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Crimes and Offenses HB 1114

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CRIMES AND OFFENSES

Homicide: Amend Article 1 of Chapter 5 of Title 16 of the Official Code of Georgia Annotated, Relating to Homicide, so as to Repeal Certain Provisions Regarding Offering to Assist in the Commission of a Suicide; Prohibit Assisted Suicide; Provide for Definitions; Provide for Criminal Penalties; Provide for Certain Exceptions; Provide for Certain Reporting Requirements with Respect to Being Convicted of Assisting in a Suicide; Amend Section 3 of Chapter 14 of Title 16 of the Official Code of Georgia Annotated, Relating to Definitions for the "Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act," so as to Provide for Assisted Suicide as Racketeering Activity; Amend Section 6 of Chapter 4 of Title 51 of the Official Code of Georgia Annotated, Relating to Torts, so as to Provide for Reporting Requirements with Respect to a Civil Judgment Against a Health Care Provider; Provide for Applicability; Provide an Effective Date; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 16-5-5 (amended); 16-14-3 (amended); 51-4-6 (new)
BILL NUMBER:	HB 1114
ACT NUMBER:	639
GEORGIA LAWS:	2012 Ga. Laws 637
SUMMARY:	The Act prohibits assisted suicide and provides for certain criminal penalties, reporting requirements by healthcare providers, and exceptions. Furthermore, it adds assisted suicide to the list of predicate RICO offenses. Finally, it mandates reporting requirements with respect to a civil judgment against a health care provider.
EFFECTIVE DATE:	May 1, 2012

History

On February 6, 2012, the Georgia Supreme Court struck down Code section 16-5-5(b) banning the public advertising of assisted suicide[1] in *Final Exit Network, Inc. v. State*.[2] In that case, a Forsyth County grand jury indicted defendants Final Exit Network, Inc., Thomas Goodwin, Lawrence Egbert, Nicholas Sheridan, and Claire Blehr in March 2010 "on charges of, inter alia, offering to assist and assisting in the commission of suicide in violation of O.C.G.A. section 16-5-5(b)."[3] The defendants challenged the statute as "unconstitutional on its face."[4] They contended that the statute violated "several constitutional provisions" of the United States and Georgia Constitutions, including their right to free speech.[5] The Georgia Supreme Court granted the "application for interlocutory appeal to consider [the] constitutional challenges."[6]

The court agreed that the law was constitutionally deficient because it impinged on the First Amendment freedom of speech right when it banned only public advertising of offers to assist in suicide.[7] The court highlighted the statute's failure to criminalize all assisted suicide.[8] The statute banned only assisted suicide that includes "a public advertisement or offer to assist" in the commission of suicide.[9] This narrow focus took it "out of the realm of content neutral regulations and render[ed] it a selective restraint on speech with a particular content," subject to strict scrutiny.[10]

Under strict scrutiny, the statute must be justified by a compelling state interest and must be narrowly tailored to the state purpose.[11] While the court recognized the "[s]tate's interest in preserving human

1. Pursuant to former Code section § 16-5-5(b), "[a]ny person who publicly advertises, offers, or holds himself or herself out as offering that he or she will intentionally and actively assist another person in the commission of suicide and commits any overt act to further that purpose is guilty of a felony . . . ." 1994 Ga. Laws 1371.
2. Final Exit Network, Inc. v. State, 290 Ga. 508, 511, 722 S.E.2d 722, 725 (2012).
3. *Id.* at 508, 722 S.E.2d at 723.
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.* at 509, 511, 722 S.E.2d at 723, 725.
8. *Final Exit Network*, 290 Ga. at 509, 722 S.E.2d at 723.
9. *Id.* at 509–10, 722 S.E.2d at 723–25.
10. *Id.* at 509, 722 S.E.2d at 723.
11. *Id.* at 509, 722 S.E.2d at 724.

life" as compelling, it found that the act was not narrowly drawn to fit the "asserted interest" of suicide prevention because it was extremely underinclusive.[12] In addition, the court found no sufficient justification for the "intrusion on protected speech rights" triggered by the criminalization of a public advertisement or offer to assist in an otherwise legal activity.[13]

House Bill (HB) 1114 banning assisted suicide was presented to the House just sixteen days after the court handed down its unanimous decision on the case.[14] This prompt response to the court's decision was not coincidental. The impetus for the bill stemed from the deficiencies of the invalidated Georgia statute itself—including its ban of the public advertising of assisted suicide but not of all assisted suicide—and not even of all advertising of assisted suicide.[15]

Bill Tracking of HB 1114

Consideration and Passage by the House

Representatives Ed Setzler (R-35th), Rich Golick (R-34th), Matt Ramsey (R-72nd), B.J. Pak, (R-102nd), Edward Lindsey (R-54th), and Tom Rice (R-51st) sponsored HB 1114 in the House.[16] The bill was first read on February 22, 2012.[17] The bill was read for the second time on February 23, 2012.[18] Speaker of the House David Ralston (R-7th) assigned the bill to the Judicial Non-Civil Committee, which favorably reported a House Committee substitute on February 28, 2012.[19]

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12. *Id.* at 509–10, 722 S.E.2d at 724. For instance, the statute did not "ban assistance in all suicides," "[n]or [did] § 16-5-5(b) render illegal all advertisements or offers to assist in a suicide." *Id.*

13. *Id.* at 510, 722 S.E.2d at 724.

14. HB 1114, as introduced, 2012 Ga. Gen. Assem.; *see Final Exit Network*, 290 Ga. at 511, 722 S.E.2d at 725.

15. *See* Telephone Interview with Rep. Ed Setzler (R-35th) (May 2, 2012) [hereinafter Setzler Interview]; *see also* Jamie Reese, *Georgia High Court Overturns Assisted Suicide Law*, JURIST (Feb. 6, 2012, 11:38 AM), http://jurist.org/paperchase/2012/02/georgia-high-court-overturns-assisted-suicide-law.php.

16. HB 1114, as introduced, 2012 Ga. Gen. Assem.

17. *Id.*; State of Georgia Final Composite Status Sheet, HB 1114, May 10, 2012.

18. State of Georgia Final Composite Status Sheet, HB 1114, May 10, 2012.

19. *Id.*

The House Committee substitute contained several substantive changes from the bill as introduced. First, it added a "physical" component to the definition of "assist[ing]."[20] Second, it narrowed the "health care provider" definition to exclude "any hospital, nursing home, home health agency, institution, or medical facility licensed or defined under Chapter 7 of Title 31."[21] Third, it limited liability to "any person with actual knowledge that a person intends to commit suicide."[22]

Furthermore, the House Committee substitute significantly expanded the type of conduct excluded from liability under the statutory provisions, particularly as it pertains to representatives of the medical profession.[23] Specifically, exemptions included conduct such as administering medication or medical procedures that may have the effect of hastening or increasing the risk of death, prescribing, dispensing, or administering medications or medical procedures pursuant to a living will, and excluding people advocating on behalf of a patient's wishes that may ultimately lead to or hasten that patient's death.[24] The House Committee dedicated a significant amount of time to discussing the exemption of "advocacy" on behalf of the patient, not only by professional advocates, but also by family members who may support the patient's wishes, even if they go against the medical professional's recommendation.[25] The exclusion turns on the *mens rea* of the advocate and does not criminalize

20. "'Assists' means the act of physically helping or physically providing the means." HB 1114 (HCS), § 1(a)(1), p. 1, ln. 18, 2012 Ga. Gen. Assem.; *see also* Video Recording of House Judiciary Non-Civil Committee Meeting, Feb. 27, 2012 at 40 min., 37 sec. (remarks by Rep. Ed Setzler (R-35th)), http://media.legis.ga.gov/hav/11_12/2012/committees/judiNon/judiNon022712EDITED.wmv [hereinafter House Video] (noting the importance of a physical act as a predicate to the offense, as opposed to the passive act of publishing a website informing the public at large of the various ways to commit suicide).

21. *Compare* HB 1114 (HCS), § 1, p. 1, ln. 19–20, 2012 Ga. Gen. Assem., *with* HB 1114, as introduced, § 1, p. 1–2, ln. 22–27, 2012 Ga. Gen. Assem.

22. *Compare* HB 1114 (HCS), § 1, p. 1, ln. 22, 2012 Ga. Gen. Assem., *with* HB 1114, as introduced, § 1, p. 1–2, ln. 22–27, 2012 Ga. Gen. Assem.

23. *Compare* HB 1114 (HCS), § 1, p. 2, ln. 26–47, 2012 Ga. Gen. Assem., *with* HB 1114, as introduced, § 1, p. 2, ln. 29–36, 2012 Ga. Gen. Assem. *See also* Rep. Butch Parrish, *House Approves $19.2 Billion State Budget for Fiscal Year 2013*, FOREST-BLADE (Mar. 13, 2012), http://www.forest-blade.com/opinion/editorials/article_909326c6-6d49-11e1-8460-0019bb2963f4.html (noting the bill's exclusion of the terms of living wills, "Do Not Resuscitate" orders, "advance directives or similar measures intending to limit pain or suffering").

24. House Video, *supra* note 20, at 48 min., 33 sec. (remarks by Rep. Ed Setzler (R-35th)).

25. *Id.*

advocates' actions that are "intended to relieve or prevent such person's pain or discomfort" and are not intended to cause that person's death.[26]

The final change reflected in the House Committee substitute almost completely eliminated Chapter 4A in the bill as introduced.[27] The original version of the bill added a new chapter to the wrongful death tort entitling the decedent's survivors to wrongful death damages and dealing with disposition of recovery and wrongdoer release.[28] The House Committee substitute did, however, retain the subsection on reasonable attorney's fees and litigation expenses that may be awarded to plaintiffs who prevail in a civil action stemming from violations of the assisted suicide provisions of the statute.[29]

The House read the House Committee substitute on March 7, 2012.[30] Representative Setzler and Representative Christian Coomer (R-14th) offered a Floor Amendment to the House Committee substitute—which made a small change in Section 1(c)(4) merely streamlining the language in that section—that the House passed without objection.[31] On the same day, the House passed HB 1114 by a vote of 124 to 45 and immediately transmitted the bill to the Senate.[32]

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26. *Id.* at 48 min., 33 sec. (remarks by Rep. Ed Setzler (R-35th)); *id.* at 55 min., 03 sec. (remarks by Rep. Ed Setzler (R-35th)); *id*. at 57 min., 45 sec (remarks by Rep. Ed Setzler (R-35th)).

27. *Compare* HB 1114 (HCS), § 2, p. 2, ln. 56–61, 2012 Ga. Gen. Assem., *with* HB 1114, as introduced, § 2, p. 2–3, ln. 48–88, 2012 Ga. Gen. Assem.

28. HB 1114, as introduced, § 2, p. 2–3, ln. 48–79, 2012 Ga. Gen. Assem.; *see also* House Video, *supra* note 20, at 1 hr., 00 min., 56 sec. (remarks by Rep. Ed Setzler (R-35th)) (noting the difficulty of creating a new tort framework).

29. HB 1114 (HCS), § 2, p. 2, ln. 59–61, 2012 Ga. Gen. Assem.; *see also* Setzler Interview, *supra* note 15 (highlighting the importance of awarding reasonable attorney's fees to gain access to counsel and provide clarity for the courts); House Video, *supra* note 20, at 1 hr., 6 min., 6 sec. (remarks by Mr. Jonathan Crumbley, Attorney representing Susan Selmer, the decedent's wife, in the civil suit against Final Exit Network, Inc.) (noting the importance of an attorney's fees clause to provide "a mechanism" for civil attorneys to pursue claims involving actual assisted suicides).

30. State of Georgia Final Composite Status Sheet, HB 1114, May 10, 2012.

31. *Compare* HB 1114 (CSFA), § 1, p. 2, ln. 42–47, 2012 Ga. Gen. Assem., *with* HB 1114 (HCS), § 2, p. 2, ln. 42–46, 2012 Ga. Gen. Assem. *See* Video Recording of House Floor Debate, Mar. 7, 2012 at 1 hr., 48 min., 5 sec. (remarks by Rep. David Ralston (R-7th)), http://www.gpb.org/lawmakers/2012/day-30.

32. Georgia House of Representatives Voting Record, HB 214 (Mar. 7, 2011).

Consideration and Passage by the Senate

Senator William Ligon, Jr. (R-3rd) sponsored HB 1114 in the Senate, and the bill was first read on March 7, 2012.[33] On that day, Lieutenant Governor Casey Cagle (R) assigned the bill to the Senate Judiciary Committee, which favorably reported a Senate Committee substitute on March 22, 2012.[34] The Senate Committee substitute contained only one major substantive change from the bill as passed by the House.[35] It added the offense of assisted suicide to the "Georgia RICO (Racketeering Influenced and Corrupt Organizations) Act" definitions, thus effectively turning assisted suicide into a predicate offense to liability under RICO.[36]

The Senate Committee substitute was read a second time on March 22, 2012, and a third time on March 27, 2012.[37] Additionally, on March 27, 2012, the Senate passed the Senate Committee substitute by a vote of 48 to 1 and transmitted it back to the House of Representatives.[38]

Further Actions by the House and Senate

On March 29, 2012, the House agreed to a House amendment of the Senate Committee substitute by a vote of 115 to 53, and the Senate agreed with the House Amendment of the Senate Committee substitute by a vote of 38 to 11.[39] The most important substantive change in the bill, as passed the House and Senate, was the exclusion of the provision providing for the award of reasonable attorney's fees and the cost of litigation under certain circumstances.[40]

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33. State of Georgia Final Composite Status Sheet, HB 1114, May 10, 2012.

34. *Id.*

35. *See* HB 1114 (SCS), § 2, p. 2, ln. 57–61, 2012 Ga. Gen. Assem. The House initially considered the RICO amendment because of the number of assisted suicides that networks facilitating the commission of a suicide are potentially involved in on a nation-wide scale. *See* Setzler Interview, *supra* note 15.

36. HB 1114 (SCS), § 2, p. 2, ln. 57–61, 2012 Ga. Gen. Assem.

37. State of Georgia Final Composite Status Sheet, HB 1114, May 10, 2012.

38. Georgia Senate Voting Record, HB 1114 (Mar. 27, 2012).

39. Georgia House of Representatives Voting Record, HB 1114 (Mar. 29, 2012); Georgia Senate Voting Record, HB 1114 (Mar. 29, 2012); State of Georgia Final Composite Status Sheet, HB 1114, May 10, 2012.

40. *Compare* HB 1114 (CSFA), § 2, p. 2, ln. 60–62, 2012 Ga. Gen. Assem., *with* HB 1114 (LC 29 5288S), 2012 Ga. Gen. Assem. *See also* O.C.G.A. §§ 16-5-1, 16-14-3, 51-4-6 (Supp. 2012).

Signing into law by the Governor

The House sent the bill to the Governor on April 10, 2012. Governor Nathan Deal signed HB 1114 into law on May 1, 2012.[41]

The Act

The Act amends three code sections of the Official Code of Georgia Annotated, including Georgia's homicide statute, RICO statute, and tort statute relating to reporting requirements.[42] The primary purpose of the Act is to criminalize assisted suicide, making it a felony punishable by imprisonment of up to ten years.[43]

Section 1 of the Act amends Georgia's homicide statute by repealing and replacing the old Code section 16-5-5.[44] Section 16-5-5 of the Act uses the same definition of "suicide" previously provided in the repealed Code section 16-5-5, but it also introduces new terminology—the words "assists," and "health care provider."[45] Next, it provides that a person commits a felony if he has "actual knowledge" that an individual plans to commit suicide and "knowingly and willfully assists" in its commission.[46] A person found guilty under Code section 16-5-5 will be punished by imprisonment of one to ten years.[47] Further, it identifies specific situations that will not be considered assisted suicide, such as prescribing pain medications, withdrawing medications, and withholding nourishment.[48] Consent of the patient or the patient's

41. State of Georgia Final Composite Status Sheet, HB 1114, May 10, 2012.

42. O.C.G.A. §§ 16-5-5, 16-14-3, 51-4-6 (2011).

43. O.C.G.A. § 16-5-5 (Supp. 2012).

44. *Compare* O.C.G.A. § 16-5-5 (Supp. 2012), *with* O.C.G.A. § 16-5-5 (2011).

45. *Compare* O.C.G.A. § 16-5-5(a) (Supp. 2012), *with* O.C.G.A. § 16-5-5(a) (2011) ("Suicide" is defined as "the intentional and willful termination of one's own life."). "Assists" is defined as "the act of physically helping or physically providing the means." O.C.G.A. § 16-5-5(a) (Supp. 2012). "Health care provider" is defined as "any person licensed, certified, or registered" pursuant to enumerated chapters within Title 43. *Id.*

46. O.C.G.A. § 16-5-5(b) (Supp. 2012).

47. *Id.*

48. *Id.* § 16-5-5(c). The exclusions enumerated in section 16-5-5(c) of the Act hinge on patient consent and advocacy. As Representative Setzler explained, allowing legitimate medical care to reach individuals receiving end-of-life care was a substantial concern during drafting of the legislation. House Video, *supra* note 20, at 48 min., 33 sec. (remarks by Rep. Ed Setzler (R-35th)). The section distinguishes between acts that have the mens rea to effectuate another person's death and acts that may hasten or increase the chance of death but are not intended to cause death. O.C.G.A. § 16-5-5(c) (Supp.

advocate who is acting in the patient's best interest is required for certain actions to not be considered assisted suicide.[49] Finally, this section pinpoints necessary reporting requirements for health care providers who have been convicted under old Code section 16-5-5 and requires that a convicted health care provider must advise any applicable licensing board of the conviction within ten days.[50] In turn, the licensing board must immediately revoke the health care provider's license to practice.[51]

Section 2 of the Act amends Code section 16-14-3 by adding the offense of assisted suicide to the items that constitute racketeering activities under Georgia's RICO statute.[52] Finally, section 3 of the Act amends Code section 51-4-6, concerning wrongful death tort claims, by adding another reporting requirement for any health care provider who has been found liable for wrongful death—the provider must notify his licensing board within ten days of the judgment so that disciplinary actions may be instituted.[53]

Analysis

Comparison to Other States' Statutes

Georgia is not unique in enacting legislation to criminalize assisted suicide. Many states have enacted legislation that makes aiding and abetting suicide a criminal offense.[54] Like Georgia, most states have preferred to enact separate legislation regarding assisted suicide and have removed the crime from consideration under homicide statutes, thereby typically reducing the penalty for violating the statute.[55]

2012).

49. O.C.G.A. § 16-5-5(c) (Supp. 2012).

50. *Id.* § 16-5-5(d).

51. *Id.*

52. *Id.* § 16-14-3(9)(A). "'Racketeering activity' means to commit, to attempt to commit, or to solicit, coerce, or intimidate another person to commit any crime which is chargeable by indictment" under several specific Georgia laws, such as homicide, theft, robbery, bribery, influencing witnesses, distributing obscene materials, insurance fraud, and residential mortgage fraud. *Id.*

53. *Id.* § 51-4-6(b).

54. *See, e.g.*, IND. CODE § 35-42-1-2.5 (2012); MINN. STAT. § 609.215 (2012); N.M. STAT. ANN. § 30-2-4 (2012). *But see* N.C. GEN. STAT. § 14-17.1 (2012) (abolishing suicide as a crime); OR. REV. STAT. § 163.117 (2012) (decriminalizing suicide by making it a defense to murder).

55. 83 C.J.S. *Suicide* § 9 (2012). "[T]he general trend reflected by modern statutes is to mitigate the punishment for assisting a suicide by removing it from the harsh consequences of homicide law and

However, several states make a distinction between assisting suicide and causing suicide.[56] An individual who causes suicide by force, duress, or deception may be charged with homicide.[57]

Furthermore, Georgia's statute mirrors the statutes in other states, particularly in respect to its distinction concerning a physical act, its exclusion of certain medical procedures, and its impact on tort litigation.[58] Indiana punishes "[p]rovid[ing] the physical means by which the other person attempts or commits suicide" and "[p]articipat[ing] in a physical act by which the other person attempts or commits suicide."[59] Likewise, Georgia only penalizes those individuals who "physically help[] or physically provid[e] the means" to commit suicide.[60] Similar to Georgia's statute, Minnesota's statute contains a specific provision that enumerates several activities that are not considered assisted suicide and are not punishable, such as administering or prescribing medications or procedures to relieve pain, even if these acts are likely to hasten or increase the risk of death.[61] Minnesota's legislation specifically

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giving it a separate criminal classification more carefully tailored to the actual culpability of the aider and abettor." *Id.* However, in the case of suicide pacts where two or more individuals agree to assist each other in committing suicide, a survivor of the pact may be charged with murder if he directly performed the act that resulted in another member of the pact's death. *See* MINN. STAT. § 609.215 (2012) (advisory committee comment); *see also* MONT. CODE ANN. § 45-5-105 (2011) (criminal law commission comments) (stating that if the defendant's conduct "made him the agent of the death, the offense is criminal homicide notwithstanding the consent or even the solicitations of the victim").

56. *See, e.g.*, N.D. CENT. CODE § 12.1-16-04 (2011) (distinguishing assisting suicide and causing suicide); 18 PA. CONS. STAT. § 2505 (2012) (treating causing suicide as criminal homicide and aiding suicide as a separate offense).

57. *See, e.g.*, N.J. STAT. ANN. § 2C:11-6 (2012) (criminalizing causing suicide as a second degree crime and assisting suicide as a fourth degree crime); 18 PA. CONS. STAT. § 2505 (2012) (stating that "[a] person may be convicted of criminal homicide for causing another to commit suicide only if he intentionally causes such suicide by force, duress or deception"). However, if a person aids or solicits suicide, this is considered an independent offense and constitutes a second degree felony. *Id. But see* OR. REV. STAT. § 163.117 (2012) (indicating that it is a defense to murder that the defendant caused or aided in the commission of suicide, except when the defendant used duress or deception).

58. *See, e.g.*, IND. CODE § 35-42-1-2.5 (2012) (requiring a physical act and excluding specific medical procedures and medications from being considered assisted suicide); MINN. STAT. § 609.215 (2012) (containing provisions for civil damages in the event that a person violates the statute).

59. IND. CODE § 35-42-1-2.5(b) (2012). *But see* MINN. STAT. § 609.215 (2012) (criminalizing conduct that does not constitute a physical act, such as advising and encouraging an individual to commit suicide).

60. O.C.G.A. § 16-5-5(a)(1) (Supp. 2012).

61. *Compare* O.C.G.A. § 16-5-5(c) (Supp. 2012), *with* MINN. STAT. § 609.215(3) (2012). Georgia's Code section indicates that assisted suicide will not comprise: "[P]rescribing, dispensing, or administering medications or medical procedures when such actions are calculated or intended to relieve or prevent such patient's pain or discomfort . . . even if the . . . procedure may have the effect of

includes a provision for tort damages against an individual who commits the crime of assisted suicide; Georgia avoided creating a new tort for assisted suicide and relies on a wrongful death cause of action.[62]

Equal Protection Concerns

The primary focus of challenges concerning assisted suicide bans is equal protection under the law.[63] The Fourteenth Amendment's Equal Protection Clause states, "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."[64] In the landmark Supreme Court case of *Vacco v. Quill*, the plaintiffs, who were several New York physicians and three terminally ill patients, argued that New York's ban on assisted suicide violated the Equal Protection Clause because the law treated similarly situated persons differently.[65] The Court rejected this argument and held that the law was evenhandedly applied to all persons and therefore constitutional.[66] "*Everyone*, regardless of physical condition, is entitled, if competent, to refuse unwanted lifesaving medical

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hastening or increasing the risk of death" or "discontinuing, withholding, or withdrawing medications, medical procedures, nourishment, or hydration." O.C.G.A. § 16-5-5(c) (Supp. 2012). Minnesota's statute indicates that a health care provider "who administers, prescribes, or dispenses medications or procedures to relieve another person's pain or discomfort, even if the medication or procedure may hasten or increase the risk of death, does not violate this section . . . ." MINN. STAT. § 609.215(3) (2012). Furthermore, a health care provider will not violate the statute if he "withholds or withdraws a life-sustaining procedure . . . in accordance with reasonable medical practice . . . ." *Id.*

62. MINN. STAT. § 609.215(5) (2012); House Video, *supra* note 20, at 1 hr. 2 min., 18 sec. (remarks by Rep. Ed Setzler (R-35th)). Minnesota's statute calls for compensatory and punitive damages against any person who violates the law and includes a provision for mandatory attorney fees in the event that the plaintiff successfully brings suit. MINN. STAT. § 609.215(5) (2012). Representative Setzler advised that creating a new tort was "very problematic" and determined that a cause of action under Georgia's existing wrongful death statute was an adequate civil remedy. House Video, *supra* note 20, at 1 hr., 00 min., 56 sec. (remarks by Rep. Ed Setzler (R-35th)). He also sought to include a provision similar to Minnesota's regarding an award of attorney fees, but the provision did not survive committee. House Video, *supra* note 20, at 1 hr., 4 min., 43 sec. (remarks by Rep. Ed Setzler (R-35th)).

63. *See, e.g.*, Vacco v. Quill, 521 U.S. 793, 797–98 (1997) (claiming that New York's statute criminalizing assisting suicide violated the Fourteenth Amendment's Equal Protection Clause).

64. U.S. CONST. amend. XIV, § 1.

65. *Vacco*, 521 U.S. at 797–98. The plaintiffs argued that because a patient was allowed to refuse life-sustaining treatment that would likely result in death, but could not obtain the assistance of his physician in hastening death, the statute unfairly discriminated against those individuals who sought physician-assisted suicide. *Id.*

66. *Id.* at 800.

treatment; *no one* is permitted to assist a suicide."[67] Similarly, in *Washington v. Glucksberg*, the Supreme Court faced a challenge by several terminally ill patients and their physicians that Washington's ban on assisted suicide violated the Equal Protection Clause.[68] The plaintiffs argued that there is a fundamental liberty interest concerning the right to physician-assisted suicide.[69] Like New York's statute, Washington's statute did not criminalize refusal of life-sustaining treatment.[70] Again, the Court rejected the contention that this distinction resulted in a violation of the Equal Protection Clause.[71]

Georgia's Act is likely to overcome similar equal protection challenges because it comports with the statutes involved in these Supreme Court cases. Section 16-5-5 of the Act criminalizes all assisted suicide and effectively defines what constitutes "assisting" under the law.[72] It similarly allows a competent patient to refuse life-sustaining treatment without fear of criminal recourse and protects doctors from being held criminally liable for complying with a patient's desire to refuse this treatment.[73]

Consequences of the Act

A potential consequence of the Act is that it overly legislates actions of physicians and fails to adequately provide a remedy when non-physicians assist in the commission of suicide. Code section 16-5-5 specifically calls for reporting requirements if a health care provider commits the crime of assisted suicide.[74] Furthermore, in section 16-5-5(d), the Act requires that a health care provider's licensing board revoke the provider's license.[75] Therefore, the Act

67. *Id.*
68. Washington v. Glucksberg, 521 U.S. 702, 708 (1997).
69. *Id.*
70. *Id.* at 717.
71. *Id.* at 735.
72. O.C.G.A. § 16-5-5 (Supp. 2012).
73. *Id.* § 16-5-5(c). Under this section of the Code, it is clear that a patient must give consent for medications to be administered to relieve pain that may hasten death and for nourishment, medications, or medical procedures to be withheld. *Id.* A medical provider who performs these acts with the patient's consent will not commit the crime of assisted suicide. *Id.*
74. *Id.* § 16-5-5(d) (requiring a health care provider convicted under the statute to notify his licensing board within ten days).
75. *Id.* (making it mandatory for the licensing board to revoke the health care provider's license

prescribes additional penalties for a health care provider who commits the crime. Although the original bill was introduced in response to the *Final Exit Network* decision—involving a group of non-physicians[76]—the final result appears to be a significant attack on physician-assisted suicide. Additionally, because most health care providers will have medical malpractice insurance, it makes them more susceptible to a wrongful death suit.[77]

The Act may draw additional criticism for not adequately defining consent or providing statutory requirements for obtaining consent. Code section 16-5-5 emphasizes the element of consent; if the health care provider's actions regarding administering medications or withholding nourishment comport with the patient's desires, then his actions are not considered assisted suicide.[78] However, Code section 16-5-5 does not provide guidance regarding the proper means by which a health care provider should obtain consent. For example, is a health care provider required to refer a patient for an independent psychological evaluation to determine the patient's intent regarding the refusal of treatment?

The Act contains many of the same elements as legislation in other states and is likely to overcome an equal protection challenge similar to those in *Vacco* and *Glucksberg*. However, the Act may still face challenges in its application to non-physicians and may make physicians vulnerable to tortious attack on the grounds that consent was not adequately obtained.

Kelly Connors & Vera Powell

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upon a judgment against the provider for wrongful death).

76. *Final Exit Network*, 290 Ga. at 508, 722 S.E.2d at 722.

77. *See* Alicia Gallegos, *Georgia Physicians Must Reveal If They Don't Have Liability Insurance*, AM. MED. NEWS (June 6, 2011), http://www.ama-assn.org/amednews/2011/06/06/gvsc0606.htm. Although Georgia physicians are not required to have liability insurance, the majority of the state's physicians are covered by liability insurance. *Id.*

78. O.C.G.A. § 16-5-5(c) (Supp. 2012) (preventing the possibility of physician-directed euthanasia).