

1999 SENATE JUDICIARY

SB 2375

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2375

Senate Judiciary Committee

Conference Committee

Hearing Date February 2, 1999

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|------------|
| 1 | | x | 0 - 2823 |
| 2-2-99 2 | | x | 2240 - end |
| 2-2-99 3 | X | | 0-184 |
| 2-8-99 1 | | x | 3940 -end |
| 2-9-99 2 | | x | 600 - 1258 |
| Committee Clerk Signature <i>Jackie Follmer</i> | | | |

Minutes:

SB2375 relates to participation in abortions and other procedures.

SENATOR STENEHJEM opened the hearing on SB2375 at 10:00 a.m.

All were present.

SISTER MARGARET ROSE PFEIFER, Health Care Advocate, testified in support of SB2375.

Testimony attached.

MRS. GARY ZENTZ, Bismarck, testified in support of SB2375. I am a nurse and I don't want to participate in these procedures.

CAROL GASS, Red River Women's Clinic, testified in opposition to SB2375. Testimony attached.

SENATOR TRAYNOR stated that this bill doesn't outlaw these procedures.

CAROL GASS stated that it could prevent a hospital from presenting options.

SENATOR STENEHJEM asked what is the status of the law currently, can't the hospitals decide that they are going to abide by this standard now.

CAROL GASS stated that some hospitals do.

SENATOR STENEHJEM asked does this bill provide for the hospitals that is not already current law.

CAROL GASS stated I don't believe we need a conscience clause in the century code.

SENATOR NELSON asked could a pharmacist ethically refuse to sell me a contraceptive according to this bill.

SISTER MARGARET PFEIFER stated that he should be able to refuse if his conscience doesn't think this should be done.

SENATOR NELSON asked if it would be possible for conscience clauses to be considered the North Dakota Medical Association and North Dakota Pharmaceutical Association, those types of agencies rather than the Century Code.

SISTER MARGARET PFEIFER stated that they are not really protected that way.

JANE SUMMERS, Grand Forks, testified in opposition to SB2375. She had a letter from Sandra Donaldson. Testimony attached.

SENATOR NAADEN, District 28, testified in support of SB2375. I believe doctors and pharmacists should have the opportunity to have a conscience clause to deny certain procedures.

SENATOR STENEHJEM asked is this bill would add anything to the current status of the law as far as rights of a hospital or doctor that they already have according to case law.

CHRIS DOBSON stated that yes it would. The case law is weak because there is no statutory authority.

SENATOR STENEHJEM asked what Catholic hospitals are doing now with respect to sterilization.

CHRIS DOBSON stated that they can't perform a sterilization and are not performing them.

SENATOR LYSON asked if we don't already have Federal protection for these people.

CHRIS DOBSON stated that Federal protection is not sufficient.

SENATOR WATNE stated that you said 45 other states have conscience legislation. I would like to see some of those other laws.

CHRIS DOBSON stated that we already have a bill for abortion and in the case of a living will and durable power of attorney of healthcare, the healthcare provider can refuse to provide any procedure that bothers their conscience. We have an inconsistency with the law.

SENATOR TRAYNOR asked if he had any amendments.

CHRIS DOBSON stated that no, he did not.

TIM LINDGREN, North Dakota Life League, submitted written testimony in support of SB2375. Testimony attached.

SENATOR STENEHJEM CLOSED the hearing on SB2375.

Discussion.

SENATOR NELSON stated that pharmacists can refuse to fill prescriptions.

HOWARD ANDERSON, Board of Pharmacy, came and gave additional information on SB2375. Their opinion is they generally feel they could state their opinions up front to the

employer. Then they can decide if they can work there or not. What duty do you owe to the patient. I don't feel this legislation is necessary.

DUEY SCHLIENHART, Fargo, explained some technical points about the pharmacists position on SB2375. The American Pharmaceutical Association has held upheld the pharmacists right to ethically refuse to dispense a prescription. This is their position on that.

GALEN JORDRESS, North Dakota Pharmacists, explained the pharmacists position on SB2375. As far as he knows, it has been never been a point of contention between the employer and employee. We do not have a definable problem with this issue. It would also really limit a pharmacist/owner control over his pharmacy.

SENATOR STENEHJEM asked about the birth control pills for other reasons, would the pharmacist ask the person what they are for.

GALEN JORDRESS stated that the pharmacist may ask. In the course of patient counseling, it may lead to the reason.

SENATOR STENEHJEM stated there may need to be amendments to this bill.

February 8, 1999 Tape 1, Side B

Discussion.

SENATOR WATNE made a motion on Amendments, SENATOR NELSON seconded. Motion carried. 6 - 0 - 0

SENATOR WATNE made a motion for DO PASS AS AMENDED, SENATOR TRAYNOR seconded. Motion failed. 3 - 3 - 0

2-8-99

SENATOR NELSON made a motion for DO NOT PASS AS AMENDED, SENATOR LYSON seconded. Motion failed. 3 - 3 - 0

SENATOR TRAYNOR made a motion for the bill to be RECORDED WITHOUT COMMITTEE RECOMMENDATION AS AMENDED, SENATOR LYSON seconded. Motion carried. 5 - 1 - 0

SENATOR WATNE AND SENATOR LYSON will carry this bill.

February 9, 1999 Tape 2, Side B

SENATOR LYSON made a Motion to Reconsider, SENATOR TRAYNOR seconded. Motion carried. 6 - 0 - 0

Discussion.

SENATOR WATNE made a motion for DO PASS AS AMENDED, SENATOR LYSON seconded. Motion carried. 4 - 2 - 0

SENATOR WATNE will carry the bill.

Date: 2-8-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2375

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendments.

Motion Made By Watne Seconded By Nelson

| Senators | Yes | No | Senators | Yes | No |
|-------------------------|-----|----|----------|-----|----|
| Senator Wayne Stenehjem | X | | | | |
| Senator Darlene Watne | X | | | | |
| Senator Stanley Lyson | X | | | | |
| Senator John Traynor | X | | | | |
| Senator Dennis Bercier | X | | | | |
| SenatorCarolyn Nelson | X | | | | |
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Total (Yes) 6 No 0

Absent _____

Floor Assignment _____

Date: 2-8-99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2375

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Watne Seconded By Traynor

| Senators | Yes | No | Senators | Yes | No |
|-------------------------|-----|----|----------|-----|----|
| Senator Wayne Stenehjem | X | | | | |
| Senator Darlene Watne | X | | | | |
| Senator Stanley Lyson | | X | | | |
| Senator John Traynor | X | | | | |
| Senator Dennis Bercier | | X | | | |
| SenatorCarolyn Nelson | | X | | | |
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Total (Yes) 3 No 3

Absent _____

Floor Assignment Senator Watne

Date: 2-8-99
 Roll Call Vote #: 3

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2375

Senate Judiciary _____ Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass As Amended

Motion Made By Nelson Seconded By Lyson

| Senators | Yes | No | Senators | Yes | No |
|-------------------------|-----|----|----------|-----|----|
| Senator Wayne Stenehjem | | X | | | |
| Senator Darlene Watne | | X | | | |
| Senator Stanley Lyson | X | | | | |
| Senator John Traynor | | X | | | |
| Senator Dennis Bercier | X | | | | |
| Senator Carolynn Nelson | X | | | | |
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Total (Yes) 3 No 3

Absent 0

Floor Assignment _____

Date: 2-8-99
Roll Call Vote #: 4

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2375

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Recorded without Committees Recommendation

Motion Made By Traynor Seconded By Lyson

| Senators | Yes | No | Senators | Yes | No |
|-------------------------|-----|----|----------|-----|----|
| Senator Wayne Stenehjem | X | | | | |
| Senator Darlene Watne | X | | | | |
| Senator Stanley Lyson | X | | | | |
| Senator John Traynor | X | | | | |
| Senator Dennis Bercier | X | | | | |
| Senator Carolynn Nelson | | X | | | |
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Total (Yes) 5 No 1

Absent 0

Floor Assignment Senator Lyson + Senator Watne

Date: 2-9-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2375

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion to Reconsider

Motion Made By Lyson Seconded By Traynor

| Senators | Yes | No | Senators | Yes | No |
|-------------------------|-----|----|----------|-----|----|
| Senator Wayne Stenehjem | X | | | | |
| Senator Darlene Watne | X | | | | |
| Senator Stanley Lyson | X | | | | |
| Senator John Traynor | X | | | | |
| Senator Dennis Bercier | X | | | | |
| SenatorCarolyn Nelson | X | | | | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

PROPOSED AMENDMENTS TO SENATE BILL NO. 2375

Page 1, line 10, remove "or distribute"

Page 1, line 11, replace "distribution" with "prescription"

Renumber accordingly

Date: 2-9-99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2375

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass AS Amended

Motion Made By Watne Seconded By Lyson

| Senators | Yes | No | Senators | Yes | No |
|-------------------------|-----|----|----------|-----|----|
| Senator Wayne Stenehjem | X | | | | |
| Senator Darlene Watne | X | | | | |
| Senator Stanley Lyson | X | | | | |
| Senator John Traynor | X | | | | |
| Senator Dennis Bercier | | X | | | |
| SenatorCarolyn Nelson | | X | | | |
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Total (Yes) 4 No 2

Absent 0

Floor Assignment Senator Watne

REPORT OF STANDING COMMITTEE

SB 2375: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2375 was placed on the Sixth order on the calendar.

Page 1, line 10, remove "or distribute"

Page 1, line 11, replace "distribution" with "prescription"

Renumber accordingly

1999 HOUSE HUMAN SERVICES

SB 2375

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2375

House Human Services Committee

Conference Committee

Hearing Date March 8, 1999

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|----------|
| 2 | x | | 44.3-end |
| 2 | | x | 0.0-18.9 |
| | | | |
| Committee Clerk Signature <i>Wape G. Yamba</i> | | | |

Minutes:

Representative JAMES BOEHM, District 31 presented the bill and informed the committee of his support. He also gave the committee written testimony from TIM LINDGREN (attached). Sister MARGARET ROSE PFEIFER, Health Care Advocate for the North Dakota Catholic Conference testified. (Testimony attached.)

OPPOSITION to SB2375.

CAROL GASS, representing the Red River Women's Clinic, testified. (Testimony attached.)

JANE SUMMERS, Grand Forks, testified in opposition to Senate Bill 2375. (Testimony attached.)

ANN SUMMERS testified in opposition to the bill on behalf of the North Dakota ACLU.

(Testimony attached.)

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2375

House Human Services Committee

Conference Committee

Hearing Date March 15, 1999

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|----------|
| 2 | x | | 26.4-end |
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| Committee Clerk Signature <i>Wayne B. Yamba</i> | | | |

Minutes:

COMMITTEE DISCUSSION

The primary concern of the committee was the impact on the rural communities of the state. In the larger cities someone can be found to dispense oral contraceptives. However, in a rural area with only one pharmacist, a person may be forced to travel unreasonable distances to obtain the desired prescription. The same thing applies to physicians in the performance of birth control procedures. There seem to be arrangements available in the hospitals of larger cities where if the hospital doesn't perform the procedure, the patient can be transferred to a nearby facility and then returned after the procedure is complete. Again, rural residence don't have that option. If the doctor won't perform the procedure (or the hospital) the patient is required to travel a great distance. The question was also raised as to whether this was truly a problem that needs to be addressed.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2375

House Human Services Committee

Conference Committee

Hearing Date March 17, 1999

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|----------|
| 1 | x | | 0.0-13.3 |
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| Committee Clerk Signature <i>Wayne B. Yamba</i> | | | |

Minutes:

COMMITTEE DISCUSSION

Rep. AMY KLINISKE presented amendments proposed by ANN SUMMERS (attached) that would insure the bill did not permit failure to treat in a life threatening situation. Rep. TODD PORTER thought these amendments weaken the existing law. This attempts to insert a conscience clause in this bill instead of addressing it in the correction section of code.

Rep. SALLY SANDVIG presented another amendment to put back in the language the Senate removed and return the bill to its original language relative to distribution of prescriptions and moved them. Rep. BLAIR THORESON seconded the motion. The motion FAILED on a roll call vote: 2 YES, 13 NO, 0 ABSENT.

Rep. TODD PORTER moved DO NOT PASS, seconded by Rep. DALE HENEGAR.

The motion PASSED on a roll call vote: 12 YES, 3 NO, 0 ABSENT.

Page 2

House Human Services Committee

Bill/Resolution Number 2375mar17

Hearing Date March 17, 1999

CARRIER: Rep. WILLIAM DEVLIN.

Closed COMMITTEE DISCUSSION.

Date: 3-17-99
 Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2375

House Human Services Committee

Subcommittee on _____
 or

Conference Committee

Legislative Council Amendment Number Amendment to restore original

Action Taken Do Not Pass Amend.

Motion Made By PS S Seconded By AT

| Representatives | Yes | No | Representatives | Yes | No |
|------------------------------|-----|----|-------------------|-----|----|
| Clara Sue Price - Chairwoman | | ✓ | Bruce A. Eckre | | ✓ |
| Robin Weisz - Vice Chairman | | ✓ | Ralph Metcalf | | ✓ |
| William R. Devlin | | ✓ | Carol A. Niemeier | | ✓ |
| Pat Galvin | | ✓ | Wanda Rose | | ✓ |
| Dale L. Henegar | | ✓ | Sally M. Sandvig | ✓ | |
| Roxanne Jensen | | ✓ | | | |
| Amy N. Kliniske | | ✓ | | | |
| Chet Pollert | | ✓ | | | |
| Todd Porter | | ✓ | | | |
| Blair Thoreson | ✓ | | | | |
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Total Yes ~~13~~ 2 No ~~2~~ 13
 Absent 0

Floor Assignment _____

Amendment Fails

If the vote is on an amendment, briefly indicate intent:

Amendment to restore original language that was removed from by Senate relative to distribution of perscriptions

Date: 3-17-99
 Roll Call Vote #: 2

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2375

House Human Services Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep Porter Seconded By Rep Henegar

| Representatives | Yes | No | Representatives | Yes | No |
|------------------------------|-----|----|-------------------|-----|----|
| Clara Sue Price - Chairwoman | ✓ | | Bruce A. Eckre | ✓ | |
| Robin Weisz - Vice Chairman | ✓ | | Ralph Metcalf | ✓ | |
| William R. Devlin | ✓ | | Carol A. Niemeier | ✓ | |
| Pat Galvin | | ✓ | Wanda Rose | ✓ | |
| Dale L. Henegar | ✓ | | Sally M. Sandvig | | ✓ |
| Roxanne Jensen | ✓ | | | | |
| Amy N. Kliniske | ✓ | | | | |
| Chet Pollert | ✓ | | | | |
| Todd Porter | ✓ | | | | |
| Blair Thoreson | | ✓ | | | |
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Total Yes 12 No 3
 Absent _____

Floor Assignment Rep Devlin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 18, 1999 2:10 p.m.

Module No: HR-49-5118
Carrier: Devlin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2375, as engrossed: Human Services Committee (Rep. Price, Chairman)
recommends **DO NOT PASS** (12 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2375 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

SB 2375



Representing the Diocese of Fargo
and the Diocese of Bismarck

Christopher T. Dodson
Executive Director and
General Counsel

To: Members of the Senate Judiciary Committee
From: Sister Margaret Rose Pfeifer, Health Care Advocate
Subject: SB 2375
Date: February 2, 1999

Mr. Chairman and committee members, I am Sister Margaret Rose Pfeifer the Health Care Advocate for the North Dakota Catholic Conference.

The North Dakota Catholic Conference supports SB 2375 because we believe that no person should be compelled to engage in a health care procedure that violates his or her conscience. The matter at issue in SB 2375 is not contraception or sterilization. The issue is conscience protection. For that reason, we urge this committee to look at a broader statute that focuses on the need to protect a person's conscience rather than particular procedures.

This public policy is not new to North Dakota. Such protection is already provided to any person who objects to following *any* directive contained in a living will or any instruction of an agent acting pursuant to a durable power of attorney for health care. (N.D.C.C. Sec. 223-06.4-08, 23-06.5-09) If the state has deemed it appropriate to protect the conscience of health care providers in these situations, why not provide some consistency and protect the conscience of all persons concerning any procedure.

Instead of listing procedures, we would like to protect health care providers who for moral or religious reasons feel they cannot perform, assist, or participate in a particular procedure, whatever that procedure that may be. Listing procedures is limiting and cannot address the types of problems that may arise in the future.

A few, but not all states have certain exceptions to the general protection. Examples of such exceptions include emergency situations, the diagnosis of a condition, and when a person expressly contracts to provide a certain procedure. We are willing to work with this committee to make this concept a part of an amendment to SB 2375.

Thank you for your consideration.

507 W. Broadway, Suite 2
Bismarck, ND 58501
(701) 223-2519
1-888-419-1237
FAX # (701) 223-6075

**Testimony before Senate Judiciary Committee,
February 2, 1999
SB 2375**

Mr. Chairman, members of the committee, my name is Carol Gass and I represent the Red River Women's Clinic, a facility providing family planning and abortion services.

SB 2375 is a "conscience clause." It exempts health care providers from civil liability for refusing to provide procedures and services to which they object. Services may be excluded on religious or moral grounds. Religious doctrine may be imposed on people who do not share these views.

For instance, Catholic doctrine opposes safe, legal abortion, tubal ligations, vasectomies, fertility treatments and contraceptives. This doctrine applies not just to Catholics but to any patient, including those on public assistance, treated in a Catholic facility that adheres to this doctrine. Services are not provided.

Dispensing the "morning-after pill," a high-dose of contraceptives, is standard emergency medical protocol in treating victims of rape and incest.

Lines 9-13 of SB 2375 would allow health care personnel to opt out of providing desperate young women who are victims of violence all proper medical treatment. Even a gag rule could be imposed on physicians that would prevent them from referring, counseling or discussing a patient's options.

Increasingly, SB2375 marginalizes and isolates women's reproductive health care.

Please vote a Do Not Pass.

Testimony on SB 2375 and SB 2418
1999 North Dakota Legislative Session

Sandra M. Donaldson
606 S. 4th Street, Grand Forks, North Dakota 58201

Chairman Thane and Members of the Committee on Human Services,

As a measure both of the complexity of the issue of abortion and of the depth of the intelligence of the citizens of our state and indeed our country, I would like to offer you an observation: polls show, people say, and reason affirms that the great majority of people are both pro choice and anti abortion. This is a paradox but not a contradiction.

In fact in a letter published in a recent edition of the Grand Forks Herald (31 January 1999), Bjorn J. Hall of Park River makes just this observation. He says "I am pro-choice but definitely not pro-abortion, as odd as that may sound." Howevermuch we may want all families to be loving and supportive, howevermuch we may want our children not to experiment with their emerging sexuality, and howevermuch we may want abortion to be a relic of our past -- that is not the case. And when women become pregnant without intending to be, what to do about it is up to them to decide -- we should not foreclose any procedure that is medically appropriate for an individual.

Another letter, this time from the Wall Street Journal of last summer (28 August 1998), has helped me grapple with the issue of intact dilation and extraction (D&X). "Dangerous legislation" is what Ralph W. Hale, Executive Vice President of the American College of Obstetricians and Gynecologists, called the bill before Congress at that time which was termed the "Partial-Birth Abortion Act." He said

In certain circumstances, an intact D&X may be the most medically appropriate procedure to save the life or health of a woman, and only a doctor, in consultation with the patient and based on the individual circumstances, can make this decision. Moreover, this bill may inadvertently outlaw other obstetric and gynecologic techniques used in both abortion and non-abortion procedures that are critical to the lives and health of American women.

A similar bill and others seeking to deny women the right to their own determination about reproduction are or will soon come before you. I urge you to heed the softer voices of your constituencies who are saying that, yes, they would like to see abortions no longer performed, while at the same time they know that we have much to do to approach that ideal and, in the meanwhile, forcing women to bear children is not the answer.

Thank you.

Testimony in support of SB 2375

By Tim Lindgren
State Director, North Dakota Life League

I am testifying in support of SB 2375.

This bill would provide protection for medical professionals who – due to moral or religious convictions – do not want to participate in abortion or sterilization procedure or prescribe or distribute contraceptives or contraceptive devices.

We support this bill as it will provide protection, support and encouragement for nurses, doctors and pharmacists who desire to live out their religious and moral convictions in the vocations of providing health care. The common good of society is supported by making the fields of pharmacy and medicine open to outstanding morally responsible young people.

As a pro-life speaker I am fortunate to visit college campuses and talk to young pharmacy and medical students. They have expressed serious concerns about their aspirations to the professions of pharmacy and medicine and the fact that they feel the pressures to participate in these procedures may be prohibitive to their careers.

I hope that you will vote do pass on this bill.

| | |
|--------|----------------|
| Term ▶ | Best Section ▶ |
|--------|----------------|

104th CONGRESS, 1st Session

United States Library of Congress

HR 1833
Engrossed in House
November 1, 1995

← BEST

AN ACT

To amend title 18, United States Code, to ban **←partial-birth abortions.→**

AN ACT

To amend title 18, United States Code, to ban **←partial-birth abortions.→**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the **←.Partial-Birth Abortion→** Ban Act of 1995'.

Sec. 2. PROHIBITION ON **←PARTIAL-BIRTH ABORTIONS.→**

(a) IN GENERAL- Title 18, United States Code, is amended by inserting after chapter 73 the following:

.CHAPTER **←74--PARTIAL-BIRTH ABORTIONS→**

.Sec.

BEST→ ←BEST .1531. **←Partial-birth abortions→** prohibited.

.Sec. 1531. **←Partial-birth abortions→** prohibited

.(a) Whoever, in or affecting interstate or foreign commerce, knowingly performs a **←partial-birth abortion→** and thereby kills a human fetus shall be fined under this title or imprisoned not more than two years, or both.

.(b) As used in this section, the term **←.partial-birth abortion'→** means an **←abortion→** in which the person performing the **←abortion partially→** vaginally delivers a living fetus before killing the fetus and completing the delivery.

.(c)(1) The father, and if the mother has not attained the age of 18 years at the time of the **←abortion,→** the maternal grandparents of the fetus, may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the **←abortion.→**

BEST→ .(2) Such relief shall include--

.(A) money damages for all injuries, psychological and physical, occasioned by the violation of this section; and

←BEST .(B) statutory damages equal to three times the cost of the **←partial-birth abortion.→**

.(d) A woman upon whom a **←partial-birth abortion→** is performed may not be prosecuted under this section, for a conspiracy to violate this section, or for an offense under section 2, 3, or 4 of this title based on a violation of this section.

BEST→ .(e) It is an affirmative defense to a prosecution or a civil action under this section, which must be proved by a preponderance of the evidence, that the **←partial-birth abortion→** was performed by a physician who reasonably believed--

.(1) the **←partial-birth abortion→** was necessary to save the life of the mother; and

.(2) no other procedure would suffice for that purpose.'

(b) CLERICAL AMENDMENT- The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 73 the following new item:

1531'.

Passed the House of Representatives November 1, 1995.

Attest:

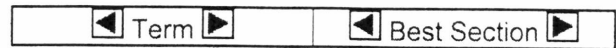
Clerk.

1995 CONG US HR 1833

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1997 WL 11158700

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Sunday, June 1, 1997

Outlook

A LOOK AT . . . The New Politics of **◀Abortion; Partial-Birth Abortions:▶**
Chronology of an Issue

As the Congressional Quarterly noted last year, "the hard fight over the **◀partial-birth abortion▶** procedure marked a shift in the congressional debate . . . **◀Abortion▶** opponents succeeded in shifting the focus onto the details of a procedure that much of the public found unacceptable, and away from the standard argument over a woman's right to an **◀abortion.▶**" The following are significant turns in the **◀abortion▶** debate:

1989

The crusade against **◀abortions▶** performed in the second or third trimester of pregnancy draws attention in Washington when the antiabortion group Operation Rescue sends hundreds to protest outside a Suitland, Md., clinic, targeted because it was believed to specialize in performing these late-term procedures.

1993

A Wichita, Kan., doctor who had been identified by antiabortion groups as one of the few doctors nationwide who performed late-term **◀abortions,▶** is shot and wounded; the editor of an antiabortion newsletter is charged with the crime.

1995

In December, the 104th Congress passes **◀HR▶** 1833, a bill proposed to outlaw a specific type of **◀abortion (▶**in which a doctor extracts a fetus, feet first, from the womb until all but the head is exposed, scissors are inserted at the base of the fetus's skull and a catheter **◀BEST** is used to suction out the brain) unless it was deemed necessary to save the woman's life. Proponents of the bill, led by Rep. Charles T. Canady (R-Fla.), call it a **◀"partial-birth abortion.▶**

BEST ▶

1996

◀BEST

In April, **◀President▶** Clinton **◀vetoes HR▶** 1833, saying the exemption should have allowed the **◀abortion▶** in order to protect the woman's health as well as her life. Congress fails to override the **◀veto.▶**

BEST ▶

1997

◀BEST

In March, Ron Fitzsimmons, director of the National Coalition of **◀Abortion▶** Providers, recants his earlier statement that **◀partial-birth abortions▶** were performed primarily to save the lives of a small number of women who were carrying badly deformed babies. His revelation that "most **◀partial-birth abortions▶** involve a healthy baby that is 20 weeks or more old," and "a healthy mother," sets off a new barrage of bitter debate.

In May, Sen. Rick Santorum (R.-Pa.) introduces **◀HR▶** 1122, a measure **BEST▶** **◀BEST** that would ban **◀partial-birth abortions▶** except when needed to save the woman's life. It is endorsed by the American Medical Association.

◀President▶ Clinton endorses Senate Minority Leader Tom Daschle's amendment to outlaw all **◀abortions▶** of viable fetuses, except in cases where the woman's life is in danger or to prevent any "grievous" injury to her health. The Senate rejects his amendment.

The Senate approves legislation to ban **◀partial-birth abortions▶** but falls short of the vote margin needed to override a **◀presidential**

veto.▶
BEST▶

SOURCES: Congressional Quarterly, Washington Post and wire reports

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CAPTION: Physician George Tiller is treated after being wounded outside clinic in Wichita.

---- INDEX REFERENCES ----

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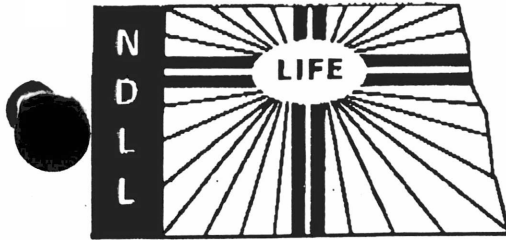
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NORTH DAKOTA LIFE LEAGUE

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Testimony in support of SB 2375

To: Chairman Clara Sue Price and members of the Human Service Committee of the House of Representatives

From: Tim Lindgren, Director of North Dakota Life League (N.D.L.L.)

I am grateful for the opportunity to testify in support of SB 2375. I represent North Dakota Life League, a non-profit organization, with over 5,000 supporters throughout North Dakota. There are basically two elements of this bill I would like to testify about.

One, this bill was actually initiated by several college pharmacy students at North Dakota State University. In my work with N.D.L.L. I speak to various groups. I was invited by the Collegians for Life to speak at one of their monthly meetings. I explained how some contraceptive chemicals and devices work. There were several pharmacy students in attendance who expressed their concerns over the possibility that they would have to disburse these pharmaceuticals for which they felt were morally objectionable to them. They asked if there was anything that could be done legislatively to help them. They expressed concern that they would have to change their majors and desired occupations if this problem is not rectified.

It is necessary to explain how some of these contraceptives work so that you may appreciate the students concerns. I think that – while some of you may disagree – you will all agree that their concerns are legitimate.

The birth control pill, Norplant and Depo Provera (The Shot) all may act as an abortifacient. While they do have two mechanisms of action which are contraceptive in nature, i.e. prevent conception, they also have a third mechanism that prevents an already conceived child from implanting in his mother's womb. This is what is called abortifacient. These pharmacy students were concerned that by disbursing these contraceptives they would be aborting newly created children and violating their religious convictions.

Secondly, I am aware that at least one doctor (in obstetrics and gynecology) changed his medical practice as a result of his personal concerns over the same moral objections.

I urge you to vote Do Pass on SB 2375 in order to protect the integrity of the medical profession and guard against religious discrimination concerns of pharmacy students and medical professionals. Thank you!



Representing the Diocese of Fargo
and the Diocese of Bismarck

Christopher T. Dodson
Executive Director and
General Counsel

To: Members of the House Human Services Committee
From: Sister Margaret Rose Pfeifer, Health Care Advocate
Subject: SB 2375
Date: March 8, 1999

Chairman Price and committee members, I am Sister Margaret Rose Pfeifer the Health Care Advocate for the North Dakota Catholic Conference.

The North Dakota Catholic Conference supports SB 2375 because we believe that no person should be compelled to engage in a health care procedure that violates his or her conscience. The matter at issue in SB 2375 is not contraception or sterilization. The issue is conscience protection. For that reason, we urge this committee to look at a broader statute that focuses on the need to protect a person's conscience rather than particular procedures.

This public policy is not new to North Dakota. Such protection is already provided to any person who objects to following *any* directive contained in a living will or *any* instruction of an agent acting pursuant to a durable power of attorney for health care. (N.D.C.C. Sec. 223-06.4-08, 23-06.5-09) If the state has deemed it appropriate to protect the conscience of health care providers in these situations, why not provide some consistency and protect the conscience of all persons concerning any procedure.

Instead of listing procedures, we would like to protect health care providers who for moral or religious reasons feel they cannot perform, assist, or participate in a particular procedure, whatever that procedure that may be. Listing procedures is limiting and cannot address the types of problems that may arise in the future.

A few, but not all states have certain exceptions to the general protection. Examples of such exceptions include emergency situations, the diagnosis of a condition, and when a person expressly contracts to provide a certain procedure. We are willing to work with this committee to make this concept a part of an amendment to SB 2375.

Thank you for your consideration.

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TESTIMONY ON SENATE BILL 2375

House Human Services Committee

Hearing, March 8, 1999

Testimony by Jane Summers, Grand Forks Citizens for Reproductive Rights

I am Jane Summers, from Grand Forks, where I have lived for almost 50 years.

I am a mother, a grandmother, and a great-grandmother. I am here today to oppose this bill on behalf of the Citizens for Reproductive Rights.

I object to this bill for a very simple but important reason: it forces one person's beliefs onto other people. I agree that if a doctor doesn't believe in birth control for religious reasons, he should be able to refuse to prescribe it as long as he is open with his patients about what's going on. However, this bill doesn't just protect the doctor or nurse's conscience and beliefs. It lets their employers, hospitals, clinics, managed care plans, and possibly health insurers, make those medical decisions for the professionals taking care of patients. This is wrong, and I believe it is against the Constitutions of the United States and of North Dakota. I was brought up to believe that in this country, a person's beliefs cannot be interfered with by other people. The way I look at it, this bill would allow people and corporations to force their beliefs, religious or otherwise, on patients, regardless of what the patient's physician would prescribe as good medical care. I hope you will vote against this expansion of institutional intrusion into private decisions which should be between patients and their physicians.

TESTIMONY ON SENATE BILL 2375

Before the House Human Services Committee

March 8, 1999

I am Anne Summers from Bismarck, where I have practiced law for almost 17 years. I am also a wife, a mother, and a grandmother. I am here on behalf of the North Dakota ACLU in opposition to this bill.

The ACLU on both national and state levels supports individual, personal conscience clauses for those who care directly for patients. An individual practicing medicine should not be forced to carry out an abortion procedure against his religious beliefs or personal conscience. The North Dakota statute as it already exists, however, goes beyond that of individual conscience and confers "conscience" on an institution. Already this creates a problem, starting with the question as to whether an institution can claim to have a "conscience" in the first place. When the exercise of that "conscience" would impose on the exercise of the employee's own, individual conscience and erode access to constitutionally protected health services, the critical problems surrounding an institutional conscience clause clearly outweigh its benefits. The current NDCC Section 23-16-14 is of questionable constitutionality already; and I would urge that it not be taken any further into constitutional debate by expanding this right of refusal to standard medical procedures and prescriptions which are in widespread use, and may constitute the best medical practice in reference to an individual patient's needs.

An individual conscience clause protects those who have religious or moral objections to abortion, but the proposed amendments in SB 2375 could result in drastic, unwarranted interference with the relationship between physician and patient. In a rural community where there is only one hospital, if that hospital decides its "conscience" mandates it to refuse to perform procedures such as voluntary sterilization or to prescribe birth control, and imposes its institutional "conscience" on all personnel it employs, then a patient who needs that medical

care may have no access to it; and the physician responsible for that patient may be unable to give appropriate medical care, which he would otherwise give.

There are also specific problems with the wording of this legislation itself; it does not define what the basis for the objection must be. It could be anything; and actually could have very little to do with religious convictions. A largescale entity could decide such services are objectionable because they aren't cost-effective, for instance. Thus, for instance, a huge HMO, provider, or healthcare "plan", on the basis that it "objects", might be able to delete these standard medical services from its coverage, affecting thousands of patients and their physicians in one fell swoop. The final sentence refers only to a person, and not to a hospital: what does "person" mean in this context? And what discrimination is being prohibited, and by what or whom?

In conclusion, the law as it already standst goes beyond the protection and respect of personal conscience and beliefs, expanding its protection to any institution or person who "objects", whatever the reason; however, SB 2375 would further vastly erode and in some cases remove, the access to health care patients should have a right to expect; and the right of physicians to provide the care they feel is appropriate to each patient, without interference by government or third parties. I urge the committee to vote "do not pass" on this bill.

PROPOSED AMENDMENT TO SENATE BILL 2375

In the House Human Services Committee

March 10, 1999

I am Anne Summers from Bismarck on behalf of the ACLU of North Dakota. I am submitting for the consideration of the committee the attached amendment, which I believe may place before the members a means of addressing some of the major concerns with this bill.

The ACLU is still on record as opposing this legislation because of the expansion of the scope of institutional "conscience", which allows an entity such as a hospital to impose its beliefs on its physicians and personnel regardless of the individual physician's adherence to standard and appropriate medical care in an individual patient's case.

However, in order to mitigate some of the real problems that may arise should this bill become law, I am offering the attached amendment as a potential partial solution or at least, a basis for discussion.

Thank you for your consideration.

Anne E. Summers, phone 223-2099

AMENDMENT
ENGROSSED SENATE BILL NO. 2375

(proposal: add additional language following the word objections as follows:)

However, nothing in this section shall be construed as authorizing the prohibition of any person or entity from providing necessary medical care, treatment, or services, which in the judgment of that person or entity, may be medically necessary to protect or save the life or health of a patient; or in an emergency situation; or where there is no readily accessible alternate medical facility or care.