

A BILL TO BE ENTITLED

1 An Act To amend Code Chapter 26-12, relating  
2 to abortions, so as to define criminal abortion; to define  
3 the word "physician"; to provide that the prohibition  
4 against criminal abortion shall not apply to abortions per-  
5 formed by physicians under certain circumstances; to provide  
6 for such circumstances; to provide for all procedures,  
7 requirements and other matters relative thereto; to provide  
8 a penalty for criminal abortion; to specifically repeal a  
9 certain Act; to repeal conflicting laws; and for other  
10 purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 Section 1. Code Chapter 26-12, relating to  
13 abortions, is hereby amended by striking said Chapter in its  
14 entirety and substituting in lieu thereof a new Code Chapter  
15 26-12 to read as follows:

16 "CHAPTER 26-12. ABORTIONS

17 "26-1201. Criminal Abortion. Except as other-  
18 wise provided in Section 26-1202, a person commits  
19 criminal abortion when he administers any medicine,  
20 drug or other substance whatever to any woman or  
21 when he uses any instrument or other means whatever  
22 upon any woman with intent to produce a miscarriage  
23 or abortion.

24 "26-1202. Exceptions. (a) For the purposes  
25 of this Section, the word 'physician' means a  
26 physician duly licensed to practice medicine and  
27 surgery pursuant to Chapter 84-9 or 84-12 of the  
28 Code of Georgia of 1933, as amended.

29 (b) Section 26-1201 shall not apply to an  
30 abortion performed by a physician upon a woman when  
31

1 the abortion is performed not later than during  
2 the twelfth week of pregnancy.

3 (c) Section 26-1201 shall not apply to an  
4 abortion performed by a physician upon a woman  
5 who is past the twelfth week of pregnancy when  
6 such physician, based upon his best clinical  
7 judgment, determines that the abortion is neces-  
8 sary because:

9 (1) A continuation of the pregnancy  
10 would endanger the life of the pregnant  
11 woman or would seriously and permanently  
12 injure her physical or mental health; or

13 (2) The fetus would very likely be  
14 born with a grave, permanent, and irremedi-  
15 able physical or mental defect.

16 (d) No abortion shall be performed under  
17 the provisions of subsection (c) of this Section  
18 unless each of the following conditions is met:

19 (1) The pregnant woman requesting the  
20 abortion certifies in writing under oath and  
21 subject to the penalties of false swearing  
22 to the physician who proposes to perform the  
23 abortion that she is a bona fide legal  
24 resident of the State of Georgia.

25 (2) The physician certifies that he  
26 believes the woman is a bona fide resident of  
27 this State and that he has no information  
28 which should lead him to believe otherwise.

29 (3) Such physician's judgment is reduced  
30 to writing and concurred in by at least two  
31  
32  
33

1 other physicians who certify in writing that,  
2 based upon their separate personal medical  
3 examinations of the pregnant woman, the  
4 abortion is, in their judgment, necessary  
5 because of one or more of the reasons set  
6 forth in subsection (c) of this Section.

7 (4) Such abortion is performed in a hos-  
8 pital licensed by the State Board of Health  
9 and accredited by the Joint Commission on  
10 Accreditation of Hospitals.

11 (5) The performance of the abortion has  
12 been approved in advance by a committee of the  
13 medical staff of the hospital in which the  
14 operation is to be performed. This committee  
15 must be one established and maintained in  
16 accordance with the standards promulgated by  
17 the Joint Commission on the Accreditation of  
18 Hospitals, and its approval must be by a  
19 majority vote of a membership of not less than  
20 three members of the hospital's staff; the  
21 physician proposing to perform the operation  
22 may not be counted as a member of the committee  
23 for this purpose.

24 (6) Such written opinions, statements,  
25 certificates and concurrences are maintained in  
26 the permanent files of such hospital and are  
27 available at all reasonable times to the district  
28 attorney of the judicial circuit in which the  
29 hospital is located.

30 (7) A copy of such written opinions,  
31  
32  
33

1 statements, certificates and concurrences  
2 is filed with the Director of the State  
3 Department of Public Health within ten days  
4 after such operation is performed.

5 (8) All written opinions, statements,  
6 certificates and concurrences filed and  
7 maintained pursuant to paragraphs (6) and  
8 (7) of this subsection shall be confidential  
9 records and shall not be made available for  
10 public inspection at any time.

11 (e) Any district attorney of the judicial  
12 circuit in which an abortion is to be performed  
13 because of one or more of the reasons set forth in  
14 subsection (c) of this Section, or any person who  
15 would be a relative of the child within the second  
16 degree of consanguinity, may petition the superior  
17 court of the county in which the abortion is to be  
18 performed for a declaratory judgment whether the  
19 performance of such abortion would violate any con-  
20 stitutional or other legal rights of the fetus.  
21 Such district attorney may also petition such court  
22 for the purpose of taking issue with compliance with  
23 the requirements of subsection (d) of this Section.  
24 The physician who proposes to perform the abortion  
25 and the pregnant woman shall be respondents. The  
26 petition shall be heard expeditiously and if the  
27 court adjudges that such abortion would violate the  
28 constitutional or other legal rights of the fetus,  
29 the court shall so declare and shall restrain the  
30 physician from performing the abortion.

1 (f) Nothing in subsection (d) of this  
2 Section shall require a hospital to admit any  
3 patient under the provisions thereof for the pur-  
4 pose of performing an abortion, nor shall any  
5 hospital be required to appoint a committee such  
6 as contemplated under paragraph (5) of subsection  
7 (d) of this Section. A physician, or any other  
8 person who is a member of or associated with the  
9 staff of a hospital, or any employee of a hospital  
10 in which such abortion has been authorized, who  
11 shall state in writing an objection to such abor-  
12 tion on moral or religious grounds shall not be  
13 required to participate in the medical procedures  
14 which will result in the abortion, and the refusal  
15 of any such person to participate therein shall  
16 not form the basis of any claim for damages on  
17 account of such refusal or for any disciplinary  
18 or recriminatory action against such person.

19 (g) When an abortion is performed in compli-  
20 ance with this Section, the death of the fetus  
21 shall not give rise to any claim for wrongful  
22 death.

23 (h) When an abortion is performed in compli-  
24 ance with the provisions of this Section, no  
25 physician or other person legally participating in  
26 the performance of such abortion shall be liable  
27 civilly or to criminal prosecution for the perfor-  
28 mance of such abortion, except in the case of  
29 negligence in the performance of said procedure."  
30  
31  
32  
33

1           Section 2. An Act entitled "An Act to amend  
2 Code Chapter 26-11 relating to the crimes of abortion,  
3 foeticide and infanticide, so as to provide for the addi-  
4 tional exceptions where such acts are undertaken or  
5 accomplished by physicians; to provide the circumstances  
6 when such acts shall be lawful; to repeal conflicting  
7 laws; and for other purposes.", which became law without  
8 the approval of the Governor (Ga. Laws 1968, p. 1432),  
9 is hereby repealed in its entirety.

10           Section 3. All laws and parts of laws in con-  
11 flict with this Act are hereby repealed.