

TITLE 31. HEALTH
CHAPTER 9A. WOMAN'S RIGHT TO KNOW
O.C.G.A. TITLE 31 Chapter 9A (2009)

§ 31-9A-1. Short title.

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

HISTORY: Code 1981, § 31-9A-1, enacted by Ga. L. 2005, p. 1450, § 6/HB 197.

§ 31-9A-2. Definitions

As used in this chapter, the term:

(1) "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device with the intent to terminate the pregnancy of a female known to be pregnant. The term "abortion" shall not include the use or prescription of any instrument, medicine, drug, or any other substance or device employed solely to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of a spontaneous abortion. The term "abortion" also shall not include the prescription or use of contraceptives.

(2) "Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial or irreversible impairment of a major bodily function.

(3) "Physician" means a person licensed to practice medicine under Article 2 of Chapter 34 of Title 43.

(4) "Probable gestational age of the unborn child" means the physician's best professional estimate of the probable gestational age of the unborn child at the time an abortion is to be performed.

(5) "Qualified agent" means the agent of the physician who is a patient educator, licensed psychologist, licensed social worker, licensed professional counselor, licensed physician assistant, registered nurse, or physician.

(6) "Secure Internet website" means a website that is safeguarded from having its content altered other than by the commissioner of community health.

(7) "Unborn child" or "fetus" means a member of the species homo sapiens from fertilization until birth.

HISTORY: Code 1981, § 31-9A-2, enacted by Ga. L. 2005, p. 1450, § 6/HB 197; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2009, p. 859, § 3/HB 509.

§ 31-9A-3. Voluntary and informed consent to abortion; availability of ultrasound

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

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

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

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

(C) The medical risks associated with carrying the unborn child to term. The information required by this paragraph may be provided by telephone without conducting a physical examination or tests of the patient, in which case the information required to be provided may be based on facts supplied to the physician by the female and whatever other relevant information is reasonably available to the physician. Such information may not be provided by a tape recording but must be provided during a consultation in which the physician or a qualified agent of the physician is able to ask questions of the female and the female is able to ask questions of the physician or the physician's qualified agent. If in the medical judgment of the physician any physical examination, tests, or other information subsequently provided to the physician requires a revision of the information previously supplied to the patient, that revised information shall be communicated to the patient prior to the performance of the abortion. Nothing in this Code section may be construed to preclude provision of required information in a language understood by the patient through a translator;

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

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

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

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

(D) That she has the right to review the printed materials described in Code Section 31-9A-4 and that these materials are available on a state sponsored website at a stated website address. The physician or the physician's qualified agent shall orally inform the female that materials have been provided by the State of Georgia and that they describe the unborn child, list agencies that offer alternatives to abortion, and contain information on fetal pain. If the female chooses to view the materials other than on the website, they shall either be given to her at least 24 hours before the abortion or mailed to her at least 72 hours before the abortion by certified mail, restricted delivery to addressee. The information required by this paragraph may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to review the printed materials other than on the website;

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

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

(A) The woman shall at the conclusion of the ultrasound be offered the opportunity to view the fetal image and hear the fetal heartbeat. The active ultrasound image shall be of a quality consistent with standard medical practice in the community, contain the dimensions of the unborn child, and accurately portray the presence of external members and internal organs, including but not limited to the heartbeat, if present or viewable, of the unborn child. The auscultation of fetal heart tone shall be of a quality consistent with standard medical practice in the community; and

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

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

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

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

(5) Prior to the performance of the abortion, the physician who is to perform the abortion or the physician's qualified agent receives a copy of the written certifications prescribed by paragraphs (3) and (4) of this Code section and retains them on file with the

female's medical record for at least three years following the date of receipt.

HISTORY: Code 1981, § 31-9A-3, enacted by Ga. L. 2005, p. 1450, § 6/HB 197; Ga. L. 2007, p. 299, § 3/HB 147.

§ 31-9A-4. Information to be made available by the Department of Community Health; format requirements; availability; requirements for website

(a) The Department of Community Health shall cause to be published in English and in each language which is the primary language of 2 percent or more of the state's population and shall cause to be available on the state website provided for in subsection (d) of this Code section the following printed materials in such a way as to ensure that the information is easily comprehensible:

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

(1.1) Geographically indexed materials designed to inform the female of public and private facilities and services available to assist a female with obtaining an ultrasound which shall include a comprehensive list of the facilities available, a description of the services they offer, and a description of the manner, including telephone numbers and website addresses, in which they might be contacted or, at the option of such department, printed materials including a toll-free, 24 hour telephone number which may be called to obtain, orally or by a tape recorded message tailored to the ZIP Code entered by the caller, such a list and description of facilities in the locality of the caller and of the services they offer;

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

term; and

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

"By 20 weeks' gestation, the unborn child has the physical structures necessary to experience pain. There is evidence that by 20 weeks' gestation unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are 20 weeks' gestational age or older who undergo prenatal surgery." The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages.

(b) The materials referred to in subsection (a) of this Code section shall be printed in a typeface large enough to be clearly legible. All pictures and print appearing on the website shall be clearly legible. All information and pictures shall be accessible with an industry standard browser, requiring no additional plug-ins.

(c) The materials required under this Code section shall be available at no cost from the Department of Community Health upon request and in a reasonably appropriate number to any person, facility, or hospital.

(d) The Department of Community Health shall develop and maintain a secure Internet website to provide the information described in this Code section. No information regarding who uses the website shall be collected or maintained. The Department of Community Health shall monitor the website on a weekly basis to prevent and correct tampering.

HISTORY: Code 1981, § 31-9A-4, enacted by Ga. L. 2005, p. 1450, § 6/HB 197; Ga. L. 2007, p. 299, § 4/HB 147; Ga. L. 2009, p. 453, § 1-4/HB 228.

§ 31-9A-5. Requirements in case of medical emergency

(a) When a medical emergency compels the performance of an abortion, the physician shall inform the female prior to the abortion, if medically reasonable and prudent, of the medical indications supporting the physician's judgment that an abortion is medically necessary to avert her death or that a 24 hour delay will create serious risk of substantial or irreversible impairment of a major bodily function.

(b) Any physician who complies with subsection (a) of this Code section shall not be held civilly liable to a patient for failure to obtain informed consent to an abortion.

HISTORY: Code 1981, § 31-9A-5, enacted by Ga. L. 2005, p. 1450, § 6/HB 197.

§ 31-9A-6. Reporting requirements

(a) The Department of Community Health shall prepare a reporting form for physicians performing abortions in a health facility licensed as an abortion facility by the Department of Community Health containing a reprint of this chapter and listing:

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

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

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

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

(b) The Department of Community Health shall ensure that copies of the reporting forms described in subsection (a) of this Code section are provided:

(1) Not later than September 7, 2005, to all health facilities licensed as an abortion facility by the Department of Community Health;

(2) To each physician licensed or who subsequently becomes licensed to practice in this state, at the same time as official notification to that physician that the physician is so licensed; and

(3) By December 1 of each year, other than the calendar year in which forms are distributed in accordance with paragraph (1) of this subsection, to all health facilities licensed as an abortion facility by the Department of Community Health.

(c) By February 28 of each year following a calendar year in any part of which this chapter was in effect, each physician who provided, or whose qualified agent provided,

information to one or more females in accordance with Code Section 31-9A-3 during the previous calendar year shall submit to the Department of Community Health a copy of the form described in subsection (a) of this Code section with the requested data entered accurately and completely.

(d) Nothing in this Code section shall be construed to preclude the voluntary or required submission of other reports or forms regarding abortions.

(e) Reports that are not submitted within a grace period of 30 days following the due date shall be subject to a late fee of \$500.00 for that period and the same fee for each additional 30 day period or portion of a 30 day period the reports are overdue. Any physician required to submit a report in accordance with this Code section who submits an incomplete report or fails to submit a report for more than one year following the due date may, in an action brought by the Department of Community Health, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or may be subject to sanctions for civil contempt.

(f) By June 30 of each year, the Department of Community Health shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this Code section for each of the items listed in subsection (a) of this Code section. Each report shall also provide the statistics for all previous calendar years adjusted to reflect any additional information from late or corrected reports. The Department of Community Health shall ensure that none of the information included in the public reports could reasonably lead to the identification of any individual who provided information in accordance with Code Section 31-9A-3 or 31-9A-4.

(g) The Department of Community Health may, by regulation, alter the dates established by subsection (c) or (e) of this Code section or paragraph (3) of subsection (b) of this Code section or may consolidate the forms or reports described in this Code section with other forms or reports for reasons including, but not limited to, achieving administrative convenience or fiscal savings or reducing the burden of reporting requirements, so long as reporting forms are sent to all facilities licensed as an abortion facility by the Department of Community Health at least once every year and the report described in subsection (f) of this Code section is issued at least once every year.

(h) The Department of Community Health shall ensure that the names and identities of the physicians filing reports under this chapter shall remain confidential. The names and identities of such physicians shall not be subject to Article 4 of Chapter 18 of Title 50.

HISTORY: Code 1981, § 31-9A-6, enacted by Ga. L. 2005, p. 1450, § 6/HB 197; Ga. L. 2007, p. 299, § 5/HB 147; Ga. L. 2009, p. 453, § 1-4/HB 228.

§ 31-9A-6.1. Civil and professional penalties for violations

In addition to whatever remedies are available under the common or statutory law of

this state, failure to comply with the requirements of this chapter shall be reported to the Georgia Composite Medical Board for disciplinary action.

HISTORY: Code 1981, § 31-9A-6.1, enacted by Ga. L. 2007, p. 299, § 6/HB 147; Ga. L. 2009, p. 859, § 2/HB 509.

§ 31-9A-7. Preservation of patient anonymity in civil proceedings

In any civil proceeding or action relating to this chapter or a breach of duty under this chapter, the court shall rule whether the anonymity of any female upon whom an abortion has been performed shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the female should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. This Code section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

HISTORY: Code 1981, § 31-9A-7, enacted by Ga. L. 2005, p. 1450, § 6/HB 197.

§ 31-9A-8. Severability

If any one or more provisions, Code sections, subsections, sentences, clauses, phrases, or words of this chapter or the application thereof to any person or circumstance is found to be unconstitutional, the same is declared to be severable, and the balance of this chapter shall remain effective notwithstanding such unconstitutionality. The General Assembly declares that it would have enacted this chapter and each Code section, subsection, sentence, clause, phrase, or word thereof irrespective of the fact that any one or more provisions, Code sections, subsections, sentences, clauses, phrases, or words would be declared unconstitutional.

HISTORY: Code 1981, § 31-9A-8, enacted by Ga. L. 2005, p. 1450, § 6/HB 197.