

House Bill 23

By: Representatives Walker of the 71st, Post 1 and Mills of the 67th, Post 2

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to
2 offenses against health and morals, so as to provide for a short title; to provide for
3 definitions; to require that a female give her informed consent prior to an abortion; to require
4 that certain information be provided to or made available to a female prior to an abortion; to
5 require a written acknowledgment of receipt of such information; to provide for the
6 preparation and availability of certain information; to provide for procedures in a medical
7 emergency; to provide for reporting; to provide criminal sanctions; to provide for civil
8 actions, damages, and attorney's fees; to provide for anonymity of certain persons in civil
9 actions; to provide for severability; to provide for an effective date; to repeal conflicting
10 laws; and for other purposes.

11

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13

SECTION 1.

14 Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against
15 health and morals, is amended by adding immediately following Article 5 thereof a new
16 article to read as follows:

17

"ARTICLE 5.1

18 16-12-150.

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

20 16-12-151.

21 As used in this article, the term:

22 (1) 'Abortion' means the use or prescription of any instrument, medicine, drug, or any
23 other substance or device intentionally to terminate the pregnancy of a female known to

1 be pregnant with an intention other than to increase the probability of a live birth, to
2 preserve the life or health of the child after live birth, or to remove a dead fetus.

3 (2) 'Attempt to perform an abortion' means an act, or an omission of a statutorily required
4 act, that, under the circumstances as the actor believes them to be, constitutes a
5 substantial step in a course of conduct planned to culminate in the performance of an
6 abortion in Georgia in violation of this article.

7 (3) 'Medical emergency' means any condition which, on the basis of the physician's good
8 faith clinical judgment, so complicates the medical condition of a pregnant female as to
9 necessitate the immediate abortion of her pregnancy to avert her death or for which a
10 delay will create serious risk of substantial and irreversible impairment of a major bodily
11 function.

12 (4) 'Physician' means a person licensed to practice medicine under Article 2 of Chapter
13 34 of Title 43.

14 (5) 'Probable gestational age of the unborn child' means what, in the judgment of the
15 physician, will with reasonable probability be the gestational age of the unborn child at
16 the time the abortion is planned to be performed.

17 16-12-152.

18 No abortion shall be performed in this state except with the voluntary and informed consent
19 of the female upon whom the abortion is to be performed. Except in the case of a medical
20 emergency, consent to an abortion is voluntary and informed if and only if:

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

23 (A) The name of the physician who will perform the abortion;

24 (B) The particular medical risks associated with the particular abortion procedure to
25 be employed, including, when medically accurate, the risks of infection, hemorrhage,
26 breast cancer, danger to subsequent pregnancies, and infertility;

27 (C) The probable gestational age of the unborn child at the time the abortion is to be
28 performed; and

29 (D) The medical risks associated with carrying her child to term.

30 The information required by this paragraph may be provided by telephone without
31 conducting a physical examination or tests of the patient, in which case the information
32 required to be provided may be based on facts supplied the physician by the female and
33 whatever other relevant information is reasonably available to the physician. Such
34 information may not be provided by a tape recording but must be provided during a
35 consultation in which the physician is able to ask questions of the female and the female
36 is able to ask questions of the physician. If a physical examination, tests, or the

1 availability of other information to the physician subsequently indicates, in the medical
2 judgment of the physician, a revision of the information previously supplied to the
3 patient, that revised information may be communicated to the patient at any time prior
4 to the performance of the abortion. Nothing in this Code section may be construed to
5 preclude provision of required information in a language understood by the patient
6 through a translator;

7 (2) The female is informed, by telephone or in person, by the physician who is to
8 perform the abortion, by a referring physician, or by an agent of either physician at least
9 24 hours before the abortion:

10 (A) That medical assistance benefits may be available for prenatal care, childbirth, and
11 neonatal care;

12 (B) That the father is liable to assist in the support of her child, even in instances in
13 which the father has offered to pay for the abortion; and

14 (C) That she has the right to review the printed materials described in Code Section
15 16-12-153, that these materials are available on a state sponsored website, and what the
16 website address is. The physician or the physician's agent shall orally inform the
17 female that materials have been provided by the State of Georgia and that they describe
18 the unborn child and list agencies which offer alternatives to abortion. If the female
19 chooses to view the materials other than on the website, they shall either be given to her
20 at least 24 hours before the abortion or mailed to her at least 72 hours before the
21 abortion by certified mail, restricted delivery to addressee, which means the postal
22 employee can only deliver the mail to the addressee.

23 The information required by this paragraph may be provided by a tape recording if
24 provision is made to record or otherwise register specifically whether the female does or
25 does not choose to review the printed materials other than on the website;

26 (3) The female certifies in writing prior to the abortion that the information described in
27 paragraphs (1) and (2) of this Code section has been furnished her and that she has been
28 informed of her opportunity to review the information referred to in subparagraph (C) of
29 paragraph (2) of this Code section; and

30 (4) Prior to the performance of the abortion, the physician who is to perform the abortion
31 or the physician's agent receives a copy of the written certification prescribed by
32 paragraph (3) of this Code section.

33 16-12-153.

34 (a) Within 90 days after this article first becomes effective in 2003, the Department of
35 Human Resources shall cause to be published in English and in each language which is the
36 primary language of 2 percent or more of the state's population and shall cause to be

1 available on the state website provided for in subsection (d) of this Code section, the
2 following printed materials in such a way as to ensure that the information is easily
3 comprehensible:

4 (1) Geographically indexed materials designed to inform the female of public and private
5 agencies and services available to assist a female through pregnancy, upon childbirth, and
6 while the child is dependent, including adoption agencies, which shall include a
7 comprehensive list of the agencies available, a description of the services they offer, and
8 a description of the manner, including telephone numbers, in which they might be
9 contacted or, at the option of such department, printed materials including a toll-free, 24
10 hour a day telephone number which may be called to obtain, orally, such a list and
11 description of agencies in the locality of the caller and of the services they offer; and

12 (2) Materials designed to inform the female of the probable anatomical and physiological
13 characteristics of the unborn child at two-week gestational increments from the time
14 when a female can be known to be pregnant to full term, including any relevant
15 information on the possibility of the unborn child's survival and pictures or drawings
16 representing the development of unborn children at two-week gestational increments,
17 provided that any such pictures or drawings must contain the dimensions of the fetus and
18 must be realistic and appropriate for the stage of pregnancy depicted. The materials shall
19 be objective, nonjudgmental, and designed to convey only accurate scientific information
20 about the unborn child at the various gestational ages. The material shall also contain
21 objective information describing the methods of abortion procedures commonly
22 employed, the medical risks commonly associated with each such procedure, the possible
23 detrimental psychological effects of abortion and the medical risks commonly associated
24 with each such procedure and the medical risks commonly associated with carrying a
25 child to term.

26 (b) The materials referred to in subsection (a) of this Code section shall be printed in a
27 typeface large enough to be clearly legible. The website provided for in subsection (d) of
28 this Code section shall be maintained at a minimum resolution of 72 pixels per inch.

29 (c) The materials required under this Code section shall be available at no cost from the
30 Department of Human Resources upon request and in appropriate number to any person,
31 facility, or hospital.

32 (d) The Department of Human Resources shall develop and maintain a secure Internet
33 website to provide the information described in this Code section.

34 16-12-154.

35 When a medical emergency compels the performance of an abortion, the physician shall
36 inform the female, prior to the abortion if possible, of the medical indications supporting

1 the physician's judgment that an abortion is necessary to avert her death or that a 24 hour
2 delay will create serious risk of substantial and irreversible impairment of a major bodily
3 function.

4 16-12-155.

5 (a) Within 90 days after this article first becomes effective in 2003, the Department of
6 Human Resources shall prepare a reporting form for physicians containing a reprint of this
7 article and listing:

8 (1) The number of females to whom the physician provided the information described
9 in paragraph (1) of Code Section 16-12-152; of that number, the number to whom such
10 information was provided by telephone and the number to whom such information was
11 provided in person; and of each of those numbers, the number to whom such information
12 was provided by a referring physician and the number to whom such information was
13 provided by a physician who is to perform the abortion;

14 (2) The number of females to whom the physician or an agent of the physician provided
15 the information described in paragraph (2) of Code Section 16-12-152; of that number,
16 the number to whom such information was provided by telephone and the number to
17 whom such information was provided in person; of each of those numbers, the number
18 to whom such information was provided by a referring physician and the number to
19 whom such information was provided by a physician who is to perform the abortion; and
20 of each of those numbers, the number to whom such information was provided by the
21 physician and the number to whom such information was provided by an agent of the
22 physician;

23 (3) The number of females who availed themselves of the opportunity to obtain a copy
24 of the printed information described in Code Section 16-12-153, other than on the
25 website, and the number who did not; and of each of those numbers, the number who, to
26 the best of the reporting physician's information and belief, went on to obtain the
27 abortion; and

28 (4) The number of abortions performed by the physician in which information otherwise
29 required to be provided at least 24 hours before the abortion was not so provided because
30 an immediate abortion was necessary to avert the female's death and the number of
31 abortions in which such information was not so provided because a delay would create
32 serious risk of substantial and irreversible impairment of a major bodily function.

33 (b) The Department of Human Resources shall ensure that copies of the reporting forms
34 described in subsection (a) of this Code section are provided:

35 (1) Within 120 days after this article first becomes effective in 2003, to all physicians
36 licensed to practice in this state;

1 (2) To each physician who subsequently becomes newly licensed to practice in this state,
2 at the same time as official notification to that physician that the physician is so licensed;
3 and

4 (3) By December 1 of each year, other than the calendar year in which forms are
5 distributed in accordance with paragraph (1) of this subsection, to all physicians licensed
6 to practice in this state.

7 (c) By February 28 of each year following a calendar year in any part of which this article
8 was in effect, each physician who provided, or whose agent provided, information to one
9 or more females in accordance with Code Section 16-12-152 during the previous calendar
10 year shall submit to the Department of Human Resources a copy of the form described in
11 subsection (a) of this Code section with the requested data entered accurately and
12 completely.

13 (d) Reports that are not submitted within a grace period of 30 days following the due date
14 shall be subject to a late fee of \$500.00 for each additional 30 day period or portion of a 30
15 day period such reports are overdue. Any physician required to submit a report in
16 accordance with this Code section who has not submitted such report or has submitted only
17 an incomplete report or has submitted such report more than one year following the due
18 date may, in an action brought by the Department of Human Resources, be directed by a
19 court of competent jurisdiction to submit a complete report within a period stated by court
20 order or may be subject to sanctions for civil contempt.

21 (e) By June 30 of each year, the Department of Human Resources shall issue a public
22 report providing statistics for the previous calendar year compiled from all of the reports
23 covering that year submitted in accordance with this Code section for each of the items
24 listed in subsection (a) of this Code section. Each such report shall also provide the
25 statistics for all previous calendar years adjusted to reflect any additional information from
26 late or corrected reports. The Department of Human Resources shall take care to ensure
27 that none of the information included in the public reports could reasonably lead to the
28 identification of any individual provided information in accordance with Code Section
29 16-12-152 or 16-12-153.

30 (f) The Department of Human Resources may, by regulation, alter the dates established
31 by subsections (c) or (e) of this Code section or paragraph (3) of subsection (b) of this Code
32 section or may consolidate the forms or reports described in this Code section with other
33 forms or reports to achieve administrative convenience or fiscal savings or to reduce the
34 burden of reporting requirements, so long as reporting forms are sent to all licensed
35 physicians in the state at least once every year and the report described in subsection (e)
36 of this Code section is issued at least once every year.

1 16-12-156.

2 Any person who knowingly or recklessly performs or attempts to perform an abortion in
3 violation of this article shall be guilty of a felony. Any physician who knowingly or
4 recklessly submits a false report under subsection (c) of Code Section 16-12-155 shall be
5 guilty of a misdemeanor. No penalty may be assessed against the female upon whom the
6 abortion is performed or attempted to be performed. No penalty or civil liability may be
7 assessed for failure to comply with subparagraph (C) of paragraph (2) of Code Section
8 16-12-152 or that portion of paragraph (3) of Code Section 16-12-152 requiring a written
9 certification that the female has been informed of her opportunity to review the information
10 referred to in subparagraph (C) of paragraph (2) of Code Section 16-12-152 unless the
11 Department of Human Resources has made the printed materials available at the time the
12 physician or the physician's agent is required to inform the female of her right to review
13 them.

14 16-12-157.

15 (a) Any person upon whom an abortion has been performed without complying with this
16 article, the father of the unborn child who was the subject of such an abortion, or the
17 grandparent of such an unborn child may maintain an action against the person who
18 performed the abortion in knowing or reckless violation of this article for actual and
19 punitive damages. Any person upon whom an abortion has been attempted without
20 complying with this article may maintain an action against the person who attempted to
21 perform the abortion in knowing or reckless violation of this article for actual and punitive
22 damages.

23 (b) If the Department of Human Resources fails to issue the public report required by
24 subsection (e) of Code Section 16-12-155, any group of ten or more citizens of this state
25 may seek an injunction in a court of competent jurisdiction against the commissioner of
26 human resources requiring that a complete report be issued within a period of time stated
27 by court order. Failure to abide by such an injunction shall subject the commissioner to
28 sanctions for civil contempt.

29 (c) If judgment is rendered in favor of the plaintiff in any action described in this Code
30 section, the court shall also render judgment for a reasonable attorney's fee in favor of the
31 plaintiff against the defendant. If judgment is rendered in favor of the defendant and the
32 court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall
33 also render judgment for a reasonable attorney's fee in favor of the defendant against the
34 plaintiff.

1 16-12-158.
2 In every civil or criminal proceeding or action brought under this article, the court shall
3 rule whether the anonymity of any female upon whom an abortion has been performed or
4 attempted shall be preserved from public disclosure if she does not give her consent to such
5 disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon
6 determining that her anonymity should be preserved, shall issue orders to the parties,
7 witnesses, and counsel and shall direct the sealing of the record and exclusion of
8 individuals from courtrooms or hearing rooms to the extent necessary to safeguard her
9 identity from public disclosure. Each such order shall be accompanied by specific written
10 findings explaining why the anonymity of the female should be preserved from public
11 disclosure, why the order is essential to that end, how the order is narrowly tailored to serve
12 that interest, and why no reasonable less restrictive alternative exists. In the absence of
13 written consent of the female upon whom an abortion has been performed or attempted,
14 anyone, other than a public official, who brings an action under subsection (a) of Code
15 Section 16-12-157 shall do so under a pseudonym. This Code section may not be
16 construed to conceal the identity of the plaintiff or of witnesses from the defendant.

17 16-12-159.
18 If any one or more provisions, Code sections, subsections, sentences, clauses, phrases, or
19 words of this article or the application thereof to any person or circumstance is found to be
20 unconstitutional, the same is declared to be severable, and the balance of this article shall
21 remain effective notwithstanding such unconstitutionality. The General Assembly declares
22 that it would have enacted this article and each Code section, subsection, sentence, clause,
23 phrase, or word thereof irrespective of the fact that any one or more provisions, Code
24 sections, subsections, sentences, clauses, phrases, or words would be declared
25 unconstitutional."

26 **SECTION 2.**

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

29 **SECTION 3.**

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