

House Bill 89

By: Representatives Peake of the 137th, Sheldon of the 105th, Mills of the 25th, Collins of the 27th, Weldon of the 3rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To enact the "Pain-Capable Unborn Child Protection Act" and regulate the performance of
2 abortions in conformity therewith; to amend Code Section 16-12-141, relating to when
3 abortion is legal, so as to make a conforming amendment and provide that any abortion not
4 in conformity with the Act shall constitute a criminal offense; to amend Title 31 of the
5 Official Code of Georgia Annotated, relating to health, so as to enact the Act as a part of said
6 title; to define terms; to state legislative findings; to require a determination of gestational
7 age prior to abortion; to prohibit abortion after a certain gestational age; to provide for
8 exceptions under certain circumstances; to provide for certain reporting requirements with
9 respect to performance of abortions; to provide for civil actions for damages and for
10 equitable relief and provide for practice and procedure in connection therewith; to provide
11 for severability; to provide for other related matters; to provide for an effective date and
12 applicability of certain provisions; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Code Section 16-12-141, relating to when abortion is legal, is amended by adding a new
16 subsection (b.1) to read as follows:

17 "(b.1) No abortion is authorized or shall be performed in violation of the 'Pain-Capable
18 Unborn Child Protection Act,' Chapter 9B of Title 31."

19 **SECTION 2.**

20 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by adding
21 a new Chapter 9B to read as follows:

"CHAPTER 9B

31-9B-1.

This chapter shall be known and may be cited as the 'Pain-Capable Unborn Child Protection Act.'

31-9B-2.

As used in this chapter, the following terms shall have the same meanings as specified in Code Section 31-9A-2:

(1) Abortion;

(2) Medical emergency;

(3) Physician;

(4) Probable gestational age of the unborn child; and

(5) Unborn child.

31-9B-3.

The General Assembly makes the following findings:

(1) At least by 20 weeks after fertilization there is substantial evidence that an unborn child has the physical structures necessary to experience pain;

(2) There is substantial evidence that, by 20 weeks after fertilization, unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted as a response to pain;

(3) Anesthesia is routinely administered to unborn children who have developed 20 weeks or more past fertilization who undergo prenatal surgery;

(4) Even before 20 weeks after fertilization, unborn children have been observed to exhibit hormonal stress responses to painful stimuli. Such responses were reduced when pain medication was administered directly to such unborn children; and

(5) It is the purpose of the State of Georgia to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain.

31-9B-4.

(a) Except in the case of a medical emergency which prevents compliance with this Code section, no abortion shall be performed or induced or be attempted to be performed or induced unless the physician performing or inducing it has first made a determination of the probable gestational age of the unborn child or relied upon such a determination made by another physician. In making such a determination, a physician shall make such

inquiries of the woman and perform or cause to be performed such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to gestational age.

(b) Failure by any physician to conform to any requirement of this Code section constitutes unprofessional conduct for purposes of paragraph (7) of subsection (a) of Code Section 43-34-8 relating to medical licensing sanctions.

31-9B-5.

(a) No person shall perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing the abortion or by another physician upon whose determination that physician relies, that the probable gestational age of the woman's unborn child is 20 or more weeks unless, in reasonable medical judgment:

(1) She has a condition which so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function; or

(2) It is necessary to preserve the life of an unborn child.

No such condition shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

(b) In a case described in paragraph (1) or (2) of subsection (a) of this Code section, the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the woman than would another available method. No such greater risk shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

31-9B-6.

(a) Any physician who performs or induces or attempts to perform or induce an abortion shall report to the Department of Community Health, in conjunction with the reports required under Code Section 31-9A-6 and in accordance with forms and rules and regulations adopted and promulgated by the department:

(1) If a determination of probable gestational age was made, the probable gestational age determined and the method and basis of the determination;

(2) If a determination of probable gestational age was not made, the basis of the determination that a medical emergency existed;

(3) If the probable gestational age was determined to be 20 or more weeks, the basis of the determination that the pregnant woman had a condition which so complicated her medical condition as to necessitate the termination of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, or the basis of the determination that it was necessary to preserve the life of an unborn child; and

(4) The method used for the abortion and, in the case of an abortion performed when the probable gestational age was determined to be 20 or more weeks, whether the method of abortion used was one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive or, if such a method was not used, the basis of the determination that termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the woman than would other available methods.

(b) By June 30 of each year, the department shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this Code section for each of the items listed in subsection (a) of this Code section. Each such report shall also provide the statistics for all previous calendar years during which this Code section was in effect, adjusted to reflect any additional information from late or corrected reports. The department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any pregnant woman upon whom an abortion was performed.

(c) Any physician who fails to submit a report by the end of the grace period of 30 days following the due date shall be subject to sanctions as specified in subsection (e) of Code Section 31-9A-6.

(d) Within 90 days after the enactment of this chapter, the department shall adopt and promulgate rules and regulations to assist in compliance with this Code section.

31-9B-7.

(a)(1) Any woman upon whom an abortion has been performed in violation of this chapter or the father of the unborn child who was the subject of such an abortion may maintain an action against the person who performed the abortion in an intentional or a reckless violation of this chapter for actual damages. Any woman upon whom an

abortion has been attempted in violation of this chapter may maintain an action against the person who attempted to perform the abortion in an intentional or a reckless violation of this chapter.

(2) A cause of action for injunctive relief against any person who has intentionally violated this chapter may be maintained by the woman upon whom an abortion was performed or attempted to be performed in violation of this chapter, by any person who is the spouse, parent, sibling, or guardian of, or a current or former licensed health care provider of, the woman upon whom an abortion has been performed or attempted to be performed in violation of this chapter or by the Attorney General. The injunction shall prevent the abortion provider from performing further abortions in violation of this chapter.

(b)(1) If judgment is rendered in favor of the plaintiff in an action described in this Code section, the court shall also render judgment for reasonable attorney's fees in favor of the plaintiff against the defendant.

(2) If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for reasonable attorney's fees in favor of the defendant against the plaintiff.

(3) No damages or attorney's fees may be assessed against the woman upon whom an abortion was performed or attempted to be performed except as provided in paragraph (2) of this subsection.

31-9B-8.

In every civil or criminal proceeding or action brought under this chapter, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings a civil action under this chapter shall do so under a pseudonym. This Code section shall not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

161 31-9B-9.

162 If any one or more provisions, Code sections, subsections, sentences, clauses, phrases, or
163 words of this chapter or the application thereof to any person or circumstance is found to
164 be unconstitutional, the same is declared to be severable, and the balance of this chapter
165 shall remain effective notwithstanding such unconstitutionality. The General Assembly
166 declares that it would have enacted this chapter and each Code section, subsection,
167 sentence, clause, phrase, or word thereof irrespective of the fact that any one or more
168 provisions, Code sections, subsections, sentences, clauses, phrases, or words would be
169 declared unconstitutional."

170 **SECTION 3.**

171 This Act shall become effective on July 1, 2011. The reporting requirements of Code
172 Section 31-9B-6 shall not apply until the rules and regulations provided for in subsection (d)
173 of that Code section have been adopted by the Department of Community Health.

174 **SECTION 4.**

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