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SENATE BILL DRS45279-MG-87A (03/13)

Short Title: Unborn Child Protection Fr. Dismemberment Act. (Public)

Sponsors: Senators Krawiec, Randleman, and Ballard (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING THE NORTH CAROLINA UNBORN CHILD PROTECTION
3 FROM DISMEMBERMENT ABORTION ACT.

4 The General Assembly of North Carolina enacts:

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

7 "Article 1L.

8 "The Unborn Child Protection From Dismemberment Abortion Act.

9 "§ 90-21.130. Definitions.

10 (a) As used in this Article, the following definitions apply:

11 (1) Abortion. – As defined in G.S. 90-21.81.

12 (2) Attempt to perform an abortion. – As defined in G.S. 90-21.81.

13 (3) Dismemberment abortion. – With the purpose of causing the death of an
14 unborn child, purposely to dismember a living unborn child and extract him
15 or her one piece at a time from the uterus through use of clamps, grasping
16 forceps, tongs, scissors, or similar instruments that, through the convergence
17 of two rigid levers, slice, crush, or grasp, or a combination of these, a portion
18 of the unborn child's body to cut or rip it off. The term does not include an
19 abortion that uses suction to dismember the body of the unborn child by
20 sucking fetal parts into a collection container, but it does include an abortion
21 in which a dismemberment abortion is used to cause the death of an unborn
22 child but suction is subsequently used to extract fetal parts after the death of
23 the unborn child.

24 (4) Physician. – A person qualified to perform an abortion as described in
25 G.S. 14-45.1.

26 (5) Purposely. – A person acts purposely with respect to a material element of
27 an offense when both of the following criteria are met:

28 a. If the element involves the nature of the person's conduct or a result
29 of his or her conduct, it is the person's conscious object to engage in
30 conduct of that nature or to cause such a result; and

31 b. If the element involves the attendant circumstances, the person is
32 aware of the existence of such circumstances or believes or has
33 reason to believe that they exist.

34 (6) Serious health risk to the unborn child's mother. – In reasonable medical
35 judgment, the mother has a condition that so complicates her medical
36 condition that it necessitates the abortion of her pregnancy to avert her death



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1 or to avert serious risk of substantial and irreversible physical impairment of
2 a major bodily function, not including psychological or emotional
3 conditions. No such condition may be determined to exist if it is based on a
4 claim or diagnosis that the woman will engage in conduct which she intends
5 to result in her death or in substantial and irreversible physical impairment of
6 a major bodily function.

7 (7) Woman. – A female human being whether or not she has reached the age of
8 majority.

9 **"§ 90-21.131. Dismemberment abortion unlawful.**

10 It shall be unlawful for any person to purposely perform a dismemberment abortion and
11 thereby kill an unborn child or attempt to perform a dismemberment abortion unless necessary
12 to prevent serious health risk to the unborn child's mother.

13 **"§ 90-21.132. Role of North Carolina Medical Board.**

14 Any physician accused in any proceeding of unlawful conduct under this Article may seek a
15 hearing before the North Carolina Medical Board on whether the dismemberment abortion was
16 necessary to prevent serious health risk to the unborn child's mother. The Board's findings are
17 admissible on that issue at any trial in which such unlawful conduct is alleged. Upon a motion
18 of the physician accused, the court shall delay the beginning of the trial for not more than 30
19 days to permit such a hearing to take place.

20 **"§ 90-21.133. Immunity.**

21 All of the following individuals are immune from any civil or criminal liability for actions
22 related to performing or attempting to perform a dismemberment abortion:

23 (1) The woman upon whom a dismemberment abortion is performed or
24 attempted to be performed.

25 (2) Any nurse, technician, secretary, receptionist, or other employee or agent
26 who is not a physician but who acts at the direction of a physician.

27 (3) Any pharmacist or other individual who is not a physician but who fills a
28 prescription or provides instruments or materials used in a dismemberment
29 abortion at the direction of a physician.

30 **"§ 90-21.134. Rape and incest.**

31 This act does not prevent abortion for any reason, including rape and incest, by any other
32 method.

33 **"§ 90-21.135. Civil remedies.**

34 (a) Any person who violates any provision of this Article shall be liable for any one or
35 more of the following:

36 (1) Objectively verifiable money damage for all injuries, psychological and
37 physical, occasioned by the dismemberment abortion.

38 (2) Statutory damages equal to three times the cost of the dismemberment
39 abortion or attempted dismemberment abortion.

40 (3) Punitive damages pursuant to Chapter 1D of the General Statutes.

41 (b) A claim for damages against any person who has violated a provision of this Article
42 may be sought by (i) the woman upon whom a dismemberment abortion was performed in
43 violation of this Article, (ii) any person who is the spouse or guardian of the woman upon
44 whom a dismemberment abortion was performed in violation of this Article, or (iii) a parent of
45 the woman upon whom a dismemberment abortion was performed in violation of this Article if
46 the woman was a minor at the time the dismemberment abortion was performed.

47 (c) No damages may be awarded to a plaintiff if the pregnancy resulted from the
48 plaintiff's criminal conduct.

49 **"§ 90-21.136. Injunctive relief.**

50 (a) A claim for injunctive relief against any person who has violated a provision of this
51 Article may be sought by (i) the woman upon whom a dismemberment abortion was performed

1 in violation of this Article or (ii) a parent of the woman upon whom a dismemberment abortion
2 was performed in violation of this Article if the woman was a minor at the time the
3 dismemberment abortion was performed.

4 (b) Any person who violates the terms of an injunction issued in accordance with this
5 section shall be subject to contempt and shall be fined ten thousand dollars (\$10,000) for the
6 first violation, fifty thousand dollars (\$50,000) for the second violation, and one hundred
7 thousand dollars (\$100,000) for the third violation and each subsequent violation. Each
8 performance or attempted performance of a dismemberment abortion in violation of the terms
9 of an injunction is a separate violation. The fine shall be the exclusive penalty for contempt
10 under this subsection. The fine under this subsection shall be cumulative. No fine shall be
11 assessed against the woman upon whom a dismemberment abortion is performed or attempted.

12 (c) The clear proceeds of any civil penalty assessed under this section shall be remitted
13 to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

14 (d) A cause of action may not be maintained by a plaintiff if the pregnancy resulted
15 from the plaintiff's criminal conduct.

16 **"§ 90-21.137. Criminal penalty.**

17 Any person who violates G.S. 90-21.131 is guilty of a Class A1 misdemeanor.

18 **"§ 90-21.138. Protection of privacy in court proceedings.**

19 In every proceeding or action brought under this Article, the court shall rule whether the
20 anonymity of any woman upon whom a dismemberment abortion has been performed or
21 attempted shall be preserved from public disclosure if she does not give her consent to the
22 disclosure. The court, upon motion or sua sponte, shall make the ruling and, upon determining
23 that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel
24 and shall direct the sealing of the record and exclusion of individuals from courtrooms or
25 hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each
26 order issued pursuant to this section shall be accompanied by specific written findings
27 explaining (i) why the anonymity of the woman should be preserved from public disclosure, (ii)
28 why the order is essential to that end, (iii) how the order is narrowly tailored to serve that
29 interest, and (iv) why no reasonable less restrictive alternative exists. In the absence of written
30 consent of the woman upon whom a dismemberment abortion has been performed or
31 attempted, anyone who brings an action under G.S. 90-21.88(a) or (b) shall do so under a
32 pseudonym. This section may not be construed to conceal the identity of the plaintiff or of
33 witnesses from the defendant.

34 **"§ 90-21.139. Construction of Article.**

35 Nothing in this Article shall be construed to do either of the following:

36 (1) Prevent an otherwise lawful abortion by any other method.

37 (2) Create or recognize a right to abortion, nor a right to a particular method of
38 abortion.

39 **"§ 90-21.140. Severability.**

40 If any one or more provisions, sections, subsections, sentences, clauses, phrases, or words
41 of this Article or the application thereof to any person or circumstance is found to be
42 unconstitutional, the same is hereby declared to be severable and the balance of this Article
43 shall remain effective notwithstanding such unconstitutionality. The General Assembly hereby
44 declares that it would have passed the remaining parts of each provision, section, subsection,
45 sentence, clause, phrase, or word of this Article if it had known that such part or parts of this
46 Article would be declared unconstitutional."

47 **SECTION 2.** This act becomes effective December 1, 2017, and applies to
48 offenses committed on or after that date.