

2019 HOUSE HUMAN SERVICES COMMITTEE

HB 1546

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HB 1546
1/21/2019
31113

- Subcommittee
 Conference Committee

Committee Clerk: Elaine Stromme by Nicole Klamann

Explanation or reason for introduction of bill/resolution: Relating to prohibition on human dismemberment abortion; and to provide a penalty.

6

Vice Chairman Rohr Opened the Hearing of HB 1546:

Representative Luke Simons: Introduced HB 1546, Oral testimony given, written not provided. This bill would ban all dismemberment abortions for a living baby. At 16 weeks old the baby is 7 inches long, not stretched out, and the head is the size of a peach. A dismemberment abortion is completed by a physician using forceps begins to work the body parts off a living baby in utero. This is a barbaric, horrible process that this bill will stop.
(Stopped at 0:02:14)

Vice Chairperson Rohr: Further supporting testimony HB 1546?

Paul Mallony, Testimony in support, **see attachment 1**
(0:03:30-0:05:53)

Representative Mary Schneider: Isn't there a case currently pending on this in the 8th circuit of appeals? If so, wouldn't it make sense to wait for the outcome of this case?

Paul Mallony: Yes, it is being challenged, it's been passed in 10 states already. No, waiting would not make sense. When Roe V Wade was decided, state after state was legalizing abortion. I don't suppose anyone in support of abortion thought they should stop at one state and wait. This is something we need to stop.

Rep. Schneider: I don't believe you answered my question. This is currently in the 8th circuit, the circuit that governs ND. A case that has been challenged and heard and waiting decision, right?

Paul Mallony: I believe so.

Vice Chairperson Rohr: Any more questions? Seeing none. Further support?

Mckenzie McCoy, Citizen. Provided supporting verbal testimony, written not received. Passing this bill will send the message that ND will not back down from the protection and sanctity of life.

Vice Chairperson Rohr: Questions? Seeing none. Further support?

Medora Nagel, Executive Director for ND Right to Life and board member for the National Right to Life Committee: Verbal testimony provided, written not received. If enacted this law would protect the living unborn children from frequently performed dismemberment abortions. It does not ban all abortions.

Vice Chairperson Rohr: Further testimony?

Shyann Simons, citizen: Provided oral and written testimony, **see attachment 2.**

Vice Chairperson Rohr: Questions? Further Support?

Mark Jorritsma, Executive Director of Family Policy Alliance of ND, provided oral and written testimony, **see attachment 3**

Vice Chairperson Rohr: Questions? Seeing none. Further Support?

Representative Jeff Hoverson, House of Representatives: Verbal support testimony, written not received. I stand in support. Along with those that are standing for the most vulnerable in our society.

Vice Chairperson Rohr: Any questions? Seeing none. Further Support?

Mrs. Henderson, citizen: Verbal support testimony, written not received. I have confirmed through a friend, who is a veterinarian, that this is not performed on animals, unless the fetus is dead. It's viewed unethical and would threaten loss of licensure if performed. I thought that to be interesting.

Vice Chairperson Rohr: Further support?

Christopher Dodson, ND Catholic Conference: Verbal and written testimony provided, **see attachment 4.**

Representative Kathy Skroch: Would it be possible for a trigger to be placed on this bill?

Christopher Dodson: Yes, it is possible. We have a trigger statute on the books now and we know how to draft them. I'd probably have to engage Legislative Council to work out some constitutional issues as to how that trigger is engaged.

Vice Chairperson Rohr: Questions? Further Support? Seeing none. Any opposed? Seeing none. Is there any neutral testimony? Seeing none.

Vice Chairperson Rohr closes meeting

Attachment 5; Supporting written testimony provided outside meeting, Linda Thorson, State Director of Concerned Women for America of ND

Attachment 6; Supporting written testimony provided outside meeting, Abortion Control Act and Addendum

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HB1546
1/23/2019
31352

- Subcommittee
 Conference Committee

Committee Clerk Signature: Elaine Stromme by Donna Whetham

Explanation or reason for introduction of bill/resolution:

Relating to prohibition on human dismemberment abortion; and to provide a penalty.

Minutes:

Attachment 1

Chairman Weisz: Opened the hearing on HB 1546. Are there any proposed amendments?

Representative Devlin: I wonder if there is a way to put a trigger in this, if it is being decided in the 8th circuit now I don't see any reason for us to put it into effect until that has made its way through the courts.

Chairman Weisz: This bill is identical to another bill.

Representative Devlin: I have not seen it but that is what we were told.

Representative Skroch: I visited with the sponsor of this bill, Rep. Simons. We will have some purposed language to give to Legislative Council to draw up an amendment to create a trigger on this bill. He wants to go forward with this and we haven't had a chance to meet. I have the language he proposes.

Chairman Weisz: Is there any more amendments or issues to this bill?

Representative Skroch: I could read it. It creates a trigger if a court case makes it go into effect, until then it is static. I would move the amendment as presented here, on Page 1 and in Section 2. Effective Date. (See Attachment 1)

Representative Westlind: Seconded the motion.

Chairman Weisz: The reality is that if 8th Circuit rules in favor then obviously the Attorney General would say this legislation would also be upheld as constitutional because the other one was. I don't recall seeing language that had the Legislative Management approving it by a motion but Rep. Devlin if you think it is okay.

Representative Devlin: I don't have a particular problem but I would like legislative management to look at this before we approve this.

Chairman Weisz: We can vote now and I will run this through Legislative Management and if everyone is comfortable with it fine, if not we can bring it back to reconsider it and fix the language. We have a motion and a second on the amendment. Further discussion on the amendment? Seeing none. Voice vote taken. Motion carried to amend HB 1546. Any further amendments on HB 1546? Seeing none.

Representative Westlind: I will move a Do Pass on HB 1546 as amended.

Representative M. Ruby: Seconded.

Chairman Weisz: Is there further discussion? Seeing none. It will be subject to approval on this amendment.

Roll Call Vote: taken for Do Pass as amended on HB 1546. Yes 9 No 2 Absent 3.
Motion carried.

Representative Westlind: Will Carry the bill.

DA 1/24/19

19.1039.01001
Title.02000

Adopted by the Human Services Committee

January 24, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1546

Page 1, line 2, remove "and"

Page 1, line 3, after "penalty" insert "; and to provide an effective date"

Page 1, after line 19, insert:

"SECTION 2. EFFECTIVE DATE. Section 1 of this Act becomes effective on the date the legislative management approves, by motion, the recommendation of the attorney general to the legislative management that it is reasonably probable this Act would be upheld as constitutional."

Renumber accordingly

Date: 11/23/19
Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 546**

House Human Services Committee

Subcommittee

Amendment LC# or Description: 19.10.39.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Skroch Seconded By Rep. Westlind

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman			Gretchen Dobervich		
Karen M. Rohr - Vice Chairman			Mary Schneider		
Dick Anderson					
Chuck Damschen					
Bill Devlin					
Clayton Fegley					
Dwight Kiefert					
Todd Porter					
Matthew Ruby					
Bill Tveit					
Greg Westlind					
Kathy Skroch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Motion Passed

Date: 1-23-19
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1546**

House Human Services Committee

Subcommittee

Amendment LC# or Description: 19.1039.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider

Motion Made By Rep Westlind Seconded By R. M. Ruby

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	✓		Gretchen Dobervich		✓
Karen M. Rohr - Vice Chairman	A		Mary Schneider		✓
Dick Anderson	A				
Chuck Damschen	✓				
Bill Devlin	✓				
Clayton Fegley	✓				
Dwight Kiefert	✓				
Todd Porter	A				
Matthew Ruby	✓				
Bill Tveit	✓				
Greg Westlind	✓				
Kathy Skroch	✓				

Total (Yes) 9 No 2

Absent 3

Floor Assignment Rep. Westlind

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1546: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 2 NAYS, 3 ABSENT AND NOT VOTING). HB 1546 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "and"

Page 1, line 3, after "penalty" insert "; and to provide an effective date"

Page 1, after line 19, insert:

"SECTION 2. EFFECTIVE DATE. Section 1 of this Act becomes effective on the date the legislative management approves, by motion, the recommendation of the attorney general to the legislative management that it is reasonably probable this Act would be upheld as constitutional."

Renumber accordingly

2019 SENATE JUDICIARY

HB 1546

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1546
3/4/2019
#33159 (1:48:14)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

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 prohibition on human dismemberment abortion; to provide a penalty; and to provide an effective date.

Minutes:

10 Attachments

Chair Larson opens the hearing on HB 1546 and informs the audience about formal hearing procedure. Senator Osland was absent.

Luke Simons, District 36 Representative, testifies in favor

Representative Simon: This is to ban the horrific, barbaric procedure of dismemberment abortion. Europe social accepts abortion and have something called “a lunch hour abortion” because they are able to get it done so quickly; you can literally go there on your lunch hour. Even in Europe, they do not do what we’re talking about because they consider it barbaric to rip a baby limb from limb while it is still alive. Veterinarians do not tear a fetus apart while it’s still alive in the womb; they first euthanize it. Dismemberment is with a fully functioning baby inside the womb. That baby is alive when they insert a very large instrument that resembles a needle-nose pliers and start ripping that baby apart. They’ll grab a leg and twist it off, another leg, an arm, a chest, a torso and lungs all while this baby is still alive. Then they grasp the head which is about the size of a peach, crush the head and rip it out in pieces. This bill simply says that we will not have anything to do with this in North Dakota. The baby must be euthanized. It’s really not a prolife bill because the baby still indeed dies, but it is probably the most humane way to kill an infant if you are to kill an infant.

Senator Bakke: I don’t see where it says that the child will be euthanized before this is done.

Representative Simon: It doesn’t say that it has to be euthanized; it’s a given.

Senator Bakke: Are you saying this is part of the procedure even though it’s not included in the document?

Representative Simon: Correct.

Senator Bakke: You don't have a fiscal note attached.

Representative Simon: It's not necessary.

Senator Bakke: You have to know that this is the same language that has been presented to other legislative bodies in the country. It has been challenged in Kansas, Oklahoma, Louisiana, Texas and found that this language is unconstitutional. This bill is currently being challenged again in the Arkansas courts and costing these states thousands of dollars. What do you anticipate the litigation costs to the state of North Dakota if this passes?

Representative Simon: I don't know, but I know that you can't put a cost on a barbaric act like this.

Senator Myrdal: I'm horrified that we are discussing this in 2019. There's an Alabama law that is pending a decision whether the Supreme Court will take it or not. Arkansas law has been heard in the eighth circuit court and we're waiting their decision on that. One of those may or may not go on, and I hope one of them does. As far as the fiscal note, both the House and Senate passed a bill that would give tax benefits to families who had a stillborn child; we put a high value on unborn children. Would you put a price tag on one of your children?

Representative Simon: No.

Senator Myrdal: on anyone's child?

Representative Simon: Absolutely not. You can't put a price on life.

Senator Myrdal: Do you think North Dakota should put a price tag on any child, preborn or not?

Representative Simon: Absolutely not. It's our job as a state to protect life at all cost.

Senator Bakke: Do you have any data that shows if you ban this particular method of abortion that it prevents abortions?

Representative Simon: Actually we don't perform this type of abortion in North Dakota as of right now. This will secure that we do not do this.

Senator Bakke: I found that this type of abortion is done .2% with all abortions. Usually it is done when a fetus has already died, has serious defects and abnormalities and will die upon birth or when the mother's life is at risk. Are you averse to this type of abortion being used in those cases, and why are we discussing this if it's not done in North Dakota?

Representative Simon: I don't know where you got your statistics, but it's done quite a bit more than that. On my Facebook page, I've posted many different statistics and doctors that

have said that this is common in their procedures. All we're saying is that this cannot be done on live babies.

Senator Bakke: I would never expect this to be done on any baby, but nowhere in your bill does it say that this can't be done on a live baby. That would have to be an amendment.

Representative Simon: The whole point of this bill is so that it cannot be done on a live baby.

Senator Myrdal: Line 9 subsection 1 says "dismembering a living unborn child" to clarify that question. Are you aware of what's going on in New York and Vermont with recent laws that have been passed? It's abortion through the ninth month. More and more doctors have come out and said that the life of the mother is no longer hardly ever an issue. Most abortions after a chemical abortion is done is done in a method that eventually uses suction to take pieces of the baby out. This bill will cover that as well; is that correct?

Representative Simon: At this stage of the abortion, most of the time the suction doesn't work because the baby is too old. It is literally taken out with forceps instead. A suction doesn't work because the limbs are too big to be suctioned out.

Senator Myrdal: Recently we've heard reports of living, unborn children's organs being harvested for sale. A court in California recently approved the unedited videos that prove that this is happening. Would you say this procedure we're banning here would also ban the collection of living organs from unborn children?

Representative Simon: If you would like to amend that, I would be all for that. I think it's barbaric. However, right now the way it is written, I don't think it says anything like that.

(15:42) Mary Johnson, District 45 Representative, testifies in favor (see attachment #1)

Representative Johnson: I've handed out two potential amendments for your consideration and the Arkansas code that regards dismemberment abortion. I have two problems with this bill. One is the effective date which requires the attorney general to weigh in the constitutionality of legislation, which in my estimate is a violation of separation of powers. In fact, the attorney general one year ago argued that very issue before the supreme court saying he should not weigh in on legislation. Secondly I think it's vague. In section 3 it says "a woman upon whom...". Without the definition of "woman" that would potentially exclude minors. There was some discussion on the legal status of these bills. In the eighth circuit, the Arkansas bill is kind of just sitting there. There was a writ of certiorari issued to the supreme court by the attorney general of Alabama on their dismemberment abortion bill. Alabama passed this statute, challenged at U.S. district court and ruled it unconstitutional. That judgement was upheld by the 11th circuit. The attorney general has issued a writ of certiorari to the U.S. supreme court. In discussion with other attorneys, I've incorporated the Alabama statute into our Century Code. The difference between the two amendments is the effective date. In the 2001 amendment, everything underscored is the Alabama statute. We go from a 3 paragraph to a 4-page bill. 2001 has an emergency clause effective date, which I see no reason not to have because these are not performed in North Dakota. The 2002 amendment has an effective date which provides that the attorney general will certify the outcome of the

challenge to the U.S. supreme court. He doesn't weigh in on constitutionality, and therefore there is no violation of separation powers. The third handout is the Arkansas language if you want to compare.

Senator Myrdal: Is there a reason you want to use Alabama over Arkansas which was heard in our circuit court?

Representative Johnson: Alabama is further along, and perhaps denial of a writ of cert for Alabama will decide the outcome of the eighth circuit case.

Senator Myrdal: You voted nay on this in the House?

Representative Johnson: I did.

Senator Myrdal: If this amendment is adopted, you would be in favor?

Representative Johnson: Yes.

(22) Oley Larsen, District 33 Senator, testifies in favor

Senator O. Larsen: I support this bill. We shouldn't be in the wheelhouse of killing human beings. I embrace the concept that North Dakota has a moral compass; this bill will help strengthen that.

(23:50) Mark Jorritsma, Executive Director of Family Policy Alliance of ND, testifies in favor (see attachment #2)

Senator Luick: What is the benefit of doing abortions this way- a dismemberment on a live child?

Jorritsma: I have no idea. It makes no sense because there's no reason that that child needs to feel that pain.

Senator Bakke: The American College of OBGYN is opposed to this bill. Are there any major medical associations that do support this bill?

Jorritsma: I am not part of the medical profession and therefore not qualified to answer that.

Senator Bakke: Do you have any data that indicates that this particular method will prevent abortions from occurring?

Jorritsma: That data does exist. I don't have it with me, but I can provide it.

Senator Bakke: I would appreciate that because I haven't been able to find anything. As it's been said, this is not performed in North Dakota.

Jorritsma: I do not believe it is. I would add that we put laws in place all the time to prevent things from happening even if they don't happen right now.

Vice Chairman Dwyer: Did you review the amendments from Representative Johnson?

Jorritsma: I have and our legal team look at them as well. There's a lot of uncertainty around where those cases are because they're both pending. We debated if it makes more sense to go with what we have here or do some amendments without having to go to an Alabama or Arkansas version. If you look at the amendments, they are very complex and the success of this in ND hinges upon the success in courts and other states. We don't recommend that.

Senator Bakke: I have concerns about the liability that we're putting the state in and the litigation and cost of that litigation if this were to pass and we were to be sued. The state of ND could incur a very hefty, financial cost. Is your organization willing to help in the financing of that?

Jorritsma: We are more than happy to help place children with foster homes. There may be costs, but our organization does not believe that you can tag a cost on a child.

Senator Bakke: As a foster mother with 35 children, I agree. However, I have concerns about that financial repercussion for putting in place a bill for something that's not even happening.

Jorritsma: If we pass this bill, there is no cost because it is not before a court, and we do not know if it will go before a court.

(33:40) Linda Thorson, State Director of Concerned Women for America, testifies in favor (see attachment #3)

(37:05) Medora Nagle, Executive Director for North Dakota Right to Life, testifies in favor (see attachment #4)

(39:05) Frances Whitman, Collegians for Life at the University of Mary, testifies in favor (see attachment #5)

Senator Myrdal: Do you remember in social studies when you learned the history of things that humanity has done wrong such as the Holocaust and the KKK? Did you see pictures of those in your history books?

Whitman: Yes.

Senator Myrdal: Have you ever seen pictures of a dismemberment of a living, unborn human in your textbooks in college or high school?

Whitman: I can't recollect where I've seen them, whether it was on the internet or at school, but I've definitely seen them.

Senator Myrdal: I would assume you have not seen them in school. I think it's a strange thing that we celebrate a law that allows this that we are not willing to teach our children about the different options of abortion, including dismemberment.

Vice Chairman Dwyer: Do you know how many campuses across the country have students for life organizations?

Whitman: I don't know. A lot of the ones I know of have some type of club, but I don't know if any in the state of North Dakota have as large of a group as we have at the University of Mary.

Senator Myrdal: How many are in your group?

Whitman: We have over 300 members in our chapter at the University of Mary.

Senator Bakke: Did you have any training or lessons on safe sexual relations and what to do in the case of a pregnancy or how to prevent a pregnancy?

Whitman: I was homeschooled. We went over it, but not in-depth like it is in public schools.

Senator Bakke: You are aware that they do provide that in public schools.

Whitman: Yes, I do understand that.

(45:15) Ashley Willis, Social Work student at the University of Mary, testifies in favor (see attachment #6)

Senator Bakke: You say in your testimony that this type of abortion should only be used if a mother or a baby has a serious medical condition, and this method of abortion is only used in that particular case.

Willis: I am for if it's a life and death situation for the mother.

Chair Larson: You are in favor of a dismemberment abortion if it's to save the life of a mother.

Willis: Yes.

(49:25) Mary Graner, Mandan citizen, testifies in favor

Graner: During the Medieval times, they used to put bodies on stretchers and turn the wheels until arms would pop off. It was one of the most barbaric forms of torture that people would use back in those days, and that was banned. We're living in a time where there's so many medical procedures and different ways to prevent pregnancies that we don't need to go inside a woman and grasp a baby part by part; it is beyond barbaric and should be banned. Right now if I find an eagle nest and break an egg, I will be fined \$50,000 and possibly thrown in jail with a large fine up to \$100,000 I believe. Anybody who goes in and rips a baby out part by part without any anesthesia is beyond barbaric. Someday I hope to have grandchildren. Are these grandkids going to come up and ask me, "Grandma do you mean they used to really pull babies out of moms piece by piece? Is that true because I heard that in school". We just can't have anything like this happen, so I do recommend a do pass.

(51:45) Christopher Dodson, Executive Director for the ND Catholic Conference, testifies in favor (see attachment #7)

Senator Bakke: You're saying there would be no litigation because if this passes, it's dependent on the decision of the Arkansas case?

Dodson: It would be dependent upon any case that would render it effective. To summarize yes, because this law would not be in effect and no one would have standing to challenge it, so there wouldn't be any litigation cost to the state.

Senator Bakke: As long as this is being challenged as being unconstitutional by any state in the nation, this bill would not be in place in ND law.

Dodson: That's not correct. For example, if the eight circuit would rule that the Arkansas case is valid, that would allow this to go into effect and wouldn't matter what the ninth circuit does.

Senator Bakke: So then ND would be facing a lawsuit about the unconstitutionality of it.

Dodson: If the eighth circuit ruled that the Arkansas case was valid and the bill language was substantially similar enough to Arkansas not to raise new cases, the eight circuit opinion would apply to ND, go into effect and have constitutionality. Someone could challenge it, but they're less likely to win in that case.

Senator Bakke: You're right, they're less likely to win because of the precedent that was set, but it could still be litigated and we would still have the cost of litigation.

Dodson: That is the case with all of the hundreds of bills we pass every legislative session, so the answer would be yes.

Senator Bakke: Don't you think this one has a higher than average chance of being litigated?

Dodson: In 2013 we passed several abortion-related bills, and only one of them was really challenged. The fact is, at one point the supreme court of the United States allowed facial challenges to abortion cases; it was common to challenge everything right away. Now there's more of a burden on the plaintiffs to bring the case, so those cases have dropped off. Also we have seen that sometimes they won't challenge them as is in the case of some of the bills that were passed in 2013.

Senator Bakke: Do you know any major medical associations that are supporting this bill?

Dodson: I do not, and that's understandable because medical associations don't take positions on policy and ethics.

Senator Bakke: This carries a class c felony. Are you prepared to have doctors put in jail for providing care that they feel is in the best interest of their patients?

Dodson: If this body has determined that something as horrifying as this should be a crime, then yes. It is a crime and should be punished as such. It's a crime that takes an innocent human life by a barbaric means; it's justified under the criminal code.

Senator Myrdal: You alluded to hundreds of bills being passed, and we have an attorney general whose job is to defend the laws of our state.

Dodson: Yes, that's one of his jobs.

Senator Myrdal: You mentioned before if it's upheld with the eight circuit and not practiced here, it still would be a difficult for a lawsuit.

Dodson: It could be that no one here would have standing because they don't actually do this abortion in ND. We know that from the statistics that's provided to the Department of Health.

Senator Myrdal: We keep hearing about lawsuit. What likely entity would sue to keep human dismemberment potentially active in the future?

Dodson: The supreme court has typically ruled that the plaintiff has to be someone who performs this abortion to have standing in an abortion case or someone who performs a similar type of procedure that may be concerned about performing this abortion unintentionally. Those are the only two that that would have standing.

Senator Myrdal: so it's highly unlikely that we'll see a lawsuit on this.

Dodson: There's no reason to believe at this moment that anyone would have standing to challenge it.

Vice Chairman Dwyer: Are you referring to the bill we have before us as opposed to the amendments that were passed out by Representative Johnson?

Dodson: My testimony is on the bill as it is, but some of the questions were related to what might be amended if you change it similar to Arkansas or Alabama.

Vice Chairman Dwyer: Have you seen the amendments and are you in support?

Dodson: I understand the concept. We talk about challenges to abortion law. That second type of plaintiff I just mentioned sometimes comes up, and whenever you pass any criminal statute, you need some clarity as to what the person, if they had the constructive knowledge, would know what is prohibited and not prohibited. One advantage to the Arkansas and Alabama statute in addition to that constitutional lineup is they are rather more specific. The substance would not change; it would still fit the intent of the sponsor, but it would clean up some of the language to be specific and to avoid an additional legal problem of it being clear so the due process requirements are met. I don't agree with the trigger language however. I think there are better ways to address the trigger language, and I think there's a typo.

Vice Chairman Dwyer: There are two different trigger options in the two amendments.

Dodson: One of them is immediate, and the other has trigger language that is specifically based on the Alabama case. I think it can be written another way so it's a little more open. Also at the end it says it's "unconstitutional"; I think what it meant was constitutional.

Vice Chairman Dwyer: The trigger language in the bill we have before us. Do you think that is the appropriate way to do it?

Dodson: When the House asked for language on how it could be done, I pointed out how it was done in 2007. The one you have before you basically mirrors what was done in 2007 with the general abortion ban. It may be good to see if you can improve that language because since then a number of states and attorneys have looked at the issues and found there are different ways to write triggers.

(1:04:00) Kathy Skroch, District 26 Representative, testifies in favor

Representative Skroch: There has to be better solutions to an unwanted child than cutting it to pieces in his or her mother's womb. We as legislators, medical providers, government agencies, prolife advocates, women's advocacy groups, mothers and grandmothers must do better. We can and must provide alternative supports to women. Dismemberment abortion is indefensible. We have in statute a myriad of laws to protect born babies from child abuse. Could anything be any more abusive than the horrific practice of using seek and destroy methods to dismember a living third-trimester baby without even the comfort of anesthesia? There was a question raised about this practice being used for any reason other than an emergency situation. When there is an emergency situation, typically a baby is removed by C section. It is much more dangerous to dismember a baby merely using ultrasound and taking a sharp instrument and cutting off pieces of the baby to remove it. They typically want to get the baby out as quickly as they can for the health of the mother and perhaps deliver a living child. In the case of a child who has died in utero in a third trimester, many times they will induce labor to expel that deceased child because that is still a safer practice. The Human Services gave a do pass, the House vote was unanimous in passage, and I urge the committee to give a do pass recommendation as well.

(1:08:00) Jared Hendrix, Minot citizen, testifies in favor

Hendricks: The American Association of Prolife obstetricians and gynecologists does support bans on dismemberment abortion. It is an organization of 2,500 doctors, nurses and other medical professionals who strongly oppose abortion. It started as a part of the American congress of obstetricians and gynecologists (ACOG), and from 1973- 2013 it was a part of that organization. It discontinued its status as a special interest group largely because the ACOG has come out to be more of a prochoice organization in their statements. In 1968 the draft abortion policy that was sent to the ACOG's membership with a questionnaire asking whether they support this policy statement. 65% responded with 86% of those favored the indications for abortion outlined by the committee. 77% favored the additional statement that account may be taken of the patient's total environment. While most interpreted the vote as widespread support for the proposed policy, a minority noted that these responses represented only 56% and 50% of the total membership. Their objections were ignored. In 2011 according to the American journal of obstetrics and gynecology, the majority of

OBGYNs in the U.S. believe that human life begins at fertilization. 57% of U.S. OBGYNs believe pregnancy begins at conception; 28% believe it begins at implantation and only 16% responded as not sure. The majority of OBGYNs in the U.S. do not perform abortions; only 14% do.

(1:12:00) Andrew Alexis Varvel, Bismarck citizen, testifies in favor (see attachment #8)

(1:22:10) Kimberly Needham, Bismarck citizen, testifies in favor

Needham: From a moral point of view, this type of abortion is not alright. I don't have the right to dismember a living animal based solely on the fact that they are alive and can feel pain. That same premise can be applied to dismember a baby in the womb who is also alive and can feel pain. I would like to point out that we're not talking about healthcare. The definition of healthcare is "the maintenance and improvement of physical and mental health, especially through the provision of medical services". Causing the death of a child by ripping his or her body apart does not fit that definition. I ask that you give this bill a do pass recommendation.

--- TESTIMONY IN OPPOSITION---

(1:24:05) Joan Heckaman, District Senator, testifies in opposition on behalf of the Red River Women's Clinic (see attachment #9)

Senator Heckaman: I am not here to testify personally on this bill, but I understand that you do not accept written testimony that I was asked to present on behalf of two people?

Chair Larson: As the Minority leader, I will allow you to read the testimony.

Senator Heckaman reads testimony.

Vice Chairman Dwyer: I'm assuming you're not in a position to answer any questions on it?

Senator Heckaman: I'm not speaking on my behalf.

Senator Myrdal: I want to go on record to say that I object to the one facility and one person that makes monetary benefit of abortions in North Dakota being heard in this manner without being questioned.

(1:31:25) Rebecca Matthews, Bismarck resident, testifies in opposition (see attachment #10)

(1:35:50) Jennifer Bailey, Bismarck resident, testifies in opposition

Bailey: I keep hearing about compassion in this committee and in this hearing. I'm wondering where our compassion is for people, men and women, who have to make hard choices in this matter. I keep hearing about the pain a fetus would have to experience, but where's the pain a mother and a father go through having to make the tough choice that is put before them by a doctor? As a mother, I have a lot of compassion for women and men who have to

go through this with their families. It's hard and not something that anyone should ever have to go through, but sometimes it is necessary; it's sad and heartbreaking. We need to remember to trust women and men to make choices about their own bodies. I feel like we as a society have forgotten to trust women.

Senator Luick: Why is this particular procedure necessary? In what circumstances is this procedure necessary?

Bailey: There are things that medically go wrong in a pregnancy. I've had friends who've had to have procedures happen after 20 weeks because their child's brain is growing on the outside of their body, and that child would never take a breath. Women physically show their pregnancy. Having people come up and rub your belly and talk about how excited they are about your pregnancy and the life that you're about to give, but then know that it's going to die, I don't know if I could personally go through that. I've had friends who eventually reach their breaking point and had to go. I can't make a choice for somebody based off of my own personal emotion towards it, but I trust that they are making the right choice for themselves and their family.

Senator Luick: but to extract the baby as it's still alive- why would a doctor do that?

Bailey: I don't know; I've never been put in a position to make a choice like that. I can't make a choice for somebody else based off of something that's medically gone wrong.

Senator Bakke: Do you generally follow your doctor's advice when your doctor makes a recommendation to you for your health?

Bailey: Yes. I've had my doctor go to bat for me several times with an insurance company about birth control and how to control my own body. I listen to my doctor, and she listens to me too.

Senator Bakke: So if your doctor said given where you are in your pregnancy, this is the only way that we can do this abortion, are you going to listen to your doctor?

Bailey: I would listen to my doctor and maybe get a second opinion from someone who is a specialist in that area. It's still a baby and you have to fight for what you think is correct.

(1:41:15) Destini Spaeth, Fargo citizen, testifies in opposition

Spaeth: I'm here as a North Dakota woman who advocates for medically supportive and safe procedures. The DNE procedure is done at an outpatient basis with a very low rate of complications. A restriction or ban on medically safe procedures places an undue burden on women to seek care in other states leading to abortions later in pregnancy. It's not uncommon for women to realize they're pregnant after they're several weeks along. Logistical, financial, time-relative and legislative barriers could hinder them from obtaining abortions right away. The wording in this bill is an attempt to fear monger and shame women who seek abortion care while pushing abortion out of reach. Something as deeply personal as having an abortion does not need restrictive legislation trying to interfere. Without a grain of doubt in my mind, I can say that every single person in this room loves someone who has had an

abortion. Abortion is a very common medical procedure; roughly 1 in 4 women have had an abortion. 60% of those who obtain abortions, and the number is even higher here in North Dakota, are mothers already. These women know what's best for them and for their families.

(1:43:50) Amy Ingersoll-Johnson, Bismarck citizen, testifies in opposition

Ingersoll-Johnson: This would leave medical providers with the difficult task of figuring out how to amend their practice to comply with ideological restrictions that are not grounded in science. We rely on our physicians to provide us with the medically appropriate care that we need and that will lead us to decrease complications with the best outcomes. With this kind of legislation, doctors will be forced by ill-advised, unscientifically motivated policy to provide lesser care to patients. This is asking providers to compromise their ethics to our detriment. Most agree that our morals should be regulated by our beliefs, not legislated by our government. Women's health care should be decided between her and her physician, not between lawmakers and church leaders. I'm inspired by the education and experience that my representatives apply when crafting good legislation as well as the caution and restraint that they exercise when legislation might cross that line from personal belief to effective governance. My sincere hope is this is all exemplified in a do not pass.

Senator Luick: You're talking about the safety of the mothers. I'm confused because this hasn't been happening in North Dakota as I understand it. Why would this bill change anything going forward?

Ingersoll-Johnson: We're not medical providers and don't have that kind of information or education. I'm not sure why we would be legislating anything as it relates to limiting medical options. That's my concern.

Vice Chairman Dwyer: You're about the fourth person that said that if you can't perform this kind of abortion, there would be lesser or more unsafe medical practices, but since it's not happening in North Dakota, there must be safe medical practices for abortion that are occurring today. You're saying that if you can't perform this kind of abortion, there would be riskier procedures that would be required. Are those riskier procedures being used today?

Ingersoll-Johnson: I don't know what riskier procedures would be performed; I'm simply conveying that data shows that this is a safe method. I don't think we are in the position of limiting physicians in their medical expertise on what they should or shouldn't be doing.

Chair Larson closes the hearing on HB 1546.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1546
3/13/2019
#33669 (14:07)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

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 prohibition on human dismemberment abortion; to provide a penalty; and to provide an effective date.

Minutes:

1 Attachment

Chair Larson begins discussion on HB 1546.

Senator Myrdal: I'm waiting for a final amendment. In committee, Mary Johnson came forward with a couple of suggestions with the Alabama and Arkansas bills. I would contend that the Alabama one would not be where to look because they're under a different circuit court. The Arkansas bill has been heard by the eighth circuit court and awaiting word from them, and that is also North Dakota's circuit court. I asked legislative council to take the current language of this bill and mirror it as much as possible to the Arkansas one since it's already been heard. However, our bill is very short and clear; it's just to the point of a dismemberment abortion and the description of it. The Arkansas one is lengthier in the end. It is my understanding that the meat of the Arkansas bill is equal to the meat of ours. Let's say the Arkansas circuit court approves the Arkansas bill. If ours closely mirrors it, then it doesn't conflict ours. The second concern was the trigger language. There's been concern that the trigger language does leave it currently to the attorney general. I'm not concerned with the constitutionality to that, but in committee we heard that that's been criticized. I have the trigger language that we may want to use instead, but I asked legislative council to combine it into one amendment. The third concern I had is that when the North Dakota legislature passed this in the past, that was put under a separate part of the Century code. The way this bill is written, it should be changed also to that same code because it's more likened to that late-term abortion ban that we have. That was a legislative council correction where it should be in the code. My amendment is pending.

Senator Bakke: I took my amendments and rewrote the bill with those amendments in red so you could see how it would read. **(see attachment #1)** I'm not married to those four conditions. I don't think letter d is significant, but I think the other three are important. The

one thing that we heard is that the child should not be living if this type of abortion is done. I think that's the most important thing. It isn't done in North Dakota, so I don't know why we're going this route. When I did my research, it's only done in .2% of the cases, and usually when it's at the life of the mother and the child is already deceased. This usually isn't don't with a live infant.

Senator Myrdal: The dilation and evacuation abortions are done with over 100,000 babies in this nation every year in the second or trimester babies. Dismemberment is used at those particular abortions, and thankfully we don't have those in North Dakota. When you talk about a medical emergency and the unborn child is no longer living, it's usually in a tubal pregnancy. In a tubal pregnancy, they don't go to an abortion facility; they go to a medical emergency room. Very often the unborn child is no longer living, but it's also not very often late in gestation. It's usually detected up to four months but usually long before that. We're hearing that more and more infants are living if you do C-section. With technology it's amazing how few instances where the life of the mother is at stake, and that woman is not likely going to be in an abortion facility. We did take out all of the description I noticed. I don't concur with that; I think this description should be detailed so we know what we're talking about.

Senator Bakke: My understanding is the point of this bill was to ban dismemberment abortions in the state. That's what this is doing. If you take any medical procedure and ask a doctor to write out word for word what they're going to do and what happens, it's gruesome. I don't think that needs to be there; it's just sensationalism, and I don't think it belongs in century code. We don't need all of that detail in there, especially since we're not even doing them in the state. It served no purpose.

Senator Myrdal: We have gruesome definitions already in century code such as gross sexual imposition. It makes us nauseous to read, but it's the reality. We have late term abortions in code even though it doesn't happen in North Dakota. Just because it isn't currently happening, we don't shy from prohibiting it in law. I think there are times we need to describe what we're talking about. I believe we have description for rape, incest and the health of the mother in parts of the code. I respectfully can't support this amendment.

Senator Bakke: Motions to adopt amendment 19.1039.02004.

Chair Larson: Seconds.

A Roll Call Vote Was Taken: 1 yea, 4 nays, 1 absent. Amendment fails.

Chair Larson ends discussion on HB 1546.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1546
3/18/2019
#33887 (10:51)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

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 prohibition on human dismemberment abortion; to provide a penalty; and to provide an effective date.

Minutes:

1 Attachment

Chair Larson begins discussion on HB 1546.

(see attachment #1)

Senator Myrdal: Representative Mary Johnson visited about the fact that there's two similar bills going through the system in the United States. One is Alabama, and that one is petitioning to be heard before the U.S. Supreme court. However, it's very unlikely it will be heard. The second one is the Arkansas one which was heard in the eighth circuit court in the Fall, and the decision can happen any day. There were assertions that we should mirror or liken this bill to one of these. Talking to legislative council, the meat of our bill in section one is as equal to the Arkansas legislation as can be. The problem is with the Arkansas legislation, that goes into several more pages of civil action and lawsuits that we don't do. Section one of the amendment should be the same as the original language. Section 2 is the trigger part that the House amended and put on it. There was concern in our hearing that it was potentially unconstitutional, though I don't necessarily agree. We overstrike section 2 effective date and replace it with what you see as subsection one and two in the bill. It's better language because in the original, one of the concerns was that we left it to the attorney general to be the sole person to weight in whether or not it should be triggered in. I visited with the attorney general, and he didn't care for that language because he'd rather have it after it's been upheld. For him to think it's reasonable to uphold it before the eighth circuit or supreme court sees a case is very ambiguous language he felt. That was one of the concerns of the opposition as well, so we replaced it with very clear language in section 2.

Chair Larson: The amendment on the bottom of page one and the top of page two looks like a repetition of that with an addition of number 3.

Senator Myrdal: Yes, it is a repetition. I'm not sure why. Section 2 and section 3 are both effective dates.

Chair Larson: What you're really changing with this amendment is none of the content of the bill in terms of what we heard in testimony. The only change in the amendment is to address the effective date portion.

Senator Myrdal: Yes. Also you see on page 1, line 1, we replaced it to a different section. That's just a technical change; they wanted it in the same section as late term abortion.

Chair Larson: It looks like the bottom of page one and all of page two are the same except for the addition of that number 3. We want to disregard that.

Vice Chairman Dwyer: We're amending the effective date of the previous law, and that's the bottom part of page 1.

Senator Myrdal: Yes, I'm sorry. In 2007 we had another trigger law on the books. We can't have two triggers that are separate, so we need both these sections because we are changing the trigger to sound the same. This amendment is correct.

Chair Larson: This part on the back doesn't need to be underlined as new language.

Senator Myrdal: No. We checked with legislative council to see if we could just match. That's a procedure that they can do so that it's consistent with the code. I apologize with the confusion.

Senator Myrdal: Moves to adopt amendment 19.1039.02006.

Senator Luick: Seconds.

A Roll Call Vote Was Taken: 4 yeas, 1 nay, 1 absent. Amendment is adopted.

Senator Myrdal: Do Pass as Amended.

Senator Luick: Seconds.

A Roll Call Vote Was Taken: 4 yeas, 1 nay, 1 absent. Motion carries.

Senator Myrdal will carry the bill.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1546
3/19/2019
#33979 (14:50)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

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 prohibition on human dismemberment abortion; to provide a penalty; and to provide an effective date.

Minutes:

1 Attachment

Chair Larson begins discussion on HB 1546.

Chair Larson: If you recall, this is the bill where there was a section at the bottom that looked like it was repetitious on the next page. Some of us were confused, and I was kind of rushing. Senator Myrdal tried to explain what that was, but I think it went passed some of us. I asked her to go through that amendment again and explain in more detail so we have a better understanding when it goes to the floor.

Senator Myrdal: Do we have to reconsider?

Chair Larson: No, I think this is just for information purposes; we've already taken action on it. As far as I'm concerned, we might not do any reconsideration. I just want us all to be aware of what the amendment says. At that point, if we want to do a reconsideration, we can, but we don't necessarily need to.

Senator Myrdal: (see attachment #1) This is amendment 2006 to HB 1546. It has the original language from the sponsor and what came from the House in section 1. Regarding section 2, we have one other law that relates to this particular issue that was passed in 2007 which has a trigger bill. On the original part of HB 1546, the opponents in our hearing were concerned about the trigger that was on 1546, which was also on the 2007 session law that left the attorney general discretion. It says, "this Act becomes effective on the date the legislative council approves, by motion, the recommendation of the attorney general to the legislative counsel that it is reasonably probable that this Act would be upheld as constitutional". I talked to the attorney general, and he doesn't like that either because he doesn't usually make suggestion on something that reasonably may or may not happen;

that's difficult language. When I went up to change the 1546 trigger law, which had the same language as 2007, good legislation says that we don't want two different bills with trigger language concerning the same issue having a different trigger. In order to do good legislative work in the code between myself and legislative council, we changed it to what you see before you. This does not change the intent of the 2007 law, nor the intent of this law whatsoever. It is like language, and we do it all the time. This is in no way to confuse or misconstrue the intent of 1546.

Senator Bakke: It most definitely changes the trigger for the previous legislation for chapter 132 code. What it says now is that if the supreme court overturns Roe V. Wade, automatically abortions are illegal in the state of ND. I don't think that was clear when we were discussion this amendment, that we were changing chapter 132. When I spoke to legislative council, the said it was not necessary, nor would we need to have both sections of the code the same.

Chair Larson: That's different messages from different attorneys with the legislative council. That's unusual.

Senator Bakke: We talked to the person who drafted the amendment that you gave.

Senator Myrdal: Let me go back to Roe V. Wade in 2007. The trigger language we put on in 2007 says, "attorney general to the legislative council that it is reasonably probable this Act would be upheld as constitutional". Roe V. Wade did not give the right to abortion but instead took away the state's rights to regulate such. The 2007 legislature decided that if that is overturned, that's the intent of the language. That is also the same intent in the other language. That can be discussed philosophically or politically, but it doesn't have any changes; it has the same effect.

Chair Larson: It is written here.

Senator Myrdal: Yes. There's no change to that. Someone in this room was there during this whole process if we want clarification.

Chair Larson: The crossed over portion talks about, "at the recommendation of the attorney general to the legislative council".

Senator Myrdal: I go back to the testimony we heard on 1546. That language that is overstricken here, was opposed to the people opposing this bill. They didn't like that we left it with the attorney general. That was one of the criticisms, that it could be unconstitutional. I don't personally think it is, but when I visited with the attorney general, he agrees that it's ambiguous. We do our best here to not have ambiguous language, and that's why we added this. I was advised and I think it makes sense to add it to the 2007 as well. I'm not going to put legislative council on trial.

Chair Larson: I appreciate the further explanation. If I had spent more time carefully reading the amendment in front of us, I would have had a better understanding of it. It is true that we try to have some consistency between different laws.

(8:15) Senator Myrdal: I do not see that this would change someone's mind on how they would vote on this bill. I think it's a misunderstanding of the 2007 law that would cause that. I think the intent of the 2007 law was the right of ND to govern themselves and to have a trigger that becomes the right of our state if it's found constitutional, and what would find that constitutional is the supreme court. That is a continuous battle, and I don't see how taking it off will change how we vote on this. This bill deals with second and third trimester abortions. There's 100,000 of these being done nationwide as we speak, and that's what's recorded. I think the intent of the bill is absolutely the same.

Senator Bakke: The only problem I personally have is that I feel like this was snuck in rather than upfront. I wish we would have made it clear that we're also changing chapter 132 because I don't think that was made clear, and that I feel is inappropriate.

Chair Larson: I disagree with you.

Senator Bakke: You knew we were changing this?

Chair Larson: No, but it was right here in black and white in front of me if I had taken more time to read it carefully, and I didn't. I do recall when we asked for more explanation, it was explained this way of taking the attorney general out of it and having the trigger language. It was explained, but I didn't honestly get it. I appreciate you bringing it up because I have a better understanding of it. The purpose of bringing it up today is so that all committee members have full knowledge of what this does because we didn't spend a lot of time talking about it, but we did talk about it, and it was right here in front of us if we had looked.

Senator Myrdal: There was no intention to sneak anything in underneath. It is just clarifying and doing like language on two things, and it does not change the 2007 law whatsoever.

Chair Larson: If we want to amend that portion out of the amendment, we can consider it.

Senator Bakke: I would move that we amend section 2 out. At the bottom of the page, both of them are section 2, but the section 2 piece that refers to chapter 132 which was HB 1466.

Senator Myrdal: Section 2 would include both triggers.

Senator Bakke: The second trigger on the back is part of the original bill. The section 2 on the front of the page is in relation to chapter 132 HB 1466 which was passed in 2007.

Chair Larson: Your motion would be to remove from the amendment where it says section 2 to the bottom of page 1.

Senator Bakke: That's the part I would like out- the part that refers to chapter 132.

Chair Larson: We will have to reconsider our action by which we passed out this amended bill first in order to do that.

Senator Bakke: Motions to Reconsider HB 1546
Vice Chairman Dwyer: Seconds.

A Roll Call Vote Was Taken: 1 yea, 4 nays, 0 absent. Motion carries.

Chair Larson: I appreciate the committee's indulgence on bringing this up again to get more understanding before it goes to the floor.

Chair Larson ends discussion on HB 1546.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1546
3/25/2019
#34211 (48:50)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

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 prohibition on human dismemberment abortion; to provide a penalty; and to provide an effective date.

Minutes:

1 Attachment

Chair Larson begins discussion on HB 1546.

(see attachment #1)

Chair Larson: I asked for us to have HB 1546 in front of us again. I went to legislative council and tried to figure out what the concern was. Looking at the amendments, it says in whole or in part. This left that decision then up to the legislative council to try to figure out when something passed in whole or in part. Maybe there's a split decision then that split decision would lead to debate, so council wanted a law trained person responsible for being able to indicate when this should be triggered. They did not like having the attorney general removed from that decision making because they aren't in a position to be able to make decisions. They have to go specifically by what the law directs them to do. When I talked with the attorney general, he said he would be fine being that decision maker if there was more direction on when that decision needed to be made. That's the reason that we have the amendment before you today. I asked council to work directly with the attorney general's office and come up with something that both of them felt could be enforced. With these amendments, he doesn't need to be the deciding factor. If it's in the Constitution, that in itself is a clear direction. This is going along with the intent of what Senator Myrdal's amendments did. We should remove that amendment and replace it with this one.

Senator Myrdal: It also takes off moving it to a different section and takes off the effect of the 2007 session law.

Chair Larson: I did mention to the attorney general that with that 2007 law stating that it is up to the attorney general to make the decision, I said if this is a triggering factor on this one, that he could trigger it on the other one as well without that being put into code.

Senator Myrdal: It's not in his discretion unless it's specifically in code.

Chair Larson: Jill will come from legislative council to advise us.

Vice Chairman Dwyer: In the 02006 amendments, that's the current trigger?

Chair Larson: That's for the 2007 law. Correct.

Senator Myrdal: That was also the current trigger on this bill before we voted on the amendments I brought. That's what the attorney general told me he didn't care for. The opposing testimony numerous times said they didn't like it either; they felt it was unconstitutional.

Senator Bakke: Chair Larson, your amendment is replacing section 2?

Chair Larson: It is replacing that amendment.

Senator Bakke: So this amendment would go away, and this would be the only amendment?

Chair Larson: Correct. When I spoke with legislative council, the attorney plus John Bjornson were there. They said that they have a problem with it being in code this way since it is so ambiguous as to what the actual trigger would be. They could give more direction, but they wanted an attorney general to be the one that was the deciding factor. In fact, Mr. Bjornson told me that as written, this amendment version would probably need an attorney general's opinion just for the code reviser to figure out how to put it into code.

(9) Troy Seibel, Chief Deputy Attorney General

Chief Deputy Seibel: I've had several conversations with Jill Grossman. One of the issues that legislative council had, was that they wanted to have a state actor so there was someone to come forward and say the following event has occurred. The attorney general agrees with that approach because otherwise legislative council is in a position to ask if it has occurred or not. We were told they would probably come to us and ask for an AG's opinion anyway. We think that makes sense to have that state actor. We had some of those discussions.

Senator Myrdal: In chapter 57 in our code last session, we passed internet taxation. The language and trigger doesn't have an actor. It was assumed when the supreme court made that constitutional, it just went into action and the tax commissioner followed the intent of the legislature. Why is it different with this?

Chief Deputy Seibel: I don't believe we were consulted about that particular trigger. We looked at it, and I think with that trigger, you have the specific 1991 Quill supreme court case which established that precedent. They were able to identify a specific case that says if this is overturned, then the following will happen. It was the Wayfair decision in South Dakota

that actually overturned it. The tax commissioner came in had a conversation with the attorney general about whether this has now happened and whether or not he should go forward, and the attorney general provided advice about that. I do not recall that we were actually consulted with regards to that particular trigger.

Senator Myrdal: There are two specific cases: Casey v. Planned Parenthood and Roe v. Wade. Those are the cases that are already targeted that would be overturned, but if you feel that the trigger language that we had originally in this bill needs changing, why not change it to the 2007?

Chief Deputy Seibel: That is within your decision to change the 2007 language. It was something that we discussed; it seems sensible to do so, but that would be a separate issue.

Vice Chairman Dwyer: Senator Myrdal's amendments and Chair Larson's amendments do the same thing. They have three parts: constitutional amendment, supreme court or eighth circuit, or supreme court which allows the states.

Chair Larson: This is basically the way the amendments first came to me. When I showed them again to the attorney general, he's the one who said he would like that number 3 to be back up in the top part. That's why it's written this way. It has the same verbiage, but he said that one is one of those acts. It's a clear decision whereas the others would make it a lot more difficult, especially when you have things like in whole or in part with somebody not being that actor that makes that decision. That's the reason they put the attorney general back into that decision.

Vice Chairman Dwyer: Troy, have you looked at both versions?

Chief Deputy Seibel: I have. The difference other than the change where you move the Constitution up, the main difference is the 2006 amendment didn't have the state actor. That was the concern that legislative council had. The amendment does. Otherwise, I think they're essentially the same.

Vice Chairman Dwyer: The only difference is the state actor between the back page of 2006 and 2009.

Chair Larson: Correct, adding the attorney general back into it.

Vice Chairman Dwyer: Page one is a policy decision whether we want to amend the 2007 law so that it has the same trigger.

Chair Larson: Correct. There is debate on whether we should go back and change the 2007 trigger without a hearing on that legislation because it doesn't need to be consistent with this because those are separate laws, and they can have different triggers according to what I have been told. It's difficult for me because I am prolife, but I want to have good law that is not debatable. That's my reason for doing this, not because I'm in opposition to any prolife stand of any sort.

Senator Myrdal: The attorney general's office said it would make sense to have the 2007 law changed equally. We do that all the time. Hundreds of amendments if not more are passed without hearings; that's what we do in this committee. We try to do good legislative work to keep it consistent.

Chair Larson: I don't disagree except I do think those are triggers for two different pieces of legislation addressing different components of abortion. Not all of our abortion prolife bills are exactly the same either. I'm open to change if it's appropriate. Is it important for the 2007 trigger language to be consistent with the 2019 trigger language?

(19:25) Jill Grossman, Legislative Council, neutral party

Grossman: Consistency is often something we strive for in our office. However, the 2007 effective date is not something necessarily that legislative counsel's office would have said this absolutely needs to be pulled in. For example, if we repeal a section of law and if referenced several times in the code, we'll say this has to be pulled in because we have to remove that reference to the section. This effective date, it's not an error to bring it in because the topic is related, but I would say it's not something that our office would require just for consistency. In visiting with the attorney general's office, I understand that they probably would appreciate clarity on some of these things.

Chair Larson: even on 2007 law?

Grossman: I don't think they would have said it needed to be brought in.

Chair Larson: Is it alright to change that legislative effective date without a hearing on the bill? Are we germane enough in this bill to do that in that bill?

Grossman: That's a policy question and pretty political.

Chair Larson: We want to make sure we're doing everything accurately in a way that it can be defended so that our attorney general doesn't have to go offend it from day one; it will be defended because of the way we write it.

Grossman: In talking with the attorney general's office, they understood our office's concern about having the state actor present. That was a big issue in the first effective date that was proposed in the amendment. That's really from the code reviser perspective. If you don't have a state actor, it's up to the code reviser to determine whether that contingent effective date is listed. The 2007 session law references this effective date, so if you went to 12.1-31-15 in our code, it has the prohibition on abortion. However, if you look on our website, it has this contingent effective date. You click on it, and it has the effective date. If you don't have a state actor, you're requiring our code reviser to decide whether this particular event occurred. That's a pretty big burden on our code reviser, and I don't think that's something our office would be comfortable taking a position on which would probably require us to reach out to the attorney general anyway.

Chair Larson: You are comfortable with the 2009 amendments?

Grossman: Yes, this have a state actor. If the attorney general's office is comfortable with this, we're comfortable with their comfort.

Senator Luick: Explain state actor.

Grossman: State actor in this case would be the attorney general. It's someone outside our office telling us that an event has occurred. For example, the Secretary of state certifies to legislative council that their website is up and running for the election.

Senator Myrdal: According to your testimony, it's clarity. Basically, you're saying it's better to fix the 2007 one. Taking the politics out of it, good lawmaking tells me that we should change it in both. From your perspective, isn't consistency of triggers with the same subject important?

Grossman: Consistency is certainly important. However, if someone came into my office and asked to tweak with the effective date for the human dismemberment abortion, I would not automatically bring in the 2007 version. This is one we wouldn't have just brought in of our own accord.

Vice Chairman Dwyer: Just to verify your office's consistency, I brought in that extra section on HB 1050, and they told me it's my call. That's what you're saying here.

Grossman: Yes. It's not improper to bring it in as the topics are related, but our office wouldn't have pulled this in without consultation.

Chair Larson: If we were to take this language in the 2009 amendment and duplicate it to match the triggering language in the 2007 law, is that something we need to wait for until we get actual amendment drafts in front of us?

Grossman: If you are changing the effective date for the human dismemberment abortion, arguably if that is triggered, I imagine that would create a trigger for the other one.

Chair Larson: without it actually being written into law. That's what I thought as well and what I mentioned to the attorney general.

Senator Myrdal: That language doesn't just include the attorney general; it goes through legislative management. That's the political battle we're dealing with.

Grossman: Certainly. For the 2007 session law that is being discussed, it references legislative council. That's not our legislative council but rather legislative management.

Vice Chairman Dwyer: Let's say that we pass 2009. Will that not be in the century code but just in the session laws?

Grossman: On our website, you can look up 12.1-31-15 and it has the prohibition on abortion. Then in parenthesis behind the section heading, there would a contingent effective

date and a c note. You can click on that, and it would open up the effective date on a different page.

Vice Chairman Dwyer: so it won't actually be in the century code.

Grossman: It is in the book, but it has this effective date in parenthesis behind it. That's what I was saying for the code reviser, until legislative council is told, once that happens, then that contingent effective date in parenthesis is removed. That means that the trigger has occurred. It is on our books, but it's not effective yet.

(31:10) Chair Larson: Then that one would be triggered to go into effect when the court of appeals of the eighth district court and all of these things would be part of the 2007, which this decision wasn't even up for debate in 2007. I have a hard time understanding.

Grossman: The 2009 amendments subsection 1 would be in reference to human dismemberment abortion because section 1 of this act would be the prohibition on human dismemberment abortion. However, subsection 2 talks about the issuance of the judgement in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion which I believe is similar to Senator Myrdal's amendment.

Senator Myrdal: The only difference is that one has an actor and one doesn't. We have several triggers on the books already, such as chapter 57 with taxation, that have triggers with no actors, and it was just triggered in when the supreme court made it constitutional.

Grossman: Effective dates like this are squishy when you reference case decision or the holdings of case decisions. They're ambiguous and a difficult issue to articulate. None have been my favorite necessarily, but I appreciate the ones that have an actor for our office perspective. I appreciate the AG office weighing in because that's who has to interpret it and trigger it into action.

Vice Chairman Dwyer: What's the section number for the abortion that you referenced?

Grossman: 12.1-31-12. If you click on the c note on our website, it opens up the effective date language.

Senator Myrdal: If we go with the 2009 amendments, the drafting to add it to the 2007 law is simple. The one thing you don't need for the 2007 is the eighth circuit court because it doesn't apply to that. Amendment old session laws like that is common. We do it all the time to comply with language and reflect current language with the same intent.

Grossman: Our office wouldn't have said you have to bring this in, but it's not improper to do so.

Senator Bakke: There was a hearing only on dismemberment abortion. Is it proper to make a change to a bill where there was not a hearing on the entire topic of the bill?

Grossman: That's a fair question. You could argue that it's just providing clarity to the attorney general, and the substance isn't changing considerably.

Chair Larson: When you look at what the 2009 amendment says, if we take the number 1 out, then the rest of it would be clear.

(37:10) Chief Deputy Seibel: That's right. When you look at the 2009 amendment, it does mention section 1 of the act, therefore it's referring specifically to dismemberment abortion and this bill. In the event that you wanted to mirror that language to the 2007 session laws, I think you would want to make some tweaks here. It would mainly be taking out section 1 of the amendment to be clear.

Chair Larson: The first paragraph of the amendment and number 2 seems to me that those would be triggering thing anyway with 2007, so whether we put it on the books that way or not, I don't think it would have any different effect because I would think the attorney general's office would act on that.

Chief Deputy Seibel: We would take that decision, but we would have to look at it through the lens of the 2007 session law language which is different. These are contingent effective dates which apply to their specific pieces of legislation. There may be a decision that would trigger both. Good or bad, our courts have done a much better job with whether online sales taxation is constitutional versus abortion. When you talk about abortion, you have a sliding scale. When you get a supreme court decision in the area of abortion, it is almost certain it is going to be a 5-4 decision, and you will probably have several concurring opinions. It gets very complicated. We'd have to take that decision and look at it through the lens of the effective date that's in these amendments and then for the 2007 law. It may be that that particular decision would trigger both, but you're dealing with different regulations of abortion. You're really not dealing with the same thing. We might have a case that says states can regulate dismemberment. We can say that's good enough for this bill, but it may not be good enough for those 2007 laws. We're going to have to look at it through different lenses if the language is not changed, but it may be that one decision would trigger both.

Senator Myrdal: With that interpretation, let's say supreme court does something to Roe v. Wade. I think if anything ever happens, it would be a total overturn to get it back to the states to regulate abortion. I was here in 2007 when they passed that, and the intent of the legislature was that if that happens, is for immediate action by the attorney general. However, it's convoluted and ambiguous because it also has legislative management into it, and that's when we run into a political thing here. It's just changing the trigger mechanism so it's smoother. Roe v. Wade took the states' rights away to regulate abortion. Then slowly, we've been able to chip at getting some of that back. What would be the possible legal reason for anyone not to change it to be equal to this? If you have legislative management into it, now we're muddying it up.

Chief Deputy Seibel: That's correct. You're looking at what language to use when this will trigger. We appreciate being involved because we are the ones that have to enforce it, and if the language isn't clear, we can get sued. From a legal perspective, you're right. There's nothing that would prohibit you guys from cleaning up and changing the 2007 session laws. Whether you decide to do it is your call.

(43:25) Vice Chairman Dwyer: If you look at the 2007 trigger, it's in the session laws but not in the century code book. That language is a little uncertain. It says the attorney general certifies that it is reasonably probable. This language isn't the best.

Chief Deputy Seibel: I would not disagree. I would say that the language that you guys are considering before you now is definitely clearer. There's more guidance that's provided to the attorney general. The language makes it difficult for the attorney general to make that decision because it requires him to get out a crystal ball and say this is why I think it would be reasonably probable or not.

Senator Myrdal: I spoke to the attorney general early on in this process. He said it's probably hopefully maybe by chance could happen. He didn't like the original language in this bill which is equal to the 2007 law, which is very ambiguous for a serious issue like this.

Chair Larson: I appreciate the discussion. It sounds like we should ask Ms. Grossman to leave this as it is, the 2009, but take out the number 1 so that we have that consistency in law, and the attorney general has some clearer direction on when to make those judgements. Would that suffice the committee?

Senator Bakke: I'm not comfortable putting it in the 2007 law without a hearing.

Chair Larson: Listening to how vague that was set up back in the day, it does seem like some clearer direction to the attorney general's office is what they have wanted.

Senator Bakke: I don't disagree. I do think it's vague, and it probably needs to be changed, but I don't think we should do that without a hearing dealing with the entire abortion process because that's what the 2007 statute was.

Chair Larson ends discussion on HB 1546.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1546
3/27/2019
#34264 (09:35)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

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 prohibition on human dismemberment abortion; to provide a penalty; and to provide an effective date.

Minutes:

1 Attachment

Chair Larson begins discussion on HB 1546.

(see attachment #1)

Chair Larson: This is what we asked to have drafted.

Senator Luick: Motions to adopt amendment 19.1039.02012.

Senator Myrdal: Seconds.

Senator Lemm: Please briefly explain.

Chair Larson: This is a bill to prohibit dismemberment abortions in North Dakota. Since it is not legal yet anyway in this state, this amendment addresses an effective date because there are some court cases happening right now that if they pass, it may allow it nationally. If it does, our state is ready to say it's prohibited here according to this legislation. This amendment puts in an effective date.

Senator Myrdal: Basically, this says you cannot dismember a living human being, meaning in the womb where they tear limb from limb. Because of the supreme court precedence of Roe vs. Wade and other court cases, that took the right of regulating abortion away from the states mostly. This bill can't go into effect if those laws are overturned at the supreme court level. It gives the regulatory authority back to each individual state to regulate whether that's true or not. We need to have that language clear because if that is overturned, that makes this effective, and it becomes effective upon this language here. We like to have clarity in the code so it has the same language, so I put in an amendment that says in 2007, this body passed similar legislation with intent to do the same thing.

Senator Bakke: I cannot support this amendment because we had no hearing on chapter 132 of the 2007 session laws. I find it inappropriate to put an amendment on a section of the code that there was no hearing on.

Chair Larson: I understand. I had those same concerns when we were discussing it with legislative council. They said it wouldn't be a problem; that it would still be germane, and they do appreciate that consistency in code.

A Roll Call Vote Was Taken: 5 yeas, 1 nay, 0 absent. Amendment is adopted.

Chair Larson: The other ones we had were the 2006 version.

Senator Luick: Motions to Reconsider amendment 19.1039.02006

Senator Myrdal: Seconds.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent. Amendment is removed.

Senator Myrdal: Motions for a Do Pass as Amended.

Senator Luick: Seconds.

Senator Bakke: Again I cannot support this bill because I find this language inflammatory, and I don't feel sections of the bill were adequately addressed during testimony. I will not be supporting the bill.

Senator Myrdal: We've gone through a strong process, and I think it's one of the most important bills before us in this session. It's sad to me that we even have to discuss whether it should be legal or not to tear a living, human child limb for limb while it's alive in the mother's womb.

A Roll Call Vote Was Taken: 5 yeas, 1 nay, 0 absent. Motion carries.

Senator Myrdal will carry the bill.

March 8, 2019

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1546

Page 1, line 9, remove "a living unborn child"

Page 1, line 9, replace "the" with "a living"

Page 1, line 10, remove ", through use of"

Page 1, remove lines 11 through 13

Page 1, line 14, remove "if the fetal body parts are removed by the same instrument, suction, or other means"

Page 1, line 15, remove "Except in the case of a medical emergency, it is a class C felony for an individual to"

Page 1, replace lines 16 through 19 with "An individual may not intentionally perform a human dismemberment abortion unless:

- a. It is a medical emergency.
- b. The unborn child is no longer living.
- c. The procedure is necessary to save the life of the pregnant woman.
- d. A physician recommends the procedure."

Renumber accordingly

March 18, 2019

SK
3/18
125

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1546

Page 1, line 1, remove "a new section to"

Page 1, line 1, replace "14-02.1" with "14-02.7"

Page 1, line 2, after the first semicolon insert "to amend and reenact section 2 of chapter 132 of the 2007 Session Laws, relating to the implementation of the prohibition of the performance of abortions;"

Page 1, replace lines 5 through 19 with:

"**SECTION 1.** Chapter 14-02.7 of the North Dakota Century Code is created and enacted as follows:

14-02.7-01. Prohibition on human dismemberment abortion - Penalty.

1. For purposes of this section, "human dismemberment abortion" means intentionally dismembering a living unborn child and extracting the unborn child one piece at a time from a uterus, with the purpose of causing the death of an unborn child, through use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two rigid levers, slice, crush, or grasp the head, arm, leg, spinal cord, internal organ, or other portion of the unborn child's body to cut or rip it off, regardless if the fetal body parts are removed by the same instrument, suction, or other means.
2. Except in the case of a medical emergency, it is a class C felony for an individual to intentionally perform a human dismemberment abortion.
3. A woman upon whom a human dismemberment abortion is performed or attempted to be performed in violation of subsection 2 may not be prosecuted for a violation of subsection 2 or for conspiracy to violate subsection 2.

SECTION 2. AMENDMENT. Section 2 of chapter 132 of the 2007 Session Laws is amended and reenacted as follows:

SECTION 2. EFFECTIVE DATE. This Act becomes effective ~~on the date the legislative council approves by motion the recommendation of the attorney general to the legislative council that it is reasonably probable that this Act would be upheld as constitutional,~~ to the extent permitted, on the thirtieth day following:

1. The issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion; or
2. Adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states authority to prohibit abortion."

Page 1, line 20, remove "on the date the"

2082

Page 1, remove lines 21 and 22

Page 1, line 23, replace "constitutional" with ", to the extent permitted, on the thirtieth day following:

1. The issuance of the judgment in any decision of the United States Supreme Court or the United States Court of Appeals for the Eighth Circuit which would allow enforcement of section 1 of this Act;
2. The issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion; or
3. Adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states authority to prohibit abortion"

Renumber accordingly

March 26, 2019

SC
3/27
(10)

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1546

Page 1, line 2, after the first semicolon insert "to amend and reenact section 2 of chapter 132 of the 2007 Session Laws, relating to the implementation of the prohibition of the performance of abortions;"

Page 1, after line 19, insert:

"SECTION 2. AMENDMENT. Section 2 of chapter 132 of the 2007 Session Laws is amended and reenacted as follows:

SECTION 2. EFFECTIVE DATE. This Act becomes effective on the ~~date the legislative council approves by motion the recommendation of the attorney general to the legislative council that it is reasonably probable that this Act would be upheld as constitutional.~~thirtieth day after:

1. The adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states the authority to prohibit abortion; or
2. The attorney general certifies to the legislative council the issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion."

Page 1, line 20, remove "date the"

Page 1, replace lines 21 through 23 with "thirtieth day after the adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states the authority to prohibit abortion, or on the thirtieth day after the attorney general certifies to the legislative council:

1. The issuance of the judgment in any decision of the United States Supreme Court or the United States Court of Appeals for the Eighth Circuit which would allow enforcement of section 1 of this Act; or
2. The issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion."

Renumber accordingly

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1546**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 19.1039.02004

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Bakke Seconded By Chair Larson

Senators	Yes	No	Senators	Yes	No
Chair Larson		X	Senator Bakke	X	
Vice Chair Dwyer		X			
Senator Luick		X			
Senator Myrdal		X			
Senator Osland	AB				

Total (Yes) 1 No 4

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1546**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 19.1039.02006

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Myrdal Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke		X
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	AB				

Total (Yes) 4 No 1

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1546**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Senator Myrdal Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke		X
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	AB				

Total (Yes) 4 No 1

Absent 1

Floor Assignment Senator Myrdal

If the vote is on an amendment, briefly indicate intent:

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1546**

Senate Judiciary _____ Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Senator Bakke _____ Seconded By Vice Chairman Dwyer _____

Senators	Yes	No	Senators	Yes	No
Chair Larson		X	Senator Bakke	X	
Vice Chair Dwyer		X			
Senator Luick		X			
Senator Myrdal		X			

Total (Yes) 1 _____ No 4 _____

Absent 0 _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1546**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 19.1039.02012

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Senator Luick Seconded By Senator Myrdal

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke		X
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Lemm	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1546**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 19.1039.02006

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Reconsider Amendment

Other Actions: _____

Motion Made By Senator Luick Seconded By Senator Myrdal

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Lemm	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1546**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Myrdal Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke		X
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Lemm	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Senator Myrdal

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1546, as engrossed: Judiciary Committee (Sen. D. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1546 was placed on the Sixth order on the calendar.

Page 1, line 2, after the first semicolon insert "to amend and reenact section 2 of chapter 132 of the 2007 Session Laws, relating to the implementation of the prohibition of the performance of abortions;"

Page 1, after line 19, insert:

"SECTION 2. AMENDMENT. Section 2 of chapter 132 of the 2007 Session Laws is amended and reenacted as follows:

SECTION 2. EFFECTIVE DATE. This Act becomes effective on the ~~date the legislative council approves by motion the recommendation of the attorney general to the legislative council that it is reasonably probable that this Act would be upheld as constitutional.~~ thirtieth day after:

1. The adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states the authority to prohibit abortion; or
2. The attorney general certifies to the legislative council the issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion."

Page 1, line 20, remove "date the"

Page 1, replace lines 21 through 23 with "thirtieth day after the adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states the authority to prohibit abortion, or on the thirtieth day after the attorney general certifies to the legislative council:

1. The issuance of the judgment in any decision of the United States Supreme Court or the United States Court of Appeals for the Eighth Circuit which would allow enforcement of section 1 of this Act; or
2. The issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion."

Renumber accordingly

2019 TESTIMONY

HB 1546

#1
HB 1546
1/21/19



517 Hill Street, NW Washington, DC 20004-1121
(202) 462-6800 FAX: (202) 797-9159 Website: www.nrlc.org

MEMORANDUM

TO: To Whom It May Concern
FROM: Mary Spaulding Balch, JD, Director, State Legislation Department
DATE: January 2015
RE: Constitutionality of the Unborn Child Protection from Dismemberment Abortion Act

The purpose of this memorandum is to explain why the Unborn Child Protection from Dismemberment Abortion Act is highly likely to be upheld as constitutional by the current U.S. Supreme Court in light of its decision upholding the Partial-Birth Abortion Ban Act of 2003, *Gonzales v. Carhart*.¹

Gonzales justified the federal law protecting unborn children from partial-birth abortions based on the government’s “interest in protecting the integrity and ethics of the medical profession,”² and on the “premise . . . that the State, from the inception of the pregnancy, maintains its own regulatory interest in protecting the life of the fetus that may become a child Where it has a rational basis to act, and it does not impose an undue burden, the State may use its regulatory power to bar certain procedures and substitute others, all in furtherance of its legitimate interests in regulating the medical profession in order to promote respect for life, including life of the unborn.”³

The *Gonzales* Court quoted a Congressional Finding from the Partial Birth Abortion Ban Act:

Implicitly approving such a brutal and inhumane procedure by choosing not to prohibit it will further coarsen society to the humanity of not only newborns, but all vulnerable and innocent human life, making it increasingly difficult to protect such life.

The same principle applies to dismemberment abortions, in which a sharp instrument is used to slice up a living unborn child.

Gonzales itself described the gruesome nature of dismemberment abortions: “[F]riction

¹ 550 U.S. 124 (2007).

² *Id.* at 157, quoting *Washington v. Glucksberg*, 521 U. S. 702, 731(1997).

³ *Gonzales*, 550 U.S. at 158.

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causes the fetus to tear apart. For example, a leg might be ripped off the fetus”⁴ Contrasting the partial birth or “intact D&E” abortion, the Court said, “In an intact D&E procedure the doctor extracts the fetus in a way conducive to pulling out its entire body, instead of ripping it apart.”⁵ “No one would dispute,” it wrote, “that, for many, D & E is a procedure itself laden with the power to devalue human life.”⁶ The author of the *Gonzales* opinion, Justice Anthony Kennedy, used an even more graphic description in his dissent in *Stenberg v. Carhart*,⁷ stating, “The fetus, in many cases, dies just as a human adult or child would: It bleeds to death as it is torn limb from limb.”

Indeed, the *dissent* in *Gonzales* stated :⁸
Nonintact D&E could equally be characterized as "brutal," . . . , involving as it does "tear[ing] [a fetus] apart" and "ripp[ing] off" its limbs,⁹ "[T]he notion that either of these two equally gruesome procedures . . . is more akin to infanticide than the other, or that the State furthers any legitimate interest by banning one but not the other, is simply irrational."¹⁰

Even some abortion practitioners describing the method acknowledge that “The procedure . . . may be more difficult . . . emotionally for some clinicians.”¹¹

The Court held that protecting unborn children from the brutal inhumanity of partial birth abortion did not impose an unconstitutional “undue burden” on abortion because other methods could be used. In particular, it noted that “the Act's prohibition only applies to the delivery of ‘a living fetus.’ . . . If the intact D&E procedure is truly necessary in some circumstances, it appears likely an injection that kills the fetus is an alternative under the Act that allows the doctor to perform the procedure.”¹²

⁴ *Id.* at 135.

⁵ *Id.* at 137; see also *id.* at 152.

⁶ *Id.* at 158.

⁷ 350 U.S. 914, 958-59 (Kennedy, J., dissenting)

⁸ *Gonzales*, 550 U.S. at 182 (Ginsburg, J., dissenting).

⁹ Internal citations to majority opinion omitted.

¹⁰ *Quoting Stenberg v. Carhart*, 530 U.S. 914, 946-947 (2000)(Stevens, J., concurring).

¹¹ Nathalie Kapp & Helena von Hertzen, “Medical Methods to Induce Abortion in the Second Trimester” in Maureen Paul et al., *Management of Unintended and Abnormal Pregnancy* 179 (1st ed. 2009).

¹² *Gonzales*, 550 U.S. at 164, *quoting* 18 U.S.C. § 1531(b)(1)(A) (2000 ed., Supp. IV).

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Similarly, the Unborn Child Protection from Dismemberment Abortion Act provides protection only when dismemberment is applied to “a living unborn child.”

One study has found no difference in complications between those women injected with a fetocidal agent prior to a dilatation and evacuation abortion and those injected with a placebo.¹³ Other studies found either no or low side effects as a result of using a fetocidal agent prior to abortion.¹⁴ Although the *Gonzales* dissent argued there is medical opinion to the contrary,¹⁵ the Court held, “The question becomes whether the Act can stand when . . . medical uncertainty persists. . . . The Court has given state and federal legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty. . . . Physicians are not entitled to ignore regulations that direct them to use reasonable alternative procedures. The law need not give abortion doctors unfettered choice in the course of their medical practice. . . . Medical uncertainty does not foreclose the exercise of legislative power in the abortion context any more than it does in other contexts.”¹⁶

Because of the close resemblance of the constitutional issues settled in the Partial Birth Abortion Ban Act case to those applying to the Unborn Child Protection from Dismemberment Abortion Act, it is highly likely that the Supreme Court would uphold it against constitutional attack.

¹³ Patricia A. Lohr, “Surgical Abortion in the Second Trimester,” 16 *Reproductive Health Matters* 151, 152 (2006). The article noted that “women in this study did . . . report a strong preference for fetal death prior to the abortion (92% in both groups). *Id.* at 156.

¹⁴ Kapp & Herten, *supra* n. 11, at 185.

¹⁵ *Gonzales*, 550 U.S. at 180n.6 (Ginsberg, J., dissenting).

¹⁶ *Gonzales*, 550 U.S. at 163-64.

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Chairman and members of the committee,

My name is Shyann Simons. And I am 14 years old. I am here to talk to you about House Bill 1546.

My mom had an ultrasound when she was around 18-20 weeks pregnant with me. I was 7 inches long and weighed roughly 8 ounces. At this stage dismemberment abortion is the most common type of abortion.

In her ultrasound she watched me stick my thumb in my mouth and start sucking. This was a bad habit I had from birth until I was five years old. As she watched me move around in her womb and suck my thumb, she realized that she could still legally chose to have an abortion.

Now, personally I feel abortion at any stage is wrong. In North Dakota we have the power to make dismemberment abortion illegal. This type of abortion is very hard to think about or imagine. No baby in its mother's womb should have to worry about anything other than sucking its thumb and kicking its legs. And did you know a baby in the womb can start sucking it's thumb at 10 to 12 weeks?

I am thankful that my parents chose life. Life is worth fighting for. Please, vote YES on HB1546. Thank you for your time.

Shyann Simons
Dickinson, ND
District 36

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Testimony in Favor of House Bill 1546

Mark Jorritsma, Executive Director
Family Policy Alliance of North Dakota
January 21, 2019

Good morning Chairman Weisz and honorable members of the House Human Services Committee. My name is Mark Jorritsma and I am the Executive Director of Family Policy Alliance of North Dakota. I am testifying in favor of House Bill 1546 and respectfully request that you render a "DO PASS" on this bill.

This bill would prohibit the dismemberment of a live preborn child as a method of abortion. I will not go into detail regarding what dismemberment means; the bill quite vividly paints a picture of that. However, I would urge the committee to consider this. Shouldn't our laws be up-to-date with the latest advancements in science and our ability to show compassion toward one another? An abortion procedure that tears apart a live preborn child, limb by limb, is a gruesome and inhumane practice that has no place in modern medicine.

There is no longer a debate about whether a preborn child is alive. The only debate remaining is whether that preborn child is a life worthy of protection. Family Policy Alliance of North Dakota believes that all life should be cherished, and that to permit this type of brutal procedure on a living child simply because she is voiceless and powerless, is to show the most flawed and unfeeling parts of humanity.

Our laws need to catch up with science. Our country's medical experts are achieving groundbreaking results in the field of fetal surgery—providing anesthesia to preborn babies at 18 weeks gestation. Yet we allow this brutal abortion procedure to be performed on a live preborn baby at 20 weeks, or older under some circumstances. This legislation does not prohibit the procedure entirely; HB 1546 simply compassionately directs doctors performing this procedure to do so only on a preborn child who is no longer alive.

Further, because traumatic dismemberment abortions are typically performed when a baby is too large to be removed as a whole, the woman herself is at much higher risk of suffering complications or even death as a result. Even Planned Parenthood, the nation's largest abortion provider, admits that abortion becomes far riskier in the later stages of pregnancy. The risk of serious complications from abortion jumps to over 76% at 21 weeks and women who undergo late-term abortions are 35 times more likely to die from an abortion at 20 weeks than in the first trimester. Given that this procedure adds another layer of risk to a situation where the mother is already at greater risk, the state has the right to protect the emotional and mental health of the mother against brutal procedures and to regulate this type of dismemberment (*Gonzales v Carhart*, at 158).

To summarize, this bill will not only stop the killing of innocent preborn children in a ghastly manner, but will also help reduce the increased risk of mental and emotional distress to the mother from this type of procedure. It does not impeded access to abortion in any way. For these and similar reasons, I respectfully request that you vote House Bill 1546 out of committee with a "DO PASS" recommendation.

Thank you for the opportunity to testify and I stand for any questions you may have.

1515 Burnt Boat Drive, Suite C148
Bismark, ND 58530

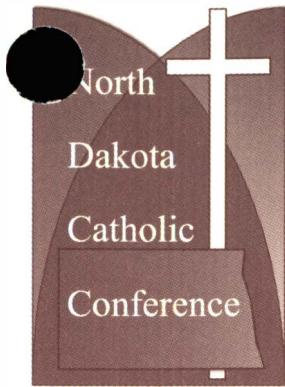
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UNLEASHING CITIZENSHIP

FamilyPolicyAlliance.com/NorthDakota

A Public Policy Partner of Focus on the Family

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Representing the Diocese of
Fargo and the Diocese of
Bismarck

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To: House Human Services Committee
From: Christopher T. Dodson, Executive Director
Subject: HB 1546 - Dismemberment Abortion
Date: January 21, 2019

The North Dakota Catholic Conference supports House Bill 1546 to ban dismemberment abortions.

Every child, at every moment of existence, deserves love and the protection of the law. No one has the right to take innocent human being's life. This is why the official policy of North Dakota is that, between childbirth and abortion, childbirth is to be given preference, encouragement, and support by law and by state action and also why the state recognizes that every abortion will "terminate the life of a whole, separate, unique, living human being." (N.D.C.C. secs. 14-02.3-01; 14-02.1-02.) House Bill 1546 furthers that policy by prohibiting a certain particularly gruesome abortion procedure known as dilation and evacuation.

One of the most erroneous statements about abortion law is the claim that *Roe v. Wade* is settled law. The holding in *Roe* became unsettled almost as soon as it was decided and abortion jurisprudence is constantly in flux. Many issues remain question and the constitutionality of banning dismemberment abortions has not been determined by the U.S. Supreme Court. It is also not clear if anyone would have standing to challenge HB 1546 in North Dakota since the procedure is not currently being done in the state. That could leave the law intact until and if the U.S. Supreme Court or the Eighth Circuit Court of Appeals renders a conclusive opinion.

We ask for a **Do Pass** recommendation on House Bill 1546.

CONCERNED
WOMEN *in* AMERICA
OF NORTH DAKOTA

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January 21, 2019

**House Human Services Committee
Testimony in Support of HB 1546**

Madam Chair and members of the committee, my name is Linda Thorson, and I am the State Director of Concerned Women for America (CWA) of North Dakota. CWA is the largest public policy women's organization in the nation. We heartily support HB1546 the prohibition on human dismemberment abortion.

It is doubtful anyone is eager to hear about abortion procedures; however, gruesome truth has the power to bring wisdom when deciding such matters on behalf of the citizens of our great state. Today, CWA of North Dakota is honored to speak on behalf of women and unborn children by giving testimony in support of HB1546 the human dismemberment abortion ban.

Thus far, the Supreme Court has not outlawed abortion outright; however, they have ruled that certain procedures are not to be used in the process of abortion. One favorable ruling was the upholding of the ban on partial-birth abortion which protects those most vulnerable, the unborn, by banning a particularly brutal and inhumane abortion method in which the child is removed from the womb feet-first and delivered part way before being killed.

There is yet another extremely horrific, inhumane abortion procedure that we must not allow ever to be done in North Dakota, dismemberment.

Dismemberment abortion means, with the purpose of causing the death of an unborn child, knowingly dismembering a living unborn child and extracting such unborn child one piece at a time from the uterus through the use of clamps, grasping forceps, tongs, scissors or similar instruments that, through the convergence of two rigid levers, slice, crush or grasp a portion of the unborn child's body in order to cut or rip it off.

This method of abortion takes place starting in the second trimester, week 13 – 27. Because North Dakota allows abortion up to only 20 weeks, let's talk about the development of the baby up to only 20 weeks. The unborn child has a beating heart, brain waves, is startled by loud noises, has learned to breath, can suck its thumb, its eyes move, its bones are hardening, and the baby can feel pain. And, the mother has begun to feel the baby move. This procedure is cruel and barbaric.

Clearly, this procedure is inhumane on multiple levels for both the unborn and their mothers. HB 1546 will protect North Dakota children from ever experiencing this kind of painful death; it will protect the mental and emotional health of women involved in these abortions.

Concerned Women for America of North Dakota urges a "Do Pass" on HB1546.

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CHAPTER 14-02.1
ABORTION CONTROL ACT

14-02.1-01. Purpose.

The purpose of this chapter is to protect unborn human life and maternal health within present constitutional limits. It reaffirms the tradition of the state of North Dakota to protect every human life whether unborn or aged, healthy or sick.

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. "Down syndrome" refers to a chromosome disorder associated with an extra chromosome twenty-one, in whole or in part, or an effective trisomy for chromosome twenty-one.
5. "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.
6. "Fertilization" means the fusion of a human spermatozoon with a human ovum.
7. "Genetic abnormality" means any defect, disease, or disorder that is inherited genetically. The term includes any physical disfigurement, scoliosis, dwarfism, Down syndrome, albinism, amelia, or any other type of physical or mental disability, abnormality, or disease.
8. "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.
9. "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.
10. "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.
11. "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;

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- (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.
12. "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 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 she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.
13. "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.
14. "Postfertilization age" means the age of the unborn child as calculated from fertilization.
15. "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.
16. "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.
17. "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.
18. "Unborn child" means the offspring of human beings from conception until birth.
19. "Viable" means the ability of an unborn child to live outside the mother's womb, albeit with artificial aid.

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

1. The state department of health shall publish in English, and in every other language that the department determines is the primary language of a significant number of state residents, the following easily comprehensible printed materials:
 - a. Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies. The materials must include a comprehensive list of the agencies available, a description of the services they offer and a description of the manner, including telephone numbers, in which they might be contacted, or, at the option of the department, printed materials, including a toll-free, twenty-four-hour-a-day telephone number that may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer. The materials must state that it is unlawful for any individual to coerce a woman to undergo an abortion and that if a minor is denied financial support by the minor's parent, guardian, or custodian due to the minor's refusal to have an abortion performed, the minor is deemed to be emancipated for the purposes of eligibility for public assistance benefits, except that those benefits may not be used to obtain an abortion. The materials also must state that any physician who performs an abortion upon a woman without her informed consent may be liable to her for damages in a civil action and that the law permits adoptive parents to pay costs of prenatal care, childbirth, and neonatal care. The materials must include the following statement: There are many public and private agencies willing and able to help you to carry your child to term and to assist you and your child after your child is born, whether you choose to keep your child or to place your child for adoption. The state of North Dakota strongly urges you to contact one or more of these agencies before making a final decision about abortion. The law requires that your physician or your physician's agent give you the opportunity to call agencies like these before you undergo an abortion.
 - b. Materials, published in a booklet format, designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any relevant information on the possibility of the survival of the unborn child and color photographs of the development of an unborn child at two-week gestational increments. The descriptions must include information about brain and heart function, the presence of external members and internal organs during the applicable states of development, and any relevant information on the possibility of the unborn child's survival. The materials must be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages. The materials required under this subsection must be reviewed, updated, and reprinted as needed.
 - c. Materials that include information on the support obligations of the father of a child who is born alive, including the father's legal duty to support his child, which may include child support payments and health insurance, and the fact that paternity may be established by the father's signature on an acknowledgment of paternity or by court action. The printed material must also state that more information concerning paternity establishment and child support services and enforcement may be obtained by calling state or county public assistance agencies.
 - d. Materials that contain objective information describing the various surgical and drug-induced methods of abortion as well as the immediate and long-term medical risks commonly associated with each abortion method, including the risks of infection, hemorrhage, cervical or uterine perforation or rupture, danger to subsequent pregnancies, the possible increased risk of breast cancer, the

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

2. 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 website. The department may make the copyrighted material available on its internet website if the department pays the copyright royalties.

14-02.1-02.2. Abortion report form.

The state department of health shall prepare an abortion compliance report form and an abortion data report form to be used by the physician for each abortion performed, as required by section 14-02.1-07. The abortion compliance report form must include a checklist designed to confirm compliance with all provisions of this chapter, chapter 14-02.3, chapter 14-02.6, and section 23-16-14. The abortion data report form 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.

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

1. No physician shall perform an abortion unless prior to such performance the physician certified in writing that the woman gave her informed consent as defined and provided in section 14-02.1-02 and shall certify in writing the pregnant woman's marital status and age based upon proof of age offered by her. Before the period of pregnancy when the unborn child may reasonably be expected to have reached viability, an abortion may not be performed upon an unemancipated minor unless the attending physician certifies in writing that each of the parents of the minor requesting the abortion has been provided by the physician in person with the information provided for in section 14-02.1-02 at least twenty-four hours before the minor's consent to the performance of abortion or unless the attending physician certifies in writing that the physician has caused materials of section 14-02.1-02 to be posted by certified mail to each of the parents of the minor separately to the last-known addresses at least forty-eight hours prior to the minor's consent to the performance of abortion. If a parent of the minor has died or rights and interests of that parent have been legally terminated, this subsection applies to the sole remaining parent. When both parents have died or the rights and interests of both parents have been legally terminated, this subsection applies to the guardian or other person standing in loco parentis. Notification by the attending physician is not required if the minor elects not to allow the notification of one or both parents or her guardian and the abortion is authorized by the juvenile court in accordance with section 14-02.1-03.1. None of the requirements of this subsection apply in the case of a medical emergency, except that when a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or for which a twenty-four-hour delay will create grave peril of immediate and irreversible loss of major bodily function, and shall certify those indications in writing.
2. Subsequent to the period of pregnancy when the unborn child may reasonably be expected to have reached viability, no abortion, other than an abortion necessary to preserve her life, or because the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health, may be performed upon any woman in the absence of:
 - a. The written consent of her husband unless her husband is voluntarily separated from her; or
 - b. The written consent of a parent, if living, or the custodian or legal guardian of the woman, if the woman is unmarried and under eighteen years of age.
3. No executive officer, administrative agency, or public employee of the state of North Dakota or any local governmental body has power to issue any order requiring an

abortion, nor shall any such officer or entity coerce any woman to have an abortion, nor shall any other person coerce any woman to have an abortion.

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14-02.1-03.1. Parental consent or judicial authorization for abortion of unmarried minor - Statement of intent.

The legislative assembly intends to encourage unmarried pregnant minors to seek the advice and counsel of their parents when faced with the difficult decision of whether or not to bear a child, to foster parental involvement in the making of that decision when parental involvement is in the best interests of the minor and to do so in a manner that does not unduly burden the right to seek an abortion.

1. No person may knowingly perform an abortion upon a pregnant woman under the age of eighteen years unless:
 - a. The attending physician has secured the written consent of the minor woman and both parents, if living, or the surviving parent if one parent is deceased, or the custodial parent if the parents are separated or divorced, or the legal guardian or guardians if the minor is subject to guardianship;
 - b. The minor woman is married and the attending physician has secured her informed written consent; or
 - c. The abortion has been authorized by the juvenile court in accordance with the provisions of this section.
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. All 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. A court may change the venue of proceedings under this section to another county only upon finding that a transfer is required in the best interests of the minor. All applications in accordance with this section must be heard by a juvenile judge or referee within forty-eight hours, excluding Saturdays and Sundays, of receipt of the application. The juvenile judge or referee shall find by clear and convincing evidence:
 - a. Whether or not the minor is sufficiently mature and well informed with regard to the nature, effects, and possible consequences of both having an abortion and bearing her child to be able to choose intelligently among the alternatives.
 - b. If the minor is not sufficiently mature and well informed to choose intelligently among the alternatives without the advice and counsel of her parents or guardian, whether or not it would be in the best interests of the minor to notify her parents or guardian of the proceedings and call in the parents or guardian to advise and counsel the minor and aid the court in making its determination and to assist the minor in making her decision.
 - c. If the minor is not sufficiently mature and well informed to choose intelligently among the alternatives and it is found not to be in the best interests of the minor to notify and call in her parents or guardian for advice and counsel, whether an abortion or some other alternative would be in the best interests of the minor.
3. All proceedings in connection with this section must be kept confidential and the identity of the minor must be protected in accordance with provisions relating to all juvenile court proceedings. This section does not limit the release, upon request, of statistical information regarding applications made under this section and their disposition.
4. The court shall keep a stenographic or mechanically recorded record of the proceedings which must be maintained on record for forty-eight hours following the proceedings. If no appeal is taken from an order of the court pursuant to the proceedings, the record of the proceedings must be sealed as soon as practicable following such forty-eight-hour period.

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5. Following the hearing and the court's inquiry of the minor, the court shall issue one of the following orders:
 - a. If the minor is sufficiently mature and well informed concerning the alternatives and without the need for further information, advice, or counseling, the court shall issue an order authorizing a competent physician to perform the abortion procedure on the minor.
 - b. If the minor is not sufficiently mature and well informed, the court may:
 - (1) Issue an order to provide the minor with any necessary information to assist her in her decision if the minor is mature enough to make the decision but not well informed enough to do so.
 - (2) Issue an order to notify the minor's parents or guardian of the pendency of the proceedings and calling for their attendance at a reconvening of the hearing in order to advise and counsel the minor and assist the court in making its determination if the court finds that to do so would be in the best interests of the minor.
 - (3) Issue an order authorizing an abortion by a competent physician if the court has determined that it would not be in the best interests of the minor to call in her parents or guardian but has found that it would be in the minor's best interests to authorize the abortion.
6. The minor or next friend may appeal the determination of the juvenile court directly to the state supreme court. In the event of such an appeal, any and all orders of the juvenile court must be automatically stayed pending determination of the issues on appeal. Any appeal taken pursuant to this section by anyone other than the minor or next friend must be taken within forty-eight hours of the determination of the juvenile court by the filing of written notice with the juvenile court and a written application in the supreme court. Failure to file notice and application within the prescribed time results in a forfeiture of the right to appeal and render the juvenile court order or orders effective for all intents and purposes.
7. Upon receipt of written notice of appeal, the juvenile court shall immediately cause to be transmitted to the supreme court the record of proceedings had in the juvenile court.
8. An application for appeal pursuant to this section must be treated as an expedited appeal by the supreme court and must be set down for hearing within four days of receipt of the application, excluding Saturdays and Sundays.
9. The hearing, inquiry, and determination of the supreme court must be limited to a determination of the sufficiency of the inquiry and information considered by the juvenile court and whether or not the order or orders of the juvenile court accord with the information considered with respect to the maturity and information available to the minor and the best interests of the minor as determined by the juvenile court. The determination of the juvenile court may not be overturned unless found to be clearly erroneous.
10. After hearing the matter the supreme court shall issue its decision within twenty-four hours.
11. Within forty-eight hours of the hearing by the supreme court, the record of the juvenile court must be returned to the juvenile court and the juvenile court shall seal it at the earliest practicable time.
12. Nothing in this section may be construed to prevent the immediate performance of an abortion on an unmarried minor woman in an emergency where such action is necessary to preserve her life and no physician may be prevented from acting in good faith in such circumstances or made to suffer any sanction thereby other than those applicable in the normal course of events to the general review of emergency and nonemergency medical procedures.
13. Nothing in this section may be construed to alter the effects of any other section of this chapter or to expand the rights of any minor to obtain an abortion beyond the limits to such rights recognized under the Constitution of the United States or under other provisions of this code.

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14-02.1-03.2. Civil damages for performance of abortions without informed consent.

Any person upon whom an abortion has been performed without informed consent as required by sections 14-02.1-02, 14-02.1-02.1, subsection 1 of section 14-02.1-03, 14-02.1-03.2, and 14-02.1-03.3 may maintain an action against the person who performed the abortion for ten thousand dollars in punitive damages and treble whatever actual damages the plaintiff may have sustained. Any person upon whom an abortion has been attempted without complying with sections 14-02.1-02, 14-02.1-02.1, subsection 1 of section 14-02.1-03, 14-02.1-03.2, and 14-02.1-03.3 may maintain an action against the person who attempted to perform the abortion for five thousand dollars in punitive damages and treble whatever actual damages the plaintiff may have sustained.

14-02.1-03.3. Privacy of woman upon whom an abortion is performed or attempted.

In every proceeding or action brought under section 14-02.1-03.2, the court shall rule whether the anonymity of any woman upon whom an abortion is performed or attempted should be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel, and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms, to the extent necessary to safeguard her identity from public disclosure. Each such order must be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

14-02.1-03.4. Required notice at abortion facility.

1. Any abortion facility that performs abortions shall display signs that contain exclusively the following words: "NOTICE: No one can force you to have an abortion. It is against the law for a spouse, a boyfriend, a parent, a friend, a medical care provider, or any other person to in any way force you to have an abortion."
2. The signs must be located so that the signs can be read easily and in areas that ensure maximum visibility to women at the time a woman gives consent to an abortion.
3. The display of signs pursuant to this section does not discharge any other legal duty of an abortion facility or physician.
4. The state department of health shall make the signs required by this section available for download in a printable format on its internet website.

14-02.1-03.5. Abortion-inducing drugs.

1. For purposes of this chapter, an abortion accomplished by the use of an abortion-inducing drug is deemed to occur when the drug is prescribed, in the case of a prescription, or when the drug is administered directly to the woman by the physician.
2. It is unlawful to knowingly give, sell, dispense, administer, otherwise provide, or prescribe any abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion in that pregnant woman, or enabling another person to induce an abortion in a pregnant woman, unless the person who gives, sells, dispenses, administers, or otherwise provides or prescribes the abortion-inducing drug is a physician, and the provision or prescription of the abortion-inducing drug satisfies the protocol tested and authorized by the federal food and drug administration and as outlined in the label for the abortion-inducing drug.
3. Every pregnant woman to whom a physician gives, sells, dispenses, administers, otherwise provides, or prescribes any abortion-inducing drug must be provided with a copy of the drug's label.
4. Any physician who gives, sells, dispenses, administers, prescribes, or otherwise provides an abortion-inducing drug shall enter a signed contract with another physician

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who agrees to handle emergencies associated with the use or ingestion of the abortion-inducing drug. The physician shall produce the signed contract on demand by the patient, the state department of health, or a criminal justice agency. Every pregnant woman to whom a physician gives, sells, dispenses, administers, prescribes, or otherwise provides any abortion-inducing drug must be provided the name and telephone number of the physician who will be handling emergencies and the hospital at which any emergencies will be handled. The physician who contracts to handle emergencies must have active admitting privileges and gynecological and surgical privileges at the hospital designated to handle any emergencies associated with the use or ingestion of the abortion-inducing drug.

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

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

1. An abortion may not be performed by any person other than a physician who is using applicable medical standards and who is licensed to practice in this state. All physicians performing abortion procedures must have admitting privileges at a hospital located within thirty miles [42.28 kilometers] of the abortion facility and staff privileges to replace hospital on-staff physicians at that hospital. These privileges must include the abortion procedures the physician will be performing at abortion facilities. An abortion facility must have a staff member trained in cardiopulmonary resuscitation present at all times when the abortion facility is open and abortions are scheduled to be performed.
2. After the first twelve weeks of pregnancy but prior to the time at which the unborn child may reasonably be expected to have reached viability, no abortion may be performed in any facility other than a licensed hospital.
3. After the point in pregnancy when the unborn child may reasonably be expected to have reached viability, no abortion may be performed except in a hospital, and then only if in the medical judgment of the physician the abortion is necessary to preserve the life of the woman or if in the physician's medical judgment the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health.

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

4. An abortion facility may not perform an abortion on a woman without first offering the woman an opportunity to receive and view at the abortion facility or another facility an active ultrasound of her unborn child. The offer and opportunity to receive and view an ultrasound must occur at least twenty-four hours before the abortion is scheduled to be performed. The active ultrasound image must be of a quality consistent with standard medical practice in the community, contain the dimensions of the unborn child, and accurately portray the presence of external members and internal organs, including the heartbeat, if present or viewable, of the unborn 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 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.

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14-02.1-04.1. Prohibition - Sex-selective abortion - Abortion for genetic abnormality - Penalty.

1. Notwithstanding any other provision of law, a physician may not intentionally perform or attempt to perform an abortion with knowledge that the pregnant woman is seeking the abortion solely:
 - a. On account of the sex of the unborn child; or
 - b. Because the unborn child has been diagnosed with either a genetic abnormality or a potential for a genetic abnormality.
2. Any physician who performs an abortion in violation of this section is guilty of a class A misdemeanor.

14-02.1-05. Preserving life of a viable child - Penalty.

An abortion of a viable child may be performed only when there is in attendance a physician other than the physician performing the abortion who shall take control and provide immediate medical care for the viable child born as a result of the abortion. The physician performing it, and subsequent to the abortion, the physician required by this section to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the unborn child. Failure to do so is a class C felony.

14-02.1-05.1. Determination of detectable heartbeat in unborn child before abortion - Exception.

1. Except when a medical emergency exists that prevents compliance with this subsection, an individual may not perform an abortion on a pregnant woman before determining, in accordance with standard medical practice, if the unborn child the pregnant woman is carrying has a detectable heartbeat. Any individual who performs an abortion on a pregnant woman based on the exception in this subsection shall note in the pregnant woman's medical records that a medical emergency necessitating the abortion existed.
2. If a physician performs an abortion on a pregnant woman before determining if the unborn child the pregnant woman is carrying has a detectable heartbeat, that physician is subject to disciplinary action under section 43-17-31.

14-02.1-05.2. Abortion after detectable heartbeat in unborn child prohibited - Exception - Penalty.

1. Notwithstanding any other provision of law, an individual may not knowingly perform an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn child the pregnant woman is carrying and whose heartbeat has been detected according to the requirements of section 14-02.1-05.1.
2.
 - a. An individual is not in violation of subsection 1 if that individual performs a medical procedure designed to or intended, in that individual's reasonable medical judgment, to prevent the death of a pregnant woman, to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman, or to save the life of an unborn child.
 - b. Any individual who performs a medical procedure as described in subsection 1 shall declare in writing, under penalty of perjury, that the medical procedure is necessary, to the best of that individual's reasonable medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. That individual also shall provide in that written document, under penalty of perjury, the medical condition of that pregnant woman that the medical procedure performed as described in subdivision a assertedly will address, and the medical rationale for the conclusion that the medical procedure is necessary

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to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

- c. The individual who performs a medical procedure as described in subdivision a shall place the written documentation required under subdivision b in the pregnant woman's medical records and shall maintain a copy of the written documentation in the individual's own records for at least seven years.
3. An individual is not in violation of subsection 1 if that individual has performed an examination for the presence of a heartbeat in the unborn child utilizing standard medical practice and that examination does not reveal a heartbeat in the unborn child or the individual has been informed by a physician who has performed the examination for the unborn child's heartbeat that the examination did not reveal a heartbeat in the unborn child.
4. It is a class C felony for an individual to willingly perform an abortion in violation of subsection 1. The pregnant woman upon whom the abortion is performed in violation of subsection 1 may not be prosecuted for a violation of subsection 1 or for conspiracy to violate subsection 1.
5. This section does not prohibit the sale, use, prescription, or administration of a measure, drug, or chemical designed for contraceptive purposes.

14-02.1-05.3. Determination of postfertilization age - Abortion of unborn child of twenty or more weeks postfertilization age prohibited.

1. The purpose of this section is to protect the state's compelling interest in the unborn human life from the time the unborn child is capable of feeling pain.
2. 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.
3. 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.

14-02.1-06. Soliciting abortions.

Repealed by S.L. 1999, ch. 50, § 79.

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:
 - (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

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number who, to the best of the reporting abortion facility's information and belief, went on to obtain the abortion.

- (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

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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.

14-02.1-07.1. Forms.

The state department of health shall make available to physicians, hospitals, and all abortion facilities the forms required by this chapter.

14-02.1-08. Protection of infant born alive - Penalty.

- 1. A person is guilty of a class C felony if the person knowingly, or negligently, causes the death of an infant born alive.
- 2. Whenever an unborn child who 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 unborn child if it survives the abortion procedure.

14-02.1-09. Humane disposal of nonviable unborn child.

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

14-02.1-10. Concealing stillbirth or death of infant - Penalty.

It is a class A misdemeanor for a person to conceal the stillbirth of a fetus or to fail to report to a physician or to the county coroner the death of an infant under two years of age.

14-02.1-11. General penalty.

A person violating any provision of this chapter for which another penalty is not specifically prescribed is guilty of a class A misdemeanor. Any person willfully violating a rule or regulation promulgated under this chapter is guilty of an infraction.

14-02.1-12. Short title.

This chapter may be cited as the North Dakota Abortion Control Act.

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Addendum to page 16:

It may be possible to avoid, cease, or even to reverse the effects of a chemical abortion utilizing mifepristone if the second pill has not been taken. Further information about abortion pill reversal and help locating a medical professional that can aide in the reversal of an abortion see <http://www.abortionpillreversal.com/> or call (877) 558-0333.

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1546

Page 1, line 2: remove “and”

Page 1, line 3 after “penalty” insert “; and to provide an effective date”

Page1, after line 19, insert:

“**SECTION 2. EFFECTIVE DATE.** Section 1 becomes effective on the date the legislative management approves by motion the recommendation of the attorney general to the legislative management that it is reasonably probable that this Act would be upheld as constitutional.”

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1546

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 14-02.1 of the North Dakota Century Code, relating to the prohibition on human dismemberment abortion; to amend and reenact section 14-02.1-02 of the North Dakota Century Code, relating to abortion-related definitions; to provide a penalty; and to declare an emergency.

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. "Attempt to perform a dismemberment abortion" means to do or omit to do anything that, under the circumstances as the actor believes the circumstances to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in the actor performing an abortion.
 - a. A substantial step includes:
 - (1) Agreeing with an individual to perform an abortion on the individual or on some other individual, regardless of whether the term abortion is used in the agreement, and regardless of

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whether the agreement is contingent on another factor, such as receipt of payment or a determination of pregnancy.

(2) Scheduling or planning a time to perform an abortion on an individual, regardless of whether the term abortion is used, and regardless of whether the performance is contingent on another factor, such as receipt of payment or a determination of pregnancy.

b. This definition may not be construed to require an abortion procedure actually be initiated for an attempt to occur.

5. "Dismemberment abortion" means, with the purpose of causing the death of an unborn child, to purposely dismember a living unborn child and extract the child one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two rigid levers, slice, crush, or grasp, or any combination of the foregoing, a portion of the unborn child's body to cut or rip it off. The term does not include an abortion that uses suction to dismember the body of the developing unborn child by sucking fetal parts into a collection container. The term includes an abortion in which a dismemberment abortion is used to cause the death of an unborn child and suction is subsequently used to extract fetal parts after the death of the unborn child.

6. "Down syndrome" refers to a chromosome disorder associated with an extra chromosome twenty-one, in whole or in part, or an effective trisomy for chromosome twenty-one.

~~5-7.~~ "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.

~~6-8.~~ "Fertilization" means the fusion of a human spermatozoon with a human ovum.

~~7-9.~~ "Genetic abnormality" means any defect, disease, or disorder that is inherited genetically. The term includes any physical disfigurement, scoliosis, dwarfism, Down syndrome, albinism, amelia, or any other type of physical or mental disability, abnormality, or disease.

~~8-10.~~ "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.

~~9-11.~~ "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.

~~10-12.~~ "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.

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14-13. "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.

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- ~~12.14.~~ "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 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 she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.
- ~~13.15.~~ "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.
- ~~14.16.~~ "Postfertilization age" means the age of the unborn child as calculated from fertilization.
- ~~15.17.~~ "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.
- ~~16.18.~~ "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.
- ~~17.19.~~ "Purposely" means, with respect to a material element of an offense:
- a. If the element involves the nature of the individual's conduct or a result thereof, it is the individual's conscious objective to engage in conduct of that nature or to cause such a result.
 - b. If the element involves the attendant circumstances, the individual is aware of the existence of the circumstances or the individual believes or hopes the circumstances exist.
- ~~20.~~ "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.
- ~~18.21.~~ "Serious health risk to the unborn child's mother" means, in reasonable medical judgment, the child's mother has a condition that so complicates the mother's medical condition that it necessitates the abortion of the mother's pregnancy to avert the mother's death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. This definition does not include a condition based on a claim or diagnosis that the woman will engage in conduct which the woman intends to result in the woman's death or in substantial and irreversible physical impairment of a major bodily function.
- ~~22.~~ "Unborn child" means the offspring of human beings from conception until birth.

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

24. "Woman" means a female human being, regardless of whether the woman has reached the age of majority.

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

Prohibition on human dismemberment abortion - Penalty - Cause of Action.

1. Notwithstanding any other provision of law, it is unlawful for an individual to purposely perform or attempt to perform a dismemberment abortion and thereby kill an unborn child unless necessary to prevent serious health risk to the unborn child's mother.
2. An individual accused in any proceeding of unlawful conduct under subsection 1 may seek a hearing before the North Dakota board of medicine on whether the dismemberment abortion was necessary to prevent serious health risk to the unborn child's mother. The findings of the board are admissible on that issue at any trial in which such unlawful conduct is alleged. Upon a motion of the individual accused, the court shall delay the beginning of the trial for not more than thirty days to permit the hearing to take place.
3. A woman upon whom an abortion is performed or attempted to be performed is not liable for performing or attempting to perform a dismemberment abortion. A nurse, technician, secretary, receptionist, or other employee or agent who is not a physician but who acts at the direction of a physician, and a pharmacist or other individual who is not a physician but who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician, is not liable for performing or attempting to perform a dismemberment abortion.
4. This section does not prevent abortion for any reason including rape and incest by any other method, unless otherwise prevented by law.
5. A cause of action for injunctive relief against an individual who has performed or attempted to perform a dismemberment abortion in violation of subsection 1 may be maintained by:
 - a. A woman upon whom a dismemberment abortion was performed or attempted to be performed.
 - b. An individual who is the spouse, parent, or guardian of, or a current or former licensed health care provider of, a woman upon whom a dismemberment abortion was performed or attempted to be performed.
 - c. A prosecuting attorney with appropriate jurisdiction.
6. The injunction must prevent the defendant from performing or attempting to perform further dismemberment abortions in violation of subsection 1.

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7. A cause of action for civil damages against an individual who has performed a dismemberment abortion in violation of subsection 1 may be maintained by:
 - a. Any woman upon whom a dismemberment abortion has been performed in violation of subsection 1.
 - b. The father of the unborn child, if married to the woman at the time the dismemberment abortion was performed.
 - c. If the woman had not attained the age of eighteen years at the time of the dismemberment abortion or has died as a result of the abortion, the maternal grandparents of the unborn child.
8. Damages may not be awarded to a plaintiff if the pregnancy resulted from criminal conduct of the plaintiff.
9. Damages awarded in such an action include:
 - a. Money damages for all injuries, psychological and physical, occasioned by the dismemberment abortion.
 - b. Statutory damages equal to three times the cost of the dismemberment abortion.
10. If judgment is rendered in favor of the plaintiff in an action described in subsection 5 or subsection 7, the court also shall render judgment for reasonable attorney fees in favor of the plaintiff against the defendant.
11. If judgment is rendered in favor of the defendant in an action described in subsection 5 or subsection 7, and the court finds the plaintiff's suit was frivolous and brought in bad faith, the court shall render judgment for reasonable attorney fees in favor of the defendant against the plaintiff.
12. Attorney fees may not be assessed against the woman upon whom an abortion was performed or attempted to be performed except in accordance with subsection 11.
13. It is a class C felony for an individual to willingly perform an abortion in violation of subsection 1.
14. In every civil, criminal, or administrative proceeding or action brought under this section, the court shall rule whether the identity of any woman upon whom an abortion has been performed or attempted to be performed must be preserved from public disclosure if the woman does not give consent to disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining the woman's anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. Each order must be accompanied by specific written findings explaining why the anonymity of the woman should be preserved, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted to be

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performed, anyone other than a public official who brings an action under subsection 5 or subsection 7 shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

15. This section may not be construed as creating or recognizing a right to abortion, nor a right to a particular method of abortion.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1546

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 14-02.1 of the North Dakota Century Code, relating to the prohibition on human dismemberment abortion; to amend and reenact section 14-02.1-02 of the North Dakota Century Code, relating to abortion-related definitions; to provide a penalty; and to provide a contingent effective date.

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. "Attempt to perform a dismemberment abortion" means to do or omit to do anything that, under the circumstances as the actor believes the circumstances to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in the actor performing an abortion.
 - a. A substantial step includes:
 - (1) Agreeing with an individual to perform an abortion on the individual or on some other individual, regardless of whether the term abortion is used in the agreement, and regardless of

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whether the agreement is contingent on another factor, such as receipt of payment or a determination of pregnancy.

(2) Scheduling or planning a time to perform an abortion on an individual, regardless of whether the term abortion is used, and regardless of whether the performance is contingent on another factor, such as receipt of payment or a determination of pregnancy.

b. This definition may not be construed to require an abortion procedure actually be initiated for an attempt to occur.

5. "Dismemberment abortion" means, with the purpose of causing the death of an unborn child, to purposely dismember a living unborn child and extract the child one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two rigid levers, slice, crush, or grasp, or any combination of the foregoing, a portion of the unborn child's body to cut or rip it off. The term does not include an abortion that uses suction to dismember the body of the developing unborn child by sucking fetal parts into a collection container. The term includes an abortion in which a dismemberment abortion is used to cause the death of an unborn child and suction is subsequently used to extract fetal parts after the death of the unborn child.

6. "Down syndrome" refers to a chromosome disorder associated with an extra chromosome twenty-one, in whole or in part, or an effective trisomy for chromosome twenty-one.

~~5-7.~~ "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.

~~6-8.~~ "Fertilization" means the fusion of a human spermatozoon with a human ovum.

~~7-9.~~ "Genetic abnormality" means any defect, disease, or disorder that is inherited genetically. The term includes any physical disfigurement, scoliosis, dwarfism, Down syndrome, albinism, amelia, or any other type of physical or mental disability, abnormality, or disease.

~~8-10.~~ "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.

~~9-11.~~ "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.

~~10-12.~~ "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.

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14.13. "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.

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- ~~12~~.14. "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 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 she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.
- ~~13~~.15. "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.
- ~~14~~.16. "Postfertilization age" means the age of the unborn child as calculated from fertilization.
- ~~15~~.17. "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.
- ~~16~~.18. "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.
- ~~17~~.19. "Purposely" means, with respect to a material element of an offense:
- a. If the element involves the nature of the individual's conduct or a result thereof, it is the individual's conscious objective to engage in conduct of that nature or to cause such a result.
 - b. If the element involves the attendant circumstances, the individual is aware of the existence of the circumstances or the individual believes or hopes the circumstances exist.
- ~~20~~. "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.
- ~~18~~.21. "Serious health risk to the unborn child's mother" means, in reasonable medical judgment, the child's mother has a condition that so complicates the mother's medical condition that it necessitates the abortion of the mother's pregnancy to avert the mother's death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. This definition does not include a condition based on a claim or diagnosis that the woman will engage in conduct which the woman intends to result in the woman's death or in substantial and irreversible physical impairment of a major bodily function.
- ~~22~~. "Unborn child" means the offspring of human beings from conception until birth.

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- 19.23. "Viable" means the ability of an unborn child to live outside the mother's womb, albeit with artificial aid.
24. "Woman" means a female human being, whether or not the woman has reached the age of majority.

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

Prohibition on human dismemberment abortion - Penalty - Cause of Action.

1. Notwithstanding any other provision of law, it is unlawful for an individual to purposely perform or attempt to perform a dismemberment abortion and thereby kill an unborn child unless necessary to prevent serious health risk to the unborn child's mother.
2. An individual accused in any proceeding of unlawful conduct under subsection 1 may seek a hearing before the North Dakota board of medicine on whether the dismemberment abortion was necessary to prevent serious health risk to the unborn child's mother. The findings of the board are admissible on that issue at any trial in which such unlawful conduct is alleged. Upon a motion of the individual accused, the court shall delay the beginning of the trial for not more than thirty days to permit the hearing to take place.
3. A woman upon whom an abortion is performed or attempted to be performed is not liable for performing or attempting to perform a dismemberment abortion. A nurse, technician, secretary, receptionist, or other employee or agent who is not a physician but who acts at the direction of a physician, and a pharmacist or other individual who is not a physician but who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician, is not liable for performing or attempting to perform a dismemberment abortion.
4. This section does not prevent abortion for any reason including rape and incest by any other method, unless otherwise prevented by law.
5. A cause of action for injunctive relief against an individual who has performed or attempted to perform a dismemberment abortion in violation of subsection 1 may be maintained by:
 - a. A woman upon whom a dismemberment abortion was performed or attempted to be performed.
 - b. An individual who is the spouse, parent, or guardian of, or a current or former licensed health care provider of, a woman upon whom a dismemberment abortion was performed or attempted to be performed.
 - c. A prosecuting attorney with appropriate jurisdiction.
6. The injunction must prevent the defendant from performing or attempting to perform further dismemberment abortions in violation of subsection 1.

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7. A cause of action for civil damages against an individual who has performed a dismemberment abortion in violation of subsection 1 may be maintained by:
 - a. Any woman upon whom a dismemberment abortion has been performed in violation of subsection 1.
 - b. The father of the unborn child, if married to the woman at the time the dismemberment abortion was performed.
 - c. If the woman had not attained the age of eighteen years at the time of the dismemberment abortion or has died as a result of the abortion, the maternal grandparents of the unborn child.
8. Damages may not be awarded to a plaintiff if the pregnancy resulted from criminal conduct of the plaintiff.
9. Damages awarded in such an action shall include:
 - a. Money damages for all injuries, psychological and physical, occasioned by the dismemberment abortion.
 - b. Statutory damages equal to three times the cost of the dismemberment abortion.
10. If judgment is rendered in favor of the plaintiff in an action described in subsection 5 or subsection 7, the court also shall render judgment for reasonable attorney fees in favor of the plaintiff against the defendant.
11. If judgment is rendered in favor of the defendant in an action described in subsection 5 or subsection 7, and the court finds the plaintiff's suit was frivolous and brought in bad faith, the court shall render judgment for reasonable attorney fees in favor of the defendant against the plaintiff.
12. Attorney fees may not be assessed against the woman upon whom an abortion was performed or attempted to be performed except in accordance with subsection 11.
13. It is a class C felony for an individual to willingly perform an abortion in violation of subsection 1.
14. In every civil, criminal, or administrative proceeding or action brought under this section, the court shall rule whether the identity of any woman upon whom an abortion has been performed or attempted to be performed must be preserved from public disclosure if the woman does not give consent to disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining the woman's anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. Each order must be accompanied by specific written findings explaining why the anonymity of the woman should be preserved, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted to be

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performed, anyone other than a public official who brings an action under subsection 5 or subsection 7 shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

15. This section may not be construed as creating or recognizing a right to abortion, nor a right to a particular method of abortion.

SECTION 3. CONTINGENT EFFECTIVE DATE. This Act becomes effective on the date the attorney general certifies to the legislative council the United States Supreme Court, based upon the appeal of West Alabama Women's Center v. Miller, 900 F. 3d 1310 (11th Cir. 2018), has issued a majority decision finding dismemberment abortions to be unconstitutional."

Renumber accordingly

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A.C.A. § 20-16-1803

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Current through all laws of the 2018 Fiscal Session and 2018 Second Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission.

Arkansas Code Annotated Title 20 Public Health And Welfare Subtitle 2. Health And Safety Chapter 16 Reproductive Health Subchapter 18-- Arkansas Unborn Child Protection from Dismemberment Abortion Act

20-16-1803. Ban on **dismemberment abortion**.

(a) A person shall not purposely perform or attempt to perform a **dismemberment abortion** and thereby kill an unborn child unless it is necessary to prevent a serious health risk to the pregnant woman.

(b)

(1) A person who is accused of violating subsection (a) of this section may seek a hearing before the Arkansas State Medical Board regarding whether the **dismemberment abortion** was necessary to prevent a serious health risk to the pregnant woman.

(2) The findings of the board are admissible in any court proceedings under this subchapter.

(3) Upon a motion by the person who is accused of violating subsection (a) of this section, a court shall delay the beginning of a trial for no more than thirty (30) days to permit a hearing under subdivision (b)(1) of this section.

(c) The following individuals are excluded from liability under this subchapter:

(1) A woman who receives or attempts to receive a **dismemberment abortion**;

(2) A nurse, technician, secretary, receptionist, or other employee or agent who is not a physician but acts at the direction of a physician; and

(3) A pharmacist or other individual who is not a physician but who fills a prescription or provides instruments or materials used in a **dismemberment abortion** to the physician or at the direction of the physician.

(d) This subchapter does not prohibit an **abortion** by any other method for any reason, including rape or incest.

History

Acts 2017, No. 45, § 1.



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Arkansas Code Annotated Title 20 Public Health And Welfare Subtitle 2. Health And Safety Chapter 16 Reproductive Health Subchapter 18-- Arkansas Unborn Child Protection from Dismemberment Abortion Act

20-16-1804. Civil remedies -- Attorney's fees.

(a) (1) A cause of action for injunctive relief against a person who has purposely violated this subchapter may be maintained by:

(A) The woman who receives or attempted to receive a **dismemberment abortion** in violation of this subchapter;

(B) A person who is the spouse, parent, or legal guardian of the woman who receives or attempted to receive a **dismemberment abortion** in violation of this subchapter; or

(C) A current or former licensed healthcare provider of the woman who receives or attempted to receive a **dismemberment abortion** in violation of this subchapter.

(2) The injunction shall prevent the **abortion** provider from performing or attempting to perform further **dismemberment abortions** in violation of this subchapter.

(b) (1) A cause of action for civil damages against a person who has purposely violated this subchapter may be maintained by:

(A) The woman who receives a **dismemberment abortion** in violation of this subchapter;

(B) The father of the unborn child, if the father is married to the woman at the time the **dismemberment abortion** was performed in violation of this subchapter; or

(C) If the woman who received a **dismemberment abortion** in violation of this subchapter is a minor or has died as a result of the **dismemberment abortion**, the parents or legal guardians of the woman who received a **dismemberment abortion** in violation of this subchapter.

(2) Civil damages shall not be awarded to a plaintiff if the pregnancy resulted from the criminal conduct of the plaintiff.

(3) Civil damages shall include:

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(A) Monetary damages for psychological injuries and physical injuries associated with the **dismemberment abortion**; and

(B) Statutory damages equal to three (3) times the cost of the **dismemberment abortion**.

(c)

(1) If judgment is rendered in favor of the plaintiff, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant.

(2) If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney's fee in favor of the defendant against the plaintiff.

(3) A reasonable attorney's fee shall not be assessed against the woman who received a **dismemberment abortion**.

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History

Acts 2017, No. 45, § 1.

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A.C.A. § 20-16-1805

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Arkansas Code Annotated Title 20 Public Health And Welfare Subtitle 2. Health And Safety Chapter 16 Reproductive Health Subchapter 18-- Arkansas Unborn Child Protection from Dismemberment Abortion Act

20-16-1805. Criminal penalty.

A person who violates § 20-16-1803(a) commits a Class D felony.

History

Acts 2017, No. 45, § 1.

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A.C.A. § 20-16-1806**Copy Citation**

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Arkansas Code Annotated Title 20 Public Health And Welfare Subtitle 2. Health And Safety Chapter 16 Reproductive Health Subchapter 18-- Arkansas Unborn Child Protection from Dismemberment Abortion Act

20-16-1806. Protection of privacy in court proceedings.

(a) In a civil proceeding or action brought under this subchapter, the court shall determine whether the anonymity of a woman who received or attempted to receive a **dismemberment abortion** shall be preserved from public disclosure without her written consent.

(b)

(1) Upon determining that the anonymity of a woman who received or attempted to receive a **dismemberment abortion** shall be preserved, the court shall issue an order to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard from public disclosure the identity of the woman who received or attempted to receive a **dismemberment abortion**.

(2) An order under subdivision (b)(1) of this section shall be accompanied by specific written findings explaining:

(A) Why the anonymity of the woman who received or attempted to receive a **dismemberment abortion** should be preserved from public disclosure;

(B) Why the order is essential to that end;

(C) How the order is narrowly tailored to serve that end; and

(D) Why no reasonable, less restrictive alternative exists.

(3) In the absence of written consent of the woman who received or attempted to receive a **dismemberment abortion**, anyone other than a public official who brings an action under § 20-16-1804 shall bring the action under a pseudonym.

(4) This subsection does not conceal from the defendant the identity of the plaintiff or of a witness.

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History

Acts 2017, No. 45, § 1.

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A.C.A. § 20-16-1807

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Arkansas Code Annotated Title 20 Public Health And Welfare Subtitle 2. Health And Safety Chapter 16 Reproductive Health Subchapter 18-- Arkansas Unborn Child Protection from Dismemberment Abortion Act

20-16-1807. Construction.

This subchapter does not:

- (1) Create or recognize a right to **abortion**;
- (2) Create or recognize a right to a particular method of **abortion**; or
- (3) Make lawful an **abortion** that is currently unlawful under any law of this state.

History

Acts 2017, No. 45, § 1.

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Testimony in Favor of House Bill 1546

Mark Jorritsma, Executive Director
Family Policy Alliance of North Dakota
March 4, 2019

Good morning Madam Chair Larson and honorable members of the Senate Judiciary Committee. My name is Mark Jorritsma and I am the Executive Director of Family Policy Alliance of North Dakota. I am testifying in favor of House Bill 1546 and respectfully request that you render a "DO PASS" on this bill.

This bill would prohibit the dismemberment of a live preborn child as a method of abortion. I will not go into detail regarding what dismemberment means; the bill quite vividly paints a picture of that. However, I would urge the committee to consider this. Shouldn't our laws be up-to-date with the latest advancements in science and our ability to show compassion toward one another? An abortion procedure that tears apart a live preborn child, limb by limb, is a gruesome and inhumane practice that has no place in modern medicine.

There is no longer a debate about whether a preborn child is alive. The only debate remaining is whether that preborn child is a life worthy of protection. Family Policy Alliance of North Dakota believes that all life should be cherished, and that to permit this type of brutal procedure on a living child simply because she is voiceless and powerless, is to show the most flawed and unfeeling parts of humanity.

Our laws need to catch up with science. Our country's medical experts are achieving groundbreaking results in the field of fetal surgery—providing anesthesia to preborn babies at 18 weeks gestation. Yet we allow this brutal abortion procedure to be performed on a live preborn baby at 20 weeks, or older under some circumstances. This legislation does not prohibit the procedure entirely; HB 1546 simply compassionately directs doctors performing this procedure to do so only on a preborn child who is no longer alive.

Further, because traumatic dismemberment abortions are typically performed when a baby is too large to be removed as a whole, the woman herself is at much higher risk of suffering complications or even death as a result. Even Planned Parenthood, the nation's largest abortion provider, admits that abortion becomes far riskier in the later stages of pregnancy. The risk of serious complications from abortion jumps to over 76% at 21 weeks and women who undergo late-term abortions are 35 times more likely to die from an abortion at 20 weeks than in the first trimester. Given that this procedure adds another layer of risk to a situation where the mother is already at greater risk, the state has the right to protect the emotional and mental health of the mother against brutal procedures and to regulate this type of dismemberment (*Gonzales v Carhart*, at 158).

To summarize, this bill will not only stop the killing of innocent preborn children in a ghastly manner, but will also help reduce the increased risk of mental and emotional distress to the mother from this type of procedure. It does not impeded access to abortion in any way. For these and similar reasons, I respectfully request that you vote House Bill 1546 out of committee with a "DO PASS" recommendation.

Thank you for the opportunity to testify and I stand for any questions you may have.

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March 4, 2019
Senate Judiciary Committee
Testimony in Support of HB 1546

Madam Chair and members of the committee, my name is Linda Thorson, and I am the State Director of Concerned Women for America (CWA) of North Dakota. CWA is the largest public policy women's organization in the nation. We heartily support HB1546 the prohibition on human dismemberment abortion.

It is doubtful anyone is eager to hear about abortion procedures; however, gruesome truth has the power to bring wisdom when deciding such matters on behalf of the citizens of our great state. Today, CWA of North Dakota is honored to speak on behalf of women and unborn children by giving testimony in support of HB1546 the human dismemberment abortion ban.

Thus far, the Supreme Court has not outlawed abortion outright; however, they have ruled that certain procedures are not to be used in the process of abortion. One favorable ruling was the upholding of the ban on partial-birth abortion which protects those most vulnerable, the unborn, by banning a particularly brutal and inhumane abortion method in which the child is removed from the womb feet-first and delivered part way before being killed.

There is yet another extremely horrific, inhumane abortion procedure that we must not allow ever to be done in North Dakota, dismemberment.

Dismemberment abortion means, with the purpose of causing the death of an unborn child, knowingly dismembering a living unborn child and extracting such unborn child one piece at a time from the uterus through the use of clamps, grasping forceps, tongs, scissors or similar instruments that, through the convergence of two rigid levers, slice, crush or grasp a portion of the unborn child's body in order to cut or rip it off.¹

This method of abortion takes place starting in the second trimester, week 13 – 27. Because North Dakota allows abortion up to only 20 weeks, let's talk about the development of the baby up to only 20 weeks. The unborn child has a beating heart, brain waves, is startled by loud noises, has learned to breath, can suck its thumb, its eyes move, its bones are hardening, and the baby can feel pain. And, the mother has begun to feel the baby move. This procedure is cruel and barbaric.

Clearly, this procedure is inhumane on multiple levels for both the unborn and their mothers. HB 1546 will protect North Dakota children from ever experiencing this kind of painful death; it will protect the mental and emotional health of women involved in these abortions.

Concerned Women for America of North Dakota urges a "Do Pass" on HB1546.

¹ <https://www.nrlc.org/uploads/stateleg/DismembermentFAQJan15.pdf>

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North Dakota
Right to LIFE



The North Dakota Dismemberment Abortion Ban

Medora Nagle Testimony

March 4, 2019

Madam Chair Larson, Members of the Senate Judiciary Committee, thank you for the opportunity to testify in support of HB 1546, the North Dakota Dismemberment Abortion Ban.

My name is Medora Nagle and I am the Executive Director for North Dakota Right to Life. I am also a board member on the National Right to Life Committee. I have been in these positions for just under three years.

If enacted, this law would protect living unborn children from the dismemberment abortion procedure. This does not ban all D&E abortions, only the ones performed on living unborn children. HB 1546 also has an exception if there is a serious health risk to the unborn child's mother.

Dismemberment abortions are a common and brutal type of D&E abortion which involves dismembering a living unborn child piece by piece. This horrific abortion is typically performed on living, developing, unborn children.

We already know that by 18-21 days following fertilization, the unborn child has a beating heart and is making his/her own blood, often a different blood type than their mother's. At six weeks, the baby has active brain waves, as well as legs, arms, eyelids, toes, and fingerprints. By eight weeks, every organ (kidneys, liver, brain, etc.) is in place, and even teeth and fingernails have developed.

Dismemberment abortions typically occur after the baby has met these milestones.

I encourage you to make a "DO PASS" recommendation so we can make North Dakota the 11th state to protect living unborn children from this gruesome abortion procedure.

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Testimony in Support of HB 1546
Frances Whitman
Collegians for Life, University of Mary
March 4th, 2019

Good afternoon madam chair and members of the Senate Judiciary Committee. My name is Frances Whitman and I represent Collegians for Life at the University of Mary. We are the local chapter of Students for Life of America and we have over 300 members in our organization at University of Mary. I am testifying on behalf of our organization and its students for you to please render a "DO PASS" on House Bill 1546.

As little as may be the desire to speak on something such as abortion and the process, there is a desperate need to speak on this matter, as so many of my generation have been lost to abortion and been stripped of their constitutional right to life. Abortion is anti-reproduction, anti-science, unethical, inhumane, and the statistics are horrifying. As a college student and a member of the Pro-Life Generation, I see a great need to speak on HB 1546, the human dismemberment abortion ban.

Therefore, here is what the bill would do: I suggest The bill will do the following:

* Prevent dismemberment abortions which are the deliberate dismembering of a living unborn child, piece by piece feet first, little by little from the womb, with the very purpose of this the death of the unborn child. The method used for this includes the use of tools to slice, crush, and grasp parts on the unborn babies' body such as the head, arms, legs, and spinal cord.

* Help correctly place the emphasis of the sciences and medicine on restoring the human person back to order, furthering the understanding of the human body, and the best way to keep it healthy; dismemberment abortions are gruesome and completely dehumanizing. During the second trimester of a woman's pregnancy, dilation is induced, and the child is removed from the womb piece by piece, and by this time the baby can feel pain. This is destruction, not restoration of a person, as medicine strive to accomplish.

*Millions of unborn babies have been lost though dismemberment abortions, babies that would be my peers This wrong and promotes a culture of death.

For these reasons and more, I ask that you please vote House Bill 1546 out of committee with a "DO PASS" recommendation. I ask as a student going into the medical field, and as a young woman who will soon take her place in society, thanks to the constitutional right to life. Thank you for the opportunity to testify and I am now happy to stand for any questions

Introduced by: Representatives Simons, Becker, Ertelt, Magrum, Rohr, Toman
Senators Kannianen, O. Larsen, Luick, Schaible, Wanzek

HB 1546: Human Dismemberment Abortion

Hello, my name is Ashley Willis and I am a Social Work student at the University of Mary. First off, I would like to say thank you for hearing my testimony today as I speak on a topic that is sensitive to not just North Dakota, but around the world, abortion. HB 1546 Relating to prohibition on human dismemberment abortion; to provide a penalty; and to provide an effective date. The definition of dismemberment is as follows: "human dismemberment abortion" means intentionally dismembering a living unborn child and extracting the unborn child one piece at a time from a uterus, with the purpose of causing the death of an unborn child, through use of clamps, grasping forceps, tongs, scissors, or similar instruments, through the convergence of two rigid levers, slice, crush, or grasp the head, arm, leg, spinal cord, internal organ, or other portions of the unborn child's body to cut or rip off. The procedure is as brutal as it sounds (Davidson, John, 2017).

Unlawfully, dismembering a baby can be compared to a murder from a crime scene. Dismemberment can be dangerous if parts of the baby are left in the womb after the procedure has been completed, not only does it cause harm to the baby but also to the mother. Doctors are supposed to be there for the aide and survival of their patients- how are doctors aiding in the survival of their patient if they are tearing one of their patients apart?

An unborn baby can sense and feel by eight weeks (Minnesota Citizens Concerned for Life), being torn apart is not considered humane for any human being. Babies also have a lower pain threshold than older children or adults.

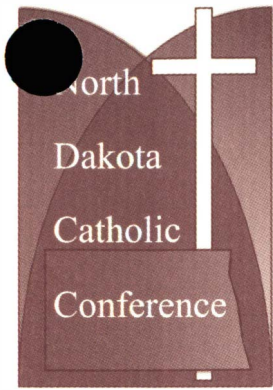
This type of abortion should only be used if a mother or baby has a serious medical condition that requires abortion (such as heart failure or missing an important organ) there are other forms of abortion that can be performed if there is no possible way to save the baby. Other forms of abortion include: medical abortions, or “the pill,” or partial birth abortions. The second type is typically only used if a life is in danger (Lowen, Linda, 2017). Varying by state, abortions are typically not suggested during the third trimester due to protection of life.

New York just passed a bill on being able to have an abortion up to full term. Let’s help reverse this process by first making dismemberment illegal here in North Dakota. On the other hand, Ohio just passed the “Heartbeat” bill where abortion will be illegal once the child’s heartbeat can be heard. “Ohio Right to Life has seen 21 pro-life initiatives become law in the last eight years. All these initiatives have led to abortions decreasing by more than 25% in Ohio, and half of Ohio’s abortion clinics shutting down (Berry, Susan, 2018).

I now stand for questions.

1. Berry, Susan, 2018. Retrieved from: <https://www.breitbart.com/politics/2018/12/25/ohio-bans-dismemberment-abortion>.
2. Davidson, John, 2017. Retrieved from: <http://thefederalist.com/2017/11/09/court-case-texas-exposes-gruesome-reality-dismemberment-abortion>.
3. Lowen, Linda, 2017. Retrieved from: <https://www.thoughtco.com/the-different-types-of-abortion-3534156>.
4. Minnesota Citizens Concerned for Life, 2015. Retrieved from: <https://secure.mccl.org/unborn-babies-can-feel-pain.html>.

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Representing the Diocese of
Fargo and the Diocese of
Bismarck

103 South Third Street
Suite 10
Bismarck ND 58501
701-223-2519
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To: Senate Judiciary Committee
From: Christopher T. Dodson, Executive Director
Subject: HB 1546 - Dismemberment Abortion
Date: March 4, 2019

The North Dakota Catholic Conference supports House Bill 1546 to ban dismemberment abortions.

Every child, at every moment of existence, deserves love and the protection of the law. No one has the right to take innocent human being's life. This is why the official policy of North Dakota is that, between childbirth and abortion, childbirth is to be given preference, encouragement, and support by law and by state action and also why the state recognizes that every abortion will "terminate the life of a whole, separate, unique, living human being." (N.D.C.C. secs. 14-02.3-01; 14-02.1-02.) House Bill 1546 furthers that policy by prohibiting a certain particularly gruesome abortion procedure known as dilation and evacuation.

One of the most erroneous statements about abortion law is the claim that *Roe v. Wade* is settled law. The holding in *Roe* became unsettled almost as soon as it was decided and abortion jurisprudence is constantly in flux. Many issues remain in question and the constitutionality of banning dismemberment abortions has not been determined by the U.S. Supreme Court. It is also not clear if anyone would have standing to challenge HB 1546 in North Dakota since the procedure is not currently being done in the state. That could leave the law intact until and if the U.S. Supreme Court or the Eighth Circuit Court of Appeals renders a conclusive opinion.

We ask for a **Do Pass** recommendation on House Bill 1546.

Testimony to the Senate Judiciary Committee

HB 1546

Andrew Alexis Varvel

March 4, 2019

Madame Chairman Larson and Members of the Committee:

My name is Andrew Alexis Varvel. I live in Bismarck, District 47.

Some people here may ask whether I have any standing at all to talk about abortion. After all, we are talking about a woman's body.

I'm a man. Nobody's perfect.

It may interest you that I was once a fetus. As a former fetus, I have a stake in this matter. As a former fetus, I have a right to talk about this subject. When I was a fetus, I reacted to the environment around me. Even though I wasn't born yet, I had opinions. And as some of you may have guessed, I haven't stopped having opinions. I also doubt I have been the only fetus with opinions. Here are two stories about me.

The day was April 10, 1971. It was the first home game for the St. Louis Cardinals baseball team that season. Due to the wonders of the internet, it is now possible to pin down when that game was. (The San Francisco Giants defeated the St. Louis Cardinals that day, 6-4.) My mother was sitting in the stands while she was in her early sixth month of pregnancy with me. A loud drunk behind her would yell whenever he disagreed with the umpire's call. And whenever that loud drunk yelled, I kicked. My mother's dress flew up into the air every time I reacted to the drunk. My mother felt so embarrassed. She hoped that nobody would notice her – and me. She then felt relief when, by the third inning, the drunk's voice went hoarse. I was born on July 30 that year.

● A few weeks later, my mother wanted to do some typing. Knowing her, she was probably trying to type some recipes. She would type, and then I would kick. She would stop typing and then I would stop kicking. When she tried to type again, I would then kick again. That routine got repeated a few times. It soon became obvious to my mother that I disliked the clickety-clack sound of a typewriter. And yes, my mother felt exasperated that I was keeping her from getting her work done.

In retrospect, this is believable. I distinctly remember how I intensely disliked the clickety-clack sound of a typewriter when I was a toddler.

Planned Parenthood calls human dismemberment abortion, quote, “a common method of second-trimester abortion.” Think about that.

● Still, while I am broadly supportive of House Bill 1546, I recommend that you add this amending language to make this bill even better.

Firstly, we need to replace section 2 with an emergency clause.

Human dismemberment abortion must be banned as soon as possible. To quote the late Martin Luther King Jr., “We are faced with the fact that tomorrow is today. We are confronted with the fierce urgency of now. In this unfolding conundrum of life and history there is such a thing as being too late. Procrastination is still the thief of time.”

● Secondly, we need to improve the language in this bill to make it more difficult for abortion advocates to challenge this law in court. We should adapt already existing laws against animal cruelty so we can protect unborn children from torture. So long as killing unborn children is permitted, the State of North Dakota ought to make sure that only the most humane methods of euthanasia are used to kill unborn children.

- Pentobarbital is extensively used in the euthanasia of animals. According to People for the Ethical Treatment of Animals, "PETA, The American Veterinary Medical Association, and the Humane Society of the United States concur that an intravenous injection of sodium pentobarbital administered by a trained professional is the kindest, most compassionate method of euthanizing animals." Texas and Missouri use a lethal injection of pentobarbital to execute prisoners.

Planned Parenthood's internal proprietary documentation states that it could take anywhere from several minutes to an entire day for digoxin to kill a fetus. (I am prohibited from reprinting it, but here is the link.)

<http://patients.pposbc.org/education/documents/IFC-503-ENG-Digoxin.pdf>

- If a federal or state government killed a death row inmate with a lethal injection that took 24 hours to kill him, that would be a national scandal. It would be scandal if a stray cat were killed that way!

Yes, we need to understand that under our Constitution as presently interpreted by the United States Supreme Court, unviable fetuses are regarded as beings of an inferior order, so far inferior that they have no rights that adults are bound to respect. Still, couldn't we at least apply existing statutes against animal cruelty to protect unborn children?

We must not allow visions of some future repeal of *Roe v. Wade* to keep us from doing what is right in the here and now. I doubt that fetuses particularly care about whether they are called humans or animals, fetuses or unborn children, but I am reasonably sure that fetuses are beings who do care about whether they are getting tortured to death.

My focus is on protecting fetuses from cruelty. This testimony is not for life but rather for peaceful death – not exactly a high ethical bar.

Planned Parenthood claims about House Bill 1546, **“This bill is not based on a desire to improve women's health, but rather aims to eliminate access to abortion as part of a larger anti-abortion strategy to ban abortion method by method.”**

(The bold print is theirs.)

I speak for myself. I speak only for myself.

The amending language I am proposing clearly authorizes the use of sodium pentobarbital for killing unborn children. I support banning human dismemberment abortion. **My** support for this ban must **not** be considered to be part of any international conspiracy to deprive a mother of her constitutionally protected right to kill her unviable unborn children, or to ensure that women stay barefoot and pregnant, or to promote some weird anti-woman dystopia where fashion police force vulnerable women to wear red robes.

I very much doubt that *Roe v. Wade* will be overturned within my lifetime. If overturning *Roe v. Wade* were truly the goal of the pro-life movement, it would do well to listen to Justice Rehnquist's famous dissent in *Planned Parenthood v. Casey*. He wrote, *“The common law which we inherited from England made abortion after 'quickening' an offense.”* If more families shared their stories about how unborn children behave in the womb, we might have a different social consensus about what abortion – or killing fetuses – really means.

According to “Pain Management in Abortion Care” presented by Nathalie Kapp, MD, MPH in October 2014 to FIAPAC, International

Federation of Professional Abortion and Contraception Associates, she states, "Almost **all** women having abortions report pain!" She also states that during a "medical abortion", "75% women experience pain of severity requiring narcotics".

Requiring either uterine anesthesia or the use of sodium pentobarbital for abortions is neither unreasonable nor an undue burden, considering these circumstances. Please note the legislative finding in Oregon Revised Statutes (167.305) saying, "Animals are sentient beings capable of experiencing pain, stress and fear." It also finds, "Animals should be cared for in ways that minimize pain, stress, fear, and suffering."

The same could also be said for unborn children.

When we talk about fetuses, let's not talk about them in abstract terms. Fetuses are living beings who may have their own opinions about loud noises. I was once a fetus. If a fetus reacts to loud noises, there is a good chance that he or she will feel pain while getting dismembered.

I am requesting improvements from the Senate Judiciary Committee to House Bill 1546. I like the concept behind this bill, but it comes across to me as basically toothless. Let's ensure that human dismemberment abortion gets banned as soon as possible in the here and now.

Thank you. I am now open for questions from the Committee.

Andrew Alexis Varvel
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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1546

Page 1, line 2, after "abortion;" insert "reduce pain for unborn children as they get killed;"

Page 1, line 3, after "to" replace "provide an effective date" with "declare an emergency"

Page 1, after line 19, insert:

4. Any person that intentionally engages in fetal cruelty is guilty of a class C felony.
5. For the purposes of this chapter, "fetal cruelty" means
 - a. Breaking a fetus's bones;
 - b. Causing the prolonged impairment of a fetus's health;
 - c. Mutilating a fetus; or
 - d. Physically torturing a fetus.

Page 1, line 20, after "2." replace the remainder of the bill with "A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

Uterine anesthesia or sodium pentobarbital mandatory for abortions – Penalty.

1. The attending physician shall perform all abortions after six weeks with either
 - (1) a dose of injected sodium pentobarbital of sufficient quantity to ensure a painless death for the unborn child; or
 - (2) uterine anesthesia unless, in the opinion of the attending physician, general anesthesia is medically appropriate to ensure that the unborn child does not suffer pain from the process of killing the unborn child.
2. Any physician who performs an abortion in violation of this section is guilty of a class A misdemeanor.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

**Testimony of Tammi Kromenaker
Director of Red River Women's Clinic
In Opposition to House Bill 1546
March 4, 2019**

Senator Larson and Members of the Senate Judiciary Committee:

Chairwoman Larson, members of the Senate Judiciary Committee, thank you for the opportunity to provide this written testimony today regarding House Bill 1546.

My name is Tammi Kromenaker and I am the Clinic Director of Red River Women's Clinic. I strongly urge you to oppose HB 1546, a bill that prohibits doctors from using their best medical judgment to provide abortion care in the manner they believe is safest and most appropriate for their patients.

Red River Women's Clinic is the only abortion provider in the state of North Dakota and has provided safe, high-quality reproductive health care, including abortion services, to women in North Dakota for over 20 years. We are members in good standing of the National Abortion Federation and maintain the highest quality standards for our practice. Our mission is to not only provide medically safe reproductive healthcare services, but to also provide those services in an emotionally supportive environment.

Red River Women's Clinic provides abortion services to women from a broad range of backgrounds. Each year, approximately sixty percent of our patients are already mothers, with at least one child at home. These women have personal experiences and understandings of pregnancy and parenting and are making careful decisions about what is best for them and their families. I have experienced firsthand the thoughtful decision-making that is an integral part of the process for all women seeking abortion services.

There is no medical reason to ban this procedure; in fact, this method ban would endanger women's health. It would remove doctors' ability to use their best medical judgment, and may force them to use additional, untested procedures that can cause health risks, discomfort, and pain. Respected medical groups like the American College of Obstetricians and Gynecologists (ACOG) oppose bans like this. ACOG has stated: "These restrictions represent legislative interference at its worst: doctors will be forced, by ill-advised, unscientifically motivated policy, to provide lesser care to patients."ⁱ

North Dakota women deserve the highest level of medical care. They deserve to benefit from trusted and tested medical procedures.

Every woman's situation is unique, and there are many reasons why a woman may seek abortion care later in pregnancy, including barriers to access. At Red River Women's Clinic, we regularly have patients who travel 2 or 6 hours for their care. We have seen patients from as far away as Williston. Travel arrangements are often a significant obstacle, which can delay a woman's

ability to have an abortion. Patients also face financial challenges in accessing abortion and therefore take time to gather enough funds for their care. Delays in seeking services can also be a result of difficulty in finding childcare as well as arranging for time off from work.

Although the vast majority of abortions in North Dakota take place before 12 weeks, every woman's situation is different. Life does not always go as planned, and some women may not find out they are pregnant until their pregnancy has progressed. Creating additional hurdles for these women, by seeking to ban a safe method of abortion, is cruel and irresponsible. This is just one more example of North Dakota politicians trying to push safe and affordable abortion care out of reach.

I urge you to oppose this bill. This bill has nothing to do with protecting women's health. Abortion is one of the safest medical procedures in the United States. Furthermore, the decision to have an abortion is a private one, which a woman makes with guidance from her doctor. A woman's health, not politics, is what must guide important medical decisions at every point in pregnancy.

Thank you, again, for the opportunity to provide this written testimony.

Tammi Kromenaker

Clinic Director
Red River Women's Clinic

¹American College of Obstetricians and Gynecologists, *Statement Regarding Abortion Procedure Bans* (October, 2015)
<https://www.acog.org/About-ACOG/News-Room/Statements/2015/ACOG-Statement-Regarding-Abortion-Procedure-Bans?p=1>.

ACOG

THE AMERICAN CONGRESS OF
OBSTETRICIANS AND GYNECOLOGISTS

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FROM: The North Dakota Section of ACOG
DATE: March 1, 2019
RE: North Dakota House Bill 1546

The North Dakota Section of the American College of Obstetricians and Gynecologists (ACOG) opposes ND **HB 1546**.

When the life of a pregnant woman is in danger, the safest and fastest option to terminate a pregnancy between fourteen and twenty weeks gestation is often a dilation and evacuation (D&E) procedure.

Efforts to ban D&E procedures will limit the ability of physicians to provide women with the medically appropriate care they need, and will likely result in worsened outcomes and increased complications. These bans will create confusion, thus putting women at risk and, in certain cases, actually leading to abortion later in pregnancy.

Medical decisions about reproductive health – especially given the complex circumstances that often accompany high risks pregnancies – should be made by each individual woman in consultation with those she trusts most, including her ob-gyn – not politicians.

ACOG supports guaranteed access to the full array of clinical and reproductive services appropriate to each individual woman's needs throughout her life and recognizes that patients and families with input from their doctors should make decisions regarding each person's unique healthcare needs, not the government. Bills like HB 1546 represent dangerous political interference in patient care and compromise patient safety.

The American College of Obstetricians and Gynecologists is the nation's leading group of physicians providing health care for women. The College strongly advocates for quality health care for women, maintains the highest standards of clinical practice and continuing education of its members, promotes patient education, and increases awareness among its members and the public of the changing issues facing women's health care. The American Congress of Obstetricians and Gynecologists is its companion organization.

####

The American College of Obstetricians and Gynecologists (The College), a 501(c)(3) organization, is the nation's leading group of physicians providing health care for women. As a private, voluntary, nonprofit membership organization of approximately 55,000 members, The College strongly advocates for quality

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health care for women, maintains the highest standards of clinical practice and continuing education of its members, promotes patient education, and increases awareness among its members and the public of the changing issues facing women's health care. The American Congress of Obstetricians and Gynecologists (ACOG), a 501(c)(6) organization, is its companion organization. www.acog.org

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ACOG Statement Regarding Abortion Procedure Bans

October 9, 2015

Washington, DC – The following is a statement from the American Congress of Obstetricians and Gynecologists (ACOG):

"The predominant approach to abortion after 13 weeks, commonly referred to as 'dilation and evacuation,' is evidence-based and medically preferred because it results in the fewest complications for women compared to alternative procedures.

"Efforts to ban specific types of procedures will limit the ability of physicians to provide women with the medically appropriate care they need, and will likely result in worsened outcomes and increased complications. These legislative efforts are based on nonmedical, subjective language. This language will create confusion, thus putting women at risk and, in certain cases, actually leading to abortion later in pregnancy.

"Quite simply, these restrictions represent legislative interference at its worst: doctors will be forced, by ill-advised, unscientifically motivated policy, to provide lesser care to patients. This is unacceptable.

"Medical decisions about reproductive health – especially given the complex circumstances that often accompany second trimester abortions – should be made by each individual woman in consultation with those she trusts most, including her ob-gyn – not politicians.

"Ob-gyns regularly see firsthand the reasons why women may need abortion care, as well as the pain that many of these women are in when confronting these decisions. Banning specific abortion procedures would leave physicians unable to provide women with medically appropriate care; this includes women who have made the difficult decision to end pregnancies for reasons including fetal anomalies or other unexpected obstetric outcomes. This is simply cruel.

"Medical care must be guided by sound science and by each patient's individual needs – not by legislative restrictions. We continue to oppose laws that limit the ability of American women to get the reproductive health services that they need and that take medical decisions out of the hands of physicians and their patients."

To read ACOG's Committee Opinion on Access to Abortion, please click [here](#).

The American College of Obstetricians and Gynecologists (The College), a 501(c)(3) organization, is the nation's leading group of physicians providing health care for women. As a private, voluntary, nonprofit membership organization of more than 58,000 members, The College strongly advocates for quality health care for women, maintains the highest standards of clinical practice and continuing education of its members, promotes patient education, and increases awareness among its members and the public of the changing issues facing women's health care. The American Congress of Obstetricians and Gynecologists (ACOG), a 501(c)(6) organization, is its companion organization. www.acog.org

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HB 1546
Senate Judiciary Committee
March 4, 2019

Chairwomen Larsen and the Senate Judiciary Committee. My name is Rebecca Matthews, a resident of Bismarck. I am here in opposition of HB 1546.

I am the mother of six biological children; however, I only have the privilege to have 4 in my home. My twins never took a breath on this earth. But it is because of them- and other families like mine- I have become an advocate for reproductive health and abortion care.

First, I want to speak to the inflammatory language used in this bill to insight shock, disgust, and fear. The proper medical term for this procedure is Dilatation and Evacuation a D&E.

While most abortions are performed during the first trimester, there are various reasons why some women will need an abortion during the second trimester. Some health risks to pregnant women may not become apparent early in pregnancy and identification of fetal anomalies most often occur during the second trimester. Furthermore, increased barriers to abortion such as mandated waiting periods, delays in accessing insurance or funds, and decreased availability of appointments may force some women to obtain abortion care during the second trimester instead of earlier in pregnancy.

I stand here one of those high-risk pregnancy situations. I stand her as a mother that needed abortion services after 20 weeks. At a little over 19 weeks my husband and I sat in a hotel room- many states away from our support system- to decide to terminate one twin to save the other twin. In our discussion we decided to try bedrest for one week, get the amniocentesis results back and see how our little twin was doing. You see, if our smaller twin died it could kill or cause brain damage to her larger sister. Sadly, we lost both twins before our next appointment to decide our babies' fate.

Abortions after 20 weeks count for a little more than 1% of all abortions. These pregnancies are wanted and cherished. These families are living a nightmare. Carrying a baby with a fatal diagnosis to term is equally hard and traumatic. It is NOT people like you sitting in these chairs to decide what nightmare a family must live. This decision was between me, my family, my doctor and my God- not the government.

HB 1546 is not based on a desire to improve women's health, but rather aims to eliminate access to abortion as part of a larger anti-abortion strategy to ban abortion method by method. That is why medical professionals oppose these bills.

According to the American College of Obstetricians and Gynecologists (ACOG), "efforts to ban specific types of procedures will limit the ability of physicians to provide women with the medically appropriate care they need and will likely result in worsened outcomes and increased complications. These legislative efforts are based on nonmedical, subjective language. This language will create confusion, thus putting women at risk and, in certain cases, actually leading to abortion later in pregnancy."¹

HB 1546 prevents physicians from using their best medical judgment when providing abortion care, interfering with the doctor-patient relationship and potentially placing women's health at risk. It is extreme government intrusion in personal medical decisions.

Please vote NO on HB 1546. Thank you.

March 8, 2019

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1546

Page 1, line 9, remove "a living unborn child"

Page 1, line 9, replace "the" with "a living"

Page 1, line 10, remove ", through use of"

Page 1, remove lines 11 through 13

Page 1, line 14, remove "if the fetal body parts are removed by the same instrument, suction, or other means"

Page 1, line 15, remove "Except in the case of a medical emergency, it is a class C felony for an individual to"

Page 1, replace lines 16 through 19 with "An individual may not intentionally perform a human dismemberment abortion unless:

- a. It is a medical emergency.
- b. The unborn child is no longer living.
- c. The procedure is necessary to save the life of the pregnant woman.
- d. A physician recommends the procedure."

Renumber accordingly

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19.1039.02000

FIRST ENGROSSMENT

Sixty-sixth
of North Dakota
Legislative Assembly

ENGROSSED HOUSE BILL NO. 1546

Introduced by

Representatives Simons, Becker, Ertelt, Magrum, Rohr, Toman

Senators Kannianen, O. Larsen, Luick, Schaible, Wanzek

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 prohibition on human dismemberment abortion; to provide a penalty;
3 and to provide an effective date.

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

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

7 **Prohibition on human dismemberment abortion - Penalty.**

8 1. For purposes of this section, "human dismemberment abortion" means intentionally
9 dismembering **a living** unborn child one piece at a time from a uterus, with the purpose of
10 causing the death of an unborn child.

11 2. **An individual may not** intentionally perform a human dismemberment abortion unless:

12 **a. It is a medical emergency**

13 **b. The unborn child is no longer living**

14 **c. The procedure is necessary to save the life of the pregnant woman**

15 **d. A physician recommends the procedure**

16 **SECTION 2. EFFECTIVE DATE.** Section 1 of this Act becomes effective on the date the
17 legislative management approves, by motion, the recommendation of the attorney general to
18 the legislative management that it is reasonably probable this Act would be upheld as
19 constitutional.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1546

Page 1, line 1, remove "a new section to"

Page 1, line 1, replace "14-02.1" with "14-02.7"

Page 1, line 2, after the first semicolon insert "to amend and reenact section 2 of chapter 132 of the 2007 Session Laws, relating to the implementation of the prohibition of the performance of abortions;"

Page 1, replace lines 5 through 19 with:

"**SECTION 1.** Chapter 14-02.7 of the North Dakota Century Code is created and enacted as follows:

14-02.7-01. Prohibition on human dismemberment abortion - Penalty.

1. For purposes of this section, "human dismemberment abortion" means intentionally dismembering a living unborn child and extracting the unborn child one piece at a time from a uterus, with the purpose of causing the death of an unborn child, through use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two rigid levers, slice, crush, or grasp the head, arm, leg, spinal cord, internal organ, or other portion of the unborn child's body to cut or rip it off, regardless if the fetal body parts are removed by the same instrument, suction, or other means.
2. Except in the case of a medical emergency, it is a class C felony for an individual to intentionally perform a human dismemberment abortion.
3. A woman upon whom a human dismemberment abortion is performed or attempted to be performed in violation of subsection 2 may not be prosecuted for a violation of subsection 2 or for conspiracy to violate subsection 2.

Page 1, after line 19, insert:

"**SECTION 2. AMENDMENT.** Section 2 of chapter 132 of the 2007 Session Laws is amended and reenacted as follows:

SECTION 2. EFFECTIVE DATE. This Act becomes effective ~~on the date the legislative council approves by motion the recommendation of the attorney general to the legislative council that it is reasonably probable that this Act would be upheld as constitutional, to the extent permitted, on the thirtieth day following:~~

1. The issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion; or
2. Adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states authority to prohibit abortion.

Page 1, line 20, remove "on the date the"

Page 1, remove lines 21 and 22

Page 1, line 23, replace "constitutional" with ", to the extent permitted, on the thirtieth day following:

1. The issuance of the judgment in any decision of the United States Supreme Court or the United States Court of Appeals for the Eighth Circuit which would allow enforcement of section 1 of this Act;
2. The issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion; or
3. Adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states authority to prohibit abortion"

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1546

Page 1, line 1, remove "a new section to"

Page 1, line 1, replace "14-02.1" with "14-02.7"

Page 1, line 2, after the first semicolon insert "to amend and reenact section 2 of chapter 132 of the 2007 Session Laws, relating to the implementation of the prohibition of the performance of abortions;"

Page 1, replace lines 5 through 19 with:

"**SECTION 1.** Chapter 14-02.7 of the North Dakota Century Code is created and enacted as follows:

14-02.7-01. Prohibition on human dismemberment abortion - Penalty.

1. For purposes of this section, "human dismemberment abortion" means intentionally dismembering a living unborn child and extracting the unborn child one piece at a time from a uterus, with the purpose of causing the death of an unborn child, through use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two rigid levers, slice, crush, or grasp the head, arm, leg, spinal cord, internal organ, or other portion of the unborn child's body to cut or rip it off, regardless if the fetal body parts are removed by the same instrument, suction, or other means.
2. Except in the case of a medical emergency, it is a class C felony for an individual to intentionally perform a human dismemberment abortion.
3. A woman upon whom a human dismemberment abortion is performed or attempted to be performed in violation of subsection 2 may not be prosecuted for a violation of subsection 2 or for conspiracy to violate subsection 2.

Page 1, after line 19, insert:

"**SECTION 2. AMENDMENT.** Section 2 of chapter 132 of the 2007 Session Laws is amended and reenacted as follows:

SECTION 2. EFFECTIVE DATE. This Act becomes effective ~~on the date the legislative council approves by motion the recommendation of the attorney general to the legislative council that it is reasonably probable that this Act would be upheld as constitutional,~~ to the extent permitted, on the thirtieth day following:

1. The issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion; or
2. Adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states authority to prohibit abortion.

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Page 1, line 20, remove "on the date the"

Page 1, remove lines 21 and 22

Page 1, line 23, replace "constitutional" with ", to the extent permitted, on the thirtieth day following:

1. The issuance of the judgment in any decision of the United States Supreme Court or the United States Court of Appeals for the Eighth Circuit which would allow enforcement of section 1 of this Act;
2. The issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion; or
3. Adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states authority to prohibit abortion"

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1546

Page 1, line 20, remove "date the"

Page 1, replace lines 21 through 23 with "thirtieth day after the adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states the authority to prohibit abortion, or on the thirtieth day after the attorney general certifies to the legislative council:

1. The issuance of the judgment in any decision of the United States Supreme Court or the United States Court of Appeals for the Eighth Circuit which would allow enforcement of section 1 of this Act; or
2. The issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1546

Page 1, line 2, after the first semicolon insert "to amend and reenact section 2 of chapter 132 of the 2007 Session Laws, relating to the implementation of the prohibition of the performance of abortions;"

Page 1, after line 19, insert:

"SECTION 2. AMENDMENT. Section 2 of chapter 132 of the 2007 Session Laws is amended and reenacted as follows:

SECTION 2. EFFECTIVE DATE. This Act becomes effective on the ~~date the legislative council approves by motion the recommendation of the attorney general to the legislative council that it is reasonably probable that this Act would be upheld as constitutional.~~thirtieth day after:

1. The adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states the authority to prohibit abortion; or
2. The attorney general certifies to the legislative council the issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion."

Page 1, line 20, remove "date the"

Page 1, replace lines 21 through 23 with: "thirtieth day after the adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states the authority to prohibit abortion, or on the thirtieth day after the attorney general certifies to the legislative council:

1. The issuance of the judgment in any decision of the United States Supreme Court or the United States Court of Appeals for the Eighth Circuit which would allow enforcement of section 1 of this Act; or
2. The issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion."

ReNUMBER accordingly