

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

1

SENATE BILL 571*

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

Sponsors: Senators Allran, Foxx; Apodaca, Ballantine, Berger, Blake, Brock, Carpenter, Forrester, Garwood, Hartsell, Pittenger, Rucho, Shubert, Sloan, Smith, Stevens, and Tillman.

Referred to: Judiciary I.

March 31, 2003

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE A TWENTY-FOUR HOUR WAITING PERIOD AND THE
2 INFORMED CONSENT OF A PREGNANT WOMAN BEFORE AN ABORTION
3 MAY BE PERFORMED.
4

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

1 abortion of her pregnancy to avert her death or for which a delay will
2 create serious risk of substantial and irreversible impairment of a
3 major bodily function.

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

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

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

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

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

16 **"§ 90-21.62. Informed consent to abortion.**

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

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

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

24 b. The particular medical risks associated with the particular
25 abortion procedure to be employed, including, when medically
26 accurate, the risks of infection, hemorrhage, breast cancer,
27 danger to subsequent pregnancies, and infertility.

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

30 d. The medical risks associated with carrying the child to term.

31 e. If the physician who is to perform the abortion has no liability
32 insurance for malpractice in the performance or attempted
33 performance of an abortion, that information shall be
34 communicated.

35 f. If the physician who will perform the abortion has no local
36 hospital admitting privileges, that information shall be
37 communicated.

38 The information required by this subdivision may be provided orally,
39 by telephone or in person, without conducting a physical examination
40 or tests of the patient, in which case the required information may be
41 based on facts supplied by the woman to the physician and whatever
42 other relevant information is reasonably available. The information
43 required by this subdivision may not be provided by a tape recording
44 but must be provided during a consultation in which the physician is

1 able to ask questions of the woman and the woman is able to ask
2 questions of the physician. If, in the medical judgment of the
3 physician, a physical examination, tests, or the availability of other
4 information to the physician subsequently indicates a revision of the
5 information previously supplied to the patient, then that revised
6 information may be communicated to the patient at anytime prior to
7 the performance of the abortion. Nothing in this section may be
8 construed to preclude provision of required information in a language
9 understood by the patient through a translator.

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

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

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

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

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

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

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 have the
39 printed materials given or mailed to her.

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

- 1 (4) The woman certifies in writing, prior to the abortion, that the
2 information described in subdivisions (1) and (2) of this section has
3 been furnished her and that she has been informed of her opportunity
4 to review the information referred to in sub-subdivision c. of
5 subdivision (2) of this section and in subdivision (3) of this section.
6 The original of this certification shall be maintained in the woman's
7 medical records, and a copy shall be given to her.
- 8 (5) Prior to the performance of the abortion, the physician who will
9 perform the abortion or the qualified person must receive a copy of the
10 written certification required by subdivision (4) of this section.
- 11 (6) The information required under this section and under G.S. 90-21.66 is
12 provided to the woman individually to protect her privacy and
13 maintain the confidentiality of the decision and to ensure that the
14 information focuses on her individual circumstances and that she has
15 an adequate opportunity to ask questions. If, at the time the
16 information is provided, the woman is on the premises of the physician
17 who is to perform the abortion, then the information shall be provided
18 in a private room in order to further the protections and purposes of
19 this subdivision.
- 20 (7) The woman is not required to pay any amount for the abortion
21 procedure until the 24-hour waiting period has expired.

22 **§ 90-21.63. Printed information required.**

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

- 27 (1) Geographically indexed materials designed to inform a woman of
28 public and private agencies and services available to assist her through
29 pregnancy, upon childbirth, and while the child is dependent, including
30 adoption agencies. The information shall include a comprehensive list
31 of the agencies available, a description of the services they offer, and a
32 description of the manner, including telephone numbers, in which they
33 might be contacted. In the alternative, in the discretion of the
34 Department, the printed materials may contain a toll-free,
35 24-hour-a-day telephone number that may be called to obtain, orally, a
36 list of these agencies in the locality of the caller and of the services
37 they offer.
- 38 (2) Materials designed to inform the woman of the probable anatomical
39 and physiological characteristics of the unborn child at two-week
40 gestational increments from the time of conception until full term,
41 including any relevant information on the possibility of the unborn
42 child's survival and pictures or drawings representing the development
43 of the unborn child at two-week gestational increments. The pictures
44 must contain the dimensions of the unborn child and must be realistic

1 and appropriate for the stage of pregnancy depicted. The materials
2 shall be objective, nonjudgmental, and designed to convey only
3 accurate scientific information about the unborn child at the various
4 gestational ages. The material shall also contain objective information
5 describing the methods of abortion procedures employed, the medical
6 risks associated with each procedure, the possible detrimental
7 psychological effects of abortion, and the medical risks associated with
8 each procedure, as well as the medical risks associated with carrying
9 an unborn child to term.

10 (b) The materials referred to in subsection (a) of this section shall be printed in a
11 typeface large enough to be clearly legible. The web site provided for in G.S. 90-21.64
12 shall be maintained at a minimum resolution of 70 DPI (dots per inch). All pictures
13 appearing on the web site shall be a minimum of 200x300 pixels. All letters on the web
14 site shall be a minimum of 11 point font. All information and pictures shall be
15 accessible with an industry standard browser, requiring no additional plug-ins.

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

19 "**§ 90-21.64. Internet web site.**

20 The Department shall develop and maintain a stable Internet web site to provide the
21 information described under G.S. 90-21.63. No information regarding who accesses the
22 web site shall be collected or maintained. The Department shall monitor the web site on
23 a daily basis to prevent and correct tampering.

24 "**§ 90-21.65. Procedure in case of medical emergency.**

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

32 "**§ 90-21.66. Informed consent for a minor.**

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

37 "**§ 90-21.67. Civil remedies.**

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

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

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

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

17 **SECTION 4.** This act becomes effective December 1, 2003, and applies to
18 claims for relief arising on or after that date.