

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1280

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

Sponsors: Representatives Carpenter; Barnhart, Capps, Davis, Gillespie, Harrington, Hiatt, Hilton, Howard, Hurley, Johnson, Kiser, McComas, Morris, Starnes, Walend, and C. Wilson.

Referred to: Health.

April 12, 2001

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 AN ABORTION
4 MAY BE PERFORMED.

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:

8 "Article 1G.

9 "Woman's Right to Know Act.

10 "**§ 90-21.50. Short title.**

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

12 "**§ 90-21.51. 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
22 conduct planned to culminate in the performance of an abortion in
23 North Carolina in violation of this Article.

24 (3) 'Coercion' means restraining or dominating the choice of a female by
25 force, threat of force, or deprivation of food or shelter by a person
26 obligated to provide food or shelter.

- 1 (4) 'Complication' means that condition which includes, but is not limited
2 to, hemorrhage, infection, uterine perforation, cervical laceration,
3 pelvic inflammatory disease, endometriosis, and retained products.
4 The Department may further define 'complication'.
5 (5) 'Department' means the Department of Health and Human Services.
6 (6) 'Medical emergency' means that condition which, on the basis of the
7 physician's good faith clinical judgment, so complicates the medical
8 condition of a pregnant woman as to necessitate the immediate
9 abortion of her pregnancy to avert her death or for which a delay will
10 create serious risk of substantial and irreversible impairment of a
11 major bodily function.
12 (7) 'Medical risks' means the usual and most frequent risks and hazards,
13 both physical and emotional, inherent in a proposed abortion
14 procedure and the risks, both physical and emotional, inherent in
15 carrying the unborn child to term.
16 (8) 'Physician' means an individual licensed to practice medicine or
17 osteopathy in accordance with this Chapter.
18 (9) 'Probable gestational age' means what, in the judgment of the
19 physician, will with reasonable probability be the gestational age of the
20 unborn child at the time the abortion is planned to be performed.
21 (10) 'Qualified person' means an agent of the physician who is a licensed
22 psychologist, licensed social worker, licensed professional counselor,
23 registered nurse, licensed physician, or a certified health educator.

24 **"§ 90-21.52. Informed consent to abortion; coercion prohibited.**

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

- 29 (1) At least 24 hours prior to the abortion, the physician who is to perform
30 the abortion, the referring physician, or a qualified person has orally
31 informed the woman, by telephone or in person, of all of the
32 following:
33 a. The particular medical risks associated with the particular
34 abortion procedure to be employed including, when medically
35 accurate, the risks of infection, hemorrhage, breast cancer,
36 danger to subsequent pregnancies, and infertility.
37 b. The probable gestational age of the unborn child at the time the
38 abortion is to be performed.
39 c. 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 d. 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 orally,
5 by telephone or in person, without conducting a physical examination
6 or tests of the patient, in which case the required information may be
7 based on facts supplied by the woman to the physician or the qualified
8 person. The information required by this section may not be provided
9 by a tape recording but must be provided during a consultation in
10 which the physician or the qualified person is able to ask questions of
11 the woman, and the woman is able to ask questions of the physician or
12 the qualified person. If in the medical judgment of the physician, a
13 physical examination, tests, or the availability of other information to
14 the physician subsequently indicates a revision of the information
15 previously supplied to the patient, then that revised information may
16 be communicated to the patient at any time prior to the performance of
17 the abortion. Nothing in this section may be construed to preclude
18 provision of required information in a language understood by the
19 patient through a translator.

20 (2) The physician who is to perform the abortion, the referring physician,
21 or the qualified person informs the woman, by telephone or in person,
22 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 public assistance programs under Chapter 108A of the
26 General Statutes may or may not be available as benefits under
27 federal and State assistance programs.

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

30 d. That the woman has the right to review the printed materials
31 described in G.S. 90-21.53. The physician or the qualified
32 person shall orally inform the woman that the materials have
33 been provided by the Department and that they describe the
34 unborn child and list agencies that offer alternatives to abortion.
35 If the woman requests the materials, they shall either be given
36 to her at least 24 hours before the abortion or mailed to her at
37 least 72 hours before the abortion by certified mail, restricted
38 delivery to addressee.

39 e. That information concerning access to local domestic violence
40 services will be provided if the woman acknowledges
41 involvement in an abusive relationship.

1 f. That she is free to withhold or withdraw her consent to the
2 abortion at any time before or during the abortion without
3 affecting her right to future care or treatment and without the
4 loss of any State or federally funded benefits to which she
5 might otherwise be entitled.

6 g. That Medicaid covers the cost of an abortion for eligible
7 women if the pregnancy was the result of rape or incest, or if
8 the abortion is necessary to save the life of the mother.

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

13 (3) The woman certifies in writing, prior to the abortion, that the
14 information described in subdivisions (1) and (2) of this section has
15 been furnished her, and that she has been informed of her opportunity
16 to review the information referred to in sub-subdivision d. of
17 subdivision (2) of this section. The original of this certification shall
18 be maintained in the woman's medical records, and a copy shall be
19 given to her.

20 (4) Prior to the performance of the abortion, the woman must be informed
21 of the name of the physician who will perform the abortion, and that
22 physician or the qualified person must receive a copy of the written
23 certification required by subdivision (3) of this section.

24 (5) The information required under this section and under G.S. 90-21.53 is
25 provided to the woman individually to protect her privacy and
26 maintain the confidentiality of her decision, and to ensure that the
27 information focuses on her individual circumstances, and that she has
28 an adequate opportunity to ask questions. If, at the time the
29 information is provided, the woman is on the premises of the physician
30 who is to perform the abortion, then the information shall be provided
31 in a private room in order to further the protections and purposes of
32 this subdivision.

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

35 **"§ 90-21.53. Printed information required.**

36 (a) The Department shall publish the following printed materials in a manner that
37 ensures that the information is easily comprehensible:

38 (1) Geographically indexed materials designed to inform a woman of
39 public and private agencies and services available to assist her through
40 pregnancy, upon childbirth, and while the child is dependent, including
41 adoption agencies. The information shall include a comprehensive list
42 of the agencies available, a description of the services they offer, and a

1 description of the manner, including telephone numbers, in which they
2 might be contacted.

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

19 (3) The materials shall state that it is unlawful for any individual to coerce
20 a woman to undergo an abortion, that any physician who performs an
21 abortion upon a woman without her informed consent may be liable to
22 her for damages in a civil action at law, and that the law permits
23 adoptive parents to pay costs of prenatal care, childbirth, and neonatal
24 care.

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

28 **"§ 90-21.54. Procedure in case of medical emergency.**

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

36 **"§ 90-21.55. Informed consent for a minor.**

37 If the woman upon whom an abortion is to be performed is an unemancipated minor,
38 the voluntary and informed written consent required under G.S. 90-21.52 shall be
39 obtained from the minor and from the adult individual who gives consent pursuant to
40 G.S. 90-21.7(a), unless the waiver order of G.S. 90-21.8(e) and (f) has been issued.

41 **"§ 90-21.56. Protection of privacy in court proceedings.**

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

8 **"§ 90-21.57. Civil remedies.**

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

13 (b) If judgment is rendered in favor of the plaintiff in any action authorized under
14 this section, the court shall also tax as part of the costs reasonable attorneys' fees in
15 favor of the plaintiff against the defendant. If judgment is rendered in favor of the
16 defendant and the court finds that the plaintiff's suit was frivolous and brought in bad
17 faith, then the court shall tax as part of the costs reasonable attorneys' fees in favor of
18 the defendant against the plaintiff."

19 **SECTION 2.** If any provision, word, phrase, or clause of this act or the
20 application thereof to any person or circumstance is held invalid, the invalidity shall not
21 affect the provisions, words, phrases, clauses, or applications of this act which can be
22 given effect without the invalid provision, word, phrase, clause, or application and, to
23 this end, the provisions, words, phrases, and clauses of this act are declared to be
24 severable.

25 **SECTION 3.** Nothing in this act shall be construed as creating or
26 recognizing a right to abortion. It is not the intention of this act to make lawful an
27 abortion that is currently unlawful.

28 **SECTION 4.** The Department of Health and Human Services shall use funds
29 available to cover the costs of implementing this act.

30 **SECTION 5.** This act becomes effective October 1, 2001, and applies to
31 claims for relief arising on or after that date.