

House Bill 1

By: Representative Franklin of the 43rd

A BILL TO BE ENTITLED
AN ACT

To amend the Official Code of Georgia Annotated so as to provide that prenatal murder shall be unlawful in all events and to remove numerous references to such procedures; to amend Title 16, relating to crimes and offenses, so as to make certain findings of fact; to define certain terms; to provide that any prenatal murder shall be unlawful; to provide a penalty; to repeal certain exceptions to certain offenses; to provide for severability; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended by striking Article 5, relating to abortion, in its entirety and inserting in lieu thereof the following:

"ARTICLE 5

16-12-140.

(a) The State of Georgia has the duty to protect all innocent life from the moment of conception until natural death. We know that life begins at conception. After nearly four decades of legal human prenatal murder, it is now abundantly clear that the practice has negatively impacted the people of this state in many ways, including economic, health, physical, psychological, emotional, and medical well-being. These, too, are areas of legitimate concern and duty of this state. The General Assembly therefore makes the following findings of fact:

(1) A fetus is a person for all purposes under the laws of this state from the moment of conception;

(2) The Georgia Constitution, at Article I, Section I, Paragraph II, provides: 'Protection 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.' Because a fetus is a person, constitutional protection attaches at the moment of conception. It is therefore the duty of the General Assembly to protect the innocent life that is being taken;

(3) Justice Blackmun, writing for the majority in *Roe v. Wade*, 410 U.S. 113 (1973), wrote: 'when those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer [to the question of when life begins].'

- (4) The General Assembly knows the answer to that difficult question, and that answer is life begins at the moment of conception;
- (5) The Supreme Court's inability to determine what is human life cannot legitimately serve to prohibit Georgia from fulfilling its constitutional mandate to protect the lives of its citizens by prosecuting crimes against said person;
- (6) The United States Congress has reserved to itself 'all legislative powers herein vested' according to Article I, Section I of the Constitution of the United States;
- (7) 'Herein vested' to the United States Congress applies to only five crimes: (1) counterfeiting, (2) piracy, (3) felonies on the high seas, (4) offenses against the law of nations, and (5) treason; according to Article I, Section VIII and Article III, Section III of the Constitution of the United States;
- (8) Murder is not counterfeiting, piracy, felony on the high seas, an offense against the law of nations, or treason;
- (9) Georgia has, therefore, reserved to itself exclusive jurisdiction over the definition and punishment of murder under Amendment X of the Constitution of the United States;
- (10) The United States judiciary only has authority to hear cases or controversies 'arising under this Constitution' and then only if 'affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a Party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects';
- (11) The definition and prosecution of murder within Georgia to protect its own prenatal citizens affects neither an ambassador nor other public minister or consul; is not a case of admiralty and maritime jurisdiction; is not a controversy to which the United States shall be a party; is not a controversy between two or more states, nor between the state of Georgia and the citizens of another state; is not a controversy between a citizen of Georgia and a citizen of a different state; is not related to citizens of Georgia claiming lands under grants of different states; and is not a case between Georgia or its citizens and another state and its citizens;
- (12) The United States Supreme Court had no jurisdiction to hear or decide the case of *Roe v. Wade* or any other case pertaining to a state's punishment of the crime of prenatal murder;
- (13) As it had no jurisdiction to hear the case, certainly the United States Supreme Court lacked the authority to pass, or order all states to strike or refuse to enforce, a law that is outside of its subject matter or federal jurisdiction;
- (14) Even if the United States Supreme Court had jurisdiction, its authority is limited to the case or controversy before it, and its opinion extends no further than between the parties to the case or controversy;
- (15) It is a foundational principle of our constitutional republic, and 'a proposition too plain to be contested, that the Constitution controls any legislative act repugnant to it'; 'a law repugnant to the Constitution is void' and even 'the courts ... are bound by that instrument'; *Marbury v. Madison*, 1 U.S. 137, 177 and 180 (1803);

(16) As 'an act of the legislature, repugnant to the Constitution, is void,' does not 'bind the courts, and oblige them to give it effect,' *Marbury* at 177, an act of the United States Supreme Court, repugnant to the Constitution, is void and does not bind the state or oblige it to give it effect;

(17) Georgia hereby unequivocally expresses its firm resolution to maintain and defend the Constitution of the United States against every aggression, either foreign or domestic, and most solemnly declares a warm attachment to the Union of the states and seeks its preservation and continuation;

(18) It is 'for this end it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that Union'; *Virginia Resolutions of 1798-99*;

(19) However, denying to a state the right to define and punish a crime not specified in the United States Constitution is a *per se* legislative act;

(20) The nullification of a state's properly promulgated laws is specifically delineated as an offense committed by King George III against the states, for which separation became necessary; *The Unanimous Declaration of the thirteen united States of America*;

(21) Compliance with, and continuation of, a fiat determination of the Supreme Court from nearly 40 years ago will cause the basis of this Union, and eventually the Union itself, to fall;

(22) Georgia was not a party to the suit in *Roe v. Wade*, and is not bound by a decision in which it did not have right of participation;

(23) Georgia is not restricted in its duty to its citizens due to the failure of the State of Texas to properly plead 'lack of subject matter jurisdiction';

(24) As the United States Constitution confers to no federal branch either the authority over the definition or prosecution of murder, or the power to nullify the laws of a state that do the same, *Roe v. Wade* is 'no law,' is a nullity, and carries no legal effect in Georgia;

(25) The act of prenatal murder is murder and conspiracy to commit murder *per se*;

(26) The act of prenatal murder has caused a significant reduction in the number of citizens in this state that would serve as workers, entrepreneurs, teachers, employees, and employers that would have significantly contributed to the prosperity and continuation of this state; and

(27) The failure to prosecute a violation of this Code section is a violation of the obligation of this state to provide all of its citizens with an equal protection of the laws.

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

(1) 'Fetus' means a person at any point of development from and including the moment of conception through the moment of birth. Such term includes all medical or popular designations of an unborn child from the moment of conception such as conceptus, zygote, embryo, homunculus, and similar terms.

(2) 'Prenatal murder' means the intentional removal of a fetus from a woman with an intention other than to produce a live birth or to remove a dead fetus; provided, however, that if a physician makes a medically justified effort to save the lives of both the mother and the fetus and the fetus does not survive, such action shall not be prenatal murder. Such term does not include a naturally occurring expulsion of a fetus known medically as

a 'spontaneous abortion' and popularly as a 'miscarriage' so long as there is no human involvement whatsoever in the causation of such event.

(c) The act of prenatal murder is contrary to the health and well-being of the citizens of this state and to the state itself and is illegal in this state in all instances.

(d) Any person committing prenatal murder in this state shall be guilty of a felony and, upon conviction, shall be punished as provided in subsection (d) of Code Section 16-5-1. The license of any physician indicted for an alleged violation of this Code section shall be suspended until resolution of the matter. The license of any physician convicted of a violation of this Code section shall be permanently revoked. The provisions of this Code section shall be in addition to any other provisions relating to the killing of a fetus or any other person."

SECTION 2.1.

Said title is further amended in subsection (h) of Code Section 16-5-20, relating to simple assault, by striking current paragraph (1) and by redesignating current paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

SECTION 2.2.

Said title is further amended in subsection (d) of Code Section 16-5-28, relating to assault on an unborn child, by striking current paragraph (1) and by redesignating current paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

SECTION 2.3.

Said title is further amended in subsection (d) of Code Section 16-5-29, relating to battery on an unborn child, by striking current paragraph (1) and by redesignating current paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

SECTION 2.4.

Said title is further amended in subsection (f) of Code Section 16-5-80, relating to feticide, voluntary manslaughter of an unborn child, and penalties, by striking current paragraph (1) and by redesignating current paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

SECTION 2.5.

Chapter 11 of Title 15, relating to juvenile proceedings, is amended in Code Section 15-11-28, relating to jurisdiction of the juvenile courts, by adding "or" at the end of subparagraph (a)(2)(C), by striking current subparagraph (a)(2)(D), and by redesignating current subparagraph (a)(2)(E) as subparagraph (a)(2)(D).

SECTION 2.6.

Said chapter is further amended by repealing in its entirety Article 3, the "Parental Notification Act," and designating said article as reserved.

SECTION 2.7.

Code Section 20-2-773, relating to restrictions on student health services and utilization of state funds, is amended by revising subsection (a) as follows:

"(a) No facility operated on public school property or operated by a public school district and no employee of any such facility acting within the scope of such employee's employment shall distribute contraceptives.

SECTION 2.8.

Title 31, relating to health, is amended in Code Section 31-2-1, relating to the duty, functions, and powers of the Department of Human Resources, by adding "and" at the end of paragraph (11), by striking current paragraph (12), and by redesignating current paragraph (13) as paragraph (12).

SECTION 2.9.

Said title is further amended in paragraph (4) of Code Section 31-7-1, relating to definitions, by striking current subparagraph (B) and by redesignating current subparagraphs (C) through (G) as subparagraphs (B) through (F), respectively.

SECTION 2.10.

Said title is further amended by revising subsection (a) of Code Section 31-7-9, relating to reports by physicians and other personnel of nonaccidental injuries to patients and immunity from liability, as follows:

"(a) As used in this Code section, the term 'medical facility' includes, without being limited to, an ambulatory surgical treatment center defined in subparagraph ~~(D)~~ (C) of paragraph (1) of Code Section 31-7-1."

SECTION 2.11.

Said title is further amended in Code Section 31-9-5, relating to the applicability of the "Georgia Medical Consent Law" to abortion and sterilization procedures, by striking the words "abortion and" and "procedures".

SECTION 2.12.

Said title is further amended by repealing in its entirety Chapter 9A, the "Woman's Right to Know Act."

SECTION 2.13.

Said title is further amended by revising Code Section 31-10-1, relating to definitions relative to vital records, by deleting the words "product of human conception" and replacing them with "prenatal human person" in paragraphs (4), (9), and (15); by deleting the words "induced termination of pregnancy" and replacing them with "prenatal murder" in paragraphs (7) and (20); and by deleting the words "an induced termination of pregnancy" and replacing them with "a prenatal murder" in paragraph (15).

SECTION 2.14.

Said title is further amended by revising subsection (a) of Code Section 31-10-18, relating to registration of spontaneous fetal deaths, as follows:

"(a) A report of spontaneous fetal death for each spontaneous fetal death which occurs in this state shall be filed with the local registrar of the county in which the delivery occurred within 72 hours after such delivery in accordance with this Code section unless the place of fetal death is unknown, in which case a fetal death certificate shall be filed in the county in which the dead fetus was found within 72 hours after such occurrence.

Preparation and filing of reports of spontaneous fetal death shall be as follows:

- (1) When a dead fetus is delivered in an institution, the person in charge of the institution or that person's designated representative shall prepare and file the report;
- (2) When a dead fetus is delivered outside an institution, the physician in attendance at or immediately after delivery shall prepare and file the report;
- (3) When a spontaneous fetal death required to be reported by this Code section occurs without medical attendance at or immediately after the delivery or when inquiry is required by Article 2 of Chapter 16 of Title 45, the 'Georgia Death Investigation Act,' the proper investigating official shall investigate the cause of fetal death and shall prepare and file the report within 30 days; and
- (4) When a spontaneous fetal death occurs in a moving conveyance and the fetus is first removed from the conveyance in this state or when a dead fetus is found in this state and the place of fetal death is unknown, the fetal death shall be reported in this state. The place where the fetus was first removed from the conveyance or the dead fetus was found shall be considered the place of fetal death."

SECTION 2.15.

Said title is further amended by repealing and reserving Code Section 31-10-19, relating to reporting of termination of pregnancy.

SECTION 2.16.

Said title is further amended by revising subsection (a) of code Section 31-10-28, relating to institutions to keep vital records, as follows:

"(a) Every person in charge of an institution shall keep a record of personal data concerning each person admitted or confined to such institution. This record shall include such information as required for the certificates of birth and death and the reports of spontaneous fetal death required by this chapter. The record shall be made at the time of admission from information provided by the person being admitted or confined but, when it cannot be so obtained, the information shall be obtained from relatives or other persons acquainted with the facts. The name and address of the person providing the information shall be a part of the record."

SECTION 2.17.

Said chapter is further amended by revising subsection (a) of Code Section 31-10-29, relating to privileged nature of disclosures, notification of local registrar of institutional

deaths and fetal deaths, and notification of the board of voting registrars of adult deaths, as follows:

"(a) Any person having knowledge or facts concerning any birth, death, spontaneous fetal death, marriage, divorce, dissolution of marriage, or annulment may disclose such facts to the state registrar, and such disclosure shall be absolutely privileged and no cause or action may be brought or maintained against such person for such disclosure."

SECTION 2.18.

Said title is further amended in subsection (b) of Code Section 31-32-14, relating to the effect of certain provisions relating to living wills on other legal rights and duties, by striking the last sentence.

SECTION 2.19.

Said title is further amended in subsection (c) of Code Section 33-24-59.6, relating to prescribed female contraceptive drugs or devices and insurance coverage, by striking the last sentence.

SECTION 2.20.

Said title is further amended by revising subparagraph (C) of paragraph (1) of Code Section 33-60-3, relating to definitions, as follows:

"(C) Coverage of testing for chlamydia in Code Section 31-17-4.1; coverage for complications of pregnancy in Code Section 33-24-24; coverage for general anesthesia and related hospital and outpatient facility charges for dental care for persons who are developmentally disabled, seven or younger, neurologically impaired, or suffering severe face or head trauma in Code Section 33-24-28.4; surveillance tests for ovarian cancer in Code Section 33-24-56.2; colorectal cancer screening and testing in Code Section 33-24-56.3; coverage for hospital stays after delivery in Code Section 33-24-58.2; direct access to obstetricians and gynecologists in Code Section 33-24-59; treatment of dependent children with cancer in Code Section 33-24-59.1; coverage for equipment and self-management training for individuals with diabetes in Code Section 33-24-59.2; coverage for prescribed female contraceptive drugs or devices in Code Section 33-24-59.6; coverage for prescription inhalers in Code Section 33-24-59.8; coverage for autism in Code Section 33-24-59.10; coverage for mastectomy and lymph node dissection in Code Section 33-24-72; coverage for mammograms, ~~pap~~ Pap smears, and screening for prostate cancer in Code Sections 33-29-3.2 and 33-30-4.2; provisions concerning mail-order pharmaceuticals in Code Section 33-30-4.3; and coverage for child wellness exams in Code Sections 33-29-3.4 and 33-30-4.5."

SECTION 2.21.

Chapter 34 of Title 43, relating to physicians, acupuncture, physician's assistants, cancer and glaucoma treatment, respiratory care, clinical perfusionists, and orthotics and prosthetics practice, is amended by striking and reserving subsection (l) of Code Section 43-34-26.3, relating to delegation of certain medical acts to advanced practice registered

nurses, construction and limitations of such delegation, definitions, conditions of nurse protocol, and issuance of prescription drug orders.

SECTION 2.22.

Said title is further amended by striking and reserving paragraph (8) of subsection (a) of Code Section 43-34-37, relating to the authority of the Composite State Board of Medical Examiners to refuse license to or discipline physicians, restoration of licenses, enforcement investigations, evidentiary privileges, closed hearings, immunity for reporting violations, and when investigation or assessment of licensee's fitness to practice is required.

SECTION 3.

In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared or adjudged invalid or unconstitutional by the Georgia Supreme Court, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect as if the section, subsection, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional. No portion of this Act may be found to be unconstitutional by the federal courts as they lack the subject matter jurisdiction to instruct this state how or whether to prosecute certain crimes.

SECTION 4.

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

SECTION 5.

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