

DOMESTIC RELATIONS AND PERSONS

CHAPTER 109

HOUSE BILL NO. 1297

(Representatives Grande, Kilichowski, Metcalf)
(Senators Berry, Christmann, Hogue)

AN ACT to create and enact two new sections to chapter 14-02.1 of the North Dakota Century Code, relating to an abortion report form and abortion-inducing drugs; to amend and reenact sections 14-02.1-02, 14-02.1-02.1, and 14-02.1-03, subsections 2 and 3 of 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, 14-02.3-03, 15.1-19-06, and 23-16-14 of the North Dakota Century Code, relating to the regulation of abortion; to provide a penalty; to provide for a report; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

14-02.1-02. Definitions.

As used in this chapter:

1. "Abortion" means the ~~termination of human pregnancy with an intention other than to produce a live birth or to remove a dead embryo or fetus~~act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable intrauterine pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:
 - a. Save the life or preserve the health of the unborn child;
 - b. Remove a dead unborn child caused by spontaneous abortion; or
 - c. Treat a woman for an ectopic pregnancy.
2. "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed or dispensed with the intent of causing an abortion.
3. "Abortion facility" means a clinic, ambulatory surgical center, physician's office, or any other place or facility in which abortions are performed or prescribed, other than a hospital.

4. "Drug label" means the pamphlet accompanying an abortion-inducing drug which outlines the protocol tested and authorized by the federal food and drug administration and agreed upon by the drug company applying for the federal food and drug administration authorization of that drug. Also known as "final printing labeling instructions", drug label is the federal food and drug administration document that delineates how a drug is to be used according to the federal food and drug administration approval.
- 3-5. "Hospital" means an institution licensed by the state department of health under chapter 23-16 and any hospital operated by the United States or this state.
- 4-6. "Human being" means an individual living member of the species of homo sapiens, including the unborn human being during the entire embryonic and fetal ages from fertilization to full gestation.
- 5-7. "Infant born alive" or ~~"live born child"~~ means a born child which exhibits either heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles or pulsation of the umbilical cord if still attached to the child.
- 6-8. "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed or induced provided that:
- a. The woman is told the following by the physician who is to perform the abortion, by the referring physician, or by the physician's agent, at least twenty-four hours before the abortion:
 - (1) The name of the physician who will perform the abortion;
 - (2) The abortion will terminate the life of a whole, separate, unique, living human being;
 - (3) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies, and infertility;
 - (4) The probable gestational age of the unborn child at the time the abortion is to be performed; and
 - (5) The medical risks associated with carrying her child to term.
 - b. The woman is informed, by the physician or the physician's agent, at least twenty-four hours before the abortion:
 - (1) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care and that more detailed information on the availability of that assistance is contained in the printed materials given to her as described in section 14-02.1-02.1;
 - (2) That the printed materials given to her and described in section 14-02.1-02.1 describe the unborn child and list agencies that offer alternatives to abortion;

~~(2)~~(3) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion; and

~~(3)~~(4) That she ~~has the right to review the printed materials described in section 14-02.1-02.1. The physician or the physician's agent shall orally inform the woman the materials have been provided by the state of North Dakota and that they describe the unborn child and list agencies that offer alternatives to abortion. If the woman chooses to view the materials, copies of them must be furnished to her. The physician and the physician's agent may disassociate themselves from the materials and may comment or refrain from comment on them, as they choose~~ is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled.

c. The woman certifies in writing, prior to the abortion, that the information described in subdivisions a and b has been furnished to her ~~and that she has been informed of her opportunity to review the information referred to in paragraph 3 of subdivision b.~~

d. ~~Prior to~~Before the performance of the abortion, the physician who is to perform or induce the abortion or the physician's agent receives a copy of the written certification prescribed by subdivision c.

e. The physician has not received or obtained payment for a service provided to a patient who has inquired about an abortion or has scheduled an abortion before the twenty-four-hour period required by this section.

7. "Licensed physician" means a person who is licensed to practice medicine or osteopathy under chapter 43-17 or a physician practicing in the armed services of the United States or in the employ of the United States.

~~8-9.~~ "Medical emergency" means ~~that a condition which, on the basis of the physician's best clinical judgment, so complicates a pregnancy as to necessitate an immediate abortion to avert the death of the mother or for which a twenty-four-hour delay will create grave peril of immediate and irreversible loss~~ that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates an immediate abortion to avert her death or for which the twenty-four-hour delay will create serious risk of substantial and irreversible physical impairment of a major bodily function. A condition may not be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct that would result in her death or in substantial and irreversible physical impairment of a major bodily function.

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

~~11.~~ "Probable gestational age of the unborn child" means what, ~~in the judgment of the attending physician~~ reasonable medical judgment, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed.

12. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
13. "Unborn child" means the offspring of human beings from conception until birth.
- ~~14.~~ "Viable" means the ability of a fetus/an unborn child to live outside the mother's womb, albeit with artificial aid.

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

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

1. The state department of health shall publish in English, and in every other language that the department determines is the primary language of a significant number of state residents, the following easily comprehensible printed materials:
 - a. Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies. The materials must include a comprehensive list of the agencies available, a description of the services they offer and a description of the manner, including telephone numbers, in which they might be contacted, or, at the option of the department, printed materials, including a toll-free, twenty-four-hour-a-day telephone number that may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer. The materials must state that it is unlawful for any individual to coerce a woman to undergo an abortion and that if a minor is denied financial support by the minor's parent, guardian, or custodian due to the minor's refusal to have an abortion performed, the minor is deemed to be emancipated for the purposes of eligibility for public assistance benefits, except that those benefits may not be used to obtain an abortion. The materials also must state that any physician who performs an abortion upon a woman without her informed consent may be liable to her for damages in a civil action and that the law permits adoptive parents to pay costs of prenatal care, childbirth, and neonatal care. The materials must include the following statement: There are many public and private agencies willing and able to help you to carry your child to term and to assist you and your child after your child is born, whether you choose to keep your child or to place your child for adoption. The state of North Dakota strongly urges you to contact one or more of these agencies before making a final decision about abortion. The law requires that your physician or your physician's agent give you the opportunity to call agencies like these before you undergo an abortion.
 - b. Materials, published in a booklet format, designed to inform the woman of the probable anatomical and physiological characteristics of the ~~fetus~~unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any relevant information on the possibility of the survival of the ~~fetus~~unborn child and ~~pictures representing color photographs of the development of a fetus/an~~unborn child at two-week gestational increments. ~~The majority of the~~

~~pictures included in the booklet must be full color photograph style images and the pictures must contain the dimensions of the fetus and must be realistic and appropriate for the stage of pregnancy depicted. The descriptions must include information about brain and heart function, the presence of external members and internal organs during the applicable states of development, and any relevant information on the possibility of the unborn child's survival. The materials must be objective, nonjudgmental, and designed to convey only accurate scientific information about the fetus/unborn child at the various gestational ages. The materials required under this subsection must be reviewed, updated, and reprinted as needed.~~

- c. Materials that include information on the support obligations of the father of a child who is born alive, including the father's legal duty to support his child, which may include child support payments and health insurance, and the fact that paternity may be established by the father's signature on an acknowledgment of paternity or by court action. The printed material must also state that more information concerning paternity establishment and child support services and enforcement may be obtained by calling state or county public assistance agencies.
- d. Materials that contain objective information describing the various surgical and drug-induced methods of abortion as well as the immediate and long-term medical risks commonly associated with each abortion method, including the risks of infection, hemorrhage, cervical or uterine perforation or rupture, danger to subsequent pregnancies, the possible increased risk of breast cancer, the possible adverse psychological effects associated with an abortion, and the medical risks associated with carrying a child to term.

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

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

Abortion report form.

The state department of health shall prepare an abortion compliance report form and an abortion data report form to be used by the physician for each abortion performed, as required by section 14-02.1-07. The abortion compliance report form must include a checklist designed to confirm compliance with all provisions of this chapter, chapter 14-02.3, chapter 14-02.6, and section 23-16-14. The abortion data report form must include the data called for in the United States standard report of induced termination of pregnancy as recommended by the national center for health statistics.

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

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

1. No physician shall perform an abortion unless prior to such performance the physician certified in writing that the woman gave her informed consent as defined and provided in section 14-02.1-02 and shall certify in writing the pregnant woman's marital status and age based upon proof of age offered by her. ~~Prior to~~Before the period of pregnancy when the fetus/unborn child may reasonably be expected to have reached viability, ~~no~~ abortion ~~shall~~may not be performed upon an unemancipated minor unless the attending physician certifies in writing that each of the parents of the minor requesting the abortion has been provided by the physician in person with the information provided for in section 14-02.1-02 at least twenty-four hours ~~prior to~~before the minor's consent to the performance of abortion or unless the attending physician certifies in writing that the physician has caused materials of section 14-02.1-02 to be posted by certified mail to each of the parents of the minor separately to the last-known addresses at least forty-eight hours prior to the minor's consent to the performance of abortion. ~~When~~If a parent of the minor has died or rights and interests of ~~such~~that parent have been legally terminated, this subsection ~~shall apply~~applies to the sole remaining parent. When both parents have died or the rights and interests of both parents have been legally terminated, this subsection ~~shall apply~~applies to the guardian or other person standing in loco parentis. Notification by the attending physician is not required if the minor elects not to allow the notification of one or both parents or her guardian and the abortion is authorized by the juvenile court in accordance with section 14-02.1-03.1. None of the requirements of this subsection apply in the case of a medical emergency, except that when a medical emergency compels the performance of an abortion, the physician shall inform the woman, ~~prior to~~before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or for which a twenty-four-hour delay will create grave peril of immediate and irreversible loss of major bodily function, and shall certify those indications in writing.
2. Subsequent to the period of pregnancy when the fetus/unborn child may reasonably be expected to have reached viability, no abortion, other than an abortion necessary to preserve her life, or because the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health, may be performed upon any woman in the absence of:
 - a. The written consent of her husband unless her husband is voluntarily separated from her; or
 - b. The written consent of a parent, if living, or the custodian or legal guardian of the woman, if the woman is unmarried and under eighteen years of age.
3. No executive officer, administrative agency, or public employee of the state of North Dakota or any local governmental body has power to issue any order requiring an abortion, nor shall any such officer or entity coerce any woman to have an abortion, nor shall any other person coerce any woman to have an abortion.

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

2. Any pregnant woman under the age of eighteen or next friend is entitled to apply to the juvenile court for authorization to obtain an abortion without parental consent. ~~Proceedings~~All proceedings on such application must be conducted in the juvenile court of the county of the minor's residence before a juvenile judge or referee, if authorized by the juvenile court judge in accordance with the provisions of chapter 27-05, except that the parental notification requirements of chapter 27-20 are not applicable to proceedings under this section. A court may change the venue of proceedings under this section to another county only upon finding that a transfer is required in the best interests of the minor. All applications in accordance with this section must be heard by a juvenile judge or referee within forty-eight hours, excluding Saturdays and Sundays, of receipt of the application. ~~The purpose of the hearing before the juvenile judge or referee must be to determine~~juvenile judge or referee shall find by clear and convincing evidence:
 - a. Whether or not the minor is sufficiently mature and well informed with regard to the nature, effects, and possible consequences of both having an abortion and bearing her child to be able to choose intelligently among the alternatives.
 - b. If the minor is not sufficiently mature and well informed to choose intelligently among the alternatives without the advice and counsel of her parents or guardian, whether or not it would be in the best interests of the minor to notify her parents or guardian of the proceedings and call in the parents or guardian to advise and counsel the minor and aid the court in making its determination and to assist the minor in making her decision.
 - c. If the minor is not sufficiently mature and well informed to choose intelligently among the alternatives and it is found not to be in the best interests of the minor to notify and call in her parents or guardian for advice and counsel, whether an abortion or some other alternative would be in the best interests of the minor.
3. All proceedings in connection with this section must be kept confidential and the identity of the minor must be protected in accordance with provisions relating to all juvenile court proceedings. This section does not limit the release, upon request, of statistical information regarding applications made under this section and their disposition.

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

Abortion-inducing drugs.

1. For purposes of this chapter, an abortion accomplished by the use of an abortion-inducing drug is deemed to occur when the drug is prescribed, in the case of a prescription, or when the drug is administered directly to the woman by the physician.
2. It is unlawful to knowingly give, sell, dispense, administer, otherwise provide, or prescribe any abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion in that pregnant woman, or enabling another person to induce an abortion in a pregnant woman, unless the person who gives, sells, dispenses, administers, or otherwise provides or prescribes the abortion-inducing drug is a physician, and the provision or prescription of the abortion-inducing drug satisfies the protocol tested and authorized by the

federal food and drug administration and as outlined in the label for the abortion-inducing drug.

3. Every pregnant woman to whom a physician gives, sells, dispenses, administers, otherwise provides, or prescribes any abortion-inducing drug must be provided with a copy of the drug's label.
4. Any physician who gives, sells, dispenses, administers, prescribes, or otherwise provides an abortion-inducing drug shall enter a signed contract with another physician who agrees to handle emergencies associated with the use or ingestion of the abortion-inducing drug. The physician shall produce the signed contract on demand by the patient, the department of health, or a criminal justice agency. Every pregnant woman to whom a physician gives, sells, dispenses, administers, prescribes, or otherwise provides any abortion-inducing drug must be provided the name and telephone number of the physician who will be handling emergencies and the hospital at which any emergencies will be handled. The physician who contracts to handle emergencies must have active admitting privileges and gynecological and surgical privileges at the hospital designated to handle any emergencies associated with the use or ingestion of the abortion-inducing drug.
5. When an abortion-inducing drug or chemical is used for the purpose of inducing an abortion, the drug or chemical must be administered by or in the same room and in the physical presence of the physician who prescribed, dispensed, or otherwise provided the drug or chemical to the patient.

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

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

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

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

4. An abortion facility may not perform an abortion on a woman without first offering the woman an opportunity to receive and view at the abortion facility

or another facility an active ultrasound of her ~~fetus~~unborn child. The offer and opportunity to receive and view an ultrasound must occur at least twenty-four hours before the abortion is scheduled to be performed. The active ultrasound image must be of a quality consistent with standard medical practice in the community, contain the dimensions of the ~~fetus~~unborn child, and accurately portray the presence of external members and internal organs, including the heartbeat, if present or viewable, of the ~~fetus~~unborn child. The auscultation of the fetal heart tone must be of a quality consistent with standard medical practice in the community. The abortion facility shall document the woman's response to the offer, including the date and time of the offer and the woman's signature attesting to her informed decision.

5. Any ~~licensed~~ physician who performs an abortion without complying with the provisions of this section is guilty of a class A misdemeanor.
6. It is a class B felony for any person, other than a physician licensed under chapter 43-17, to perform an abortion in this state.

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

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

1. Records:
 - a. All abortion facilities and hospitals in which abortions are performed shall keep records, including admission and discharge notes, histories, results of tests and examinations, nurses' worksheets, social service records, and progress notes, and shall further keep a copy of all written certifications provided for in this chapter as well as a copy of the constructive notice forms, consent forms, court orders, abortion data reports, adverse event reports, abortion compliance reports, and complication reports. All abortion facilities shall keep records of the number of women who availed themselves of the opportunity to receive and view an ultrasound image of their ~~fetuses~~unborn children pursuant to section 14-02.1-04, and the number who did not; and of each of those numbers, the number who, to the best of the reporting abortion facility's information and belief, went on to obtain the abortion. Records must be maintained in the permanent files of the hospital or abortion facility for a period of not less than seven years.
 - b. The medical records of abortion facilities and hospitals in which abortions are performed and all information contained therein must remain confidential and may be used by the state department of health only for gathering statistical data and ensuring compliance with the provisions of this chapter.
2. Reporting:
 - a. An individual abortion compliance report and an individual abortion data report for each abortion performed upon a woman must be completed by her attending physician. The abortion data report must be confidential and may not contain the name of the woman. ~~This reporting~~The abortion data report must include the data called for in the United States standard report of induced termination of pregnancy as recommended by the national center for health statistics.

- b. All abortion compliance reports must be signed by the attending physician within twenty-four hours and submitted to the state department of health within thirty business days from the date of the abortion. All abortion data and complication reports must be signed by the attending physician providing the post-abortion care and submitted to the state department of health within thirty days from the date of the post-abortion care. If a physician provides an abortion-inducing drug to another for the purpose of inducing an abortion and the physician knows that the individual experiences during or after the use an adverse event, the physician shall provide a written report of the adverse event within thirty days of the event to the state department of health and the federal food and drug administration via the medwatch reporting system. For purposes of this section, "adverse event" is defined based upon the federal food and drug administration criteria given in the medwatch reporting system.
- c. A copy of the abortion report, any complication report, and any adverse event report must be made a part of the medical record of the patient at the facility or hospital in which the abortion was performed. In cases when post-abortion complications are discovered, diagnosed, or treated by physicians not associated with the facility or hospital where the abortion was performed, the state department of health shall forward a copy of the report to that facility or hospital to be made a part of the patient's permanent record.
- d. The state department of health is responsible for collecting all abortion compliance reports and, abortion data reports, complication reports, and adverse event reports and collating and evaluating all data gathered therefrom from these reports and shall annually publish a statistical report based on data from abortions performed in the previous calendar year. All abortion compliance reports received by the state department of health are public records. Except for disclosure to a law enforcement officer or state agency, the department may not disclose an abortion compliance report without first removing any individually identifiable health information and any other demographic information, including race, marital status, number of previous live births, and education regarding the woman upon whom the abortion was performed.
- e. The state department of health shall report to the attorney general any apparent violation of this chapter.

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

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

1. A person is guilty of a class C felony if the person knowingly, or negligently, causes the death of a viable fetus an infant born alive.
2. Whenever a fetus which an unborn child who is the subject of abortion is born alive and is viable, it becomes an abandoned and deprived child, unless:
 - a. The termination of the pregnancy is necessary to preserve the life of the mother; or
 - b. The mother and her spouse, or either of them, have agreed in writing in advance of the abortion, or within seventy-two hours thereafter, to accept

the parental rights and responsibilities for the fetusunborn child if it survives the abortion procedure.

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

14-02.1-09. Humane disposal of nonviable fetusunborn child.

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

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

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

1. Between normal childbirth and abortion, it is the policy of the state of North Dakota that normal childbirth is to be given preference, encouragement, and support by law and by state action, it being in the best interests of the well-being and common good of North Dakota citizens.
2. An agency of this state may not produce, distribute, publish, disseminate, endorse, or approve materials of any type that, between normal childbirth and abortion, do not give preference, encouragement, and support to normal childbirth. An agency of the state may not fund, endorse, or support any program that, between normal childbirth and abortion, does not give preference, encouragement, and support to normal childbirth.
3. No funds of this state or any agency, county, municipality, or any other subdivision thereof and no federal funds passing through the state treasury or a state agency may be used to pay for the performance, or for promoting the performance, of an abortion unless the abortion is necessary to prevent the death of the woman.

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

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

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

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

15.1-19-06. Abortion referrals.

1. No person while acting in an official capacity as an employee or agent of a school district may refer a student to another person, agency, or entity for the purpose of obtaining an abortion. This provision does not extend to private communications between the employee or agent and a child of the employee or agent.
2. Between normal childbirth and abortion, it is the policy of the state of North Dakota that normal childbirth is to be given preference, encouragement, and support by law and by state action. A person acting in an official capacity as an employee or agent of a school district, between normal childbirth and abortion, shall give preference, encouragement, and support to normal childbirth. No public school in the state may endorse or support any program that, between normal childbirth and abortion, does not give preference, encouragement, and support to normal childbirth. No public school of the state may authorize a presentation to students that, between normal childbirth and abortion, does not give preference, encouragement, and support to normal childbirth.

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

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

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

SECTION 15. STATE DEPARTMENT OF HEALTH REPORT TO LEGISLATIVE MANAGEMENT - ABORTION DATA. During the 2011-12 interim, the state department of health shall:

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

SECTION 16. STATEMENT OF LEGISLATIVE INTENT. The costs incurred by the state department of health as a result of producing the printed information required under section 2 of this Act may not exceed fifty thousand dollars.

Approved April 18, 2011
Filed April 18, 2011

CHAPTER 110

HOUSE BILL NO. 1265

(Representatives S. Kelsh, Grande, Klein, Klemin, Kretschmar)
(Senator Lyson)

AN ACT to amend and reenact section 14-05-24 of the North Dakota Century Code, relating to divorce and the consideration of pension plans in the division of property and debts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-05-24 of the North Dakota Century Code is amended and reenacted as follows:

14-05-24. Division of property and debts.

1. When a divorce is granted, the court shall make an equitable distribution of the property and debts of the parties.
2. If one party to the divorce is covered by the civil service retirement system or other government pension system in lieu of social security and is not entitled to receive full social security benefits and the other party is a social security recipient, in making an equitable distribution award, the court shall compute what the present value of the social security benefits would have been to the party with the government pension during the covered period and subtract that amount from the value of the government pension in order to determine the government pension's marital portion.
3. The court may redistribute property and debts in a postjudgment proceeding if a party has failed to disclose property and debts as required by rules adopted by the supreme court or the party fails to comply with the terms of a court order distributing property and debts.

Approved April 20, 2011
Filed April 20, 2011

CHAPTER 111

SENATE BILL NO. 2288

(Senator Holmberg)

AN ACT to create and enact a new section to chapter 14-05 of the of the North Dakota Century Code, relating to summary real estate disposition judgments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-05 of the North Dakota Century Code is created and enacted as follows:

Summary real estate disposition judgment.

1. If real estate is described in a judgment and decree of divorce, the court may direct either of the parties or their legal counsel to prepare and submit to the court, in a form prescribed by the court, a proposed summary real estate disposition judgment. Upon approval by the court and filing of the summary real estate disposition judgment with the clerk of court, the clerk of court shall provide to any party upon request certified copies of the summary real estate disposition judgment.
2. A summary real estate disposition judgment must contain the following information:
 - a. The full caption and file number of the case and the title "Summary Real Estate Disposition Judgment";
 - b. The dates of the parties' marriage and of the entry of the judgment and decree of divorce;
 - c. The names of the parties' attorneys or if either or both appeared pro se;
 - d. The name of the judge and referee, if any, who signed the order for judgment and decree;
 - e. Whether the judgment and decree resulted from a stipulation, a default, or a trial and the appearances at the default or trial;
 - f. If the judgment and decree resulted from a stipulation, whether the real property was described by a legal description;
 - g. If the judgment and decree resulted from a default, whether the petition contained the legal description of the property and whether disposition was made in accordance with the request for relief;
 - h. Whether the summons and petition were served personally upon the respondent in accordance with the North Dakota Rules of Civil Procedure;

- i. If the summons and petition were served on the respondent only by publication, the name of each legal newspaper and county in which the summons and petition were published and the dates of publications;
 - j. Whether either party changed the party's name through the judgment and decree;
 - k. The legal description of each parcel of real estate;
 - l. The name or names of the persons awarded an interest in each parcel of real estate and a description of the interest awarded;
 - m. Liens, mortgages, encumbrances, or other interests in the real estate described in the judgment and decree; and
 - n. Triggering or contingent events set forth in the judgment and decree affecting the disposition of each parcel of real estate.
3. a. On the court's own motion or on application by an interested person, the court shall issue an order authorizing the clerk of court to issue an amended summary real estate disposition judgment to correct an erroneous legal description of real estate contained in the judgment and decree of divorce.
 - b. An application to correct a legal description under this subdivision must contain:
 - (1) The erroneous legal description contained in the judgment and decree;
 - (2) The correct legal description of the real estate;
 - (3) Written evidence satisfactory to the court to show the correct legal description, or a request for an evidentiary hearing to produce evidence of the correct legal description; and
 - (4) A proposed amended summary real estate disposition judgment.
 - c. The court shall consider an application under this subsection on an expedited basis. The court's order must be based on the evidence provided in the application, the evidence produced at an evidentiary hearing, or the evidence already in the record of the proceeding. If the court is satisfied that an erroneous legal description should be corrected under this subsection, the court may issue its order without a hearing or notice to any person. A filing fee is not required for an application under this subsection. The court's order must be treated as an amendment of the court's findings of fact regarding the legal description of the property in question, without the need to amend the original judgment and decree. The court shall issue the order if the court specifically finds that the court had jurisdiction over the respondent in the divorce proceeding and that the property was sufficiently identified in the original proceedings to prevent prejudice to the rights of either party to the divorce and that the amendment will not prejudice their rights. The court's order is effective retroactive to the date of entry of the original judgment and decree of divorce.

- d. An amended summary real estate disposition judgment must be treated the same as the prior summary real estate disposition judgment for all purposes.
 - e. On request by any interested person, the clerk of court shall provide a certified copy of an amended summary real estate disposition judgment showing the correct legal description of the real property affected by the judgment and decree.
 - f. This subsection may not be used to add omitted property to a judgment and decree of divorce, unless the court determines that the omitted property is an integral or appurtenant part of real property already properly included in the judgment and decree.
4. An order or provision in a judgment and decree that provides that the judgment and decree must be recorded in the office of the county recorder means, if a summary real estate disposition judgment has been approved by the court, that the summary real estate disposition judgment, rather than the judgment and decree, must be recorded in the office of the county recorder.
 5. The summary real estate disposition judgment operates as a conveyance and transfer of each interest in the real estate in the manner and to the extent described in the summary real estate disposition judgment. A summary real estate disposition judgment, or an amended summary real estate disposition judgment that supersedes an earlier judgment, is prima facie evidence of the facts stated in the summary real estate disposition judgment. A purchaser for value without notice of any defect in the divorce proceedings may rely on a summary real estate disposition judgment or a later amended summary real estate disposition judgment to establish the facts stated in the judgment.
 6. If a conflict exists between the judgment and decree and the summary real estate disposition judgment, the summary real estate disposition judgment recorded in the office of the county recorder controls as to the interest acquired in real estate by any subsequent purchaser in good faith and for a valuable consideration, who is in possession of the interest or whose interest is recorded with the county recorder, before the recording of the judgment and decree in office of county recorder.

Approved April 20, 2011
Filed April 20, 2011

CHAPTER 112

SENATE BILL NO. 2247

(Senators Olafson, Lyson, Nelson)
(Representatives DeKrey, Delmore, Sanford)

AN ACT to create and enact a new section to chapter 14-07.1 of the North Dakota Century Code, relating to a domestic violence fatality review commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-07.1 of the North Dakota Century Code is created and enacted as follows:

Domestic violence fatality review commission.

1. The attorney general's office may establish a domestic violence fatality review commission to review domestic violence deaths that have occurred in the state. The domestic violence fatality review commission may review incidents in which the investigation of fatal incidents of domestic violence has been completed or adjudicated by law enforcement for the purpose of:
 - a. Recommending policies and protocols to prevent the incidence of domestic violence and resulting fatalities; and
 - b. Providing consultation and coordination for agencies involved in the prevention and investigation of domestic violence.
2. The attorney general shall appoint the membership of the domestic violence fatality review commission, as appropriate, and may include representatives from:
 - a. Law enforcement agencies within the state;
 - b. County or city attorneys and public defenders, and the judiciary;
 - c. The medical examiner;
 - d. The department of corrections and rehabilitation;
 - e. Physicians and mental health professionals;
 - f. Employees of the state department of health and county social services;
 - g. Local civic agencies and organizations involved with crime victims and domestic violence protection, reporting, counseling, and assistance;
 - h. Other organizations, departments, and agencies determined to be appropriate; and
 - i. Other individuals serving on an ad hoc basis in association with a particular review.

3. The commission may investigate and review the facts and circumstances of all deaths that occur in the state as a result of domestic violence.
 - a. The review may include necessary and appropriate information, including current laws and policies, actions taken by agencies and persons related to or involved with the incident, criminal justice data collection and analysis, and other information the commission determines to be relevant to the review.
 - b. The confidential and other appropriate records of a department or agency of the state or municipality relating to the domestic violence incident may be examined by the commission. The domestic violence fatality review commission and each member of the commission shall preserve the confidentiality of any records examined.
4. The domestic violence fatality review commission shall report its findings and recommendations to the attorney general before December thirty-first of each year.
5. Meetings of the domestic violence fatality review commission are closed to the public and are not subject to section 44-04-19.
6. The determinations, conclusions, and recommendations of the domestic violence fatality review commission are not admissible in a civil or criminal proceeding.
7. Except for a public report issued by the attorney general's office, any information, records, or data collected by the commission are an exempt record. The commission may not use the information, records, or data for purposes other than those designated by this section.
8. Whenever funding is available from grants, a member of the domestic violence fatality review commission who is not a permanent full-time state employee is entitled to compensation at a rate of seventy-five dollars per day and mileage and expense reimbursement as provided for in sections 44-08-04 and 54-06-09. A state employee who is a member of the commission must receive that employee's regular salary and is entitled to mileage and expense reimbursement as provided for in sections 44-08-04 and 54-06-09, to be paid by the employing agency.

Approved April 27, 2011
Filed April 27, 2011

CHAPTER 113

SENATE BILL NO. 2214

(Senators Schneider, Lyson, Olafson)
(Representatives Beadle, Klemin)

AN ACT to amend and reenact section 14-09-22 of the North Dakota Century Code, relating to the abuse or neglect of a child; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-22 of the North Dakota Century Code is amended and reenacted as follows:

14-09-22. Abuse or neglect of child - Penalty.

1. Except as provided in subsection 2 or 3, a parent, adult family or household member, guardian, or other custodian of any child, who willfully commits any of the following offenses is guilty of a class C felony except if the victim of an offense under subdivision a is under the age of six years in which case the offense is a class B felony:
 - a. Inflicts, or allows to be inflicted, upon the child, bodily injury, substantial bodily injury, or serious bodily injury as defined by section 12.1-01-04 or mental injury.
 - b. Fails to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals.
 - c. Permits the child to be, or fails to exercise reasonable diligence in preventing the child from being, in a disreputable place or associating with vagrants or vicious or immoral persons.
 - d. Permits the child to engage in, or fails to exercise reasonable diligence in preventing the child from engaging in, an occupation forbidden by the laws of this state or an occupation injurious to the child's health or morals or the health or morals of others.
2. A person who provides care, supervision, education, or guidance for a child unaccompanied by the child's parent, adult family or household member, guardian, or custodian in exchange for money, goods, or other services and who while providing such services commits an offense under subdivision a of subsection 1 is guilty of a class B felony. Any such person who commits, allows to be committed, or conspires to commit, against the child, a sex offense as defined in chapter 12.1-20 is subject to the penalties provided in that chapter.
3. A person who commits an offense under subdivision a of subsection 1 is guilty of a class B felony if the victim suffers permanent loss or impairment of the function of a bodily member or organ, except if the victim of the offense is under the age of six years in which case the offense is a class A felony.

Approved April 19, 2011
Filed April 20, 2011

CHAPTER 114

SENATE BILL NO. 2181

(Senators Olafson, Lyson, Schneider)
(Representatives Damschen, Klemin, Monson)

AN ACT to amend and reenact section 14-10-06 of the North Dakota Century Code, relating to mitigating factors for contributing to the consumption or possession of alcoholic beverages by a minor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-10-06 of the North Dakota Century Code is amended and reenacted as follows:

14-10-06. Unlawful to encourage or contribute to the deprivation or delinquency of minor - Penalty.

1. Any individual who by any act willfully encourages, causes, or contributes to the delinquency or deprivation of any minor is guilty of a class A misdemeanor.
2. Any individual who by any act willfully encourages, causes, or contributes to the deprivation of a child less than sixteen years of age by causing that child to engage in sexual conduct as defined under section 12.1-27.2-01, in any play, motion picture, photograph, dance, or other visual representation is guilty of a class C felony.
3. If an individual is convicted of this section for encouraging, causing, or contributing to the consumption or possession of alcoholic beverages by ~~an individual under twenty-one years of age~~ a minor, the court shall consider the following in mitigation:
 - a. After consuming the alcohol, the underage individual was in need of medical assistance as a result of consuming alcohol; and
 - b. Within twelve hours after the underage individual consumed the alcohol, the defendant contacted law enforcement or emergency medical personnel to report that the underage individual was in need of medical assistance as a result of consuming alcohol.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 115

SENATE BILL NO. 2082

(Judiciary Committee)

(At the request of the Department of Human Services)

AN ACT to create and enact a new section to chapter 14-15.1 of the North Dakota Century Code, relating to the confidentiality of identified adoption proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-15.1 of the North Dakota Century Code is created and enacted as follows:

Confidentiality of records.

All files, records, and proceedings under this chapter are confidential pursuant to section 14-15-16. This confidentiality requirement is retroactive pursuant to subsection 25 of section 14-15-16.

Approved April 25, 2011

Filed April 25, 2011