

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

SENATE BILL 353  
RATIFIED BILL

AN ACT TO MODIFY CERTAIN LAWS PERTAINING TO ABORTION, TO LIMIT ABORTION COVERAGE UNDER HEALTH INSURANCE PLANS OFFERED UNDER A HEALTH BENEFIT EXCHANGE OPERATING IN NORTH CAROLINA OR OFFERED BY A COUNTY OR MUNICIPALITY, TO PROHIBIT A PERSON FROM PERFORMING OR ATTEMPTING TO PERFORM AN ABORTION WHEN THE SEX OF THE UNBORN CHILD IS A SIGNIFICANT FACTOR IN SEEKING THE ABORTION, TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO AMEND RULES AND CONDUCT A STUDY PERTAINING TO CLINICS CERTIFIED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO BE SUITABLE FACILITIES FOR THE PERFORMANCE OF ABORTIONS, TO AMEND THE WOMEN'S RIGHT TO KNOW ACT, AND TO INCREASE PENALTIES FOR UNSAFE MOVEMENTS BY DRIVERS THAT THREATEN THE PROPERTY AND SAFETY OF MOTORCYCLISTS.

The General Assembly of North Carolina enacts:

**PART I. HEALTH CARE CONSCIENCE PROTECTION**

**SECTION 1.(a)** G.S. 14-45.1(e) reads as rewritten:

"(e) Nothing in this section shall require a physician licensed to practice medicine in ~~North Carolina or Carolina~~, any ~~nurse-nurse~~, or any other health care provider who shall state an objection to abortion on moral, ethical, or religious grounds, to perform or participate in medical procedures which result in an abortion. The refusal of ~~such physician-a physician,~~ nurse, or health care provider to perform or participate in these medical procedures shall not be a basis for damages for ~~such the refusal~~, or for any disciplinary or any other recriminatory action against ~~such physician-the physician,~~ the physician, nurse, or health care provider. For purposes of this section, the phrase "health care provider" shall have the same meaning as defined under G.S. 90-410(1)."

**SECTION 1.(b)** G.S. 14-45.1(f) reads as rewritten:

"(f) Nothing in this section shall require a ~~hospital or hospital,~~ other health care ~~institution-institution,~~ or other health care provider to perform an abortion or to provide abortion services."

**SECTION 1.(c)** This section becomes effective 30 days after it becomes law.

**PART II. LIMITS ON ABORTION FUNDING UNDER HEALTH INSURANCE PLANS OFFERED THROUGH A HEALTH INSURANCE EXCHANGE OR BY LOCAL GOVERNMENTS**

**SECTION 2.(a)** Article 51 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

**"§ 58-51-63. Coverage for abortions not allowed in plans offered through Exchange.**

(a) Pursuant to the authority granted to states under 42 U.S.C. § 18023(a), no qualified health plan offered through an Exchange created under Subchapter III of Chapter 157 of Title 42 of the U.S. Code and operating within this State shall include coverage for abortion services.

(b) The coverage limitation in subsection (a) of this section shall not apply to an abortion performed when the pregnancy is the result of an act of rape or incest or the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself."

**SECTION 2.(b)** G.S. 153A-92(d) reads as rewritten:



"(d) A county may purchase life insurance or health insurance or both for the benefit of all or any class of county officers and employees as a part of their compensation. A county may provide other fringe benefits for county officers and employees. In providing health insurance to county officers and employees, a county shall not provide abortion coverage greater than that provided by the State Health Plan for Teachers and State Employees under Article 3B of Chapter 135 of the General Statutes."

**SECTION 2.(c)** G.S. 160A-162(b) reads as rewritten:

"(b) The council may purchase life, health, and any other forms of insurance for the benefit of all or any class of city employees and their dependents, and may provide other fringe benefits for city employees. In providing health insurance to city employees, the council shall not provide abortion coverage greater than that provided by the State Health Plan for Teachers and State Employees under Article 3B of Chapter 135 of the General Statutes."

**SECTION 2.(d)** Subsections (a) and (d) of this section are effective when they become law. Subsections (b) and (c) of this section apply to insurance contracts or policies issued, renewed, or amended on or after October 1, 2013.

### **PART III. CLARIFY LAW/PROHIBIT SEX-SELECTIVE ABORTION**

**SECTION 3.(a)** Chapter 90 of the General Statutes is amended by adding the following new Article to read:

"Article 1K.

"Certain Abortions Prohibited.

#### **"§ 90-21.120. Definitions.**

The following definitions apply in this Article:

- (1) Abortion. – As defined in G.S. 90-21.81(1).
- (2) Attempt to perform an abortion. – As defined in G.S. 90-21.81(2).
- (3) Woman. – As defined in G.S. 90-21.81(11).

#### **"§ 90-21.121. Sex-selective abortion prohibited.**

(a) Notwithstanding any of the provisions of G.S. 14-45.1, no person shall perform or attempt to perform an abortion upon a woman in this State with knowledge, or an objective reason to know, that a significant factor in the woman seeking the abortion is related to the sex of the unborn child.

(b) Nothing in this section shall be construed as placing an affirmative duty on a physician to inquire as to whether the sex of the unborn child is a significant factor in the pregnant woman seeking the abortion.

#### **"§ 90-21.122. Civil remedies.**

(a) Any person who violates any provision of this Article shall be liable for damages, including punitive damages pursuant to Chapter 1D of the General Statutes, and may be enjoined from future acts.

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

(c) A claim for injunctive relief against any person who has violated a provision of this Article may be sought by (i) the woman upon whom an abortion was performed or attempted in violation of this Article, (ii) any person who is the spouse, guardian, or current or former licensed health care provider of the woman upon whom an abortion was performed or attempted in violation of this Article, or (iii) a parent of the woman upon whom an abortion was performed or attempted in violation of this Article if the woman was a minor at the time the abortion was performed or attempted.

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

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

**"§ 90-21.123. Protection of privacy in court proceedings.**

In every proceeding or action brought under this Article, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted shall be preserved from public disclosure if the woman does not give her consent to the disclosure. The court, upon motion or sua sponte, shall make the ruling and, upon determining that the woman's anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. Each order issued pursuant to this section shall be accompanied by specific written findings explaining (i) why the anonymity of the woman should be preserved from public disclosure, (ii) why the order is essential to that end, (iii) how the order is narrowly tailored to serve that interest, and (iv) why no reasonable, less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone who brings an action under G.S. 90-21.122 shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant."

**SECTION 3.(b)** G.S. 90-21.81(2) reads as rewritten:

**"§ 90-21.81. Definitions.**

The following definitions apply in this Article:

- ...
- (2) Attempt to perform an abortion. – An act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in violation of this ~~Article~~ Article or Article 1K of this Chapter.

...."

**SECTION 3.(c)** This section becomes effective October 1, 2013, and applies to violations occurring on or after that date.

**PART IV. AMEND WOMEN'S RIGHT TO KNOW ACT**

**SECTION 4.(a)** G.S. 90-21.82(1) reads as rewritten:

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

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

- (1) At least 24 hours prior to the abortion, a physician or qualified professional has orally informed the woman, by telephone or in person, of all of the following:
- a. The name of the physician who will perform the ~~abortion~~ abortion to ensure the safety of the procedure and prompt medical attention to any complications that may arise. The physician performing a surgical abortion shall be physically present during the performance of the entire abortion procedure. The physician prescribing, dispensing, or otherwise providing any drug or chemical for the purpose of inducing an abortion shall be physically present in the same room as the patient when the first drug or chemical is administered to the patient.

...."

**SECTION 4.(b)** G.S. 90-21.83 is amended by adding a new subsection to read:

**"(d)** The Department shall cause to be available on the State Web site a list of resources the woman may contact for assistance upon receiving information from the physician performing the ultrasound that the unborn child may have a disability or serious abnormality and shall do so in a manner prescribed by subsection (b) of this section."

**SECTION 4.(c)** The Department of Health and Human Services (Department) shall amend its rules pertaining to clinics certified by the Department to be suitable facilities for the performance of abortions under G.S. 14-45.1. The Department is authorized to apply any requirement for the licensure of ambulatory surgical centers to the standards applicable to clinics certified by the Department to be suitable facilities for the performance of abortions.

The rules shall ensure that standards for clinics certified by the Department address the on-site recovery phase of patient care at the clinic, protect patient privacy, provide quality assurance, and ensure that patients with complications receive the necessary medical attention, while not unduly restricting access. The Department may issue temporary rules, in addition to its permanent rulemaking authority, to enforce this subsection. No later than January 1, 2014, the Department shall report to the Joint Legislative Oversight Committee on Health and Human Services on its progress in amending the rules.

**SECTION 4.(d)** The Department of Health and Human Services, Division of Health Service Regulations, shall study what resources the Division needs to adequately enforce regulations for clinics certified by the Department to be suitable facilities for the performance of abortions. By April 1, 2014, the Department shall report the findings and any recommendations of this study to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division.

**SECTION 4.(e)** This section becomes effective October 1, 2013.

## **PART V. MOTORCYCLE SAFETY**

**SECTION 5.(a)** G.S. 20-154 reads as rewritten:

**"§ 20-154. Signals on starting, stopping or turning.**

...

(a1) A person who violates subsection (a) of this section and causes a motorcycle operator to change travel lanes or leave that portion of any public street or highway designated as travel lanes shall be responsible for an infraction and shall be assessed a fine of not less than two hundred dollars (\$200.00). A person who violates subsection (a) of this section that results in a crash causing property damage or personal injury to a motorcycle operator or passenger shall be responsible for an infraction and shall be assessed a fine of not less than five hundred dollars (~~\$500.00~~)-(\$500.00) unless subsection (a2) of this section applies.

(a2) A person who violates subsection (a) of this section and the violation results in a crash causing property damage in excess of five thousand dollars (\$5,000) or a serious bodily injury as defined in G.S. 20-160.1(b) to a motorcycle operator or passenger shall be responsible for an infraction and shall be assessed a fine of not less than seven hundred fifty dollars (\$750.00). A violation of this subsection shall be treated as a failure to yield right-of-way to a motorcycle for purposes of assessment of points under G.S. 20-16(c). In addition, the trial judge shall have the authority to order the license of any driver violating this subsection suspended for a period not to exceed 30 days. If a judge orders suspension of a person's drivers license pursuant to this subsection, the judge may allow the licensee a limited driving privilege for a period not to exceed the period of suspension. The limited driving privilege shall be issued in the same manner and under the terms and conditions prescribed in G.S. 20-16.1(b)(1), (2), (3), (4), (5), and G.S. 20-16.1(g).

...."

**SECTION 5.(b)** This section becomes effective October 1, 2013, and applies to violations committed on or after that date.

## **PART VI. SEVERABILITY AND EFFECTIVE DATE**

**SECTION 6.(a)** If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable. If any provision of this act is temporarily or permanently restrained or enjoined by judicial order, this act shall be enforced as though such restrained or enjoined provisions had not been adopted, provided that whenever such temporary or permanent restraining order or injunction is stayed, dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

**SECTION 6.(b)** This act is effective as provided herein. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26<sup>th</sup> day of July, 2013.

s/ Tom Apodaca  
Presiding Officer of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

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Pat McCrory  
Governor

Approved \_\_\_\_\_ .m. this \_\_\_\_\_ day of \_\_\_\_\_, 2013