

The Senate Committee on Health and Human Services offers the following substitute to SB 109:

A BILL TO BE ENTITLED
AN ACT

To amend Article 1 of Chapter 1 of Title 31 of the Official Code of Georgia Annotated, relating to general provisions relative to health, so as to clarify the use and effectiveness of Physician Orders for Life-Sustaining Treatment forms; to provide alternate terminology for do not resuscitate orders; to amend other Code sections of the Official Code of Georgia Annotated for purposes of conformity; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 1 of Chapter 1 of Title 31 of the Official Code of Georgia Annotated, relating to general provisions relative to health, is amended by adding a new Code section to read as follows:

"31-1-14.

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

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

(2) 'Authorized person' shall have the same meaning as in Code Section 31-39-2.

(3) 'Decision-making capacity' means the ability to understand and appreciate the nature and consequences of an order regarding end of life care decisions, including the benefits and disadvantages of such an order, and to reach an informed decision regarding the order.

(4) 'Health care facility' shall have the same meaning as in Code Section 31-32-2.

(5) 'Health care provider' shall have the same meaning as in Code Section 31-32-2.

(6) 'Life-sustaining procedures' means medications, machines, or other medical procedures or interventions which, when applied to a patient in a terminal condition or in a state of permanent unconsciousness, could in reasonable medical judgment keep the patient alive but cannot cure the patient and where, in the judgment of the attending physician and a second physician, death will occur without such procedures or

28 interventions. The term 'life-sustaining procedures' shall not include the provision of
29 nourishment or hydration but a patient may direct the withholding or withdrawal of the
30 provision of nourishment or hydration in a POLST form. The term 'life-sustaining
31 procedures' shall not include the administration of medication to alleviate pain or the
32 performance of any medical procedure deemed necessary to alleviate pain.

33 (7) 'Physician Orders for Life-Sustaining Treatment form' or 'POLST form' means a form
34 executed pursuant to this Code section which provides directions regarding the patient's
35 end of life care.

36 (8) 'Provision of nourishment or hydration' means the provision of nutrition or fluids by
37 tube or other medical means.

38 (9) 'State of permanent unconsciousness' means an incurable or irreversible condition in
39 which the patient is not aware of himself or herself or his or her environment and in
40 which the patient is showing no behavioral response to his or her environment.

41 (10) 'Terminal condition' means an incurable or irreversible condition which would result
42 in the patient's death in a relatively short period of time.

43 (b) The department shall develop and make available a Physician Orders for
44 Life-Sustaining Treatment form. Such form shall provide directions regarding the patient's
45 end of life care and shall be voluntarily executed by either a patient who has
46 decision-making capacity and an attending physician or the patient's authorized person and
47 an attending physician; provided, however, that this shall not prevent a health care facility
48 from imposing additional administrative or procedural requirements as directed by federal
49 law or regulations. A POLST form may be executed when a patient has a serious illness
50 or condition and the attending physician's reasoned judgment is that the patient will die
51 within the next 365 days. Such form, if signed by an authorized person, shall indicate the
52 relationship of the authorized person to the patient pursuant to paragraph (3) of Code
53 Section 31-39-2.

54 (c)(1) A POLST form shall constitute a legally sufficient order. Such an order shall
55 remain effective unless the order is revoked by the patient. An attending physician who
56 has issued such an order and who transfers care of the patient to another physician shall
57 inform the receiving physician and the health care facility, if applicable, of the order.
58 Review of the POLST form is recommended at care transitions and such review should
59 be specified on the form. A POLST form signed by the patient and attending physician
60 and indicating 'allow natural death' or 'do not resuscitate' or the equivalent may be
61 implemented without restriction. If the POLST form (i) is signed by the attending
62 physician and an authorized person instead of the patient and (ii) indicates 'allow natural
63 death' or 'do not resuscitate' or the equivalent, in compliance with subsection (c) of Code
64 Section 31-39-4, the POLST form may be implemented or become effective when the

65 patient is a candidate for nonresuscitation, and such consent shall be based in good faith
66 upon what such authorized person determines such candidate for nonresuscitation would
67 have wanted had such candidate for nonresuscitation understood the circumstances under
68 which such order is being considered. A POLST form addressing interventions other
69 than resuscitation and signed by the patient and attending physician may be implemented
70 without restriction. If the POLST form is signed by an authorized person who is the
71 health care agent named by the patient in an advance directive for health care and the
72 attending physician, in compliance with paragraph (1) of subsection (e) of Code Section
73 31-32-7, all treatment indications on the POLST form may be implemented. If the
74 POLST form is signed by an authorized person who is not the health care agent named
75 by the patient in an advance directive for health care, treatment indications on the POLST
76 form may be implemented or become effective only when the patient is in a terminal
77 condition or a state of permanent unconsciousness.

78 (2) A POLST form shall be portable with the patient across care settings and shall be
79 valid in any health care facility in which the patient who is the subject of such form is
80 being treated. A health care facility and a health care provider, in its discretion, may rely
81 upon a POLST form as legally valid consent by the patient to the terms therein; provided,
82 however, that this shall not prevent a health care facility from imposing additional
83 requirements regarding a patient's end of life care decisions.

84 (3) A copy of a POLST form shall be valid and have the same meaning and effect as the
85 original document.

86 (4) A physician orders for life-sustaining treatment form which was executed in another
87 state, which is valid under the laws of such state and which is substantially similar to the
88 Georgia POLST form, and contains signatures of (i) either the patient or an authorized
89 person and (ii) the attending physician, shall be treated as a POLST form which complies
90 with this Code section.

91 (d)(1) Each health care provider, health care facility, and any other person who acts in
92 good faith reliance on a POLST form shall be protected and released to the same extent
93 as though such provider, facility, or other person had interacted directly with the patient
94 as a fully competent person. Without limiting the generality of the foregoing, the
95 following specific provisions shall also govern, protect, and validate the acts of an
96 authorized person and each such health care provider, health care facility, and any other
97 person acting in good faith reliance on such POLST form:

98 (A) No such health care provider, health care facility, or person shall be subject to civil
99 or criminal liability or discipline for unprofessional conduct solely for complying with
100 a POLST form, even if death or injury to the patient ensues;

101 (B) No such health care provider, health care facility, or person shall be subject to civil
102 or criminal liability or discipline for unprofessional conduct solely for failure to comply
103 with a POLST form, so long as such health care provider, health care facility, or person
104 promptly informs the patient's authorized person of such health care provider's, health
105 care facility's, or person's refusal or failure to comply with such POLST form. The
106 authorized person shall then be responsible for arranging the patient's transfer to
107 another health care provider or health care facility. A health care provider, health care
108 facility, or person who is unwilling to comply with a POLST form shall continue to
109 provide reasonably necessary consultation and care in connection with the pending
110 transfer;

111 (C) If the actions of a health care provider, health care facility, or person who fails to
112 comply with a POLST form are substantially in accord with reasonable medical
113 standards at the time of reference; and such provider, facility, or person cooperates in
114 the transfer of the patient, then the health care provider, health care facility, or person
115 shall not be subject to civil or criminal liability or discipline for unprofessional conduct
116 for failure to comply with such POLST form;

117 (D) No authorized person who, in good faith, acts with due care for the benefit of the
118 patient and in accordance with a POLST form, or who fails to act, shall be subject to
119 civil or criminal liability for such action or inaction; and

120 (E) If a POLST form is revoked, a person shall not be subject to criminal prosecution
121 or civil liability for acting in good faith reliance upon such POLST form unless such
122 person had actual knowledge of the revocation.

123 (2) No person shall be civilly liable for failing or refusing in good faith to effectuate a
124 POLST form regarding the withholding or withdrawal of life-sustaining procedures or
125 the withholding or withdrawal of the provision of nourishment or hydration.

126 (3) No physician or any person acting under a physician's direction and no health care
127 facility or any agent or employee thereof who, acting in good faith in accordance with the
128 requirements of this Code section, causes the withholding or withdrawal of life-sustaining
129 procedures or the withholding or withdrawal of the provision of nourishment or hydration
130 from a patient or who otherwise participates in good faith therein shall be subject to any
131 civil or criminal liability or guilty of unprofessional conduct therefor.

132 (4) Any person who participates in the withholding or withdrawal of life-sustaining
133 procedures or the withholding or withdrawal of the provision of nourishment or hydration
134 pursuant to a POLST form and who has actual knowledge that such POLST form has
135 been properly revoked shall not have any civil or criminal immunity otherwise granted
136 under this subsection for such conduct.

137 (e) In the event there are any directions in a patient's previously executed living will,
 138 advance directive for health care, durable power of attorney for health care, do not
 139 resuscitate order, or other legally authorized instrument that conflict with the directions in
 140 a POLST form, the most recent instrument will take precedence to the extent of the
 141 conflict."

142 SECTION 2.

143 Chapter 39 of Title 31 of the Official Code of Georgia Annotated, relating to
 144 cardiopulmonary resuscitation, is amended by revising subsections (a) and (c) of Code
 145 Section 31-39-4, relating to persons authorized to issue an order not to resuscitate, as follows:

146 "(a) It shall be lawful for the attending physician to issue an order not to resuscitate
 147 pursuant to the requirements of this chapter. Any written order issued by the attending
 148 physician using the term 'do not resuscitate,' 'DNR,' 'order not to resuscitate,' 'do not
 149 attempt resuscitation,' 'DNAR,' 'no code,' 'allow natural death,' 'AND,' 'order to allow
 150 natural death,' or substantially similar language in the patient's chart shall constitute a
 151 legally sufficient order and shall authorize a physician, health care professional, nurse,
 152 physician assistant, caregiver, or emergency medical technician to withhold or withdraw
 153 cardiopulmonary resuscitation. Such an order shall remain effective, whether or not the
 154 patient is receiving treatment from or is a resident of a health care facility, until the order
 155 is canceled as provided in Code Section 31-39-5 or until consent for such order is revoked
 156 as provided in Code Section 31-39-6, whichever occurs earlier. An attending physician
 157 who has issued such an order and who transfers care of the patient to another physician
 158 shall inform the receiving physician and the health care facility, if applicable, of the order."

159 "(c) The appropriate authorized person may, after being informed of the provisions of this
 160 Code section, consent orally or in writing to an order not to resuscitate for an adult
 161 candidate for nonresuscitation; provided, however, that such consent is based in good faith
 162 upon what such authorized person determines such candidate for nonresuscitation would
 163 have wanted had such candidate for nonresuscitation understood the circumstances under
 164 which such order is being considered. Where such authorized person is an agent under a
 165 durable power of attorney for health care or a health care agent under an advance directive
 166 for health care appointed pursuant to Chapter 32 of this title or where a Physician Orders
 167 for Life-Sustaining Treatment form with a code status of 'do not resuscitate' or its
 168 equivalent has been executed in accordance with Code Section 31-1-14 by an authorized
 169 person who is an agent under a durable power of attorney for health care or a health care
 170 agent under an advance directive for health care appointed pursuant to Chapter 32 of this
 171 title, the attending physician may issue an order not to resuscitate a candidate for
 172 nonresuscitation pursuant to the requirements of this chapter without the concurrence of

173 another physician, notwithstanding the provisions of paragraph (4) of Code Section
174 31-39-2."

175 **SECTION 3.**

176 Code Section 16-5-5 of the Official Code of Georgia Annotated, relating to assisted suicide
177 and notification of licensing board regarding violations, is amended by revising paragraphs
178 (3) and (4) of subsection (c) as follows:

179 "(3) Any person prescribing, dispensing, or administering medications or medical
180 procedures pursuant to, without limitation, a living will, a durable power of attorney for
181 health care, an advance directive for health care, a Physician Orders for Life-Sustaining
182 Treatment form pursuant to Code Section 31-1-14, or a consent pursuant to Code Section
183 29-4-18 or 31-9-2 when such actions are calculated or intended to relieve or prevent a
184 patient's pain or discomfort but are not calculated or intended to cause such patient's
185 death, even if the medication or medical procedure may have the effect of hastening or
186 increasing the risk of death;

187 (4) Any person discontinuing, withholding, or withdrawing medications, medical
188 procedures, nourishment, or hydration pursuant to, without limitation, a living will, a
189 durable power of attorney for health care, an advance directive for health care, a
190 Physician Orders for Life-Sustaining Treatment form pursuant to Code Section 31-1-14,
191 a consent pursuant to Code Section 29-4-18 or 31-9-2, or a written order not to
192 resuscitate; or"

193 **SECTION 4.**

194 Code Section 16-5-101 of the Official Code of Georgia Annotated, relating to neglect to a
195 disabled adult, elder person, or resident, is amended by revising subsection (b) as follows:

196 "(b) The provisions of this Code section shall not apply to a physician nor any person
197 acting under a physician's direction nor to a hospital, hospice, or long-term care facility,
198 nor any agent or employee thereof who is in good faith acting within the scope of his or her
199 employment or agency or who is acting in good faith in accordance with a living will, a
200 durable power of attorney for health care, an advance directive for health care, a Physician
201 Orders for Life-Sustaining Treatment form pursuant to Code Section 31-1-14, an order not
202 to resuscitate, or the instructions of the patient or the patient's lawful surrogate decision
203 maker, nor shall the provisions of this Code section require any physician, any institution
204 licensed in accordance with Chapter 7 of Title 31, or any employee or agent thereof to
205 provide essential services or shelter to any person in the absence of another legal obligation
206 to do so."

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SECTION 5.

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Code Section 29-4-18 of the Official Code of Georgia Annotated, relating to definitions, requirements, and termination of temporary medical consent guardianship, is amended by revising subsections (k) and (l) as follows:

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"(k)(1) No hospital or other health care facility, health care provider, or other person or entity shall be subject to civil or criminal liability or discipline for unprofessional conduct solely for relying in good faith on any direction or decision by a temporary medical consent guardian, even if death or injury to the medical consent ward ensues. Each hospital or other health care facility, health care provider, and any other person or entity who acts in good faith reliance on any direction or decision by a temporary medical consent guardian shall be protected and released to the same extent as though such person had interacted directly with the medical consent ward as a fully competent person.

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(2) No temporary medical consent guardian who, in good faith, acts with due care for the benefit of the medical consent ward, or who fails to act, shall be subject to civil or criminal liability for such action or inaction.

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~~(3) Any person who acts in good faith in accordance with a Physician Order for Life-sustaining Treatment developed pursuant to subsection (l) of this Code section shall have all of the immunity granted pursuant to Code Section 31-32-10.~~

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~~(l) The Department of Public Health shall develop and make available a Physician Order for Life-sustaining Treatment, a specific form voluntarily executed by a patient or his or her authorized person as defined in Code Section 31-39-2 and a physician which provides directions regarding end-of-life care."~~

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SECTION 6.

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