

ANALYSIS OF GEORGIA SENATE BILL 169

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The National Catholic Bioethics Center

For

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Contained herein is our analysis of the proposed bill to protect the human embryo from non-therapeutic research and destruction pursuant to the use of *in vitro* fertilization as a treatment for infertility. If this legislative proposal can be secured as you have proposed (attached), it could be supported consistent with John Paul II's position on incremental legislation contained in his encyclical *Evangelium Vitae*. See *Evangelium vitae*, #73:

A particular problem of conscience can arise in cases where a legislative vote would be decisive for the passage of a more restrictive law, aimed at limiting the number of authorized abortions, in place of a more permissive law already passed or ready to be voted on. Such cases are not infrequent. It is a fact that while in some parts of the world there continue to be campaigns to introduce laws favouring abortion, often supported by powerful international organizations, in other nations-particularly those which have already experienced the bitter fruits of such permissive legislation-there are growing signs of a rethinking in this matter. In a case like the one just mentioned, when it is not possible to overturn or completely abrogate a pro-abortion law, an elected official, whose absolute personal opposition to procured abortion was well known, could licitly support proposals aimed at limiting the harm done by such a law and at lessening its negative consequences at the level of general opinion and public morality. This does not in fact represent an illicit cooperation with an unjust law, but rather a legitimate and proper attempt to limit its evil aspects.¹

If endorsed by the Catholic Church in Georgia, we recommend that pastoral education as to why such support can be given be carefully crafted, incorporating the following

¹ John Paul II, Encyclical Letter *Evangelium vitae*, 25 Mar. 1995 (7 Dec. 2007), <http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html>.

information either generally or specifically:

1. This proposal restricts any kind of financial gain or in-kind service (which would seem to prevent any kind of non-familial surrogacy). Although not preventing surrogacy that already occurs legally, such a restriction does limit it further. While we are not supporting gamete/embryo adoption, this at least puts restrictions on it. Thus, these provisions are limiting existing practice.
2. This is incremental legislation, which affirms that these provisions are not to be used to recognize abortion as a right (although existing laws cannot be abrogated by these provisions).

We hope this is helpful, and we look forward to continuing to collaborate with you.

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Senate Bill 169

By: Senators Hudgens of the 47th, Williams of the 19th, Rogers of the 21st, Thomas of the 54th, Shafer of the 48th and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 7 of Title 19 of the Official Code of Georgia Annotated, relating to the parent and child relationship generally, so as to provide for a short title; to provide for definitions; to provide that it shall be unlawful for any person or entity to intentionally or knowingly create or attempt to create an in vitro human embryo by any means other than fertilization of a human egg by a human sperm; to provide for standards for physicians and facilities performing in vitro fertilizations; to provide for judicial standards; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Ethical Treatment of Human Embryos Act."

SECTION 2.

Chapter 7 of Title 19 of the Official Code of Georgia Annotated, related to the parent and child relationship generally, is amended by adding a new article to read as follows:

"ARTICLE 4

19-7-60.

For purposes of this article, the term:

(1) 'Donor' means an individual from whose body gametes were obtained, or an individual from whose body cells or tissues were obtained for the purpose of creating gametes or human embryos, whether for valuable consideration or not.

(2) 'Gamete' means an egg (oocyte) or sperm.

(3) 'Human embryo' means an organism with a human or predominantly human genetic constitution from the single-celled stage to approximately eight weeks development that is derived by fertilization (in vitro or in utero), parthenogenesis, cloning (somatic cell nuclear transfer), or any other means from one or more human gametes or human diploid cells.

(4) 'In vitro' means outside the human body.

(5) 'In vitro fertilization' means the formation of a human embryo outside the human body by union of human egg(s) with human sperm.

(6) 'In vitro human embryo' means a human embryo created outside the human body.

(7) 'Transfer' means the placement of a human embryo into the body of a woman.

(8) 'Valuable consideration' means financial gain or advantage, including cash, in-kind payments, reimbursement for any costs incurred in connection with the removal,

processing, disposal, preservation, quality control, storage, transfer, or donation of human gametes, including lost wages of the donor, as well as any other consideration.

19-7-61.

(a) It shall be unlawful for any person or entity to intentionally or knowingly create or attempt to create an in vitro human embryo by any means other than fertilization of a human egg by a human sperm.

(b) The creation of an in vitro human embryo shall be solely for the purpose of initiating a human pregnancy by means of transfer to the uterus of a human female for the treatment of human infertility. No person or entity shall intentionally or knowingly transfer or attempt to transfer an embryo into a human uterus that is not the product of fertilization of a human egg by a human sperm.

19-7-62.

No person or entity shall give or receive valuable consideration, offer to give or receive valuable consideration, or advertise for the giving or receiving of valuable consideration for the provision of gametes or in vitro human embryos. This Code section shall not apply to regulate or prohibit the procurement of gametes for the treatment of infertility being experienced by the patient from whom the gametes are being derived.

19-7-63.

The in vitro human embryo shall be given an identification by the facility for use within the medical facility. Records shall be maintained that identify the donors associated with the in vitro human embryo, and the confidentiality of such records shall be maintained as required by law.

19-7-64.

(a) A living in vitro human embryo is a biological human being who is not the property of any person or entity. The fertility physician and the medical facility that employs the physician owe a high duty of care to the living in vitro human embryo. Any contractual provision identifying the living in vitro embryo as the property of any party shall be null and void. The in vitro human embryo shall not be intentionally destroyed for any purpose by any person or entity or through the actions of such person or entity.

(b) An in vitro human embryo that fails to show any sign of life over a 36 hour period outside a state of cryopreservation shall be considered no longer living.

19-7-65.

Only medical facilities meeting the standards of the American Society for Reproductive Medicine and the American College of Obstetricians and Gynecologists shall cause the fertilization of an in vitro human embryo. A person who engages in the creation of in vitro human embryos shall be qualified as a medical doctor licensed to practice medicine in this state and shall possess specialized training and skill in artificial reproductive technology in conformity with the standards established by the American Society for Reproductive Medicine or the American College of Obstetricians and Gynecologists.

A. Any person, employer or entity, whether public or private, has the right not to participate in, and no person, employer or entity, whether public or private, shall be

required to participate in any health care service that violates its conscience. No person, employer or entity, whether public or private, shall be held civilly or criminally liable, discriminated against, dismissed, demoted, or in any way prejudiced or damaged because of a refusal for any reason to participate in any health care service that violates its conscience.

B. For purposes of this code section:

(a) "Conscience" means religious, moral or ethical principles.

(b) "Health care service" means any phase of patient medical care, treatment or procedure, including, but not limited to, the following: patient referral, counseling, therapy, testing, diagnosis or prognosis, research, instruction, prescribing, dispensing or administering any device, drug, or medication, surgery, or any other care, treatment or procedure.

(c) "Participate" means to counsel, advise, provide, perform, assist in, refer for, admit for purposes of providing, participate in providing, pay, contract for, or otherwise arrange for the payment of, in whole or in part any health care service or any form of such service.

19-7-66.

In the interest of reducing the risk of complications for both the mother and the transferred in vitro human embryos, including the risk of preterm birth associated with higher-order multiple gestations, a person or entity performing in vitro fertilization shall limit the number of in vitro human embryos created in a single cycle to the number to be transferred in that cycle in accord with Code Section 19-7-67.

19-7-67.

(a) Where a woman under age 40 is to receive treatment using her own eggs or embryos created using her own eggs, whether fresh or previously cryopreserved, at the time of transfer no person or entity shall transfer more than two embryos in any treatment cycle, regardless of the procedure used.

(b) Where a woman age 40 or over is to receive treatment using her own eggs or embryos created using her own eggs, whether fresh or previously cryopreserved, at the time of transfer no person or entity shall transfer more than three embryos in any treatment cycle, regardless of the procedure used.

(c) Where a woman is to receive treatment using donated eggs or adopted embryos, no person or entity shall transfer more than two donated eggs or two adopted embryos in any treatment cycle, regardless of the woman's age at the time of transfer and regardless of the procedure used.

19-7-68.

In disputes arising between any parties regarding the in vitro human embryo, the judicial standard for resolving such disputes shall be the best interest of the in vitro human embryo.

19-7-69.

All facilities providing assisted reproductive technologies shall, at least 24 hours prior to obtaining a signed contract for services, provide patients with informed consent as required by law and obtain a signed disclosure form before services commence. In addition to medical risks and information on outcome and success rates, the informed consent materials shall state in plain language the parental rights and duties of the donors, as well as their legal rights and duties regarding the disposition of in vitro human embryos that were not transferred due to either of the fertility patient's death, divorce, abandonment, or dispute over the custody of the in vitro human embryo.

19-7-70.

Nothing in this article shall be construed to affect conduct relating to abortion as provided in Chapter 12 of Title 16; provided, however, that nothing in this article shall be construed or implied to recognize any independent right to abortion under the laws of this state.

19-7-71.

Notwithstanding any other provision of this article to the contrary, nothing in this article shall be construed to create or recognize any independent right to engage in the practice of in vitro fertilization or to create in vitro human embryos by any means.

19-7-72.

(a) Any person or entity that violates any provision of this article and derives a pecuniary gain from such violation shall be fined not less than \$500.00 nor more than \$1,000.00.

(b) Any violation of this article shall constitute unprofessional conduct pursuant to Code Section 43-34-37 and shall result in sanctions increasing in severity from censure to temporary suspension of license to permanent revocation of license.

(c) Any violation of this article may be the basis for denying an application for, denying an application for the renewal of, or revoking any license, permit, certificate, or any other form of permission required to practice or engage in a trade, occupation, or profession.

(d) Any violation of this article by an individual in the employ and under the auspices of a licensed health care facility to which the management of said facility consents, knows, or should know may be the basis for denying an application for, denying an application for the renewal of, temporarily suspending, or permanently revoking any operational license, permit, certificate, or any other form of permission required to operate a medical or health care facility."

SECTION 3.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 4.

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