

House Bill 481

By: Representatives Setzler of the 35th, Lott of the 122nd, Taylor of the 173rd, Bonner of the 72nd, Ehrhart of the 36th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 2 of Title 1 of the Official Code of Georgia Annotated, relating to persons
2 and their rights, so as to provide that all natural persons at any stage of development,
3 including an unborn child at any stage of development who is carried in the womb, shall be
4 included in state population based determinations; to amend Article 5 of Chapter 12 of Title
5 16 of the Official Code of Georgia Annotated, relating to abortion, so as to revise the time
6 when an abortion may be performed; to amend Chapter 9A of Title 31 of the Official Code
7 of Georgia Annotated, relating to the "Woman's Right to Know Act," to provide for advising
8 women seeking an abortion of the presence of a human heartbeat; to remove certain
9 penalties; to amend Chapter 9B of Title 31 of the Official Code of Georgia Annotated,
10 relating to physician's obligation in performance of abortions, so as to require physicians
11 performing abortions to determine the existence of a human heartbeat before performing an
12 abortion; to provide for the reporting of certain information by physicians; to amend
13 Chapter 7 of Title 19 of the Official Code of Georgia Annotated, relating to parent and child
14 relationship generally, to provide that the right to recover for the full value of a child begins
15 at the first detection of a human heartbeat in the womb in the cases of a homicide of a child
16 carried in the womb; to provide for legislative findings; to provide for related matters; to
17 provide for standing to intervene and defend constitutional challenges to this Act; to provide
18 a short title; to provide an effective date; to repeal conflicting laws; and for other purposes.

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20 style="text-align:center">**PART I**
21 style="text-align:center">**SECTION 1-1.**

22 This Act shall be known and may be cited as the "Living Infants Fairness and Equality
23 (LIFE) Act."

24

SECTION 1-2.

25 The General Assembly of Georgia makes the following findings:

26 (1) In the founding of the United States of America, the State of Georgia and the several
27 states affirmed that: "We hold these Truths to be self-evident, that all Men are created
28 equal, that they are endowed by their Creator with certain unalienable Rights, that among
29 these are Life, Liberty, and the Pursuit of Happiness – that to secure these Rights,
30 Governments are instituted among men;"

31 (2) To protect the fundamental rights of all human beings, and specifically to protect the
32 fundamental rights of particular classes of persons who had not previously been
33 recognized under law, the 14th Amendment to the United States Constitution was ratified,
34 providing that, "nor shall any State deprive any person of life, liberty, or property,
35 without due process of law; nor deny any person within its jurisdiction the equal
36 protection of the laws";

37 (3) Modern medical science, not available decades ago, demonstrates that early infants
38 in the womb are a class of living, distinct human beings that, among other individual
39 human traits, have their own distinct blood types, distinct organ systems, distinct central
40 nervous systems, unique fingerprints, unique genetic characteristics, and approximately
41 six weeks after fertilization, detectable human heartbeats; from earliest development,
42 unborn children need only nourishment and a safe environment to grow to full adulthood;

43 (4) The State of Georgia, applying reasoned judgment to the full body of modern medical
44 science, recognizes the benefits of providing early infants in the womb with full legal
45 recognition as members of the human community, above the minimum requirements of
46 federal law;

47 (5) The United States Supreme Court held unanimously in *Pruneyard v. Robins* (1980)
48 that a state may provide a more expansive level of protection of a fundamental right than
49 the minimum required by the United States Constitution; and that previous United States
50 Supreme Court precedent ruled, in the absence of more expansive state protections, that
51 it "does not *ex proprio vigore* limit a State's authority to exercise its police power or its
52 sovereign right to adopt in its own constitution individual liberties more expansive than
53 those conferred by the Federal Constitution";

54 (6) Article I, Section I, Paragraphs I and II of the Constitution of the State of Georgia
55 affirm that "[n]o person shall be deprived of life, liberty, or property except by due
56 process of law"; and that "[p]rotection to person and property is the paramount duty of
57 government and shall be impartial and complete. No person shall be denied the equal
58 protection of the laws";

- 59 (7) The State of Georgia, supported by modern medical science and acting with reasoned
60 judgment in its "right to adopt in its own...individual liberties more expansive than those
61 [minimum requirements] conferred by the Federal Constitution," finds that unborn
62 children shall be worthy of recognition as natural persons under the laws of this State;
- 63 (8) Such legal recognition by the state requires legislative action to clarify conditions and
64 practical considerations regarding the general qualifications for state population
65 determinations, civil rights of recovery, and state abortion law;
- 66 (9) It is the responsibility of the legislative branch of the state to appropriately balance
67 the competing life and health interests of the unborn child with the life, health, and
68 privacy interests of the pregnant mother;
- 69 (10) In the *Planned Parenthood v. Casey* (1992) decision, the United States Supreme
70 Court established that government is free to express "profound respect for the life of the
71 unborn" at any stage of pregnancy and established a "compelling state interest" to protect
72 the "potentiality of human life" of the unborn child at the point of "fetal viability" at
73 which time "the independent essence of the second life can now be the object of state
74 protection";
- 75 (11) The *American Academy of Obstetricians and Gynecologists, Clinical Management*
76 *Guidelines* (2015) provides that "ultrasonography" that detects a human heartbeat "is the
77 preferred modality to determine the presence of a 'viable' intrauterine gestation";
- 78 (12) With the broad availability of ultrasound technology to physicians, nurses, and
79 sonographers throughout the state, the ability of medical practitioners to detect the
80 presence of the fetal heartbeat has become the standard in establishing the viability of a
81 pregnancy;
- 82 (13) The *Uniform Determination of Death Act* (UDDA, 1981) is a model state law that
83 for nearly four decades has been the nation-wide standard, long adopted by the American
84 Medical Association, American Bar Association, State of Georgia, and almost all states
85 in the United States, "to provide a comprehensive and medically sound basis for
86 determining death [or life] in all situations";
- 87 (14) The *UDDA* affirms that a consistent human heartbeat, independent of life support,
88 is a core determining factor in establishing the legal presence of human life in a full range
89 of circumstances, for the young and old alike;
- 90 (15) This more expansive and constitutionally valid state recognition of unborn children
91 as persons did not exist when the state statutes leading to the current federal abortion
92 related precedents *Planned Parenthood v. Casey* (1992), *Roe v. Wade* (1973), *et al.* were
93 established;

94 (16) It is the intent of the state to effectively balance *Casey's* "strict scrutiny" protections
 95 under the 14th Amendment for the liberty interest of the mother with the "strict scrutiny"
 96 protections under the 14th Amendment for the life interest of the person in the womb;

97 (17) In applying the balancing test of "strict scrutiny" to two "compelling state interests"
 98 in tension with each other, the State of Georgia finds that "narrowly tailoring" the
 99 protection of the life interest of the person in the womb, recognized from earliest fetal
 100 development, leads to the life interest receding reasonably to the point of the legally and
 101 medically substantial bright line test of "viable" human life, the human heartbeat, to
 102 accommodate *Casey's* standard of "no undue burden" to abortion before "fetal viability"
 103 wherein "the unborn person's life 'can in reason and all fairness' be thought to override
 104 the interests of the mother;"

105 (18) To provide medical clarity and legal finality to the issue, it is the state's intent to no
 106 longer base the "viability" threshold for persons in the womb upon the medically
 107 uncertain concept of "potentially able to live outside the mother's womb", which not even
 108 healthy full-term infants can without "artificial aid;" but rather, to base it upon the firm
 109 legal standard for determining human life and death used nationally for nearly four
 110 decades (*UDDA*) and the medical standard that is "the preferred modality to determine
 111 the presence of a 'viable' intrauterine gestation," the presence of a human heartbeat, which
 112 is a consistent, clearly definable threshold at which the person in the womb has a greater
 113 than 95 percent chance of survival when carried to term;

114 (19) It shall be the policy of the State of Georgia to recognize the presence of a fetal
 115 heartbeat as the point of "fetal viability," creating a compelling state interest to protect
 116 "the independent essence of the second life" as an "object of state protection" from
 117 abortion; and

118 (20) It shall be the policy of the State of Georgia to recognize unborn children as natural
 119 persons who qualify for state income tax deductions and state population based
 120 determinations.

121 **PART II**

122 **SECTION 2-1.**

123 Chapter 2 of Title 1 of the Official Code of Georgia Annotated, relating to persons and their
 124 rights, is amended by revising Code Section 1-2-1, relating to classes of persons generally,
 125 corporations deemed artificial persons, and nature of corporations generally, as follows:
 126 "1-2-1.

127 (a) There are two classes of persons: natural and artificial.

128 (b) Unless otherwise provided by law, any natural person, including an unborn child at any
 129 stage of development who is carried in the womb, shall be included in state population
 130 based determinations.

131 ~~(b)~~(c) Corporations are artificial persons. They are creatures of the law and, except insofar
 132 as the law forbids it, they are subject to be changed, modified, or destroyed at the will of
 133 their creator."

134 **PART III**
 135 **SECTION 3-1.**

136 Article 5 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to
 137 abortion, is amended by revising Code Section 16-12-141, relating to restrictions on the
 138 performance of abortions and availability of records, as follows:

139 "16-12-141.

140 ~~(a) No abortion is authorized or shall be performed in violation of subsection (a) of Code~~
 141 ~~Section 31-9B-2.~~

142 ~~(b)(1) No abortion is authorized or shall be performed after the first trimester unless the~~
 143 ~~abortion is performed in a licensed hospital, in a licensed ambulatory surgical center, or~~
 144 ~~in a health facility licensed as an abortion facility by the Department of Community~~
 145 ~~Health.~~

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

148 ~~(c)~~(a)(1) No abortion is authorized or shall be performed if the probable gestational age
 149 of the unborn child has been determined in accordance with Code Section 31-9B-2 to
 150 be 20 weeks or more unless the pregnancy is diagnosed as medically futile, as such term
 151 is defined in Code Section 31-9B-1 to have a human heartbeat, or except when, in
 152 reasonable medical judgment, the abortion is necessary to:

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

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

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

162 (2) In any case described in subparagraph (A) or (B) of paragraph (1) of this subsection,
 163 the physician shall terminate the pregnancy in the manner which, in reasonable medical
 164 judgment, provides the best opportunity for the unborn child to survive unless, in
 165 reasonable medical judgment, termination of the pregnancy in that manner would pose
 166 a greater risk either of the death of the pregnant woman or of the substantial and
 167 irreversible physical impairment of a major bodily function of the pregnant woman than
 168 would another available method. No such greater risk shall be deemed to exist if it is
 169 based on a diagnosis or claim of a mental or emotional condition of the pregnant woman
 170 or that the pregnant woman will purposefully engage in conduct which she intends to
 171 result in her death or in substantial and irreversible physical impairment of a major bodily
 172 function. If the child is capable of sustained life, medical aid then available must be
 173 rendered.

174 (b) No abortion is authorized or shall be performed in violation of subsection (a) of Code
 175 Section 31-9B-2.

176 (c)(1) No abortion is authorized or shall be performed after the first trimester unless the
 177 abortion is performed in a licensed hospital, in a licensed ambulatory surgical center, or
 178 in a health facility licensed as an abortion facility by the Department of Community
 179 Health.

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

182 (d) ~~Hospital Physician, hospital,~~ or other licensed health facility records shall be available
 183 to law enforcement agencies within the district attorney of the judicial circuit in which the
 184 physician, ~~hospital,~~ or health facility is located.

185 (e) Any woman upon whom an abortion is performed in violation of this Code section may
 186 recover in a civil action from the person who engaged in such violation all damages
 187 available to her under Georgia law for any torts."

188 **SECTION 3-2.**

189 To amend Chapter 9A of Title 31 of the Official Code of Georgia Annotated, relating to the
 190 "Woman's Right to Know Act," by revising paragraph (1) of Code Section 31-9A-3, relating
 191 to voluntary and informed consent to abortion and availability of ultrasound, as follows:

192 "(1) The female is told the following, by telephone or in person, by the physician who
 193 is to perform the abortion, by a qualified agent of the physician who is to perform the
 194 abortion, by a qualified agent of a referring physician, or by a referring physician, at
 195 least 24 hours before the abortion:

196 (A) The particular medical risks to the individual patient associated with the particular
 197 abortion procedure to be employed, when medically accurate;

198 (B) The probable gestational age and presence of a human heartbeat of the unborn
199 child at the time the abortion would be performed; and

200 (C) The medical risks associated with carrying the unborn child to term.

201 The information required by this paragraph may be provided by telephone without
202 conducting a physical examination or tests of the patient, in which case the information
203 required to be provided may be based on facts supplied to the physician by the female and
204 whatever other relevant information is reasonably available to the physician. Such
205 information may not be provided by a tape recording but must be provided during a
206 consultation in which the physician or a qualified agent of the physician is able to ask
207 questions of the female and the female is able to ask questions of the physician or the
208 physician's qualified agent. If in the medical judgment of the physician any physical
209 examination, tests, or other information subsequently provided to the physician requires
210 a revision of the information previously supplied to the patient, that revised information
211 shall be communicated to the patient prior to the performance of the abortion. Nothing
212 in this Code section may be construed to preclude provision of required information in
213 a language understood by the patient through a translator;"

214 **SECTION 3-3.**

215 Said chapter is further amended by revising paragraph (3) of subsection (a) of Code
216 Section 31-9A-4, relating to information to be made available by the Department of Public
217 Health, format requirements, availability, and requirements for website, as follows:

218 "(3) Materials with the following statement concerning unborn children with a human
219 heartbeat and of 20 weeks' or more gestational age:

220 'By six weeks' gestation, the unborn child has a human heartbeat. By 20 weeks'
221 gestation, the unborn child has the physical structures necessary to experience pain.
222 There is evidence that by 20 weeks' gestation unborn children seek to evade certain
223 stimuli in a manner which in an infant or an adult would be interpreted to be a response
224 to pain. Anesthesia is routinely administered to unborn children who are 20 weeks'
225 gestational age or older who undergo prenatal surgery.'

226 The materials shall be objective, nonjudgmental, and designed to convey only accurate
227 scientific information about the unborn child at the various gestational ages."

228 **SECTION 3-4.**

229 Said chapter is further amended by repealing in its entirety Code Section 31-9A-6.1, relating
230 to civil and professional penalties for violations and prerequisites for seeking penalties.

231 **SECTION 3-5.**

232 Chapter 9B of Title 31 of the Official Code of Georgia Annotated, relating to physician's
 233 obligation in performance of abortions, is amended by revising Code Section 31-9B-2,
 234 relating to requirement to determine probable gestational age of unborn child, as follows:

235 "31-9B-2.

236 (a) Except in the case of a medical emergency ~~or when a pregnancy is diagnosed as~~
 237 ~~medically futile~~, no abortion shall be performed or attempted to be performed unless the
 238 physician performing it such procedure has first made a determination of the probable
 239 gestational age presence of a human heartbeat of the unborn child ~~or relied upon such a~~
 240 ~~determination made by another physician.~~

241 (b) ~~Failure~~ In addition to any criminal or civil penalties provided by law, failure by any
 242 physician to conform to any requirement of this Code section constitutes unprofessional
 243 conduct for purposes of paragraph (7) of subsection (a) of Code Section 43-34-8 relating
 244 to medical licensing sanctions."

245 **SECTION 3-6.**

246 Said chapter is further amended by revising subsection (a) of Code Section 31-9B-3, relating
 247 to required reporting of physicians and departments, confidentiality, and failure to comply,
 248 as follows:

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

253 (1) If a determination of ~~probable gestational age~~ the presence of a human heartbeat was
 254 made, ~~the probable gestational age determined~~ and the method and basis of the
 255 determination;

256 (2) If a determination of ~~probable gestational age~~ the presence of a human heartbeat was
 257 not made, the basis of the determination that a medical emergency existed ~~or that a~~
 258 ~~pregnancy was diagnosed as medically futile~~;

259 (3) ~~If the probable gestational age was determined to be 20 or more weeks a~~
 260 determination of the presence of a human heartbeat was made, the basis of the
 261 determination that the pregnant woman ~~had a medically futile pregnancy or had a~~
 262 condition which so complicated her medical condition as to necessitate the termination
 263 of her pregnancy to avert her death or to avert serious risk of substantial and irreversible
 264 physical impairment of a major bodily function, or the basis of the determination that it
 265 was necessary to preserve the life of an unborn child; and

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

274 **PART IV**

275 **SECTION 4-1.**

276 Chapter 7 of Title 19 of the Official Code of Georgia Annotated, relating to parent and child
 277 relationship generally, is amended by revising paragraph (1) of subsection (c) of Code
 278 Section 19-7-1, relating to in whom parental power lies, how such power lost, and recovery
 279 for homicide of child, as follows:

280 "(c)(1) In every case of the homicide of a child, minor or sui juris, there shall be some
 281 party entitled to recover the full value of the life of the child, either as provided in this
 282 Code section or as provided in Chapter 4 of Title 51. For the homicide of a child carried
 283 in the womb, the right to recover for the full value of the life of such child shall begin at
 284 the point at which a human heartbeat is present."

285 **PART V**

286 **SECTION 5-1.**

287 Any citizen of this state shall have standing and the right to intervene and defend in any
 288 action challenging the constitutionality of any portion of this Act.

289 **SECTION 5-2.**

290 All provisions of this Act shall be severable in accordance with Code Section 1-1-3.

291 **PART VI**

292 **SECTION 6-1.**

293 This Act shall become effective on July 1, 2019.

294

SECTION 6-2.

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