

South Carolina General Assembly
124th Session, 2021-2022

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S. 1373

STATUS INFORMATION

General Bill

Sponsors: Senators Cash, Rice and Verdin

Document Path: I:\s-res\rjc\018abor.kmm.rjc.docx

Introduced in the Senate on June 28, 2022

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

Summary: Not yet available

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
6/28/2022	Senate	Introduced and read first time
6/28/2022	Senate	Referred to Committee on Medical Affairs

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VERSIONS OF THIS BILL

[6/28/2022](#)

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

A BILL

TO AMEND CHAPTER 41, TITLE 44 OF THE 1976 CODE, RELATING TO ABORTION, BY ADDING ARTICLE 8, TO PROVIDE THAT ABORTIONS ARE ILLEGAL IN SOUTH CAROLINA, TO PROVIDE THAT PHYSICIANS WHO PERFORM A MEDICAL PROCEDURE OR MEDICAL TREATMENT DESIGNED TO SAVE THE LIFE OF THE MOTHER THAT ACCIDENTALLY OR UNINTENTIONALLY RESULTS IN THE DEATH OF THE UNBORN CHILD MUST DOCUMENT THE CIRCUMSTANCES SURROUNDING THE MEDICAL TREATMENT OR MEDICAL PROCEDURE AND TO PROVIDE WHAT DOCUMENTATION MUST BE MAINTAINED; TO PROVIDE THAT IT IS UNLAWFUL TO AID, ABET, OR CONSPIRE WITH SOMEONE TO PROCURE AN ABORTION; TO PROVIDE THAT IT IS UNLAWFUL TO MANUFACTURE, POSSESS FOR SALE OR DISTRIBUTION, DISTRIBUTE, OFFER FOR SALE, SELL, OR ADVERTISE THE SALE OR DISTRIBUTION OF AN ABORTIFACIENT; TO PROVIDE THAT IT IS UNLAWFUL TO KNOWINGLY OR INTENTIONALLY TO RECRUIT, HARBOR, OR TRANSPORT A PREGNANT MINOR WHO RESIDES IN THIS STATE TO

ANOTHER STATE TO PROCURE AN ABORTION OR TO OBTAIN AN ABORTIFACIENT; TO PROVIDE THAT IT IS UNLAWFUL TO COERCE A PREGNANT WOMAN TO HAVE AN ABORTION; TO PROVIDE THAT NOTHING IN THE ARTICLE MAY BE CONSTRUED TO SUBJECT A PREGNANT WOMAN TO A CRIMINAL PENALTY OR CIVIL LIABILITY FOR ANY VIOLATION OF THIS ARTICLE; TO PROVIDE THAT THE ATTORNEY GENERAL HAS THE CONCURRENT AUTHORITY TO PROSECUTE A PERSON FOR A CRIMINAL VIOLATION OF THIS ARTICLE WITH THE SEVERAL SOLICITORS OF THE STATE, WITHIN THEIR RESPECTIVE CIRCUITS; TO PROVIDE THAT THE BOARD OF MEDICAL EXAMINERS MUST REVOKE THE LICENSE OF A PHYSICIAN WHO PERFORMS AN ABORTION IN VIOLATION OF THIS ARTICLE; TO PROVIDE FOR CIVIL ACTIONS, INCLUDING WRONGFUL DEATH CLAIMS, ARISING FROM VIOLATIONS OF THIS ARTICLE; AND TO PROVIDE FOR CRIMINAL ENTERPRISE LIABILITY.

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 at Conception - No Exceptions - Act."

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

"Article 8

Prohibition of Abortions

Section [44-41-810](#). The provisions contained in this article supersede the provisions contained in Articles 1, 3, 5, and 6 of this Chapter.

Section [44-41-820](#). For the purposes of this article:

- (1) 'Abortifacient' means mifepristone, misoprostol, or any other chemical or drug dispensed with the intent of causing an abortion.
- (2) 'Abortion' means the use or prescription of any instrument or device, or of an abortifacient, to:
 - (a) intentionally kill, or attempt to kill, the unborn child of a woman known or suspected to be pregnant; or
 - (b) intentionally terminate, or attempt to terminate, the pregnancy of a woman known or suspected to be pregnant, with an intention other than to:
 - (i) produce a live birth and to preserve the life and health of the child if born alive; or
 - (ii) remove a dead unborn child or ectopic pregnancy.
- (3) 'Fertilization' means the time when a male human sperm penetrates a zona pellucida.
- (4) 'Physician' means a person licensed to practice medicine in this State.

(5) 'Pregnant' or 'pregnancy' means the female reproductive condition of having a living, unborn child in her uterus.

(6) 'Pregnant minor' means a pregnant female who has not yet attained the age of eighteen years.

(7) 'Reasonable medical judgment' means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(8) 'Unborn child' means an individual human being from fertilization until live birth.

Section [44-41-830](#). (A) It is unlawful to knowingly or intentionally perform or induce an abortion. A person who violates this section is guilty of a felony and, upon conviction, must be imprisoned for not more than twenty-five years if the unborn child dies as a result of the violation. A person who violates this section is guilty of a felony and, upon conviction, must be imprisoned for not more than twenty years if the unborn child is born alive despite the violation.

(B) Medical treatment provided to a pregnant woman by a physician that results in the accidental death of or unintentional injury to or death of the unborn child does not constitute a violation of this section.

Section [44-41-840](#). (A)(1) Nothing in this article shall be construed to prohibit a licensed physician from performing a medical procedure or providing medical treatment designed or intended to prevent the death of a pregnant woman. 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 child in a manner consistent with accepted medical standards. Under such circumstances, the accidental or unintentional injury to or death of the unborn child is not a violation of this article. 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 child.

(2) In the case of a non-emergency premature delivery after nineteen weeks of pregnancy:

(a) the delivery must be performed in a hospital or other health care facility that has appropriate neonatal services for premature infants; and

(b) the physician performing the delivery must arrange for the attendance, in the same room in which the delivery is performed, another physician who it to take control of, provide immediate medical care for, and take all steps reasonably necessary to preserve the life and health of the unborn child immediately upon the child's delivery.

(3) Prior to performing a medical procedure or medical treatment pursuant to this subsection, the physician must obtain in-person, non-coerced, informed consent from the pregnant woman or, if the pregnant woman is a minor, the in-person, non-coerced informed consent of the pregnant woman's parent or legal guardian.

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

(C) Nothing in this article shall be construed to prohibit in vitro fertilization or assisted reproductive technology. The authority to regulate in vitro fertilization and assisted reproductive technology procedures is reserved by the Legislature.

(D) A physician charged with a violation of Section [44-41-830](#) may assert compliance with this section as an affirmative defense.

(E) A physician who performs a medical procedure or provides medical treatment permitted by subsection (A) on a pregnant minor that results in the accidental or unintentional death of the unborn child shall notify at least one of the minor's parents or the minor's legal guardian within twenty-four hours of the procedure or treatment and shall certify in writing that notice has been given in the minor's medical record. A physician who fails to provide notice or to include

the proper certification as provided in this subsection is guilty of a misdemeanor and, upon conviction, shall be imprisoned for up to thirty days or fined not more than one thousand dollars, or both. Failure to provide notice and failure to include the proper certification are separate offenses for which the penalty in this subsection shall apply.

(F) A physician who performs a medical procedure or provides medical treatment permitted by subsection (A) that results in the accidental or unintentional death of the unborn child shall certify in writing in the pregnant woman's medical record the basis upon which the physician made the required determinations. A physician who fails to make the certifications required pursuant to this subsection is guilty of a misdemeanor and, upon conviction, shall be imprisoned for up to thirty days or fined not more than one thousand dollars, or both.

Section [44-41-850](#). (A) When a physician performs a medical procedure or provides medical treatment permitted by [44-41-840](#) (A) that results in the accidental or unintentional death of the unborn child, then he shall report to the Department of Health and Environmental Control on a form provided by the department. The report shall include:

- (1) the full name and address of the physician;
- (2) the date and location where the medical procedure or medical treatment took place, including the name of the facility;
- (3) the pregnant woman's:
 - (a) county and state of residence;
 - (b) marital status;
 - (c) age; and
 - (d) obstetrical history, including the dates of any abortions;
- (4) a certification that the physician obtained the in-person, non-coerced, informed consent from the pregnant woman for the physician to perform the medical procedure or medical treatment or if the pregnant woman is a minor, the in-person, non-coerced, informed consent of one of the minor's parents or the minor's legal guardian;
- (5) concerning the unborn child:
 - (a) the post-fertilization age of the unborn child and the method used for the determination;
 - (b) the gender of the unborn child, if detectable;
 - (c) the medical indication by diagnosis code for the pregnant woman and the unborn child;
 - (d) the medical procedure or medical procedure provided;
 - (e) the results of pathological examinations if performed;
 - (f) whether the unborn child was delivered alive, and if so, how long the unborn child lived after delivery; and
 - (g) whether the pregnant woman survived the medical procedure or medical treatment, and if so, for how long;

(6) a recitation and certification of facts supporting the medical procedure or medical treatment.

(B) The physician shall complete the form prescribed in subsection (A) and transmit the completed form within thirty days of performing the medical procedure or medical treatment. However, if the pregnant woman was a minor, then the physician must complete and transmit the form to the Department of Health and Environmental Control and the Department of Social Services within three days.

(C) Dates required on the form may not be redacted.

(D) A physician who fails to timely complete or transmit a completed report as required in this section is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than thirty days or fined one thousand dollars, or both. Each instance where a doctor fails to timely complete or transmit a completed report as required by this section constitutes a separate offense.

(E)(1) Annually on or before January first, the Department of Health and Environmental Control shall compile a public report providing:

(a) statistics for the previous calendar year from the information submitted by physicians pursuant to this section;

(b) statistics for prior calendar years, with updated information for the calendar year that was submitted after the compilation of statistics for that year.

(2) The Department of Health and Environmental Control shall summarize aggregate data from all data submitted pursuant to this section and submit the data to the United States Centers for Disease Control and Prevention for inclusion in the annual Vital Statistics Report.

(3) The Department of Health and Environmental Control shall ensure that no identifying information for any pregnant women are contained in the report.

Section [44-41-860](#). (A) It is unlawful to knowingly or intentionally aid, abet, or conspire with another person to violate the provisions contained in Section [44-41-830](#). A person who violates this section is guilty of a felony and is subject to the same penalties as provided in Section [44-41-830](#).

(B) The prohibition against aiding and abetting a violation of Section [44-41-830](#) includes, but is not limited to knowingly and intentionally:

(1) providing information to a pregnant woman, or someone seeking information on behalf of a pregnant woman, by telephone, internet, or any other mode of communication regarding self-administered abortions or the means to obtain an abortion, knowing that the information will be used, or is reasonably likely to be used, for an abortion;

(2) hosting or maintaining an internet website, providing access to an internet website, or providing an internet service purposefully directed to a pregnant woman who is a resident of this State that provides information on how to obtain an abortion, knowing that the information will be used, or is reasonably likely to be used for an abortion;

(3) offering or providing abortion doula services, knowing that the services will be used, or are reasonably likely to be used for an abortion;

(4) providing a referral to an abortion provider, knowing that the referral will result, or is reasonably likely to result, in an abortion; and

(5) providing a referral to an abortion provider and receiving monetary remuneration, or other compensation, from an abortion provider for the referral.

Section [44-41-870](#). (A)(1) It is unlawful to knowingly and intentionally manufacture an abortifacient.

(2) It is unlawful to knowingly possess for sale or distribution, distribute, offer for sale, sell, or advertise the sale or distribution of an abortifacient when the person in possession, distributing, offering for sale, selling, or advertising the sale of the abortifacient knows, or has reason to know, that the person to which he is selling, distributing, or advertising the sale of the abortifacient intends to use the abortifacient to induce an abortion.

(3) A person who violates the provisions contained in this subsection is guilty of a felony and, upon conviction, must be imprisoned for not more than twenty years.

(B) The provisions in subsection (A) do not apply to a pharmacist or a manufacturer or distributor of drugs or medical supplies who manufactures, possesses, offers, sells, or distributes any drug, medicine, instrument, or thing intended for any lawful medical purpose in his normal course of business.

Section [44-41-880](#). It is unlawful to knowingly or intentionally to recruit, harbor, or transport a pregnant minor who resides in this State to another state to procure an abortion or to obtain an abortifacient. A person who violates this section is guilty of a felony and, upon conviction, must be imprisoned for not more than twenty years.

Section [44-41-890](#). A person who knowingly or intentionally coerces a pregnant woman to have an abortion is guilty of a felony and, upon conviction, shall be imprisoned for five years.

Section [44-41-900](#). Nothing in the article may be construed to subject a pregnant woman to a criminal penalty or civil liability for any violation of this article.

Section [44-41-910](#). The Attorney General has the concurrent authority to prosecute a person for a criminal violation of this article with the several solicitors of the State, within their respective circuits.

Section [44-41-920](#). (A) The State Board of Medical Examiners shall revoke a physician's license to practice medicine in this State if the physician pleads guilty or nolo contendere to or is convicted of a criminal violation of this article.

(B) The State Board of Medical Examiners shall suspend a physician's license to practice medicine for six months, if the physician fails to make any of the certifications or reports required by this article.

Section [44-41-930](#). (A) The Attorney General, a solicitor acting within his respective circuit, the father of the unborn child, a maternal or paternal grandparent of the unborn child, and a parent or legal guardian of a pregnant minor may bring a civil action against a person who violates, attempts to violate, or threatens to violate a provision of this article.

(B) If the plaintiff in a civil action brought pursuant to this section prevails by proving, by a preponderance of the evidence, that the defendant violated, attempted to violate, or threatened to violate a provision of this article, the court shall award:

- (1) injunctive relief;
- (2) compensatory damages if the plaintiff suffered injury or harm, including, but not limited to loss of parental care, custody and companionship of the unborn child, and emotional distress;
- (3) punitive damages, payable to a non-profit chosen by the plaintiff, that provides services to pregnant women; and
- (4) reasonable attorney's fees and court costs.

Section [44-41-940](#). (A) A woman who obtained an abortion may bring a wrongful death action on behalf of her dead unborn child against the person who performed or induced the abortion, if the abortion was the proximate cause of the death of the unborn child.

(B) If the woman upon whom an abortion was performed or induced does not bring a wrongful death action pursuant to this section, then a wrongful death action may be brought against the person who performed or induced the abortion, if the abortion was the proximate cause of the death of the unborn child by the father of the unborn child, a parent or legal guardian of a pregnant minor upon whom an abortion was performed or induced, or the estate of a pregnant woman who died as a result of an abortion.

(C) Except for the requirement for a live birth, an action for wrongful death pursuant to this section is subject to the same defenses and requirements of proof as would apply to an action for wrongful death of a child who has been born alive.

(D) If the plaintiff in a wrongful death action brought pursuant to this section prevails, the court shall award:

- (1) compensatory damages if the plaintiff suffered injury or harm from the defendant's conduct, including, but not limited to, loss of parental care, custody, and companionship, or emotional distress;
- (2) punitive damages, payable to a non-profit chosen by the plaintiff, that provides services to pregnant women; and
- (3) reasonable attorney's fees and court costs.

Section [44-41-950](#). (A) For the purposes of this section:

(1) 'Prohibited abortion activity' means an activity that a person knowingly or intentionally:

- (a) performs or induces an abortion in violation of Section [44-41-830](#);
- (b) conspires, aids, or abets an abortion in violation of Section [44-41-860](#);
- (c) engages in activity related to a violation of Section [44-41-870](#); and
- (d) engages in activity related to a violation of Section [44-41-880](#).

(2) 'Pattern of prohibited abortion activity' means that an individual, entity, or an entity acting through its agents or others that the entity acted in concert with engaged in at least two incidents of abortion activity.

(3) 'Whistleblower' means an employee who brings wrongdoing by an employer or other employees to the attention of a person who may bring an action for a violation of this article.

(B)(1) It is unlawful for a person to:

- (a) knowingly or intentionally receive any proceeds directly or indirectly derived from a pattern of prohibited abortion activity;
- (b) knowingly or intentionally use or invest any proceeds directly or indirectly derived from a pattern of prohibited abortion activity to acquire an interest in property of, or to establish or operate, an entity engaged in prohibited abortion activity;
- (c) through a pattern of prohibited abortion activity, knowingly or intentionally, acquire or maintain, either directly or indirectly, an interest in or control of an entity, or the property of an entity, engaged in a pattern of prohibited abortion activity;
- (d) be employed by or associated with an entity known by the person to engage in a pattern of prohibited abortion activity; or
- (e) knowingly or intentionally conduct or otherwise participate in the activities of an entity engaged in a pattern of prohibited abortion activity.

(2) A person who violates this subsection is guilty of a felony and, upon conviction, must be imprisoned up to ten years.

(C) The Attorney General, or a solicitor acting within his circuit, may bring an action to prevent, restrain, or remedy a violation of subsection (B) by seeking appropriate orders, including, but not limited to:

(1) ordering a person to be divested of any proceeds directly or indirectly derived from a pattern of prohibited abortion business activities and of an interest, direct or indirect, in any entity engaged in a pattern of abortion business activity;

(2) imposing reasonable restriction on the future activities or investments of a person, including, but not limited to, prohibiting a person from engaging prohibited abortion business activities; and

(3) ordering the dissolution or reorganization of an entity engaged in a pattern of prohibited abortion business activities, making provision for the rights of innocent people.

(D)(1) A person may not take any action to impede a whistleblower from communicating about a violation of this article with the Attorney General, a solicitor, or any other person authorized to bring an action for a violation of this article. Actions to impede a whistleblower may include, but are not limited to:

(a) enforcing, or threatening to enforce, a confidentiality agreement or a predispute arbitration agreement with respect to the communications; or

(b) discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against a whistleblower in the terms and conditions of employment.

(2) A person who violates this subsection is guilty of a felony and, upon conviction, must be imprisoned for ten years.

Section [44-41-960](#). (A) In a civil action brought pursuant to this article, a court may not award compensatory damages or punitive damages if the losing party demonstrates that he paid, or has been ordered to pay compensatory damages or punitive damages in a previous civil action for the same violations.

(B) A damage award in an action brought pursuant to this article may not be:

(1) paid for or reimbursed by an insurance policy, except to the extent that the person against whom the damage award is assessed has insufficient personal assets to pay the total damage award; and

(2) subject to any medical malpractice limits on recovery of damages as otherwise provided by law.

(C) A civil action may not be brought by a person who impregnated a woman seeking an abortion if the pregnancy resulted from rape, criminal sexual conduct, or incest.

(D) The following do not constitute defenses to an action brought pursuant to this article:

(1) the fact that the pregnant woman or, if the pregnant woman is a minor, a parent or legal guardian consented to the abortion;

(2) ignorance or mistake of law;

(3) a person's belief that any provision of this article is unconstitutional;

(4) a person's reliance on a state or federal court decision that is not binding on the court in which the action has been brought;

(5) non-mutual issue preclusion or non-mutual claim preclusion;

(6) contributory or comparative negligence;

(7) assumption of the risk; or

(8) a claim that an action brought pursuant to this article violates a constitutional right of a third-party.

(E) A court may:

(1) not award attorney fees or court costs to a person subject to an action pursuant to this article unless the action is frivolous, without foundation, or brought in bad faith or for the sole reason of delay;

(2) not award attorney fees or costs to a person who prevails in challenging the constitutionality of this article under state law, unless the defense of this article is frivolous, without foundation, made in bad faith, or for the sole reason of delay; and

(3) award attorney fees and court costs to a person who prevails in defending the constitutionality of this article under state law, even though the challenge to the constitutionality of this article was not frivolous, without foundation, or brought in bad faith or for the sole reason of delay.

(F) This article may not be construed to impose liability or conduct protected by the First Amendment to the United States Constitution or by South Carolina Constitution.

(G) A person must bring an action pursuant to this article not later than six years after the date of the alleged violation occurs."

SECTION 3. 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 4. This act takes effect upon approval by the Governor.

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This web page was last updated on June 29, 2022 at 11:15 AM