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H. 5401

STATUS INFORMATION

General Bill

Sponsors: Reps. Magnuson and McCabe

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Companion/Similar bill(s): 381, 1335, 3568

Introduced in the House on May 12, 2022

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

Summary: Personhood Act of SC

Homicide by Prenatal Child Murder, or Manslaughter, or Involuntary Manslaughter Act

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
5/12/2022	House	Introduced and read first time (House Journal page 147)
5/12/2022	House	Referred to Committee on Judiciary (House Journal page 147)

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VERSIONS OF THIS BILL

[5/12/2022](#)

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A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16-3-100 SO AS TO ENACT THE **“HOMICIDE BY PRENATAL CHILD MURDER, OR MANSLAUGHTER, OR INVOLUNTARY MANSLAUGHTER ACT”**; TO PROVIDE FINDINGS OF **THE GENERAL ASSEMBLY**; TO ACKNOWLEDGE AND **MEMORIALIZE** THAT THE RIGHT TO LIFE FOR EACH BORN AND PREBORN HUMAN BEING **IS INHERENT AND UNALIENABLE BEGINNING** AT FERTILIZATION; TO **DEFINE THE WORDS ‘PERSON’, ‘HUMAN’, AND ‘HUMAN BEING’ TO MEAN A NATURAL PERSON CREATED IN THE IMAGE OF GOD, AT ANY STAGE OF DEVELOPMENT, BEGINNING AT FERTILIZATION, TO ACKNOWLEDGE AND MEMORIALIZE THAT NO PERSON SHALL BE DEPRIVED OF LIFE WITHOUT DUE PROCESS OF LAW NOR DENIED THE EQUAL PROTECTION OF THE LAWS, RIGHTS** GUARANTEED BY SECTION 3, ARTICLE I OF THE CONSTITUTION OF THIS STATE; TO **REPEAL CHAPTER 41, TITLE 44, RELATING TO “ABORTIONS”**; TO PROHIBIT ALLOCATION OF PUBLIC FUNDS, ALLOCATION OF PERSONNEL OR PROPERTY, OR IMPLEMENTATION BY ANY OFFICIAL, OF THIS STATE, OR ANY POLITICAL SUBDIVISION OF THIS STATE, TO IMPLEMENTATION OR ENFORCEMENT OF ANY FEDERAL LAW, TREATY, EXECUTIVE ORDER, RULE, OR REGULATION DETERMINED BY THE ATTORNEY GENERAL TO PURPORT TO COMPEL LEGISLATIVE OR EXECUTIVE ACTION PURSUANT TO SECTION 4.; AND FOR OTHER PURPOSES.

1 Whereas, the General Assembly, under Section 1A, Article III, of
2 the Constitution of the State of South Carolina, 1895, is empowered
3 to assemble to make new laws, as the common good may require;
4 and

5
6 Whereas, Section 3, Article I of the Constitution of the State of
7 South Carolina, 1895, guarantees that no person may be deprived of
8 life, liberty, or property without due process of law or be denied the
9 equal protection of the laws; and

10
11 Whereas, the General Assembly, in the exercise of its constitutional
12 powers and in carrying out its duties and responsibilities under the
13 law, finds it necessary and proper to ensure that the rights of its
14 citizens extend to each newly born and preborn human being. Now,
15 therefore,

16
17 Be it enacted by the General Assembly of the State of South
18 Carolina:

19
20 SECTION 1. Article 1, Chapter 3, Title 16 of the 1976 Code is
21 amended by adding:

22
23 “Section 16-3-100. (A) This section may be cited as the
24 **‘Homicide by Prenatal Child Murder, or Manslaughter, or**
25 **Involuntary Manslaughter Act’.**

26 (B) The General Assembly finds as follows regarding the
27 sanctity of life:

28 (1) The General Assembly acknowledges that the July 4, 1776
29 Declaration of Independence is one of the Organic Laws of the
30 United States of America found in the United States Code.

31 (2) The General Assembly acknowledges that all persons are
32 endowed by their Creator with certain unalienable rights, **the**
33 **foremost of which is the right to life.**

34 (3) The General Assembly acknowledges that personhood is
35 God-given, as all men are created in the image of God.

36 (4) The General Assembly finds that the Preamble to the
37 Constitution of the State of South Carolina contains the sovereign
38 peoples’ acknowledgment of God as the source of constitutional
39 liberty, saying: ‘We the people of the State of South Carolina, in
40 Convention assembled, grateful to God for our liberties, do ordain
41 and establish this Constitution for the preservation and perpetuation
42 of the same’.

1 (5) **The General Assembly acknowledges that the State of**
2 **South Carolina has a God-ordained and constitutional duty to**
3 **establish justice and protect the right to life of human beings,**
4 **the first and primary end of civil government.**

5 (6) The General Assembly **acknowledges** that a human being
6 is a **natural** person **beginning** at fertilization.

7
8 (C)(1) The right to life for each born and preborn human being is
9 inherent and unalienable beginning at fertilization.

10 (2) Definitions. As used in this section:

11 (a) The words ‘person’, ‘human’, and ‘human being’, mean
12 a natural person created in the image of God, at any stage of
13 development, beginning at fertilization.

14 (b) ‘Fertilization’ means the union of a human
15 spermatozoon with a human ovum.

16 (c) ‘Conception’ means fertilization.

17 (3) No person shall be deprived of life without due process of
18 law nor denied the equal protection of the laws, rights guaranteed
19 by Section 3, Article I of the Constitution of this State.

20
21 (D)(1) Nothing in this section shall be construed to prohibit a
22 licensed physician from performing a medical procedure or
23 providing medical treatment designed or intended to prevent the
24 death of a pregnant woman, **including delivering the child**
25 **prematurely if necessarily concomitant with the lifesaving**
26 **intervention. The physician shall act in accordance with the**
27 **standard of care, insofar as Section 16-3-100.(C) is not violated,**
28 to preserve both the life of the mother and the life of the preborn
29 human being. Under such circumstances, the accidental or
30 unintentional injury or death to the preborn human being is not a
31 violation of this section. The provisions of this section must not be
32 construed to authorize the intentional killing of a preborn human
33 being.

34
35 (2) Nothing in this section shall be construed to prohibit
36 contraception. As used in this item, ‘contraception’ is defined as the
37 prevention of fertilization. **Any drug, device, or chemical which is**
38 **determined by the Department of Health and Environmental**
39 **Control (Department of Public Health, beginning July 1, 2024)**
40 **to violate Section 16-3-100.(C) is prohibited.**

41
42 (3) Nothing in this section shall be construed to prohibit in
43 vitro fertilization **procedures** or assisted reproductive technology

1 **procedures, which do not violate Section 16-3-100.(C).** The
2 authority to regulate in vitro fertilization **procedures** and assisted
3 reproductive technology procedures is reserved by the Legislature.

4
5 **(E) A person is guilty of the homicide of a prenatal child**
6 **under this section, if the person:**

7 **(1) causes the death of a prenatal child by prenatal child**
8 **murder; or**

9 **(2) causes the death of a prenatal child by prenatal child**
10 **manslaughter; or**

11 **(3) causes the death of a prenatal child by prenatal child**
12 **involuntary manslaughter; or**

13 **(4) knowingly aids and abets another person to cause the death**
14 **of a prenatal child by prenatal child murder; or**

15 **(5) knowingly aids and abets another person to cause the death**
16 **of a prenatal child by prenatal child manslaughter; or**

17 **(6) knowingly aids and abets another person to cause the death**
18 **of a prenatal child by prenatal child involuntary manslaughter;**

19
20 **as prenatal child murder, manslaughter, and involuntary**
21 **manslaughter are defined in this section.**

22
23 **(F) For purposes of this section, the following definitions**
24 **apply:**

25 **(1) "prenatal child murder" is the killing of any prenatal person**
26 **with malice aforethought, either express or implied;**

27 **(2) "prenatal child manslaughter" is the unlawful killing of any**
28 **prenatal person without malice, express or implied;**

29 **(3) "prenatal child involuntary manslaughter" is the unlawful**
30 **killing of any prenatal person by criminal negligence. With**

31 **regard to the crime of prenatal child involuntary manslaughter,**
32 **criminal negligence is defined as the reckless disregard of the**

33 **safety of others. A person charged with the crime of prenatal**
34 **child involuntary manslaughter may be convicted**

35 **only upon a showing of criminal negligence as defined in this**
36 **section.**

37
38 **(G) A person who is convicted of or pleads guilty to**
39 **homicide by prenatal child murder, or manslaughter, or**
40 **involuntary manslaughter:**

41 **(1) under subsection (E)(1) must be punished by death, or by a**
42 **mandatory minimum term of imprisonment for thirty years to**

43 **life; or**

1 **(2) under subsection (E)(2) must be imprisoned not more than**
2 **thirty years or less than two years; or**
3 **(3) under subsection (E)(3) must be imprisoned must be**
4 **imprisoned not more than five years; or**
5 **(4) under subsection (E)(4) must be imprisoned not exceeding**
6 **thirty years nor less than fifteen years; or**
7 **(5) under subsection (E)(5) must be imprisoned not exceeding**
8 **two years nor less than one year; or**
9 **(6) under subsection (E)(6) must be imprisoned not exceeding**
10 **one year.**

11

12 **(H) In sentencing a person under this section, the judge must**
13 **consider any aggravating circumstances including, but not**
14 **limited to, a defendant's past pattern of prenatal child murder,**
15 **manslaughter, or involuntary manslaughter, and any mitigating**
16 **circumstances.**

17

18 **(I) In a prosecution under this section, unless specifically**
19 **provided otherwise, solicitors and the Attorney General shall**
20 **have concurrent authority to prosecute criminal cases and to**
21 **perform any duty that necessarily relates to such prosecution.**

22

23 **(J) This section is enacted pursuant to the power reserved to this**
24 **State under the Tenth Amendment of the United States**
25 **Constitution.”**

26

27 SECTION 2. **(A) Chapter 41, Title 44 of the 1976 Code is repealed.**

28 **(B) Section 38-71-238(B) of the 1976 Code is repealed. Amend**
29 **section title to conform. Renumber subsection to conform.**

30

31 SECTION 3. **The provisions of this act supercede the following:**

32 **(A) Section 1-13-30(I) of the 1976 Code;**

33 **(B) Section 14-8-200(b)(7) of the 1976 Code;**

34 **(C) Section 16-3-1083 of the 1976 Code; and**

35 **(D) Any provision of the 1976 Code that could otherwise be**
36 **construed to violate Section 16-3-100.(C).**

37

38 SECTION 4. **(A) The State of South Carolina, and its political**
39 **subdivisions, cannot be compelled by the federal government to**
40 **take any legislative or executive action to implement or enforce**
41 **a federal law, treaty, executive order, rule, or regulation related**
42 **to a person's right to life enshrined in the Fifth and Fourteenth**
43 **Amendments to the United States Constitution, or in Article I,**

1 **Section 3 of the Constitution of this State, that violates the right**
2 **of persons to not be deprived of life without due process of law,**
3 **or that violates the right of persons to not be denied the equal**
4 **protection of the laws, as provided in Section 16-3-100 .**

5 **(B) Any federal law, treaty, executive order, rule, or**
6 **regulation related to a person's right to life enshrined in the**
7 **Fifth and Fourteenth Amendments to the United States**
8 **Constitution, or in Article I, Section 3 of the Constitution of this**
9 **State, must be evaluated by the Attorney General. The Attorney**
10 **General shall issue a written opinion of whether the law, treaty,**
11 **executive order, rule, or regulation purports to compel**
12 **legislative or executive action prohibited pursuant to subsection**
13 **(A).**

14 **(C) If the Attorney General renders an opinion that a federal**
15 **law, treaty, executive order, rule, or regulation purports to**
16 **compel legislative or executive action prohibited pursuant to**
17 **subsection (A), then:**

18 **(1) no public funds of this State, or any political subdivision of**
19 **this State, shall be allocated for the implementation or**
20 **enforcement of that federal law, treaty, executive order, rule, or**
21 **regulation;**

22 **(2) no personnel or property of this State, or any political**
23 **subdivision of this State, shall be allocated to the**
24 **implementation or enforcement of that federal law, treaty,**
25 **executive order, rule, or regulation; and**

26 **(3) no official, agent, or employee of the State of South Carolina,**
27 **or any political subdivision of it, shall implement, attempt to**
28 **implement, enforce, or attempt to enforce that federal law,**
29 **treaty, executive order, rule, or regulation.**

30
31 **SECTION 5.** If any portion of this act is finally and
32 constitutionally adjudicated invalid, then the entire act is void.

33
34 **SECTION 6.** This act takes effect upon approval by the Governor.

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