A BILL TO BE ENTITLED

AN ACT

To amend Chapter 2 of Title 1 of the Official Code of Georgia Annotated, relating to persons and their rights, so as to provide that unborn children shall not be included in certain population based determinations; to repeal definitions; to amend Article 5 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to abortion, so as to revise the time when an abortion may be performed and requirements therefor; to repeal definitions; to repeal a right of action and damages and affirmative defenses; to prohibit certain arrests, charges, and prosecutions; to provide for expedited review; to amend Chapter 6 of Title 19 of the Official Code of Georgia Annotated, relating to alimony and child support, so as to repeal certain support obligation provisions; to provide a definition; to amend Chapter 7 of Title 19 of the Official Code of Georgia Annotated, relating to parent and child relationship generally, so as to provide that the right to recover for the full value of a child shall not include an unborn child; to amend Chapter 9A of Title 31 of the Official Code of Georgia Annotated, the "Woman's Right to Know Act," so as to provide for the advisement of women seeking an abortion of certain medical information; to provide for the content of certain notices; to amend Chapter 9B of Title 31 of the Official Code of Georgia Annotated, relating to physician's obligation in performance of abortions, so as to require physicians performing abortions to determine the probable gestational age before performing an abortion; to provide for the reporting of certain information by physicians; to amend Chapter 7 of Title 48 of the

Official Code of Georgia Annotated, relating to income taxes, so as to revise income tax provisions relating to an unborn child; to provide for legislative findings and intent; to provide a short title; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Pregnancy Decriminalization and Maternal Protection Act."

SECTION 2.

The General Assembly makes the following findings:

(1) No individual should be subjected to criminal prosecution, incarceration, or surveillance for the outcome of a pregnancy;

(2) The criminalization of abortion, miscarriage, and stillbirth has led to unjust arrests, prosecutions, and imprisonment disproportionately impacting women, particularly Black women and those in underserved communities;

(3) The State of Georgia recognizes that pregnancy outcomes are medical and personal matters, not criminal acts;

(4) Any interpretation of state law that permits the arrest, detention, or prosecution of a pregnant person for abortion, miscarriage, or stillbirth is contrary to the principles of justice, liberty, and due process; and

(5) It is the intent of this Act to fully decriminalize pregnancy outcomes and ensure that no person is deprived of their freedom based on reproductive health decisions or outcomes.

SECTION 3.

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

"1-2-1.

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

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

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

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

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

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

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

SECTION 4.

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

"16-12-141.

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

(b)(1) No abortion is authorized or shall be performed after the first trimester unless the abortion is performed in a licensed hospital, in a licensed ambulatory surgical center, or

in a health facility licensed as an abortion facility by the Department of Community Health.

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

(A) Such physician determines, in reasonable medical judgment, that a medical emergency exists;

(B) The probable gestational age of the unborn child is 20 weeks or less; or

(C) The pregnancy is the result of rape or incest for which an official police report has been filed alleging the offense of rape or incest.

(3) As used in this subsection, the term 'probable gestational age of the unborn child' shall have the same meaning as set forth in Code Section 31-9B-1.

(c) In any case described in subsection (b) of this Code section, the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the pregnant woman than would another available method. No such greater risk shall be deemed to exist if such risk is based on a diagnosis or claim of a mental or emotional condition of the pregnant woman or that the pregnant woman will purposefully engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function. If the child is capable of sustained life, medical aid then available shall be rendered.

(d) At any stage of pregnancy, no individual shall be arrested, charged, or prosecuted for:

(1) Experiencing a miscarriage;

(2) Experiencing a stillbirth;

(3) Obtaining or attempting to obtain an abortion; or

(4) Any act or omission alleged to have contributed to a pregnancy outcome.

(e) Any individual who is arrested, charged, or prosecuted for an offense related to a pregnancy outcome shall have an expedited review of such arrest and charge, and the state shall establish a process of review within three months of the effective date of this Act to assist individuals pursuant to this subsection.

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

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

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

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

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

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

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

~~(5) 'Spontaneous abortion' means the naturally occurring death of an unborn child, including a miscarriage or stillbirth.~~

~~(b) No abortion is authorized or shall be performed if an unborn child has been determined in accordance with Code Section 31-9B-2 to have a detectable human heartbeat except when:~~

~~(1) A physician determines, in reasonable medical judgment, that a medical emergency exists;~~

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

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

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

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

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

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

~~(f) Health records shall be available to the district attorney of the judicial circuit in which the act of abortion occurs or the woman upon whom an abortion is performed resides.~~

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

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

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

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

~~(3) A licensed pharmacist engages in the practice of pharmacy, as such term is defined in Code Section 26-4-4, to provide care for a pregnant woman which results in the accidental or unintentional injury or death of an unborn child;~~

~~(4) A licensed physician assistant, as such term is defined in Code Section 43-34-102, provides care to a pregnant woman which results in the accidental or unintentional injury to or death of an unborn child; or~~

~~(5) A woman sought an abortion because she reasonably believed that an abortion was the only way to prevent a medical emergency.~~"

SECTION 5.

Chapter 6 of Title 19 of the Official Code of Georgia Annotated, relating to alimony and child support, is amended in Code Section 19-6-15, relating to child support, guidelines for determining amount of award, continuation of duty of support, and duration of support, by repealing in its entirety subsection (a.1) and adding a new paragraph to subsection (a) to read as follows:

"(6.05) 'Child' means child or children."

SECTION 6.

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

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

SECTION 7.

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

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

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

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

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

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

SECTION 8.

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

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

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

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

SECTION 9.

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

"31-9B-2.

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

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

SECTION 10.

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

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

(1) If a determination of probable gestational age was made, the probable gestational age determined and the method and basis of the determination;

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

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

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

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

~~(2) If a detectable human heartbeat, as such term is defined in Code Section 1-2-1, exists, the basis of the determination that the pregnant woman had a medically futile pregnancy, that a medical emergency existed, or that the pregnancy was the result of rape or incest; and~~

~~(3) The method used for the abortion.~~"

SECTION 11.

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

"(a) As used in this Code section, the term 'dependent' shall have the same meaning as in the Internal Revenue Code of 1986~~; provided, however, that any unborn child with a detectable human heartbeat, as such terms are defined in Code Section 1-2-1, shall qualify as a dependent minor~~."

SECTION 12.

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

SECTION 13.

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