

## North Carolina

*Bryant v. Moore et al.*, No.1:23-CV-77, (M.D.N.C., June 3, 2024). Permanent Injunction issued In U.S. Dis. Ct., Eagles, J., ordering the following North Carolina laws preempted by federal law; (1) N. C. Gen. Stat. § 90-21.83A, §90-21.83B, §90-21.93, and any other provision that prevent any healthcare provider other than a licensed doctor from providing mifepristone, (2) N.C. Gen. Stat. §14-44.1, §90-21.83A, §90-21.83B, and any other provisions that require mifepristone to be provided in person, (3) N.C. Gen. Stat. §90-21.83A, §90-21.83B, §90-21.93, and any other provisions requiring an in-person follow-up visit after providing mifepristone, and (4) N.C. Gen. Stat. §90-21.93, and any other provisions requiring reporting of non-fatal adverse event related to mifepristone to the FDA. Civil, Criminal and administrative proceedings related to the above -mentioned statutes are enjoined from enforcement. See Judgement and Permanent Injunction, Eagles, J., No. 1:23-CV-77, June 3, 2024.

*Planned Parenthood South Atlantic (PPSAT) v. Stein et al.*, No. 1:23-cv-480 (M.D.N.C, September 30, 2023), preliminary injunction granted prohibiting enforcement of 2 provisions of North Carolina's 12 abortion ban; (1) providers must determine and document probable intrauterine location of pregnancy before administering medication to terminate pregnancy, and (2) requirement procedural abortions must be performed in hospitals after 12 weeks of pregnancy.

*Bryant v. Stein et al.*, No.1:23-cv-00077-WO-LPA (M.D.N.C., filed January 25, 2023), lawsuit filed seeks to declare NC state law restricting the use of mifepristone is preempted by regulations issued by FDA for mifepristone. NC law conflicts with FDA REMS requirements for mifepristone use. See Judgement and Permanent Injunction, Eagles, J., No. 1:23-CV-77, June 3, 2024 above.

**See *Bryant v. Moore et al*, No. No.1:23-CV-77, (M.D.N.C., June 3, 2024), Eagles J., (above) regarding permanent injunction for specific N.C. General Statutes listed in this document**

### § 90-21.80. Short title.

This act may be cited as "Abortion Laws." (2011-405, s. 1; 2023-14, s. 1.2.)

### § 90-21.81. Definitions.

The following definitions apply in this Article:

- (1) Abortion. - A surgical abortion or a medical abortion, as those terms are defined in this section, respectively.
- (1a) Abortion-inducing drug. - A medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with knowledge that the termination will, with reasonable likelihood, cause the death of the unborn child. This includes the off-label use of drugs such as mifepristone (Mifeprex), misoprostol (Cytotec), and methotrexate, approved by the United States Food and Drug Administration to induce abortions or known to have abortion-inducing properties, prescribed specifically with the intent of causing an abortion, whether or not there exists a diagnosed pregnancy at the time of prescription or dispensing, for the purposes of the woman taking the drugs at a later date to cause an abortion rather than contemporaneously with a clinically diagnosed pregnancy. This definition shall not include drugs that may be known to cause an abortion but are prescribed for other medical indications, such as chemotherapeutic agents and diagnostic drugs.
- (1b) Adverse event. - Any untoward medical occurrence associated with the use of a drug in humans, whether or not considered drug related.

- (1c) Renumbered pursuant to Session Laws 2023-14, s. 11.
- (2) Attempt to perform an abortion. - An act, or an omission of a statutorily required act, that, under the circumstances as the physician believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in violation of this Article or Article 1K of this Chapter.
- (2a) Complication. - Any physical or psychological conditions which, in the reasonable medical judgment of a licensed health care professional, arise as a primary or secondary result of an induced abortion, including:
- a. Uterine perforation.
  - b. Cervical laceration.
  - c. Infection.
  - d. Bleeding or vaginal bleeding that qualifies as a Grade 2 or higher adverse event according to the Common Terminology Criteria for Adverse Events.
  - e. Pulmonary embolism.
  - f. Deep vein thrombosis.
  - g. Failure to actually terminate the pregnancy.
  - h. Incomplete abortion due to retained tissue.
  - i. Pelvic inflammatory disease.
  - j. Endometritis.
  - k. Missed ectopic pregnancy.
  - l. Cardiac arrest.
  - m. Respiratory arrest.
  - n. Renal failure.
  - o. Shock.
  - p. Amniotic fluid embolism.
  - q. Coma.
  - r. Free fluid in abdomen.
  - s. Allergic reactions to anesthesia and abortion-inducing drugs.
  - t. Psychological complications as described by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).
- (3) Department. - The Department of Health and Human Services.
- (4) Display a real-time view of the unborn child. - An ultrasound or any more scientifically advanced means of viewing the unborn child in real time.
- (4a) Health care provider. - As defined in G.S. 90-410.
- (4b) Hospital. - As defined in G.S. 131E-76.
- (4c) Incest. - The criminally injurious conduct in the nature of the conduct described in G.S. 14-178.
- (4d) Life-limiting anomaly. - The diagnosis by a qualified physician of a physical or genetic condition that (i) is defined as a life-limiting disorder by current medical evidence and (ii) is uniformly diagnosable.
- (4e) Medical abortion. - The use of any medicine, drug, or other substance intentionally to terminate the pregnancy of a woman known to be pregnant with an intention other than to do any of the following:
- a. Increase the probability of a live birth.
  - b. Preserve the life or health of the child.
  - c. Remove a dead, unborn child who died as a result of (i) natural causes in utero, (ii) accidental trauma, or (iii) a criminal assault of the pregnant woman or her unborn child which causes the premature termination of the pregnancy.
  - d. Remove an ectopic pregnancy.

- (5) Medical emergency. - A condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including any psychological or emotional conditions. For purposes of this definition, no condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.
- (5a) Partial-birth abortion. - As defined in 18 U.S.C. § 1531(b)(1) as it exists on January 1, 2023.
- (6) Physician. - An individual licensed to practice medicine in accordance with this Chapter.
- (7) Probable gestational age. - What, in the judgment of the physician, will, with reasonable probability, be the gestational age of the unborn child at the time the abortion is planned to be performed.
- (7a) Qualified physician. - Any of the following: (i) a physician who possesses, or is eligible to possess, board certification in obstetrics or gynecology, (ii) a physician who possesses sufficient training based on established medical standards in safe abortion care, abortion complications, and miscarriage management, or (iii) a physician who performs an abortion in a medical emergency as defined by this Article.
- (8) Qualified professional. - An individual who is a registered nurse, nurse practitioner, or physician assistant licensed in accordance with Article 1 of this Chapter, or a qualified technician acting within the scope of the qualified technician's authority as provided by North Carolina law and under the supervision of a physician.
- (9) Qualified technician. - A registered diagnostic medical sonographer who is certified in obstetrics and gynecology by the American Registry for Diagnostic Medical Sonography (ARDMS) or a nurse midwife or advanced practice nurse practitioner in obstetrics with certification in obstetrical ultrasonography.
- (9a) Rape. - The criminally injurious conduct in the nature of the conduct described in G.S. 14-27.21, 14-27.22, 14-27.23, 14-27.24, and 14-27.25.
- (9b) Surgical abortion. - The use or prescription of any instrument or device intentionally to terminate the pregnancy of a woman known to be pregnant with an intention other than to do any of the following:
- a. Increase the probability of a live birth.
  - b. Preserve the life or health of the child.
  - c. Remove a dead, unborn child who died as the result of (i) natural causes in utero, (ii) accidental trauma, or (iii) a criminal assault on the pregnant woman or her unborn child which causes the premature termination of the pregnancy.
  - d. Remove an ectopic pregnancy.
- (9c) Unborn child. - As defined in G.S. 14-23.1.
- (10) Website. - A website that, to the extent reasonably practicable, is safeguarded from having its content altered other than by the Department.
- (10a) Renumbered pursuant to Session Laws 2023-14, s. 11.
- (11) Woman. - A female human, whether or not she is an adult. (2011-405, s. 1; 2013-366, s. 3(b); 2023-14, ss. 1.2, 11.)

#### **§ 90-21.81A. Abortion.**

- (a) Abortion. - It shall be unlawful after the twelfth week of a woman's pregnancy to procure or cause a miscarriage or abortion in the State of North Carolina.
- (b) Partial-Birth Abortion Prohibited. - It shall be unlawful for a qualified physician, any health care provider, or any person to perform a partial-birth abortion at any time. (2023-14, s. 1.2; 2023-65, s. 14.1(b).)

**§ 90-21.81B. When abortion is lawful.**

Notwithstanding any of the provisions of G.S. 14-44 and G.S. 14-45, and subject to the provisions of this Article, it shall not be unlawful to procure or cause a miscarriage or an abortion in the State of North Carolina in the following circumstances:

- (1) When a qualified physician determines there exists a medical emergency.
- (2) During the first 12 weeks of a woman's pregnancy, when the procedure is performed by a qualified physician licensed to practice medicine in this State in a hospital, ambulatory surgical center, or clinic certified by the Department of Health and Human Services to be a suitable facility for the performance of abortions, in accordance with G.S. 90-21.82A or during the first 12 weeks of a woman's pregnancy when a medical abortion is procured.
- (3) After the twelfth week and through the twentieth week of a woman's pregnancy, when the procedure is performed by a qualified physician in a suitable facility in accordance with G.S. 90-21.82A when the woman's pregnancy is a result of rape or incest.
- (4) During the first 24 weeks of a woman's pregnancy, if a qualified physician determines there exists a life-limiting anomaly in accordance with this Article. (2023-14, s. 1.2; 2023-65, s. 14.1(c).)

**§ 90-21.81C. Abortion reporting, objection, and inspection requirements.**

(a) Procedure Information. - A qualified physician who advises, procures, or causes a miscarriage or abortion after the twelfth week of a woman's pregnancy shall record all of the following: (i) the method used by the qualified physician to determine the probable gestational age of the unborn child at the time the procedure is to be performed, (ii) the results of the methodology, including the measurements of the unborn child, and (iii) an ultrasound image of the unborn child that depicts the measurements. The qualified physician shall provide this information, including the ultrasound image, to the Department of Health and Human Services pursuant to subsection (c) of this section.

(b) Recording of Findings. - A qualified physician who procures or causes a miscarriage or abortion after the twelfth week of a woman's pregnancy shall record the findings and analysis on which the qualified physician based the determination that there existed a medical emergency, life-limiting anomaly, rape, or incest and shall provide that information to the Department of Health and Human Services pursuant to subsection (c) of this section. Materials generated by the physician or provided by the physician to the Department of Health and Human Services pursuant to this section shall not be public records under G.S. 132-1. The information provided under this subsection shall be for statistical purposes only, and the confidentiality of the patient and the physician shall be protected. It is the duty of the qualified physician to submit information to the Department of Health and Human Services that omits identifying information of the patient and complies with Health Insurance Portability and Accountability Act of 1996 (HIPAA).

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

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

(e) Medical Personnel Objection. - No physician, nurse, or any other health care provider who shall state an objection to abortion on moral, ethical, or religious grounds shall be required to perform or participate in medical

procedures which result in an abortion. The refusal of a physician, nurse, or health care provider to perform or participate in these medical procedures shall not be a basis for damages for the refusal or for any disciplinary or any other recriminatory action against the physician, nurse, or health care provider.

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

(g) Clinic Inspection. - The Department of Health and Human Services shall annually inspect any clinic, including ambulatory surgical facilities and any suitable facility under G.S. 90-21.82A, where abortions are performed. The Department of Health and Human Services shall publish on the Department's website and on the State website established under this Article the results and findings of all inspections conducted on or after January 1, 2013, of suitable facilities, including ambulatory surgical facilities, where abortions are performed, including any statement of deficiencies and any notice of administrative action resulting from the inspection. No person who is less than 18 years of age shall be employed at any clinic, including ambulatory surgical facilities, where abortions are performed. The requirements of this subsection shall not apply to a hospital required to be licensed under Chapter 131E of the General Statutes. (2023-14, s. 1.2.)

### **§ 90-21.81D. Life-limiting anomaly procedure; informed consent.**

(a) Procedure; Informed Consent. - If a qualified physician has determined there exists a life-limiting anomaly in accordance with this Article, in order to procure or cause a miscarriage or abortion, the qualified physician who made that determination must (i) procure or cause the miscarriage or abortion during the first 24 weeks of a woman's pregnancy and (ii) explain in writing and orally or provide to the woman all of the following information:

- (1) The basis of the determination that the diagnosis qualifies as life limiting.
- (2) The risks associated with the life-limiting anomaly and any procedure or treatment, medical, surgical, or otherwise, to perform the abortion.
- (3) While there exists a risk of stillbirth with life-limiting anomalies, life-limiting anomalies have resulted in live births of infants with unpredictable and variable lengths of life.
- (4) The woman has been provided by the qualified physician with current information on the life-limiting anomaly, including the likelihood of survival and length of survival, if known, after birth based on current medical evidence. The qualified physician proposing the abortion will offer referrals to the woman for neonatal and perinatal palliative care consultations. Neonatal consultation will discuss options for medical stabilization, evaluation, and possible treatments to support the infant after birth. Perinatal palliative care will discuss a plan for comfort care interventions that include the possibility of home discharge on palliative care.
- (5) The woman has been provided all information contained in G.S. 90-21.82 if the abortion is a surgical abortion or all information contained in G.S. 90-21.83A if the abortion is a medical abortion, and her informed consent has been obtained in accordance with those sections.
- (6) The woman has been provided all information, in addition to the information provided under subdivision (5) of this subsection, regarding her options and the spectrum of care, including all of the following:
  - a. Continuation of the pregnancy.
  - b. Referrals offered to perinatal palliative comfort care service providers to discuss palliative care, neonatal specialists, and other appropriate specialists, as indicated by the particular life-limiting anomaly, and those service providers can discuss those options, including the stabilization of the infant in the labor and delivery room, transfer to the Neonatal Intensive Care Unit for further evaluation and treatment, and support for the mother and her family should they choose to continue the pregnancy.

(b) Affirmation. - All additional information provided to the woman under this section shall be signed and initialed by both the woman and the qualified physician.

(c) Report. - The qualified physician who performs an abortion due to the determination of a life-limiting anomaly under this section shall submit a report to the Department of Health and Human Services for statistical purposes. The report shall include, at a minimum, all of the following:

- (1) Identification of the qualified physician who diagnosed the baby with a life-limiting anomaly.
- (2) The probable gestational age of the unborn child.
- (3) Identification of the qualified physician who performed the abortion.
- (4) The pregnant woman's age and race.
- (5) The number of previous pregnancies, number of live births, and number of previous abortions of the pregnant woman.

(d) Public Records. - Materials generated by the physician or provided by the physician to the Department of Health and Human Services pursuant to this section shall not be public records under G.S. 132-1. (2023-14, s. 1.2.)

### **§ 90-21.82. Informed consent to surgical abortion.**

(a) No surgical abortion shall be performed upon a woman in this State without her voluntary and informed consent as described in this section.

(b) Except in the case of a medical emergency, consent to a surgical abortion is voluntary and informed only if all of the following conditions are satisfied:

(1) At least 72 hours prior to the surgical abortion, a physician or qualified professional has orally informed the woman, in person, of the information contained in the consent form.

(1a) The consent form shall include, at a minimum, all of the following:

- a. The name of the physician who will perform the surgical abortion to ensure the safety of the procedure and prompt medical attention to any complications that may arise, specific information for the physician's hospital admitting privileges, and whether the physician accepts the pregnant woman's insurance. The physician performing a surgical abortion shall be physically present during the performance of the entire abortion procedure.
- b. The particular medical risks associated with the surgical abortion procedure to be employed, including, when medically accurate, the risks of infection, hemorrhage, cervical tear or uterine perforation, danger to subsequent pregnancies, including the ability to carry a child to full term, and any adverse psychological effects associated with the surgical abortion.
- c. The probable gestational age of the unborn child at the time the surgical abortion is to be performed.
- d. The medical risks associated with carrying the child to term.
- e. The display of a real-time view of the unborn child and heart tone monitoring that enable the pregnant woman to view her unborn child or listen to the heartbeat of the unborn child are available to the woman. The physician performing the surgical abortion, qualified technician, or referring physician shall inform the woman that the printed materials and website described in G.S. 90-21.83 and G.S. 90-21.84 contain phone numbers and addresses for facilities that offer the services free of charge. If requested by the woman, the physician or qualified professional shall provide to the woman the list as compiled by the Department.
- f. If the physician who is to perform the surgical abortion has no liability insurance for malpractice in the performance or attempted performance of a surgical abortion, that information shall be communicated.
- g. The location of the hospital that offers obstetrical or gynecological care located within 30 miles of the location where the surgical abortion is performed or induced and at which the physician performing or inducing the surgical abortion has clinical privileges. If the

physician who will perform the surgical abortion has no local hospital admitting privileges, that information shall be communicated.

If the physician or qualified professional does not know the information required in sub-subdivisions a., f., or g. of this subdivision, the woman shall be advised that this information will be directly available from the physician who is to perform the surgical abortion. However, the fact that the physician or qualified professional does not know the information required in sub-subdivisions a., f., or g. shall not restart the 72-hour period. The information required by this subdivision shall be provided in English and in each language that is the primary language of at least two percent (2%) of the State's population. The information shall be provided orally in person, by the physician or qualified professional, in which case the required information may be based on facts supplied by the woman to the physician and whatever other relevant information is reasonably available. The information required by this subdivision shall not be provided by a tape recording but shall be provided during a consultation in which the physician is able to ask questions of the patient and the patient is able to ask questions of the physician. If, in the medical judgment of the physician, a physical examination, tests, or the availability of other information to the physician subsequently indicates a revision of the information previously supplied to the patient, then that revised information may be communicated to the patient at any time before the performance of the surgical abortion. Nothing in this section may be construed to preclude provision of required information in a language understood by the patient through a translator.

- (1b) A consent form shall not be considered valid, and informed consent not obtained by the woman, unless all of the following conditions are satisfied:
  - a. The woman signs and initials each entry, list, description, or declaration required to be on the consent form described in sub-subdivisions a. through g. of subdivision (1a) of this subsection.
  - b. The woman signs and initials each entry, list, description, or declaration required to be on the acknowledgment of risks and consent statement described in sub-subdivisions a. through n. of subdivision (2) of this subsection.
  - c. The physician signs the qualified physician declaration described in subdivision (5) of this subsection.
  - d. The physician uses the consent form created by the Department for the purposes of this section.
- (2) Prior to the surgical abortion, an acknowledgment of risks and consent statement must be signed and initialed by the woman with a physical or electronic signature attesting she has received all of the following information at least 72 hours before the surgical abortion. The acknowledgment of risks and consent statement shall include, at a minimum, all of the following:
  - a. That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care.
  - b. That public assistance programs under Chapter 108A of the General Statutes may or may not be available as benefits under federal and State assistance programs.
  - c. That the father is liable to assist in the support of the child, even if the father has offered to pay for the abortion.
  - d. That the woman has other alternatives to abortion, including keeping the baby or placing the baby for adoption.
  - e. That the woman has been told about the printed materials described in G.S. 90-21.83, and that she has been told that these materials are available on a State-sponsored website, and she has been given the address of the State-sponsored website. The physician or a

qualified professional shall orally inform the woman that the materials have been provided by the Department and that they describe the unborn child and list agencies that offer alternatives to abortion. If the woman chooses to view the materials other than on the website, the materials shall be given to her at least 72 hours before the surgical abortion.

- f. That the woman (i) is not being forced to have a surgical abortion, (ii) has a choice to not have the surgical abortion, and (iii) is free to withhold or withdraw her consent to the surgical abortion at any time before or during the surgical abortion without affecting her right to future care or treatment and without the loss of any State or federally funded benefits to which she might otherwise be entitled.
- g. Attestation that the woman understands that the surgical abortion is intended to end her pregnancy.
- h. Attestation that the woman understands the surgical abortion has specific risks and may result in specific complications.
- i. Attestation that the woman has been given the opportunity to ask questions about her pregnancy, the development of her unborn child, and alternatives to surgical abortion.
- j. Confirmation that the woman has been provided access to State-prepared, printed materials on informed consent for surgical abortion and the State-prepared and maintained website on informed consent for a surgical abortion.
- k. If applicable, that the woman has been given the name and phone number of a qualified physician who has agreed to provide medical care and treatment in the event of complications associated with the surgical abortion procedure.
- l. Attestation that the woman has received or been given sufficient information to give her informed consent to the surgical abortion.
- m. That the woman has a private right of action to sue the qualified physician under the laws of this State if she feels she has been coerced or misled prior to obtaining an abortion, and how to access State resources regarding her legal right to obtain relief.
- n. A statement that she will be given a copy of the forms and materials with all signatures and initials required under this Article, and all other informed consent forms required by this State.

The information required by this subdivision shall be provided in English and in each language that is the primary language of at least two percent (2%) of the State's population.

(3) Repealed by Session Laws 2023-14, s. 1.2, effective July 1, 2023.

(4) Repealed by Session Laws 2023-14, s. 1.2, effective July 1, 2023.

(5) The physician has signed a physician declaration form stating that prior to the surgical abortion procedure, the qualified physician has (i) explained in person the surgical abortion procedure to be used, (ii) provided all of the information required in this section, and (iii) answered all of the woman's questions regarding the surgical abortion. (2011-405, s. 1; 2013-366, s. 4(a); 2015-62, s. 7(b); 2023-14, s. 1.2; 2023-65, s. 14.1(d).)

#### **§ 90-21.82A. Suitable facilities for the performance of surgical abortions.**

(a) The following definitions apply in this section:

(1) Abortion clinic. - As defined in G.S. 131E-153.1.

(2) Ambulatory surgical facility. - As defined in G.S. 131E-176.

(3) Hospital. - As defined in G.S. 131E-176.

(b) During the first 12 weeks of pregnancy, a physician licensed to practice medicine under this Chapter may perform a surgical abortion in a hospital, an ambulatory surgical facility, or an abortion clinic; provided, however,



that (i) the clinic has been licensed by the Department of Health and Human Services to be a suitable facility for the performance of abortions and (ii) the licensed physician performs the abortion in accordance with this Article and Article 1K of this Chapter.

(c) After the twelfth week of pregnancy, a physician licensed to practice medicine under this Chapter may not perform a surgical abortion as permitted under North Carolina law in any facility other than a hospital. (2023-14, s. 2.1.)

**§ 90-21.83. Printed information required.**

(a) Within 90 days after this Article becomes effective, the Department shall publish in English and in each language that is the primary language of at least two percent (2%) of the State's population and shall cause to be available on the website established under G.S. 90-21.84, the following printed materials in a manner that ensures that the information is comprehensible to a person of ordinary intelligence:

- (1) Geographically indexed materials designed to inform a woman of public and private agencies and services available to assist her through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies. The information shall include a comprehensive list of the agencies available, a description of the services they offer, including which agencies offer, at no cost to the woman, imaging that enables the woman to view the unborn child or heart tone monitoring that enables the woman to listen to the heartbeat of the unborn child, and a description of the manner, including telephone numbers, in which they might be contacted. In the alternative, in the discretion of the Department, the printed materials may contain a toll-free, 24-hour-a-day telephone number that may be called to obtain, orally or by tape recorded message tailored to the zip code entered by the caller, a list of these agencies in the locality of the caller and of the services they offer.
- (2) Materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time a woman can be known to be pregnant until full term, including pictures or drawings representing the development of the unborn child at two-week gestational increments. The pictures shall contain the dimensions of the unborn child, information about brain and heart functions, the presence of external members and internal organs, and be realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages. The material shall contain objective information describing the methods of abortion procedures employed, the medical risks associated with each procedure, the possible adverse psychological effects of abortion, as well as the medical risks associated with carrying an unborn child to term.

(b) The materials referred to in subsection (a) of this section shall be printed in a typeface large enough to be clearly legible. The website provided for in G.S. 90-21.84 shall be maintained at a minimum resolution of 70 DPI (dots per inch). All pictures appearing on the website shall be a minimum of 200x300 pixels. All letters on the website shall be a minimum of 12-point font. All information and pictures shall be accessible with an industry-standard browser requiring no additional plug-ins.

(c) The materials required under this section shall be available at no cost from the Department upon request and in appropriate numbers to any physician, person, health facility, hospital, or qualified professional. The Department shall create the consent forms described in this section to be used by qualified physicians for the purposes of obtaining informed consent for surgical and medical abortions.

(d) The Department shall cause to be available on the website a list of resources the woman may contact for assistance upon receiving information from the physician performing the ultrasound that the unborn child may have a disability or serious abnormality and shall do so in a manner prescribed by subsection (b) of this section. (2011-405, s. 1; 2013-366, s. 4(b); 2023-14, s. 1.2.)

**§ 90-21.83A. Informed consent to medical abortion.**

(a) No medical abortion shall be performed upon a woman in this State without her voluntary and informed consent as described in this section.

(b) Except in the case of a medical emergency, consent to a medical abortion is voluntary and informed only if all of the following conditions are satisfied:

(1) At least 72 hours prior to the medical abortion, a qualified physician or qualified professional has orally informed the woman, in person, of the information contained in the consent form.

(2) The consent form shall include, at a minimum, all of the following:

- a. The name of the physician who will prescribe, dispense, or otherwise provide the abortion-inducing drugs to ensure the safety of the procedure and prompt medical attention to any complications that may arise, specific information for the physician's hospital admitting privileges, and whether the physician accepts the pregnant woman's insurance. The physician prescribing, dispensing, or otherwise providing any drug or chemical for the purpose of inducing an abortion shall be physically present in the same room as the woman when the first drug or chemical is administered to the woman.
- b. The probable gestational age of the unborn child as determined by both patient history and by ultrasound results used to confirm gestational age.
- c. A detailed description of the steps to complete the medical abortion.
- d. A detailed list of the risks related to the specific abortion-inducing drug or drugs to be used, including hemorrhage, failure to remove all tissue of the unborn child which may require an additional procedure, sepsis, sterility, and possible continuation of the pregnancy.
- e. The medical risks associated with carrying the child to term.
- f. The display of a real-time view of the unborn child and heart tone monitoring that enable the pregnant woman to view her unborn child or listen to the heartbeat of the unborn child are available to the woman. The physician performing the abortion, qualified technician, or referring physician shall inform the woman that the printed materials and website described in G.S. 90-21.83 and G.S. 90-21.84 contain phone numbers and addresses for facilities that offer the services free of charge. If requested by the woman, the physician or qualified professional shall provide to the woman the list as compiled by the Department.
- g. Information about Rh incompatibility, including that if the woman has an Rh-negative blood type, she could receive an injection of Rh immunoglobulin at the time of the medical abortion to prevent Rh incompatibility in future pregnancies.
- h. Information about the risks of complications from a medical abortion, including incomplete abortion, increase with advancing gestational age, and that infection and hemorrhage are the most common causes of deaths related to medical abortions.
- i. Notice that the woman may see the remains of her unborn child in the process of completing the abortion.
- j. Notice that the physician who is to perform the medical abortion has no liability insurance for malpractice in the performance or attempted performance of an abortion, if applicable.
- k. The location of the hospital that offers obstetrical or gynecological care located within 30 miles of the location where the medical abortion is performed or induced and at which the physician performing or inducing the medical abortion has clinical privileges. If the physician who will perform the medical abortion has no local hospital admitting privileges, that information shall be communicated.

If the physician or qualified professional does not know the information required in sub-subdivision a., j., or k. of this subdivision, the woman shall be advised that this information will be directly available from the physician who is to perform the medical abortion. However, the fact that the physician or qualified professional does not know the information required in sub-subdivision a., j., or k. shall not restart the 72-hour period. The information required by this subdivision shall be provided in English and in each language that is the primary language of at least two percent (2%) of the State's population. The information shall be provided orally in person, by the physician or qualified professional, in which case the required information may be based on facts supplied by the woman to the physician and whatever other relevant information is reasonably available. The information required by this subdivision shall not be provided by a tape recording but shall be provided during an in-person consultation conducted by a qualified professional or a qualified physician. A physician must be available to ask and answer questions within the statutory time frame upon request of the patient or the qualified professional. If, in the medical judgment of the physician, a physical examination, tests, or the availability of other information to the physician subsequently indicates a revision of the information previously supplied to the patient, then that revised information may be communicated to the patient at any time before the performance of the medical abortion. Nothing in this section may be construed to preclude provision of required information in a language understood by the patient through a translator.

- (3) A consent form shall not be considered valid, and informed consent not obtained from the woman, unless all of the following conditions are satisfied:
  - a. The woman signs and initials each entry, list, description, or declaration required to be on the consent form described in subdivision (2) of this subsection.
  - b. The woman signs and initials each entry, list, description, or declaration required to be on the acknowledgment of risks and consent statement described in subdivision (4) of this subsection.
  - c. The physician signs the qualified physician declaration described in subdivision (5) of this subsection.
  - d. The physician uses the consent form created by the Department for the purposes of this section.
- (4) Prior to the medical abortion, an acknowledgment of risks and consent statement must be signed and initialed by the woman with a physical or electronic signature attesting she has received all of the following information at least 72 hours before the medical abortion. The acknowledgment of risks and consent statement shall include, at a minimum, all of the following:
  - a. That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care.
  - b. That public assistance programs under Chapter 108A of the General Statutes may or may not be available as benefits under federal and State assistance programs.
  - c. That the father is liable to assist in the support of the child, even if the father has offered to pay for the abortion.
  - d. That the woman has other alternatives to abortion, including keeping the baby or placing the baby for adoption.
  - e. That the woman has been told about the printed materials described in G.S. 90-21.83, and that she has been told that these materials are available on a State-sponsored website, and she has been given the address of the State-sponsored website. The physician or a qualified professional shall orally inform the woman that the materials have been provided by the Department and that they describe the unborn child and list agencies

that offer alternatives to abortion. If the woman chooses to view the materials other than on the website, the materials shall be given to her at least 72 hours before the medical abortion.

- f. Attestation that the woman (i) is not being forced to have a medical abortion, (ii) has a choice to not have the medical abortion, and (iii) is free to withhold or withdraw her consent to the abortion-inducing drug regimen even after she has begun the abortion-inducing drug regimen.
- g. Attestation that the woman understands that the medical abortion is intended to end her pregnancy.
- h. Attestation that the woman understands the medical abortion regimen has specific risks and may result in specific complications.
- i. Attestation that the woman has been given the opportunity to ask questions about her pregnancy, the development of her unborn child, and alternatives to medical abortion.
- j. Confirmation that the woman has been provided access to State-prepared, printed materials on informed consent for abortion and the State-prepared and maintained website on informed consent for a medical abortion.
- k. If applicable, that the woman has been given the name and phone number of a qualified physician who has agreed to provide medical care and treatment in the event of complications associated with the abortion-inducing drug regimen.
- l. Notice that the physician will schedule an in-person follow-up visit for the woman at approximately seven to 14 days after providing the abortion-inducing drug or drugs to confirm that the pregnancy is completely terminated and to assess the degree of bleeding and other complications.
- m. That the woman has received or been given sufficient information to give her informed consent to the abortion-inducing drug regimen or procedure.
- n. That the woman has a private right of action to sue the qualified physician under the laws of this State if she feels she has been coerced or misled prior to obtaining an abortion, and how to access State resources regarding her legal right to obtain relief.
- o. A statement that she will be given a copy of the forms and materials with all signatures and initials required under this Article, and all other informed consent forms required by this State.

The information required by this subdivision shall be provided in English and in each language that is the primary language of at least two percent (2%) of the State's population.

- (5) The physician has signed a physician declaration form stating that prior to the medical abortion procedure, the qualified physician has (i) explained in person the medical abortion procedure to be used, (ii) provided all of the information required in this section, and (iii) answered all of the woman's questions regarding the medical abortion. (2023-14, s. 1.2; 2023-65, ss. 13B.1(a), 14.1(e).)

**§ 90-21.83B. Distribution of abortion-inducing drugs and duties of physician.**

(a) A physician prescribing, administering, or dispensing an abortion-inducing drug must examine the woman in person and, prior to providing an abortion-inducing drug, shall do all of the following:

- (1) Independently verify that the pregnancy exists.
- (2) Determine the woman's blood type; offer necessary medical services, treatment, and advice, based on the physician's reasonable medical judgment of any medical risks associated with the woman's blood type, including whether the woman's blood type is Rh negative; and be able to administer Rh immunoglobulin at the time of the abortion, if medically necessary.

- (3) Provide any other medically indicated diagnostic tests, including iron or hemoglobin/hematocrit tests, to determine whether the woman has a heightened risk of complications.
- (4) Screen the woman for coercion, abuse, comply with G.S. 90-21.91, and refer the woman to the appropriate health care provider for appropriate treatment, if medically necessary.
- (5) Inform the patient that she may see the remains of her unborn child in the process of completing the abortion.
- (6) Verify the probable gestational age of the unborn child.
- (7) Document in the woman's medical chart the probable gestational age and existence of an intrauterine pregnancy, and whether the woman received treatment for an Rh negative condition or any other diagnostic tests.
- (8) Comply with all provisions of this Article and laws of this State as applicable.

(b) The physician providing any abortion-inducing drug, or an agent of the physician, shall schedule a follow-up visit for the woman at approximately seven to 14 days after administration of the abortion-inducing drug to confirm that the pregnancy is completely terminated and to assess the degree of bleeding. The physician shall make all reasonable efforts to ensure that the woman returns for the scheduled appointment. A brief description of the efforts made to comply with this subsection, including the date, time, and identification by name of the person making these efforts, shall be included in the woman's medical records. (2023-14, s. 1.2; 2023-65, s. 14.1(f).)

#### **§ 90-21.85. Display of real-time view requirement.**

(a) Notwithstanding G.S. 90-21.81B, except in the case of a medical emergency, in order for the woman to make an informed decision, at least four hours before a woman having any part of an abortion performed or induced, and before the administration of any anesthesia or medication in preparation for the abortion on the woman, the physician who is to perform the abortion, or qualified technician working in conjunction with the physician, shall do each of the following:

- (1) Perform an obstetric real-time view of the unborn child on the pregnant woman.
- (2) Provide a simultaneous explanation of what the display is depicting, which shall include the presence, location, and dimensions of the unborn child within the uterus and the number of unborn children depicted. The individual performing the display shall offer the pregnant woman the opportunity to hear the fetal heart tone. The image and auscultation of fetal heart tone shall be of a quality consistent with the standard medical practice in the community. If the image indicates that fetal demise has occurred, a woman shall be informed of that fact.
- (3) Display the images so that the pregnant woman may view them.
- (4) Provide a medical description of the images, which shall include the dimensions of the embryo or fetus and the presence of external members and internal organs, if present and viewable.
- (5) Obtain a written certification from the woman, before the abortion, that the requirements of this section have been complied with, which shall indicate whether or not she availed herself of the opportunity to view the image.
- (6) Retain a copy of the written certification prescribed by subdivision (a)(5) of this section. The certification shall be placed in the medical file of the woman and shall be kept by the abortion provider for a period of not less than seven years. If the woman is a minor, then the certification shall be placed in the medical file of the minor and kept for at least seven years or for five years after the minor reaches the age of majority, whichever is greater.

If the woman has had an obstetric display of a real-time image of the unborn child within 72 hours before the abortion is to be performed, the certification of the physician or qualified technician who performed the procedure in compliance with this subsection shall be included in the patient's records and the requirements under this subsection shall be deemed to have been met.

(a) A pregnant woman has the right to view a real-time view image of the unborn child under this section and shall not be denied a real-time view of the unborn child due to a clinic policy or rule.

(b) Nothing in this section shall be construed to prevent a pregnant woman from averting her eyes from the displayed images or from refusing to hear the simultaneous explanation and medical description.

(c) In the event the person upon whom the abortion is to be performed is an unemancipated minor, as defined in G.S. 90-21.6(1), the information described in subdivisions (a)(2) and (a)(4) of this section shall be furnished and offered respectively to a person required to give parental consent under G.S. 90-21.7(a) and the unemancipated minor. The person required to give consent in accordance with G.S. 90-21.7(a), as appropriate, shall make the certification required by subdivision (a)(5) of this section. In the event the person upon whom the abortion is to be performed has been adjudicated mentally incompetent by a court of competent jurisdiction, the information shall be furnished and offered respectively to her spouse or a legal guardian if she is married or, if she is not married, to one parent or a legal guardian and the woman. The spouse, legal guardian, or parent, as appropriate, shall make the certification required by subdivision (a)(5) of this section. In the case of an abortion performed pursuant to a court order under G.S. 90-21.8(e) and (f), the information described in subdivisions (a)(2) and (a)(4) of this section shall be provided to the minor, and the certification required by subdivision (a)(5) of this section shall be made by the minor. (2011-405, s. 1; 2023-14, s. 1.2; 2023-65, s. 14.1(h).)

#### **§ 90-21.86. Procedure in case of medical emergency.**

When a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or that a 72-hour delay will create a serious risk of substantial and irreversible impairment of a major bodily function, not including psychological or emotional conditions. As soon as feasible, the physician shall document in writing the medical indications upon which the physician relied and shall cause the original of the writing to be maintained in the woman's medical records and a copy given to her. (2011-405, s. 1; 2015-62, s. 7(c).)

#### **§ 90-21.87. Informed consent for a minor.**

If the woman upon whom an abortion is to be performed is an unemancipated minor, the voluntary and informed written consent required under G.S. 90-21.82 or G.S. 90-21.83A shall be obtained from the minor and from the adult individual who gives consent pursuant to G.S. 90-21.7(a). (2011-405, s. 1; 2023-14, s. 1.2.)

#### **§ 90-21.88. Civil remedies.**

(a) Any person upon whom an abortion has been performed, her personal representative in the event of a wrongful death action in accordance with G.S. 28A-18-1, and any father of an unborn child that was the subject of an abortion may maintain an action for damages against the person who performed the abortion in knowing or reckless violation of this Article. Any person upon whom an abortion has been attempted may maintain an action for damages against the person who performed the abortion in willful violation of this Article.

(a) Notwithstanding any other provision of law, (i) a woman upon whom the abortion has been attempted, induced, or performed or (ii) her parent or guardian, if she is a minor at the time of the attempted or completed abortion, may bring an action under this section within three years from the date of the alleged violation or from the date of the initial discovery of harm from an alleged violation. If at the time of the alleged violation the woman is a minor, then the minor shall have three years from the date the minor attains the age of majority to bring an action under this section.

(b) Injunctive relief against any person who has willfully violated this Article may be sought by and granted to (i) the woman upon whom an abortion was performed or attempted to be performed in violation of this Article, (ii) any person who is the spouse, parent, sibling, or guardian of, or a current or former licensed health care provider of, the woman upon whom an abortion has been performed or attempted to be performed in violation of this

Article, or (iii) the Attorney General. The injunction shall prevent the abortion provider from performing or inducing further abortions in this State in violation of this Article.

(c) If judgment is rendered in favor of the plaintiff in any action authorized under this section, the court shall also tax as part of the costs reasonable attorneys' fees in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous or brought in bad faith, then the court shall tax as part of the costs reasonable attorneys' fees in favor of the defendant against the plaintiff. (2011-405, s. 1; 2023-14, s. 1.2.)

#### **§ 90-21.88A. Violation of this Article.**

A physician who violates any provision of this Article shall be subject to discipline by the North Carolina Medical Board under G.S. 90-14(a)(2) and any other applicable law or rule. Any licensed pharmacist who violates any provision of this Article shall be subject to discipline by the North Carolina Board of Pharmacy under Article 4A of this Chapter. Any other licensed health care provider who violates any provision of this Article shall be subject to discipline under their respective licensing agency or board. No pregnant woman seeking to obtain an abortion in accordance with this Article shall be subject to professional discipline for attempting to do so. (2023-14, s. 1.2.)

#### **§ 90-21.89. Protection of privacy in court proceedings.**

In every proceeding or action brought under this Article, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted shall be preserved from public disclosure if she does not give her consent to the disclosure. The court, upon motion or sua sponte, shall make the ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each order issued pursuant to this section shall be accompanied by specific written findings explaining (i) why the anonymity of the woman should be preserved from public disclosure, (ii) why the order is essential to that end, (iii) how the order is narrowly tailored to serve that interest, and (iv) why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone who brings an action under G.S. 90-21.88 (a) or (b) shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant. (2011-405, s. 1.)

#### **§ 90-21.90. Assurance of informed consent.**

(a) All information required to be provided under G.S. 90-21.82 and G.S. 90-21.83A to a woman considering abortion shall be presented to the woman individually and in the physical presence of the woman and in a language the woman understands to ensure that the woman has adequate opportunity to ask questions and to ensure the woman is not the victim of a coerced abortion.

(b) Should a woman be unable to read the materials provided to the woman pursuant to this section, a physician or qualified professional shall read the materials to the woman in a language the woman understands before the abortion. (2011-405, s. 1; 2023-14, s. 1.2.)

#### **§ 90-21.91. Assurance that consent is freely given.**

If a physician acting pursuant to this Article has reason to believe that a woman is being coerced into having an abortion, the physician or qualified professional shall inform the woman that services are available for the woman and shall provide the woman with private access to a telephone and information about, but not limited to, each of the following services:

- (1) Rape crisis centers.
- (2) Shelters for victims of domestic violence.
- (3) Restraining orders.

(4) Pregnancy care centers. (2011-405, s. 1.)

**§ 90-21.92. Severability.**

If any one or more provision, section, subsection, sentence, clause, phrase, or word of this Article or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable, and the balance of this Article shall remain effective, notwithstanding such unconstitutionality. The General Assembly hereby declares that it would have passed this Article, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional. (2011-405, s. 1.)

**§ 90-21.93. Reporting requirements.**

(a) Report. - After a surgical or medical abortion is performed, the physician or health care provider that conducted the surgical or medical abortion shall complete and transmit a report to the Department in compliance with the requirements of this section. The report shall be completed by either the hospital, clinic, or health care provider in which the surgical or medical abortion was completed and signed by the physician who dispensed, administered, prescribed, or otherwise provided the abortion-inducing drug or performed the procedure or treatment to the woman. Any physician or health care provider shall make reasonable efforts to include all of the required information in this section in the report without violating the privacy of the woman. The report shall be transmitted to the Department within 15 days after either the (i) date of the follow-up appointment following a medical abortion, (ii) date of the last patient encounter for treatment directly related to a surgical abortion, or (iii) end of the month in which the last scheduled appointment occurred, whichever is later. A report completed under this section for a minor shall be sent to the Department and the Division of Social Services within 30 days of the surgical or medical abortion.

(b) Contents. - Each report completed in accordance with this section shall contain, at a minimum, all of the following:

- (1) Identifying information of the (i) physician who provided the abortion-inducing drug or performed the surgical abortion and (ii) referring physician, agency, or service, if applicable.
- (2) The location, date, and type of the surgical abortion, or the location of where any abortion-inducing drug was administered or dispensed, including any health care provider facility, at the home of the pregnant woman, or other location.
- (3) The woman's county, state, and country of residence; age; and race.
- (4) The woman's number of live births, previous pregnancies, and number of previous abortions.
- (5) The woman's preexisting medical conditions, which could complicate her pregnancy.
- (6) The probable gestational age of the unborn child, as determined by both patient history and ultrasound, and the date of the ultrasound used to estimate gestational age.
- (7) The abortion-inducing drugs used, and the date in which the abortion-inducing drugs were dispensed, administered, and used.
- (8) Whether the woman returned for the scheduled follow-up appointment or examination to determine the completion of the abortion procedure and to assess bleeding, the results of the follow-up appointment or examination, and the date of any follow-up appointment or examination of the abortion procedure.
- (9) The reasonable efforts of the physician to encourage the woman to attend the follow-up appointment or examination if the woman did not attend.
- (10) Any specific complications the woman suffered from the abortion procedure.
- (11) The amount of money billed to cover the treatment for specific complications, including whether the treatment was billed to Medicaid, private insurance, private pay, or any other method, including ICD-10 diagnosis codes reported, any other codes reported, any charges for hospitals,



emergency departments, physicians, prescriptions or other drugs, laboratory tests, and any other costs for treatment.

(c) Adverse Event from Abortion-Inducing Drug Report. - If a woman has an adverse event related to the administration, dispensing, or prescription of an abortion-inducing drug for the purpose of inducing an abortion, the physician who provided the abortion-inducing drug or the physician who diagnosed or treated the woman for the adverse event shall provide a written report of the adverse event within three days of the adverse event to the Food and Drug Administration through the MedWatch Reporting System and to the Department.

(d) Adverse Event or Complication from Abortion Procedure Report. - If a woman has an adverse event or complication related to a surgical abortion or abortion procedure, the physician or health care provider who performed the surgical abortion or abortion procedure or the physician who diagnosed or treated the woman for the adverse event or complication shall make a report of the adverse event or complication, including the diagnosis or treatment that was provided. A report under this subsection shall be transmitted to the Department within 15 days of the end of the month that the adverse event or complication occurred.

(e) Additional Report Contents. - In addition to the information in subsection (b) of this section, a report made under subsection (c) or (d) of this section shall contain all of the following information:

- (1) The date the woman presented for treatment of the adverse event or complication.
- (2) The specific complication that led to the treatment, including any physical or psychological conditions, which, in the reasonable medical judgment of a physician or health care provider, arose as a primary or secondary result of an induced abortion.
- (3) Whether the woman obtained abortion-inducing drugs as a mail order or from an internet website, and, if so, information identifying the name of the source, website or URL address, and telemedicine provider.

(f) Departmental Reports. - The Department shall prepare a comprehensive annual statistical report based upon the data gathered from reports under this Article. The report shall be made available to the public in a downloadable format. On or before October 1, 2023, and each October 1 thereafter, the Department shall submit the report to the Joint Legislative Oversight Committee on Health and Human Services. The Department shall also submit data and the annual report to the Centers for Disease Control and Prevention for inclusion in the annual Vital Statistics Report. Original copies of reports shall be made available to the North Carolina Medical Board, the North Carolina Board of Pharmacy, State law enforcement offices, and the Division of Social Services for official use.

(g) Identifying Information. - A report completed under this section shall not contain the woman's name, any common identifiers of the woman, or any other information that would make it possible to identify the woman subject to a report under this section, including the woman's social security number or drivers license identification number. The Department and any State agency or any contractor thereof shall not maintain statistical information that may reveal the identity of a woman obtaining or seeking to obtain a surgical or medical abortion. Absent a court order, the Department and any State agency or any contractor thereof shall not compare data concerning surgical or medical abortions or resulting complications maintained in an electronic or other information system file or format with data in any other format or information system in an effort to identify a woman obtaining or seeking to obtain a drug-induced abortion.

(h) Communication of Information. - The Department shall communicate the reporting requirements of this Article to all medical professional organizations, licensed physicians, hospitals, emergency departments, clinics certified to perform abortion services under this Article, other clinics and facilities that provide health care services, and any other health care facility in this State. (2023-14, s. 1.2; 2023-65, s. 14.1(j).)

## **Article 1K. Certain Abortions Prohibited.**

### **§ 90-21.120. Definitions.**

The following definitions apply in this Article:

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

(3) Woman. – As defined in G.S. 90-21.81. (2013-366, s. 3(a); 2023-14, s. 1.4(a).)

**§ 90-21.121. Eugenic abortions prohibited.**

(a) Notwithstanding any of the provisions of G.S. 90-21.81B, no person shall perform or attempt to perform an abortion upon a pregnant woman if the person has knowledge that the pregnant woman is seeking the abortion, in whole or in part, because of any of the following:

- (1) The actual or presumed race or racial makeup of the unborn child.
- (2) The sex of the unborn child.
- (3) The presence or presumed presence of Down syndrome.

(b) Nothing in this section shall be construed as placing an affirmative duty on a physician to inquire as to whether the sex of the unborn child is a significant factor in the pregnant woman seeking the abortion.

(2013-366, s. 3(a); 2023-14, s. 1.4(b).)

**§ 90-21.122. Civil remedies.**

(a) Any person who violates any provision of this Article shall be liable for damages, including punitive damages pursuant to Chapter 1D of the General Statutes, and may be enjoined from future acts.

(b) A claim for damages against any person who has violated a provision of this Article may be sought by (i) the woman upon whom an abortion was performed or attempted in violation of this Article, (ii) any person who is the spouse or guardian of the woman upon whom an abortion was performed or attempted in violation of this Article, or (iii) a parent of the woman upon whom an abortion was performed or attempted in violation of this Article if the woman was a minor at the time the abortion was performed or attempted.

(c) A claim for injunctive relief against any person who has violated a provision of this Article may be sought by (i) the woman upon whom an abortion was performed or attempted in violation of this Article, (ii) any person who is the spouse, guardian, or current or former licensed health care provider of the woman upon whom an abortion was performed or attempted in violation of this Article, or (iii) a parent of the woman upon whom an abortion was performed or attempted in violation of this Article if the woman was a minor at the time the abortion was performed or attempted.

(d) Any person who violates the terms of an injunction issued in accordance with this section shall be subject to civil contempt and shall be fined ten thousand dollars (\$10,000) for the first violation, fifty thousand dollars (\$50,000) for the second violation, and one hundred thousand dollars (\$100,000) for the third violation and each subsequent violation. Each performance or attempted performance of an abortion in violation of the terms of an injunction is a separate violation. The fine shall be the exclusive penalty for civil contempt under this subsection. The fine under this subsection shall be cumulative. No fine shall be assessed against the woman upon whom an abortion is performed or attempted.

(e) The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (2013-366, s. 3(a).)

**§ 90-21.123. Protection of privacy in court proceedings.**

In every proceeding or action brought under this Article, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted shall be preserved from public disclosure if the woman does not give her consent to the disclosure. The court, upon motion or sua sponte, shall make the ruling and, upon determining that the woman's anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. Each order issued pursuant to this section shall be accompanied by specific written findings explaining (i) why the anonymity of the woman should be preserved from public disclosure, (ii) why the order is essential to that end, (iii) how the order is narrowly tailored to serve that interest, and (iv) why no reasonable, less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone who brings an action under G.S. 90-21.122 shall do so under a pseudonym. This section may

not be construed to conceal the identity of the plaintiff or of witnesses from the defendant. (2013-366, s. 3(a).)

#### **Article 1A. Treatment of Minors. Part 1. General Provisions.**

##### **§ 90-21.1.**

When physician may treat minor without consent of parent, guardian or person in loco parentis. It shall be lawful for any physician licensed to practice medicine in North Carolina to render treatment to any minor without first obtaining the consent and approval of either the father or mother of said child, or any person acting as guardian, or any person standing in loco parentis to said child where: (1) The parent or parents, the guardian, or a person standing in loco parentis to said child cannot be located or contacted with reasonable diligence during the time within which said minor needs to receive the treatment herein authorized, or (2) Where the identity of the child is unknown, or where the necessity for immediate treatment is so apparent that any effort to secure approval would delay the treatment so long as to endanger the life of said minor, or (3) Where an effort to contact a parent, guardian, or person standing in loco parentis would result in a delay that would seriously worsen the physical condition of said minor, or (4) Where the parents refuse to consent to a procedure, and the necessity for immediate treatment is so apparent that the delay required to obtain a court order would endanger the life or seriously worsen the physical condition of the child. No treatment shall be administered to a child over the parent's objection as herein authorized unless the physician shall first obtain the opinion of another physician licensed to practice medicine in the State of North Carolina that such procedure is necessary to prevent immediate harm to the child. Provided, however, that the refusal of a physician to use, perform or render treatment to a minor without the consent of the minor's parent, guardian, or person standing in the position of loco parentis, in accordance with this Article, shall not constitute grounds for a civil action or criminal proceedings against such physician. (1965, c. 810, s. 1; 1977, c. 625, s. 1.)

##### **§ 90-21.2. "Treatment" defined.**

The word "treatment" as used in G.S. 90-21.1 is hereby defined to mean any medical procedure or treatment, including X rays, the administration of drugs, blood transfusions, use of anesthetics, and laboratory or other diagnostic procedures employed by or ordered by a physician licensed to practice medicine in the State of North Carolina that is used, employed, or ordered to be used or employed commensurate with the exercise of reasonable care and equal to the standards of medical practice normally employed in the community where said physician administers treatment to said minor. (1965, c. 810, s. 2.)

##### **§ 90-21.3. Performance of surgery on minor; obtaining second opinion as to necessity.**

The word "treatment" as defined in G.S. 90-21.2 shall also include any surgical procedure which in the opinion of the attending physician is necessary under the terms and conditions set out in G.S. 90-21.1; provided, however, no surgery shall be conducted upon a minor as herein authorized unless the surgeon shall first obtain the opinion of another physician licensed to practice medicine in the State of North Carolina that said surgery is necessary under the conditions set forth in G.S. 90-21.1; provided further, that in any emergency situation that shall arise in a rural community, or in a community where it is impossible for the surgeon to contact any other physician for the purpose of obtaining his opinion as to the necessity for immediate surgery, it shall not be necessary for the surgeon to obtain approval from another physician before performing such surgery as is necessary under the terms and conditions set forth in G.S. 90-21.1. (1965, c. 810, s. 3.)

##### **§ 90-21.4. Responsibility, liability and immunity of physicians.**

(a) Any physician licensed to practice medicine in North Carolina providing health services to a minor under the terms, conditions and circumstances of this Article shall not be held liable in any civil or criminal action for providing such services without having obtained permission from the minor's parent, legal guardian, person standing in loco parentis, or a legal custodian other than a parent when granted specific authority in a custody order to consent to medical or psychiatric treatment. The physician shall not be relieved on the basis of this

Article from liability for negligence in the diagnosis and treatment of a minor. (b) The physician shall not notify a parent, legal guardian, person standing in loco parentis, or a legal custodian other than a parent when granted specific authority in a custody order to consent to medical or psychiatric treatment, without the permission of the minor, concerning the medical health services set out in G.S. 90-21.5(a), unless the situation in the opinion of the attending physician indicates that notification is essential to the life or health of the minor. If a parent, legal guardian[,] person standing in loco parentis, or a legal custodian other than a parent when granted specific authority in a custody order to consent to medical or psychiatric treatment contacts the physician concerning the treatment or medical services being provided to the minor, the physician may give information. (1965, c. 810, s. 4; 1977, c. 582, s. 1; 1985, c. 589, s. 30.)

#### **§ 90-21.5. Minor's consent sufficient for certain medical health services.**

(a) Subject to subsection (a1) of this section, any minor may give effective consent to a physician licensed to practice medicine in North Carolina for medical health services for the prevention, diagnosis and treatment of (i) venereal disease and other diseases reportable under G.S. 130A-135, (ii) pregnancy, (iii) abuse of controlled substances or alcohol, and (iv) emotional disturbance. This section does not authorize the inducing of an abortion, performance of a sterilization operation, or admission to a 24-hour facility licensed under Article 2 of Chapter 122C of the General Statutes except as provided in G.S. 122C-223. This section does not prohibit the admission of a minor to a treatment facility upon his own written application in an emergency situation as authorized by G.S. 122C-223. (a1) Notwithstanding any other provision of law to the contrary, a health care provider shall obtain written consent from a parent or legal guardian prior to administering any vaccine that has been granted emergency use authorization and is not yet fully approved by the United States Food and Drug Administration to an individual under 18 years of age. (b) Any minor who is emancipated may consent to any medical treatment, dental and health services for himself or for his child. (1971, c. 35; 1977, c. 582, s. 2; 1983, c. 302, s. 2; 1985, c. 589, s. 31; 1985 (Reg. Sess., 1986), c. 863, s. 4; 2009-570, s. 10; 2021-110, s. 9.)

#### **§ 90-21.6. Definitions.**

For the purposes of Part 2 only of this Article, unless the context clearly requires otherwise: (1) Abortion. – As defined in G.S. 90-21.81. (1a) Unemancipated minor or minor. – Any person under the age of 18 who has not been married or has not been emancipated pursuant to Article 35 of Chapter 7B of the General Statutes. (2) Repealed by Session Laws 2023-14, s. 1.4(c), effective July 1, 2023. (1995, c. 462, s. 1; 1998-202, s. 13(t); 2023-14, s. 1.4(c).)

#### **§ 90-21.7. Parental consent required.**

(a) No physician licensed to practice medicine in North Carolina shall perform an abortion upon an unemancipated minor unless the physician or agent thereof or another physician or agent thereof first obtains the written consent of the minor and of: (1) A parent with custody of the minor; or (2) The legal guardian or legal custodian of the minor; or (3) A parent with whom the minor is living; or (4) A grandparent with whom the minor has been living for at least six months immediately preceding the date of the minor's written consent. (b) The pregnant minor may petition, on her own behalf or by guardian ad litem, the district court judge assigned to the juvenile proceedings in the district court where the minor resides or where she is physically present for a waiver of the parental consent requirement if: (1) None of the persons from whom consent must be obtained pursuant to this section is available to the physician performing the abortion or the physician's agent or the referring physician or the agent thereof within a reasonable time or manner; or (2) All of the persons from whom consent must be obtained pursuant to this section refuse to consent to the performance of an abortion; or (3) The minor elects not to seek consent of the person from whom consent is required. (1995, c. 462, s. 1.)

### **§ 90-21.8. Procedure for waiver of parental consent.**

(a) The requirements and procedures under Part 2 of this Article are available and apply to unemancipated minors seeking treatment in this State. (b) The court shall ensure that the minor or her guardian ad litem is given assistance in preparing and filing the petition and shall ensure that the minor's identity is kept confidential. (c) The minor may participate in proceedings in the court on her own behalf or through a guardian ad litem. The court shall advise her that she has a right to appointed counsel, and counsel shall be provided upon her request in accordance with rules adopted by the Office of Indigent Defense Services. (d) Court proceedings under this section shall be confidential and shall be given precedence over other pending matters necessary to ensure that the court may reach a decision promptly. In no case shall the court fail to rule within seven days of the time of filing the application. This time limitation may be extended at the request of the minor. At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor; the nature, possible consequences, and alternatives to the abortion; and any other evidence that the court may find useful in determining whether the parental consent requirement shall be waived. (e) The parental consent requirement shall be waived if the court finds: (1) That the minor is mature and well-informed enough to make the abortion decision on her own; or (2) That it would be in the minor's best interests that parental consent not be required; or (3) That the minor is a victim of rape or of felonious incest under G.S. 14-178. (f) The court shall make written findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence be maintained. If the court finds that the minor has been a victim of incest, whether felonious or misdemeanor, it shall advise the Director of the Department of Social Services of its findings for further action pursuant to Article 3 of Chapter 7B of the General Statutes. (g) If the female petitioner so requests in her petition, no summons or other notice may be served upon the parents, guardian, or custodian of the minor female. (h) The minor may appeal an order issued in accordance with this section. The appeal shall be a de novo hearing in superior court. The notice of appeal shall be filed within 24 hours from the date of issuance of the district court order. The de novo hearing may be held out of district and out of session and shall be held as soon as possible within seven days of the filing of the notice of appeal. The record of the de novo hearing is a confidential record and shall not be open for general public inspection. The Chief Justice of the North Carolina Supreme Court shall adopt rules necessary to implement this subsection. (i) No court costs shall be required of any minor who avails herself of the procedures provided by this section. (1995, c. 462, s. 1; 1998-202, s. 13(u); 2000-144, s. 35.)

### **§ 90-21.9. Medical emergency exception.**

The requirements of parental consent prescribed by G.S. 90-21.7(a) shall not apply when, in the best medical judgment of the physician based on the facts of the case before the physician, a medical emergency exists that so complicates the pregnancy as to require an immediate abortion, or when the conditions prescribed by G.S. 90-21.1(4) are met. (1995, c. 462, s. 1.)

### **§ 90-21.10. Penalty.**

Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement of Part 2 of this Article shall be guilty of a Class 1 misdemeanor. (1995, c. 462, s. 1.)

### **Part 3. Parental Consent for Treatment. § 90-21.10A.**

Definitions. The following definitions apply in this Article: (1), (2) Reserved for future codification purposes. (3) Health care facility. – A health care facility, licensed under Chapter 131E or 122C of the General Statutes, where health care services are provided to patients, including: a. An agent or employee of the health care facility

that is licensed, certified, or otherwise authorized to provide health care services. b. The officers and directors of a health care facility. (4) Health care practitioner. – An individual who is licensed, certified, or otherwise authorized under this Chapter, Chapter 90B, Chapter 90C, or Chapter 115C of the General Statutes to provide health care services in the ordinary course of business or practice of a profession or in an approved education or training program, or an agent or employee of that individual. (5) Minor. – Any person under the age of 18 who has not been married or has not been emancipated pursuant to Article 35 of Chapter 7B of the General Statutes. (6) Parent. – A minor's parent, guardian, or person standing in loco parentis. A person standing in loco parentis is a person who has assumed parental responsibilities, including support and maintenance of the minor. (7) Treatment. – Any medical procedure or treatment, including X-rays, the administration of drugs, blood transfusions, use of anesthetics, and laboratory or other diagnostic procedures employed by or ordered by a health care practitioner, that is used, employed, or ordered to be used or employed commensurate with the exercise of reasonable care and equal to the standards of medical practice normally employed in the community where the health care practitioner administers treatment to the minor child. (2023-106, s. 3(a).)

#### **§ 90-21.10C. Penalty.**

A health care practitioner or other person that violates this section is subject to disciplinary action by the board that licensed, certified, or otherwise authorized the health care practitioner to provide treatment, including a fine of up to five thousand dollars (\$5,000). (2023-106, s. 3(a).)

#### **§ 90-21.90. Assurance of informed consent.**

(a) All information required to be provided under G.S. 90-21.82 and G.S. 90-21.83A to a woman considering abortion shall be presented to the woman individually and in the physical presence of the woman and in a language the woman understands to ensure that the woman has adequate opportunity to ask questions and to ensure the woman is not the victim of a coerced abortion.

(b) Should a woman be unable to read the materials provided to the woman pursuant to this section, a physician or qualified professional shall read the materials to the woman in a language the woman understands before the abortion. (2011-405, s. 1; 2023-14, s. 1.2.)

#### **§ 90-21.93. Reporting requirements.**

**(a) Report.** – After a surgical or medical abortion is performed, the physician or health care provider that conducted the surgical or medical abortion shall complete and transmit a report to the Department in compliance with the requirements of this section. The report shall be completed by either the hospital, clinic, or health care provider in which the surgical or medical abortion was completed and signed by the physician who dispensed, administered, prescribed, or otherwise provided the abortion-inducing drug or performed the procedure or treatment to the woman. Any physician or health care provider shall make reasonable efforts to include all of the required information in this section in the report without violating the privacy of the woman. The report shall be transmitted to the Department within 15 days after either the

- (i) date of the follow-up appointment following a medical abortion,
- (ii) date of the last patient encounter for treatment directly related to a surgical abortion, or
- (iii) end of the month in which the last scheduled appointment occurred, whichever is later.

A report completed under this section for a minor shall be sent to the Department and the Division of Social Services within 30 days of the surgical or medical abortion.

**(b) Contents.** – Each report completed in accordance with this section shall contain, at a minimum, all of the following:

- (1) Identifying information of the (i) physician who provided the abortion-inducing drug or performed the surgical abortion and (ii) referring physician, agency, or service, if applicable.
- (2) The location, date, and type of the surgical abortion, or the location of where any abortion-inducing drug was administered or dispensed, including any health care provider facility, at the home of the pregnant

woman, or other location.

(3) The woman's county, state, and country of residence; age; and race.

(4) The woman's number of live births, previous pregnancies, and number of previous abortions.

(5) The woman's preexisting medical conditions, which could complicate her pregnancy.

(6) The probable gestational age of the unborn child, as determined by both patient history and ultrasound, and the date of the ultrasound used to estimate gestational age.

(7) The abortion-inducing drugs used, and the date in which the abortion-inducing drugs were dispensed, administered, and used.

(8) Whether the woman returned for the scheduled follow-up appointment or examination to determine the completion of the abortion procedure and to assess bleeding, the results of the follow-up appointment or examination, and the date of any follow-up appointment or examination of the abortion procedure.

(9) The reasonable efforts of the physician to encourage the woman to attend the follow-up appointment or examination if the woman did not attend.

(10) Any specific complications the woman suffered from the abortion procedure.

(11) The amount of money billed to cover the treatment for specific complications, including whether the treatment was billed to Medicaid, private insurance, private pay, or any other method, including ICD-10 diagnosis codes reported, any other codes reported, any charges for hospitals, emergency departments, physicians, prescriptions or other drugs, laboratory tests, and any other costs for treatment.

**(c) Adverse Event from Abortion-Inducing Drug Report.** – If a woman has an adverse event related to the administration, dispensing, or prescription of an abortion-inducing drug for G.S. 90-21.93 Page 2 the purpose of inducing an abortion, the physician who provided the abortion-inducing drug or the physician who diagnosed or treated the woman for the adverse event shall provide a written report of the adverse event within three days of the adverse event to the Food and Drug Administration through the MedWatch Reporting System and to the Department.

**(d) Adverse Event or Complication from Abortion Procedure Report.** – If a woman has an adverse event or complication related to a surgical abortion or abortion procedure, the physician or health care provider who performed the surgical abortion or abortion procedure or the physician who diagnosed or treated the woman for the adverse event or complication shall make a report of the adverse event or complication, including the diagnosis or treatment that was provided. A report under this subsection shall be transmitted to the Department within 15 days of the end of the month that the adverse event or complication occurred.

**(e) Additional Report Contents.** – In addition to the information in subsection (b) of this section, a report made under subsection (c) or (d) of this section shall contain all of the following information: (1) The date the woman presented for treatment of the adverse event or complication.

(2) The specific complication that led to the treatment, including any physical or psychological conditions, which, in the reasonable medical judgment of a physician or health care provider, arose as a primary or secondary result of an induced abortion.

(3) Whether the woman obtained abortion-inducing drugs as a mail order or from an internet website, and, if so, information identifying the name of the source, website or URL address, and telemedicine provider. (

**(f) Departmental Reports.** – The Department shall prepare a comprehensive annual statistical report based upon the data gathered from reports under this Article. The report shall be made available to the public in a downloadable format. On or before October 1, 2023, and each October 1 thereafter, the Department shall submit the report to the Joint Legislative Oversight Committee on Health and Human Services. The Department shall also submit data and the annual report to the Centers for Disease Control and Prevention for inclusion in the annual Vital Statistics Report. Original copies of reports shall be made available to the North Carolina Medical Board, the North Carolina Board of Pharmacy, State law enforcement offices, and the Division of Social Services for official use.

**(g) Identifying Information.** – A report completed under this section shall not contain the woman's name, any common identifiers of the woman, or any other information that would make it possible to identify the woman

subject to a report under this section, including the woman's social security number or drivers license identification number. The Department and any State agency or any contractor thereof shall not maintain statistical information that may reveal the identity of a woman obtaining or seeking to obtain a surgical or medical abortion. Absent a court order, the Department and any State agency or any contractor thereof shall not compare data concerning surgical or medical abortions or resulting complications maintained in an electronic or other information system file or format with data in any other format or information system in an effort to identify a woman obtaining or seeking to obtain a drug-induced abortion.

**(h) Communication of Information.** – The Department shall communicate the reporting requirements of this Article to all medical professional organizations, licensed physicians, hospitals, emergency departments, clinics certified to perform abortion services under this Article, other clinics and facilities that provide health care services, and any other health care facility in this State. (2023-14, s. 1.2; 2023-65, s. 14.1(j).)

## **Article 1K.**

### **§ 90-21.120 Certain Abortions Prohibited.**

#### **Definitions.**

The following definitions apply in this Article:

- (1) Abortion. – As defined in G.S. 90-21.81.
- (2) Attempt to perform an abortion. – As defined in G.S. 90-21.81.
- (3) Woman. – As defined in G.S. 90-21.81. (2013-366, s. 3(a); 2023-14, s. 1.4(a).)

## **Article 1M.**

### **Born-Alive Abortion Survivors Protection Act.**

#### **§ 90-21.140.**

**Definitions.** As used in this Article, the following definitions apply: (1) Abortion. – As defined in G.S. 90-21.81. (2) Attempt to perform an abortion. – As defined in G.S. 90-21.81. (3) Born alive. – With respect to a member of the species *Homo sapiens*, this term means the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion. (2023-14, s. 3(a).)

#### **§ 90-21.141. Findings.**

The General Assembly makes the following findings: (1) If an abortion results in the live birth of an infant, the infant is a legal person for all purposes under the laws of North Carolina and entitled to all the protections of such laws. (2) Any infant born alive after an abortion or within a hospital, clinic, or other facility has the same claim to the protection of the law that would arise for any newborn, or for any person who comes to a hospital, clinic, or other facility for screening and treatment or otherwise becomes a patient within its care. (2023-14, s. 3(a).)

#### **§ 90-21.142. Requirements for health care practitioners.**

In the case of an abortion or an attempt to perform an abortion that results in a child born alive, any health care practitioner present at the time the child is born alive shall do all of the following: (1) Exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as a reasonably diligent and conscientious health care practitioner would render to any other child born alive at the same gestational age. (2) Following the exercise of skill, care, and diligence required under subdivision (1) of this section, ensure that the child born alive is immediately transported and admitted to a hospital. (2023-14, s. 3(a).)

#### **§ 90-21.143. Mandatory reporting of noncompliance.**



A health care practitioner or any employee of a hospital, a physician's office, or an abortion clinic who has knowledge of a failure to comply with the requirements of G.S. 90-21.142 shall immediately report the failure to comply to an appropriate State or federal law enforcement agency, or both. (2023-14, s. 3(a).)

**§ 90-21.144. Bar to prosecution of mothers of infants born alive.**

The mother of a child born alive may not be prosecuted for a violation of, or attempt to or conspiracy to commit a violation of, G.S. 90-21.142 or G.S. 90-21.143 involving the child who was born alive. (2023-14, s. 3(a).)

**§ 90-21.145. Penalties. (a) In General.**

Except as provided in subsection (b) of this section, unless the conduct is covered under some other provision of law providing greater punishment, a person who violates G.S. 90-21.142 or G.S. 90-21.143 is guilty of a Class D felony, which shall include a fine of not more than two hundred fifty thousand dollars (\$250,000). (b) Unlawful Killing of Child Born Alive. – Any person who intentionally performs or attempts to perform an overt act that kills a child born alive shall be punished as under G.S. 14-17(c) for murder. (2023-14, s. 3(a).)

**§ 90-21.146. Civil remedies; attorneys' fees. (a) Civil Remedies.**

If a child is born alive and there is a violation of this Article, a claim for damages against any person who has violated a provision of this Article may be sought by the woman upon whom an abortion was performed or attempted in violation of this Article. A claim for damages may include any one or more of the following: (1) Objectively verifiable money damage for all injuries, psychological and physical, occasioned by the violation of this Article. (2) Statutory damages equal to three times the cost of the abortion or attempted abortion. (3) Punitive damages pursuant to Chapter 1D of the General Statutes. (b) Attorneys' Fees. – If judgment is rendered in favor of the plaintiff in any action authorized under this section, the court shall also tax as part of the costs reasonable attorneys' fees in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous or brought in bad faith, then the court shall tax as part of the costs reasonable attorneys' fees in favor of the defendant against the plaintiff. (2023-14, s. 3(a).)

**§ 131E-153. Title; purpose.**

(a) This Part shall be known as the "Abortion Clinic Licensure Act."

(b) The purpose of this Part is to provide for the development, establishment, and enforcement of basic standards:

- (1) For the care and treatment of individuals in abortion clinics; and
- (2) For the maintenance and operation of abortion clinics so as to ensure safe and adequate treatment of such individuals in abortion clinics. (2023-14, s. 2.2.)

**§ 131E-153.1. Definitions**

The following definitions apply in this Part, unless otherwise specified:

- (1) Abortion clinic. - A freestanding facility, that is neither physically attached nor operated by a hospital, for the performance of abortions during the first 12 weeks of pregnancy.
- (2) Commission. - The North Carolina Medical Care Commission.
- (3) Operating room. - A room used for the performance of surgical procedures requiring one or more incisions and that is required to comply with all applicable licensure codes and standards for an operating room. (2023-14, s. 2.2.)

**§ 131E-153.2. Licensure requirement.**

(a) No person shall operate an abortion clinic without a license obtained from the Department.

(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules adopted by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual base license fee in the amount of eight hundred fifty dollars (\$850.00) plus a nonrefundable annual per-operating room fee in the amount of seventy-five dollars (\$75.00).

(c) A license to operate an abortion clinic shall be annually renewed upon the filing and the Department's approval of a renewal application. The renewal application shall be available from the Department and shall contain all necessary and reasonable information that the Department may by rule require.

(d) Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable except with the written approval of the Department.

(e) Licenses shall be posted in a conspicuous place on the licensed premises. (2023-14, s. 2.2.)

### **§ 131E-153.3. Fair billing and collections practices for abortion clinics.**

All abortion clinics licensed under this Part shall be subject to the fair billing and collections practices set out in G.S. 131E-91. (2023-14, s. 2.2.)

### **§ 131E-153.4. Adverse action on a license.**

(a) Subject to subsection (b) of this section, the Department is authorized to deny a new or renewal application for a license and to amend, recall, suspend, or revoke an existing license upon a determination that there has been a substantial failure to comply with the provisions of this Part or the rules adopted under this Part.

(b) Chapter 150B of the General Statutes, the Administrative Procedure Act, shall govern all administrative action and judicial review in cases where the Department has taken the action described in subsection (a) of this section. (2023-14, s. 2.2.)

### **§ 131E-153.5. Rules and enforcement.**

(a) The Commission is authorized to adopt, amend, and repeal all rules necessary for the implementation of this Part. These rules shall be no stricter than those issued by the Commission under G.S. 131E-79 of the Ambulatory Surgical Facility Licensure Act.

(b) The Department shall enforce the rules adopted or amended by the Commission with respect to abortion clinics. (2023-14, s. 2.2.)

### **§ 131E-153.6. Inspections.**

(a) The Department shall make or cause to be made inspections of abortion clinics as necessary. The Department is authorized to delegate to a State officer, agent, board, bureau, or division of State government the authority to make inspections according to the rules adopted by the Commission. The Department may revoke this delegated authority in its discretion.

(b) Notwithstanding the provisions of G.S. 8-53 or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department who make these inspections may review any writing or other record in any recording medium that pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been patients of the facility being inspected unless that patient objects, in writing, to review of that patient's records. Physicians, psychologists, psychiatrists, nurses, and anyone else involved in giving treatment at or through a facility who may be interviewed by representatives of the Department may disclose to these representatives information related to an inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53 or any other rule of law; provided, however, that the patient has not made written objection to this disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review

of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the patient or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information is not disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1. Prior to releasing any information or allowing any inspections referred to in this section, the patient must be advised in writing by the facility that the patient has the right to object, in writing, to this release of information or review of the records and that by objecting, in writing, the patient may prohibit the inspection or release of the records. (2023-14, s. 2.2.)

#### **§ 131E-153.7. Penalties.**

A person who owns in whole or in part or operates an abortion clinic without a license is guilty of a Class 3 misdemeanor and upon conviction will be subject only to a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. Each day of continuing violation after conviction is considered a separate offense. (2023-14, s. 2.2.)

#### **§ 131E-153.8. Injunction.**

(a) Notwithstanding the existence or pursuit of any other remedy, the Department may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management, or operation of an abortion clinic without a license.

(b) If any person shall hinder the proper performance of duty of the Secretary or a representative in carrying out the provisions of this Part, the Secretary may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance, irrespective of all other remedies at law.

(c) Actions under this section shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure. (2023-14, s. 2.2.)

### **Article 11. Abortion and Kindred Offenses.**

**§ 14-44.** Using drugs or instruments to destroy unborn child. If any person shall willfully administer to any woman, either pregnant or quick with child, or prescribe for any such woman, or advise or procure any such woman to take any medicine, drug or other substance whatever, or shall use or employ any instrument or other means with intent thereby to destroy such child, he shall be punished as a Class H felon. (1881, c. 351, s. 1; Code, s. 975; Rev., s. 3618; C.S., s. 4226; 1967, c. 367, s. 1; 1979, c. 760, s. 5; 1979, 2 nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; c 179, s. 14.)

#### **§ 14-44.1. Providing or advertising abortion-inducing drugs to pregnant woman.**

(a) Offense. – All of the following are unlawful: (1) For any individual within the State, including a physician, an employee or contractor of a physician's office or clinic, or other abortion provider, or organization within the State, including a physician's office or clinic or other abortion provider, to mail, provide, or supply an abortion-inducing drug directly to a pregnant woman in violation of G.S. 90-21.83A(b)(2)a. Lack of knowledge or intent that the abortion-inducing drug will be administered outside the physical presence of a physician shall not be a defense to a violation of this subdivision. (2) For any manufacturer or supplier of an abortion-inducing drug to ship or cause to be shipped any abortion-inducing drug directly to a pregnant woman in violation of G.S. 90-21.83A(b)(2)a. Lack of knowledge or intent that the abortion-inducing drug will be administered outside the physical presence of a physician shall not be a defense to a violation of this subdivision. (3) For any individual or organization to purchase or otherwise procure an advertisement, host or maintain an internet website, or provide an internet service purposefully directed to a pregnant woman who is a resident of this State when the

individual or organization knows that the purpose of the advertisement, website, or internet service is solely to promote the sale of an abortion-inducing drug to be administered to a woman in violation of G.S.

90-21.83A(b)(2)a. (b) Punishment. – An individual or organization who violates this section commits an infraction as defined in G.S. 14-3.1 and is subject to a fine of five thousand dollars (\$5,000) per violation. (c) Definitions. – The following definitions apply in this section: (1) Abortion-inducing drug. – As defined in G.S. 90-21.81(1a). (2) Organization. – As defined in G.S. 15A-773(c). (2023-14, s. 1.3.)

#### **§ 14-45. Using drugs or instruments to produce miscarriage or injure pregnant woman.**

If any person shall administer to any pregnant woman, or prescribe for any such woman, or advise and procure such woman to take any medicine, drug or anything whatsoever, with intent thereby to procure the miscarriage of such woman, or to injure or destroy such woman, or shall use any instrument or application for any of the above purposes, he shall be punished as a Class I felon. (1881, c. 351, s. 2; Code, s. 976; Rev., s. 3619; C.S., s. 4227; 1979, c. 760, s. 5; 1979, 2 nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14.)

#### **§ 14-46.1. Prohibit sale of the remains of an unborn child resulting from an abortion or miscarriage.**

(a) No person shall sell the remains of an unborn child resulting from an abortion or a miscarriage or any aborted or miscarried material. (b) For purposes of this section, the term "sell" shall mean the transfer from one person to another in exchange for any consideration whatsoever. The term shall not include payment for incineration, burial, cremation, or any services performed pursuant to G.S. 130A-131.10(f). (c) A person convicted of a violation of this section is guilty of a Class I felony. (2015-265, s. 2.)

#### **§ 90-21.88. Civil remedies.**

(a) Any person upon whom an abortion has been performed, her personal representative in the event of a wrongful death action in accordance with G.S. 28A-18-1, and any father of an unborn child that was the subject of an abortion may maintain an action for damages against the person who performed the abortion in knowing or reckless violation of this Article. Any person upon whom an abortion has been attempted may maintain an action for damages against the person who performed the abortion in willful violation of this Article. (a1) Notwithstanding any other provision of law, (i) a woman upon whom the abortion has been attempted, induced, or performed or (ii) her parent or guardian, if she is a minor at the time of the attempted or completed abortion, may bring an action under this section within three years from the date of the alleged violation or from the date of the initial discovery of harm from an alleged violation. If at the time of the alleged violation the woman is a minor, then the minor shall have three years from the date the minor attains the age of majority to bring an action under this section. (b) Injunctive relief against any person who has willfully violated this Article may be sought by and granted to (i) the woman upon whom an abortion was performed or attempted to be performed in violation of this Article, (ii) any person who is the spouse, parent, sibling, or guardian of, or a current or former licensed health care provider of, the woman upon whom an abortion has been performed or attempted to be performed in violation of this Article, or (iii) the Attorney General. The injunction shall prevent the abortion provider from performing or inducing further abortions in this State in violation of this Article. (c) If judgment is rendered in favor of the plaintiff in any action authorized under this section, the court shall also tax as part of the costs reasonable attorneys' fees in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court findsthat the plaintiff's suit was frivolous or brought in bad faith, then the court shall tax as part of the costs reasonable attorneys' fees in favor of the defendant against the plaintiff. (2011-405, s. 1; 2023-14, s. 1.2.)

#### **§ 90-21.88A.**

Violation of this Article. A physician who violates any provision of this Article shall be subject to discipline by the North Carolina Medical Board under G.S. 90-14(a)(2) and any other applicable law or rule. Any licensed pharmacist who violates any provision of this Article shall be subject to discipline by the North Carolina Board of Pharmacy under Article 4A of this Chapter. Any other licensed health care provider who violates any

provision of this Article shall be subject to discipline under their respective licensing agency or board. No pregnant woman seeking to obtain an abortion in accordance with this Article shall be subject to professional discipline for attempting to do so. (2023-14, s. 1.2.)

## **Article 6A**

### **§ 14-23.7. Exceptions.**

Nothing in this Article shall be construed to permit the prosecution under this Article of any of the following:

(1) Acts which cause the death of an unborn child if those acts were lawful, pursuant to the provisions of Article 1I of Chapter 90 of the General Statutes.

(2) Acts which are committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

(3) Acts committed by a pregnant woman with respect to her own unborn child, including, but not limited to, acts which result in miscarriage or stillbirth by the woman. The following definitions shall apply in this section:

a. Miscarriage. – The interruption of the normal development of an unborn child, other than by a live birth, and which is not an induced abortion permitted under Article 1I of Chapter 90 of the General Statutes, resulting in the complete expulsion or extraction from a pregnant woman of the unborn child.

b. Stillbirth. – The death of an unborn child prior to the complete expulsion or extraction from a woman, irrespective of the duration of pregnancy and which is not an induced abortion permitted under Article 1I of Chapter 90 of the General Statutes. (2011-60, s. 2; 2023-65, s. 14.1(a).)