Bill Number:	H. 5399 Amended by the House of Representatives on August 30, 2022
Author:	Lucas
Subject:	Prohibition of Abortion
Requestor:	Senate Medical Affairs
RFA Analyst(s):	Griffith, Gardner, Jolliff, Tipton, and Williams
Impact Date:	September 6, 2022

Fiscal Impact Summary

This bill prohibits abortions except in the case of rape or incest or to protect the life or health of the pregnant woman. The bill creates a new felony offense for anyone who performs or abets an abortion or who uses force or the threat of force to injure or intimidate a person for the purpose of coercing an abortion. It also creates a new civil cause of action against a person for violation of the provisions of the bill and specifies that the pregnant woman may not be criminally prosecuted. The amended bill places certain financial responsibilities on the biological father of an unborn child, with additional financial responsibilities in cases of rape or incest. Additionally, the bill provides a $3,000 state individual income tax deduction for an unborn child dependent who is not born during the income tax year and has reached a gestational age of at least six weeks. Lastly, this legislation gives the South Carolina House of Representatives, the South Carolina Senate, the South Carolina Governor, and/or the South Carolina Attorney General the right to intervene in any case in which the constitutionality or enforceability of any provision of the bill is challenged.

The bill will have no fiscal impact on the Department of Health and Environmental Control (DHEC); the Public Employee Benefit Authority (PEBA); the University of South Carolina School of Medicine; Judicial; Probation, Parole, and Pardon Services; the Office of the Attorney General; the Department of Revenue (DOR); the House of Representatives; the Senate; or the Governor's Office because these agencies will manage any costs related to implementation of the bill within their existing appropriations. Further, we anticipate that the bill will have no fiscal impact on the Department of Health and Human Services (DHHS); the Commission on Indigent Defense; and the Commission on Prosecution Coordination based upon previous responses. We have contacted these agencies for confirmation.

The bill requires the Board of Medical Examiners under the Department of Labor, Licensing and Regulation (LLR) to revoke the license of a physician who violates the provisions of the bill. While the agency currently has a review process in place for complaints, the number of complaints that will be received is unknown. If the number of complaints increases significantly, the agency may incur additional expenses; however, the amount of the potential impact is undetermined. Additionally, pursuant to Proviso 81.3 of the FY 2022-23 Appropriations Act, LLR is required to remit annually to the General Fund an amount equal to 10 percent of expenditures of the Division of Professional and Occupational Licensing. Therefore, General Fund revenue may also increase by an undetermined amount.

The bill creates a new felony offense for violations of Section 44-41-820 punishable by up to two years of imprisonment, a fine of $10,000, or both. The Department of Corrections reports the annual average cost to house an inmate in FY 2021-22 was $30,187, of which $27,883 was state funded. Therefore, we anticipate this bill may result in an undetermined increase in expenses for Corrections, as the impact is dependent upon the number of convictions under this new felony and the duration of any imprisonment.

This bill will increase General Fund expenditures for the Medical University of South Carolina (MUSC) by up to $975,000 per year beginning in FY 2022-23 for additional medical compliance and legal personnel and services and out-of-state training operations. The institution anticipates needing an additional 0.2 FTEs for General Counsel at an annual cost of $20,000, 0.5 FTEs for a Maternal Fetal Medicine MD with annual salary and fringe of $350,000, and 0.1 FTEs for an Ethics Physician with annual salary and fringe of $200,000. In addition, MUSC reports that ancillary or external legal expenses related to the review and defense of its physicians will total up to $130,000 annually. Costs for the out-of-state training are expected total $275,000. We have requested additional clarification regarding these expenditures.

The new individual income tax exemption for an unborn child dependent who is not born during the income tax year and has reached a gestational age of at least six weeks is expected to reduce General Fund individual income tax revenue by $2,975,000 annually beginning in FY 2022-23.

DHEC currently licenses three abortion clinics in the state, which generated $1,625 in revenue in FY 2021-22. It is undetermined whether the bill will affect this revenue.

Additionally, RFA anticipates this bill may result in an undetermined impact to General Fund revenue, Other Funds revenue, and local revenue due to the modifications in fines and fees collected in court.

Explanation of Fiscal Impact

Amended by the House of Representatives on August 30, 2022
State Expenditure
This bill prohibits abortions except in the case of rape or incest or to prevent the following:

- the death of the pregnant woman,
- a substantial risk of death for the pregnant woman because of a physical condition, or
- the substantial and irreversible physical impairment of a major bodily function of the pregnant woman.

Any physician who performs an abortion for the life or health of the mother must declare in a written document that the medical procedure was necessary. In the case of rape or incest, the physician must report, within twenty-four hours of the abortion, the allegation of rape or incest to the sheriff in the county in which the abortion was performed.

The bill creates a felony for anyone who performs or abets an abortion or who uses force or the threat of force to injure or intimidate a person for the purpose of coercing an abortion. It also creates a new civil cause of action against a person for violation of the provisions of the bill and clarifies that the pregnant woman may not be criminally prosecuted. Beginning with the date of conception, a biological father of a child must pay the mother of the child fifty percent of the mother's pregnancy expenses and child support payment obligations in an amount determined pursuant to Section 63-17-470. In the case of rape or incest, the biological father is also responsible for the full cost of any expenses incurred by the mother for mental health counseling arising out of the rape or incest.

Lastly, this legislation gives the South Carolina House of Representatives, the South Carolina Senate, the South Carolina Governor, and/or the South Carolina Attorney General the right to intervene in any case in which the constitutionality or enforceability of any provision of the bill is challenged.

Department of Health and Environmental Control. DHEC is responsible for the licensing and regulation of abortion clinics in the state. The agency indicates that any expenditures related to the enactment of the bill will be managed within its current appropriations.

Department of Health and Human Services. DHHS operates South Carolina Healthy Connections (Medicaid), which pays medical bills for eligible low-income families and individuals. This includes bills for Family Planning services. Based on previous responses, we anticipate DHHS will require a review of policies to include stated timeframes for physicians' statements. We anticipate the agency will manage additional costs associated with these policy reviews within its existing appropriations. We have contacted the agency for confirmation.

Public Employee Benefit Authority. PEBA administers the state's employee insurance programs for South Carolina's public workforce. The agency reports that the bill will have no fiscal impact on the State Health Plan. Because the bill does not operationally affect PEBA, it will have no impact on the agency.

Department of Labor, Licensing and Regulation. Proposed Section 44-41-870 will require the Board of Medical Examiners, which is under the authority of LLR, to revoke the license of a physician who violates the provisions of the bill after due process according to the rules and regulations. This proposed section will also authorize complaints to be filed for violations of these provisions and will authorize the Board of Medical Examiners to assess costs of the investigation, fines, and other disciplinary actions it deems appropriate.

LLR and the licensing boards, including the Board of Medical Examiners, currently have a process for accepting and processing complaints that may result from the bill. However, the fiscal impact on the agency is undetermined because the potential increase in the number of complaints that may be filed with the agency is unknown.

Additionally, the Board of Medical Examiners falls under the Division of Professional and Occupational Licensing, within LLR. Pursuant to Proviso 81.3 of the FY 2022-23

Appropriations Act, LLR is required to remit annually to the General Fund an amount equal to 10 percent of expenditures of the Division of Professional and Occupational Licensing. Because expenditures of the Board of Medical Examiners are undetermined, the increase in General Fund revenue is also undetermined.

Medical University of South Carolina. MUSC educates and employs physicians in the state who will be required to adhere to the requirements of this bill, and the university indicates additional medical compliance and legal personnel may be required. The institution anticipates needing an additional 0.2 FTEs for General Counsel at an annual cost of $20,000, 0.5 FTEs for a Maternal Fetal Medicine MD with annual salary and fringe of $350,000, and 0.1 FTEs for an Ethics Physician with annual salary and fringe of $200,000. In addition, MUSC reports that ancillary or external legal expenses related to the review and defense of its physicians will total up to $130,000 annually. Finally, MUSC indicates that this bill will require some physician training activities to take place out-of-state. The institution reports that fees for out-of-state training will total $200,000 annually, in addition to $50,000 in annual transportation and housing costs and $25,000 in annual training equipment costs. In total, this bill will increase General Fund expenditures for MUSC by up to $975,000 per year beginning in FY 2022-23. We have requested additional clarification regarding these expenditures.

University of South Carolina. USC School of Medicine indicates that the provisions of this bill can be managed within the university's existing appropriations and will have no fiscal impact.

Judicial. This bill expands the circumstances under which abortion is unlawful to all cases except in the case of rape or incest or to protect the life or health of the pregnant woman. The bill creates a felony offense for violations of the provisions prohibiting abortion. Additionally, the bill creates a new civil cause of action that may be brought by enumerated persons against persons who violate the provisions of the bill and allows for actions for injunctive relief. Further, the bill places additional financial responsibilities on the biological father that may impact family court cases.

Judicial anticipates enactment of the bill will increase caseloads in general session, common pleas, and family courts but believes resultant costs can be managed using existing General Fund resources.

Commission on Indigent Defense. This bill creates a new cause of action, which may increase the number of cases to be filed by circuit solicitors. Based on previous responses, we expect the commission can manage any additional costs associated with enactment of the bill using existing General Fund resources. We have contacted the agency for confirmation.

Commission on Prosecution Coordination. This bill creates a new cause of action, which may increase the number of cases to be filed by circuit solicitors. Based on previous responses, we expect the commission can manage any additional costs associated with enactment of the bill using existing General Fund resources. We have contacted the agency for confirmation.

Department of Corrections. The bill creates a new felony offense punishable by up to two years of imprisonment. The department reports the annual average cost to house an inmate in FY 2021-22 was $30,187, of which $27,883 is state funded. Therefore, this bill may result in an undetermined increase in expenses for Corrections as the impact is dependent upon the number of convictions under this new felony and the duration of any imprisonment.

Probation, Parole & Pardon Services. The implementation of this bill will have no expenditure impact on the department as the department expects to manage any increase in caseloads within its current resources.

Office of the Attorney General. This bill enables the Attorney General to file civil or criminal charges against persons who violate the provisions of the bill. The Attorney General may also intervene in any case in which the constitutionality or enforceability of the bill is challenged. The Attorney General's Office indicates that the bill will have no General Fund expenditure impact since any costs associated with actions the office may take will be managed within normal operating expenses.

Department of Revenue. The bill as amended creates Section 44-41-910 to allow a taxpayer to claim a $3,000 state individual income tax exemption for an unborn child dependent who is not born during the income tax year and has reached a gestational age of at least six weeks. DOR will administer the new exemption using existing staff and resources. Therefore, the bill will not impact expenditures for the agency.

House of Representatives and Senate. The House of Representatives and the Senate report that in the event the General Assembly elects to intervene in any action related to the constitutionality of the language within the current version of the bill, they anticipate that existing funds can be utilized to cover any expenses associated with such an intervention.

Governor's Office. The Governor's Office will use current appropriations to cover any expenses associated with intervening in any action related to the constitutionality of the language in the current bill.

State Revenue

The bill as amended creates Section 44-41-910 to allow a taxpayer to claim a $3,000 state individual income tax exemption for an unborn child dependent who is not born during the income tax year and has reached a gestational age of at least six weeks. The act takes effect upon approval by the Governor, and we assume would first apply to tax year 2022.

Approximately 56,800 births are expected in South Carolina in 2022 based on our latest population projections. Diving this by 52 weeks, we estimate approximately 1,092 births per week. In order to qualify for the tax exemption, the unborn child dependent must be at least six weeks but not have been born during the income tax year. Assuming an average forty-week gestational age at birth, there are approximately thirty-four weeks between the required six-week age and birth. Multiplying thirty-four weeks by 1,092 births per week, we estimate approximately 37,138 pregnancies may qualify. Further, research suggests approximately 10 percent of clinically recognized pregnancies end in miscarriage[1]. Including these pregnancies results in an estimated 40,852 taxpayers that may qualify for the exemption. Multiplying 40,852 taxpayers times a $3,000 exemption yields approximately $122,557,000 in newly exempt income.

In order to estimate the potential impact of the new exemption on tax revenue, we analyzed tax year 2019 individual income tax filings for taxpayers claiming the current exemption for dependents under six years of age, as these are the taxpayers most likely to claim a new exemption for an unborn child dependent. Using the new income tax rates for tax year 2022 adopted in Act 228 of 2022, the top marginal tax rate is 6.5 percent. However, a large majority of these taxpayers do not have sufficient tax liability to claim the full amount of the new $3,000 tax deduction. Based on a recalculation of these returns with the proposed $3,000 deduction, the actual marginal tax rate these taxpayers accounting for all taxpayers who already have no taxable income is 2.43 percent. Multiplying the $122,557,000 in newly exempt income by the 2.43 percent tax rate yields approximately $2,975,000 in reduced income taxes. Therefore, this exemption is expected to reduce General Fund individual income tax revenue by $2,975,000 annually beginning in FY 2022-23.

DHEC currently licenses three abortion clinics in the state, which generated $1,625 in revenue in FY 2021-22. It is undetermined whether the bill will affect this revenue.

The bill may increase complaints that are filed with the Board of Medical Examiners, which falls under LLR's Division of Professional and Occupational Licensing. Pursuant to Proviso 81.3 of the FY 2022-23 Appropriations Act, LLR is required to remit annually to the General Fund an amount equal to 10 percent of expenditures of the Division of Professional and Occupational Licensing. Because expenditures of the Board of Medical Examiners are undetermined, the increase in General Fund revenue is also undetermined.

This bill creates a new felony with a potential fine of up to $10,000. This may result in a change in the fines and fees collected in court. Further, the bill may create additional family court cases due to the expansion of responsibility for biological fathers. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, RFA anticipates this bill may result in an undetermined impact to General Fund revenue, Other Funds revenue, and local revenue due to the modifications in fines and fees collections in court.

Local Expenditure
N/A

Local Revenue
This bill creates a new felony with a potential fine of up to $10,000. This may result in a change in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, RFA anticipates this bill may result in an undetermined

[1] Dugas, Carla; Valori H. Slane, StatPearls, National Library of Medicine, National Center for Biotechnology Information, https://www.ncbi.nlm.nih.gov/books/NBK532992/ Accessed on September 1, 2022

impact to General Fund revenue, Other Funds revenue, and local revenue due to the modifications in fines and fees collections in court.

Amended by House Judiciary on August 16, 2022
State Expenditure
This bill prohibits abortions except to prevent the following:

- the death of the pregnant woman,
- a substantial risk of death for the pregnant woman because of a physical condition, or
- the substantial and irreversible physical impairment of a major bodily function of the pregnant woman.

Any physician who performs an abortion for the above exceptions must declare in a written document that the medical procedure was necessary.

The bill creates a felony for anyone who performs or abets an abortion or who uses force or the threat of force to injure or intimidate a person for the purpose of coercing an abortion. It also creates a new civil cause of action against a person for violation of the provisions of the bill and clarifies that the pregnant woman may not be criminally prosecuted. Lastly, this legislation gives the South Carolina House of Representatives, the South Carolina Senate, the South Carolina Governor, and/or the South Carolina Attorney General the right to intervene in any case in which the constitutionality or enforceability of any provision of the bill is challenged.

Department of Health and Environmental Control. DHEC is responsible for the licensing and regulation of abortion clinics in the state. The agency indicates that any expenditures related to the enactment of the bill will be managed within its current appropriations.

Department of Health and Human Services. DHHS operates South Carolina Healthy Connections (Medicaid), which pays medical bills for eligible low-income families and individuals. This includes bills for Family Planning services. Currently, the federal Hyde Amendment allows the use of federal funds to pay for abortion-related services in cases of rape, incest, and danger to the life of the mother. This bill authorizes the use of federal funds only for abortions to protect the life or health of the mother. To account for these changes, DHHS will require a review of policies to remove coverage for abortion-related services in cases of rape or incest and a review of policies to include stated timeframes for physicians' statements. The agency will manage additional costs associated with these policy reviews within its existing appropriations.

Public Employee Benefit Authority. PEBA administers the state's employee insurance programs for South Carolina's public workforce. The agency reports that the bill will have no fiscal impact on the State Health Plan. Because the bill does not operationally affect PEBA, it will have no impact on the agency.

Department of Labor, Licensing and Regulation. Proposed Section 44-41-870 will require the Board of Medical Examiners, which is under the authority of LLR, to revoke the license of a physician who violates the provisions of the bill after due process according to the rules and regulations. This proposed section will also authorize complaints to be filed for violations of these provisions and will authorize the Board of Medical Examiners to assess costs of the investigation, fines, and other disciplinary actions it deems appropriate.

LLR and the licensing boards, including the Board of Medical Examiners, currently have a process for accepting and processing complaints that may result from the bill. However, the fiscal impact on the agency is undetermined because the potential increase in the number of complaints that may be filed with the agency is unknown.

Additionally, the Board of Medical Examiners falls under the Division of Professional and Occupational Licensing, within LLR. Pursuant to Proviso 81.3 of the FY 2022-23 Appropriations Act, LLR is required to remit annually to the General Fund an amount equal to 10 percent of expenditures of the Division of Professional and Occupational Licensing. Because expenditures of the Board of Medical Examiners are undetermined, the increase in General Fund revenue is also undetermined.

Medical University of South Carolina. We have contacted the agency for its estimate of fiscal impact and are awaiting a response.

University of South Carolina. USC School of Medicine indicates that the provisions of this bill can be managed within the university's existing appropriations and will have no fiscal impact.

Judicial. This bill expands the circumstances under which abortion is unlawful to all cases except to protect the life or health of the pregnant woman. Additionally, the bill creates a new civil cause of action that may be brought by enumerated persons against persons who violate the provisions of the bill and allows for actions for injunctive relief. Judicial anticipates enactment of the bill will increase caseloads in general session and common pleas courts but believes resultant costs can be managed using existing General Fund resources.

Commission on Indigent Defense. This bill creates a new cause of action, which may increase the number of cases to be filed by circuit solicitors. The commission indicates it can manage any additional costs associated with enactment of the bill using existing General Fund resources.

Commission on Prosecution Coordination. This bill creates a new cause of action, which may increase the number of cases to be filed by circuit solicitors. The commission indicates it can manage any additional costs associated with enactment of the bill using existing General Fund resources.

Department of Corrections. The bill creates a new felony offense punishable by up to two years of imprisonment. The department reports the annual average cost to house an inmate in FY 2021-22 was $30,187, of which $27,883 is state funded. Therefore, this bill may result in an undetermined increase in expenses for Corrections as the impact is dependent upon the number of convictions under this new felony and the duration of any imprisonment.

Probation, Parole & Pardon Services. The implementation of this bill will have no expenditure impact on the department as the department expects to manage any increase in caseloads within its current resources.

Office of the Attorney General. This bill enables the Attorney General to file civil or criminal charges against persons who violate the provisions of the bill. The Attorney General may also intervene in any case in which the constitutionality or enforceability of the bill is challenged. The Attorney General's Office indicates that the bill will have no General Fund expenditure impact since any costs associated with actions the office may take will be managed within normal operating expenses.

House of Representatives and Senate. The House of Representatives and the Senate report that in the event the General Assembly elects to intervene in any action related to the constitutionality of the language within the current version of the bill, they anticipate that existing funds can be utilized to cover any expenses associated with such an intervention.

Governor's Office. The Governor's Office will use current appropriations to cover any expenses associated with intervening in any action related to the constitutionality of the language in the current bill.

State Revenue

DHEC currently licenses three abortion clinics in the state, which generated $1,625 in revenue in FY 2021-22. It is undetermined whether the bill will affect this revenue.

The bill may increase complaints that are filed with the Board of Medical Examiners, which falls under LLR's Division of Professional and Occupational Licensing. Pursuant to Proviso 81.3 of the FY 2022-23 Appropriations Act, LLR is required to remit annually to the General Fund an amount equal to 10 percent of expenditures of the Division of Professional and Occupational Licensing. Because expenditures of the Board of Medical Examiners are undetermined, the increase in General Fund revenue is also undetermined.

This bill creates a new felony with a potential fine of up to $10,000. This may result in a change in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, RFA anticipates this bill may result in an undetermined impact to General Fund revenue, Other Funds revenue, and local revenue due to the modifications in fines and fees collections in court.

Local Expenditure

N/A

Local Revenue

This bill creates a new felony with a potential fine of up to $10,000. This may result in a change in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, RFA anticipates this bill may result in an undetermined impact to General Fund revenue, Other Funds revenue, and local revenue due to the modifications in fines and fees collections in court.

Frank A. Rainwater, Executive Director