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Senate Bill 529

By: Senators Pearson of the 51st, Thomas of the 54th, Unterman of the 45th, Rogers of the 21st, Williams of the 19th and others

AS PASSED SENATE

A BILL TO BE ENTITLED
AN ACT

To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, so as to specify certain acts that constitute criminal abortion; to provide for criminal punishment and civil remedies for criminal abortion; to provide for witness testimony and evidence; to provide for notification of certain investigations; to provide for definitions; to provide for prohibitions on the circumstances under which an abortion may be performed; to revise the definition of the term "racketeering activity" to include certain conduct relating to criminal abortion; to provide for related matters; to provide for an effective date and applicability; 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 revising subsection (b) of Code Section 16-12-140, relating to criminal abortion, and adding new subsections to read as follows:

"(b) A person commits the offense of criminal abortion when that person performs an abortion:

(1) With actual knowledge that the pregnant woman is seeking the abortion as a result of unlawful coercion;

(2) With the intent to prevent an unborn child from being born based upon the race, color, or gender of the unborn child or the race or color of either parent of that unborn child;

(3) With the actual knowledge that the pregnant woman is seeking the abortion with the intent to prevent an unborn child from being born based upon the race, color, or gender of the unborn child or the race or color of either parent of that unborn child; or

(4) In violation of any of the following: Code Section 15-11-112, subsection (b) or (c) of Code Section 16-12-141, Code Section 31-9A-3, or Code Section 31-9A-5.

(c) A person convicted of the offense of criminal abortion shall be punished by imprisonment for not less than one nor more than ten years; provided, however, that a person convicted of a violation of paragraph (4) of subsection (b) of this Code section shall be guilty of a misdemeanor.

(d) Notwithstanding the actual knowledge of the physician performing the abortion, any physician performing an abortion who personally confirms by direct inquiry that such abortion is not being sought with the intent to prevent an unborn child from being born based upon unlawful coercion or the race, color, or gender of the unborn child or the race or color of either parent of that unborn child and obtains written certification of such facts from the woman seeking such abortion shall not be criminally responsible for any violation of paragraphs (1) and (3) of subsection (b) of this Code section.

(e) 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.

(f) The right to recover for the death of an unborn child resulting from a violation of this Code section shall be as provided for in Code Sections 51-4-4 and 19-7-1, with all references to 'child' therein deemed to include 'unborn child.'

(g) Any woman upon whom an abortion is performed shall not be held criminally responsible or civilly liable as a result of such abortion for any violation of this Code section or for solicitation or for conspiracy to violate this Code section.

(h) The testimony of a witness, or the ability to introduce evidence, shall not be limited or impaired by virtue of any document the witness signed in connection with this Code section.

(i) Immediate notification of any criminal investigation initiated pursuant to this Code section shall be made to the Georgia Composite Medical Board.

(j) This Code section shall be subject to all applicable laws governing the confidentiality of a patient's personal medical information.

(k) As used in this Code Section, the term:

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

(2) 'Unlawful coercion' means to compel another person by committing, attempting to commit, or threatening to commit any violation of local, state, or federal law or any tort."

SECTION 2.

Said title is further amended by revising subsection (a) of Code Section 16-12-141, relating to when abortion is legal and the filing of certificate of abortion by performing physician, as follows:

"(a) Nothing in this article shall be construed to prohibit an abortion performed by a physician duly licensed to practice medicine and surgery pursuant to Chapter 34 of Title 43, based upon his or her best clinical judgment that an abortion is necessary, except that subsection (b) of Code Section 16-12-140 is a prohibition on the circumstances under which an abortion may be performed which shall apply to both duly licensed physicians and laypersons, and Code Section 16-12-144 is a prohibition of a particular abortion method which shall apply to both duly licensed physicians and laypersons. The exceptions set forth in this subsection shall not apply to an abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself."

SECTION 3.

Said title is further amended by revising subparagraph (A) of paragraph (9) of Code Section 16-14-3, relating to definitions related to racketeer influenced and corrupt organizations, by striking the "or" at the end of division (xxxix), by striking the period and inserting a semicolon at the end of division (xxxx), and by adding a new divisions to read as follows:

"(xxxxi) Code Section 16-12-140, relating to criminal abortion."

SECTION 4.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to conduct on and after that date.

SECTION 5.

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