

HOUSE BILL NO. 1297

Introduced by

Representatives Grande, Kilichowski, Metcalf

Senators Berry, Christmann, Hogue

1 A BILL for an Act to create and enact two new sections to chapter 14-02.1 of the North Dakota
2 Century Code, relating to an abortion report form and abortion inducing drugs; to amend and
3 reenact sections 14-02.1-02, 14-02.1-02.1, and 14-02.1-03, subsections 2 and 3 of
4 section 14-02.1-03.1, and sections 14-02.1-04, 14-02.1-07, 14-02.1-08, 14-02.1-09, 14-02.3-01,
5 14-02.3-03, 15.1-19-06, and 23-16-14 of the North Dakota Century Code, relating to the
6 regulation of abortion; to provide a penalty; and to provide for a report.

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

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

10 **14-02.1-02. Definitions.**

11 As used in this chapter:

- 12 1. "Abortion" means the ~~termination of human pregnancy with an intention other than to~~
13 ~~produce a live birth or to remove a dead embryo or fetus~~act of using or prescribing any
14 instrument, medicine, drug, or any other substance, device, or means with the intent to
15 terminate the clinically diagnosable pregnancy of a woman, including the elimination of
16 one or more unborn children in a multifetal pregnancy, with knowledge that the
17 termination by those means will with reasonable likelihood cause the death of the
18 unborn child. Such use, prescription, or means is not an abortion if done with the intent
19 to:
20 a. Save the life or preserve the health of the unborn child; or
21 b. Remove a dead unborn child caused by spontaneous abortion.
22 2. "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed
23 or dispensed with the intent of causing an abortion.

- 1 3. "Abortion facility" means a clinic, ambulatory surgical center, physician's office, or any
2 other place or facility in which abortions are performed or prescribed, other than a
3 hospital.
- 4 4. "Drug label" means the pamphlet accompanying an abortion-inducing drug which
5 outlines the protocol tested and authorized by the federal food and drug administration
6 and agreed upon by the drug company applying for the federal food and drug
7 administration authorization of that drug. Also known as "final printing labeling
8 instructions", drug label is the federal food and drug administration document that
9 delineates how a drug is to be used according to the federal food and drug
10 administration approval.
- 11 3-5. "Hospital" means an institution licensed by the state department of health under
12 chapter 23-16 and any hospital operated by the United States or this state.
- 13 4-6. "Human being" means an individual living member of the species of homo sapiens,
14 including the unborn human being during the entire embryonic and fetal ages from
15 fertilization to full gestation.
- 16 5-7. "Infant born alive" ~~or "live born child"~~ means a born child which exhibits either
17 heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary
18 muscles or pulsation of the umbilical cord if still attached to the child.
- 19 6-8. "Informed consent" means voluntary consent to abortion by the woman upon whom
20 the abortion is to be performed or induced provided that:
- 21 a. The woman is told the following by the physician who is to perform the abortion,
22 by the referring physician, or by the physician's agent, at least twenty-four hours
23 before the abortion:
- 24 (1) The name of the physician who will perform the abortion;
- 25 (2) The abortion will terminate the life of a whole, separate, unique, living
26 human being;
- 27 (3) The particular medical risks associated with the particular abortion
28 procedure to be employed including, when medically accurate, the risks of
29 infection, hemorrhage, danger to subsequent pregnancies, and infertility;
- 30 (4) The probable gestational age of the unborn child at the time the abortion is
31 to be performed; ~~and~~

- 1 (5) The medical risks associated with carrying her child to term; and
2 (6) Any other information that a reasonable patient would consider material to
3 the decision of whether to undergo the abortion.
- 4 b. The woman is informed, by the physician or the physician's agent, at least
5 twenty-four hours before the abortion:
- 6 (1) That medical assistance benefits may be available for prenatal care,
7 childbirth, and neonatal care and that more detailed information on the
8 availability of that assistance is contained in the printed materials given to
9 her as described in section 14-02.1-02.1;
- 10 (2) That the printed materials given to her and described in section
11 14-02.1-02.1 describe the unborn child and list agencies that offer
12 alternatives to abortion;
- 13 ~~(2)(3)~~ That the father is liable to assist in the support of her child, even in
14 instances in which the father has offered to pay for the abortion; and
- 15 ~~(3)(4)~~ That she has the right to review the printed materials described in section
16 ~~14-02.1-02.1. The physician or the physician's agent shall orally inform the~~
17 ~~woman the materials have been provided by the state of North Dakota and~~
18 ~~that they describe the unborn child and list agencies that offer alternatives to~~
19 ~~abortion. If the woman chooses to view the materials, copies of them must~~
20 ~~be furnished to her. The physician and the physician's agent may~~
21 ~~disassociate themselves from the materials and may comment or refrain~~
22 ~~from comment on them, as they choose~~ is free to withhold or withdraw her
23 consent to the abortion at any time without affecting her right to future care
24 or treatment and without the loss of any state or federally funded benefits to
25 which she might otherwise be entitled.
- 26 c. The woman certifies in writing, prior to the abortion, that the information
27 described in subdivisions a and b has been furnished to her ~~and that she has~~
28 ~~been informed of her opportunity to review the information referred to in~~
29 ~~paragraph 3 of subdivision b.~~

- 1 d. ~~Prior to~~Before the performance of the abortion, the physician who is to perform or
2 induce the abortion or the physician's agent receives a copy of the written
3 certification prescribed by subdivision c.
- 4 e. The physician has not received or obtained payment for a service provided to a
5 patient who has inquired about an abortion or has scheduled an abortion before
6 the twenty-four-hour period required by this section.
- 7 ~~7. "Licensed physician" means a person who is licensed to practice medicine or~~
8 ~~osteopathy under chapter 43-17 or a physician practicing in the armed services of the~~
9 ~~United States or in the employ of the United States.~~
- 10 ~~8-9.~~ "Medical emergency" means that a condition which, on the basis of the physician's
11 best clinical judgment, so complicates a pregnancy as to necessitate an immediate
12 abortion to avert the death of the mother or for which a twenty-four-hour delay will
13 create grave peril of immediate and irreversible loss that, in reasonable medical
14 judgment, so complicates the medical condition of the pregnant woman that it
15 necessitates the immediate abortion of her pregnancy without first determining
16 postfertilization age to avert her death or for which the delay necessary to determine
17 postfertilization age will create serious risk of substantial and irreversible physical
18 impairment of a major bodily function. A condition may not be deemed a medical
19 emergency if based on a claim or diagnosis that the woman will engage in conduct
20 that would result in her death or in substantial and irreversible physical impairment of a
21 major bodily function.
- 22 ~~9-10.~~ "Probable gestational age of the unborn child" means what, in the judgment of the
23 attending physician, will with reasonable probability be the gestational age of the
24 unborn child at the time the abortion is planned to be performed.
- 25 11. "Reasonable medical judgment" means a medical judgment that would be made by a
26 reasonably prudent physician, knowledgeable about the case and the treatment
27 possibilities with respect to the medical conditions involved.
- 28 12. "Unborn child" means the offspring of human beings from conception until birth.
- 29 ~~10-13.~~ "Viable" means the ability of a fetus an unborn child to live outside the mother's womb,
30 albeit with artificial aid.

1 **SECTION 2. AMENDMENT.** Section 14-02.1-02.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **14-02.1-02.1. Printed information - Referral service.**

4 1. The state department of health shall publish in English, and in every other language
5 that the department determines is the primary language of a significant number of
6 state residents, the following easily comprehensible printed materials:

7 a. Geographically indexed materials designed to inform the woman of public and
8 private agencies and services available to assist a woman through pregnancy,
9 upon childbirth, and while the child is dependent, including adoption agencies.
10 The materials must include a comprehensive list of the agencies available, a
11 description of the services they offer and a description of the manner, including
12 telephone numbers, in which they might be contacted, or, at the option of the
13 department, printed materials, including a toll-free, twenty-four-hour-a-day
14 telephone number that may be called to obtain, orally, such a list and description
15 of agencies in the locality of the caller and of the services they offer. The
16 materials must state that it is unlawful for any individual to coerce a woman to
17 undergo an abortion and that if a minor is denied financial support by the minor's
18 parent, guardian, or custodian due to the minor's refusal to have an abortion
19 performed, the minor is deemed to be emancipated for the purposes of eligibility
20 for public assistance benefits, except that those benefits may not be used to
21 obtain an abortion. The materials also must state that any physician who
22 performs an abortion upon a woman without her informed consent may be liable
23 to her for damages in a civil action and that the law permits adoptive parents to
24 pay costs of prenatal care, childbirth, and neonatal care. The materials must
25 include the following statement: There are many public and private agencies
26 willing and able to help you to carry your child to term and to assist you and your
27 child after your child is born, whether you choose to keep your child or to place
28 your child for adoption. The state of North Dakota strongly urges you to contact
29 one or more of these agencies before making a final decision about abortion. The
30 law requires that your physician or your physician's agent give you the
31 opportunity to call agencies like these before you undergo an abortion.

- 1 b. Materials, published in a booklet format, designed to inform the woman of the
2 probable anatomical and physiological characteristics of the fetusunborn child at
3 two-week gestational increments from the time when a woman can be known to
4 be pregnant to full term, including any relevant information on the possibility of
5 the survival of the fetusunborn child and pictures-representingcolor photographs
6 of the development of a fetusan unborn child at two-week gestational increments.
7 ~~The majority of the pictures included in the booklet must be full color~~
8 ~~photograph-style images and the pictures must contain the dimensions of the~~
9 ~~fetus and must be realistic and appropriate for the stage of pregnancy~~
10 ~~depicted.~~The descriptions must include information about brain and heart
11 function, the presence of external members and internal organs during the
12 applicable states of development, and any relevant information on the possibility
13 of the unborn child's survival. The materials must be objective, nonjudgmental,
14 and designed to convey only accurate scientific information about the
15 fetusunborn child at the various gestational ages. The materials required under
16 this subsection must be reviewed, updated, and reprinted as needed.
- 17 c. Materials that include information on the support obligations of the father of a
18 child who is born alive, including the father's legal duty to support his child, which
19 may include child support payments and health insurance, and the fact that
20 paternity may be established by the father's signature on an acknowledgment of
21 paternity or by court action. The printed material must also state that more
22 information concerning paternity establishment and child support services and
23 enforcement may be obtained by calling state or county public assistance
24 agencies.
- 25 d. Materials that contain objective information describing the various surgical and
26 drug-induced methods of abortion as well as the immediate and long-term
27 medical risks commonly associated with each abortion method, including the
28 risks of infection, hemorrhage, cervical or uterine perforation or rupture, danger to
29 subsequent pregnancies, increased risk of breast cancer, the possible adverse
30 psychological effects associated with an abortion, and the medical risks
31 associated with carrying a child to term.

- 1 2. The materials required under subsection 1 must be available at no cost from the state
2 department of health upon request and in appropriate number to any person, facility,
3 or hospital, and, except for copyrighted material, must be available on the
4 department's internet website. The department may make the copyrighted material
5 available on its internet website if the department pays the copyright royalties.

6 **SECTION 3.** A new section to chapter 14-02.1 of the North Dakota Century Code is created
7 and enacted as follows:

8 **Abortion report form.**

9 The state department of health shall prepare an abortion report form to be used by the
10 physician for each abortion performed, as required by section 14-02.1-07. The form must
11 include a checklist designed to confirm compliance with all provisions of this chapter, chapter
12 14-02.3, chapter 14-02.6, and section 23-16-14.

13 **SECTION 4. AMENDMENT.** Section 14-02.1-03 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **14-02.1-03. Consent to abortion - Notification requirements.**

- 16 1. No physician shall perform an abortion unless prior to such performance the physician
17 certified in writing that the woman gave her informed consent as defined and provided
18 in section 14-02.1-02 and shall certify in writing the pregnant woman's marital status
19 and age based upon proof of age offered by her. ~~Prior to~~Before the period of
20 pregnancy when the ~~fetus~~unborn child may reasonably be expected to have reached
21 viability, ~~nean~~ an abortion ~~shall~~may not be performed upon an unemancipated minor
22 unless the attending physician certifies in writing that each of the parents of the minor
23 requesting the abortion has been provided by the physician in person with the
24 information provided for in section 14-02.1-02 at least twenty-four hours ~~prior to~~before
25 the minor's consent to the performance of abortion or unless the attending physician
26 certifies in writing that the physician has caused materials of section 14-02.1-02 to be
27 posted by certified mail to each of the parents of the minor separately to the
28 last-known addresses at least forty-eight hours prior to the minor's consent to the
29 performance of abortion. ~~When~~If a parent of the minor has died or rights and interests
30 of ~~such~~that parent have been legally terminated, this subsection ~~shall apply~~applies to
31 the sole remaining parent. When both parents have died or the rights and interests of

1 both parents have been legally terminated, this subsection ~~shall apply~~applies to the
2 guardian or other person standing in loco parentis. Notification by the attending
3 physician is not required if the minor elects not to allow the notification of one or both
4 parents or her guardian and the abortion is authorized by the juvenile court in
5 accordance with section 14-02.1-03.1. None of the requirements of this subsection
6 apply in the case of a medical emergency, except that when a medical emergency
7 compels the performance of an abortion, the physician shall inform the woman, ~~prior-~~
8 ~~to~~before the abortion if possible, of the medical indications supporting the physician's
9 judgment that an abortion is necessary to avert her death or for which a
10 twenty-four-hour delay will create grave peril of immediate and irreversible loss of
11 major bodily function, and shall certify those indications in writing.

- 12 2. Subsequent to the period of pregnancy when the ~~fetus~~unborn child may reasonably be
13 expected to have reached viability, no abortion, other than an abortion necessary to
14 preserve her life, or because the continuation of her pregnancy will impose on her a
15 substantial risk of grave impairment of her physical or mental health, may be
16 performed upon any woman in the absence of:
- 17 a. The written consent of her husband unless her husband is voluntarily separated
18 from her; or
 - 19 b. The written consent of a parent, if living, or the custodian or legal guardian of the
20 woman, if the woman is unmarried and under eighteen years of age.
- 21 3. No executive officer, administrative agency, or public employee of the state of North
22 Dakota or any local governmental body has power to issue any order requiring an
23 abortion, nor shall any such officer or entity coerce any woman to have an abortion,
24 nor shall any other person coerce any woman to have an abortion.

25 **SECTION 5. AMENDMENT.** Subsections 2 and 3 of section 14-02.1-03.1 of the North
26 Dakota Century Code are amended and reenacted as follows:

- 27 2. Any pregnant woman under the age of eighteen or next friend is entitled to apply to
28 the juvenile court for authorization to obtain an abortion without parental consent.
29 Proceedings on such application must be conducted in the juvenile court of the county
30 of the minor's residence before a juvenile judge or referee, if authorized by the juvenile
31 court judge in accordance with the provisions of chapter 27-05, except that the

1 parental notification requirements of chapter 27-20 are not applicable to proceedings
2 under this section. All applications in accordance with this section must be heard by a
3 juvenile judge or referee in the juvenile court of the county of the minor's residence
4 within forty-eight hours, excluding Saturdays and Sundays, of receipt of the
5 application. ~~The purpose of the hearing before the juvenile judge or referee must be to~~
6 ~~determine~~ juvenile judge or referee shall find by clear and convincing evidence:

- 7 a. Whether or not the minor is sufficiently mature and well informed with regard to
8 the nature, effects, and possible consequences of both having an abortion and
9 bearing her child to be able to choose intelligently among the alternatives.
- 10 b. If the minor is not sufficiently mature and well informed to choose intelligently
11 among the alternatives without the advice and counsel of her parents or
12 guardian, whether or not it would be in the best interests of the minor to notify her
13 parents or guardian of the proceedings and call in the parents or guardian to
14 advise and counsel the minor and aid the court in making its determination and to
15 assist the minor in making her decision.
- 16 c. If the minor is not sufficiently mature and well informed to choose intelligently
17 among the alternatives and it is found not to be in the best interests of the minor
18 to notify and call in her parents or guardian for advice and counsel, whether an
19 abortion or some other alternative would be in the best interests of the minor.

- 20 3. All proceedings in connection with this section must be kept confidential and the
21 identity of the minor must be protected in accordance with provisions relating to all
22 juvenile court proceedings. This section does not limit the release, upon request, of
23 statistical information regarding applications made under this section and their
24 disposition.

25 **SECTION 6.** A new section to chapter 14-02.1 of the North Dakota Century Code is created
26 and enacted as follows:

27 **Abortion-inducing drugs.**

- 28 1. For purposes of this chapter, an abortion accomplished by the use of an
29 abortion-inducing drug is deemed to occur when the drug is prescribed, in the case of
30 a prescription, or when the drug is administered directly to the woman by the
31 physician.

- 1 2. It is unlawful to knowingly give, sell, dispense, administer, otherwise provide, or
2 prescribe any abortion-inducing drug to a pregnant woman for the purpose of inducing
3 an abortion in that pregnant woman, or enabling another person to induce an abortion
4 in a pregnant woman, unless the person who gives, sells, dispenses, administers, or
5 otherwise provides or prescribes the abortion-inducing drug is a physician, and the
6 provision or prescription of the abortion-inducing drug satisfies the protocol tested and
7 authorized by the federal food and drug administration and as outlined in the label for
8 the abortion-inducing drug.
- 9 3. Every pregnant woman to whom a physician gives, sells, dispenses, administers,
10 otherwise provides, or prescribes any abortion-inducing drug must be provided with a
11 copy of the drug's label.
- 12 4. Any physician who gives, sells, dispenses, administers, prescribes, or otherwise
13 provides an abortion-inducing drug shall enter a signed contract with another
14 physician who agrees to handle emergencies associated with the use or ingestion of
15 the abortion-inducing drug. The physician shall produce the signed contract on
16 demand by the patient, the department of health, or a criminal justice agency. Every
17 pregnant woman to whom a physician gives, sells, dispenses, administers, prescribes,
18 or otherwise provides any abortion-inducing drug must be provided the name and
19 telephone number of the physician who will be handling emergencies and the hospital
20 at which any emergencies will be handled. The physician who contracts to handle
21 emergencies must have active admitting privileges and gynecological and surgical
22 privileges at the hospital designated to handle any emergencies associated with the
23 use or ingestion of the abortion-inducing drug.
- 24 5. When an abortion-inducing drug or chemical is used for the purpose of inducing an
25 abortion, the drug or chemical must be administered by or in the same room and in the
26 physical presence of the physician who prescribed, dispensed, or otherwise provided
27 the drug or chemical to the patient.

28 **SECTION 7. AMENDMENT.** Section 14-02.1-04 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **14-02.1-04. Limitations on the performance of abortions - Penalty.**

- 2 1. No abortion may be done by any person other than a licensed physician using
3 applicable medical standards ~~applicable to all other surgical procedures~~.
- 4 2. After the first twelve weeks of pregnancy but prior to the time at which the fetusunborn
5 child may reasonably be expected to have reached viability, no abortion may be
6 performed in any facility other than a licensed hospital.
- 7 3. After the point in pregnancy when the fetusunborn child may reasonably be expected
8 to have reached viability, no abortion may be performed except in a hospital, and then
9 only if in the medical judgment of the physician the abortion is necessary to preserve
10 the life of the woman or if in the physician's medical judgment the continuation of her
11 pregnancy will impose on her a substantial risk of grave impairment of her physical or
12 mental health.

13 An abortion under this subsection may only be performed if the above-mentioned
14 medical judgment of the physician who is to perform the abortion is first certified by the
15 physician in writing, setting forth in detail the facts upon which the physician relies in
16 making this judgment and if this judgment has been concurred in by two other licensed
17 physicians who have examined the patient. The foregoing certification and
18 concurrence is not required in the case of an emergency when the abortion is
19 necessary to preserve the life of the patient.

- 20 4. An abortion facility may not perform an abortion on a woman without first offering the
21 woman an opportunity to receive and view at the abortion facility or another facility an
22 active ultrasound of her fetusunborn child. The offer and opportunity to receive and
23 view an ultrasound must occur at least twenty-four hours before the abortion is
24 scheduled to be performed. The active ultrasound image must be of a quality
25 consistent with standard medical practice in the community, contain the dimensions of
26 the fetusunborn child, and accurately portray the presence of external members and
27 internal organs, including the heartbeat, if present or viewable, of the fetusunborn
28 child. The auscultation of the fetal heart tone must be of a quality consistent with
29 standard medical practice in the community. The abortion facility shall document the
30 woman's response to the offer, including the date and time of the offer and the
31 woman's signature attesting to her informed decision.

1 5. Any licensed physician who performs an abortion without complying with the
2 provisions of this section is guilty of a class A misdemeanor.

3 6. It is a class B felony for any person, other than a physician licensed under chapter
4 43-17, to perform an abortion in this state.

5 **SECTION 8. AMENDMENT.** Section 14-02.1-07 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **14-02.1-07. Records required - Reporting of practice of abortion.**

8 1. Records:

9 a. All abortion facilities and hospitals in which abortions are performed shall keep
10 records, including admission and discharge notes, histories, results of tests and
11 examinations, nurses' worksheets, social service records, and progress notes,
12 and shall further keep a copy of all written certifications provided for in this
13 chapter as well as a copy of the constructive notice forms, consent forms, court
14 orders, abortion reports, adverse event reports, and complication reports. All
15 abortion facilities shall keep records of the number of women who availed
16 themselves of the opportunity to receive and view an ultrasound image of their
17 ~~fetuses~~unborn children pursuant to section 14-02.1-04, and the number who did
18 not; and of each of those numbers, the number who, to the best of the reporting
19 abortion facility's information and belief, went on to obtain the abortion. Records
20 must be maintained in the permanent files of the hospital or abortion facility for a
21 period of not less than seven years.

22 b. The medical records of abortion facilities and hospitals in which abortions are
23 performed and all information contained therein must remain confidential and
24 may be used by the state department of health only for gathering statistical data
25 and ensuring compliance with the provisions of this chapter.

26 2. Reporting:

27 a. An individual abortion report for each abortion performed upon a woman must be
28 completed by her attending physician. The report ~~must be confidential and~~ may
29 not contain the name of the woman. This reporting must include the data called
30 for in the United States standard report of induced termination of pregnancy as
31 recommended by the national center for health statistics.

- 1 b. All abortion reports must be signed by the attending physician and submitted to
2 the state department of health within ~~thirty days~~twenty-four hours from the date of
3 the abortion. All complication reports must be signed by the physician providing
4 the post-abortion care and submitted to the state department of health within
5 thirty days from the date of the post-abortion care. If a physician provides an
6 abortion-inducing drug to another for the purpose of inducing an abortion and the
7 physician knows that the individual experiences during or after the use an
8 adverse event, the physician shall provide a written report of the adverse event
9 within twenty-four hours of the event to the state department of health and the
10 federal food and drug administration via the medwatch reporting system. For
11 purposes of this section, "adverse event" is defined based upon the federal food
12 and drug administration criteria given in the medwatch reporting system.
- 13 c. A copy of the abortion report, any complication report, and any adverse event
14 report must be made a part of the medical record of the patient at the facility or
15 hospital in which the abortion was performed. In cases when post-abortion
16 complications are discovered, diagnosed, or treated by physicians not associated
17 with the facility or hospital where the abortion was performed, the state
18 department of health shall forward a copy of the report to that facility or hospital
19 to be made a part of the patient's permanent record.
- 20 d. The state department of health is responsible for collecting all abortion reports
21 and, complication reports, and adverse event reports and collating and evaluating
22 all data gathered therefrom and shall annually publish a statistical report based
23 on data from abortions performed in the previous calendar year. All abortion
24 reports, complication reports, and adverse event reports received by the state
25 department of health are public records. The board may not release the name or
26 any other personal identifying information regarding the woman upon whom the
27 abortion was performed.
- 28 e. The state department of health shall report to the attorney general any apparent
29 violation of this chapter.

30 **SECTION 9. AMENDMENT.** Section 14-02.1-08 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **14-02.1-08. Protection of viable fetus infant born alive - Penalty.**

- 2 1. A person is guilty of a class ~~GAA~~ felony if the person ~~knowingly, or~~
3 ~~negligently, intentionally~~ causes the death of a ~~viable fetus~~ an infant born alive.
- 4 2. Whenever a ~~fetus which~~ an unborn child who is the subject of abortion is born alive and
5 is viable, it becomes an abandoned and deprived child, unless:
- 6 a. The termination of the pregnancy is necessary to preserve the life of the mother;
7 or
- 8 b. The mother and her spouse, or either of them, have agreed in writing in advance
9 of the abortion, or within seventy-two hours thereafter, to accept the parental
10 rights and responsibilities for the ~~fetus~~ unborn child if it survives the abortion
11 procedure.

12 **SECTION 10. AMENDMENT.** Section 14-02.1-09 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **14-02.1-09. Humane disposal of nonviable fetus unborn child.**

15 The ~~licensed~~ physician performing the abortion, if performed outside of a hospital, must see
16 to it that the ~~fetus~~ unborn child is disposed of in a humane fashion under regulations established
17 by the state department of health. A licensed hospital in which an abortion is performed must
18 dispose of a dead ~~fetus~~ unborn child in a humane fashion in compliance with regulations
19 promulgated by the state department of health.

20 **SECTION 11. AMENDMENT.** Section 14-02.3-01 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **14-02.3-01. State policy on abortion and childbirth - Use of public funds restricted.**

- 23 1. Between normal childbirth and abortion, it is the policy of the state of North Dakota
24 that normal childbirth is to be given preference, encouragement, and support by law
25 and by state action, it being in the best interests of the well-being and common good
26 of North Dakota citizens.
- 27 2. An agency of this state may not produce, distribute, publish, disseminate, endorse, or
28 approve materials of any type that, between normal childbirth and abortion, do not give
29 preference, encouragement, and support to normal childbirth. An agency of the state
30 may not fund, endorse, or support any program that, between normal childbirth and
31 abortion, does not give preference, encouragement, and support to normal childbirth.

1 3. No funds of this state or any agency, county, municipality, or any other subdivision
2 thereof and no federal funds passing through the state treasury or a state agency may
3 be used to pay for the performance, or for promoting the performance, of an abortion
4 unless the abortion is necessary to prevent the death of the woman.

5 **SECTION 12. AMENDMENT.** Section 14-02.3-03 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **14-02.3-03. Payment for abortions by health insurance policies delivered or issued in**
8 **North Dakota restricted.**

9 No health insurance contracts, plans, or policies delivered or issued for delivery in this state
10 may provide coverage for abortions, including the elimination of one or more unborn children in
11 a multifetal pregnancy, except by an optional rider for which there must be paid an additional
12 premium. Provided, however, that this section does not apply to the performance of an abortion
13 necessary to prevent the death of the woman.

14 **SECTION 13. AMENDMENT.** Section 15.1-19-06 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **15.1-19-06. Abortion referrals.**

17 1. No person while acting in an official capacity as an employee or agent of a school
18 district may refer a student to another person, agency, or entity for the purpose of
19 obtaining an abortion. This provision does not extend to private communications
20 between the employee or agent and a child of the employee or agent.

21 2. Between normal childbirth and abortion, it is the policy of the state of North Dakota
22 that normal childbirth is to be given preference, encouragement, and support by law
23 and by state action. A person acting in an official capacity as an employee or agent of
24 a school district, between normal childbirth and abortion, shall give preference,
25 encouragement, and support to normal childbirth. No public school in the state may
26 endorse or support any program that, between normal childbirth and abortion, does
27 not give preference, encouragement, and support to normal childbirth. No public
28 school of the state may authorize a presentation to students that, between normal
29 childbirth and abortion, does not give preference, encouragement, and support to
30 normal childbirth.

1 **SECTION 14. AMENDMENT.** Section 23-16-14 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **23-16-14. Participation in abortion - Not mandatory.**

4 No hospital, physician, nurse, hospital employee, nor any other person is under any duty, by
5 law or contract, nor may such hospital or person in any circumstances be required to participate
6 in the performance of an abortion, if such hospital or person objects to such abortion. No such
7 person or institution may be discriminated against because the person or institution so objects.
8 For purposes of this section, "abortion" means the act of using or prescribing any instrument,
9 medicine, drug, or any other substance, device, or means with the intent to terminate the
10 clinically diagnosable pregnancy of a woman, including the elimination of one or more unborn
11 children in a multifetal pregnancy, with knowledge that the termination by those means will with
12 reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is
13 not an abortion if done with the intent to save the life or preserve the health of the unborn child;
14 or remove a dead unborn child caused by spontaneous abortion.

15 **SECTION 15. STATE DEPARTMENT OF HEALTH REPORT TO LEGISLATIVE**

16 **MANAGEMENT - ABORTION DATA.** During the 2011-12 interim, the state department of
17 health shall:

- 18 1. Create an inventory of the data, reports, records, and other material the department is
19 required to gather, receive, create, or maintain relating to abortions as required under
20 chapter 14-02.1. The inventory must include information regarding the frequency with
21 which the items in the inventory must be gathered, received, or created.
- 22 2. Create a report that outlines the department's practices in gathering, receiving, and
23 creating the items in the inventory.
- 24 3. Make three reports to the legislative management on the status and outcome of the
25 creation of the inventory and the practices report. The first report must be made before
26 January 1, 2012; the second before April 1, 2012; and the third before July 1, 2012.