

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 536

Short Title: Abortion/Right to Know.

(Public)

Sponsors: Representatives C. Wilson; Aldridge, Allred, Baker, Brawley, Brown, Buchanan, Cansler, Capps, Carpenter, Clary, Creech, Culp, Davis, Decker, Dickson, Dockham, Eddins, Ellis, Esposito, Gardner, Gulley, Hardy, Hiatt, Hill, Holmes, Howard, Hurley, Ives, Justus, Kiser, McComas, McMahan, Miner, Morris, Nichols, Preston, Rayfield, Reynolds, Russell, Sexton, Shubert, Starnes, Tallent, Thompson, Warner, Watson, Weatherly, G. Wilson, and Wood.

Referred to: Human Resources.

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A TWENTY-FOUR-HOUR WAITING PERIOD AND THE INFORMED CONSENT OF A PREGNANT WOMAN BEFORE AN 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 1F.

“WOMAN'S RIGHT TO KNOW ACT.

“§ 90-21.37. Short title.

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

“§ 90-21.38. 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 than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

(2) 'Attempt to perform an abortion' means 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 North Carolina in violation of this Article.

(3) 'Coercion' means restraining or dominating the choice of a female by force, threat of force, or deprivation of food or shelter by a person obligated to provide food or shelter.

(4) 'Complication' means that condition which includes but is not limited to hemorrhage, infection, uterine perforation, cervical laceration, pelvic inflammatory disease, endometriosis, and retained products. The Department may further define 'complication.'

(5) 'Department' means the Department of Environment, Health, and Natural Resources.

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

(7) 'Medical risks' means the usual and most frequent risks and hazards, both physical and emotional, inherent in a proposed abortion procedure and the risks, both physical and emotional, inherent in carrying the unborn child to term.

(8) 'Physician' means an individual licensed to practice medicine or osteopathy in accordance with this Chapter.

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

(10) 'Qualified person' means an agent of the physician who is a psychologist, licensed social worker, licensed professional counselor, registered nurse, or physician.

"§ 90-21.39. Informed consent to abortion; coercion prohibited.

No abortion shall be performed upon a woman in this State without her voluntary and informed consent. It shall be unlawful for any individual to coerce a woman to undergo an abortion. 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, the physician who is to perform the abortion, the referring physician, or a qualified person has orally informed the woman of all of the following:

- 1 a. The particular medical risks associated with the particular
2 abortion procedure to be employed including, when medically
3 accurate, the risks of infection, hemorrhage, breast cancer,
4 danger to subsequent pregnancies, and infertility.
- 5 b. The medical risks associated with carrying the unborn child to
6 term.
- 7 c. The probable gestational age of the unborn child at the time the
8 abortion is to be performed.
- 9 d. If the physician who is to perform the abortion has no liability
10 insurance for malpractice in the performance or attempted
11 performance of an abortion, that information shall be
12 communicated.
- 13 e. If the physician who will perform the abortion has no local
14 hospital admitting privileges, that information shall be
15 communicated.

16 The information required by this subdivision may be provided orally
17 without conducting a physical examination or tests of the patient, in
18 which case the required information may be based on facts supplied by
19 the woman to the physician or the qualified person. The information
20 required by this section may not be provided by a tape recording but
21 must be provided during a consultation in which the physician or the
22 qualified person is able to ask questions of the woman and the woman is
23 able to ask questions of the physician or the qualified person. If in the
24 medical judgment of the physician a physical examination, tests, or the
25 availability of other information to the physician subsequently indicate a
26 revision of the information previously supplied to the patient, then that
27 revised information may be communicated to the patient at any time
28 prior to the performance of the abortion. Nothing in this section may be
29 construed to preclude provision of required information in a language
30 understood by the patient through a translator.

- 31 (2) The physician who is to perform the abortion, the referring physician, or
32 the qualified person informs the woman, by telephone or in person, of
33 each of the following at least 24 hours before the abortion:
- 34 a. That medical assistance benefits may be available for prenatal
35 care, childbirth, and neonatal care.
- 36 b. That it describe the public assistance programs, such as Aid to
37 Families with Dependent Children, that may or may not be
38 available as benefits under federal and State assistance programs.
- 39 c. That the father is liable to assist in the support of the child, even
40 if the father has offered to pay for the abortion.
- 41 d. That the woman has the right to review the printed materials
42 described in G.S. 90-21.40. The physician or the qualified
43 person shall orally inform the woman that the materials have

1 been provided by the Department and that they describe the
2 unborn child and list agencies which offer alternatives to
3 abortion. If the woman requests the materials, they shall either
4 be given to her at least 24 hours before the abortion or mailed to
5 her at least 72 hours before the abortion by certified mail,
6 restricted delivery to addressee.

7 e. That information concerning access to local domestic violence
8 services will be provided if the woman acknowledges
9 involvement in an abusive relationship.

10 f. That she is free to withhold or withdraw her consent to the
11 abortion at any time before or during the abortion without
12 affecting her right to future care or treatment and without the loss
13 of any State or federally funded benefits to which she might
14 otherwise be entitled.

15 The information required by this subdivision may be provided by a tape
16 recording if provision is made to record or otherwise register
17 specifically whether the woman does or does not choose to review the
18 printed materials.

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

25 (4) Prior to the performance of the abortion, the woman must be informed
26 of the name of the physician who will perform the abortion, and that
27 physician or the qualified person must receive a copy of the written
28 certification required by subdivision (3) of this section.

29 (5) The information required under this section and under G.S. 90-21.40 is
30 provided to the woman individually and in a private room to protect her
31 privacy and maintain the confidentiality of her decision, and to ensure
32 that the information focuses on her individual circumstances, and that
33 she has an adequate opportunity to ask questions.

34 (6) The woman is not required to pay any amount for the abortion
35 procedure until the 24-hour waiting period has expired.

36 **"§ 90-21.40. Printed information required.**

37 (a) The Department shall publish the following printed materials in a manner that
38 ensures that the information is easily comprehensible:

39 (1) Geographically indexed materials designed to inform a woman of public
40 and private agencies and services available to assist her through
41 pregnancy, upon childbirth, and while the child is dependent, including
42 adoption agencies. The information shall include a comprehensive list
43 of the agencies available, a description of the services they offer, and a

1 description of the manner, including telephone numbers, in which they
2 might be contacted.

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

19 (3) The materials shall state that it is unlawful for any individual to coerce a
20 woman to undergo an abortion, that any physician who performs an
21 abortion upon a woman without her informed consent may be liable to
22 her for damages in a civil action at law, and that the law permits
23 adoptive parents to pay costs of prenatal care, childbirth, and neonatal
24 care.

25 (b) The materials required under this section shall be available at no cost from the
26 Department upon request and in appropriate numbers to any physician, qualified person,
27 facility, or hospital.

28 **"§ 90-21.41. Procedure in case of medical emergency.**

29 When a medical emergency compels the performance of an abortion, the physician
30 shall inform the woman, prior to the abortion if possible, of the medical indications
31 supporting the physician's judgment that an abortion is necessary to avert her death or
32 that a 24-hour delay will create serious risk of substantial and irreversible impairment of
33 a major bodily function. As soon as feasible the physician shall document in writing the
34 medical indications upon which the physician relied and shall cause the original of the
35 writing to be maintained in the woman's medical records and a copy given to her.

36 **"§ 90-21.42. Informed consent for a minor.**

37 If the woman upon whom an abortion is to be performed is an unemancipated minor,
38 the voluntary and informed written consent required under G.S. 90-21.7 shall be obtained
39 from the minor and from the adult individual who gives consent pursuant to G.S. 90-
40 21.7(a), unless the waiver order of G.S. 90-21.8(e) and (f) has been issued.

41 **"§ 90-21.43. Protection of privacy in court proceedings.**

42 In every civil proceeding or action brought under this Article, the court may rule
43 whether the anonymity of any woman upon whom an abortion has been performed or

1 attempted shall be preserved from public disclosure if she does not give her consent to
2 disclosure. The court, upon its own motion or upon motion of a party, and upon
3 determining that the woman's anonymity should be preserved, shall issue appropriate
4 orders to the parties, witnesses, and counsel. Nothing in this section shall be construed to
5 conceal from the defendant the identity of the plaintiff in a civil case.

6 **"§ 90-21.44. Civil remedies.**

7 (a) Any person upon whom an abortion has been performed or attempted to be
8 performed may maintain an action against the person who performed or attempted to
9 perform the abortion in knowing or reckless violation of this Article for actual damages
10 and, to the extent allowed by law, for punitive damages.

11 (b) If judgment is rendered in favor of the plaintiff in any action authorized under
12 this section, the court shall also tax as part of the costs reasonable attorneys' fees in favor
13 of the plaintiff against the defendant. If judgment is rendered in favor of the defendant
14 and the court finds that the plaintiff's suit was frivolous and brought in bad faith, then the
15 court shall tax as part of the costs reasonable attorneys' fees in favor of the defendant
16 against the plaintiff."

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

22 Section 3. Nothing in this act shall be construed as creating or recognizing a
23 right to abortion. It is not the intention of this act to make lawful an abortion that is
24 currently unlawful.

25 Section 4. The Department of Environment, Health, and Natural Resources
26 shall use funds available for the 1997-98 fiscal year to cover the costs of implementing
27 this act.

28 Section 5. This act becomes effective December 1, 1997, and applies to claims
29 for relief arising on or after that date.