

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1064

Short Title: Abortion/Right to Know.

(Public)

Sponsors: Representatives Decker; Daughtry, Gardner, Howard, C. Wilson, Cansler, Gillespie, and Thompson.

Referred to: Health, if favorable, Judiciary I.

April 15, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE A TWENTY-FOUR-HOUR WAITING PERIOD AND THE
3 INFORMED CONSENT OF A PREGNANT WOMAN BEFORE AN ABORTION
4 MAY BE PERFORMED.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 90 of the General Statutes is amended by adding the
7 following new Article to read:

8 **"ARTICLE 1G.**

9 **"WOMAN'S RIGHT TO KNOW ACT.**

10 **"§ 90-21.50. Short title.**

11 This act may be cited as the Woman's Right to Know Act.

12 **"§ 90-21.51. Definitions.**

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

- 14 (1) 'Abortion' means the use or prescription of any instrument, medicine,
15 drug, or any other substance or device intentionally to terminate the
16 pregnancy of a woman known to be pregnant with an intention other
17 than to increase the probability of a live birth, to preserve the life or
18 health of the child after live birth, or to remove a dead fetus.

- 1 (2) 'Attempt to perform an abortion' means an act, or an omission of a
2 statutorily required act, that, under the circumstances as the actor
3 believes them to be, constitutes a substantial step in a course of conduct
4 planned to culminate in the performance of an abortion in North
5 Carolina in violation of this Article.
- 6 (3) 'Coercion' means restraining or dominating the choice of a female by
7 force, threat of force, or deprivation of food or shelter by a person
8 obligated to provide food or shelter.
- 9 (4) 'Complication' means that condition that includes, but is not limited to,
10 hemorrhage, infection, uterine perforation, cervical laceration, pelvic
11 inflammatory disease, endometriosis, and retained products. The
12 Department of Health and Human Services may, by rule, further define
13 'complication'.
- 14 (5) 'Department' means the Department of Health and Human Services.
- 15 (6) 'Medical emergency' means that condition that, on the basis of the
16 physician's good faith clinical judgment, so complicates the medical
17 condition of a pregnant woman as to necessitate the immediate abortion
18 of her pregnancy to avert her death or for which a delay will create
19 serious risk of substantial and irreversible impairment of one or more of
20 her major bodily functions.
- 21 (7) 'Medical risks' means the usual and most frequent risks and hazards,
22 both physical and emotional, inherent in a proposed abortion procedure
23 and the risks, both physical and emotional, inherent in carrying the
24 unborn child to term.
- 25 (8) 'Physician' means an individual licensed to practice medicine or
26 osteopathy in accordance with this Chapter.
- 27 (9) 'Probable gestational age' means what, in the judgment of the physician,
28 will, with reasonable probability, be the gestational age of the unborn
29 child at the time the abortion is planned to be performed.
- 30 (10) 'Qualified person' means an agent of the physician who is a
31 psychologist, licensed social worker, licensed professional counselor,
32 registered nurse, or physician.

33 **"§ 90-21.52. Informed consent to abortion; coercion prohibited.**

34 No abortion shall be performed upon a woman in this State without her voluntary and
35 informed consent. It shall be unlawful for any individual to coerce a woman to undergo
36 an abortion. Except in the case of a medical emergency, consent to an abortion is
37 voluntary and informed only if all of the following conditions are satisfied:

- 38 (1) At least 24 hours prior to the abortion, the physician who is to perform
39 the abortion, the referring physician, or a qualified person has orally
40 informed the woman of all of the following:
- 41 a. The particular medical risks associated with the particular
42 abortion procedure to be employed including, when medically

1 accurate, the risks of infection, hemorrhage, breast cancer,
2 danger to subsequent pregnancies, and infertility.

3 b. The medical risks associated with carrying the unborn child to
4 term.

5 c. The probable gestational age of the unborn child at the time the
6 abortion is to be performed.

7 d. If the physician who is to perform the abortion has no liability
8 insurance for malpractice in the performance or attempted
9 performance of an abortion, that information shall be
10 communicated.

11 e. If the physician who will perform the abortion has no local
12 hospital admitting privileges, that information shall be
13 communicated.

14 The information required by this subdivision may be provided orally
15 without conducting a physical examination or tests of the patient, in
16 which case the required information may be based on facts supplied by
17 the woman to the physician or the qualified person. The information
18 required by this section may not be provided by a tape recording but
19 must be provided during a consultation in which the physician or the
20 qualified person is able to ask questions of the woman and the woman is
21 able to ask questions of the physician or the qualified person. If in the
22 medical judgment of the physician a physical examination, tests, or the
23 availability of other information to the physician subsequently indicates
24 a revision of the information previously supplied to the patient, then that
25 revised information may be communicated to the patient at any time
26 prior to the performance of the abortion. Nothing in this section may be
27 construed to preclude provision of required information in a language
28 understood by the patient through a translator.

29 (2) The physician who is to perform the abortion, the referring physician, or
30 the qualified person informs the woman, by telephone or in person, of
31 each of the following at least 24 hours before the abortion:

32 a. That medical assistance benefits may be available for prenatal
33 care, childbirth, and neonatal care.

34 b. A description of the public assistance programs, such as the
35 Temporary Assistance to Needy Families block grant funds, that
36 may or may not be available as benefits under federal and State
37 assistance programs.

38 c. That the father is liable to assist in the support of the child, even
39 if the father has offered to pay for the abortion.

40 d. That the woman has the right to review the printed materials
41 described in G.S. 90-21.53. The physician or the qualified
42 person shall orally inform the woman that the materials have
43 been provided by the Department and that they describe the

1 unborn child and list agencies that offer alternatives to abortion.
2 If the woman requests the materials, they shall either be given to
3 her at least 24 hours before the abortion or mailed to her at least
4 72 hours before the abortion by certified mail, restricted delivery
5 to addressee.

6 e. That information concerning access to local domestic violence
7 services will be provided if the woman acknowledges
8 involvement in an abusive relationship.

9 f. That the woman is free to withhold or withdraw her consent to
10 the abortion at any time before or during the abortion without
11 affecting her right to future care or treatment and without the loss
12 of any State or federally funded benefits to which she might
13 otherwise be entitled.

14 The information required by this subdivision may be provided by a tape
15 recording if provision is made to record or otherwise register
16 specifically whether the woman does or does not choose to review the
17 printed materials.

18 (3) The woman certifies in writing, prior to the abortion, that the
19 information described in subdivisions (1) and (2) of this subsection has
20 been furnished her and that she has been informed of her opportunity to
21 review the information referred to in sub-subdivision d. of subdivision
22 (2) of this section. The original of this certification shall be maintained
23 in the woman's medical records, and a copy shall be given to her.

24 (4) Prior to the performance of the abortion, the woman must be informed
25 of the name of the physician who will perform the abortion, and that
26 physician or the qualified person must receive a copy of the written
27 certification required by subdivision (3) of this section.

28 (5) The information required under this section and under G.S. 90-21.53 is
29 provided to the woman individually and in a private room to protect her
30 privacy and maintain the confidentiality of her decision, and to ensure
31 that the information focuses on her individual circumstances, and that
32 she has an adequate opportunity to ask questions.

33 (6) The woman is not required to pay any amount for the abortion
34 procedure until the 24-hour waiting period has expired.

35 **"§ 90-21.53. Printed information required.**

36 (a) The Department shall publish the following printed materials in a manner that
37 ensures that the information is easily comprehensible:

38 (1) Geographically indexed materials designed to inform a woman of public
39 and private agencies and services available to assist her through
40 pregnancy, upon childbirth, and while the child is dependent, including
41 adoption agencies. The information shall include a comprehensive list
42 of the agencies available, a description of the services they offer, and a

1 description of the manner, including telephone numbers, in which they
2 might be contacted.

3 (2) Materials designed to inform the woman of the probable anatomical and
4 physiological characteristics of the unborn child at two-week gestational
5 increments from the time when a woman can be known to be pregnant
6 until full term, including any relevant information on the possibility of
7 the unborn child's survival and pictures representing the development of
8 the unborn child at two-week gestational increments. The pictures must
9 contain the dimensions of the unborn child and must be realistic and
10 appropriate for the stage of pregnancy depicted. The materials shall be
11 objective, nonjudgmental, and designed to convey only accurate
12 scientific information about the unborn child at the various gestational
13 ages. The material shall also contain objective information describing
14 the methods of abortion procedures employed, the medical risks
15 associated with each procedure, the possible detrimental psychological
16 effects of abortion, and the medical risks associated with carrying an
17 unborn child to term.

18 (3) The materials shall state that it is unlawful for any individual to coerce a
19 woman to undergo an abortion, that any physician who performs an
20 abortion upon a woman without her voluntary and informed consent
21 may be liable to her for damages in a civil action at law, and that the law
22 permits adoptive parents to pay costs of prenatal care, childbirth, and
23 neonatal care.

24 (b) The materials required under this section shall be available at no cost from the
25 Department upon request and in appropriate numbers to any physician, qualified person,
26 facility, or hospital.

27 **"§ 90-21.54. Procedure in case of medical emergency.**

28 When a medical emergency compels the performance of an abortion, the physician
29 shall inform the woman, prior to the abortion if possible, of the medical indications
30 supporting the physician's judgment that an abortion is necessary to avert her death or
31 that a 24-hour delay will create serious risk of substantial and irreversible impairment of
32 a major bodily function. As soon as feasible the physician shall document in writing the
33 medical indications upon which the physician relied and shall cause the original of the
34 writing to be maintained in the woman's medical records and a copy given to her.

35 **"§ 90-21.55. Informed consent for a minor.**

36 If the woman upon whom an abortion is to be performed is an unemancipated minor,
37 the voluntary and informed written consent required under G.S. 90-21.52 shall be
38 obtained from the minor and from the adult individual who gives consent pursuant to
39 G.S. 90-21.7(a), unless the order waiving parental consent pursuant to G.S. 90-21.8 has
40 been obtained.

41 **"§ 90-21.56. Protection of privacy in court proceedings.**

42 In every civil proceeding or action brought under this Article, the court may rule
43 whether the anonymity of any woman upon whom an abortion has been performed or

1 attempted shall be preserved from public disclosure if she does not give her consent to
2 disclosure. The court, upon its own motion or upon motion of a party and upon
3 determining that the woman's anonymity should be preserved, shall issue appropriate
4 orders to the parties, witnesses, and counsel. Nothing in this section shall be construed to
5 allow concealment from the defendant the identity of the plaintiff in a civil case.

6 **"§ 90-21.57. Civil remedies.**

7 (a) Any person upon whom an abortion has been performed or attempted to be
8 performed may maintain an action against the person who performed or attempted to
9 perform the abortion in knowing or reckless violation of this Article for actual damages
10 and, to the extent allowed by law, for punitive damages.

11 (b) If judgment is rendered in favor of the plaintiff in any action authorized under
12 this section, the court shall also tax as part of the costs reasonable attorneys' fees in favor
13 of the plaintiff against the defendant. If judgment is rendered in favor of the defendant
14 and the court finds that the plaintiff's suit was frivolous and brought in bad faith, then the
15 court shall tax as part of the costs reasonable attorneys' fees in favor of the defendant
16 against the plaintiff."

17 Section 2. If any provision, word, phrase, or clause of this act or the
18 application thereof to any person or circumstance is held invalid, the invalidity shall not
19 affect the provisions, words, phrases, clauses, or applications of this act which can be
20 given effect without the invalid provision, word, phrase, clause, or application and, to this
21 end, the provisions, words, phrases, and clauses of this act are declared to be severable.

22 Section 3. Nothing in this act shall be construed as creating or recognizing a
23 right to abortion. It is not the intention of this act to make lawful an abortion that is
24 currently unlawful.

25 Section 4. The Department of Health and Human Services shall use funds
26 available to cover the costs of implementing this act.

27 Section 5. This act becomes effective December 1, 1999, and applies to claims
28 for relief arising on or after that date.