

9-1-2003

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Recommended Citation

Fuller Judith, *DOMESTIC RELATIONS Marriage Generally: Remove the Requirement for Premarital Testing for Syphilis Prior to the Issuance of a Marriage License*, 20 GA. ST. U. L. REV. (2003).

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DOMESTIC RELATIONS

Marriage Generally: Remove the Requirement for Premarital Testing for Syphilis Prior to the Issuance of a Marriage License

CODE SECTION:	O.C.G.A. § 19-3-40 (amended)
BILL NUMBER:	SB 190
ACT NUMBER:	390
GEORGIA LAWS:	2003 Ga. Laws 895
SUMMARY:	The Act removes the requirement for premarital blood testing when applying for a marriage license.
EFFECTIVE DATE:	July 1, 2003

History

After World War II, a syphilis outbreak prompted society to recognize the need for premarital blood testing to assist in detecting the disease.¹ In 1949, the Georgia General Assembly passed Code section 19-3-40.² The General Assembly intended the legislation to alert those infected and to ensure their treatment, in order to prevent the spread of congenital syphilis.³

Today, premarital testing detects few syphilitic infections,⁴ and the costs far outweigh the benefits.⁵ In the experience of Senator Don R. Thomas of the 54th district, a practicing physician and the sponsor of this bill, most of these tests yield negative results, and positive results are frequently “false positives.”⁶ Many states have repealed their mandatory premarital syphilis screening requirements because of the limited net results.⁷ Furthermore, national sexually transmitted

1. See JoAnna P. Deering, *Mandatory Premarital Blood Testing: An Analysis of O.C.G.A. § 19-3-40, at 8-11 (Fall 2002)* (unpublished manuscript on file with the Georgia State University Law Review).

2. See 1949 Ga. Laws 1054, §§ 1-10, at 1054-57 (formerly found at O.C.G.A. § 19-3-40 (1999)).

3. See Interview with Dr. Kathleen Toomey, M.D., M.P.H., Director of Public Health, Georgia Department of Human Resources (Mar. 28, 2003) [hereinafter Toomey Interview]. In the 1950s, out-of-wedlock births were rare compared to 2003 out-of-wedlock births. See *id.*

4. See Electronic Mail Interview with Sen. Don Thomas, Senate District No. 54 (Mar. 26, 2003) [hereinafter Thomas Interview].

5. See Deering, *supra* note 1, at 12-15.

6. See Thomas Interview, *supra* note 4.

7. See Deering, *supra* note 1, at 12. Georgia is one of the few states continuing to require premarital testing. See Audio Recording of Senate Proceedings, Mar. 6, 2003 (remarks by Sen. Don Thomas), *at*

disease control programs now effectively detect sexually transmitted diseases, including syphilis.⁸

The law is also ineffective because the people currently most at risk for the disease are (1) homosexual men, (2) those in poverty, and (3) intravenous drug users.⁹ The soon-to-be newlyweds typically are not in the high-risk groups.¹⁰ Because “the demographics of this disease have changed, the ways [by] which to detect the disease had to change.”¹¹ Consequently, many states enacted prenatal testing statutes.¹² This change has saved money and has been more successful in detecting syphilis.¹³ As the law was intended to detect congenital syphilis, testing pregnant women instead of brides makes more sense in 2003.¹⁴

The Department of Human Resources spends over \$200,000 annually conducting premarital blood tests.¹⁵ Commissioner Jim Martin is responsible for the Department’s overall budget.¹⁶ When the administration called for budget cuts, he searched for programs that could be cut for their lack of efficiency or effectiveness.¹⁷ The mandatory premarital blood testing program met the criteria.¹⁸

SB 190

Senator Thomas introduced SB 190 to the Senate on February 27, 2003.¹⁹ The bill was assigned to the Senate Health and Human

<http://www.state.ga.us/leg/audio/2003archive.html> [hereinafter Senate Audio]. At the time of this publication, Connecticut, Massachusetts, Mississippi, Montana, Oklahoma and the District of Columbia also required premarital blood testing. See Deering, *supra* note 1, at 24.

8. See Toomey Interview, *supra* note 3.

9. See *id.*; see also Bill Johnson, *AIDS, Syphilis Hurt Black Community*, DETROIT NEWS, Sept. 20, 2002, available at 2002 WL 25291632.

10. See Toomey Interview, *supra* note 3; Johnson, *supra* note 9.

11. Toomey Interview, *supra* note 3.

12. See *id.*

13. See *id.*

14. See *id.* From 1996 to 2001, 79% of infants born with congenital syphilis in Georgia belonged to unwed mothers. See Deering, *supra* note 1, at 14. Dr. Toomey labeled the old law “anachronistic” and said it needed to be repealed. See Toomey Interview, *supra* note 3.

15. Interview with Jim Martin, Commissioner, Georgia Department of Human Resources (Mar. 26, 2003) [hereinafter Martin Interview].

16. See *id.*

17. See *id.*

18. See *id.*

19. See SB 190, as introduced, 2003 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, SB 190, Apr. 25, 2003.

Services Committee.²⁰ The Senate Committee favorably reported the bill, with no changes.²¹ The Senate considered SB 190 on March 6, 2003.²² Senator Thomas presented the bill persuasively and clearly outlined the reasons why the Georgia requirement for premarital testing was outdated and in need of repeal.²³

During the floor debate, Senator Nadine Thomas of the 10th district asked Senator Don Thomas if this law should have been repealed ten years ago.²⁴ Senator Don Thomas responded in the affirmative.²⁵ The bill passed the Senate unanimously by a vote of 48 to 0.²⁶

House Consideration

The bill was read for the first time in the House on March 24, 2003, and then assigned to the Health and Human Services Committee.²⁷ The House Committee discussed the bill's scope and after some debate favorably reported SB 190 with no changes on April 17, 2003.²⁸

On April 25, 2003, the last day of the legislative session, Representative Paul E. Smith of the 13th district took the well to present the bill.²⁹ In a short presentation, Representative Smith stated that the Department of Human Resources requested that the General Assembly remove this provision from the law.³⁰ Representative Smith noted that Georgia is only one of five states that continue to have a premarital testing requirement, and the elimination of the

20. See State of Georgia Final Composite Status Sheet, SB 190, Apr. 25, 2003.

21. See *id.*

22. See *id.*

23. See Senate Audio, *supra* note 9 (remarks by Sen. Don Thomas).

24. See *id.* (remarks by Sen. Nadine Thomas).

25. See *id.* (remarks by Sen. Don Thomas).

26. See State of Georgia Final Composite Status Sheet, SB 190, Apr. 25, 2003; Georgia Senate Voting Record, SB 190 (Mar. 6, 2003).

27. See State of Georgia Final Composite Status Sheet, SB 190, Apr. 25, 2003.

28. See *id.*; Interview with Sandy Torres, Legal Services Officer, Georgia Department of Human Resources (May 6, 2003). At the initial meeting, the Committee only discussed the syphilis repeal, even though the legislation affected all premarital blood testing. The Code section repealed dealt with rubella and syphilis testing, as well as counseling and optional testing for sickle cell anemia. See *id.*

29. See Audio Recording of House Proceedings, Apr. 25, 2003 (remarks by Rep. Paul Smith), at <http://www.state.ga.us/leg/audio/2003archive.html>.

30. See *id.*

provision would save the state approximately \$300,000 a year.³¹ There was no further debate on the bill, and it passed by a vote of 147 to 15.³²

The Act

The Act deletes Code section 19-3-40.³³ By doing so, the Act eliminates the requirements for premarital blood testing in order to obtain a Georgia marriage license.

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31. *See id.* In reality, repealing the law will save the state \$200,000. *See* Martin Interview, *supra* note 15.

32. *See id.*; State of Georgia Final Composite Status Sheet, SB 190, Apr. 25, 2003; Georgia House of Representatives Voting Record, SB 190 (Apr. 25, 2003).

33. 2003 Ga. Laws 895 (formerly found at O.C.G.A. § 19-3-40 (1999)).