

Sixty-third  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2368

Introduced by

Senators Miller, Campbell, Schaible

Representatives B. Koppelman, Larson, Rohr

1 A BILL for an Act to create and enact a new section to chapter 14-02.1 of the North Dakota  
2 Century Code, relating to limitations on and penalties for performing an abortion; to amend and  
3 reenact sections 14-02.1-01, 14-02.1-02, and 14-02.1-07 of the North Dakota Century Code,  
4 relating to definitions and reporting requirements.

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

6 **SECTION 1. AMENDMENT.** Section 14-02.1-01 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **14-02.1-01. Purpose.**

9 ~~The purpose of this chapter is to protect unborn human life and maternal health within~~  
10 ~~present constitutional limits. It reaffirms the tradition of the state of North Dakota to protect every~~  
11 ~~human life whether unborn or aged, healthy or sick~~The purpose of this section is to protect the  
12 state's compelling interest in the unborn human life from the time the unborn child is capable of  
13 feeling pain.

14 **SECTION 2. AMENDMENT.** Section 14-02.1-02 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **14-02.1-02. Definitions.**

17 As used in this chapter:

- 18 1. "Abortion" means the act of using or prescribing any instrument, medicine, drug, or  
19 any other substance, device, or means with the intent to terminate the clinically  
20 diagnosable intrauterine pregnancy of a woman, including the elimination of one or  
21 more unborn children in a multifetal pregnancy, with knowledge that the termination by  
22 those means will with reasonable likelihood cause the death of the unborn child. Such  
23 use, prescription, or means is not an abortion if done with the intent to:

- 24 a. Save the life or preserve the health of the unborn child;

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

- 1           (3) The particular medical risks associated with the particular abortion  
2                    procedure to be employed including, when medically accurate, the risks of  
3                    infection, hemorrhage, danger to subsequent pregnancies, and infertility;
- 4           (4) The probable gestational age of the unborn child at the time the abortion is  
5                    to be performed; and
- 6           (5) The medical risks associated with carrying her child to term.
- 7           b. The woman is informed, by the physician or the physician's agent, at least  
8                    twenty-four hours before the abortion:
- 9                    (1) That medical assistance benefits may be available for prenatal care,  
10                    childbirth, and neonatal care and that more detailed information on the  
11                    availability of that assistance is contained in the printed materials given to  
12                    her as described in section 14-02.1-02.1;
- 13                   (2) That the printed materials given to her and described in section  
14                    14-02.1-02.1 describe the unborn child and list agencies that offer  
15                    alternatives to abortion;
- 16                   (3) That the father is liable to assist in the support of her child, even in  
17                    instances in which the father has offered to pay for the abortion; and
- 18                   (4) That she is free to withhold or withdraw her consent to the abortion at any  
19                    time without affecting her right to future care or treatment and without the  
20                    loss of any state or federally funded benefits to which she might otherwise  
21                    be entitled.
- 22           c. The woman certifies in writing, prior to the abortion, that the information  
23                    described in subdivisions a and b has been furnished to her.
- 24           d. Before the performance of the abortion, the physician who is to perform or induce  
25                    the abortion or the physician's agent receives a copy of the written certification  
26                    prescribed by subdivision c.
- 27           e. The physician has not received or obtained payment for a service provided to a  
28                    patient who has inquired about an abortion or has scheduled an abortion before  
29                    the twenty-four-hour period required by this section.
- 30    9-10. "Medical emergency" means a condition that, in reasonable medical judgment, so  
31                    complicates the medical condition of the pregnant woman that it necessitates an

1 immediate abortion of her pregnancy without first determining postfertilization age to  
2 avert her death or for which the ~~twenty-four-hour~~ delay necessary to determine  
3 postfertilization age will create serious risk of substantial and irreversible physical  
4 impairment of a major bodily function, not including psychological or emotional  
5 conditions. A condition may not be deemed a medical emergency if based on a claim  
6 or diagnosis that the woman will engage in conduct that ~~would~~ she intends to result in  
7 her death or in substantial and irreversible physical impairment of a major bodily  
8 function.

9 ~~40-11.~~ "Physician" means an individual who is licensed to practice medicine or osteopathy  
10 under chapter 43-17 or a physician who practices in the armed services of the United  
11 States or in the employ of the United States.

12 ~~41-12.~~ "Postfertilization age" means the age of the unborn child as calculated from  
13 fertilization.

14 13. "Probable gestational age of the unborn child" means what, in reasonable medical  
15 judgment, will with reasonable probability be the gestational age of the unborn child at  
16 the time the abortion is planned to be performed.

17 14. "Probable postfertilization age of the unborn child" means what, in reasonable medical  
18 judgment, will with reasonable probability be the postfertilization age of the unborn  
19 child at the time the abortion is planned to be performed or induced.

20 ~~42-15.~~ "Reasonable medical judgment" means a medical judgment that would be made by a  
21 reasonably prudent physician, knowledgeable about the case and the treatment  
22 possibilities with respect to the medical conditions involved.

23 ~~43-16.~~ "Unborn child" means the offspring of human beings from conception until birth.

24 ~~44-17.~~ "Viable" means the ability of an unborn child to live outside the mother's womb, albeit  
25 with artificial aid.

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

28 **Determination of postfertilization age - Abortion of unborn child of twenty or more**  
29 **weeks postfertilization age prohibited.**

30 1. Except in the case of a medical emergency, an abortion may not be performed or  
31 induced or be attempted to be performed or induced unless the physician performing

1 or inducing the abortion has first made a determination of the probable postfertilization  
2 age of the unborn child or relied upon such a determination made by another  
3 physician. In making the determination, the physician shall make those inquiries of the  
4 woman and perform or cause to be performed the medical examinations and tests as  
5 a reasonably prudent physician, knowledgeable about the case and the medical  
6 conditions involved, would consider necessary to perform in making an accurate  
7 diagnosis with respect to postfertilization age.

8 2. Except in the case of a medical emergency, a person may not perform or induce or  
9 attempt to perform or induce an abortion upon a woman when it has been determined,  
10 by the physician performing or inducing or attempting to perform or induce the abortion  
11 or by another physician upon whose determination that physician relies, that the  
12 probable postfertilization age of the woman's unborn child is twenty or more weeks.

13 **SECTION 4. AMENDMENT.** Section 14-02.1-07 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **14-02.1-07. Records required - Reporting of practice of abortion.**

16 1. Records:

17 a. All abortion facilities and hospitals in which abortions are performed shall keep  
18 records, including admission and discharge notes, histories, results of tests and  
19 examinations, nurses' worksheets, social service records, and progress notes,  
20 and shall further keep a copy of all written certifications provided for in this  
21 chapter as well as a copy of the constructive notice forms, consent forms, court  
22 orders, abortion data reports, adverse event reports, abortion compliance reports,  
23 and complication reports. All abortion facilities shall keep the following records of  
24 the:

25 (1) The number of women who availed themselves of the opportunity to receive  
26 and view an ultrasound image of their unborn children pursuant to section  
27 14-02.1-04, and the number who did not; and of each of those numbers, the  
28 number who, to the best of the reporting abortion facility's information and  
29 belief, went on to obtain the abortion. ~~Records must be maintained in the~~  
30 ~~permanent files of the hospital or abortion facility for a period of not less~~  
31 ~~than seven years.~~

- 1                   (2) Postfertilization age:
- 2                   (a) If a determination of probable postfertilization age was not made, the
- 3                   basis of the determination that a medical emergency existed.
- 4                   (b) If the probable postfertilization age was determined to be twenty or
- 5                   more weeks and an abortion was performed, the basis of the
- 6                   determination that a medical emergency existed.
- 7                   b. The medical records of abortion facilities and hospitals in which abortions are
- 8                   performed and all information contained therein must remain confidential and
- 9                   may be used by the state department of health only for gathering statistical data
- 10                  and ensuring compliance with the provisions of this chapter.
- 11                  c. Records must be maintained in the permanent files of the hospital or abortion
- 12                  facility for a period of not less than seven years.
- 13                  2. Reporting:
- 14                  a. An individual abortion compliance report and an individual abortion data report for
- 15                  each abortion performed upon a woman must be completed by her attending
- 16                  physician. The abortion data report must be confidential and may not contain the
- 17                  name of the woman. The abortion data report must include the data called for in
- 18                  the United States standard report of induced termination of pregnancy as
- 19                  recommended by the national center for health statistics.
- 20                  b. All abortion compliance reports must be signed by the attending physician within
- 21                  twenty-four hours and submitted to the state department of health within ten
- 22                  business days from the date of the abortion. All abortion data and complication
- 23                  reports must be signed by the attending physician and submitted to the state
- 24                  department of health within thirty days from the date of the abortion. If a
- 25                  physician provides an abortion-inducing drug to another for the purpose of
- 26                  inducing an abortion and the physician knows that the individual experiences
- 27                  during or after the use an adverse event, the physician shall provide a written
- 28                  report of the adverse event within thirty days of the event to the state department
- 29                  of health and the federal food and drug administration via the medwatch reporting
- 30                  system. For purposes of this section, "adverse event" is defined based upon the
- 31                  federal food and drug administration criteria given in the medwatch reporting

1            system. If a determination of probable postfertilization age was not made, the  
2            abortion compliance report must state the basis of the determination that a  
3            medical emergency existed. If the probable postfertilization age was determined  
4            to be twenty or more weeks and an abortion was performed, the abortion  
5            compliance report must state the basis of the determination that a medical  
6            emergency existed.

- 7            c. A copy of the abortion report, any complication report, and any adverse event  
8            report must be made a part of the medical record of the patient at the facility or  
9            hospital in which the abortion was performed. In cases when post-abortion  
10           complications are discovered, diagnosed, or treated by physicians not associated  
11           with the facility or hospital where the abortion was performed, the state  
12           department of health shall forward a copy of the report to that facility or hospital  
13           to be made a part of the patient's permanent record.
- 14           d. The state department of health is responsible for collecting all abortion  
15           compliance reports, abortion data reports, complication reports, and adverse  
16           event reports and collating and evaluating all data gathered from these reports  
17           and shall annually publish a statistical report based on data from abortions  
18           performed in the previous calendar year. All abortion compliance reports received  
19           by the state department of health are public records. Except for disclosure to a  
20           law enforcement officer or state agency, the department may not disclose an  
21           abortion compliance report without first removing any individually identifiable  
22           health information and any other demographic information, including race, marital  
23           status, number of previous live births, and education regarding the woman upon  
24           whom the abortion was performed.
- 25           e. The state department of health shall report to the attorney general any apparent  
26           violation of this chapter.