

Senate Bill 23

By: Senator Cheeks of the 23rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 9 of Title 31 of the Official Code of Georgia Annotated, relating to
2 informed consent to medical treatment, so as to require and provide standards for informed
3 consent to abortion procedures; to enact the "Woman's Right To Know Act"; to provide for
4 matters required to be disclosed and for the manner of disclosure; to require a waiting period
5 following disclosure; to prohibit acceptance of payment during the waiting period; to direct
6 the Department of Human Resources to publish and distribute certain informational
7 materials; to require transmittal of such materials; to require certification of informed
8 consent; to provide for standards of professional conduct; to provide for intent and
9 construction with other statutes; to provide for related matters; to make conforming
10 amendments to existing law; to provide for an effective date and for applicability; to repeal
11 conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 Chapter 9 of Title 31 of the Official Code of Georgia Annotated, relating to informed consent
15 to medical treatment, is amended by designating the existing text of the chapter as Article 1
16 and by adding thereafter a new Article 2 to read as follows:

17 style="text-align:center">"ARTICLE 2

18 31-9-20.

19 This article shall be known and may be cited as the 'Woman's Right To Know Act.'

20 31-9-21.

21 No abortion shall be performed or induced without the voluntary and informed consent of
22 the woman upon whom the abortion is to be performed or induced. Except in the case of
23 a medical emergency, consent to an abortion is voluntary and informed only if:

- 1 (1) At least 24 hours before the abortion, the physician who is to perform the abortion
2 or the referring physician has informed the woman in writing of:
- 3 (A) The name of the physician who will perform the abortion;
 - 4 (B) A description of the proposed abortion method;
 - 5 (C) A description of risks related to the proposed abortion method, including risks to
6 the woman's reproductive health, and alternatives to the abortion that a reasonable
7 patient would consider material to the decision of whether or not to undergo the
8 abortion;
 - 9 (D) The probable gestational age of the fetus at the time the abortion is to be
10 performed;
 - 11 (E) The probable anatomical and physiological characteristics of the fetus at the time
12 the abortion is to be performed;
 - 13 (F) The medical risks associated with carrying a fetus to term; and
 - 14 (G) Any need for anti-Rh immune globulin therapy, if she is Rh negative, the likely
15 consequences of refusing such therapy, and the cost of the therapy;
- 16 (2) At least 24 hours before the abortion, the physician who is to perform the abortion,
17 the referring physician, or a qualified person has informed the woman in writing that:
- 18 (A) Medical assistance benefits may be available for prenatal care, childbirth, and
19 neonatal care and that more detailed information on the availability of such assistance
20 is contained in the printed materials given to her and described in this article;
 - 21 (B) The printed materials required by this article describe the fetus and list agencies
22 which offer alternatives to abortion with a special section listing adoption services;
 - 23 (C) The father of the fetus is liable to assist in the support of her child, even in
24 instances where he has offered to pay for the abortion, except that in the case of rape
25 this information may be omitted; and
 - 26 (D) The woman is free to withhold or withdraw her consent to the abortion at any time
27 prior to invasion of the uterus without affecting her right to future care or treatment and
28 without the loss of any state or federally funded benefits to which she might otherwise
29 be entitled;
- 30 (3) Prior to the abortion procedure, prior to physical preparation for the abortion, and
31 prior to the administration of medication for the abortion, the woman shall meet privately
32 with the physician who is to perform the abortion and such person's staff to ensure that
33 she has an adequate opportunity to ask questions of and obtain information from the
34 physician concerning the abortion;
- 35 (4) At least 24 hours before the abortion, the woman is given a copy of the printed
36 materials required by this article. If the woman asks questions concerning any of the
37 information or materials, answers shall be provided to her in her own language;

1 (5) The woman certifies in writing on a form provided by the department, prior to the
2 abortion, that the information required to be provided under paragraphs (1), (2), and (4)
3 of this Code section has been provided and that she has met with the physician who is to
4 perform the abortion on an individual basis as provided under paragraph (3) of this Code
5 section. All physicians who perform abortions shall report the total number of
6 certifications received monthly to the department. The department shall make the
7 number of certifications received available on an annual basis;

8 (6) Prior to the performance of the abortion, the physician who is to perform the abortion
9 or the physician's agent receives a copy of the written certification prescribed by
10 paragraph (5) of this Code section; and

11 (7) The woman is not required to pay any amount for the abortion procedure until the 24
12 hour waiting period has expired.

13 31-9-22.

14 (a) The department shall cause to be published and distributed widely, no later than
15 October 1, 2003, and shall update on an annual basis, the following easily comprehensible
16 printed materials:

17 (1) Geographically indexed materials designed to inform the woman of public and
18 private agencies and services available to assist a woman through pregnancy, upon
19 childbirth, and while her child is dependent, including but not limited to adoption
20 agencies. The materials shall include a comprehensive list of the agencies, a description
21 of the services they offer, and the telephone numbers and addresses of the agencies and
22 inform the woman about available medical assistance benefits for prenatal care,
23 childbirth, and neonatal care and about the support obligations of the father of a child
24 who is born alive. The department shall ensure that the materials described in this Code
25 section are comprehensive and do not directly or indirectly promote, exclude, or
26 discourage the use of any agency or service described in this paragraph. The materials
27 shall also contain a toll-free, 24 hour a day telephone number which may be called to
28 obtain, orally, such a list and description of agencies in the locality of the caller and of
29 the services they offer. The materials shall state that it is unlawful for any individual to
30 coerce a woman to undergo an abortion and that any physician who performs an abortion
31 upon a woman without her informed consent may be liable to her for damages. The
32 materials shall state that Georgia law permits adoptive parents to pay medical expenses
33 directly related to the mother's pregnancy and hospitalization for the birth of the child
34 and medical care for the child. The materials shall include the following statement:
35 'Many public and private agencies exist to provide counseling and information on
36 available services. You are strongly urged to seek their assistance to obtain guidance

1 during your pregnancy. In addition, you are encouraged to seek information on abortion
2 services, alternatives to abortion, including adoption, and resources available to
3 postpartum mothers. The law requires that your physician or the physician's agent
4 provide the enclosed information.';

5 (2) Materials that inform the pregnant woman of the probable anatomical and
6 physiological characteristics of the fetus at two-week gestational increments from
7 fertilization to full term, including pictures or drawings representing the development of
8 a fetus at two-week gestational increments, and any relevant information on the
9 possibility of the fetus' survival. Any such pictures or drawings shall contain the
10 dimensions of the fetus and shall be realistic. The materials shall be objective,
11 nonjudgmental, and designed to convey only accurate scientific information about the
12 fetus at the various gestational ages. The material shall also contain objective
13 information describing the methods of abortion procedures commonly employed, the
14 medical risks commonly associated with each such procedure, and the medical risks
15 associated with carrying a fetus to term; and

16 (3) A certification form to be used by physicians or their agents under paragraph (5) of
17 Code Section 31-9-21 which will list all the items of information which are to be given
18 to women by physicians or their agents under this article.

19 (b) The materials required under this Code section shall be printed in a typeface large
20 enough to be clearly legible. The materials shall be made available in both English and
21 Spanish language versions.

22 (c) The materials required under this Code section shall be available at no cost from the
23 department upon request and in appropriate number to any person, facility, or hospital.

24 31-9-23.

25 Where a medical emergency compels the performance of an abortion, the physician shall
26 inform the woman, before the abortion if possible, of the medical indications supporting
27 the physician's judgment that an abortion is necessary to preserve the life or health of the
28 woman.

29 31-9-24.

30 Any physician who intentionally, knowingly, or recklessly fails to provide informed
31 consent pursuant to this article is guilty of unprofessional conduct for purposes of Code
32 Section 43-34-37, relating to disciplinary licensing sanctions against physicians.

1 31-9-25.

2 Any physician who complies with the provisions of this article shall not be held civilly
3 liable to a patient for failure to obtain informed consent to the abortion.

4 31-9-26.

5 (a) Nothing in this article shall be construed as creating or recognizing a right to abortion.

6 (b) It is not the intention of this article to make lawful an abortion which would otherwise
7 be unlawful."

8 **SECTION 2.**

9 Said chapter is further amended by striking Code Section 31-9-1, which provides a short title,
10 and inserting in its place a new Code section to read as follows:

11 "31-9-1.

12 This ~~chapter~~ article shall be known and may be cited as the 'Georgia Medical Consent
13 Law."

14 **SECTION 3.**

15 Said chapter is further amended by striking Code Section 31-9-4, relating to applicability of
16 the informed consent law to certain patients, and inserting in its place a new Code section to
17 read as follows:

18 "31-9-4.

19 This ~~chapter~~ article shall be applicable to the care and treatment of patients in facilities for
20 the mentally ill as defined in paragraph (7) of Code Section 37-3-1."

21 **SECTION 4.**

22 Said chapter is further amended by striking Code Section 31-9-5, relating to applicability of
23 the informed consent law to abortion and sterilization procedures, and inserting in its place
24 a new Code section to read as follows:

25 "31-9-5.

26 This ~~chapter~~ article shall not apply in any manner whatsoever to abortion and sterilization
27 procedures, which procedures shall ~~continue to~~ be governed by ~~existing~~ law independently
28 of the terms and provisions of this ~~chapter~~ article."

29 **SECTION 5.**

30 Said chapter is further amended by striking subsections (a) and (d) of Code Section 31-9-6,
31 relating to construction of the informed consent law, and inserting in their respective places
32 new subsections to read as follows:

1 "(a) This ~~chapter~~ article shall be liberally construed, and all relationships set forth in this
 2 chapter shall include the adoptive, foster, and step relations as well as blood relations and
 3 the relationship by common-law marriage as well as ceremonial marriage."

4 "(d) A consent to surgical or medical treatment which discloses in general terms the
 5 treatment or course of treatment in connection with which it is given and which is duly
 6 evidenced in writing and signed by the patient or other person or persons authorized to
 7 consent pursuant to the terms of this ~~chapter~~ article shall be conclusively presumed to be
 8 a valid consent in the absence of fraudulent misrepresentations of material facts in
 9 obtaining the same."

11 SECTION 6.

12 Said chapter is further amended in Code Section 31-9-6.1, relating to disclosures for certain
 13 procedures, by striking paragraph (2) of subsection (b), paragraph (3) of subsection (e), and
 14 subsection (g) and inserting in their respective places new provisions to read as follows:

15 "(2) If a consent to a diagnostic or surgical procedure is required to be obtained under
 16 this Code section and such consent discloses in general terms the information required
 17 in subsection (a) of this Code section, is duly evidenced in writing, and is signed by the
 18 patient or other person or persons authorized to consent pursuant to the terms of this
 19 ~~chapter~~ article, then such consent shall be rebuttably presumed to be a valid consent."

20 "(3) ~~If a~~ A patient or other person or persons authorized to give consent pursuant to this
 21 ~~chapter~~ article make a request in writing that the information provided for in this Code
 22 section not be disclosed;"

23 "(g) The Composite State Board of Medical Examiners shall be required to adopt and have
 24 the authority to promulgate rules and regulations governing and establishing the standards
 25 necessary to implement this ~~chapter~~ article specifically including but not limited to the
 26 disciplining of a physician who fails to comply with this Code section."

27 SECTION 7.

28 Said chapter is further amended by striking Code Section 31-9-7, relating to right to refuse
 29 consent at age 18, and inserting in its place a new Code section to read as follows:

30 "31-9-7.

31 Nothing contained in this ~~chapter~~ article shall be construed to abridge any right of a person
 32 18 years of age or over to refuse to consent to medical and surgical treatment as to his or
 33 her own person."

