

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO

### SENATE BILL NO. 2232

Introduced by

Senators Meyer, Lee, Roers

Representatives Dobervich, O'Brien, Stemen

1 A BILL for an Act to create and enact a new section to chapter 50-25.1 of the North Dakota  
2 Century Code, relating to an exemption for postpartum exposure to controlled substances and  
3 alcohol; to amend and reenact sections 50-25.1-16 and 50-25.1-17 of the North Dakota Century  
4 Code, relating to reporting requirements for prenatal exposure to controlled substances and  
5 alcohol abuse and toxicology test requirements; and to repeal section 50-25.1-18 of the North  
6 Dakota Century Code, relating to reporting requirements for prenatal exposure to alcohol  
7 misuse.

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

9 **SECTION 1. AMENDMENT.** Section 50-25.1-16 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **50-25.1-16. Prenatal exposure to controlled substances or alcohol misuse - Reporting**  
12 **requirements.**

13 1. ~~An~~Except as provided for under subsection 2, an individual required to report under  
14 section 50-25.1-03 who has knowledge of or reasonable cause to suspect that a  
15 woman is pregnant and has ~~used or engaged in the abuse of a~~ controlled substance ~~for~~  
16 ~~a nonmedical purpose or~~ alcohol misuse during the pregnancy shall report the  
17 circumstances to the department or authorized agent if the knowledge or suspicion is  
18 derived from information received by that individual in that individual's official or  
19 professional capacity.

- 1       2. An individual required to report under section 50-25.1-03 is exempt from reporting  
2       under subsection 1 if the individual is providing or collaborating with other  
3       professionals to provide the woman with prenatal, mental health, or other health-  
4       care substance abuse services, including voluntary entrance into a licensed treatment  
5       program. If the woman discontinues regular prenatal care, fails to follow treatment  
6       recommendations, or continues to engage in the abuse of a controlled substance or  
7       alcohol misuse, the individual shall report in accordance with subsection 1.  
8       3. Any individual may make a voluntary report if the individual has knowledge of or  
9       reasonable cause to suspect that a woman is pregnant and has used or engaged in the  
10      abuse of a controlled substance for a nonmedical purpose or alcohol misuse during the  
11      pregnancy.  
12      34. If a report alleges a pregnant woman's use or abuse of a controlled substance ~~for a~~  
13      ~~nonmedical purpose or alcohol misuse~~, the department or authorized agent  
14      immediately shall initiate an appropriate assessment that must include a referral for  
15      assessment of the presence of a substance use disorder with expectation to follow  
16      any treatment recommendations, and a referral for prenatal care. The department or  
17      authorized agent may also take any appropriate action under chapter 25-03.1.  
18      4. ~~A report and assessment under this section is not required if the pregnant woman~~  
19      ~~voluntarily enters treatment in a licensed treatment program. If the pregnant woman~~  
20      ~~does not complete voluntary treatment, continues to use controlled substances for a~~  
21      ~~nonmedical purpose, or fails to follow treatment recommendations, an individual~~  
22      ~~required to report under section 50-25.1-03 who has knowledge of the failure to~~  
23      ~~complete voluntary treatment, continued use of controlled substance for nonmedical~~  
24      ~~purpose, or failure to follow treatment recommendations shall make a report as~~  
25      ~~required by this section.~~  
26      5. A report under this section must be made as described in section 50-25.1-04 and must  
27      be sufficient to identify the woman, the nature and extent of use, if known, and the  
28      name and address of the individual making the report.

29      **SECTION 2. AMENDMENT.** Section 50-25.1-17 of the North Dakota Century Code is  
30      amended and reenacted as follows:

**50-25.1-17. Toxicology testing - Requirements.**

1. If the woman has obstetrical complications that are a medical indication of possible use of a controlled substance for a nonmedical purpose or alcohol misuse, upon the consent of the pregnant woman, or without consent if a specimen is otherwise available, a physician ~~shall~~may administer a toxicology test to a pregnant woman under the physician's care or to a woman under the physician's care within eight hours after delivery to determine whether there is evidence that she has ingested a controlled substance or alcohol. If the test results are positive, the physician ~~shall~~may report the results under section 50-25.1-03.1. A negative test result or the pregnant woman's refusal to consent to a test does not eliminate the obligation to report under section 50-25.1-03 if other evidence gives the physician reason to believe the patient has used a controlled substance for a nonmedical purpose or has engaged in alcohol misuse.
2. If a physician has reason to believe based on a medical assessment of the mother or the infant that the mother used a controlled substance for a nonmedical purpose or engaged in alcohol misuse during the pregnancy, the physician ~~shall~~may administer, without the consent of the child's parents or guardian, to the newborn infant born under the physician's care a toxicology test to determine whether there is evidence of prenatal exposure to a controlled substance or alcohol. If the test results are positive, the physician ~~shall~~may report the results as neglect under section 50-25.1-03. A negative test result does not eliminate the obligation to report under section 50-25.1-03 if other medical evidence of prenatal exposure to a controlled substance or alcohol misuse is present.
3. A physician or any other medical personnel administering a toxicology test to determine the presence of a controlled substance or alcohol in a pregnant woman, in a woman within eight hours after delivery, or in a child at birth or during the first month of life is immune from civil or criminal liability arising from administration of the test if the physician ordering the test believes in good faith that the test is required under this section and the test is administered in accordance with ~~an established protocol and~~ reasonable medical practice. A physician or any other medical personnel who

1 determines in good faith not to administer a toxicology test under this section is  
2 immune from liability for not administering the test.

3 **SECTION 3.** A new section to chapter 50-25.1 of the North Dakota Century Code is created  
4 and enacted as follows:

5 **Postpartum exposure to controlled substances or alcohol misuse - Reporting**  
6 **requirements.**

7 An individual required to report under section 50-25-03 with knowledge or reasonable cause  
8 to suspect a postpartum woman has engaged in the abuse of a controlled substance or alcohol  
9 misuse is exempt from reporting when the individual is providing or collaborating with other  
10 professionals to provide the woman or her infant with health care services, including voluntary  
11 entrance into a licensed treatment program. If the woman discontinues regular postnatal care,  
12 fails to cooperate in the provision of services for the infant, fails to follow treatment  
13 recommendations, or continues to engage in the abuse of a controlled substance or alcohol  
14 misuse, the individual shall report in accordance with section 50-25-03.

15 **SECTION 4. REPEAL.** Section 50-25.1-18 of the North Dakota Century Code is repealed.