

Woman's Right to Know Act in North Carolina (2011) [1]

By: Venkatraman, Richa Keywords: [Women's Right to Know](#) [2] [Abortion Restriction in the US](#) [3]

The North Carolina state legislature passed The Woman's Right to Know Act in 2011, which places several restrictions on [abortion](#) [4] care in the state. The Woman's Right to Know Act, or the Act, imposes [informed consent](#) [5] requirements that physicians must fulfill before performing an [abortion](#) [4] as well as a twenty-four hour waiting period between counseling and the procedure for people seeking [abortion](#) [4], with exceptions for cases of medical emergency. Then-governor of North Carolina Beverly Perdue initially vetoed House Bill 854, which contained the Act, but the state legislature overrode her veto to pass the bill. In response to a lawsuit that the American Civil Liberties Union, or ACLU, and other organizations filed in 2011, a US district court judge blocked the law's [ultrasound](#) [6] mandate from going into effect and a later court case determined that the mandate was illegal. With the passage of the Act in North Carolina, the state passed several [abortion](#) [4] regulations and mandated that [abortion](#) [4] providers must inform women of specific details about their [pregnancy](#) [7] before performing the [abortion](#) [4] procedure.

Legislators in North Carolina's House of Representatives introduced House Bill 854 on 7 April 2011. Republican legislators Patricia McElraft and Ruth Samuelson sponsored the bill. Forty-two additional Republican legislators, and no Democrats, cosponsored the bill. In the years since the passage of the Woman's Right to Know Act, McElraft has sponsored and voted on multiple pieces of legislation involving [abortion](#) [4] restrictions. In 2018, McElraft was named a Champion of the Family by the North Carolina Values Coalition, which scores North Carolina legislators based on how often they have advocated what the [organization](#) [8] calls "pro-family values" through their legislative actions. The Coalition gave McElraft a pro-family score of 100 percent.

House Bill 854 amended Chapter Ninety of the state's General Statutes by adding Article II, the short title of which was the Woman's Right to Know Act. The full title of House Bill 854 was An Act to Require a Twenty-Four-Hour Waiting Period and the Informed Consent of a Pregnant Woman Before an Abortion May Be Performed. HB 854 is divided into three sections. The first section contains the full text of the Woman's Right to Know Act. Sections two and three of HB 854 briefly state that North Carolina's Department of Health and Human Services is responsible for enforcing the Act and that the Act will go into effect ninety days after its passage.

The text of the Women's Right to Know Act, or the Act, is divided into Section 1, 2, 3, and 4. Sections 1 and 2 each feature several sub-sections. Section 1 establishes the name of the bill, the definitions of key terms, the requirements of [informed consent](#) [5] according to the law, several items the Department of Health and Human Services must provide, including printed materials and a website, the legal responsibilities of the people who perform abortions, other legal considerations such as privacy in court, and an exception for medical emergencies. Section 2 establishes that no unemancipated minor, or someone younger than eighteen years old who is still under the legal guardianship of an adult, can obtain an [abortion](#) [4] without the written consent of their legal guardian, although a minor may ask the court for an exception if they cannot get their guardian's written consent. Section 3 establishes that the Department of Health and Human Services is responsible for enforcing the Act with money specifically put aside for implementing it, and Section 4 states that the law becomes effective ninety days after it becomes law.

Most of the text of the Act is within Section 1, which has fourteen smaller sections. The first and second sections establish the name of the Act, the Woman's Right to Know Act, and the definitions, for the purpose of the bill, of the terms [abortion](#) [4], attempt to perform an [abortion](#) [4], department, medical emergency, physician, probable gestational age, which is how old the [fetus](#) [9] is likely to be, qualified professional, qualified technician, stable internet web site, and woman. The authors of the bill define [abortion](#) [4] as the use of any tool, meaning medical instruments or medications, to terminate a [pregnancy](#) [7] in any situation other than to protect the life of the [fetus](#) [9] or gestating parent. In the text of the bill, the authors use the terms child or [unborn child](#) [10] instead of infant, neonate, or [fetus](#) [9]. The third section establishes requirements for [informed consent](#) [5]. In the Act, [informed consent](#) [5] for an [abortion](#) [4] requires a twenty-four hour waiting period after the person seeking an [abortion](#) [4] has been informed of medical risks of terminating a [pregnancy](#) [7] or carrying it to term, options for medical assistance, the contents of an [ultrasound](#) [6] of the [fetus](#) [9], the probable gestational age of the [fetus](#) [9], whether the attending physician has liability insurance for malpractice, and the location of a hospital within thirty miles of where the [abortion](#) [4] will be performed where the physician is allowed to work. This information may be imparted in person or over the phone, but the person seeking an [abortion](#) [4] must certify in writing that they received this information at least twenty-four hours before the [abortion](#) [4] will be performed. Another section describes the requirements for an [ultrasound](#) [6]. The Act states that at least four hours before any aspect of the procedure to complete an [abortion](#) [4], the physician or a qualified technician must perform an [ultrasound](#) [6] so the person seeking an [abortion](#) [4] can see the [fetus](#) [9] and hear a description of its physical development.

The remaining sub-sections of Section 1 outline legal responsibilities of the physician who will perform an [abortion](#) [4], procedure for medical emergencies and unemancipated minors, responsibilities of the Department, and other legal considerations. The Act requires physicians to, in addition to the requirements for [informed consent](#) [5] and ultrasounds, report information related to their performance of abortions and compliance with the obligations of the Act. The Act also states that the Department must prepare printed information informing someone seeking an [abortion](#) [4] of options for support if they choose to carry the [pregnancy](#) [7] to term, and details of their [fetus](#) [9] at its probable gestational age, and a website to carry the same information. In the case of a medical emergency, the Act allows physicians to perform an [abortion](#) [4] without a twenty-four hour waiting period or [ultrasound](#) [6], but requires documentation of their decision and its justification. In the case of an unemancipated minor, the Act requires the written consent of their legal guardians. In the remaining sub-sections of Section 1, Civil Remedies, Protection of Privacy in Court Proceedings, Assurance of Informed Consent, and Assurance that Consent is Freely Given, the Act outlines further legal information in the situations that someone has performed an [abortion](#) [4] in

violation of the law or the person seeking an [abortion](#)^[4] is unable to understand the information provided or is suspected to be acting under coercion.

The North Carolina General Assembly first passed HB 854, containing the Woman's Right to Know Act, on 15 June 2011. The vote was mostly split along party lines, with most Democratic legislators voting against and most Republican legislators voting in favor. Then-Governor Beverly Perdue vetoed the bill on 27 June 2011. In her veto letter, Perdue described the bill as a dangerous intrusion into the confidential relationship between women and their physicians. Perdue contended that physicians must be able to advise their patients based on their own medical expertise without interference from the government. Perdue also criticized what she called certain extreme provisions of the bill as an attempt by elected officials to impose their own ideological agenda on others. The General Assembly overrode Perdue's veto on 28 July 2011. The override passed by one vote and the law was set to go into effect in October 2011.

In September 2011, the American Civil Liberties Union, or ACLU, along with Planned Parenthood of North Carolina, the Center for Reproductive Rights, and other self-described pro-choice organizations filed a lawsuit challenging the provision requiring women to view a narrated [ultrasound](#)^[6] before having an [abortion](#)^[4]. Rather than directly challenging the [ultrasound](#)^[6] requirement or waiting period, the ACLU framed the case as a free-speech issue and sued on behalf of physicians and healthcare providers. The case listed several physicians and healthcare providers as opponents of the law on behalf of their patients and several officials of the state of North Carolina as supporters of the law. The initial title of the case was *Stuart v. Huff* after the name of the first healthcare provider listed, physician Gretchen S. Stuart, and the name of the current president of the North Carolina Medical Board, or NCMB, Janice E. Huff. In subsequent years, the name of the case changed as the leadership of the NCMB changed.

On 25 October 2011, US District Court Judge Catherine Eagles temporarily blocked the [ultrasound](#)^[6] provision from going into effect, though the other parts of the law still went into effect. At that time, other legal challenges had blocked similar [ultrasound](#)^[6] provisions requiring that the image be placed in a woman's line of sight and simultaneously described in Texas and Oklahoma. In her written opinion for the case, Eagles argued that the [ultrasound](#)^[6] provision went well beyond typical [informed consent](#)^[5] requirements for other medical procedures and would likely harm the psychological health of the women it was meant to protect. Eagles concluded that the [ultrasound](#)^[6] requirement amounted to compelling physicians to share the state's non-medical message with patients unwilling to see or hear it, and therefore the free-speech argument against the [ultrasound](#)^[6] provision was likely to be successful. After Eagles temporarily blocked the law, the district court continued to hear arguments for and against the law. On 17 January 2014, Eagles issued her ruling in the case, now titled *Stuart v. Loomis*, declaring the [ultrasound](#)^[6] provision unconstitutional. In her opinion, Eagles concluded that the [ultrasound](#)^[6] provision did violate first amendment free speech rights of physicians and permanently blocked it from going into effect.

Defenders of the law, represented by then president of the NCMB Paul Camnitz and North Carolina attorney general Roy Cooper, appealed the District Court's decision to a higher court, the Fourth Circuit Court of Appeals. In the case now titled *Stuart v. Camnitz*^[11], the three-judge panel of the Fourth Circuit Court unanimously upheld the ruling of the lower district court and affirmed that the [ultrasound](#)^[6] provision violated the First Amendment free speech rights of physicians. At the time of the decision, the Fifth and Eighth Circuit Courts had elected to uphold similar laws in the states they oversaw requiring physicians to recite state-mandated information to their patients, meaning the Fourth Circuit Court's decision created a significant split among the Circuit Courts. Judge J. Harvey Wilkinson III authored the court's opinion, in which he held that the [ultrasound](#)^[6] requirement went far beyond a standard [informed consent](#)^[5] conversation between doctor and patient. Wilkinson held that forcing that experience onto a patient who has objected to it adds a more traumatic element to what he calls the indescribably difficult decision to have an [abortion](#)^[4].

After the Fourth Circuit Court's decision, attorney general Roy Cooper and then president of the NCMB Cheryl Walker-McGill, along with other North Carolina state officials, petitioned the United States Supreme Court to review the decision, arguing that the Supreme Court should weigh in because the Fourth Circuit Court's opinion differed from the opinion of the Fifth and Eighth Circuit Courts in similar cases involving compelled speech requirements for physicians. Cooper and Walker-McGill filed their petition in March 2015. In June 2015, the Supreme Court declined to accept the case, though the Court gave no reason for doing so. The Supreme Court's rejection meant the decision of the Circuit Court was upheld and the [ultrasound](#)^[6] requirement was declared a violation of the First Amendment and permanently blocked from going into effect four years after it was first passed.

In 2011, there were thirty-six [abortion](#)^[4] providers in North Carolina, though only twenty-one of those were specialized [abortion](#)^[4] clinics, which are facilities where more than half of all patient visits are for abortions. Other [abortion](#)^[4] providers include nonspecialized clinics, hospitals, and private physicians' offices. In 2017, there were twenty-six [abortion](#)^[4] providers in North Carolina, of which fourteen were dedicated clinics, representing a substantial drop in [abortion](#)^[4] clinics statewide. In 2017, ninety-one percent of counties in North Carolina had no clinics that provided abortions, and fifty-three percent of North Carolina women lived in those counties and would have had to travel somewhere else to receive an [abortion](#)^[4].

Several subsequent pieces of legislation in North Carolina, supported by the Woman's Right to Know Act's sponsor Patricia McElraft, have placed further restrictions on [abortion](#)^[4] in the state. In 2013, McElraft voted to pass Senate Bill 353, which authorized additional regulations on [abortion](#)^[4] services. One such [regulation](#)^[12] was the requirement that [abortion](#)^[4] clinics be licensed as ambulatory surgical centers, which have facilities similar to a hospital's that are unnecessary for many [abortion](#)^[4] procedures, such as full operating rooms. SB 353 also required physicians, rather than nurses or other qualified healthcare workers, to be physically present for the administration of the drug in a drug-induced [abortion](#)^[4]. Finally, SB 353 allowed healthcare providers to refuse to provide [abortion](#)^[4] services for religious reasons. Other legislation has been passed or proposed, also sponsored by McElraft, which would make changes to the Woman's Right to Know Act and how it is enforced. In 2015, McElraft sponsored and voted to pass House Bill 465, which, among other regulations, lengthened the twenty-four-hour waiting period established by the Woman's Right to Know Act in 2011 to seventy-two hours.

The Woman's Right to Know Act in North Carolina represented a shift in the state towards increased [regulation](#)^[12] of [abortion](#)^[4] providers. The restrictions on [abortion](#)^[4] outlined in the Woman's Right to Know Act have since been reinforced or modified by additional regulations. Though the [ultrasound](#)^[6] provision of the North Carolina Act was struck down in federal court, similar provisions passed by other states

have been upheld by other federal courts.

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