

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 536  
Committee Substitute Favorable 4/24/97

Short Title: Abortion/Right to Know.

(Public)

Sponsors:

Referred to:

March 18, 1997

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 1F.**

9 **“WOMAN'S RIGHT TO KNOW ACT.**

10 **“§ 90-21.37. Short title.**

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

12 **“§ 90-21.38. 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.

- 1           (2) 'Attempt to perform an abortion' means an act, or an omission of a  
2 statutorily required act, that, under the circumstances as the actor  
3 believes them to be, constitutes a substantial step in a course of conduct  
4 planned to culminate in the performance of an abortion in North  
5 Carolina in violation of this Article.
- 6           (3) 'Coercion' means restraining or dominating the choice of a female by  
7 force, threat of force, or deprivation of food or shelter by a person  
8 obligated to provide food or shelter.
- 9           (4) 'Complication' means that condition which includes, but is not limited  
10 to, hemorrhage, infection, uterine perforation, cervical laceration, pelvic  
11 inflammatory disease, endometriosis, and retained products. The  
12 Department may further define 'complication'.
- 13           (5) 'Department' means the Department of Environment, Health, and  
14 Natural Resources.
- 15           (6) 'Medical emergency' means that condition which, on the basis of the  
16 physician's good faith clinical judgment, so complicates the medical  
17 condition of a pregnant woman as to necessitate the immediate abortion  
18 of her pregnancy to avert her death or for which a delay will create  
19 serious risk to her life.
- 20           (7) 'Medical risks' means the usual and most frequent risks and hazards,  
21 both physical and emotional, inherent in a proposed abortion procedure  
22 and the risks, both physical and emotional, inherent in carrying the  
23 unborn child to term.
- 24           (8) 'Physician' means an individual licensed to practice medicine or  
25 osteopathy in accordance with this Chapter.
- 26           (9) 'Probable gestational age' means what, in the judgment of the physician,  
27 will with reasonable probability be the gestational age of the unborn  
28 child at the time the abortion is planned to be performed.
- 29           (10) 'Qualified person' means an agent of the physician who is a licensed  
30 psychologist, licensed social worker, licensed professional counselor,  
31 registered nurse, or physician.

32 **"§ 90-21.39. Informed consent to abortion; coercion prohibited.**

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

- 37           (1) At least 24 hours prior to the abortion, the physician who is to perform  
38 the abortion, the referring physician, or a qualified person has orally  
39 informed the woman, by telephone or in person, of all of the following:
- 40           a. The particular medical risks associated with the particular  
41 abortion procedure to be employed including, when medically  
42 accurate, the risks of infection, hemorrhage, breast cancer,  
43 danger to subsequent pregnancies, and infertility.

- 1           b. The medical risks associated with carrying the unborn child to  
2           term.
- 3           c. The probable gestational age of the unborn child at the time the  
4           abortion is to be performed.
- 5           d. If the physician who is to perform the abortion has no liability  
6           insurance for malpractice in the performance or attempted  
7           performance of an abortion, that information shall be  
8           communicated.
- 9           e. If the physician who will perform the abortion has no local  
10           hospital admitting privileges, that information shall be  
11           communicated.

12           The information required by this subdivision may be provided orally, by  
13           telephone or in person, without conducting a physical examination or  
14           tests of the patient, in which case the required information may be based  
15           on facts supplied by the woman to the physician or the qualified person.  
16           The information required by this section may not be provided by a tape  
17           recording but must be provided during a consultation in which the  
18           physician or the qualified person is able to ask questions of the woman  
19           and the woman is able to ask questions of the physician or the qualified  
20           person. If in the medical judgment of the physician a physical  
21           examination, tests, or the availability of other information to the  
22           physician subsequently indicates a revision of the information  
23           previously supplied to the patient, then that revised information may be  
24           communicated to the patient at any time prior to the performance of the  
25           abortion. Nothing in this section may be construed to preclude  
26           provision of required information in a language understood by the  
27           patient through a translator.

28           (2) The physician who is to perform the abortion, the referring physician, or  
29           the qualified person informs the woman, by telephone or in person, of  
30           each of the following at least 24 hours before the abortion:

- 31           a. That medical assistance benefits may be available for prenatal  
32           care, childbirth, and neonatal care.
- 33           b. That public assistance programs, such as the Work First Cash  
34           Assistance Program established pursuant to the federal waivers  
35           received by the Department of Human Resources on February 5,  
36           1996, or the Temporary Assistance to Needy Families federal  
37           block grant, may or may not be available as benefits under  
38           federal and State assistance programs.
- 39           c. That the father is liable to assist in the support of the child, even  
40           if the father has offered to pay for the abortion.
- 41           d. That the woman has the right to review the printed materials  
42           described in G.S. 90-21.40. The physician or the qualified  
43           person shall orally inform the woman that the materials have

1           been provided by the Department and that they describe the  
2           unborn child and list agencies which offer alternatives to  
3           abortion. If the woman requests the materials, they shall either  
4           be given to her at least 24 hours before the abortion or mailed to  
5           her at least 72 hours before the abortion by certified mail,  
6           restricted delivery to addressee.

7           e.   That information concerning access to local domestic violence  
8           services will be provided if the woman acknowledges  
9           involvement in an abusive relationship.

10          f.   That she is free to withhold or withdraw her consent to the  
11          abortion at any time before or during the abortion without  
12          affecting her right to future care or treatment and without the loss  
13          of any State or federally funded benefits to which she might  
14          otherwise be entitled.

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

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

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

29          (5)   The information required under this section and under G.S. 90-21.40 is  
30          provided to the woman individually to protect her privacy and maintain  
31          the confidentiality of her decision, and to ensure that the information  
32          focuses on her individual circumstances, and that she has an adequate  
33          opportunity to ask questions. If, at the time the information is provided,  
34          the woman is on the premises of the physician who is to perform the  
35          abortion, then the information shall be provided in a private room in  
36          order to further the protections and purposes of this subdivision.

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

39    **"§ 90-21.40. Printed information required.**

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

42                  (1)   Geographically indexed materials designed to inform a woman of public  
43                  and private agencies and services available to assist her through

1 pregnancy, upon childbirth, and while the child is dependent, including  
2 adoption agencies. The information shall include a comprehensive list  
3 of the agencies available, a description of the services they offer, and a  
4 description of the manner, including telephone numbers, in which they  
5 might be contacted.

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

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

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

31 **"§ 90-21.41. Procedure in case of medical emergency.**

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

39 **"§ 90-21.42. Informed consent for a minor.**

40 If the woman upon whom an abortion is to be performed is an unemancipated minor,  
41 the voluntary and informed written consent required under G.S. 90-21.7 shall be obtained  
42 from the minor and from the adult individual who gives consent pursuant to G.S. 90-  
43 21.7(a), unless the waiver order of G.S. 90-21.8(e) and (f) has been issued.

1 **"§ 90-21.43. Protection of privacy in court proceedings.**

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

9 **"§ 90-21.44. Civil remedies.**

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

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

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

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

28 Section 4. The Department of Environment, Health, and Natural Resources  
29 shall use funds available to cover the costs of implementing this act.

30 Section 5. This act becomes effective December 1, 1997, and applies to claims  
31 for relief arising on or after that date.