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A BILL  
TO BE ENTITLED

AN ACT to authorize sterilization of individuals by physicians; to set forth the conditions under which such sterilization is authorized as to consenting persons and as to persons not legally competent; to protect physicians and all persons legally participating in such sterilization from civil liability or criminal prosecution; to allow therapeutic sterilizations in certain circumstances; to allow persons objecting on moral or religious grounds not to participate in sterilization procedures and to relieve them from liability; to repeal an Act creating the State Board of Eugenics and defining the duties of said Board, approved February 23, 1937 (Ga. L. 1937, p. 414); to repeal an Act authorizing sterilization approved March 10, 1966 (Ga. L. 1966, p. 453); to provide for a short title; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1

This Act shall be known as and may be defined as the "Voluntary Sterilization Act".

SECTION 2

It shall be lawful for any physician duly licensed without restriction to practice medicine and surgery pursuant to the provisions of Chapter 84-9 of the Code of Georgia of 1933, as amended, establishing a State Board of Medical Examiners and providing for the issuance of licenses to practice medicine,



① and acting in collaboration or consultation with at least two (2) other physicians also so licensed, and so requested by any person twenty-one (21) years of age or over, or less than twenty-one (21) years of age if legally married, to perform upon such person a sterilization procedure, provided a request in writing is made by such person and by his or her spouse, if married and if such spouse can be found after reasonable effort, and provided, further, that prior to or at the time of such request a full and reasonable medical explanation is given by such physician to such person as to the meaning and consequence of such operation.

### SECTION 3

(a) Finding of Need. - The General Assembly of Georgia finds that the present laws of Georgia provide no way for the performance of Sterilization Procedures as hereinafter defined upon persons, whether or not twenty-one (21) years of age, who, because of mental retardation, brain damage, or both, are irreversibly and incurably mentally incompetent to the degree that such persons with or without economic aid (charitable or otherwise) from others could not provide care and support for one or more children procreated by them in such a way that such children could reasonably be expected to survive to the age of twenty-one (21) years without suffering or sustaining serious mental or physical harm.

(b) Definitions. - For all purposes of this Section 3, the following words and terms shall have the meanings hereinafter stated:

(i) "Person Subject to this Section": A person, whether or not twenty-one (21) years of age, who, because of mental retardation, brain damage, or both,



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is irreversibly and incurably mentally incompetent to the degree that such person, with or without economic aid (charitable or otherwise) from others could not provide care and support for one or more children procreated by such person in such a way that such children could reasonably be expected to survive to the age of twenty-one (21) years without suffering or sustaining serious mental or physical harm, when there has been, according to the procedures of this Section as hereinafter stated, the required findings that the condition of such person is irreversible and incurable;

(ii) "Physician": A person duly licensed to practice medicine and surgery in Georgia without restriction pursuant to the laws of Georgia;

(iii) "Accredited Hospital": A hospital licensed by the State Board of Health of Georgia and accredited by the Joint Commission of Accreditation of Hospitals;

(iv) "Sterilization Procedure": Any procedure or operation performed by a Physician which is designed or intended to prevent conception and which is not designed or intended to unsex the patient by removing the ovaries or testicles.

(c) Prerequisites to Performing a Sterilization Procedure on a Person Subject to this Section. - A Sterilization Procedure may be performed by a Physician on a Person Subject to this Section pursuant to subsection (d) of this Section 3 only after satisfaction of all of the following conditions precedent:

(i) A petition shall be filed by one or more of the parent or parents or legal guardian or next-of-kin



of the person alleged to be subject to this Section, or by the Chairman of the State Board of Health, or by the Director of any County Board of Health, or by the Director of the State Department of Family and Children Services (or the County Director of any County Departments thereof) in the court of ordinary in the county of residence of such person alleged to be subject to this Section stating the reasons why such person is alleged to be subject to this Section and containing the written consent of the parent or parents not filing the petition, if such parents are surviving, can be found after reasonable effort, and are mentally competent, and if no such parent or parents survive, or can be found after reasonable effort, or if such parent or parents are mentally incompetent, the written consent of a guardian ad litem who shall be appointed by the court of ordinary and who shall make investigation and report to the court of ordinary before the hearing shall commence, provided that such guardian ad litem shall be a duly qualified and licensed member of the State Bar of Georgia.

(ii) The ordinary shall appoint two (2) Physicians, neither of whom is the Physician who proposes to perform the Sterilization Procedure on the person alleged to be subject to this Section and neither of whom is a member of the committee of the Accredited Hospital described in subsection (iii) hereof, who shall make an investigation and report to the court before the hearing shall commence that they have examined the person alleged to be subject to this Section and whether or not they find



such person to be a Person Subject to this Section and that the condition of such person is irreversible and incurable in their opinion.

(iii) Prior to the hearing on the application, evidence shall be presented to the court that a Sterilization Procedure has been approved for the person alleged to be subject to this Section by a committee of the medical staff of the Accredited Hospital in which the operation is to be performed. Such committee shall be one established and maintained in accordance with the standards promulgated by the Joint Commission on the Accreditation of Hospitals, and its approval must be by a majority vote of a membership of not less than three (3) members of the hospital staff, the Physician proposing to perform the Sterilization Procedure on the person alleged to be subject to this Section not being counted as a member of the committee for this purpose. The approval of such committee as above specified shall be based upon a finding that the person alleged to be subject to this Section is a Person Subject to this Section and that the condition of such person is irreversible and incurable in the opinion of the majority of the committee as above specified.

(iv) After hearing, if the ordinary shall find by a legal preponderance of all of the evidence above specified that the person alleged to be subject to this Section is a Person Subject to this Section and that the condition of such person is irreversible and incurable, he shall enter an order and judgment authorizing the Physician to perform such Sterilization Procedure



in accordance with the provisions of subsection (d) of this Section 13.

(v) An appeal to the superior court may be had by the applicant or person alleged to be subject to this Section or any other interested party on such judgment in the court of ordinary as in other cases made and provided by the laws of this State. The proceedings before the superior court shall constitute a trial de novo, and upon application of either party shall be heard before a jury; any decision of the superior court, or of any court, in such cases may be appealed to the higher courts of this State as in other civil cases; the cost of appeal, if any, to the superior and higher courts, shall be taxed as in other civil cases; and the pendency of any appeal shall stay the proceedings in the court of ordinary until the appeal be finally determined. Pauper's affidavits regarding court costs and costs of appeal may be filed as in other cases made and provided by the laws of this State.

(vi) The person alleged to be subject to the provisions of this Section shall have the right to counsel at all stages of the proceedings provided for herein.

(d) Performance of Sterilization Procedure. - After judgment of the court in accordance with the preceding subsections of this Section 3 shall have become final to the effect that such Sterilization shall be performed upon such Person Subject to this Section, a Sterilization Procedure may be performed by a Physician upon such Person Subject to this Section in an Accredited Hospital.



#### SECTION 4

Wherever used in this Act, the words "Sterilization Procedure" shall include and authorize the performance by the Physician of any procedure or operation which is designed or intended to prevent conception and which is not designed or intended to unsex the patient by removing the ovaries or testicles.

#### SECTION 5

No operation under this law shall be performed by any person other than a physician duly licensed without restriction to practice medicine and surgery in this State pursuant to Chapter 84-9 of the Code of Georgia of 1933, as amended.

#### SECTION 6

When an operation shall have been performed in compliance with the provisions of this law, no physician duly licensed without restriction to practice medicine and surgery in this State or other person legally participating in the execution of the provisions of this Act shall be liable civilly or to criminal prosecution on account of such operation or participation therein, except in the case of negligence in the performance of said procedures. Nothing in this Act shall be construed so as to require compliance with this Act or to prevent the medical or surgical treatment for sound therapeutic purposes of any person in this State, by a physician duly licensed without restriction to practice medicine and surgery in this State, which treatment may involve the nullification or destruction of the reproductive functions at the same time that it serves such sound therapeutic purposes.



#### SECTION 7

Nothing in this Act shall require a hospital to admit any patient under the provisions hereof for the purpose of performing a Sterilization Procedure, nor shall any hospital be required to appoint a committee such as contemplated under subsection 3(c)(iii). A physician, or any other person who is a member of or associated with the staff of a hospital, or any employee of a hospital in which a Sterilization Procedure has been authorized, who shall object to such Sterilization Procedure on moral or religious grounds shall not be required to participate in the medical procedures or the committee procedures leading to such Sterilization Procedure, and the refusal of any such person to participate therein shall not form the basis of any claim for damages on account of such refusal or for any disciplinary or recriminatory action against such person.

#### SECTION 8

An Act creating the State Board of Eugenics and defining the duties of said Board, approved February 23, 1937 (Ga. L. 1937, p. 414), as amended, is hereby repealed in its entirety.

#### SECTION 9

An Act authorizing sterilization of certain individuals approved March 10, 1966 (Ga. L. 1966, p. 453) is hereby repealed in its entirety.

#### SECTION 10

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