

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

FILED SENATE
Apr 4, 2017
S.B. 588
PRINCIPAL CLERK

S

D

SENATE BILL DRS25049-MG-95C* (03/16)

Short Title: Whole Woman's Health Act. (Public)

Sponsors: Senators Chaudhuri, Van Duyn, and Bryant (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT REPEALING LAWS IN CONFLICT WITH THE UNITED STATES SUPREME
3 COURT DECISION IN WHOLE WOMAN'S HEALTH V. HELLERSTEDT.

4 Whereas, comprehensive reproductive health care, including safe abortion, is a vital
5 component of a woman's overall health; and

6 Whereas, abortion is one of the safest medical procedures in the United States, as
7 demonstrated by data, including from the CDC, showing that abortion has over a 99 percent
8 safety record; and

9 Whereas, like other medical procedures, the safety of abortion is furthered by
10 evidence-based practices developed and supported by medical professionals; and

11 Whereas, any regulation of medical care must have a legitimate purpose; and

12 Whereas, the goal of medical regulation should be to improve the quality of care
13 and increase access to care; and

14 Whereas, in the landmark decision *Whole Woman's Health v. Hellerstedt* (*Whole*
15 *Woman's Health*), the Supreme Court recently reaffirmed a woman's constitutional right to
16 access safe, legal abortion, confirming over 40 years of precedent; and

17 Whereas, in *Whole Woman's Health*, the Court struck down two provisions of a
18 Texas law, H.B. 2, which was designed to close abortion providers in the state; and

19 Whereas, Justice Ruth Bader Ginsberg concluded in her concurrence that given the
20 safety of abortion, "it is beyond rational belief that H.B. 2 could genuinely protect the health of
21 women, and certain that the law "would simply make it more difficult for them to obtain
22 abortions"; and

23 Whereas, in *Whole Woman's Health*, the Court held that the Constitution "requires
24 that courts consider the burdens a law imposes on abortion access together with the benefits
25 those laws confer"; and

26 Whereas, in *Whole Woman's Health*, the Court further held that courts, "when
27 determining the constitutionality of laws regulating abortion procedures," must place
28 "considerable weight upon evidence...presented"; and

29 Whereas, in *Whole Woman's Health*, Justice Ruth Bader Ginsburg wrote in her
30 concurrence that abortion restrictions that "do little or nothing for health, but rather strew
31 impediments to abortion...cannot survive judicial inspection"; and

32 Whereas, according to the American College of Obstetricians and Gynecologists,
33 the American Medical Association, American Academy of Family Physicians, and the
34 American Osteopathic Association, leading public health organizations and amici curiae for the
35 petitioners in *Whole Woman's Health*, "[w]omen's access to high-quality, evidence-based



1 abortion should not be limited by laws enacted under the guise of patient safety but that, in fact,
2 harm women's health"; and

3 Whereas, the 334 restrictions on abortion providers and their patients adopted
4 nationally since 2010 and the more than 30 restrictions in North Carolina that were enacted
5 based on pretextual reasons are just a systematic attempt to eliminate access to safe and legal
6 medical care; and

7 Whereas, in accordance with the United States Constitution, it is the intent of the
8 General Assembly to prevent the enforcement of laws or regulations that burden abortion
9 access and do not provide legitimate health benefits; Now, therefore,
10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** This act shall be known and may be cited as "The Whole Woman's
12 Health Act."

13 **SECTION 2.** G.S. 14-45.1 reads as rewritten:

14 **"§ 14-45.1. When abortion not ~~unlawful~~unlawful; abortion statistics; abortion opt-out**
15 **for health care providers.**

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

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

32 (b) Notwithstanding any of the provisions of G.S. 14-44 and 14-45, it shall not be
33 unlawful, after the twentieth week of a woman's pregnancy, to advise, procure or cause a
34 miscarriage or abortion when the procedure is performed by a qualified physician licensed to
35 practice medicine in North Carolina in a hospital or clinic licensed or certified by the
36 Department of Health and Human Services, ~~if there is a medical emergency as defined by G.S.~~
37 ~~90-21.81(5).~~Services.

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

45 ~~A qualified physician who procures or causes a miscarriage or abortion after the twentieth~~
46 ~~week of a woman's pregnancy shall record the findings and analysis on which the qualified~~
47 ~~physician based the determination that there existed a medical emergency as defined by G.S.~~
48 ~~90-21.81(5) and shall provide that information to the Department of Health and Human~~
49 ~~Services pursuant to G.S. 14-45.1(c). Materials generated by the physician or provided by the~~
50 ~~physician to the Department of Health and Human Services pursuant to this section shall not be~~
51 ~~public records under G.S. 132-1.~~

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

6 (c) The Department of Health and Human Services shall prescribe and collect on an
7 annual basis, from hospitals or clinics, including ambulatory surgical facilities, where abortions
8 are performed, statistical summary reports concerning the medical and demographic
9 characteristics of the abortions provided for in this section, ~~including the information described~~
10 ~~in subsection (b1) of this section as it shall deem to be in the public interest.~~ section. Hospitals
11 or clinics where abortions are performed shall be responsible for providing these statistical
12 summary reports to the Department of Health and Human Services. The reports shall be for
13 statistical purposes only and the confidentiality of the patient relationship shall be protected.
14 Materials generated by the physician or provided by the physician to the Department of Health
15 and Human Services pursuant to this section shall not be public records under G.S. 132-1.

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

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

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

27 (g) ~~For purposes of this section, "qualified physician" means (i) a physician who~~
28 ~~possesses, or is eligible to possess, board certification in obstetrics or gynecology, (ii) a~~
29 ~~physician who possesses sufficient training based on established medical standards in safe~~
30 ~~abortion care, abortion complications, and miscarriage management, or (iii) a physician who~~
31 ~~performs an abortion in a medical emergency as defined by G.S. 90-21.81(5)."~~

32 **SECTION 3.** Chapter 90 of the General Statutes is amended by adding a new
33 Article to read:

34 "Article 1L.

35 "Access to Abortion.

36 "**§ 90-21.130. State laws or regulations burdening access to abortion unenforceable.**

37 (a) A State law or regulation that places a burden on a woman's access to abortion is
38 unenforceable if, when considering the burdens imposed by the law or regulation on abortion
39 access together with the benefits conferred by the law or regulation, the law or regulation does
40 not confer legitimate health benefits.

41 (b) A State law or regulation places a burden on access to abortion if the law or
42 regulation does one or more of the following:

- 43 (1) Forces abortion providers to cease providing abortions.
- 44 (2) Increases the time a woman must wait to have an abortion.
- 45 (3) Requires a meaningful increase in the distance a woman must travel to
46 access care.
- 47 (4) Requires medically unnecessary visits to a health care facility or clinic.
- 48 (5) Requires a health care provider to perform a medical service that the
49 provider would not otherwise perform.
- 50 (6) Increases the risk to a woman's health.
- 51 (7) Causes a meaningful increase in the cost of a procedure.

- 1 (8) Serves no purpose other than to stigmatize patients and abortion providers.
- 2 (9) Serves no purpose or effect other than to decrease or eliminate access to
- 3 abortion.
- 4 (b) A State law or regulation confers a legitimate health benefit if it does either of the
- 5 following:
- 6 (1) Expands women's access to medically accurate, comprehensive, and
- 7 unbiased health care services.
- 8 (2) Increases patient safety, according to evidence-based research."
- 9 **SECTION 4.** Articles 1I and 1K of Chapter 90 of the General Statutes are
- 10 repealed.
- 11 **SECTION 5.** This act becomes effective October 1, 2017.