office of the Attorney General. This bill enables the Attorney General to file criminal charges against persons who violate the provisions of the bill. 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.

Judicial. This bill states the circumstances under which abortion is unlawful to all cases except in the case of rape or incest when the probable gestational age is not more than twelve weeks, when a fatal fetal anomaly exists, to prevent the death or irreversible impairment of a major bodily function of the pregnant woman or for a minor with consent from parents or the court. The bill creates a felony offense for violations of the provisions prohibiting abortion. 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 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.

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.

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.

Department of Corrections. The bill may add instances of a felony offense for violations of the provisions of this bill. 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, of which \$4,830 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.

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.

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, as the bill does not modify the services covered by the plan. Additionally, because the bill does not operationally affect PEBA, it will have no impact on the agency.

University of South Carolina. USC School of Medicine educates and employs physicians in the state who will be required to adhere to the requirements of this bill. The institution indicates that the provisions of this bill can be managed within the university's existing appropriations and will have no fiscal impact.

State Revenue

Based on a previous response, DHEC 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.

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. 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 and Other Funds revenue due to the potential increase in fines and fees collections in court.

Further, this bill creates a potential fine of up to \$50,000 for an entity with ownership of the pregnant woman's medical records that fails to keep these records for at least seven years. The revenue impact of this subsection is undetermined as there are no data on the number of possible violations.

Local Expenditure

N/A

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 local revenue due to the potential increase in fines and fees collections in court.

Amended by the Senate on February 8, 2023

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This bill also creates a new felony for any person who violates the provisions of the bill that is punishable by a fine of \$10,000, imprisonment for not more than two years, or both. Further this bill states that any abortion performed in this State must be reported by the licensed facility on the standard form and reported to DHEC within seven days. Any facility that fails to submit a report by the end of thirty days following the due date must be subject to a late fee of \$1,000 for each additional thirty-day period or portion of a thirty-day period the report is overdue. Any facility that has not submitted a report, or has submitted only an incomplete report, more than six months following the due date, may be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to civil contempt. Intentional

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Department of Health and Environmental Control. DHEC is responsible for the licensing and regulation of abortion clinics in the state. Based on previous responses, RFA anticipates that any expenditures related to the enactment of the bill will be managed within its current appropriations. This fiscal impact statement will be updated if DHEC provides information indicating otherwise.

Department of Labor, Licensing, and Regulation. LLR provides licenses to physicians in the state through the Board of Medical Examiners. This bill does not modify LLR's oversight or responsibilities of licensing physicians. Therefore, this bill will have no expenditure impact for LLR.

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Local Expenditure

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Frank A. Rainwater, Executive Director