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2/8/2023 Scrivener's error corrected

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**VERSIONS OF THIS BILL**

[11/30/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/29_20221130.docx)

[02/08/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/29_20230208.docx)

A bill

to amend the South Carolina Code of Laws BY ADDING CHAPTER 140 TO TITLE 44 OF THE SOUTH CAROLINA CODE, TO PROVIDE THAT A WOMAN MAY HAVE AN ABORTION PRIOR TO THE VIABILITY OF HER EMBRYO OR FETUS, TO PROVIDE FOR THE CIRCUMSTANCES IN WHICH A WOMAN MAY HAVE AN ABORTION AFTER THE VIABILITY OF HER FETUS, TO PROVIDE FOR THE PROCESS THROUGH WHICH A MINOR MAY HAVE AN ABORTION, TO PROVIDE THAT ASSISTIVE REPRODUCTIVE TECHNOLOGIES AND CONTRACEPTIVES SHALL BE AVAILABLE IN SOUTH CAROLINA, TO PROVIDE THAT PREGNANT WOMEN ARE ENTITLED TO QUALITY PRENATAL AND POSTNATAL HEALTHCARE, AND TO EXPAND MEDICAID TO FACILITATE THE DELIVERY OF QUALITY PRENATAL AND POSTNATAL HEALTHCARE; by amending Section 40‑47‑37, relating to Practice of telemedicine requirements, so as to PERMIT DOCTORS TO PRESCRIBE ABORTION INDUCING DRUGS VIA TELEMEDICINE; by adding Section 38‑71‑48 so as to PROVIDE THAT HEALTH INSURANCE POLICIES THAT PROVIDE PREGNANCY AND CHILD BIRTH COVERAGE MUST ALSO OFFER COVERAGE FOR ABORTIONS AND RELATED SERVICES AND MEDICAL PROCEDURES INTENDED TO PERMANENTLY PREVENT PREGNANCY INCLUDING, BUT NOT LIMITED TO, TUBAL LIGATION, HYSTERECTOMY, AND VASECTOMY; by adding Section 38‑71‑49 so as to PROVIDE THAT HEALTH INSURANCE POLICIES MUST OFFER COVERAGE FOR ASSISTIVE REPRODUCTIVE TECHNOLOGIES; TO AMEND SECTION 59‑32‑10(2) OF THE SOUTH CAROLINA CODE TO PROVIDE THAT REPRODUCTIVE HEALTH EDUCATION MEANS AGE APPROPRIATE, UNBIASED, COMPREHENSIVE, AND MEDICALLY ACCURATE INSTRUCTION, AND TO FURTHER PROVIDE THAT ABSTINENCE EDUCATION CAN BE TAUGHT BUT NOT TAUGHT AS THE PRIMARY OR ONLY WAY TO PREVENT PREGNANCY; TO AMEND 59‑32‑10(4) OF THE SOUTH CAROLINA CODE TO PROVIDE THAT ABSTINENCE FROM SEX BEFORE MARRIAGE CAN BE ENCOURAGED AS A WAY TO PREVENT PREGNANCY; and TO REPEAL CHAPTER 41, TITLE 44 OF THE SOUTH CAROLINA CODE, RELATING TO ABORTION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 44 of the S.C. Code is amended by adding:

CHAPTER 140

Reproductive Health Rights

Section 44‑140‑10. For the purposes of this chapter:

(1) “Abortion” means the use of an instrument, medicine, drug, or other substance or device with intent to terminate the pregnancy of a woman known to be pregnant for reasons other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

(2) “Abortion‑inducing drugs” means a medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with knowledge that the termination will with reasonable likelihood cause the death of the unborn child. This includes off‑label use of drugs known to have abortion‑inducing properties, which are prescribed specifically with the intent of causing an abortion, such as misoprostol (Cytotec) and methotrexate. This definition does not apply to drugs that may be known to cause an abortion but which are prescribed for other medical indications, including, but not limited to, chemotherapeutic agents or diagnostic drugs. Use of such drugs to induce abortion is also known as ‘medical’, ‘drug‑induced.’

(3) “Assistive reproductive technologies” means treatments or procedures that involve the handling of human egg, sperm, and embryo outside the body with the intent of facilitating a pregnancy. Assistive reproductive technologies include, but are not limited to, in vitro fertilization, egg, embryo, or sperm cryopreservation, egg or embryo donation, and gestational surrogacy.

(4) “Contraceptive” means any drug, device, medication, or method used to prevent pregnancy. A contraceptive may prevent ovulation, fertilization, or implantation in the uterus.

(5) “Department” means the Department of Health and Environmental Control.

(6) “Emergency contraception” means a form of contraception that is effective if administered within a specified period of time after sexual intercourse.

(7) “Hospital” means those institutions licensed for hospital operation by the department in accordance with Article 3, Chapter 7 of this title and which have also been certified by the department to be suitable facilities for the performance of abortions.

(8) “Infertility” means the inability to establish pregnancy after twelve months of regular, unprotected sexual intercourse; or a person’s incapacity for reproduction either as an individual or with his partner, which may be determined after a period of less than twelve months of regular, unprotected sexual intercourse, or based on medical, sexual, and reproductive history, age, physical findings, or diagnostic testing.

(9) “Pregnant” means the condition of a woman carrying a developing embryo or fetus within her body. Pregnancy does not begin until a zygote is implanted in the uterine wall.

(10) “Spontaneous abortion” means a noninduced embryonic or fetal death or passage of products of conception before twenty weeks gestation.

(11) “Viability” means the state of fetal development when the life of the fetus may be continued indefinitely outside the womb by natural or artificial life‑supportive systems. A legal presumption is hereby created that viability occurs no sooner than the twenty fourth week of pregnancy, recognizing that some pregnancies may never become viable.

Section 44‑140‑20. An abortion may be performed or induced by a physician on a woman with her consent prior to the viability of her fetus. The decision to have an abortion prior to the viability of her fetus shall be solely that of the pregnant woman in consultation with her physician.

Section 44‑140‑30. An abortion may be performed or induced by a physician after a fetus reaches viability only with a pregnant woman’s consent and only when the:

(1) abortion is necessary based upon her physician’s best medical judgment to preserve the life or health of the woman;

(2) pregnancy was the result of rape;

(3) pregnancy was the result of incest; or

(4) abortion is necessary based upon a fetal diagnosis that is incompatible with life.

Section 44‑140‑40. A physician practicing telemedicine in accordance with the requirements contained in Section 40‑47‑37 may prescribe abortion‑inducing drugs.

Section 44‑140‑50. A pregnant woman may not be kept alive by artificial methods in order to carry a pregnancy to term without her consent. In the event of incapacity, a pregnant woman may not be kept alive by artificial methods in order to carry a pregnancy to term without the consent of her medical power of attorney, next of kin, or immediate family members, in that order of priority.

Section 44‑140‑60. No person may seize any blood, DNA, medical waste, or anything related to an abortion in order to be used in prosecuting an allegation of rape or incest without the written consent of the woman upon whom the abortion was performed or induced. In the event that the woman upon whom the abortion was performed was a minor, consent must be obtained from one of her parents or legal guardian who is not alleged to have committed the rape or incest that resulted in the pregnancy.

Section 44‑140‑70. (A) No private or nongovernmental hospital or clinic shall be required to admit any patient for the purpose of performing or inducing an abortion, nor shall such institutions be required to permit their facilities to be utilized to perform or induce abortions. No cause of action shall arise against any such hospital or clinic for refusal to perform or induce or to allow the performance or induction of an abortion if the institution has adopted a policy to not admit patients for the purpose of performing or inducing abortions; provided that no hospital or clinic shall refuse an emergency admittance.

(B)(1) No physician, nurse, technician, or other employee of a hospital, clinic, or physician shall be required to recommend, perform, induce, or assist in the performance or induction of an abortion if he advises the hospital, clinic, or employing physician in writing that he objects to performing, inducing, assisting, or otherwise participating in such procedures. Such notice will suffice without specification of the reason therefor.

(2) No physician, nurse, technician, or other person who refuses to perform, induce, or assist in the performance or induction of an abortion shall be liable to any person for damages allegedly arising from such refusal.

(3) No physician, nurse, technician or other person who refuses to perform, induce, assist in the performance or induction of an abortion shall because of that refusal be dismissed, suspended, demoted, or otherwise disciplined or discriminated against by the hospital or clinic with which he is affiliated or by which he is employed. A civil action for damages or reinstatement of employment, or both, may be prosecuted by any person whose employment or affiliation with a hospital or clinic has been altered or terminated in violation of this chapter; provided that no physician, nurse, technician, or other person may refuse to provide care in a medical emergency.

(4) Any physician who performs an abortion shall also provide, for proper compensation, necessary aftercare for his patient unless released by the patient in writing. The extent of aftercare required shall be that care customarily provided by physicians in such cases in accordance with accepted medical practice.

(C) A private or nongovernmental hospital or clinic, or a physician, nurse, technician, or other person who refuses to provide emergency contraception to a rape victim must inform the rape victim as soon as practicable of her right to emergency contraception and where she can obtain emergency contraception, including a referral to another medical facility or physician.

Section 44‑140‑80. Any abortion performed or induced in this State must be reported by the performing physician on the standard form for reporting abortions to the State Registrar, Department of Health and Environmental Control, within seven days after the abortion is performed or induced. The names of the patient and physician may not be reported on the form or otherwise disclosed to the State Registrar. The form must indicate from whom consent was obtained, circumstances waiving consent, and, if an exception was exercised pursuant to Section 44‑140‑30, which exception the physician relied upon in performing or inducing the abortion.

Section 44‑140‑90. (A)(1) The department shall promulgate and enforce regulations for the certification of hospitals as defined in Section 44‑140‑10 as suitable facilities for the performance of abortions.

(2) The department shall promulgate and enforce regulations for the licensing and certification of facilities other than hospitals as defined in Section 44‑140‑10(7) wherein abortions are to be performed or induced.

(B)(1) A facility in which five or more abortions are performed or induced in a month must be licensed by the department to operate as an abortion clinic.

(2) The department shall promulgate regulations concerning sanitation, housekeeping, maintenance, staff qualifications, emergency equipment and procedures to provide emergency care, medical records and reports, laboratory, procedure and recovery rooms, physical plant, quality assurance, infection control, and information on and access to patient follow up care necessary to carry out the purposes of this section.

Section 44‑140‑100. (A) A pregnant woman who is experiencing or has experienced a miscarriage or spontaneous abortion is immune from all legal action, including police investigation and prosecution.

(B) Physicians are authorized to treat a woman experiencing a spontaneous abortion or miscarriage or who has already experienced a spontaneous abortion or miscarriage with any medical procedure or pharmaceutical deemed by medical professionals to be the appropriate standard of care.

(C) Pharmacists are authorized to dispense medication known to induce abortions for the treatment of miscarriage or spontaneous abortion.

Section 44‑140‑110. All medical schools in this State must include training on miscarriage and spontaneous abortion management in their required instruction of students who will provide reproductive care to women.

Section 44‑140‑120. It is unlawful to deceive, or attempt to deceive, a woman, regardless of whether the woman is pregnant, by providing her with false or misleading information concerning the gestational age of her fetus, her due date, how much time she has to make a decision concerning an abortion, or any other false or misleading information that may impact a woman’s decision concerning her pregnancy and whether to have an abortion. A person who violates this section is guilty of a felony, and, upon conviction, must be fined up to ten thousand dollars or imprisoned for up to five years, or both.

Section 44‑140‑130. The General Assembly may not appropriate funds or otherwise commit resources to crisis pregnancy centers or any other facility that inaccurately presents itself as a health care facility.

Section 44‑140‑140. All data related to a woman’s fertility, including data related to tracking menstrual cycles must:

(1) remain confidential and may not be released to anyone without the woman’s prior written consent; and

(2) not be used as evidence in any prosecution of the woman.

Section 44‑140‑150. (A) No person may perform an abortion upon a minor unless consent is obtained in accordance with one of the following provisions:

(1) the attending physician or his agent or the referring physician or his agent has secured the informed written consent, signed and witnessed, of the pregnant minor and:

(a) one parent of the minor; or

(b) a legal guardian of the minor; or

(c) a grandparent of the minor; or

(d) any person who has been standing in loco parentis to the minor for a period not less than sixty days;

(2) the minor is emancipated and the attending physician or his agent has received the informed signed written consent of the minor; or

(3) the attending physician or his agent has obtained the informed signed written consent of the minor and has received the order of the court obtained by the minor pursuant to this chapter.

(B) If a parent or legal guardian refuses to give the informed written consent for the min’or's abortion and there has been a judicial finding of refusal of consent, and the minor has a child or children as a result of that pregnancy, the duty imposed by law of supporting the child or children extends to the minor and jointly and severally to the refusing parent or legal guardian and the natural father until the minor reaches the age of eighteen years or is emancipated.

(C) Any person standing in loco parentis and who consents to the abortion of the minor as permitted in subsection (A)(1) of this section shall sign an affidavit indicating the nature and length of his or her relationship with the minor. The affidavit must state the penalties for wilfully or knowingly making a false representation. Anyone who knowingly or wilfully makes a false representation in the affidavit shall be guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than one year.

Section 44‑140‑160. Every minor has the right to petition the court for an order granting her the right to obtain an abortion without the consent. In seeking this relief the following procedures apply:

(1) The minor may prepare and file a petition in either the circuit or family court. The petition may be filed in the name of Jane Doe to protect the anonymity of the minor.

(2) The Adoption and Birth Parent Services Division of the Department of Social Services, upon request of the minor, must provide assistance to the minor in preparing and filing the petition. Preparation and filing of the petition must be completed within forty eight hours after the request. The Department of Social Services shall promulgate regulations establishing the procedures to be followed in providing this assistance.

(3) Upon the filing of the petition, the court shall appoint a guardian ad litem for the minor, taking into consideration the preference of the minor. The minor may participate in court proceedings on her own behalf, but the court shall advise her that she has a right to court appointed counsel and shall provide her with counsel upon her request.

(4) All proceedings pursuant to this section must be given precedence over other matters pending before the court.

(5) The court shall hold a hearing and rule on the merits of the petition within seventy two hours of the filing of the petition. This time may be extended upon the request of the minor. The court shall consider the emotional and physical development, maturity, intellect, and understanding of the minor; the nature and possible consequences of the abortion and of the alternatives to the abortion; and other evidence that the court may find useful in determining whether the minor should be granted the right on her own behalf to consent to the abortion or whether the abortion is in the best interest of the minor. The court shall weigh this against the ability of the minor to provide and care for a child. The court shall also consider the risks of an abortion versus the risks of pregnancy, including the maternal and infant mortality rates in this State.

Section 44‑140‑170. (A) The court shall enter a written order stating findings of fact and conclusions of law in support of its decision to:

(1) grant the minor the right on her own behalf to consent to the abortion if the court finds that the minor is mature and well informed enough to make the abortion decision on her own;

(2) grant consent for the abortion if the court finds that the performance of the abortion would be in the minor's best interest; or

(3) deny the petition if the court finds that the minor is immature and that performance of the abortion would not be in the min’or's best interest. If the father of the child born after the denial of the petition is identified by adjudication, he shall share in the expenses of the delivery and rearing of the child as determined by the court. Orders issued under this item shall specify that the minor shall have the right to counseling services, appropriate prenatal care, delivery, neonatal, and post natal care, the cost of which may be paid by the State. Additionally, the State shall have subrogation rights against the father for payments made by the State on behalf of the child.

(B) The court shall immediately issue a written order to the minor, her guardian ad litem, attorney, or other person designated by the minor to receive notice on her behalf.

Section 44‑140‑180. (A) A minor has the right to appeal to the Supreme Court a decision rendered pursuant to Section 44‑140‑170. She is entitled to an anonymous and expeditious appellate review which takes precedence over other matters pending before the court.

(B) A minor who declares she has insufficient funds to pursue the procedures provided in this section or in Section 44‑140‑160 must not be required to pay the costs associated with these procedures.

(C) The notice of intent to appeal must be filed with the court issuing the order within seventy two hours from the date the order is received. The record on appeal must be completed and the appeal must be perfected within ten days from the filing of the notice of intent to appeal. These filing requirements are not considered jurisdictional and may be extended by the Supreme Court upon request of the minor for good cause shown.

(D) All hearings conducted under this section and Section 44‑140‑160 must be closed to the public. All records related to these sections and Section 44‑140‑160 are not open to public examination and must be sealed by the court.

(E) The Supreme Court shall adopt rules governing the administration of the courts or practice and procedure before such courts necessary to carry out the provisions of this section and Sections 44‑140‑160 and 44‑140‑170.

Section 44‑140‑190. Failure to obtain required consent constitutes prima facie evidence of interference with family relations in appropriate civil actions. The law of this State does not preclude the award of exemplary damages in an appropriate civil action relevant to violations concerning a minor. Nothing in this chapter may be construed to limit the common law rights of parents.

Section 44‑140‑200. (A) A person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement in this article is guilty of a misdemeanor and, upon conviction, must be fined not less than two thousand dollars nor more than ten thousand dollars or imprisoned for not more than three years, or both. No part of the minimum fine may be suspended. For conviction of a third or subsequent offense, the sentence must be imprisonment for not less than sixty days nor more than three years, none of which may be suspended.

(B) A physician or any person employed or connected with a physician, hospital, or health care facility performing abortions who acts in good faith is justified in relying on the representations of the unemancipated minor or of any other person providing the information required under this chapter. A physician or other person who furnishes professional services related to an act authorized or required by this chapter and who relies upon the information furnished pursuant to this chapter may not be held to have violated any criminal law or to be civilly liable for the reliance, provided that the physician or other person acted in good faith.

Section 44‑140‑210. (A) A physician or other professional person or agency counseling or discussing with a minor the question of her obtaining an abortion shall fully inform her of the procedures she must follow under law to obtain an abortion without the required consent.

(B) The Adoption and Birth Parent Services Division of the Department of Social Services shall develop and distribute brochures to health and education professionals for use in counseling pregnant minors. This brochure shall include the following:

(1) how to access her local health department for prenatal care;

(2) how to access her local Adoption and Birth Parent Services Division of the Department of Social Services or any private not for profit adoption service;

(3) the parental consent requirement as outlined in this bill;

(4) the judicial by pass procedure as provided in this article; and

(5) how to access her local mental health center for counseling services.

Section 44‑140‑220. It is the public policy of this state to protect and promote equitable access to the full range of assistive reproductive technologies. Any undue burden placed on a person seeking to utilize assistive reproductive technologies is a violation of this section.

Section 44‑140‑230. Practitioners of assistive reproductive technologies are not required to preserve eggs or sperm. However, a patient, after consultation with her practitioner, may choose to preserve eggs or sperm. If the patient chooses to preserve eggs or sperm, then the practitioner must provide for appropriate preservation in accordance with generally accepted medical standards.

Section 44‑140‑240. It is the public policy of this State that individuals in this State are entitled to make autonomous decisions concerning contraceptives. Each individual in this State is entitled to access, possess, and use the contraceptive method that the individual decides is best for her circumstances.

Section 44‑140‑250. (A) It is the public policy of this State that all pregnant women in South Carolina are entitled to high‑quality healthcare during pregnancy, childbirth, and for at least one year after childbirth, regardless of their insurance plan coverage, lack of insurance, or ability to pay.

(B) To facilitate the delivery of high‑quality delivery of prenatal and postnatal healthcare services to financially challenged women, beginning January 1, 2024, an adult sixty‑five years of age and younger whose income is at or below one hundred thirty‑three percent of the federal poverty level, with a five percent income disregard, is eligible for Medicaid as provided for in the “Patient Protection and Affordable Care Act” (P.L. No. 111‑148) and amendments to that act.

Section 44‑140‑260. A pregnant woman may choose to receive prenatal and postnatal care from a midwife, doula, physician, nurse, nurse practitioner, or any other health care provider of her choice.

SECTION 2. Section 40‑47‑37(C)(6) of the S.C. Code is amended to read:

(6) prescribe within a practice setting fully in compliance with this section and during an encounter in which threshold information necessary to make an accurate diagnosis has been obtained in a medical history interview conducted by the prescribing licensee; provided, however, that Schedule II and Schedule III prescriptions are not permitted except for those Schedule II and Schedule III medications specifically authorized by the board, which may include, but not be limited to, Schedule II‑nonnarcotic and Schedule III‑nonnarcotic medications; further, provided, that licensees prescribing controlled substances by means of telemedicine must comply with all relevant federal and state laws including, but not limited to, participation in the South Carolina Prescription Monitoring Program set forth in Article 15, Chapter 53, Title 44; further, provided, that prescribing of lifestyle medications including, but not limited to, erectile dysfunction drugs is not permitted unless approved by the board; further, provided, that prescribing abortion‑inducing drugs is not permitted; as used in this article “abortion‑inducing drug” means a medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with knowledge that the termination will with reasonable likelihood cause the death of the unborn child. This includes off‑label use of drugs known to have abortion‑inducing properties, which are prescribed specifically with the intent of causing an abortion, such as misoprostol (Cytotec), and methotrexate. This definition does not apply to drugs that may be known to cause an abortion, but which are prescribed for other medical indications including, but not limited to, chemotherapeutic agents or diagnostic drugs. Use of such drugs to induce abortion is also known as “medical”, “drug‑induced”, and/or “chemical abortion”;

SECTION 3. Chapter 71, Title 38 of the S.C. Code is amended by adding:

Section 38‑71‑48. Every health maintenance organization, individual and group health insurance policy, or contract issued or renewed in this State that provides coverage for pregnancy and childbirth must also provide coverage for:

(1) abortions and related services; and

(2) medical procedures intended to permanently prevent pregnancy, including, but not limited to, tubal ligation, hysterectomy, and vasectomy.

SECTION 4. Chapter 71, Title 38 of the S.C. Code is amended by adding:

Section 38‑71‑49. Every health maintenance organization, individual and group health insurance policy, or contract issued or renewed in this State must offer coverage for assistive reproductive technologies. Coverage offered pursuant to this section shall include, but shall not be not limited to, ovulation induction, egg retrieval, sperm retrieval, artificial insemination, in vitro fertilization, genetic screening, intracytoplasmic sperm injection, and any other non‑experimental treatment, as determined by the Director of the Department of Health and Environmental Control in consultation with appropriate professional and patient organizations such as the American Society for Reproductive Medicine, RESOLVE, the National Infertility Association, and the American College of Obstetricians and Gynecologists.

SECTION 5. Section 59‑32‑10(2) of the S.C. Code is amended to read:

(2) “Reproductive health education” means age appropriate, unbiased, comprehensive, and medically accurate instruction in human physiology, conception, prenatal care and development, childbirth, and postnatal care, but does not include instruction concerning sexual practices outside marriage or practices unrelated to reproduction except within the context of the risk of disease. Abstinence and the risks associated with sexual activity outside of marriage must be strongly emphasizedmay be encouraged and discussed, however, it may not be the only or primary method of prevention of pregnancy and sexually transmitted diseases.

SECTION 6. Section 59‑32‑10(4) of the S.C. Code is amended to read:

(4) “Pregnancy prevention education” means instruction intended to:

(a) stress the importance ofencourage abstaining from sexual activity until marriage;

(b) help students develop skills to enable them to resist peer pressure and abstain from sexual activity;

(c) explain methods of contraception and the risks and benefits of each method. Abortion must not be included as a method of birth control. Instruction explaining the methods of contraception must not be included in any education program for grades kindergarten through fifth. Contraceptive information must be given in the context of future family planning.

SECTION 7. Chapter 41, Title 44 of the S.C. Code, relating to abortions, is repealed.

SECTION 8. This act takes effect upon approval by the Governor.

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