

House Bill 1134

By: Representatives Moore of the 95th, Clark of the 108th, Hutchinson of the 107th, Kennard of the 102nd, Allen of the 40th, and others

A BILL TO BE ENTITLED
AN ACT

1 To repeal the provisions of House Bill 481 passed during the 2019 regular session and to
2 restore the law to what it was before such bill was enacted; to amend Chapter 2 of Title 1 of
3 the Official Code of Georgia Annotated, relating to persons and their rights, so as to remove
4 references to unborn children and other definitions; to amend Article 5 of Chapter 12 of
5 Title 16 of the Official Code of Georgia Annotated, relating to abortion, so as to revise the
6 time when an abortion may be performed; to provide for exceptions; to provide for
7 requirements for performing an abortion; to amend Chapter 6 of Title 19 of the Official Code
8 of Georgia Annotated, relating to alimony and child support, so as to revise a definition; to
9 amend Chapter 7 of Title 19 of the Official Code of Georgia Annotated, relating to parent
10 and child relationship generally, so as to revise the right to recover for the full value of the
11 life of an unborn child; to amend Chapter 9A of Title 31 of the Official Code of Georgia
12 Annotated, relating to the "Woman's Right to Know Act," so as to revise the information
13 provided to women seeking an abortion; to provide for certain civil and professional
14 penalties and the standards for the imposition of such penalties; to amend Chapter 9B of Title
15 31 of the Official Code of Georgia Annotated, relating to physician's obligation in
16 performance of abortions, so as to require physicians performing abortions to determine the
17 probable gestational age of the unborn child before performing an abortion; to provide for
18 the reporting of certain information by physicians; to amend Chapter 7 of Title 48 of the
19 Official Code of Georgia Annotated, relating to income taxes, so as to remove a proviso
20 regarding whether an unborn child with a detectable human heartbeat is a dependent minor
21 for income tax purposes; to provide for related matters; to provide for an effective date; to
22 repeal conflicting laws; and for other purposes.

23 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

24 **SECTION 1.**

25 Chapter 2 of Title 1 of the Official Code of Georgia Annotated, relating to persons and their
26 rights, is amended by revising Code Section 1-2-1, relating to classes of persons generally,

27 "natural person" defined, corporations deemed artificial persons, and nature of corporations
 28 generally, as follows:

29 "1-2-1.

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

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

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

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

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

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

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

42 SECTION 2.

43 Article 5 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to
 44 abortion, is amended by revising Code Section 16-12-141, relating to restrictions on the
 45 performance of abortions, availability of records, civil cause of action, and affirmative
 46 defenses, as follows:

47 "16-12-141.

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

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

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

55 ~~(B) Removing an ectopic pregnancy.~~

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

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

63 ~~in conduct which she intends to result in her death or in substantial and irreversible~~
 64 ~~physical impairment of a major bodily function.~~

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

68 ~~(5) 'Spontaneous abortion' means the naturally occurring death of an unborn child,~~
 69 ~~including a miscarriage or stillbirth. No abortion is authorized or shall be performed in~~
 70 ~~violation of subsection (a) of Code Section 31-9B-2.~~

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

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

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

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

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

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

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

99 (2) In any case described in subparagraph (A) or (B) of paragraph (1) of this subsection,
 100 the physician shall terminate the pregnancy in the manner which, in reasonable medical
 101 judgment, provides the best opportunity for the unborn child to survive unless, in
 102 reasonable medical judgment, termination of the pregnancy in that manner would pose
 103 a greater risk either of the death of the pregnant woman or of the substantial and
 104 irreversible physical impairment of a major bodily function of the pregnant woman than
 105 would another available method. No such greater risk shall be deemed to exist if it is
 106 based on a diagnosis or claim of a mental or emotional condition of the pregnant woman
 107 or that the pregnant woman will purposefully engage in conduct which she intends to
 108 result in her death or in substantial and irreversible physical impairment of a major bodily
 109 function. If the child is capable of sustained life, medical aid then available must be
 110 rendered.

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

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

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

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

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

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

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

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

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

- 135 ~~(3) A licensed pharmacist engages in the practice of pharmacy, as such term is defined~~
 136 ~~in Code Section 26-4-4, to provide care for a pregnant woman which results in the~~
 137 ~~accidental or unintentional injury or death of an unborn child;~~
 138 ~~(4) A licensed physician assistant, as such term is defined in Code Section 43-34-102,~~
 139 ~~provides care to a pregnant woman which results in the accidental or unintentional injury~~
 140 ~~to or death of an unborn child; or~~
 141 ~~(5) A woman sought an abortion because she reasonably believed that an abortion was~~
 142 ~~the only way to prevent a medical emergency."~~

143 **SECTION 3.**

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

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

149 **SECTION 4.**

150 Said chapter is further amended by repealing subsection (a.1) of Code Section 19-6-15,
 151 relating to child support guidelines for determining amount of award, continuation of duty
 152 of support, and duration of support.

153 **SECTION 5.**

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

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

164 **SECTION 6.**

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

168 "(1) The female is told the following, by telephone or in person, by the physician who
 169 is to perform the abortion, by a qualified agent of the physician who is to perform the
 170 abortion, by a qualified agent of a referring physician, or by a referring physician, at least
 171 24 hours before the abortion:

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

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

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

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

191 SECTION 7.

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

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

198 '~~As early as six weeks' gestation, an unborn child may have a detectable human~~
 199 ~~heartbeat.~~ By 20 weeks' gestation, ~~an~~ the unborn child has the physical structures
 200 necessary to experience pain. There is evidence that by 20 weeks' gestation unborn
 201 children seek to evade certain stimuli in a manner which in an infant or an adult would
 202 be interpreted to be a response to pain. Anesthesia is routinely administered to unborn
 203 children who are 20 weeks' gestational age or older who undergo prenatal surgery.'

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

206 **SECTION 8.**

207 Said chapter is further amended by adding a new Code section to read as follows:

208 "31-9A-6.1.

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

212 (b) Any plaintiff seeking relief in the form of civil remedies for a violation of Code
 213 Section 31-9B-2 shall produce clear and convincing evidence that the physician
 214 determining the probable gestational age of the unborn child or the physician whose
 215 determination was relied upon was negligent in his or her determination.

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

220 **SECTION 9.**

221 Chapter 9B of Title 31 of the Official Code of Georgia Annotated, relating to physician's
 222 obligation in performance of abortions, is amended by revising Code Section 31-9B-2,
 223 relating to requirement to determine presence of detectable heartbeat of unborn child, as
 224 follows:

225 "31-9B-2.

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

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

236

SECTION 10.

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

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

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

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

250 ~~(2)(3) If a detectable human heartbeat, as such term is defined in Code Section 1-2-1,~~
 251 ~~exists~~ the probable gestational age was determined to be 20 weeks or more, the basis of
 252 the determination that the pregnant woman had a medically futile pregnancy, that a
 253 medical emergency existed, or that the pregnancy was the result of rape or incest or had
 254 a condition which so complicated her medical condition as to necessitate the termination
 255 of her pregnancy to avert her death or to avert serious risk of substantial and irreversible
 256 physical impairment of a major bodily function, or the basis of the determination that it
 257 was necessary to preserve the life of an unborn child; and

258 ~~(3)(4) The method used for the abortion and, in the case of an abortion performed when~~
 259 the probable gestation age was determined to be 20 weeks or more, whether the method
 260 of abortion used was one that, in reasonable medical judgment, provided the best
 261 opportunity for the unborn child to survive or, if such method was not used, the basis of
 262 the determination that the pregnancy was medically futile or that termination of the
 263 pregnancy in that manner would pose a greater risk either of the death of the pregnant
 264 woman or of the substantial and irreversible physical impairment of a major bodily
 265 function of the pregnant woman than would other available methods."

266

SECTION 11.

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

270 "(a) As used in this Code section, the term 'dependent' shall have the same meaning as in
 271 the Internal Revenue Code of 1986; ~~provided, however, that any unborn child with a~~

272 ~~detectable human heartbeat, as such terms are defined in Code Section 1-2-1, shall qualify~~
273 ~~as a dependent minor."~~

274 **SECTION 12.**

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

277 **SECTION 13.**

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