

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

4

HOUSE BILL 854
Committee Substitute Favorable 5/12/11
Committee Substitute #2 Favorable 6/7/11
Fourth Edition Engrossed 6/8/11

Short Title: Abortion-Woman's Right to Know Act.

(Public)

Sponsors:

Referred to:

April 7, 2011

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 MAY
4 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 11.

9 "Woman's Right to Know Act.

10 "§ 90-21.80. Short title.

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

12 "§ 90-21.81. Definitions.

13 The following definitions apply in this Article:

- 14 (1) Abortion. – The use or prescription of any instrument, medicine, drug, or
15 other substance or device intentionally to terminate the pregnancy of a
16 woman known to be pregnant with an intention other than to do any of the
17 following:
18 a. Increase the probability of a live birth.
19 b. Preserve the life or health of the child.
20 c. Remove a dead, unborn child who died as the result of (i) natural
21 causes in utero, (ii) accidental trauma, or (iii) a criminal assault on
22 the pregnant woman or her unborn child which causes the premature
23 termination of the pregnancy.
24 (2) Attempt to perform an abortion. – An act, or an omission of a statutorily
25 required act, that, under the circumstances as the actor believes them to be,
26 constitutes a substantial step in a course of conduct planned to culminate in
27 the performance of an abortion in violation of this Article.
28 (3) Department. – The Department of Health and Human Services.
29 (4) Display a real-time view of the unborn child. – An ultrasound or any more
30 scientifically advanced means of viewing the unborn child in real time.
31 (5) Medical emergency. – A condition which, in reasonable medical judgment,
32 so complicates the medical condition of the pregnant woman as to
33 necessitate the immediate abortion of her pregnancy to avert her death or for
34 which a delay will create serious risk of substantial and irreversible physical



1 impairment of a major bodily function, not including any psychological or
2 emotional conditions. For purposes of this definition, no condition shall be
3 deemed a medical emergency if based on a claim or diagnosis that the
4 woman will engage in conduct which would result in her death or in
5 substantial and irreversible physical impairment of a major bodily function.

6 (6) Physician. – An individual licensed to practice medicine in accordance with
7 this Chapter.

8 (7) Probable gestational age. – What, in the judgment of the physician, will,
9 with reasonable probability, be the gestational age of the unborn child at the
10 time the abortion is planned to be performed.

11 (8) Qualified professional. – An individual who is a registered nurse, nurse
12 practitioner, or physician assistant licensed in accordance with Article 1 of
13 this Chapter, or a qualified technician acting within the scope of the
14 qualified technician's authority as provided by North Carolina law and under
15 the supervision of a physician.

16 (9) Qualified technician. – A registered diagnostic medical sonographer who is
17 certified in obstetrics and gynecology by the American Registry for
18 Diagnostic Medical Sonography (ARDMS) or a nurse midwife or advanced
19 practice nurse practitioner in obstetrics with certification in obstetrical
20 ultrasonography.

21 (10) Stable Internet Web site. – A Web site that, to the extent reasonably
22 practicable, is safeguarded from having its content altered other than by the
23 Department.

24 (11) Woman. – A female human, whether or not she is an adult.

25 **§ 90-21.82. Informed consent to abortion.**

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

29 (1) At least 24 hours prior to the abortion, a physician or qualified professional
30 has orally informed the woman, by telephone or in person, of all of the
31 following:

32 a. The name of the physician who will perform the abortion.

33 b. The particular medical risks associated with the particular abortion
34 procedure to be employed, including, when medically accurate, the
35 risks of infection, hemorrhage, cervical tear or uterine perforation,
36 danger to subsequent pregnancies, including the ability to carry a
37 child to full term, and any adverse psychological effects associated
38 with the abortion.

39 c. The probable gestational age of the unborn child at the time the
40 abortion is to be performed.

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

42 e. The display of a real-time view of the unborn child and heart tone
43 monitoring that enable the pregnant woman to view her unborn child
44 or listen to the heartbeat of the unborn child are available to the
45 woman. The physician performing the abortion, qualified technician,
46 or referring physician shall inform the woman that the printed
47 materials and Web site described in G.S. 90-21.83 and G.S. 90-21.84
48 contain phone numbers and addresses for facilities that offer the
49 services free of charge. If requested by the woman, the physician or
50 qualified professional shall provide to the woman the list as compiled
51 by the Department.

- 1 f. If the physician who is to perform the abortion has no liability
2 insurance for malpractice in the performance or attempted
3 performance of an abortion, that information shall be communicated.
4 g. The location of the hospital that offers obstetrical or gynecological
5 care located within 30 miles of the location where the abortion is
6 performed or induced and at which the physician performing or
7 inducing the abortion has clinical privileges. If the physician who
8 will perform the abortion has no local hospital admitting privileges,
9 that information shall be communicated.

10 If the physician or qualified professional does not know the information
11 required in sub-subdivisions a., f., or g. of this subdivision, the woman shall
12 be advised that this information will be directly available from the physician
13 who is to perform the abortion. However, the fact that the physician or
14 qualified professional does not know the information required in
15 sub-subdivisions a., f., or g. shall not restart the 24-hour period. The
16 information required by this subdivision shall be provided in English and in
17 each language that is the primary language of at least two percent (2%) of
18 the State's population. The information may be provided orally either by
19 telephone or in person, in which case the required information may be based
20 on facts supplied by the woman to the physician and whatever other relevant
21 information is reasonably available. The information required by this
22 subdivision may not be provided by a tape recording but shall be provided
23 during a consultation in which the physician is able to ask questions of the
24 patient and the patient is able to ask questions of the physician. If, in the
25 medical judgment of the physician, a physical examination, tests, or the
26 availability of other information to the physician subsequently indicates a
27 revision of the information previously supplied to the patient, then that
28 revised information may be communicated to the patient at any time before
29 the performance of the abortion. Nothing in this section may be construed to
30 preclude provision of required information in a language understood by the
31 patient through a translator.

32 (2) The physician or qualified professional has informed the woman, either by
33 telephone or in person, of each of the following at least 24 hours before the
34 abortion:

- 35 a. That medical assistance benefits may be available for prenatal care,
36 childbirth, and neonatal care.
37 b. That public assistance programs under Chapter 108A of the General
38 Statutes may or may not be available as benefits under federal and
39 State assistance programs.
40 c. That the father is liable to assist in the support of the child, even if
41 the father has offered to pay for the abortion.
42 d. That the woman has other alternatives to abortion, including keeping
43 the baby or placing the baby for adoption.
44 e. That the woman has the right to review the printed materials
45 described in G.S. 90-21.83, that these materials are available on a
46 State-sponsored Web site, and the address of the State-sponsored
47 Web site. The physician or a qualified professional shall orally
48 inform the woman that the materials have been provided by the
49 Department and that they describe the unborn child and list agencies
50 that offer alternatives to abortion. If the woman chooses to view the
51 materials other than on the Web site, the materials shall either be

1 given to her at least 24 hours before the abortion or be mailed to her
2 at least 72 hours before the abortion by certified mail, restricted
3 delivery to addressee.

4 f. That the woman is free to withhold or withdraw her consent to the
5 abortion at any time before or during the abortion without affecting
6 her right to future care or treatment and without the loss of any State
7 or federally funded benefits to which she might otherwise be entitled.

8 The information required by this subdivision shall be provided in English
9 and in each language that is the primary language of at least two percent
10 (2%) of the State's population. The information required by this subdivision
11 may be provided by a tape recording if provision is made to record or
12 otherwise register specifically whether the woman does or does not choose
13 to have the printed materials given or mailed to her. Nothing in this
14 subdivision shall be construed to prohibit the physician or qualified
15 professional from e-mailing a Web site link to the materials described in this
16 subdivision or G.S. 90-21.83.

17 (3) The woman certifies in writing, before the abortion, that the information
18 described in subdivisions (1) and (2) of this section has been furnished her
19 and that she has been informed of her opportunity to review the information
20 referred to in sub-subdivision (2)e. of this section. The original of this
21 certification shall be maintained in the woman's medical records, and a copy
22 shall be given to her.

23 (4) Before the performance of the abortion, the physician who will perform the
24 abortion or the qualified technician must receive a copy of the written
25 certification required by subdivision (3) of this section.

26 **"§ 90-21.83. Printed information required.**

27 (a) Within 90 days after this Article becomes effective, the Department shall publish in
28 English and in each language that is the primary language of at least two percent (2%) of the
29 State's population and shall cause to be available on the State Web site established under
30 G.S. 90-21.84, the following printed materials in a manner that ensures that the information is
31 comprehensible to a person of ordinary intelligence:

32 (1) Geographically indexed materials designed to inform a woman of public and
33 private agencies and services available to assist her through pregnancy, upon
34 childbirth, and while the child is dependent, including adoption agencies.
35 The information shall include a comprehensive list of the agencies available,
36 a description of the services they offer, including which agencies offer, at no
37 cost to the woman, imaging that enables the woman to view the unborn child
38 or heart tone monitoring that enables the woman to listen to the heartbeat of
39 the unborn child, and a description of the manner, including telephone
40 numbers, in which they might be contacted. In the alternative, in the
41 discretion of the Department, the printed materials may contain a toll-free,
42 24-hour-a-day telephone number that may be called to obtain, orally or by
43 tape recorded message tailored to the zip code entered by the caller, a list of
44 these agencies in the locality of the caller and of the services they offer.

45 (2) Materials designed to inform the woman of the probable anatomical and
46 physiological characteristics of the unborn child at two-week gestational
47 increments from the time a woman can be known to be pregnant until full
48 term, including pictures or drawings representing the development of the
49 unborn child at two-week gestational increments. The pictures shall contain
50 the dimensions of the unborn child, information about brain and heart
51 functions, the presence of external members and internal organs, and be

1 realistic and appropriate for the stage of pregnancy depicted. The materials
2 shall be objective, nonjudgmental, and designed to convey only accurate
3 scientific information about the unborn child at the various gestational ages.
4 The material shall contain objective information describing the methods of
5 abortion procedures employed, the medical risks associated with each
6 procedure, the possible adverse psychological effects of abortion, as well as
7 the medical risks associated with carrying an unborn child to term.

8 (b) The materials referred to in subsection (a) of this section shall be printed in a
9 typeface large enough to be clearly legible. The Web site provided for in G.S. 90-21.84 shall be
10 maintained at a minimum resolution of 70 DPI (dots per inch). All pictures appearing on the
11 Web site shall be a minimum of 200x300 pixels. All letters on the Web site shall be a minimum
12 of 12-point font. All information and pictures shall be accessible with an industry-standard
13 browser requiring no additional plug-ins.

14 (c) The materials required under this section shall be available at no cost from the
15 Department upon request and in appropriate numbers to any physician, person, health facility,
16 hospital, or qualified professional.

17 **"§ 90-21.84. Internet Web site.**

18 The Department shall develop and maintain a stable Internet Web site to provide the
19 information described under G.S. 90-21.83. No information regarding who accesses the Web
20 site shall be collected or maintained. The Department shall monitor the Web site on a regular
21 basis to prevent and correct tampering.

22 **"§ 90-21.85. Display of real-time view requirement.**

23 (a) Notwithstanding G.S. 14-45.1, except in the case of a medical emergency, in order
24 for the woman to make an informed decision, at least four hours before a woman having any
25 part of an abortion performed or induced, and before the administration of any anesthesia or
26 medication in preparation for the abortion on the woman, the physician who is to perform the
27 abortion, or qualified technician working in conjunction with the physician, shall do each of the
28 following:

- 29 (1) Perform an obstetric real-time view of the unborn child on the pregnant
30 woman.
- 31 (2) Provide a simultaneous explanation of what the display is depicting, which
32 shall include the presence, location, and dimensions of the unborn child
33 within the uterus and the number of unborn children depicted. The individual
34 performing the display shall offer the pregnant woman the opportunity to
35 hear the fetal heart tone. The image and auscultation of fetal heart tone shall
36 be of a quality consistent with the standard medical practice in the
37 community. If the image indicates that fetal demise has occurred, a woman
38 shall be informed of that fact.
- 39 (3) Display the images so that the pregnant woman may view them.
- 40 (4) Provide a medical description of the images, which shall include the
41 dimensions of the embryo or fetus and the presence of external members and
42 internal organs, if present and viewable.
- 43 (5) Obtain a written certification from the woman, before the abortion, that the
44 requirements of this section have been complied with, which shall indicate
45 whether or not she availed herself of the opportunity to view the image.
- 46 (6) Retain a copy of the written certification prescribed by subdivision (a)(5) of
47 this section. The certification shall be placed in the medical file of the
48 woman and shall be kept by the abortion provider for a period of not less
49 than seven years. If the woman is a minor, then the certification shall be
50 placed in the medical file of the minor and kept for at least seven years or for
51 five years after the minor reaches the age of majority, whichever is greater.

1 If the woman has had an obstetric display of a real-time image of the unborn child within 72
2 hours before the abortion is to be performed, the certification of the physician or qualified
3 technician who performed the procedure in compliance with this subsection shall be included in
4 the patient's records and the requirements under this subsection shall be deemed to have been
5 met.

6 (b) Nothing in this section shall be construed to prevent a pregnant woman from
7 averting her eyes from the displayed images or from refusing to hear the simultaneous
8 explanation and medical description.

9 (c) In the event the person upon whom the abortion is to be performed is an
10 unemancipated minor, as defined in G.S. 90-21.6(1), the information described in subdivisions
11 (a)(2) and (a)(4) of this section shall be furnished and offered respectively to a person required
12 to give parental consent under G.S. 90-21.7(a) and the unemancipated minor. The person
13 required to give consent in accordance with G.S. 90-21.7(a), as appropriate, shall make the
14 certification required by subdivision (a)(5) of this section. In the event the person upon whom
15 the abortion is to be performed has been adjudicated mentally incompetent by a court of
16 competent jurisdiction, the information shall be furnished and offered respectively to her
17 spouse or a legal guardian if she is married or, if she is not married, to one parent or a legal
18 guardian and the woman. The spouse, legal guardian, or parent, as appropriate, shall make the
19 certification required by subdivision (a)(5) of this section. In the case of an abortion performed
20 pursuant to a court order under G.S. 90-21.8(e) and (f), the information described in
21 subdivisions (a)(2) and (a)(4) of this section shall be provided to the minor, and the certification
22 required by subdivision (a)(5) of this section shall be made by the minor.

23 **"§ 90-21.86. Procedure in case of medical emergency.**

24 When a medical emergency compels the performance of an abortion, the physician shall
25 inform the woman, before the abortion if possible, of the medical indications supporting the
26 physician's judgment that an abortion is necessary to avert her death or that a 24-hour delay will
27 create a serious risk of substantial and irreversible impairment of a major bodily function, not
28 including psychological or emotional conditions. As soon as feasible, the physician shall
29 document in writing the medical indications upon which the physician relied and shall cause
30 the original of the writing to be maintained in the woman's medical records and a copy given to
31 her.

32 **"§ 90-21.87. Informed consent for a minor.**

33 If the woman upon whom an abortion is to be performed is an unemancipated minor, the
34 voluntary and informed written consent required under G.S. 90-21.82 shall be obtained from
35 the minor and from the adult individual who gives consent pursuant to G.S. 90-21.7(a).

36 **"§ 90-21.88. Civil remedies.**

37 (a) Any person upon whom an abortion has been performed and any father of an unborn
38 child that was the subject of an abortion may maintain an action for damages against the person
39 who performed the abortion in knowing or reckless violation of this Article. Any person upon
40 whom an abortion has been attempted may maintain an action for damages against the person
41 who performed the abortion in willful violation of this Article.

42 (b) Injunctive relief against any person who has willfully violated this Article may be
43 sought by and granted to (i) the woman upon whom an abortion was performed or attempted to
44 be performed in violation of this Article, (ii) any person who is the spouse, parent, sibling, or
45 guardian of, or a current or former licensed health care provider of, the woman upon whom an
46 abortion has been performed or attempted to be performed in violation of this Article, or (iii)
47 the Attorney General. The injunction shall prevent the abortion provider from performing or
48 inducing further abortions in this State in violation of this Article.

49 (c) If judgment is rendered in favor of the plaintiff in any action authorized under this
50 section, the court shall also tax as part of the costs reasonable attorneys' fees in favor of the
51 plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court

1 finds that the plaintiff's suit was frivolous or brought in bad faith, then the court shall tax as part
2 of the costs reasonable attorneys' fees in favor of the defendant against the plaintiff.

3 **"§ 90-21.89. Protection of privacy in court proceedings.**

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

18 **"§ 90-21.90. Assurance of informed consent.**

19 (a) All information required to be provided under G.S. 90-21.82 to a woman
20 considering abortion shall be presented to the woman individually and, except for information
21 that may be provided by telephone, in the physical presence of the woman and in a language
22 the woman understands to ensure that the woman has adequate opportunity to ask questions and
23 to ensure the woman is not the victim of a coerced abortion.

24 (b) Should a woman be unable to read the materials provided to the woman pursuant to
25 this section, a physician or qualified professional shall read the materials to the woman in a
26 language the woman understands before the abortion.

27 **"§ 90-21.91. Assurance that consent is freely given.**

28 If a physician acting pursuant to this Article has reason to believe that a woman is being
29 coerced into having an abortion, the physician or qualified professional shall inform the woman
30 that services are available for the woman and shall provide the woman with private access to a
31 telephone and information about, but not limited to, each of the following services:

- 32 (1) Rape crisis centers.
- 33 (2) Shelters for victims of domestic violence.
- 34 (3) Restraining orders.
- 35 (4) Pregnancy care centers.

36 **"§ 90-21.92. Severability.**

37 If any one or more provision, section, subsection, sentence, clause, phrase, or word of this
38 Article or the application thereof to any person or circumstance is found to be unconstitutional,
39 the same is hereby declared to be severable, and the balance of this Article shall remain
40 effective, notwithstanding such unconstitutionality. The General Assembly hereby declares that
41 it would have passed this Article, and each provision, section, subsection, sentence, clause,
42 phrase, or word thereof, irrespective of the fact that any one or more provision, section,
43 subsection, sentence, clause, phrase, or word be declared unconstitutional."

44 **SECTION 2.** The Department of Health and Human Services shall use funds
45 appropriated to it in implementing this act.

46 **SECTION 3.** This act becomes effective 90 days after it becomes law and applies
47 to claims for relief arising on or after October 1, 2011.