

SENATE SUBSTITUTE TO HB 954:

AS PASSED SENATE

**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 civil and professional penalties for violations of the "Woman's Right to Know Act"; to
8 provide for confidentiality; to change certain provisions relating to definitions relative to the
9 "Woman's Right to Know Act"; to state legislative findings; to provide for other related
10 matters; to provide effective dates; to repeal conflicting laws; and for other purposes.

11 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

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;
- 23 (4.1) Probable gestational age is an estimate made to assume the closest time to which
24 the fertilization of a human ovum occurred and does not purport to be an exact diagnosis
25 of when such fertilization occurred; and
26

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

30 **SECTION 2.**

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

34 "16-12-140.

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

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

42 16-12-141.

43 (a) ~~Nothing in this article shall be construed to prohibit an abortion performed by a~~
 44 ~~physician duly licensed to practice medicine and surgery pursuant to Chapter 34 of Title~~
 45 ~~43, based upon his or her best clinical judgment that an abortion is necessary, except that~~
 46 ~~Code Section 16-12-144 is a prohibition of a particular abortion method which shall apply~~
 47 ~~to both duly licensed physicians and laypersons. No abortion is authorized or shall be~~
 48 ~~performed in violation of subsection (a) of Code Section 31-9B-2.~~

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

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

55 (c)(1) No abortion is authorized or shall be performed ~~after the second trimester~~ if the
 56 probable gestational age of the unborn child has been determined in accordance with
 57 Code Section 31-9B-2 to be 20 weeks or more unless the physician and two consulting
 58 physicians certify that the pregnancy is diagnosed as medically futile, as such term is
 59 defined in Code Section 31-9B-1, or in reasonable medical judgment the abortion is
 60 necessary in their best clinical judgment to preserve the life or health of the woman to:

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

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

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

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

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

88 **SECTION 3.**

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

91 "CHAPTER 9B

92 31-9B-1.

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

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

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

96 (3) 'Medically futile' means that stage of a pregnancy when, in the judgment of the
 97 attending physician using the appropriate standard of care for making such a
 98 determination, he or she diagnoses the unborn child with a congenital or chromosomal
 99 anomaly that is incompatible with life.

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

101 (5) 'Probable gestational age of the unborn child' means what will, in reasonable medical
 102 judgment and with reasonable probability, be the postfertilization age of the unborn child
 103 at the time the abortion is planned to be performed or induced, as dated from the time of
 104 fertilization of the human ovum.

105 (6) 'Reasonable medical judgment' means a medical judgment that would be made by a
 106 reasonably prudent physician, knowledgeable about the case and the treatment
 107 possibilities with respect to the medical conditions involved.

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

109 31-9B-2.

110 (a) Except in the case of a medical emergency or when a pregnancy is diagnosed as
 111 medically futile, no abortion shall be performed or attempted to be performed unless the
 112 physician performing it has first made a determination of the probable gestational age of
 113 the unborn child or relied upon such a determination made by another physician.

114 (b) Failure by any physician to conform to any requirement of this Code section constitutes
 115 unprofessional conduct for purposes of paragraph (7) of subsection (a) of Code Section
 116 43-34-8 relating to medical licensing sanctions.

117 31-9B-3.

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

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

124 (2) If a determination of probable gestational age was not made, the basis of the
 125 determination that a medical emergency existed or that a pregnancy was diagnosed as
 126 medically futile;

127 (3) If the probable gestational age was determined to be 20 or more weeks, the basis of
 128 the determination that the pregnant woman had a medically futile pregnancy or had a
 129 condition which so complicated her medical condition as to necessitate the termination

130 of her pregnancy to avert her death or to avert serious risk of substantial and irreversible
 131 physical impairment of a major bodily function, or the basis of the determination that it
 132 was necessary to preserve the life of an unborn child; and

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

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

149 (c) The department shall ensure that the names and identities of the physicians filing
 150 reports under this chapter shall remain confidential. The names and identities of such
 151 physicians shall not be subject to Article 4 of Chapter 18 of Title 50.

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

155 (e) The department shall adopt such rules and regulations as are reasonable and necessary
 156 to implement the provisions of this Code section."

157 **SECTION 3A.**

158 Said title is further amended by revising Code Section 31-9A-6.1, relating to civil and
 159 professional penalties for violations of the "Woman's Right to Know Act," as follows:

160 "31-9A-6.1.

161 (a) In addition to whatever remedies are available under the common or statutory law of
 162 this state, failure to comply with the requirements of this chapter shall be reported to the
 163 Georgia Composite Medical Board for disciplinary action.

164 (b) Any plaintiff seeking relief in the form of civil remedies for a violation of Code
 165 Section 31-9B-4 shall produce clear and convincing evidence that the physician

166 determining the probable gestational age of the fetus or the physician whose determination
 167 was relied upon was negligent in his or her determination.

168 (c) Any female who solicits or conspires to solicit an abortion who makes a false
 169 representation of her age or name shall not have standing to state a claim against any party
 170 pursuant to this chapter or Chapter 9B of this title nor shall any agency or instrumentality
 171 of the state consider any action related to such claim."

172 **SECTION 4.**

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

175 ~~"(2) 'Medical emergency' means any condition which, on the basis of the physician's~~
 176 ~~good faith clinical judgment, so complicates the medical condition of a pregnant female~~
 177 ~~as to necessitate the immediate abortion of her pregnancy to avert her death or for which~~
 178 ~~a delay will create serious risk of substantial or irreversible impairment of a major bodily~~
 179 ~~function. 'Medical emergency' means any condition which, in reasonable medical~~
 180 ~~judgment, so complicates the medical condition of a pregnant female as to necessitate the~~
 181 ~~immediate abortion of her pregnancy to avert her death or for which a delay will create~~
 182 ~~serious risk of substantial or irreversible impairment of a major bodily function of the~~
 183 ~~pregnant woman or death of the unborn child. No such condition shall be deemed to exist~~
 184 ~~if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant~~
 185 ~~woman or that the pregnant woman will purposefully engage in conduct which she~~
 186 ~~intends to result in her death or in substantial and irreversible physical impairment of a~~
 187 ~~major bodily function."~~

188 **SECTION 5.**

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

192 **SECTION 6.**

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