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CHAPTER 41.

 ABORTIONS

ARTICLE 1.

 ABORTIONS GENERALLY

**SECTION 44‑41‑10.** Definitions.

As used in this chapter:

(a) “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.

(b) “Physician” means a person licensed to practice medicine in this State.

(c) “Department” means the South Carolina Department of Health and Environmental Control.

(d) “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.

(e) “Clinic” shall mean any facility other than a hospital as defined in subsection (d) which has been licensed by the Department, and which has also been certified by the Department to be suitable for the performance of abortions.

(f) “Pregnancy” means the condition of a woman carrying a fetus or embryo within her body as the result of conception.

(g) “Conception” means the fecundation of the ovum by the spermatozoa.

(h) “Consent” means a signed and witnessed voluntary agreement to the performance of an abortion.

(i) “First trimester of pregnancy” means the first twelve weeks of pregnancy commencing with conception rather than computed on the basis of the menstrual cycle.

(j) “Second trimester of pregnancy” means that portion of a pregnancy following the twelfth week and extending through the twenty‑fourth week of gestation.

(k) “Third trimester of pregnancy” means that portion of a pregnancy beginning with the twenty‑fifth week of gestation.

(l) “Viability” means that stage of human development when the fetus is potentially able to live outside of the mother’s womb with or without the aid of artificial life support systems. For the purposes of this chapter, a legal presumption is hereby created that viability occurs no sooner than the twenty‑fourth week of pregnancy.

(m) “Minor” means a female under the age of seventeen.

(n) “Emancipated minor” means a minor who is or has been married or has by court order been freed from the care, custody, and control of her parents.

(o) “In loco parentis” means any person over the age of eighteen who has placed himself or herself in the position of a lawful parent by assuming obligations which are incidental to the parental relationship and has so served for a period of sixty days.

**SECTION 44‑41‑20.** Legal Abortions.

Abortion shall be a criminal act except when performed under the following circumstances:

(a) During the first trimester of pregnancy the abortion is performed with the pregnant woman’s consent by her attending physician pursuant to his professional medical judgment.

(b) During the second trimester of pregnancy the abortion is performed with the pregnant woman’s consent by her attending physician in a hospital or clinic certified by the Department.

(c) During the third trimester of pregnancy, the abortion is performed with the pregnant woman’s consent, and if married and living with her husband the consent of her husband, in a certified hospital, and only if the attending physician and one additional consulting physician, who shall not be related to or engaged in private practice with the attending physician, certify in writing to the hospital in which the abortion is to be performed that the abortion is necessary based upon their best medical judgment to preserve the life or health of the woman. In the event that the preservation of the woman’s mental health is certified as the reason for the abortion, an additional certification shall be required from a consulting psychiatrist who shall not be related to or engaged in private practice with the attending physician. All facts and reasons supporting such certification shall be set forth by the attending physician in writing and attached to such certificate.

**SECTION 44‑41‑30.** Persons from whom consent is required.

(A) Consent is required before the performance of an abortion from the pregnant woman in every case and in the case of a minor, it must be obtained pursuant to the provisions of Section 44‑41‑31.

(B) In the case of a woman who is under adjudication of mental incompetency by a court of competent jurisdiction, consent must be obtained from her spouse or a legal guardian if she is married; if she is not married, from one parent or a legal guardian.

(C) Notwithstanding the consent required in subsections (A) and (B) consent must be waived if:

(1) a physician determines that a medical emergency exists involving the life of or grave physical injury to the pregnant woman; or

(2) the pregnancy is the result of incest.

(D) In cases of incest the physician performing the abortion shall report the alleged incest to the local county department of social services or to a law enforcement agency in the county where the child resides or is found. Failure to report is a violation punishable under the child abuse laws of this State.

(E) Nothing in this section permits a physician to perform an abortion without first obtaining the consent of the pregnant woman if she is capable of giving consent.

**SECTION 44‑41‑31.** Abortion upon minors; consent requirements; support obligations of parent or legal guardian who refuses to give consent for minor’s abortion; penalty for false representation.

(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 minor’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 44‑41‑32.** Petitioning court for right to obtain abortion without consent of parent or legal guardian.

Every minor has the right to petition the court for an order granting her the right to obtain an abortion without the consent required in Section 44‑41‑31(1). 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 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.

**SECTION 44‑41‑33.** Court order granting or denying minor right to obtain abortion.

(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 minor’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 44‑41‑34.** Appeals; hearings closed to public; records to be sealed; Supreme Court to adopt rules.

(A) A minor has the right to appeal to the Supreme Court a decision rendered pursuant to Section 44‑41‑33. 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 44‑41‑32 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 described in Section 44‑41‑33 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 Sections 44‑41‑32 and 44‑41‑34 must be closed to the public. All records related to these sections and Section 44‑41‑33 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 Sections 44‑41‑32, 44‑41‑33, and 44‑41‑34.

**SECTION 44‑41‑35.** Failure to obtain required consent.

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 44‑41‑36.** Penalty for failing to conform with requirements of Sections 44‑41‑10 through 44‑41‑36 when performing abortion on minor; justified reliance on representations of minors or other persons.

(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 Sections 44‑41‑10 through 44‑41‑36 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 44‑41‑37.** Disclosure of consent requirements when counseling or discussing abortion with minor; brochure for use in counseling pregnant minors.

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 consent required in Section 44‑41‑31(1).

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 referred in Sections 44‑41‑32, 44‑41‑33, and 44‑41‑34; and

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

**SECTION 44‑41‑40.** Certain hospitals or clinics may refuse to perform abortions.

No private or nongovernmental hospital or clinic shall be required to admit any patient for the purpose of terminating a pregnancy, nor shall such institutions be required to permit their facilities to be utilized for the performance of abortions. No cause of action shall arise against any such hospital or clinic for refusal to perform or to allow the performance of an abortion if the institution has adopted a policy not to admit patients for the purpose of terminating pregnancies; provided, that no hospital or clinic shall refuse an emergency admittance.

**SECTION 44‑41‑50.** Medical employees shall not be required to aid in abortions; providing necessary aftercare following abortion.

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

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

(c) No physician, nurse, technician or other person who refuses to perform or assist in the performance 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.

(d) 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.

**SECTION 44‑41‑60.** Abortions shall be reported.

Any abortion performed 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. 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 or circumstances waiving consent.

**SECTION 44‑41‑70.** Promulgation of rules and regulations for certification of hospitals and other facilities.

(a) The department shall promulgate and enforce regulations for the certification of hospitals as defined in Section 44‑41‑10(d) as suitable facilities for the performance of abortions.

(b) The department shall promulgate and enforce regulations for the licensing and certification of facilities other than hospitals as defined in Section 44‑41‑10(d) wherein abortions are to be performed as provided for in Section 44‑41‑20(a) and (b).

**SECTION 44‑41‑75.** Licensing of certain abortion facilities; regulations.

(A) A facility in which any second trimester or five or more first trimester abortions are performed in a month must be licensed by the department to operate as an abortion clinic and must comply with the provisions of Article 3.

(B) 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 44‑41‑80.** Performing or soliciting unlawful abortion; testimony of woman may be compelled.

(a) Any person, except as permitted by this chapter, who provides, supplies, prescribes or administers any drug, medicine, prescription or substance to any woman or uses or employs any device, instrument or other means upon any woman, with the intent to produce an abortion shall be deemed guilty of a felony and, upon conviction, shall be punished by imprisonment for a term of not less than two nor more than five years or fined not more than five thousand dollars, or both. Provided, that the provisions of this item shall not apply to any woman upon whom an abortion has been attempted or performed.

(b) Except as otherwise permitted by this chapter, any woman who solicits of any person or otherwise procures any drug, medicine, prescription or substance and administers it to herself or who submits to any operation or procedure or who uses or employs any device or instrument or other means with intent to produce an abortion, unless it is necessary to preserve her life, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment for a term of not more than two years or fined not more than one thousand dollars, or both.

(c) Any woman upon whom an abortion has been performed or attempted in violation of the provisions of this chapter may be compelled to testify in any criminal prosecution initiated pursuant to subsection (a) of this section; provided, however, that such testimony shall not be admissible in any civil or criminal action against such woman and she shall be forever immune from any prosecution for having solicited or otherwise procured the performance of the abortion or the attempted performance of the abortion upon her.

**SECTION 44‑41‑85.** Performance of partial‑birth abortion by physician; felony; cause of action against physician.

(A) A physician who knowingly performs a partial‑birth abortion and thereby kills a human fetus is guilty of a felony and, upon conviction, must be fined not less than five thousand dollars or imprisoned for not less than five years, or both. This section shall not apply to a partial‑birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, a physical illness, or a physical injury if no other medical procedure would suffice for that purpose.

(B) As used in this section:

(1) the term “partial‑birth abortion” means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

(2) the term “physician” means a physician, surgeon, or osteopath authorized to practice medicine in this State and licensed pursuant to Chapter 47 of Title 40. However, an individual who is not a physician, but who directly and knowingly performs a partial‑birth abortion is also subject to the provisions of this section.

(C)(1) The father, if married to the mother at the time she receives a partial‑birth abortion, and if the mother has not attained the age of eighteen years at the time of the abortion, the maternal grandparents of the fetus have a cause of action against the physician or other person unlawfully performing a partial‑birth abortion and may obtain appropriate relief, unless the pregnancy resulted from the plaintiff’s criminal conduct or the plaintiff consented to the abortion.

(2) Such relief includes, but is not limited to:

(a) actual damages which shall be trebled;

(b) punitive damages for all injuries, psychological and physical, occasioned by the violation of this section; and

(c) reasonable costs and attorney’s fees.

(D) A woman upon whom a partial‑birth abortion is performed may not be prosecuted for a violation of this section, for a conspiracy to violate this section, or for any other offense which is based on a violation of this section.

ARTICLE 3.

 WOMAN’S RIGHT TO KNOW

**SECTION 44‑41‑310.** Short title.

This article may be cited as the “Woman’s Right to Know Act”.

**SECTION 44‑41‑320.** Definitions.

As used in this article:

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

(2) “Probable gestational age of the embryo or fetus” means what, in the judgment of the attending physician based upon the attending physician’s examination and the woman’s medical history, is with reasonable probability the gestational age of the embryo or fetus at the time the abortion is planned to be performed.

**SECTION 44‑41‑330.** Conditions for performance; information requirements; waiting period; minors or mentally incompetent persons; retention of records.

(A) Except in the case of a medical emergency and in addition to any other consent required by the laws of this State, no abortion may be performed or induced unless the following conditions have been satisfied:

(1) The woman must be informed by the physician who is to perform the abortion or by an allied health professional working in conjunction with the physician of the procedure to be involved and by the physician who is to perform the abortion of the probable gestational age of the embryo or fetus at the time the abortion is to be performed. If an ultrasound is performed, an abortion may not be performed sooner than sixty minutes following completion of the ultrasound. The physician who is to perform the abortion or an allied health professional working in conjunction with the physician must inform the woman before the ultrasound procedure of her right to view the ultrasound image at her request during or after the ultrasound procedure.

(2) The woman must be presented by the physician who is to perform the abortion or by an allied health professional working in conjunction with the physician a written form containing the following statement: “You have the right to review printed materials prepared by the State of South Carolina which describe fetal development, list agencies which offer alternatives to abortion, and describe medical assistance benefits which may be available for prenatal care, childbirth, and neonatal care. You have the right to view your ultrasound image.” This form must be signed and dated by both the physician who is to perform the procedure and the pregnant woman upon whom the procedure is to be performed.

(3) The woman must certify in writing, before the abortion, that the information described in item (1) of this subsection has been furnished her, and that she has been informed of her opportunity to review the information referred to in item (2) of this subsection.

(4) Before performing the abortion, the physician who is to perform or induce the abortion must determine that the written certification prescribed by item (3) of this subsection or the certification required by subsection (D) has been signed. This subsection does not apply in the case where an abortion is performed pursuant to a court order.

(B) Nothing herein limits the information provided by the physician who is to perform the abortion or allied health professional to the person upon whom the abortion procedure is to be performed.

(C) No abortion may be performed sooner than twenty‑four hours after the woman receives the written materials and certifies this fact to the physician or the physician’s agent.

(D) If the clinic or other facility where the abortion is to be performed or induced mails the printed materials described in Section 44‑41‑340 to the woman upon whom the abortion is to be performed or induced or if the woman obtains the information at the county health department and if the woman verifies in writing, before the abortion, that the printed materials were received by her more than twenty‑four hours before the abortion is scheduled to be performed or induced, that the information described in item (A)(1) has been provided to her, and that she has been informed of her opportunity to review the information referred to in item (A)(2), then the waiting period required pursuant to subsection (C) does not apply.

(E) In the event the person upon whom the abortion is to be performed or induced is an unemancipated minor, as defined in Section 44‑41‑10, the information described in Section 44‑41‑330(A)(1) and (2) must be furnished and offered respectively to a parent of the minor, a legal guardian of the minor, a grandparent of the minor, or any person who has been standing in loco parentis to the minor for a period of not less than sixty days. The parent, legal guardian, grandparent, or person who has been standing in loco parentis, as appropriate, must make the certification required by Section 44‑41‑330(A)(3). In the event the person upon whom the abortion is to be performed is under adjudication of mental incompetency by a court of competent jurisdiction, the information must be furnished and offered respectively to her spouse or a legal guardian if she is married; if she is not married, from one parent or a legal guardian. The spouse, legal guardian, or parent, as appropriate, must make the certification required by Section 44‑41‑330(A)(3). This subsection does not apply in the case of an abortion performed pursuant to a court order.

(F) A clinic or other facility must maintain, for three years after the abortion is performed or induced, the woman’s written verification that the information was so provided and the printed materials were so offered. In the case of an unemancipated minor or mentally incompetent person, the clinic or other facility is required to maintain a copy of the court order or the medical records and written consent for three years after the procedure is performed.

(G) This section does not apply if a clinic or other facility where abortions are performed or induced does not have, through no fault of the clinic or facility and if the clinic or facility can demonstrate through written evidence the unavailability of the materials described in Section 44‑41‑340.

**SECTION 44‑41‑340.** Publication of materials regarding available assistance, etc.

(A) The South Carolina Department of Health and Environmental Control shall cause to be published the following printed materials:

(1) geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies, which include a comprehensive list of the agencies available, a description of the services they offer, and a description of the manner, including telephone numbers, in which they may be contacted;

(2) materials designed to inform the woman of the probable anatomical and physiological characteristics of the embryo or fetus at two‑week gestational increments from the time when a woman can be known to be pregnant to full term. Any photograph, drawing or other depiction must state in bold letters, which are easily legible, stating the magnification of the photograph, drawing or depiction if it is not the actual size of the embryo or fetus at the age indicated. The materials must be objective, nonjudgmental, and designed to convey only accurate scientific information about the embryo or fetus at the various gestational ages;

(3) materials designed to inform the woman of the principal types of abortion procedures and the major risks associated with each procedure, as well as the major risks associated with carrying a fetus to full‑term;

(4) materials designed to inform the woman that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care by providing the names, addresses, and phone numbers of appropriate agencies that provide or have information available on these benefits;

(5) materials designed to inform the woman of the mechanisms available for obtaining child support payments.

(6) a list of health care providers, facilities, and clinics that offer to perform ultrasounds free of charge. The list must be arranged geographically and shall include the name, address, hours of operation, and telephone number of each entity listed. A health care provider, facility, or clinic that would like to be included on this list may contact the department and provide the required information. The department must update this list annually before September first;

(7) a plainly worded explanation of how a woman may calculate the gestational age of her embryo or fetus;

(8) a scientifically accurate statement concerning the contribution that each parent makes to the genetic constitution of their biological child;

(9) forms for notifications, certifications, and verifications required by Section 44‑41‑330.

(B) The materials must be easily comprehendible and must be printed in a typeface large enough to be clearly legible.

(C) The materials required under this section must be available from the South Carolina Department of Health and Environmental Control upon request and in appropriate number to any person, facility, or hospital.

(D)(1) The materials required under this section must be available on the department’s Internet website in a format suitable for downloading. The website must be capable of permitting the user to print a time and date stamped certification identifying when the materials are downloaded.

(2) The department’s Internet website also must provide a link to the Internet website maintained by health care providers, facilities, and clinics that offer to perform ultrasounds free of charge that have requested to be placed on the list maintained by the department.

**SECTION 44‑41‑350.** Penalties for noncompliance with this article.

A physician who performs an abortion when the physician knows or should know that the provisions of this article have not been complied with before the abortion is guilty of a misdemeanor and, upon conviction:

(1) for a first or second offense, must be fined not more than one thousand dollars. No term of imprisonment may be imposed for a first or second offense.

(2) for a third or subsequent offense, must be imprisoned not more than three years or fined not more than five thousand dollars, or both.

**SECTION 44‑41‑360.** Preservation of anonymity of woman having abortion.

In every proceeding or action brought under this article, the court shall rule whether the anonymity of any woman upon whom an abortion is performed or attempted shall be preserved from public disclosure if she does not give her consent to such a disclosure. The court, upon motion of any person or upon its own motion, shall make such a ruling and, upon determining that her anonymity 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 order under this section must 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. This section may not be construed to conceal the identity of the plaintiff or of the prosecutrix or of witnesses from the defendant or to abridge or deny the defendant’s ability to conduct discovery under applicable rules of court or the defendant’s right to a trial by jury or to cross examination.

**SECTION 44‑41‑370.** Applicability of article.

This article applies only to facilities in which any second trimester or five or more first trimester abortions are performed in a month.

**SECTION 44‑41‑380.** Severability of provisions of article.

If any provision, word, phrase, or clause of Article 3, Chapter 41, Title 44 of the 1976 Code, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions, words, phrases, clauses, or applications of Article 3, Chapter 41, Title 44 which can be given effect without the invalid provision, word, phrase, clause, or application, and, to this end, the provisions, words, phrases, and clauses of Article 3, Chapter 41, Title 44 are declared to be severable.