

Senate Bill 218

By: Senators Thompson of the 14th, Tillery of the 19th, Miller of the 49th, Dugan of the 30th, Gooch of the 51st 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 provide for legislative findings; to provide for related matters; to  
17 provide for standing to intervene and defend constitutional challenges to this Act; to provide  
18 a short title; to provide an effective date; to repeal conflicting laws; and for other purposes.

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

20 **PART I**  
21 **SECTION 1-1.**

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

24

**SECTION 1-2.**

25 The General Assembly of Georgia makes the following findings:

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

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

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

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

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

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

- 59 (7) The State of Georgia, supported by modern medical science and acting with reasoned  
60 judgment in its "right to adopt in its own...individual liberties more expansive than those  
61 [minimum requirements] conferred by the Federal Constitution," finds that unborn  
62 children shall be worthy of recognition as natural persons under the laws of this State;
- 63 (8) Such legal recognition by the state requires legislative action to clarify conditions and  
64 practical considerations regarding the general qualifications for state population  
65 determinations, civil rights of recovery, and state abortion law;
- 66 (9) It is the responsibility of the legislative branch of the state to appropriately balance  
67 the competing life and health interests of the unborn child with the life, health, and  
68 privacy interests of the pregnant mother;
- 69 (10) In the *Planned Parenthood v. Casey* (1992) decision, the United States Supreme  
70 Court established that government is free to express "profound respect for the life of the  
71 unborn" at any stage of pregnancy and established a "compelling state interest" to protect  
72 the "potentiality of human life" of the unborn child at the point of "fetal viability" at  
73 which time "the independent essence of the second life can now be the object of state  
74 protection";
- 75 (11) The *American Academy of Obstetricians and Gynecologists, Clinical Management*  
76 *Guidelines* (2015) provides that "ultrasonography" that detects a human heartbeat "is the  
77 preferred modality to determine the presence of a 'viable' intrauterine gestation";
- 78 (12) With the broad availability of ultrasound technology to physicians, nurses, and  
79 sonographers throughout the state, the ability of medical practitioners to detect the  
80 presence of the fetal heartbeat has become the standard in establishing the viability of a  
81 pregnancy;
- 82 (13) The *Uniform Determination of Death Act* (UDDA, 1981) is a model state law that  
83 for nearly four decades has been the nation-wide standard, long adopted by the American  
84 Medical Association, American Bar Association, State of Georgia, and almost all states  
85 in the United States, "to provide a comprehensive and medically sound basis for  
86 determining death [or life] in all situations";
- 87 (14) The *UDDA* affirms that a consistent human heartbeat, independent of life support,  
88 is a core determining factor in establishing the legal presence of human life in a full range  
89 of circumstances, for the young and old alike;
- 90 (15) This more expansive and constitutionally valid state recognition of unborn children  
91 as persons did not exist when the state statutes leading to the current federal abortion  
92 related precedents *Planned Parenthood v. Casey* (1992), *Roe v. Wade* (1973), *et al.* were  
93 established;

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

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

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

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

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

121

## PART II

122

### SECTION 2-1.

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

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

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

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

134 **PART III**  
 135 **SECTION 3-1.**

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

139 "16-12-141.

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

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

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

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

153 (A) Avert the death of the pregnant woman or avert serious risk of substantial and  
 154 irreversible physical impairment of a major bodily function of the pregnant woman. No  
 155 such condition shall be deemed to exist if it is based on a diagnosis or claim of a mental  
 156 or emotional condition of the pregnant woman or that the pregnant woman will  
 157 purposefully engage in conduct which she intends to result in her death or in substantial  
 158 and irreversible physical impairment of a major bodily function; or

159 (B) Preserve the life of an unborn child.

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

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

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

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

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

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

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

188 **SECTION 3-2.**

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

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

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

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

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

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

214 **SECTION 3-3.**

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

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

220 'By six weeks' gestation, the unborn child has a human heartbeat. By 20 weeks'  
221 gestation, the unborn child has the physical structures necessary to experience pain.  
222 There is evidence that by 20 weeks' gestation unborn children seek to evade certain  
223 stimuli in a manner which in an infant or an adult would be interpreted to be a response  
224 to pain. Anesthesia is routinely administered to unborn children who are 20 weeks'  
225 gestational age or older who undergo prenatal surgery.'

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

228 **SECTION 3-4.**

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

231 **SECTION 3-5.**

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

235 "31-9B-2.

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

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

245 **SECTION 3-6.**

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

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

253 (1) If a determination of ~~probable gestational age~~ the presence of a human heartbeat was  
 254 made, ~~the probable gestational age determined~~ and the method and basis of the  
 255 determination;

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

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



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

274 **PART IV**

275 **SECTION 4-1.**

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

280 "(c)(1) In every case of the homicide of a child, minor or sui juris, there shall be some  
 281 party entitled to recover the full value of the life of the child, either as provided in this  
 282 Code section or as provided in Chapter 4 of Title 51. For the homicide of a child carried  
 283 in the womb, the right to recover for the full value of the life of such child shall begin at  
 284 the point at which a human heartbeat is present."

285 **PART V**

286 **SECTION 5-1.**

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

289 **SECTION 5-2.**

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

291 **PART VI**

292 **SECTION 6-1.**

293 This Act shall become effective on July 1, 2019.

294

**SECTION 6-2.**

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