

Senate Bill 39

By: Senators Orrock of the 36th, Tate of the 38th, Jones II of the 22nd, Butler of the 55th,
Seay of the 34th 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 change certain provisions relating to
5 civil and professional penalties for violations of the "Woman's Right to Know Act"; to
6 change certain provisions relating to definitions relative to the "Woman's Right to Know
7 Act"; to repeal provisions relating to a physician's obligation in the performance of abortions;
8 to provide for related matters; to provide for an effective date; to repeal conflicting laws; and
9 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
26 Title 43, based upon his or her best clinical judgment that an abortion is necessary, except

27 that Code Section 16-12-144 is a prohibition of a particular abortion method which shall
 28 apply to both duly licensed physicians and laypersons. No abortion is authorized or shall
 29 be 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 Code
 38 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 child product of the abortion 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 revising
 71 paragraph (2) of Code Section 31-9A-2, relating to definitions relative to the "Woman's Right
 72 to Know Act," as follows:

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

86 **SECTION 3.**

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

89 "31-9A-6.1.

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

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

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

101 **SECTION 4.**

102 Said title is further amended by repealing Chapter 9B, relating to a physician's obligation in
103 the performance of abortions, in its entirety.

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.