

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1231

Short Title: Abortion Control Act.

(Public)

Sponsors: Representatives Stam; and Decker.

Referred to: Human Resources.

April 12, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE ABORTION CONTROL ACT.

3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 130A of the General Statutes is amended by adding a new
5 Article to read:

6 **“ARTICLE 19.**
7 **“ABORTION CONTROL ACT.**

8 **“§ 130A-450. Short title.**

9 This Article shall be known and may be cited as the Abortion Control Act.

10 **“§ 130A-451. Purpose and findings.**

11 The General Assembly finds that (i) the life of each human being begins at
12 conception, (ii) unborn children have protectable interests in life, health, and well-being,
13 and (iii) the natural parents of unborn children have protectable interests in the life,
14 health, and well-being of their unborn child. The General Assembly, therefore,
15 recognizes the right to life of all humans, born and unborn.

16 **“§ 130A-452. Construction.**

17 The laws of this State shall be interpreted and construed to acknowledge on behalf of
18 the unborn child at every stage of development, all the rights, privileges, and immunities
19 available to other persons, citizens, and residents of this State, subject only to the
20 Constitution of the United States and the Constitution of North Carolina.

21 Nothing in this Article may be interpreted as creating a claim for relief against a
22 woman for indirectly harming her unborn child by failing to properly care for herself or
23 by failing to follow any particular program of prenatal care; except that the unlawful use

1 of controlled substances does create a claim for relief if it proximately causes damage to
2 her unborn child.

3 **"§ 130A-453. Definitions.**

4 As used in this Article, unless the context requires otherwise:

- 5 (1) 'Abortion' means the intentional destruction of the life of an embryo or
6 fetus in his mother's womb or the intentional termination of the
7 pregnancy of a mother with an intention other than to increase the
8 probability of a live birth or to remove a dead or dying unborn child;
9 (2) 'Abortion facility' means a clinic, physician's office, ambulatory
10 surgical care facility, or any other place or facility in which abortions
11 are performed other than a hospital;
12 (3) 'Conception' means the fertilization of the ovum of a female by a
13 sperm of a male;
14 (4) 'Employer' means the State or any political or civil subdivision
15 thereof, or any person employing two or more persons within the State,
16 and any person acting as an agent of the employer;
17 (5) 'Gestational age' means length of pregnancy as measured from the first
18 day of the woman's last menstrual period;
19 (6) 'Participate in abortion' means to undergo an abortion, or to perform,
20 assist in, refer for, promote, procure, or counsel a woman to have an
21 abortion that is not necessary to save the woman's life;
22 (7) 'Public employee' means any person employed by this State or any
23 agency or political subdivision thereof;
24 (8) 'Public facility' means any (i) public institution, (ii) public building,
25 including a hospital, (iii) public equipment, or (iv) physical asset
26 owned, leased, or controlled by this State or any agency or political
27 subdivision thereof;
28 (9) 'Public funds' means any funds received or controlled by this State or
29 agency or political subdivision thereof, including funds derived from
30 federal, State, or local taxes, gifts, bequests, or grants from any source,
31 federal grants or payments, or intergovernmental transfers;
32 (10) 'Physician' means any person licensed to practice medicine in this
33 State;
34 (11) 'Unborn child' means the offspring of human beings from the moment
35 of conception until birth and at every stage of its biological
36 development, including the human conceptus, zygote, morula,
37 blastocyst, embryo, and fetus;
38 (12) 'Viability' means that stage of fetal development when the life of the
39 unborn child may be continued indefinitely outside the womb by
40 natural or artificial life-support systems.

41 **"§ 130A-454. Physician's duty regarding abortions.**

42 (a) Before a physician performs an abortion on a woman he has reason to believe
43 is carrying an unborn child of 20 or more weeks gestational age, the physician shall
44 first determine if the unborn child is viable. In making this determination, the physician

1 shall perform or cause to be performed such medical examinations and tests as are
2 necessary to make a finding of the gestational age, weight, and lung maturity of the
3 unborn child and shall enter such findings and determination of viability in the medical
4 record of the mother.

5 (b) No physician shall perform an abortion unless, prior to such abortion, the
6 physician certifies in writing that the woman gave her informed consent, freely and
7 without coercion, after the attending physician had informed her of the information
8 contained in subsections (a) and (c) of this section and shall further certify in writing the
9 pregnant woman's age, based upon proof of age offered by her.

10 (c) In order to ensure that the consent for an abortion is informed consent, no
11 abortion may be performed or induced upon a pregnant woman unless she has signed a
12 consent form supplied by the State Health Director, acknowledging that she has been
13 informed by the attending physician of the following facts:

14 (1) That according to the best medical judgment of her attending physician
15 she is or is not pregnant.

16 (2) The particular risks associated with the abortion technique to be used.

17 (3) Alternatives to abortion that are available.

18 (d) A person authorized to perform abortions in this State shall, before
19 performing the abortion, provide medical advice and counseling to the woman seeking
20 the abortion regarding the potential medical, physiological, and psychological
21 consequences of having an abortion. A person who fails to provide such medical advice
22 and counseling shall be liable to the woman upon whom the person performed the
23 abortion for all damages proximately caused by the abortion.

24 **"§ 130A-455. Penalty for performing abortion without surgical privileges.**

25 Any physician performing an abortion who does not have surgical privileges at a
26 hospital which offers obstetrical or gynecological care shall be guilty of a misdemeanor.

27 **"§ 130A-456. Discrimination prohibited.**

28 (a) It is unlawful for an employer to:

29 (1) Fail or refuse to hire or to discharge an individual, or otherwise to
30 discriminate against an individual, with respect to his or her
31 compensation, terms, conditions, or privileges of employment, because
32 of such individual's refusal to participate in abortion;

33 (2) Limit, segregate, or classify employees or applicants for employment
34 in any way which deprives, or tends to deprive, an individual of
35 employment opportunities or otherwise adversely affects his status as
36 an employee, because of the individual's refusal to participate in
37 abortion;

38 (3) To discharge, expel, or otherwise discriminate against a person
39 because he has opposed practices forbidden under this Article or
40 because he has filed a complaint, testified, or assisted in a legal
41 proceeding under this Article.

42 (b) It is unlawful for any person to aid, abet, incite, compel, or coerce the doing
43 of any acts forbidden by this section, or to attempt to do so.

1 (c) Notwithstanding any other provisions of this section, the acts proscribed in
2 subsection (a) of this section shall not be unlawful if the trier of fact finds by clear,
3 cogent, and convincing evidence an inability to reasonably accommodate an individual's
4 refusal to participate in abortion without undue hardship on the conduct of the particular
5 business or enterprise, or where participation in abortion is a bona fide occupational
6 qualification reasonably necessary to the normal operation of the business or enterprise.

7 (d) Nothing in this section may be construed to require an employer to grant
8 preferential treatment to an individual because of the individual's refusal to participate
9 in abortion.

10 (e) Any individual injured as a result of acts prohibited by this section may
11 commence a civil action against the person who committed the prohibited act, and shall
12 recover treble damages and the costs of the suit, including reasonable attorney's fees.

13 **"§ 130A-457. No abortions using public resources or facilities.**

14 (a) It is unlawful for any public funds to be expended for the purpose of
15 performing or assisting an abortion, which abortion is not necessary to save the life of
16 the mother, or for the purpose of encouraging or counseling a woman to have an
17 abortion that is not necessary to save the woman's life.

18 (b) It is unlawful for any public employee acting within the scope of his
19 employment to perform or assist an abortion that is not necessary to save the life of the
20 mother. It is unlawful for a physician, nurse, or other health care personnel, or a social
21 worker, counselor, or person of similar occupation, who is a public employee acting
22 within the scope of his employment to encourage or counsel a woman to have an
23 abortion that is not necessary to save the woman's life.

24 (c) It is unlawful for any public facility to be used for the purpose of performing
25 or assisting an abortion not necessary to save the life of the mother or for the purpose of
26 encouraging or counseling a woman to have an abortion not necessary to save her life."

27 Sec. 2. G.S. 14-45.1(b) reads as rewritten:

28 "(b) Notwithstanding any of the provisions of G.S. 14-44 and 14-45, it shall not
29 be unlawful, after the twentieth week of a woman's pregnancy, to advise, procure or
30 cause a miscarriage or abortion as allowed under Article 19 of Chapter 130A when the
31 procedure is performed by a physician licensed to practice medicine in North Carolina
32 in a hospital licensed by the Department of Human Resources, if there is substantial risk
33 that continuance of the pregnancy would threaten the life or gravely impair the physical
34 health of the woman."

35 Sec. 3. G.S. 14-45.1 is amended by adding a new subsection to read:

36 "(g) An abortion or miscarriage that is lawful under subsections (a) and (b) of this
37 section does not include an abortion performed or miscarriage caused for the purpose of
38 discrimination with respect to the gender of an unborn child."

39 Sec. 4. There is appropriated from the General Fund to the Department of
40 Public Education the sum of five hundred thousand dollars (\$500,000) for the 1989-90
41 fiscal year, and the sum of seven hundred fifty thousand dollars (\$750,000) for the
42 1990-91 fiscal year, to be used by the Department of Public Instruction for producing
43 and distributing instructional material in furtherance of G.S. 130A-451 for use by public
44 school teachers who choose to use such instructional material.

1 Sec. 5. There is appropriated to the Division of Social Services, Department
2 of Human Resources, the sum of five hundred thousand dollars (\$500,000) for the 1989-
3 90 fiscal year, and the sum of seven hundred fifty thousand dollars (\$750,000) for the
4 1990-91 fiscal year, for the producing and distributing of instructional materials in
5 furtherance of G.S. 130A-451 to be used by social workers and other employees of the
6 Division of Social Services.

7 Sec. 6. Sections 1 through 3 of this act shall become effective October 1,
8 1989, and shall apply to acts occurring on or after that date; Sections 4 and 5 of this act
9 shall become effective July 1, 1989.