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HEALTH Consent for Surgical or Medical Treatment: Provide a Short Title; Provide for Legislative Findings and Purpose; Amend Chapter 9A of Title 31 of the Official Code of Georgia Annotated, Relating to the "Woman's Right to Know Act," so as to Offer Pregnant Females an Opportunity to Undergo an Ultrasound if Such Imaging is Available and Allow the Woman to View the Sonogram and Listen to the Fetal Heartbeat, if Present; Change Certain Provisions Relating to Voluntary and Informed Consent to Abortions; Require Certain Information Be Made Available by the Department of Human Resources; Change

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## HEALTH

***Consent for Surgical or Medical Treatment: Provide a Short Title; Provide for Legislative Findings and Purpose; Amend Chapter 9A of Title 31 of the Official Code of Georgia Annotated, Relating to the “Woman’s Right to Know Act,” so as to Offer Pregnant Females an Opportunity to Undergo an Ultrasound if Such Imaging is Available and Allow the Woman to View the Sonogram and Listen to the Fetal Heartbeat, if Present; Change Certain Provisions Relating to Voluntary and Informed Consent to Abortions; Require Certain Information Be Made Available by the Department of Human Resources; Change Certain Provisions Relating to Reporting Requirements; Provide for Civil and Professional Penalties; Provide for Construction; Provide for Severability; Provide for an Effective Date; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes***

CODE SECTIONS:	O.C.G.A. §§ 31-9A-3 to -4, -6 (amended)
BILL NUMBER:	HB 147
ACT NUMBER:	207
GEORGIA LAWS:	2007 GA. LAWS 299
SUMMARY:	The Act amends the “Woman’s Right to Know Act” by requiring physicians to offer pregnant women seeking an abortion the opportunity to undergo an ultrasound or sonogram, and to offer the viewing or hearing of such tests. The woman must certify in writing, at the conclusion of her visit, that she was provided with such opportunity and whether she elected to view the sonogram or hear the fetal heartbeat. The Act provides for civil and professional penalties for failure to comply.
EFFECTIVE DATE:	July 1, 2007

*History*

House and Senate members of the Georgia General Assembly shared a common goal in 2007: to reduce the number of abortions in Georgia.<sup>1</sup> However, the members were far from an agreement on how to accomplish this goal.<sup>2</sup> Georgia has the eighth highest teen pregnancy rate of any state in the nation, with teen pregnancies costing Georgia's taxpayers more than \$113 million a year.<sup>3</sup> Half of all the pregnancies in the United States are unintended and forty-two percent of these unintended pregnancies end in an abortion.<sup>4</sup> Furthermore, the legislature found it startling that one-third of all American women will have had an abortion by the time they are forty-five-years old.<sup>5</sup>

During the 2006 legislative session, Representative James Mills (R-25th) attempted to pass House Bill 888 to address these concerns.<sup>6</sup> The bill required that a sonogram be performed, either on-site or by referral to another facility, prior to an abortion, and that the woman be offered the opportunity to view the ultrasound or sonogram.<sup>7</sup> A failure to offer an opportunity the view the ultrasound or sonogram image would be punished as a misdemeanor.<sup>8</sup> HB 888 further provided that the ultrasound or sonogram would not be required if the abortion resulted from a medical emergency, or the pregnancy resulted from rape or incest, either of which must be documented by a police report.<sup>9</sup> Though favorably reported by a House committee, HB 888 never reached the House floor for a vote.<sup>10</sup>

Representative Mills reintroduced similar legislation as HB 147 during the 2007 session.<sup>11</sup> Though the requirement was later

1. Video Recording of Senate Proceedings, Apr. 11, 2007 at 1 hr., 51 min., 8 sec. (remarks by Sen. Nan Orrock (D-36th)), [http://www.georgia.gov/00/article/0,2086,4802\\_6107103\\_72682316,00.html](http://www.georgia.gov/00/article/0,2086,4802_6107103_72682316,00.html) [hereinafter Senate Video].

2. See *infra* Bill Tracking.

3. Senate Video, *supra* note 1, at 1 hr., 51 min., 8 sec. (remarks by Sen. Nan Orrock (D-36th)).

4. *Id.*

5. See *id.*

6. HB 888, as introduced, 2006 Ga. Gen. Assem.

7. *Id.*

8. HB 888 (HCS), 2006 Ga. Gen. Assem.

9. *Id.*

10. See Georgia General Assembly, HB 888, Bill Tracking, [http://www.legis.ga.gov/legis/2005\\_06/sum/hb888.htm](http://www.legis.ga.gov/legis/2005_06/sum/hb888.htm).

11. See HB 147, as introduced, 2007 Ga. Gen. Assem.

removed, as introduced HB 147 required an ultrasound or sonogram to be performed prior to an abortion<sup>12</sup> The bill gave women the right to view the ultrasound and hear the child's heartbeat, if audible.<sup>13</sup> It also required that women seeking abortions be given a list of health care providers and clinics that offer free ultrasounds.<sup>14</sup>

Representative Mills believed that this bill would allow women to be fully armed with all the facts before making the choice to have an abortion, including the reality and status of their unborn children and the consequences of such a choice.<sup>15</sup> Accordingly, the Act modified Georgia's informed consent law, which lists certain pieces of information that physicians are required to offer to women before performing the abortion, part of the Woman's Right to Know Act.<sup>16</sup> Representative Mills stated on the House floor that he did not know of any other medical test performed on a patient where the information from the test is withheld.<sup>17</sup> He described HB 147 as a "pro-birthday bill" which, if passed, would enable future lawyers, doctors, and legislators to be born who would not otherwise have been born.<sup>18</sup>

### *Similar Bills in Other States*

Georgia is the not the first state to consider legislation requiring pre-abortion ultrasounds, and it will likely not be the last. At least five other states have considered bills similar to HB 147.

### *Indiana*

In 2005, Indiana became one of the first states to pass a law regarding ultrasounds before an abortion.<sup>19</sup> Indiana's law requires a

12. *Id.*

13. *Id.*

14. *Id.*

15. Interview with Rep. James Mills (R-25th) (Apr. 25, 2007) [hereinafter Mills Interview].

16. *See* HB 147, as introduced, 2007 Ga. Gen. Assem.; O.C.G.A. § 31-9A-1 et seq. (2006).

17. Video Recording of House Proceedings, Mar. 19, 2007 at 1 hr., 36 min., 2 sec. (remarks by Rep. James Mills (R-25th)), [http://www.georgia.gov/00/article/0,2086,4802\\_6107103\\_72682804,00.html](http://www.georgia.gov/00/article/0,2086,4802_6107103_72682804,00.html) [hereinafter House Video].

18. Mills Interview, *supra* note 15.

19. *See generally* S.B. 76, 114th Gen. Assem., 1st Sess. (Ind. 2005), available at <http://www.in.gov/legislative/bills/2005/SB/SB0076.1.html>.

physician to inform a woman, before she gives her consent to an abortion, of the “availability of fetal ultrasound imaging . . . to enable the woman to view the image and hear the heartbeat of the fetus.”<sup>20</sup> Indiana’s law does not mandate that an ultrasound be performed or that the physician offer the ultrasound for the woman to see; it simply states that the physician must tell the woman about the availability of an ultrasound.<sup>21</sup>

According to the sponsor of the Indiana legislation, Senator Michael Young (R-35th), “the legislation is necessary because women had told him they ‘didn’t know this technology was available or doctors said it wasn’t needed.’”<sup>22</sup> Governor Mitch Daniels also spoke in support of the bill, stating that one goal of his administration was to decrease the number of abortions.<sup>23</sup>

In opposition, Planned Parenthood stated that this was a “law with no medical value, and that the best information women can receive comes from consultation with their doctor, not their legislator.”<sup>24</sup> In another statement, they accused this bill of being “one more of government’s continued intrusions into doctor-patient relationships.”<sup>25</sup>

### *Michigan*

Michigan followed Indiana the following year and passed ultrasound/abortion legislation that was signed by their Governor in March of 2006.<sup>26</sup> As in Georgia, Michigan’s HB 4446 was an extension of its informed consent law, which lists certain pieces of information that physicians are required to offer to women before performing the abortion.<sup>27</sup> Like Georgia, Michigan simply added the

20. *Id.* § (1)(F).

21. *Id.*

22. *Indiana Governor Signs Bill Requiring Doctors to Offer Ultrasound to Women Seeking Abortion*, MEDICAL NEWS TODAY, Apr. 22, 2005, <http://www.medicalnewstoday.com/articles/23273.php> [hereinafter *Indiana Governor*].

23. *Id.*

24. Planned Parenthood Advocate of Indiana, 2005 Indiana Legislation, [http://advocates.ppin.org/2005\\_legislation.aspx](http://advocates.ppin.org/2005_legislation.aspx).

25. *Indiana Governor*, *supra* note 22.

26. H.B. 4446, 93rd Legislature, Reg. Sess. (Mich. 2006). A full history of the bill can be found at <http://legislature.mi.gov/doc.aspx?2005-HB-4446>.

27. *See id.*; HB 147, as introduced, 2007 Ga. Gen. Assem.

language concerning ultrasounds as one more required piece of information that must be obtained before an abortion is performed.<sup>28</sup> Similarly, Michigan's law requires physicians who give an ultrasound to offer the woman the option of viewing that ultrasound.<sup>29</sup> The physicians are not required to perform the ultrasound; they simply have to "provide that patient with the opportunity to view or decline to view an active ultrasound image of the fetus" if there is one performed.<sup>30</sup>

The arguments for and against the Michigan law mirrored those brought up in the debate of Georgia's HB 147.<sup>31</sup> One supporter, Frank Pavone, national director of Priests for Life, claimed that "[u]pon seeing the image of their children on a screen, most women will no longer desire this horrific death for their children."<sup>32</sup> Shelli Weisberg, member of the American Civil Liberties Union of Michigan, argued in opposition that "[t]hese are decisions that should be made between a woman and her doctor, certainly not by a legislator. It is a tactic to make the decision to have an abortion that much more difficult and it puts more obstacles in the way of having an abortion."<sup>33</sup>

### *Florida*

While Georgia legislators debated HB 147, Florida legislators debated a similar bill dealing with ultrasounds and abortions. Florida's bill required every woman seeking an abortion to have an ultrasound.<sup>34</sup> The bill also required every woman to view the ultrasound before having the abortion.<sup>35</sup> The doctor could avoid liability only if the woman seeking the abortion stated in writing that she refused to view the ultrasound.<sup>36</sup> The Florida legislation provided exemptions for women who were "the victims of rape, incest,

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28. See H.B. 4446, 93rd Legislature, Reg. Sess. (Mich. 2006).

29. *Id.*

30. *Id.*

31. See *infra* Bill Tracking.

32. Monisha Bansal, *Michigan House Passes Ultrasound Bill*, Crosswalk.com, <http://www.crosswalk.com/1332651> (last visited Apr. 15, 2008).

33. *Id.*

34. H.B. 1497, 2007 Gen. Assem., Reg. Sess. (Fla. 2007).

35. *Id.*

36. *Id.*

domestic violence, or human trafficking or for women who have a serious medical condition necessitating the abortion.”<sup>37</sup> Notably, Florida’s bill did not make medical malpractice a cause of action against the medical personnel who failed to perform a sonogram or ultrasound, but did create a private civil action against clinics, nurses, or physicians for violation of the patients’ rights.<sup>38</sup> However, Florida’s legislature did add a provision that required a twenty-four hour “waiting period before a physician may perform or induce an abortion.”<sup>39</sup>

Representative Susan Bucher (D-88th) opposed the Florida legislation, calling it “an ugly amendment . . . designed to cause substantial psychological impact to a young woman” and to intimidate women away from choosing abortions.<sup>40</sup> Supporters of the bill rebuked these accusations, claiming that the “provision in no way prevents . . . a woman’s ability to choose an abortion.”<sup>41</sup> This debate varied greatly from the debate in the Georgia legislature, where both sides acknowledged that the bill would decrease the number of abortions.<sup>42</sup>

Although the bill passed the House on April 27, with another version adopted by the Florida Senate on May 4, 2007, it was ultimately struck down by the House on the same day.<sup>43</sup>

### *Texas*

Another version of ultrasound/abortion legislation was debated during the 2007 state legislative session in Texas, in the form of Senate Bill 920. The bill was similar to the Florida bill in that it

37. *Id.*

38. *Id.*

39. *Id.*

40. David Royse, *House Debates Extending Abortion Ultrasound Requirement*, ASSOCIATED PRESS, Apr. 26, 2007 (on file with the Georgia State University Law Review).

41. *Id.* (statement of Representative Stephen Precourt (R-41st)).

42. See generally Video Recording of House Judiciary Non-Civil Committee Meeting, Feb. 12, 2007 at 55 min., 0 sec.,

[http://www.legis.state.ga.us/legis/2007\\_08/house/Committees/judiciaryNonCivil/judyncArchives.htm](http://www.legis.state.ga.us/legis/2007_08/house/Committees/judiciaryNonCivil/judyncArchives.htm) [hereinafter House Committee Video] (where the fact of whether the bill would decrease abortions was not at issue).

43. See Florida House of Representatives, CS/HB 1497, Selected Bill Detail, <http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=36642&BillText=1497&HouseChamber=H&SessionId=54>.

required a physician to perform an ultrasound before an abortion.<sup>44</sup> SB 920 contained a list of conditions for physicians to meet before obtaining a pregnant woman's consent to perform the abortion.<sup>45</sup> In particular, the bill requires the physician performing the abortion to "provide[] the woman with an obstetric ultrasound image of the unborn child, and review[] the image of the unborn child with the woman."<sup>46</sup> Although the ultrasounds must be explained, there was nothing in the Texas bill requiring the woman to view the ultrasound images: "Neither [the] physician nor the woman shall be penalized if she refuses to look at the presented ultrasound images."<sup>47</sup>

Again, the opposition to the bill saw it as a tool to stop abortions. Senator Eliot Shapleigh (D-29th) of El Paso looked at the impact on women and concluded that the bill had only "one purpose and that is guilt."<sup>48</sup> The bill's author, Senator Dan Patrick (R-7th), acknowledged that it was an anti-abortion bill, but he considered that an excellent reason to pass the bill: "I'm interested in protecting the lives of the unborn and giving a woman an option before she makes that fatal choice for that fetus, for that baby, to look at that ultrasound."<sup>49</sup>

SB 920 was passed by both houses of the Texas legislature, making it one of the few successful bills requiring a woman have an ultrasound before an abortion.<sup>50</sup>

### *South Carolina*

South Carolina's version of ultrasound/abortion legislation received attention from other state's legislatures during 2007 because it was considered by critics to be the strictest version of such legislation.<sup>51</sup> The original version of HB 3355 made it mandatory for

44. SB 920, Texas Legislature Session 80(R), *available at* <http://www.capitol.state.tx.us/tlodocs/80R/billtext/html/SB00920E.htm>.

45. *Id.*

46. *Id.* § (a)(3).

47. *Id.* § (a)(1).

48. Liz Austin Peterson, *Senate Panel Approves Bill Requiring Ultrasounds Before Abortions*, Associated Press, Apr. 24, 2007 (on file with the Georgia State University Law Review).

49. *Id.*

50. Texas Legislature Online History, *available at* <http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=80R&Bill=SB920>.

51. See Royse, *supra* note 40; Peterson, *supra* note 48.

the physician to not only perform the ultrasound, but to review it with the pregnant woman seeking an abortion.<sup>52</sup> The law then required the woman to certify in writing that she had reviewed the ultrasound images before she could go through with the abortion.<sup>53</sup> Had the original version passed, it would have been the only state law requiring both the physician to perform an ultrasound and the woman to review it, with no option for the woman to refuse.<sup>54</sup> However, though this version passed the South Carolina House with a vote of 91 to 23, the legislation failed to pass the Senate.<sup>55</sup>

The version now being considered by the South Carolina legislature is almost identical to Georgia's HB 147: it does not require the physician to perform an ultrasound, only to offer the viewing of the ultrasound if the physician actually performs one.<sup>56</sup> If an ultrasound is not performed, the physician must still tell the patient that an ultrasound is available for viewing the fetus.<sup>57</sup>

This version is supported by South Carolina Governor Mark Sanford, who stated that he "believe[s] life is sacred, and in the debate over when life begins [a society] should always err on the side of life."<sup>58</sup> The measure's sponsor, Representative Greg Delleney (R-43rd), stated, "It's just providing a woman with more information."<sup>59</sup> However, Representative Cobb-Hunter (D-66th), who is a social worker, called the new requirement "emotional blackmail for a woman who has already made an agonizing decision" and that people

52. See H. 3355, 117th Gen. Assem., 2007-2008 Sess. (S.C. 2007), available at [http://www.scstatehouse.net/sess117\\_2007-2008/bills/3355.htm](http://www.scstatehouse.net/sess117_2007-2008/bills/3355.htm) [hereinafter S.C. Bill] (Version 1/25/2007).

53. *Id.*; see also Brietta Clark, *South Carolina's Ultrasound Bill is Unconstitutional and Unethical*, Bioethics Forum, Apr. 20, 2007, <http://www.bioethicsforum.org/South-Carolina-Ultrasound-Bill-abortion.asp>.

54. See *supra* *Similar Bills in Other States* (discussing legislation passed by Florida, Texas, Indiana, and Michigan).

55. See S.C. Bill, *supra* note 52.

56. Compare S.C. Bill, *supra* note 52 (Version 5/24/2007) with HB 147, as passed, 2007 Ga. Gen. Assem.

57. HB 3355, 117th Legislature Sess. (S.C. 2007) (version as of Apr. 19, 2007), available at [http://www.scstatehouse.net/sess117\\_2007-2008/prever/3355\\_20070419.htm](http://www.scstatehouse.net/sess117_2007-2008/prever/3355_20070419.htm).

58. Steven Ertelt, *South Carolina Governor Endorses Abortion-Ultrasound Bill as House Votes*, LIFE NEWS.COM, Mar. 20, 2007, <http://www.lifenews.com/state2168.html>.

59. *Id.*

may “love [their children] in the womb but once they get here, it’s a different story.”<sup>60</sup>

However, after repeated amendments by both the House and Senate, a mutual version has not been agreed upon, and discussions will commence during the 2008 session.<sup>61</sup>

### *Bill Tracking*

#### *Consideration and Passage by the House*

Representatives James Mills (R-25th), Donna Sheldon (R-105th), Barry Fleming (R-117th), Mike Coan (R-101st), David Ralston (R-7th), and Ed Setzler (R-35th) sponsored HB 147.<sup>62</sup> The bill, to be known as the “Woman’s Ultrasound Right to Know Act,” was introduced to amend the Woman’s Right to Know Act.<sup>63</sup>

On January 25, 2007, the House first read HB 147.<sup>64</sup> The bill was read for a second time on January 26, 2007, and the Speaker of the House, Glenn Richardson (R-19th), assigned it to the Judiciary Non-Civil Committee.<sup>65</sup>

The committee considered the original HB 147, which initially mandated physicians or other qualified agents to require that pregnant women undergo an ultrasound or sonogram prior to having an abortion.<sup>66</sup> Further, the original bill required the woman seeking the abortion to certify in writing prior to the abortion that she viewed the ultrasound imaging and was given the opportunity to listen to the heartbeat of the unborn child.<sup>67</sup> If she decided not to view the ultrasound or listen to the heartbeat, then she must decline to do so in writing.<sup>68</sup> The bill would have added a Code section providing that a physician’s failure to comply with the provisions would be a basis for malpractice, a basis for professional disciplinary action from the

60. *Abortion Ultrasound Bill Advances in S.C.*, CBS NEWS INTERACTIVE, Mar. 22, 2007 (on file with the Georgia State University Law Review).

61. See S.C. Bill, *supra* note 52.

62. HB 147, as introduced, 2007 Ga. Gen. Assem.

63. O.C.G.A. § 31-9A-1 et. seq (2006).

64. State of Georgia Final Composite Status Sheet, HB 147, June 5, 2007.

65. *Id.*

66. HB 147, as introduced, 2007 Ga. Gen. Assem.

67. *Id.*

68. *Id.*

Composite State Board of Medical Examiners, and a basis for recovery for the woman for the wrongful death of her unborn child.<sup>69</sup> Additionally, any failure to comply with the Act would be punished as a misdemeanor.<sup>70</sup>

The House committee made several substantive changes to HB 147, but favorably reported the bill on March 1, 2007.<sup>71</sup> Most importantly, the committee substituted the mandatory language of the bill with language stating that a physician need only *offer* a pregnant woman the opportunity for an ultrasound.<sup>72</sup> At the conclusion of the ultrasound, the woman would be offered the opportunity to view the fetal image and hear the fetal heartbeat.<sup>73</sup>

The substitute bill did not change the requirement that the woman certify in writing, prior to the abortion, that she was given an opportunity to view the sonogram, and whether or not she elected to view it or listen to the fetal heartbeat.<sup>74</sup> The substitute bill did lessen the punishment for physicians failing to comply with the section by removing all the punishment provisions except the one providing a basis for professional disciplinary action from the Composite State Board of Medical Examiners.<sup>75</sup>

Representative Mills presented the bill before the House floor on March 19, 2007, emphasizing that the bill did not mandate that ultrasounds be performed.<sup>76</sup> Concern arose as to whether the bill provided an exception for victims of rape or incest.<sup>77</sup> Representatives Jeff Lewis (R-15th) and Ed Setzler (R-35th) then voiced their support for the bill.<sup>78</sup>

Representative Stephanie Benfield (D-85th), as well as Representatives David Lucas (D-139th) and Nikki Randall (D-138th),

69. *Id.*

70. *Id.*

71. See HB 147 (HCS), 2007 Ga. Gen. Assem.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. State of Georgia Final Composite Status Sheet, HB 147, June 5, 2007; House Video, *supra* note 17, at 1 hr., 15 min. 29 sec. (remarks by Rep. James Mills (R-25th)).

77. See House Video, *supra* note 17, at 1 hr., 18 min., 29 sec. (remarks by Rep. Jill Chambers (R-81st)).

78. *Id.* at 1 hr. 54 min. 6 sec. (remarks by Rep. Jeff Lewis (R-15th)); *id.* at 2 hr., 6 min., 53 sec. (remarks by Rep. Ed Setzler (R-35th)).

voiced concerns over the implications of the bill.<sup>79</sup> Specifically, Representative Benfield expressed concern that the passage of the bill was not the best and most effective way to minimize the abortion rate in Georgia:

[I]f we're really concerned about preventing unintended pregnancies, let's work on family planning, let's work on something that we all can agree on. This to me is divisive . . . Let's have some real comprehensive sex education in our schools, let's fully fund family planning clinics in Georgia, and let's work to prevent unintended pregnancies. And this bill in my opinion is not the best way to go to achieve that.<sup>80</sup>

Despite the voiced opposition and concerns about the bill's effectiveness and implications, the House adopted the committee substitute by a vote of 116 to 54.<sup>81</sup>

### *Consideration and Passage by the Senate*

The bill was then considered by the Senate, carried over by Senator Nancy Schaefer (R-50th), who sponsored similar legislation this year in the Senate.<sup>82</sup> The bill was read and referred to the Health and Human Services Committee on March 20, 2007.<sup>83</sup> The Committee favorably reported the bill on March 30, 2007, first eliminating the language requiring certain specifications for the ultrasound quality and portrayal, and it was read before the Senate for the second time on April 10, 2007.<sup>84</sup>

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79. House Video, *supra* note 17, at 1 hr., 37 min., 25 sec. (remarks by Rep. Stephanie Benfield (D-85th)); *id.* at 1 hr. 48 min. 55 sec. (remarks by Rep. David Lucas (D-139th)); *id.* at 2 hr., 1 min., 10 sec. (remarks by Rep. Nikki Randall (D-138th)).

80. *Id.* at 1 hr., 44 min., 10 sec. (remarks by Rep. Stephanie Benfield (D-85th)).

81. Georgia House of Representatives Voting Record, HB 147 (Mar. 19, 2007); *see* State of Georgia Final Composite Status Sheet, HB 147, June 5, 2007.

82. Sonji Jacobs, *Senate Approves Ultrasound Rule*, AJC.COM, Apr. 11, 2007, [http://www.ajc.com/blogs/content/shared-blogs/ajc/georgia/entries/2007/04/11/senate\\_approves\\_4.html](http://www.ajc.com/blogs/content/shared-blogs/ajc/georgia/entries/2007/04/11/senate_approves_4.html).

83. State of Georgia Final Composite Status Sheet, HB 147, June 5, 2007.

84. *Id.*

The Senate debated the bill on April 11, 2007.<sup>85</sup> That day, the Senate voted to “engross” the bill, thus restricting lawmakers from amending the measure on the floor.<sup>86</sup>

Several senators spoke out against the bill on the floor, including Senator Nan Orrock (D-36th).<sup>87</sup> Senator Orrock contended that “[w]e should be gathering around a goal of reducing teen pregnancy . . . around a consensus that we want to improve the health of our mothers, to improve the health of our newborns, and improve the overall opportunities for women to make educated choices.”<sup>88</sup> Despite opposition to the bill and an attempt to amend the bill, the Senate voted 36 to 17 to pass HB 147.<sup>89</sup> The bill then moved back to the House to review changes made during the Senate committee hearing regarding ultrasound quality and portrayal.<sup>90</sup>

### *Final Considerations*

The House disagreed with the Senate amendment on April 13, 2007.<sup>91</sup> However, the Senate insisted on the changes on April 17, 2007, and the House insisted on their changes on April 19, 2007.<sup>92</sup>

On April 19, 2007, both the House and Senate appointed conference committees to review the bill.<sup>93</sup> On April 20, the bill went before both the House and Senate committees.<sup>94</sup> The first Committee Conference Report lost before the Senate.<sup>95</sup> The second Committee Conference Report was then adopted by both the House and Senate committees.<sup>96</sup> This version, crafted by a six-member House and

85. *Id.*

86. Jacobs, *supra* note 82.

87. *Id.*

88. See Senate Video, *supra* note 1, at 1 hr., 51 min., 8 sec. (remarks by Sen. Nan Orrock (D-36th)) (suggesting that there is a better way to reduce teen pregnancies).

89. See State of Georgia Final Composite Status Sheet, HB 147, June 5, 2007; Vicky Eckenrode, *Senate Passes Weakened Pre-Abortion Measure*, JACKSONVILLE.COM, Apr. 12, 2007, [http://www.jacksonville.com/tu-online/stories/041207/geo\\_9193282.shtml](http://www.jacksonville.com/tu-online/stories/041207/geo_9193282.shtml).

90. Eckenrode, *supra* note 89.

91. See Georgia General Assembly, HB 147, Bill Tracking, [http://www.legis.ga.gov/legis/2007\\_08/sum/hb147.htm](http://www.legis.ga.gov/legis/2007_08/sum/hb147.htm).

92. *Id.*

93. State of Georgia Final Composite Status Sheet, HB 147, June 5, 2007.

94. *Id.*

95. See *id.*

96. See *id.*

Senate conference committee, stated that in all cases in which a pregnant woman is seeking an abortion, a medical provider must offer her a chance to view the fetal image and hear the fetal heart before the pregnancy is terminated.<sup>97</sup>

However, the version adopted by the conference committee again failed in the Senate on the last day of the session.<sup>98</sup> Members of the Senate expressed their disapproval of the requirements added (requiring the physician to offer the woman a chance to view the fetal image and hear the fetal heart) by the members of the House and Senate Committees.<sup>99</sup> Senator Renee Unterman (R-45th), a former nurse who serves on the Health and Human Services Committee, which originally considered the bill, expressed concern that the bill was “deceptive . . . [i]t was like a bait-and-switch . . . and I just don't like being treated that way.”<sup>100</sup> The revision failed with the opposition of Democrats and at least one Republican.<sup>101</sup>

Late in the afternoon on the session's last day, April 20, 2007, the bill finally passed both committees in a final version agreed upon by both the House and Senate.<sup>102</sup> This substitution, similar to Senator Schaefer's SB 66, stripped some of the language written by Representative Mills, which described how lawmakers would be involved if the state were sued over the law.<sup>103</sup> It also reinstated the requirement that an ultrasound or sonogram be offered if such imaging is available, and that the woman be allowed to view the sonogram and listen to the fetal heartbeat.<sup>104</sup> However, the version did not provide for criminal penalties for the failure to perform the

97. Sonji Jacobs, *Abortion Bill Changed*, AJC.COM, Apr. 20, 2007, [http://www.ajc.com/blogs/content/shared-blogs/ajc/georgia/entries/2007/04/20/senate\\_changes.html](http://www.ajc.com/blogs/content/shared-blogs/ajc/georgia/entries/2007/04/20/senate_changes.html); see HB 147 (CCR2), 2007 Ga. Gen. Assem.

98. Doug Gross, *Abortion Ultrasound Bill Falls Short in Senate*, EXAMINER.COM, Apr. 20, 2007 (on file with the Georgia State University Law Review).

99. *Id.*

100. *Id.*

101. *Id.*

102. Sonji Jacobs, *Ultrasound Bill Passes*, AJC.COM, Apr. 20, 2007, [http://www.ajc.com/blogs/content/shared-blogs/ajc/georgia/entries/2007/04/20/revised\\_ultraso.html](http://www.ajc.com/blogs/content/shared-blogs/ajc/georgia/entries/2007/04/20/revised_ultraso.html).

103. See HB 147 (SCS), 2007 Ga. Gen. Assem.; Doug Gross, *Senate Reverses Position, Supports Abortion Ultrasound Bill*, ASSOCIATED PRESS, Apr. 20, 2007, available at [http://www.examiner.com/a-686726~Senate\\_reverses\\_position\\_\\_supports\\_abortion\\_ultrasound\\_bill.html](http://www.examiner.com/a-686726~Senate_reverses_position__supports_abortion_ultrasound_bill.html).

104. See HB 147 (SCS), 2007 Ga. Gen. Assem.

abortion or sonogram or for the failure to offer them to the pregnant woman.<sup>105</sup>

Finally, on April 30, 2007, the bill was sent to Governor Sonny Perdue for enactment.<sup>106</sup> As representatives from Georgia Right to Life and the Catholic Church looked on, Governor Perdue signed the bill into law on May 23, 2007; the law became effective on July 1, 2007.<sup>107</sup>

### *The Act*

Section 1 of the Act provides for the short title, the “Woman’s Ultrasound Right to Know Act.”<sup>108</sup>

Section 2 lists the findings of the General Assembly.<sup>109</sup> Specifically, it states that, in consideration of the effects of abortions:

- (1) It is essential to the psychological and physical well being of a woman considering an abortion that she receives complete and accurate information on the reality and status of her pregnancy and of her unborn child.
- (2) The decision to abort “is an important and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences.” *Planned Parenthood v. Danforth*, 428 U.S. 52, 67 (1976); and
- (3) The knowledgeable exercise of a woman’s decision to have an abortion depends on the extent to which the woman receives sufficient information to make an informed choice between two alternatives: giving birth or having an abortion.<sup>110</sup>

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105. *Id.*

106. See Georgia General Assembly, HB 147, Bill Tracking, [http://www.legis.ga.gov/legis/2007\\_08/sum/hb147.htm](http://www.legis.ga.gov/legis/2007_08/sum/hb147.htm).

107. Carlos Campos, *Abortion Law on Viewing Ultrasounds Signed*, ATLANTA J.-CONST., May 23, 2007.

108. HB 147, as passed, 2007 Ga. Gen. Assem.

109. *Id.*

110. *Id.*

Section 2 also lists several purposes for the bill's enactment.<sup>111</sup> First, the legislature seeks to "ensure that every woman considering an abortion receive complete information on the reality and status of her pregnancy and of her unborn child and that every woman submitting to an abortion do so only after giving her voluntary and informed consent to the abortion procedure."<sup>112</sup> Second, the legislature seeks to "protect unborn children from a woman's uninformed decision to have an abortion."<sup>113</sup> Third, it seeks to reduce "the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed."<sup>114</sup> Finally, it seeks to "adopt the construction of the term 'medical emergency' accepted by the United States Supreme Court in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)."<sup>115</sup>

Sections 3 provides that the Act amends Chapter 9A of Title 31 of the O.C.G.A. relating to the "Woman's Right to Know Act" to offer pregnant women an opportunity to undergo an ultrasound, if such imaging is available, and allow women to view the sonogram and listen to the fetal heartbeat, if present.<sup>116</sup> Further, Section 3 requires the woman to certify in writing that she was provided an opportunity for an ultrasound or sonogram, whether or not she elected to view the sonogram, and whether or not she elected to listen to the fetal heartbeat.<sup>117</sup>

Section 4 requires the Department of Human Resources to provide geographically indexed materials to inform the woman of facilities and services available to assist her with obtaining an ultrasound, as well as additional contact information for those services.<sup>118</sup>

Section 5 changes certain provisions relating to reporting requirements of the Department of Human Services, requiring the Department to report the number of women who were provided the

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111. *Id.*

112. *Id.*

113. *Id.*

114. HB 147, as passed, 2007 Ga. Gen. Assem.

115. *Id.*

116. O.C.G.A. § 31-9A-3 (Supp. 2007).

117. *Id.*

118. O.C.G.A. § 31-9A-4 (Supp. 2007).

opportunity to view the fetal image and hear the fetal heartbeat, along with the number of women who actually elected to do so.<sup>119</sup>

Section 6 adds a new code section making the failure to comply with the Act reportable to the Composite State Board of Medical Examiners for disciplinary action.<sup>120</sup>

Section 7 notes that nothing in the act should be construed as creating or recognizing a right to abortion.<sup>121</sup>

### *Analysis*

#### *Public Policy Problems or Benefits*

Supporters of the Act argue that it will reduce the “risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed.”<sup>122</sup> In support of this argument, one woman testified before a House committee meeting about her own abortion experience, her regret and depression, and how she would have made a different decision if she had had more information at the time of the abortion.<sup>123</sup>

It has also been argued that an abortion candidate who sees an ultrasound is less likely to have an abortion, a big issue for pro-life advocates.<sup>124</sup> Statistics from Focus on the Family show that 84% of women decided not to have an abortion after seeing the ultrasound of their baby.<sup>125</sup>

Arguably, the Act is flawed by not having an exception for women who have been victims of rape, incest, or domestic violence. Critics of the Act have argued that women should not have to defend themselves against the question of whether or not they want to see an ultrasound of the fetus, and additionally that women do not need an

119. O.C.G.A. § 31-9A-6 (Supp. 2007).

120. O.C.G.A. § 31-9A-6.1 (Supp. 2007).

121. HB 147, as passed, 2007 Ga. Gen. Assem.

122. See HB 147, as introduced, 2007 Ga. Gen. Assem., § 2(b)(3).

123. House Committee Video, *supra* note 42, at 55 min., 0 sec. (remarks by Ms. Brock).

124. See *id.* at 55 min., 0 sec. (Ms. Brock testifying before the committee that if she had seen the ultrasound of her pregnancy, she would not have had an abortion when she was a teenager because she would have known that the fetus was not just a piece of tissue).

125. Ertelt, *supra* note 58.

image branded into their minds reminding them of the rape, incest, or domestic violence that they endured.<sup>126</sup>

### *Unintended Consequences of the Act*

One consequence of the Act's passage overlooked by other states, and only briefly mentioned in the HB 147 debates, is the possibility of a waste of resources.<sup>127</sup> Since neither the physicians nor the abortion clinics will want to be held responsible if an ultrasound is not offered, "it is really feasible that up to two or three ultrasounds could be done. That is a waste of resources."<sup>128</sup> Because the Act potentially makes the doctor or the clinic responsible, they may not trust the patient concerning whether an ultrasound has already been performed and whether she has seen the images. This could lead doctors to routinely perform their own ultrasound to make sure that they are exempt from liability.<sup>129</sup> Another possible consequence is that the Act will interfere with efforts to recruit obstetricians and gynecologists to establish a practice in Georgia because of the Act's penalties.<sup>130</sup>

Another concern is that while the Act requires the production of materials to inform women about clinics offering ultrasounds, it does not specify which clinics can be included and what qualifications they must have.<sup>131</sup> Women might choose a clinic that is a pro-life center, where they may be discouraged from seeking the abortion.<sup>132</sup>

### *Unresolved Issues with the Act*

There are many issues unresolved by the final version of the Act that must be addressed, either in future legislation or by the courts. First, there is no provision providing a source of funds to create the

126. See House Committee Video, *supra* note 42, at 3 min., 4 sec. (remarks by Sarah Cook, interim director for Georgia Network to End Sexual Assault, detailing her rape experience).

127. *Id.* at 25 min., 15 sec. (remarks by Adrienne Martine, general counsel for Planned Parenthood).

128. *Id.*

129. *Id.*

130. *Id.* at 16 min., 20 sec. (remarks by Chairwoman Sharon Cooper (R-41st) questioning Carol Swift, President of Georgia Right to Life).

131. See Interview with Rep. Stephanie Benfield (D-85th) (Apr. 19, 2007) [hereinafter Benfield Interview].

132. *Id.*

lists and brochures the Act requires.<sup>133</sup> Additionally, no funds were allotted for the centers offering free ultrasounds, new pamphlets, and twenty-four hour hotlines.<sup>134</sup>

There are no instructions on who compiles the list of abortion centers or what criteria, if any, should be required for placement on those lists.<sup>135</sup> There is also nothing in the Act detailing who will operate these free clinics and whether or not they will be monitored by a state agency or private agency.<sup>136</sup>

One possible issue for the courts to address is whether the woman or her doctor may be held liable if the pregnant woman lies to her doctor or falsely certifies that she has had an ultrasound.

### *Constitutional and Ethical Problems*

One constitutional argument concerning ultrasound/abortion legislation in general is that the requirements of the legislation may create an undue burden on a patient's right to choose whether to have an abortion. Law professor Brietta Clark, a commentator for BioethicsForum.org, outlines the argument:

First, it creates a mechanism for imposing certain 'information' on patients that is coercive. Second, viewing an ultrasound does not provide the patient with any new or helpful information and thus does not facilitate informed decision-making. Finally, requiring a woman to undergo an ultrasound and view the image presents a psychological obstacle to women seeking abortion that could jeopardize their physical and mental health.<sup>137</sup>

Though Clark refers to the South Carolina legislation, these arguments could expand to less restrictive legislation such as Georgia's Act.

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133. *Id.*

134. See O.C.G.A. § 31-9A-4 (Supp. 2007).

135. Benfield Interview, *supra* note 131.

136. House Committee Video, *supra* note 42, at 25 min., 15 sec. (remarks by Adrienne Martine, general counsel for Planned Parenthood).

137. Clark, *supra* note 53.

The “undue burden” provision stems from *Planned Parenthood v. Casey*, where the Supreme Court of the United States established the current test for determining when government regulation of abortion is unconstitutional.<sup>138</sup> The Court stated that the state may enact rules and regulations designed to “encourage [a pregnant woman] to know that there are philosophic and social arguments of great weight that can be brought to bear in favor of continuing the pregnancy to full term . . . .”<sup>139</sup> But if a regulation were to have “the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus,” it would be considered an undue burden and therefore unconstitutional.<sup>140</sup> Though the Act currently does not require an ultrasound, the provisions of the Act still may be challenged as imposing an undue burden on women seeking abortions, and, as victims of rape, incest, or domestic violence are not exempted from the requirements of the Act, they may have an especially cognizable claim.

In addition to undue burden concerns, there is also a possible failure under the Equal Protection provision of the Fourteenth Amendment in that the Act could have consequences adversely affecting the poor, the uninsured, or people living in rural areas, many of whom do not have easy access to healthcare. For them, the requirement to have an ultrasound might hinder their ability to have an abortion, especially an early abortion.<sup>141</sup>

Until the issue is reconsidered by the United States Supreme Court, this Act will stand alongside the proposed legislation in other states as a means of challenging current abortion law. While challenges are certain, the Act will serve as an example of an ultrasound/abortion bill that made it through the state legislature.

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138. *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

139. *Id.* at 872.

140. *Id.* at 877.

141. House Committee Video, *supra* note 42, at 25 min., 15 sec. (remarks by Adrienne Martine, general counsel for Planned Parenthood).

