**South Carolina General Assembly**

124th Session, 2021-2022

**H. 3508**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Bennett, McGarry, Burns, Haddon, V.S. Moss, McCravy, Oremus and Thayer

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Introduced in the House on January 12, 2021

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Summary: Life Appropriations Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/16/2020 House Prefiled

12/16/2020 House Referred to Committee on **Judiciary**

1/12/2021 House Introduced and read first time ([House Journal‑page 217](file:///h:\hj\20210112.docx))

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2/2/2021 House Member(s) request name added as sponsor: Thayer

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**VERSIONS OF THIS BILL**

[12/16/2020](file:///p:\pprever\2021-22\3508_20201216.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “LIFE APPROPRIATION ACT” BY ADDING ARTICLE 8 TO CHAPTER 41, TITLE 44 SO AS TO DEFINE CERTAIN ABORTION‑RELATED TERMS, INCLUDING “ABORTION REFERRAL”, “CONVENIENCE ABORTION”, AND “SECULAR ABORTION”; TO PROHIBIT THE APPROPRIATION OR GRANTING OF PUBLIC FUNDS TO FACILITIES, INDIVIDUALS, OR ENTITIES TO PAY THE DIRECT OR INDIRECT COSTS OF PERFORMING, INDUCING, REFERRING, OR COUNSELING IN FAVOR OF CONVENIENCE ABORTIONS BECAUSE SUCH WOULD VIOLATE THE ESTABLISHMENT CLAUSE OF THE UNITED STATES AND SOUTH CAROLINA CONSTITUTIONS, WITH EXCEPTIONS; TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND OTHER STATE AGENCIES TO ENSURE THAT FEDERAL FUNDS ARE NOT USED TO PERFORM OR PROMOTE CONVENIENCE ABORTIONS AND ARE NOT AWARDED TO AN ENTITY THAT PERFORMS OR PROMOTES CONVENIENCE ABORTIONS; TO GIVE TAXPAYERS STANDING TO SUE TO ENFORCE CERTAIN PROVISIONS OF THIS ARTICLE; TO CREATE THE “SOUTH CAROLINA FOSTER CARE AND ADOPTION INITIATIVES FUND” AND TO PROVIDE FOR ITS PURPOSE, ADMINISTRATION, AND USES; TO PROHIBIT HOSPITALS OR OTHER STATE ACTORS FROM DISCRIMINATING AGAINST OR DISCIPLINING A PERSON DUE TO THE PERSON’S MORAL RELIGIOUS BELIEFS IN FAVOR OR AGAINST CONVENIENCE ABORTION OR SECULAR ABORTION; AND FOR OTHER PURPOSES.

Whereas, the State of South Carolina facilitates the disbursement of both state and federal public funds to qualifying entities for purposes of conducting certain activities; and

Whereas, it is possible that public funds made available by or through the State of South Carolina may be appropriated to an entity that performs convenience abortions or subsidizes or otherwise facilitates the entity’s ability to perform convenience abortions although the funds that were not disbursed specifically for the purpose of performing convenience abortions; and

Whereas, the Establishment Clause of the First Amendment of the United States Constitution states that “Congress shall make no law respecting an establishment of religion” and Section 2, Article I of the Constitution of South Carolina, 1895, states, “The General Assembly shall make no law respecting an establishment of religion”; and

Whereas, convenience abortions fall directly within the exclusive jurisdiction of the Free Exercise and Establishment Clause of the First Amendment of the United States Constitution, having nothing to do with the Fourteenth Amendment; and

Whereas, the Establishment Clause of the United States Constitution prohibits the State of South Carolina from enforcing, respecting, recognizing, favoring, or endorsing policies that finance convenience abortion facilities with public funds because such an appropriation fails the three prongs of the Lemon test established by the United States Supreme Court in Lemon v. Kurtzman, 403 U.S. 602 (1971) by constituting a nonsecular sham that cultivates an indefensible legal weapon against nonobservers of the religion of secular humanism, while having the effect of excessively entangling the government with the religion of secular humanism; and

Whereas, abortion with funds distributed by the State constitutes paying for an abortion and, therefore, must be barred by the First Amendment Establishment Clause of the United States Constitution and by Section 2, Article I, of the South Carolina Constitution, 1895; and

Whereas, the direct or indirect subsidization or facilitation of abortion with funds distributed by the State constitutes paying for an abortion and, therefore, must be barred by the First Amendment Establishment Clause of the United States Constitution and by Section 2, Article I of the Constitution of South Carolina, 1895; and

Whereas, the State of South Carolina may not favor or endorse one religion over another, nor may the State of South Carolina favor or endorse the religion of secular humanism generally over nonreligion, especially because it is a religious worldview that tends to promote licentiousness; and

Whereas, it is the policy of the State of South Carolina to:

(a) favor childbirth and family planning services that do not include convenience abortions or the promotion of convenience abortions within the continuum of care or services; and

(b) avoid the direct or indirect use of public funds to promote or support convenience abortions. Now, therefore,

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 “Life Appropriation Act”.

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

“Article 8

Life Appropriation Act

Section 44‑41‑810. As used in this article:

(1) ‘Abortion referral’ means the act of recommending a pregnant woman to a doctor, clinic, or other person or entity for the purpose of obtaining or learning about obtaining a convenience abortion.

(2) ‘Affiliate’ means an individual or entity that, directly or indirectly, owns, controls, is controlled by, or is under the common control of another person or entity, in whole or in part, or a subsidiary, parent, or sibling entity.

(3) ‘Breast and Cervical Cancer Mortality Prevention Act’ means the ‘Breast and Cervical Cancer Mortality Prevention Act of 1990,’ 42 U.S.C. Section 300k, as amended.

(4) ‘Conception’ has the same meaning as defined in Section 44‑41‑10.

(5) ‘Convenience abortion’ has the same meaning as ‘abortion’, as defined in Section 44‑41‑10, and as ‘elective or nontherapeutic abortion’, which is defined as the act of using or prescribing an instrument, medicine, drug, device, or another substance or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. The term includes faith‑based ideology and practice that is inseparable linked to the religion of Secular Humanism and is not based on medical sceince. An act is not a convenience abortion if the act is performed with the intent to:

(a) save the life of the mother or resolve a medical emergency;

(b) save the life or preserve the health of the unborn child;

(c) remove a dead unborn child caused by spontaneous abortion;

(d) remove an ectopic pregnancy;

(e) abort and remove an unborn child that is the result of rape or incest reported to a law enforcement agency; or

(f) abort and remove an unborn child because of a fetal malformation that is incompatible with the baby being born alive.

(6) ‘Emotional appeal’ means a method of persuasion through sentiment, not logic, designed to create an emotional response.

(7) ‘Facility’ means any public or private hospital, clinic, center, medical school, medical training institution, health care facility, physician’s office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location wherein medical care is provided to any person.

(8) ‘Infertility Prevention Project’ means the infertility prevention project operated by the United States Centers for Disease Control and Prevention.

(9) ‘Lemon test’ means a three‑prong test that was originally created by the United States Supreme Court and now adopted by this State that is used to determine if government action is unconstitutional under the Establishment Clause. The test requires that state action or government policy:

(a) have a valid secular purpose;

(b) not have the effect of advancing, endorsing, or inhibiting religion; and

(c) not foster excessive entanglement with a particular religion.

Government action violates the Establishment Clause if it fails to satisfy any of the prongs.

(10) ‘Logical nexus’ means some relevant connection.

(11) ‘Nongovernment group’ means a nonprofit organization exempt from federal income taxation under Section 501(c)(3) or any other individual or group that is working to:

(a) advance birth; the interests, knowledge, safety, health, and welfare of expecting mothers; the facilitation of quality, safe, and healthy adoption and the cultivation of strong nurturing families; or the quality, strength, safeness, and effectiveness of the foster care system; or

(b) provide ultrasound testing; the employment opportunities of single mothers who are expecting; counseling and therapy for expecting or new mothers; or community for expecting or new mothers.

(12) ‘Medical emergency’ means that condition which, on the basis of the physician’s good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(13) ‘Minority HIV/AIDS Initiative’ means the minority HIV/AIDS Initiative operated by the Office of Minority Health in the United States Department of Health and Human Services.

(14) ‘Nonsecular sham’ means a policy, a course, or principle of action adopted or proposed by a state actor which endorses, respects, or favors the beliefs of a particular religion where the preeminent and primary force driving the state’s action is not genuine, but is a sham that ultimately has a primary religious objective. The term refers to a type of policy that is predicated on a series of unproven faith‑based assumptions and naked assertions that are implicitly religious.

(15) ‘Personal Responsibility Education Program’ means the program administered by the Administration for Children and Families in the United States Department of Health and Human Services to educate adolescents on abstinence and contraception for the prevention of pregnancy and sexually transmitted infections.

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

(17) ‘Pregnancy’ has the same meaning as defined in Section 44‑41‑10.

(18) ‘Promote’ means to advocate for, assist with, encourage, or popularize through advertising or publicity.

(19) ‘Public funds’ means any funds received or controlled by this State or any agency or political subdivision thereof including, but not limited to, funds derived from federal, state, or local taxes, gifts or grants from any source, public or private, federal grants or payments, or intergovernmental transfers.

(20) ‘Reasonable observer’ means a person of ordinary prudence who views a policy from an objective standard in the context of the state’s longstanding practice through the lens of self‑evident neutral, natural, and noncontroversial transcultural morality and who has not been desensitized by so‑called evolving standards of decency that are predicated on a current cultural mindset that seeks to normalize practices that were otherwise considered to be self‑evidently immoral, obscene, injurious, unnatural, or subversive to human flourishing.

(21) ‘Religion’ means a set of unproven answers to the greater questions like ‘Why are we here?,’ ‘What should we be doing as humans?,’ ‘How do we get our identity?,’ and ‘What happens after death?’ The term means a closed system and group or community that is organized, full, and provides a comprehensive code by which individuals may guide their daily activities. Religion concerns an ultimate concern, sincere belief, a nontheistic or theistic belief system that if obeyed, makes a person good.

(22) ‘Secular abortion’ means the act of using or prescribing an instrument, medicine, drug, device, or another substance or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child, when carried out to:

(a) save the life of the mother or resolve a medical emergency;

(b) save the life or preserve the health of the unborn child;

(c) remove a dead unborn child caused by spontaneous abortion;

(d) remove an ectopic pregnancy;

(e) abort and remove an unborn child that is the result of rape or incest reported to a law enforcement agency; or

(f) abort and remove an unborn child because of a fetal malformation that is incompatible with the baby being born alive.

(23) ‘Secular humanism’ means a faith‑based worldview that is also referred to as postmodern western individualistic moral relativism, expressive individualism, or leftism. A belief system that is protected by the Free Exercise Clause of the First Amendment of the United States Constitution and Section 2, Article I of the Constitution of South Carolina, 1895, and centered on the unproven assumption that there are no moral absolutes and that one moral doctrine should be used as the superior basis for law and policy. The term includes a series of unproven faith‑based assumptions and naked assertions that suggest that morality and truth are manmade conventions and that at the heart of liberty is man’s ability to define his own meaning of the universe. The term refers to a religion that does not fulfill any compelling state interest but instead tends to erode community standards of decency and promote licentiousness. The term refers to the unproven belief that convenience abortions are moral or plausible. The term includes sexual orientation orthodoxy and nonsecular self‑asserted sex‑based identity narratives. The term refers to the belief that man is merely a bundle of chemicals, animated pieces of meat, or accidental particles and that nature is all there is. The term refers to the unproven faith‑based assumption or Nietzschean theory that man evolved from monkeys and should, therefore, love one another just because.

(24) ‘Secular policy’ means a course or principle of action adopted or proposed by a state actor that is natural, neutral, and noncontroversial that is based on self‑evident morality and objective truth from the reasonable observer perspective. The term includes government procedure or state action that generally accomplishes its goals and does not tend to put religion over nonreligion or one religion over another or does not convey to a reasonable observer that the State favors one religion. The term includes a course of governmental action where the preeminent and primary force driving the policy is genuine, not a sham, and not merely secondary to a religious objective.

(25) ‘Taxpayer standing’ means standing of a taxpayer to file a lawsuit against the government actor that is directly or symbolically engaging in practices that violate the Establishment Clause of the First Amendment after it actually or prospectively engaged in action that potentially failed at least one prong of the Lemon test or coercion test. The term includes a test that requires a minimal logical nexus in order to be invoked by a taxpayer when the government is directly or symbolically endorsing a religion in a coercive manner in violation of the Lemon test.

(26) ‘The fund’ means the South Carolina Foster Care and Adoption Initiative Fund.

(27) ‘Title XIX of the federal Social Security Act’ means Medicaid, 42 U.S.C. Section 1396, et. seq.

(28) ‘Unborn child’ has the same meaning as defined in Section 44‑41‑430.

(29) ‘Violence Against Women Act’ means Section 1910A of Section 40151 of the ‘Violent Crime Control and Law Enforcement Act of 1994’, Part A of Title XIX of the ‘Public Health and Human Services Act’, former 42 U.S.C. Section 300w, 42 U.S.C. Section 280b‑l b, as amended.

Section 44‑41‑820. (A) An agency or instrumentality of the State is prohibited from appropriating or awarding a grant of public funds to pay the direct or indirect costs of performing, inducing, referring, or counseling in favor of convenience abortions, because such state action fails the Lemon test and violates the First Amendment Establishment Clause of the United States Constitution and Section 2, Article I of the Constitution of South Carolina, 1895, for:

(1) constituting a nonsecular sham;

(2) cultivating indefensible legal weapons against nonobservers of the religion of secular humanism; and

(3) having the effect of excessively entangling the government with the religion of secular humanism.

(B) Pursuant to the First Amendment Establishment Clause of the United States Constitution, Section 2, Article I of the Constitution of South Carolina, 1895, and the state’s compelling interest to discourage licentiousness, an agency or instrumentality of the State shall not grant, appropriate, or distribute a grant of public funds to an individual or entity that:

(1) performs, induces, provides referrals, or counsels in favor of convenience abortions; and

(2) is an affiliate of a person or entity that performs abortions, induces abortions, provides abortion referrals, or counsels in favor of convenience abortions because such appropriations have the effect of endorsing nonsecular practices that excessively entangles the government with the religion of secular humanism.

(C) Pursuant to the First Amendment Establishment Clause of the United States Constitution, Section 2, Article I of the Constitution of South Carolina, 1895, and the state’s compelling interest to uphold community standards of decency, an agency or instrumentality of the State shall not appropriate or award a grant of public funds to pay the direct or indirect costs of performing, inducing, referring, or counseling in favor of convenience abortions, including without limitation:

(1) administrative costs and expenses;

(2) overhead costs;

(3) employee salaries;

(4) rent and mortgage payments; and

(5) telephone and other utility payments.

(D) Pursuant to the First Amendment Establishment Clause of the United States Constitution, Section 2, Article I of the Constitution of South Carolina, 1895, and the state’s compelling interest to discourage licentiousness, the Department of Health and Environmental Control and all other state agencies shall ensure that public funds:

(1) received through:

(a) the Violence Against Women Act;

(b) the Breast and Cervical Cancer Mortality Prevention Act;

(c) the Infertility Prevention Project;

(d) the Minority HIV/AIDS Initiative;

(e) the Infant Mortality Reduction Project or the Infant Vitality Initiative;

(f) the Personal Responsibility Education Program (PREP); or

(g) any other similar federal program;

(2) are not used to do any of the following:

(a) perform convenience abortions;

(b) promote convenience abortions;

(c) contract with any entity that performs or promotes convenience abortions; or

(d) become or continue to be an affiliate of any entity that performs or promotes convenience abortions because such an appropriation endorses nonsecular practices and has the effect of excessively entangling the government with the religion of secular humanism.

(E) Any taxpayer of this State or its political subdivisions shall have taxpayer standing to bring suit in a court of competent jurisdiction to enforce the provisions of this section. The prevailing party may seek attorney’s fees, costs, and other forms of equitable relief.

(F) Any officer or employee of the State who knowingly authorizes the use of public funds prohibited by this section shall be dismissed from that person’s office or position and the person’s employment shall be terminated immediately.

Section 44‑41‑830. (A) There is hereby created the South Carolina Foster Care and Adoption Initiatives Fund. The fund is separate and distinct from the general fund of the State and all other funds.

(B) The fund must consist of:

(1) monies collected from any fees imposed on convenience abortion providers for cultivating secondary harmful effects or eroding community standards of decency;

(2) any fines or monetary penalties awarded to the State against convenience abortion providers, physicians, or facilities for violating state law pursuant to Sections 44‑41‑36, 44‑41‑85, 44‑41‑350, and 44‑41‑470; and

(3) any other appropriations, gifts, grants, donations, and bequests.

(C) Public funds that would have otherwise been appropriated in the past to facilities providing convenience abortions may be appropriated to the fund.

(D) All interest earned on the fund must be credited to the fund.

(E) The purpose of the fund is to provide grant funding for foster care and adoption services and initiatives for both government and, especially, nongovernmental groups and individuals.

(F) The South Carolina Department of Social Services or its designee shall administer the fund and establish the administrative rules of the fund. The South Carolina Department of Social Services shall allocate monies from the fund according to the following distribution:

(1) fifty percent of the monies in the fund must be used for foster care services and initiatives; and

(2) fifty percent of the monies in the fund must be used for adoption services and initiatives or to care for unborn children and their mothers.

(G) The South Carolina Department of Social Services or its designee shall evaluate activities conducted pursuant to this section each year and, on or before February fifteen, submit an annual report containing the evaluation to the President of the Senate and the Speaker of the House of Representatives and notify the General Assembly that the report is available. The report must include the manner in which the funds in the account were maintained and distributed.

Section 44‑41‑840 (A) Pursuant to the Free Exercise Clause of the First Amendment of the United States Constitution and Section 2, Article I of the Constitution of South Carolina, 1895:

(1) no hospital or any other state actor shall discriminate against or discipline a person because of the person’s moral religious beliefs in favor of or against convenience abortion or secular abortion ideology and practices;

(2) no private or denominational hospital may be required to permit its facilities to be utilized for the performance of convenience abortions; and

(3) no person may be required, as a condition of training, employment, pay, promotion, or privileges, to agree to perform or participate in the performing of convenience abortions.

(B) A civil action for damages or reinstatement of employment, or both, may be brought for any violation of subsection (A). The prevailing party may seek attorney fees, costs, and other forms of equitable relief.

Section 44‑41‑850. (A) Section 44‑41‑820 does not affect the funding of a hospital, medical school, or university.

(B) The restrictions under Section 44‑41‑820 do not apply to funding available through the State Plan under Title XIX of the Social Security Act (Medical Assistance Program), if and only if the Hyde Amendment applies and blocks public funds from being appropriated to convenience abortion providers in the State of South Carolina because:

(1) the underlying legal basis for the Hyde Amendment is the First Amendment Establishment Clause of the United States Constitution; and

(2) the First Amendment Establishment Clause of the United States Constitution mirrors the restrictions under Section 2, Article I of the Constitution of South Carolina, 1895.

Section 44‑41‑860. (A) This article does not create or recognize:

(1) a right to experience or provide a convenience abortion; or

(2) a right to public funds, a contract, or a grant.

(B) The purpose of this article is not to:

(1) prove or disprove that life begins at conception;

(2) abolish or criminalize convenience abortion practices or ideology or other secular humanist practices or ideology; or

(3) limit convenience abortion practice to a time certain.

(C) The purpose of this article is to:

(1) distinguish secular abortion from convenience abortion;

(2) reinforce that all members of the General Assembly and all executive and judicial officers are bound by oath or affirmation pursuant to Article VI of the United States Constitution not to create or enforce policies that violate the Establishment Clause or Free Exercise Clause of the First Amendment of the United States Constitution regardless of the members’ or officers’ party affiliation or personal religious beliefs;

(3) codify the well‑established jurisprudence that emotional appeals, even good ones, cannot be used to usurp the Establishment Clause of the First Amendment of the United States Constitution or Section 2, Article I of the Constitution of South Carolina, 1895, in an effort to justify appropriating public funds to convenience abortion providers;

(4) restore the integrity of the Fourteenth Amendment’s equal protection and substantive due process clauses that the judicial branch has misused because there is no right of privacy mentioned or implied in the United States Constitution and because the substantive due process and the equal protection clauses of the Fourteenth Amendment have nothing to do with convenience abortions and do not require the State to endorse, respect, promote, or fund convenience abortion practices that are inherently nonsecular procedures;

(5) establish that:

(a) convenience abortion ideology is inseparably linked to the religion of secular humanism;

(b) while secular humanism is a religion for the purposes of the First Amendment Establishment Clause as the United States Supreme Court already resolved, secular humanism is a disfavored religion because it involves indecent speech that tends to erode community standards of decency and promote licentiousness;

(c) this State has a protected and compelling interest to uphold community standards of decency and to discourage licentiousness;

(d) it is the policy of this State to favor childbirth and family planning services that do not include convenience abortions or the promotion of convenience abortions within the continuum of care or services;

(e) the State of South Carolina has a compelling interest to not only help unborn children flourish but also born children who are available for adoption or who are placed in the foster care system; and

(f) public funds that may have been appropriated to convenience abortion providers in the past could be redirected to adoption and foster care services to better enable human flourishing without violating the Constitution of the United States or of this State because such an appropriation amounts to a secular policy and a secular use of public funds.

(D) This article is constructed on the premise that:

(1) the State of South Carolina is part of a constitutional republic;

(2) the United States Constitution is the supreme sovereign law of this country that preempts all state and federal law;

(3) the First Amendment of the United States Constitution applies to the State of South Carolina through the Fourteenth Amendment of the United States Constitution;

(4) the Establishment Clause of the First Amendment of the United States Constitution and Section 2, Article I of the Constitution of South Carolina, 1895, prohibits the appropriation of public funds to convenience abortion providers because such an appropriation constitutes state action that fails the prongs of the Lemon test established by the United States Supreme Court for:

(a) constituting a nonsecular sham;

(b) cultivating an indefensible legal weapon against nonobservers of the religion of secular humanism; and

(c) having the effect of excessively entangling the government with the religion of secular humanism;

(5) the Free Exercise Clause of the First Amendment of the United States Constitution affords a person the right to hold nonsecular moral beliefs in favor of or against convenience abortion practices without fear of discrimination by a state actor;

(6) the right to form and express a religious belief is distinct from the right to practice it; and

(7) nonsecular practices that excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the State can be restricted by the State because the freedom of religion is not absolute.”

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

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