

Sixty-second
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1297

Introduced by

Representatives Grande, Kilichowski, Metcalf

Senators Berry, Christmann, Hogue

1 A BILL for an Act to create and enact two new sections to chapter 14-02.1 of the North Dakota
2 Century Code, relating to an abortion report form and abortion-inducing drugs; to amend and
3 reenact sections 14-02.1-02, 14-02.1-02.1, and 14-02.1-03, subsections 2 and 3 of section
4 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,
5 14-02.3-03, 15.1-19-06, and 23-16-14 of the North Dakota Century Code, relating to the
6 regulation of abortion; to provide a penalty; to provide for a report; and to provide a statement of
7 legislative intent.

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

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

11 **14-02.1-02. Definitions.**

12 As used in this chapter:

- 13 1. "Abortion" means the ~~termination of human pregnancy with an intention other than to~~
14 ~~produce a live birth or to remove a dead embryo or fetus~~act of using or prescribing any
15 instrument, medicine, drug, or any other substance, device, or means with the intent to
16 terminate the clinically diagnosable **intrauterine** pregnancy of a woman, including the
17 elimination of one or more unborn children in a multifetal pregnancy, with knowledge
18 that the termination by those means will with reasonable likelihood cause the death of
19 the unborn child. Such use, prescription, or means is not an abortion if done with the
20 intent to:
21 a. Save the life or preserve the health of the unborn child;~~or~~
22 b. Remove a dead unborn child caused by spontaneous abortion; or
23 c. **Treat a woman for an ectopic pregnancy.**

- 1 2. "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed
2 or dispensed with the intent of causing an abortion.
- 3 3. "Abortion facility" means a clinic, ambulatory surgical center, physician's office, or any
4 other place or facility in which abortions are performed or prescribed, other than a
5 hospital.
- 6 4. "Drug label" means the pamphlet accompanying an abortion-inducing drug which
7 outlines the protocol tested and authorized by the federal food and drug administration
8 and agreed upon by the drug company applying for the federal food and drug
9 administration authorization of that drug. Also known as "final printing labeling
10 instructions", drug label is the federal food and drug administration document that
11 delineates how a drug is to be used according to the federal food and drug
12 administration approval.
- 13 3-5. "Hospital" means an institution licensed by the state department of health under
14 chapter 23-16 and any hospital operated by the United States or this state.
- 15 4-6. "Human being" means an individual living member of the species of homo sapiens,
16 including the unborn human being during the entire embryonic and fetal ages from
17 fertilization to full gestation.
- 18 5-7. "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 6-8. "Informed consent" means voluntary consent to abortion by the woman upon whom
22 the abortion is to be performed or induced provided that:
- 23 a. The woman is told the following by the physician who is to perform the abortion,
24 by the referring physician, or by the physician's agent, at least twenty-four hours
25 before the abortion:
- 26 (1) The name of the physician who will perform the abortion;
- 27 (2) The abortion will terminate the life of a whole, separate, unique, living
28 human being;
- 29 (3) The particular medical risks associated with the particular abortion
30 procedure to be employed including, when medically accurate, the risks of
31 infection, hemorrhage, danger to subsequent pregnancies, and infertility;

1 (4) The probable gestational age of the unborn child at the time the abortion is
2 to be performed; and

3 (5) The medical risks associated with carrying her child to term; ~~and~~

4 ~~(6) Any other information that a reasonable patient would consider material to~~
5 ~~the decision of whether to undergo the abortion.~~

6 b. The woman is informed, by the physician or the physician's agent, at least
7 twenty-four hours before the abortion:

8 (1) That medical assistance benefits may be available for prenatal care,
9 childbirth, and neonatal care and that more detailed information on the
10 availability of that assistance is contained in the printed materials given to
11 her as described in section 14-02.1-02.1;

12 (2) That the printed materials given to her and described in section
13 14-02.1-02.1 describe the unborn child and list agencies that offer
14 alternatives to abortion;

15 ~~(2)(3)~~ That the father is liable to assist in the support of her child, even in
16 instances in which the father has offered to pay for the abortion; and

17 ~~(3)(4)~~ That she has the right to review the printed materials described in section
18 ~~14-02.1-02.1. The physician or the physician's agent shall orally inform the~~
19 ~~woman the materials have been provided by the state of North Dakota and~~
20 ~~that they describe the unborn child and list agencies that offer alternatives to~~
21 ~~abortion. If the woman chooses to view the materials, copies of them must~~
22 ~~be furnished to her. The physician and the physician's agent may~~
23 ~~disassociate themselves from the materials and may comment or refrain~~
24 ~~from comment on them, as they choose~~ is free to withhold or withdraw her
25 consent to the abortion at any time without affecting her right to future care
26 or treatment and without the loss of any state or federally funded benefits to
27 which she might otherwise be entitled.

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

- 1 d. ~~Prior to~~Before the performance of the abortion, the physician who is to perform or
- 2 induce the abortion or the physician's agent receives a copy of the written
- 3 certification prescribed by subdivision c.
- 4 e. The physician has not received or obtained payment for a service provided to a
- 5 patient who has inquired about an abortion or has scheduled an abortion before
- 6 the twenty-four-hour period required by this section.
- 7 7. ~~"Licensed physician" means a person who is licensed to practice medicine or~~
- 8 ~~osteopathy under chapter 43-17 or a physician practicing in the armed services of the~~
- 9 ~~United States or in the employ of the United States.~~
- 10 8.9. ~~"Medical emergency" means that a condition which, on the basis of the physician's~~
- 11 ~~best clinical judgment, so complicates a pregnancy as to necessitate an immediate~~
- 12 ~~abortion to avert the death of the mother or for which a twenty-four-hour delay will~~
- 13 ~~create grave peril of immediate and irreversible loss~~that, in reasonable medical
- 14 judgment, so complicates the medical condition of the pregnant woman that it
- 15 necessitates an immediate abortion to avert her death or for which the
- 16 twenty-four-hour delay will create serious risk of substantial and irreversible physical
- 17 impairment of a major bodily function. A condition may not be deemed a medical
- 18 emergency if based on a claim or diagnosis that the woman will engage in conduct
- 19 that would result in her death or in substantial and irreversible physical impairment of a
- 20 major bodily function.
- 21 9:10. "Physician" means an individual who is licensed to practice medicine or osteopathy
- 22 under chapter 43-17 or a physician who practices in the armed services of the United
- 23 States or in the employ of the United States.
- 24 11. ~~"Probable gestational age of the unborn child" means what, in the judgment of the~~
- 25 ~~attending physician~~reasonable medical judgment, will with reasonable probability be
- 26 the gestational age of the unborn child at the time the abortion is planned to be
- 27 performed.
- 28 12. "Reasonable medical judgment" means a medical judgment that would be made by a
- 29 reasonably prudent physician, knowledgeable about the case and the treatment
- 30 possibilities with respect to the medical conditions involved.
- 31 13. "Unborn child" means the offspring of human beings from conception until birth.

- 1 14. "Viable" means the ability of a ~~fetus~~an unborn child to live outside the mother's womb,
2 albeit with artificial aid.

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

5 **14-02.1-02.1. Printed information - Referral service.**

- 6 1. The state department of health shall publish in English, and in every other language
7 that the department determines is the primary language of a significant number of
8 state residents, the following easily comprehensible printed materials:

- 9 a. Geographically indexed materials designed to inform the woman of public and
10 private agencies and services available to assist a woman through pregnancy,
11 upon childbirth, and while the child is dependent, including adoption agencies.
12 The materials must include a comprehensive list of the agencies available, a
13 description of the services they offer and a description of the manner, including
14 telephone numbers, in which they might be contacted, or, at the option of the
15 department, printed materials, including a toll-free, twenty-four-hour-a-day
16 telephone number that may be called to obtain, orally, such a list and description
17 of agencies in the locality of the caller and of the services they offer. The
18 materials must state that it is unlawful for any individual to coerce a woman to
19 undergo an abortion and that if a minor is denied financial support by the minor's
20 parent, guardian, or custodian due to the minor's refusal to have an abortion
21 performed, the minor is deemed to be emancipated for the purposes of eligibility
22 for public assistance benefits, except that those benefits may not be used to
23 obtain an abortion. The materials also must state that any physician who
24 performs an abortion upon a woman without her informed consent may be liable
25 to her for damages in a civil action and that the law permits adoptive parents to
26 pay costs of prenatal care, childbirth, and neonatal care. The materials must
27 include the following statement: There are many public and private agencies
28 willing and able to help you to carry your child to term and to assist you and your
29 child after your child is born, whether you choose to keep your child or to place
30 your child for adoption. The state of North Dakota strongly urges you to contact
31 one or 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~~unborn child at
5 two-week gestational increments from the time when a woman can be known to
6 be pregnant to full term, including any relevant information on the possibility of
7 the survival of the ~~fetus~~unborn child and ~~pictures representing~~color photographs
8 of the development of a fetus~~an unborn child~~ at two-week gestational increments.
9 ~~The majority of the pictures included in the booklet must be full color~~
10 ~~photograph-style images and the pictures must contain the dimensions of the~~
11 ~~fetus and must be realistic and appropriate for the stage of pregnancy~~
12 ~~depicted.~~The descriptions must include information about brain and heart
13 function, the presence of external members and internal organs during the
14 applicable states of development, and any relevant information on the possibility
15 of the unborn child's survival. The materials must be objective, nonjudgmental,
16 and designed to convey only accurate scientific information about the
17 ~~fetus~~unborn child at the various gestational ages. The materials required under
18 this subsection must 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, which
21 may include child support payments and health insurance, and the fact that
22 paternity may be established by the father's signature on an acknowledgment of
23 paternity or by court action. The printed material must also state that more
24 information concerning paternity establishment and child support services and
25 enforcement may be obtained by calling state or county public assistance
26 agencies.

27 d. Materials that contain objective information describing the various surgical and
28 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, danger to
31 subsequent pregnancies, the possible increased risk of breast cancer, the

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

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

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

10 **Abortion report form.**

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

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

20 **14-02.1-03. Consent to abortion - Notification requirements.**

21 1. No physician shall perform an abortion unless prior to such performance the physician
22 certified in writing that the woman gave her informed consent as defined and provided
23 in section 14-02.1-02 and shall certify in writing the pregnant woman's marital status
24 and age based upon proof of age offered by her. ~~Prior to~~Before the period of
25 pregnancy when the ~~fetus~~unborn child may reasonably be expected to have reached
26 viability, ~~nean~~ ~~an~~ ~~abortion shall~~may not be performed upon an unemancipated minor
27 unless the attending physician certifies in writing that each of the parents of the minor
28 requesting the abortion has been provided by the physician in person with the
29 information provided for in section 14-02.1-02 at least twenty-four hours ~~prior to~~before
30 the minor's consent to the performance of abortion or unless the attending physician
31 certifies in writing that the physician has caused materials of section 14-02.1-02 to be

1 posted by certified mail to each of the parents of the minor separately to the
2 last-known addresses at least forty-eight hours prior to the minor's consent to the
3 performance of abortion. ~~When~~^{If} a parent of the minor has died or rights and interests
4 of ~~such~~^{that} parent have been legally terminated, this subsection ~~shall apply~~^{applies} to
5 the sole remaining parent. When both parents have died or the rights and interests of
6 both parents have been legally terminated, this subsection ~~shall apply~~^{applies} to the
7 guardian or other person standing in loco parentis. Notification by the attending
8 physician is not required if the minor elects not to allow the notification of one or both
9 parents or her guardian and the abortion is authorized by the juvenile court in
10 accordance with section 14-02.1-03.1. None of the requirements of this subsection
11 apply in the case of a medical emergency, except that when a medical emergency
12 compels the performance of an abortion, the physician shall inform the woman, ~~prior-~~
13 ~~to~~^{before} the abortion if possible, of the medical indications supporting the physician's
14 judgment that an abortion is necessary to avert her death or for which a
15 twenty-four-hour delay will create grave peril of immediate and irreversible loss of
16 major bodily function, and shall certify those indications in writing.

- 17 2. Subsequent to the period of pregnancy when the ~~fetus~~^{unborn child} may reasonably be
18 expected to have reached viability, no abortion, other than an abortion necessary to
19 preserve her life, or because the continuation of her pregnancy will impose on her a
20 substantial risk of grave impairment of her physical or mental health, may be
21 performed upon any woman in the absence of:

- 22 a. The written consent of her husband unless her husband is voluntarily separated
23 from her; or
24 b. The written consent of a parent, if living, or the custodian or legal guardian of the
25 woman, if the woman is unmarried and under eighteen years of age.

- 26 3. No executive officer, administrative agency, or public employee of the state of North
27 Dakota or any local governmental body has power to issue any order requiring an
28 abortion, nor shall any such officer or entity coerce any woman to have an abortion,
29 nor shall any other person coerce any woman to have an abortion.

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

- 1 2. Any pregnant woman under the age of eighteen or next friend is entitled to apply to the
2 juvenile court for authorization to obtain an abortion without parental consent.
3 ~~Proceedings~~All proceedings on such application must be conducted in the juvenile
4 court of the county of the minor's residence before a juvenile judge or referee, if
5 authorized by the juvenile court judge in accordance with the provisions of chapter
6 27-05, except that the parental notification requirements of chapter 27-20 are not
7 applicable to proceedings under this section. A court may change the venue of
8 proceedings under this section to another county only upon finding that a transfer is
9 required in the best interests of the minor. All applications in accordance with this
10 section must be heard by a juvenile judge or referee within forty-eight hours, excluding
11 Saturdays and Sundays, of receipt of the application. ~~The purpose of the hearing~~
12 ~~before the juvenile judge or referee must be to determine~~juvenile judge or referee shall
13 find by clear and convincing evidence:
- 14 a. Whether or not the minor is sufficiently mature and well informed with regard to
15 the nature, effects, and possible consequences of both having an abortion and
16 bearing her child to be able to choose intelligently among the alternatives.
- 17 b. If the minor is not sufficiently mature and well informed to choose intelligently
18 among the alternatives without the advice and counsel of her parents or
19 guardian, whether or not it would be in the best interests of the minor to notify her
20 parents or guardian of the proceedings and call in the parents or guardian to
21 advise and counsel the minor and aid the court in making its determination and to
22 assist the minor in making her decision.
- 23 c. If the minor is not sufficiently mature and well informed to choose intelligently
24 among the alternatives and it is found not to be in the best interests of the minor
25 to notify and call in her parents or guardian for advice and counsel, whether an
26 abortion or some other alternative would be in the best interests of the minor.
- 27 3. All proceedings in connection with this section must be kept confidential and the
28 identity of the minor must be protected in accordance with provisions relating to all
29 juvenile court proceedings. This section does not limit the release, upon request, of
30 statistical information regarding applications made under this section and their
31 disposition.

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

3 **Abortion-inducing drugs.**

- 4 1. For purposes of this chapter, an abortion accomplished by the use of an
5 abortion-inducing drug is deemed to occur when the drug is prescribed, in the case of
6 a prescription, or when the drug is administered directly to the woman by the
7 physician.
- 8 2. It is unlawful to knowingly give, sell, dispense, administer, otherwise provide, or
9 prescribe any abortion-inducing drug to a pregnant woman for the purpose of inducing
10 an abortion in that pregnant woman, or enabling another person to induce an abortion
11 in a pregnant woman, unless the person who gives, sells, dispenses, administers, or
12 otherwise provides or prescribes the abortion-inducing drug is a physician, and the
13 provision or prescription of the abortion-inducing drug satisfies the protocol tested and
14 authorized by the federal food and drug administration and as outlined in the label for
15 the abortion-inducing drug.
- 16 3. Every pregnant woman to whom a physician gives, sells, dispenses, administers,
17 otherwise provides, or prescribes any abortion-inducing drug must be provided with a
18 copy of the drug's label.
- 19 4. Any physician who gives, sells, dispenses, administers, prescribes, or otherwise
20 provides an abortion-inducing drug shall enter a signed contract with another
21 physician who agrees to handle emergencies associated with the use or ingestion of
22 the abortion-inducing drug. The physician shall produce the signed contract on
23 demand by the patient, the department of health, or a criminal justice agency. Every
24 pregnant woman to whom a physician gives, sells, dispenses, administers, prescribes,
25 or otherwise provides any abortion-inducing drug must be provided the name and
26 telephone number of the physician who will be handling emergencies and the hospital
27 at which any emergencies will be handled. The physician who contracts to handle
28 emergencies must have active admitting privileges and gynecological and surgical
29 privileges at the hospital designated to handle any emergencies associated with the
30 use or ingestion of the abortion-inducing drug.

- 1 5. When an abortion-inducing drug or chemical is used for the purpose of inducing an
2 abortion, the drug or chemical must be administered by or in the same room and in the
3 physical presence of the physician who prescribed, dispensed, or otherwise provided
4 the drug or chemical to the patient.

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

7 **14-02.1-04. Limitations on the performance of abortions - Penalty.**

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

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

- 26 4. An abortion facility may not perform an abortion on a woman without first offering the
27 woman an opportunity to receive and view at the abortion facility or another facility an
28 active ultrasound of her fetusunborn child. The offer and opportunity to receive and
29 view an ultrasound must occur at least twenty-four hours before the abortion is
30 scheduled to be performed. The active ultrasound image must be of a quality
31 consistent with standard medical practice in the community, contain the dimensions of

the fetusunborn child, and accurately portray the presence of external members and internal organs, including the heartbeat, if present or viewable, of the fetusunborn 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 fetusesunborn 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~~ ten business days ~~twenty-four hours~~ 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~~ abortion. 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 ~~twenty-four hours~~ 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

1 abortions performed in the previous calendar year. All abortion compliance
2 reports received by the state department of health are public records. Except for
3 disclosure to a law enforcement officer or state agency, the department may not
4 disclose an abortion compliance report without first removing any individually
5 identifiable health information and any other demographic information, including
6 race, marital status, number of previous live births, and education regarding the
7 woman upon whom the abortion was performed.

- 8 e. The state department of health shall report to the attorney general any apparent
9 violation of this chapter.

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

12 **14-02.1-08. Protection of ~~viable fetus~~ infant born alive - Penalty.**

- 13 1. A person is guilty of a class ~~CAA~~ felony if the person ~~knowingly, or~~
14 ~~negligently,~~ intentionally causes the death of a ~~viable fetus~~ an infant born alive.
15 2. Whenever a ~~fetus which~~ an unborn child who is the subject of abortion is born alive and
16 is viable, it becomes an abandoned and deprived child, unless:
17 a. The termination of the pregnancy is necessary to preserve the life of the mother;
18 or
19 b. The mother and her spouse, or either of them, have agreed in writing in advance
20 of the abortion, or within seventy-two hours thereafter, to accept the parental
21 rights and responsibilities for the ~~fetus~~ unborn child if it survives the abortion
22 procedure.

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

25 **14-02.1-09. Humane disposal of nonviable ~~fetus~~ unborn child.**

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

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

3 **14-02.3-01. State policy on abortion and childbirth - Use of public funds restricted.**

4 1. Between normal childbirth and abortion, it is the policy of the state of North Dakota
5 that normal childbirth is to be given preference, encouragement, and support by law
6 and by state action, it being in the best interests of the well-being and common good
7 of North Dakota citizens.

8 2. An agency of this state may not produce, distribute, publish, disseminate, endorse, or
9 approve materials of any type that, between normal childbirth and abortion, do not give
10 preference, encouragement, and support to normal childbirth. An agency of the state
11 may not fund, endorse, or support any program that, between normal childbirth and
12 abortion, does not give preference, encouragement, and support to normal childbirth.

13 3. No funds of this state or any agency, county, municipality, or any other subdivision
14 thereof and no federal funds passing through the state treasury or a state agency may
15 be used to pay for the performance, or for promoting the performance, of an abortion
16 unless the abortion is necessary to prevent the death of the woman.

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

19 **14-02.3-03. Payment for abortions by health insurance policies delivered or issued in**
20 **North Dakota restricted.**

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

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

28 **15.1-19-06. Abortion referrals.**

29 1. No person while acting in an official capacity as an employee or agent of a school
30 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; ~~or~~ 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 1. Create an inventory of the data, reports, records, and other material the department is
2 required to gather, receive, create, or maintain relating to abortions as required under
3 chapter 14-02.1. The inventory must include information regarding the frequency with
4 which the items in the inventory must be gathered, received, or created.
- 5 2. Create a report that outlines the department's practices in gathering, receiving, and
6 creating the items in the inventory.
- 7 3. Make three reports to the legislative management on the status and outcome of the
8 creation of the inventory and the practices report. The first report must be made before
9 January 1, 2012; the second before April 1, 2012; and the third before
10 ~~July~~September 1, 2012.

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