

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 624

Short Title: Abortion/Right to Know.

(Public)

Sponsors: Representatives Decker, Hayes, Gardner; Aldridge, Arnold, Baker, Barbee, Brawley, J. Brown, Buchanan, Cansler, Capps, Carpenter, Clary, Cocklereece, Creech, Cummings, Davis, Dickson, Dockham, Eddins, Ellis, Esposito, Hiatt, Hill, Holmes, Howard, Hurley, Justus, Kiser, Linney, McComas, K. Miller, Miner, Nye, Pate, Pulley, Reynolds, Robinson, Russell, Sexton, Shubert, Snowden, Tallent, Tolson, Weatherly, C. Wilson, G. Wilson, and Wood.

Referred to: Judiciary I.

March 29, 1995

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE INFORMED CONSENT OF A PREGNANT WOMAN BEFORE 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 1E.

"WOMAN'S RIGHT TO KNOW ACT.

"§ 90-21.25. Short title.

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

"§ 90-21.26. 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

1 than to increase the probability of a live birth, to preserve the life or
2 health of the child after live birth, or to remove a dead fetus.

3 (2) 'Attempt to perform an abortion' means an act, or an omission of a
4 statutorily required act, that, under the circumstances as the actor
5 believes them to be, constitutes a substantial step in a course of conduct
6 planned to culminate in the performance of an abortion in North
7 Carolina in violation of this Article.

8 (3) 'Department' means the Department of Human Resources.

9 (4) 'Medical emergency' means that condition which, on the basis of the
10 physician's good faith clinical judgment, so complicates the medical
11 condition of a pregnant woman as to necessitate the immediate abortion
12 of her pregnancy to avert her death or for which a delay will create
13 serious risk of substantial and irreversible impairment of a major bodily
14 function.

15 (5) 'Physician' means an individual licensed to practice medicine or
16 osteopathy in accordance with Chapter 90 of the General Statutes.

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

20 **"§ 90-21.27. Informed consent to abortion.**

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

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

28 a. The name of the physician who will perform the abortion;

29 b. The particular medical risks associated with the particular
30 abortion procedure to be employed including, when medically
31 accurate, the risks of infection, hemorrhage, breast cancer,
32 danger to subsequent pregnancies, and infertility;

33 c. The probable gestational age of the unborn child at the time the
34 abortion is to be performed; and

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

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

1 other information to the physician subsequently indicate, in the medical
2 judgment of the physician, a revision of the information previously
3 supplied to the patient, that revised information may be communicated
4 to the patient at any time prior to the performance of the abortion.
5 Nothing in this section may be construed to preclude provision of
6 required information in a language understood by the patient through a
7 translator;

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

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

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

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

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

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

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

37 **"§ 90-21.28. Printed information required.**

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

41 (1) Geographically indexed materials designed to inform a woman of public
42 and private agencies and services available to assist her through
43 pregnancy, upon childbirth, and while the child is dependent, including

1 adoption agencies. The information shall include a comprehensive list
2 of the agencies available, a description of the services they offer, and a
3 description of the manner, including telephone numbers, in which they
4 might be contacted. The printed materials may also include a toll-free,
5 24-hour-a-day telephone number which may be called to obtain orally,
6 the list and description of agencies in the locality of the caller and of the
7 services they offer; and

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

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

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

29 **§ 90-21.29. Procedure in case of medical emergency.**

30 When a medical emergency compels the performance of an abortion, the physician
31 shall inform the woman, prior to the abortion if possible, of the medical indications
32 supporting the physician's judgment that an abortion is necessary to avert her death or
33 that a 24-hour delay will create serious risk of substantial and irreversible impairment of
34 a major bodily function.

35 **§ 90-21.30. Reporting requirements.**

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

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

- 1 (2) The number of women to whom the physician or the physician's agent
2 provided the information described in G.S. 90-21.27(2) and of that
3 number, the number provided by telephone and the number provided in
4 person; of each of those numbers, the number provided by a referring
5 physician and the number provided by the physician who is to perform
6 the abortion; and of each of those numbers, the number provided by the
7 physician and the number provided by an agent of the physician;
- 8 (3) The number of women who availed themselves of the opportunity to
9 obtain a copy of the printed information described in G.S. 90-21.28 and
10 the number who did not, and of each of those numbers, the number who,
11 to the best of the reporting physician's information and belief, obtained
12 the abortion; and
- 13 (4) The number of abortions performed by the physician in which
14 information otherwise required to be provided at least 24 hours before
15 the abortion was not so provided because an immediate abortion was
16 necessary to avert the woman's death, and the number of abortions in
17 which such information was not so provided because a delay would
18 create serious risk of substantial and irreversible impairment of a major
19 bodily function.
- 20 (b) The Department shall ensure that copies of the reporting forms described in
21 this section are provided:
- 22 (1) To each physician newly licensed to practice in this State at the same
23 time as official notification to that physician that the physician is
24 licensed; and
- 25 (2) By December 1 of each year, to all physicians licensed to practice in
26 this State.
- 27 (c) By March 1 of each year following a calendar year in any part of which this
28 Article was in effect, each physician who provided, or whose agent provided, information
29 to one or more women in accordance with G.S. 90-21.27 during the previous calendar
30 year shall submit to the Department a copy of the form described in this section with the
31 requested data entered accurately and completely.
- 32 (d) Reports that are not submitted within 30 days following the due date of the
33 report shall be subject to a late fee of five hundred dollars (\$500.00) for each additional
34 30-day period or portion of a 30-day period the report is overdue. Any physician
35 required to report in accordance with this section who has not submitted a report, or has
36 submitted only an incomplete report, more than one year following the due date of the
37 report may, in an action brought by the Department, be directed by a court of competent
38 jurisdiction to submit a complete report within a period stated by court order or be subject
39 to sanctions for civil contempt.
- 40 (e) By June 30 of each year, the Department shall issue a public report providing
41 statistics for the previous calendar year compiled from all of the reports covering that
42 year submitted in accordance with this section for each of the items listed in subsection
43 (a) of this section. Each report shall also provide the statistics for all previous calendar

1 years, adjusted to reflect any additional information from late or corrected reports. The
2 Department shall ensure that none of the information included in the public reports could
3 reasonably lead to the identification of any individual provided information in accordance
4 with this Article.

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

11 **"§ 90-21.31. Criminal penalties.**

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

22 **"§ 90-21.32. Civil remedies.**

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

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

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

42 **"§ 90-21.33. Protection of privacy in court proceedings.**

1 In every civil or criminal proceeding or action brought under this Article, the court
2 shall rule whether the anonymity of any woman upon whom an abortion has been
3 performed or attempted shall be preserved from public disclosure if she does not give her
4 consent to such disclosure. The court, upon its own motion or upon motion of a party,
5 shall make the ruling and, upon determining that her anonymity should be preserved,
6 shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the
7 record and exclusion of individuals from courtrooms or hearing rooms to the extent
8 necessary to safeguard the woman's identity from public disclosure. Each order shall be
9 accompanied by specific written findings explaining why the anonymity of the woman
10 should be preserved from public disclosure, why the order is essential to that end, how
11 the order is narrowly tailored to serve that interest, and why no reasonable less restrictive
12 alternative exists. In the absence of written consent of the woman upon whom an
13 abortion has been performed or attempted, any person other than a public official, who
14 brings an action under G.S. 90-21.30(a) shall do so under a pseudonym. Nothing in this
15 section shall be construed to conceal the identity of the plaintiff or of witnesses from the
16 defendant."

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

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

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