

## Senate Bill 23

By: Senators Cheeks of the 23rd, Seabaugh of the 28th, Shafer of the 48th and Starr of the 44th

**AS PASSED SENATE**

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:**

14 **SECTION 1.**

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

18 **"ARTICLE 2**

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

17

## SECTION 2.

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

20 "31-9-1.

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

23

## SECTION 3.

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

27 "31-9-4.

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



1 necessary to implement this ~~chapter~~ article specifically including but not limited to the  
2 disciplining of a physician who fails to comply with this Code section."

3 **SECTION 7.**

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

6 "31-9-7.

7 Nothing contained in this ~~chapter~~ article shall be construed to abridge any right of a person  
8 18 years of age or over to refuse to consent to medical and surgical treatment as to his or  
9 her own person."

10 **SECTION 8.**

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

18 **SECTION 9.**

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