

A BILL TO BE ENTITLED
AN ACT

1 To amend the Official Code of Georgia Annotated so as to provide that abortion procedures
2 shall be unlawful in all events and to remove numerous references to such procedures; to
3 amend Title 16, relating to crimes and offenses, so as to make certain findings of fact; to
4 define certain terms; to provide that any abortion procedure shall be unlawful; to provide a
5 penalty; to repeal certain exceptions to certain offenses; to provide for severability; to
6 provide an effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

8 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
9 amended by striking Article 5, relating to abortion, in its entirety and inserting in lieu thereof
10 the following:
11

"ARTICLE 5

12 16-12-140.

13 (a) The State of Georgia has the duty to protect all innocent life from the moment of
14 conception until natural death. We know that life begins at conception. After three
15 decades of legal human abortion, it is now abundantly clear that the practice has negatively
16 impacted the people of this state in many ways, including economic, health, physical,
17 psychological, emotional, and medical well-being. These, too, are areas of legitimate
18 concern and duty of this state. The General Assembly therefore makes the following
19 findings of fact:
20

21 (1) A fetus is a person for all purposes under the laws of this state from the moment of
22 conception;

23 (2) The Georgia Constitution, at Article I, Section I, Paragraph II, provides: 'Protection
24 to person and property is the paramount duty of government and shall be impartial and

1 complete. No person shall be denied the equal protection of the laws.' Because a fetus
2 is a person, constitutional protection attaches at the moment of conception. It is therefore
3 the duty of the General Assembly to protect the innocent life that is being taken;

4 (3) Justice Blackmun, writing for the majority in *Roe v. Wade*, 410 U.S. 113 (1973),
5 wrote: 'when those trained in the respective disciplines of medicine, philosophy, and
6 theology are unable to arrive at any consensus, the judiciary, at this point in the
7 development of man's knowledge, is not in a position to speculate as to the answer [to
8 the question of when life begins].'

9 (4) The Supreme Court's inability to determine what is human life cannot legitimately
10 serve to prohibit Georgia from fulfilling its constitutional mandate to protect the lives of
11 its citizens by prosecuting crimes against said person;

12 (5) The General Assembly knows the answer to that difficult question, and that answer
13 is life begins at the moment of conception;

14 (6) The United States Congress has reserved to itself 'all legislative powers *herein vested*'
15 according to Article I, Section I of the Constitution of the United States;

16 (7) 'Herein vested' to the United States Congress applies to only five crimes: (1)
17 counterfeiting, (2) piracy, (3) felonies on the high seas, (4) offenses against the law of
18 nations, and (5) treason; according to Article I, Section VIII and Article III, Section III
19 of the Constitution of the United States;

20 (8) Murder is not counterfeiting, piracy, felony on the high seas, an offense against the
21 law of nations, or treason;

22 (9) Georgia has, therefore, reserved to itself exclusive jurisdiction over the definition and
23 punishment of murder under Amendment X of the Constitution of the United States;

24 (10) The United States judiciary only has authority to hear cases or controversies 'arising
25 under this Constitution' and then only if 'affecting ambassadors, other public ministers
26 and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which
27 the United States shall be a Party; to controversies between two or more states; between
28 a state and citizens of another state; between citizens of different states; between citizens
29 of the same state claiming lands under grants of different states, and between a state, or
30 the citizens thereof, and foreign states, citizens or subjects';

31 (11) The definition and prosecution of murder within Georgia to protect its own unborn
32 citizens affects neither an ambassador nor other public minister or consul; is not a case
33 of admiralty and maritime jurisdiction; is not a controversy to which the United States
34 shall be a party; is not a controversy between two or more states, nor between the state
35 of Georgia and the citizens of another state; is not a controversy between a citizen of
36 Georgia and a citizen of a different state; is not related to citizens of Georgia claiming

1 lands under grants of different states; and is not a case between Georgia or its citizens and
2 another state and its citizens;

3 (12) The United States Supreme Court had no jurisdiction to hear or decide the case of
4 *Roe v. Wade*;

5 (13) As it had no jurisdiction to hear the case, certainly the United States Supreme Court
6 lacked the authority to pass, or order all states to strike or refuse to enforce, a law that is
7 outside of its subject matter or federal jurisdiction;

8 (14) Even if the United States Supreme Court had jurisdiction, its authority is limited to
9 the case or controversy before it, and its opinion extends no further than between the
10 parties to the case or controversy;

11 (15) It is a foundational principle of our constitutional republic, and 'a proposition too
12 plain to be contested, that the Constitution controls any legislative act repugnant to it'; 'a
13 law repugnant to the Constitution is void' and even 'the courts ... are bound by that
14 instrument'; *Marbury v. Madison*, 1 U.S. 137, 177 and 180 (1803);

15 (16) As 'an act of the legislature, repugnant to the Constitution, is void,' does not 'bind
16 the courts, and oblige them to give it effect,' *Marbury* at 177, an act of the United States
17 Supreme Court, repugnant to the Constitution, is void and does not bind the state or
18 oblige it to give it effect;

19 (17) Georgia hereby unequivocally expresses its firm resolution to maintain and defend
20 the Constitution of the United States against every aggression, either foreign or domestic,
21 and most solemnly declares a warm attachment to the Union of the states and seeks its
22 preservation and continuation;

23 (18) It is 'for this end it is their duty to watch over and oppose every infraction of those
24 principles which constitute the only basis of that Union'; *Virginia Resolutions of 1798-99*;

25 (19) However, denying to a state the right to define and punish a crime not specified in
26 the United States Constitution is a *per se* legislative act;

27 (20) The nullification of a state's properly promulgated laws is specifically delineated
28 as an offense committed by King George against the states, for which separation became
29 necessary; *The Unanimous Declaration of the thirteen united States of America*;

30 (21) Compliance with, and continuation of, a fiat determination of the Supreme Court
31 from nearly 35 years ago will cause the basis of this Union, and eventually the Union
32 itself, to fall;

33 (22) Georgia was not a party to the suit in *Roe v. Wade*, and is not bound by a decision
34 in which it did not have right of participation;

35 (23) Georgia is not restricted in its duty to its citizens due to the failure of the State of
36 Texas to properly plead 'lack of subject matter jurisdiction';

1 (24) As the United States Constitution confers to no federal branch either the authority
 2 over the definition or prosecution of murder, or the power to nullify the laws of a state
 3 that do the same, *Roe v. Wade* is 'no law,' is a nullity, and carries no legal effect in
 4 Georgia;

5 (25) The practice of abortion is murder and conspiracy to commit murder *per se*;

6 (26) The practice of abortion has caused a significant reduction in the number of citizens
 7 in this state that would serve as workers, entrepreneurs, teachers, employees, and
 8 employers that would have significantly contributed to the prosperity and continuation
 9 of this state; and

10 (27) The failure to prosecute a violation of this code section is a violation of the
 11 obligation of this state to provide all of its citizens with an equal protection of the laws.

12 (b) As used in this Code section, the term:

13 (1) 'Abortion' means the intentional removal of a fetus from a woman with an intention
 14 other than to produce a live birth or to remove a dead fetus; provided, however, that if a
 15 physician makes a medically justified effort to save the lives of both the mother and the
 16 fetus and the fetus does not survive, such action shall not be an abortion. Such term does
 17 not include a naturally occurring expulsion of a fetus known medically as a 'spontaneous
 18 abortion' and popularly as a 'miscarriage' so long as there is no human involvement
 19 whatsoever in the causation of such event.

20 (2) 'Fetus' means a person at any point of development from and including the moment
 21 of conception through the moment of birth. Such term includes all medical or popular
 22 designations of an unborn child from the moment of conception such as zygote, embryo,
 23 homunculus, and similar terms.

24 (c) The practice of abortion is contrary to the health and well-being of the citizens of this
 25 state and to the state itself and is illegal in this state in all instances.

26 (d) Any person performing an abortion in this state shall be guilty of a felony and, upon
 27 conviction, shall be punished as provided in subsection (d) of Code Section 16-5-1. The
 28 license of any physician indicted for an alleged violation of this Code section shall be
 29 suspended until resolution of the matter. The license of any physician convicted of a
 30 violation of this Code section shall be permanently revoked. The provisions of this Code
 31 section shall be in addition to any other provisions relating to the killing of a fetus or any
 32 other person."

33 SECTION 2.1.

34 Said title is further amended in subsection (h) of Code Section 16-5-20, relating to simple
 35 assault, by striking current paragraph (1) and by redesignating current paragraphs (2) and (3)
 36 as paragraphs (1) and (2), respectively.

SECTION 2.2.

Said title is further amended in subsection (d) of Code Section 16-5-28, relating to assault on an unborn child, by striking current paragraph (1) and by redesignating current paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

SECTION 2.3.

Said title is further amended in subsection (d) of Code Section 16-5-29, relating to battery on an unborn child, by striking current paragraph (1) and by redesignating current paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

SECTION 2.4.

Said title is further amended in subsection (f) of Code Section 16-5-80, relating to feticide, voluntary manslaughter of an unborn child, and penalties, by striking current paragraph (1) and by redesignating current paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

SECTION 2.5.

Chapter 11 of Title 15, relating to juvenile proceedings, is amended in Code Section 15-11-28, relating to jurisdiction of the juvenile courts, by striking current subparagraph (a)(1)(D) and by redesignating current subparagraph (a)(1)(E) as subparagraph (a)(1)(D).

SECTION 2.6.

Said chapter is further amended by repealing in its entirety Article 3, the "Parental Notification Act," and designating said article as reserved.

SECTION 2.7.

Code Section 20-2-773, relating to restrictions on student health services and utilization of state funds, is amended by revising subsection (a) as follows:

"(a) No facility operated on public school property or operated by a public school district and no employee of any such facility acting within the scope of such employee's employment shall ~~provide any of the following health services to public school students:~~
distribute contraceptives.

~~(1) Distribution of contraceptives;~~

~~(2) Performance of abortions;~~

~~(3) Referrals for abortion; or~~

~~(4) Dispensing abortifacients."~~

SECTION 2.8.

Title 31, relating to health, is amended in Code Section 31-2-1, relating to the duty, functions, and powers of the Department of Human Resources, by adding "and" at the end of paragraph (11), by striking current paragraph (12), and by redesignating current paragraph (13) as paragraph (12).

SECTION 2.9.

Said title is further amended in paragraph (1) of Code Section 31-7-1, relating to definitions, by striking current subparagraph (C) and by redesignating current subparagraphs (D), (E), (F), and (G) as subparagraphs (C), (D), (E), and (F), respectively.

SECTION 2.10.

Said title is further amended by revising subsection (a) of Code Section 31-7-9, relating to reports by physicians and other personnel of nonaccidental injuries to patients and immunity from liability, as follows:

"(a) As used in this Code section, the term 'medical facility' includes, without being limited to, an ambulatory surgical treatment center defined in subparagraph ~~(D)~~ (C) of paragraph (1) of Code Section 31-7-1."

SECTION 2.11.

Said title is further amended in Code Section 31-9-5, relating to the applicability of the "Georgia Medical consent Law" to abortion and sterilization procedures, by striking the words "abortion and" and "procedures".

SECTION 2.12.

Said title is further amended by repealing in its entirety Chapter 9A, the "Woman's Right To Know Act."

SECTION 2.13.

Said title is further amended in subsection (b) of Code Section 31-32-14, relating to the effect of certain provisions relating to living wills on other legal rights and duties, by striking the last sentence.

SECTION 2.14.

Said title is further amended in subsection (c) of Code Section 33-24-59.6, relating to prescribed female contraceptive drugs or devices and insurance coverage, by striking the last sentence.

SECTION 2.15.

Said title is further amended by revising subparagraph (C) of paragraph (1) of Code Section 33-60-3, relating to definitions, as follows:

"(C) Coverage of testing for chlamydia in Code Section 31-17-4.1; coverage for complications of pregnancy in Code Section 33-24-24; coverage for general anesthesia and related hospital and outpatient facility charges for dental care for persons who are developmentally disabled, seven or younger, neurologically impaired, or suffering severe face or head trauma in Code Section 33-24-28.4; surveillance tests for ovarian cancer in Code Section 33-24-56.2; colorectal cancer screening and testing in Code Section 33-24-56.3; coverage for hospital stays after delivery in Code Section 33-24-58.2; direct access to obstetricians and gynecologists in Code Section 33-24-59; treatment of dependent children with cancer in Code Section 33-24-59.1; coverage for equipment and self-management training for individuals with diabetes in Code Section 33-24-59.2; coverage for prescribed female contraceptive drugs or devices in Code Section 33-24-59.6, ~~provided that nothing contained in this paragraph shall be construed to require any insurance company to provide coverage for abortion~~; coverage for prescription inhalers in Code Section 33-24-59.8; coverage for autism in Code Section 33-24-59.10; coverage for mastectomy and lymph node dissection in Code Section 33-24-72; coverage for mammograms, ~~pap~~ Pap smears, and screening for prostate cancer in Code Sections 33-29-3.2 and 33-30-4.2; provisions concerning mail-order pharmaceuticals in Code Section 33-30-4.3; and coverage for child wellness exams in Code Sections 33-29-3.4 and 33-30-4.5."

SECTION 2.16.

Chapter 34 of Title 43, relating to physicians, acupuncture, physician's assistants, cancer and glaucoma treatment, respiratory care, clinical perfusionists, and orthotics and prosthetics practice, is amended by striking and reserving subsection (1) of Code Section 43-34-26.3, relating to delegation of certain medical acts to advanced practice registered nurses, construction and limitations of such delegation, definitions, conditions of nurse protocol, and issuance of prescription drug orders.

SECTION 2.17.

Said title is further amended by striking and reserving paragraph (8) of subsection (a) of Code Section 43-34-37, relating to the authority of the Composite State Board of Medical Examiners to refuse license to or discipline physicians, restoration of licenses, enforcement investigations, evidentiary privileges, closed hearings, immunity for reporting violations, and when investigation or assessment of licensee's fitness to practice is required.

SECTION 3.

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2 In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared
3 or adjudged invalid or unconstitutional by the Georgia Supreme Court, such adjudication
4 shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this
5 Act, which shall remain of full force and effect as if the section, subsection, sentence, clause,
6 or phrase so declared or adjudged invalid or unconstitutional were not originally a part
7 hereof. The General Assembly declares that it would have passed the remaining parts of this
8 Act if it had known that such part or parts hereof would be declared or adjudged invalid or
9 unconstitutional. No portion of this Act may be found to be unconstitutional by the federal
10 courts as they lack the subject matter jurisdiction to instruct this state how or whether to
11 prosecute certain crimes.

SECTION 4.

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

SECTION 5.

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