

The House Committee on Judiciary offers the following substitute to HB 235:

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 additional persons that shall  
3 be authorized to consent to surgical or medical treatment on behalf of an incapacitated  
4 person; to provide for immunity; to provide for related matters; to provide for an effective  
5 date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 9 of Title 31 of the Official Code of Georgia Annotated, relating to consent for  
9 surgical or medical treatment, is amended by revising Code Section 31-9-2, relating to  
10 persons authorized to consent to surgical or medical treatment, as follows:

11 "31-9-2.

12 (a) In addition to such other persons as may be authorized and empowered, any one of the  
13 following persons is authorized and empowered to consent, either orally or otherwise, to  
14 any surgical or medical treatment or procedures not prohibited by law which may be  
15 suggested, recommended, prescribed, or directed by a duly licensed physician:

16 (1) Any adult, for himself or herself, whether by living will or otherwise;

17 (1.1) Any person authorized to give such consent for the adult under a health care agency  
18 complying with Chapter 36 of Title 31, the 'Durable Power of Attorney for Health Care  
19 Act';

20 (2) In the absence or unavailability of a living spouse, any parent, whether an adult or  
21 a minor, for his or her minor child;

22 (3) Any married person, whether an adult or a minor, for himself or herself and for his  
23 or her spouse;

24 (4) Any person temporarily standing in loco parentis, whether formally serving or not,  
25 for the minor under his or her care; and any guardian, for his or her ward;

1 (5) Any female, regardless of age or marital status, for herself when given in connection  
2 with pregnancy, or the prevention thereof, or childbirth;

3 (6) Upon the inability of any adult to consent for himself or herself and in the absence  
4 of any person to consent under paragraphs (2) through (5) of this subsection, the  
5 following persons in the following order of priority:

6 (A) Any adult child for his or her parents;

7 (B) Any parent for his or her adult child;

8 (C) Any adult for his or her brother or sister; ~~or~~

9 (D) Any grandparent for his or her grandchild;

10 (E) Any niece or nephew for his or her aunt or uncle, any aunt or uncle for his or her  
11 niece or nephew, or any cousin for his or her cousin; or

12 (F) In the absence of an ability to locate any individual under subparagraphs (A)  
13 through (E) of this paragraph after a good faith search, a competent adult who presents  
14 an affidavit to the health care facility or to the attending or treating physician stating  
15 that he or she specifically meets all requirements as a competent adult. For purposes  
16 of this subparagraph, 'competent adult' means any person 18 years of age or older who  
17 has exhibited special care and concern for the patient, who is familiar with the patient's  
18 personal values, who is reasonably available to become involved in the patient's health  
19 care, and who did not and does not receive any compensation from the patient.

20 (b) Any person authorized and empowered to consent under subsection (a) of this Code  
21 section shall, after being informed of the provisions of this Code section, act in good faith  
22 to consent to surgical or medical treatment or procedures which the patient would have  
23 wanted had the patient understood the circumstances under which such treatment or  
24 procedures are provided.

25 (c) For purposes of this Code section, 'inability of any adult to consent for himself or  
26 herself' shall mean a determination in the medical record by a licensed physician after the  
27 physician has personally examined the adult that the adult 'lacks sufficient understanding  
28 or capacity to make significant responsible decisions' regarding his or her medical  
29 treatment or the ability to communicate by any means such decisions.

30 (d)(1) A health care provider or institution acting in good faith and in accordance with  
31 generally accepted health care standards applicable to the health care provider or institution  
32 shall not be subject to civil or criminal liability or to discipline for unprofessional conduct  
33 for:

34 (A) Complying with a health care decision of a person apparently having authority to  
35 make a health care decision for a patient pursuant to subparagraph (a)(6)(F) of this  
36 Code section, including a decision to withhold or withdraw health care; or

1 (B) Declining to comply with a health care decision of a person based on a belief that  
2 the person then lacked authority.

3 (2) An individual acting as agent for a patient under subparagraph (a)(6)(F) of this Code  
4 section shall not be subject to civil or criminal liability or to discipline for unprofessional  
5 conduct for health care decisions made in good faith."

6 **SECTION 2.**

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

9 **SECTION 3.**

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