

South Carolina Human Life Protection Act

Section 1. Title.

This Act shall be known as the “South Carolina Human Life Protection Act.”

Section 2. Legislative Declarations.

- A. The South Carolina 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.
- B. Article I, Section 3 of the Constitution of the State of South Carolina 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 a preborn child is deserving of that protection.
- C. The South Carolina General Assembly, in the exercise of its constitutional duties and powers, has a fundamental duty to provide equal protection for the life, health and welfare of all persons, including preborn children *in utero*.
- D. It is undisputed that the life of every human being begins at conception.
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- E. South Carolina maintains a fundamental interest in protecting the life of every human being from conception.

Section 3. Definitions.

- A. **“Abortion”** means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn human being. Such use, prescription, or means is not an abortion if done with the intent to save the life or preserve the health of the preborn human being, or to remove a dead unborn human being.
- B. ~~**“Conception”** means fertilization. (NOTE—44-44-10(G) NEEDS TO BE REPEALED)~~
- C. **“Contraceptive”** means a drug, device, or chemical that prevents conception.
- D. **“Female”** means a biological female as assigned at the time of birth or an intersexed person capable of producing an ovum at birth.

- E. **“Physician”** means any person licensed to practice medicine and surgery, or osteopathic medicine and surgery, in this State.
- F. **“Pregnant Woman”** means the human biological female reproductive condition of having a living unborn child within her body throughout the entire embryonic and fetal stages of the unborn child from fertilization to full gestation and childbirth, whether or not she has reached the age of majority.
- G. **“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.
- H. **“Unborn human being”** or **“unborn child”** or **“preborn child”** or **“preborn human being”** or **“fetus”** each mean an individual organism of the species homo sapiens from conception until live birth.

Section 4. Abortion Prohibition

- A. No person may knowingly administer to, prescribe for, procure for, pay for, or sell to any pregnant woman any medicine, drug, or other substance with the specific intent of causing or abetting an abortion.
- B. No person may knowingly use or employ any instrument, device, means, or procedure upon a pregnant woman with the specific intent of causing or abetting an abortion.

Section 5. Exclusions.

- A. It shall not be a violation of Section 4 of this Act for a licensed physician to perform a medical procedure necessary in reasonable medical judgment to prevent: the death of the pregnant woman; a substantial risk of death for the pregnant woman because of a physical condition; or the substantial and irreversible 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 her unborn child, to the extent it does not ~~adversely 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 and irreversible physical impairment of a major bodily function.

- B. A physician who performs a medical procedure as described in subsection 5.A. shall declare, in a written document, that the medical procedure was necessary, by reasonable medical judgment, to prevent the death of the pregnant woman or to prevent the substantial risk of a substantial and irreversible 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 and the medical rationale for the physician's conclusion that the medical procedure was necessary to prevent the death of the pregnant woman or to prevent the serious risk of a substantial and irreversible impairment of a major bodily function of the pregnant woman, and that all reasonable efforts were made to save the fetus in the event it was living and *in utero*. Such documentation must be included in the woman's medical records within 30 days from the date of the procedure. The physician's determination shall be *prima facie* evidence for a permitted abortion 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 and irreversible 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 Maternal Trauma, Uterine Rupture, Intrauterine Fetal Demise and Miscarriage*. However, when an unborn child is alive *in utero*, the physician must make all reasonable efforts to deliver and save the life of an unborn child during the process of separating the unborn child from the pregnant woman, to the extent it does not adversely affect the life or health of the pregnant woman, and in a manner consistent with reasonable medical practice. The enumeration of the medical conditions in this section (5.C.) is not intended to exclude or abrogate other conditions that satisfy the exclusions of 5.A. or prevent other procedures that are not included in the definition of "abortion" in section 3.A.
- D. Medical treatment provided to the pregnant woman by a licensed physician which results in the accidental or unintentional injury to or the death of her unborn child is not a violation of Section 4 of this Act.
- E. It shall not be a violation of Section 4 of this Act, and nothing in this Act 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 act shall be construed as prohibiting the practice of *in vitro* fertilization (IVF), so long as the practice complies with current accepted medical ethics and standards of care for IVF. Nothing in this article shall be construed to prohibit in vitro fertilization or assisted reproductive technology procedures accepted as standard of care by the reproductive medical community. No part of the in vitro fertilization procedures or assisted reproductive procedures considered normal standard of care will be considered an abortion procedure. Notwithstanding the above, the practice of "selective reduction," (defined as a procedure to stop the development of one or more fetuses *in utero*) shall constitute an abortion in violation of Section 4, above, except, when necessary, in reasonable medical judgment, to prevent a substantial risk of death for another fetus, or the substantial and irreversible physical impairment of a major bodily function of another fetus.~~

Section 6. Criminal Offense

A person who violates Section 4 of this Act is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned not more than two years, or both. 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 Section 4 of this Act, is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned not more than two years, or both.

Notwithstanding the Exclusions of Section 5, A-F, any person who is not a physician licensed in this state, who prescribes any means of abortion as defined in this act, for the purpose of facilitating an abortion inside the borders of this state, violates Section 4 of this Act, is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned not more than two years, or both.

Section 7. Civil Cause(s) of Action

A. ~~Illegal Abortion.~~ In addition to whatever remedies are available under the common or statutory law of this State, failure to comply with the requirements of Section 4 of this act shall provide for the basis for a civil action as described below.

Any pregnant woman upon whom an abortion has been performed, induced or coerced in violation of this Act, or the father of the unborn child who was the subject of such an abortion, the maternal and paternal aunt, uncle, or grandparent of the unborn child may maintain an action against the person or persons who violated Section 4 of this act ~~performed, induced or coerced the abortion in intentional or reckless violation of this Act~~ for actual and punitive damages. In addition to all other damages, and separate and distinct from all other damages, each plaintiff shall be entitled to statutory damages of \$10,000.00 for each ~~abortion that each defendant performed or induced in violation of this act,~~ to be imposed on each defendant for each such violation.

~~B. Attempted Illegal Abortion. Any woman upon whom an abortion has been attempted in violation of this Act may also maintain an action against the person who attempted to perform or induce the abortion in an intentional or reckless violation of this Act for actual and punitive damages. In addition to all other damages, and separate and distinct from all other damages, each plaintiff shall be entitled to statutory damages of \$10,000.00 for each attempted abortion that each defendant performed or induced in violation of this act.~~

C. Injunctive Relief. A separate and distinct cause of action for injunctive relief against any person or persons who has/have ~~intentionally or recklessly~~ violated Section 4 of this Act may be maintained (i) by the woman upon whom an abortion was performed or induced, attempted to be performed or induced in violation of this Act; (ii) if the woman had not attained the age of eighteen (18) years at the time of the abortion or has died as a result of the abortion, the parent or guardian of the pregnant woman; (iii) by a Solicitor or prosecuting attorney with proper jurisdiction; or (iv) by the Attorney General. The injunction shall prevent the person or persons who violated Section 4 of this Act ~~performs illegal abortions from further performing or inducing or attempting to perform or induce further abortions in violation of this Act in this State.~~

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

E. No damages, costs or attorney's fee may be assessed against the woman upon whom an abortion was performed or induced or attempted to be 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 or attempted abortion and shall not be subject to the limitations and requirements of S.C. Code Ann. Sections 15-79-110-130.

Section 8. No Liability of Pregnant Woman

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 8. Professional Censure

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 4 of this Act commits an act of unprofessional conduct and his or her license to practice in the State of South Carolina shall be immediately ~~suspended and subsequently~~ revoked by the State Board of Medical Examiners for South Carolina (SBME) after due process according to the rules and procedures of SBME. A complaint may be originated by any person or *sua sponte*. In addition, SBME may assess costs of the investigation, fines and other disciplinary actions it may deem appropriate.

Section 9. Protection of Privacy in Court Proceedings.

In every civil or criminal proceeding or action brought under this Act, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or induced or attempted to be performed or induced shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or *sua sponte*, shall make such a ruling and, upon determining that her 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 or attempted to be performed or induced, anyone, other than a public official, who brings an action under subsections (A) or (B) of section 4 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 10. Effect

This article must not be construed to repeal, by implication or otherwise, Section ~~44-41-630-650~~, [44-41-20](#) or any otherwise applicable provision of South Carolina law regulating or restricting abortion. An abortion that complies with this article but violates the provisions of Section [44-41-20](#) or any otherwise applicable provision of South Carolina law must be considered unlawful as provided in such provision. An abortion that complies with the provisions of Section [44-41-20](#) or any otherwise applicable provision of South Carolina law regulating or restricting abortion but violates this article must be considered unlawful as provided in this article. 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 11. Severability.

If any one or more provision, section, subsection, sentence, clause, phrase or word of this Act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this Act shall remain effective notwithstanding such unconstitutionality. The legislature hereby declares that it would have passed this Act, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

Section 12. Right of Intervention.

The South Carolina House of Representatives, the South Carolina Senate, the South Carolina Governor and/or the South Carolina Attorney General may intervene and in the case of the South Carolina House of Representatives, and the South Carolina Senate, may appoint one or more of its members to intervene as a matter of right in any case in which the constitutionality or enforceability of this Act is challenged.

Section 13. Effective Date.

Insert effective date language