

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 563\*

Short Title: Whole Woman's Health Act. (Public)

Sponsors: Representatives Fisher, Cunningham, Meyer, and B. Richardson (Primary Sponsors).

*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Rules, Calendar, and Operations of the House

April 5, 2017

A BILL TO BE ENTITLED

AN ACT REPEALING LAWS IN CONFLICT WITH THE UNITED STATES SUPREME COURT DECISION IN WHOLE WOMAN'S HEALTH V. HELLERSTEDT.

Whereas, comprehensive reproductive health care, including safe abortion, is a vital component of a woman's overall health; and

Whereas, abortion is one of the safest medical procedures in the United States, as demonstrated by data, including from the CDC, showing that abortion has over a 99 percent safety record; and

Whereas, like other medical procedures, the safety of abortion is furthered by evidence-based practices developed and supported by medical professionals; and

Whereas, any regulation of medical care must have a legitimate purpose; and

Whereas, the goal of medical regulation should be to improve the quality of care and increase access to care; and

Whereas, in the landmark decision *Whole Woman's Health v. Hellerstedt* (*Whole Woman's Health*), the Supreme Court recently reaffirmed a woman's constitutional right to access safe, legal abortion, confirming over 40 years of precedent; and

Whereas, in *Whole Woman's Health*, the Court struck down two provisions of a Texas law, H.B. 2, which was designed to close abortion providers in the state; and

Whereas, Justice Ruth Bader Ginsberg concluded in her concurrence that given the safety of abortion, "it is beyond rational belief that H.B. 2 could genuinely protect the health of women, and certain that the law "would simply make it more difficult for them to obtain abortions"; and

Whereas, in *Whole Woman's Health*, the Court held that the Constitution "requires that courts consider the burdens a law imposes on abortion access together with the benefits those laws confer"; and

Whereas, in *Whole Woman's Health*, the Court further held that courts, "when determining the constitutionality of laws regulating abortion procedures," must place "considerable weight upon evidence...presented"; and

Whereas, in *Whole Woman's Health*, Justice Ruth Bader Ginsburg wrote in her concurrence that abortion restrictions that "do little or nothing for health, but rather strew impediments to abortion...cannot survive judicial inspection"; and

Whereas, according to the American College of Obstetricians and Gynecologists, the American Medical Association, American Academy of Family Physicians, and the American Osteopathic Association, leading public health organizations and amici curiae for the



1 petitioners in *Whole Woman's Health*, "[w]omen's access to high-quality, evidence-based  
2 abortion should not be limited by laws enacted under the guise of patient safety but that, in fact,  
3 harm women's health"; and

4 Whereas, the 334 restrictions on abortion providers and their patients adopted  
5 nationally since 2010 and the more than 30 restrictions in North Carolina that were enacted  
6 based on pretextual reasons are just a systematic attempt to eliminate access to safe and legal  
7 medical care; and

8 Whereas, in accordance with the United States Constitution, it is the intent of the  
9 General Assembly to prevent the enforcement of laws or regulations that burden abortion  
10 access and do not provide legitimate health benefits; Now, therefore,  
11 The General Assembly of North Carolina enacts:

12 **SECTION 1.** This act shall be known and may be cited as "The Whole Woman's  
13 Health Act."

14 **SECTION 2.** G.S. 14-45.1 reads as rewritten:

15 **"§ 14-45.1. When abortion not ~~unlawful~~; abortion statistics; abortion opt-out**  
16 **for health care providers.**

17 (a) Notwithstanding any of the provisions of G.S. 14-44 and 14-45, it shall not be  
18 ~~unlawful, during the first 20 weeks of a woman's pregnancy, unlawful~~ to advise, procure, or  
19 cause a miscarriage or abortion when the procedure is performed by a ~~qualified physician~~  
20 ~~licensed to practice medicine in North Carolina in a hospital or clinic certified by the~~  
21 ~~Department of Health and Human Services to be a suitable facility for the performance of~~  
22 ~~abortions;~~ health care provider operating within his or her scope of practice.

23 (a1) The Department of Health and Human Services shall annually inspect any clinic,  
24 including ambulatory surgical facilities, where abortions are performed. The Department of  
25 Health and Human Services shall publish on the Department's Web site and on the State Web  
26 site established under G.S. 90-21.84 the results and findings of all inspections conducted on or  
27 after January 1, 2013, of clinics, including ambulatory surgical facilities, where abortions are  
28 performed, including any statement of deficiencies and any notice of administrative action  
29 resulting from the inspection. No person who is less than 18 years of age shall be employed at  
30 any clinic, including ambulatory surgical facilities, where abortions are performed. The  
31 requirements of this subsection shall not apply to a hospital required to be licensed under  
32 Chapter 131E of the General Statutes.

33 (b) Notwithstanding any of the provisions of G.S. 14-44 and 14-45, it shall not be  
34 unlawful, after the twentieth week of a woman's pregnancy, to advise, procure or cause a  
35 miscarriage or abortion when the procedure is performed by a qualified physician licensed to  
36 practice medicine in North Carolina in a hospital or clinic licensed or certified by the  
37 Department of Health and Human Services, ~~if there is a medical emergency as defined by G.S.~~  
38 ~~90-21.81(5);~~ Services.

39 (b1) ~~A qualified physician who advises, procures, or causes a miscarriage or abortion~~  
40 ~~after the sixteenth week of a woman's pregnancy shall record all of the following: the method~~  
41 ~~used by the qualified physician to determine the probable gestational age of the unborn child at~~  
42 ~~the time the procedure is to be performed; the results of the methodology, including the~~  
43 ~~measurements of the unborn child; and an ultrasound image of the unborn child that depicts the~~  
44 ~~measurements. The qualified physician shall provide this information, including the ultrasound~~  
45 ~~image, to the Department of Health and Human Services pursuant to G.S. 14-45.1(c).~~

46 ~~A qualified physician who procures or causes a miscarriage or abortion after the twentieth~~  
47 ~~week of a woman's pregnancy shall record the findings and analysis on which the qualified~~  
48 ~~physician based the determination that there existed a medical emergency as defined by G.S.~~  
49 ~~90-21.81(5) and shall provide that information to the Department of Health and Human~~  
50 ~~Services pursuant to G.S. 14-45.1(c). Materials generated by the physician or provided by the~~

1 physician to the Department of Health and Human Services pursuant to this section shall not be  
2 public records under G.S. 132-1.

3 ~~The information provided under this subsection shall be for statistical purposes only, and~~  
4 ~~the confidentiality of the patient and the physician shall be protected. It is the duty of the~~  
5 ~~qualified physician to submit information to the Department of Health and Human Services that~~  
6 ~~omits identifying information of the patient and complies with Health Insurance Portability and~~  
7 ~~Accountability Act of 1996 (HIPAA).~~

8 (c) The Department of Health and Human Services shall prescribe and collect on an  
9 annual basis, from hospitals or clinics, including ambulatory surgical facilities, where abortions  
10 are performed, statistical summary reports concerning the medical and demographic  
11 characteristics of the abortions provided for in this section, ~~including the information described~~  
12 ~~in subsection (b1) of this section as it shall deem to be in the public interest.~~ section. Hospitals  
13 or clinics where abortions are performed shall be responsible for providing these statistical  
14 summary reports to the Department of Health and Human Services. The reports shall be for  
15 statistical purposes only and the confidentiality of the patient relationship shall be protected.  
16 Materials generated by the physician or provided by the physician to the Department of Health  
17 and Human Services pursuant to this section shall not be public records under G.S. 132-1.

18 (d) The requirements of G.S. 130A-114 are not applicable to abortions performed  
19 pursuant to this section.

20 (e) No physician, nurse, or any other health care provider who shall state an objection  
21 to abortion on moral, ethical, or religious grounds shall be required to perform or participate in  
22 medical procedures which result in an abortion. The refusal of a physician, nurse, or health care  
23 provider to perform or participate in these medical procedures shall not be a basis for damages  
24 for the refusal, or for any disciplinary or any other recriminatory action against the physician,  
25 nurse, or health care provider. For purposes of this section, the phrase "health care provider"  
26 shall have the same meaning as defined under G.S. 90-410(1).

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

29 ~~(g) For purposes of this section, "qualified physician" means (i) a physician who~~  
30 ~~possesses, or is eligible to possess, board certification in obstetrics or gynecology, (ii) a~~  
31 ~~physician who possesses sufficient training based on established medical standards in safe~~  
32 ~~abortion care, abortion complications, and miscarriage management, or (iii) a physician who~~  
33 ~~performs an abortion in a medical emergency as defined by G.S. 90-21.81(5)."~~

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

36 "Article 1L.

37 "Access to Abortion.

38 **"§ 90-21.130. State laws or regulations burdening access to abortion unenforceable.**

39 (a) A State law or regulation that places a burden on a woman's access to abortion is  
40 unenforceable if, when considering the burdens imposed by the law or regulation on abortion  
41 access together with the benefits conferred by the law or regulation, the law or regulation does  
42 not confer legitimate health benefits.

43 (b) A State law or regulation places a burden on access to abortion if the law or  
44 regulation does one or more of the following:

45 (1) Forces abortion providers to cease providing abortions.

46 (2) Increases the time a woman must wait to have an abortion.

47 (3) Requires a meaningful increase in the distance a woman must travel to  
48 access care.

49 (4) Requires medically unnecessary visits to a health care facility or clinic.

50 (5) Requires a health care provider to perform a medical service that the  
51 provider would not otherwise perform.

- 1           (6)    Increases the risk to a woman's health.
- 2           (7)    Causes a meaningful increase in the cost of a procedure.
- 3           (8)    Serves no purpose other than to stigmatize patients and abortion providers.
- 4           (9)    Serves no purpose or effect other than to decrease or eliminate access to
- 5                    abortion.
- 6       (b)    A State law or regulation confers a legitimate health benefit if it does either of the
- 7 following:
- 8           (1)   Expands women's access to medically accurate, comprehensive, and
- 9                    unbiased health care services.
- 10          (2)   Increases patient safety, according to evidence-based research."
- 11       **SECTION 4.** Articles 1I and 1K of Chapter 90 of the General Statutes are
- 12 repealed.
- 13       **SECTION 5.** This act becomes effective October 1, 2017.