

House Bill 481 (COMMITTEE SUBSTITUTE)

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 amend Chapter 7 of Title 48 of the Official Code of Georgia
17 Annotated, relating to income taxes, to provide that a natural person carried in the womb is
18 a dependent minor for income tax purposes; to provide for legislative findings; to provide for
19 related matters; to provide for standing to intervene and defend constitutional challenges to
20 this Act; to provide a short title; to provide an effective date; to repeal conflicting laws; and
21 for other purposes.

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

SECTION 1-1.

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

SECTION 1-2.

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 human beings, 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 early infants in the womb are a class of living, distinct human beings that, among other individual human traits, have their own distinct blood types, distinct organ systems, distinct central nervous systems, unique fingerprints, unique genetic characteristics, and approximately six weeks gestational age, detectable human heartbeats; from earliest development, unborn children need only nourishment and a safe environment to grow to full adulthood;

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

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

(6) 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";

(7) The State of Georgia, supported by modern medical science and acting with reasoned judgment in its "right to adopt in its own...individual liberties more expansive than those [minimum requirements] conferred by the Federal Constitution," finds that unborn children shall be worthy of recognition as natural persons under the laws of this State;

(8) Such legal recognition by the state requires legislative action to clarify conditions and practical considerations regarding the general qualifications for state population determinations, civil rights of recovery, and state abortion law;

(9) It is the responsibility of the legislative branch of the state to appropriately balance the competing life and health interests of the unborn child with the life, health, and privacy interests of the pregnant mother;

(10) In the *Planned Parenthood v. Casey* (1992) decision, the United States Supreme Court established that government is free to express "profound respect for the life of the unborn" at any stage of pregnancy and established a "compelling state interest" to protect the "potentiality of human life" of the unborn child at the point of "fetal viability" at which time "the independent essence of the second life can now be the object of state protection";

(11) The *American Academy of Obstetrics and Gynecology, Clinical Management Guidelines* (2015) provides that "ultrasonography" that detects a human heartbeat "is the preferred modality to determine the presence of a 'viable' intrauterine gestation";

(12) With the broad availability of ultrasound technology to physicians, nurses, and sonographers throughout the state, the ability of medical practitioners to detect the presence of the fetal heartbeat has become the standard in establishing the viability of a pregnancy;

(13) The *Uniform Determination of Death Act* (UDDA, 1981) is a model state law that for nearly four decades has been the nation-wide standard, long adopted by the American Medical Association, American Bar Association, State of Georgia, and almost all states in the United States, "to provide a comprehensive and medically sound basis for determining death [or life] in all situations";

(14) The *UDDA* affirms that a consistent human heartbeat, independent of life support, is a core determining factor in establishing the legal presence of human life in a full range of circumstances, for the young and old alike;

(15) This more expansive and constitutionally valid state recognition of unborn children as persons did not exist when the state statutes leading to the current federal abortion related precedents *Planned Parenthood v. Casey* (1992), *Roe v. Wade* (1973), *et al.* were established;

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

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

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

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

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

PART II**SECTION 2-1.**

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

~~(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."

PART III**SECTION 3-1.**

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

(A) Necessary to avert ~~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; ~~or~~

(B) ~~Necessary to preserve~~ Preserve the life of an unborn child; ~~or~~

(C) Because of a pregnancy with an unborn child of 20 weeks or less gestational age that resulted from 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.~~

(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.

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

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

(e) 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."

SECTION 3-2.

To amend Chapter 9A of Title 31 of the Official Code of Georgia Annotated, relating to the "Woman's Right to Know Act," 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 human heartbeat of the unborn child at the time the abortion would be performed; and

(C) The medical risks associated with carrying the 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 3-3.

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 human heartbeat and of 20 weeks' or more gestational age:

'By six weeks' gestation, the unborn child has a human heartbeat. By 20 weeks' gestation, the 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 unborn child at the various gestational ages."

SECTION 3-4.

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 3-5.

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 human heartbeat of the 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 3-6.

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~~ the presence of a human heartbeat was made, ~~the probable gestational age determined~~ and the method and basis of the determination;

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

(3) ~~If the probable gestational age was determined to be 20 or more weeks a determination of the presence of a human heartbeat was made,~~ the basis of the determination that the pregnant woman had a medically futile pregnancy 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) 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, if applicable ~~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."~~

PART IV

SECTION 4-1.

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 a child carried in the womb, the right to recover for the full value of the life of such child shall begin at the point at which a human heartbeat is present."

292 **PART V**
293 **SECTION 5-1.**

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

297 "(a) As used in this Code section, the term 'dependent' shall have the same meaning as in
298 the Internal Revenue Code of 1986; provided, however, that any natural person, including
299 an unborn child at any stage of development who is carried in the womb shall qualify as
300 a dependent minor."

301 **PART VI**
302 **SECTION 6-1.**

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

305 **SECTION 6-2.**

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

307 **PART VII**
308 **SECTION 7-1.**

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

310 **SECTION 7-2.**

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