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Short Title: Parental Consent/Abortion.

(Public)

Sponsors:

Referred to:

March 16, 1995

A BILL TO BE ENTITLED  
AN ACT TO REQUIRE CONSENT FOR AN UNEMANCIPATED MINOR'S  
ABORTION.

The General Assembly of North Carolina enacts:

Section 1. Article 1A of Chapter 90 of the General Statutes is amended by designating all the existing language as "Part 1.", and by adding a new Part to read:

**"PART 2. CONSENT FOR MINOR'S ABORTION.**

**"§ 90-21.6. Definitions.**

As used in this Part, unless the context clearly requires otherwise, the term:

(1) 'Abortion' means the intentional interruption of a pregnancy by the application of external agents, whether chemical or physical, or the ingestion of chemical agents, with an intention other than to produce a live birth or to remove a dead fetus.

(2) 'Adult family member' means a person who is 21 years of age or older who is the parent, grandparent, or aunt or uncle of the minor and is related to the minor by blood, marriage, or adoption.

(3) 'Clergy' or 'member of the clergy' means a person certified under Article 26 of Chapter 90 of the General Statutes as a practicing pastoral

1 counselor, or who is an ordained member of the clergy of the  
2 congregation of which the minor is a member.

- 3 (4) 'Unemancipated minor' or 'minor' means any person under the age of 16  
4 who is not emancipated.

5 **"§ 90-21.7. Consent required.**

6 No physician licensed to practice medicine in North Carolina may knowingly perform  
7 an abortion upon an unemancipated minor unless:

- 8 (1) The attending physician has secured the informed written consent of the  
9 minor in accordance with G.S. 90-21.8 and the minor, under all the  
10 surrounding circumstances, is mentally and physically competent to  
11 give consent; and  
12 (2) The minor has received information and counseling from and the  
13 written consent of a member of the clergy; or  
14 (3) The attending physician has received and will make part of the minor's  
15 medical record the informed written consent of at least one of the  
16 minor's parents or guardian, or other adult family member; or  
17 (4) The district court issues an order under G.S. 90-21.10 granting to the  
18 minor:  
19 a. Majority rights for the sole purpose of consenting to the abortion,  
20 or  
21 b. Consent to the abortion.

22 **"§ 90-21.8. Informed consent; disallowance of recovery.**

23 (a) To ensure that consent for an abortion is informed, the attending physician  
24 shall:

- 25 (1) Inform the minor in a manner which, in the physician's professional  
26 judgment, is not misleading and which will be understood by the  
27 patient, of at least the following:  
28 a. In the physician's best judgment, the minor is pregnant;  
29 b. The number of weeks of duration of the pregnancy; and  
30 c. The particular risks associated with the minor's pregnancy, the  
31 abortion procedure that will be performed, and the risks involved  
32 with that procedure; and  
33 (2) Determine whether the minor is, under all the surrounding  
34 circumstances, mentally and physically competent to give consent.

35 (b) No recovery may be allowed against any physician upon the grounds that the  
36 abortion was rendered without the informed consent of the minor when:

- 37 (1) The physician, in obtaining the minor's consent, acted in accordance  
38 with the standards of practice among members of the same health care  
39 profession with similar training and experience situated in the same or  
40 similar communities; or  
41 (2) The physician has received and acted in good faith on the written  
42 consent to the abortion given by the minor to a member of the clergy.

43 **"§ 90-21.9. Presumption of validity of informed written consent; rebuttal.**

1 An informed consent which is evidenced in writing and signed by the minor and a  
2 member of the clergy, or by the minor's parent, guardian, or adult family member, shall  
3 be presumed to be a valid informed consent. This presumption may be subject to rebuttal  
4 only upon proof that the informed consent was obtained through fraud, deception, or  
5 coercion.

6 **"§ 90-21.10. Court order concerning consent to abortion.**

7 (a) The district court may issue an order for the purpose of consenting to the  
8 abortion by the minor under the following circumstances and procedures:

9 (1) The minor or the minor's guardian ad litem may file a petition with the  
10 district court. If requested by the minor or the minor's guardian ad litem,  
11 the court shall assist in preparing the petition. The petition shall set  
12 forth:

13 a. The initials of the minor;

14 b. The age of the minor;

15 c. That the minor has been fully informed of the risks and  
16 consequences of the abortion; and

17 d. That the minor is of sound mind and has sufficient intellectual  
18 capacity to consent to the abortion.

19 The petition may also request that if the court does not grant the minor  
20 majority rights for the purpose of consent to the abortion, then the court  
21 should find that the abortion is in the best interest of the minor and give  
22 judicial consent to the abortion.

23 (2) A petition filed under this section is a confidential record and shall not  
24 be open for general public inspection.

25 (3) A hearing on the merits of the petition shall be held as soon as possible  
26 within five days of the filing of the petition. If the minor is unable to  
27 afford counsel and the court finds it necessary that the minor be  
28 represented, then the court may appoint counsel at least 24 hours before  
29 the time of the hearing. At the hearing, the court shall hear evidence  
30 relating to:

31 a. The emotional development, maturity, intellect, and  
32 understanding of the minor; and

33 b. Any other evidence that the court may find useful in determining  
34 whether the minor should be granted majority rights for the  
35 purposes of consenting to the abortion or whether the abortion is  
36 in the best interest of the minor.

37 The court shall conduct the hearing in private with only the minor,  
38 interested parties as determined by the court, and necessary court  
39 officers or personnel present. The record of the hearing is a confidential  
40 record and shall not be open for general public inspection.

41 (b) In the order, the court shall for good cause:

42 (1) Grant the petition for majority rights for the sole purpose of consenting  
43 to the abortion; or

- 1           (2) Find the abortion to be in the best interest of the minor and give judicial  
2 consent to the abortion, setting forth the grounds for the finding; or  
3           (3) Deny the petition only if the court finds that the minor is not mature  
4 enough to make her own decision and that the abortion is not in her best  
5 interest.

6       The order shall be confidential and not open to general public inspection, except that  
7 the physician whose services are requested to perform the abortion shall be provided with  
8 a copy of the order.

9       (c) The minor may appeal an order issued in accordance with this section. The  
10 appeal shall be a de novo hearing in superior court and the provisions of G.S. 90-  
11 21.10(a)(3) and (b) shall apply. The notice of appeal shall be filed within 24 hours from  
12 the date of issuance of the district court order. The de novo hearing shall be held as soon  
13 as possible within five days of the filing of the notice of appeal. The record of the de  
14 novo hearing is a confidential record and shall not be open for general public inspection.  
15 The Chief Justice of the North Carolina Supreme Court shall adopt rules necessary to  
16 implement this subsection.

17 **"§ 90-21.10.1. Immunity.**

18       If an abortion is performed lawfully pursuant to this Part, then the informed consent  
19 of a member of the clergy, an adult family member, or the informed consent of the minor  
20 pursuant to a court order of majority rights or judicial consent, shall bar an action by a  
21 parent or guardian of the minor against the adult family member or member of the clergy  
22 who consented in good faith and in accordance with this Part, and against the physician  
23 who performed the abortion, except that this immunity shall not extend to actions filed  
24 against the physician for medical malpractice pursuant to Article 1B of this Chapter.

25 **"§ 90-21.10.2. Abortion performed against minor's will.**

26       No abortion may be performed on any minor against her will except pursuant to a  
27 court order finding that the abortion is necessary to preserve the life of the minor.

28 **"§ 90-21.10.3. Medical emergency exception.**

29       The requirements of parental consent prescribed by G.S. 90-21.7 shall not apply  
30 when, in the best medical judgment of the physician based on the facts of the case before  
31 the physician, a medical emergency exists that so complicates the pregnancy as to require  
32 an immediate abortion, or when the conditions prescribed by G.S. 90-21.1 are met.

33 **"§ 90-21.10.4. Violation; penalties.**

34       Any person who knowingly performs or aids in the performance of an abortion in  
35 violation of this Part shall be guilty of a Class 1 misdemeanor."

36       Sec. 2. G.S. 7A-523(a) is amended by adding a subdivision to read:

37       "(8) Proceedings involving consent for an abortion on an unemancipated  
38 minor pursuant to Article 1A, Part 2 of Chapter 90 of the General  
39 Statutes."

40       Sec. 3. G.S. 7A-451(a) is amended by adding a subdivision to read:

41       "(16) A proceeding involving consent for an abortion on an unemancipated  
42 minor pursuant to Article 1A, Part 2 of Chapter 90 of the General

1                    Statutes. G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to this  
2                    proceeding."

3                    Sec. 4. Notwithstanding any other State or local law to the contrary, no State  
4 or local government agency or entity shall deny eligibility for financial assistance under  
5 Aid to Families with Dependent Children to any infant or child on the basis that the  
6 mother of the infant or child was an unemancipated minor when the infant or child was  
7 born.

8                    Sec. 5. This act becomes effective October 1, 1995.