

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 624
Committee Substitute Favorable 6/26/95
Committee Substitute #2 Favorable 7/24/95

Short Title: Abortion/Right to Know.

(Public)

Sponsors:

Referred to:

March 29, 1995

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 ABORTION
4 MAY BE PERFORMED, TO REQUIRE PHYSICIANS TO INFORM WOMEN OF
5 MEDICAL RISKS, GESTATIONAL AGE, THE NAME OF THE PHYSICIAN
6 PERFORMING THE ABORTION, AND CERTAIN OTHER INFORMATION,
7 AND TO REQUIRE CERTAIN PRINTED MATERIALS AND REPORTS.

8 The General Assembly of North Carolina enacts:

9 Section 1. Chapter 90 of the General Statutes is amended by adding the
10 following new Article to read:

11 **"ARTICLE 1E.**

12 **"WOMAN'S RIGHT TO KNOW ACT.**

13 **"§ 90-21.25. Short title.**

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

15 **"§ 90-21.26. Definitions.**

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

- 17 (1) 'Abortion' means the use or prescription of any instrument, medicine,
18 drug, or any other substance or device intentionally to terminate the

1 pregnancy of a woman known to be pregnant with an intention other
2 than to increase the probability of a live birth, to preserve the life or
3 health of the child after live birth, or to remove a dead fetus.

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

9 (3) 'Department' means the Department of Human Resources.

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

16 (5) 'Medical risks' means risks and hazards, both physical and emotional.

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

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

22 **"§ 90-21.27. Informed consent to abortion.**

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

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

33 b. The name of the physician who will perform the abortion.

34 c. The medical risks associated with carrying the child to term.

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

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

16 (2) The physician who is to perform the abortion, the referring physician, or
17 an agent of either physician informs the woman, by telephone or in
18 person, of each of the following at least 24 hours before the abortion:

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

21 b. That the father is liable to assist in the support of the child, even
22 if the father has offered to pay for the abortion.

23 c. That the woman has the right to review the printed materials
24 described in G.S. 90-21.28(a). The physician or the physician's
25 agent shall orally inform the woman that the materials have been
26 provided by the Department and that they describe the unborn
27 child and list agencies which offer alternatives to abortion. If the
28 woman chooses to view the materials, they shall either be given
29 to her at least 24 hours before the abortion or mailed to her at
30 least 72 hours before the abortion by certified mail, restricted
31 delivery to addressee.

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

36 (3) The woman certifies in writing, prior to the abortion, that the
37 information described in subdivisions (1) and (2) of this subsection has
38 been furnished her and that she has been informed of her opportunity to
39 review the information referred to in sub-subdivision c. of subdivision
40 (2) of this section. The original of this certification shall be maintained
41 in the woman's medical records and a copy shall be given to her.

- 1 (4) Prior to the performance of the abortion, the physician who is to
2 perform the abortion or the physician's agent receives a copy of the
3 written certification required by subdivision (3) of this section.

4 **"§ 90-21.28. Printed information required.**

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

- 7 (1) Geographically indexed materials designed to inform a woman of public
8 and private agencies and services available to assist her through
9 pregnancy, upon childbirth, and while the child is dependent, including
10 adoption agencies. The information shall include a comprehensive list
11 of the agencies available, a description of the services they offer, and a
12 description of the manner, including telephone numbers, in which they
13 might be contacted. The printed materials may also include a toll-free,
14 24-hour-a-day telephone number which may be called to obtain an oral
15 list and description of agencies in the locality of the caller and of the
16 services they offer.

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

33 (b) The materials referred to in subsection (a) of this section shall be printed in a
34 typeface large enough to be clearly legible.

35 (c) The materials required under this section shall be available at no cost from the
36 Department upon request and in appropriate number to any person, facility, or hospital.

37 **"§ 90-21.29. Procedure in case of medical emergency.**

38 When a medical emergency compels the performance of an abortion, the physician
39 shall inform the woman, prior to the abortion if possible, of the medical indications
40 supporting the physician's judgment that an abortion is necessary to avert her death or
41 that a 24-hour delay will create serious risk of substantial and irreversible impairment of
42 a major bodily function.

43 **"§ 90-21.30. Reporting requirements.**

1 (a) The Department shall prepare a reporting form for physicians listing all of the
2 following:

3 (1) The number of women to whom the physician provided the information
4 described in G.S. 90-21.27(1) and of that number, the number provided
5 by telephone and the number provided in person; and of each of those
6 numbers, the number provided in the capacity of a referring physician
7 and the number provided in the capacity of a physician who is to
8 perform the abortion.

9 (2) The number of women to whom the physician or the physician's agent
10 provided the information described in G.S. 90-21.27(2) and of that
11 number, the number provided by telephone and the number provided in
12 person; of each of those numbers, the number provided by a referring
13 physician and the number provided by the physician who is to perform
14 the abortion; and of each of those numbers, the number provided by the
15 physician and the number provided by an agent of the physician.

16 (3) The number of women who availed themselves of the opportunity to
17 obtain a copy of the printed information described in G.S. 90-21.28 and
18 the number who did not, and of each of those numbers, the number who,
19 to the best of the reporting physician's information and belief, obtained
20 the abortion.

21 (4) The number of abortions performed by the physician in which
22 information otherwise required to be provided at least 24 hours before
23 the abortion was not so provided because an immediate abortion was
24 necessary to avert the woman's death, and the number of abortions in
25 which such information was not so provided because a delay would
26 create serious risk of substantial and irreversible impairment of a major
27 bodily function.

28 (b) The Department shall ensure that copies of the reporting forms described in
29 this section are provided to each of the following:

30 (1) Each physician newly licensed to practice in this State at the same time
31 as official notification to that physician that the physician is licensed.

32 (2) By December 1 of each year, to all physicians licensed to practice in
33 this State.

34 (c) By March 1 of each year following a calendar year in any part of which this
35 Article was in effect, each physician who provided, or whose agent provided, information
36 to one or more women in accordance with G.S. 90-21.27 during the previous calendar
37 year shall submit to the Department a copy of the form described in this section with the
38 requested data entered accurately and completely.

39 (d) Reports that are not submitted within 30 days following the due date of the
40 report shall be subject to a late fee of five hundred dollars (\$500.00) for each additional
41 30-day period or portion of a 30-day period the report is overdue. Any physician
42 required to report in accordance with this section who has not submitted a report, or has
43 submitted only an incomplete report, more than one year following the due date of the

1 report may, in an action brought by the Department, be directed by a court of competent
2 jurisdiction to submit a complete report within a period stated by court order or be subject
3 to sanctions for civil contempt.

4 (e) By June 30 of each year, the Department shall issue a public report providing
5 statistics for the previous calendar year compiled from all of the reports covering that
6 year submitted in accordance with this section for each of the items listed in subsection
7 (a) of this section. Each report shall also provide the statistics for all previous calendar
8 years, adjusted to reflect any additional information from late or corrected reports. The
9 Department shall ensure that none of the information included in the public reports could
10 reasonably lead to the identification of any individual provided information in accordance
11 with this Article.

12 (f) The Department may adopt rules to alter the dates established by this section or
13 to consolidate forms or reports required by this section to achieve administrative
14 convenience or fiscal savings or to reduce the burden of reporting requirements, so long
15 as reporting forms are sent to all licensed physicians in this State at least once every year
16 and the report required under subsection (e) of this section is issued at least once every
17 year.

18 **"§ 90-21.31. Criminal penalties.**

19 Any person who knowingly or recklessly performs or attempts to perform an abortion
20 in violation of this Article shall be guilty of a Class 1 misdemeanor. Any physician who
21 knowingly or recklessly submits a false report under G.S. 90-21.30 shall be guilty of a
22 Class 1 misdemeanor. No penalty may be assessed against the woman upon whom the
23 abortion is performed or attempted to be performed.

24 **"§ 90-21.32. Protection of privacy in court proceedings.**

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

33 **"§ 90-21.33. Civil remedies.**

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

38 (b) If judgment is rendered in favor of the plaintiff in any action authorized under
39 this section, the court shall also render judgment for reasonable attorneys' fees in favor of
40 the plaintiff against the defendant. If judgment is rendered in favor of the defendant and
41 the court finds that the plaintiff's suit was frivolous and brought in bad faith, then the
42 court shall render judgment for reasonable attorneys' fees in favor of the defendant
43 against the plaintiff."

1 Sec. 2. If any provision, word, phrase, or clause of this act or the application
2 thereof to any person or circumstance is held invalid, the invalidity shall not affect the
3 provisions, words, phrases, clauses, or applications of this act which can be given effect
4 without the invalid provision, word, phrase, clause, or application and, to this end, the
5 provisions, words, phrases, and clauses of this act are declared to be severable.

6 Sec. 3. This act becomes effective December 1, 1995, and applies to offenses
7 committed and causes of action arising on or after that date.