

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE BILL 549

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

Sponsors: Senators Allran; Apodaca, Blake, Brock, Brown, Goodall, Hartsell, Hunt, Jacumin, Pittenger, Presnell, Smith, Stevens, and Webster.

Referred to: Health Care.

March 15, 2005

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 1H.

9 "Woman's Right to Know Act.

10 "**§ 90-21.60. Short title.**

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

12 "**§ 90-21.61. 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) 'Department' means the Department of Health and Human Services.

25 (4) 'Medical emergency' means that condition which, on the basis of the  
26 physician's good faith clinical judgment, so complicates the medical  
27 condition of a pregnant woman as to necessitate the immediate  
28 abortion of her pregnancy to avert her death or for which a delay will

1 create serious risk of substantial and irreversible impairment of a  
2 major bodily function.

3 (5) 'Physician' means an individual licensed to practice medicine or  
4 osteopathy in accordance with this Chapter.

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

8 (7) 'Qualified person' means an agent of the physician who is a licensed  
9 psychologist, licensed social worker, licensed professional counselor,  
10 registered nurse, licensed physician, or certified health educator.

11 (8) 'Stable Internet Web site' means a Web site that, to the extent  
12 reasonably practicable, is safeguarded from having its content altered  
13 other than by the Department.

14 (9) 'Woman' means a female human, whether or not she is an adult.

15 **"§ 90-21.62. Informed consent to abortion.**

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

19 (1) At least 24 hours prior to the abortion, the physician who is to perform  
20 the abortion or the referring physician has orally informed the woman,  
21 by telephone or in person, of all of the following:

22 a. The name of the physician who will perform the abortion.

23 b. The statistically significant medical risks associated with the  
24 particular abortion procedure to be performed.

25 c. The probable gestational age of the unborn child at the time the  
26 abortion is to be performed.

27 d. If the physician who is to perform the abortion has no liability  
28 insurance for malpractice in the performance or attempted  
29 performance of an abortion, that information shall be  
30 communicated.

31 e. If the physician who will perform the abortion has no local  
32 hospital admitting privileges, that information shall be  
33 communicated.

34 The information required by this subdivision may be provided orally,  
35 by telephone or in person, without conducting a physical examination  
36 or tests of the patient, in which case the required information may be  
37 based on facts supplied by the woman to the physician and whatever  
38 other relevant information is reasonably available. The information  
39 required by this subdivision may not be provided by a tape recording  
40 but must be provided during a consultation in which the physician is  
41 able to ask questions of the woman and the woman is able to ask  
42 questions of the physician. If, in the medical judgment of the  
43 physician, a physical examination, tests, or the availability of other  
44 information to the physician subsequently indicates a revision of the

1 information previously supplied to the patient, then that revised  
2 information may be communicated to the patient at anytime prior to  
3 the performance of the abortion. Nothing in this section may be  
4 construed to preclude provision of required information in a language  
5 understood by the patient through a translator.

6 (2) The physician who is to perform the abortion, the referring physician,  
7 or a qualified person has informed, by telephone or in person, the  
8 woman of each of the following at least 24 hours before the abortion:

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

11 b. That public assistance programs under Chapter 108A of the  
12 General Statutes may or may not be available as benefits under  
13 federal and State assistance programs.

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

16 d. That the woman has the right to review the printed materials  
17 described in G.S. 90-21.63, that these materials are available on  
18 a State-sponsored Web site, and the address of the  
19 State-sponsored Web site. The physician or a qualified person  
20 shall orally inform the woman that the materials have been  
21 provided by the Department and that they describe the unborn  
22 child and list agencies that offer alternatives to abortion. If the  
23 woman chooses to view the materials other than on the Web  
24 site, they shall either be given to her at least 24 hours before the  
25 abortion or be mailed to her at least 72 hours before the  
26 abortion by certified mail, restricted delivery to addressee.

27 e. That the woman is free to withhold or withdraw her consent to  
28 the abortion at any time before or during the abortion without  
29 affecting her right to future care or treatment and without the  
30 loss of any State or federally funded benefits to which she  
31 might otherwise be entitled.

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 have the  
35 printed materials given or mailed to her.

36 (3) If the physician uses ultrasound equipment in the performance of an  
37 abortion, the physician shall inform the woman that she has the right to  
38 view the ultrasound image of her unborn child before an abortion is  
39 performed. If the woman requests to view the ultrasound image, it  
40 shall be shown to her.

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

1 subdivision (2) of this section and in subdivision (3) of this section.  
2 The original of this certification shall be maintained in the woman's  
3 medical records, and a copy shall be given to her.

4 (5) Prior to the performance of the abortion, the physician who will  
5 perform the abortion or the qualified person must receive a copy of the  
6 written certification required by subdivision (4) of this section.

7 (6) The information required under this section and under G.S. 90-21.66 is  
8 provided to the woman individually to protect her privacy and  
9 maintain the confidentiality of the decision and to ensure that the  
10 information focuses on her individual circumstances and that she has  
11 an adequate opportunity to ask questions. If, at the time the  
12 information is provided, the woman is on the premises of the physician  
13 who is to perform the abortion, then the information shall be provided  
14 in a private room in order to further the protections and purposes of  
15 this subdivision.

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

18 **"§ 90-21.63. Printed information required.**

19 (a) The Department shall publish in English and in each language that is the  
20 primary language of at least two percent (2%) of the State's population and shall cause  
21 to be available on the State Web site established under G.S. 90-21.64 the following  
22 printed materials in a manner that ensures that the information is easily comprehensible:

23 (1) Geographically indexed materials designed to inform a woman of  
24 public and private agencies and services available to assist her through  
25 pregnancy, upon childbirth, and while the child is dependent, including  
26 adoption agencies. The information shall include a comprehensive list  
27 of the agencies available, a description of the services they offer, and a  
28 description of the manner, including telephone numbers, in which they  
29 might be contacted. In the alternative, in the discretion of the  
30 Department, the printed materials may contain a toll-free,  
31 24-hour-a-day telephone number that may be called to obtain, orally, a  
32 list of these agencies in the locality of the caller and of the services  
33 they offer.

34 (2) Materials designed to inform the woman of the probable anatomical  
35 and physiological characteristics of the unborn child at two-week  
36 gestational increments from the time of conception until full term,  
37 including any relevant information on the possibility of the unborn  
38 child's survival and pictures or drawings representing the development  
39 of the unborn child at two-week gestational increments. The pictures  
40 must contain the dimensions of the unborn child and must be realistic  
41 and appropriate for the stage of pregnancy depicted. The materials  
42 shall be objective, nonjudgmental, and designed to convey only  
43 accurate scientific information about the unborn child at the various  
44 gestational ages. The material shall also contain objective information

1 describing the methods of abortion procedures employed, the medical  
2 risks associated with each procedure, the possible detrimental  
3 psychological effects of abortion, and the medical risks associated with  
4 each procedure, as well as the medical risks associated with carrying  
5 an unborn child to term.

6 (b) The materials referred to in subsection (a) of this section shall be printed in a  
7 typeface large enough to be clearly legible. The Web site provided for in G.S. 90-21.64  
8 shall be maintained at a minimum resolution of 70 DPI (Dots Per Inch). All pictures  
9 appearing on the Web site shall be a minimum of 200 x 300 pixels. All letters on the  
10 Web site shall be a minimum of 11-point font. All information and pictures shall be  
11 accessible with an industry standard browser requiring no additional plug-ins.

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

15 **"§ 90-21.64. Internet Web site.**

16 The Department shall develop and maintain a stable Internet Web site to provide the  
17 information described under G.S. 90-21.63. No information regarding who accesses the  
18 Web site shall be collected or maintained. The Department shall monitor the Web site  
19 on a daily basis to prevent and correct tampering.

20 **"§ 90-21.65. Procedure in case of medical emergency.**

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

28 **"§ 90-21.66. Informed consent for a minor.**

29 If the woman upon whom an abortion is to be performed is an unemancipated minor,  
30 the voluntary and informed written consent required under G.S. 90-21.62 shall be  
31 obtained from the minor and from the adult individual who gives consent pursuant to  
32 G.S. 90-21.7(a), unless the waiver order of G.S. 90-21.8(e) and (f) has been issued.

33 **"§ 90-21.67. Civil remedies.**

34 (a) Any person upon whom an abortion has been performed and any father of an  
35 unborn child that was the subject of an abortion may maintain an action for damages  
36 against the person who performed the abortion in knowing or reckless violation of this  
37 Article. Any person upon whom an abortion has been attempted may maintain an action  
38 for damages against the person who performed the abortion in knowing or reckless  
39 violation of this Article.

40 (b) If judgment is rendered in favor of the plaintiff in any action authorized under  
41 this section, the court shall also tax as part of the costs reasonable attorneys' fees in  
42 favor of the plaintiff against the defendant. If judgment is rendered in favor of the  
43 defendant, and the court finds that the plaintiff's suit was frivolous and brought in bad

1 faith, then the court shall tax as part of the costs reasonable attorneys' fees in favor of  
2 the defendant against the plaintiff."

3           **SECTION 2.** If any provision, word, phrase, or clause of this act or the  
4 application thereof to any person or circumstance is held invalid, the invalidity shall not  
5 affect the provisions, words, phrases, clauses, or applications of this act which can be  
6 given effect without the invalid provision, word, phrase, clause, or application, and to  
7 this end the provisions, words, phrases, and clauses of this act are declared to be  
8 severable. The General Assembly declares that it would have enacted this act and each  
9 provision, word, phrase, or clause of this act irrespective of the fact that any one or  
10 more provision, word, phrase, or clause be declared unconstitutional.

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

13           **SECTION 4.** This act becomes effective October 1, 2005, and applies to  
14 claims for relief arising on or after that date.