COMMITTEE AMENDMENT ADOPTED AND AMENDED

September 7, 2022

**H. 5399**

Introduced by Reps. Lucas, G.M. Smith, McCravy, T. Moore, White, Ligon, Long, Gilliam, Chumley, Burns, Hardee, Bailey, J.E. Johnson, B. Newton, Hewitt, Bustos, Jordan, M.M. Smith, Davis, Hyde, Hixon, West, Hiott, Jones, Caskey, Fry, Thayer, Pope, Forrest, Oremus, Trantham, Bennett, McGarry, Felder, Allison, D.C. Moss, Brittain, Nutt, Haddon, Huggins, G.R. Smith, Magnuson, May, Wooten, B. Cox, Yow, Murphy, Crawford, Bryant and Robbins

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Read the first time September 6, 2022.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44‑41‑05 SO AS TO PROHIBIT ABORTIONS IN THE STATE OF SOUTH CAROLINA.

Amend Title To Conform

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

SECTION 1. This act may be cited and shall be known as the “South Carolina Human Life Protection Act”.

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

“Article 7

South Carolina Human Life Protection Act

Section 44‑41‑810. For purposes of this article:

(1) ‘Abortion’ means the use of an instrument, medicine, drug, or other substance or device with intent to terminate the pregnancy of a woman known to be pregnant for reasons other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn human being.

(2) ‘Conception’ means the fecundation of the ovum by the spermatozoa.

(3) ‘Contraceptive’ means a drug, device, or chemical administered before the time when a pregnancy could be determined through conventional medical testing and if the contraceptive drug, device, or chemical is sold, used, prescribed, or administered in accordance with manufacturer instructions.

(4) ‘Physician’ means a person licensed to practice medicine in this State.

(5) ‘Pregnancy’ means the condition of a woman carrying a fetus or embryo within her body as the result of conception.

(6) ‘Probable gestational age’ means the age of an unborn human being as calculated from the first day of the last menstrual cycle of a pregnant woman.

(7) ‘Rape’ has the same meaning as criminal sexual conduct, regardless of the degree of criminal sexual conduct.

(8) ‘Reasonable medical judgment’ means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(9) ‘Selective reduction’ means a procedure associated with assistive reproductive technologies that stops the development of one or more unborn human beings in utero.

(10) ‘Unborn human being’ each mean an individual organism of the species homo sapiens from conception until live birth.

Section 44‑41‑820. (A) It is unlawful to knowingly administer to, prescribe for, or distribute to any woman known to be pregnant any medicine, drug, or other substance with the specific intent of causing an abortion.

(B) It is unlawful to knowingly use or employ any instrument, device, means, or procedure upon a woman known to be pregnant with the specific intent of causing an abortion.

(C)(1) A person who violates subsection (A) or (B) is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned not more than two years, or both.

(2) Any person who uses force or the threat of force to intentionally injure or intimidate any person, for the purpose of coercing an abortion in violation of subsection (A) or (B) is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned not more than two years, or both.

(3) Notwithstanding the provisions of Section 44‑41‑830, any person who is not a physician licensed in this State, who prescribes any means of abortion as defined in this article, for the purpose of facilitating an abortion inside the borders of this State, violates Section 44‑41‑820, is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned not more than two years, or both.

Section 44‑41‑830. (A) It is not a violation of Section 44‑41‑820 for a physician to perform a medical procedure necessary in reasonable medical judgment to prevent:

(1) the death of the pregnant woman;

(2) a substantial risk of death for the pregnant woman because of a physical condition; or

(3) the substantial physical impairment of a major bodily function of the pregnant woman, not including psychological or emotional conditions.

However, the physician shall make reasonable medical efforts under the circumstances to preserve the life of the pregnant woman’s unborn human being, to the extent it does not substantially risk the death or physical impairment of a major bodily function of the pregnant woman, not including psychological or emotional conditions and in a manner consistent with reasonable medical practice. A medical procedure shall not be considered necessary if based on a claim or diagnosis that a woman will engage in conduct that she intends to result in her death or in a substantial physical impairment of a major bodily function.

(B) A physician who performs a medical procedure as described in subsection (A) shall certify, in a written document, that the medical procedure was necessary, by reasonable medical judgment, to prevent the death of the pregnant woman, to prevent a substantial risk of death for the pregnant woman because of a physical condition, or to prevent the substantial risk of a substantial physical impairment of a major bodily function of the pregnant woman, not including psychological or emotional conditions. In the document the physician shall specify the pregnant woman’s medical condition that the medical procedure was asserted to address; the medical rationale for the physician’s conclusion that the medical procedure was necessary to prevent the death of the pregnant woman, to prevent a substantial risk of death for the pregnant woman because of a physical condition, or to prevent the serious risk of a substantial impairment of a major bodily function of the pregnant woman; and that all reasonable efforts were made to save the unborn human being in the event it was living and in utero. This documentation must be included in the woman’s medical records within thirty days from the date of the procedure. The physician’s exercise of reasonable medical judgement for a permitted medical procedure is presumed within the applicable standard of care.

(C) It is presumed that the following medical conditions constitute a substantial risk of death or substantial risk of a substantial physical impairment of a major bodily function of a pregnant woman: molar pregnancy, partial molar pregnancy, blighted ovum, ectopic pregnancy, severe preeclampsia, HELLP syndrome, abruptio placentae, severe physical maternal trauma, uterine rupture, intrauterine fetal demise, and miscarriage.However, when an unborn human being is alive in utero, the physician must make all reasonable efforts to deliver and save the life of the unborn human being during the process of separating the unborn human being from the pregnant woman to the extent it does not adversely affect the life or physical health of the pregnant woman, and in a manner consistent with reasonable medical practice. The enumeration of the medical conditions in this subsection is not intended to exclude or abrogate other conditions that satisfy the exclusions of subsection (A) or prevent other procedures that are not included in the definition of abortion in Section 44‑41‑810.

(D) Medical treatment provided to the pregnant woman by a physician which results in the accidental or unintentional injury to or the death of her unborn human being is not a violation of Section 44‑41‑820.

(E) It is not a violation of Section 44‑41‑820, and nothing in this article may be construed to prohibit the use, sale, prescription, or administration of a contraceptive measure, drug, chemical, or device if the contraceptive measure, drug, chemical, or device is used, sold, prescribed, or administered in accordance with manufacturer instructions and is not used, sold, prescribed, or administered to cause or induce an abortion of a clinically diagnosable pregnancy.

(F) Nothing in this article shall be construed to prohibit assisted reproductive technology procedures including, but not limited to, in vitro fertilization accepted as standard of care by the reproductive medical community. No part of the assisted reproductive procedures considered the normal standard constitute an abortion procedure. However, the practice of selective reduction, shall constitute an abortion in violation of Section 44-41-820 except, when necessary, in reasonable medical judgment, to prevent a substantial risk of death for another unborn human being, or the substantial and irreversible physical impairment of a major bodily function of another unborn human being.

(G)(1) It is not a violation of Section 44‑41‑820, and nothing in this article may be construed to prohibit the use, sale, prescription, or insertion of an intrauterine device if the intrauterine device is used, sold, inserted, or prescribed within the reasonable standard of care by a physician and is not used, sold, prescribed, or administered to cause or induce an abortion of a clinically diagnosable pregnancy.

(2) It is not a violation of Section 44-41-820, and nothing in this article may be construed to prohibit the use, sale, prescription, or administration of an emergency contraceptive drug designed to be taken within five days of unprotected sex and used according to the manufacturer’s instructions. For purposes of this item, an emergency contraceptive drug does not include mifepristone or misoprostol.

(H) It is not a violation of Section 44-41-820 if an abortion is performed or induced on a pregnant woman if in reasonable medical judgment, the unborn human being has a profound and irremediable congenital or chromosomal anomaly that, with or without the provision of life-preserving treatment, would be incompatible with sustaining life after birth.

Section 44‑41‑850. (A) In addition to whatever remedies are available under the common or statutory law of this State, failure to comply with the requirements of this article shall provide the basis for a civil action as described in this section.

(B) Any pregnant woman upon whom an abortion has been performed, induced, or coerced in violation of this article may maintain an action against the person or persons who violated this article for actual and punitive damages. In addition to all other damages, and separate and distinct from all other damages, each plaintiff is entitled to statutory damages of ten thousand dollars for each violation of this article to be imposed on each defendant of each such violation.

(C) A separate and distinct cause of action for injunctive relief against any person or persons who have violated this article may be maintained by:

(1) the woman upon whom an abortion was performed or induced in violation of this article;

(2) the parent or guardian of the pregnant woman if the woman had not attained the age of eighteen years at the time of the abortion or has died as a result of the abortion;

(3) a solicitor or prosecuting attorney with proper jurisdiction; or

(4) the Attorney General.

The injunction prevents the person or persons who violated the article from further violation of this article in this State.

(D) If judgment is rendered in favor of the plaintiff in an action described in this section, the court also shall render judgment for reasonable costs and attorney’s fees in favor of the plaintiff against the defendant.

(E) No damages, costs, or attorney’s fee may be assessed against the woman upon whom an abortion was performed or induced.

(F) In no case may civil damages be awarded to any plaintiff if the pregnancy resulted from the plaintiff’s criminal conduct.

(G) A civil cause of action under this section must be brought within three years from the date of the abortion and is not subject to the limitations and requirements of Chapter 79, Title 15.

Section 44‑41‑850. A pregnant woman on whom an abortion is performed or induced in violation of this article may not be criminally prosecuted for violating any of the provisions of this article or for attempting to commit, conspiring to commit, or acting complicitly in committing a violation of any of the provisions of the article and is not subject to a civil or criminal penalty based on the abortion being performed or induced in violation of any of the provisions of this article.

Section 44‑41‑860. In addition to any other penalties imposed by law, a physician or any other professionally licensed person who intentionally, knowingly, or recklessly violates the prohibition in Section 44‑41‑820 commits an act of unprofessional conduct and the person’s license to practice in the State of South Carolina immediately shall be revoked by the State Board of Medical Examiners for South Carolina, after due process according to the rules and procedures of the State Board of Medical Examiners. A complaint may be originated by any person or sua sponte. In addition, the State Board of Medical Examiners may assess costs of the investigation, fines, and other disciplinary actions it may deem appropriate.

Section 44‑41‑870. In every civil or criminal proceeding or action brought under this article, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or induced shall be preserved from public disclosure if the woman does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that the woman’s anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel, and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or induced, anyone, other than a public official, who brings an action pursuant to Section 44‑41‑820 shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

Section 44‑41‑880. If some or all of the provisions of this article are ever temporarily or permanently restrained or enjoined by judicial order, all other provisions of South Carolina law regulating or restricting abortion must be enforced as though such restrained or enjoined provisions had not been adopted; provided, however, that whenever such temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.”

SECTION 3. Article 3, Chapter 17, Title 63 of the 1976 Code is amended by adding:

“Section 63-17-325. A biological father of a child has a duty to pay the mother of the child the following financial obligations beginning with the date of conception:

(1) child support payment obligations in an amount determined pursuant to Section 63-17-470;

(2) fifty percent of the mother’s pregnancy expenses.

(a) Any portion of a mother’s pregnancy expenses paid by the mother or the biological father reduces that parent’s fifty percent obligation regardless of when the mother or biological father pays the pregnancy expenses.

(b) Pregnancy expenses must include fifty percent of the mother’s insurance premiums that are not paid by her employer or governmental program beginning from the date of conception and before the pregnancy ends, unless otherwise ordered by the court.

(c) Item (2) does not apply if a court apportions pregnancy expenses as part of an award of child support in item (1).

(B) In the case of a mother who becomes pregnant as a result of rape or incest, the biological father, in addition to the duties imposed by subsection (A), also is responsible for the full cost of any expenses incurred by the mother for mental health counseling arising out of the rape or incest.

(C) The duties imposed by this section accrue at the time of conception and must be applied retroactively when paternity is contested and medical evidence establishes the paternity of the child. Interest accrues on any retroactive obligations beginning with conception until either the obligations are brought current or paid in full whichever happens first. The rate of interest must be calculated based on the applicable interest rate for money decrees and judgments in this State established annually by the South Carolina Supreme Court.”

SECTION 4. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

“Section 12-6-3810. There is allowed as a deduction in computing South Carolina taxable income of an individual, a South Carolina unborn human being dependent exemption equal to three thousand dollars for each eligible unborn dependent of the taxpayer, who is unborn at some point during the income tax year and has reached a probable gestational age of at least six weeks.”

SECTION 5. A. The Public Employee Benefit Authority and the State Health Plan shall cover prescribed contraceptives for dependents under the same terms and conditions that the Plan provides contraceptive coverage for employees and spouses. The State Health Plan shall not apply patient cost sharing provisions to covered contraceptives.

B. Article 1, Chapter 71, Title 38 of the 1976 Code is amended by adding:

“Section 38-71-146. All individual and group health insurance and health maintenance organization policies in this State shall include coverage for contraceptives. For purposes of this Section, ‘contraceptive’ means any drug, device, or medication to prevent pregnancy. A contraceptive may prevent ovulation, fertilization, or implantation in the uterus. A contraceptive does not include any drug, device, or medication used with the intent of terminating a pregnancy of a woman known to be pregnant.”

SECTION 6. The President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives have an unconditional right to intervene on behalf of their respective bodies in a state court action and may provide evidence or argument, written or oral, if a party to that court action challenges the constitutionality of this act. In a federal court action that challenges the constitutionality of this act the Legislature may seek to intervene, to file an amicus brief, or to present arguments in accordance with federal rules of procedure. Intervention by the Legislature pursuant to this provision does not limit the duty of the Attorney General to appear and prosecute legal actions or defend state agencies, officers or employees as otherwise provided. In any action in which the Legislature intervenes or participates, the Senate and the House of Representatives shall function independently from each other in the representation of their respective clients.

SECTION 7. 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 8. This act takes effect upon approval by the Governor.

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