**South Carolina General Assembly**

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**H. 5403**

**STATUS INFORMATION**

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Introduced in the House on May 9, 2018

Currently residing in the House Committee on **Judiciary**

Summary: SC Fetal Heartbeat Protection from Abortion Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

5/9/2018 House Introduced and read first time ([House Journal‑page 153](file:///h:\hj\20180509.docx))

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**VERSIONS OF THIS BILL**

[5/9/2018](file:///p:\pprever\2017-18\5403_20180509.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “SOUTH CAROLINA FETAL HEARTBEAT PROTECTION FROM ABORTION ACT” BY ADDING ARTICLE 6 TO CHAPTER 41, TITLE 44 SO AS TO PROHIBIT ABORTIONS UPON DETECTION OF A FETAL HEARTBEAT WITH EXCEPTIONS, TO REQUIRE PHYSICIANS TO DETERMINE WHETHER THERE IS THE PRESENCE OF A HEARTBEAT BEFORE PERFORMING AN ABORTION ON A PREGNANT WOMEN AND TO PROVIDE DOCUMENTATION OF THE TESTING TO THE PREGNANT WOMAN, TO CREATE CRIMINAL PENALTIES, AND FOR OTHER PURPOSES; BY ADDING SECTION 44‑41‑90 SO AS TO PROHIBIT CERTAIN ACTIONS WITH RESPECT TO FETAL BODY PARTS AND TO CREATE CRIMINAL PENALTIES; AND TO AMEND SECTION 44‑41‑10, RELATING TO ABORTION‑RELATED DEFINITIONAL TERMS, SO AS TO ADD A DEFINITION FOR ‘FETAL BODY PART’ AND OTHER TERMS.

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

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

“Article 6

South Carolina Fetal Heartbeat Protection from Abortion Act

Section 44‑41‑610. This article may be cited as the ‘South Carolina Fetal Heartbeat Protection from Abortion Act’.

Section 44‑41‑620. For purposes of this article, unless the context otherwise requires:

(1) ‘Abortion’ has the same meaning as defined in Section 44‑41‑430.

(2) ‘Fetal heartbeat’ means cardiac activity, the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(3) ‘Medical emergency’ means a situation in which an abortion is performed to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life‑endangering physical condition caused by or arising from the pregnancy, but not including psychological conditions, emotional conditions, familial conditions, or the woman’s age; or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman.

(4) ‘Medically necessary’ means any of the following:

(a) the pregnancy is the result of a rape that is reported within forty‑five days of the incident to a law enforcement agency or to a public or private health agency, which may include a family physician;

(b) the pregnancy is the result of incest that is reported within one hundred forty days of the incident to a law enforcement agency or to a public or private health agency, which may include a family physician;

(c) any spontaneous abortion, commonly known as a miscarriage, if not all of the products of conception are expelled; or

(d) the attending physician certifies that the fetus has a fetal anomaly, as that term is defined in Section 44‑41‑430.

(5) ‘Physician’ means a person licensed to practice medicine in this State pursuant to Article 1, Chapter 47, Title 40.

(6) ‘Reasonable medical judgment’ has the same meaning as defined in Section 44‑41‑430.

(7) ‘Unborn child’ has the same meaning as defined in Section 44‑41‑430.

Section 44‑41‑630. (A)(1) Except in the case of a medical emergency or when the abortion is medically necessary, a physician shall not perform an abortion unless the physician has first complied with the prerequisites of Article 5, Chapter 41, Title 44 and has tested the pregnant woman as specified in this article to determine if a fetal heartbeat is detectable.

(2) In testing for a detectable fetal heartbeat, the physician shall perform an abdominal ultrasound, necessary to detect a fetal heartbeat according to standard medical practice and including the use of medical devices, as determined by standard medical practice and specified by regulation of the Board of Medical Examiners.

(3) Following the testing of the pregnant woman for a detectable fetal heartbeat, the physician shall inform the pregnant woman, in writing, of all of the following:

(a) whether a fetal heartbeat was detected; and

(b) that, if a fetal heartbeat was detected, an abortion is prohibited.

(4) Upon receipt of the written information, the pregnant woman shall sign a form acknowledging that the pregnant woman has received the information as required pursuant to this article.

(B)(1) A physician shall not perform an abortion on a pregnant woman when it has been determined that the unborn child has a detectable fetal heartbeat, unless, in the physician’s reasonable medical judgment, a medical emergency exists, or when the abortion is medically necessary.

(2) Notwithstanding item (1), if a physician determines that the probable post‑fertilization age of the unborn child, as defined in Section 44‑41‑430, is twenty weeks or more, the physician shall not perform an abortion on a pregnant woman when it has been determined that the unborn child has a detectable fetal heartbeat, unless in the physician’s reasonable medical judgment the pregnant woman has a condition which the physician deems a medical emergency, or the abortion is necessary to preserve the life of an unborn child.

(C) A physician shall retain in the woman’s medical record all of the following:

(1) documentation of the testing for a fetal heartbeat as required pursuant to subsection (A) and the results of the fetal heartbeat test; and

(2) the pregnant woman’s signed form acknowledging that the pregnant woman received the information as required pursuant to (A).

(D)(1) A physician who violates any provision of this article is guilty of a felony and must be fined ten thousand dollars or imprisoned for not more than two years, or both.

(2) The provisions of this article shall not be construed to impose civil or criminal liability on a woman upon whom an abortion is performed in violation of this article.

(E) The Board of Medical Examiners shall promulgate regulations to implement the provisions of this article.”

SECTION 2. Article 1, Chapter 41, Title 44 of the 1976 Code is amended by adding:

“Section 44‑41‑90. (A) A person shall not knowingly acquire, provide, receive, otherwise transfer, or use a fetal body part in this State, regardless of whether the acquisition, provision, receipt, transfer, or use is for valuable consideration.

(B) Subsection (A) shall not apply to any of the following:

(1) diagnostic or remedial tests, procedures, or observations with the sole purpose of determining the life or health of the fetus in order to provide that information to the pregnant woman or to preserve the life or health of the fetus or pregnant woman;

(2) the actions of a person taken in furtherance of the final disposition of a fetal body part;

(3) the pathological study of body tissue, including genetic testing, for diagnostic or forensic purposes; or

(4) a fetal body part if the fetal body part results from a spontaneous termination of pregnancy or stillbirth and is willingly donated for the purpose of medical research.

(C) A person who violates this section is guilty of a felony and, upon conviction, must be fined one thousand to ten thousand dollars or imprisoned up to ten years, or both.”

SECTION 3. Section 44‑41‑10 of the 1976 Code is amended by adding appropriately lettered items at the end to read:

“( ) ‘Fetal body part’means a cell, tissue, organ, or other part of a fetus that is terminated by an abortion. ‘Fetal body part’does not include any of the following:

(i) cultured cells or cell lines derived from a spontaneous termination of pregnancy or stillbirth and willingly donated for the purposes of medical research;

(ii) a cell, tissue, organ, or other part of a fetus that is terminated by an abortion that occurred prior to July 1, 2019; and

(iii) all cells and tissues external to the fetal body proper.

( ) ‘Final disposition’means the disposition of fetal body parts by burial, interment, entombment, cremation, or incineration.

( ) ‘Valuable consideration’means any payment including, but not limited to, payment associated with the transportation, processing, preservation, quality control, or storage of fetal body parts.”

SECTION 4. This act takes effect upon approval by the Governor.

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