

<b>LFC Requester:</b>	<b>Austin Davidson</b>
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**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

**AgencyAnalysis.nmlegis.gov**

*{Analysis must be uploaded as a PDF}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply:  
**Original**     **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_ **Substitute**    \_\_\_\_\_

**Date** 1/18/24  
**Bill No:** HB 110

**Sponsor:** Rep. John Block  
**Short**    Limit Certain Abortions  
**Title:**    \_\_\_\_\_

**Agency Name and Code**    AOC  
**Number:**    218  
**Person Writing**    Kathleen Sabo  
**Phone:** 505-470-3214    **Email** aoccaj@nmcourts.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
None	None	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: HB 110, Section 1(A) enacts a new section of the Criminal Code to create the third-degree felony penalty for a health care provider who

- Knowingly performs an abortion without determining whether the fetus has a detectable heartbeat;
- Knowingly performs an abortion without informing the pregnant woman of the results of a heartbeat determination; or
- Knowingly performs an abortion after determining that the fetus has a heartbeat.

HB 110 provides that the health care provider is guilty of a third-degree felony resulting in the death of a human fetus, and amends Section 31-18-15 NMSA 1978 to provide a five-year term of imprisonment for the specific felony classification.

HB 110, Section 1(B) provides that a health care provider who fails to follow the procedures pursuant to Subsection A shall be deemed to have breached the duty of care to the patient. Subsection C provides that nothing in this section shall prevent the patient from exhausting other available remedies. Subsection D provides that nothing in Section 1 is to be construed to allow the prosecution of a woman who receives an abortion.

**FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions, and appeals from convictions, as well as challenges to the constitutionality of the law. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

**SIGNIFICANT ISSUES**

- 1) While HB 110 amends Section 31-18-15(A) NMSA 1978 to provide a five-year sentence of imprisonment for a third-degree felony resulting in the death of a human fetus, there is no fine specified in Subsection E.
- 2) On the federal and state level, “Heartbeat Protection Acts” or “fetal heartbeat bills” have been introduced and enacted into law to prohibit abortion in cases where a fetal heartbeat is detectable, usually around 6 weeks into pregnancy. See <https://www.congress.gov/bill/118th-congress/house->

[bill/175/text?s=5&r=1&q=%7B%22search%22%3A%5B%22heartbeat+act%22%5D%7D#:~:text=Introduced%20in%20House%20\(01%2F09%2F2023\)&text=To%20amend%20title%2018%2C%20United,a%20fetal%20heartbeat%20is%20detectable.&text=A%20BILL- .To%20amend%20title%2018%2C%20United%20States%20Code%2C%20to%20prohibit%20abortion,a%20fetal%20heartbeat%20is%20detectable](https://www.congress.gov/bills/116/175/text/s=5&r=1&q=%7B%22search%22%3A%5B%22heartbeat+act%22%5D%7D#:~:text=Introduced%20in%20House%20(01%2F09%2F2023)&text=To%20amend%20title%2018%2C%20United,a%20fetal%20heartbeat%20is%20detectable.&text=A%20BILL- ,To%20amend%20title%2018%2C%20United%20States%20Code%2C%20to%20prohibit%20abortion,a%20fetal%20heartbeat%20is%20detectable), for text of H.R. 175, the Heartbeat Protection Act of 2023.

Within days of the Supreme Court ruling in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), multiple states had reimposed so-called fetal heartbeat and other bills that had been placed on hold under *Roe v. Wade*, 410 U.S. 113 (1973).

As reported by the Associated Press

The laws generally prohibit abortions of “an unborn human individual whose fetal heartbeat has been detected.” That terminology — used widely in anti-abortion legislation across the country — [does not easily translate to medical science](#).

That’s because at the point where advanced technology can detect that first visual flutter, as early as six weeks into pregnancy, the embryo isn’t yet a fetus, and it doesn’t have a heart. An embryo is termed a fetus eight weeks after fertilization, according to medical experts.

Abortion rights advocates, civil rights attorneys and some abortion foes favor calling the laws “six-week abortion bans.” That, too, is misleading. Most “heartbeat” laws make no mention of a particular gestational age after which abortion is illegal.

What they ban are most abortions after the point when a state-sanctioned detection method administered in good faith by a medical professional can detect cardiac activity.

See, *EXPLAINER: Abortion landscape under state ‘heartbeat’ laws*, Julie Carr Smyth, June 29, 2022 at <https://apnews.com/article/abortion-us-supreme-court-health-ohio-tennessee-0056dcfb4e5fe1590f07b5993c52078a> .

- 3) HB 110 does not contain any exceptions to the imposition of the third-degree felony penalty, such as when the pregnancy is the result of rape or incest, when the gestational age is less than a given number of weeks, or in the event of a medical emergency jeopardizing the life or health of the pregnant person.

In this rapidly changing landscape, it is difficult to find a current list of states with fetal heartbeat laws containing exceptions. Ohio, by constitutional amendment, recently created a constitutionally-protected right to abortion. Prior to that, Ohio’s fetal heartbeat law contained an exception for abortions performed “in response to a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy” that “places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.” Iowa’s law includes exceptions for

pregnancies resulting from rape or incest, and for medical emergencies that endanger the life of the pregnant woman. The proposed federal legislation, H.R. 705, referenced and cited above, provides that

This subsection does not apply to an abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, but not including psychological or emotional conditions.

South Carolina's fetal heartbeat law contains the following language re: exceptions in Section 44-41-640 S.C. Code Ann.

**SECTION 44-41-640.** Exceptions for medical emergencies or to prevent the death of the pregnant woman; written notations in medical records.

(A) It is not a violation of Section ~~44-41-630~~ if an abortion is performed or induced on a pregnant woman due to a medical emergency or is performed 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, not including psychological or emotional conditions, of the pregnant woman.

(B)(1) Section ~~44-41-630~~ 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 or is performed to prevent the death of the pregnant woman or to prevent the serious risk of a substantial or irreversible impairment of a major bodily function, not including psychological or emotional conditions, that prevents compliance with the section.

(2) A physician who performs or induces an abortion on a pregnant woman based on the exception in item (1) shall make written notations in the pregnant woman's medical records of the following:

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

(b) the medical condition of the pregnant woman that assertedly prevented compliance with Section ~~44-41-630~~; and

(c) the medical rationale to support the physician's or person's conclusion that the pregnant woman's medical condition necessitated the immediate abortion of her pregnancy to avert her death and a medical emergency necessitating the abortion existed.

(3) A physician performing a medical procedure pursuant to item (1) shall make reasonable medical efforts under the circumstances to preserve the life of the pregnant woman's unborn child, to the extent that it does not risk the death of the pregnant woman or the serious risk of a substantial and irreversible physical impairment of a major bodily function of the pregnant woman, not including

psychological or emotional conditions and in a manner consistent with reasonable medical practices. A medical procedure shall not be considered necessary if it is performed based upon a claim or diagnosis that the woman will engage in conduct that she intends to result in her death or in a substantial physical impairment of a major bodily function.

(4)(a) For at least seven years from the date the notations are made in the pregnant woman's medical records, the physician owner of the pregnant woman's medical records shall maintain a record of the notations and in his own records a copy of the notations.

(b) A person, if he is the owner of the pregnant woman's medical records, who violates this subsection is guilty of a felony and must be fined up to ten thousand dollars, imprisoned for not more than two years, or both.

(c) An entity with ownership of the pregnant woman's medical records that violates item (3) must be fined up to fifty thousand dollars.

(C)(1) It is not a violation of Section ~~44-41-630~~ for a physician to perform a medical procedure necessary in his reasonable medical judgment to prevent the death of a pregnant woman or the serious risk of a substantial and irreversible physical impairment of a major bodily function of the pregnant woman, not including psychological or emotional conditions.

(2) It is presumed that the following medical conditions constitute a risk of death or serious risk of a substantial and irreversible physical impairment of a major bodily function of a pregnant woman, not including psychological or emotional conditions: molar pregnancy, partial molar pregnancy, blighted ovum, ectopic pregnancy, severe preeclampsia, HELLP syndrome, abruptio placentae, severe physical maternal trauma, uterine rupture, intrauterine fetal demise, and miscarriage. However, when an unborn child is alive in utero, the physician must make all reasonable efforts to deliver and save the life of an unborn child during the process of separating the unborn child from the pregnant woman, to the extent that it does not adversely affect the life or physical health of the pregnant woman, and in a manner that is consistent with reasonable medical practice. The enumeration of the medical conditions in this item is not intended to exclude or abrogate other conditions that satisfy the exclusions contained in item (1) or prevent other procedures that are not included in the definition of abortion.

(3) A physician who performs a medical procedure pursuant to item (1) shall declare, in a written document maintained with the woman's medical records, that the medical procedure was necessary, the woman's medical condition necessitating the procedure, the physician's rationale for his conclusion that the procedure was necessary, and that all reasonable efforts were made to save the unborn child in the event it was living prior to the procedure. The declaration required by this item must be placed in the woman's medical records not later than thirty days after the procedure was completed. A physician's exercise of reasonable medical judgment in relation to a medical procedure undertaken pursuant to this subsection is presumed to be within the applicable standard of

care.

(D) Medical treatment provided to a pregnant woman by a physician which results in the accidental or unintentional injury or death of her unborn child is not a violation of Section [44-41-630](#).

(E) It is not a violation of Section [44-41-630](#) to use, sell, or administer a contraceptive measure, drug, chemical, or device if the contraceptive measure, drug, chemical, or device is used, sold, prescribed or administered in accordance with manufacturer's instructions and is not used, sold, prescribed or administered to cause or induce an abortion.

See

[https://www.scstatehouse.gov/query.php?search=DOC&searchtext=44%2041%20630&category=CODEOFLAWS&conid=37962584&result\\_pos=0&keyval=880&numrows=10](https://www.scstatehouse.gov/query.php?search=DOC&searchtext=44%2041%20630&category=CODEOFLAWS&conid=37962584&result_pos=0&keyval=880&numrows=10).

- 4) There is no definition of “heartbeat” or “detectable heartbeat” contained within HB 110. South Carolina, for example, has defined the term “fetal heartbeat” as “cardiac activity, or the steady and repetitive rhythmic contraction of the fetal heart, within the gestational sac.” See Section 44-41-610(6) S.C. Code Ann. At [https://www.scstatehouse.gov/query.php?search=DOC&searchtext=44%2041%20630&category=CODEOFLAWS&conid=37962584&result\\_pos=0&keyval=880&numrows=10](https://www.scstatehouse.gov/query.php?search=DOC&searchtext=44%2041%20630&category=CODEOFLAWS&conid=37962584&result_pos=0&keyval=880&numrows=10). See also, *South Carolina abortion ban with ‘fetal heartbeat’ definition creates confusion, doctors say*, August 25, 2023 at <https://www.pbs.org/newshour/politics/south-carolina-abortion-ban-with-fetal-heartbeat-definition-creates-confusion-doctors-say>.
- 5) Should HB 110 become law, it is likely that challenges to the law will be made based on violating a right to privacy. As the Federalist Society reports in December 2023, in response to a challenge to South Carolina’s fetal heartbeat law

In *Planned Parenthood South Atlantic v. State (Planned Parenthood II)*, the South Carolina Supreme Court was asked whether a state law banning abortion after the detection of a fetal heartbeat violated the state’s constitution.[1] The court, in a 4-1 decision authored by Justice John Kittredge, held that the abortion ban did not violate article I, section 10, of the South Carolina Constitution, which prohibits “unreasonable invasion[s] of privacy.”[2]

This opinion follows closely behind a fractured decision from the court in January 2023, which held that a prior version of South Carolina’s fetal heartbeat law was unconstitutional.[3] In *Planned Parenthood South Atlantic v. State (Planned Parenthood I)* three out of five justices agreed that the state constitution contained no right to an abortion, but the court still found the fetal heartbeat law unconstitutional.[4] Notably, one member of the 3-2 majority, Justice John Cannon Few, concurred with the majority only in result and wrote separately in that case. In his view, the South Carolina General Assembly’s failure to consider whether the abortion ban provided enough time for a woman to know she was pregnant and exercise a meaningful choice rendered the ban an unreasonable invasion into a woman’s privacy.[5]

See <https://fedsoc.org/scdw/south-carolina-supreme-court-upholds-heartbeat-abortion-ban> , for additional reporting. See also <https://law.justia.com/cases/south-carolina/supreme-court/2023/28174.html> and 892 S.E.2d 121 (S.C. 2023) for the South Carolina Supreme Court’s decision in the case.

### **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

### **ADMINISTRATIVE IMPLICATIONS**

See “Fiscal Implications,” above.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None.

### **TECHNICAL ISSUES**

### **OTHER SUBSTANTIVE ISSUES**

### **ALTERNATIVES**

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

### **AMENDMENTS**