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HOUSE BILL 716
Committee Substitute Favorable 5/1/13
Third Edition Engrossed 5/7/13

Short Title: Clarify Law/Prohibit Sex-Selective Abortion.

(Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED
AN ACT TO PROHIBIT A PERSON FROM PERFORMING OR ATTEMPTING TO
PERFORM AN ABORTION WHEN THE SEX OF THE UNBORN CHILD IS A
SIGNIFICANT FACTOR IN SEEKING THE ABORTION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding the
following new Article to read:

"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(1).

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

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

"§ 90-21.121. Sex-selective abortion prohibited.

(a) Notwithstanding any of the provisions of G.S. 14-45.1, no person shall perform or attempt to perform an abortion upon a woman in this State with knowledge, or an objective reason to know, that a significant factor in the pregnant woman seeking the abortion is related to the sex of the unborn child.

(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.

"§ 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 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.

(c) 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



1 the first violation, fifty thousand dollars (\$50,000) for the second violation, and one hundred
2 thousand dollars (\$100,000) for the third violation and each subsequent violation. Each
3 performance or attempted performance of an abortion in violation of the terms of an injunction
4 is a separate violation. The fine shall be the exclusive penalty for civil contempt under this
5 subsection. The fine under this subsection shall be cumulative. No fine shall be assessed against
6 the woman upon whom an abortion is performed or attempted.

7 (d) The clear proceeds of any civil penalty assessed under this section shall be remitted
8 to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

9 **"§ 90-21.123. Protection of privacy in court proceedings.**

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

24 **"§ 90-21.124. Severability.**

25 If any one or more provisions, sections, subsections, sentences, clauses, phrases, or words
26 of this Article or the application thereof to any person or circumstance are found to be
27 unconstitutional, the same is hereby declared to be severable, and the balance of this Article
28 shall remain effective, notwithstanding such unconstitutionality. The General Assembly hereby
29 declares that it would have passed this Article, and each provision, section, subsection,
30 sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more
31 provisions, sections, subsections, sentences, clauses, phrases, or words may be declared
32 unconstitutional."

33 **SECTION 2.** This act becomes effective October 1, 2013, and applies to violations
34 occurring on or after that date.