**South Carolina General Assembly**

124th Session, 2021-2022

**S. 341**

**STATUS INFORMATION**

General Bill

Sponsors: Senator McLeod

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Introduced in the Senate on January 12, 2021

Currently residing in the Senate Committee on **Medical Affairs**

Summary: SC Pro Birth Accountability Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/9/2020 Senate Prefiled

12/9/2020 Senate Referred to Committee on **Medical Affairs**

1/12/2021 Senate Introduced and read first time ([Senate Journal‑page 275](file:///h:\sj\20210112.docx))

1/12/2021 Senate Referred to Committee on **Medical Affairs** ([Senate Journal‑page 275](file:///h:\sj\20210112.docx))

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**VERSIONS OF THIS BILL**

[12/9/2020](file:///p:\pprever\2021-22\341_20201209.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “SOUTH CAROLINA PRO BIRTH ACCOUNTABILITY ACT” BY ADDING ARTICLE 6 TO CHAPTER 41, TITLE 44 SO AS TO REQUIRE COMPENSATION OF CERTAIN WOMEN GIVING BIRTH TO A CHILD WHO BUT FOR A FETAL HEARTBEAT LAW COULD CHOOSE TO TERMINATE THE PREGNANCY, AND FOR OTHER PURPOSES.

Whereas, from a medical perspective, there is no dispute that a six‑week old embryo cannot exist outside of the womb of a pregnant woman; and

Whereas, under a proposed law prohibiting abortion upon detection of a fetal heartbeat, the development of an unborn embryo is deemed governmentally more important than the life and rights of the pregnant woman; and

Whereas, if enacted, the fetal heartbeat law will force a pregnant woman who, could have otherwise elected an abortion, to act as a gestational surrogate for the State of South Carolina, which cannot itself physically conceive or carry a child; and

Whereas, as a matter of constitutional law, a state may not force a citizen to serve in any capacity without fair payment or to take a citizen’s property without just compensation; and

Whereas, in the surrogacy market, a woman’s uterus is not unlike rental property, as a commissioning couple agrees to pay a gestational surrogate certain compensation for carrying a fetus to term and giving birth to a child; and

Whereas, just as South Carolina may not constitutionally use a citizen’s rental property without just compensation, it may not constitutionally require a woman to incubate a child without appropriate compensation. Now, therefore,

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

SECTION 1. This act may be known and cited as the “South Carolina Pro Birth Accountability Act”.

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

“Article 6

South Carolina Pro Birth Accountability Act

Section 44‑41‑510. A pregnant woman who, but for a law prohibiting an abortion upon detection of a fetal heartbeat, would be legally allowed to choose to terminate her pregnancy pursuant to Section 44‑41‑20 and the South Carolina Pain‑Capable Unborn Child Protection Act and who is accordingly compelled by the State to carry the pregnancy to term and give birth to a child is entitled to be compensated by the State as provided in Section 44‑41‑520.

Section 44‑41‑520. Compensation to which a woman is entitled pursuant to Section 44‑41‑510 includes:

(1) reasonable living, legal, medical, psychological, and psychiatric expenses that are directly related to prenatal, intrapartal, and postpartal periods;

(2) upon detection of a fetal heartbeat, eligibility to claim the fetus as a child for purposes of any child‑related federal or state income tax credits or deductions including, but not limited to, the child tax credit, the child and dependent care tax credit, and the earned income tax credit;

(3) automatic eligibility for and entitlement to participate in the state Nurse‑Family Partnership program through which a pregnant woman is paired with a specially trained nurse to provide home visits from early pregnancy through the child’s second birthday;

(4) automatic eligibility for and entitlement to any public assistance available pursuant to Chapter 5, Title 43 including, but not limited to, TANF and SNAP benefits, which may not be reduced or suspended before the child reaches eighteen years of age, and for the Special Supplemental Food Program for Pregnant and Breastfeeding Women, Infants, and Children (WIC);

(5) if the woman or fetus, or both, die during the gestational period or during labor and delivery, reimbursement of all associated funeral and burial expenses;

(6) if the woman becomes disabled as a result of carrying the fetus to term, any medical expenses associated with the woman’s disability including, but not limited to, costs associated with recommended surgery, treatment, physical or occupational therapy, or other medical expenses, as long as the woman is disabled;

(7) if the child is born with a congenital abnormality or disability, any medical expenses associated with the care of that abnormality or disability including, but not limited to, costs of hospitalization, therapeutic and ADA‑compliant equipment and accommodations, and long‑term care and treatment for the life of the child;

(8) costs associated with health, dental, and vision insurance for the child until the age of eighteen, including payment of any premiums, copays, deductibles, and other expenses;

(9) in the case of an unmarried woman, if the biological father of the child is unknown or unable to provide support, child support pursuant to Chapter 17, Title 63;

(10) if the pregnancy was caused by rape or incest, child support pursuant to Chapter 17, Title 63; and

(11) a fully funded South Carolina 529 College Savings Plan for the benefit of the child.

Section 44‑41‑530. (A)(1) To obtain compensation from the State pursuant to Section 44‑41‑510, a woman shall file an affidavit with the Department of Social Services indicating that but for a law prohibiting an abortion upon detection of a fetal heartbeat, she would have been legally allowed to choose to terminate her pregnancy pursuant to Section 44‑41‑20 and the South Carolina Pain‑Capable Unborn Child Protection Act, and that she would have chosen to terminate the pregnancy and not give birth to the child. The affidavit may be filed any time after a medical professional determines the existence of a fetal heartbeat that prevents the woman from terminating the pregnancy and before the birth of the child. The department shall process any claims for compensation pursuant to this article in a timely manner.

(2) Upon receipt of an affidavit filed by a woman pursuant to this subsection, the department shall assign a case manager to the woman in order to develop a case plan to ensure that the woman is receiving adequate prenatal care, and to determine any available state‑funded programs and services for which the woman and unborn child are eligible. The case manager must meet with the pregnant woman monthly in person to ensure that the pregnancy is continuing and that the requisite programs, services, and funding are accessible. As part of the prenatal visits, the case manager shall review all reports of the nurse assigned through the Nurse‑Family Partnership program to ensure that the woman is maintaining a nutritious, healthy lifestyle for development of the fetus. After the birth of the child, the case manager shall make a reasonable number of face‑to‑face visits, as determined by department regulation, to ensure that the requisite programs, services, and funding continue to be accessible for the woman and her child.

(B) The General Assembly shall establish a fund, separate and apart from the General Fund, to which is annually appropriated sufficient funds to award the compensation authorized and required pursuant to this article and to fund the operational costs incurred by the Department of Social Services in fulfilling the duties outlined in subsection (A).

(C) Any state agency, or division of a state agency, that determines eligibility for and award of any benefits addressed by this article including, but not limited to, SNAP, TANF, child support, WIC, and Nurse‑Family Partnership program benefits, shall cooperate with the Department of Social Services as the department processes the award of compensation in accordance with subsection (A).

Section 44‑41‑540. In addition to any compensation to which a woman is entitled from the State pursuant to this article:

(1) if the woman dies as a result of the pregnancy or child birth, the estate of the woman may pursue a civil action against the State under the South Carolina Tort Claims Act for compensable and punitive damages;

(2) if the woman suffers a miscarriage as a result of the pregnancy, the woman may pursue a civil action against the State under the South Carolina Tort Claims Act for compensable and punitive damages;

(3) in the case of an unmarried woman, if the biological father is known, by admission or determination of paternity through DNA testing at any time during the pregnancy or after birth, child support must be paid by the biological father to the woman and is retroactive to the date on which the fetal heartbeat was determined;

(4) in the case of an unmarried woman, if the biological father wilfully accrues more than five thousand dollars in child support arrearage, the biological father is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years. The court may suspend any portion of the prison sentence if the man consents to a voluntary vasectomy and to payment of restitution to the woman in the amount of the child support arrearages owed.”

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

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