

House Bill 1132

By: Representatives Rogers of the 15th, White of the 3rd, Post 2, Burmeister of the 96th, Mills of the 67th, Post 2, and Coan of the 67th, Post 1

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to
2 enact the "Georgia Starvation and Dehydration of Persons with Disabilities Prevention Act";
3 to provide for definitions; to establish a presumption regarding life-sustaining procedures in
4 health care decisions; to provide for exceptions to the health care presumption; to provide for
5 civil remedies; to amend Code Section 31-32-11 of the Official Code of Georgia Annotated,
6 relating to the effect of the chapter on living wills on other legal rights and duties, so as to
7 provide that no presumption is created in contravention of Chapter 31 of Title 31; to amend
8 Chapter 36 of Title 31 of the Official Code of Georgia Annotated, relating to durable power
9 of attorney for health care, so as to provide that no presumption is created in contravention
10 of Chapter 31 of Title 31; to provide for related matters; to provide for an effective date; to
11 repeal conflicting laws; and for other purposes.

12 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

13 **SECTION 1.**

14 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by striking
15 Chapter 31, which is reserved, and inserting in lieu thereof a new Chapter 31 to read as
16 follows:

17 **"CHAPTER 31**

18 31-31-1.

19 This chapter shall be known and may be cited as the 'Georgia Starvation and Dehydration
20 of Persons with Disabilities Prevention Act.'

21 31-31-2.

22 As used in this chapter, the term:

1 (1) 'Attending physician' means the physician who has primary responsibility at the time
2 of reference for the treatment and care of the person.

3 (2) 'Express and informed consent' means consent voluntarily given with sufficient
4 knowledge of the subject matter involved, including a general understanding of the
5 procedure, the medically acceptable alternative procedures or treatments, and the
6 substantial risks and hazards inherent in the proposed treatment or procedures, to enable
7 the person giving consent to make an understanding and enlightened decision without any
8 element of force, fraud, deceit, duress, or other form of constraint or coercion.

9 (3) 'Health care provider' or 'provider' means the attending physician and any other
10 person administering health care to the person at the time of reference who is licensed,
11 certified, or otherwise authorized or permitted by law to administer health care in the
12 ordinary course of business or the practice of a profession, including any person
13 employed by or acting for any such authorized person.

14 (4) 'Nourishment' means sustenance administered by way of the gastrointestinal tract.

15 (5) 'Person legally incapable of making health care decisions' means any person who:

16 (A) Has been declared legally incompetent to make decisions affecting medical
17 treatment or care;

18 (B) In the reasonable judgment of the attending physician, is unable to make decisions
19 affecting medical treatment or other health care services; or

20 (C) Is a minor.

21 (6) 'Physician' means a person lawfully licensed in this state to practice medicine and
22 surgery pursuant to Article 2 of Chapter 34 of Title 43.

23 (7) 'Reasonable medical judgment' means a medical judgment that would be made by a
24 reasonably prudent physician who is knowledgeable about the case and the treatment
25 possibilities with respect to the medical conditions involved.

26 31-31-3.

27 (a) It shall be presumed that every person legally incapable of making health care
28 decisions has directed his or her health care providers to provide him or her with
29 nourishment and hydration to a degree that is sufficient to sustain life.

30 (b) No guardian, surrogate, public or private agency, court, or any other person shall have
31 the authority to make a decision on behalf of a person legally incapable of making health
32 care decisions to withhold or withdraw nourishment or hydration from such a person except
33 in the circumstances and under the conditions specifically provided for in Code
34 Section 31-31-4.

1 31-31-4.

2 The presumption pursuant to Code Section 31-31-3 shall not apply:

3 (1) To the extent that, in reasonable medical judgment:

4 (A) Provision of nourishment and hydration is not medically possible;

5 (B) Provision of nourishment and hydration would hasten death; or

6 (C) Because of the medical condition of the person legally incapable of making health
7 care decisions, the person would be incapable of digesting or absorbing the nourishment
8 and hydration so that its provision would not contribute to sustaining the person's life;

9 (2) If the person executed a directive in accordance with Chapter 32 or Chapter 36 of
10 Title 31 specifically authorizing the withholding or withdrawal of nourishment,
11 hydration, or both to the extent the authorization applies; or

12 (3) If there is clear and convincing evidence that the person, when legally capable of
13 making health care decisions, gave express and informed consent to withdrawing or
14 withholding nourishment or hydration in the applicable circumstances.

15 31-31-5.

16 (a) A cause of action for injunctive relief may be maintained against any person who
17 commits an actual or threatened violation of this chapter or secures a court determination,
18 notwithstanding the position of a guardian or surrogate, whether there is clear and
19 convincing evidence that the person legally incapable of making health care decisions,
20 when legally capable of making such decisions, gave express and informed consent to
21 withdrawing or withholding nourishment or hydration in the applicable circumstances.

22 (b) The action for injunctive relief may be brought by any person who is:

23 (1) The spouse, parent, child, or sibling of the person legally incapable of making health
24 care decisions;

25 (2) A current or former health care provider of the person legally incapable of making
26 health care decisions;

27 (3) A legally appointed guardian of the person legally incapable of making health care
28 decisions;

29 (4) A state protection and advocacy agency; or

30 (5) A public official with appropriate jurisdiction to prosecute or enforce the laws of this
31 state.

32 (c) Pending the final determination of the court, it shall direct that nourishment and
33 hydration be provided unless it determines that subsection (a) of Code Section 31-31-4 is
34 applicable."

SECTION 2.

Code Section 31-32-11 of the Official Code of Georgia Annotated, relating to the effect of the chapter on living wills on other legal rights and duties, is amended by striking subsection (c) in its entirety and inserting in lieu thereof the following:

"(c) This chapter shall create no presumption concerning the intention of an individual who has not executed a declaration to consent to the use or withholding of life-sustaining procedures in the event of a terminal condition, a coma, or a persistent vegetative state, nor shall it create any presumption in contravention of Chapter 31 of Title 31."

SECTION 3.

Chapter 36 of Title 31 of the Official Code of Georgia Annotated, relating to durable power of attorney for health care, is amended by striking Code Section 31-36-4, relating to delegation of health care powers to an agent, death of principal, and rights regarding life-sustaining or death-delaying procedures, in its entirety and inserting in its place a new Code Section 31-36-4 to read as follows:

"31-36-4.

The health care powers that may be delegated to an agent include, without limitation, all powers an individual may have to be informed about and to consent to or refuse or withdraw any type of health care for the individual. A health care agency may extend beyond the principal's death if necessary to permit anatomical gift, autopsy, or disposition of remains. Nothing in this chapter shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining or death-delaying procedures in any lawful manner, and the provisions of this chapter are cumulative in such respect. Nothing in this chapter shall create any presumption in contravention of Chapter 31 of Title 31 relating to life-sustaining procedures in health care decisions."

SECTION 4.

This Act shall become effective on July 1, 2004.

SECTION 5.

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