

Sixtieth  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1464

Introduced by

Representatives Kerzman, L. Meier

Senators Dever, Robinson

1 A BILL for an Act to create and enact a new section to chapter 14-02.1 of the North Dakota  
2 Century Code, relating to use of abortion-inducing drugs; to amend and reenact sections  
3 14-02.1-02 and 14-02.1-02.1, subsections 2 and 3 of section 14-02.1-03.1, and sections  
4 14-02.1-08, 14-02.3-01, 14-02.3-03, 15.1-19-05, 15.1-19-06, and 23-16-14 of the North Dakota  
5 Century Code, relating to limitations on abortion; and to provide a penalty.

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

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

9 **14-02.1-02. Definitions.** As used in this chapter:

- 10 1. "Abortion" means the termination of human pregnancy, including the elimination of  
11 one or more fetuses or embryos in a multifetal pregnancy, with an intention other  
12 than to produce ~~a~~ an immediate live birth or to remove a dead embryo or fetus.
- 13 2. "Abortion facility" means a clinic, ambulatory surgical center, physician's office, or  
14 any other place or facility in which abortions are performed or prescribed, other  
15 than a hospital.
- 16 3. "Hospital" means an institution licensed by the state department of health under  
17 chapter 23-16 and any hospital operated by the United States or this state.
- 18 4. "Infant born alive" or "live born child" means a born child which exhibits either  
19 heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary  
20 muscles or pulsation of the umbilical cord if still attached to the child.
- 21 5. "Informed consent" means voluntary consent to abortion by the woman upon whom  
22 the abortion is to be performed or induced provided that:

- 1           a.    The woman is told the following by the physician who is to perform the  
2                    abortion, by the referring physician, or by the physician's agent, at least  
3                    twenty-four hours before the abortion:
- 4                    (1)   The name of the physician who will perform the abortion;  
5                    (2)   The particular medical risks associated with the particular abortion  
6                            procedure to be employed including, when medically accurate, the risks  
7                            of infection, hemorrhage, danger to subsequent pregnancies, and  
8                            infertility;  
9                    (3)   The probable gestational age of the unborn child at the time the  
10                           abortion is to be performed; ~~and~~  
11                   (4)   The medical risks associated with carrying her child to term; and  
12                   (5)   Any other information that a reasonable patient would consider material  
13                           to the decision of whether to undergo the abortion.
- 14           b.    The woman is informed, by the physician or the physician's agent, at least  
15                    twenty-four hours before the abortion:
- 16                    (1)   That medical assistance benefits may be available for prenatal care,  
17                            childbirth, and neonatal care and that more detailed information on the  
18                            availability of that assistance is contained in the printed materials  
19                            provided to her as described in section 14-02.1-02.1;  
20                    (2)   That the printed materials provided to her and described in section  
21                            14-02.1-02.1 describe the unborn child and list agencies that offer  
22                            alternatives to abortion;  
23                    (3)   That the father is liable to assist in the support of her child, even in  
24                            instances in which the father has offered to pay for the abortion; and  
25                    ~~(3)   That she has the right to review the printed materials described in~~  
26                            ~~section 14-02.1-02.1. The physician or the physician's agent shall~~  
27                            ~~orally inform the woman the materials have been provided by the state~~  
28                            ~~of North Dakota and that they describe the unborn child and list~~  
29                            ~~agencies that offer alternatives to abortion. If the woman chooses to~~  
30                            ~~view the materials, copies of them must be furnished to her. The~~  
31                            ~~physician and the physician's agent may disassociate themselves from~~

1                   ~~the materials and may comment or refrain from comment on them, as~~  
2                   ~~they choose.~~

3                   (4)   That she is free to withhold or withdraw her consent to the abortion at  
4                   any time without affecting her right to future care or treatment and  
5                   without the loss of any state or federally funded benefits to which she  
6                   might otherwise be entitled.

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

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

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

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

20                  7.    "Medical emergency" means that condition which, on the basis of the physician's  
21                  best clinical judgment, so complicates a pregnancy as to necessitate an immediate  
22                  abortion to avert the death of the mother or for which a twenty-four-hour delay will  
23                  create grave peril of immediate and irreversible loss of major bodily function.

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

27                  9.    "Viable" means the ability of a fetus to live outside the mother's womb, albeit with  
28                  artificial aid.

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

31                  **14-02.1-02.1. Printed information - Referral service.**

1           1.    The state department of health shall publish in English, and in every other  
2                    language that the department determines is the primary language of a significant  
3                    number of state residents, the following easily comprehensible printed materials  
4                    and informational video, which the state department of health annually shall review  
5                    and update, if necessary:

6           a.    Geographically indexed materials designed to inform the woman of public and  
7                    private agencies and services available to assist a woman through pregnancy,  
8                    upon childbirth, and while the child is dependent, including adoption agencies.  
9                    The materials must include a comprehensive list of the agencies available, a  
10                   description of the services they offer and a description of the manner,  
11                   including telephone numbers, in which they might be contacted, or, at the  
12                   option of the department, printed materials including a toll-free,  
13                   twenty-four-hour-a-day telephone number that may be called to obtain, orally,  
14                   such a list and description of agencies in the locality of the caller and of the  
15                   services they offer. The materials must state that it is unlawful for any  
16                   individual to coerce a woman to undergo an abortion and that if a minor is  
17                   denied financial support by the minor's parent, guardian, or custodian due to  
18                   the minor's refusal to have an abortion performed, the minor is deemed to be  
19                   emancipated for the purposes of eligibility for public assistance benefits,  
20                   except that those benefits may not be used to obtain an abortion. The  
21                   materials must also state that any physician who performs an abortion upon a  
22                   woman without her informed consent may be liable to her for damages in a  
23                   civil action and that the law permits adoptive parents to pay costs of prenatal  
24                   care, childbirth, and neonatal care. The materials must include the following  
25                   statement:

26                       There are many public and private agencies willing and able to help you  
27                       to carry your child to term and to assist you and your child after your child is  
28                       born, whether you choose to keep your child or to place your child for  
29                       adoption. The state of North Dakota strongly urges you to contact one or  
30                       more of these agencies before making a final decision about abortion. The

- 1                   law requires that your physician or your physician's agent give you the  
2                   opportunity to call agencies like these before you undergo an abortion.
- 3           b.   Materials, published in a booklet format, designed to inform the woman of the  
4                   probable anatomical and physiological characteristics of the fetus at two-week  
5                   gestational increments from the time when a woman can be known to be  
6                   pregnant to full term, including any relevant information on the possibility of  
7                   the survival of the fetus and ~~pictures representing~~ color photographs of the  
8                   development of a fetus at two-week gestational increments. ~~The majority of~~  
9                   ~~the pictures included in the booklet must be full color photograph style images~~  
10                  ~~and the pictures must contain the dimensions of the fetus and must be~~  
11                  ~~realistic and appropriate for the stage of pregnancy depicted.~~ The  
12                  descriptions must include information about brain and heart function, the  
13                  presence of external members and internal organs during the applicable  
14                  states of development, and any relevant information on the possibility of the  
15                  unborn child's survival. The materials must be objective, nonjudgmental, and  
16                  designed to convey only accurate scientific information about the fetus at the  
17                  various gestational ages. The materials required under this subsection must  
18                  be reviewed, updated, and reprinted as needed.
- 19           c.   Materials that include information on the support obligations of the father of a  
20                  child who is born alive, including the father's legal duty to support his child,  
21                  which may include child support payments and health insurance, and the fact  
22                  that paternity may be established by the father's signature on a birth  
23                  certificate or statement of paternity or by court action. The printed material  
24                  must also state that more information concerning paternity establishment and  
25                  child support services and enforcement may be obtained by calling state or  
26                  county public assistance agencies.
- 27           d.   Materials that contain objective information describing the various surgical  
28                  and drug-induced methods of abortion as well as the immediate and long-term  
29                  medical risks commonly associated with each abortion method, including the  
30                  risks of infection, hemorrhage, cervical or uterine perforation or rupture,  
31                  danger to subsequent pregnancies, 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.

e. A checklist certification form to be used by the physician or the physician's agent which lists all the items of information which are to be given to the woman by a physician or the physician's agent under this chapter.

2. The department shall produce a video that may be used statewide, presenting the information described in subdivisions a, b, c, and d of subsection 1. In preparing the video, the department may summarize and make reference to the printed comprehensive list of geographically indexed names and services described in subdivision a of subsection 1. The video must show, in addition to the information described in subdivisions a, b, c, and d of subsection 1, an ultrasound of the heartbeat of an unborn child at four to five weeks gestational age, at six to eight weeks gestational age, and each month thereafter, until viability. The information must be presented in an objective, unbiased manner designed to convey only accurate scientific information.

~~2.~~ 3. 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 web site. The department may make the copyrighted material available on its internet web site if the department pays the copyright royalties.

**SECTION 3. 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 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. All applications in accordance with this section must be heard by a juvenile judge or referee in the juvenile court of the county of

1            the minor's residence within forty-eight hours, excluding Saturdays and Sundays,  
2            of receipt of the application. ~~The purpose of the hearing before the juvenile judge~~  
3            ~~or referee must be to determine~~ juvenile judge or referee shall find by clear and  
4            convincing evidence:

- 5            a. Whether or not the minor is sufficiently mature and well informed with regard  
6            to the nature, effects, and possible consequences of both having an abortion  
7            and bearing her child to be able to choose intelligently among the alternatives.  
8            b. If the minor is not sufficiently mature and well informed to choose intelligently  
9            among the alternatives without the advice and counsel of her parents or  
10           guardian, whether or not it would be in the best interests of the minor to notify  
11           her parents or guardian of the proceedings and call in the parents or guardian  
12           to advise and counsel the minor and aid the court in making its determination  
13           and to assist the minor in making her decision.  
14           c. If the minor is not sufficiently mature and well informed to choose intelligently  
15           among the alternatives and it is found not to be in the best interests of the  
16           minor to notify and call in her parents or guardian for advice and counsel,  
17           whether an abortion or some other alternative would be in the best interests of  
18           the minor.

- 19           3. All proceedings in connection with this section must be kept confidential and the  
20           identity of the minor must be protected in accordance with provisions relating to all  
21           juvenile court proceedings. This section does not limit the release, upon request,  
22           of general information not identifying the minor in any proceeding under this  
23           chapter.

24           **SECTION 4.** A new section to chapter 14-02.1 of the North Dakota Century Code is  
25           created and enacted as follows:

26           **Abortion-inducing drugs.** For purposes of this chapter, an abortion accomplished by  
27           the use of an abortion-inducing drug is deemed to occur when the drug is prescribed, in the  
28           case of a prescription, or when the drug is administered directly to the woman by the physician.

29           **SECTION 5. AMENDMENT.** Section 14-02.1-08 of the North Dakota Century Code is  
30           amended and reenacted as follows:

31           **14-02.1-08. Protection of ~~viable fetus~~ infant born alive - Penalty.**

1. A person is guilty of a class ~~G~~ AA felony if the person ~~knowingly, or negligently,~~  
intentionally causes the death of ~~a viable fetus~~ an infant born alive.
2. Whenever a fetus which 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 ~~fetus~~ infant born alive if it survives the abortion procedure.

**SECTION 6. 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. No agency of this state may 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. No agency of the state may 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, or referral for, an abortion unless the abortion is necessary to prevent the death of the woman.

**SECTION 7. AMENDMENT.** Section 14-02.3-03 of the North Dakota Century Code is amended and reenacted as follows:



1           **14-02.3-03. Payment for abortions by health insurance policies delivered or**  
2 **issued in North Dakota restricted.** No health insurance contracts, plans, or policies delivered  
3 or issued for delivery in this state may provide coverage for abortions including the elimination  
4 of one or more fetuses or embryos in a multifetal pregnancy, except by an optional rider for  
5 which there must be paid an additional premium. Provided, however, that this section does not  
6 apply to the performance of an abortion necessary to prevent the death of the woman.

7           **SECTION 8. AMENDMENT.** Section 15.1-19-05 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9           **15.1-19-05. Birth control device - Distribution - Restriction.**

10          1. No person while acting in an official capacity as an employee or agent of a school  
11 district may distribute a birth control device to a student. This section does not  
12 apply to the distribution of a birth control device by an employee or agent to a child  
13 of that employee or agent. For purposes of this section, an agent of a school  
14 district includes an authorized visiting presenter.

15          **SECTION 9. AMENDMENT.** Section 15.1-19-06 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17          **15.1-19-06. Abortion referrals.**

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

1           **SECTION 10. AMENDMENT.** Section 23-16-14 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **23-16-14. Participation in abortion - Not mandatory.** No hospital, physician, nurse,  
4 hospital employee, nor any other person is under any duty, by law or contract, nor may such  
5 hospital or person in any circumstances be required to participate in the performance of an  
6 abortion, if such hospital or person objects to such abortion. No such person or institution may  
7 be discriminated against because the person or institution so objects. For purposes of this  
8 section, "abortion" means the termination of human pregnancy, including the elimination of one  
9 or more fetuses or embryos in a multifetal pregnancy, with an intention other than to produce an  
10 immediate live birth to to remove dead embryo or fetus.