

House Bill 496

By: Representatives Dunahoo of the 31st, Byrd of the 20th, Smith of the 18th, Mathis of the 149th, and Horner of the 3rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and
2 offenses, so as to provide for an exception for defendant mothers of unborn children; to
3 provide a short title; to provide for a definition; to provide for construction; to provide for
4 exceptions; to provide for concurrent prosecuting authority of the Attorney General and
5 prosecuting attorneys in certain cases; to provide for applicability; to remove exceptions that
6 allow for assault and battery on an unborn child; to amend Code Section 19-7-1 of the
7 Official Code of Georgia Annotated, relating to in whom parental power lies, how such
8 power lost, and recovery for homicide of a child or unborn child, so as to provide for the
9 right to recovery for the life of a child beginning at the stage of fertilization; to provide for
10 related matters; to provide for legislative findings; to repeal conflicting laws; and for other
11 purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 The General Assembly finds and determines that:

15 (1) Article I, Section I, Paragraph I of the Georgia Constitution provides, "No person
16 shall be deprived of life, liberty, or property except by due process of law.";

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17 (2) Article I, Section I, Paragraph II of the Georgia Constitution provides, "Protection
 18 to person and property is the paramount duty of government and shall be impartial and
 19 complete. No person shall be denied the equal protection of the laws.";

20 (3) The Fourteenth Amendment to the Constitution of the United States requires that
 21 "[n]o state...shall deny to any person within its jurisdiction the equal protection of the
 22 laws";

23 (4) To fulfill such right to life and equal protection requirements, the lives of unborn
 24 persons in this state should be protected with the same criminal and civil laws protecting
 25 the lives of born persons, while ensuring that all persons potentially subject to such laws
 26 are entitled to due process protections; and

27 (5) In keeping with our oaths of office, the God-given right to life shall be secured and
 28 the impartial and equal protection of the laws shall be provided to all unborn persons
 29 from the moment of fertilization and at every stage of development, and abortion shall
 30 be abolished in this state, so help us God.

31 **SECTION 2.**

32 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses is
 33 amended by revising Code Section 16-3-26, relating to coercion, as follows:

34 "16-3-26.

35 ~~A person is not guilty of a crime, except murder where the victim is not an unborn child,~~
 36 ~~if the act upon which the supposed criminal liability is based is performed under such~~
 37 ~~coercion that the person reasonably believes that performing the act is the only way to~~
 38 ~~prevent his or her imminent death or great bodily injury.~~

39 (a) A person is not guilty of a crime if the act upon which the supposed criminal liability
 40 is based is performed under such coercion that the person reasonably believes that the
 41 performance of the act is the only way to prevent his or her imminent death or great bodily
 42 injury.

43 (b) The defense of coercion provided by subsection (a) of this Code section shall not apply
44 to a charge of murder unless the victim is an unborn child and the defendant is the child's
45 mother."

46 **SECTION 3.**

47 Said title is further amended in Article 1 of Chapter 5, relating to homicide, by adding a new
48 Code section to read as follows:

49 "16-5-6.

50 (a) This Code section shall be known and may be cited as the 'Georgia Prenatal Equal
51 Protection Act.'

52 (b) As used in this article, the term 'human being' includes a living human, unborn child
53 at every stage of development from fertilization until birth.

54 (c) Enforcement pursuant to this Code section is subject to the same presumptions,
55 defenses, justifications, laws of parties, immunities, and clemencies as would apply to the
56 homicide of a person who had been born alive.

57 (d) Conduct does not constitute a violation of this article if such conduct is a lawful
58 medical procedure:

59 (1) Performed by a licensed physician;

60 (2) Performed on a pregnant female to avert the death of the pregnant female;

61 (3) That results in the accidental or unintentional death of the unborn child; and

62 (4) Performed when reasonable alternatives to save the life of the unborn child:

63 (A) Are unavailable; or

64 (B) Were attempted unsuccessfully before the performance of the medical procedure.

65 (e) Prosecuting attorneys and the Attorney General shall have concurrent authority to
66 prosecute any criminal cases arising under the provisions of this Code section and to
67 perform any necessary related duty. For purposes of investigating offenses or criminal

68 cases arising under the provisions of this Code section, the Attorney General shall have the
 69 authority to employ peace officers.

70 (f) This Code section prevails over other law to the extent of any conflict.

71 (g) In accordance with Article I, Section I, Paragraph X of the Georgia Constitution,
 72 Article I, Section 9, Clause 3 of the Constitution of the United States, and Code
 73 Section 1-3-5, this Code section is prospective only and shall not apply to any act
 74 committed prior to the effective date of this Act."

75 **SECTION 4.**

76 Said title is further amended by revising Code Section 16-5-28, relating to assault on an
 77 unborn child, as follows:

78 "16-5-28.

79 (a) For the purposes of this Code section, the term 'unborn child' means a member of the
 80 species homo sapiens at any stage of development who is carried in the womb.

81 (b) A person commits the offense of assault of an unborn child when such person, without
 82 legal justification, attempts to inflict violent injury to an unborn child.

83 (c) Any person convicted of the offense of assault of an unborn child shall be guilty of a
 84 misdemeanor.

85 ~~(d) Nothing in this Code section shall be construed to permit the prosecution of:~~

86 ~~(1) Any person for conduct relating to an abortion for which the consent of the pregnant~~
 87 ~~woman, or person authorized by law to act on her behalf, has been obtained or for which~~
 88 ~~such consent is implied by law;~~

89 ~~(2) Any person for any medical treatment of the pregnant woman or her unborn child;~~

90 or

91 ~~(3) Any woman with respect to her unborn child."~~

92 **SECTION 5.**

93 Said title is further amended by revising Code Section 16-5-29, relating to battery of an
94 unborn child, as follows:

95 "16-5-29.

96 (a) For the purposes of this Code section, the term 'unborn child' means a member of the
97 species homo sapiens at any stage of development who is carried in the womb.

98 (b) A person commits the offense of battery of an unborn child when such person, without
99 legal justification, intentionally inflicts physical harm upon an unborn child.

100 (c) A person convicted of the offense of battery of an unborn child shall be guilty of a
101 misdemeanor.

102 ~~(d) Nothing in this Code section shall be construed to permit the prosecution of:~~

103 ~~(1) Any person for conduct relating to an abortion for which the consent of the pregnant~~
104 ~~woman, or person authorized by law to act on her behalf, has been obtained or for which~~
105 ~~such consent is implied by law;~~

106 ~~(2) Any person for any medical treatment of the pregnant woman or her unborn child;~~
107 ~~or~~

108 ~~(3) Any woman with respect to her unborn child."~~

109 **SECTION 6.**

110 Code Section 19-7-1 of the Official Code of Georgia Annotated, relating to in whom parental
111 power lies, how such power lost, and recovery for homicide of a child or unborn child, is
112 amended by revising paragraph (1) of subsection (c) as follows:

113 "(c)(1) In every case of the homicide of a child, minor or sui juris, there shall be some
114 party entitled to recover the full value of the life of the child, either as provided in this
115 Code section or as provided in Chapter 4 of Title 51. For the homicide of an unborn
116 child, the right to recover for the full value of the life of such child shall begin at the point

117 ~~at which a detectable human heartbeat, as such term is defined in Code Section 1-2-1, is~~
118 ~~present fertilization.~~"

119 **SECTION 7.**

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