

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H.B. 439
Mar 22, 2023
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH50024-NJ-18A

Short Title: RBG Act.

(Public)

Sponsors: Representative von Haefen.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REMOVE BARRIERS TO GAIN ACCESS TO ABORTION ACT (RBG ACT).

3 Whereas, the ability to access safe and legal abortion is a critical component of a
4 patient's health and dignity, as well as independence, freedom, and equality; and

5 Whereas, throughout pregnancy, patients must be able to make their own health care
6 decisions with the advice of health care professionals they trust and without government
7 interference; and

8 Whereas, North Carolina has limited access to abortion services by enacting a
9 growing number of hurdles, restrictions, and requirements that serve no medical purpose and are
10 intended to make it more difficult for patients to access health care; and

11 Whereas, the impact of abortion restrictions is predominantly felt by those who
12 already experience systemic barriers to health care, including young people, people of color and
13 those with disabilities, individuals with low incomes, and those who live in rural areas or are
14 undocumented; Now, therefore,

15 The General Assembly of North Carolina enacts:

16 SECTION 1. G.S. 14-45.1 reads as rewritten:

17 "§ 14-45.1. When abortion not unlawful.

18 (a) Notwithstanding ~~any of the provisions of G.S. 14-44 and 14-45, it any other provision,~~
19 it shall not be unlawful, during the first 20 weeks of a woman's pregnancy, before a pregnancy is
20 viable, to advise, procure, or cause a miscarriage or abortion when the procedure is performed
21 by a qualified physician licensed to practice medicine in North Carolina in a hospital or clinic
22 certified by the Department of Health and Human Services to be a suitable facility for the
23 performance of abortions. ~~health care provider.~~

24 (a1) ~~The Department of Health and Human Services shall annually inspect any clinic,~~
25 ~~including ambulatory surgical facilities, where abortions are performed. The Department of~~
26 ~~Health and Human Services shall publish on the Department's Web site and on the State Web~~
27 ~~site established under G.S. 90-21.84 the results and findings of all inspections conducted on or~~
28 ~~after January 1, 2013, of clinics, including ambulatory surgical facilities, where abortions are~~
29 ~~performed, including any statement of deficiencies and any notice of administrative action~~
30 ~~resulting from the inspection. No person who is less than 18 years of age shall be employed at~~
31 ~~any clinic, including ambulatory surgical facilities, where abortions are performed. The~~
32 ~~requirements of this subsection shall not apply to a hospital required to be licensed under Chapter~~
33 ~~131E of the General Statutes.~~

34 (b) Notwithstanding ~~any of the provisions of G.S. 14-44 and 14-45, any other provision,~~
35 it shall not be unlawful, after the twentieth week of a woman's pregnancy, after a pregnancy is
36 viable, to advise, procure or cause a miscarriage or abortion when the procedure is performed by



1 a qualified physician licensed to practice medicine in North Carolina in a hospital licensed by the
2 Department of Health and Human Services, health care provider, if there is a medical emergency
3 as defined by G.S. 90-21.81(5).~~in this section.~~

4 (b1) A qualified physician who advises, procures, or causes a miscarriage or abortion after
5 the sixteenth week of a woman's pregnancy shall record all of the following: the method used by
6 the qualified physician to determine the probable gestational age of the unborn child at the time
7 the procedure is to be performed; the results of the methodology, including the measurements of
8 the unborn child; and an ultrasound image of the unborn child that depicts the measurements.
9 The qualified physician shall provide this information, including the ultrasound image, to the
10 Department of Health and Human Services pursuant to G.S. 14-45.1(e).

11 A qualified physician who procures or causes a miscarriage or abortion after the twentieth
12 week of a woman's pregnancy shall record the findings and analysis on which the qualified
13 physician based the determination that there existed a medical emergency as defined by
14 G.S. 90-21.81(5) and shall provide that information to the Department of Health and Human
15 Services pursuant to G.S. 14-45.1(e). Materials generated by the physician or provided by the
16 physician to the Department of Health and Human Services pursuant to this section shall not be
17 public records under G.S. 132-1.

18 The information provided under this subsection shall be for statistical purposes only, and the
19 confidentiality of the patient and the physician shall be protected. It is the duty of the qualified
20 physician to submit information to the Department of Health and Human Services that omits
21 identifying information of the patient and complies with Health Insurance Portability and
22 Accountability Act of 1996 (HIPAA).

23 (c) The Department of Health and Human Services shall prescribe and collect on an
24 annual basis, from hospitals or clinics, including ambulatory surgical facilities, where abortions
25 are performed, statistical summary reports concerning the medical and demographic
26 characteristics of the abortions provided for in this section, including the information described
27 in subsection (b1) of this section as it shall deem to be in the public interest. Hospitals or clinics
28 where abortions are performed shall be responsible for providing these statistical summary
29 reports to the Department of Health and Human Services. The reports shall be for statistical
30 purposes only and the confidentiality of the patient relationship shall be protected. Materials
31 generated by the physician or provided by the physician to the Department of Health and Human
32 Services pursuant to this section shall not be public records under G.S. 132-1.

33 (d) The requirements of G.S. 130A-114 are not applicable to abortions performed
34 pursuant to this section.

35 (e) No physician, nurse, or any other health care provider who shall state an objection to
36 abortion on moral, ethical, or religious grounds shall be required to perform or participate in
37 medical procedures which result in an abortion. The refusal of a physician, nurse, or health care
38 provider to perform or participate in these medical procedures shall not be a basis for damages
39 for the refusal, or for any disciplinary or any other recriminatory action against the physician,
40 nurse, or health care provider. For purposes of this section, the phrase "health care provider" shall
41 have the same meaning as defined under G.S. 90-410(1).

42 (f) Nothing in this section shall require a hospital, other health care institution, or other
43 health care provider to perform an abortion or to provide abortion services.

44 (g) For purposes of this section, "qualified physician" means (i) a physician who
45 possesses, or is eligible to possess, board certification in obstetrics or gynecology, (ii) a physician
46 who possesses sufficient training based on established medical standards in safe abortion care,
47 abortion complications, and miscarriage management, or (iii) a physician who performs an
48 abortion in a medical emergency as defined by G.S. 90-21.81(5).Definitions. – The following
49 definitions apply in this section:

50 (1) Medical emergency. – A condition which, in reasonable medical judgment, so
51 complicates the medical condition of the pregnant person as to necessitate the

1 immediate termination of the pregnancy to avert her death or for which a delay
 2 will create serious risk of substantial and/or irreversible physical impairment,
 3 including any psychological or emotional conditions.

4 (2) Qualified health care provider. – Includes all of the following:

- 5 a. A physician licensed to practice medicine under Article 1 of Chapter
 6 90 of the General Statutes.
 7 b. A physician assistant licensed under G.S. 90-18.1.
 8 c. A nurse practitioner licensed under G.S. 90-18.2.
 9 d. A certified nurse midwife licensed under Article 10A of Chapter 90 of
 10 the General Statutes."

11 **SECTION 2.(a)** Chapter 90 of the General Statutes is amended by adding a new
 12 Article to read:

13 "Article 1M.

14 "Codify Roe and Casey Protections.

15 **"§ 90-21.140. Short title.**

16 This Article shall be known and may be cited as "Codify Roe and Casey Protections."

17 **"§ 90-21.141. Purpose.**

18 The purpose of this Article is to codify the essential holdings of Roe v. Wade, 410 U.S. 113
 19 (1973), and Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992).

20 **"§ 90-21.142. Allowable requirements.**

21 (a) The State shall not impose an undue burden on the ability of a woman to choose
 22 whether or not to terminate a pregnancy before fetal viability.

23 (b) The State may restrict the ability of a woman to choose whether or not to terminate a
 24 pregnancy after fetal viability, unless such a termination is necessary to preserve the life or health
 25 of the woman.

26 (c) For the purposes of this section, the term "undue burden" means any burden that
 27 places a substantial obstacle in the path of a woman seeking to terminate a pregnancy prior to
 28 fetal viability.

29 (d) Nothing in this Article shall be construed to have any effect on laws regarding
 30 conscience protection."

31 **SECTION 2.(b)** G.S. 90-21.4 is amended by adding a new subsection to read:

32 "(c) For the purposes of this section, a person who is qualified to practice medicine under
 33 Article 1 of Chapter 90 of the General Statutes, a physician assistant as defined in G.S. 90-18.1,
 34 a nurse practitioner as defined in G.S. 90-18.2, or a certified nurse midwife licensed under Article
 35 10A of Chapter 90 of the General Statutes shall qualify for the same limited immunity in this
 36 section that is designated for a physician."

37 **SECTION 2.(c)** G.S. 90-21.9 reads as rewritten:

38 **"§ 90-21.9. Medical emergency exception.**

39 (a) The requirements of parental consent prescribed by G.S. 90-21.7(a) shall not apply
 40 when, in the best medical judgment of the physician based on the facts of the case before the
 41 physician, a medical emergency exists that so complicates the pregnancy as to require an
 42 immediate abortion, or when the conditions prescribed by G.S. 90-21.1(4) are met.

43 (b) For the purposes of this section and G.S. 90-21.7, a person who is qualified to practice
 44 medicine under Article 1 of Chapter 90 of the General Statutes, a physician assistant as defined
 45 in G.S. 90-18.1, a nurse practitioner as defined in G.S. 90-18.2, or a certified nurse midwife
 46 licensed under Article 10A of Chapter 90 of the General Statutes may fulfill the requirements
 47 and functions designated for a physician."

48 **SECTION 2.(d)** G.S. 90-21.5(a) reads as rewritten:

49 "(a) Subject to subsection (a1) of this section, any minor may give effective consent to a
 50 physician licensed to practice medicine in North Carolina for medical health services for the
 51 prevention, diagnosis and treatment of (i) venereal disease and other diseases reportable under

1 G.S. 130A-135, (ii) pregnancy, (iii) abuse of controlled substances or alcohol, and (iv) emotional
2 disturbance. This section does not authorize ~~the inducing of an abortion,~~ performance of a
3 sterilization ~~operation,~~ operation or admission to a 24-hour facility licensed under Article 2 of
4 Chapter 122C of the General Statutes except as provided in G.S. 122C-223. This section does
5 not prohibit the admission of a minor to a treatment facility upon his own written application in
6 an emergency situation as authorized by G.S. 122C-223."

7 **SECTION 2.(e)** G.S. 90-21.120 reads as rewritten:

8 "**§ 90-21.120. Definitions.**

9 The following definitions apply in this Article:

10 (1) Abortion. – ~~As defined in G.S. 90-21.81(1).~~ The use or prescription of any
11 instrument, medicine, drug, or other substance or device intentionally to
12 terminate the pregnancy of a woman known to be pregnant with an intention
13 other than to increase the probability of a live birth.

14 (2) ~~Attempt to perform an abortion.~~ – ~~As defined in G.S. 90-21.81(2).~~

15 (3) ~~Woman.~~ – ~~As defined in G.S. 90-21.81(11).~~"

16 **SECTION 2.(f)** G.S. 90-21.121 is repealed.

17 **SECTION 2.(g)** Article 1I of Chapter 90 of the General Statutes is repealed.

18 **SECTION 2.(h)** This section is effective when it becomes law.

19 **SECTION 3.(a)** G.S. 143C-6-5.5 is repealed.

20 **SECTION 3.(b)** G.S. 135-48.50 reads as rewritten:

21 "**§ 135-48.50. Coverage mandates.**

22 The Plan shall provide coverage subject to the following coverage mandates:

23 (1) Abortion coverage. – ~~The Plan shall not provide coverage for abortions for~~
24 ~~which State funds could not be used under G.S. 143C-6-5.5.~~ The Plan shall,
25 ~~however,~~ shall provide coverage for subsequent complications or related
26 charges arising from an ~~abortion not covered under this subdivision.~~ abortion.

27 "...."

28 **SECTION 4.(a)** G.S. 58-51-63 is repealed.

29 **SECTION 4.(b)** This section is effective 30 days after it becomes law and applies to
30 contracts entered into, amended, or renewed on or after that date.

31 **SECTION 5.(a)** G.S. 153A-92(d) reads as rewritten:

32 "(d) A county may purchase life insurance or health insurance or both for the benefit of
33 all or any class of county officers and employees as a part of their compensation. A county may
34 provide other fringe benefits for county officers and employees. ~~In providing health insurance to~~
35 ~~county officers and employees, a county shall not provide abortion coverage greater than that~~
36 ~~provided by the State Health Plan for Teachers and State Employees under Article 3B of Chapter~~
37 ~~135 of the General Statutes."~~

38 **SECTION 5.(b)** G.S. 160A-162(b) reads as rewritten:

39 "(b) The council may purchase life, health, and any other forms of insurance for the benefit
40 of all or any class of city employees and their dependents, and may provide other fringe benefits
41 for city employees. ~~In providing health insurance to city employees, the council shall not provide~~
42 ~~abortion coverage greater than that provided by the State Health Plan for Teachers and State~~
43 ~~Employees under Article 3B of Chapter 135 of the General Statutes."~~

44 **SECTION 6.** Except as otherwise provided, this act is effective when it becomes
45 law.