

Introduced by

Representatives Kerzman, Metcalf

Senators Christmann, Erbele

1 A BILL for an Act to create and enact chapter 14-02.7 of the North Dakota Century Code,
2 relating to the prohibition of the performance of abortions, except to save the life of the mother;
3 to provide a penalty; and to provide an effective date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 14-02.7 of the North Dakota Century Code is created and
6 enacted as follows:

7 **14-02.7-01. Definitions.** As used in this chapter unless the context otherwise
8 requires:

9 1. "Abortion" means the use or prescription of any instrument, medicine, drug, or any
10 other substance or device intentionally to terminate the pregnancy of an individual
11 known to be pregnant with an intention other than to increase the probability of a
12 live birth, to preserve the life or health of the child after live birth, or to remove a
13 dead unborn child who died as the result of a spontaneous miscarriage, accidental
14 trauma, or a criminal assault upon the pregnant female or her unborn child.

15 2. "Physician" means a person authorized to practice medicine under chapter 43-17.

16 3. "Professional judgment" means a medical judgment that would be made by a
17 reasonably prudent physician who is knowledgeable about the case and the
18 treatment possibilities with respect to the medical conditions involved.

19 **14-02.7-02. Abortions prohibited - Penalty.** Except as otherwise provided under
20 section 14-02.7-03, it is a class C felony to perform an abortion.

21 **14-02.7-03. Exception.** An abortion may be performed by a physician when necessary
22 in professional judgment to prevent the pregnant female's death.

23 **14-02.7-04. Attempted abortions.**

- 1 1. For the purposes of this chapter, an attempt to perform an abortion is an act or
2 omission that, under the circumstances as the actor believes them to be,
3 constitutes a substantial step in a course of conduct planned to culminate in the
4 performance of an abortion in this state. Substantial steps include:
5 a. Agreeing with an individual to perform an abortion on that individual or on
6 some other individual, regardless of whether the term "abortion" is used in the
7 agreement, and regardless of whether the agreement is contingent on another
8 factor such as receipt of payment or a determination of pregnancy; or
9 b. Scheduling or planning a time to perform an abortion, regardless of whether
10 the term "abortion" is used, and regardless of whether the performance is
11 contingent on another factor such as receipt of payment or a determination of
12 pregnancy.
13 2. This section does not require that an abortion actually must be initiated for an
14 attempt to occur.

15 **14-02.7-05. Employees and pharmacists.** Any nurse, technician, secretary,
16 receptionist, or other employee or agent who is not a physician but who acts at the direction of
17 a physician is not liable for an attempt to perform an abortion. Any pharmacist or other
18 individual who is not a physician but who fills a prescription or provides instruments or materials
19 used in an abortion at the direction of or to a physician is not liable for an attempt to perform an
20 abortion.

21 **14-02.7-06. Affirmative defense.** In any proceeding pursuant to sections 14-02.7-07,
22 14-02.7-08, 14-02.7-09, 14-02.7-10, or 14-02.7-11 relating to the performance or attempted
23 performance of an abortion, it is an affirmative defense that the defendant performed or
24 attempted to perform the abortion for any reason set forth in section 14-02.7-03.

25 **14-02.7-07. Standing to prevent abortions.**

- 26 1. A person with standing may maintain an action against the performance or
27 attempted performance of an abortion except an abortion allowed under section
28 14-02.7-03. Those with standing are:
29 a. The attorney general.
30 b. Any state's attorney.

- 1 c. Any individual upon whom an abortion has been performed or attempted to be
2 performed.
- 3 d. The parent of a minor upon whom an abortion has been or is about to be
4 performed or attempted to be performed.
- 5 e. The father of the unborn child subject to an abortion that has been or is about
6 to performed or attempted to be performed.
- 7 2. The attorney general and a state's attorney may maintain an action only against a
8 person shown to have performed or attempted to perform, or to be about to
9 perform, an abortion unlawful under this chapter. An individual under subdivision c
10 of subsection 1 and, except to enjoin other individuals from performing or
11 attempting to perform an unlawful abortion of the relative of the plaintiff, an
12 individual under subdivision d or e of subsection 1 may maintain an action only
13 against any person who performed or attempted to perform the unlawful abortion
14 that is the source of their standing.

15 **14-02.7-08. Relief.** Any person bringing an action against the performance or
16 attempted performance of unlawful abortions may seek a temporary restraining order, a
17 preliminary injunction, and a final injunction. Pecuniary compensation may not be sought for an
18 abortion sought to be enjoined. If oral or documentary information is sought from any
19 defendant or witness by the plaintiff through discovery or other means, and the defendant or
20 witness claims a privilege against self-incrimination, the court shall rule on whether the
21 defendant or witness is entitled to claim the privilege. If the court rules the privilege is properly
22 claimed, the court shall issue an order identifying what is subject to the privilege, and neither
23 the identified material nor any evidence derived from the identified material may be used
24 thereafter in any criminal prosecution against the person from which the identified material was
25 obtained after the claim of privilege unless the prosecutor proves the identified material was
26 obtained from entirely independent sources. The court shall direct that the information given be
27 provided to the plaintiff.

28 **14-02.7-09. Civil contempt - Civil fines.** Any person knowingly violating the terms of
29 an injunction against the performance or attempted performance of unlawful abortions is subject
30 to civil contempt, and must be fined ten thousand dollars for the first violation, fifty thousand
31 dollars for the second violation, one hundred thousand dollars for the third violation, and for

1 each succeeding violation an amount in excess of one hundred thousand dollars sufficient to
2 deter future violations. The fine is the exclusive penalty for contempt. Each performance or
3 attempted performance of an unlawful abortion in violation of the terms of an injunction is a
4 separate violation. Fines are cumulative. No fine may be assessed against the individual on
5 whom an abortion is performed or attempted.

6 **14-02.7-10. Attorney's fees.** If judgment is rendered in favor of the plaintiff in any
7 action for an injunction based on a finding that the defendant performed or attempted to perform
8 an abortion unlawful under this chapter, knowing or with reckless disregard for whether it was
9 an unlawful abortion, or if a defendant is adjudged in contempt of a temporary restraining order,
10 preliminary injunction, or injunction, the court also shall render judgment for a reasonable
11 attorney's fee in favor of the plaintiff against the defendant. No attorney's fee may be assessed
12 against the individual on whom an abortion is performed or attempted. The attorney's fee shall
13 be taxed and collected as other costs of the action and paid to the attorney for the plaintiff. If
14 the attorney is the attorney general, the attorney's fee must be deposited in the general fund of
15 the state. If the attorney is a state's attorney, the attorney's fee must be deposited in the
16 general fund of the county.

17 **14-02.7-11. Civil actions.** Any person with standing under section 14-02.7-07 may
18 maintain an action against the person who performed or attempted an abortion unlawful under
19 this chapter with knowledge that it was an unlawful abortion or with reckless disregard for
20 whether it was an unlawful abortion. In an action under this section, the plaintiff may seek ten
21 thousand dollars in exemplary damages and treble whatever actual damages the plaintiff may
22 have sustained, notwithstanding any other law. A person with standing under subdivision c, d,
23 or e of subsection 1 of section 14-02.7-07 may maintain an action only against a person who
24 performed or attempted to perform the unlawful abortion that is the source of the standing. No
25 damages may be assessed against the individual on whom an abortion is performed or
26 attempted. No person is estopped from recovery in such a suit on the ground that either the
27 plaintiff or the individual upon whom the abortion was performed or attempted gave consent to
28 the abortion. Any contract of indemnification for such damages is void.

29 **14-02.7-12. Anonymity.** In every proceeding or action pursuant to section 14-02.7-07,
30 14-02.7-08, 14-02.7-09, 14-02.7-10, or 14-02.7-11, the court shall rule whether the anonymity of
31 any individual upon whom an abortion is performed or attempted should be preserved from

1 public disclosure if the individual does not give consent to such disclosure. The court, upon
2 motion or sua sponte, shall make such a ruling and, upon determining that anonymity should be
3 preserved, shall issue orders to the parties, witnesses, and counsel, and shall direct the sealing
4 of the record and exclusion of individuals from courtrooms or hearing rooms, to the extent
5 necessary to safeguard the individual's identity from public disclosure. Each order must be
6 accompanied by a specific written finding explaining why the anonymity of the individual should
7 be preserved from public disclosure, why the order is essential to that end, how the order is
8 narrowly tailored to serve that interest, and why no reasonable less-restrictive alternative exists.
9 In the absence of written consent of the individual upon whom an abortion has been performed
10 or attempted, anyone, other than a public official, who brings an action pursuant to section
11 14-02.7-07, 14-02.7-08, 14-02.7-09, 14-02.7-10, or 14-02.7-11 shall do so under a pseudonym.
12 This section may not be construed to conceal the identity of the plaintiff or of any witness from
13 the defendant.

14 **SECTION 2. EFFECTIVE DATE.** This Act becomes effective on the date the attorney
15 general certifies to the secretary of state and the legislative council that as a result of new
16 decisions by the Supreme Court of the United States, it is reasonably probable that this Act
17 would be upheld as constitutional.