

House Bill 1

By: Representative Franklin of the 43rd

A BILL TO BE ENTITLED
AN ACT

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

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

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

12 "ARTICLE 5

13 16-12-140.

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

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

25 complete. No person shall be denied the equal protection of the laws.' Because a fetus
 26 is a person, constitutional protection attaches at the moment of conception. It is therefore
 27 the duty of the General Assembly to protect the innocent life that is being taken;
 28 (3) Justice Blackmun, writing for the majority in *Roe v. Wade*, 410 U.S. 113 (1973),
 29 wrote: 'when those trained in the respective disciplines of medicine, philosophy, and
 30 theology are unable to arrive at any consensus, the judiciary, at this point in the
 31 development of man's knowledge, is not in a position to speculate as to the answer [to the
 32 question of when life begins].'
 33 (4) The General Assembly knows the answer to that difficult question, and that answer
 34 is life begins at the moment of conception;
 35 (5) The Supreme Court's inability to determine what is human life cannot legitimately
 36 serve to prohibit Georgia from fulfilling its constitutional mandate to protect the lives of
 37 its citizens by prosecuting crimes against said person;
 38 (6) The United States Congress has reserved to itself 'all legislative powers *herein vested*'
 39 according to Article I, Section I of the Constitution of the United States;
 40 (7) 'Herein vested' to the United States Congress applies to only five crimes: (1)
 41 counterfeiting, (2) piracy, (3) felonies on the high seas, (4) offenses against the law of
 42 nations, and (5) treason; according to Article I, Section VIII and Article III, Section III
 43 of the Constitution of the United States;
 44 (8) Murder is not counterfeiting, piracy, felony on the high seas, an offense against the
 45 law of nations, or treason;
 46 (9) Georgia has, therefore, reserved to itself exclusive jurisdiction over the definition and
 47 punishment of murder under Amendment X of the Constitution of the United States;
 48 (10) The United States judiciary only has authority to hear cases or controversies 'arising
 49 under this Constitution' and then only if 'affecting ambassadors, other public ministers
 50 and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which
 51 the United States shall be a Party; to controversies between two or more states; between
 52 a state and citizens of another state; between citizens of different states; between citizens
 53 of the same state claiming lands under grants of different states, and between a state, or
 54 the citizens thereof, and foreign states, citizens or subjects';
 55 (11) The definition and prosecution of murder within Georgia to protect its own prenatal
 56 citizens affects neither an ambassador nor other public minister or consul; is not a case
 57 of admiralty and maritime jurisdiction; is not a controversy to which the United States
 58 shall be a party; is not a controversy between two or more states, nor between the state
 59 of Georgia and the citizens of another state; is not a controversy between a citizen of
 60 Georgia and a citizen of a different state; is not related to citizens of Georgia claiming

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

63 (12) The United States Supreme Court had no jurisdiction to hear or decide the case of
64 *Roe v. Wade* or any other case pertaining to a state's punishment of the crime of prenatal
65 murder;

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

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

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

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

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

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

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

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

91 (21) Compliance with, and continuation of, a fiat determination of the Supreme Court
92 from nearly 40 years ago will cause the basis of this Union, and eventually the Union
93 itself, to fall;

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

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

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

102 (25) The act of prenatal murder is murder and conspiracy to commit murder *per se*;

103 (26) The act of prenatal murder has caused a significant reduction in the number of
 104 citizens in this state who would serve as workers, entrepreneurs, teachers, employees, and
 105 employers who would have significantly contributed to the prosperity and continuation
 106 of this state; and

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

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

110 (1) 'Fetus' means a person at any point of development from and including the moment
 111 of conception through the moment of birth. Such term includes all medical or popular
 112 designations of an unborn child from the moment of conception such as conceptus,
 113 zygote, embryo, homunculus, and similar terms.

114 (2) 'Prenatal murder' means the intentional removal of a fetus from a woman with an
 115 intention other than to produce a live birth or to remove a dead fetus; provided, however,
 116 that if a physician makes a medically justified effort to save the lives of both the mother
 117 and the fetus and the fetus does not survive, such action shall not be prenatal murder.
 118 Such term does not include a naturally occurring expulsion of a fetus known medically
 119 as a 'spontaneous abortion' and popularly as a 'miscarriage' so long as there is no human
 120 involvement whatsoever in the causation of such event.

121 (c) The act of prenatal murder is contrary to the health and well-being of the citizens of
 122 this state and to the state itself and is illegal in this state in all instances.

123 (d) Any person committing prenatal murder in this state shall be guilty of a felony and,
 124 upon conviction, shall be punished as provided in subsection (d) of Code Section 16-5-1.
 125 The license of any physician indicted for an alleged violation of this Code section shall be
 126 suspended until resolution of the matter. The license of any physician convicted of a
 127 violation of this Code section shall be permanently revoked. The provisions of this Code
 128 section shall be in addition to any other provisions relating to the killing of a fetus or any
 129 other person."

130 **SECTION 2.1.**

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

134 **SECTION 2.2.**

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

138 **SECTION 2.3.**

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

142 **SECTION 2.4.**

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

146 **SECTION 2.5.**

147 Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to juvenile
 148 proceedings, is amended in Code Section 15-11-28, relating to jurisdiction of the juvenile
 149 courts, by adding "or" at the end of subparagraph (a)(2)(C), by striking current subparagraph
 150 (a)(2)(D), and by redesignating current subparagraph (a)(2)(E) as subparagraph (a)(2)(D).

151 **SECTION 2.6.**

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

154 **SECTION 2.7.**

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

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

162 ~~(1) Distribution of contraceptives;~~

163 ~~(2) Performance of abortions;~~

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

165 ~~(4) Dispensing abortifacients."~~

166 **SECTION 2.8.**

167 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended in Code
 168 Section 31-2-1, relating to the creation and powers of the Department of Community Health,
 169 by adding "and" at the end of paragraph (16), by striking current paragraph (17), and by
 170 redesignating current paragraph (18) as paragraph (17).

171 **SECTION 2.9.**

172 Said title is further amended in paragraph (4) of Code Section 31-7-1, relating to definitions,
 173 by striking current subparagraph (B) and by redesignating current subparagraphs (C) through
 174 (G) as subparagraphs (B) through (F), respectively.

175 **SECTION 2.10.**

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

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

182 **SECTION 2.11.**

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

186 **SECTION 2.12.**

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

189 **SECTION 2.13.**

190 Said title is further amended by revising Code Section 31-10-1, relating to definitions relative
 191 to vital records, by deleting the words "product of human conception" and replacing them
 192 with "prenatal human person" in paragraphs (4), (9), and (15); by deleting the words
 193 "induced termination of pregnancy" and replacing them with "prenatal murder" in paragraphs
 194 (7) and (20); and by deleting the words "an induced termination of pregnancy" and replacing
 195 them with "a prenatal murder" in paragraph (15).

196

SECTION 2.14.

197 Said title is further amended by revising subsection (a) of Code Section 31-10-18, relating
 198 to registration of spontaneous fetal deaths, as follows:

199 "(a) A report of spontaneous fetal death for each spontaneous fetal death which occurs in
 200 this state shall be filed with the local registrar of the county in which the delivery occurred
 201 within 72 hours after such delivery in accordance with this Code section unless the place
 202 of fetal death is unknown, in which case a fetal death certificate shall be filed in the county
 203 in which the dead fetus was found within 72 hours after such occurrence. ~~All induced~~
 204 ~~terminations of pregnancy shall be reported in the manner prescribed in Code Section~~
 205 ~~31-10-19.~~ Preparation and filing of reports of spontaneous fetal death shall be as follows:

206 (1) When a dead fetus is delivered in an institution, the person in charge of the institution
 207 or that person's designated representative shall prepare and file the report;

208 (2) When a dead fetus is delivered outside an institution, the physician in attendance at
 209 or immediately after delivery shall prepare and file the report;

210 (3) When a spontaneous fetal death required to be reported by this Code section occurs
 211 without medical attendance at or immediately after the delivery or when inquiry is
 212 required by Article 2 of Chapter 16 of Title 45, the 'Georgia Death Investigation Act,' the
 213 proper investigating official shall investigate the cause of fetal death and shall prepare
 214 and file the report within 30 days; and

215 (4) When a spontaneous fetal death occurs in a moving conveyance and the fetus is first
 216 removed from the conveyance in this state or when a dead fetus is found in this state and
 217 the place of fetal death is unknown, the fetal death shall be reported in this state. The
 218 place where the fetus was first removed from the conveyance or the dead fetus was found
 219 shall be considered the place of fetal death."

220

SECTION 2.15.

221 Said title is further amended by repealing and reserving Code Section 31-10-19, relating to
 222 reporting of termination of pregnancy.

223

SECTION 2.16.

224 Said title is further amended by revising subsection (a) of Code Section 31-10-28, relating
 225 to institutions to keep vital records, as follows:

226 "(a) Every person in charge of an institution shall keep a record of personal data
 227 concerning each person admitted or confined to such institution. This record shall include
 228 such information as required for the certificates of birth and death and the reports of
 229 spontaneous fetal death ~~and induced termination of pregnancy~~ required by this chapter.
 230 The record shall be made at the time of admission from information provided by the person

231 being admitted or confined but, when it cannot be so obtained, the information shall be
 232 obtained from relatives or other persons acquainted with the facts. The name and address
 233 of the person providing the information shall be a part of the record."

234 **SECTION 2.17.**

235 Said title is further amended by revising subsection (a) of Code Section 31-10-29, relating
 236 to privileged nature of disclosures, notification of local registrar of institutional deaths and
 237 fetal deaths, and notification of the board of voting registrars of adult deaths, as follows:

238 "(a) Any person having knowledge or facts concerning any birth, death, spontaneous fetal
 239 death, marriage, ~~induced termination of pregnancy~~, divorce, dissolution of marriage, or
 240 annulment may disclose such facts to the state registrar, and such disclosure shall be
 241 absolutely privileged and no cause or action may be brought or maintained against such
 242 person for such disclosure."

243 **SECTION 2.18.**

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

247 **SECTION 2.19.**

248 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended in
 249 subsection (c) of Code Section 33-24-59.6, relating to prescribed female contraceptive drugs
 250 or devices and insurance coverage, by striking the last sentence.

251 **SECTION 2.20.**

252 Said title is further amended by revising subparagraph (C) of paragraph (1) of Code Section
 253 33-60-3, relating to definitions, as follows:

254 "(C) Coverage of testing for chlamydia in Code Section 31-17-4.1; coverage for
 255 complications of pregnancy in Code Section 33-24-24; coverage for general anesthesia
 256 and related hospital and outpatient facility charges for dental care for persons who are
 257 developmentally disabled, seven or younger, neurologically impaired, or suffering
 258 severe face or head trauma in Code Section 33-24-28.4; surveillance tests for ovarian
 259 cancer in Code Section 33-24-56.2; colorectal cancer screening and testing in Code
 260 Section 33-24-56.3; coverage for hospital stays after delivery in Code Section
 261 33-24-58.2; direct access to obstetricians and gynecologists in Code Section 33-24-59;
 262 treatment of dependent children with cancer in Code Section 33-24-59.1; coverage for
 263 equipment and self-management training for individuals with diabetes in Code Section

264 33-24-59.2; coverage for prescribed female contraceptive drugs or devices in Code
 265 Section 33-24-59.6, ~~provided that nothing contained in this paragraph shall be~~
 266 ~~construed to require any insurance company to provide coverage for abortion~~; coverage
 267 for prescription inhalers in Code Section 33-24-59.8; coverage for autism in Code
 268 Section 33-24-59.10; coverage for mastectomy and lymph node dissection in Code
 269 Section 33-24-72; coverage for mammograms, ~~pap~~ Pap smears, and screening for
 270 prostate cancer in Code Sections 33-29-3.2 and 33-30-4.2; provisions concerning
 271 mail-order pharmaceuticals in Code Section 33-30-4.3; and coverage for child wellness
 272 exams in Code Sections 33-29-3.4 and 33-30-4.5."

273 **SECTION 2.21.**

274 Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to physicians,
 275 acupuncture, physician assistants, cancer and glaucoma treatment, respiratory care, clinical
 276 perfusionists, and orthotics and prosthetics practice, is amended by striking and reserving
 277 paragraph (8) of subsection (a) of Code Section 43-34-8, relating to the authority of the
 278 Georgia Composite Medical Board to refuse license to or discipline physicians, restoration
 279 of licenses, enforcement investigations, evidentiary privileges, closed hearings, immunity for
 280 reporting violations, when investigation or assessment of licensee's fitness to practice is
 281 required, failure to appear, and publication of final disciplinary action.

282 **SECTION 2.22.**

283 Said chapter is further amended by striking and reserving subsection (l) of Code Section
 284 43-34-25, relating to delegation of certain medical acts to advanced practice registered
 285 nurses, construction and limitations of such delegation, definitions, conditions of nurse
 286 protocol, and issuance of prescription drug orders.

287 **SECTION 2.23.**

288 Said chapter is further amended by repealing Code Section 43-34-110, relating to abortions
 289 not to be performed by physician assistants, which reads as follows:

290 "43-34-110.

291 Nothing in this article shall be construed to allow a physician assistant to perform an
 292 abortion or to administer, prescribe, or issue a drug order that is intended to cause abortion
 293 to occur pharmacologically."

294 **SECTION 3.**

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

305 **SECTION 4.**

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

308 **SECTION 5.**

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