

**South Carolina General Assembly**  
124th Session, 2021-2022

**S. 1**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Grooms, Verdin, Kimbrell, Garrett, Martin, Shealy, Climer, Corbin, Cromer, Rice, Adams, Hembree, Gambrell, Loftis and Campsen

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Introduced in the Senate on January 12, 2021

Introduced in the House on February 2, 2021

Last Amended on January 27, 2021

Currently residing in the House

Summary: SC Fetal Heartbeat Protection from Abortion Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date	Body	Action Description with journal page number
12/9/2020	Senate	Prefiled
12/9/2020	Senate	Referred to Committee on <b>Medical Affairs</b>
1/12/2021	Senate	Introduced and read first time ( <a href="#">Senate Journal-page 87</a> )
1/12/2021	Senate	Referred to Committee on <b>Medical Affairs</b> ( <a href="#">Senate Journal-page 87</a> )
1/25/2021	Senate	Committee report: Favorable with amendment <b>Medical Affairs</b> ( <a href="#">Senate Journal-page 2</a> )
1/26/2021	Senate	Amended ( <a href="#">Senate Journal-page 5</a> )
1/26/2021	Senate	Debate interrupted ( <a href="#">Senate Journal-page 5</a> )
1/27/2021		Scrivener's error corrected
1/27/2021	Senate	Amended ( <a href="#">Senate Journal-page 6</a> )
1/27/2021	Senate	Read second time ( <a href="#">Senate Journal-page 6</a> )
1/27/2021	Senate	Roll call Ayes-29 Nays-17 ( <a href="#">Senate Journal-page 6</a> )
1/28/2021		Scrivener's error corrected
1/28/2021	Senate	Read third time and sent to House ( <a href="#">Senate Journal-page 12</a> )
1/28/2021	Senate	Roll call Ayes-30 Nays-13 ( <a href="#">Senate Journal-page 12</a> )
2/2/2021	House	Introduced and read first time ( <a href="#">House Journal-page 7</a> )
2/2/2021	House	Referred to Committee on <b>Judiciary</b> ( <a href="#">House Journal-page 7</a> )
2/10/2021	House	Committee report: Favorable <b>Judiciary</b> ( <a href="#">House Journal-page 2</a> )
2/16/2021	House	Requests for debate-Rep(s). Hiott, Simrill, Hixon, Carter, Whitmire, Caskey, Huggins, Davis, Bannister, GR Smith, VS Moss, Stringer, King, Nutt, Allison, Oremus, B Newton, T Moore, Pope, Elliott, Clyburn, Hosey, JL Johnson, Bailey, Fry, Hewitt, Jordon, Yow, Gilliam, Sandifer, McGinnis, Hardee, Gatch, R Williams, Brawley, Jefferson, McCravy, MM Smith, Brittain, Weeks, Danning, Cobb-Hunter, Thayer, Kimmons, Gagnon, ( <a href="#">House Journal-page 8</a> )

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**VERSIONS OF THIS BILL**

[12/9/2020](#)

[1/25/2021](#)

[1/26/2021](#)

[1/27/2021](#)

[1/27/2021-A](#)

[1/28/2021](#)

[2/10/2021](#)

1 ~~Indicates Matter Stricken~~  
2 Indicates New Matter  
3  
4 COMMITTEE REPORT  
5 February 10, 2021  
6

7 **S. 1**  
8

9 Introduced by Senators Grooms, Verdin, Kimbrell, Garrett, Martin,  
10 Shealy, Climer, Corbin, Cromer, Rice, Adams, Hembree,  
11 Gambrell, Loftis and Campsen  
12

13 S. Printed 2/10/21--H.  
14 Read the first time February 2, 2021.  
15 \_\_\_\_\_  
16

17 **THE COMMITTEE ON JUDICIARY**

18 To whom was referred a Bill (S. 1) to enact the “South  
19 Carolina Fetal Heartbeat and Protection from Abortion Act”; to  
20 amend Chapter 41, Title 44 of the 1976 code, etc., respectfully

21 **REPORT:**

22 That they have duly and carefully considered the same and  
23 recommend that the same do pass:  
24

25 CHRIS MURPHY for Committee.  
26 \_\_\_\_\_  
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**A BILL**

10  
11

12 TO ENACT THE “SOUTH CAROLINA FETAL HEARTBEAT  
13 AND PROTECTION FROM ABORTION ACT”; TO AMEND  
14 CHAPTER 41, TITLE 44 OF THE 1976 CODE, RELATING TO  
15 ABORTIONS, BY ADDING ARTICLE 6, TO REQUIRE  
16 TESTING FOR A DETECTABLE FETAL HEARTBEAT  
17 BEFORE AN ABORTION IS PERFORMED ON A PREGNANT  
18 WOMAN, TO PROHIBIT THE PERFORMANCE OF AN  
19 ABORTION IF A FETAL HEARTBEAT IS DETECTED, TO  
20 PROVIDE MEDICAL EMERGENCY EXCEPTIONS, TO  
21 REQUIRE CERTAIN DOCUMENTATION AND  
22 RECORDKEEPING BY PHYSICIANS PERFORMING  
23 ABORTIONS, TO CREATE A CIVIL ACTION FOR A  
24 PREGNANT WOMAN UPON WHOM AN ABORTION IS  
25 PERFORMED, TO CREATE CRIMINAL PENALTIES, AND  
26 FOR OTHER PURPOSES; TO AMEND SECTION 44-41-460(A)  
27 OF THE 1976 CODE, RELATING TO THE REQUIRED  
28 REPORTING OF ABORTION DATA TO THE DEPARTMENT  
29 OF HEALTH AND ENVIRONMENTAL CONTROL, TO ADD  
30 REPORTING OF FETAL HEARTBEAT TESTING AND  
31 PATIENT MEDICAL CONDITION DATA; AND TO AMEND  
32 SECTION 44-41-330(A)(1) OF THE 1976 CODE, RELATING TO  
33 A PREGNANT WOMAN’S RIGHT TO KNOW CERTAIN  
34 INFORMATION, TO REQUIRE NOTIFICATION OF THE  
35 DETECTION OF A FETAL HEARTBEAT.

36

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

39

40 SECTION 1. This act shall be known and may be cited as the  
41 “South Carolina Fetal Heartbeat and Protection from Abortion Act”.

1 SECTION 2. The General Assembly hereby finds, according to  
2 contemporary medical research, all of the following:

3  
4 (1) as many as thirty percent of natural pregnancies end in  
5 spontaneous miscarriage;

6 (2) fewer than five percent of all natural pregnancies end in  
7 spontaneous miscarriage after the detection of a fetal heartbeat;

8 (3) over ninety percent of in vitro pregnancies survive the first  
9 trimester if a fetal heartbeat is detected;

10 (4) nearly ninety percent of in vitro pregnancies do not  
11 survive the first trimester if a fetal heartbeat is not detected;

12 (5) a fetal heartbeat is a key medical predictor that an unborn  
13 human individual will reach live birth;

14 (6) a fetal heartbeat begins at a biologically identifiable  
15 moment in time, normally when the fetal heart is formed in the  
16 gestational sac;

17 (7) the State of South Carolina has legitimate interests from  
18 the outset of a pregnancy in protecting the health of the pregnant  
19 woman and the life of the unborn child who may be born; and

20 (8) in order to make an informed choice about whether to  
21 continue a pregnancy, a pregnant woman has a legitimate interest in  
22 knowing the likelihood of the human fetus surviving to full-term  
23 birth based upon the presence of a fetal heartbeat.

24  
25 SECTION 3. Chapter 41, Title 44 of the 1976 Code is amended by  
26 adding:

27  
28 "ARTICLE 6

29  
30 Fetal Heartbeat and Protection from Abortion

31  
32 Section 44-41-610. As used in this article:

33 (1) 'Conception' means fertilization.

34 (2) 'Contraceptive' means a drug, device, or chemical that  
35 prevents conception.

36 (3) 'Fetal heartbeat' means cardiac activity, or the steady and  
37 repetitive rhythmic contraction of the fetal heart, within the  
38 gestational sac.

39 (4) 'Gestational age' means the age of an unborn human  
40 individual as calculated from the first day of the last menstrual  
41 period of a pregnant woman.

1 (5) ‘Gestational sac’ means the structure that comprises the  
2 extraembryonic membranes that envelop the human fetus and that is  
3 typically visible by ultrasound after the fourth week of pregnancy.

4 (6) ‘Human fetus’ or ‘unborn child’ each means an individual  
5 organism of the species homo sapiens from fertilization until live  
6 birth.

7 (7) ‘Intrauterine pregnancy’ means a pregnancy in which a  
8 human fetus is attached to the placenta within the uterus of a  
9 pregnant woman.

10 (8) ‘Medical emergency’ means a condition that, by any  
11 reasonable medical judgment, so complicates the medical condition  
12 of a pregnant woman that it necessitates the immediate abortion of  
13 her pregnancy to avert her death without first determining whether  
14 there is a detectable fetal heartbeat or for which the delay necessary  
15 to determine whether there is a detectable fetal heartbeat will create  
16 serious risk of a substantial and irreversible physical impairment of  
17 a major bodily function, not including psychological or emotional  
18 conditions. A condition must not be considered a medical  
19 emergency if based on a claim or diagnosis that a woman will  
20 engage in conduct that she intends to result in her death or in a  
21 substantial and irreversible physical impairment of a major bodily  
22 function.

23 (9) ‘Physician’ means any person licensed to practice  
24 medicine and surgery, or osteopathic medicine and surgery, in this  
25 State.

26 (10) ‘Reasonable medical judgment’ means a medical  
27 judgment that would be made by a reasonably prudent physician  
28 who is knowledgeable about the case and the treatment possibilities  
29 with respect to the medical conditions involved.

30 (11) ‘Spontaneous miscarriage’ means the natural or accidental  
31 termination of a pregnancy and the expulsion of the human fetus,  
32 typically caused by genetic defects in the human fetus or physical  
33 abnormalities in the pregnant woman.

34

35 Section 44-41-620. (A) A court judgment or order suspending  
36 enforcement of any provision of this chapter is not to be regarded as  
37 tantamount to repeal of that provision.

38 (B) If the United States Supreme Court issues a decision  
39 overruling Roe v. Wade, 410 U.S. 113 (1973), any other court issues  
40 an order or judgment restoring, expanding, or clarifying the  
41 authority of states to prohibit or regulate abortion entirely or in part,  
42 or an amendment is ratified to the Constitution of the United States  
43 restoring, expanding, or clarifying the authority of states to prohibit

1 or regulate abortion entirely or in part, then the Attorney General  
2 may apply to the pertinent state or federal court for either or both of  
3 the following:

4 (1) a declaration that any one or more of the statutory  
5 provisions specified in subsection (A) are constitutional; or

6 (2) a judgment or order lifting an injunction against the  
7 enforcement of any one or more of the statutory provisions specified  
8 in subsection (A).

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

13

14 Section 44-41-630. An abortion provider who is to perform or  
15 induce an abortion, a certified technician, or another agent of the  
16 abortion provider who is competent in ultrasonography shall:

17 (1) perform an obstetric ultrasound on the pregnant woman,  
18 using whichever method the physician and pregnant woman agree  
19 is best under the circumstances;

20 (2) during the performance of the ultrasound, display the  
21 ultrasound images so that the pregnant woman may view the  
22 images; and

23 (3) record a written medical description of the ultrasound  
24 images of the unborn child's fetal heartbeat, if present and viewable.

25

26 Section 44-41-640. If a pregnancy is at least eight weeks after  
27 fertilization, then the abortion provider who is to perform or induce  
28 an abortion, or an agent of the abortion provider, shall tell the  
29 woman that it may be possible to make the embryonic or fetal  
30 heartbeat of the unborn child audible for the pregnant woman to hear  
31 and shall ask the woman if she would like to hear the heartbeat. If  
32 the woman would like to hear the heartbeat, then the abortion  
33 provider shall, using whichever method the physician and patient  
34 agree is best under the circumstances, make the fetal heartbeat of the  
35 unborn child audible for the pregnant woman to hear.

36

37 Section 44-41-650. (A) Except as provided in Section  
38 44-41-660, no person shall perform, induce, or attempt to perform  
39 or induce an abortion on a pregnant woman before a physician  
40 determines in accordance with Section 44-41-630 whether the  
41 human fetus the pregnant woman is carrying has a detectable fetal  
42 heartbeat.

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

4

5 Section 44-41-660. (A) Section 44-41-650 does not apply to a  
6 physician who performs or induces an abortion if the physician  
7 determines according to standard medical practice that a medical  
8 emergency exists that prevents compliance with the section.

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

13 (1) the physician's belief that a medical emergency  
14 necessitating the abortion existed;

15 (2) the medical condition of the pregnant woman that  
16 assertedly prevented compliance with Section 44-41-650; and

17 (3) the medical rationale to support the physician's  
18 conclusion that the pregnant woman's medical condition  
19 necessitated the immediate abortion of her pregnancy to avert her  
20 death.

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

24

25 Section 44-41-670. A physician is not in violation of Section  
26 44-41-650 if the physician acts in accordance with Section  
27 44-41-630 and the method used to test for the presence of a fetal  
28 heartbeat does not reveal a fetal heartbeat.

29

30 Section 44-41-680. (A) Except as provided in subsection (B), no  
31 person shall perform, induce, or attempt to perform or induce an  
32 abortion on a pregnant woman with the specific intent of causing or  
33 abetting the termination of the life of the human fetus the pregnant  
34 woman is carrying and whose fetal heartbeat has been detected in  
35 accordance with Section 44-41-630.

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

39 (1) the pregnancy is the result of rape, and the probable post-  
40 fertilization age of the fetus is fewer than twenty weeks;

41 (2) the pregnancy is the result of incest, and the probable post-  
42 fertilization age of the fetus is fewer than twenty weeks;

1 (3) the physician is acting in accordance with Section 44-41-690;  
2 or  
3 (4) there exists a fetal anomaly, as defined in Section 44-41-  
4 430.

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

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

25  
26 Section 44-41-690. (A) Section 44-41-680 does not apply to a  
27 physician who performs a medical procedure that, by any reasonable  
28 medical judgment, is designed or intended to prevent the death of  
29 the pregnant woman or to prevent the serious risk of a substantial  
30 and irreversible impairment of a major bodily function of the  
31 pregnant woman.

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

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

6

7 Section 44-41-700. A physician is not in violation of Section  
8 44-41-680 if the physician acts in accordance with Section  
9 44-41-630 and the method used to test for the presence of a fetal  
10 heartbeat does not reveal a fetal heartbeat.

11

12 Section 44-41-710. This article must not be construed to repeal,  
13 by implication or otherwise, Section 44-41-20 or any otherwise  
14 applicable provision of South Carolina law regulating or restricting  
15 abortion. An abortion that complies with this article but violates the  
16 provisions of Section 44-41-20 or any otherwise applicable  
17 provision of South Carolina law must be considered unlawful as  
18 provided in such provision. An abortion that complies with the  
19 provisions of Section 44-41-20 or any otherwise applicable  
20 provision of South Carolina law regulating or restricting abortion  
21 but violates this article must be considered unlawful as provided in  
22 this article. If some or all of the provisions of this article are ever  
23 temporarily or permanently restrained or enjoined by judicial order,  
24 all other provisions of South Carolina law regulating or restricting  
25 abortion must be enforced as though such restrained or enjoined  
26 provisions had not been adopted, provided, however, that whenever  
27 such temporary or permanent restraining order or injunction is  
28 stayed or dissolved, or otherwise ceases to have effect, such  
29 provisions shall have full force and effect.

30

31 Section 44-41-720. Nothing in this article prohibits the sale, use,  
32 prescription, or administration of a drug, device, or chemical that is  
33 designed for contraceptive purposes.

34

35 Section 44-41-730. A pregnant woman on whom an abortion is  
36 performed or induced in violation of this article may not be  
37 criminally prosecuted for violating any of the provisions of this  
38 article or for attempting to commit, conspiring to commit, or acting  
39 complicitly in committing a violation of any of the provisions of the  
40 article and is not subject to a civil or criminal penalty based on the  
41 abortion being performed or induced in violation of any of the  
42 provisions of this article.

43

1 Section 44-41-740. (A) A woman who meets any one or more of  
2 the following criteria may file a civil action in a court of competent  
3 jurisdiction:

4 (1) a woman on whom an abortion was performed or induced  
5 in violation of this article; or

6 (2) a woman on whom an abortion was performed or induced  
7 who was not given the information provided in Section 44-41-330.

8 (B) A woman who prevails in an action filed pursuant to  
9 subsection (A) shall receive the following from the person who  
10 committed the act or acts described in subsection (A):

11 (1) damages in an amount equal to ten thousand dollars or an  
12 amount determined by the trier of fact after consideration of the  
13 evidence; and

14 (2) court costs and reasonable attorney's fees.

15 (C) If the defendant in an action filed pursuant to subsection (A)  
16 prevails and the court finds that the commencement of the action  
17 constitutes frivolous conduct and that the defendant was adversely  
18 affected by the frivolous conduct, then the court shall award  
19 reasonable attorney's fees to the defendant, provided, however, that  
20 a conclusion of frivolousness cannot rest upon the  
21 unconstitutionality of the provision that was allegedly violated.”  
22

23 SECTION 4. Section 44-41-460(A) of the 1976 Code is amended  
24 by adding appropriately numbered new items at the end to read:

25  
26 “( ) The information related to fetal heartbeat testing required  
27 pursuant to Sections 44-41-630, 44-41-660, and 44-41-690, as  
28 applicable.

29 ( ) Whether the reason for the abortion was to preserve the  
30 health of the pregnant woman and, if so, the medical condition that  
31 the abortion was asserted to address and the medical rationale for  
32 the conclusion that an abortion was necessary to address that  
33 condition. If the reason for the abortion was other than to preserve  
34 the health of the pregnant woman, then the report must specify that  
35 maternal health was not the purpose of the abortion. This  
36 information must also be placed in the pregnant woman's medical  
37 records and maintained for at least seven years thereafter.”  
38

39 SECTION 5. Section 44-41-330(A)(1) of the 1976 Code is  
40 amended to read:

41  
42 “(1)(a) The woman must be informed by the physician who is to  
43 perform the abortion or by an allied health professional working in

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

11 (b) If the physician who intends to perform or induce an  
12 abortion on a pregnant woman has determined pursuant to Section  
13 44-41-630 that the human fetus the pregnant woman is carrying has  
14 a detectable fetal heartbeat, then that physician shall inform the  
15 pregnant woman in writing that the human fetus the pregnant  
16 woman is carrying has a fetal heartbeat. The physician shall further  
17 inform the pregnant woman, to the best of the physician's  
18 knowledge, of the statistical probability, absent an induced abortion,  
19 of bringing the human fetus possessing a detectable fetal heartbeat  
20 to term based on the gestational age of the human fetus or, if the  
21 director of the department has specified statistical probability  
22 information, shall provide to the pregnant woman that information.  
23 The department may promulgate regulations that specify  
24 information regarding the statistical probability of bringing an  
25 unborn child possessing a detectable fetal heartbeat to term based  
26 on the gestational age of the unborn child. Any regulations must be  
27 based on available medical evidence."

28  
29 SECTION 6. Section 44-41-60 of the 1976 Code is amended to  
30 read:

31  
32 "Section 44-41-60. Any abortion performed in this State must be  
33 reported by the performing physician on the standard form for  
34 reporting abortions to the State Registrar, Department of Health and  
35 Environmental Control, within seven days after the abortion is  
36 performed. The names of the patient and physician may not be  
37 reported on the form or otherwise disclosed to the State Registrar.  
38 The form must indicate from whom consent was obtained, ~~or~~  
39 circumstances waiving consent, and, if an exception was exercised  
40 pursuant to Section 44-41-660, which exception the physician relied  
41 upon in performing or inducing the abortion."  
42

1 SECTION 7. If any section, subsection, paragraph, subparagraph,  
2 sentence, clause, phrase, or word of this act is for any reason held to  
3 be unconstitutional or invalid, then such holding shall not affect the  
4 constitutionality or validity of the remaining portions of this act, the  
5 General Assembly hereby declaring that it would have passed this  
6 act and each and every section, subsection, paragraph,  
7 subparagraph, sentence, clause, phrase, and word thereof,  
8 irrespective of the fact that any one or more other sections,  
9 subsections, paragraphs, subparagraphs, sentences, clauses, phrases,  
10 or words hereof may be declared to be unconstitutional, invalid, or  
11 otherwise ineffective.

12

13 SECTION 8. The repeal or amendment by this act of any law,  
14 whether temporary, permanent, civil, or criminal, does not affect  
15 pending actions, rights, duties, or liabilities founded thereon or alter,  
16 discharge, release, or extinguish any penalty, forfeiture, or liability  
17 incurred under the repealed or amended law, unless the repealed or  
18 amended provision shall so expressly provide. After the effective  
19 date of this act, all laws repealed or amended by this act must be  
20 taken and treated as remaining in full force and effect for the purpose  
21 of sustaining any pending or vested right, civil action, special  
22 proceeding, criminal prosecution, or appeal existing as of the  
23 effective date of this act and for the enforcement of rights, duties,  
24 penalties, forfeitures, and liabilities as they stood under the repealed  
25 or amended laws.

26

27 SECTION 9. This act takes effect upon approval by the Governor.

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29