

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1044

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

Sponsors: Representatives Samuelson, Current, Hurley, Killian (Primary Sponsors); Allred, Avila, Barnhart, Blackwell, Blackwood, Blust, Brown, Burr, Burris-Floyd, Cleveland, Daughtry, Dockham, Dollar, Folwell, Frye, Gillespie, Guice, Gulley, Hilton, Holloway, Howard, Johnson, Justice, Justus, Langdon, Lewis, McComas, McCormick, McElraft, McGee, Mills, Moore, Randleman, Rhyne, Sager, Setzer, Stam, Starnes, Steen, Stevens, Stiller, Tillis, West, and Wiley.

Referred to: Judiciary I, if favorable, Health.

April 6, 2009

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 MAY
4 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 11.

9 "Woman's Right to Know Act.

10 **"§ 90-21.70. Short title.**

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

12 **"§ 90-21.71. 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, drug,
15 or any other substance or device intentionally to terminate the pregnancy of
16 a woman known to be pregnant with an intention other than to increase the
17 probability of a live birth, to preserve the life or health of the child after live
18 birth, or to remove a dead fetus.
- 19 (2) 'Attempt to perform an abortion' means an act, or an omission of a statutorily
20 required act, that, under the circumstances as the actor believes them to be,
21 constitutes a substantial step in a course of conduct planned to culminate in
22 the performance of an abortion in North Carolina in violation of this Article.
- 23 (3) 'Department' means the Department of Health and Human Services.
- 24 (4) 'Medical emergency' means that condition which, on the basis of the
25 physician's good faith clinical judgment, so complicates the medical
26 condition of a pregnant woman as to necessitate the immediate abortion of
27 her pregnancy to avert her death or for which a delay will create serious risk
28 of substantial and irreversible impairment of a major bodily function.
- 29 (5) 'Physician' means an individual licensed to practice medicine or osteopathy
30 in accordance with this Chapter.



- 1 (6) 'Probable gestational age' means what, in the judgment of the physician, will,
2 with reasonable probability, be the gestational age of the unborn child at the
3 time the abortion is planned to be performed.
- 4 (7) 'Qualified person' means an agent of the physician who is a licensed
5 psychologist, licensed social worker, licensed professional counselor,
6 registered nurse, licensed physician, or certified health educator.
- 7 (8) 'Stable Internet Web site' means a Web site that, to the extent reasonably
8 practicable, is safeguarded from having its content altered other than by the
9 Department.
- 10 (9) 'Woman' means a female human, whether or not she is an adult.

11 **"§ 90-21.72. Informed consent to abortion.**

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

- 15 (1) At least 24 hours prior to the abortion, the physician who is to perform the
16 abortion or the referring physician has orally informed the woman, by
17 telephone or in person, of all of the following:
- 18 a. The name of the physician who will perform the abortion.
- 19 b. The particular medical risks associated with the particular abortion
20 procedure to be employed, including, when medically accurate, the
21 risks of infection, hemorrhage, breast cancer, danger to subsequent
22 pregnancies, and infertility.
- 23 c. The probable gestational age of the unborn child at the time the
24 abortion is to be performed.
- 25 d. The medical risks associated with carrying the child to term.
- 26 e. If the physician who is to perform the abortion has no liability
27 insurance for malpractice in the performance or attempted
28 performance of an abortion, that information shall be communicated.
- 29 f. If the physician who will perform the abortion has no local hospital
30 admitting privileges, that information shall be communicated.

31 The information required by this subdivision may be provided orally, by
32 telephone or in person, without conducting a physical examination or tests of
33 the patient, in which case the required information may be based on facts
34 supplied by the woman to the physician and whatever other relevant
35 information is reasonably available. The information required by this
36 subdivision may not be provided by a tape recording but must be provided
37 during a consultation in which the physician is able to ask questions of the
38 woman and the woman is able to ask questions of the physician. If, in the
39 medical judgment of the physician, a physical examination, tests, or the
40 availability of other information to the physician subsequently indicates a
41 revision of the information previously supplied to the patient, then that
42 revised information may be communicated to the patient at any time prior to
43 the performance of the abortion. Nothing in this section may be construed to
44 preclude provision of required information in a language understood by the
45 patient through a translator.

- 46 (2) The physician who is to perform the abortion, the referring physician, or a
47 qualified person who has informed the woman, by telephone or in person, of
48 each of the following at least 24 hours before the abortion:
- 49 a. That medical assistance benefits may be available for prenatal care,
50 childbirth, and neonatal care.

- 1 b. That public assistance programs under Chapter 108A of the General
2 Statutes may or may not be available as benefits under federal and
3 State assistance programs.
- 4 c. That the father is liable to assist in the support of the child, even if
5 the father has offered to pay for the abortion.
- 6 d. That the woman has the right to review the printed materials
7 described in G.S. 90-21.73, that these materials are available on a
8 State-sponsored Web site, as well as the address of the
9 State-sponsored Web site. The physician or a qualified person shall
10 orally inform the woman that the materials have been provided by
11 the Department and that they describe the unborn child and list
12 agencies that offer alternatives to abortion. If the woman chooses to
13 view the materials other than on the Web site, they shall either be
14 given to her at least 24 hours before the abortion or be mailed to her
15 at least 72 hours before the abortion by certified mail, restricted
16 delivery to addressee.
- 17 e. That the woman is free to withhold or withdraw her consent to the
18 abortion at any time before or during the abortion without affecting
19 her right to future care or treatment and without the loss of any State
20 or federally funded benefits to which she might otherwise be entitled.

21 The information required by this subdivision may be provided by a tape
22 recording if provision is made to record or otherwise register specifically
23 whether the woman does or does not choose to have the printed materials
24 given or mailed to her.

- 25 (3) If the physician uses ultrasound equipment in the performance of an
26 abortion, the physician shall inform the woman that she has the right to view
27 the ultrasound image of her unborn child before an abortion is performed. If
28 the woman requests to view the ultrasound image, it shall be shown to her.
- 29 (4) The woman certifies in writing, prior to the abortion, that the information
30 described in subdivisions (1) and (2) of this section has been furnished her
31 and that she has been informed of her opportunity to review the information
32 referred to in sub-subdivision c. of subdivision (2) of this section and in
33 subdivision (3) of this section. The original of this certification shall be
34 maintained in the woman's medical records, and a copy shall be given to her.
- 35 (5) Prior to the performance of the abortion, the physician who will perform the
36 abortion or the qualified person must receive a copy of the written
37 certification required by subdivision (4) of this section.
- 38 (6) The information required under this section and under G.S. 90-21.76 is
39 provided to the woman individually to protect her privacy and maintain the
40 confidentiality of the decision and to ensure that the information focuses on
41 her individual circumstances and that she has an adequate opportunity to ask
42 questions. If, at the time the information is provided, the woman is on the
43 premises of the physician who is to perform the abortion, then the
44 information shall be provided in a private room in order to further the
45 protections and purposes of this subdivision.
- 46 (7) The woman is not required to pay any amount for the abortion procedure
47 until the 24-hour waiting period has expired.

48 **"§ 90-21.73. Printed information required.**

49 (a) The Department shall publish in English and in each language that is the primary
50 language of at least two percent (2%) of the State's population and shall cause to be available

1 on the State Web site established under G.S. 90-21.74 the following printed materials in a
2 manner that ensures that the information is easily comprehensible:

3 (1) Geographically indexed materials designed to inform a woman of public and
4 private agencies and services available to assist her through pregnancy, upon
5 childbirth, and while the child is dependent, including adoption agencies.
6 The information shall include a comprehensive list of the agencies available,
7 a description of the services they offer, and a description of the manner,
8 including telephone numbers, in which they might be contacted. In the
9 alternative, in the discretion of the Department, the printed materials may
10 contain a toll-free, 24-hour-a-day telephone number that may be called to
11 obtain, orally, a list of these agencies in the locality of the caller and of the
12 services they offer.

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

28 (b) The materials referred to in subsection (a) of this section shall be printed in a
29 typeface large enough to be clearly legible. The Web site provided for in G.S. 90-21.74 shall be
30 maintained at a minimum resolution of 70 DPI (dots per inch). All pictures appearing on the
31 Web site shall be a minimum of 200x300 pixels. All letters on the Web site shall be a minimum
32 of 11-point font. All information and pictures shall be accessible with an industry-standard
33 browser, requiring no additional plug-ins.

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

37 **"§ 90-21.74. Internet Web site.**

38 The Department shall develop and maintain a stable Internet Web site to provide the
39 information described under G.S. 90-21.73. No information regarding who accesses the Web
40 site shall be collected or maintained. The Department shall monitor the Web site on a daily
41 basis to prevent and correct tampering.

42 **"§ 90-21.75. Procedure in case of medical emergency.**

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

50 **"§ 90-21.76. Informed consent for a minor.**

1 If the woman upon whom an abortion is to be performed is an unemancipated minor, the
2 voluntary and informed written consent required under G.S. 90-21.72 shall be obtained from
3 the minor and from the adult individual who gives consent pursuant to G.S. 90-21.7(a), unless
4 the waiver order of G.S. 90-21.8(e) and (f) has been issued.

5 **"§ 90-21.77. Civil remedies.**

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

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

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

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

26 **SECTION 4.** This act becomes effective December 1, 2009, and applies to claims
27 for relief arising on or after that date.