

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2302

Introduced by

Senators Sitte, Luick, Unruh

Representatives Damschen, Heller, Rohr

1 A BILL for an Act to provide for the ethical treatment of human embryos; ~~and~~ to provide a
2 penalty; and to provide directives to the department of human services regarding medicaid and
3 other coverage for pregnant women.

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

5 **SECTION 1.**

6 **Definitions.**

7 As used in this Act only:

- 8 1. "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 2. "Embryo" means an organism in its earliest stages of development, including the
12 single-cell stage.
- 13 3. "Facility" or "medical facility" means any public or private hospital, clinic, center,
14 medical school, medical training institution, health care facility, physician's office,
15 infirmary, dispensary, ambulatory surgical treatment center, or other institution or
16 location wherein medical care is provided to any person.
- 17 4. "Gamete" means an egg (oocyte) or sperm.
- 18 5. "Human-animal hybrid" means any of the following:
- 19 a. A human embryo into which a nonhuman cell or a component of a nonhuman cell
20 is introduced so that it is uncertain whether the human embryo is a member of
21 the species homo sapiens;
- 22 b. An embryo produced by fertilizing a human egg with a nonhuman sperm;
- 23 c. An embryo produced by fertilizing a nonhuman egg with a human sperm;
- 24 d. An embryo produced by introducing a nonhuman nucleus into a human egg;

- 1 e. An embryo produced by introducing a human nucleus into a nonhuman egg;
2 f. An embryo containing at least haploid sets of chromosomes from both a human
3 and a nonhuman life form;
4 g. A nonhuman life form engineered with the intention of generating functional
5 human gametes within the body of a nonhuman life form; or
6 h. A nonhuman life form engineered such that it contains a human brain or a brain
7 derived wholly from human neural tissues.
8 6. "Human embryo" means an organism with a human or predominantly human genetic
9 constitution from the single-cell stage to eight weeks development that is derived by
10 fertilization (in vitro or in utero), parthenogenesis, cloning (somatic cell nuclear
11 transfer), or any other means from one or more human gametes or human diploid
12 cells.
13 7. "In vitro" means outside the human body.
14 8. "In vitro human embryo" means a human embryo created outside the human body.
15 9. "Pay" or "payment" means pay, contract for, or otherwise arrange for the payment of in
16 whole or in part.
17 10. "Valuable consideration" means financial gain or advantage, including cash, in-kind
18 payments, reimbursement for any costs incurred in connection with the removal,
19 processing, disposal, preservation, quality control, storage, transfer, or donation of
20 human gametes, including lost wages of the donor, as well as any other consideration.

21 **SECTION 2.**

22 **Ethical treatment of human embryos.**

- 23 1. A person may not intentionally or knowingly create or attempt to create an in vitro
24 human embryo by any means other than fertilization of a human egg by a human
25 sperm.
26 2. The creation of an in vitro human embryo may be solely for the purpose of initiating a
27 human pregnancy by means of transfer to the body of a human female for the
28 treatment of human infertility. A pregnancy may not be initiated with the intention of
29 deliberately destroying the embryo for scientific research. A human embryo may not be
30 gestated to the fetal stage for purposes of destroying the fetus in order to harvest
31 tissue, organs, or stem cells. A person may not intentionally or knowingly transfer or

1 attempt to transfer an embryo that is not the product of fertilization of a human egg by
2 a human sperm into a human body.

3 3. A person may not intentionally or knowingly:

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

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

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

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

9 4. This section does not prohibit:

10 a. Research involving the use of transgenic animal models containing human
11 genes;

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

15 c. A person from receiving organs, tissues, or cells delivered from outside this state;
16 or

17 d. Cryopreservation of a human embryo.

18 **SECTION 3.**

19 **Valuable consideration prohibited.**

20 A person may not give or receive valuable consideration, offer to give or receive valuable
21 consideration, or advertise for the giving or receiving of valuable consideration for the provision
22 of gametes or in vitro human embryos. This section does not regulate or prohibit the
23 procurement of gametes for the treatment of infertility being experienced by the patient from
24 whom the gametes are being derived. This Act may not be construed as prohibiting the
25 cryopreservation of gametes.

26 **SECTION 4.**

27 **Identification.**

28 An in vitro human embryo must be given an identification by the facility for use within the
29 medical facility. Records must be maintained identifying the donors associated with the in vitro
30 human embryo. The confidentiality of records kept under this section must be maintained.

31 **SECTION 5.**

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

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

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

10 **SECTION 6.**

11 **Judicial standard.**

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

14 **SECTION 7.**

15 **Penalty.**

16 1. It is a class B misdemeanor for a person to violate this Act.

17 2. A violation of this Act by a physician constitutes grounds for disciplinary action under
18 section 43-17-31.

19 3. A violation of this Act may be the basis for denying an application for, denying an
20 application for the renewal of, or revoking any license, permit, certificate, or any other
21 form of permission required to practice or engage in a medical trade, occupation, or
22 profession.

23 4. A violation this Act by an employee of a licensed health care facility to which the
24 management of said facility consents, knows, or should know may be the basis for
25 denying an application for, denying an application for the renewal of, temporarily
26 suspending, or permanently revoking any operational license, permit, certificate, or
27 any other form of permission required to operate a medical or health care facility.

28 **SECTION 8.**

29 **Construction.**

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

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

1 | **SECTION 9. DEPARTMENT OF HUMAN SERVICES TO SEEK APPROVAL TO EXPAND**
2 **MEDICAID COVERAGE.** The department of human services shall expand medicaid coverage
3 for pregnant women to the maximum allowed under federal law. The department shall seek
4 approval for the federal share of the expenditures related to this expansion.

5 **SECTION 10. DEPARTMENT OF HUMAN SERVICES TO PROVIDE COVERAGE FOR**
6 **PREGNANCY AND DELIVERY COSTS.** The department of human services shall provide
7 coverage equivalent to the coverage provided under medicaid to pregnant women who exceed
8 the maximum allowed, as established in section 9 of this Act. This coverage must be available
9 to pregnant women who do not have private insurance to cover the cost of pregnancy-related
10 care and delivery.