

SENATE BILL NO. 2302

Introduced by

Senators Sitte, Luick, Unruh

Representatives Damschen, Heller, Rohr

1 A BILL for an Act to provide for the right to life act; to provide a penalty; and to provide an
2 effective date.

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

4 **SECTION 1.**

5 **Definitions.**

6 As used in this Act only:

- 7 1. "Abortion" is the crime of knowingly using or employing any instrument, device, or
8 procedure upon a pregnant woman with the intent of causing the termination of the life
9 of a preborn child, causing the death of that preborn child.
- 10 2. "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed
11 or dispensed with the intent of terminating the life of a preborn child, with knowledge
12 that the termination will occur.
- 13 3. "Child" means a human being prior to and during birth, an unemancipated individual
14 who has not attained eighteen years of age.
- 15 4. "Contraception" means any medicine, device, or other substance prescribed or
16 dispensed with the intent of stopping the union of the male sperm and female ovum.
- 17 5. "Destructive research" means medical procedures, scientific or laboratory research, or
18 other kinds of investigation that kill or injure the subject of such research. It does not
19 include:
- 20 a. Research in the use of nuclear transfer or other cloning techniques to produce
21 molecules; deoxyribonucleic acid; cells other than human embryos, tissues,
22 organs, plants, or animals other than humans; or

- 1 b. Any diagnostic procedure that benefits the human embryo subject to such tests,
2 while not imposing risks greater than those considered acceptable for other
3 human research subjects.
- 4 6. "Dismember" means to use an instrument or procedure for the purpose of
5 disconnecting any bones at their joint, completely severing any bones, or removing
6 any organs or limbs, including but not limited to the spinal cord, arms, legs, and
7 internal organs.
- 8 7. "Donor" means an individual from whose body gametes were obtained, or an
9 individual from whose body cells or tissues were obtained for the purpose of creating
10 gametes or human embryos, whether for valuable consideration or not.
- 11 8. "Embryo" or "human embryo" means an organism with a human or predominantly
12 human genetic constitution from the single cell stage to approximately eight weeks'
13 development that is derived by fertilization (in vitro or in utero), parthenogenesis,
14 cloning (somatic cell nuclear transfer), or any other means from one or more human
15 gametes or human diploid cells.
- 16 9. "Embryonic stem cell" means a stem cell obtained from an embryo of the same
17 species.
- 18 10. "Embryo transfer" means the medical procedure of physically placing an embryo into
19 the uterus of a female.
- 20 11. "Facility" or "medical facility" means any public or private hospital, clinic, center,
21 medical school, medical training institution, health care facility, physician's office,
22 infirmery, dispensary, ambulatory surgical treatment center, or other institution or
23 location wherein medical care is provided to any person.
- 24 12. "Gamete" means an egg (oocyte) or sperm.
- 25 13. "Health care service" means any phase of patient medical care, treatment, or
26 procedure. The term includes patient referral, counseling, therapy, testing, diagnosis
27 or prognosis, research, instruction, prescribing, dispensing or administering any
28 device, drug or medication, surgery, or any other care or treatment rendered by health
29 care providers or health care institutions.
- 30 14. "Human animal hybrid" means any of the following:

- 1 a. A human embryo into which a nonhuman cell or a component of a nonhuman cell
2 is introduced so that it is uncertain whether the human embryo is a member of
3 the species homo sapiens;
- 4 b. A hybrid human-animal embryo produced by fertilizing a human egg with a
5 nonhuman sperm;
- 6 c. A hybrid human-animal embryo produced by fertilizing a nonhuman egg with a
7 human sperm;
- 8 d. An embryo produced by introducing a nonhuman nucleus into a human egg;
- 9 e. An embryo produced by introducing a human nucleus into a nonhuman egg;
- 10 f. An embryo containing at least haploid sets of chromosomes from both a human
11 and a nonhuman life form;
- 12 g. A nonhuman life form engineered with the intention of generating functional
13 human gametes within the body of a nonhuman life form;
- 14 h. A nonhuman life form engineered such that it contains a human brain or a brain
15 derived wholly from human neural tissues.
- 16 15. "In vitro" means outside the human body.
- 17 16. "In vitro fertilization" means the formation of a human embryo outside the human body
18 by union of human egg with human sperm.
- 19 17. "In vitro human embryo" means a human embryo created outside the human body.
- 20 18. "Medical emergency" means any condition which, in reasonable medical judgment, so
21 complicates the medical condition of a pregnant female as to necessitate the
22 immediate abortion of her pregnancy to avert her death or for which a delay will create
23 serious risk of substantial or irreversible impairment of a major bodily function of the
24 pregnant woman or death of the unborn child. No such condition shall be deemed to
25 exist if it is based on a diagnosis or claim of a mental or emotional condition of the
26 pregnant woman or that the pregnant woman will purposefully engage in conduct
27 which she intends to result in her death or in substantial and irreversible physical
28 impairment of a major bodily function.
- 29 19. "Pay" or "payment" means pay, contract for, or otherwise arrange for the payment of in
30 whole or in part.

- 1 20. "Person" means any living human organisms, beginning at the single cell stage or later
2 stage of development, no matter how created; and, when appropriate, an
3 "organization".
- 4 21. "Physician" means a person licensed to practice medicine in the state of North Dakota.
5 This term includes medical doctors and doctors of osteopathy.
- 6 22. "Pluripotent cells" means stem cells possessing the ability to give rise to most or all of
7 the various cell types that make up the body. One demonstration of pluripotency is the
8 ability, even after prolonged culture, to form derivatives of all three embryonic germ
9 layers from the progeny of a single cell.
- 10 23. "Preborn child" means any person at any stage of development prior to and during
11 birth.
- 12 24. "Prohibited human research" means:
- 13 a. Any medical procedures, scientific or laboratory research, or other kinds of
14 investigation that kill or injure the human subject, at any stage of development, of
15 such research; or
- 16 b. Any scientific or laboratory research, or other kinds of investigation conducted on
17 fetal tissue obtained from an abortion;
- 18 c. It does not include:
- 19 (1) Research in the use of nuclear transfer or other cloning techniques to
20 produce molecules; deoxyribonucleic acid; or cells other than human
21 embryos, tissues, organs, plants, or animals other than humans; or
- 22 (2) Any diagnostic procedure that benefits the human subject to such tests.
- 23 25. "Somatic cell" means a cell having a complete or nearly complete set of chromosomes
24 obtained from a living or deceased human body at any stage of development.
- 25 26. "Spontaneous miscarriage" is the unintentional termination of a pregnancy.
- 26 27. "Transfer" means the placement of a human embryo into the body of a woman.
- 27 28. "Valuable consideration" means financial gain or advantage, including cash, in-kind
28 payments, reimbursement for any costs incurred in connection with the removal,
29 processing, disposal, preservation, quality control, storage, transfer, or donation of
30 human gametes, including lost wages of the donor, as well as any other consideration.

31 **SECTION 2.**

1 **Abortion prohibited.**

2 No abortion is authorized or shall be performed unless to avert the death of the pregnant
3 woman in a medical emergency.

4 1. Penalties.

5 a. Any physician who knowingly uses or employs any instrument, device, or
6 procedure upon a pregnant woman with the intent of causing the termination of
7 the life of a preborn child, who causes the death of that preborn child, is guilty of
8 a class A misdemeanor without imprisonment.

9 b. Any physician who knowingly administers to, prescribes for, or procures for, or
10 sells to any pregnant woman any abortion-inducing drug with the general intent of
11 causing or abetting the termination of the life of a preborn child is guilty of a
12 class A misdemeanor without imprisonment.

13 c. Any physician who intentionally or knowingly violates this section shall be liable
14 for damages.

15 d. If any person commits an abortion resulting in death, any surviving family
16 member, other beneficiary, executor, or administrator of the decedent's estate
17 may bring an appropriate action as allowed under state law.

18 e. Any physician who refers or assists in a violation of this section shall be
19 considered to have engaged in unprofessional conduct for which the physician's
20 license to provide health care services in the state of North Dakota shall be
21 suspended or revoked by the state department of health.

22 f. Any licensed physician who knowingly dismembers a living unborn child during
23 abortion with the intent of endangering the life or health of the child is guilty of a
24 class A felony.

25 2. Construction - Contraception.

26 a. Nothing in this section may be construed to prohibit the sale, use, prescription, or
27 administration of a contraceptive measure, drug, or chemical. Only birth control
28 that can be clinically proven to kill a person shall be affected by this section. In
29 the interest of protecting the health and safety of the people of North Dakota, the
30 state department of health shall provide a list of birth control products along with

1 their clinically proven effects upon women and preborn human beings at every
2 stage of development.

3 b. Spontaneous miscarriages shall not be affected by this section.

4 c. The state of North Dakota does not punish the crime of sexual assault with the
5 death penalty, and neither shall persons conceived through a sexual assault be
6 punished with the loss of life.

7 **SECTION 3.**

8 **Ethical treatment of human embryos.**

9 1. A person may not intentionally or knowingly create or attempt to create an in vitro
10 human embryo by any means other than fertilization of a human egg by a human
11 sperm.

12 2. The creation of an in vitro human embryo shall be solely for the purpose of initiating a
13 human pregnancy by means of transfer to the uterus of a human female for the
14 treatment of human infertility. A pregnancy may not be initiated with the intention of
15 deliberately destroying the embryo for scientific research. An embryo may not be
16 gestated to the fetal stage for purposes of destroying the fetus in order to harvest
17 tissue stem cells for research. A person may not intentionally or knowingly transfer or
18 attempt to transfer an embryo which is not the product of fertilization of a human egg
19 by a human sperm into a human uterus.

20 3. A person may not intentionally or knowingly:

21 a. Create or attempt to create a human-animal hybrid;

22 b. Transfer or attempt to transfer a human embryo into a nonhuman womb;

23 c. Transfer or attempt to transfer a nonhuman embryo into a human womb; or

24 d. Transfer or receive for any purpose a human-animal hybrid or any product
25 derived from such hybrid.

26 4. This section does not prohibit any of the following:

27 a. Research involving the use of transgenic animal models containing human
28 genes;

29 b. Xenotransplantation of human organs, tissues, or cells into recipient animals,
30 including animals at any stage of development before birth, if the
31 xenotransplantation does not violate a prohibition in subsection 3; and

1 c. An individual from receiving organs, tissues, or cells delivered from outside this
2 state.

3 **SECTION 4.**

4 **Valuable consideration prohibited.**

5 A person may not give or receive valuable consideration, offer to give or receive valuable
6 consideration, or advertise for the giving or receiving of valuable consideration for the provision
7 of gametes or in vitro human embryos. This section does not regulate or prohibit the
8 procurement of gametes for the treatment of infertility being experienced by the patient from
9 whom the gametes are being derived.

10 **SECTION 5.**

11 **Identification.**

12 An in vitro human embryo must be given an identification by the facility for use within the
13 medical facility. Records must be maintained identifying the donors associated with the in vitro
14 human embryo. The confidentiality of records kept under this section must be maintained as
15 required by law.

16 **SECTION 6.**

17 **Care and treatment of in vitro human embryos.**

18 1. A living in vitro human embryo is a biological human being who is not the property of
19 any person. The fertility physician and the medical facility that employs the physician
20 owe a high duty of care to the living in vitro human embryo. Any contractual provision
21 identifying the living in vitro embryo as the property of any party is null and void. The
22 in vitro human embryo may not be intentionally destroyed for any purpose by any
23 person or through the actions of such person.

24 2. An in vitro human embryo that fails to show any sign of life over a thirty-six-hour period
25 outside a state of cryopreservation must be considered no longer living.

26 **SECTION 7.**

27 **Creation and transfer.**

28 In order to reduce the risk of complications for both the mother and the transferred in vitro
29 embryos, including the risk of preterm birth associated with higher-order multiple gestations, a
30 person performing in vitro fertilization shall limit the number of in vitro human embryos created
31 in a single cycle to the number to be transferred in that cycle in accordance with this section.

1 **SECTION 8.**

2 **Judicial standard.**

3 In disputes arising between any parties regarding an in vitro human embryo, the judicial
4 standard for resolving such disputes is the best interest of the in vitro human embryo.

5 **SECTION 9.**

6 **Informed consent.**

7 At least twenty-four hours before obtaining a signed contract for services, a facility providing
8 assisted reproductive technologies shall provide patients with informed consent and shall obtain
9 a signed disclosure form before services commence. In addition to medical risks and
10 information on outcome and success rates, the informed consent materials must state in plain
11 language the parental rights and duties of the donors, as well as the donor's legal rights and
12 duties regarding the disposition of in vitro human embryos that were not transferred due to
13 either of the fertility patient's death, or divorce, abandonment, or dispute over the custody of the
14 in vitro human embryo.

15 **SECTION 10.**

16 **Application.**

17 Sections 1 through 9 of this Act may not be construed to affect conduct relating to abortion
18 and sections 1 through 9 of this Act may not be construed to recognize any independent right to
19 abortion under the laws of this state. Notwithstanding any other provisions in sections 1 through
20 9 of this Act to the contrary, sections 1 through 9 of this Act may not be construed to create or
21 recognize any independent right to engage in the practice of in vitro fertilization or to create in
22 vitro human embryos by any means.

23 **SECTION 11.**

24 **Penalty.**

- 25 1. It is a class B misdemeanor without imprisonment for a person to violate sections 1
26 through 9 of this Act if that person derives a pecuniary gain from the violation.
27 2. A violation of sections 1 through 9 of this Act by a physician constitutes grounds for
28 disciplinary action under section 43-17-31.
29 3. A violation of sections 1 through 9 of this Act may be the basis for denying an
30 application for, denying an application for the renewal of, or revoking any license,

1 permit, certificate, or any other form of permission required to practice or engage in a
2 medical trade, occupation, or profession.

3 4. A violation of sections 1 through 9 of this Act by an employee of a licensed health care
4 facility to which the management of said facility consents, knows, or should know may
5 be the basis for denying an application for, denying an application for the renewal of,
6 temporarily suspending, or permanently revoking any operational license, permit,
7 certificate, or any other form of permission required to operate a medical or health
8 care facility.

9 **SECTION 12.**

10 **Construction.**

11 1. Nothing in this Act shall be construed as creating or recognizing a right to abortion.

12 2. It is not the intention of this Act to make lawful an abortion that is currently unlawful.

13 **SECTION 13. EFFECTIVE DATE.** This Act is effective on the date the secretary of state
14 certifies to the legislative council that a constitutional amendment recognizing the inalienable
15 right to life of all human beings at every stage of development has been approved by a majority
16 of the voters in a statewide election.