

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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SENATE DRS15131-LY-47\* (2/27)

Short Title: Abortion - Woman's Right to Know. (Public)

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Sponsors: Senators Allran; and Foxx.

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Referred to:

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A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 90 of the General Statutes is amended by adding the  
following new Article to read:

"Article 1H.

"Woman's Right to Know Act.

**"§ 90-21.60. Short title.**

This act shall be known and may be cited as the 'Woman's Right to Know Act'.

**"§ 90-21.61. Definitions.**

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

- (1) 'Abortion' means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.
- (2) 'Attempt to perform an abortion' means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in North Carolina in violation of this Article.
- (3) 'Department' means the Department of Health and Human Services.
- (4) 'Medical emergency' means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate

1 abortion of her pregnancy to avert her death or for which a delay will  
2 create serious risk of substantial and irreversible impairment of a  
3 major bodily function.

4 (5) 'Physician' means an individual licensed to practice medicine or  
5 osteopathy in accordance with this Chapter.

6 (6) 'Probable gestational age' means what, in the judgment of the  
7 physician, will with reasonable probability be the gestational age of the  
8 unborn child at the time the abortion is planned to be performed.

9 (7) 'Qualified person' means an agent of the physician who is a licensed  
10 psychologist, licensed social worker, licensed professional counselor,  
11 registered nurse, licensed physician, or certified health educator.

12 (8) 'Stable Internet web site' means a web site that, to the extent  
13 reasonably practicable, is safeguarded from having its content altered  
14 other than by the Department.

15 (9) 'Woman' means a female human, whether or not she is an adult.

16 **"§ 90-21.62. Informed consent to abortion.**

17 No abortion shall be performed upon a woman in this State without her voluntary  
18 and informed consent. Except in the case of a medical emergency, consent to an  
19 abortion is voluntary and informed only if all of the following conditions are satisfied:

20 (1) At least 24 hours prior to the abortion, the physician who is to perform  
21 the abortion or the referring physician has orally informed the woman,  
22 by telephone or in person, of all of the following:

23 a. The name of the physician who will perform the abortion.

24 b. The particular medical risks associated with the particular  
25 abortion procedure to be employed, including, when medically  
26 accurate, the risks of infection, hemorrhage, breast cancer,  
27 danger to subsequent pregnancies, and infertility.

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

30 d. The medical risks associated with carrying the child to term.

31 e. If the physician who is to perform the abortion has no liability  
32 insurance for malpractice in the performance or attempted  
33 performance of an abortion, that information shall be  
34 communicated.

35 f. If the physician who will perform the abortion has no local  
36 hospital admitting privileges, that information shall be  
37 communicated.

38 The information required by this subdivision may be provided orally,  
39 by telephone or in person, without conducting a physical examination  
40 or tests of the patient, in which case the required information may be  
41 based on facts supplied by the woman to the physician and whatever  
42 other relevant information is reasonably available. The information  
43 required by this subdivision may not be provided by a tape recording  
44 but must be provided during a consultation in which the physician is

1           able to ask questions of the woman and the woman is able to ask  
2           questions of the physician. If, in the medical judgment of the  
3           physician, a physical examination, tests, or the availability of other  
4           information to the physician subsequently indicates a revision of the  
5           information previously supplied to the patient, then that revised  
6           information may be communicated to the patient at anytime prior to  
7           the performance of the abortion. Nothing in this section may be  
8           construed to preclude provision of required information in a language  
9           understood by the patient through a translator.

10           (2) The physician who is to perform the abortion, the referring physician,  
11           or a qualified person has informed, by telephone or in person, the  
12           woman of each of the following at least 24 hours before the abortion:

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

15           b. That public assistance programs under Chapter 108A of the  
16           General Statutes may or may not be available as benefits under  
17           federal and State assistance programs.

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

20           d. That the woman has the right to review the printed materials  
21           described in G.S. 90-21.63, that these materials are available on  
22           a State-sponsored web site, and the address of the  
23           State-sponsored web site. The physician or a qualified person  
24           shall orally inform the woman that the materials have been  
25           provided by the Department and that they describe the unborn  
26           child and list agencies that offer alternatives to abortion. If the  
27           woman chooses to view the materials other than on the web  
28           site, they shall either be given to her at least 24 hours before the  
29           abortion or be mailed to her at least 72 hours before the  
30           abortion by certified mail, restricted delivery to addressee.

31           e. That the woman is free to withhold or withdraw her consent to  
32           the abortion at any time before or during the abortion without  
33           affecting her right to future care or treatment and without the  
34           loss of any State or federally funded benefits to which she  
35           might otherwise be entitled.

36           The information required by this subdivision may be provided by a  
37           tape recording if provision is made to record or otherwise register  
38           specifically whether the woman does or does not choose to have the  
39           printed materials given or mailed to her.

40           (3) If the physician uses ultrasound equipment in the performance of an  
41           abortion, the physician shall inform the woman that she has the right to  
42           view the ultrasound image of her unborn child before an abortion is  
43           performed. If the woman requests to view the ultrasound image, it  
44           shall be shown to her.

- 1           (4)    The woman certifies in writing, prior to the abortion, that the  
2           information described in subdivisions (1) and (2) of this section has  
3           been furnished her and that she has been informed of her opportunity  
4           to review the information referred to in sub-subdivision c. of  
5           subdivision (2) of this section and in subdivision (3) of this section.  
6           The original of this certification shall be maintained in the woman's  
7           medical records, and a copy shall be given to her.
- 8           (5)    Prior to the performance of the abortion, the physician who will  
9           perform the abortion or the qualified person must receive a copy of the  
10          written certification required by subdivision (4) of this section.
- 11          (6)    The information required under this section and under G.S. 90-21.66 is  
12          provided to the woman individually to protect her privacy and  
13          maintain the confidentiality of the decision and to ensure that the  
14          information focuses on her individual circumstances and that she has  
15          an adequate opportunity to ask questions. If, at the time the  
16          information is provided, the woman is on the premises of the physician  
17          who is to perform the abortion, then the information shall be provided  
18          in a private room in order to further the protections and purposes of  
19          this subdivision.
- 20          (7)    The woman is not required to pay any amount for the abortion  
21          procedure until the 24-hour waiting period has expired.

22    **§ 90-21.63. Printed information required.**

23          (a)    The Department shall publish in English and in each language that is the  
24          primary language of at least two percent (2%) of the State's population and shall cause  
25          to be available on the State web site established under G.S. 90-21.64 the following  
26          printed materials in a manner that ensures that the information is easily comprehensible:

- 27               (1)    Geographically indexed materials designed to inform a woman of  
28               public and private agencies and services available to assist her through  
29               pregnancy, upon childbirth, and while the child is dependent, including  
30               adoption agencies. The information shall include a comprehensive list  
31               of the agencies available, a description of the services they offer, and a  
32               description of the manner, including telephone numbers, in which they  
33               might be contacted. In the alternative, in the discretion of the  
34               Department, the printed materials may contain a toll-free,  
35               24-hour-a-day telephone number that may be called to obtain, orally, a  
36               list of these agencies in the locality of the caller and of the services  
37               they offer.
- 38               (2)    Materials designed to inform the woman of the probable anatomical  
39               and physiological characteristics of the unborn child at two-week  
40               gestational increments from the time of conception until full term,  
41               including any relevant information on the possibility of the unborn  
42               child's survival and pictures or drawings representing the development  
43               of the unborn child at two-week gestational increments. The pictures  
44               must contain the dimensions of the unborn child and must be realistic

1           and appropriate for the stage of pregnancy depicted. The materials  
2           shall be objective, nonjudgmental, and designed to convey only  
3           accurate scientific information about the unborn child at the various  
4           gestational ages. The material shall also contain objective information  
5           describing the methods of abortion procedures employed, the medical  
6           risks associated with each procedure, the possible detrimental  
7           psychological effects of abortion, and the medical risks associated with  
8           each procedure, as well as the medical risks associated with carrying  
9           an unborn child to term.

10          (b)    The materials referred to in subsection (a) of this section shall be printed in a  
11          typeface large enough to be clearly legible. The web site provided for in G.S. 90-21.64  
12          shall be maintained at a minimum resolution of 70 DPI (dots per inch). All pictures  
13          appearing on the web site shall be a minimum of 200x300 pixels. All letters on the web  
14          site shall be a minimum of 11 point font. All information and pictures shall be  
15          accessible with an industry standard browser, requiring no additional plug-ins.

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

19          "**§ 90-21.64. Internet web site.**

20          The Department shall develop and maintain a stable Internet web site to provide the  
21          information described under G.S. 90-21.63. No information regarding who accesses the  
22          web site shall be collected or maintained. The Department shall monitor the web site on  
23          a daily basis to prevent and correct tampering.

24          "**§ 90-21.65. Procedure in case of medical emergency.**

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

32          "**§ 90-21.66. Informed consent for a minor.**

33          If the woman upon whom an abortion is to be performed is an unemancipated minor,  
34          the voluntary and informed written consent required under G.S. 90-21.62 shall be  
35          obtained from the minor and from the adult individual who gives consent pursuant to  
36          G.S. 90-21.7(a), unless the waiver order of G.S. 90-21.8(e) and (f) has been issued.

37          "**§ 90-21.67. Civil remedies.**

38          (a)    Any person upon whom an abortion has been performed and any father of an  
39          unborn child that was the subject of an abortion may maintain an action for damages  
40          against the person who performed the abortion in knowing or reckless violation of this  
41          Article. Any person upon whom an abortion has been attempted may maintain an action  
42          for damages against the person who performed the abortion in knowing or reckless  
43          violation of this Article.

1 (b) If judgment is rendered in favor of the plaintiff in any action authorized under  
2 this section, the court shall also tax as part of the costs reasonable attorneys' fees in  
3 favor of the plaintiff against the defendant. If judgment is rendered in favor of the  
4 defendant and the court finds that the plaintiff's suit was frivolous and brought in bad  
5 faith, then the court shall tax as part of the costs reasonable attorneys' fees in favor of  
6 the defendant against the plaintiff."

7 **SECTION 2.** If any provision, word, phrase, or clause of this act or the  
8 application thereof to any person or circumstance is held invalid, the invalidity shall not  
9 affect the provisions, words, phrases, clauses, or applications of this act which can be  
10 given effect without the invalid provision, word, phrase, clause, or application, and to  
11 this end the provisions, words, phrases, and clauses of this act are declared to be  
12 severable. The General Assembly declares that it would have enacted this act and each  
13 provision, word, phrase, or clause of this act irrespective of the fact that any one or  
14 more provision, word, phrase, or clause be declared unconstitutional.

15 **SECTION 3.** The Department of Health and Human Services shall use funds  
16 available to cover the costs of implementing this act.

17 **SECTION 4.** This act becomes effective December 1, 2003, and applies to  
18 claims for relief arising on or after that date.