

South Carolina

[Planned Parenthood S. Atl. v. State, No. 28174, 2023 S.C. LEXIS 165 \(Aug. 23, 2023\)](#)

South Carolina Supreme Court vacated the preliminary injunction for the Fetal Heartbeat and Protection from Abortion Act (2023) and declared the act constitutional. The law bans abortion after embryonic cardiac activity is detected.

Planned Parenthood S. Atl. v. South Carolina, No. 2023CP400274 (S.C. Ct. Com. Pl. May 26, 2023) (holding that the Act to Amend the Fetal Heartbeat and Protection from Abortion Act, S.C. Code tit. 44, Ch. 41, art. 6, which bans abortions after a fetal heartbeat has been detected, must be put on hold until it can be reviewed by the South Carolina State Supreme Court)

(*NB: § 44-41-680 IS CURRENTLY ENJOINED DUE TO THE DECISION IN *Planned Parenthood S. Atl. v. South Carolina*, No. 2023CP400274 (S.C. Ct. Com. Pl. May 26, 2023)*)

Planned Parenthood S. Atl. v. South Carolina, No. 28127 (S.C. Jan. 5, 2023) (holding the Fetal Heartbeat and Protection from Abortion Act, S.C. Code Ann. tit. 44, Ch. 41, art. 6, which bans abortions after 6 weeks gestational age, is unconstitutional under South Carolina’s state constitution):

Overall, after comparing the varying interests, the Act cannot withstand the clear directive of our state constitution—that “unreasonable invasions of privacy shall not be violated” While the State has an interest in fetal life and in providing women with vital medical information about their pregnancy, we... [hold] that the Act’s six-week ban does not serve that interest. Rather, it forecloses abortion in South Carolina for many pregnant women who may seek it, underscoring the fact that any inclusion of an “informed choice” is contradictory with the remaining provisions. By leaving no room for many women to exercise that choice, the Act prohibits certain South Carolinians from making their own medical decisions... Thus, it cannot be deemed a reasonable restriction on privacy, and accordingly, the Act violates article I, section 10 of the South Carolina Constitution.

S.C. Const. art. I, § 10 Searches and seizures; invasions of privacy.

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained. (1970 (56) 2684; 1971 (57) 315.)

S.C. Code Ann. § 44-41-610. Definitions

As used in this article:

(1) “Conception” means fertilization.

- (2) “Contraceptive” means a drug, device, or chemical that prevents conception.
- (3) “Fetal heartbeat” means cardiac activity, or the steady and repetitive rhythmic contraction of the fetal heart, within the gestational sac.
- (4) “Gestational age” means the age of an unborn human individual as calculated from the first day of the last menstrual period of a pregnant woman.
- (5) “Gestational sac” means the structure that comprises the extraembryonic membranes that envelop the human fetus and that is typically visible by ultrasound after the fourth week of pregnancy.
- (6) “Human fetus” or “unborn child” each means an individual organism of the species homo sapiens from fertilization until live birth.
- (7) “Intrauterine pregnancy” means a pregnancy in which a human fetus is attached to the placenta within the uterus of a pregnant woman.
- (8) “Medical emergency” means a condition that, by any reasonable medical judgment, so complicates the medical condition of a pregnant woman that it necessitates the immediate abortion of her pregnancy to avert her death without first determining whether there is a detectable fetal heartbeat or for which the delay necessary to determine whether there is a detectable fetal heartbeat will create serious risk of a substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. A condition must not be considered a medical emergency if based on a claim or diagnosis that a woman will engage in conduct that she intends to result in her death or in a substantial and irreversible physical impairment of a major bodily function.
- (9) “Physician” means any person licensed to practice medicine and surgery, or osteopathic medicine and surgery, in this State.
- (10) “Reasonable medical judgment” means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
- (11) “Spontaneous miscarriage” means the natural or accidental termination of a pregnancy and the expulsion of the human fetus, typically caused by genetic defects in the human fetus or physical abnormalities in the pregnant woman.

S.C. Code Ann. § 44-41-620. Effect of court judgment or order; enforcement.

(A) A court judgment or order suspending enforcement of any provision of this chapter is not to be regarded as tantamount to repeal of that provision.

(B) If the United States Supreme Court issues a decision overruling Roe v. Wade, 410 U.S. 113 (1973), any other court issues an order or judgment restoring, expanding, or clarifying the authority of states to prohibit or regulate abortion entirely or in part, or an amendment is ratified to the Constitution of the United States restoring, expanding, or clarifying the authority of states to prohibit or regulate abortion entirely or in part, then the Attorney General may apply to the pertinent state or federal court for either or both of the following:

- (1) a declaration that any one or more of the statutory provisions specified in subsection (A) are constitutional; or
- (2) a judgment or order lifting an injunction against the enforcement of any one or more of the statutory provisions specified in subsection (A).

(C) If the Attorney General fails to apply for relief pursuant to subsection (B) within a thirty-day period after an event described in that subsection occurs, then any solicitor may apply to the appropriate state or federal court for such relief.

S.C. Code Ann. § 44-41-630. Obstetric ultrasound; display of images; recording written medical description of images of fetal heartbeat.

An abortion provider who is to perform or induce an abortion, a certified technician, or another agent of the abortion provider who is competent in ultrasonography shall:

- (1) perform an obstetric ultrasound on the pregnant woman, using whichever method the physician and pregnant woman agree is best under the circumstances;
- (2) during the performance of the ultrasound, display the ultrasound images so that the pregnant woman may view the images; and
- (3) record a written medical description of the ultrasound images of the unborn child's fetal heartbeat, if present and viewable.

S.C. Code Ann. § 44-41-640. Abortion provider shall make fetal heartbeat audible for pregnant woman to hear.

If a pregnancy is at least eight weeks after fertilization, then the abortion provider who is to perform or induce an abortion, or an agent of the abortion provider, shall tell the woman that it may be possible to make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear and shall ask the woman if she would like to hear the heartbeat. If the woman would like to hear the heartbeat, then the abortion provider shall, using whichever method the physician and patient agree is best under the circumstances, make the fetal heartbeat of the unborn child audible for the pregnant woman to hear.

S.C. Code Ann. § 44-41-650. Determination of detectable fetal heartbeat prior to abortion; penalties.

(A) Except as provided in Section 44-41-660, no person shall perform, induce, or attempt to perform or induce an abortion on a pregnant woman before a physician determines in accordance with Section 44-41-630 whether the human fetus the pregnant woman is carrying has a detectable fetal heartbeat.

(B) A person who violates subsection (A) is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned not more than two years, or both.

S.C. Code Ann. § 44-41-660. Exception for medical emergency; written notations in medical records.

(A) Section 44-41-650 does not apply to a physician who performs or induces an abortion if the physician determines according to standard medical practice that a medical emergency exists that prevents compliance with the section.

(B) A physician who performs or induces an abortion on a pregnant woman based on the exception in subsection (A) shall make written notations in the pregnant woman's medical records of the following:

- (1) the physician's belief that a medical emergency necessitating the abortion existed;
- (2) the medical condition of the pregnant woman that assertedly prevented compliance with Section 44-41-650; and
- (3) the medical rationale to support the physician's conclusion that the pregnant woman's medical condition necessitated the immediate abortion of her pregnancy to avert her death.

(C) For at least seven years from the date the notations are made, the physician shall maintain in his own records a copy of the notations.

S.C. Code Ann. § 44-41-680. Performance of abortion prohibited if fetal heartbeat detected; exceptions; physician required to notify law enforcement after performing abortion in certain circumstances; penalties.

(*NB: § 44-41-680 IS CURRENTLY ENJOINED DUE TO THE DECISION IN *Planned Parenthood S. Atl v. South Carolina*, No. 2023CP400274 (S.C. Ct. Com. Pl. May 26, 2023)*)

(A) Except as provided in subsection (B), no person shall perform, induce, or attempt to perform or induce an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the human fetus the pregnant woman is carrying and whose fetal heartbeat has been detected in accordance with Section 44-41-630.

(B) A physician may perform, induce, or attempt to perform or induce an abortion on a pregnant woman after a fetal heartbeat has been detected in accordance with Section 44-41-630 only if:

- (1) the pregnancy is the result of rape, and the probable post-fertilization age of the fetus is fewer than twenty weeks;
- (2) the pregnancy is the result of incest, and the probable post-fertilization age of the fetus is fewer than twenty weeks;
- (3) the physician is acting in accordance with Section 44-41-690; or
- (4) there exists a fetal anomaly, as defined in Section 44-41-430.

(C) A physician who performs or induces an abortion on a pregnant woman based on the exception in either subsection (B)(1) or (2) must report the allegation of rape or incest to the sheriff in the county in which the abortion was performed. The report must be made no later than twenty-four hours after performing or inducing the abortion, may be made orally or otherwise, and shall include the name and contact information of the pregnant woman making the allegation. Prior to performing or inducing an abortion, a physician who performs or induces an abortion based upon an allegation of rape or incest must notify the pregnant woman that the physician will report the allegation of rape or incest to the sheriff. The physician shall make written notations in the pregnant woman's medical records that the abortion was performed pursuant to the applicable exception, that the doctor timely notified the sheriff of the allegation of rape or incest, and that the woman was notified prior to the abortion that the physician would notify the sheriff of the allegation of rape or incest.

(D) A person who violates subsection (A) is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned not more than two years, or both.

S.C. Code Ann. § 44-41-690. Exceptions to prevent death or serious risk of substantial and irreversible impairment of a major bodily function; written documentation required.

(A) Section 44-41-680 does not apply to a physician who performs a medical procedure that, by any reasonable medical judgment, is designed or intended to prevent the death of the pregnant woman or to prevent the serious risk of a substantial and irreversible impairment of a major bodily function of the pregnant woman.

(B) A physician who performs a medical procedure as described in subsection (A) shall declare, in a written document, that the medical procedure was necessary, by reasonable medical judgment, to prevent the death of the pregnant woman or to prevent the serious risk of a substantial and irreversible physical impairment of a major bodily function of the pregnant woman. In the document, the physician shall specify the pregnant woman's medical condition that the medical procedure was asserted to address and the medical rationale for the physician's conclusion that the medical procedure was necessary to prevent the death of the pregnant woman or to prevent the serious risk of a substantial and irreversible impairment of a major bodily function of the pregnant woman.

(C) A physician who performs a medical procedure as described in subsection (A) shall place the written document required by subsection (B) in the pregnant woman's medical records. For at least seven years from the date the document is created, the physician shall maintain a copy of the document in his own records.

(See above, *Planned Parenthood S. Atl. v. South Carolina*, which held § 44-41-610 to §44-41-690 unconstitutional.)

S.C. Code Ann. § 40-47-37(C)(6) Practice of telemedicine, requirements.

(C) In addition to those requirements set forth in subsections (A) and (B), a licensee who establishes a physician-patient relationship solely via telemedicine as defined in Section 40-47-20(52) shall:

(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”;

S.C. Code Ann. § 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.

S.C. Code Ann. § 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.

S.C. Code Ann. §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.

S.C. Code Ann. §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.

S.C. Code Ann. §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.

S.C. Code Ann. §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.

S.C. Code Ann. § 44-41-60. Abortions must 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, circumstances waiving consent, and, if an exception was exercised pursuant to Section 44-41-660, which exception the physician relied upon in performing or inducing the abortion.

S.C. Code Ann. § 44-41-75(A). Licensing of certain abortion facilities; regulations.

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.

S.C. Code Ann. § 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.

S.C. Code Ann. § 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.

S.C. Code Ann. § 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.

S.C. Code Ann. § 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)(a) 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.

(b) If the physician who intends to perform or induce an abortion on a pregnant woman has determined pursuant to Section 44-41-630 that the human fetus the pregnant woman is carrying has a detectable fetal heartbeat, then that physician shall inform the pregnant woman in writing that the human fetus the pregnant woman is carrying has a fetal heartbeat. The physician shall further inform the pregnant woman, to the best of the physician's knowledge, of the statistical probability, absent an induced abortion, of bringing the human fetus possessing a detectable fetal heartbeat to term based on the gestational age of the human fetus or, if the director of the department has specified statistical probability information, shall provide to the pregnant woman that information. The department may promulgate regulations that specify information regarding the statistical probability of bringing an unborn child possessing a detectable fetal heartbeat to term based on the gestational age of the unborn child. Any regulations must be based on available medical evidence.

(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.

S.C. Code Ann. § 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.

S.C. Code Ann. § 44-41-440. Determination of probable post-fertilization age of unborn child.

Except in the case of a medical emergency or fetal anomaly, no abortion must be performed or induced or be attempted to be performed or induced unless the physician performing or inducing it has first made a determination of the probable post-fertilization age of the unborn child or relied upon such a determination made by another physician. In making such a determination, the physician shall make such inquiries of the woman and perform or cause to be performed such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to post-fertilization age.

S.C. Code Ann. § 44-41-450. Abortion prohibited when probable post-fertilization age of unborn child is twenty or more weeks; exceptions.

(A) No person shall perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing or attempting to perform or induce the abortion or by another physician upon whose determination that physician relies, that the probable post-fertilization age of the woman's unborn child is twenty or more weeks, except in the case of fetal anomaly, or in reasonable medical judgment, she has a condition which so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such greater risk must be considered to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

(B) When an abortion upon a woman whose unborn child has been determined to have a probable post-fertilization age of twenty or more weeks is not prohibited by subsection (A), the physician

shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive, unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the woman than would other available methods. No such greater risk must be considered to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

S.C. Code Ann. § 44-41-460. Report of abortion performed pursuant to Section 44-41-450; patient privacy; department to issue public report; late fee for failure of facility to report; regulations.

(A) Any abortion performed in this State pursuant to Section 44-41-450 must be reported by the licensed facility 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 and must include:

(1) Post-fertilization age:

- (a) if a determination of probable post-fertilization age was made, whether ultrasound was employed in making the determination, and the week of probable post-fertilization age determined; or
- (b) if a determination of probable post-fertilization age was not made, the basis of the determination that a medical emergency existed.

(2) Method of abortion, of which the following was employed:

- (a) medication abortion such as, but not limited to, mifepristone/misoprostol or methotrexate/misoprostol;
- (b) manual vacuum aspiration;
- (c) electrical vacuum aspiration;
- (d) dilation and evacuation;
- (e) combined induction abortion and dilation and evacuation;
- (f) induction abortion with prostaglandins;
- (g) induction abortion with intra-amniotic instillation such as, but not limited to, saline or urea;
- (h) induction abortion; and
- (i) intact dilation and extraction (partial-birth).

(3) Whether an intrafetal injection was used in an attempt to induce fetal demise such as, but not limited to, intrafetal potassium chloride or digoxin.

(4) Age of the patient.

(5) If the probable post-fertilization age was determined to be twenty or more weeks, whether the reason for the abortion was a medical emergency or fetal anomaly, and if the reason was a medical emergency, the basis of the determination that the pregnant woman had a condition which so complicated her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.

(6) If the probable post-fertilization age was determined to be twenty or more weeks, whether or not the method of abortion used was one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive and, if such a method was not used, the basis of the determination that termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the woman than would other available methods.

(7) The information related to fetal heartbeat testing required pursuant to Sections 44-41-630, 44-41-660, and 44-41-690, as applicable.

(8) Whether the reason for the abortion was to preserve the health of the pregnant woman and, if so, the medical condition that the abortion was asserted to address and the medical rationale for the conclusion that an abortion was necessary to address that condition. If the reason for the abortion was other than to preserve the health of the pregnant woman, then the report must specify that maternal health was not the purpose of the abortion. This information must also be placed in the pregnant woman's medical records and maintained for at least seven years thereafter.

(B) Reports required by subsection (A) shall not contain the name or the address of the patient whose pregnancy was terminated, nor shall the report contain any other information identifying the patient, except that each report shall contain a unique medical record identifying number, to enable matching the report to the patient's medical records. Such reports must be maintained in strict confidence by the department, must not be available for public inspection, and must not be made available except:

(1) to the Attorney General or solicitor with appropriate jurisdiction pursuant to a criminal investigation;

(2) to the Attorney General or solicitor pursuant to a civil investigation of the grounds for an action under Section 44-41-480(B); or

(3) pursuant to court order in an action under Section 44-41-480.

(C) By June thirtieth of each year, the department shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection (A). Each such report also shall provide the statistics for all previous calendar years during which this section was in effect, adjusted to reflect any additional information from late or corrected reports. The department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any pregnant woman upon whom an abortion was performed, induced, or attempted.

(D) Any facility that fails to submit a report by the end of thirty days following the due date must be subject to a late fee of one thousand dollars for each additional thirty-day period or portion of a thirty-day period the report is overdue. Any facility required to report in accordance with this article that has not submitted a report, or has submitted only an incomplete report, more than six months following the due date, may, in an action brought by the department, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to civil contempt. Intentional or reckless falsification of any report required under this section is a misdemeanor punishable by not more than one year in prison.

(E) Within ninety days of the effective date of this article, the Department of Health and Environmental Control shall adopt and promulgate forms and regulations to assist in compliance with this section. Subsection (A) shall take effect so as to require reports regarding all abortions performed or induced on and after the first day of the first calendar month following the effective date of such rules.

S.C. Code Ann. § 44-41-470. Penalties for noncompliance with Sections 44-41-440 and 44-41-450.

Any physician who intentionally or knowingly fails to conform to any requirement in Section 44-41-440 and Section 44-41-450 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, no part of which may be suspended.