

House Bill 954 (COMMITTEE SUBSTITUTE)

By: Representatives McKillip of the 115<sup>th</sup>, Collins of the 27<sup>th</sup>, England of the 108<sup>th</sup>, Hamilton of the 23<sup>rd</sup>, Sheldon of the 105<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 5 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated,  
2 relating to abortion, so as to change certain provisions relating to criminal abortion; to  
3 change certain provisions relating to when abortion is legal; to amend Title 31 of the Official  
4 Code of Georgia Annotated, relating to health, so as to define certain terms; to require a  
5 determination of gestational age prior to abortion; to provide for certain reporting  
6 requirements with respect to performance of abortions; to change certain provisions relating  
7 to definitions relative to the "Woman's Right to Know Act"; to state legislative findings; to  
8 provide for other related matters; to provide effective dates; to repeal conflicting laws; and  
9 for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 The General Assembly makes the following findings:

- 13 (1) At least by 20 weeks after fertilization there is substantial evidence that an unborn  
14 child has the physical structures necessary to experience pain;
- 15 (2) There is substantial evidence that, by 20 weeks after fertilization, unborn children  
16 seek to evade certain stimuli in a manner which in an infant or an adult would be  
17 interpreted as a response to pain;
- 18 (3) Anesthesia is routinely administered to unborn children who have developed 20  
19 weeks or more past fertilization who undergo prenatal surgery;
- 20 (4) Even before 20 weeks after fertilization, unborn children have been observed to  
21 exhibit hormonal stress responses to painful stimuli. Such responses were reduced when  
22 pain medication was administered directly to such unborn children; and
- 23 (5) It is the purpose of the State of Georgia to assert a compelling state interest in  
24 protecting the lives of unborn children from the stage at which substantial medical  
25 evidence indicates that they are capable of feeling pain.

26

**SECTION 2.**

27 Article 5 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to  
 28 abortion, is amended by revising Code Sections 16-12-140 and 16-12-141, relating to  
 29 criminal abortion and when abortion is legal, respectively, as follows:

30 "16-12-140.

31 ~~(a) Except as otherwise provided in Code Section 16-12-141, a~~ A person commits the  
 32 offense of criminal abortion when, in violation of Code Section 16-12-141, he or she  
 33 administers any medicine, drugs, or other substance whatever to any woman or when he  
 34 or she uses any instrument or other means whatever upon any woman with intent to  
 35 produce a miscarriage or abortion.

36 (b) A person convicted of the offense of criminal abortion shall be punished by  
 37 imprisonment for not less than one nor more than ten years.

38 16-12-141.

39 ~~(a) Nothing in this article shall be construed to prohibit an abortion performed by a~~  
 40 ~~physician duly licensed to practice medicine and surgery pursuant to Chapter 34 of Title~~  
 41 ~~43, based upon his or her best clinical judgment that an abortion is necessary, except that~~  
 42 ~~Code Section 16-12-144 is a prohibition of a particular abortion method which shall apply~~  
 43 ~~to both duly licensed physicians and laypersons. No abortion is authorized or shall be~~  
 44 ~~performed in violation of subsection (a) of Code Section 31-9B-2.~~

45 (b)(1) No abortion is authorized or shall be performed after the first trimester unless the  
 46 abortion is performed in a licensed hospital, in a licensed ambulatory surgical center, or  
 47 in a health facility licensed as an abortion facility by the Department of Community  
 48 Health.

49 (2) An abortion shall only be performed by a physician licensed under Article 2 of  
 50 Chapter 34 of Title 43.

51 ~~(c)(1) No abortion is authorized or shall be performed after the second trimester~~ if the  
 52 probable gestational age of the unborn child has been determined in accordance with  
 53 Code Section 31-9B-2 to be 20 weeks or more unless ~~the physician and two consulting~~  
 54 ~~physicians certify that~~ in reasonable medical judgment the abortion is necessary ~~in their~~  
 55 ~~best clinical judgment to preserve the life or health of the woman to:~~

56 (A) Avert the death of the pregnant woman or avert serious risk of substantial and  
 57 irreversible physical impairment of a major bodily function of the pregnant woman. No  
 58 such condition shall be deemed to exist if it is based on a diagnosis or claim of a mental  
 59 or emotional condition of the pregnant woman or that the pregnant woman will  
 60 purposefully engage in conduct which she intends to result in her death or in substantial  
 61 and irreversible physical impairment of a major bodily function; or

62 (B) Preserve the life of an unborn child.

63 As used in this paragraph, the term 'probable gestational age of the unborn child' has the  
 64 meaning provided by Code Section 31-9B-1.

65 (2) In any case described in subparagraph (A) or (B) of paragraph (1) of this subsection,  
 66 the physician shall terminate the pregnancy in the manner which, in reasonable medical  
 67 judgment, provides the best opportunity for the unborn child to survive unless, in  
 68 reasonable medical judgment, termination of the pregnancy in that manner would pose  
 69 a greater risk either of the death of the pregnant woman or of the substantial and  
 70 irreversible physical impairment of a major bodily function of the pregnant woman than  
 71 would another available method. No such greater risk shall be deemed to exist if it is  
 72 based on a diagnosis or claim of a mental or emotional condition of the pregnant woman  
 73 or that the pregnant woman will purposefully engage in conduct which she intends to  
 74 result in her death or in substantial and irreversible physical impairment of a major bodily  
 75 function. If the product of the abortion child is capable of meaningful or sustained life,  
 76 medical aid then available must be rendered.

77 ~~(d) The performing physician shall file with the commissioner of public health within ten~~  
 78 ~~days after an abortion procedure is performed a certificate of abortion containing such~~  
 79 ~~statistical data as is determined by the Department of Public Health consistent with~~  
 80 ~~preserving the privacy of the woman. Hospital or other licensed health facility records~~  
 81 ~~shall be available to the district attorney of the judicial circuit in which the hospital or~~  
 82 ~~health facility is located."~~

83 **SECTION 3.**

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

86 "CHAPTER 9B

87 31-9B-1.

88 (a) As used in this chapter, the term:

89 (1) 'Abortion' has the meaning provided by Code Section 31-9A-2.

90 (2) 'Medical emergency' has the meaning provided by Code Section 31-9A-2.

91 (3) 'Physician' has the meaning provided by Code Section 31-9A-2.

92 (4) 'Probable gestational age of the unborn child' means what will, in reasonable medical  
 93 judgment and with reasonable probability, be the postfertilization age of the unborn child  
 94 at the time the abortion is planned to be performed or induced, as dated from the time of  
 95 fertilization of the human ovum.

96 (5) 'Reasonable medical judgment' means a medical judgment that would be made by a  
97 reasonably prudent physician, knowledgeable about the case and the treatment  
98 possibilities with respect to the medical conditions involved.

99 (6) 'Unborn child' has the meaning provided by Code Section 31-9A-2.

100 31-9B-2.

101 (a) Except in the case of a medical emergency, no abortion shall be performed or  
102 attempted to be performed unless the physician performing it has first made a  
103 determination of the probable gestational age of the unborn child or relied upon such a  
104 determination made by another physician.

105 (b) Failure by any physician to conform to any requirement of this Code section constitutes  
106 unprofessional conduct for purposes of paragraph (7) of subsection (a) of Code Section  
107 43-34-8 relating to medical licensing sanctions.

108 31-9B-3.

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

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

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

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

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

131 (b) By June 30 of each year, the department shall issue a public report providing statistics  
 132 for the previous calendar year compiled from all of the reports covering that year submitted  
 133 in accordance with this Code section for each of the items listed in subsection (a) of this  
 134 Code section. Each such report shall also provide the statistics for all previous calendar  
 135 years during which this Code section was in effect, adjusted to reflect any additional  
 136 information from late or corrected reports. The department shall take care to ensure that  
 137 none of the information included in the public reports could reasonably lead to the  
 138 identification of any pregnant woman upon whom an abortion was performed.  
 139 (c) Any physician who fails to submit a report by the end of the grace period of 30 days  
 140 following the due date shall be subject to sanctions as specified in subsection (e) of Code  
 141 Section 31-9A-6.  
 142 (d) The department shall adopt such rules and regulations as are reasonable and necessary  
 143 to implement the provisions of this Code section."

144 **SECTION 4.**

145 Said title is further amended by revising paragraph (2) of Code Section 31-9A-2, relating to  
 146 definitions relative to the "Woman's Right to Know Act," as follows:

147 ~~"(2) 'Medical emergency' means any condition which, on the basis of the physician's~~  
 148 ~~good faith clinical judgment, so complicates the medical condition of a pregnant female~~  
 149 ~~as to necessitate the immediate abortion of her pregnancy to avert her death or for which~~  
 150 ~~a delay will create serious risk of substantial or irreversible impairment of a major bodily~~  
 151 ~~function. 'Medical emergency' means any condition which, in reasonable medical~~  
 152 judgment, so complicates the medical condition of a pregnant female as to necessitate the  
 153 immediate abortion of her pregnancy to avert her death or for which a delay will create  
 154 serious risk of substantial or irreversible impairment of a major bodily function of the  
 155 pregnant woman or death of the unborn child. No such condition shall be deemed to exist  
 156 if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant  
 157 woman or that the pregnant woman will purposefully engage in conduct which she  
 158 intends to result in her death or in substantial and irreversible physical impairment of a  
 159 major bodily function."

160 **SECTION 5.**

161 For purposes of promulgating rules and regulations, this Act shall become effective upon  
 162 approval by the Governor or upon its becoming law without such approval. For all other  
 163 purposes, this Act shall become effective on January 1, 2013.

164

**SECTION 6.**

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