

House Bill 147 (AS PASSED HOUSE AND SENATE)

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 offer pregnant females an opportunity to undergo an ultrasound if such
4 imaging is available and allow the woman to view the sonogram and listen to the fetal
5 heartbeat, if present; to change certain provisions relating to voluntary and informed consent
6 to abortions; to require certain information be made available by the Department of Human
7 Resources; to change certain provisions relating to reporting requirements; to provide for
8 civil and professional penalties; to provide for construction; to provide for severability; to
9 provide for an effective date; to provide for related matters; to repeal conflicting laws; and
10 for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

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

14 style="text-align:center">**SECTION 2.**

15 (a) The General Assembly finds that:

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

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

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

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

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

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

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

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

11 SECTION 3.

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

15 "31-9A-3.

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

20 (1) The female is told the following, by telephone or in person, by the physician who is
 21 to perform the abortion, by a qualified agent of the physician who is to perform the
 22 abortion, by a qualified agent of a referring physician, or by a referring physician, at least
 23 24 hours before the abortion:

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

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

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

29 The information required by this paragraph may be provided by telephone without
 30 conducting a physical examination or tests of the patient, in which case the information
 31 required to be provided may be based on facts supplied to the physician by the female and
 32 whatever other relevant information is reasonably available to the physician. Such
 33 information may not be provided by a tape recording but must be provided during a
 34 consultation in which the physician or a qualified agent of the physician is able to ask
 35 questions of the female and the female is able to ask questions of the physician or the
 36 physician's qualified agent. If in the medical judgment of the physician any physical

1 examination, tests, or other information subsequently provided to the physician requires
 2 a revision of the information previously supplied to the patient, that revised information
 3 shall be communicated to the patient prior to the performance of the abortion. Nothing
 4 in this Code section may be construed to preclude provision of required information in
 5 a language understood by the patient through a translator;

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

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

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

13 (C) How to obtain a list of health care providers, facilities, and clinics that offer to
 14 perform ultrasounds free of charge; such list shall be arranged geographically and shall
 15 include the name, address, hours of operation, and telephone number of each listed
 16 entity; and

17 ~~(C)~~(D) That she has the right to review the printed materials described in Code Section
 18 31-9A-4 and that these materials are available on a state sponsored website at a stated
 19 website address. The physician or the physician's qualified agent shall orally inform
 20 the female that materials have been provided by the State of Georgia and that they
 21 describe the unborn child, list agencies that offer alternatives to abortion, and contain
 22 information on fetal pain. If the female chooses to view the materials other than on the
 23 website, they shall either be given to her at least 24 hours before the abortion or mailed
 24 to her at least 72 hours before the abortion by certified mail, restricted delivery to
 25 addressee.

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

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

33 (4) For all cases in which an ultrasound is performed prior to conducting an abortion or
 34 a pre-abortion screen:

35 (A) The woman shall at the conclusion of the ultrasound be offered the opportunity to
 36 view the fetal image and hear the fetal heartbeat. The active ultrasound image shall be
 37 of a quality consistent with standard medical practice in the community, contain the

1 dimensions of the unborn child, and accurately portray the presence of external
 2 members and internal organs, including but not limited to the heartbeat, if present or
 3 viewable, of the unborn child. The auscultation of fetal heart tone shall be of a quality
 4 consistent with standard medical practice in the community; and

5 (B) At the conclusion of these actions and prior to the abortion, the female certifies in
 6 writing that:

7 (i) She was provided the opportunity described in subparagraph (A) of this
 8 paragraph;

9 (ii) Whether or not she elected to view the sonogram; and

10 (iii) Whether or not she elected to listen to the fetal heartbeat, if present; and

11 ~~(4)~~(5) Prior to the performance of the abortion, the physician who is to perform the
 12 abortion or the physician's qualified agent receives a copy of the written ~~certification~~
 13 certifications prescribed by ~~paragraph~~ paragraphs (3) and (4) of this Code section and
 14 retains ~~it~~ them on file with the female's medical record for at least three years following
 15 the date of receipt."

16 SECTION 4.

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

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

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

34 (1.1) Geographically indexed materials designed to inform the female of public and
 35 private facilities and services available to assist a female with obtaining an ultrasound
 36 which shall include a comprehensive list of the facilities available, a description of the

1 services they offer, and a description of the manner, including telephone numbers and
 2 website addresses, in which they might be contacted or, at the option of such department,
 3 printed materials including a toll-free, 24 hour telephone number which may be called to
 4 obtain, orally or by a tape recorded message tailored to the ZIP Code entered by the
 5 caller, such a list and description of facilities in the locality of the caller and of the
 6 services they offer;

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

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

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

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

29 SECTION 5.

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

32 "(a) ~~Not later than August 8, 2005, the~~ The Department of Human Resources shall prepare
 33 a reporting form for physicians performing abortions in a health facility licensed as an
 34 abortion facility by the Department of Human Resources containing a reprint of this
 35 chapter and listing:

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

7 (2) The number of females to whom the physician or a qualified agent of the physician
 8 provided the information described in paragraph (2) of Code Section 31-9A-3; of that
 9 number, the number to whom the information was provided by telephone and the number
 10 to whom the information was provided in person; of each of those numbers, the number
 11 to whom the information was provided by a referring physician and the number to whom
 12 the information was provided by a physician who is to perform the abortion; and of each
 13 of those numbers, the number to whom the information was provided by the physician
 14 and the number to whom the information was provided by a qualified agent of the
 15 physician; ~~and~~

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

20 (4) The number of females who were provided the opportunity to view the fetal image
 21 and hear the fetal heartbeat; of that number, the number who elected to view the
 22 sonogram and the number who elected to listen to the fetal heartbeat, if present."

23 SECTION 6.

24 Said chapter is further amended by adding a new Code section to read as follows:

25 "31-9A-6.1.

26 In addition to whatever remedies are available under the common or statutory law of this
 27 state, failure to comply with the requirements of this chapter shall be reported to the
 28 Composite State Board of Medical Examiners for disciplinary action."

29 SECTION 7.

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

32 SECTION 8.

33 In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared
 34 or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other

1 sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full
2 force and effect as if the section, subsection, sentence, clause, or phrase so declared or
3 adjudged invalid or unconstitutional were not originally a part hereof. The General
4 Assembly declares that it would have passed the remaining parts of this Act if it had known
5 that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

6 **SECTION 9.**

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

8 **SECTION 10.**

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