

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

HOUSE BILL NO. 1305
(Representatives Grande, Brabandt, K. Koppelman, Laning, Rohr, Steiner)
(Senators Berry, Burckhard, Campbell, Dever, Erbele, Hogue)

AN ACT to create and enact a new section to chapter 14-02.1 of the North Dakota Century Code, relating to the prohibition on abortions for sex selection or genetic abnormalities; to amend and reenact section 14-02.1-02 of the North Dakota Century Code, relating to definitions; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-02. Definitions.

As used in this chapter:

1. "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable intrauterine pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:
 - a. Save the life or preserve the health of the unborn child;
 - b. Remove a dead unborn child caused by spontaneous abortion; or
 - c. Treat a woman for an ectopic pregnancy.
2. "Abortion facility" means a clinic, ambulatory surgical center, physician's office, or any other place or facility in which abortions are performed or prescribed, other than a hospital.
3. "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed or dispensed with the intent of causing an abortion.
4. "Drug label" means the pamphlet accompanying an abortion-inducing drug which outlines the protocol tested and authorized by the federal food and drug administration and agreed upon by the drug company applying for the federal food and drug administration authorization of that drug. Also known as "final printing labeling instructions", drug label is the federal food and drug administration document that delineates how a drug is to be used according to the federal food and drug administration approval.
5. "Down syndrome" refers to a chromosome disorder associated with an extra chromosome twenty-one, in whole or in part, or an effective trisomy for chromosome twenty-one.
6. "Genetic abnormality" means any defect, disease, or disorder that is inherited genetically. The term includes any physical disfigurement, scoliosis, dwarfism, Down syndrome, albinism, amelia, or any other type of physical or mental disability, abnormality, or disease.
7. "Hospital" means an institution licensed by the state department of health under chapter 23-16 and any hospital operated by the United States or this state.

- 6-8. "Human being" means an individual living member of the species of homo sapiens, including the unborn human being during the entire embryonic and fetal ages from fertilization to full gestation.
- 7-9. "Infant born alive" means a born child which exhibits either heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles or pulsation of the umbilical cord if still attached to the child.
- 8-10. "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed or induced provided that:
- a. The woman is told the following by the physician who is to perform the abortion, by the referring physician, or by the physician's agent, at least twenty-four hours before the abortion:
 - (1) The name of the physician who will perform the abortion;
 - (2) The abortion will terminate the life of a whole, separate, unique, living human being;
 - (3) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies, and infertility;
 - (4) The probable gestational age of the unborn child at the time the abortion is to be performed; and
 - (5) The medical risks associated with carrying her child to term.
 - b. The woman is informed, by the physician or the physician's agent, at least twenty-four hours before the abortion:
 - (1) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care and that more detailed information on the availability of that assistance is contained in the printed materials given to her as described in section 14-02.1-02.1;
 - (2) That the printed materials given to her and described in section 14-02.1-02.1 describe the unborn child and list agencies that offer alternatives to abortion;
 - (3) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion; and
 - (4) That she is free to withhold or withdraw her consent to the abortion at any time 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.
 - c. The woman certifies in writing, prior to the abortion, that the information described in subdivisions a and b has been furnished to her.
 - d. Before the performance of the abortion, the physician who is to perform or induce the abortion or the physician's agent receives a copy of the written certification prescribed by subdivision c.
 - e. The physician has not received or obtained payment for a service provided to a patient who has inquired about an abortion or has scheduled an abortion before the twenty-four-hour period required by this section.
- 9-11. "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates an immediate abortion to

avert her death or for which the twenty-four-hour delay will create serious risk of substantial and irreversible physical impairment of a major bodily function. A condition may not be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct that would result in her death or in substantial and irreversible physical impairment of a major bodily function.

- ~~10-12.~~ "Physician" means an individual who is licensed to practice medicine or osteopathy under chapter 43-17 or a physician who practices in the armed services of the United States or in the employ of the United States.
- ~~11-13.~~ "Probable gestational age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed.
- ~~12-14.~~ "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
- ~~13-15.~~ "Unborn child" means the offspring of human beings from conception until birth.
- ~~14-16.~~ "Viable" means the ability of an unborn child to live outside the mother's womb, albeit with artificial aid.

SECTION 2. A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

Prohibition - Sex-selective abortion - Abortion for genetic abnormality - Penalty.

1. Notwithstanding any other provision of law, a physician may not intentionally perform or attempt to perform an abortion with knowledge that the pregnant woman is seeking the abortion solely:
 - a. On account of the sex of the unborn child; or
 - b. Because the unborn child has been diagnosed with either a genetic abnormality or a potential for a genetic abnormality.
2. Any physician who performs an abortion in violation of this section is guilty of a class A misdemeanor.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1305.

House Vote: Yeas 64 Nays 27 Absent 3

Senate Vote: Yeas 27 Nays 15 Absent 5

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,

at _____ o'clock _____ M.

Secretary of State