

Senate Bill 367

By: Senators Balfour of the 9th, Henson of the 41st, Goggans of the 7th, Hawkins of the 49th and Tate of the 38th

AS PASSED

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 and entities
3 that shall be authorized to consent to surgical or medical treatment on behalf of an
4 incapacitated person; to provide for immunity; to amend Article 2 of Chapter 4 of Title 29
5 of the Official Code of Georgia Annotated, relating to procedure for appointment of
6 guardians for adults, so as to provide for expedited judicial intervention for the appointment
7 of a temporary medical consent guardian; to provide for definitions; to provide requirements
8 for a petition, supporting documentation, and notice; to provide for preliminary and
9 evidentiary hearings; to provide for termination of a temporary medical consent
10 guardianship; to provide for immunity; to provide for related matters; to provide for an
11 effective date; to repeal conflicting laws; and for other purposes.

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

13 **SECTION 1.**

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

17 "31-9-2.

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

22 (1) Any adult, for himself or herself, whether by living will, advance directive for health
23 care, or otherwise;

24 (1.1) Any person authorized to give such consent for the adult under an advance directive
25 for health care or durable power of attorney for health care under Chapter 32 of ~~Title 31~~
26 this title;

- 27 (2) In the absence or unavailability of a person authorized pursuant to paragraph (1.1)
 28 of this subsection, any married person for his or her spouse;
- 29 (3) In the absence or unavailability of a living spouse, any parent, whether an adult or
 30 a minor, for his or her minor child;
- 31 ~~(3) Any married person, whether an adult or a minor, for himself or herself and for his~~
 32 ~~or her spouse;~~
- 33 (4) Any person temporarily standing in loco parentis, whether formally serving or not,
 34 for the minor under his or her care; and any guardian, for his or her ward;
- 35 (5) Any female, regardless of age or marital status, for herself when given in connection
 36 with pregnancy, or the prevention thereof, or childbirth; ~~or~~
- 37 (6) Upon the inability of any adult to consent for himself or herself and in the absence
 38 of any person to consent under paragraphs ~~(2)~~ (1.1) through (5) of this subsection, the
 39 following persons in the following order of priority:
- 40 (A) Any adult child for his or her parents;
- 41 (B) Any parent for his or her adult child;
- 42 (C) Any adult for his or her brother or sister; ~~or~~
- 43 (D) Any grandparent for his or her grandchild;
- 44 (E) Any adult grandchild for his or her grandparent; or
- 45 (F) Any adult niece, nephew, aunt, or uncle of the patient who is related to the patient
 46 in the first degree; or
- 47 (7) Upon the inability of any adult to consent for himself or herself and in the absence
 48 of any person to consent under paragraphs (1.1) through (6) of this subsection, an adult
 49 friend of the patient. For purposes of this paragraph, 'adult friend' means an adult who
 50 has exhibited special care and concern for the patient, who is generally familiar with the
 51 patient's health care views and desires, and who is willing and able to become involved
 52 in the patient's health care decisions and to act in the patient's best interest. The adult
 53 friend shall sign and date an acknowledgment form provided by the hospital or other
 54 health care facility in which the patient is located for placement in the patient's records
 55 certifying that he or she meets such criteria.
- 56 (a.1) In the absence, after reasonable inquiry, of any person authorized in subsection (a)
 57 of this Code section to consent for the patient, a hospital or other health care facility or any
 58 interested person may initiate proceedings for expedited judicial intervention to appoint a
 59 temporary medical consent guardian pursuant to Code Section 29-4-18.
- 60 (b) Any person authorized and empowered to consent under subsection (a) of this Code
 61 section shall, after being informed of the provisions of this Code section, act in good faith
 62 to consent to surgical or medical treatment or procedures which the patient would have
 63 wanted had the patient understood the circumstances under which such treatment or

64 procedures are provided. The person who consents on behalf of the patient in accordance
 65 with subsection (a) of this Code section shall have the right to visit the patient in
 66 accordance with the hospital or health care facility's visitation policy.

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

72 (d)(1) No hospital or other health care facility, health care provider, or other person or
 73 entity shall be subject to civil or criminal liability or discipline for unprofessional conduct
 74 solely for relying in good faith on any direction or decision by any person reasonably
 75 believed to be authorized and empowered to consent under subsection (a) of this Code
 76 section even if death or injury to the patient ensues. Each hospital or other health care
 77 facility, health care provider, and any other person or entity who acts in good faith
 78 reliance on any such direction or decision shall be protected and released to the same
 79 extent as though such person had interacted directly with the patient as a fully competent
 80 person.

81 (2) No person authorized and empowered to consent under subsection (a) of this Code
 82 section who, in good faith, acts with due care for the benefit of the patient, or who fails
 83 to act, shall be subject to civil or criminal liability for such action or inaction."

84 **SECTION 2.**

85 Article 2 of Chapter 4 of Title 29 of the Official Code of Georgia Annotated, relating to
 86 procedure for appointment of guardians for adults, is amended by adding a new Code section
 87 to read as follows:

88 "29-4-18.

89 (a) As used in this Code section, the term:

90 (1) 'Adult unable to consent' means a person 18 years of age or older who has been
 91 determined in his or her medical records by a licensed physician after the physician has
 92 personally examined the adult that he or she lacks sufficient understanding or capacity
 93 to make significant responsible decisions regarding his or her medical treatment or the
 94 ability to communicate by any means such decisions.

95 (2) 'Life-sustaining procedures' means medications, machines, or other medical
 96 procedures or interventions which, when applied to a medical consent ward in a terminal
 97 condition or in a state of permanent unconsciousness, could in reasonable medical
 98 judgment keep such medical consent ward alive but cannot cure the medical consent ward

99 and where, in the judgment of the medical consent ward's primary treating physician and
 100 a second physician, death will occur without such procedures or interventions.

101 (3) 'Medical consent ward' means a ward for whom the court has appointed a temporary
 102 medical consent guardian pursuant to this Code section for a limited time and only for the
 103 purposes of consenting to surgical or medical treatment or procedures not prohibited by
 104 law.

105 (4) 'Proposed medical consent ward' means an adult unable to consent who is or has been
 106 a patient in a health care institution or of a health care provider.

107 (5) 'State of permanent unconsciousness' means an incurable or irreversible condition in
 108 which the medical consent ward is not aware of himself or herself or his or her
 109 environment and in which such medical consent ward is showing no behavioral response
 110 to his or her environment.

111 (6) 'Temporary medical consent guardian' means an individual appointed pursuant to the
 112 provisions of this Code section for a limited time and only for the purposes of consenting
 113 to surgical or medical treatment or procedures not prohibited by law.

114 (7) 'Terminal condition' means an incurable or irreversible condition which would result
 115 in the medical consent ward's death in a relatively short period of time.

116 (b) In the absence, after reasonable inquiry, of a person authorized or willing to consent
 117 for the proposed medical consent ward under the provisions of Code Section 31-9-2, any
 118 interested person, including the proposed medical consent ward, may file a petition for the
 119 appointment of a temporary medical consent guardian. The petition shall be filed in the
 120 court of the county in which the proposed medical consent ward is domiciled or is found.

121 (c) The petition for appointment of a temporary medical consent guardian shall set forth:

122 (1) A statement of the facts upon which the court's jurisdiction is based;

123 (2) The name, address, and county of domicile of the proposed medical consent ward,
 124 if known;

125 (3) The name, address, and county of domicile of the petitioner and the petitioner's
 126 relationship to the proposed medical consent ward;

127 (4) A statement of the reasons the temporary medical consent guardian is sought,
 128 including:

129 (A) Facts that support the need for such guardian including facts that establish what
 130 medical decisions are needed and why those decisions are needed without undue delay;

131 (B) Facts that support the determination that the proposed medical consent ward lacks
 132 sufficient capacity to make or communicate medical treatment decisions; and

133 (C) The anticipated duration of the temporary medical consent guardianship;

134 (5) The fact that no other person appears to have authority and willingness to act in the
 135 circumstances, whether under a power of attorney, trust, or otherwise;

- 136 (6) The reason for any omission in the petition for an appointment of a temporary
137 medical consent guardian in the event full particulars are lacking; and
- 138 (7) Whether a petition for the appointment of a guardian or conservator has been filed
139 or is being filed in conjunction with the petition for the appointment of the temporary
140 medical consent guardian.
- 141 (d) Upon the filing of a petition for a temporary medical consent guardian, the court shall
142 review the petition to determine whether there is probable cause to believe that the
143 proposed medical consent ward lacks decision-making capacity and is in need of a
144 temporary medical consent guardian and either:
- 145 (1) Dismiss the petition and provide the proposed medical consent ward with the order
146 dismissing the petition; or
- 147 (2) If the court determines that there is probable cause to believe that the proposed
148 medical consent ward is in need of a temporary medical consent guardian, immediately:
- 149 (A) Appoint legal counsel to represent the proposed medical consent ward, which
150 counsel may be the same counsel who is appointed to represent such adult in the
151 hearing on the petition for guardianship, if any such petition has been filed, and the
152 court shall inform counsel of the appointment;
- 153 (B) Order a preliminary hearing to be conducted within 72 hours after the filing of the
154 petition; and
- 155 (C) Notify any proposed medical consent ward of any proceedings by service of all
156 pleadings on such proposed medical consent ward, which notice shall be served
157 personally on the proposed medical consent ward by a person specially appointed by
158 the court for such purpose and shall not be served by mail, and such notice shall inform
159 the proposed medical consent ward:
- 160 (i) That he or she has the right to attend any hearing that is held in connection with
161 the petition to appoint a temporary medical consent guardian;
- 162 (ii) That he or she may lose important rights to control the management of his or her
163 person if a temporary medical consent guardian is appointed;
- 164 (iii) That legal counsel has been appointed on his or her behalf; and
- 165 (iv) The date and time of the preliminary hearing on the petition to appoint a
166 temporary medical consent guardian.
- 167 (e) Unless waived by the court, notice of the petition and the preliminary hearing shall also
168 be served on the following persons who have not joined in the petition or otherwise
169 consented to the proceedings:
- 170 (1) The administrator of the hospital or other health care facility where the proposed
171 medical consent ward is located;

- 172 (2) The primary treating physician and other physicians believed to have provided any
173 medical opinion or advice about any condition of the proposed medical consent ward
174 relevant to the petition;
- 175 (3) All other persons the petitioner believes may have information concerning the
176 expressed wishes of the proposed medical consent ward; and
- 177 (4) Any other persons as the court may direct.
- 178 (f) At the preliminary hearing, the court, in its discretion, shall:
- 179 (1) Appoint a temporary medical consent guardian;
180 (2) Order an evidentiary hearing to be conducted not later than four days after the
181 preliminary hearing; or
182 (3) Dismiss the petition and provide the proposed medical consent ward with the order
183 dismissing the petition.
- 184 (g) If the court orders an evidentiary hearing, in addition to any other evidence presented
185 to the court, the court may consider any case review by the hospital's or health care
186 facility's ethics committee or subcommittee thereof or by any other ethics mechanism
187 selected by the hospital or health care facility.
- 188 (h) If the court holds an evidentiary hearing, the court, in its discretion, shall either:
- 189 (1) Appoint a temporary medical consent guardian; or
190 (2) Dismiss the petition and provide the proposed medical consent ward with the order
191 dismissing the petition.
- 192 (i) The court shall have the authority to appoint as a temporary medical consent guardian
193 any individual the court deems fit with consideration given to any applicable conflict of
194 interest issue so as long as such individual is: (1) willing and able to become involved in
195 the proposed medical consent ward's health care decisions and (2) willing to exercise
196 reasonable care, diligence, and prudence and to consent in good faith to medical or surgical
197 treatment or procedures which the proposed medical consent ward would have wanted had
198 he or she not been incapacitated. Where the proposed medical consent ward's preferences
199 are not known, the temporary medical consent guardian shall agree to act in the proposed
200 medical consent ward's best interests. However, a temporary medical consent guardian
201 shall not be authorized to withdraw life-sustaining procedures unless specifically
202 authorized by the court pursuant to this Code section.
- 203 (j) The temporary medical consent guardianship shall terminate on the earliest of:
- 204 (1) The court's removal of the temporary medical consent guardian;
205 (2) The effective date of the appointment of a permanent guardian under Code Section
206 29-4-2;
207 (3) The duration of the current hospitalization of the medical consent ward or a
208 substantially continuous stay in another health care facility; or

209 (4) Sixty days from the date of appointment of the temporary medical consent guardian.
210 (k)(1) No hospital or other health care facility, health care provider, or other person or
211 entity shall be subject to civil or criminal liability or discipline for unprofessional conduct
212 solely for relying in good faith on any direction or decision by a temporary medical
213 consent guardian, even if death or injury to the medical consent ward ensues. Each
214 hospital or other health care facility, health care provider, and any other person or entity
215 who acts in good faith reliance on any direction or decision by a temporary medical
216 consent guardian shall be protected and released to the same extent as though such person
217 had interacted directly with the medical consent ward as a fully competent person.
218 (2) No temporary medical consent guardian who, in good faith, acts with due care for the
219 benefit of the medical consent ward, or who fails to act, shall be subject to civil or
220 criminal liability for such action or inaction.
221 (l) The Department of Community Health shall develop and make available a Physician
222 Order for Life-sustaining Treatment, a specific form voluntarily executed by a patient and
223 his or her authorized representative and a physician which provides directions regarding
224 end of life care."

225 **SECTION 3.**

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

228 **SECTION 4.**

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