

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 536
Committee Substitute Favorable 4/24/97
Third Edition Engrossed 4/30/97

Short Title: Abortion/Right to Know.

(Public)

Sponsors:

Referred to:

March 18, 1997

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 1F.

9 "Woman's Right to Know Act.

10 "**§ 90-21.37. Short title.**

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

12 "**§ 90-21.38. 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

1 than to increase the probability of a live birth, to preserve the life or
2 health of the child after live birth, or to remove a dead fetus.

3 (2) 'Attempt to perform an abortion' means an act, or an omission of a
4 statutorily required act, that, under the circumstances as the actor
5 believes them to be, constitutes a substantial step in a course of conduct
6 planned to culminate in the performance of an abortion in North
7 Carolina in violation of this Article.

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

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

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

17 (6) 'Medical emergency' means that condition which, on the basis of the
18 physician's good faith clinical judgment, so complicates the medical
19 condition of a pregnant woman as to necessitate the immediate abortion
20 of her pregnancy to avert her death or for which a delay will create
21 serious risk to her life.

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

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

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

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

34 **"§ 90-21.39. Informed consent to abortion; coercion prohibited.**

35 No abortion shall be performed upon a woman in this State without her voluntary and
36 informed consent. It shall be unlawful for any individual to coerce a woman to undergo
37 or not to undergo an abortion. Except in the case of a medical emergency, consent to an
38 abortion is voluntary and informed only if all of the following conditions are satisfied:

39 (1) At least 24 hours prior to the abortion, the physician who is to perform
40 the abortion, the referring physician, or a qualified person has orally
41 informed the woman, by telephone or in person, of all of the following:

42 a. The particular medical risks associated with the particular
43 abortion procedure to be employed including, when medically

1 accurate, the risks of infection, hemorrhage, breast cancer,
2 danger to subsequent pregnancies, and infertility.

3 b. The medical risks associated with carrying the unborn child to
4 term including, when medically accurate the risk of high blood
5 pressure, worsening or onset of diabetes, hemorrhage, infection,
6 a 10-20% risk of abdominal surgery (caesarean section), and 10
7 times the risk of death compared to abortion.

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

10 d. If the physician who is to perform the abortion has no liability
11 insurance for malpractice in the performance or attempted
12 performance of an abortion, that information shall be
13 communicated.

14 e. If the physician who will perform the abortion has no local
15 hospital admitting privileges, that information shall be
16 communicated.

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

33 (2) The physician who is to perform the abortion, the referring physician, or
34 the qualified person informs the woman, by telephone or in person, of
35 each of the following at least 24 hours before the abortion:

36 a. That medical assistance benefits may be available for prenatal
37 care, childbirth, and neonatal care.

38 b. That public assistance programs, such as the Work First Cash
39 Assistance Program established pursuant to the federal waivers
40 received by the Department of Human Resources on February 5,
41 1996, or the Temporary Assistance to Needy Families federal
42 block grant, may or may not be available as benefits under
43 federal and State assistance programs.

- 1 c. That the father is liable to assist in the support of the child, even
2 if the father has offered to pay for the abortion.
- 3 d. That the woman has the right to review the printed materials
4 described in G.S. 90-21.40. The physician or the qualified
5 person shall orally inform the woman that the materials have
6 been provided by the Department and that they describe the
7 unborn child and list agencies which offer alternatives to
8 abortion. If the woman requests the materials, they shall either
9 be given to her at least 24 hours before the abortion or mailed to
10 her at least 72 hours before the abortion by certified mail,
11 restricted delivery to addressee.
- 12 e. That information concerning access to local domestic violence
13 services will be provided if the woman acknowledges
14 involvement in an abusive relationship.
- 15 f. That she is free to withhold or withdraw her consent to the
16 abortion at any time before or during the abortion without
17 affecting her right to future care or treatment and without the loss
18 of any State or federally funded benefits to which she might
19 otherwise be entitled.
- 20 g. That Medicaid covers the cost of an abortion for eligible women
21 if the pregnancy was the result of rape or incest, or if the abortion
22 is necessary to save the life of the mother.

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

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

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

37 (5) The information required under this section and under G.S. 90-21.40 is
38 provided to the woman individually to protect her privacy and maintain
39 the confidentiality of her decision, and to ensure that the information
40 focuses on her individual circumstances, and that she has an adequate
41 opportunity to ask questions. If, at the time the information is provided,
42 the woman is on the premises of the physician who is to perform the

1 abortion, then the information shall be provided in a private room in
2 order to further the protections and purposes of this subdivision.

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

5 **"§ 90-21.40. Printed information required.**

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

8 (1) Geographically indexed materials designed to inform a woman of public
9 and private agencies and services available to assist her through
10 pregnancy, upon childbirth, and while the child is dependent, including
11 adoption agencies. The information shall include a comprehensive list
12 of the agencies available, a description of the services they offer, and a
13 description of the manner, including telephone numbers, in which they
14 might be contacted.

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

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

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

40 **"§ 90-21.41. Procedure in case of medical emergency.**

41 When a medical emergency compels the performance of an abortion, the physician
42 shall inform the woman, prior to the abortion if possible, of the medical indications
43 supporting the physician's judgment that an abortion is necessary to avert her death or

1 that a 24-hour delay will create a serious risk to her life. As soon as feasible, the
2 physician shall document in writing the medical indications upon which the physician
3 relied and shall cause the original of the writing to be maintained in the woman's medical
4 records and a copy given to her.

5 **"§ 90-21.42. Informed consent for a minor.**

6 If the woman upon whom an abortion is to be performed is an unemancipated minor,
7 the voluntary and informed written consent required under G.S. 90-21.7 shall be obtained
8 from the minor and from the adult individual who gives consent pursuant to G.S. 90-
9 21.7(a), unless the waiver order of G.S. 90-21.8(e) and (f) has been issued.

10 **"§ 90-21.43. Protection of privacy in court proceedings.**

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

18 **"§ 90-21.44. Civil remedies.**

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

23 (b) If judgment is rendered in favor of the plaintiff in any action authorized under
24 this section, the court shall also tax as part of the costs reasonable attorneys' fees in favor
25 of the plaintiff against the defendant. If judgment is rendered in favor of the defendant
26 and the court finds that the plaintiff's suit was frivolous and brought in bad faith, then the
27 court shall tax as part of the costs reasonable attorneys' fees in favor of the defendant
28 against the plaintiff."

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

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

37 Section 4. The Department of Environment, Health, and Natural Resources
38 shall use funds available to cover the costs of implementing this act.

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