



**SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE**  
**STATEMENT OF ESTIMATED FISCAL IMPACT**  
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*This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.*

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<b>Bill Number:</b>	S. 0474	Amended by the House of Representatives on May 16, 2023
<b>Author:</b>	Grooms	
<b>Subject:</b>	Abortion – Fetal Heartbeat	
<b>Requestor:</b>	House Judiciary	
<b>RFA Analyst(s):</b>	Boggs, Gardner, Tipton, and Miller	
<b>Impact Date:</b>	May 22, 2023	

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### **Fiscal Impact Summary**

This bill as amended specifies that no person may perform an abortion if a fetal heartbeat has been detected. An abortion may be performed after the detection of a fetal heartbeat in a medical emergency to save the life of the mother or to prevent serious risk of substantial and irrevocable harm of a major body function of the mother, not including psychological or emotional conditions. The physician performing the abortion in this situation must take reasonable steps to preserve the life of the unborn child. Additionally, an abortion is allowed in the case of rape or incest if the probable gestational age of the unborn child is no more than twelve weeks or if there is a fatal fetal anomaly present. A person who violates these provisions is guilty of a felony, punishable by a fine, imprisonment, or both. This bill also allows a pregnant woman upon whom an abortion was performed in violation of these provisions, the parent or guardian of the pregnant woman if the woman is under the age of eighteen or dies as a result of the abortion, a solicitor or prosecuting attorney with proper jurisdiction, or the Attorney General to bring a civil action against a person who violates the provisions of this bill. The plaintiff may be awarded statutory damages of \$10,000 for each violation and may also be awarded reasonable costs and attorney's fees. Under no circumstance may civil damages be awarded to a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct. This bill further specifies that the pregnant woman on whom an abortion is performed is not subject to criminal or civil liability.

This bill also specifies that no state funds appropriated by the state for employer contributions to the State Health Plan may be expended to reimburse the expense of an abortion except as provided in the case of rape or incest, to preserve the life or health of the mother, or if a fatal fetal anomaly exists. The State Health Plan must, however, provide coverage of prescribed contraceptives for dependents. Additionally, all individual and group health insurance and health maintenance organization policies within this state must include coverage for contraceptives.

Further, the biological father of the unborn child has a duty to pay child support, 50 percent of the mother's pregnancy expenses, and other financial responsibilities as outlined in the bill. If the pregnancy is a result of rape or incest, in addition to the other financial responsibilities, the father has the duty to pay the full cost of mental health counseling for the mother that arises due to the rape or incest.

The bill will have no fiscal impact on the Department of Health and Human Services (DHHS); the University of South Carolina School of Medicine; Judicial; the Probation, Parole, and Pardon Services; the Commission on Indigent Defense; the Commission on Prosecution Coordination; or the Office of the Attorney General because these agencies will manage any costs related to implementation of the bill within their existing appropriations.

The bill requires the Department of Health and Environmental Control (DHEC) to update its standard form for reporting abortions. This form is maintained by a third-party vendor requiring a one-time cost to update the proprietary system to conform to the bill. DHEC reports that the agency will request a General Fund appropriation increase of approximately \$30,000 to fund the expenses.

The bill creates new felony offenses punishable by up to two years of imprisonment, a fine of \$10,000, or both. The Department of Corrections (SCDC) reports the annual average cost to house an inmate in FY 2021-22 was \$32,247, of which \$30,044 was state funded, and the marginal cost per inmate was \$4,836, of which \$4,830 was state funded. The impact is dependent upon the number of convictions under this new felony and the duration of any imprisonment; however, any increase will likely be managed within existing appropriations.

This bill may increase expenditures for the Medical University of South Carolina (MUSC) by up to \$542,500 beginning in FY 2023-24 for additional medical compliance and legal personnel and services and out-of-state training operations. The institution anticipates needing an additional 0.3 FTEs for General Counsel with annual salary and fringe of \$25,000, 0.2 FTEs for a Maternal Fetal Medicine MD with annual salary and fringe of \$87,500, and 0.1 FTEs for an Ethics Physician with annual salary and fringe of \$25,000. In addition, MUSC reported that ancillary or external legal expenses related to the review and defense of its physicians will total up to \$130,000 annually. Costs for the out-of-state training are expected to total \$275,000. The institution indicated that additional General Fund appropriations will be requested to cover these expenses.

This bill will have no expenditure impact on the Public Employee Benefit Authority (PEBA) or the State Health Plan (SHP) beyond the amount requested in the FY 2023-24 budget. PEBA reported that the annual expense to the SHP for coverage of contraceptives for covered dependents, without patient cost sharing, is approximately \$3,153,000. For FY 2023-24, PEBA has included the cost for the routine coverage of contraceptives for dependents of active or retired employees without patient cost sharing. Additionally, if this bill takes effect prior to July 1, 2023, PEBA anticipates being able to manage the cost within existing appropriations.

This bill will have no expenditure impact on the Department of Insurance (DOI), as it does not operationally change the agency's responsibilities. DOI further reported that contraceptive coverage is considered an essential health benefit under the Affordable Care Act (ACA) of 2010, and coverage of contraceptives by private insurers became federally mandated in 2017.

DHEC currently licenses three abortion clinics in the state, which generated \$1,625 in revenue in FY 2021-22. It is undetermined whether the bill will affect this revenue.

The bill requires the Board of Medical Examiners under the Department of Labor, Licensing and Regulation (LLR) to revoke the license of a physician who violates the provisions of the bill. The agency currently has a review process in place for complaints and may assess any fines or fees the agency deems necessary. However, the number of complaints that will be received from this bill is unknown, and any increase in fines and fees to offset the potential increase in cost is also unknown. Additionally, pursuant to Proviso 81.3 of the FY 2022-23 Appropriations Act, LLR is required to remit annually to the General Fund an amount equal to 10 percent of expenditures of the Division of Professional and Occupational Licensing. Therefore, General Fund revenue may increase by an undetermined amount.

Further, this bill will have no impact on insurance premiums tax revenue as private insurers are currently covering contraceptives, pursuant to a 2017 federal mandate.

Additionally, RFA anticipates this bill may result in an undetermined increase to General Fund, Other Funds, and local revenue due to the potential increase in fines and fees collected in court related to the newly created felony and civil action.

## **Explanation of Fiscal Impact**

### **Amended by the House of Representatives on May 16, 2023**

#### **State Expenditure**

This bill as amended specifies that no person may perform an abortion if a fetal heartbeat has been detected. An abortion may be performed after the detection of a fetal heartbeat in a medical emergency to save the life of the mother or to prevent serious risk of substantial and irrevocable harm of a major body function of the mother, not including psychological or emotional conditions. The physician performing the abortion in this situation must take reasonable steps to preserve the life of the unborn child. Additionally, an abortion is allowed in the case of rape or incest if the probable gestational age of the unborn child is no more than twelve weeks or if there is a fatal fetal anomaly present. A person who violates these provisions is guilty of a felony, punishable by a fine, imprisonment, or both. This bill also allows a pregnant woman upon whom an abortion was performed in violation of these provisions, the parent or guardian of the pregnant woman if the woman is under the age of eighteen or dies as a result of the abortion, a solicitor or prosecuting attorney with proper jurisdiction, or the Attorney General to bring a civil action against a person who violates the provisions of this bill. The plaintiff may be awarded statutory damages of \$10,000 for each violation and may also be awarded reasonable costs and attorney's fees. Under no circumstance may civil damages be awarded to a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct. This bill further specifies that the pregnant woman on whom an abortion is performed is not subject to criminal or civil liability.

This bill also specifies that no state funds appropriated by the state for employer contributions to the State Health Plan may be expended to reimburse the expense of an abortion except as provided in the case of rape or incest, to preserve the life or health of the mother, or if a fatal fetal anomaly exists. The State Health Plan must, however, provide coverage of prescribed

contraceptives for dependents. Additionally, all individual and group health insurance and health maintenance organization policies within this state must include coverage for contraceptives.

Further, the biological father of the unborn child has a duty to pay child support, 50 percent of the mother's pregnancy expenses, and other financial responsibilities as outlined in the bill. If the pregnancy is a result of rape or incest, in addition to the other financial responsibilities, the father has the duty to pay the full cost of mental health counseling for the mother that arises due to the rape or incest.

**Department of Health and Human Services.** DHHS operates South Carolina Healthy Connections (Medicaid), which pays medical bills for eligible low-income families and individuals. This includes bills for Family Planning services. Currently, the federal Hyde Amendment allows the use of federal funds to pay for abortion-related services in cases of rape, incest, and danger to the life of the mother. While this bill includes exceptions related to the life of the mother, rape, and incest, the exceptions for rape and incest are only for when the probable gestational age is not more than twelve weeks. Therefore, abortions in cases of rape and incest that occur after the probable gestational age is more than twelve weeks would be illegal in South Carolina and not coverable by DHHS. This change is anticipated to have a minimal fiscal impact to DHHS. DHHS anticipates it can comply with this bill and remain compliant with current Medicaid regulations using existing appropriations.

**Department of Health and Environmental Control.** DHEC is responsible for the licensing and regulation of abortion clinics in the state. The bill requires DHEC to update its standard form for reporting abortions. This form is maintained by a third-party vendor requiring a one-time cost to update the proprietary system to conform to the bill. DHEC reports that the agency will request a General Fund appropriation increase of approximately \$30,000 to fund the expenses.

**Department of Labor, Licensing, and Regulation.** The bill requires the Board of Medical Examiners under LLR to revoke the license of a physician who violates the provisions of the bill. This bill allows LLR to assess costs of the investigation, fines, and other disciplinary actions. This bill may increase the number of licenses revoked by the Board of Medical Examiners; however, LLR anticipates that any additional costs can be managed within existing appropriations or offset by assessments.

**Office of the Attorney General.** This bill enables the Attorney General to file civil or criminal charges against persons who violate the provisions of the bill. The Attorney General may also intervene in any case in which the constitutionality or enforceability of the bill is challenged. The Attorney General's Office indicates that the bill will have no General Fund expenditure impact since any costs associated with actions the office may take will be managed within normal operating expenses.

**Judicial.** This bill changes the circumstances under which abortion is unlawful to all cases except in the case of rape or incest when the probable gestational age is not more than twelve weeks, when a fatal fetal anomaly exists, or to prevent the death or irreversible impairment of a major bodily function of the pregnant woman. The bill creates a felony offense for violations of

the provisions prohibiting abortion. Additionally, the bill creates a new civil cause of action. Further, the bill places additional financial responsibilities on the biological father that may impact family court cases. Judicial anticipates enactment of the bill will increase caseloads in general session, common pleas, and family courts but believes resultant costs can be managed using existing General Fund resources.

**Commission on Prosecution Coordination.** This bill creates a new cause of action, which may increase the number of cases filed by circuit solicitors. The commission anticipates being able to manage any additional costs associated with enactment of the bill using existing resources. Therefore, this bill will have no expenditure impact for the commission.

**Commission on Indigent Defense.** This bill creates a new cause of action, which may increase the number of cases defended. The commission indicates it can manage any additional costs associated with enactment of the bill using existing General Fund resources.

**Probation, Parole & Pardon Services.** The implementation of this bill will have no expenditure impact on the department as the department expects to manage any increase in caseloads within its current resources.

**Department of Corrections.** The bill may increase instances of imprisonment for the new felony offense for violations of the provisions of this bill. This felony is punishable by up to two years of imprisonment, a fine of \$10,000, or both. The Department of Corrections reports the annual total cost per inmate in FY 2021-22 was \$32,247, of which \$30,044 was state funded, and the marginal cost per inmate was \$4,836, of which \$4,830 was state funded. The impact is dependent upon the number of convictions under this new felony and the duration of any imprisonment; however, any increase will likely be managed within existing appropriations.

**Medical University of South Carolina.** MUSC educates and employs physicians in the state who will be required to adhere to the requirements of this bill, and the university indicated additional medical compliance and legal personnel may be required. The institution anticipates needing an additional 0.3 FTEs for General Counsel at an annual cost of \$25,000, 0.2 FTEs for a Maternal Fetal Medicine MD with annual salary and fringe of \$87,500, and 0.1 FTEs for an Ethics Physician with annual salary and fringe of \$25,000. In addition, MUSC reported that ancillary or external legal expenses related to the review and defense of its physicians will total up to \$130,000 annually. Further, MUSC indicated that this bill will require some physician training activities to take place out-of-state. The institution reported that fees for out-of-state training will total \$200,000 annually, in addition to \$50,000 in annual transportation and housing costs and \$25,000 in annual training equipment costs. In total, this bill will increase expenses for MUSC by up to \$542,500 per year beginning in FY 2023-24. The institution indicated that additional General Fund appropriations will be requested to cover these expenses.

**Public Employee Benefit Authority.** This bill requires PEBA to provide coverage of contraceptives to dependents of active and retired state employees under the SHP without applying patient cost sharing provisions. According to PEBA, the annual expense to the SHP of routine birth control coverage for members covered as children without cost sharing is

approximately \$3,153,000. In prior years, the SHP covered dependents' contraceptives based on medical needs and with patient cost sharing. However, PEBA has included the cost of routine coverage of dependent contraceptives, with no patient cost sharing, in its budget request for FY 2023-24. Additionally, if this bill takes effect prior to July 1, 2023, PEBA anticipates being able to manage the cost within existing appropriations.

**University of South Carolina.** The University of South Carolina School of Medicine educates and employs physicians in the state who will be required to adhere to the requirements of this bill. The institution indicated that the provisions of this bill can be managed within the university's existing appropriations and will have no fiscal impact.

**Department of Insurance.** This bill requires coverage of contraceptives by all individual and group health insurance and health maintenance organization policies in the state, regulated by DOI. The agency indicated that this bill does operationally change the agency's responsibilities and will have no expenditure impact. DOI further reported that contraceptive coverage is considered an essential health benefit under the ACA and coverage of contraceptives by private insurers is federally mandated. Therefore, this bill is not anticipated to impact private insurance premium rates.

#### **State Revenue**

Based on a previous response, DHEC licenses three abortion clinics in the state, which generated \$1,625 in revenue in FY 2021-22. It is undetermined whether the bill will affect this revenue.

The bill may increase complaints that are filed with the Board of Medical Examiners, which falls under LLR's Division of Professional and Occupational Licensing. Pursuant to Proviso 81.3 of the FY 2022-23 Appropriations Act, LLR is required to remit annually to the General Fund an amount equal to 10 percent of expenditures of the Division of Professional and Occupational Licensing. Because expenditures of the Board of Medical Examiners are undetermined, the increase in General Fund revenue is also undetermined. This bill allows LLR to assess costs of the investigation, fines, and other disciplinary actions. These assessments are distributed to Other Funds. Therefore, RFA anticipates this bill may result in an undetermined increase to LLR's Other Funds.

The bill requires coverage of prescription contraceptives for all individual and group health insurance and health maintenance organization policies in the state. DOI indicated that this requirement was federally mandated in 2017, and that any resulting premium increases have likely already been realized. Therefore, this bill will have no impact on insurance premiums tax revenue.

Additionally, this bill creates a new felony with a potential fine of up to \$10,000. This may result in an increase in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, RFA anticipates this bill may result in an undetermined increase to General Fund revenue and Other Funds revenue due to the potential increase in fines and fees collections in court.

**Local Expenditure**

N/A

**Local Revenue**

This bill creates a new felony with a potential fine of up to \$10,000. This may result in an increase in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, RFA anticipates this bill may result in an undetermined increase to local revenue due to the potential increase in fines and fees collections in court.

**Amended by House Judiciary on May 10, 2023****State Expenditure**

This bill as amended specifies that no person may perform an abortion if a fetal heartbeat has been detected. An abortion may be performed after the detection of a fetal heartbeat in a medical emergency to save the life of the mother or to prevent serious risk of substantial and irrevocable harm of a major body function of the mother, not including psychological or emotional conditions. The physician performing the abortion in this situation must take reasonable steps to preserve the life of the unborn child. Additionally, an abortion is allowed in the case rape or incest if the probable gestational age of the unborn child is no more than twelve weeks or if there is a fatal fetal anomaly present. A person who violates this is guilty of a felony, punishable by a fine, imprisonment, or both. This bill also allows civil actions to be brought for violations of this bill.

This bill also specifies that no state funds appropriated by the state for employer contributions to the State Health Plan may be expended to reimburse the expense of an abortion except as provided in the case of rape or incest, to preserve the life or health of the mother, or if a fatal fetal anomaly exists. The State Health Plan must, however, provide coverage of prescribed contraceptives for dependents. Additionally, all individual and group health insurance and health maintenance organization policies within this state must include coverage for contraceptives.

Further, the biological father of the unborn child has a duty to pay child support, 50 percent of the mother's pregnancy expenses and other financial responsibilities as outlined in the bill. If the pregnancy is a result of rape or incest, in addition to the other financial responsibilities, the father has the duty to pay the full cost of mental health counseling for the mother that arises due to the rape or incest.

The Revenue and Fiscal Affairs Office is working with state agencies to provide a fiscal impact statement on the expenditure and revenue impacts of this bill as amended. Therefore, this fiscal impact statement is pending.

**State Revenue**

N/A

**Local Expenditure**

N/A

## **Local Revenue**

N/A

## **Updated for Additional Agency Response on May 9, 2023**

**Amended by the Senate on February 8, 2023**

### **State Expenditure**

This bill prohibits abortions after a fetal heartbeat has been detected, except in the case of rape or incest or if the mother is a minor when the probable gestational age is not more than twelve weeks, when a fatal fetal anomaly exists, or to prevent the death or irreversible impairment of a major bodily function of the pregnant woman.

Any physician who performs an abortion for the life or health of the mother must declare in a written document that the medical procedure was necessary. In the case of rape or incest, the abortion must be performed when the probable gestational age is not more than twelve weeks, and the physician must report within twenty-four hours of the abortion the allegation of rape or incest to the sheriff in the county in which the abortion was performed. In the case of a fatal fetal anomaly, the anomaly must be notated in the pregnant woman's medical records with the presence and nature of the fatal fetal anomaly and the medical rationale that with or without life-preserving treatment life after birth would be unsustainable. These notations must be maintained for at least seven years. Further, a minor must have parental consent or approval from a court before a physician can perform an abortion.

This bill also creates a new felony for any person who violates the provisions of the bill that is punishable by a fine of \$10,000, imprisonment for not more than two years, or both. Further this bill states that any abortion performed in this State must be reported by the licensed facility on the standard form and reported to DHEC within seven days. Any facility that fails to submit a report by the end of thirty days following the due date must be subject to a late fee of \$1,000 for each additional thirty-day period or portion of a thirty-day period the report is overdue. Any facility that has not submitted a report, or has submitted only an incomplete report, more than six months following the due date, may be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to civil contempt. Intentional or reckless falsification of any report required under this section is a misdemeanor punishable by not more than one year in prison.

**Department of Health and Human Services.** DHHS operates South Carolina Healthy Connections (Medicaid), which pays medical bills for eligible low-income families and individuals. This includes bills for Family Planning services. Currently, the federal Hyde Amendment allows the use of federal funds to pay for abortion-related services in cases of rape, incest, and danger to the life of the mother. While this bill includes exceptions related to the life of the mother, rape, and incest, the exceptions for rape and incest are only for when the probable gestational age is not more than twelve weeks. Therefore, abortions in cases of rape and incest that occur after the probable gestational age is more than twelve weeks would be illegal in South Carolina and not coverable by DHHS. This change is anticipated to have a minimal fiscal impact



to DHHS. DHHS anticipates it can comply with this bill and remain compliant with current Medicaid regulations using assisting appropriations.

**Department of Health and Environmental Control.** DHEC is responsible for the licensing and regulation of abortion clinics in the state. The bill requires DHEC to update its standard form for reporting abortions. This form is maintained by a third-party vendor requiring a one-time cost to update the proprietary system to conform to the bill. DHEC reports that the agency will request a General Fund appropriation increase of approximately \$30,000 to fund the expenses.

*This section of the fiscal impact statement has been updated to include a response from DHEC.*

**Department of Labor, Licensing, and Regulation.** LLR provides licenses to physicians in the state through the Board of Medical Examiners. This bill does not modify LLR's oversight or responsibilities of licensing physicians. Therefore, this bill will have no expenditure impact for LLR.

**Office of the Attorney General.** This bill enables the Attorney General to file criminal charges against persons who violate the provisions of the bill. The Attorney General's Office indicates that the bill will have no General Fund expenditure impact since any costs associated with actions the office may take will be managed within normal operating expenses.

**Judicial.** This bill states the circumstances under which abortion is unlawful to all cases except in the case of rape or incest when the probable gestational age is not more than twelve weeks, when a fatal fetal anomaly exists, to prevent the death or irreversible impairment of a major bodily function of the pregnant woman or for a minor with consent from parents or the court. The bill creates a felony offense for violations of the provisions prohibiting abortion. Judicial anticipates enactment of the bill will increase caseloads in general session and common pleas courts but believes resultant costs can be managed using existing General Fund resources.

**Commission on Prosecution Coordination.** This bill creates a new cause of action, which may increase the number of cases to be filed by circuit solicitors. The commission anticipates being able to manage any additional costs associated with enactment of the bill using existing resources. Therefore, this bill will have no expenditure impact for the commission.

**Commission on Indigent Defense.** This bill creates a new cause of action, which may increase the number of cases to be filed by circuit solicitors. The commission indicates it can manage any additional costs associated with enactment of the bill using existing General Fund resources.

**Probation, Parole & Pardon Services.** The implementation of this bill will have no expenditure impact on the department as the department expects to manage any increase in caseloads within its current resources.

**Department of Corrections.** The bill may add instances of a felony offense for violations of the provisions of this bill. This felony is punishable by up to two years of imprisonment, a fine of \$10,000, or both. The Department of Corrections reports the annual total cost per inmate in FY

2021-22 was \$32,247, of which \$30,044 was state funded, and the marginal cost per inmate was \$4,836, of which \$4,830 was state funded. If there is a substantial increase in the inmate population due to this bill, SCDC will request a General Fund appropriation increase. However, the amount of the request, if a request is necessary, is dependent upon the potential increase of convictions under the felony and the duration of any imprisonment.

**Medical University of South Carolina.** MUSC educates and employs physicians in the state who will be required to adhere to the requirements of this bill, and the university indicates additional medical compliance and legal personnel may be required. The institution anticipates needing an additional 0.3 FTEs for General Counsel at an annual cost of \$25,000, 0.2 FTEs for a Maternal Fetal Medicine MD with annual salary and fringe of \$87,500, and 0.1 FTEs for an Ethics Physician with annual salary and fringe of \$25,000. In addition, MUSC reports that ancillary or external legal expenses related to the review and defense of its physicians will total up to \$130,000 annually. Finally, MUSC indicates that this bill will require some physician training activities to take place out-of-state. The institution reports that fees for out-of-state training will total \$200,000 annually, in addition to \$50,000 in annual transportation and housing costs and \$25,000 in annual training equipment costs. In total, this bill will increase expenses for MUSC by up to \$542,500 per year beginning in FY 2023-24. The institution indicates that additional General Fund appropriations will be requested to cover these expenses.

**Public Employee Benefit Authority.** PEBA administers the State's employee insurance programs for South Carolina's public workforce. The agency reports that the bill will have no fiscal impact on the State Health Plan, as the bill does not modify the services covered by the plan. Additionally, because the bill does not operationally affect PEBA, it will have no impact on the agency.

**University of South Carolina.** USC School of Medicine educates and employs physicians in the state who will be required to adhere to the requirements of this bill. The institution indicates that the provisions of this bill can be managed within the university's existing appropriations and will have no fiscal impact.

### **State Revenue**

Based on a previous response, DHEC licenses three abortion clinics in the state, which generated \$1,625 in revenue in FY 2021-22. It is undetermined whether the bill will affect this revenue.

Additionally, this bill creates a new felony with a potential fine of up to \$10,000. This may result in an increase in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, RFA anticipates this bill may result in an undetermined increase to General Fund revenue and Other Funds revenue due to the potential increase in fines and fees collections in court.

Further, this bill creates a potential fine of up to \$50,000 for an entity with ownership of the pregnant woman's medical records that fails to keep these records for at least seven years. The revenue impact of this subsection is undetermined as there are no data on the number of possible violations.

## **Local Expenditure**

N/A

## **Local Revenue**

This bill creates a new felony with a potential fine of up to \$10,000. This may result in an increase in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, RFA anticipates this bill may result in an undetermined increase to local revenue due to the potential increase in fines and fees collections in court.

## **Amended by the Senate on February 8, 2023**

### **State Expenditure**

This bill prohibits abortions after a fetal heartbeat has been detected, except in the case of rape or incest or if the mother is a minor when the probable gestational age is not more than twelve weeks, when a fatal fetal anomaly exists, or to prevent the death or irreversible impairment of a major bodily function of the pregnant woman.

Any physician who performs an abortion for the life or health of the mother must declare in a written document that the medical procedure was necessary. In the case of rape or incest, the abortion must be performed when the probable gestational age is not more than twelve weeks, and the physician must report within twenty-four hours of the abortion the allegation of rape or incest to the sheriff in the county in which the abortion was performed. In the case of a fatal fetal anomaly, the anomaly must be notated in the pregnant woman's medical records with the presence and nature of the fatal fetal anomaly and the medical rationale that with or without life-preserving treatment life after birth would be unsustainable. These notations must be maintained for at least seven years. Further, a minor must have parental consent or approval from a court before a physician can perform an abortion.

This bill also creates a new felony for any person who violates the provisions of the bill that is punishable by a fine of \$10,000, imprisonment for not more than two years, or both. Further this bill states that any abortion performed in this State must be reported by the licensed facility on the standard form and reported to DHEC within seven days. Any facility that fails to submit a report by the end of thirty days following the due date must be subject to a late fee of \$1,000 for each additional thirty-day period or portion of a thirty-day period the report is overdue. Any facility that has not submitted a report, or has submitted only an incomplete report, more than six months following the due date, may be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to civil contempt. Intentional or reckless falsification of any report required under this section is a misdemeanor punishable by not more than one year in prison.

**Department of Health and Human Services.** DHHS operates South Carolina Healthy Connections (Medicaid), which pays medical bills for eligible low-income families and individuals. This includes bills for Family Planning services. Currently, the federal Hyde Amendment allows the use of federal funds to pay for abortion-related services in cases of rape,

incest, and danger to the life of the mother. While this bill includes exceptions related to the life of the mother, rape, and incest, the exceptions for rape and incest are only for when the probable gestational age is not more than twelve weeks. Therefore, abortions in cases of rape and incest that occur after the probable gestational age is more than twelve weeks would be illegal in South Carolina and not coverable by DHHS. This change is anticipated to have a minimal fiscal impact to DHHS. DHHS anticipates it can comply with this bill and remain compliant with current Medicaid regulations using assisting appropriations.

**Department of Health and Environmental Control.** DHEC is responsible for the licensing and regulation of abortion clinics in the state. Based on previous responses, RFA anticipates that any expenditures related to the enactment of the bill will be managed within its current appropriations. This fiscal impact statement will be updated if DHEC provides information indicating otherwise.

**Department of Labor, Licensing, and Regulation.** LLR provides licenses to physicians in the state through the Board of Medical Examiners. This bill does not modify LLR's oversight or responsibilities of licensing physicians. Therefore, this bill will have no expenditure impact for LLR.

**Office of the Attorney General.** This bill enables the Attorney General to file criminal charges against persons who violate the provisions of the bill. The Attorney General's Office indicates that the bill will have no General Fund expenditure impact since any costs associated with actions the office may take will be managed within normal operating expenses.

**Judicial.** This bill states the circumstances under which abortion is unlawful to all cases except in the case of rape or incest when the probable gestational age is not more than twelve weeks, when a fatal fetal anomaly exists, to prevent the death or irreversible impairment of a major bodily function of the pregnant woman or for a minor with consent from parents or the court. The bill creates a felony offense for violations of the provisions prohibiting abortion. Judicial anticipates enactment of the bill will increase caseloads in general session and common pleas courts but believes resultant costs can be managed using existing General Fund resources.

**Commission on Prosecution Coordination.** This bill creates a new cause of action, which may increase the number of cases to be filed by circuit solicitors. The commission anticipates being able to manage any additional costs associated with enactment of the bill using existing resources. Therefore, this bill will have no expenditure impact for the commission.

**Commission on Indigent Defense.** This bill creates a new cause of action, which may increase the number of cases to be filed by circuit solicitors. The commission indicates it can manage any additional costs associated with enactment of the bill using existing General Fund resources.

**Probation, Parole & Pardon Services.** The implementation of this bill will have no expenditure impact on the department as the department expects to manage any increase in caseloads within its current resources.

**Department of Corrections.** The bill may add instances of a felony offense for violations of the provisions of this bill. This felony is punishable by up to two years of imprisonment, a fine of \$10,000, or both. The Department of Corrections reports the annual total cost per inmate in FY 2021-22 was \$32,247, of which \$30,044 was state funded, and the marginal cost per inmate was \$4,836, of which \$4,830 was state funded. If there is a substantial increase in the inmate population due to this bill, SCDC will request a General Fund appropriation increase. However, the amount of the request, if a request is necessary, is dependent upon the potential increase of convictions under the felony and the duration of any imprisonment.

**Medical University of South Carolina.** MUSC educates and employs physicians in the state who will be required to adhere to the requirements of this bill, and the university indicates additional medical compliance and legal personnel may be required. The institution anticipates needing an additional 0.3 FTEs for General Counsel at an annual cost of \$25,000, 0.2 FTEs for a Maternal Fetal Medicine MD with annual salary and fringe of \$87,500, and 0.1 FTEs for an Ethics Physician with annual salary and fringe of \$25,000. In addition, MUSC reports that ancillary or external legal expenses related to the review and defense of its physicians will total up to \$130,000 annually. Finally, MUSC indicates that this bill will require some physician training activities to take place out-of-state. The institution reports that fees for out-of-state training will total \$200,000 annually, in addition to \$50,000 in annual transportation and housing costs and \$25,000 in annual training equipment costs. In total, this bill will increase expenses for MUSC by up to \$542,500 per year beginning in FY 2023-24. The institution indicates that additional General Fund appropriations will be requested to cover these expenses.

**Public Employee Benefit Authority.** PEBA administers the State's employee insurance programs for South Carolina's public workforce. The agency reports that the bill will have no fiscal impact on the State Health Plan, as the bill does not modify the services covered by the plan. Additionally, because the bill does not operationally affect PEBA, it will have no impact on the agency.

**University of South Carolina.** USC School of Medicine educates and employs physicians in the state who will be required to adhere to the requirements of this bill. The institution indicates that the provisions of this bill can be managed within the university's existing appropriations and will have no fiscal impact.

### **State Revenue**

Based on a previous response, DHEC licenses three abortion clinics in the state, which generated \$1,625 in revenue in FY 2021-22. It is undetermined whether the bill will affect this revenue.

Additionally, this bill creates a new felony with a potential fine of up to \$10,000. This may result in an increase in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, RFA anticipates this bill may result in an undetermined increase to General Fund revenue and Other Funds revenue due to the potential increase in fines and fees collections in court.

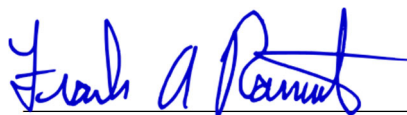
Further, this bill creates a potential fine of up to \$50,000 for an entity with ownership of the pregnant woman's medical records that fails to keep these records for at least seven years. The revenue impact of this subsection is undetermined as there are no data on the number of possible violations.

**Local Expenditure**

N/A

**Local Revenue**

This bill creates a new felony with a potential fine of up to \$10,000. This may result in an increase in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, RFA anticipates this bill may result in an undetermined increase to local revenue due to the potential increase in fines and fees collections in court.



Frank A. Rainwater, Executive Director