

Senate Bill 72

By: Senators Brass of the 6th, Kirkpatrick of the 32nd, Dolezal of the 27th, Strickland of the 42nd, Walker III of the 20th and others

**AS PASSED SENATE**

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 52 of Title 31 of the Official Code of Georgia Annotated, relating to  
2 terminally ill patient's right to try investigational drugs, biological products, and devices, so  
3 as to expand access to individualized investigational treatments to patients who have  
4 severely debilitating or life-threatening illnesses; to provide for definitions; to provide for  
5 eligibility criteria; to provide for written informed consent; to allow certain manufacturers  
6 or eligible facilities to make available individualized investigational treatments; to provide  
7 that coverage is not mandatory; to prohibit the sanctions against a physician's license; to  
8 provide exemption to liability for certain charges; to provide for statutory construction; to  
9 provide for related matters; to provide for a short title; to repeal conflicting laws; and for  
10 other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 This Act shall be known and may be cited as the "Hope for Georgia Patients Act."

14 **SECTION 2.**

15 Chapter 52 of Title 31 of the Official Code of Georgia Annotated, relating to terminally ill  
16 patient's right to try investigational drugs, biological products, and devices, is amended by  
17 designating Code Sections 31-52-1 through 31-52-10, the "Georgia Right to Try Act," as  
18 Article 1.

19 **SECTION 3.**

20 Said chapter is further amended by replacing "chapter" with "article" wherever the former  
21 appears in:

- 22 (1) Code Section 31-52-1, relating to short title;
- 23 (2) Code Section 31-52-4, relating to eligibility criteria;
- 24 (3) Code Section 31-52-6, relating to manufacturers permitted to make investigational  
25 drugs, biological products, or devices available;
- 26 (4) Code Section 31-52-7, relating to coverage under health benefit plan permitted but not  
27 required;
- 28 (5) Code Section 31-52-8, relating to physician immunity from sanction for  
29 recommending, prescribing, or treating with investigational drugs, biological products, or  
30 devices; and
- 31 (6) Code Section 31-52-10, relating to statutory construction.

32 **SECTION 4.**

33 Said chapter is further amended by revising Code Section 31-52-3, relating to definitions, as  
34 follows:

35 "31-52-3.

36 As used in this ~~chapter~~ article, the term:

- 37 (1) 'Eligible patient' means a person who meets the requirements of Code  
38 Section 31-52-4.

39 (2) 'Investigational drug, biological product, or device' means a drug, biological product,  
 40 or device which has successfully completed Phase I of a federal Food and Drug  
 41 Administration approved clinical trial but has not yet been approved for general use by  
 42 the federal Food and Drug Administration and currently remains under investigation in  
 43 a federal Food and Drug Administration approved clinical trial.

44 (3) 'Physician' means a person licensed to practice medicine pursuant to Article 2 of  
 45 Chapter 34 of Title 43.

46 (4) 'Terminal illness' means a disease that, without life-sustaining procedures, will result  
 47 in death in the near future and is not considered by a treating physician to be reversible  
 48 even with administration of current federal Food and Drug Administration approved and  
 49 available treatments.

50 (5) 'Written informed consent' means a written document that:

51 (A) Is signed by the patient; parent, if the patient is a minor; legal guardian; or ~~health~~  
 52 ~~care~~ healthcare agent designated by the patient in an advance directive for ~~health care~~  
 53 healthcare executed pursuant to Chapter 32 of ~~Title 31~~ this title;

54 (B) Is attested to by the patient's physician and a witness; and

55 (C) Meets the requirements of Code Section 31-52-5."

56 **SECTION 5.**

57 Said chapter is further amended by adding a new article to read as follows:

58 "ARTICLE 2

59 31-52-20.

60 As used in this article, the term:

61 (1) 'Eligible facility' means an institution that is currently operating under the  
 62 Federalwide Assurance for the Protection of Human Subjects under 42 U.S.C.

63 Section 289(a) and 45 C.F.R. Part 46 and is subject to federal laws, regulations, policies,  
64 and guidelines, including renewals and updates.

65 (2) 'Eligible patient' means a person who meets the requirements of Code  
66 Section 31-52-21.

67 (3) 'Individualized investigational treatment' means a drug, biological product, or device  
68 that is unique to and produced exclusively for an individual patient based on his or her  
69 own genetic profile. Such term includes, but is not limited to, individualized gene  
70 therapy, individualized investigational antisense oligonucleotides, and individualized  
71 neoantigen vaccines or individualized neoantigen therapy. Such term includes any drug,  
72 biological product, or device derived from human perinatal tissues, cells, and secreted  
73 factors, provided that such substances are not obtained from an abortion. Such term does  
74 not include any drug, biological product, or device derived from human primary or  
75 secondary embryonic stem cells or cell lines.

76 (4) 'Life-threatening illness' means a disease or condition where the likelihood of death  
77 is high unless the course of the disease is interrupted or a disease or condition with a  
78 potentially fatal outcome, where the end point of clinical trial analysis is survival. Such  
79 term shall not include the natural process of aging.

80 (5) 'Manufacturer' means a person or entity engaged in the manufacturing of  
81 individualized investigational treatments in an eligible facility.

82 (6) 'Physician' means a person licensed to practice medicine pursuant to Article 2 of  
83 Chapter 34 of Title 43.

84 (7) 'Severely debilitating illness' means a disease or condition that causes major  
85 irreversible morbidity.

86 (8) 'Written informed consent' means a written document that:

87 (A) Is signed by the patient; parent, if the patient is a minor; legal guardian; or  
88 healthcare agent designated by the patient in an advance directive for healthcare  
89 executed pursuant to Chapter 32 of this title;

90 (B) Is attested to by the patient's physician and a witness; and

91 (C) Meets the requirements of Code Section 31-52-22.

92 31-52-21.

93 In order for a person to be considered an eligible patient to access an individualized  
94 investigational treatment pursuant to this article, a physician must document in writing that  
95 the person:

96 (1) Has a life-threatening or severely debilitating illness;

97 (2) Has, in consultation with the physician, considered all other treatment options  
98 currently approved by the United States Food and Drug Administration;

99 (3) Has been given a recommendation by the physician for an individualized  
100 investigational treatment based on an analysis of such patient's genomic sequence, human  
101 chromosomes, deoxyribonucleic acid, ribonucleic acid, genes, gene products such as  
102 enzymes and other types of proteins, or metabolites; and

103 (4) Has given written informed consent for the use of the individualized investigational  
104 treatment.

105 31-52-22.

106 Written informed consent shall, at a minimum, include the following:

107 (1) A description of the currently approved products and treatments for the  
108 life-threatening or severely debilitating illness from which the patient suffers;

109 (2) An attestation that the patient concurs with his or her physician in believing that all  
110 currently approved and conventionally recognized treatments are unlikely to prolong the  
111 patient's life, and the known risks of the individualized investigational treatment are not  
112 greater than the probable outcome of the patient's illness;

113 (3) Clear identification of the specific proposed individualized investigational treatment  
114 that the patient is seeking to use;

115 (4) A description of the potential best and worst outcomes of using the individualized  
116 investigational treatment and a realistic description of the most likely outcome. The  
117 description shall include the possibility that new, unanticipated, different, or worse  
118 symptoms might result and that death could be hastened by the proposed treatment. The  
119 description shall be based on the physician's knowledge of the proposed treatment in  
120 conjunction with an awareness of the patient's condition;

121 (5) A statement that the patient understands that his or her health benefit plan or  
122 third-party administrator is not obligated to pay for the individualized investigational  
123 treatment, or any care or treatment consequent to the use of such treatment, unless such  
124 health benefit plan or third-party administrator is specifically required to do so by law or  
125 contract;

126 (6) A statement that the patient understands that his or her eligibility for hospice care  
127 may be withdrawn if he or she begins treatment with the individualized investigational  
128 treatment but that such hospice care may be reinstated if such treatment ends and he or  
129 she meets hospice eligibility requirements; and

130 (7) A statement that the patient understands that he or she is liable for all expenses  
131 consequent to the use of the individualized investigational treatment and that such  
132 liability extends to the patient's estate, unless a contract between the patient and the  
133 manufacturer of the individualized investigational treatment states otherwise, except as  
134 provided for in Code Section 31-52-27.

135 31-52-23.

136 (a) A manufacturer or an eligible entity may make available an individualized  
137 investigational treatment to an eligible patient, and an eligible patient may request such  
138 treatment from such manufacturer or facility pursuant to this article; provided, however,  
139 that nothing in this article shall be construed to require that such manufacturer or facility  
140 make available such treatment to such patient.

141 (b) A manufacturer or an eligible facility may provide an individualized investigational  
142 treatment to an eligible patient:

143 (1) Without receiving compensation; or

144 (2) With the requirement that the eligible patient pays the costs of or the costs associated  
145 with the manufacture of the individualized investigational treatment.

146 31-52-24.

147 (a) A health benefit plan or governmental agency may provide coverage for the cost of any  
148 individualized investigational treatment pursuant to this article; provided, however, that  
149 nothing in this article shall be construed to require a health benefit plan or governmental  
150 agency to provide coverage for the cost of any individualized investigational treatment or  
151 related cost of services associated with the use, care, or treatment of an eligible patient  
152 associated with such individualized investigational treatment pursuant to this article.

153 (b) A hospital or other healthcare facility is not required to provide new or additional  
154 services associated with any individualized investigational treatment unless approved by  
155 such hospital or facility.

156 31-52-25.

157 (a) The Georgia Composite Medical Board shall not revoke, suspend, sanction, fail to  
158 renew, or take any other action against a physician's license solely based on such  
159 physician's recommendation, prescription, or treatment of an eligible patient with an  
160 individualized investigational treatment pursuant to this article.

161 (b) The Department of Community Health shall not take action against a healthcare  
162 provider's Medicare certification based solely on such provider's recommendation that an  
163 eligible patient have access to an individualized investigational treatment.

164 31-52-26.

165 No official, employee, or agent of the state shall block or attempt to block an eligible  
166 patient's access to an individualized investigational treatment. Counseling, advice, or a  
167 recommendation for treatment consistent with medical standards of care shall not be  
168 construed as a violation of this Code section.

169 31-52-27.

170 (a) This article shall not be construed to create a private cause of action against a  
171 manufacturer, eligible facility, or any other person or entity involved in the care of an  
172 eligible patient using any individualized investigational treatment for any harm done to  
173 such patient resulting from the individualized investigational treatment if such  
174 manufacturer, facility, person, or entity complied in good faith with the terms of this article  
175 and exercised reasonable care.

176 (b) This article shall not be construed to create a private cause of action against a physician  
177 who refuses to recommend an individualized investigational treatment for any otherwise  
178 eligible patient.

179 (c) Any person or entity involved in the care of an eligible patient using an individualized  
180 investigational treatment shall not be liable for injury or death to such patient as a result of  
181 such treatment under Code Section 51-1-27 or Chapter 4 of Title 51, unless it is shown that  
182 the person or entity failed to obtain written informed consent in compliance with Code  
183 Section 31-52-22.

184 (d) This article shall not be construed to affect any required healthcare coverage under  
185 Title 33 for patients in clinical trials.

186 (e) If an eligible patient's death is proximately caused by an individualized investigational  
187 treatment, such patient's estate, heirs, or devisees are not liable for any debt remaining after  
188 payment by insurance for charges directly incurred for such treatment; provided, however,  
189 that this subsection does not provide an exemption to liability for charges for

190 nonexperimental treatments provided to the patient, including nonexperimental treatments  
191 rendered to the patient due to complications or consequences of the individualized  
192 investigational treatment."

193

**SECTION 6.**

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