

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS55046-LU-26A (2/7)

Short Title: Abortion-Woman's Right to Know. (Public)

Sponsors: Senator Allran.

Referred to:

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 1H.

"Woman's Right to Know Act.

"§ 90-21.60. Short title.

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

"§ 90-21.61. 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) 'Department' means the Department of Health and Human Services.

(4) '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

1 abortion of her pregnancy to avert her death or for which a delay will
2 create serious risk of substantial and irreversible impairment of a
3 major bodily function.

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

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

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

12 (8) 'Stable Internet Web site' means a Web site that, to the extent
13 reasonably practicable, is safeguarded from having its content altered
14 other than by the Department.

15 (9) 'Woman' means a female human, whether or not she is an adult.

16 **"§ 90-21.62. Informed consent to abortion.**

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

20 (1) At least 24 hours prior to the abortion, the physician who is to perform
21 the abortion or the referring physician has orally informed the woman,
22 by telephone or in person, of all of the following:

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

24 b. The statistically significant medical risks associated with the
25 particular abortion procedure to be performed.

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

28 d. If the physician who is to perform the abortion has no liability
29 insurance for malpractice in the performance or attempted
30 performance of an abortion, that information shall be
31 communicated.

32 e. If the physician who will perform the abortion has no local
33 hospital admitting privileges, that information shall be
34 communicated.

35 The information required by this subdivision may be provided orally,
36 by telephone or in person, without conducting a physical examination
37 or tests of the patient, in which case the required information may be
38 based on facts supplied by the woman to the physician and whatever
39 other relevant information is reasonably available. The information
40 required by this subdivision may not be provided by a tape recording
41 but must be provided during a consultation in which the physician is
42 able to ask questions of the woman and the woman is able to ask
43 questions of the physician. If, in the medical judgment of the
44 physician, a physical examination, tests, or the availability of other

1 information to the physician subsequently indicates a revision of the
2 information previously supplied to the patient, then that revised
3 information may be communicated to the patient at anytime prior to
4 the performance of the abortion. Nothing in this section may be
5 construed to preclude provision of required information in a language
6 understood by the patient through a translator.

7 (2) The physician who is to perform the abortion, the referring physician,
8 or a qualified person has informed, by telephone or in person, the
9 woman of each of the following at least 24 hours before the abortion:

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

12 b. That public assistance programs under Chapter 108A of the
13 General Statutes may or may not be available as benefits under
14 federal and State assistance programs.

15 c. That the father is liable to assist in the support of the child, even
16 if the father has offered to pay for the abortion.

17 d. That the woman has the right to review the printed materials
18 described in G.S. 90-21.63, that these materials are available on
19 a State-sponsored Web site, and the address of the
20 State-sponsored Web site. The physician or a qualified person
21 shall orally inform the woman that the materials have been
22 provided by the Department and that they describe the unborn
23 child and list agencies that offer alternatives to abortion. If the
24 woman chooses to view the materials other than on the Web
25 site, they shall either be given to her at least 24 hours before the
26 abortion or be mailed to her at least 72 hours before the
27 abortion by certified mail, restricted delivery to addressee.

28 e. That the woman is free to withhold or withdraw her consent to
29 the abortion at any time before or during the abortion without
30 affecting her right to future care or treatment and without the
31 loss of any State or federally funded benefits to which she
32 might otherwise be entitled.

33 The information required by this subdivision may be provided by a
34 tape recording if provision is made to record or otherwise register
35 specifically whether the woman does or does not choose to have the
36 printed materials given or mailed to her.

37 (3) If the physician uses ultrasound equipment in the performance of an
38 abortion, the physician shall inform the woman that she has the right to
39 view the ultrasound image of her unborn child before an abortion is
40 performed. If the woman requests to view the ultrasound image, it
41 shall be shown to her.

42 (4) The woman certifies in writing, prior to the abortion, that the
43 information described in subdivisions (1) and (2) of this section has
44 been furnished her and that she has been informed of her opportunity

1 to review the information referred to in sub-subdivision c. of
2 subdivision (2) of this section and in subdivision (3) of this section.
3 The original of this certification shall be maintained in the woman's
4 medical records, and a copy shall be given to her.

5 (5) Prior to the performance of the abortion, the physician who will
6 perform the abortion or the qualified person must receive a copy of the
7 written certification required by subdivision (4) of this section.

8 (6) The information required under this section and under G.S. 90-21.66 is
9 provided to the woman individually to protect her privacy and
10 maintain the confidentiality of the decision and to ensure that the
11 information focuses on her individual circumstances and that she has
12 an adequate opportunity to ask questions. If, at the time the
13 information is provided, the woman is on the premises of the physician
14 who is to perform the abortion, then the information shall be provided
15 in a private room in order to further the protections and purposes of
16 this subdivision.

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

19 **"§ 90-21.63. Printed information required.**

20 (a) The Department shall publish in English and in each language that is the
21 primary language of at least two percent (2%) of the State's population and shall cause
22 to be available on the State Web site established under G.S. 90-21.64 the following
23 printed materials in a manner that ensures that the information is easily comprehensible:

24 (1) Geographically indexed materials designed to inform a woman of
25 public and private agencies and services available to assist her through
26 pregnancy, upon childbirth, and while the child is dependent, including
27 adoption agencies. The information shall include a comprehensive list
28 of the agencies available, a description of the services they offer, and a
29 description of the manner, including telephone numbers, in which they
30 might be contacted. In the alternative, in the discretion of the
31 Department, the printed materials may contain a toll-free,
32 24-hour-a-day telephone number that may be called to obtain, orally, a
33 list of these agencies in the locality of the caller and of the services
34 they offer.

35 (2) Materials designed to inform the woman of the probable anatomical
36 and physiological characteristics of the unborn child at two-week
37 gestational increments from the time of conception until full term,
38 including any relevant information on the possibility of the unborn
39 child's survival and pictures or drawings representing the development
40 of the unborn child at two-week gestational increments. The pictures
41 must contain the dimensions of the unborn child and must be realistic
42 and appropriate for the stage of pregnancy depicted. The materials
43 shall be objective, nonjudgmental, and designed to convey only
44 accurate scientific information about the unborn child at the various

1 gestational ages. The material shall also contain objective information
2 describing the methods of abortion procedures employed, the medical
3 risks associated with each procedure, the possible detrimental
4 psychological effects of abortion, and the medical risks associated with
5 each procedure, as well as the medical risks associated with carrying
6 an unborn child to term.

7 (b) The materials referred to in subsection (a) of this section shall be printed in a
8 typeface large enough to be clearly legible. The Web site provided for in G.S. 90-21.64
9 shall be maintained at a minimum resolution of 70 DPI (Dots Per Inch). All pictures
10 appearing on the Web site shall be a minimum of 200 x 300 pixels. All letters on the
11 Web site shall be a minimum of 11-point font. All information and pictures shall be
12 accessible with an industry standard browser requiring no additional plug-ins.

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

16 **"§ 90-21.64. Internet Web site.**

17 The Department shall develop and maintain a stable Internet Web site to provide the
18 information described under G.S. 90-21.63. No information regarding who accesses the
19 Web site shall be collected or maintained. The Department shall monitor the Web site
20 on a daily basis to prevent and correct tampering.

21 **"§ 90-21.65. Procedure in case of medical emergency.**

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

29 **"§ 90-21.66. Informed consent for a minor.**

30 If the woman upon whom an abortion is to be performed is an unemancipated minor,
31 the voluntary and informed written consent required under G.S. 90-21.62 shall be
32 obtained from the minor and from the adult individual who gives consent pursuant to
33 G.S. 90-21.7(a), unless the waiver order of G.S. 90-21.8(e) and (f) has been issued.

34 **"§ 90-21.67. Civil remedies.**

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

41 (b) If judgment is rendered in favor of the plaintiff in any action authorized under
42 this section, the court shall also tax as part of the costs reasonable attorneys' fees in
43 favor of the plaintiff against the defendant. If judgment is rendered in favor of the
44 defendant, and the court finds that the plaintiff's suit was frivolous and brought in bad

1 faith, then the court shall tax as part of the costs reasonable attorneys' fees in favor of
2 the defendant against the plaintiff."

3 **SECTION 2.** If any provision, word, phrase, or clause of this act or the
4 application thereof to any person or circumstance is held invalid, the invalidity shall not
5 affect the provisions, words, phrases, clauses, or applications of this act which can be
6 given effect without the invalid provision, word, phrase, clause, or application, and to
7 this end the provisions, words, phrases, and clauses of this act are declared to be
8 severable. The General Assembly declares that it would have enacted this act and each
9 provision, word, phrase, or clause of this act irrespective of the fact that any one or
10 more provision, word, phrase, or clause be declared unconstitutional.

11 **SECTION 3.** The Department of Health and Human Services shall use funds
12 available to cover the costs of implementing this act.

13 **SECTION 4.** This act becomes effective October 1, 2005, and applies to
14 claims for relief arising on or after that date.