

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1026

Short Title: Right to Know Act.

(Public)

Sponsors: Representatives Decker; J. Brown, Brubaker, Creech, Nichols, C. Preston, Weatherly, and C. Wilson.

Referred to: Courts and Justice.

April 19, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE WOMAN'S RIGHT TO KNOW ACT REQUIRING
3 INFORMED CONSENT OF THE PREGNANT WOMAN BEFORE 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 1E.**

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

10 **"§ 90-21.25. Short title; findings and intent; construction; right of conscience.**

11 (a) This act shall be known and may be cited as the Woman's Right to Know Act
12 of North Carolina.

13 (b) It is the intent of the General Assembly to protect the life and health of the
14 woman subject to abortion and to protect the life and health of the child subject to
15 abortion. The General Assembly finds that the rights and interests furthered by this
16 Article are not secure in the context in which abortion is presently performed.

17 (c) Reliable and convincing evidence compels the General Assembly to find the
18 following:

19 (1) Many women now seek or are encouraged to undergo abortions
20 without full knowledge of the development of the unborn child or of
21 alternatives to abortion.

1 (2) The gestational age at which viability of an unborn child occurs has
2 been lower substantially and steadily as advances in neonatal medical
3 care continue to be made.

4 (3) A reasonable waiting period, as contained in this Article, is critical to
5 the assurance that a woman elect to undergo an abortion procedure
6 only after having the fullest opportunity to give her informed consent
7 to the procedure.

8 (d) In every relevant civil or criminal proceeding in which it is possible to do so
9 without violating the Constitution of the United States, the common and statutory law of
10 North Carolina shall be construed so as to extend to the unborn the equal protection of
11 the laws and to further the public policy of this State to encourage childbirth over
12 abortion.

13 (e) It is the public policy of North Carolina to respect and protect the right of
14 conscience of all persons who refuse to obtain, receive, subsidize, accept, or provide
15 abortions, including those persons who are engaged in the delivery of medical services
16 and medical care whether acting individually, corporately, or in association with other
17 persons; and to prohibit all forms of discrimination, disqualification, coercion,
18 disability, or imposition of liability or financial burden upon such persons or entities by
19 reason of their refusing to act contrary to their conscience or conscientious convictions
20 in refusing to obtain, receive, subsidize, accept, or provide abortions.

21 **"§ 90-21.26. Definitions.**

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

23 (1) 'Abortion' means the use or prescription of any instrument, medicine,
24 drug, or any other substance or device with intent to terminate the
25 pregnancy of a woman known to be pregnant for reasons other than to
26 save the life or preserve the health of an unborn child, to remove a
27 dead unborn child, or to deliver an unborn child prematurely, by
28 accepted medical procedures in order to preserve the health of both the
29 mother and the unborn child.

30 (2) 'Department' means the Department of Human Resources.

31 (3) 'Gestational age' means the age of the unborn child as calculated from
32 the first day of the last menstrual period of the pregnant woman.

33 (4) 'Medical emergency' means that condition which, on the basis of the
34 physician's good faith clinical judgment, so complicates the medical
35 condition of a pregnant woman as to necessitate the immediate
36 abortion of her pregnancy to avert her death or for which a delay will
37 create serious risk of grave impairment to her health.

38 (5) 'Viability' means that stage of fetal development when, in the judgment
39 of the physician based on the particular facts of the case before the
40 physician and in light of the most advanced medical technology and
41 information available, there is a reasonable likelihood of sustained
42 survival of the unborn child outside the body of the child's mother,
43 with or without artificial support.

44 **"§ 90-21.27. Informed consent to abortion.**

1 (a) No abortion shall be performed or induced except with the voluntary and
2 informed consent of the woman upon whom the abortion is to be performed or induced.
3 Except in the case of a medical emergency, consent to an abortion is voluntary and
4 informed if and only if:

5 (1) At least 24 hours prior to the abortion, the physician who is to perform
6 the abortion or the referring physician has orally informed the woman
7 of:

8 a. The nature of the proposed procedure or treatment and of those
9 risks and alternatives to the procedure or treatment that a
10 reasonable patient would consider material to the decision of
11 whether or not to undergo the abortion,

12 b. The probable gestational age of the unborn child at the time the
13 abortion is to be performed, and

14 c. The medical risks associated with carrying her child to term;

15 (2) At least 24 hours prior to the abortion, the physician who is to perform
16 the abortion or the referring physician, or a qualified physician
17 assistant, health care practitioner, technician, or social worker to whom
18 the responsibility has been delegated by either physician, has informed
19 the pregnant woman that:

20 a. The Department publishes printed materials which describe the
21 unborn child and list agencies which offer alternatives to
22 abortion and that she has a right to review the printed materials
23 and that a copy will be provided to her free of charge if she
24 chooses to review it,

25 b. Medical assistance benefits may be available for prenatal care,
26 childbirth, and neonatal care, and that more detailed
27 information on the availability of such assistance is contained in
28 the printed materials published by the Department, and

29 c. The father of the unborn child is liable to assist in the support of
30 her child, even in instances where he has offered to pay for the
31 abortion. In the case of rape, this information may be omitted;

32 (3) A copy of the printed materials has been provided to the pregnant
33 woman if she chooses to view these materials; and

34 (4) The pregnant woman certifies in writing, prior to the abortion, that the
35 information required to be provided under subdivisions (1), (2), and
36 (3) of this subsection has been provided.

37 (b) Where a medical emergency compels the performance of an abortion, the
38 physician shall inform the woman, prior to the abortion if possible, of the medical
39 indications supporting the physician's judgment that an abortion is necessary to avert
40 her death or to avert grave impairment of her health.

41 (c) Any physician who violates the provisions of this Article is guilty of
42 'unprofessional conduct' and such physician's license for the practice of medicine shall
43 be subject to suspension or revocation in accordance with procedures provided under
44 G.S. 90-14. Any physician who performs or induces an abortion without first obtaining

1 the certification required by subsection (a)(4) of this section, or with knowledge or
2 reason to know that the informed consent of the woman has not been obtained, shall be
3 guilty of a misdemeanor. No physician shall be guilty of violating this section for
4 failure to furnish the information required by subsection (a) of this section if the
5 physician can demonstrate, by a preponderance of the evidence, that the physician
6 reasonably believed that furnishing the information would have resulted in a severely
7 adverse effect on the physical or mental health of the patient."

8 Sec. 2. The Department of Human Resources shall develop and publish
9 printed materials on the following:

- 10 (1) A description of the fetal development of an unborn child;
11 (2) A list of agencies that offer alternatives to abortion;
12 (3) A list of medical assistance benefits that may be available to pregnant
13 women for prenatal care, childbirth, and neonatal care.

14 The Department shall make such materials available for distribution to physicians upon
15 request, and shall review the materials annually for sufficiency and accuracy.

16 Sec. 3. This act is effective upon ratification and applies to lawful abortions
17 performed on or after that date.