

Sixtieth
Legislative Assembly
of North Dakota

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

26 There are many public and private agencies willing and able to help
27 you to carry your child to term and to assist you and your child after your child
28 is 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 an
23 acknowledgement of paternity or by court action. The printed material must
24 also state that more information concerning paternity establishment and child
25 support services and enforcement may be obtained by calling state or county
26 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
29 long-term medical risks commonly associated with each abortion method,
30 including the risks of infection, hemorrhage, cervical or uterine perforation or
31 rupture, danger to subsequent pregnancies, increased risk of breast cancer,

1 the possible adverse psychological effects associated with an abortion, and
2 the medical risks associated with carrying a child to term.

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

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

16 ~~2.~~ 3. The materials required under subsection 1 must be available at no cost from the
17 state department of health upon request and in appropriate number to any person,
18 facility, or hospital, and, except for copyrighted material, must be available on the
19 department's internet web site. The department may make the copyrighted
20 material available on its internet web site if the department pays the copyright
21 royalties.

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

24 2. Any pregnant woman under the age of eighteen or next friend is entitled to apply to
25 the juvenile court for authorization to obtain an abortion without parental consent.
26 Proceedings on such application must be conducted in the juvenile court of the
27 county of the minor's residence before a juvenile judge or referee, if authorized by
28 the juvenile court judge in accordance with the provisions of chapter 27-05, except
29 that the parental notification requirements of chapter 27-20 are not applicable to
30 proceedings under this section. All applications in accordance with this section
31 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
8 alternatives.
- 9 b. If the minor is not sufficiently mature and well informed to choose intelligently
10 among the alternatives without the advice and counsel of her parents or
11 guardian, whether or not it would be in the best interests of the minor to notify
12 her parents or guardian of the proceedings and call in the parents or guardian
13 to advise and counsel the minor and aid the court in making its determination
14 and to assist the minor in making her decision.
- 15 c. If the minor is not sufficiently mature and well informed to choose intelligently
16 among the alternatives and it is found not to be in the best interests of the
17 minor to notify and call in her parents or guardian for advice and counsel,
18 whether an abortion or some other alternative would be in the best interests
19 of the minor.

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

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

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

30 **SECTION 5. AMENDMENT.** Section 14-02.1-08 of the North Dakota Century Code is
31 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 ~~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, except upon request, referral for, an abortion unless the abortion is necessary to prevent the death of the woman.

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

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

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

11 **15.1-19-05. Birth control device - Distribution - Restriction.**

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

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

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

20 1. No person while acting in an official capacity as an employee or agent of a school
21 district may refer a student to another person, agency, or entity for the purpose of
22 obtaining an abortion. This provision does not extend to private communications
23 between the employee or agent and a child of the employee or agent.

24 2. Between normal childbirth and abortion, it is the policy of the state of North Dakota
25 that normal childbirth is to be given preference, encouragement, and support by
26 law and by state action. A person acting in an official capacity as an employee or
27 agent of a school district, between normal childbirth and abortion, shall give
28 preference, encouragement, and support to normal childbirth. No public school in
29 the state may endorse or support any program that, between normal childbirth and
30 abortion, does not give preference, encouragement, and support to normal
31 childbirth. No public school of the state may authorize a presentation to students

1 that, between normal childbirth and abortion, does not give preference,
2 encouragement, and support to normal childbirth.

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

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