



SENATE BILL 20: Care for Women, Children, and Families Act - Part I, Abortion Law Revisions

2023-2024 General Assembly

Committee:		Date:	November 17, 2023
Introduced by:		Prepared by:	Jason Moran-Bates Staff Attorney
Analysis of:	S.L. 2023-14		

OVERVIEW: *Part I of S.L. 2023-14, as amended by Part XIII-B and Part XIV of S.L. 2023-65, repeals and replaces the current abortion law in North Carolina. Under the new law, abortion is permitted through the first 12 weeks of pregnancy for any reason, through the 20th week of pregnancy if the pregnancy resulted from rape or incest, through the 24th week of pregnancy if there is a life-limiting anomaly in the unborn child, and at any time if there is a medical emergency for the pregnant woman. Part I also bifurcates the definition of abortion into surgical and medical abortions and creates new informed consent provisions for both. Finally, Part I criminalizes the provision or advertising of abortion-inducing drugs in certain circumstances, prohibits eugenic abortions, and establishes reporting requirements for abortion.*

This bill was vetoed by the Governor on May 14, 2023. The veto was overridden by the General Assembly on May 16, 2023. This Part of the act became effective July 1, 2023, and the criminal provisions apply to any offenses committed on or after that date.

CURRENT LAW: Under current law, abortion is permitted through the first 20 weeks of pregnancy for any reason and after 20 weeks in the case of a medical emergency. (G.S. 14-45.1). Certain abortions performed after 16 weeks of pregnancy and all abortions performed after 20 weeks must be reported to the Department of Health and Human Services (DHHS). Healthcare providers and healthcare institutions are never required to perform abortions. Sex selective abortions are prohibited under any circumstances (G.S. 90-21.121). The current informed consent provisions for abortion are listed in Article 1I of Chapter 90.

BILL ANALYSIS: Part I of S.L. 2023-14, as amended by Part XIII-B and Part XIV of S.L. 2023-65, repeals the current restrictions on abortion in G.S. 14-45.1. Those restrictions are replaced with new provisions in Article 1I of Chapter 90. Under those new provisions, abortion is permitted through the first 12 weeks of pregnancy for any reason, through the 20th week of pregnancy if the pregnancy resulted from rape or incest, through the 24th week of pregnancy if there is a life-limiting anomaly in the unborn child, and at any time if there is a medical emergency for the pregnant woman.

Part I establishes informed consent provisions for abortions when there is a life-limiting anomaly in the unborn child, surgical abortions, and medical abortions.

Life-limiting anomaly informed consent: If a physician determines the unborn child has a uniformly diagnosable disorder that is life-limiting under current medial evidence, an abortion can be performed through the 24th week of pregnancy. In order to procure an abortion under those circumstances, the physician must provide the pregnant woman the following information and affirm it has been provided:

- The basis for the life-limiting anomaly diagnosis.
- The risks associated with the anomaly and any forms of treatment.

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- A statement that all life-limiting anomalies have resulted in the births of live infants with variable lengths of life.
- Current information, including the likelihood of survival, on the anomaly.
- Referrals for neonatal and palliative care consultations.
- The information required for a surgical or medical abortion, as appropriate.
- Information on continuation of pregnancy.

The physician performing the abortion must report the identification of the diagnosing physician, the identity of the physician who performed the abortion, the probable gestational age of the child, the pregnant woman's age and race, and the pregnant woman's pregnancy history to DHHS.

Surgical abortion informed consent: Most of the surgical abortion informed consent requirements are found in current law under G.S. 90-21.82. Regardless of the current gestational age of the child, no physician can use an instrument or device to terminate a pregnancy, other than to (i) increase the probability of a live birth, (ii) preserve the life or health of the child, (iii) remove a child who died of natural causes or assault, or (iv) remove an ectopic pregnancy, unless the following conditions are met:

- The woman is provided with a consent form disclosing: (i) the identity of the physician performing the abortion, (ii) the risks of the procedure, (iii) the probable gestational age of the child, (iv) the risks of carrying the pregnancy to term, (v) a real-time view of the child and heart tone monitoring, (vi) information on whether the physician has malpractice insurance, and (vii) the location of a hospital offering obstetric care where the physician has admitting privileges.
- The consent form is (i) the one developed by DHHS; (ii) provided to the woman at least 72 hours prior to the abortion; (iii) signed and initialed by the woman at each entry; (iv) appropriately signed by the physician.
- An acknowledgement of risks and consent statement with the following information is signed by the woman at least 72 hours prior to the abortion:
 - Benefits can be available for prenatal care, birth, and neonatal care.
 - Medicaid and other state or federal assistance may be available.
 - The father is liable to support the child.
 - A statement that there are alternatives to abortion and information on those programs can be found on a DHHS website.
 - An acknowledgement the woman is not being forced to have an abortion and can withdraw consent for it at any time.
 - An acknowledgement the surgical abortion will end the pregnancy.
 - An acknowledgement the woman understands the risks of surgical abortion, has had an opportunity to ask questions about those risks, and has received state-prepared information on informed consent.
 - Information on the physician who will handle any medical complications from the abortion.
 - Information that the woman has a private right of action against a physician who has coerced her into getting an abortion.

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- The physician has signed a declaration that the abortion procedure has been explained to the woman, that she has been provided all the required information, and that all of her questions have been answered.

Medical abortion informed consent: The medical abortion informed consent provisions are all new law. Regardless of the current gestational age of the child, no physician can use a medicine, drug, or other substance to terminate a pregnancy, other than to (i) increase the probability of a live birth, (ii) preserve the life or health of the child, (iii) remove a child who died of natural causes or assault, or (iv) remove an ectopic pregnancy, unless the following conditions are met:

- The woman is provided with consent form disclosing: (i) the identity of the physician who will be physically present to provide the abortion-inducing drug, (ii) the risks and potential complications of the procedure; (iii) the probable gestational age of the child, (iv) the risks of carrying the pregnancy to term, (v) a real-time view of the child and heart tone monitoring, (vi) information on whether the physician has malpractice insurance, (vii) the location of a hospital offering obstetric care where the physician has admitting privileges, (viii) information on Rh incompatibility, and (ix) the right of the woman to see the remains or her unborn child
- The consent form is (i) the one developed by DHHS; (ii) provided to the woman at least 72 hours prior to the abortion; (iii) signed and initialed by the woman at each entry; (iv) appropriately signed by the physician.
- An acknowledgement of risks and consent statement with the following information is signed by the woman at least 72 hours prior to the abortion:
 - Benefits can be available for prenatal care, birth, and neonatal care.
 - Medicaid and other state or federal assistance can be available.
 - The father is liable to support the child.
 - A statement that there are alternatives to abortion and information on those programs can be found on a DHHS website.
 - An acknowledgement the woman is not being forced to have an abortion and can withdraw consent for it at any time.
 - An acknowledgement the medical abortion will end the pregnancy.
 - A statement the woman understands the medical abortion regimen and has been given sufficient information on it.
 - An acknowledgement the woman understands the risks of medical abortion, has had an opportunity to ask questions about those risks, and has received state-prepared information on informed consent.
 - Information on the physician who will handle any medical complications from the abortion.
 - Information that the woman has a private right of action against a physician who has coerced her into getting an abortion.
 - A follow-up appointment must be scheduled seven to 14 days to confirm termination of the pregnancy.

Duty of Physicians: In addition to the informed consent requirements, physicians administering abortion-inducing drugs must also (i) verify the pregnancy and gestational age of the child, (ii) determine the

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woman's blood type, (iii) provide any medically-indicated diagnostic tests, and (iv) screen the woman for abuse.

Reporting Requirements: Physicians must report to DHHS on all abortions performed after 12 weeks of pregnancy. In addition, the following information would need to be reported for all abortions: (i) identifying information for the physician performing the abortion, (ii) the location of the abortion, (iii) demographic and medical history information on the woman who had the abortion, (iv) the probable gestational age of the unborn child and the method used to determine that age; (v) information on any follow-up appointments, (vi) any complications to the abortion.

Adverse events must be reported to the Food and Drug Administration (for medical abortions) or DHHS (for surgical abortions). Those reports must include all the information required for a normal abortion report as well as the date of treatment for the adverse event, the specific complaint that led to treatment, and, in the case of a medical abortion, if the woman got the abortion-inducing medication via mail order.

Violations: A woman who had an abortion performed on her in violation of the provisions of Article 1I, or her parents if she were a minor at the time, has a private right of action against the physician who performed the abortion. Healthcare providers who violated the provisions of Article 1I can be disciplined by the appropriate licensing board.

Criminal Providing or Advertising of Abortion-Inducing Drugs: It is an infraction, punishable by a \$5,000 fine, to provide a woman with an abortion-inducing drug if that drug is not administered in the physical presence of a physician.

EFFECTIVE DATE: This bill was vetoed by the Governor on May 14, 2023. The veto was overridden by the General Assembly on May 16, 2023. This Part of the act became effective July 1, 2023, and the criminal provisions apply to any offenses committed on or after that date.