

House Bill 481 (COMMITTEE SUBSTITUTE)

By: Representatives Setzler of the 35<sup>th</sup>, Lott of the 122<sup>nd</sup>, Taylor of the 173<sup>rd</sup>, Bonner of the 72<sup>nd</sup>, Ehrhart of the 36<sup>th</sup>, 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:

23 **PART I**

24 **SECTION 1-1.**

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

27 **SECTION 1-2.**

28 The General Assembly of Georgia makes the following findings:

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

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

40 (3) Modern medical science, not available decades ago, demonstrates that early infants  
41 in the womb are a class of living, distinct human beings that, among other individual  
42 human traits, have their own distinct blood types, distinct organ systems, distinct central  
43 nervous systems, unique fingerprints, unique genetic characteristics, and approximately  
44 six weeks gestational age, detectable human heartbeats; from earliest development,  
45 unborn children need only nourishment and a safe environment to grow to full adulthood;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

124

**PART II**

125

**SECTION 2-1.**

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

129 "1-2-1.

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

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

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

137

**PART III**

138

**SECTION 3-1.**

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

142 "16-12-141.

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

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

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

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

156 (A) Necessary to avert ~~Avert~~ the death of the pregnant woman or avert serious risk of  
 157 substantial and irreversible physical impairment of a major bodily function of the

158 pregnant woman. No such condition shall be deemed to exist if it is based on a  
 159 diagnosis or claim of a mental or emotional condition of the pregnant woman or that  
 160 the pregnant woman will purposefully engage in conduct which she intends to result in  
 161 her death or in substantial and irreversible physical impairment of a major bodily  
 162 function; ~~or~~

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

164 (C) Because of a pregnancy with an unborn child of 20 weeks or less gestational age  
 165 that resulted from rape or incest in which an official police report has been filed  
 166 alleging the offense of rape or incest.

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

169 (2) In any case described in subparagraph (A) or (B) of paragraph (1) of this subsection,  
 170 the physician shall terminate the pregnancy in the manner which, in reasonable medical  
 171 judgment, provides the best opportunity for the unborn child to survive unless, in  
 172 reasonable medical judgment, termination of the pregnancy in that manner would pose  
 173 a greater risk either of the death of the pregnant woman or of the substantial and  
 174 irreversible physical impairment of a major bodily function of the pregnant woman than  
 175 would another available method. No such greater risk shall be deemed to exist if it is  
 176 based on a diagnosis or claim of a mental or emotional condition of the pregnant woman  
 177 or that the pregnant woman will purposefully engage in conduct which she intends to  
 178 result in her death or in substantial and irreversible physical impairment of a major bodily  
 179 function. If the child is capable of sustained life, medical aid then available must be  
 180 rendered.

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

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

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

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

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

195 **SECTION 3-2.**

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

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

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

205 (B) The probable gestational age and presence of a human heartbeat of the unborn  
 206 child at the time the abortion would be performed; and

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

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

221 **SECTION 3-3.**

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

225 "(3) Materials with the following statement concerning unborn children with a human  
 226 heartbeat and of 20 weeks' or more gestational age:

227 'By six weeks' gestation, the unborn child has a human heartbeat. By 20 weeks'  
 228 gestation, the unborn child has the physical structures necessary to experience pain.  
 229 There is evidence that by 20 weeks' gestation unborn children seek to evade certain  
 230 stimuli in a manner which in an infant or an adult would be interpreted to be a response

231 to pain. Anesthesia is routinely administered to unborn children who are 20 weeks'  
232 gestational age or older who undergo prenatal surgery.'

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

235 **SECTION 3-4.**

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

238 **SECTION 3-5.**

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

242 "31-9B-2.

243 (a) Except in the case of a medical emergency or when a pregnancy is diagnosed as  
244 medically futile, no abortion shall be performed or attempted to be performed unless the  
245 physician performing it such procedure has first made a determination of the ~~probable~~  
246 ~~gestational age~~ presence of a human heartbeat of the unborn child ~~or relied upon such a~~  
247 ~~determination made by another physician.~~

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

252 **SECTION 3-6.**

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

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

260 (1) If a determination of ~~probable gestational age~~ the presence of a human heartbeat was  
261 made, ~~the probable gestational age determined~~ and the method and basis of the  
262 determination;

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

266 (3) ~~If the probable gestational age was determined to be 20 or more weeks a~~  
 267 determination of the presence of a human heartbeat was made, the basis of the  
 268 determination that the pregnant woman had a medically futile pregnancy or had a  
 269 condition which so complicated her medical condition as to necessitate the termination  
 270 of her pregnancy to avert her death or to avert serious risk of substantial and irreversible  
 271 physical impairment of a major bodily function, or the basis of the determination that it  
 272 was necessary to preserve the life of an unborn child; and

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

#### 281 PART IV

#### 282 SECTION 4-1.

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

287 "(c)(1) In every case of the homicide of a child, minor or sui juris, there shall be some  
 288 party entitled to recover the full value of the life of the child, either as provided in this  
 289 Code section or as provided in Chapter 4 of Title 51. For the homicide of a child carried  
 290 in the womb, the right to recover for the full value of the life of such child shall begin at  
 291 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.