

COMMITTEE OF CONFERENCE SUBSTITUTE TO HB 954

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:

12 **SECTION 1.**

13 The General Assembly makes the following findings:

- 14 (1) At least by 20 weeks after fertilization there is substantial evidence that an unborn
15 child has the physical structures necessary to experience pain;
- 16 (2) There is substantial evidence that, by 20 weeks after fertilization, unborn children
17 seek to evade certain stimuli in a manner which in an infant or an adult would be
18 interpreted as a response to pain;
- 19 (3) Anesthesia is routinely administered to unborn children who have developed 20
20 weeks or more past fertilization who undergo prenatal surgery;
- 21 (4) Even before 20 weeks after fertilization, unborn children have been observed to
22 exhibit hormonal stress responses to painful stimuli. Such responses were reduced when
23 pain medication was administered directly to such unborn children;
- 24 (4.1) Probable gestational age is an estimate made to assume the closest time to which
25 the fertilization of a human ovum occurred and does not purport to be an exact diagnosis
26 of when such fertilization occurred; and

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, in reasonable medical judgment, the unborn child has
 97 a profound and irremediable congenital or chromosomal anomaly that is incompatible
 98 with sustaining life after birth.

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

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

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

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

108 31-9B-2.

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

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

116 31-9B-3.

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

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

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

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

130 physical impairment of a major bodily function, or the basis of the determination that it
 131 was necessary to preserve the life of an unborn child; and
 132 (4) The method used for the abortion and, in the case of an abortion performed when the
 133 probable gestational age was determined to be 20 or more weeks, whether the method of
 134 abortion used was one that, in reasonable medical judgment, provided the best
 135 opportunity for the unborn child to survive or, if such a method was not used, the basis
 136 of the determination that the pregnancy was medically futile or that termination of the
 137 pregnancy in that manner would pose a greater risk either of the death of the pregnant
 138 woman or of the substantial and irreversible physical impairment of a major bodily
 139 function of the pregnant woman than would other available methods.
 140 (b) By June 30 of each year, the department shall issue a public report providing statistics
 141 for the previous calendar year compiled from all of the reports covering that year submitted
 142 in accordance with this Code section for each of the items listed in subsection (a) of this
 143 Code section. Each such report shall also provide the statistics for all previous calendar
 144 years during which this Code section was in effect, adjusted to reflect any additional
 145 information from late or corrected reports. The department shall take care to ensure that
 146 none of the information included in the public reports could reasonably lead to the
 147 identification of any pregnant woman upon whom an abortion was performed.
 148 (c) The department shall ensure that the names and identities of the physicians filing
 149 reports under this chapter shall remain confidential. The names and identities of such
 150 physicians shall not be subject to Article 4 of Chapter 18 of Title 50.
 151 (d) Any physician who fails to submit a report by the end of the grace period of 30 days
 152 following the due date shall be subject to sanctions as specified in subsection (e) of Code
 153 Section 31-9A-6.
 154 (e) The department shall adopt such rules and regulations as are reasonable and necessary
 155 to implement the provisions of this Code section."

156 **SECTION 4.**

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

159 "31-9A-6.1.

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

163 (b) Any plaintiff seeking relief in the form of civil remedies for a violation of Code
 164 Section 31-9B-2 shall produce clear and convincing evidence that the physician

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

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

171 **SECTION 5.**

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

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

187 **SECTION 6.**

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

191 **SECTION 7.**

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