

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 734

Short Title: Abortion/Right to Know.

(Public)

Sponsors: Senators Allran, Kincaid, Clark, Ballantine, Hartsell, Sawyer, Horton, Ledbetter, Simpson, Cochrane, Page, Carpenter, McKoy, Shaw, Forrester, Carrington, McDaniel, Foxx, East, Little, Davis, and Webster.

Referred to: Judiciary II/Election Laws

April 17, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THE INFORMED CONSENT OF A PREGNANT WOMAN
3 BEFORE ABORTION MAY BE PERFORMED.

4 The General Assembly of North Carolina enacts:

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

7 **"ARTICLE 1E.**

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

9 **"§ 90-21.25. Short title.**

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

11 **"§ 90-21.26. Definitions.**

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

- 13 (1) 'Abortion' means the use or prescription of any instrument, medicine,
14 drug, or any other substance or device intentionally to terminate the
15 pregnancy of a woman known to be pregnant with an intention other
16 than to increase the probability of a live birth, to preserve the life or
17 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) 'Department' means the Department of Human Resources.
- 7 (4) 'Medical emergency' means that condition which, on the basis of the
8 physician's good faith clinical judgment, so complicates the medical
9 condition of a pregnant woman as to necessitate the immediate abortion
10 of her pregnancy to avert her death or for which a delay will create
11 serious risk of substantial and irreversible impairment of a major bodily
12 function.
- 13 (5) 'Physician' means an individual licensed to practice medicine or
14 osteopathy in accordance with Chapter 90 of the General Statutes.
- 15 (6) 'Probable gestational age' means what, in the judgment of the physician,
16 will with reasonable probability be the gestational age of the unborn
17 child at the time the abortion is planned to be performed.

18 **"§ 90-21.27. Informed consent to abortion.**

19 No abortion shall be performed in this State except with the voluntary and informed
20 consent of the woman upon whom the abortion is to be performed or induced. Except in
21 the case of a medical emergency, consent to an abortion is voluntary and informed if and
22 only if:

- 23 (1) At least 24 hours prior to the abortion, the physician who is to perform
24 the abortion or the referring physician has orally informed the woman
25 of:
- 26 a. The name of the physician who will perform the abortion;
27 b. The particular medical risks associated with the particular
28 abortion procedure to be employed including, when medically
29 accurate, the risks of infection, hemorrhage, breast cancer,
30 danger to subsequent pregnancies, and infertility;
31 c. The probable gestational age of the unborn child at the time the
32 abortion is to be performed; and
33 d. The medical risks associated with carrying the child to term.

34 The information required by this subdivision may be provided by
35 telephone without conducting a physical examination or tests of the
36 patient, in which case the information required to be provided may be
37 based on facts supplied by the woman to the physician. The information
38 required by this section may not be provided by a tape recording, but
39 must be provided during a consultation in which the physician is able to
40 ask questions of the woman and the woman is able to ask questions of
41 the physician. If a physical examination, tests, or the availability of
42 other information to the physician subsequently indicate, in the medical
43 judgment of the physician, a revision of the information previously

1 supplied to the patient, that revised information may be communicated
2 to the patient at any time prior to the performance of the abortion.
3 Nothing in this section may be construed to preclude provision of
4 required information in a language understood by the patient through a
5 translator;

6 (2) The woman is informed, by telephone or in person, by the physician
7 who is to perform the abortion, by a referring physician, or by an agent
8 of either physician at least 24 hours before the abortion:

9 a. That medical assistance benefits may be available for prenatal
10 care, childbirth, and neonatal care;

11 b. That the father is liable to assist in the support of the child, even
12 in instances in which the father has offered to pay for the
13 abortion; and

14 c. That the woman has the right to review the printed materials
15 described in G.S. 90-21.28(1). The physician or the physician's
16 agent shall orally inform the woman that the materials have been
17 provided by the Department and that they describe the unborn
18 child and list agencies which offer alternatives to abortion. If the
19 woman chooses to view the materials, they shall either be given
20 to her at least 24 hours before the abortion or mailed to her at
21 least 72 hours before the abortion by certified mail, restricted
22 delivery to addressee.

23 The information required by this subdivision may be provided by a
24 tape recording if provision is made to record or otherwise register
25 specifically whether the woman does or does not choose to review the
26 printed materials;

27 (3) The woman certifies in writing, prior to the abortion, that the
28 information described in subdivisions (1) and (2) of this subsection has
29 been furnished her and that she has been informed of her opportunity to
30 review the information referred to in subparagraph c. of subdivision (2)
31 of this section; and

32 (4) Prior to the performance of the abortion, the physician who is to
33 perform the abortion or the physician's agent receives a copy of the
34 written certification required by subdivision (3) of this section.

35 **"§ 90-21.28. Printed information required.**

36 (a) The Department shall publish, in English and in each language which is the
37 primary language of two percent (2%) or more of the State's population, the following
38 printed materials in such a way as to ensure that the information is easily comprehensible:

39 (1) Geographically indexed materials designed to inform a woman of public
40 and private agencies and services available to assist her through
41 pregnancy, upon childbirth, and while the child is dependent, including
42 adoption agencies. The information shall include a comprehensive list
43 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. The printed materials may also include a toll-free,
3 24-hour-a-day telephone number which may be called to obtain orally,
4 the list and description of agencies in the locality of the caller and of the
5 services they offer; and

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

23 (b) The materials referred to in subsection (a) of this section shall be printed in a
24 typeface large enough to be clearly legible.

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

27 **"§ 90-21.29. 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.

33 **"§ 90-21.30. Reporting requirements.**

34 (a) The Department shall prepare a reporting form for physicians containing a
35 reprint of this Article and listing the following:

36 (1) The number of women to whom the physician provided the information
37 described in G.S. 90-21.27(1) and of that number, the number provided
38 by telephone and the number provided in person; and of each of those
39 numbers, the number provided in the capacity of a referring physician
40 and the number provided in the capacity of a physician who is to
41 perform the abortion;

42 (2) The number of women to whom the physician or the physician's agent
43 provided the information described in G.S. 90-21.27(2) and of that

1 number, the number provided by telephone and the number provided in
2 person; of each of those numbers, the number provided by a referring
3 physician and the number provided by the physician who is to perform
4 the abortion; and of each of those numbers, the number provided by the
5 physician and the number provided by an agent of the physician;

6 (3) The number of women who availed themselves of the opportunity to
7 obtain a copy of the printed information described in G.S. 90-21.28 and
8 the number who did not, and of each of those numbers, the number who,
9 to the best of the reporting physician's information and belief, obtained
10 the abortion; and

11 (4) The number of abortions performed by the physician in which
12 information otherwise required to be provided at least 24 hours before
13 the abortion was not so provided because an immediate abortion was
14 necessary to avert the woman's death, and the number of abortions in
15 which such information was not so provided because a delay would
16 create serious risk of substantial and irreversible impairment of a major
17 bodily function.

18 (b) The Department shall ensure that copies of the reporting forms described in
19 this section are provided:

20 (1) To each physician newly licensed to practice in this State at the same
21 time as official notification to that physician that the physician is
22 licensed; and

23 (2) By December 1 of each year, to all physicians licensed to practice in
24 this State.

25 (c) By March 1 of each year following a calendar year in any part of which this
26 Article was in effect, each physician who provided, or whose agent provided, information
27 to one or more women in accordance with G.S. 90-21.27 during the previous calendar
28 year shall submit to the Department a copy of the form described in this section with the
29 requested data entered accurately and completely.

30 (d) Reports that are not submitted within 30 days following the due date of the
31 report shall be subject to a late fee of five hundred dollars (\$500.00) for each additional
32 30-day period or portion of a 30-day period the report is overdue. Any physician
33 required to report in accordance with this section who has not submitted a report, or has
34 submitted only an incomplete report, more than one year following the due date of the
35 report may, in an action brought by the Department, be directed by a court of competent
36 jurisdiction to submit a complete report within a period stated by court order or be subject
37 to sanctions for civil contempt.

38 (e) By June 30 of each year, the Department shall issue a public report providing
39 statistics for the previous calendar year compiled from all of the reports covering that
40 year submitted in accordance with this section for each of the items listed in subsection
41 (a) of this section. Each report shall also provide the statistics for all previous calendar
42 years, adjusted to reflect any additional information from late or corrected reports. The
43 Department shall ensure that none of the information included in the public reports could

1 reasonably lead to the identification of any individual provided information in accordance
2 with this Article.

3 (f) The Department may adopt rules to alter the dates established by this section or
4 to consolidate forms or reports required by this section to achieve administrative
5 convenience or fiscal savings or to reduce the burden of reporting requirements, so long
6 as reporting forms are sent to all licensed physicians in this State at least once every year
7 and the report required under subsection (e) of this section is issued at least once every
8 year.

9 **"§ 90-21.31. Criminal penalties.**

10 Any person who knowingly or recklessly performs or attempts to perform an abortion
11 in violation of this Article shall be guilty of a Class I felony. Any physician who
12 knowingly or recklessly submits a false report under G.S. 90-21.30 shall be guilty of a
13 Class 1 misdemeanor. No penalty may be assessed against the woman upon whom the
14 abortion is performed or attempted to be performed. No penalty or civil liability may be
15 assessed for failure to comply with G.S. 90-21.27(2) or that portion of G.S. 90-21.27(3)
16 requiring a written certification that the woman has been informed of her opportunity to
17 review the information referred to in G.S. 90-21.27(2) unless the Department has made
18 the printed materials available at the time the physician or the physician's agent is
19 required to inform the woman of her right to review them.

20 **"§ 90-21.32. Civil remedies.**

21 (a) Any person upon whom an abortion has been performed without complying
22 with this Article, the father of the unborn child who was the subject of such an abortion,
23 or the grandparent of such an unborn child may maintain an action against the person
24 who performed the abortion in knowing or reckless violation of this Article for actual and
25 punitive damages. Any person upon whom an abortion has been attempted without
26 complying with this Article may maintain an action against the person who attempted to
27 perform the abortion in knowing or reckless violation of this Article for actual and
28 punitive damages.

29 (b) If the Department fails to issue the public report required by G.S. 90-21.30(e),
30 any group of 10 or more citizens of this State may seek an injunction in a court of
31 competent jurisdiction against the Department requiring that a complete report be issued
32 within a period stated by court order. Failure to abide by such an injunction shall subject
33 the Secretary of the Department for sanctions for civil contempt.

34 (c) If judgment is rendered in favor of the plaintiff in any action authorized under
35 this section, the court shall also render judgment for reasonable attorneys' fees in favor of
36 the plaintiff against the defendant. If judgment is rendered in favor of the defendant and
37 the court finds that the plaintiff's suit was frivolous and brought in bad faith, then the
38 court shall render judgment for reasonable attorneys' fees in favor of the defendant
39 against the plaintiff.

40 **"§ 90-21.33. Protection of privacy in court proceedings.**

41 In every civil or criminal proceeding or action brought under this Article, the court
42 shall rule whether the anonymity of any woman upon whom an abortion has been
43 performed or attempted shall be preserved from public disclosure if she does not give her

1 consent to such disclosure. The court, upon its own motion or upon motion of a party,
2 shall make the ruling and, upon determining that her anonymity should be preserved,
3 shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the
4 record and exclusion of individuals from courtrooms or hearing rooms to the extent
5 necessary to safeguard the woman's identity from public disclosure. Each order shall be
6 accompanied by specific written findings explaining why the anonymity of the woman
7 should be preserved from public disclosure, why the order is essential to that end, how
8 the order is narrowly tailored to serve that interest, and why no reasonable less restrictive
9 alternative exists. In the absence of written consent of the woman upon whom an
10 abortion has been performed or attempted, any person other than a public official, who
11 brings an action under G.S. 90-21.30(a) shall do so under a pseudonym. Nothing in this
12 section shall be construed to conceal the identity of the plaintiff or witnesses from the
13 defendant."

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

19 Sec. 3. The Department of Human Resources shall ensure that copies of
20 reporting forms required under G.S. 90-21.30 are provided to all physicians licensed to
21 practice in this State. The forms shall be provided by the Department within 120 days of
22 the effective date of this act.

23 Sec. 4. This act becomes effective October 1, 1995.