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Sixty-third
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT
with House Amendments
ENGROSSED SENATE BILL NO. 2368

Introduced by

Senators Miller, Campbell, Schaible

Representatives B. Koppelman, Larson, Rohr

A BILL for an Act to create and enact a new section to chapter 14-02.1 of the North Dakota Century Code, relating to limitations on and penalties for performing an abortion; and to amend and reenact sections 14-02.1-02, 14-02.1-07, 14-02.3-01, and 14-02.3-02 of the North Dakota Century Code, relating to definitions, reporting requirements, and the use of public funds for abortions and family planning.

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 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 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.
3. "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed or dispensed with the intent of causing an abortion.

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.

5. "Fertilization" means the fusion of a human spermatozoon with a human ovum.

6. "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.

~~6.~~7. "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.

~~7.~~8. "Infant born alive" 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.

~~8.~~9. "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;

(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

(4) That she 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.

d. 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.

~~9.~~10. "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates an immediate abortion of her pregnancy without first determining postfertilization age to avert her death or for which the ~~twenty-four-hour~~ delay necessary to determine postfertilization age will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. 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~~she intends to result in

her death or in substantial and irreversible physical impairment of a major bodily function.

~~10.~~11. "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.~~12. "Postfertilization age" means the age of the unborn child as calculated from fertilization.

13. "Probable gestational age of the unborn child" means what, in 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.

14. "Probable postfertilization age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the postfertilization age of the unborn child at the time the abortion is planned to be performed or induced.

~~12.~~15. "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.~~16. "Unborn child" means the offspring of human beings from conception until birth.

~~14.~~17. "Viable" means the ability of an unborn child to live outside the mother's womb, albeit with artificial aid.

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

Determination of postfertilization age - Abortion of unborn child of twenty or more weeks postfertilization age prohibited, for the purpose of protecting the state's compelling interest in the unborn human life from the time the unborn child is capable of feeling pain.

1. Except in the case of a medical emergency, an abortion may not be performed or induced or be attempted to be performed or induced unless the physician performing or inducing the abortion has first made a determination of the probable postfertilization age of the unborn child or relied upon such a determination made by another physician. In making the determination, the physician shall make those inquiries of the woman and perform or cause to be performed the medical examinations and tests as

a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to postfertilization age.

2. Except in the case of a medical emergency, a person may not perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing or attempting to perform or induce the abortion or by another physician upon whose determination that physician relies, that the probable postfertilization age of the woman's unborn child is twenty or more weeks.

SECTION 3. 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 the following records ~~of the~~:
      (1) The number of women who availed themselves of the opportunity to receive and view an ultrasound image of their 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.~~
      (2) Postfertilization age:
         (a) If a determination of probable postfertilization age was not made, the basis of the determination that a medical emergency existed.

(b) If the probable postfertilization age was determined to be twenty or more weeks and an abortion was performed, the basis of the determination that a medical emergency existed.

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.

c. Records must be maintained in the permanent files of the hospital or abortion facility for a period of not less than seven years.

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. 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 ten business days from the date of the abortion. All abortion data and complication reports must be signed by the attending physician and submitted to the state department of health within thirty days from the date of the 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 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. If a determination of probable postfertilization age was not made, the abortion compliance report must state the basis of the determination that a medical emergency existed. If the probable postfertilization age was determined

to be twenty or more weeks and an abortion was performed, the abortion compliance report must state the basis of the determination that a medical emergency existed.

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, abortion data reports, complication reports, and adverse event reports and collating and evaluating all data gathered 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 4. 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~~Unless an abortion is necessary to prevent the death of the woman, no funds of this state or any agency, county, municipality, school district, or any other subdivision thereof, or institution under the control of the state board of higher education, and no federal funds passing through the state treasury or a state agency may be used to ~~pay~~:
   a. Pay for the performance, or for promoting the performance, of an abortion ~~unless the abortion is necessary to prevent the death of the woman~~; or
   b. Contract with, or provide financial or other support to individuals, organizations, or entities performing, inducing, referring for, or counseling in favor of, abortions.

SECTION 5. AMENDMENT. Section 14-02.3-02 of the North Dakota Century Code is amended and reenacted as follows:

14-02.3-02. Use of public funds for family planning - Use for the performance, referral, and encouragement of abortion prohibited.

~~No~~Except as required by federal law, no funds of this state or any agency, county, municipality, school district, or any other subdivision thereof, or institution under the control of the state board of higher education, and no federal funds passing through the state treasury or a state agency may be used ~~as~~:

1. As family planning funds by any person or public or private agency which performs, refers, or encourages abortion; or
2. To contract with, or provide financial or other support to individuals, organizations, or entities performing, inducing, referring for, or counseling in favor of, abortions.