

HOUSE BILL 546<sup>1</sup>: CRIMES AND OFFENSES; OFFENSE OF CRIMINAL ABORTION; PROVIDE

*Amending O.C.G.A. Chapter 12 of Title 16*

**First Signature:** Representative Jodi Lott (122<sup>nd</sup>)

**Co-Sponsors:** Representative Dominic LaRiccia (169<sup>th</sup>), Representative Mandi Ballinger (23<sup>rd</sup>), Representative Susan Holmes (129<sup>th</sup>) Representative Rick Jasperse (11<sup>th</sup>), Representative Tom McCall (33<sup>rd</sup>)

**Summary:** The purpose of this Bill is “[t]o amend Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against health and morals, so as to provide for the offense of criminal abortion; to provide for definitions; to provide for exceptions; to provide for penalties; to provide for statutory construction; to provide for affirmative defenses to prosecution; to provide for related matters; to provide for contingent effectiveness; to repeal conflicting laws; and for other purposes.”<sup>2</sup>

**Status:** House Second Readers, March 1, 2019.<sup>3</sup>

TEXT OF HOUSE BILL 546 <sup>4</sup>

**SECTION 1.**

Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against health and morals, is amended by adding a new article to read as follows:

“ARTICLE 5A

16-12-150.

As used in this article, the term:

(1) ‘Abortion’ means the act of using, prescribing, administering, procuring, or selling any instrument, medicine, drug, substance, device, or other means with the purpose to terminate a pregnancy which could be detected or determined through conventional medical testing and with knowledge that termination by any of those means will with reasonable likelihood cause the death of the unborn child; provided, however, that any such act shall not be considered an abortion if the act is performed with the purpose of:

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<sup>1</sup> H.B. 546, 155th Gen. Assemb., 1st Reg. Sess. (Ga. 2019), available at <http://www.legis.ga.gov/Legislation/20192020/183341.pdf> (last visited Oct. 10, 2020).

<sup>2</sup> *Id.*

<sup>3</sup> 2019-2020 Regular Session-H.B. 546, *Crimes and Offenses; Offense of Criminal Abortion; Provide*, GA GEN. ASSEMB., <http://www.legis.ga.gov/legislation/en-US/Display/20192020/HB/546> (last visited Oct. 10, 2020) [hereinafter H.B. 546 Status Sheet].

<sup>4</sup> H.B. 546.

- (A) Saving the life or preserving the health of the unborn child;
- (B) Removing a dead unborn child caused by spontaneous abortion;
- (C) Removing an ectopic pregnancy; or
- (D) Selling, using, prescribing, or administering a contraceptive measure, drug, or chemical if the contraceptive measure, drug, or chemical is sold, used, prescribed, or administered in accordance with manufacturer instructions.

(2) 'Medical emergency' means a condition in which an abortion is necessary to preserve the life of a pregnant individual whose life is endangered by a disorder, illness, or physical injury, including a life-endangering condition caused by or arising from the pregnancy itself.

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

(4) 'Reasonable medical judgment' means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(5) 'Unborn child' means an individual organism of the species Homo sapiens from the fusion of a human spermatozoon with a human ovum until live birth.

16-12-151.

(a) A person commits the offense of criminal abortion when he or she purposely performs or purposely attempts to perform an abortion.

(b) A person shall not have committed the offense of criminal abortion if he or she purposely performs or purposely attempts to perform an abortion if the act is purposely performed or purposely attempted.

- (1) To save the life of a pregnant woman in a medical emergency;
- (2) When a pregnancy is diagnosed as medically futile;
- (3) In the case of a pregnancy resulting from rape; or
- (4) In the case of a pregnancy resulting from incest.

(b) A person who commits the offense of criminal abortion in violation of this Code section shall, upon conviction thereof, be guilty of a felony and punished by a fine not to exceed \$100,000.00, imprisonment not to exceed ten years, or both.

16-12-152.

This article shall not be construed to prohibit the sale, use, prescription, or administration of a contraceptive measure, drug, or chemical if the contraceptive measure, drug, or chemical is administered before the time when a pregnancy could be detected or determined through

conventional medical testing and if the contraceptive measure, drug, or chemical is sold, used, prescribed, or administered in accordance with manufacturer instructions.

16-12-153.

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 the 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 the 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 to or death of the unborn child; or

(4) A licensed physician assistant provides care to a pregnant woman which results in the accidental or unintentional injury to or death of the unborn child.”

## SECTION 2.

This Act shall become effective upon passage of a joint resolution that is signed by the Governor ratifying such Act by both houses of the Georgia General Assembly upon the occurrence of either of the following events:

(1) The United States Supreme Court overrules, in whole or in part, the central holding of *Roe v. Wade*, 410 U.S. 113 (1973), reaffirmed by *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992); or

(2) An amendment to the United States Constitution is adopted that, in whole or in part, restores to the State of Georgia the authority to prohibit abortion.

## SECTION 3.

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

### SPONSOR'S RATIONALE

Representative Jodi Lott (“Representative Lott”) and Representative Dominic LaRiccia (“Representative LaRiccia”) sponsor House Bill 546, which criminalizes an abortion once a fetal heartbeat has been or could be detected through conventional medicinal testing.<sup>5</sup> The Bill is a

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<sup>5</sup> *Id.*

“trigger” law that would automatically ban most abortions if *Roe v. Wade*<sup>6</sup> were overturned.<sup>7</sup> Proponents of House Bill 546 emphasize that “[abortionists would receive] up to ten years in prison and/or up to a \$100,000 fine. HB 546 wouldn’t take effect until a joint resolution of the legislature is signed, after either the U.S. Supreme Court overturns *Roe*’s central holding or a national Constitutional amendment invalidates the 1973 ruling.”<sup>8</sup> This Bill was specifically requested by Governor Kemp.<sup>9</sup> The Governor made this request to further support the fulfillment of his campaign promise to pass the “toughest abortion laws in the country.”<sup>10</sup>

Supporters of the bill believe it protects the innocent and most vulnerable of human lives.<sup>11</sup> Governor Kemp, referring to the State of Georgia, stated that “at a time where lawmakers across the country justify late-term abortions and infanticide, we will champion life.”<sup>12</sup> Representative Lott has strongly opposed abortion in favor of counseling and adoption as alternative options.<sup>13</sup> Despite support for pro-choice legislation in Atlanta and other cities, citizens in the rural areas of Georgia strongly support anti-abortion laws.<sup>14</sup> Many rural Georgians’ views on abortion stem from their Christian faith and belief that life begins at conception, and therefore, that taking the life of an unborn child is morally wrong.<sup>15</sup> Representative LaRiccia says that his district is “overwhelmingly pro-life,” and that his constituents expect him to fight for abortion restrictions.<sup>16</sup> States within the “Bible Belt,” which include Georgia, have historically been rooted in deep Christian values.<sup>17</sup>

#### OPPOSITION’S RATIONALE

Representative Dar’Shun Kendrick (D-93rd) has been an outspoken pro-choice advocate and is against legislation restricting abortion, including House Bill 481 (The Heartbeat Bill), which

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<sup>6</sup> *Roe v. Wade*, 410 U.S. 113 (1973) (The landmark Supreme Court decision that established a woman’s legal right to an abortion was decided on January 22, 1973. The Court ruled, in a 7-2 decision, that a woman’s right to choose an abortion was protected by the privacy rights guaranteed by the Fourteenth Amendment to the U.S. Constitution. The legal precedent for the decision was rooted in the 1965 case of *Griswold v. Connecticut*, which established the right to privacy involving medical procedures.); see also History.com Editors, *Roe v. Wade is decided*, HISTORY.COM (Nov. 13, 2009), available at <https://www.history.com/this-day-in-history/roe-v-wade>.

<sup>7</sup> Calvin Freiburger, *Georgia Pro-lifers Introduce Two Separate Bills to Ban Most Abortions*, LIFESITE NEWS (Mar. 1, 2019), available at <https://www.lifesitenews.com/news/georgia-pro-lifers-introduce-two-separate-bills-to-ban-most-abortions>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Stephen Fowler, *Kemp Announces Bill Banning Abortion If Roe V. Wade Overturned*, GPB NEWS (Mar. 1, 2019), available at <https://www.gpb.org/news/2019/03/01/kemp-announces-bill-banning-abortion-if-roe-v-wade-overturned>.

<sup>11</sup> Cody Hall, *Kemp’s Floor Leaders File Pro-Life Legislation*, OFFICER OF THE GOVERNOR (Feb. 28, 2019), available at <https://gov.georgia.gov/press-releases/2019-02-28/kemps-floor-leaders-file-pro-life-legislation>.

<sup>12</sup> *Id.*

<sup>13</sup> Representative Jodi Lott, *2015 Georgia Candidate Questionnaire*, GEORGIA LIFE ALLIANCE (Nov. 5, 2015), available at <https://georgialifealliance.com/wp-content/uploads/2015/06/Jodi-Lott.pdf>.

<sup>14</sup> Maya T. Prabhu, *In the Heart of Georgia’s Bible Belt, ‘Heartbeat’ Law Draws Huge Support*, THE ATLANTA JOURNAL CONSTITUTION (June 3, 2019), available at <https://www.ajc.com/news/state--regional-govt--politics/the-heart-georgia-bible-belt-heartbeat-law-draws-huge-support/QCjywFndbGG2xnt1Ey6ajM/>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

is a companion bill to House Bill 546.<sup>18</sup> Representative Kendrick opposes House Bill 546 and other anti-abortion legislation because she believes that governments tend to regulate the choices and bodies of women, despite not having similar regulations toward men.<sup>19</sup> Representative Kendrick and other legislators are also concerned that women will go to extreme measures to obtain an abortion if a six-week ban is made law, including using wire hangers to perform at-home abortions.<sup>20</sup> Representative Park Cannon (D-58th) shared with the committee that she had an abortion following a sexual assault in 2010, and that she does not regret her decision.<sup>21</sup> Representative Cannon contends that her colleagues are “playing politics with women’s lives in Georgia.”<sup>22</sup>

It is not only Democrats that oppose anti-abortion legislation in Georgia, at least in part. The House Committee on Health and Human Services Chairwomen, Representative Sharon Cooper (R-43rd), called for numerous amendments to another anti-abortion bill, House Bill 481<sup>23</sup>, many of which were included in House Bill 546.<sup>24</sup> Representative Cooper argues against the bill because she disagrees with the notion that we are as alive inside the womb as we are on the outside.<sup>25</sup> She stated that a child in the womb “is living not because of their own body function, but because of their mother’s body function.”<sup>26</sup> Representative Cooper wants exceptions for “medically futile” pregnancies, specifically: fetal anomalies that are incompatible with life.<sup>27</sup> It is yet to be determined if Representative Cooper will ultimately support House Bill 546, which includes such exceptions, as the bill has been tabled.

In opposition to the anti-abortion legislation introduced in the 155<sup>th</sup> legislative session, Representative Kendrick has introduced House Bill 746, “Women’s Right to Immediate Access Act”<sup>28</sup>, and is also drafting what she has called the “Testicular Bill of Rights”,<sup>29</sup> which aims to

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<sup>18</sup> Representative Dar’Shun Kendrick, *Kendrick: ‘One Year After Georgia’s Abortion Ban, the Supreme Court Tackles Crisis of Access’*, THE ATLANTA VOICE (June 23, 2020), available at <https://www.theatlantavoices.com/articles/kendrick-one-year-after-georgias-abortion-ban-the-supreme-court-tackles-crisis-of-access/>.

<sup>19</sup> *Id.*

<sup>20</sup> Ari Bee, *House Committee Hearing on Abortion Ban, HB 481*, MEDIUM (Mar. 12, 2019), available at <https://medium.com/@aribee/house-committee-hearing-on-abortion-ban-hb-481-dddf532c6808>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> H.B. 481, 155th Gen. Assemb., 1st Reg. Sess. (Ga. 2019), available at <http://www.legis.ga.gov/Legislation/20192020/187013.pdf> (last visited Oct. 10, 2020) (House Bill 481 would outlaw abortions once a doctor detects a heartbeat in the womb — which is usually at about six weeks into a pregnancy — and would be among the strictest abortion laws in the country. Current Georgia law allows abortions to be performed until 20 weeks. The legislation narrowly passed the Georgia House.); see also Maya T. Prabhu, *Hearing on Georgia ‘heartbeat’ abortion bill draws emotional crowd*, THE ATLANTA JOURNAL CONSTITUTION (Mar. 18, 2019), available at <https://www.ajc.com/news/state--regional-govt--politics/hearing-georgia-heartbeat-abortion-bill-draws-emotional-crowd/bzSaSrOublQ7V8wIZIk93O/>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> H.B. 746, 155th Gen. Assemb., 2nd Reg. Sess. (Ga. 2020), available at <http://www.legis.ga.gov/Legislation/20192020/187894.pdf> (last visited Oct. 10, 2020).

<sup>29</sup> Adrienne Haney, *Georgia representative intends to introduce ‘testicular bill of rights’*, 11 ALIVE (Mar. 12, 2019), available at <https://www.11alive.com/article/news/politics/georgia-representative-intends-to-introduce-testicular-bill-of-rights/85-538d44c7-da58-44bc-8c24-488931c33f48>.

regulate the reproductive rights and responsibilities of men. She acknowledges the high probability of the bills failure but argues that it is meant to “call attention to the absurd double standard that women are held to.”<sup>30</sup>

Concerns relating to anti-abortion legislation extends beyond the political sphere in Georgia. The state offers a tax credit that has lured many film and TV productions.<sup>31</sup> The industry is responsible for more than 92,000 jobs in Georgia, according to the Motion Picture Association of America (MPAA), and some 455 productions were shot in Georgia in 2018, according to the state.<sup>32</sup> Some actors and producers have already said they will no longer work in Georgia because of the abortion law.<sup>33</sup> Opposition to anti-abortion law results from the potential impacts on individuals, politics, and industry in Georgia.

#### IMPLICATIONS IN GEORGIA

If passed, House Bill 546 would prohibit abortion if *Roe v. Wade* is overturned except in cases of rape, incest, physical medical emergency, or when a pre-born child has been determined to have a “profound and irredeemable” condition that is supposedly “incompatible” with sustained life after birth.<sup>34</sup> The bill also does not prohibit contraceptives administered “before the time when a pregnancy could be detected or determined through conventional medical testing.”<sup>35</sup>

Performing an abortion after the statutorily prescribed timeframe would be punishable by up to ten years in prison and/or fines up to \$100,000.<sup>36</sup> House Bill 546 would not take effect until a joint resolution of the legislature is signed.<sup>37</sup> A joint resolution can be signed if the U.S. Supreme Court overturns *Roe*'s central holding or if a national Constitutional amendment invalidates the 1973 ruling.<sup>38</sup> Though currently stalled, House Bill 546 may be back on the table because recently confirmed U.S. Supreme Court Justice Amy Coney Barrett has formed a 6-3 conservative majority on the U.S. Supreme Court.<sup>39</sup> Justice Barrett has advocated against abortion, abortion rights, and publicly supported the reversal of *Roe v. Wade* in the years before she joined the federal bench.<sup>40</sup> Democrats contend that the 1973 landmark *Roe v. Wade* ruling – granting a woman's right to terminate a pregnancy – could be undermined or overturned based on Barrett's confirmation.<sup>41</sup>

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<sup>30</sup> *Id.*

<sup>31</sup> Lisa Richwine, *Disney CEO says it will be 'difficult' to film in Georgia if abortion law takes effect*, REUTERS (May 29, 2019), available at <https://www.reuters.com/article/us-usa-abortion-walt-disney-exclusive/disney-ceo-says-it-will-be-difficult-to-film-in-georgia-if-abortion-law-takes-effect-idUSKCN1T003X>.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Freiburger, *supra* note 7.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Hollie McKay, *Amy Coney Barrett to Face Tough Questioning From Dems Over Abortion*, FOX NEWS (Oct. 10, 2020), available at <https://www.foxnews.com/politics/amy-coney-barrett-dems-abortion-supreme-court>.

<sup>40</sup> Stephanie Kirchgaessner, *Barrett Was Member of Anti-Abortion Group That Promoted Clinic Criticized for Misleading Women*, THE GUARDIAN (Oct. 11, 2020), available at <https://www.theguardian.com/us-news/2020/oct/11/amy-coney-barrett-member-right-to-life-organization>.

<sup>41</sup> *Id.*

Legal scholars believe that the confirmation of Barrett could set in motion many of the “trigger laws” enacted and introduced throughout the United States, including in Georgia.<sup>42</sup>

In 2017, 36,330 abortions were provided in Georgia from twenty-six facilities.<sup>43</sup> House Bill 546 would either effectively shut down these facilities, or the practitioners would risk severe penalties for each abortion procedure they would provide. Women traveling from other states to obtain abortions in Georgia would be stripped of that option.<sup>44</sup> Prosecutions for abortion could also deter women from seeking medical care, being honest and open about their health with their medical care providers, and resorting to extreme measures such as self-administering abortions.<sup>45</sup>

#### LEGISLATIVE GENEALOGY

This Bill was introduced in the House hopper on February 28, 2019.<sup>46</sup> The Bill’s first reading in the House was on February 28, 2019.<sup>47</sup> The House Second Reading was on March 1, 2019.<sup>48</sup> The bill was tabled. House Bill 546 did not receive a hearing during this legislative session but could be revived. The Supreme Court’s current 6-3 conservative majority could overturn the *Roe v. Wade* decision, thrusting House Bill 546 to the forefront in Georgia.<sup>49</sup>

**Prepared by: J.R. Warren**

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<sup>42</sup> Courtney Vinopal, *How Barrett’s Confirmation Could Influence the Fight Over Abortion Access*, PBS NEWS HOUR (Oct. 21, 2020), available at <https://www.pbs.org/newshour/nation/how-barretts-confirmation-could-influence-the-fight-over-abortion-access>.

<sup>43</sup> *State Facts About Abortion: Georgia*, GUTTMACHER INSTITUTE (2019), available at <https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-georgia>.

<sup>44</sup> Rachel M. Cohen, *A GOP Bill in Georgia Would Jail Doctors Who Perform Abortions in a Post-Roe America*, THE INTERCEPT (Mar. 11, 2019), available at <https://theintercept.com/2019/03/11/roe-v-wade-abortion-restrictions-georgia/>.

<sup>45</sup> *Id.*

<sup>46</sup> H.B. 546 Status Sheet, *supra* note 3.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Vinopal, *supra* note 42.