

House Bill 244

By: Representatives Mueller of the 152<sup>nd</sup>, Bunn of the 74<sup>th</sup>, Smith of the 19<sup>th</sup>, Franklin of the 39<sup>th</sup>, Hammontree of the 4<sup>th</sup> and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to  
2 offenses against health and morals, so as to provide for a short title; to provide for  
3 definitions; to require that a female give her informed consent prior to an abortion; to require  
4 that certain information be provided to or made available to a female prior to an abortion; to  
5 require a written acknowledgment of receipt of such information; to provide for the  
6 preparation and availability of certain information; to provide for procedures in a medical  
7 emergency; to provide for reporting; to provide criminal sanctions; to provide for civil  
8 actions, damages, and attorney's fees; to provide for anonymity of certain persons in civil  
9 actions; to provide for severability; to provide for an effective date; to repeal conflicting  
10 laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against  
14 health and morals, is amended by adding immediately following Article 5 thereof a new  
15 article to read as follows:

16 style="text-align:center">"ARTICLE 5.1

17 16-12-150.

18 This article shall be known and may be cited as the 'Woman's Right to Know Act.'

19 16-12-151.

20 As used in this article, the term:

1 (1) 'Abortion' means the use or prescription of any instrument, medicine, drug, or any  
2 other substance or device intentionally to terminate the pregnancy of a female known to  
3 be pregnant with an intention other than to increase the probability of a live birth, to  
4 preserve the life or health of the child after live birth, or to remove a dead fetus.

5 (2) 'Attempt to perform an abortion' means an act, or an omission of a statutorily required  
6 act, that, under the circumstances as the actor believes them to be, constitutes a  
7 substantial step in a course of conduct planned to culminate in the performance of an  
8 abortion in Georgia in violation of this article.

9 (3) 'Medical emergency' means any condition which, on the basis of the physician's good  
10 faith clinical judgment, so complicates the medical condition of a pregnant female as to  
11 necessitate the immediate abortion of her pregnancy to avert her death or for which a  
12 delay will create serious risk of substantial and irreversible impairment of a major bodily  
13 function.

14 (4) 'Physician' means a person licensed to practice medicine under Article 2 of Chapter  
15 34 of Title 43.

16 (5) 'Probable gestational age of the unborn child' means what, in the judgment of the  
17 physician, will with reasonable probability be the gestational age of the unborn child at  
18 the time the abortion is planned to be performed.

19 16-12-152.

20 No abortion shall be performed in this state except with the voluntary and informed consent  
21 of the female upon whom the abortion is to be performed. Except in the case of a medical  
22 emergency, consent to an abortion is voluntary and informed if and only if:

23 (1) The female is told the following, by telephone or in person, by the physician who is  
24 to perform the abortion or by a referring physician, at least 24 hours before the abortion:

25 (A) The name of the physician who will perform the abortion;

26 (B) The particular medical risks associated with the particular abortion procedure to be  
27 employed, including, when medically accurate, the risks of infection, hemorrhage,  
28 breast cancer, danger to subsequent pregnancies, and infertility;

29 (C) The probable gestational age of the unborn child at the time the abortion is to be  
30 performed; and

31 (D) The medical risks associated with carrying her child to term.

32 The information required by this paragraph may be provided by telephone without  
33 conducting a physical examination or tests of the patient, in which case the information  
34 required to be provided may be based on facts supplied the physician by the female and  
35 whatever other relevant information is reasonably available to the physician. Such  
36 information may not be provided by a tape recording but must be provided during a

1 consultation in which the physician is able to ask questions of the female and the female  
2 is able to ask questions of the physician. If a physical examination, tests, or the  
3 availability of other information to the physician subsequently indicates, in the medical  
4 judgment of the physician, a revision of the information previously supplied to the  
5 patient, that revised information may be communicated to the patient at any time prior  
6 to the performance of the abortion. Nothing in this Code section may be construed to  
7 preclude provision of required information in a language understood by the patient  
8 through a translator;

9 (2) The female is informed, by telephone or in person, by the physician who is to perform  
10 the abortion, by a referring physician, or by an agent of either physician at least 24 hours  
11 before the abortion:

12 (A) That medical assistance benefits may be available for prenatal care, childbirth, and  
13 neonatal care;

14 (B) That the father is liable to assist in the support of her child, even in instances in  
15 which the father has offered to pay for the abortion; and

16 (C) That she has the right to review the printed materials described in Code Section  
17 16-12-153, that these materials are available on a state sponsored website, and what the  
18 website address is. The physician or the physician's agent shall orally inform the  
19 female that materials have been provided by the State of Georgia and that they describe  
20 the unborn child and list agencies which offer alternatives to abortion. If the female  
21 chooses to view the materials other than on the website, they shall either be given to her  
22 at least 24 hours before the abortion or mailed to her at least 72 hours before the  
23 abortion by certified mail, restricted delivery to addressee, which means the postal  
24 employee can only deliver the mail to the addressee.

25 The information required by this paragraph may be provided by a tape recording if  
26 provision is made to record or otherwise register specifically whether the female does or  
27 does not choose to review the printed materials other than on the website;

28 (3) The female certifies in writing prior to the abortion that the information described in  
29 paragraphs (1) and (2) of this Code section has been furnished her and that she has been  
30 informed of her opportunity to review the information referred to in subparagraph (C) of  
31 paragraph (2) of this Code section; and

32 (4) Prior to the performance of the abortion, the physician who is to perform the abortion  
33 or the physician's agent receives a copy of the written certification prescribed by  
34 paragraph (3) of this Code section.

35

1 16-12-153.

2 (a) Within 90 days after this article first becomes effective in 2001, the Department of  
3 Human Resources shall cause to be published in English and in each language which is the  
4 primary language of 2 percent or more of the state's population and shall cause to be  
5 available on the state website provided for in subsection (d) of this Code section, the  
6 following printed materials in such a way as to ensure that the information is easily  
7 comprehensible:

8 (1) Geographically indexed materials designed to inform the female of public and private  
9 agencies and services available to assist a female through pregnancy, upon childbirth, and  
10 while the child is dependent, including adoption agencies, which shall include a  
11 comprehensive list of the agencies available, a description of the services they offer, and  
12 a description of the manner, including telephone numbers, in which they might be  
13 contacted or, at the option of such department, printed materials including a toll-free, 24  
14 hour a day telephone number which may be called to obtain, orally, such a list and  
15 description of agencies in the locality of the caller and of the services they offer; and

16 (2) Materials designed to inform the female of the probable anatomical and physiological  
17 characteristics of the unborn child at two-week gestational increments from the time  
18 when a female can be known to be pregnant to full term, including any relevant  
19 information on the possibility of the unborn child's survival and pictures or drawings  
20 representing the development of unborn children at two-week gestational increments,  
21 provided that any such pictures or drawings must contain the dimensions of the fetus and  
22 must be realistic and appropriate for the stage of pregnancy depicted. The materials shall  
23 be objective, nonjudgmental, and designed to convey only accurate scientific information  
24 about the unborn child at the various gestational ages. The material shall also contain  
25 objective information describing the methods of abortion procedures commonly  
26 employed, the medical risks commonly associated with each such procedure, the possible  
27 detrimental psychological effects of abortion and the medical risks commonly associated  
28 with each such procedure and the medical risks commonly associated with carrying a  
29 child to term.

30 (b) The materials referred to in subsection (a) of this Code section shall be printed in a  
31 typeface large enough to be clearly legible. The website provided for in subsection (d) of  
32 this Code section shall be maintained at a minimum resolution of 72 pixels per inch.

33 (c) The materials required under this Code section shall be available at no cost from the  
34 Department of Human Resources upon request and in appropriate number to any person,  
35 facility, or hospital.

36 (d) The Department of Human Resources shall develop and maintain a secure Internet  
37 website to provide the information described in this Code section.

1 16-12-154.

2 When a medical emergency compels the performance of an abortion, the physician shall  
3 inform the female, prior to the abortion if possible, of the medical indications supporting  
4 the physician's judgment that an abortion is necessary to avert her death or that a 24 hour  
5 delay will create serious risk of substantial and irreversible impairment of a major bodily  
6 function.

7 16-12-155.

8 Within 90 days after this article first becomes effective in 2001, the Department of Human  
9 Resources shall prepare a reporting form for physicians containing a reprint of this article  
10 and listing:

11 (1) The number of females to whom the physician provided the information described in  
12 paragraph (1) of Code Section 16-12-152; of that number, the number to whom such  
13 information was provided by telephone and the number to whom such information was  
14 provided in person; and of each of those numbers, the number to whom such information  
15 was provided by a referring physician and the number to whom such information was  
16 provided by a physician who is to perform the abortion;

17 (2) The number of females to whom the physician or an agent of the physician provided  
18 the information described in paragraph (2) of Code Section 16-12-152; of that number,  
19 the number to whom such information was provided by telephone and the number to  
20 whom such information was provided in person; of each of those numbers, the number  
21 to whom such information was provided by a referring physician and the number to  
22 whom such information was provided by a physician who is to perform the abortion; and  
23 of each of those numbers, the number to whom such information was provided by the  
24 physician and the number to whom such information was provided by an agent of the  
25 physician;

26 (3) The number of females who availed themselves of the opportunity to obtain a copy  
27 of the printed information described in Code Section 16-12-153, other than on the  
28 website, and the number who did not; and of each of those numbers, the number who, to  
29 the best of the reporting physician's information and belief, went on to obtain the  
30 abortion; and

31 (4) The number of abortions performed by the physician in which information otherwise  
32 required to be provided at least 24 hours before the abortion was not so provided because  
33 an immediate abortion was necessary to avert the female's death and the number of  
34 abortions in which such information was not so provided because a delay would create  
35 serious risk of substantial and irreversible impairment of a major bodily function.

1 (b) The Department of Human Resources shall ensure that copies of the reporting forms  
2 described in subsection (a) of this Code section are provided:

3 (1) Within 120 days after this article first becomes effective in 2001, to all physicians  
4 licensed to practice in this state;

5 (2) To each physician who subsequently becomes newly licensed to practice in this state,  
6 at the same time as official notification to that physician that the physician is so licensed;  
7 and

8 (3) By December 1 of each year, other than the calendar year in which forms are  
9 distributed in accordance with paragraph (1) of this subsection, to all physicians licensed  
10 to practice in this state.

11 (c) By February 28 of each year following a calendar year in any part of which this article  
12 was in effect, each physician who provided, or whose agent provided, information to one  
13 or more females in accordance with Code Section 16-12-152 during the previous calendar  
14 year shall submit to the Department of Human Resources a copy of the form described in  
15 subsection (a) of this Code section with the requested data entered accurately and  
16 completely.

17 (d) Reports that are not submitted within a grace period of 30 days following the due date  
18 shall be subject to a late fee of \$500.00 for each additional 30 day period or portion of a 30  
19 day period such reports are overdue. Any physician required to submit a report in  
20 accordance with this Code section who has not submitted such report or has submitted only  
21 an incomplete report or has submitted such report more than one year following the due  
22 date may, in an action brought by the Department of Human Resources, be directed by a  
23 court of competent jurisdiction to submit a complete report within a period stated by court  
24 order or may be subject to sanctions for civil contempt.

25 (e) By June 30 of each year, the Department of Human Resources shall issue a public  
26 report providing statistics for the previous calendar year compiled from all of the reports  
27 covering that year submitted in accordance with this Code section for each of the items  
28 listed in subsection (a) of this Code section. Each such report shall also provide the  
29 statistics for all previous calendar years adjusted to reflect any additional information from  
30 late or corrected reports. The Department of Human Resources shall take care to ensure  
31 that none of the information included in the public reports could reasonably lead to the  
32 identification of any individual provided information in accordance with Code Section  
33 16-12-152 or 16-12-153.

34 (f) The Department of Human Resources may, by regulation, alter the dates established by  
35 subsections (c) or (e) of this Code section or paragraph (3) of subsection (b) of this Code  
36 section or may consolidate the forms or reports described in this Code section with other  
37 forms or reports to achieve administrative convenience or fiscal savings or to reduce the

1 burden of reporting requirements, so long as reporting forms are sent to all licensed  
2 physicians in the state at least once every year and the report described in subsection (e)  
3 of this Code section is issued at least once every year.

4 16-12-156.

5 Any person who knowingly or recklessly performs or attempts to perform an abortion in  
6 violation of this article shall be guilty of a felony. Any physician who knowingly or  
7 recklessly submits a false report under subsection (c) of Code Section 16-12-155 shall be  
8 guilty of a misdemeanor. No penalty may be assessed against the female upon whom the  
9 abortion is performed or attempted to be performed. No penalty or civil liability may be  
10 assessed for failure to comply with subparagraph (C) of paragraph (2) of Code Section  
11 16-12-152 or that portion of paragraph (3) of Code Section 16-12-152 requiring a written  
12 certification that the female has been informed of her opportunity to review the information  
13 referred to in subparagraph (C) of paragraph (2) of Code Section 16-12-152 unless the  
14 Department of Human Resources has made the printed materials available at the time the  
15 physician or the physician's agent is required to inform the female of her right to review  
16 them.

17 16-12-157.

18 (a) Any person upon whom an abortion has been performed without complying with this  
19 article, the father of the unborn child who was the subject of such an abortion, or the  
20 grandparent of such an unborn child may maintain an action against the person who  
21 performed the abortion in knowing or reckless violation of this article for actual and  
22 punitive damages. Any person upon whom an abortion has been attempted without  
23 complying with this article may maintain an action against the person who attempted to  
24 perform the abortion in knowing or reckless violation of this article for actual and punitive  
25 damages.

26 (b) If the Department of Human Resources fails to issue the public report required by  
27 subsection (e) of Code Section 16-12-155, any group of ten or more citizens of this state  
28 may seek an injunction in a court of competent jurisdiction against the commissioner of  
29 human resources requiring that a complete report be issued within a period of time stated  
30 by court order. Failure to abide by such an injunction shall subject the commissioner to  
31 sanctions for civil contempt.

32 (c) If judgment is rendered in favor of the plaintiff in any action described in this Code  
33 section, the court shall also render judgment for a reasonable attorney's fee in favor of the  
34 plaintiff against the defendant. If judgment is rendered in favor of the defendant and the  
35 court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall

1 also render judgment for a reasonable attorney's fee in favor of the defendant against the  
2 plaintiff.

3 16-12-158.

4 In every civil or criminal proceeding or action brought under this article, the court shall  
5 rule whether the anonymity of any female upon whom an abortion has been performed or  
6 attempted shall be preserved from public disclosure if she does not give her consent to such  
7 disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon  
8 determining that her anonymity should be preserved, shall issue orders to the parties,  
9 witnesses, and counsel and shall direct the sealing of the record and exclusion of  
10 individuals from courtrooms or hearing rooms to the extent necessary to safeguard her  
11 identity from public disclosure. Each such order shall be accompanied by specific written  
12 findings explaining why the anonymity of the female should be preserved from public  
13 disclosure, why the order is essential to that end, how the order is narrowly tailored to serve  
14 that interest, and why no reasonable less restrictive alternative exists. In the absence of  
15 written consent of the female upon whom an abortion has been performed or attempted,  
16 anyone, other than a public official, who brings an action under subsection (a) of Code  
17 Section 16-12-157 shall do so under a pseudonym. This Code section may not be  
18 construed to conceal the identity of the plaintiff or of witnesses from the defendant.

19 16-12-159.

20 If any one or more provisions, Code sections, subsections, sentences, clauses, phrases, or  
21 words of this article or the application thereof to any person or circumstance is found to be  
22 unconstitutional, the same is declared to be severable, and the balance of this article shall  
23 remain effective notwithstanding such unconstitutionality. The General Assembly declares  
24 that it would have enacted this article and each Code section, subsection, sentence, clause,  
25 phrase, or word thereof irrespective of the fact that any one or more provisions, Code  
26 sections, subsections, sentences, clauses, phrases, or words would be declared  
27 unconstitutional."

## 28 **SECTION 2.**

29 This Act shall become effective upon its approval by the Governor or upon its becoming law  
30 without such approval.

## 31 **SECTION 3.**

32 All laws and parts of laws in conflict with this Act are repealed.

