

House Bill 481 (AS PASSED HOUSE AND SENATE)

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 natural persons include an unborn child; to provide that
3 such unborn children shall be included in certain population based determinations; to provide
4 definitions; to amend Article 5 of Chapter 12 of Title 16 of the Official Code of Georgia
5 Annotated, relating to abortion, so as to provide definitions; to revise the time when an
6 abortion may be performed; to provide for exceptions; to provide for the requirements for
7 performing an abortion; to provide for a right of action and damages; to provide for
8 affirmative defenses; to amend Chapter 6 of Title 19 of the Official Code of Georgia
9 Annotated, relating to alimony and child support, so as to provide a definition; to provide a
10 maximum support obligation for certain circumstances; to amend Chapter 7 of Title 19 of the
11 Official Code of Georgia Annotated, relating to parent and child relationship generally, so
12 as to provide that the right to recover for the full value of a child begins at the point when a
13 detectable human heartbeat exists; to amend Chapter 9A of Title 31 of the Official Code of
14 Georgia Annotated, relating to the "Woman's Right to Know Act," so as to provide for
15 advising women seeking an abortion of the presence of a detectable human heartbeat; to
16 provide for the content of certain notices; to repeal certain penalties; to amend Chapter 9B
17 of Title 31 of the Official Code of Georgia Annotated, relating to physician's obligation in
18 performance of abortions, so as to require physicians performing abortions to determine the
19 existence of a detectable human heartbeat before performing an abortion; to provide for the
20 reporting of certain information by physicians; to amend Chapter 7 of Title 48 of the Official
21 Code of Georgia Annotated, relating to income taxes, so as to provide that an unborn child
22 with a detectable human heartbeat is a dependent minor for income tax purposes; to provide
23 for legislative findings; to provide for related matters; to provide for standing to intervene
24 and defend constitutional challenges to this Act; to provide a short title; to provide for
25 severability; to provide an effective date; to repeal conflicting laws; and for other purposes.

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

SECTION 2.

The General Assembly of Georgia makes the following findings:

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

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

(3) Modern medical science, not available decades ago, demonstrates that unborn children are a class of living, distinct persons and more expansive state recognition of unborn children as persons did not exist when *Planned Parenthood v. Casey* (1992) and *Roe v. Wade* (1973) established abortion related precedents;

(4) The State of Georgia, applying reasoned judgment to the full body of modern medical science, recognizes the benefits of providing full legal recognition to an unborn child above the minimum requirements of federal law;

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

(6) It shall be the policy of the State of Georgia to recognize unborn children as natural persons.

SECTION 3.

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

"1-2-1.

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

(b) 'Natural person' means any human being including an unborn child.

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

(d) Unless otherwise provided by law, any natural person, including an unborn child with a detectable human heartbeat, shall be included in population based determinations.

(e) As used in this Code section, the term:

(1) 'Detectable human heartbeat' means embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the heart within the gestational sac.

(2) 'Unborn child' means a member of the species Homo sapiens at any stage of development who is carried in the womb."

SECTION 4.

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

"16-12-141.

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

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

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

~~(c)(1)~~(a) As used in this article, the term:

(1) 'Abortion' means the act of using, prescribing, or administering any instrument, substance, device, or other means with the purpose to terminate a pregnancy with knowledge that termination will, with reasonable likelihood, cause the death of an unborn child; provided, however, that any such act shall not be considered an abortion if the act is performed with the purpose of:

(A) Removing a dead unborn child caused by spontaneous abortion; or

(B) Removing an ectopic pregnancy.

(2) 'Detectable human heartbeat' means embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the heart within the gestational sac.

(3) 'Medical emergency' means a condition in which an abortion is necessary in order to prevent the death of the pregnant woman or the substantial and irreversible physical impairment of a major bodily function of the pregnant woman. No such greater risk shall be deemed to exist if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant woman or that the pregnant woman will purposefully engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

(4) 'Medically futile' means that, in reasonable medical judgment, an unborn child has a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth.

(5) 'Spontaneous abortion' means the naturally occurring death of an unborn child, including a miscarriage or stillbirth.

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

~~(A)(1) Avert the death of the pregnant woman or avert serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman. No such condition shall be deemed to exist if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant woman or that the pregnant woman will purposefully engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function~~ A physician determines, in reasonable medical judgment, that a medical emergency exists; or

~~(B)(2) Preserve the life of an unborn child~~ The probable gestational age of the unborn child is 20 weeks or less and the pregnancy is the result of rape or incest in which an official police report has been filed alleging the offense of rape or incest. As used in this paragraph, the term 'probable gestational age of the unborn child' has the meaning provided by Code Section 31-9B-1; or

~~(3) A physician determines, in reasonable medical judgment, that the pregnancy is medically futile.~~

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

~~(2) In any case described in subparagraph (A) or (B) of paragraph (1) of this subsection, the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose~~

~~a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the pregnant woman than would another available method. No such greater risk shall be deemed to exist if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant woman or that the pregnant woman will purposefully engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function. If the child is capable of sustained life, medical aid then available must be rendered.~~

(c) In conducting an abortion, if the child is capable of sustained life, medical aid then available shall be rendered.

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

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

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

~~(d)(f)~~ Hospital or other licensed health facility Health records shall be available to the district attorney of the judicial circuit in which the ~~hospital or health facility is located~~ act of abortion occurs or the woman upon whom an abortion is performed resides.

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

(h) It shall be an affirmative defense to prosecution under this article if:

(1) A licensed physician provides medical treatment to a pregnant woman which results in the accidental or unintentional injury to or death of an unborn child;

(2) An advanced practice registered nurse or registered professional nurse, as such terms are defined in Code Section 43-26-3, or a licensed practical nurse, as such term is defined in Code Section 43-26-32, engages in the practice of nursing to provide care for a pregnant woman which results in the accidental or unintentional injury to or death of an unborn child;

(3) A licensed pharmacist engages in the practice of pharmacy, as such term is defined in Code Section 26-4-4, to provide care for a pregnant woman which results in the accidental or unintentional injury or death of an unborn child;

(4) A licensed physician assistant, as such term is defined in Code Section 43-34-102, provides care to a pregnant woman which results in the accidental or unintentional injury to or death of an unborn child; or

(5) A woman sought an abortion because she reasonably believed that an abortion was the only way to prevent a medical emergency."

SECTION 5.

Chapter 6 of Title 19 of the Official Code of Georgia Annotated, relating to alimony and child support, is amended by revising paragraph (4) of subsection (a) of Code Section 19-6-15, relating to child support, guidelines for determining amount of award, continuation of duty of support, and duration of support, and by adding a new subsection to read as follows:

~~"(4) 'Child' means child or children~~ Reserved."

"(a.1)(1) As used in this chapter, the term 'child' means child or children, including any unborn child with a detectable human heartbeat as such terms are defined in Code Section 1-2-1.

(2) Notwithstanding any provision of this Code section to the contrary, the maximum amount of support which the court may impose on the father of an unborn child under this Code section shall be the amount of direct medical and pregnancy related expenses of the mother of the unborn child. After birth, the provisions of this Code section shall apply in full."

SECTION 6.

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

"(c)(1) In every case of the homicide of a child, minor or sui juris, there shall be some party entitled to recover the full value of the life of the child, either as provided in this Code section or as provided in Chapter 4 of Title 51. For the homicide of an unborn child, the right to recover for the full value of the life of such child shall begin at the point at which a detectable human heartbeat, as such term is defined in Code Section 1-2-1, is present."

SECTION 7.

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

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

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

(B) The probable gestational age and presence of a detectable human heartbeat, as such term is defined in Code Section 1-2-1, of ~~the~~ an unborn child at the time the abortion would be performed; and

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

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

SECTION 8.

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

"(3) Materials with the following statement concerning unborn children with a detectable human heartbeat, as such term is defined in Code Section 1-2-1, and of 20 weeks' or more gestational age:

'As early as six weeks' gestation, an unborn child may have a detectable human heartbeat. By 20 weeks' gestation, ~~the~~ an unborn child has the physical structures

necessary to experience pain. There is evidence that by 20 weeks' gestation unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are 20 weeks' gestational age or older who undergo prenatal surgery.'

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

SECTION 9.

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

SECTION 10.

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

"31-9B-2.

(a) Except in the case of a medical emergency or when a pregnancy is diagnosed as medically futile, no abortion shall be performed or attempted to be performed unless the physician performing it such procedure has first made a determination of the ~~probable gestational age~~ presence of a detectable human heartbeat, as such term is defined in Code Section 1-2-1, of the ~~an~~ unborn child ~~or relied upon such a determination made by another physician.~~

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

SECTION 11.

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

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

(1) If a ~~determination of probable gestational age was made~~ detectable human heartbeat, as such term is defined in Code Section 1-2-1, exists, the probable gestational age, ~~determined~~ and the method and basis of the determination;

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

(3)(2) ~~If the probable gestational age was determined to be 20 or more weeks a~~ detectable human heartbeat, as such term is defined in Code Section 1-2-1, exists, the basis of the determination that the pregnant woman had a medically futile pregnancy, ~~that a medical emergency existed, or that the pregnancy was the result of rape or incest or had a condition which so complicated her medical condition as to necessitate the termination of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, or the basis of the determination that it was necessary to preserve the life of an unborn child; and~~

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

SECTION 12.

Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes, is amended by revising subsection (a) of Code Section 48-7-26, relating to personal exemptions, as follows:

"(a) As used in this Code section, the term 'dependent' shall have the same meaning as in the Internal Revenue Code of 1986; provided, however, that any unborn child with a detectable human heartbeat, as such terms are defined in Code Section 1-2-1, shall qualify as a dependent minor."

SECTION 13.

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

301 **SECTION 14.**

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

303 **SECTION 15.**

304 This Act shall become effective on January 1, 2020.

305 **SECTION 16.**

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