

Senator Balfour of the 9th offered the following substitute to SB 23:

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 consent for surgical or medical treatment, 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 that a physician who complies with this article shall not be civilly
8 liable for failure to obtain informed consent; to provide for circumstances under which a
9 physician shall be guilty of unprofessional conduct; to provide for anonymity of certain
10 persons in civil actions; to provide for severability; to make conforming amendments to
11 existing law; to provide for related matters; to provide for an effective date; to repeal
12 conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

14 Chapter 9 of Title 31 of the Official Code of Georgia Annotated, relating to consent for
15 surgical or medical treatment, is amended by designating the existing text of the chapter as
16 Article 1 and by adding thereafter a new Article 2 to read as follows:
17

"ARTICLE 2

18
19 31-9-20.

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

21 31-9-21.

22 As used in this article, the term:

1 (1) 'Abortion' means the use or prescription of any instrument, medicine, drug, or any
 2 other substance or device intentionally to terminate the pregnancy of a female known to
 3 be pregnant with an intention other than to increase the probability of a live birth, to
 4 preserve the life or health of the child after live birth, or to remove a dead fetus.

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

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

14 (4) 'Physician' means a person licensed to practice medicine and surgery under Article
 15 2 of Chapter 34 of Title 43.

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

19 (6) 'Qualified agent' means the agent of the physician who is a licensed psychologist,
 20 licensed social worker, licensed professional counselor, licensed physician's assistant,
 21 registered nurse, or physician.

22 31-9-22.

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

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

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

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

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

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

35 The information required by this paragraph may be provided by telephone without
 36 conducting a physical examination or tests of the patient, in which case the information

1 required to be provided may be based on facts supplied the physician by the female and
2 whatever other relevant information is reasonably available to the physician. Such
3 information may not be provided by a tape recording but must be provided during a
4 consultation in which the physician is able to ask questions of the female and the female
5 is able to ask questions of the physician. If a physical examination, tests, or the
6 availability of other information to the physician subsequently indicates, in the medical
7 judgment of the physician, a revision of the information previously supplied to the
8 patient, that revised information may be communicated to the patient at any time prior
9 to the performance of the abortion. Nothing in this Code section may be construed to
10 preclude provision of required information in a language understood by the patient
11 through a translator;

12 (2) The female is informed, by telephone or in person, by the physician who is to
13 perform the abortion or by a qualified agent of the physician at least 24 hours before the
14 abortion:

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

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

19 (C) That she has the right to review the printed materials described in Code Section
20 31-9-23, that these materials are available on a state sponsored website, and what the
21 website address is. The physician or the physician's agent shall orally inform the
22 female that materials have been provided by the State of Georgia and that they describe
23 the unborn child and list agencies which offer alternatives to abortion. If the female
24 chooses to view the materials other than on the website, they shall either be given to her
25 at least 24 hours before the abortion or mailed to her at least 72 hours before the
26 abortion by certified mail, restricted delivery to addressee, which means the postal
27 employee can only deliver the mail to the addressee.

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

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

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

1 31-9-23.

2 (a) Within 90 days after this article first becomes effective, the Department of Human
3 Resources shall cause to be published in English and in each language which is the primary
4 language of 2 percent or more of the state's population and shall cause to be available on
5 the state website provided for in subsection (d) of this Code section the following printed
6 materials in such a way as to ensure that the information is easily comprehensible:

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

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

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

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

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

1 31-9-24.

2 When a medical emergency compels the performance of an abortion, the physician shall
3 inform the female, prior to the abortion if possible, of the medical indications supporting
4 the physician's judgment that an abortion is necessary to avert her death or that a 24 hour
5 delay will create serious risk of substantial and irreversible impairment of a major bodily
6 function.

7 31-9-25.

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

10 31-9-26.

11 Any physician who intentionally, knowingly, or recklessly fails to obtain informed consent
12 pursuant to this article shall be guilty of unprofessional conduct pursuant to paragraph (7)
13 of subsection (a) of Code Section 43-34-37. No penalty may be assessed against the
14 female upon whom the abortion is performed or attempted to be performed. No penalty
15 or civil liability may be assessed for failure to comply with subparagraph (C) of paragraph
16 (2) of Code Section 31-9-22 or that portion of paragraph (3) of Code Section 31-9-22
17 requiring a written certification that the female has been informed of her opportunity to
18 review the information referred to in subparagraph (C) of paragraph (2) of Code Section
19 31-9-22 unless the Department of Human Resources has made the printed materials
20 available at the time the physician or the physician's agent is required to inform the female
21 of her right to review them.

22 31-9-27.

23 In every civil proceeding or action brought under this article, the court shall rule whether
24 the anonymity of any female upon whom an abortion has been performed or attempted
25 shall be preserved from public disclosure if she does not give her consent to such
26 disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon
27 determining that her anonymity should be preserved, shall issue orders to the parties,
28 witnesses, and counsel and shall direct the sealing of the record and exclusion of
29 individuals from courtrooms or hearing rooms to the extent necessary to safeguard her
30 identity from public disclosure. Each such order shall be accompanied by specific written
31 findings explaining why the anonymity of the female should be preserved from public
32 disclosure, why the order is essential to that end, how the order is narrowly tailored to serve
33 that interest, and why no reasonable less restrictive alternative exists. This Code section

1 may not be construed to conceal the identity of the plaintiff or of witnesses from the
2 defendant.

3 31-9-28.

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

5 (b) This article is not intended to make lawful an abortion which would otherwise be
6 unlawful.

7 31-9-29.

8 If any one or more provisions, Code sections, subsections, sentences, clauses, phrases, or
9 words of this article or the application thereof to any person or circumstance is found to be
10 unconstitutional, the same is declared to be severable, and the balance of this article shall
11 remain effective notwithstanding such unconstitutionality. The General Assembly declares
12 that it would have enacted this article and each Code section, subsection, sentence, clause,
13 phrase, or word thereof irrespective of the fact that any one or more provisions, Code
14 sections, subsections, sentences, clauses, phrases, or words would be declared
15 unconstitutional."

16 **SECTION 2.**

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

19 "31-9-1.

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

22 **SECTION 3.**

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

26 "31-9-4.

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

29 **SECTION 4.**

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

1 "31-9-5.

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

5 SECTION 5.

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

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

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

18 SECTION 6.

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

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

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

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

SECTION 7.

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

"31-9-7.

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

SECTION 8.

This Act shall become effective January 1, 2004, and shall apply with respect to abortions performed on or after that date, except that: (1) the provisions of this Act relating to publication and distribution of materials by the Department of Human Resources shall become effective for administrative purposes on approval of this Act by the Governor or upon this Act's becoming law without such approval; and (2) such provisions relating to publication and distribution by the department shall become effective for all purposes on October 1, 2003.

SECTION 9.

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