**South Carolina General Assembly**

124th Session, 2021-2022

**H. 3872**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. McGarry, Yow, Gilliam, M.M. Smith, McCravy, Bennett and Dabney

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Introduced in the House on February 10, 2021

Currently residing in the House Committee on **Judiciary**

Summary: Life Nondiscrimination Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/10/2021 House Introduced and read first time ([House Journal‑page 6](file:///h:\hj\20210210.docx))

2/10/2021 House Referred to Committee on **Judiciary** ([House Journal‑page 6](file:///h:\hj\20210210.docx))

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**VERSIONS OF THIS BILL**

[2/10/2021](file:///p:\pprever\2021-22\3872_20210210.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “HUMAN LIFE NONDISCRIMINATION ACT” BY ADDING ARTICLE 10 TO CHAPTER 41, TITLE 44 SO AS TO PROHIBIT ABORTIONS BASED ON RACE, SEX, OR GENETIC ABNORMALITY, WITH EXCEPTIONS, TO REQUIRE PHYSICIANS TO CONFIRM THAT AN ABORTION IS NOT BEING SOUGHT DUE TO THE RACE, SEX, OR GENETIC ABNORMALITY OF THE UNBORN HUMAN BEING, WITH EXCEPTIONS, AND TO REQUIRE PHYSICIANS TO FILE RELATED DOCUMENTATION WITH THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; TO REQUIRE THE DEPARTMENT TO CREATE CERTAIN REPORTING FORMS; TO ESTABLISH CIVIL AND CRIMINAL PENALTIES AND PROFESSIONAL DISCIPLINARY ACTION FOR PHYSICIAN NONCOMPLIANCE; TO AUTHORIZE THE ATTORNEY GENERAL TO INSTITUTE LEGAL PROCEEDINGS; AND FOR OTHER PURPOSES.

Whereas, it is well‑established that human life begins at conception and continues in an unbroken progression through birth until death. Every individual on this continuum is a “human being”, meaning a member of the speciesHomo sapiens; and

Whereas, all human beings, from conception through death, have intrinsic dignity and worth. Human dignity includes the inherent right not to suffer discrimination on the basis of innate characteristics, such as a human being’s race, sex, or genetic characteristics, including any genetic abnormalities; and

Whereas, the U.S. Supreme Court has zealously vindicated the rights of people even potentially subjected to race, sex, and disability discrimination, including in Box v. Planned Parenthood of Indiana and Kentucky, 139 S.Ct. 1780 (2019) and Tennessee v. Lane, 541 U. S. 509 (2004); and

Whereas, the inherent right against discrimination on the basis of race, sex, or genetic abnormality is protected in federal and state laws. For example, the 1964 Civil Rights Act (42 U.S.C. Section 2000e, et seq.) and the laws of every state protect against discrimination on the basis of race or sex. In addition, the Rehabilitation Act of 1973 (29 U.S.C. Section 701), the Americans With Disabilities Amendments Act of 2010 (42 U.S.C. Section 12101, et seq.), and numerous state laws prohibit discrimination against individuals on the basis of a real or perceived physical or mental impairment that substantially limits one or more major life activities; and

Whereas, notwithstanding these protections, unborn human beings are often discriminated against and deprived of life, and abortion is an act rife with potential for eugenic manipulation; and

Whereas, sex‑selection abortions are used to prevent the birth of a human being of the undesired sex, and its victims are overwhelmingly female. Despite equality under the law being guaranteed to all women in the United States and most of the developed world, sex‑selection abortions continue to occur in the United States; and

Whereas, unborn human beings perceived as “handicapped” or “disabled”, such as those with Down syndrome or other chromosomal or genetic abnormalities, or those with operable conditions, such as spina bifida and cleft palate, are routinely aborted in the United States, despite increasingly favorable postnatal outcomes for these human beings, as well as the availability of helpful pharmaceutical treatments, gene therapies, and prosthetic advances that give formerly “handicapped” and “disabled” human beings much greater opportunities for survival and success than ever before. 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 “Human Life Nondiscrimination Act”.

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

“Article 10

Human Life Nondiscrimination Act

Section 44‑41‑1010. It is the intent of the General Assembly, through this article and any regulations and policies promulgated hereunder, to prohibit the practice of nontherapeutic or elective abortion for the purpose of terminating the life of an unborn human being because of that human being’s race, sex, or the presence or presumed presence of a genetic abnormality.

Section 44‑41‑1020. As used in this article:

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

(2) ‘Attempt to perform or induce an abortion’ means to do or omit anything that, under the circumstances as the person believes them to be, is an act or omission that constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in violation of this article.

(3) ‘Because of race’ means on account of the actual or presumed race or racial makeup of the unborn human being.

(4) ‘Because of the presence of a genetic abnormality’ means on account of the presence or presumed presence of an abnormal gene expression in the unborn human being including, but not limited to, chromosomal disorders or morphological malformations occurring as the result of defective gene expression.

(5) ‘Because of sex’ means on account of the actual or presumed sex of the unborn human being.

(6) ‘Conception’ means the fusion of human spermatozoon with a human ovum.

(7) ‘Department’ means the Department of Health and Environmental Control.

(8) ‘Human being’ means an individual member of the species Homo sapiens, from and after the point of conception.

(9) ‘Major bodily function’ means bodily functions including, but not limited to, functions of the immune system, normal cell growth, and bladder, bowel, brain, circulatory, digestive, endocrine, neurological, reproductive, and respiratory functions.

(10) ‘Medical emergency’ means a condition in which, on the basis of the physician’s good faith clinical judgment, an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life‑endangering physical condition arising from the pregnancy itself, or when the continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function.

(11) ‘Physician’ or ‘referring physician’ means a person licensed to practice medicine in this State.

Section 44‑41‑1030. (A) Except in a medical emergency, a person may not perform, induce, or attempt to perform or induce an abortion unless the physician who is to perform or induce the abortion has first confirmed that the abortion is not being sought because of the race or sex of the unborn human being or because of the presence or presumed presence of a genetic abnormality and documented these facts in the maternal patient’s chart, as well as in the report to be filed with the department as set forth in subsection (C).

(B) Except in a medical emergency, a person may not intentionally or knowingly perform, induce, or attempt to perform or induce an abortion of an unborn human being if the abortion is being sought because of the actual or presumed race or sex of the unborn human being or because of the presence or presumed presence of a genetic abnormality.

(C) In every case in which a physician performs or induces an abortion on an unborn human being, the physician shall within fifteen days of the procedure cause to be filed with the department, on a form supplied by the department, a report containing the following information:

(1) date the abortion was performed;

(2) specific method of abortion used;

(3) whether the race of, sex of, or the presence or presumed presence of any genetic abnormality in the unborn human being had been detected at the time of the abortion by genetic testing, such as by maternal serum tests or ultrasound, such as by nuchal translucency screening (NT), or by other forms of testing;

(4) a statement confirming that the reason for the abortion, as stated by the maternal patient, was not because of the unborn human being’s actual or presumed race or sex or the presence or presumed presence of any genetic abnormality; and

(5) probable health consequences of the abortion and specific abortion method used.

The physician shall sign the form attestating under oath that the information stated thereon is true and correct to the best of the physician’s knowledge.

Reports required and submitted pursuant to this subsection may not contain the name of the maternal patient upon whom the abortion was performed or any other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a woman who obtained or sought to obtain an abortion.

Section 44‑41‑1040. The department shall create the forms required pursuant to this article within thirty days after the effective date of this act. No provision of this article requiring the reporting of information on forms published by the department is applicable until ten days after the requisite forms have been made available or the effective date of this act, whichever is later.

Section 44‑41‑1050. (A)Any person who intentionally or knowingly violates the prohibitions in Section 44‑41‑1030(A) or (B) is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned not more than two years, or both.

(B) A woman upon whom an abortion is performed, induced, or attempted in violation of this article may not be prosecuted for conspiracy to commit any violation of this article.

Section 44‑41‑1060. (A) A physician who intentionally or knowingly violates the prohibitions in Section 44‑41‑1030(A) or (B) commits an act of unprofessional conduct, and the Board of Medical Examiners must revoke the physician’s license to practice medicine pursuant to Chapter 47, Title 40.

(B) A physician who knowingly or intentionally files with the department any report required by Section 44‑41‑1030(C) known by the physician to be false is subject to a civil penalty or fine up to one thousand dollars imposed by the department.

Section 44‑41‑1070. The Attorney General has the authority to bring an action in law or equity to enforce the provisions of this article on behalf of the director of the department or the Board of Medical Examiners. The Board of Medical Examiners also has authority to bring such action on its own behalf.

Section 44‑41‑1080. Nothing in this article may be construed as creating or recognizing a right to abortion or as altering generally accepted medical standards. Further, it is not the intention of this article to make lawful an abortion that is currently unlawful.”

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, 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. The General Assembly, through one or more sponsors of this act duly appointed by resolution of their respective chamber, may intervene as a matter of right in any case in which the constitutionality of this act is challenged.

SECTION 5. This act takes effect upon approval by the Governor.

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