

Senate Bill 37

By: Senators Orrock of the 36th, Tate of the 38th, Davenport of the 44th, Sims of the 12th, Butler of the 55th 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 repeal provisions relating to a  
5 physician's obligation in the performance of abortions; to change certain provisions relating  
6 to civil and professional penalties for violations of the "Woman's Right to Know Act"; to  
7 change certain provisions relating to definitions relative to the "Woman's Right to Know  
8 Act"; to provide for other related matters; to provide for an effective date; to repeal  
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

12 Article 5 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to  
13 abortion, is amended by revising Code Sections 16-12-140 and 16-12-141, relating to  
14 criminal abortion and restrictions on the performance of abortions, respectively, as follows:

15 "16-12-140.

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

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

23 16-12-141.

24 (a) Nothing in this article shall be construed to prohibit an abortion performed by a  
25 physician duly licensed to practice medicine and surgery pursuant to Chapter 34 of Title  
26 43, based upon his or her best clinical judgment that an abortion is necessary, except that

27 Code Section 16-12-144 is a prohibition of a particular abortion method which shall apply  
 28 to both duly licensed physicians and laypersons. No abortion is authorized or shall be  
 29 performed in violation of subsection (a) of Code Section 31-9B-2.

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

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

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

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

48 (B) ~~Preserve the life of an unborn child.~~

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

51 (2) ~~In any case described in subparagraph (A) or (B) of paragraph (1) of this subsection,~~  
 52 ~~the physician shall terminate the pregnancy in the manner which, in reasonable medical~~  
 53 ~~judgment, provides the best opportunity for the unborn child to survive unless, in~~  
 54 ~~reasonable medical judgment, termination of the pregnancy in that manner would pose~~  
 55 ~~a greater risk either of the death of the pregnant woman or of the substantial and~~  
 56 ~~irreversible physical impairment of a major bodily function of the pregnant woman than~~  
 57 ~~would another available method. No such greater risk shall be deemed to exist if it is~~  
 58 ~~based on a diagnosis or claim of a mental or emotional condition of the pregnant woman~~  
 59 ~~or that the pregnant woman will purposefully engage in conduct which she intends to~~  
 60 ~~result in her death or in substantial and irreversible physical impairment of a major bodily~~  
 61 ~~function. If the product of the abortion child is capable of meaningful or sustained life,~~  
 62 ~~medical aid then available must be rendered.~~

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

69 **SECTION 2.**

70 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by  
 71 repealing Chapter 9B, relating to a physician's obligation in the performance of abortions,  
 72 in its entirety.

73 **SECTION 3.**

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

76 "(2) 'Medical emergency' means any condition which, on the basis of the physician's  
 77 good faith clinical judgment, so complicates the medical condition of a pregnant female  
 78 as to necessitate the immediate abortion of her pregnancy to avert her death or for which  
 79 a delay will create serious risk of substantial or irreversible impairment of a major bodily  
 80 function. ~~'Medical emergency' means any condition which, in reasonable medical~~  
 81 ~~judgment, so complicates the medical condition of a pregnant female as to necessitate the~~  
 82 ~~immediate abortion of her pregnancy to avert her death or for which a delay will create~~  
 83 ~~serious risk of substantial or irreversible impairment of a major bodily function of the~~  
 84 ~~pregnant woman or death of the unborn child. No such condition shall be deemed to exist~~  
 85 ~~if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant~~  
 86 ~~woman or that the pregnant woman will purposefully engage in conduct which she~~  
 87 ~~intends to result in her death or in substantial and irreversible physical impairment of a~~  
 88 ~~major bodily function."~~

89 **SECTION 4.**

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

92 "31-9A-6.1.

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

96 ~~(b) Any plaintiff seeking relief in the form of civil remedies for a violation of Code~~  
97 ~~Section 31-9B-2 shall produce clear and convincing evidence that the physician~~  
98 ~~determining the probable gestational age of the fetus or the physician whose determination~~  
99 ~~was relied upon was negligent in his or her determination.~~

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

104 **SECTION 5.**

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

107 **SECTION 6.**

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