

House Bill 147

By: Representatives Mills of the 25th, Sheldon of the 105th, Fleming of the 117th, Coan of the 101st, Ralston of the 7th, and others

A BILL TO BE ENTITLED
AN ACT

1 To provide a short title; to provide for legislative findings and purpose; to amend Chapter 9A
2 of Title 31 of the Official Code of Georgia Annotated, relating to the 'Woman's Right to
3 Know Act,' so as to require physicians or other qualified agents to require that pregnant
4 females undergo an ultrasound or sonogram prior to having an abortion; to change certain
5 provisions relating to voluntary and informed consent to abortions; to require certain
6 information be made available by the Department of Human Resources; to change certain
7 provisions relating to reporting requirements; to provide for civil causes of action; to amend
8 Article 5 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to
9 abortion, to provide for criminal penalties for failure to comply with the "Woman's Right to
10 Know Act"; to provide for construction; to provide for intervention; to provide for
11 severability; to provide for an effective date; to provide for related matters; to repeal
12 conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 This Act shall be known and may be cited as the "Woman's Ultrasound Right to Know Act."

16 **SECTION 2.**

17 (a) The General Assembly finds that:

18 (1) It is essential to the psychological and physical well-being of a woman considering
19 an abortion that she receive complete and accurate information on the reality and status
20 of her pregnancy and of her unborn child;

21 (2) The decision to abort "is an important and often a stressful one, and it is desirable and
22 imperative that it be made with full knowledge of its nature and consequences." *Planned*
23 *Parenthood v. Danforth*, 428 U.S. 52, 67 (1976); and

1 (3) The knowledgeable exercise of a woman's decision to have an abortion depends on
 2 the extent to which the woman receives sufficient information to make an informed
 3 choice between two alternatives: giving birth or having an abortion.

4 (b) Based on the findings in subsection (a) of this section, it is the purpose of this Act to:

5 (1) Ensure that every woman considering an abortion receive complete information on
 6 the reality and status of her pregnancy and of her unborn child and that every woman
 7 submitting to an abortion do so only after giving her voluntary and informed consent to
 8 the abortion procedure;

9 (2) Protect unborn children from a woman's uninformed decision to have an abortion;

10 (3) Reduce "the risk that a woman may elect an abortion, only to discover later, with
 11 devastating psychological consequences, that her decision was not fully informed"
 12 *Planned Parenthood v. Casey*, 505 U.S. 833, 882 (1992); and

13 (4) Adopt the construction of the term "medical emergency" accepted by the United
 14 States Supreme Court in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

15 SECTION 3.

16 Chapter 9A of Title 31 of the Official Code of Georgia Annotated, relating to the "Woman's
 17 Right to Know Act," is amended by revising Code Section 31-9A-3, relating to voluntary and
 18 informed consent to abortion, as follows:

19 "31-9A-3.

20 No abortion shall be performed in this state except with the voluntary and informed consent
 21 of the female upon whom the abortion is to be performed. Notwithstanding any provision
 22 of law to the contrary, except in the case of a medical emergency, consent to an abortion
 23 is voluntary and informed if and only if:

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

28 (A) The particular medical risks to the individual patient associated with the particular
 29 abortion procedure to be employed, when medically accurate;

30 (B) The probable gestational age of the unborn child at the time the abortion would be
 31 performed; and

32 (C) The medical risks associated with carrying the unborn child to term.

33 The information required by this paragraph may be provided by telephone without
 34 conducting a physical examination or tests of the patient, in which case the information
 35 required to be provided may be based on facts supplied to the physician by the female and
 36 whatever other relevant information is reasonably available to the physician. Such

1 information may not be provided by a tape recording but must be provided during a
 2 consultation in which the physician or a qualified agent of the physician is able to ask
 3 questions of the female and the female is able to ask questions of the physician or the
 4 physician's qualified agent. If in the medical judgment of the physician any physical
 5 examination, tests, or other information subsequently provided to the physician requires
 6 a revision of the information previously supplied to the patient, that revised information
 7 shall be communicated to the patient prior to the performance of the abortion. Nothing
 8 in this Code section may be construed to preclude provision of required information in
 9 a language understood by the patient through a translator;

10 (1.1) The female is informed, by telephone or in person, by the physician who is to
 11 perform the abortion, by a referring physician, or by a qualified agent of either physician
 12 at least 24 hours before the abortion:

13 (A) An ultrasound or sonogram examination of each unborn child shall be performed
 14 prior to an abortion being performed. Such examination may be performed at any
 15 facility designed for such examination; and

16 (B) That she has the right to view an active ultrasound of the unborn child and hear the
 17 heartbeat of the unborn child if the heartbeat is audible. The active ultrasound image
 18 shall be of a quality consistent with standard medical practice in the community,
 19 contain the dimensions of the unborn child, and accurately portray the presence of
 20 external members and internal organs, if present or viewable, of the unborn child. The
 21 auscultation of fetal heart tone shall be of a quality consistent with standard medical
 22 practice in the community;

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

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

28 (B) That the father will be liable pursuant to subsection (a) of Code Section 19-7-49
 29 to assist in the support of her child; and

30 (C) That a list of health care providers, facilities, and clinics that offer to perform
 31 ultrasounds free of charge is available; such list shall be arranged geographically and
 32 shall include the name, address, hours of operation, and telephone number of each listed
 33 entity;

34 ~~(C)~~(D) That she has the right to review the printed materials described in Code Section
 35 31-9A-4 and that these materials are available on a state sponsored website at a stated
 36 website address. The physician or the physician's qualified agent shall orally inform
 37 the female that materials have been provided by the State of Georgia and that they

1 describe the unborn child, list agencies that offer alternatives to abortion, and contain
 2 information on fetal pain. If the female chooses to view the materials other than on the
 3 website, they shall either be given to her at least 24 hours before the abortion or mailed
 4 to her at least 72 hours before the abortion by certified mail, restricted delivery to
 5 addressee.

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

9 (3) The female certifies in writing, prior to the abortion, that the information described
 10 in paragraphs (1), (1.1), and (2) of this Code section has been furnished her, that she
 11 viewed the ultrasound imaging and was given the opportunity to listen to the heartbeat
 12 of the unborn child or decided not to view the ultrasound or listen to the heartbeat, and
 13 that she has been informed of her opportunity to review the information referred to in
 14 subparagraph ~~(C)~~ (D) of paragraph (2) of this Code section; and

15 (4) Prior to the performance of the abortion, the physician who is to perform the abortion
 16 or the physician's qualified agent receives a copy of the written certification prescribed
 17 by paragraph (3) of this Code section and retains it on file with the female's medical
 18 record for at least three years following the date of receipt."

19 SECTION 4.

20 Said chapter is further amended by revising subsection (a) of Code Section 31-9A-4, relating
 21 to information to be made available by the Department of Human Resources, format
 22 requirements, availability, and requirements for website, as follows:

23 "(a) ~~Not later than August 8, 2005, the~~ The Department of Human Resources shall cause
 24 to be published in English and in each language which is the primary language of 2 percent
 25 or more of the state's population and shall cause to be available on the state website
 26 provided for in subsection (d) of this Code section the following printed materials in such
 27 a way as to ensure that the information is easily comprehensible:

28 (1) Geographically indexed materials designed to inform the female of public and private
 29 agencies and services available to assist a female through pregnancy, upon childbirth, and
 30 while the child is dependent, including adoption agencies, which shall include a
 31 comprehensive list of the agencies available, a description of the services they offer, and
 32 a description of the manner, including telephone numbers and website addresses, in
 33 which they might be contacted or, at the option of such department, printed materials
 34 including a toll-free, 24 hour telephone number which may be called to obtain, orally or
 35 by a tape recorded message tailored to the ZIP Code entered by the caller, such a list and
 36 description of agencies in the locality of the caller and of the services they offer;

1 (1.1) Geographically indexed materials designed to inform the female of public and
 2 private facilities and services available to assist a female with obtaining an ultrasound or
 3 sonogram which shall include a comprehensive list of the facilities available, a
 4 description of the services they offer, and a description of the manner, including
 5 telephone numbers and website addresses, in which they might be contacted or, at the
 6 option of such department, printed materials including a toll-free, 24 hour telephone
 7 number which may be called to obtain, orally or by a tape recorded message tailored to
 8 the ZIP Code entered by the caller, such a list and description of facilities in the locality
 9 of the caller and of the services they offer;

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

23 (3) Materials with the following statement concerning unborn children of 20 weeks' or
 24 more gestational age:

25 'By 20 weeks' gestation, the unborn child has the physical structures necessary to
 26 experience pain. There is evidence that by 20 weeks' gestation unborn children seek
 27 to evade certain stimuli in a manner which in an infant or an adult would be interpreted
 28 to be a response to pain. Anesthesia is routinely administered to unborn children who
 29 are 20 weeks' gestational age or older who undergo prenatal surgery.'

30 The materials shall be objective, nonjudgmental, and designed to convey only accurate
 31 scientific information about the unborn child at the various gestational ages."

32 SECTION 5.

33 Said chapter is further amended by revising subsection (a) of Code Section 31-9A-6, relating
 34 to reporting requirements, as follows:

35 "(a) ~~Not later than August 8, 2005, the~~ The Department of Human Resources shall prepare
 36 a reporting form for physicians performing abortions in a health facility licensed as an

1 abortion facility by the Department of Human Resources containing a reprint of this
2 chapter and listing:

3 (1) The number of females to whom the physician provided the information described
4 in paragraph (1) of Code Section 31-9A-3; of that number, the number to whom the
5 information was provided by telephone and the number to whom the information was
6 provided in person; and of each of those numbers, the number to whom the information
7 was provided by a referring physician and the number to whom the information was
8 provided by a physician who is to perform the abortion;

9 (1.1) The number of females to whom the physician provided the information described
10 in paragraph (1.1) of Code Section 31-9A-3; of that number, the number to whom the
11 information was provided by telephone and the number to whom the information was
12 provided in person; and of each of those numbers, the number to whom the information
13 was provided by a referring physician and the number to whom the information was
14 provided by a physician who is to perform the abortion;

15 (2) The number of females to whom the physician or a qualified agent of the physician
16 provided the information described in paragraph (2) of Code Section 31-9A-3; of that
17 number, the number to whom the information was provided by telephone and the number
18 to whom the information was provided in person; of each of those numbers, the number
19 to whom the information was provided by a referring physician and the number to whom
20 the information was provided by a physician who is to perform the abortion; and of each
21 of those numbers, the number to whom the information was provided by the physician
22 and the number to whom the information was provided by a qualified agent of the
23 physician; and

24 (3) The number of females who availed themselves of the opportunity to obtain a copy
25 of the printed information described in Code Section 31-9A-4, other than on the website,
26 and the number who did not; and of each of those numbers, the number who, to the best
27 of the reporting physician's information and belief, went on to obtain the abortion."

28 SECTION 6.

29 Said chapter is further amended by adding a new Code Section as follows:

30 "31-9A.6.1.

31 In addition to whatever remedies are available under the common or statutory law of this
32 state, failure to comply with the requirements of this chapter shall:

33 (1) Provide a basis for a malpractice action. Any intentional violation of this Code
34 section shall be admissible in a civil suit as prima-facie evidence of a failure to obtain
35 informed consent, which, except in the case of a medical emergency, constitutes medical
36 malpractice;

1 (2) Provide a basis for professional disciplinary action from the Composite State Board
2 of Medical Examiners; and

3 (3) Provide a basis for recovery for the woman for the wrongful death of her unborn
4 child under Chapter 4 of Title 51, whether or not the unborn child was born alive or was
5 viable at the time the abortion was performed."

6 **SECTION 7.**

7 Article 5 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to
8 abortion, is amended by adding a new Code section to read as follows:

9 "16-12-141.2.

10 Any person who purposefully, knowingly, or recklessly performs or attempts to perform
11 or induce an abortion without complying with Chapter 9A of Title 31 shall be punished as
12 for a misdemeanor."

13 **SECTION 8.**

14 Nothing in this Act shall be construed as creating or recognizing a right to abortion. It is not
15 the intention of this Act to make lawful an abortion that is currently unlawful.

16 **SECTION 9.**

17 The General Assembly, by joint resolution, may appoint one or more of its members who
18 sponsored or cosponsored this Act in his or her official capacity to intervene as a matter of
19 right in any case in which the constitutionality of this Act is challenged.

20 **SECTION 10.**

21 In the event any section, subsection, subsection, paragraph, subparagraph, item, sentence,
22 clause, phrase, or word of this Act is declared or adjudged to be invalid or unconstitutional,
23 the remain portions of this Act shall automatically be repealed upon the entry of such
24 declaration or adjudication and shall not remain of full force and effect such declaration or
25 adjudication. The General Assembly declares that it would not have enacted the remaining
26 parts of this Act if it had known that such portion of this Act would be declared or adjudged
27 invalid or unconstitutional.

28 **SECTION 11.**

29 This Act shall become effective on July 1, 2007.

30 **SECTION 12.**

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