

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

H

1

HOUSE BILL 998*

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

Sponsors: Representatives L. Johnson, Stam (Primary Sponsors); Allred, Baker, Barbee, Barnhart, Blackwood, Blust, Bonner, Bowie, Brubaker, Capps, Church, Clary, Creech, Culp, Daughtry, Decker, Dockham, Eddins, Ellis, England, Frye, Gillespie, Gorman, Gulley, Hill, Hilton, Holmes, Howard, C. Johnson, Justice, Justus, Kiser, LaRoque, Lewis, McComas, McGee, McHenry, McMahan, Miner, Moore, Pate, Preston, Ray, Rayfield, Rhodes, Sauls, Setzer, Sexton, Starnes, Stiller, Walend, Walker, Warner, West, K. Williams, C. Wilson, G. Wilson, Wood, and Yongue.

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

April 9, 2003

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE A TWENTY-FOUR HOUR WAITING PERIOD AND THE
2 INFORMED CONSENT OF A PREGNANT WOMAN BEFORE AN ABORTION
3 MAY BE PERFORMED.
4

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:

"Article 1H.

"Woman's Right to Know Act.

10 **"§ 90-21.60. Short title.**

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

12 **"§ 90-21.61. 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
17 than to increase the probability of a live birth, to preserve the life or
18 health of the child after live birth, or to remove a dead fetus.

19 (2) 'Attempt to perform an abortion' means an act, or an omission of a
20 statutorily required act, that, under the circumstances as the actor
21 believes them to be, constitutes a substantial step in a course of

1 conduct planned to culminate in the performance of an abortion in
2 North Carolina in violation of this Article.

3 (3) 'Department' means the Department of Health and Human Services.

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

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

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

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

18 (8) 'Stable Internet web site' means a web site that, to the extent
19 reasonably practicable, is safeguarded from having its content altered
20 other than by the Department.

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

22 **"§ 90-21.62. Informed consent to abortion.**

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

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

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

30 b. The particular medical risks associated with the particular
31 abortion procedure to be employed, including, when medically
32 accurate, the risks of infection, hemorrhage, breast cancer,
33 danger to subsequent pregnancies, and infertility.

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

36 d. The medical risks associated with carrying the child to term.

37 e. If the physician who is to perform the abortion has no liability
38 insurance for malpractice in the performance or attempted
39 performance of an abortion, that information shall be
40 communicated.

41 f. If the physician who will perform the abortion has no local
42 hospital admitting privileges, that information shall be
43 communicated.

1 The information required by this subdivision may be provided orally,
2 by telephone or in person, without conducting a physical examination
3 or tests of the patient, in which case the required information may be
4 based on facts supplied by the woman to the physician and whatever
5 other relevant information is reasonably available. The information
6 required by this subdivision may not be provided by a tape recording
7 but must be provided during a consultation in which the physician is
8 able to ask questions of the woman and the woman is able to ask
9 questions of the physician. If, in the medical judgment of the
10 physician, a physical examination, tests, or the availability of other
11 information to the physician subsequently indicates a revision of the
12 information previously supplied to the patient, then that revised
13 information may be communicated to the patient at anytime prior to
14 the performance of the abortion. Nothing in this section may be
15 construed to preclude provision of required information in a language
16 understood by the patient through a translator.

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

- 20 a. That medical assistance benefits may be available for prenatal
21 care, childbirth, and neonatal care.
- 22 b. That public assistance programs under Chapter 108A of the
23 General Statutes may or may not be available as benefits under
24 federal and State assistance programs.
- 25 c. That the father is liable to assist in the support of the child, even
26 if the father has offered to pay for the abortion.
- 27 d. That the woman has the right to review the printed materials
28 described in G.S. 90-21.63, that these materials are available on
29 a State-sponsored web site, and the address of the
30 State-sponsored web site. The physician or a qualified person
31 shall orally inform the woman that the materials have been
32 provided by the Department and that they describe the unborn
33 child and list agencies that offer alternatives to abortion. If the
34 woman chooses to view the materials other than on the web
35 site, they shall either be given to her at least 24 hours before the
36 abortion or be mailed to her at least 72 hours before the
37 abortion by certified mail, restricted delivery to addressee.
- 38 e. That the woman is free to withhold or withdraw her consent to
39 the abortion at any time before or during the abortion without
40 affecting her right to future care or treatment and without the
41 loss of any State or federally funded benefits to which she
42 might otherwise be entitled.

43 The information required by this subdivision may be provided by a
44 tape recording if provision is made to record or otherwise register

1 specifically whether the woman does or does not choose to have the
2 printed materials given or mailed to her.

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

8 (4) The woman certifies in writing, prior to the abortion, that the
9 information described in subdivisions (1) and (2) of this section has
10 been furnished her and that she has been informed of her opportunity
11 to review the information referred to in sub-subdivision c. of
12 subdivision (2) of this section and in subdivision (3) of this section.
13 The original of this certification shall be maintained in the woman's
14 medical records, and a copy shall be given to her.

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

18 (6) The information required under this section and under G.S. 90-21.66 is
19 provided to the woman individually to protect her privacy and
20 maintain the confidentiality of the decision and to ensure that the
21 information focuses on her individual circumstances and that she has
22 an adequate opportunity to ask questions. If, at the time the
23 information is provided, the woman is on the premises of the physician
24 who is to perform the abortion, then the information shall be provided
25 in a private room in order to further the protections and purposes of
26 this subdivision.

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

29 **§ 90-21.63. Printed information required.**

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

34 (1) Geographically indexed materials designed to inform a woman of
35 public and private agencies and services available to assist her through
36 pregnancy, upon childbirth, and while the child is dependent, including
37 adoption agencies. The information shall include a comprehensive list
38 of the agencies available, a description of the services they offer, and a
39 description of the manner, including telephone numbers, in which they
40 might be contacted. In the alternative, in the discretion of the
41 Department, the printed materials may contain a toll-free,
42 24-hour-a-day telephone number that may be called to obtain, orally, a
43 list of these agencies in the locality of the caller and of the services
44 they offer.

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

17 (b) The materials referred to in subsection (a) of this section shall be printed in a
18 typeface large enough to be clearly legible. The web site provided for in G.S. 90-21.64
19 shall be maintained at a minimum resolution of 70 DPI (dots per inch). All pictures
20 appearing on the web site shall be a minimum of 200x300 pixels. All letters on the web
21 site shall be a minimum of 11 point font. All information and pictures shall be
22 accessible with an industry standard browser, requiring no additional plug-ins.

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

26 **"§ 90-21.64. Internet web site.**

27 The Department shall develop and maintain a stable Internet web site to provide the
28 information described under G.S. 90-21.63. No information regarding who accesses the
29 web site shall be collected or maintained. The Department shall monitor the web site on
30 a daily basis to prevent and correct tampering.

31 **"§ 90-21.65. Procedure in case of medical emergency.**

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

39 **"§ 90-21.66. Informed consent for a minor.**

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

44 **"§ 90-21.67. Civil remedies.**

1 (a) Any person upon whom an abortion has been performed and any father of an
2 unborn child that was the subject of an abortion may maintain an action for damages
3 against the person who performed the abortion in knowing or reckless violation of this
4 Article. Any person upon whom an abortion has been attempted may maintain an action
5 for damages against the person who performed the abortion in knowing or reckless
6 violation of this Article.

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

13 **SECTION 2.** If any provision, word, phrase, or clause of this act or the
14 application thereof to any person or circumstance is held invalid, the invalidity shall not
15 affect the provisions, words, phrases, clauses, or applications of this act which can be
16 given effect without the invalid provision, word, phrase, clause, or application, and to
17 this end the provisions, words, phrases, and clauses of this act are declared to be
18 severable. The General Assembly declares that it would have enacted this act and each
19 provision, word, phrase, or clause of this act irrespective of the fact that any one or
20 more provision, word, phrase, or clause be declared unconstitutional.

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

23 **SECTION 4.** This act becomes effective December 1, 2003, and applies to
24 claims for relief arising on or after that date.