

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 624  
Committee Substitute Favorable 6/26/95

Short Title: Abortion/Right to Know.

(Public)

Sponsors:

Referred to:

March 29, 1995

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE A TWENTY-FOUR HOUR WAITING PERIOD AND THE  
3 INFORMED CONSENT OF A PREGNANT WOMAN BEFORE AN 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.**

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

12 **"§ 90-21.26. Definitions.**

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

- 14 (1) 'Abortion' means the use or prescription of any instrument, medicine,  
15 drug, or any other substance or device intentionally to terminate the  
16 pregnancy of a woman known to be pregnant with an intention other  
17 than to increase the probability of a live birth, to preserve the life or  
18 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 one or more of  
12 her major bodily functions.
- 13           (5) 'Medical risks' means the usual and most frequent risks and hazards,  
14 both physical and emotional, inherent in a proposed abortion procedure  
15 and the risks, both physical and emotional, inherent in carrying the fetus  
16 to term.
- 17           (6) 'Physician' means an individual licensed to practice medicine or  
18 osteopathy in accordance with this Chapter.
- 19           (7) 'Probable gestational age' means what, in the judgment of the physician,  
20 will with reasonable probability be the gestational age of the fetus at the  
21 time the abortion is planned to be performed.

22 **"§ 90-21.27. Informed consent to abortion.**

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

- 26           (1) At least 24 hours prior to the abortion, the physician who is to perform  
27 the abortion, the referring physician, or an agent of either physician has  
28 orally informed the woman of all of the following:
- 29           a. 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           b. The medical risks associated with carrying the fetus to term.
- 34           c. The probable gestational age of the fetus at the time the abortion  
35 is to be performed.
- 36           d. If the physician who is to perform the abortion has no liability  
37 insurance for malpractice in the performance or attempted  
38 performance of an abortion, that information shall be  
39 communicated.
- 40           e. If the physician who will perform the abortion has no local  
41 hospital admitting privileges, that information shall be  
42 communicated.

1           The information required by this subdivision may be provided by  
2 telephone without conducting a physical examination or tests of the  
3 patient, in which case the required information may be based on facts  
4 supplied by the woman to the physician or the physician's agent. The  
5 information required by this section may not be provided by a tape  
6 recording but must be provided during a consultation in which the  
7 physician or the physician's agent is able to ask questions of the woman  
8 and the woman is able to ask questions of the physician or the  
9 physician's agent. If a physical examination, tests, or the availability of  
10 other information to the physician subsequently indicate, in the medical  
11 judgment of the physician, a revision of the information previously  
12 supplied to the patient, that revised information may be communicated  
13 to the patient at any time prior to the performance of the abortion.  
14 Nothing in this section may be construed to preclude provision of  
15 required information in a language understood by the patient through a  
16 translator.

17       (2) The physician who is to perform the abortion, the referring physician, or  
18 an agent of either physician informs the woman, by telephone or in  
19 person, of each of the following at least 24 hours before the abortion:

- 20       a. That medical assistance benefits may be available for prenatal  
21 care, childbirth, and neonatal care.  
22       b. That it describe the public assistance programs, such as Aid to  
23 Families with Dependent Children, that may or may not be  
24 available as benefits under federal and State assistance programs.  
25       c. That the father is liable to assist in the support of the child, even  
26 if the father has offered to pay for the abortion.  
27       d. That the woman has the right to review the printed materials  
28 described in G.S. 90-21.28(a). The physician or the physician's  
29 agent shall orally inform the woman that the materials have been  
30 provided by the Department and that they describe the fetus and  
31 list agencies which offer alternatives to abortion. If the woman  
32 requests the materials, they shall either be given to her at least 24  
33 hours before the abortion or mailed to her at least 72 hours before  
34 the abortion by certified mail, restricted delivery to addressee.  
35       e. That information concerning access to local domestic violence  
36 services will be provided if the woman acknowledges  
37 involvement in an abusive relationship.

38           The information required by this subdivision may be provided by a  
39 tape recording if provision is made to record or otherwise register  
40 specifically whether the woman does or does not request the printed  
41 materials.

42       (3) The woman certifies in writing, prior to the abortion, that the  
43 information described in subdivisions (1) and (2) of this section has

1           been furnished her and that she has been informed of her opportunity to  
2           review the information referred to in sub-subdivision c. of subdivision  
3           (2) of this section. The original of this certification shall be maintained  
4           in the woman's medical records and a copy shall be given to her.

- 5           (4) Prior to the performance of the abortion, the woman must be informed  
6           of the name of the physician who will perform the abortion, and that  
7           physician or the physician's agent must receive a copy of the written  
8           certification required by subdivision (3) of this section.

9           **"§ 90-21.28. Printed information required.**

10          (a) The Department shall publish the following printed materials in English and  
11          Spanish in a manner that ensures that the information is easily comprehensible:

- 12           (1) Geographically indexed materials designed to inform a woman of public  
13           and private agencies and services available to assist her through  
14           pregnancy, upon childbirth, and while the child is dependent, including  
15           adoption agencies. The information shall include a comprehensive list  
16           of the agencies available, a description of the services they offer, and a  
17           description of the manner, including telephone numbers, in which they  
18           might be contacted. The printed materials may also include a toll-free,  
19           24-hour-a-day telephone number which may be called to obtain an oral  
20           list and description of agencies in the locality of the caller and of the  
21           services they offer.

- 22           (2) Materials designed to inform the woman of the probable anatomical and  
23           physiological characteristics of the fetus at two-week gestational  
24           increments from the time when a woman can be known to be pregnant  
25           until full term, including any relevant information on the possibility of  
26           the fetus' survival and pictures or drawings representing the  
27           development of a fetus at two-week gestational increments. The  
28           pictures or drawings must contain the dimensions of the fetus and must  
29           be realistic and appropriate for the stage of pregnancy depicted. The  
30           materials shall be objective, nonjudgmental, and designed to convey  
31           only accurate scientific information about the fetus at the various  
32           gestational ages. The material shall also contain objective information  
33           describing the methods of abortion procedures employed, the medical  
34           risks associated with each procedure, the possible detrimental  
35           psychological effects of abortion and the medical risks associated with  
36           each procedure, and the medical risks associated with carrying a fetus to  
37           term.

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

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

42          **"§ 90-21.29. Procedure in case of medical emergency.**

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

6 **"§ 90-21.30. Reporting requirements.**

7        (a) The Department shall prepare a reporting form for physicians listing all of the  
8 following:

9            (1) The number of women to whom the physician provided the information  
10 described in G.S. 90-21.27(1) and of that number, the number provided  
11 by telephone and the number provided in person; and of each of those  
12 numbers, the number provided in the capacity of a referring physician  
13 and the number provided in the capacity of a physician who is to  
14 perform the abortion.

15            (2) The number of women to whom the physician or the physician's agent  
16 provided the information described in G.S. 90-21.27(2) and of that  
17 number, the number provided by telephone and the number provided in  
18 person; of each of those numbers, the number provided by a referring  
19 physician and the number provided by the physician who is to perform  
20 the abortion; and of each of those numbers, the number provided by the  
21 physician and the number provided by an agent of the physician.

22            (3) The number of women who availed themselves of the opportunity to  
23 obtain a copy of the printed information described in G.S. 90-21.28 and  
24 the number who did not, and of each of those numbers, the number who,  
25 to the best of the reporting physician's information and belief, obtained  
26 the abortion.

27            (4) The number of abortions performed by the physician in which  
28 information otherwise required to be provided at least 24 hours before  
29 the abortion was not so provided because an immediate abortion was  
30 necessary to avert the woman's death, and the number of abortions in  
31 which such information was not so provided because a delay would  
32 create serious risk of substantial and irreversible impairment of a major  
33 bodily function.

34        (b) The Department shall ensure that copies of the reporting forms described in  
35 this section are provided to each of the following:

36            (1) Each physician newly licensed to practice in this State at the same time  
37 as official notification to that physician that the physician is licensed.

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

40        (c) By March 1 of each year following a calendar year in any part of which this  
41 Article was in effect, each physician who provided, or whose agent provided, information  
42 to one or more women in accordance with G.S. 90-21.27 during the previous calendar

1 year shall submit to the Department a copy of the form described in this section with the  
2 requested data entered accurately and completely.

3 (d) Reports that are not submitted within 30 days following the due date of the  
4 report shall be subject to a late fee of five hundred dollars (\$500.00) for each additional  
5 30-day period or portion of a 30-day period the report is overdue. Any physician  
6 required to report in accordance with this section who has not submitted a report, or has  
7 submitted only an incomplete report, more than one year following the due date of the  
8 report may, in an action brought by the Department, be directed by a court of competent  
9 jurisdiction to submit a complete report within a period stated by court order or be subject  
10 to sanctions for civil contempt.

11 (e) By June 30 of each year, the Department shall issue a public report providing  
12 statistics for the previous calendar year compiled from all of the reports covering that  
13 year submitted in accordance with this section for each of the items listed in subsection  
14 (a) of this section. Each report shall also provide the statistics for all previous calendar  
15 years, adjusted to reflect any additional information from late or corrected reports. The  
16 Department shall ensure that none of the information included in the public reports could  
17 reasonably lead to the identification of any individual provided information in accordance  
18 with this Article.

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

25 **"§ 90-21.31. Criminal penalties.**

26 Any person who knowingly or recklessly performs or attempts to perform an abortion  
27 in violation of this Article shall be guilty of a Class 1 misdemeanor. Any physician who  
28 knowingly or recklessly submits a false report under G.S. 90-21.30 shall be guilty of a  
29 Class 1 misdemeanor. No penalty may be assessed against the woman upon whom the  
30 abortion is performed or attempted to be performed.

31 **"§ 90-21.32. Protection of privacy in court proceedings.**

32 In every civil or criminal proceeding or action brought under this Article, the court  
33 may rule whether the anonymity of any woman upon whom an abortion has been  
34 performed or attempted shall be preserved from public disclosure if she does not give her  
35 consent to disclosure. The court, upon its own motion or upon motion of a party, and  
36 upon determining that the woman's anonymity should be preserved, shall issue  
37 appropriate orders to the parties, witnesses, and counsel. Nothing in this section shall be  
38 construed to conceal from the defendant the identity of the plaintiff in a civil case or the  
39 identity of the victim in a criminal case.

40 **"§ 90-21.33. Civil remedies.**

41 (a) Any person upon whom an abortion has been performed or attempted to be  
42 performed may maintain an action against the person who performed or attempted to

1 perform the abortion in knowing or reckless violation of this Article for actual damages  
2 and, to the extent allowed by law, for punitive damages.

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

9       Sec. 2. If any provision, word, phrase, or clause of this act or the application  
10 thereof to any person or circumstance is held invalid, the invalidity shall not affect the  
11 provisions, words, phrases, clauses, or applications of this act which can be given effect  
12 without the invalid provision, word, phrase, clause, or application and, to this end, the  
13 provisions, words, phrases, and clauses of this act are declared to be severable.

14       Sec. 3. This act becomes effective December 1, 1995, and applies to offenses  
15 committed and causes of action arising on or after that date.