**A** **BILL**

TO ENACT THE EQUAL PROTECTION FOR UNBORN BABIES ACT; TO AMEND TITLE 44 OF THE 1976 CODE, RELATING TO HEALTH, BY ADDING CHAPTER 139 TO PROHIBIT THE PERFORMANCE OR INDUCTION OF ABORTIONS IN THIS STATE, TO PROVIDE PENALTIES FOR VIOLATING THE PROHIBITION, TO DEFINE NECESSARY TERMS; AND TO PROVIDE THAT THE PROVISIONS CONTAINED IN THIS ACT ARE EFFECTIVE UPON AN ACTION TAKEN BY THE FEDERAL GOVERNMENT THAT HAS THE EFFECT OF ACKNOWLEDGING THAT THE STATE OF SOUTH CAROLINA HAS THE AUTHORITY TO REGULATE ABORTION TO THE EXTENT SET FORTH IN THIS ACT.

Whereas, the General Assembly acknowledges that all human beings are created equal, and endowed by their Creator with certain unalienable rights, the foremost of which is the right to life; and

Whereas, Article I, Section 3 of the Constitution of the State of South Carolina, 1895, guarantees that no person may be deprived of life, liberty, or property without due process of law or be denied the equal protection of the laws; and

Whereas, the General Assembly, in the exercise of its constitutional duties and powers, has a compelling interest to establish justice and provide equal protection of life for all babies, both born and unborn. Now, therefore,

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

SECTION 1. This act may be referred to and cited as the “Equal Protection for Unborn Babies Act.”

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

“Chapter 139

Prohibition of Abortions

Section 44-139-10. For the purposes of this chapter:

(1)(a) ‘Abortion’ means:

(i) the use, distribution, dispensing, or delivering of any instrument, medicine, drug, or any other substance or device intended to intentionally kill the unborn baby of a woman known or suspected to be pregnant; and

(ii) an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the death of the unborn baby of a woman known or suspected to be pregnant.

(b) The definition of ‘abortion’ does not include a medical procedure performed by a physician to:

(i) save the life or preserve the health of an unborn baby;

(ii) remove a dead unborn baby caused by a spontaneous abortion; or

(iii) treat an ectopic pregnancy.

(2) ‘Attempt to perform or induce an abortion’ means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this State in violation of this article.

(3) ‘Fertilization’ means the fusion of a human spermatozoon with a human ovum.

(3) ‘Physician’ means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in this State.

(4) ‘Unborn baby’ means an individual human being from fertilization until live birth.

(5) ‘Woman’ means a female human being whether or not she has reached the age of majority.

Section 44-139-20. It is unlawful for a person to participate in the performance or induction of, or participate in an attempt to perform or induce, an abortion in this State.

Section 44-139-30. A person convicted of participating in the performance or induction of an abortion must be punished in the same manner as provided in Section 16-3-20. Notwithstanding the provisions of this section, the prosecuting agency in determining the appropriate criminal charge, if any, against a woman upon whom an abortion is performed must consider the level of cooperation by that woman in the prosecution of any other person violating this chapter.

Section 44-139-40. A person convicted of participating in an attempt to perform or induce an abortion must be punished in the same manner as provided in Section 16-3-29. Notwithstanding the provisions of this section, the prosecuting agency in determining the appropriate criminal charge, if any, against a woman upon whom an abortion is performed must consider the level of cooperation by that woman in the prosecution of any other person violating this Chapter.

Section 44-139-50. (A) Nothing in this chapter shall be construed to prohibit a physician from performing a medical procedure or providing medical treatment designed or intended to prevent the death of a pregnant woman, including delivering the unborn baby prematurely if necessarily concomitant with the lifesaving intervention. However, a physician shall make reasonable medical efforts under the circumstances to preserve both the life of the mother and the life of the unborn baby in a manner consistent with accepted medical standards. Under such circumstances, the accidental or unintentional injury to or death of the unborn baby is not a violation of this chapter. A physician’s understanding of a risk of death for a pregnant woman must not be based on a diagnosis or claim of a mental or emotional condition of the pregnant woman or a diagnosis or claim that the pregnant woman will purposefully engage in conduct that she intends to result in her death. The provisions of this section must not be construed to authorize the intentional killing of an unborn baby.

(B) Nothing in this article shall be construed to prohibit contraception. As used in this subsection, ‘contraception’ is defined as the prevention of fertilization.”

SECTION 3. The provisions contained in SECTION 2 shall take effect upon the certification by the Attorney General to the Governor, the President of the Senate, and the Speaker of the House of Representatives that:

(1) the United States Supreme Court has overruled, in whole or in part, *Roe v. Wade*, 410 U.S. 113 (1973), that has the effect of acknowledging that the State of South Carolina has the authority to regulate abortion to the extent set forth in this act;

(2) an amendment to the United States Constitution has been adopted that has the effect of acknowledging that the State of South Carolina has the authority to regulate abortion to the extent set forth in this act; or

(3) the United States Congress has enacted a law that has the effect of acknowledging that the State of South Carolina has the authority to regulate abortion to the extent set forth in this act.

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, then 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 5. This act takes effect upon approval by the Governor.

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