

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1482

Short Title: Ban Partial-Birth Abortions.

(Public)

Sponsors: Senators Page; Ballantine, Carrington, Webster, McKoy, McDaniel, Clark, Allran, Carpenter, East, Davis, Forrester, and Ledbetter.

Referred to: Judiciary II/Election Laws.

June 3, 1996

A BILL TO BE ENTITLED

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2 AN ACT TO BAN PARTIAL-BIRTH ABORTIONS AND TO REQUIRE A TWENTY-
3 FOUR-HOUR WAITING PERIOD AND THE INFORMED CONSENT OF A
4 PREGNANT WOMAN BEFORE ABORTION MAY BE PERFORMED, TO
5 REQUIRE PHYSICIANS TO INFORM WOMEN OF MEDICAL RISKS,
6 GESTATIONAL AGE, THE NAME OF THE PHYSICIAN PERFORMING THE
7 ABORTION, AND CERTAIN OTHER INFORMATION, AND TO REQUIRE
8 CERTAIN PRINTED MATERIALS AND REPORTS.

9 The General Assembly of North Carolina enacts:

10 Section 1. Article 11 of Chapter 14 of the General Statutes is amended by
11 adding a new Part to read:

12 **"PART 2. PARTIAL-BIRTH ABORTION BAN ACT OF 1996.**

13 **"§ 14-45.2. Definitions.**

14 The following definitions apply in this Part:

15 (1) Partial-birth abortion. – An abortion in which the person performing the
16 abortion partially vaginally delivers a living fetus before killing the
17 fetus and completing the delivery.

18 (2) Physician. – A doctor of medicine or osteopathy legally authorized to
19 practice medicine and surgery by the state in which the doctor performs

1 such activity, or any other individual legally authorized by the State to
2 perform abortions.

3 **"§ 14-45.3. Partial-birth abortions prohibited; criminal penalty.**

4 (a) Unless the conduct is covered under some other provision of law providing
5 greater punishment, any physician who performs a partial-birth abortion and kills a
6 human fetus is guilty of a Class I felony.

7 (b) Unless the conduct is covered under some other provision of law providing
8 greater punishment, any person who is not a physician and who performs a partial-birth
9 abortion and kills a human fetus is guilty of a Class I felony.

10 **"§ 14-45.4. Partial-birth abortions prohibited; civil remedies and penalties.**

11 (a) The following parties may obtain appropriate relief in a civil action for a
12 violation of this Article, unless the pregnancy resulted from the plaintiff's criminal
13 conduct or the plaintiff consented to the abortion:

14 (1) The father of the fetus, if the father was married to the mother at the
15 time she received a partial-birth abortion procedure.

16 (2) The maternal grandparents of the fetus, if the mother had not attained
17 the age of 18 years at the time of the abortion.

18 (b) The civil remedies available under this section include the following:

19 (1) Money damages for all injuries, psychological and physical, occasioned
20 by the violation of this section; and

21 (2) Statutory damages equal to three times the cost of the partial-birth
22 abortion.

23 **"§ 14-45.5. Application of Part.**

24 (a) This Part does not apply to a physician who performs a partial-birth
25 abortion if:

26 (1) The mother's life is endangered by a physical disorder, illness, or injury;
27 and

28 (2) The procedure is necessary to save the life of the mother; and

29 (3) No other medical procedure would suffice for that purpose.

30 (b) A woman upon whom a partial-birth abortion is performed may not be
31 prosecuted under this Part, for conspiracy to violate this Part. A woman upon whom a
32 partial-birth abortion is performed is not civilly liable under this Part."

33 Sec. 2. Article 11 of Chapter 14 of the General Statutes is recodified as Part 1
34 of Article 11 of Chapter 14 of the General Statutes.

35 Sec. 3. Chapter 90 of the General Statutes is amended by adding the following
36 new Article to read:

37 **"ARTICLE 1F.**

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

39 **"§ 90-21.41. Short title.**

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

41 **"§ 90-21.42. Definitions.**

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

- 1 (1) 'Abortion' means the use or prescription of any instrument, medicine,
2 drug, or any other substance or device intentionally to terminate the
3 pregnancy of a woman known to be pregnant with an intention other
4 than to increase the probability of a live birth, to preserve the life or
5 health of the child after live birth, or to remove a dead fetus.
- 6 (2) 'Attempt to perform an abortion' means an act, or an omission of a
7 statutorily required act, that, under the circumstances as the actor
8 believes them to be, constitutes a substantial step in a course of conduct
9 planned to culminate in the performance of an abortion in North
10 Carolina in violation of this Article.
- 11 (3) 'Department' means the Department of Human Resources.
- 12 (4) 'Medical emergency' means that condition which, on the basis of the
13 physician's good faith clinical judgment, so complicates the medical
14 condition of a pregnant woman as to necessitate the immediate abortion
15 of her pregnancy to avert her death or for which a delay will create
16 serious risk of substantial and irreversible impairment of one or more of
17 her major bodily functions.
- 18 (5) 'Medical risks' means risks and hazards, both physical and emotional.
- 19 (6) 'Physician' means an individual licensed to practice medicine or
20 osteopathy in accordance with this Chapter.
- 21 (7) 'Probable gestational age' means what, in the judgment of the physician,
22 will with reasonable probability be the gestational age of the unborn
23 child at the time the abortion is planned to be performed.

24 **"§ 90-21.43. Informed consent to abortion.**

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

- 28 (1) At least 24 hours prior to the abortion, the physician who is to perform
29 the abortion or the referring physician has orally informed the woman of
30 all of the following:
- 31 a. The particular medical risks associated with the particular
32 abortion procedure to be employed including, when medically
33 accurate, the risks of infection, hemorrhage, breast cancer,
34 danger to subsequent pregnancies, and infertility.
- 35 b. The name of the physician who will perform the abortion.
- 36 c. The medical risks associated with carrying the child to term.
- 37 d. The probable gestational age of the unborn child at the time the
38 abortion is to be performed.
- 39 e. If the physician who is to perform the abortion has no liability
40 insurance for malpractice in the performance or attempted
41 performance of an abortion, that information shall be
42 communicated.

1 f. If the physician who will perform the abortion has no local
2 hospital admitting privileges, that information shall be
3 communicated.

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

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

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

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

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

40 (3) The woman certifies in writing, prior to the abortion, that the
41 information described in subdivisions (1) and (2) of this subsection has
42 been furnished her and that she has been informed of her opportunity to
43 review the information referred to in sub-subdivision c. of subdivision

1 (2) of this section. The original of this certification shall be maintained
2 in the woman's medical records and a copy shall be given to her.

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

6 **"§ 90-21.44. Printed information required.**

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

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

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

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

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

39 **"§ 90-21.45. Procedure in case of medical emergency.**

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

1 that a 24-hour delay will create serious risk of substantial and irreversible impairment of
2 a major bodily function.

3 **"§ 90-21.46. Informed consent for a minor.**

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

8 **"§ 90-21.47. Protection of privacy in court proceedings.**

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

17 **"§ 90-21.48. Civil remedies.**

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

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

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

33 Sec. 5. The Department of Human Resources shall report to the Joint
34 Legislative Commission on Governmental Operations by December 1, 1997, on the cost
35 of the initial production and printing of the materials required by G.S. 90-21.44.

36 Sec. 6. This act becomes effective December 1, 1996, and applies to offenses
37 committed and causes of action arising on or after that date.