AMENDED

March 29, 2017

**H. 3548**

Introduced by Reps. Bennett, Delleney, Yow, Stringer, Hardee, Erickson, Long, Fry, Daning, S. Rivers, Davis, Allison, Hill, Crosby, B. Newton, McCoy, West, McCravy, Tallon, Elliott, Henderson, V.S. Moss, G.R. Smith, Pope, Toole, Huggins, Hamilton, Bedingfield, Atwater, Ballentine, Willis, Simrill and Lowe

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Read the first time January 24, 2017.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “SOUTH CAROLINA UNBORN CHILD PROTECTION FROM DISMEMBERMENT ABORTION ACT” BY ADDING ARTICLE 6 TO CHAPTER 41, TITLE 44 SO AS TO PROHIBIT DISMEMBERMENT ABORTIONS, WITH EXCEPTIONS, AND TO DEFINE RELEVANT TERMS; TO PROVIDE FOR INJUNCTIVE RELIEF AND CIVIL REMEDIES TO ENFORCE THE PROVISIONS OF THE ARTICLE; TO CREATE CRIMINAL PENALTIES; AND FOR OTHER PURPOSES.

Amend Title To Conform

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 Unborn Child Protection from Dismemberment Abortion Act

Section 44‑41‑610. This article may be cited as the South Carolina Unborn Child Protection from Dismemberment Abortion Act.

(A) Notwithstanding any other provision of law, a physician who knowingly performs or attempts to perform a dismemberment abortion and thereby kills an unborn child unless necessary to prevent serious health risk to the unborn child’s mother is guilty of a felony and upon conviction must be fined ten thousand dollars or imprisoned for two years or both. ‘Serious health risk to the unborn child’s mother’ means that in reasonable medical judgment she has a condition that so complicates her medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such condition may be determined to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

(B) As used in this section:

(1) ‘Dismemberment abortion’ means, with the intention of causing the death of an unborn child, knowingly to dismember a living unborn child and extract him or her one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors or similar instruments that, through the convergence of two rigid levers, slice, crush, and/or grasp a portion of the unborn child’s body to cut or rip it off.

(2) The term ‘physician’ means a physician, surgeon, or osteopath authorized to practice medicine in this State and licensed pursuant to Chapter 47, Title 40. However, an individual who is not a physician, but who directly and knowingly performs a dismemberment abortion is also subject to the provisions of this section.

(3) The term ‘dismemberment abortion’ does not include an abortion which uses suction to dismember the body of the unborn child by sucking fetal parts into a collection container, although it does include an abortion in which a dismemberment abortion, as defined in item (1) is used to cause the death of an unborn child but suction is subsequently used to extract fetal parts after the death of the unborn child.

(C)(1) The father, if married to the mother at the time she receives a dismemberment abortion, and if the mother has not attained the age of eighteen years at the time of the abortion, the maternal grandparents of the fetus have a cause of action against the physician or other person unlawfully performing a dismemberment abortion and may obtain appropriate relief, unless the pregnancy resulted from the plaintiff’s criminal conduct or the plaintiff consented to the abortion.

(2) Such relief includes, but is not limited to:

(a) actual damages which shall be trebled;

(b) punitive damages for all injuries, psychological and physical, occasioned by the violation of this section; and

(c) reasonable costs and attorney’s fees.

(D) A woman upon whom a dismemberment abortion is performed may not be prosecuted for a violation of this section, for a conspiracy to violate this section, or for any other offense which is based on a violation of this section.

(E) This article does not prevent abortion for any reason including rape and incest by any other method.

Section 44‑41‑620. (A) A cause of action for injunctive relief against a person who has performed or attempted to perform a dismemberment abortion in violation of Section 44‑41‑610 may be maintained by:

(1) a woman upon whom such a dismemberment abortion was performed;

(2) if the woman is a minor, a person who is the parent or guardian of a woman upon whom such a dismemberment abortion was performed; or

(3) a prosecuting attorney with appropriate jurisdiction.

(B) The injunction shall prevent the defendant from performing further dismemberment abortions in violation of Section 44‑41‑610 in this State.

(C) A cause of action may not be maintained by a plaintiff if the pregnancy resulted from the plaintiff’s criminal conduct.

Section 44‑41‑630. Nothing in this article shall be construed as creating or recognizing a right to abortion, nor a right to a particular method of abortion.”

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. This act takes effect upon approval by the Governor.

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