2023 SENATE JUDICIARY

SB 2150

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2150
1/16/2023

A bill relating to abortion and grounds for disciplinary action imposed against a physician; relating to sex-selective abortions, genetic abnormality abortions, human dismemberment abortions, and abortions after a detectable heartbeat; to provide a penalty; and to declare an emergency.

2:28 PM Chairman Larson opened the meeting.

Present were Chairman Larson and Senators Myrdal, Sickler, Luick, Braunberger, Estenson and Paulson.

Discussion Topics:

- Families
- Right to Life
- Roe v Wade
- Affirmative defense
- Trigger law
- Direct exceptions
- Deadly anomalies

2:29 PM Senator Myrdal introduced the bill.

2:39 PM Senator Keith Boehm spoke in favor of the bill.

2:42 PM Christopher Dodson, North Dakota Catholic Conference, testified in favor of the bill and offered written testimony #13532.

3:00 PM Melissa Hauer, General Counsel, North Dakota Hospital Association testified in favor of the bill and provided written testimony #13491.

3:07 PM Courtney Koebele, North Dakota Medical Association, testified in favor of the bill and asked for an amendment. She offered written testimony as well #13455.

3:12PM Dr. Brendan Boe testified in favor of the bill and offered written testimony #13338.

3:18 PM Mark Jorritsma, Executive Director, ND Family Alliance Legislative Action, testified in favor of the bill and provided written testimony #13380.

3:22 PM Sierra Heitkamp, Legislative Director, North Dakota Right to Life testified in favor of the bill and provided written testimony #13871.

3:23 PM Dr. Ana Tobiasz, Maternal Fetal Medical Physician, testified in favor of the bill, with suggested amendments, and offered written testimony #13415.

3:36 PM Dr. Collette Lessard testified in favor of the bill with suggested amendments and provided written testimony #13433.

3:57 PM Dr. Erica Hofland testified in favor of the bill with suggested amendments and provided written testimony #13308.

4:02 PM Heather Sandness Nelson, OB/Gyn, testified in favor of the bill with amendments and provided written testimony #13559.

4:07 PM Liana Haven, Medical Student, testified in favor of the bill and provided written testimony #13377.

4:09 PM Lovita Scrimshaw introduced herself and attempted to testified online but due to technical problems the committee determined they would read her written testimony #13404.

4:12 PM Mandy Dendy testified neutral on the bill and provided written testimony #13562.

4:20 PM Rebecca Matthews testified opposed to the bill unless amended and provided written testimony #13872.

4:23 PM Olivia Data testified opposed to the bill and provided written testimony #13875.

4:28 PM Kayla Schmidt Interim Executive Director of the North Dakota Women's Network testified opposed to the bill and offered written testimony #13876.

4:30 PM Andrew Varvel testified opposed to the bill and provided written testimony #13566.

Additional Written Testimony:

Doug Sharbono provided written testimony #13395.

Tami Kromenaker provided written testimony #13489.

Kathrine Christensen provided written testimony #13511

Kirsten Bokinskie provided written testimony #13538.

Julia Dworsky provided written testimony #13556.

Megan Corn provided written testimony #13557.

Amirah Hurst provided written testimony #13563.

Ciara Johnson provided written testimony #13567.

4:32 PM Chairman Larson closed the public hearing and the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2150
1/18/2023

A bill relating to abortion and grounds for disciplinary action imposed against a physician, relating to sex-selective abortions, genetic abnormality abortions, human dismemberment abortions, and abortions after a detectable heartbeat; to provide a penalty; and to declare an emergency.

2:21 PM Madam Chair Larson called meeting to order.
Madam Chair Larson, Senators, Myrdal, Luick, Estenson, Braunberger, Sickler, and Paulson were present.

Discussion

- Abortion vs Induction
- Fictitious numbers
- Legality
- Ethically
- Sepsis of Mother
- Anomalies
- Quality of life
- Legal tweaks

Committee discussion.

2:33 PM Madam Chair Larson closed the meeting.

Patricia Wilkens, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2150
1/25/2023

A bill relating to abortion and grounds for disciplinary action imposed against a physician, relating to sex-selective abortions, genetic abnormality abortions, human dismemberment abortions, and abortions after a detectable heartbeat; to provide a penalty; and to declare an emergency.

1:59 PM Chairman Larson opened the meeting.

Present are Chairman Larson and Senators Braunberger, Sickler, Estenson, Luick and Myrdal. Senator Paulson was absent.

Discussion Topics:

- Trigger laws
- Pregnancy
- Fetuses

2:01 PM Christopher Dodson, North Dakota Catholic Conference, provided oral testimony.

2:04 PM Senator Myrdal spoke to amendments that have been prepared for the bill, LC 23.0137.05001.

2:04 PM Senator Myrdal moved to adopt amendment LC 23.0137.05001, #16833. Senator Luick seconded the motion.

2:05 PM Roll call vote taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	AB
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passed 6-0-1.

2:12 PM Courtney Koebele, North Dakota Medical Association provided oral testimony on the bill.

2:15 PM Senator Myrdal moves to adopt amendment LC 23.0137.05002 #16834. Senator Luick seconded the motion.

2:16 PM Roll call vote is taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	AB
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passed 6-0-1.

2:17 PM Senator Myrdal moves a Do Pass to SB 2150 as amended. Senator Luick seconded the motion.

2:17 PM Roll call vote is taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	AB
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	N
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion Passed 5-1-1.

2:18 PM Senator Myrdal will carry the bill.

This bill does not affect Workforce Development.

2:19 PM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

23.0137.05003
Title.06000

Adopted by the Senate Judiciary Committee

January 25, 2023

1-25-23 (1-2)

PROPOSED AMENDMENTS TO SENATE BILL NO. 2150

Page 1, line 1, after the first comma insert "14-02.1-01,"

Page 2, line 1, remove "Save the life or preserve the health of the unborn child;"

Page 2, line 2, remove "(2)"

Page 2, line 3, replace "(3)" with "(2)"

Page 2, line 6, remove "and irreversible"

Page 2, line 16, after the underscored period insert ""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.

e."

Page 2, line 25, after "that" insert "based on reasonable medical judgment"

Page 2, line 27, replace "postfertilization" with "gestational"

Page 3, after line 3, insert:

"**SECTION 2. AMENDMENT.** Section 14-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-01. Purpose.

The purpose of this chapter is to protect ~~unborn~~and promote human life and maternal health ~~within present constitutional limits~~when the performance of an abortion is not otherwise prohibited by law. ~~It~~This chapter reaffirms the tradition of the state of North Dakota to protect every human life whether unborn or aged, healthy or sick."

Page 3, line 14, overstrike "Save the life or preserve the health of the unborn child;"

Page 3, line 15, overstrike "b."

Page 3, line 16, overstrike "c." and insert immediately thereafter "b."

Page 4, line 26, remove the overstrike over "~~gestational~~"

Page 4, line 26, remove "postfertilization"

Page 5, line 9, after the semicolon insert "and"

Page 5, line 13, overstrike "; and"

Page 5, overstrike lines 14 through 17

Page 5, line 18, overstrike "14-02.1-02.1"

Page 5, line 31, overstrike "and irreversible"

Page 6, line 8, overstrike ""Postfertilization age" means the age of the unborn child as calculated from"

Page 6, overstrike line 9

Page 6, line 10, remove the overstrike over ""~~Probable gestational age of the unborn child" means what, in~~" and overstrike "~~reasonable medical~~"

Page 6, line 11, remove the overstrike over "~~judgment~~" and overstrike "~~, will with reasonable probability be the gestational age of the unborn child~~"

Page 6, line 12, remove the overstrike over the overstruck period

Page 6, line 13, remove "13."

Page 6, line 13, overstrike ""Probable postfertilization age of the unborn child" means what, in reasonable medical"

Page 6, overstrike lines 14 and 15

Page 6, line 16, replace "14." with "13."

Page 6, line 19, replace "15." with "14."

Page 6, line 20, replace "16." with "15."

Page 8, line 23, overstrike ", such as mifepristone and misoprostol"

Page 9, line 7, after the first comma insert "section 12.1-31-12,"

Page 9, line 13, remove "or"

Page 9, line 16, after "12.1-20" insert "; or

c. Necessary due to a medical emergency"

Page 16, line 22, overstrike "If a determination of probable postfertilization age was not made, the"

Page 16, line 23, overstrike "basis of the determination that a medical emergency existed" and insert immediately thereafter "A record of the probable gestational age of the unborn child at the time of the abortion. If a probable gestational age of the unborn child was not made because of a medical emergency, the record must include the basis of the determination that a medical emergency existed"

Page 17, line 10, remove "or"

Page 17, line 13, after "12.1-20" insert "; or

(3) Necessary due to a medical emergency"

Page 17, line 27, overstrike "postfertilization" and insert immediately thereafter "gestational"

Page 17, line 27, after "age" insert "of the unborn child"

Page 17, line 28, overstrike "If the probable"

Page 17, overstrike lines 29 through 31

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2150: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2150 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 1, after the first comma insert "14-02.1-01,"

Page 2, line 1, remove "Save the life or preserve the health of the unborn child;"

Page 2, line 2, remove "(2)"

Page 2, line 3, replace "(3)" with "(2)"

Page 2, line 6, remove "and irreversible"

Page 2, line 16, after the underscored period insert ""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.

e."

Page 2, line 25, after "that" insert "based on reasonable medical judgment"

Page 2, line 27, replace "postfertilization" with "gestational"

Page 3, after line 3, insert:

"**SECTION 2. AMENDMENT.** Section 14-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-01. Purpose.

The purpose of this chapter is to protect ~~unborn~~and promote human life and maternal health ~~within present constitutional limits~~when the performance of an abortion is not otherwise prohibited by law. ~~It~~This chapter reaffirms the tradition of the state of North Dakota to protect every human life whether unborn or aged, healthy or sick."

Page 3, line 14, overstrike "Save the life or preserve the health of the unborn child;"

Page 3, line 15, overstrike "b."

Page 3, line 16, overstrike "c." and insert immediately thereafter "b."

Page 4, line 26, remove the overstrike over "~~gestational~~"

Page 4, line 26, remove "postfertilization"

Page 5, line 9, after the semicolon insert "and"

Page 5, line 13, overstrike "; and"

Page 5, overstrike lines 14 through 17

Page 5, line 18, overstrike "14-02.1-02.1"

Page 5, line 31, overstrike "and irreversible"

Page 6, line 8, overstrike ""Postfertilization age" means the age of the unborn child as calculated from"

Page 6, overstrike line 9

Page 6, line 10, remove the overstrike over ""~~Probable gestational age of the unborn child" means what, in~~" and overstrike "~~reasonable medical~~"

Page 6, line 11, remove the overstrike over "~~judgment~~" and overstrike "~~, will with reasonable probability be the gestational age of the unborn child~~"

Page 6, line 12, remove the overstrike over the overstruck period

Page 6, line 13, remove "13."

Page 6, line 13, overstrike ""Probable postfertilization age of the unborn child" means what, in reasonable medical"

Page 6, overstrike lines 14 and 15

Page 6, line 16, replace "14." with "13."

Page 6, line 19, replace "15." with "14."

Page 6, line 20, replace "16." with "15."

Page 8, line 23, overstrike ", such as mifepristone and misoprostol"

Page 9, line 7, after the first comma insert "section 12.1-31-12,"

Page 9, line 13, remove "or"

Page 9, line 16, after "12.1-20" insert "; or

c. Necessary due to a medical emergency"

Page 16, line 22, overstrike "If a determination of probable postfertilization age was not made, the"

Page 16, line 23, overstrike "basis of the determination that a medical emergency existed" and insert immediately thereafter "A record of the probable gestational age of the unborn child at the time of the abortion. If a probable gestational age of the unborn child was not made because of a medical emergency, the record must include the basis of the determination that a medical emergency existed"

Page 17, line 10, remove "or"

Page 17, line 13, after "12.1-20" insert "; or

(3) Necessary due to a medical emergency"

Page 17, line 27, overstrike "postfertilization" and insert immediately thereafter "gestational"

Page 17, line 27, after "age" insert "of the unborn child"

Page 17, line 28, overstrike "If the probable"

Page 17, overstrike lines 29 through 31

Renumber accordingly

2023 HOUSE HUMAN SERVICES

SB 2150

2023 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Pioneer Room, State Capitol

SB 2150
3/14/2023

Relating to abortion and grounds for disciplinary action imposed against a physician and relating to sex-selective abortions, genetic abnormality abortions, human dismemberment abortions, and abortions after a detectable heartbeat; to provide a penalty; and to declare an emergency.

Chairman Weisz called the meeting to order at 10:19 AM.

Chairman Robin Weisz, Vice Chairman Matthew Ruby, Reps. Karen A. Anderson, Mike Beltz, Clayton Fegley, Kathy Frelich, Dawson Holle, Dwight Kiefert, Carrie McLeod, Todd Porter, Brandon Prichard, Karen M. Rohr, Jayme Davis, and Gretchen Dobervich. All present.

Discussion Topics:

- Codification of state law
- Trigger law
- Heartbeat abortion ban
- Medical emergency exceptions
- Lethal fetal anomalies
- Sexual violence impacts
- Unplanned pregnancies
- Maternal mortality rates
- Informed decisions

Sen. Myrdal introduced SB 2150.

Christopher Dodson, Executive Director for the North Dakota Catholic Conference, supportive testimony #24588.

Vice Chairman Ruby presided as Chairman at 10:26 AM.

Melissa Hauer, General Counsel/Vice President of the North Dakota Hospital Association, supportive testimony #24489.

Courtney Koebele, with the North Dakota Medical Association, supportive testimony #24493.

Ana Tobiasz, Maternal Fetal Medicine physician from Bismarck, North Dakota, supportive testimony #24580.

Sierra Heitkamp, Legislative Director for North Dakota Right to Life, supportive testimony #24621.

Kayla Schmidt, Interim Director of the North Dakota Women's Network, opposition testimony #27167.

Bonnie Policheck, North Dakota citizen, spoke in opposition.

Katie Christensen, Director of External Affairs for Planned Parenthood, opposition testimony #24614.

Cody Schuler, Advocacy Manager of the ACLU, opposition testimony #24743.

Additional written testimony:
Laura Frisch, Community Violence Intervention Center, Grand Forks, ND # 24683
Elizabeth Loos, Lobbyist, NASW-ND, # 24641
Doug Sharbono, ND Citizen, # 24684
Destini Spaeth, Board Chari, ND Women In Need Abortion Access Fund, # 24511

Vice Chairman Ruby adjourned the meeting at 11:09 AM.

Phillip Jacobs, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Pioneer Room, State Capitol

SB 2150
3/15/2023

Relating to abortion and grounds for disciplinary action imposed against a physician and relating to sex-selective abortions, genetic abnormality abortions, human dismemberment abortions, and abortions after a detectable heartbeat; to provide a penalty; and to declare an emergency.

Chairman Weisz called the meeting to order at 10:04 AM.

Chairman Robin Weisz, Vice Chairman Matthew Ruby, Reps. Kathy Frelich, Dawson Holle, Dwight Kiefert, Carrie McLeod, Todd Porter, Karen M. Rohr, Jayme Davis, and Gretchen Dobervich present. Reps. Karen A. Anderson, Mike Beltz, Clayton Fegley, and Brandon Prichard not present.

Discussion Topics:

- Committee work

Chairman Weisz called for a discussion on SB 2150.

Rep. Dobervich proposed amendment 23.0137.06002 (#27170).

Rep. Dobervich moved amendment 23.0137.06002.

Seconded by Rep. Davis.

Roll Call Vote:

Representatives	Vote
Representative Robin Weisz	N
Representative Matthew Ruby	N
Representative Karen A. Anderson	AB
Representative Mike Beltz	AB
Representative Jayme Davis	Y
Representative Gretchen Dobervich	Y
Representative Clayton Fegley	AB
Representative Kathy Frelich	N
Representative Dawson Holle	N
Representative Dwight Kiefert	N
Representative Carrie McLeod	N
Representative Todd Porter	N
Representative Brandon Prichard	AB
Representative Karen M. Rohr	N

Motion fails 2-8-4.

Rep. McLeod moved a do pass on SB 2150.

Seconded by Rep. Rohr.

Roll Call Vote:

Representatives	Vote
Representative Robin Weisz	Y
Representative Matthew Ruby	Y
Representative Karen A. Anderson	AB
Representative Mike Beltz	AB
Representative Jayme Davis	N
Representative Gretchen Dobervich	N
Representative Clayton Fegley	AB
Representative Kathy Frelich	Y
Representative Dawson Holle	Y
Representative Dwight Kiefert	Y
Representative Carrie McLeod	Y
Representative Todd Porter	Y
Representative Brandon Prichard	AB
Representative Karen M. Rohr	Y

Motion carries 8-2-4.

Carried by Rep. Rohr.

Vice Chairman Ruby adjourned the meeting at 10:17 AM.

Phillip Jacobs, Committee Clerk

Reconsidered 3/15/23 afternoon.

2023 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Pioneer Room, State Capitol

SB 2150
3/15/2023

Relating to abortion and grounds for disciplinary action imposed against a physician and relating to sex-selective abortions, genetic abnormality abortions, human dismemberment abortions, and abortions after a detectable heartbeat; to provide a penalty; and to declare an emergency.

Chairman Weisz called the meeting to order at 3:49 PM.

Chairman Robin Weisz, Vice Chairman Matthew Ruby, Reps. Karen A. Anderson, Mike Beltz, Clayton Fegley, Kathy Frelich, Dawson Holle, Dwight Kiefert, Carrie McLeod, Todd Porter, Brandon Prichard, Karen M. Rohr, Jayme Davis, and Gretchen Dobervich. All present.

Discussion Topics:

- Committee work

Chairman Weisz called for a discussion on SB 2150.

Rep. Anderson moved to reconsider the committee's actions on SB 2150.

Seconded by Vice Chairman Ruby.

Motion carries by voice vote.

Rep. Anderson moved a do pass on SB 2150.

Seconded by Rep. Rohr.

Roll Call Vote:

Representatives	Vote
Representative Robin Weisz	Y
Representative Matthew Ruby	Y
Representative Karen A. Anderson	Y
Representative Mike Beltz	Y
Representative Jayme Davis	N
Representative Gretchen Dobervich	N
Representative Clayton Fegley	Y
Representative Kathy Frelich	Y
Representative Dawson Holle	Y
Representative Dwight Kiefert	Y
Representative Carrie McLeod	Y
Representative Todd Porter	Y

Representative Brandon Prichard	Y
Representative Karen M. Rohr	Y

Motion carries 12-2-0.

Carried by Rep. Rohr.

Chairman Weisz adjourned the meeting at 3:51 PM.

Phillip Jacobs, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2150, as engrossed: Human Services Committee (Rep. Weisz, Chairman) recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2150 was placed on the Fourteenth order on the calendar.

2023 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Pioneer Room, State Capitol

SB 2150
4/13/2023

Relating to abortion and grounds for disciplinary action imposed against a physician and relating to sex-selective abortions, genetic abnormality abortions, human dismemberment abortions, and abortions after a detectable heartbeat; to provide a penalty; and to declare an emergency.

Chairman Weisz called the meeting to order at 3:14 PM.

Chairman Robin Weisz, Vice Chairman Matthew Ruby, Reps. Karen A. Anderson, Mike Beltz, Kathy Frelich, Dawson Holle, Dwight Kiefert, Carrie McLeod, Brandon Prichard, Karen M. Rohr, Jayme Davis, and Gretchen Dobervich present. Reps. Clayton Fegley and Todd Porter not present.

Discussion Topics:

- Committee work
- Amendments
- Mental health
- Health of mother and fetus

Chairman Weisz called for a discussion on SB 2150.

Rep. Frelich moved to reconsider the committee's action on SB 2150.

Seconded by Rep. Anderson.

Motion carries by voice vote.

Rep. Rohr moved to adopt amendment (#23.0137.06006) to SB 2150 (#27738).

Seconded by Rep. Anderson.

Roll Call Vote:

Representatives	Vote
Representative Robin Weisz	Y
Representative Matthew Ruby	Y
Representative Karen A. Anderson	Y
Representative Mike Beltz	Y
Representative Jayme Davis	N
Representative Gretchen Dobervich	N
Representative Clayton Fegley	AB
Representative Kathy Frelich	Y
Representative Dawson Holle	Y

Representative Dwight Kiefert	Y
Representative Carrie McLeod	Y
Representative Todd Porter	AB
Representative Brandon Prichard	Y
Representative Karen M. Rohr	Y

Motion carries 10-2-2.

Rep. Dobervich moved to adopt amendment (#23.0137.06004) to SB 2150 (#27739)

Seconded by Rep. Davis.

Roll Call Vote:

Representatives	Vote
Representative Robin Weisz	N
Representative Matthew Ruby	N
Representative Karen A. Anderson	N
Representative Mike Beltz	N
Representative Jayme Davis	Y
Representative Gretchen Dobervich	Y
Representative Clayton Fegley	AB
Representative Kathy Frelich	N
Representative Dawson Holle	N
Representative Dwight Kiefert	N
Representative Carrie McLeod	N
Representative Todd Porter	AB
Representative Brandon Prichard	N
Representative Karen M. Rohr	N

Motion failed 2-10-2.

Rep. Prichard moved a do pass as amended on SB 2150.

Seconded by Vice Chairman Ruby.

Representatives	Vote
Representative Robin Weisz	Y
Representative Matthew Ruby	Y
Representative Karen A. Anderson	Y
Representative Mike Beltz	Y
Representative Jayme Davis	N
Representative Gretchen Dobervich	N
Representative Clayton Fegley	AB
Representative Kathy Frelich	Y
Representative Dawson Holle	Y
Representative Dwight Kiefert	Y
Representative Carrie McLeod	Y

Representative Todd Porter	AB
Representative Brandon Prichard	Y
Representative Karen M. Rohr	Y

Motion carries 10-2-2. Representative Rohr will carry the bill.

Chairman Weisz adjourned the meeting at 3:29 PM.

Phillip Jacobs, Committee Clerk

SK 4/13
1583

23.0137.06006
Title.07000

Prepared by the Legislative Council staff for
Representative Weisz
April 3, 2023

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2150

Page 1, line 1, after "to" insert "create and enact a new chapter to title 12.1 of the North Dakota Century Code, relating to abortions; to"

Page 1, line 1, remove "12.1-31-12,"

Page 1, line 4, after "sections" insert "12.1-31-12,"

Page 1, line 6, after "to" insert "abortions,"

Page 1, remove lines 10 through 23

Page 2, remove lines 1 through 30

Page 3, replace lines 1 through 7 with:

"**SECTION 1.** A new chapter to title 12.1 of the North Dakota Century Code is created and enacted as follows:

Definitions.

As used in this chapter:

1. "Abortion" means the act of using, selling, or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge the termination by those means will with reasonable likelihood cause the death of the unborn child. The use, sale, prescription, or means is not an abortion if done with the intent to:

   a. Remove a dead unborn child caused by spontaneous abortion;

   b. Treat a woman for an ectopic pregnancy; or

   c. Treat a woman for a molar pregnancy.

2. "Physician" means an individual 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.

3. "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.

4. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

5. "Serious health risk" means a condition that, in reasonable medical judgment, complicates the medical condition of the pregnant woman so

that it necessitates an abortion to prevent substantial physical impairment of a major bodily function, not including any psychological or emotional condition. The term may not be based on a claim or diagnosis that the woman will engage in conduct that will result in her death or in substantial physical impairment of a major bodily function.

Abortion prohibited - Penalty.

It is a class C felony for a person, other than the pregnant female upon whom the abortion was performed, to perform an abortion.

Exceptions.

This chapter does not apply to:

1. An abortion deemed necessary based on reasonable medical judgment which was intended to prevent the death or a serious health risk to the pregnant female.

2. An abortion to terminate a pregnancy that based on reasonable medical judgment resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20, if the probable gestational age of the unborn child is six weeks or less.

3. An individual assisting in performing an abortion if the individual was acting within the scope of that individual's regulated profession, was under the direction of or at the direction of a physician, and did not know the physician was performing an abortion in violation of this chapter."

Page 3, line 26, overstrike "or"

Page 3, line 27, after "pregnancy" insert "; or

c. Treat a woman for a molar pregnancy"

Page 6, line 11, overstrike "substantial"

Page 6, line 11, overstrike "physical impairment of a"

Page 6, line 12, overstrike "major bodily function, not including psychological or emotional conditions" and insert immediately thereafter "a serious health risk"

Page 6, line 12, overstrike "A condition"

Page 6, overstrike lines 13 through 15

Page 6, line 30, after "14." insert ""Serious health risk" means a condition that, in reasonable medical judgment, complicates the medical condition of the pregnant woman so that it necessitates an abortion to prevent substantial physical impairment of a major bodily function, not including any psychological or emotional condition. The term may not be based on a claim or diagnosis that the woman will engage in conduct that will result in her death or in substantial physical impairment of a major bodily function.

15."

Page 7, line 1, replace "15." with "16."

Page 9, line 19, remove "section 12.1-31-12,"

Page 9, line 29, replace "due to a medical emergency" with "to prevent a serious health risk"

Page 10, line 25, overstrike "avert" and insert immediately thereafter "prevent"

Page 10, line 26, overstrike "for which a twenty-four-hour delay will create grave peril of immediate"

Page 10, line 27, overstrike "and irreversible loss of major bodily function" and insert immediately thereafter "prevent a serious health risk"

Page 10, line 31, overstrike the comma

Page 10, line 31, overstrike "because the continuation of her pregnancy will impose on her a"

Page 11, line 1, overstrike "substantial risk of grave impairment of her physical"

Page 11, line 1, overstrike "health" and insert immediately thereafter "to prevent a serious health risk"

Page 15, line 16, overstrike "After the point in pregnancy when the unborn child may reasonably be expected to"

Page 15, line 17, overstrike "have reached viability,"

Page 15, line 17, remove "an"

Page 15, line 17, overstrike "abortion may be performed"

Page 15, overstrike line 18

Page 15, line 19, overstrike "the life of the woman"

Page 15, overstrike lines 22 through 26

Page 15, line 27, overstrike "concurrence is not required in the case of"

Page 15, line 27, remove "a medical"

Page 15, line 27, overstrike "emergency when the abortion"

Page 15, overstrike line 28

Page 15, line 29, overstrike "4."

Page 16, line 10, overstrike "5." and insert immediately thereafter "4."

Page 16, line 12, overstrike "6." and insert immediately thereafter "5."

Page 21, line 20, after "Sections" insert "12.1-31-12,"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2150, as engrossed: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2150 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new chapter to title 12.1 of the North Dakota Century Code, relating to abortions; to"

Page 1, line 1, remove "12.1-31-12,"

Page 1, line 4, after "sections" insert "12.1-31-12,"

Page 1, line 6, after "to" insert "abortions,"

Page 1, remove lines 10 through 23

Page 2, remove lines 1 through 30

Page 3, replace lines 1 through 7 with:

"**SECTION 1.** A new chapter to title 12.1 of the North Dakota Century Code is created and enacted as follows:

Definitions.

As used in this chapter:

1. "Abortion" means the act of using, selling, or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge the termination by those means will with reasonable likelihood cause the death of the unborn child. The use, sale, prescription, or means is not an abortion if done with the intent to:

   a. Remove a dead unborn child caused by spontaneous abortion;

   b. Treat a woman for an ectopic pregnancy; or

   c. Treat a woman for a molar pregnancy.

2. "Physician" means an individual 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.

3. "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.

4. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

5. "Serious health risk" means a condition that, in reasonable medical judgment, complicates the medical condition of the pregnant woman so that it necessitates an abortion to prevent substantial physical impairment of a major bodily function, not including any psychological or emotional condition. The term may not be based on a claim or diagnosis that the

woman will engage in conduct that will result in her death or in substantial physical impairment of a major bodily function.

Abortion prohibited - Penalty.

It is a class C felony for a person, other than the pregnant female upon whom the abortion was performed, to perform an abortion.

Exceptions.

This chapter does not apply to:

1. An abortion deemed necessary based on reasonable medical judgment which was intended to prevent the death or a serious health risk to the pregnant female.

2. An abortion to terminate a pregnancy that based on reasonable medical judgment resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20, if the probable gestational age of the unborn child is six weeks or less.

3. An individual assisting in performing an abortion if the individual was acting within the scope of that individual's regulated profession, was under the direction of or at the direction of a physician, and did not know the physician was performing an abortion in violation of this chapter."

Page 3, line 26, overstrike "or"

Page 3, line 27, after "pregnancy" insert "; or

c. Treat a woman for a molar pregnancy"

Page 6, line 11, overstrike "substantial"

Page 6, line 11, overstrike "physical impairment of a"

Page 6, line 12, overstrike "major bodily function, not including psychological or emotional conditions" and insert immediately thereafter "a serious health risk"

Page 6, line 12, overstrike "A condition"

Page 6, overstrike lines 13 through 15

Page 6, line 30, after "14." insert ""Serious health risk" means a condition that, in reasonable medical judgment, complicates the medical condition of the pregnant woman so that it necessitates an abortion to prevent substantial physical impairment of a major bodily function, not including any psychological or emotional condition. The term may not be based on a claim or diagnosis that the woman will engage in conduct that will result in her death or in substantial physical impairment of a major bodily function.

15."

Page 7, line 1, replace "15." with "16."

Page 9, line 19, remove "section 12.1-31-12,"

Page 9, line 29, replace "due to a medical emergency" with "to prevent a serious health risk"

Page 10, line 25, overstrike "avert" and insert immediately thereafter "prevent"

Page 10, line 26, overstrike "for which a twenty-four-hour delay will create grave peril of immediate"

Page 10, line 27, overstrike "and irreversible loss of major bodily function" and insert immediately thereafter "prevent a serious health risk"

Page 10, line 31, overstrike the comma

Page 10, line 31, overstrike "because the continuation of her pregnancy will impose on her a"

Page 11, line 1, overstrike "substantial risk of grave impairment of her physical"

Page 11, line 1, overstrike "health" and insert immediately thereafter "to prevent a serious health risk"

Page 15, line 16, overstrike "After the point in pregnancy when the unborn child may reasonably be expected to"

Page 15, line 17, overstrike "have reached viability,"

Page 15, line 17, remove "an"

Page 15, line 17, overstrike "abortion may be performed"

Page 15, overstrike line 18

Page 15, line 19, overstrike "the life of the woman"

Page 15, overstrike lines 22 through 26

Page 15, line 27, overstrike "concurrence is not required in the case of"

Page 15, line 27, remove "a medical"

Page 15, line 27, overstrike "emergency when the abortion"

Page 15, overstrike line 28

Page 15, line 29, overstrike "4."

Page 16, line 10, overstrike "5." and insert immediately thereafter "4."

Page 16, line 12, overstrike "6." and insert immediately thereafter "5."

Page 21, line 20, after "Sections" insert "12.1-31-12,"

Renumber accordingly

TESTIMONY

SB 2150

Senate Judiciary Committee

January 16, 2023

SB 2150

Chair Larson, and members of the Committee, I am Dr. Erica Hofland. I have worked as an obstetrician for past 10 years in Dickinson, North Dakota. I am here to support Senate Bill 2150, as amended.

North Dakota's laws regarding termination care have been confusing and conflicting. This lack of clarity became more pronounced when it became possible that North Dakota's trigger law would be enacted. I appreciate this bill's attempt to consolidate laws around termination care and I am relieved to see this bill removes affirmative defenses in regard to providing obstetric medical care. Affirmative defenses are very harmful to the timely and evidence-based care we provide to the families of the state of North Dakota.

There are, however, sections of this bill that require further discussion and amendment. Medical care is complex, and this bill does not fully recognize how ill a pregnant woman can become. The definition of a medical emergency on page 2 and page 6 lines needs a minor amendment. The word that needs to be changed specifically is page 2, line 6. Currently this definition reads "to prevent her death or substantial and irreversible physical impairment." This should read "to prevent her death or substantial or irreversible physical impairment." Identical language should be amended on page 6, line 4.

While this change might seem subtle it has a large impact. Pre-viable severe preeclampsia can put a woman at risk of seizure and stroke. These complications are devastating, but with aggressive medical care the effect of a stroke can be lessened and, in some cases, can be reversible. Likewise pre-viable rupture of membranes and chorioamnionitis (an infection within the uterus due to the early rupture of membranes) can cause such a pronounced infection that a hysterectomy with resulting loss of fertility can occur. However, with early intervention this devastating consequence can be avoided. Appropriate medical care should not be withheld to families in the above or numerous other scenarios to the point they are at "substantial and irreversible physical impairment."

Another area of concern is with page 2, line 25-28. While this bill allows for termination care in the case of rape or incest the bill effectively makes it impossible to access by placing a six-week limit on those terminations. It is well documented that many pregnant individuals do not recognize their pregnancy until a much later gestational age. Additionally, individuals who have suffered sexual assault often do not have timely care. The phrase "if the probable post fertilization age of the unborn child is six weeks or less" should be removed from this bill.

There are other sections of this bill that could be improved upon as well. It is challenging to highlight all of these in this testimony. As stated above I do support this bill as it removes problematic affirmative defense language. I do not, however, want this committee to think my support for this bill is without reservations.

Thank you for the opportunity to testify.

Sincerely submitted,

Erica Hofland, MD, FACOG

Dickinson, North Dakota

Senate Judiciary Committee

SB 2150

January 16, 2023

Chair Larson and members of the Committee, I am Dr. Brendan Boe and am here to support Senate Bill 2150 and to request amendment and clarification to some language within the bill. I am a board-certified Obstetrician and Gynecologist practicing in Grand Forks, ND. I am here to speak for myself and not on behalf of my colleagues or any institution.

I appreciate Senate Bill 2150 changing the language from "affirmative defenses" to "exceptions", and I thank you for that. I also appreciate that it doesn't change much regarding current legislation and law regarding the practice of obstetrics and gynecology within the state of North Dakota.

While I support the passage of this bill, I request amendment and clarification to the following areas within the bill:

First, I agree with the North Dakota Medical Association in requesting amendment to the wording of page 2, line 6 from "substantial AND irreversible" to "substantial OR irreversible", as I cannot in good conscience sit and watch my patient deteriorate to the point of "substantial AND irreversible" harm before intervening. Cardiologists don't wait for irreversible myocardial damage prior to placing stents in diseased coronary arteries; general surgeons don't wait for bowel death, gangrene, or systemic sepsis prior to repairing abdominal wall hernias; medical oncologists don't wait for stage IV cancer in order to provide chemotherapy, so why should pregnant women wait for "substantial AND irreversible physical impairment of a major bodily function" prior to receiving medical intervention?

Some specific obstetric disease states that come to mind are pre-viable pre-eclampsia with severe features (elevated blood pressure with end organ dysfunction prior to viability), chorioamnionitis (infection within the uterus requiring evacuation), and pre-viable prelabor rupture of membranes (amniotic membrane rupture prior to viability).

Second, I request clarification regarding the term “postfertilization” (page 2, line 27; page 4, line 26; page 6, lines 13 and 14), as I haven’t encountered that term in medical training or medical practice and have never used it in patient counseling or medical decision making. Throughout this bill, I am implored, by law, to use “reasonable medical judgement”, and I, a board-certified OBGYN, request amendment to return to “gestational age” which is standard language used in obstetric practice set forth by the American Board of Obstetrics and Gynecology.

Third, I ask you to consider allowing abortion for lethal fetal anomalies. End of life decisions are made every day in this state. These are impossible and heart-wrenching decisions that families sometimes have to make, and I ask that you consider allowing them to make those decisions prior to advanced gestation or after delivery.

Finally, I request amendment to page 2, lines 27 and 28 to increase the upper limit of abortion in the setting of gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest. Many women do not know they are pregnant until well after 6 weeks GESTATIONAL age and victims of sexual trauma tend not to present to care until a later time.

I was born in Bismarck and raised in Beulah. I received my Doctor of Pharmacy from North Dakota State University and my Medical Degree from the University of North Dakota. I completed four years of Obstetrics and Gynecology training at the University of Colorado and chose to return to North Dakota to practice medicine as a board-certified OBGYN. My father, sister and I raise canola and wheat 15 miles northwest of Golden Valley, North Dakota.

I love North Dakota. My family lives here; my friends live here; and my patients live here. My life is here.

If I cannot provide intervention in order to prevent substantial OR irreversible harm to my patients, then I can no longer practice obstetrics and gynecology in North Dakota.

I appreciate your time and consideration.

Brendan Boe MD, PharmD

Senate Judiciary Committee
SB 2150
January 16, 2023

Good afternoon, Chair Larson and Committee Members. My name is Liana Haven, and I am a current fourth year medical student in the state of North Dakota applying to an Obstetrics and Gynecology residency in this upcoming Match. Thank you for the opportunity to testify in support of SB 2150 so long as amendments be considered by this committee.

While I am originally from Minnesota, North Dakota has always been a second home to me. This is where my mom grew up, and where I would come to spend holidays with my family out in Killdeer. It was because of this, I chose to come to the University of North Dakota to earn my degrees in a Bachelor of Science, Master of Public Health, and soon my Medical Degree. While I would be honored to come back and practice in this state after I complete my four-year residency and return the investment that this state has placed in me and my education, I do not see how that could be possible with certain aspects of SB 2150 standing as they currently do.

I would like to applaud the lawmakers of this state in removing the affirmative action aspect from the "Trigger Law" that was proposed. However, there are still several areas of concern I have with SB 2150. There are three which I will discuss further; the time restricted proposed to receive an abortion of a pregnancy in the case of rape or incest, the verbiage around what constitutes a medical emergency for abortion, and limitations related to termination in presence of unviable anatomic abnormalities of the fetus.

The first concern relates to the limited 6-week time frame to receive an abortion in the case of rape or incest. The average menstrual cycle can be anywhere from 21-35 days with the average being 28 days. However, if the latter of 35 days is someone's "normal" menstrual cycle length, they would only have a week to know their menstrual cycle is late, obtain a positive pregnancy test and receive the care they need after already being a victim to rape or incest. That is not feasible especially when considering other factors like finances, travel, and emotional stress that could be factored into such a circumstance. It is also estimated that between 15-25% of women of reproductive age have irregular menstrual cycles. As such, their cycles may be lengthened or shortened in unpredictable ways, meaning they may not know they have missed a menstrual cycle within the proposed 6-week time frame. Thus, while the exceptions for rape and incest are important and I am grateful they are present, the proposed timeframe does not accurately account for the wide range of menstrual cycle lengths and the likelihood someone would know they became pregnant after their assault.

The second concern with the proposed bill is the verbiage related to what is constituted as a medical emergency, or exemption. As the bill currently stands it states, "substantial AND irreversible harm". However, this adds unnecessary vagueness and complicates the care a physician would provide and threatens the life of the woman. For example, a condition known as preeclampsia requires the delivery of the fetus regardless of its gestational age to save the life of the woman. The complications of eclampsia, which can occur if pre-eclampsia is not

treated with the delivery of the fetus, are substantial including seizures that can lead to coma and potentially death, but this does not always occur, nor can it be known when dealing with the patient who needs care emergently. Because of this, and many other situations where the treatment is early delivery, or termination, the verbiage should be changed to "substantial OR irreversible harm" for better clarity and ensuring physicians will not question if the care they are providing is within the legal parameters set by the state.

Thirdly, I ask the Chair and Committee Members to consider adding a clause allowing for providers to perform a termination~~,~~ in the presence of anatomical abnormalities that would result in an unviable fetus at birth. While there can still be a heartbeat in these cases, other anomalies make it as such that the fetus would either die in the womb, or shortly after their delivery. This situation is deeply personal and difficult to make, but should be made by the pregnant woman. To force the continuation of a pregnancy to term or until the fetus dies in the womb can cause great emotional trauma. Depending on the anomaly present, the woman's life can also be in danger through complications of carrying such a pregnancy. Having this exception in place would provide great comfort to patients placed in this difficult situation and mean they don't need to travel great distances to receive the care they feel they need and to allow them to grieve as they feel necessary.

While I personally have other oppositions to items within SB 2150, I know many of these aspects have already been in place within the state of North Dakota for a long period of time. To prevent further harm to the people of the state of North Dakota, I would like to reiterate my support for SB2150. If the proposed alterations mentioned above are considered and lead to changes of the bill, I as aspiring obstetrician and gynecologist would consider returning to this state to provide care to the women across this great state.

Thank you for taking the time to read my written testimony. I greatly appreciate it.

NORTH DAKOTA
Family Alliance LEGISLATIVE ACTION
Faith · Family · Freedom

Testimony in Support of Senate Bill 2150

Mark Jorritsma, Executive Director
North Dakota Family Alliance Legislative Action
January 16, 2023

Dear Madam Chair Larson and honorable members of the Senate Judiciary Committee. My name is Mark Jorritsma and I am the Executive Director of North Dakota Family Alliance Legislative Action. I am testifying in support of Senate Bill 2150 and respectfully request that you render a "DO PASS" on this bill for a number of reasons.

Let me start by saying I am not a lawyer, and Mr. Dodson has done a terrific job describing the changes this bill would have on the Century Code. That said, North Dakota Family Alliance Legislative Action does have additional comments on this bill.

First, from a religious point of view, we as a state have always supported the life of the unborn child. As it states at the very beginning of the ND Abortion Control Act in our Century Code:

> *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.*

Protecting unborn life is fundamental to who we are as a state.

Second, we have a rich heritage of protecting life in our state. Years ago, when we enacted the so-called trigger law and other pro-life legislation, our legislators knew what they were doing. They were actually being strategic and anticipating the overturn of *Roe v. Wade*. Since that time, countless pro-life bills have become laws, with the support of the legislature on up to the Governor's office.

That said, there are always parts of the Century Code that could benefit from further definition, reconciling with other laws, and general updating and clarification. This bill seeks to do just that for the various life laws on the books.

1515 Burnt Boat Dr., Suite C-148, Bismarck, ND 58503
mark@NDfamilyalliance.org
701·355·6425
www.ndfamilyalliance.org

Third, North Dakota Family Alliance Legislative Action has heard from individuals across the state, and certainly from the thousands of citizens we directly represent, that they are strongly in favor of this bill. They particularly appreciate the work that has been done to actively engage the medical community on this bill, since many of them are actually part of that community.

Finally, from a faith perspective, our organization, and indeed the majority of North Dakotans, favor pro-life legislation. A 2020 Pew Research study indicated that the majority of our citizens would prefer that abortion be illegal in all/most cases. We were actually ranked #10 among all states on this question. In another study, Pew Research found that 76% of North Dakotans are part of an organized religion that opposes abortion. With most of the state being faith affiliated and the Catholic and Protestant denominations representing an overwhelming majority, it is not a huge leap to see that faith goes hand-in-hand with North Dakotans' support for life.

Life is important to North Dakotans, including the lives of unborn children. From a fundamental chapter of our Century Code, to past legislation and our faith foundation, North Dakotans support life. This bill does just that, and for those reasons, North Dakota Family Alliance Legislative Action asks that you please vote Senate Bill 2150 out of committee with a "DO PASS" recommendation.

1515 Burnt Boat Dr., Suite C-148, Bismarck, ND 58503
mark@NDfamilyalliance.org
701·355·6425
www.ndfamilyalliance.org

Do Pass Testimony
of Doug Sharbono, citizen of North Dakota
on SB2150
in the Sixty-eighth Legislative Assembly of North Dakota

Dear Chairwoman Larson and members of the Senate Judiciary Committee,

I am writing as a citizen and believe SB2150 is needed legislation to better reinforce existing law concerning abortion. I ask for a Do Pass on SB2150.

Recently, SCOTUS ruled Roe v. Wade unconstitutional and overruled it through its Dobbs decision. North Dakota has a trigger law on the books, which restricts abortion. However, implementation of this law has been stalled by the North Dakota South Central Judicial District Court. This activist court has seemingly had ever-changing rulings specific to this issue to obstruct the law from being followed. Each time one condition is satisfied, the goal post gets moved with another new arbitrary requirement.

I am completely in favor of adding language the relevant section to legislatively keep removing arguments from the activist court. SB2150 will do this. Eventually, the collective will of the people through their legislators can then be followed.

Please give SB2150 a “Do Pass” and let’s protect life.

Thank you,

Douglas B. Sharbono

Doug Sharbono
1708 9th St S
Fargo, ND 58103

Testimony in Regard to Senate Bill 2150

Lovita Scrimshaw, DO, Emergency Medicine Physician
American Academy of Medical Ethics, North Dakota State Director
January 14, 2023

Good afternoon to the honorable Senate Judiciary Committee. My name is Lovita Scrimshaw and I am a physician in Minot, ND and also serve as the North Dakota State Director of the American Academy of Medical Ethics. I am testifying in regard to Senate Bill 2150 with a concern of one portion of the bill. I respectfully request that you render a "DO PASS" on this bill only if a change could be made to point #3b, page 2.

The section of concern I have states "An abortion to terminate a pregnancy that resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20, if the probable postfertilization age of the unborn child is six weeks or less." My question to the Committee is why should an innocent life be terminated for the crimes of another? This is certainly a difficult circumstance for the mother, but why should an innocent baby be killed for the crime of the father? Why not offer the mother assistance such as help with emotional support, counseling, provide her with additional resources in deciding the future for this child including the option of adoption, post-birth support, among other options?

I appreciate the bill's intent to protect life. This is apparent from the definition of "Human Being" starting at fertilization. This is medically correct. Life starts at fertilization. Since the Human Being starts at fertilization, then point #3b (as written in the current bill) would allow an abortion to kill the innocent Human Being. Supporting point #3b nullifies the bill's original intent to declare the human baby as a life worth protecting. Of note, I have spoken with a well-respected OB/GYN physician colleague in Minot who has many years of experience in the field of OB/GYN along with several other physicians in my area who are also of the opinion that we would fully support this bill if point #3b is not listed as an exception and therefore all of human life is valued and respected.

I applaud the definitions of medical emergency and the reasonable exceptions to the definition of abortion: "Save the life or preserve the health of the unborn child; (2) Remove a dead unborn child caused by spontaneous abortion; or (3) Treat a woman for an ectopic pregnancy."

Thank you for the opportunity to testify and I am now happy to answer any questions.

Senate Judiciary Committee
SB 2150
January 16, 2023

Good afternoon, Chair Larson and members of the Committee. My name is Dr Ana Tobiasz, MD and I am a Maternal Fetal Medicine physician in Bismarck. Thank you for the opportunity to testify in favor of SB 2150. I am asking the committee to give this bill a Do Pass recommendation provided amendments can be granted.

My medical training and expertise is in caring for women during high risk pregnancies. I was born and raised in Munich, ND and completed my undergraduate and medical school training at the University of North Dakota. After medical school I completed a 4-year residency training in Obstetrics and Gynecology followed by a 3-year fellowship training in Maternal Fetal Medicine. I have worked as a maternal fetal medicine specialist in Bismarck since July 2017. I am one of 5 of my specialty throughout the entire state.

After completing my out-of-state residency training and fellowship training, I returned to my home state so that I could improve access to high quality obstetric care for many reasons. Partly because I had a high-risk pregnancy with my first and did not receive appropriate care planning for my son who would be born with a congenital anomaly and I expect better for women and families in this state. Also, because I don't think pregnant women should have to travel out of state to access high quality and safe obstetric care and state of the art fetal diagnosis and delivery care planning.

I have been a leader in the state for helping to initiate and be involved in programs that would improve quality and safety of obstetric care in this state, including the perinatal quality collaborative, maternal mortality committee, and the ND Medical Association Leadership Council.

I spend my days getting women and their fetuses safely through pregnancy. This includes women with severe heart conditions, lung conditions, cancer, and complications that arise in pregnancy including preeclampsia (high blood pressure and risk of organ injury in pregnancy), membrane rupture and hundreds of others. It also includes diagnosing fetal conditions which require in utero procedures for the fetus to survive and care planning for babies that will require surgery after birth in order to survive.

Despite the fact that most of my days are spent making sure women get as far as they can safely in the pregnancy with a plan of care for their fetus/neonate, sometimes medical conditions will necessitate delivery prior to the point the

fetus can survive if delivered. These are heartbreaking scenarios for everyone involved. The patient, the family, the doctors making these diagnoses and having to give these recommendations, as well as the nurses caring for the patients. These are not “elective” terminations by any means and for that matter, there are no non-medically indicated terminations that occur in this state at any of the medical facilities which provide obstetric care.

For this reason, I can only support SB 2150 if amendments in the definition of medical emergency exceptions are made. If not, it will threaten my ability to practice in this state without fear of criminal prosecution for providing what is the standard of care medical practice.

While I have concerns about multiple aspects of this law, I support SB 2150 insofar as it is an improvement on the restrictions on abortion that were provided by the “trigger law,” which effectively bans abortions in all circumstances with limited exceptions and severely limits the ability of obstetricians and health care professionals who provide care to pregnant women only with the support of an affirmative defense.

SB 2150 eliminates the affirmative defenses in the trigger law and this is a respectable change to minimize the impact these laws will have on practicing physicians who care for pregnant women experiencing medical complications in North Dakota.

I do have concerns with SB 2150 as it stands and would request amendments to include several exceptions.

- First and foremost, the exceptions deemed a medical emergency are not sufficient to allow for care for the most common medical conditions in pregnancy that would necessitate an abortion, including pre viable membrane rupture and pre viable preeclampsia. The language of concern includes an exception for preventing “her death or substantial and irreversible physical impairment of a major bodily function, not including any psychological or emotional condition.” A simple amendment to change this language to “substantial OR irreversible physical impairment of a major bodily function” would allow for the majority of these medical conditions to be cared for as standard medical practice would dictate. If this change is not allowed, most of these patients will require transfer out of state for their medical care or their physicians will be potentially open to criminal charges. The requirement of an irreversible physical impairment is too specific and does not account for the range of scenarios that would require an abortion as the only feasible option to improve the health and condition of the mother without threatening her life or resulting in serious

conditions such as sepsis, organ failure, hysterectomy, among others.

An example of this would include a pregnant woman who experiences membrane rupture prior to fetal viability who develops an in utero infection. At the time this is diagnosed, she may not be experiencing irreversible effects related to the infection. Waiting until the time point she has organ injury will delay her care and will put her at risk of sepsis, further organ injury, and death. These women can go from looking generally not that sick to very ill in a matter of minutes and the minute we suspect these infections we need to act. Effecting delivery of the fetus and placenta and treating with antibiotics will not leave her with an irreversible condition. The question still stands: when is this condition irreversible and at what point can I act without risking committing a crime? *Ideally physicians would act well before their patients are at risk for irreversible harm as with any other medical condition. Complications of pregnancy are a medical condition that should receive the same respect.*

- I also have concerns that we do not allow for pregnancy termination for lethal fetal anomalies. These decisions are no different than making the decision to make a family member with end stage cancer “do not resuscitate” or to take a family member off life support if no brain stem activity is present that would sustain life. Forcing these women to carry these pregnancies to term poses a risk to their health. The risk of continuing pregnancy to term makes it 14 times more likely the woman will die as a result of pregnancy as compared to abortion. I would respectfully ask that consideration be given for an amendment that would allow for these families to stay in state and have an in-hospital labor induction at the time these conditions are diagnosed rather than having to travel out of state.

  An example of this would be a fetal diagnosis of anencephaly, which is an anomaly that results in the fetus having an absent skull covering the brain. This is a universally lethal condition and the majority of these infants will not survive more than minutes or hours after birth. If the family chooses to carry to term they receive ongoing prenatal care and making plans for palliative care of the infant after birth. My ask is that these families not be forced to carry to term with these types of uniformly lethal diagnoses. The majority of families who receive a lethal fetal diagnosis during pregnancy will opt for pregnancy termination and 100% of these currently travel out of state to receive the same compassionate care that they should be able to receive close to home. These are end of life decisions. They can have the same palliative care experience with their infant at 20 weeks and in fact would improve the chances they would be able to see their infant

born alive and spend those precious moments with them. We wouldn't expect forcing the prolongation of any other life limiting condition so how is this different, especially when it poses a risk to maternal life.

- My last concern is related to the rape and incest exception. Proof of rape and incest will be difficult to obtain and the law does not make it clear what documentation would be required as proof. Will a police report need to be filed and provided by the patient? Additionally, limiting this exception to 6 weeks gestation effectively makes it impossible for the majority of individuals in these horrific circumstances to seek abortion care. If the legislature is serious about making this an exception, the gestational age needs to be extended as the majority of pregnancies are not diagnosed until after 6 weeks gestation and therefore this exception will not allow for termination for the majority of individuals who have just undergone a traumatic experience.

In summary, I ask for a do pass for SB 2150, as amended, allowing for the medical emergencies to read "substantial OR irreversible physical impairment of a bodily function."

I would also ask for consideration of amendments to include an exception for termination for lethal fetal anomalies and to clarify the documentation needed to prove rape and incest to allow for an abortion without the health care professional facing criminal charges for performing an illegal abortion, as well as to extend the gestational age to later than 6 weeks gestation.

Dr Ana Tobiasz, MD
Maternal Fetal Medicine Physician

Senate Judiciary Committee

SB 2150

Monday January 16, 2023

Chair Larson and Committee Members, I am Dr Collette Lessard, a board-certified physician in Obstetrics and Gynecology practicing in Grand Forks, North Dakota. I have been practicing as an OBGYN physician for nearly ten years.

I am here in support of SB 2150, with a few critical amendments. We support and appreciate that this bill, compared to the trigger law, removes the affirmative defenses, and outlines the ability for us OBGYN physicians to treat ectopic pregnancies. We are thankful that you heard our concerns about those issues.

As stated by the North Dakota Medical Association, we are requesting an amendment to SB 2150 regarding the medical emergency language. The requested amendment is to replace "and" with "or" on page 2, line 6 and to replace "and" with "or" also on page 5, line 31. These amendments are critical to patient safety. The amendments are necessary so that OBGYN physicians can provide safe care for our patients locally when unexpected and serious pregnancy complications arise.

In the current bill, the wording is "to prevent her death or substantial AND irreversible physical impairment of a major bodily function". There are many examples of serious pregnancy complications that can occur prior to viability of the pregnancy. By viability, I mean the gestation at which a baby has a chance, with neonatal intensive care support, to survive outside of the uterus. Many of these pregnancy conditions pose significant increased risks to the mother. Treatment of these conditions in a timely manner, can prevent further harm and risk to the mother's health. In giving patients these difficult diagnoses, we counsel patients on risks and benefits to immediate treatment (induction of labor/termination of the pregnancy) versus expectant management (continuing the pregnancy) and the prognosis for their baby. In many of these scenarios, the prognosis for their baby is very poor due to the early gestation in pregnancy when these complications are occurring. When women choose expectant management in these conditions, they are risking serious health complications. It should be a patient's choice in these scenarios to make individualized and informed decisions with their healthcare team. If the wording is left as it currently is, "substantial AND irreversible physical impairment of a major bodily function", a pregnant woman would be forced to continue a pregnancy until they are becoming critically ill. This is not the standard of care in medicine.

I will give a specific example of one of these medical conditions, preeclampsia. Preeclampsia is a disorder of pregnancy in which a woman develops high blood pressure unexpectedly. Preeclampsia is responsible for an estimated 16% of maternal deaths. This condition can

present any time after approximately 20 weeks in the pregnancy. Most frequently it occurs later in the third trimester and near term in the pregnancy. However, it can occur prior to viability as well. Preeclampsia with severe features is the most dangerous form of this condition. Patients with preeclampsia with severe features tend to have very high blood pressures, putting them at risk of stroke. There are also many other acute (sudden) and long-term complications affecting other organs in the body that can occur with preeclampsia with severe features. These complications can include seizures, kidney and liver failure, pulmonary edema (fluid on the lungs), myocardial infarction (heart attack), acute respiratory distress syndrome (lung failure), coagulopathy (the body's clotting factors are consumed and spontaneous, life-threatening bleeding occurs), and liver rupture. The ultimate treatment for preeclampsia is delivery of the baby and placenta. Initially upon diagnosis, blood pressure treatment and other medications are started. This can stabilize the disease temporarily. But with preeclampsia with severe features, progression to the complications above will eventually occur without delivery. These complications can occur within days or a week or two of diagnosis. The other difficult factor is that you cannot predict when a patient's clinical status will deteriorate, and it can be sudden and rapid. I have had some of these patients doing very well and stable, and yet within hours have sudden-onset chest pain and blood pressures approaching 200 mmHg, or develop kidney failure or coagulopathy overnight. The risk of stroke is significantly increased in pregnant women when blood pressures exceed 160 mmHg systolic (the top number). When this disease develops at 20 or 21 weeks, for example, expectant management is very risky and unlikely to reach the gestational age of viability.

The above is just one example of an obstetric scenario in which women are faced with a grim prognosis for themselves and their baby. The requested amendment (to replace "and" with "or" on page 2, line 6 and to replace "and" with "or" also on page 5, line 31) would allow the patient to make an informed medical decision in these devastating circumstances, given the substantial risks to them and the poor prognosis for their child. The way the line is currently written in SB 2150 with "substantial AND irreversible physical impairment" makes it so that we are not allowed to treat these women until they are experiencing the most serious complications, putting their lives at unnecessary risk. We should be able to offer delivery before they develop coagulopathy or organ failure. If this amendment is not made, all of these patients will need to be sent out of state. This poses unnecessary and significant challenges, along with emotional and financial burdens for them.

The second requested amendment is in section 3b, regarding the gestational age limits on pregnancies conceived by sexual assault. The reality is that most women who are pregnant via sexual assault may not even know that they are pregnant until much farther along in the first trimester. It also puts unnecessary pressure on these women to be rushed into making a decision, in already devastating and emotional circumstances.

A third amendment requested is to allow for abortion for lethal fetal anomalies in this state. These diagnoses bring forth unimaginable pain and devastation to families. They are unexpected and not often known about until 20 weeks, at the standard time of an anatomy scan. Deciding to continue a pregnancy or not after receiving the diagnosis of a lethal fetal

anomaly is making an end-of-life decision for their child. Pregnancy comes with risks, even in the healthiest women. We should allow these families to make these decisions for their child while in the uterus, just like they are allowed to make decisions about withdrawing care or providing supportive care for their child after birth. This also allows the patient and her family to consider the risks to her with delivering the baby in the second trimester for example, compared to carrying to full-term. These are heartbreaking and painful decisions for families. They should be able to receive this compassionate care in state with their OBGYN physician and their families close by, rather than needing to travel out of state for care.

The complexity of obstetrics is very challenging to convey and, unfortunately, it often underestimated and not fully understood by the public. Before becoming an OBGYN, I did not understand any of this either. I want to finish my testimony by sharing my background, so you all understand what I mean by this.

My family farms just outside of Grafton, North Dakota, where I was born and raised. I grew up with Catholic and conservative values. When graduating high school and throughout college, my feelings on abortion were simple and "black and white". I felt that abortion was wrong under all circumstances. It was not until medical school that I began to recognize that the world of pregnancy and obstetrics was much more complicated than I had known. During medical school and OBGYN residency I finally understood why abortion is a medically necessary part of reproductive care.

Let me clarify, I have never performed an elective abortion. I did not attend a residency with those services. However, in residency I learned that abortion is much more than a woman ending her pregnancy because she does not want to be pregnant. Abortion sometimes is choosing to induce labor at 18 or 20 weeks gestation because severe complications in the pregnancy have arose, or because your baby has a lethal birth defect and will not survive outside the uterus. These are unexpected, heart-wrenching, and devastating decisions. Abortion in some of these circumstances is a woman choosing an end-of-life care decision for her baby during the pregnancy. OBGYN physicians, our nurses and team members provide diligent and compassionate care to these families during these times.

Chair Larson and Committee Members, I truly had no idea the scope of what abortion was, or the complexities of pregnancy, before I became an OBGYN. Likewise, I recognize that you all may not fully realize the seriousness and dangers of these situations either. I care so deeply about the patients I serve. I am hoping that you hear what we are trying to explain. We are the only physicians in the state caring for these women in these circumstances. We already having a shortage of OBGYN doctors. Restricting our ability to care for them in these circumstances will make it worse. Please seriously consider these suggested amendments – changing "and" to "or" in the medical emergency language, removing the six week gestation limit for abortions in pregnancies from sexual assault, and allowing for abortions for lethal anomalies in state. Thank you for the opportunity to testify today. I would be happy to answer any questions.

Collette Lessard, MD, FACOG

Senate Judiciary Committee

SB 2150

January 16, 2023

Chair Larson and Committee Members, I am Courtney Koebele and represent the North Dakota Medical Association. The North Dakota Medical Association is the professional membership organization for North Dakota physicians, residents, and medical students.

NDMA is neutral on the topic of abortion, and just like many segments of society, our members are on both sides of the abortion issue. However, the NDMA Policy Forum recently passed a policy opposing the criminalization of medical practice. This policy states as follows:

> NDMA should take all reasonable and necessary steps to ensure that evidence-based medical decision-making and treatment, exercised in accordance with evidence-based standards of care, does not become a violation of criminal law.

NDMA supports SB 2150 and appreciates the work that went into this bill. NDMA was part of the collaboration process with the Catholic Conference and NDHA. This bill fixes our main objection to the trigger law – the affirmative defenses. Which if left in place, make many common procedures that physicians do chargeable as a felony.

We do ask for one amendment to SB 2150. Based on consultation with the physicians working with pregnant women, and their extensive experience helping pregnant women, we believe a slight change to the medical emergency language is necessary. On page 2, line 6, replace “and” with “or”. And on page 5, line 31, replace “and” with “or”.

None of the hospitals and clinics in the state perform elective abortions. However, during the management of pregnancies, and helping women have a successful birth, there are many conditions that it is impossible to determine whether they are substantial and irreversible. We have physicians here to testify in more detail as to why this amendment is necessary.

Dr. Brendan Boe and Dr. Collette Lessard are obstetricians from Grand Forks, Dr. Erica Hofland is an obstetrician from Dickinson, and Dr. Ana Tobiasz is a maternal and fetal medicine specialist from Bismarck.

Just for the record, North Dakota has 80 physicians that specialize in Obstetrics/Gynecology, with five of those specializing in maternal and fetal medicine. An Obstetrics and Gynecology residency involves four years of additional training after a four-year medical school education. A maternal fetal medicine specialty requires an additional three years after residency.

NDMA urges a DO PASS of SB 2150, with amendments. Thank you for the opportunity to address this committee. I would be happy to answer any questions.

Testimony of Tammi Kromenaker
Director of Red River Women's Clinic
In Opposition to Senate Bill 2150
January 16, 2023

Dear members of the Senate Judiciary Committee:

Thank you for the opportunity to submit testimony in opposition to Senate Bill 2150 ("S.B. 2150"). My name is Tammi Kromenaker, and I am the Director of Red River Women's Clinic. We have provided safe abortion care services to North Dakotans for over 20 years. We are members in good standing of the National Abortion Federation and maintain the highest quality standards for our practice. We are now providing abortion care in Moorhead. Our mission is to not only provide medically safe reproductive health services, but to also provide those services in an emotionally supportive environment. I strongly oppose S.B. 2150.

Every person should be able to make their own decisions about their health and their bodies, including decisions about abortion. No one should have their most personal medical decisions controlled by politicians. Yet, since the recent Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, total bans on abortion based in politics, not healthcare, have created a public health crisis.[1] Abortion bans acutely and most directly harm those who already struggle to access healthcare, including people of color and low-income people. This is especially true here, where even maternal health care is not available for all North Dakotans. In fact, nearly 19% of women in North Dakota live in "maternal healthcare deserts," where dependable access to prenatal care is inaccessible.[2]

Pregnancy is not a neutral state—it is physically and emotionally challenging—and for many North Dakotans, it can be life threatening. Carrying a pregnancy to term is approximately 33 times riskier than having an abortion.[3] In fact, in the United States, the mortality rate associated with childbirth is approximately 14 times higher than that associated with abortion.[4] People who are turned away from receiving abortion care, experience an increase in household poverty that can last at least four years, compared to those who are able to access abortion services.[5] By banning

---

[1] Center for American Progress, *Abortion Bans Will Result in More Women Dying* (Nov. 2, 2022) https://www.americanprogress.org/article/abortion-bans-will-result-in-more-women-dying/. "A woman in Wisconsin experiencing a miscarriage was turned away from the hospital and sent home to bleed without medical supervision. In Arizona, a 14-year-old, caught in the crosshairs of abortion restrictions, was denied medically indicated medication she had taken for years…" *Id.*

[2] *N. D. is the #6 State with the Most People Living in Maternal Health Care Deserts*, STACKER (Oct. 29, 2021), https://stacker.com/north-dakota/north-dakota-6-state-most-people-living-maternal-health-care-deserts.

[3] Lisa Marshall, *Study: Banning Abortion Would Boost Maternal Mortality by Double-Digits*, CU BOULDER TODAY, UNIV. OF COLO. BOULDER (Sep. 8, 2021), https://www.colorado.edu/today/2021/09/08/study-banning-abortion-would-boost-maternal-mortality-double-digits.

[4] Increasing Access to Abortion, AM. COLL. OF OBSTETRICIANS AND GYNECOLOGISTS (Dec. 2020), https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2020/12/increasing-access-to-abortion.

[5] Advancing New Standards in Reproductive Health, *The Harms of Denying a Woman a Wanted Abortion Findings from the Turnaway Study*, UNIV. OF CAL. S.F. (Apr. 16, 2020) https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf.

abortion and forcing North Dakotans to give birth, the state is denying our communities the ability to live safe and healthy lives and thrive.

We know that when people are denied abortions, they are less likely to have enough money to cover basic expenses and less likely to leave abusive partners.[6] They are more likely to live in poverty, and less likely to set aspirational life plans for the coming year.[7] Their existing children show worse child development.[8] People who accessed abortion care, on the other hand, are more likely to be financially stable, more likely to raise children under stable conditions, and more likely to have a wanted child later.[9] A study found that 95% of people who obtained an abortion said that it was the right decision and expressed no regret.[10]

Access to abortion care is essential to the social and economic participation of all North Dakotans and it is vital that the right to reproductive autonomy and self-determination is not infringed by this abortion ban. The harm done by S.B. 2150 will fall most heavily on already marginalized communities, including people of color, low-income people, and people in rural areas. The Legislature should be focused on policies that will serve all North Dakotans, instead of passing extreme abortion bans.

For these reasons, I strongly oppose S.B. 2150 and ask you to vote *no* on this bill. Thank you for the opportunity to provide testimony. Please do not hesitate to contact me if you have questions or would like further information.

Sincerely,

Tammi Kromenaker

Tammi Kromenaker

---

[6] *Id.*

[7] Advancing New Standards in Reproductive Health, *The Turnaway Study*, Univ. of Cal. S.F. (Dec. 2022) https://www.ansirh.org/sites/default/files/2022-12/turnawaystudyannotatedbibliography122122.pdf.

[8] Advancing New Standards in Reproductive Health, *The Harms of Denying a Woman a Wanted Abortion Findings from the Turnaway Study*, UNIV. OF CAL. S.F. (Apr. 16, 2020) https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf.

[9] Advancing New Standards in Reproductive Health, *The Harms of Denying a Woman a Wanted Abortion Findings from the Turnaway Study*, UNIV. OF CAL. S.F. (Apr. 16, 2020) https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf.

[10] Advancing New Standards in Reproductive Health, *The Turnaway Study*, Univ. of Cal. S.F. https://www.ansirh.org/research/ongoing/turnaway-study (last accessed Jan. 15, 2023).

2023 Senate Bill no. 2150

Senate Judiciary Committee

Senator Diane Larson, Chairman

January 16, 2023

Chairman Larson and members of the Senate Judiciary Committee, I am Melissa Hauer, General Counsel/Vice President, of the North Dakota Hospital Association (NDHA). I testify in support of Senate Bill 2150. We do ask that you consider an amendment.

We are not expressing an opinion regarding what our state's policy ought to be regarding elective termination of healthy pregnancies. Hospitals are not in the business of providing such elective terminations. But many of the medications and procedures used in abortion are also used to treat serious pregnancy complications that threaten a woman's life or physical health, such as ectopic pregnancy, preeclampsia, and premature rupture of membranes.

At present, the current legal landscape regarding abortion in our state is uncertain. We want to ensure that our health care providers can continue to treat complications of pregnancy without fear of being caught up in criminal penalties for elective abortion. We worked with the main sponsor of the bill and the North Dakota Catholic Conference, and we appreciate their collaboration. NDHA supports the changes this bill would make to clarify and fix inconsistencies in current state abortion law.

Our main concern - which would be resolved with the passage of this bill - was the affirmative defenses in the trigger law. We want to ensure that evidence-based medical decision-making and treatment used to preserve the life and physical

health of a pregnant female are not criminalized. Physicians need to manage pregnancy complications where the mother's life or health are at risk, and they should not fear criminal consequences for doing so. With such uncertainty, physicians may delay care or decide not to practice in a state that puts them at risk of jail time for providing medically necessary care.

We ask for an amendment to the bill. As the physicians who will testify will explain, we believe a slight change is necessary to the medical emergency language. On page 2, line 6 and on page 5, line 31, we ask that "and" be replaced with "or". It is impossible to determine whether some pregnancy complications are substantial and irreversible.

In summary, we ask that you amend the bill and give it a **Do Pass as Amended** recommendation.

I would be happy to respond to any questions you may have. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel/Vice President
North Dakota Hospital Association

Planned Parenthood®
Minnesota, North Dakota, South Dakota Action Fund

Testimony
SB 2150
Judiciary Committee
January 16, 2023

Chair Larson, Vice Chair Paulson, and members of the Committee,

My name is Katie Christensen, and I am the North Dakota State Director of External Affairs for Planned Parenthood North Central States. Thank you for the opportunity to submit testimony in opposition to SB 2150.

Planned Parenthood North Central States provides advocacy, education, and health services, including expert reproductive health care, across our five-state region. At our Moorhead health center, over 60% of our patients are residents of North Dakota. We have tens of thousands of activists and supporters throughout the state. Our education team reaches more than 500 people each year through programming, trainings, and community presentations. Planned Parenthood is here to ensure all people have the information and the means to make free and responsible decisions about whether and when to have children, and our mission affirms human rights to reproductive health care and freedom.

If passed, SB 2150 would ban nearly all abortions in North Dakota. States with strong access to abortion have lower maternal mortality rates, lower infant death rates, improved prenatal care access, and higher contraception uptake. Furthermore, states with similar abortion exceptions such as SB 2150 have scared medical professionals from providing care and placed pregnant people in dangerous situations. Access to abortion care is supported by an overwhelming majority of Americans including North Dakotans who soundly rejected a ballot measure that would have banned abortion in 2014.

Additionally, if this bill were enacted, any healthcare provider who performed an abortion could be imprisoned for up to 5 years and/or face a fine up to $10,000. Physicians who believe that providing an abortion would be in the best interest of the health or life of their patients would be prohibited from doing so except in extremely narrow circumstances. Physicians are ethically required to ensure their patients receive the most appropriate and effective care, yet if passed, this law would put doctors in a place where they must choose between malpractice and a felony. Politicians have no place controlling care provided by licensed medical experts. North Dakotans deserve better.

The Planned Parenthood Minnesota, North Dakota, South Dakota Action Fund strongly urges a Do Not Pass recommendation on SB 2150. If enacted, SB 2150 would limit pregnant people from accessing comprehensive reproductive health care while intimidating physicians from providing the care that they are trained to deliver.

Katie Christensen
kchristensen@ppncs.org
701.388.7369

North Dakota Catholic Conference

Representing the Diocese of Fargo and the Diocese of Bismarck

103 South Third Street
Suite 10
Bismarck ND 58501
701-223-2519
ndcatholic.org
ndcatholic@ndcatholic.org

To: Senate Judiciary Committee
From: Christopher Dodson, Executive Director
Subject: Senate Bill 2150
Date: January 16, 2023

The North Dakota Catholic Conference supports Senate Bill 2150 because it better states the Legislative Assembly's previously enacted abortion laws for this post-*Roe* world.

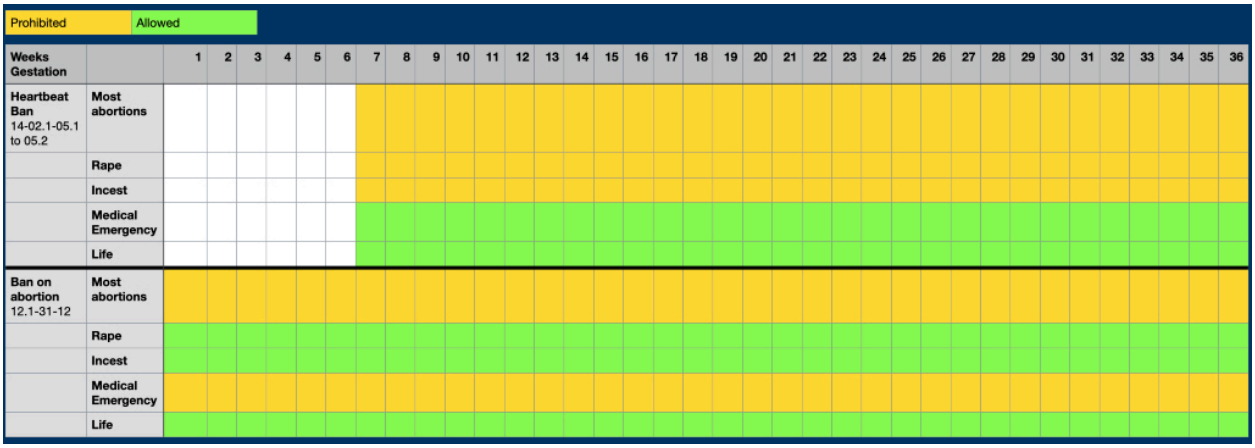
Desiring to protect unborn human life from abortion, this legislative body has, over many sessions, enacted several laws prohibiting abortions or particular types of abortions. Some of those laws were constitutional under *Roe* and *Casey*, some were not.[1] After the *Dobbs* decision, all of them are presumably constitutional under the U.S. Constitution.[2]

Not all of them, however, are still needed. Some are absorbed or made superfluous by other statutes. In addition, some of the definitions and provisions are facially inconsistent. The purpose of SB 2150 is to address these problems. It is the result of months of work involving various experts and stakeholders.

Before explaining the bill's details, it helps to review the previously enacted laws, how they overlap, and why some control over others.

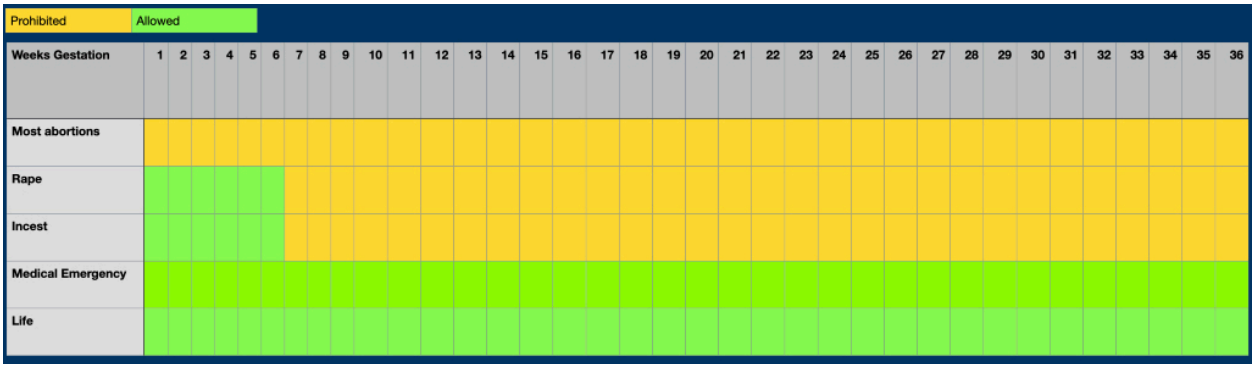
This first slide shows all the laws enacted that prohibit abortions in some way, the laws' exceptions, and scopes according to weeks of gestation.

Without going into the details of each law, we can see that there is some overlap so that some laws are made superfluous by others. After removing those laws, we have left what is commonly called the "trigger law" which passed in 2007, and what is commonly called the "heartbeat ban," which passed in 2013. Those two laws look like this:



According to principles established by the North Dakota Supreme Court, the legislature is presumed to have known about earlier enacted laws and to have intended to replace them where applicable. In other words, the latter enacted controls. In this case, the heartbeat ban controls where applicable.

Applying this principle, we have this:



In short, all abortions are prohibited except for reasons of rape or incest during the first six weeks and for the life of the mother or a medical emergency to prevent substantial and irreversible physical impairment of a major bodily function throughout pregnancy.

This is what the legislature has already passed and intended to go into effect.

The ultimate effect of these laws when combined and the judicial principles of construction are applied is not easily apparent. Almost immediately after the *Dobbs* decision, it became apparent that legislators, healthcare providers, activists on both sides, and journalists were confused about what law applied and when. Several legislators and representatives from pro-life organizations met and decided that it would be in everyone's interest to work off one cleaned-up law. People might want to debate what should be the law, but first, let's better state what is the law.

The result is SB 2150, the purpose of which is to better express and effect what the Legislative Assembly has already enacted. It does this by:

(1) Expressing in one statute prohibitions previously enacted in separate statutes;
(2) Removing obsolete language and language made moot by the scope of other broader statutes;
(3) Making the language, definitions, and exceptions consistent;
(4) Clarifying ambiguous language; and
(5) Except when necessary to accomplish the above, not making any substantive changes to what the Legislative Assembly has already enacted.

Some other points about the bill are worth noting before we review the bill's provisions. First, we examined parts of the Century Code other than the trigger law and the Abortion Control Act that might be impacted and addressed them when appropriate. Second, the bill preserves the typical structure of the Century Code by placing direct criminal violations in the Criminal Code and keeping in the Abortion Control Act the requirements for abortions that are legal. Third, we do not believe that SB 2150 impacts, one way or the other, the current case before the North Dakota Supreme Court because the changes made in SB 2150 do not impact the issue presented in that case.

Page 1 of the bill starts in the Criminal Code by making changes in Section 12.1-31-12, which was known as the "trigger law." The definition of "abortion" is changed to match the definition used in the Abortion Control Act. That definition was more recently passed, is clearer, and expressly excludes treating ectopic pregnancies.

On page 2, lines 4 through 11, the bill inserts a definition of "medical emergency" that further down is made an exception to the prohibition. It is a cleaned-up version of the definition used in the Abortion Control Act. The changes on lines 12 through 18 also make the definitions consistent with the Abortion Control Act.

The changes on page 2, line 21 change the exceptions from affirmative defenses to direct exceptions. The "trigger ban" used affirmative defenses, in which a defendant would have to assert and then prove that the requirements for the exceptions existed. However, the "heartbeat ban," which under the principles of construction applies to all abortions after six weeks gestation, uses direct exception language. Because the most recent legislation used exceptions rather than affirmative defenses, and because it makes no sense to use affirmative defenses for abortions occurring during the first six weeks of gestation, but not after, SB 2150 removes the affirmative defenses to direct exceptions for all abortions.

Page 2, lines 27 and 28, limits the exception for abortions in the case of rape or incest to abortions done in the first six weeks of gestation. The heartbeat ban enacted in 2013 does not contain exceptions for rape or incest. Since this is the controlling law and because the purpose of the heartbeat ban was to prohibit abortions after six weeks gestation, the exception exists only for those weeks. This is the existing law, with or without SB 2150.

On page 3, line 3, the bill adds a medical emergency exception to the prohibition. This exception existed in the heartbeat ban and would now apply to all abortions.

This concludes the criminal code section of the bill. It revises the existing law to incorporate the heartbeat ban, includes the medical emergency exception, changes the affirmative defenses to exceptions, and makes the language consistent with the Abortion Control Act.

The rest of the bill primarily addresses changes to the requirements necessary for those abortions that are still permitted. As it always has been, most of these requirements are in the Abortion Control Act. These provisions primarily affect the Department of Health and Human Services, the courts, and the informed consent requirements.

On page 3, lines 22 through 24, the definition of "Down syndrome" is removed, as is the definition of "genetic abnormality" on page 4. These definitions were used in the ban on abortions for reasons of Down syndrome or genetic abnormality. This ban is now superfluous, so it and the corresponding definitions are removed.

The change on page 4, line 26, is an example of where the language is made more consistent with other sections of the code.

At the bottom of page 5, the definition of "medical emergency" was revised to remove language no longer needed because it related to the ban on abortions after twenty weeks gestation, which is also no longer needed. This revised definition is the same definition in the criminal code section discussed earlier.

The deletion on page 6, lines 10 through 12, also removes language that is no longer needed.

The next change is on page 8. This section concerns the materials produced by the Department of Health and Human Services that, in addition to being made available to the public, must be provided to a woman seeking an abortion by the physician or the physician's assistant twenty-four hours before the abortion. Since most abortions would be prohibited in North Dakota, it makes sense that the materials include information about what is prohibited and what is allowed.

The changes on page 9, lines 9 through 16 add to the abortion data report form that must be submitted to the Department of Health and Human Services for every abortion an indication of whether the abortion was to prevent the death of the mother or because of rape or incest. The state currently does not collect that data.

On page 10, lines 21 and 23, the bill removes a requirement that a wife receives consent from her husband before obtaining an abortion. This language was found unconstitutional many years ago and at this time it is not known whether it would be allowed under the *Dobbs* framework. Considering that the only abortions that would now be allowed would be for saving the life of the mother, a medical emergency, or because of rape or incest, we decided to remove the language.

Keeping with the principle of not substantively changing the existing laws, the parental consent requirement with a judicial bypass is retained. However, because the only abortions for minors that would be subject to the parental consent requirement would be those because of reasons of rape or incest, language is added on page 13 to require the judge to enter a finding that those reasons existed if the judicial bypass is used. Medical emergencies, including those to prevent the death of the minor, are already excluded from the parental consent provisions.

On page 14, lines 12 through 16, the bill removes language made superfluous by the definition of "medical emergency."

The changes on page 15 clarify that after twelve weeks of pregnancy an abortion may only be done in a hospital and that an abortion after the unborn child has reached viability has additional certification requirements.

The changes on page 16 remove language no longer needed because it relates to provisions that are now moot.

The new language on page 17 adds that the physician must include on the abortion report whether the abortion was to prevent the death of the mother or was because of reasons of rape or incest.

The language at the top of page 21 is removed because it subjected a physician to disciplinary action for violating the heartbeat ban, which is now removed from the code. Another section of the existing law subjects a physician to disciplinary action for a conviction for any felony. (See Section 43-17-31(1)(b).)

Finally, we come to the repealed sections. These sections were either made moot by the scope of other sections or are incorporated into the revised Section 12.1-31-12.

Section Repealed	**Description**	**Why Repealed**
14-02.1-04.1	Prohibition on abortions for sex selection and genetic abnormality	Moot
14-02.1-04.2	Prohibition on "human dismemberment abortion" (dilation and evacuation)	Moot
14-02.1-05.1	Heartbeat Ban	Incorporated into Section 12.1-31-12
14-02.1-05.2	Heartbeat Ban	Incorporated into Section 12.1-31-12
14-02.1-05.3	Post-20 week Ban	Moot

These revisions might not be perfect. We might find other sections or statutes that should be revised. There may exist other parts of the Abortion Control Act not concerning the prohibitions that the committee may consider.

Senate Bill 2150, however, provides a better way than the existing statutes of implementing what the legislature has already enacted and it removes unnecessary and confusing language. It is the conference's hope that if legislators want to change these laws in this session they offer amendments to this bill.

Senate Bill 2150 does not enact new bans on abortions. All the prohibitions in SB 2150 already exist and they would still exist if SB 2150 is not enacted. However, if it does not pass:

- Defendants would have to rely on affirmative defenses for abortions excepted under the law if the abortion occurred within the first six weeks of gestation, but not for abortions occurring after six weeks of gestation;

- Questions could arise as to whether the treatment of ectopic pregnancies or abortions in cases of medical emergencies would be legal during the first six weeks of gestation, but no such questions would arise after six weeks of gestation; and

- Confusion could exist as to which law would be violated when more than one statute encompasses the prohibited abortion.

Ultimately, the question presented by SB 2150 is not about whether a person supports or opposes the abortion bans. It is about whether we want a clearer, better statute.

For these reasons, the North Dakota Catholic Conference requests a "Do Pass" recommendation on SB 2150.

---

[1] *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood of Southeastern Pennsylvania, et al. v. Robert P. Casey, et al.*, 505 U.S. 833 (1992).

[2] *Dobbs v. Jackson Women's Health Organization*, 597 U.S. _ (2022).

Prohibited | Allowed

Weeks Gestation		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36
Post-Viability 14-02.1-04(3)	**Most abortions**																								P	P	P	P	P	P	P	P	P	P	P	P
	Rape																								P	P	P	P	P	P	P	P	P	P	P	P
	Incest																								P	P	P	P	P	P	P	P	P	P	P	P
	Grave Mental Health																								A	A	A	A	A	A	A	A	A	A	A	A
	Medical Emergency																								A	A	A	A	A	A	A	A	A	A	A	A
	Life																								A	A	A	A	A	A	A	A	A	A	A	A
Heartbeat Ban 14-02.1-05.1 to 05.2	**Most abortions**							P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
	Rape							P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
	Incest							P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
	Grave Mental Health							P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
	Medical Emergency							A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
	Life							A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Post-20 weeks 14-02.1-05.3	**Most abortions**																				P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
	Rape																				P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
	Incest																				P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
	Grave Mental Health																				P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
	Medical Emergency																				A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
	Life																				A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Dilation and evacuation (D&E) ban 14-02.1-04.2	**Most abortions**												P	P	P	P	P	P	P	P	P	P	P	P													
	Rape												P	P	P	P	P	P	P	P	P	P	P	P													
	Incest												P	P	P	P	P	P	P	P	P	P	P	P													
	Grave Mental Health												P	P	P	P	P	P	P	P	P	P	P	P													
	Medical Emergency												A	A	A	A	A	A	A	A	A	A	A	A													
	Life												A	A	A	A	A	A	A	A	A	A	A	A													
Ban on abortion 12.1-31-12	**Most abortions**	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
	Rape	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
	Incest	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
	Grave Mental Health	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
	Medical Emergency	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
	Life	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

Prohibited | Allowed

Weeks Gestation		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36
Heartbeat Ban 14-02.1-05.1 to 05.2	**Most abortions**																																				
	Rape																																				
	Incest																																				
	Grave Mental Health																																				
	Medical Emergency																																				
	Life																																				

Ban on abortion 12.1-31-12	**Most abortions**																																				
	Rape																																					
	Incest																																				
	Grave Mental Health																																				
	Medical Emergency																																				
	Life																																				

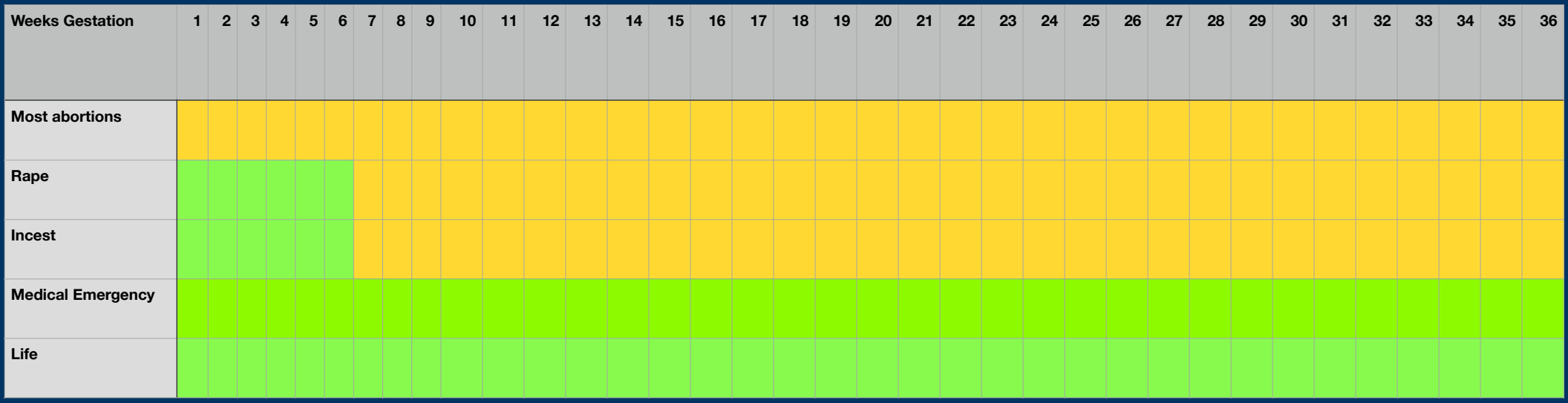
Heartbeat Ban and Trigger Ban

Prohibited	Allowed

Weeks Gestation		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36
Heartbeat Ban 14-02.1-05.1 to 05.2	**Most abortions**																																				
	Rape																																				
	Incest																																				
	Medical Emergency																																				
	Life																																				
Ban on abortion 12.1-31-12	**Most abortions**																																				
	Rape																																				
	Incest																																				
	Medical Emergency																																				
	Life																																				

Heartbeat Ban and Trigger Ban Combined

Prohibited	Allowed



Under established legal principles, the heartbeat ban controls over the trigger ban wherever applicable.

Senate Judiciary Committee
SB 2150
January 16, 2023

Greetings, Chair Larson and Committee Members. My name is Kirsten Bokinskie, and I am a fourth-year medical student at the University of North Dakota School of Medicine and Health Sciences. At present, I am applying to Obstetrics and Gynecology residency programs. I am very grateful for the opportunity to testify in support of SB 2150 so long as amendments are considered by this committee.

I am a life-long citizen of North Dakota and have much appreciation for the abundance of opportunity provided for me by this great state. I grew up in Fargo then moved across the Red River for my undergraduate education at Concordia College in Moorhead, MN. I chose to continue my professional education at UND SMHS due to the outstanding education and deep conviction to serve the people of North Dakota in my future practice as a physician. My aim to have a full-scope generalist ob/gyn practice and provide the best possible care to the people of North Dakota will not be possible without changes to certain parts of SB 2150. These changes will not only improve the health and safety of pregnant people in our state, but also aid in recruitment and retention of physicians.

I am thankful for the changes that have been made thus far, including the removal of the affirmative action aspect from the "Trigger Law" that was proposed. In addition to this change, it is imperative that three improvements be strongly considered. This includes the verbiage surrounding what constitutes a medical emergency, the 6-week timeframe proposed to receive an elective abortion for a pregnancy related to rape or incest, and the limits related to termination in the case of unviable anatomic abnormalities of the fetus.

First, the verbiage surrounding what constitutes a medical emergency needs to be modified. The current language states "her death or substantial AND irreversible physical impairment of a major bodily function, not including any psychological or emotional condition." An amendment to change this language to "substantial OR irreversible physical impairment of a major bodily function" would allow for medical emergencies such as pre-viable membrane rupture and pre-viable preeclampsia to be cared for in the most medically appropriate and evidence-based fashion.

Second, the 6-week timeframe proposed to receive an elective abortion in the case of rape or incest does not allow adequate time for people to recognize a missed period, have a positive pregnancy test, come to terms with their horrific circumstance, and make a decision which is in their own best interest. Also, of note, is how and who is to say if a case is rape or incest? Will law enforcement or a formal reporting system need to provide proof to allow for termination of the pregnancy without legal repercussions for the pregnant person? Such traumatic circumstances for citizens in North Dakota need to be treated with care and adequate time to seek the care they need.

Third, the limits related to termination in the case of unviable anatomic abnormalities of the fetus should be evaluated. North Dakotans seeking an abortion in such conditions are required to

travel out of state for medical care. Individuals who are not able to travel out of state are then forced to carry to term regardless if fetal demise has already occurred. This greatly increases the risk of negative health consequences for the person carrying the pregnancy. If people choose to carry a pregnancy under these conditions to full term, that should be their choice, not based on their ability to seek care in another state.

In summary, I support the passing of SB 2150 with the previously mentioned amendments. I urge you to consider for allowing for medical emergencies to read “substantial OR irreversible”, exceptions for lethal fetal anatomic anomalies, and to clarify documentation and extending longer than 6 weeks in cases of rape or incest. These considerations are vital in the health and safety of not only pregnant people, but also the physicians of North Dakota.

Kirsten Bokinskie, BA
Medical Student

Senate Judiciary Committee
SB 2150
January 16, 2023

Good afternoon, Chair Larson and Committee Members,

My name is Julia Dworsky, and I am a third-year medical student in North Dakota. Thank you for the opportunity to testify today. I am asking the committee to give this bill a Do Pass recommendation, provided that the following amendments can be granted:

1. Medical emergencies changed to "substantial OR irreversible physical impairment."
2. Including an exception for termination for lethal fetal anomalies.
3. Clarifying the documentation needed to prove rape and incest to allow for an abortion, as well as to extend the gestational age to later than six weeks gestation.

I did not grow up in North Dakota, but I became acquainted with this state while working at Minnesota clinics providing obstetrical care, including abortions. Between referrals from providers who could not help their patients receiving a lethal fetal diagnosis to the families driving over 10 hours in a blizzard to get basic medical care, I realized that there was a strong need for access to reproductive healthcare in North Dakota. My time in medical school has motivated me to become an OBGYN. I hoped to practice in North Dakota and bridge the gap in healthcare access that I saw during my work experiences. However, as SB 2150 stands today, this is unfortunately not a feasible option for me, my classmates, and future applicants to the medical school program unless the following amendments are made.

Firstly, the current language in SB 2150 includes an exception for termination for preventing "death or substantial and irreversible physical impairment." This ambiguity leaves providers at risk of criminal charges for providing the standard level of practice for common medical conditions, such as preterm rupture of membranes. An abortion may prevent severe complications such as intrauterine infection, sepsis, or hysterectomy. Amending the language to "substantial OR irreversible physical impairment of a major bodily function" would allow medical providers to act in line with their medical training without intentionally harming a patient by waiting for irreversible bodily damage to occur.

The second change that should be made regards an exception for the termination of a pregnancy for lethal fetal anomalies. Patients in North Dakota who choose to terminate must leave their homes and support systems to utilize a different state's health system for this care. While the outcome of the fetus in a diagnosis of lethal anomaly is inevitable, mortality increases drastically for the woman continuing a pregnancy to term. North Dakota patients should be supported and cared for by their state health system regardless of their decision to terminate or not when faced with the diagnosis of a lethal fetal anomaly.

The last change I propose relates to the exception of rape and incest. This exception must clarify the specific proof needed to qualify for an abortion. There is no need for survivors of rape and incest to be further harmed emotionally when determining how to receive medical care.

Additionally, limiting this exception to six weeks gestation further harms these survivors as it is not a feasible timeline for an abortion to occur.

The barriers to medical care as SB 2150 currently stands will alienate people from North Dakota, as patients will be forced to seek standard care elsewhere. Providers in various specialties such as OBGYN, Emergency Medicine, Family Medicine, and more will fear facing criminal charges for performing standard functions of their jobs.

The primary purpose of the medical school in North Dakota is to educate physicians for subsequent service in North Dakota and enhance the quality of life in North Dakota. As a medical student, I do not feel that SB 2150, as it currently stands, embodies this purpose, as it will negatively impact the quality of life and safety of healthcare recipients in this state.

Thank you for the opportunity to submit written testimony.

Julia Dworsky, MS-III

Senate Judiciary Committee
SB 2150
January 16, 2023

Chair Larson and Committee Members, my name is Megan Corn, and I am a current third year medical student in the state of North Dakota applying to an Obstetrics and Gynecology residency in 2024. Thank you for the opportunity to testify in support of SB 2150 so long as amendments be considered by this committee.

I came to North Dakota for medical school and have been amazed by all this state has to offer. I came with an open mind and heart and have found so much love for the small towns and Midwest hospitality. The people of North Dakota have invested in me to become a physician and help make our country a healthier and safer place. However, if SB 2150 is passed as written, it would deter me from returning to the state to practice OBGYN after my residency. SB 2150 does thankfully remove the affirmative defense and protect the treatment of ectopic pregnancies, which is why I write to show my support, but I recommend several amendments to SB 2150.

I support SB 2150 if amendments are made to extend the time restrictions proposed to receive an abortion in the case of rape or incest, improve the clarity of language which constitutes a medical emergency for abortion, and allow for termination in the presence of unviable anatomic abnormalities of the fetus.

If our state does not provide laws that allow for patient and physician safety, it will deter applicants from attending medical school in our state. Not only will these laws decrease the number of applicants applying and accepting a position to attend school in our state but may also dissuade physicians from applying to jobs and decrease physician retention in North Dakota.

We have so many medically underserved areas across the state, we should be creating policies that protect our doctors, our mothers, sisters, daughters, and wives. To do so, I support SB 2150 with amendments over the “Trigger Law”.

Thank you for the opportunity to testify.

Megan Corn, MS III

Senate Judiciary Committee
SB 2150
January 16, 2023

Good afternoon Chair Larson and members of the Committee. My name is Dr. Heather Sandness Nelson. I am an OB/Gyn here in Bismarck and the Obstetrics Department Chair at my hospital. Thank you for giving me the opportunity to speak with you today. I am in favor of SB 2150 and a Do Pass recommendation with a requested amendment.

I have the humble honor of guiding women through one of the most special moments in their lives. Often this is a joyous occasion, however, many times complications arise that require us to have very difficult discussions and make tough decisions with our patients and their families regarding their pregnancy.

I have concerns the bill in its current state will restrict my fellow colleagues and my capacity to safely care for patients who develop complications during pregnancy—complications, that if not managed actively and in accordance with standards of care, could lead to substantial or irreversible physical harm.

Current language of the bill states both requirements (substantial and irreversible impairment) need to be satisfied for a termination of pregnancy to be considered legal.

There are many scenarios in which continuation of a pregnancy could lead to substantial OR irreversible impairment, but if we as physicians are restricted to satisfying the language of a law rather than providing safe, standard of care medicine, it will lead to inconsistent care for fear of legal retribution.

Complications in pregnancy such as previable rupture of membranes, lethal fetal anomalies, and maternal blood pressure conditions can lead to substantial physical impairment.

Complications in pregnancy such as maternal respiratory disease, liver disease, heart disease and in utero infections are irreversible conditions and can lead to irreversible physical impairment.

I request the definition of medical emergency be amended to reflect that many complications of pregnancy can lead to substantial OR irreversible physical impairment. This would allow women in our state to receive necessary, consistent care with regard to their pregnancy. The current wording is too specific and can result in unnecessary complications because we are unable to offer standard interventions.

These complications are not rare, and these decisions can be heartbreaking for patients and their families. Restricting our capacity to offer these women and their families safe management will only lead to inconsistent and substandard care for fear of prosecution.

Although I feel the decision to continue a pregnancy or pursue termination is an entirely private, protected conversation between a woman and her physician, I ask for a Do Pass recommendation for SB2150 if an amendment is made to allow medical emergencies to read: “substantial OR irreversible physical impairment of a major bodily function.”

Thank you,
Heather Sandness Nelson, MD
Obstetrics and Gynecology Physician

Senate Judiciary Committee
Senate Bill 2150
January 16, 2023

Good afternoon Chairperson Larson and members of the Committee. My name is Mandy Dendy and I come before you today to share my personal story with you.

Twenty years ago this week my husband and I began living our worst nightmare. We were expecting our first child and an ultrasound had revealed some abnormalities. We were sent for a higher level ultrasound which revealed our baby did not have kidneys. It is a condition called Potter's Syndrome named after Dr. Edith Potter who discovered it in the 1940s. It is almost universally fatal with only one known survivor that I can find since that time. The abnormality was not discovered until our first routine ultrasound at the halfway point of my pregnancy. This particular abnormality cannot be found until at least the second trimester as what happens is the mother's body provides amniotic fluid for the baby in the developing first trimester and then the baby's boy, specifically the baby's kidneys, take over in the second trimester. Wyatt didn't have kidneys and so he could not produce amniotic fluid. Amniotic fluid is critical for development of the fetal lungs. Wyatt died from underdeveloped lungs, not his missing kidneys. Medically, this is known as bilateral renal agenesis.

We were told that he could die at any time and if by some miracle he was born alive he would die shortly after. There were no treatments, only planning for

the inevitable worst. We were given a choice - continue to carry a child that was given no chance of survival with, at that time, no known survivors, or terminate the pregnancy. My husband placed the decision in my hands because it was my body that would house this child and it was my vigilance day and night that would monitor his continued survival in utero. I was the one who would deliver him, dead or alive.

I chose to take a chance that the doctors were somehow mistaken or that my baby would somehow defy the overwhelming odds. I am the patient that Drs. Boe, Tobiasz, and Lessard referred to in their testimony, the patient who is given a fetal diagnosis incompatible with life. They have given you the medical perspective of that diagnosis and I am here to give you the human patient perspective. There is more to my story that I haven't told you yet.

I have made this decision twice and carried two babies to term, both with the same fetal anomaly. Our first and our fifth children, and our only sons. There is an emotional cost that cannot be accurately measured. I carried my sons each for four months of pregnancy, knowing they could die in utero at any moment. I obsessed over their every moment, fearing what stillness could mean. I delivered them by scheduled c-sections around the 37th week of pregnancy, still knowing that a moving baby prior to that first incision did not guarantee anything. We arranged for photographers to be in the delivery room, along with a priest, to baptize our sons as soon as possible and to capture every fleeting moment of

their brief lives. I arranged for funerals and burials before ever entering the operating room.

I delivered my babies on the maternity floor just like any other expectant mother. Except my room had a butterfly on the door to signify the emptiness. I listened to the cries of babies in rooms around me and left the hospital with empty arms and milk-filling breasts with no child to feed. I attended the funerals of my sons just five days after giving birth, watching their tiny coffins lower into the ground of the double grave plot we had purchased, one at the foot of our graves and one at the head.

I went home after the birth of our second son, but fifth child, Eli, to three young daughters who needed their mother. Their mother needed to grieve. I can tell you those experiences profoundly changed me as a person and as a parent.

Those are the emotional costs. There are also financial costs. Going to a hospital and having a baby is expensive. Tack on the cost of a funeral and burial right on the heels of that and it can be financially overwhelming. Even with my husband lovingly crafting our babies' coffins himself and already having a headstone and grave plot, Eli's funeral cost thousands of dollars. Whether a child is buried or cremated, there is a cost, a heavy financial burden to sit alongside the steep emotional price of choosing to carry and deliver a child with a fatal fetal abnormality.

I am asking you to consider our story when deciding whether there should be an exception for pregnancies diagnosed with lethal fetal abnormalities. We don't regret the choices we made in carrying our sons to term despite both of them dying within hours of their births. Having a choice in a situation where you have such little control is important.

Amirah Hurst
Testimony on SB 2150
Jan 16, 2023

Good afternoon legislators,

My name is Amirah Hurst & I'm currently a high school student attending Red River in Grand Forks, ND. I'm here today to urge members of the council to vote in opposition of SB 2150.

Recently, the question of abortion has been on everyone's mind. When is life determined? Is abortion healthcare? What constitutes the right to a safe abortion? I'm sure the majority of you are already set on your belief surrounding abortion, therefore I'm not here to change your view. Instead I invite you to look outside yourself and do your job as politicians and realize how harmful this bill is to women of all ages, race, and socioeconomic statuses across our state.

Six weeks seems like enough time for a woman to find out she's pregnant, right? Wrong. There are many errors in the proposed bill, specifically section 3b of the Section 1 Amendment which essentially changes the deadline of an abortion (for special cases) to six weeks or less. Typically, women don't realize the possibility of pregnancy until a missed period, which is based off of a regular menstrual cycle (28 days). Doctors count the age of a pregnancy from the first day of your last menstrual cycle. Meaning by the time a woman misses her period & finds out they are pregnant they are already 4 weeks pregnant. Leaving the woman with only two weeks to make a decision. This is the best case scenario, ignoring the irregularities in women's menstrual cycles. A 2019 study showed that only 13% of women have a "regular" 28-day cycle. Meaning if their period has not arrived "on time", they may not notice until it's been a week late now leaving them with only one week. Such variability in cycles indicates that a six week time frame is not practical for even the detection of pregnancy, let alone the decision making of whether or not to go through with an abortion. Being six weeks pregnant does not give you six weeks to have an abortion.

Amirah Hurst
Testimony on SB 2150
Jan 16, 2023

Abortions will not end, regardless of the laws aiming to do so. Unsafe abortions will continue & the morality of pregnant women will increase especially in impoverished populations of our community. It has been exemplified in many other countries with abortion bans. Look beyond your own beliefs and objectively look at how damaging the passing of this bill is. It has been shown time and time again. For the sake of liberty and justice for all promised to US citizens, please do not let history repeat itself.

Thank you for your time and please make the right decision in voting “Do Not Pass” on SB 2150.

-Amirah Hurst

Grand Forks, ND.

Senate Judiciary Committee
Senate Bill 2150

Andrew Alexis Varvel

Peace Garden Room North Dakota State Capitol January 16, 2023 2:30PM

Madame Chairman Larson and Members of the Committee:

My name is Andrew Alexis Varvel. I live in Bismarck.

Some of the most important pieces of legislation are so-called “housecleaning bills” that make major changes while not seeming to make a big fuss. This looks like one of them.

Yet, this legislation confuses me.

This bill repeals our state's ban on sex-selective abortion. Why?

This bill repeals our state's ban on dismemberment abortion. Why?

This bill repeals our state's ban on killing fetuses with Down's Syndrome. Why?

This bill repeals our state's ban on killing fetuses based on a genetic abnormality. Why?

The bill repeals our state's ban on killing fetuses after twenty weeks. Why?

Granted, I have never been fond of Century Code sections 14-02.1-05.1 and 14-02.1-05.2, which ban abortion once a heartbeat is found. I have long regarded the acquisition of human morphology and the ability to feel pain to be far more important than a heartbeat.

And that reminds me – I am still disappointed that North Dakota has still yet to pass any law requiring anaesthesia during abortions, both for the mother's comfort and to ensure that when unborn children get killed, they get euthanized in the most humane manner possible.

Hopefully, this bill is a work in progress. If it comes out of this committee in substantially the same form as what I am seeing now, it would probably deserve a DO NOT PASS on balance.

Thank you.

Andrew Alexis Varvel
2630 Commons Avenue
Bismarck, ND 58503
701-255-6639
mr.a.alexis.varvel@gmail.com

Senate Judiciary Committee

SB 2150

Monday January 16, 2023

Chair Larson and Committee Members, I am Dr. Ciara Johnson, a board-certified physician in Obstetrics and Gynecology practicing in Grand Forks, North Dakota.

I write in support of SB 2150, with a few critical amendments. I support and appreciate that this bill, compared to the trigger law, removes the affirmative defenses and outlines the ability for us as OB/GYN physicians to treat ectopic pregnancies as we have been trained to do for the safety of our patients. We are thankful that you heard our concerns about these issues.

As stated by the North Dakota Medical Association, we are requesting an amendment to SB 2150 regarding the medical emergency language. The requested amendment is to replace “and” with “or” on page 2, line 6 and to replace “and” with “or” also on page 5, line 31. These amendments are critical to patient safety. The amendments are necessary so that OB/GYN physicians can continue provide evidence-based care for our patients locally when unexpected and serious pregnancy complications arise.

In the current bill, the wording is “to prevent her death or substantial AND irreversible physical impairment of a major bodily function”. There are many examples of serious pregnancy complications that can occur prior to viability of the pregnancy that are proven to compromise maternal health and if not addressed in a timely fashion do just this. Waiting for serious medical harm, both substantial and irreversible, to occur before intervening is not the standard of care in any field of medicine and should certainly not be the expectation when caring for our own mothers, sisters, daughters and friends.

There are medical scenarios that we, as obstetricians, deal with on a daily basis that have been proven to frequently lead to such damage and, unfortunately, death including preeclampsia with severe features (elevated blood pressures that can lead to coagulopathies, seizure/stroke, potentially death), pre-viable preterm premature rupture of membranes (can result in systemic infection and death if pregnancy is not delivered) and massive maternal hemorrhage which can result from several conditions including abnormal placentation, incomplete but inevitable miscarriage and placental abruption. Though the recommended and evidence-based treatment for these conditions often results in the loss of a pregnancy, it allows us to keep our mothers, sisters, daughters, and friends alive.

The second requested amendment is in section 3b, regarding the gestational age limits on pregnancies conceived by sexual assault. Most women who are pregnant via sexual assault may not even know that they are pregnant until much farther along in the first trimester. Many are young, unsuspecting and scared individuals who have been through a traumatic experience they do not wish to address. We are requesting that this gestational age limit be removed or extended until a later gestation.

A third amendment requested is to allow for abortion for lethal fetal anomalies in this state. These anomalies and diagnoses are not often known about until 20 weeks, at the standard time of an anatomy scan. A family should be able to make an informed decision in these cases and receive compassionate care in the state of North Dakota with their OB/GYN physician and their families close by. Eliminating this possibility is a true disservice to our own people and places social and financial burdens on women who are already in very difficult situations.

As OB/GYN physicians, we face many complicated and high-risk medical circumstances with our patients in their pregnancies. As it is now, they are oftentimes extremely difficult to navigate appropriately due to both the medical and emotional complexities involved. The above-mentioned amendments are necessary so that all women can continue trust that they can seek AND receive safe care in THIS state when these unfortunate situations arise.

Like many other physicians in this state, I was born and raised here, received my medical education here and am now raising my own children here. I hope to continue to be able to use my acquired skills to provide very necessary care to the women in our state, but without these amendments in place, it would become very difficult for me to do so. I fear that we are at risk of losing very capable, competent and absolutely needed OB/GYN physicians in this state if these changes are not made. The women in OUR state deserve better than having to choose between receiving marginal care or leaving to receive evidence-based care. Please hear this today.

Thank you for the opportunity to provide my thoughts. I support my colleagues who are in Bismarck testifying on this in person today. If you have any questions, please do not hesitate to reach out.

Respectfully,
Ciara Johnson, MD, FACOG

North Dakota Right to LIFE

Chairwoman Larson and Members of the Senate Judiciary Committee –

My name is Sierra Heitkamp and I am the Legislative Director for North Dakota Right to Life. I am here today to represent the interests and legislative initiatives of their base comprised of 3700 citizens across the state of North Dakota.

Today we have before us SB 2150 which is intended to clarify definitions in North Dakota's century code regarding current laws that have been passed. After reading through the bill, there are many opportunities to identify the consistent changes made by this bill to update and clarify language.

With my time today, I would take this opportunity to point out a few changes that are important to our members at NDRL. First, this bill adds in language defining a medical emergency in the case that a woman that is outside the outlined exceptions would be able to receive necessary care from her doctor. SB 2150 also updates our reporting laws regarding the practice of abortion which is beneficial when collecting data on abortion across North Dakota.

I ask this committee today for a ***Do Pass recommendation on SB 2150*** in order to solidify the values of North Dakotans by correcting these obstacles in our current laws.

Thank you for your time today and I will now stand for any questions that the committee may have.

Sincerely,

Sierra Heitkamp

Sierra Heitkamp
NDRL Legislative Director

(701) 955-8239 office@ndrl.org P.O. Box 1325, Williston, ND 58801

Senate Judiciary Committee

SB 2150

Jan 16, 2023

Rebecca Matthews

Chairperson Larson, members of the Senate Judiciary Committee. I am Rebecca Matthews and I am here today in opposition of Senate Bill 2150

Over 15 years ago during my 3rd pregnancy I found out I was expecting identical twin girls with a shared placenta. I was about to face new terminology like twin-to-twin transfusion syndrome, velamentous cord insertion, placental share, placental laser surgery and cord ligation. I learned to lean on my Maternal Fetal Medicine doctor and Fetal Surgeon staff to understand all the medical options available to me for the most optimal outcome. I leaned on my long-time OB/GYN as she knew me, my husband, and family best. I am here once again as I was in 2013, to tell this story to the members of the legislature who have decided that legislation is needed to come between myself and my medical team. During my pregnancy, I am the most grateful that I could navigate all the options available to me without this interference.

In 2007, we left an out-of-state Fetal Care Center with a recommendation of bed rest and contemplation before making the decision to terminate one twin to save the other. That time was a living hell that I cannot even describe to you. Time spent in prayer. Time spent with my four- and six-year-old. Time wondering what the next day would bring. Sadly, I lost both twins that week and I delivered them still born.

My lived situation is a perfect example of how abortion is not a black and white issue and law cannot be written to adequately cover all the grey areas and possible situations doctors and patients face daily.

As a woman from Western North Dakota. I value my independence, my faith, and not having the government mingle in my medical decisions. I stand for those North Dakotans who will be in my shoes during a difficult pregnancy. That they continue to have the right to make their own medical choices without government intrusion. I ask you to vote no and stay out the business of medicine.

Olivia Data
Testimony on SB 2150
January 16, 2023

RE: Testimony in Opposition of SB 2150

Good afternoon, Chairwoman Larson and members of the committee.

My name is Olivia Data. I was born and raised here in North Dakota, I'm a North Dakota resident and a current freshman at Harvard college, and I am here today to urge you to vote "Do Not Pass" on SB 2150.

I know abortion is a difficult subject. It is an issue fraught with emotions and complex beliefs about life and death and right and wrong, which is why it is an issue that must be left up to individuals. Neither science nor religion can agree on when life begins – if it's at conception, the first heartbeat, the first breath – so why would we seek to draw such a harsh and uncompromising line as this one in the government?

I doubt there is a single person here who would disagree that the creation of new life is beautiful and that babies should be protected. Yet, we must also acknowledge that pregnancy is a health condition which can result in both positive and negative outcomes for the pregnant person and the fetus. The fact is, abortion is healthcare. Yes, it should be regulated, and of course, there should be other options, but denying anyone the right to choose what to do with their own body is not only extreme governmental overreach, but a violation of our most basic humanity.

No one wants an abortion like we want a spa day or an iced coffee. An abortion is a serious and, in many cases, necessary medical procedure. In an ideal world, no one would have to have an abortion, but until then, what will actually help reduce abortions is promoting better education,

increasing access to medical resources, and empowering future generations to make healthy decisions about their own bodies.

I think we can agree that we all want to protect children. But I ask you not just to think about a romanticized narrative of saving the unborn, not just about the potentiality of hypothetical children, but about children today. I ask you to think about the children who, if the worst happens, and they are impregnated as a result of rape or incest, will have only 6 weeks to gather adequate support and resources to travel to a clinic in another state. I ask you to think about the children who, if this bill is passed, will have to grow up with the knowledge hanging over their heads that if they are hurt and violated, they could be treated as a criminal and not a survivor. I ask you to think about young girls who will be taught by this bill that the same government that's supposed to protect them does not trust them to make decisions about their own lives and bodies.

As a young woman, I am terrified. I have grown up knowing that I, as a woman, as a person, as a North Dakotan, have the right to control my own body. But if this bill passes, even in dire medical emergencies, even in cases of rape or incest, that right will be severely limited. Is my ability to feel safe in my own skin, is my liberty, is my life worth less to you than even the potentiality of a pregnancy?

SB 2150 tells me and every person who wants basic autonomy that our futures can be taken away at the whim of the government. It could be your children living in fear of losing their autonomy. Your grandchild could sit scared in a courtroom because somebody found their miscarriage suspicious. Your daughter could bleed out in a hospital while her doctor waits until

she's close enough to death to be saved. How many of us will have to be hurt before you listen? How many of us will have to spill to you our deepest fears and most personal tragedies before you believe us? How many of us will have to stand up here and beg for fundamental human rights before you grant us the basic dignity to control our own bodies?

I truly believe we all want the same thing: to build a community where people feel safe and to provide a better, kinder future for North Dakota's children. But SB 2150 is not the way. Let us educate our youth, empower women to make our own decisions, and create a future where no one has to live in fear of losing their fundamental liberties.

I urge the committee to vote "Do Not Pass" on SB 2150.

Thank you for listening, and I will gladly stand for any questions.

Olivia Data
District 35
Bismarck, ND

North Dakota Women's Network

Kayla Schmidt – Interim Executive Director, North Dakota Women's Network
Opposition - SB 2150
North Dakota Senate Judiciary Committee

January 16, 2023

Chair Larson and members of the Senate Judiciary Committee,

My name is Kayla Schmidt and I am the Interim Executive Director of the North Dakota Women's Network.

We are a statewide organization working towards improving the lives of women across North Dakota with the support of our members and advocates. I am providing testimony in opposition of Senate Bill 2150.

Our mission includes empowering women to take an informed role in their health care decisions. We rely on medical experts to guide us in making these personal choices.

While SB2150 does allow care providers with "exceptions" instead of the burden of "affirmative defenses," the bill does not account for the many complications that may arise during a pregnancy. The expertise of a doctor should not be overshadowed by limited definitions that restrict their ability to treat patients. North Dakotans deserve to receive medical care that is not hindered by interference from the government.

When women have adequate access to reproductive health services, they are more likely to attain economic stability, maintain emotional and physical health, and build strong families and futures.

North Dakotans deserve healthcare that preserves their personal liberty, dignity, and privacy. Senate Bill 2150 endangers these ideals; thus, we ask for a "Do Not Pass" recommendation from this committee.

Thank you.

Kayla Schmidt
director@ndwomen.org

23.0137.05001

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2150

Introduced by

Senators Myrdal, Boehm, Luick

Representatives Porter, Rohr, M. Ruby

A BILL for an Act to amend and reenact sections 12.1-31-12, 14-02.1-02, 14-02.1-02.1, 14-02.1-02.2, 14-02.1-03, 14-02.1-03.1, 14-02.1-04, and 14-02.1-07, and subsection 1 of section 43-17-31 of the North Dakota Century Code, relating to abortion and grounds for disciplinary action imposed against a physician; to repeal sections 14-02.1-04.1, 14-02.1-04.2, 14-02.1-05.1, 14-02.1-05.2, and 14-02.1-05.3 of the North Dakota Century Code, relating to sex-selective abortions, genetic abnormality abortions, human dismemberment abortions, and abortions after a detectable heartbeat; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-31-12 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-12. Abortion - ~~Affirmative defenses~~Exceptions.

1. As used in this section:
   a. "Abortion" means the ~~use or prescription of any substance, device, instrument, medicine, or drug to intentionally terminate the pregnancy of an individual known to be pregnant. The term does not include an act made with the intent to increase the probability of a live birth; preserve the life or health of a child after live birth; or remove a dead, unborn child who died as a result of a spontaneous miscarriage, an accidental trauma, or a criminal assault upon the pregnant female or her unborn child~~act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge 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:

(1) Save the life or preserve the health of the unborn child;

(2) Remove a dead unborn child caused by spontaneous abortion; or

(3) Treat a woman for an ectopic pregnancy.

b. "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 to prevent her death or substantial ~~and irreversible~~ physical impairment of a major bodily function, not including any psychological or emotional condition. 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.

c. "Physician" means an individual 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.

~~c.~~ ~~"Professional~~

d. "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.

e. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

2. It is a class C felony for a person, other than the pregnant female upon whom the abortion was performed, to perform an abortion.

3. ~~The following are affirmative defenses under this~~This section does not apply to:

a. ~~That the~~An abortion ~~was~~deemed necessary ~~in professional~~based on reasonable medical judgment ~~and~~which was intended to prevent the death of the pregnant female.

b. ~~That the~~An abortion ~~was~~ to terminate a pregnancy that resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20, if the probable ~~postfertilization~~gestational age of the unborn child is six weeks or less.

c. ~~That the~~An individual assisting in performing an abortion if the individual was acting within the scope of that individual's regulated profession ~~and~~, was under the direction of or at the direction of a physician, and did not know the physician was performing an abortion in violation of this section.

d. An abortion necessary due to a medical emergency.

SECTION 2. 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. ~~"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. ~~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.~~5. "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.~~6. "Hospital" means an institution licensed by the department of health and human services under chapter 23-16 and any hospital operated by the United States or this state.

~~9.~~7. "Human being" means an individual living member of the species of homo sapiens, including the unborn human being during the entire embryonic and fetal ages from fertilization to full gestation.

~~10.~~8. "Infant born alive" means a born child which exhibits either heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles or pulsation of the umbilical cord if still attached to the child.

~~11.~~9. "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed or induced provided:

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~~postfertilization~~ 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;

(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; and

(5) That it may be possible to reverse the effects of an abortion-inducing drug if she changes her mind, but time is of the essence, and information and assistance with reversing the effects of an abortion-inducing drug are available in the printed materials given to her as described in section 14-02.1-02.1.

c. The woman certifies in writing, ~~prior to~~before 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.~~10. "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates an immediate abortion ~~of her pregnancy without first determining postfertilization age~~ to

~~avert~~prevent 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.~~11. "Physician" means an individual ~~who is~~ licensed to practice medicine or osteopathy under chapter 43-17 or a physician who practices in the armed services of the United States or in the employ of the United States.

~~14.~~12. ~~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.~~13. ~~"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.~~

~~17.14.~~13. "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.

~~18.15.~~14. "Unborn child" means the offspring of human beings from conception until birth.

~~19.16.~~15. "Viable" means the ability of an unborn child to live outside the mother's womb, albeit with artificial aid.

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

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

1. The department of health and human services 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 public assistance agencies or human service zones.

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

e. Materials including information it may be possible to reverse the effects of an abortion-inducing drug but time is of the essence. The materials must include information directing the patient where to obtain further information and assistance in locating a medical professional who can aid in the reversal of abortion-inducing drugs, such as mifepristone and misoprostol.

f. Materials including a notice that the performance of certain abortions is prohibited by law.

2. The materials required under subsection 1 must be available at no cost from the department of health and human services 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.

SECTION 4. AMENDMENT. Section 14-02.1-02.2 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-02.2. Abortion report form.

The department of health and human services 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~~:

1. The data called for in the United States standard report of induced termination of pregnancy as recommended by the national center for health statistics; and
2. Whether the abortion was:
   a. Necessary in reasonable medical judgment and was intended to prevent the death of the pregnant female; or
   b. To terminate a pregnancy that resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20.

SECTION 5. AMENDMENT. Section 14-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

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

1. ~~No~~A physician ~~shall~~may not perform an abortion unless ~~prior to~~before 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~~before 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~~an 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 not 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~~ 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.

SECTION 6. AMENDMENT. Section 14-02.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

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~~A person may not 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 rules 3, 4, and 5 of the North Dakota Rules of Juvenile Procedure 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.

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 and the pregnancy resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20.

(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~~a medical 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.

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

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~~before the time at which the unborn child may reasonably be expected to have reached viability, ~~no~~an abortion may not 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~~an 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~~a medical 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.

SECTION 8. AMENDMENT. Section 14-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-07. Records required - Reporting of practice of abortion.

1. ~~Records:~~

   a. All abortion facilities and hospitals in which abortions are performed shall keep records, including admission and discharge notes, histories, results of tests and examinations, nurses' worksheets, social service records, and progress notes, and shall further keep a copy of all written certifications provided for in this chapter as well as a copy of the constructive notice forms, consent forms, court orders, abortion data reports, adverse event reports, abortion compliance reports, and complication reports. All abortion facilities shall keep 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 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~~A record of the probable gestational age of the unborn child at the time of the abortion. If a probable gestational age of the unborn child was not made because of a medical emergency, the record must include 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 department of health and human services 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 and whether:

(1) The abortion was performed to prevent the death of the pregnant female; or

(2) The pregnancy resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20.

b. All abortion compliance reports must be signed by the attending physician within twenty-four hours and submitted to the department of health and human services 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 department of health and human services 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 department of health and human services 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~~gestational age of the unborn child 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 department of health and human services 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 department of health and human services 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 department of health and human services are public records. Except for disclosure to a law enforcement officer or state agency, the department may not disclose an abortion compliance report without first removing any individually identifiable health information and any other demographic information, including race, marital status, number of previous live births, and education regarding the woman upon whom the abortion was performed.

e. The department of health and human services shall report to the attorney general any apparent violation of this chapter.

SECTION 9. AMENDMENT. Subsection 1 of section 43-17-31 of the North Dakota Century Code is amended and reenacted as follows:

1. Disciplinary action may be imposed against a physician upon any of the following grounds:

a. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.

b. The making of false or misleading statements about the physician's skill or the efficacy of any medicine, treatment, or remedy.

c. The conviction of any misdemeanor determined by the board to have a direct bearing upon a person's ability to serve the public as a practitioner of medicine or any felony. A license may not be withheld contrary to the provisions of chapter 12.1-33.

d. Habitual use of alcohol or drugs.

e. Physical or mental disability materially affecting the ability to perform the duties of a physician in a competent manner.

f. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.

g. Obtaining any fee by fraud, deceit, or misrepresentation.

h. Aiding or abetting the practice of medicine by an unlicensed, incompetent, or impaired person.

i. The violation of any provision of a medical practice act or the rules and regulations of the board, or any action, stipulation, condition, or agreement imposed by the board or its investigative panels.

j. The practice of medicine under a false or assumed name.

k. The advertising for the practice of medicine in an untrue or deceptive manner.

l. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.

m. The willful or negligent violation of the confidentiality between physician and patient, except as required by law.

n. The failure of a doctor of osteopathy to designate that person's school of practice in the professional use of that person's name by such terms as "osteopathic physician and surgeon", "doctor of osteopathy", "D.O.", or similar terms.

o. Gross negligence in the practice of medicine.

p. Sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine.

q. The prescription, sale, administration, distribution, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes.

r. The payment or receipt, directly or indirectly, of any fee, commission, rebate, or other compensation for medical services not actually or personally rendered, or for patient referrals; this prohibition does not affect the lawful distributions of professional partnerships, corporations, limited liability companies, or associations.

s. The failure to comply with the reporting requirements of section 43-17.1-05.1.

t. The failure to transfer medical records to another physician or to supply copies of those records to the patient or to the patient's representative when requested to do so by the patient or the patient's designated representative, except if the disclosure is otherwise limited or prohibited by law. A reasonable charge for record copies may be assessed.

u. A continued pattern of inappropriate care as a physician, including unnecessary surgery.

v. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine.

w. The prescribing, selling, administering, distributing, or giving to oneself or to one's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.

x. The violation of any state or federal statute or regulation relating to controlled substances.

y. The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to practice medicine based upon acts or conduct by the physician that would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.

z. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.

aa. The failure to properly monitor a fluoroscopy technologist or an emergency medical technician.

bb. The failure to furnish the board or the investigative panel, their investigators, or representatives information legally requested by the board or the investigative panel.

cc. ~~The performance of an abortion on a pregnant woman prior to determining if the unborn child the pregnant woman is carrying has a detectable heartbeat, as provided in subsection 1 of section 14-02.1-05.1.~~

~~dd.~~ Noncompliance with the physician health program established under chapter 43-17.3.

SECTION 10. REPEAL. Sections 14-02.1-04.1, 14-02.1-04.2, 14-02.1-05.1,14-02.1-05.2, and 14-02.1-05.3 of the North Dakota Century Code are repealed.

SECTION 11. EMERGENCY. This Act is declared to be an emergency measure.

23.0137.05002
Title.

Prepared by the Legislative Council staff for
Senator Myrdal
January 24, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2150

Page 1, line 1, after the first comma insert "14-02.1-01,"

Page 2, line 1, remove "Save the life or preserve the health of the unborn child;"

Page 2, line 2, remove "(2)"

Page 2, line 3, replace "(3)" with "(2)"

Page 2, line 25, after "that" insert "based on reasonable medical judgment"

Page 3, after line 3, insert:

"**SECTION 2. AMENDMENT.** Section 14-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-01. Purpose.

The purpose of this chapter is to protect ~~unborn~~and promote human life and maternal health ~~within present constitutional limits~~when the performance of an abortion is not otherwise prohibited by law. ~~It~~This chapter reaffirms the tradition of the state of North Dakota to protect every human life whether unborn or aged, healthy or sick."

Page 3, line 14, overstrike "Save the life or preserve the health of the unborn child;"

Page 3, line 15, overstrike "b."

Page 3, line 16, overstrike "c." and insert immediately thereafter "b."

Page 5, line 9, after the semicolon insert "and"

Page 5, line 13, overstrike "; and"

Page 5, overstrike lines 14 through 17

Page 5, line 18, overstrike "14-02.1-02.1"

Page 8, line 23, overstrike ", such as mifepristone and misoprostol"

Page 9, line 8, after the comma insert "section 12.1-31-12,"

Page 9, line 13, remove "or"

Page 9, line 16, after "12.1-20" insert "; or

c. Necessary due to a medical emergency"

Page 17, line 10, remove "or"

Page 17, line 13, after "12.1-20" insert "; or

(3) Necessary due to a medical emergency"

Renumber accordingly

2023 Senate Bill no. 2150
House Human Services Committee
Representative Robin Weisz, Chairman
March 14, 2023

Chairman Weisz and members of the House Human Services Committee, I am Melissa Hauer, General Counsel/Vice President, of the North Dakota Hospital Association (NDHA). NDHA represents hospitals and health care systems across the state. I testify in support of engrossed Senate Bill 2150. We ask that you give the bill a **Do Pass** recommendation.

We are not expressing an opinion regarding what our state's policy ought to be regarding elective termination of healthy pregnancies. Hospitals are not in the business of providing such elective terminations. But many of the medications and procedures used in abortion are also used to treat serious pregnancy complications that threaten a woman's life or physical health, such as ectopic pregnancy, preeclampsia, and premature rupture of membranes.

The current legal landscape regarding abortion in our state is uncertain. We want to ensure that health care providers can continue to treat pregnancy complications without fear of being caught up in the criminal penalties for elective abortion. We worked in collaboration with the North Dakota Medical Association and the North Dakota Catholic Conference to address our concerns. We appreciate their collaboration. NDHA supports the changes this bill will make to clarify and fix inconsistencies in current state abortion law.

Our main concern - which would be resolved with the passage of this bill - was the affirmative defenses in the trigger law. We want to ensure that evidence-based medical decision-making and treatment used to preserve the life and physical health of a pregnant female are not criminalized. Physicians need to manage pregnancy complications where the mother's life or health are at risk, and they should not fear criminal consequences for doing so. With such uncertainty, physicians may delay care or decide not to practice in a state that puts them at risk of jail time for providing medically necessary care.

In the Senate, we asked for an amendment to clarify the language of the medical emergency exception. That amendment was adopted and is now part of the engrossed bill before you. We appreciate the collaboration of the groups that again came together to compromise on the language of the amendment.

In summary, we support the engrossed bill and ask that you give it a **Do Pass** recommendation. I would be happy to respond to any questions you may have. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel/Vice President
North Dakota Hospital Association

House Human Services Committee

SB 2150

March 14, 2023

Chairman Weisz and Committee Members, I am Courtney Koebele and represent the North Dakota Medical Association. The North Dakota Medical Association is the professional membership organization for North Dakota physicians, residents, and medical students.

NDMA is neutral on the topic of abortion, and just like many segments of society, our members are on both sides of the abortion issue. However, the NDMA Policy Forum recently passed a policy opposing the criminalization of medical practice. This policy states as follows:

> NDMA should take all reasonable and necessary steps to ensure that evidence-based medical decision-making and treatment, exercised in accordance with evidence-based standards of care, does not become a violation of criminal law.

NDMA supports SB 2150 and appreciates the work that went into this bill. This bill fixes our main objection to the trigger law – the affirmative defenses. Without the fixes, many common procedures performed by physicians are chargeable as a felony.

We also appreciate the amendments to SB 2150 made in the Senate Judiciary Committee. Based on consultation with physicians providing maternal care and their extensive experience helping pregnant women, the Senate Judiciary amended the bill to make sure the emergency exceptions covered the situations which may occur during a pregnancy.

No hospitals and clinics in the state perform elective abortions. However, during the management of pregnancies, and helping women have a successful birth, there are many conditions that are impossible to determine whether they are substantial and irreversible.

We have a physician here to testify in more detail as to why the slight amendment was necessary. Ana Tobiasz, a maternal and fetal medicine specialist from Bismarck.

For the record, North Dakota has 71 physicians that specialize in Obstetrics/Gynecology, with five of those specializing in maternal and fetal medicine. An Obstetrics and Gynecology residency involves four years of additional training after a four-year medical school education. A maternal fetal medicine specialty requires another additional three years after residency.

NDMA urges a DO PASS of SB 2150. Thank you for the opportunity to address this committee. I would be happy to answer any questions.

Chairman Weisz and members of the Human Services Committee-

My name is Destini Spaeth and I am submitting testimony in opposition to SB2150. I am the Board Chair of the North Dakota Women In Need Abortion Access Fund. We provide financial support to callers leading up to and on the day of their abortion. Last year, we successfully supported over 600 people in accessing care. I oppose this bill because it infringes on our rights, as North Dakotans, to make thoughtful healthcare decisions and to plan our futures accordingly.

The language in this bill is intended to scare people who may need or provide abortion care. Is it truly the will of the North Dakota legislature to rule by instilling fear? We should be lifting up and prioritizing the needs of our communities and abortion is a very common need, indeed. One in four people who can get pregnant will have an abortion in their lifetime. Failure to acknowledge this commonness only creates more hurdles to accessing comprehensive healthcare but it does not stop it from happening. People will continue to have the abortions they need and want because of a dedicated network of providers, abortion funds, logistical support groups, and compassionate neighbors. Abortion bans like SB2150 ensure that care is delayed and abortions are done later in pregnancy- but abortions will continue.

When it is determined that the North Dakota abortion trigger-ban violates our state constitution, SB2150, if made law, will be the next to be struck down as the language mirrors that of the trigger-ban. Only adding an exception for victims of rape and incest up to 6 weeks, before many people know they are pregnant, is hardly a compassionate compromise.

I am asking you to vote DO NOT PASS out of committee on SB2150.

Thank you for taking these few moments to consider the dignity, safety, and self-determination of people who may need abortions living in North Dakota.

House Human Services Committee
SB 2150
March 14, 2023

Good afternoon, Chair Weisz and members of the Committee. My name is Dr. Ana Tobiasz, MD and I am a Maternal Fetal Medicine physician in Bismarck. Thank you for the opportunity to testify in favor of SB 2150. I am asking the committee to give this bill a Do Pass recommendation.

My medical training and expertise is in caring for women during high risk pregnancies. I was born and raised in Munich, ND and completed my undergraduate and medical school training at the University of North Dakota. After medical school I completed a 4-year residency training in Obstetrics and Gynecology followed by a 3-year fellowship training in Maternal Fetal Medicine. I have worked as a maternal fetal medicine specialist in Bismarck since July 2017. I am one of 5 of my specialty throughout the entire state.

I have been a leader in the state for helping to initiate and be involved in programs that would improve quality and safety of obstetric care in this state, including the perinatal quality collaborative, maternal mortality committee, and the ND Medical Association Leadership Council.

While I have concerns about multiple aspects of this law, I support SB 2150 insofar as it is an improvement on the trigger law's restrictions imposed on providing health care to pregnant women.

The SB 2150 amendments eliminate the affirmative defenses in the trigger law. This is a respectable change to minimize the impact these laws will have on practicing physicians who care for pregnant women experiencing medical complications.

The medical exception amendments will allow for the majority of medical emergencies that can occur in pregnancy to be cared for in a timely fashion. This amendment is critical when it comes to getting women and their fetuses safely through pregnancy. This includes women with severe heart conditions, lung conditions, cancer, and complications that arise in pregnancy including preeclampsia (high blood pressure and risk of organ injury in pregnancy), membrane rupture and hundreds of others.

Therefore, I support SB 2150 as amended, adopted and passed by the Senate.

Dr Ana Tobiasz, MD
Maternal Fetal Medicine Physician

North Dakota Catholic Conference

Representing the Diocese of Fargo and the Diocese of Bismarck

103 South Third Street
Suite 10
Bismarck ND 58501
701-223-2519
ndcatholic.org
ndcatholic@ndcatholic.org

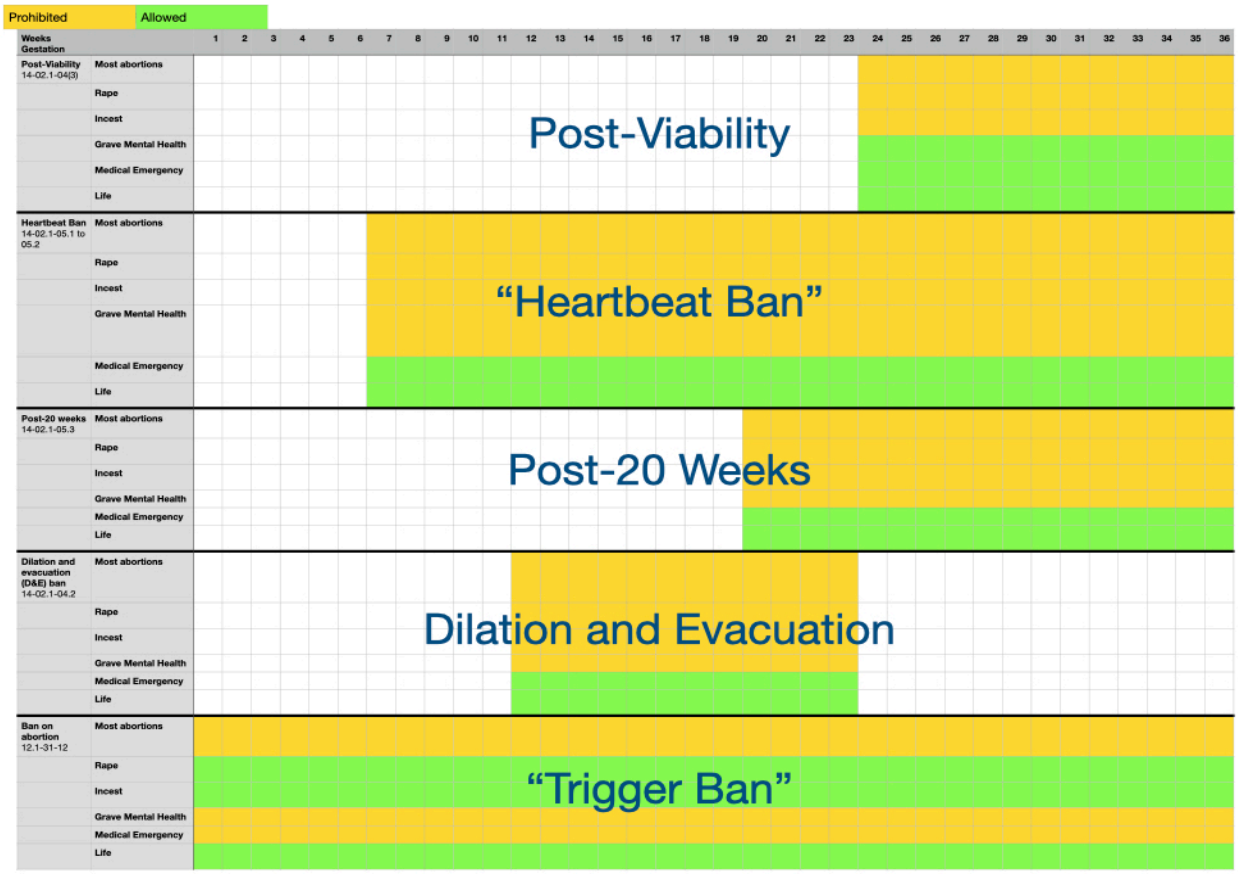
To: House Human Services Committee
From: Christopher Dodson, Executive Director
Subject: Senate Bill 2150
Date: March 14, 2023

The North Dakota Catholic Conference supports Senate Bill 2150 because it better states the Legislative Assembly's previously enacted abortion laws for this post-*Roe* world.

Desiring to protect unborn human life from abortion, this legislative body has, over many sessions, enacted several laws prohibiting abortions or particular types of abortions. Some of those laws were constitutional under *Roe* and *Casey*, some were not.[1] After the *Dobbs* decision, all of them are presumably constitutional under the U.S. Constitution.[2]

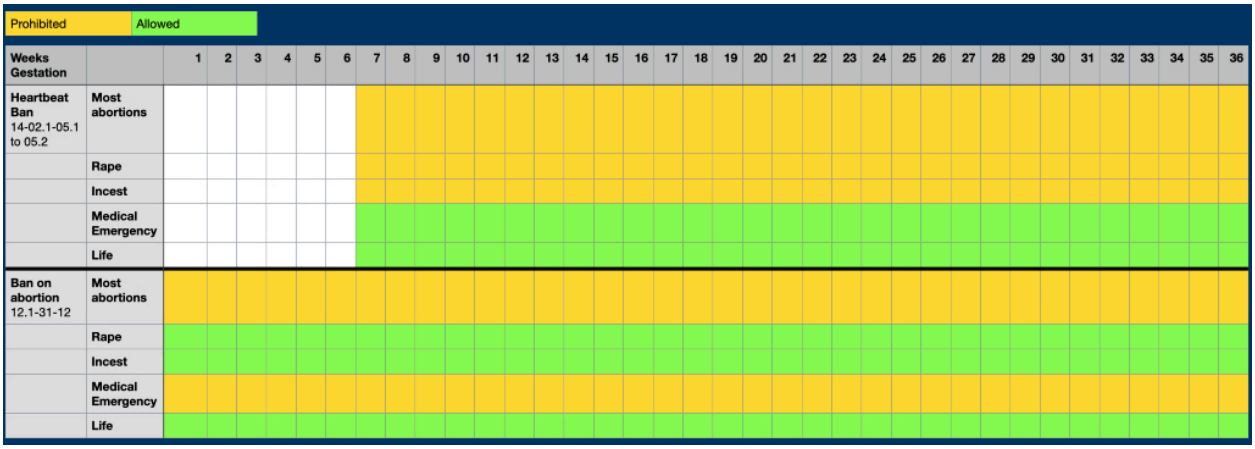
Not all of them, however, are still needed. Some are absorbed or made superfluous by other statutes. In addition, some of the definitions and provisions are facially inconsistent. The purpose of SB 2150 is to address these problems. It is the result of months of work involving various experts and stakeholders.

Before explaining the bill's details, it helps to review the previously enacted laws, how they overlap, and why some control over others. This first table shows all the laws enacted that prohibit abortions in some way, the laws' exceptions, and scopes according to weeks of gestation.



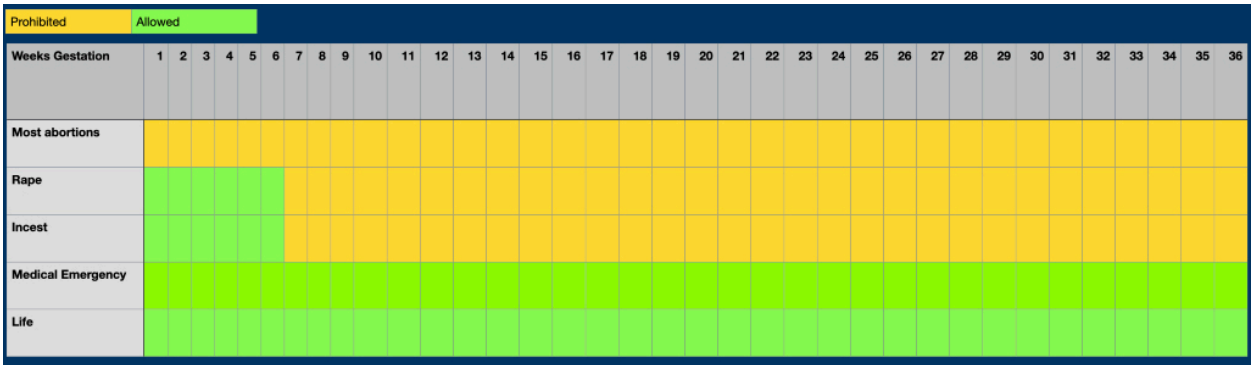
Without going into the details of each law, we can see that there is some overlap so that some laws are made superfluous by others.

After removing those laws, we have left what is commonly called the "trigger law" which passed in 2007, and what is commonly called the "heartbeat ban," which passed in 2013. Those two laws look like this:



According to principles established by the North Dakota Supreme Court, the legislature is presumed to have known about earlier enacted laws and to have intended to replace them where applicable. In other words, the latter enacted controls. In this case, the heartbeat ban controls where applicable.

Applying this principle, we have this:



In short, all abortions are prohibited except for reasons of rape or incest during the first six weeks and for the life of the mother or a medical emergency to prevent substantial physical impairment of a major bodily function throughout pregnancy.

This is what the legislature has already passed and intended to go into effect.

The ultimate effect of these laws when combined and the judicial principles of construction are applied is not easily apparent. Almost immediately after the *Dobbs* decision, it became apparent that legislators, healthcare providers, activists on both

sides, and journalists were confused about what law applied and when. Several legislators and representatives from pro-life organizations met and decided that it would be in everyone's interest to work off one cleaned-up law. People might want to debate what should be the law, but first, let's better state what is the law.

The result is SB 2150, the purpose of which is to better express and implement what the Legislative Assembly has already enacted. It does this by:

(1) Stating in one statute prohibitions previously enacted in separate statutes;
(2) Removing obsolete language and language made moot by the scope of other broader statutes;
(3) Making the language, definitions, and exceptions consistent;
(4) Clarifying ambiguous language; and
(5) Except when necessary to accomplish the above, not making any substantive changes to what the Legislative Assembly has already enacted.

Some other points about the bill are worth noting before we review the bill's provisions:

(1) We examined parts of the Century Code other than the trigger law and the Abortion Control Act that might be impacted and addressed them when appropriate.
(2) The bill preserves the typical structure of the Century Code by placing direct criminal violations in the Criminal Code and keeping in the Abortion Control Act the requirements for abortions that are legal.
(3) We do not believe that SB 2150 impacts, one way or the other, the current case before the North Dakota Supreme Court because the changes made in SB 2150 do not impact the issue presented in that case.
(4) The original version of SB 2150 concerned only amending the state's abortion prohibitions. Subsequently, the Attorney General's office suggested amendments to other abortion-related laws to make them consistent with SB 2150's changes and to clarify other parts of the Abortion Control Act. Here again, none of these changes substantively alter what the legislature has already enacted. Those suggestions were adopted by the Senate.

A walk-through of the bill is included at the end of this testimony. If the committee prefers a summary, SB 2150 can be viewed in three parts: the criminal code section, the Abortion Control Act, and the repealed sections.

The Criminal Code

Section 1 of the bill amends what was known as the "trigger law. SB 2150 makes several important changes to this law. They are:

- The definition of "abortion" is based on the definition used in the Abortion Control Act. That definition was more recently passed, is clearer, and expressly excludes treating ectopic pregnancies.

- A definition of "medical emergency" is added and made an exception to the offense. It is a cleaned-up version of the definition used in the Abortion Control Act. The definition also includes a change requested by the North Dakota Hospital Association and the North Dakota Medical Association.[3]

- The exceptions are changed from affirmative defenses to direct exceptions. The "trigger ban" used affirmative defenses, in which a defendant would have to assert and then prove that the requirements for the exceptions existed. However, the "heartbeat ban," which under the principles of construction applies to all abortions after six weeks gestation, uses direct exception language. Because the most recent legislation used exceptions rather than affirmative defenses, and because it makes no sense to use affirmative defenses for abortions occurring during the first six weeks of gestation, but not after, SB 2150 removes the affirmative defenses to direct exceptions for all abortions.

- The exception for abortions in the case of rape or incest is limited to abortions done in the first six weeks of gestation. The heartbeat ban enacted in 2013 does not contain exceptions for rape or incest. Since this is the controlling law and because the purpose of the heartbeat ban was to prohibit abortions after six weeks gestation, the exception exists only for those weeks. This is the existing law, with or without SB 2150.

Abortion Control Act and Physician Disciplinary Actions

The rest of the bill primarily addresses changes to the requirements necessary for those abortions that are still permitted. As it always has been, most of these requirements are in the Abortion Control Act. These provisions primarily affect the Department of Health and Human Services, the courts, and the informed consent requirements. Major changes in this section include:

- At the suggestion of the Attorney General's office, the preamble to the chapter was revised to indicate that the chapter concerns abortions not otherwise prohibited by law.

- Throughout this section, definitions, phrases, and requirements related to now superfluous laws, such as the ban on abortions for genetic abnormalities, the dilation and evacuation ban, and the twenty-week ban.

- The definitions are made consistent.

- It requires that the materials produced by the Department of Health and Human Services that, in addition to being made available to the public, must be provided to a woman seeking an abortion by the physician or the physician's assistant twenty-four hours before the abortion now include information about what is prohibited and what is allowed.

- It adds to the abortion data report form that must be submitted to the Department of Health and Human Services for every abortion an indication of whether the abortion was to prevent the death of the mother, because of rape or incest, or necessary due to a medical emergency.

- The requirement that a wife receives consent from her husband before obtaining an abortion is removed. This language was found unconstitutional many years ago and at this time it is not known whether it would be allowed under the *Dobbs* framework. Considering that the only abortions that would now be allowed would be for saving the life of the mother, in a medical emergency, or because of rape or incest, the language was removed.

- In the case of a judicial bypass for a minor, the judge must now enter a finding that the pregnancy was due to rape or incest. Medical emergencies, including those to prevent the death of the minor, are already excluded from the parental consent provisions.

- It added that the physician must include on the abortion compliance report whether the abortion was to prevent the death of the mother, was because of reasons of rape or incest, or was necessary due to a medical emergency.

- It removes subjecting a physician to disciplinary action for violating the heartbeat ban because the heartbeat ban is now removed from the code. Another section of the existing law subjects a physician to disciplinary action for a conviction for any felony. (See Section 43-17-31(1)(b).)

Repealed Sections

These sections were either made moot by the scope of other sections or are incorporated into the revised Section 12.1-31-12.

Section Repealed	Description	Why Repealed
14-02.1-04.1	Prohibition on abortions for sex selection and genetic abnormality	Moot
14-02.1-04.2	Prohibition on “human dismemberment abortion” (dilation and evacuation)	Moot
14-02.1-05.1	Heartbeat Ban	Incorporated into Section 12.1-31-12
14-02.1-05.2	Heartbeat Ban	Incorporated into Section 12.1-31-12
14-02.1-05.3	Post-20 week Ban	Moot

These revisions might not be perfect. We might find other sections or statutes that should be revised. There may exist other parts of the Abortion Control Act not concerning the prohibitions that the committee may consider.

Senate Bill 2150, however, provides a better way than the existing statutes of implementing what the legislature has already enacted and it removes unnecessary and confusing language. It is the conference's hope that if legislators want to change these laws in this session they offer amendments to this bill.

Senate Bill 2150 does not enact new bans on abortions. All the prohibitions in SB 2150 already exist and they would still exist if SB 2150 is not enacted. However, if it does not pass:

- Defendants would have to rely on affirmative defenses for abortions excepted under the law if the abortion occurred within the first six weeks of gestation, but not for abortions occurring after six weeks of gestation;

- Questions could arise as to whether the treatment of ectopic pregnancies or abortions in cases of medical emergencies would be legal during the first six weeks of gestation, but no such questions would arise after six weeks of gestation; and

- Confusion could exist as to which law would be violated when more than one statute encompasses the prohibited abortion.

Ultimately, the question presented by SB 2150 is not about whether a person supports or opposes prohibiting abortion. It is about whether we want a clearer, better statute.

For these reasons, the North Dakota Catholic Conference requests a "Do Pass" recommendation on SB 2150.

---

[1] *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood of Southeastern Pennsylvania, et al. v. Robert P. Casey, et al.*, 505 U.S. 833 (1992).

[2] *Dobbs v. Jackson Women's Health Organization*, 597 U.S. _ (2022).

[3] The definition of "medical emergency" in SB 2150 as introduced stated "substantial and irreversible physical impairment of a bodily function . . ." The Senate removed the words "and irreversible" in both places where "medical emergency" is defined.

At the end of each definition, however, there is a clarification that 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." In both cases, the removal of "and irreversible" was missed in the Senate amendments.

Engrossed Senate Bill 2150 Walk-Through

Page 1 of the bill starts in the Criminal Code by making changes in Section 12.1-31-12, which was known as the "trigger law." The definition of "abortion" is based on the definition used in the Abortion Control Act. That definition was more recently passed, is clearer, and expressly excludes treating ectopic pregnancies.

On page 2, lines 5 through 12, the bill inserts a definition of "medical emergency" that further down is made an exception to the prohibition. It is a cleaned-up version of the definition used in the Abortion Control Act. The definition also includes a change requested by the North Dakota Hospital Association and the North Dakota Medical Association.[1]

The changes on lines 13 through 22 make the definitions consistent with the Abortion Control Act.

The changes on page 2, line 25 change the exceptions from affirmative defenses to direct exceptions. The "trigger ban" used affirmative defenses, in which a defendant would have to assert and then prove that the requirements for the exceptions existed. However, the "heartbeat ban," which under the principles of construction applies to all abortions after six weeks gestation, uses direct exception language. Because the most recent legislation used exceptions rather than affirmative defenses, and because it makes no sense to use affirmative defenses for abortions occurring during the first six weeks of gestation, but not after, SB 2150 removes the affirmative defenses to direct exceptions for all abortions.

Page 3, line 2, limits the exception for abortions in the case of rape or incest to abortions done in the first six weeks of gestation. The heartbeat ban enacted in 2013 does not contain exceptions for rape or incest. Since this is the controlling law and because the purpose of the heartbeat ban was to prohibit abortions after six weeks gestation, the exception exists only for those weeks. This is the existing law, with or without SB 2150.

On page 3, line 7, the bill adds a medical emergency exception to the prohibition. This exception existed in the heartbeat ban and would now apply to all abortions.

On page 3, lines 11 through 14, the preamble to the Abortion Control Act is revised to indicate that the chapter concerns abortions not otherwise prohibited by law while

---

[1] The definition of "medical emergency" in SB 2150 as introduced stated "substantial and irreversible physical impairment of a bodily function . . ." The Senate removed the words "and irreversible" in both places where "medical emergency" is defined.

At the end of each definition, however, there is a clarification that 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." In both cases, the removal of "and irreversible" was missed in the Senate amendments.

retaining the affirmation that the state desires to protect every human life whether unborn or aged, healthy or sick.

The changes on page 3, lines 19 through 27, reflect the improved definition of abortion, which was applied to the criminal code definition.

On page 4 the definition of "Down syndrome" is removed, as is the definition of "genetic abnormality" on page 4. These definitions were used in the ban on abortions for reasons of Down syndrome or genetic abnormality. This ban is now superfluous, so it and the corresponding definitions are removed.

On page 5 language is removed that required a physician or the physician's agent to orally inform the woman about the possibility of reversing the effects of an abortion inducing drug. Because this requirement exists even if the abortion is not through an abortion inducing drug, this language resulted in a legal challenge. After discussions with the Attorney General's office, the Senate chose to remove this requirement, recognizing that the notification about the possibility of reversing the effects of the abortion inducing drug is still included in the materials the woman must be provided prior to the abortion

The changes on page 6, lines 7 through 15, reflect the improved and now consistent definition of "medical emergency." The changes removed language related to now moot provisions of the law, the removal of "and irreversible" requested by the North Dakota Medical Association and the North Dakota Hospital Association, and grammatical changes. As noted in footnote 1, the Senate amendments missed removing "and irreversible" on line 15.

The changes on page 6, lines 19 through 26, removes obsolete language and provide a single definition for gestational age.

The next change is on page 9, lines 6 an 7. This section concerns the materials produced by the Department of Health and Human Services that, in addition to being made available to the public, must be provided to a woman seeking an abortion by the physician or the physician's assistant twenty-four hours before the abortion. Since most abortions would be prohibited in North Dakota, it makes sense that the materials include information about what is prohibited and what is allowed.

The changes on page 9, lines 16 through 29 add to the abortion data report form that must be submitted to the Department of Health and Human Services for every abortion an indication of whether the abortion was to prevent the death of the mother, because of rape or incest, or necessary due to a medical emergency. The state currently does not collect that data.

On page 11, lines 3 and 4, the bill removes the requirement that a wife receives consent from her husband before obtaining an abortion is removed. This language was found unconstitutional many years ago and at this time it is not known whether it would be allowed under the *Dobbs* framework. Considering that the only abortions that

would now be allowed would be for saving the life of the mother, in a medical emergency, or because of rape or incest, the language was removed.

Keeping with the principle of not substantively changing the existing laws, the parental consent requirement with a judicial bypass is retained. However, because the only abortions for minors that would be subject to the parental consent requirement would be those because of reasons of rape or incest, language is added on page 13 to require the judge to enter a finding that those reasons existed if the judicial bypass is used. Medical emergencies, including those to prevent the death of the minor, are already excluded from the parental consent provisions.

On page 14, lines 22 through 26, the bill removes language made superfluous by the definition of "medical emergency."

The changes on page 15 clarify that after twelve weeks of pregnancy an abortion may only be done in a hospital and that an abortion after the unborn child has reached viability is allowed only in cases to save the life of the woman.

The changes on page 16, line 30 through page 17, line 9, apply the new definition of gestational age to reporting requirements.

The new language on page 17, lines 23 through 27, adds that the physician must include on the abortion compliance report whether the abortion was to prevent the death of the mother, was because of reasons of rape or incest, or necessary due to a medical emergency.

The changes on page 18 apply the new definition of gestational age and remove language related to a now moot law that is repealed by the bill.

The language on page 21, lines 15 through 17, is removed because it subjected a physician to disciplinary action for violating the heartbeat ban, which is now removed from the code. Another section of the existing law subjects a physician to disciplinary action for a conviction for any felony. (See Section 43-17-31(1)(b).)

Section 11 of the bill repeals sections that were either made moot by the scope of other sections or are incorporated into the revised Section 12.1-31-12.

Section Repealed	Description	Why Repealed
14-02.1-04.1	Prohibition on abortions for sex selection and genetic abnormality	Moot
14-02.1-04.2	Prohibition on "human dismemberment abortion" (dilation and evacuation)	Moot
14-02.1-05.1	Heartbeat Ban	Incorporated into Section 12.1-31-12
14-02.1-05.2	Heartbeat Ban	Incorporated into Section 12.1-31-12
14-02.1-05.3	Post-20 week Ban	Moot

Prohibited | Allowed

Weeks Gestation		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36
Post-Viability 14-02.1-04(3)	**Most abortions**																																				
	Rape																																				
	Incest																																				
	Grave Mental Health																																				
	Medical Emergency																																				
	Life																																				
Heartbeat Ban 14-02.1-05.1 to 05.2	**Most abortions**																																				
	Rape																																				
	Incest																																				
	Grave Mental Health																																				
	Medical Emergency																																				
	Life																																				
Post-20 weeks 14-02.1-05.3	**Most abortions**																																				
	Rape																																				
	Incest																																				
	Grave Mental Health																																				
	Medical Emergency																																				
	Life																																				
Dilation and evacuation (D&E) ban 14-02.1-04.2	**Most abortions**																																				
	Rape																																				
	Incest																																				
	Grave Mental Health																																				
	Medical Emergency																																				
	Life																																				
Ban on abortion 12.1-31-12	**Most abortions**																																				
	Rape																																				
	Incest																																				
	Grave Mental Health																																				
	Medical Emergency																																				
	Life																																				

Prohibited	Allowed

Weeks Gestation		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36
Heartbeat Ban 14-02.1-05.1 to 05.2	**Most abortions**																																				
	Rape																																				
	Incest																																				
	Grave Mental Health																																				
	Medical Emergency																																				
	Life																																				

“Heartbeat Ban”

Ban on abortion 12.1-31-12	**Most abortions**																																				
	Rape																																				
	Incest																																				
	Grave Mental Health																																				
	Medical Emergency																																				
	Life																																				

“Trigger Ban”

Heartbeat Ban and Trigger Ban

Prohibited	Allowed

Weeks Gestation		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36
Heartbeat Ban 14-02.1-05.1 to 05.2	**Most abortions**																																				
	Rape																																				
	Incest																																				
	Medical Emergency																																				
	Life																																				
Ban on abortion 12.1-31-12	**Most abortions**																																				
	Rape																																				
	Incest																																				
	Medical Emergency																																				
	Life																																				

Heartbeat Ban and Trigger Ban Combined

Prohibited	Allowed

Weeks Gestation	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36
Most abortions																																				
Rape																																				
Incest																																				
Medical Emergency																																				
Life																																				

Under established legal principles, the heartbeat ban controls over the trigger ban wherever applicable.

Planned Parenthood®
Minnesota, North Dakota, South Dakota Action Fund

Testimony
SB 2150
Human Services
March 14, 2023

Chair Weisz, Vice Chair Ruby, and members of the Committee,

My name is Katie Christensen, and I am the North Dakota State Director of External Affairs for Planned Parenthood Minnesota, North Dakota, South Dakota Action Fund. Thank you for the opportunity to testify in opposition to SB 2150.

Planned Parenthood North Central States provides advocacy, education, and health services, including expert reproductive health care, across our five-state region. At our Moorhead health center, over 60% of our patients are residents of North Dakota. We have tens of thousands of supporters throughout the state. Planned Parenthood is here to ensure all people have the information and the means to make free and responsible decisions about whether and when to have children. Our mission affirms human rights to reproductive health care and freedom.

If passed, SB 2150 would ban nearly all abortions in North Dakota. States with adequate access to abortion have lower maternal mortality rates, lower infant death rates, and improved prenatal care access. Furthermore, states with similar abortion exceptions such as SB 2150 have scared medical professionals from providing care and placed pregnant people in dangerous situations.

If this bill were enacted, any healthcare provider who performed an abortion could be imprisoned for up to 5 years and/or face a fine up to $10,000. Physicians are ethically required to ensure their patients receive the most appropriate and effective care, yet if passed, this law would put doctors in a place where they must choose between malpractice and a felony. Politicians have no place controlling care provided by licensed medical experts.

Furthermore, the authors of this bill claim to provide an exception for pregnancies resulting from rape or incest; however, this exception only applies in the earliest stages of pregnancy before many people even know they are pregnant. Due to this short timeframe, the exception is basically useless. Additionally, it is well documented that when a person in an abusive relationship is unable to access abortion, they are more likely to remain in contact with the abuser thus putting themselves and their children at risk.

The Planned Parenthood Minnesota, North Dakota, South Dakota Action Fund strongly urges a Do Not Pass recommendation on SB 2150. If enacted, SB 2150 would limit pregnant people from accessing comprehensive reproductive health care while intimidating physicians from providing the care that they are trained to deliver. North Dakotans deserve better.

Katie Christensen
kchristensen@ppncs.org
701.388.7369

North Dakota Right to LIFE

Chairman Robin Weisz and Members of the House Human Services Committee –

My name is Sierra Heitkamp and I am the Legislative Director for North Dakota Right to Life. I am here today to represent the interests and legislative initiatives of their base comprised of 3700 citizens across the state of North Dakota.

Today we have before us SB 2150 which is intended to clarify definitions in North Dakota's century code regarding current laws that have been passed. After reading through the bill, there are many opportunities to identify the consistent changes made by this bill to update and clarify language.

With my time today, I would take this opportunity to point out a few changes that are important to our members at NDRL. First, this bill adds in language defining a medical emergency in the case that a woman that is outside the outlined exceptions would be able to receive necessary care from her doctor. SB 2150 also updates our reporting laws regarding the practice of abortion which is beneficial when collecting data on abortion across North Dakota.

I ask this committee today for a ***Do Pass recommendation on SB 2150*** in order to solidify the values of North Dakotans by correcting these obstacles in our current laws.

Thank you for your time today and I will now stand for any questions that the committee may have.

Sincerely,

Sierra M Heitkamp

Sierra M Heitkamp
NDRL Legislative Director

(701) 955-8239 office@ndrl.org P.O. Box 1325, Williston, ND 58801

701.557.1500 » info.naswnd@socialworkers.org » naswnd.socialworkers.org

NASW
National Association of Social Workers
NORTH DAKOTA CHAPTER

TESTIMONY on SB 2150
from the
NATIONAL ASSOCIATION OF SOCIAL WORKERS—NORTH DAKOTA CHAPTER
to the
ND House Human Services Committee
March 14, 2023

Chairman Weisz and members of the House Human Services Committee:

The Advocacy Committee of the NASW-ND submits this testimony in opposition of Senate Bill 2150. We appreciate the opportunity to share our perspective.

NASW-ND strongly opposes SB 2150 for the following reasons:

1. Abortion bans take away people's power over their lives and their futures and put pregnant people in danger by not providing comprehensive reproductive health care. SB 2150 is in direct opposition to our mission of advancing sound and equitable social policy.
    a. While this bill allows for termination care in the case of rape or incest, the bill effectively makes it impossible to access said care by placing a six-week limit on those terminations.
    b. The majority of pregnancies are not diagnosed until after 6 weeks gestation and therefore this exception will not allow for termination for most individuals who have just undergone a traumatic experience.
2. SB 2150 goes against our ethical code of conduct as social workers.
    a. 1.02 Self-Determination: Social workers respect and promote the right of clients to self-determination and assist clients in their efforts to identify and clarify their goals.
    b. The decision about whether, when, or how to become a parent is one of the most important life decisions we make. This legislation would affect important, personal private decisions that should be made by individuals in consultation with their doctors and their families.
3. Anyone seeking health care services should receive comprehensive, unbiased, medically and factually accurate information, including pregnant people.
    a. A medical provider or counselor should never try to shame someone or pressure them into making a different decision based on their own personal beliefs.
    b. Trained, licensed, and experienced medical professionals, not legislators, are best able to work with patients to decide what option is best for them.

The NASW-ND respectfully requests that members of the House Human Services Committee vote Do Not Pass on SB 2150.

Testimony submitted by:

Elizabeth Loos
NASW-ND Lobbyist

The North Dakota Chapter of the National Association of Social Workers (NASW-ND) is a membership association representing social workers in the state of North Dakota. The mission of NASW-ND is to strengthen and protect the practice of social work in North Dakota and to advance sound and equitable social policy. Our position on this bill is solidly grounded in our organization's mission.

March 13, 2023

Chairman Weisz and Members of the House Human Services Committee,

For the record my name is Laura Frisch. I am here today as a person with experience with unplanned pregnancy, and as a staff member of the Community Violence Intervention Center (CVIC) in Grand Forks, ND, a dual domestic violence and sexual assault agency.

Twenty-seven years ago I was a college student finishing my degree in social work when I discovered that I was pregnant. I was taking birth control and was in a relationship—though I wasn't sure what my boyfriend's reaction would be to the news. By the time I began to suspect I was pregnant and went to student health, I was 9 weeks pregnant.

To say I was devastated is an understatement. I was a single, uninsured, scared, unmarried, broke college student without a degree who had hoped to get my master's degree after graduation. I felt trapped and hopeless, that I'd let myself and my parents down. My boyfriend was supportive and promised to stick by me, but I knew I'd need to make a decision with no guarantees—after all, 50% of marriages don't make it and I had no idea what the success rate for relationships with unplanned pregnancy was, but I figured it was worse. I prayed that I'd have a miscarriage so that my life wouldn't be completely unraveled. I considered whether an abortion was something I wanted. For the next couple of months, I wished I could disappear.

Fortunately I was able to get support services. I was able to get free counseling through a crisis pregnancy program. I qualified for Medical Assistance and started seeing a doctor for prenatal care. At 20 weeks pregnant, I finally told my parents. They were crushed, but pledged to support me in any way they could.

10 years later, I was married to my boyfriend and we had a second child. I not only finished college, but I completed my master's degree. When I got the news that a dear family member was pregnant at the age of 14 and was considering adoption, my husband and I offered to adopt the baby so that she could remain part of the baby's life but not have to assume the responsibility of raising a child. She took several weeks to think about it and eventually agreed.

In some ways my experience sounds like a pro-life message, but I am here testifying in opposition to SB 2150. I had a supportive relationship and ultimately supportive parents, but I needed the time and space to come to a decision that was right for me. I'm so grateful that the laws back then gave me the time I needed to come to my own decision.

I want you to picture that scared, desperate college student, facing an unplanned pregnancy, but instead of a supportive boyfriend, she's a traumatized sexual assault victim. Instead of wishing she could disappear, she's contemplating suicide and worried that the person who assaulted her will track her down and harm her again. She's doing her best to move on, but sometimes she can't even leave her apartment because she is paralyzed by fear. Now picture a young girl at age 13. Her uncle has been sexually abusing her for several years. She's not sure what's going on with her body or even how to put into words what's been happening to her. How many weeks along do you think it will be before she realizes she is pregnant? How long until she tells her parents, or will she wait until someone can tell she is pregnant? These are the kinds of experiences I have heard during my 26 years working at CVIC. The desperation

and despair I felt in my own situation pales in comparison to the trauma of sexual assault or abuse, and an unplanned pregnancy as a result of that violence is simply unimaginable.

In ND, we take a lot of pride in our independence and not forcing decisions on people that we know have the wisdom to make themselves. We didn't mandate the COVID vaccine or even masks, even though that allowed the virus to spread and kill other people who became infected. Like many of you, I lost family members who made that decision, including my uncle, because we recognized that people had the right to choose for themselves. We don't mandate that everyone be required to be an organ donor, even though that would save lives, including lives of children. We certainly wouldn't force that on a family during a traumatic time, like losing a loved one to an auto accident, because we know the decisions are gut wrenching, and the government shouldn't be the one to decide what is right for a family.

Women in our state, particularly victims of violence, deserve that same dignity and supportive space. Let's not try to force them into decisions before they even know they're pregnant. When someone feels trapped, the antidote is to help them see that they have options. When someone feels desperate, the antidote is to give them time and space, not rush them into a decision. As policy makers, you can support life by making policies that fund safety net services that support women and girls in a time of need. Several of those bills are currently moving through the legislature, and they make good, ND common sense. We also have a bill giving additional time to sexual assault survivors to report law enforcement due to a recognition that trauma has devastating consequences and may create a disabling mental condition. Another good, common-sense policy.

Let's stay out of national trends and adopt policies that acknowledge that this is an extremely complicated issue that only someone who has walked a mile in those shoes truly understands. Please keep exceptions for rape and incest victims intact, give reasonable time to traumatized individuals to make difficult decisions, and vote Do Not Pass on SB 2150 as it is currently written.

Do Pass Testimony
of Doug Sharbono, citizen of North Dakota
on SB2150
in the Sixty-eighth Legislative Assembly of North Dakota

Dear Chairman Weisz and members of the House Human Services Committee,

I am writing as a citizen and believe SB2150 is needed legislation to better reinforce existing law concerning abortion. I ask for a Do Pass on SB2150.

Recently, SCOTUS ruled Roe v. Wade unconstitutional and overruled it through its Dobbs decision. North Dakota has a trigger law on the books, which restricts abortion. However, implementation of this law has been stalled by the North Dakota South Central Judicial District Court. This activist court has seemingly had ever-changing rulings specific to this issue to obstruct the law from being followed. Each time one condition is satisfied, the goal post gets moved with another new arbitrary requirement.

I am completely in favor of adding language to the relevant section to legislatively keep removing arguments from the activist court. SB2150 will do this. Eventually, the collective will of the people through their legislators can then be followed.

Please give SB2150 a “Do Pass” and let’s protect life.

Thank you,

Doug Sharbono
1708 9th St S
Fargo, ND 58103

House Human Service Committee
SB2150
March 14, 2023

Chair Weisz, Vice Chair Ruby, and members of the Committee:

The American Civil Liberties Union of North Dakota is a nonpartisan organization whose mission is to protect, defend, strengthen, and promote the constitutional rights and civil liberties of all people in North Dakota.

On behalf of the ACLU of North Dakota, I submit testimony in opposition to SB2360.

ACLU
AMERICAN CIVIL LIBERTIES UNION
North Dakota
P.O. Box 1190
Fargo, ND 58107
701-404-7269
northdakota@aclu.org
aclund.org

Everyone deserves the freedom to make their own decisions about their bodies, healthcare and futures—including the decision to have an abortion. This bill attempts to ban nearly all abortion in the state, should the enjoined "trigger ban" be found Constitutional.

A pregnant person's health, not politics, should have control over important medical decisions. Decisions about pregnancy are deeply personal and people must be able to make their own decisions about their bodies and their lives, not politicians. The government should not be insreted into people's private lives, and no one should be forced to disclose the reasons why they need abortion care.

Despite an attempt to include exemptions, one-size fits all laws have no place in healthcare decisions. We cannot know all the personal and medical circumstances behind someone's decision to have an abortion. Everyone should be able to get the abortion care they need, when they need it and be able to make those decision about pregnancy with those they trust, not have those decisions dictated by the government.

This bill poses a dangerous threat to the health and well-being of individuals seeking abortion care. Abortion is essential, time-sensitive health care and is one of the safest medical procedures performed in the United States. Delaying or denying that care can have long-lasting health consequences.

Moreover, forcing someone to carry a pregnancy against their will results in increased levels of poverty and an inability to cover basic needs like food, housing, and transportation. Those who are denied an abortion are more likely than those who receive an abortion to be living in poverty and lacking full-time employment six months after the denial of care. They are also more likely to stay tethered to abusive partners.

Attacks on abortion access disproportionately harm people who have always faced systemic barriers to care — communities of color, LGBTQ+ & Two Spirited people, undocumented immigrants, young people, those living in rural communities, people with disabilities, and those with low incomes. Persistent healthcare disparities already create substantial barriers to abortion care, and this bill would further exasperate existing disparities.

The majority of North Dakota residents have already made their feelings known at the ballot box: 64% of voters in 2014 rejected a Constitutional "right to life" amendment. Furthermore, a majority of Americans think abortion should be legal in most circumstances (according to Pew Research Center).

Instead of legislating politics and morality into the healthcare of citizens, the 68th Assembly of the North Dakota Legislature should be focused on repealing the trigger ban and maintaining and expanding the right to bodily autonomy and healthcare for pregnant citizens of North Dakota.

We urge you to vote "Do Not Pass" on this dangerous and harmful bill and we further urge the North Dakota House of Representatives to vote no and fullfil its role of making lives better for the people of our state by maintaining and expanding liberty to pregnant citizens.

ACLU
AMERICAN CIVIL LIBERTIES UNION
North Dakota
P.O. Box 1190
Fargo, ND 58107
701-404-7269
northdakota@aclu.org
aclund.org

Cody J. Schuler
Advocacy Manager
ACLU of North Dakota
cschuler@aclu.org

North Dakota Women's Network

Kayla Schmidt – Interim Executive Director, North Dakota Women's Network
Opposition - SB 2150
North Dakota House Human Services Committee

March 14, 2023

Chair Weisz and members of the Committee,

My name is Kayla Schmidt and I am the Interim Executive Director of the North Dakota Women's Network. We are a statewide organization working towards improving the lives of women across North Dakota. I am providing testimony in opposition of Senate Bill 2150.

Our mission includes empowering women to take an informed role in their health care decisions. Every woman, like every pregnancy is different. SB2150 has been promoted as a simplification of North Dakota's abortion laws; however, this bill is an oversimplification of complex issues that will ultimately harm patients and doctors who must consider the many complications that may arise during a pregnancy.

While the topic of abortion is often framed as a moral or legal binary argument, the results of a 2022 PEW Research Center survey has found that the majority of Americans do *not* have an absolutist view on abortion regulations. Nuance and individual circumstances are key. The report found that 53% of Americans believe abortion should be legal if the baby is likely to be born with severe disabilities or health problems with another 25% of respondents indicating their decision would depend on the situation.

During testimony for SB2150 before the Senate Judiciary committee, several medical care providers requested changes to the bill's language which limits a healthcare professional's ability to provide care for patients who face difficult, personal decisions about their pregnancy. Several doctors requested an amendment to allow abortion in the case of lethal fetal anomalies. This amendment was not added.

Dr. Collette Lessard stated, "[t]hese diagnoses bring forth unimaginable pain and devastation to families. They are unexpected and not often known about until 20 weeks, at the standard time of an anatomy scan…These are heartbreaking and painful decisions for families. They should be able to receive this compassionate care in state with their OBGYN physician and their families." When asking for consideration for language regarding lethal fetal anomalies, Dr. Brendan Boe said, "[e]nd of life decisions are made every day in this state. These are impossible and heartwrenching decisions that families sometimes have to make, and I ask that you consider allowing them to make those decisions prior to advanced gestation."

This testimony demonstrated the experience and expertise of a doctor should not be overshadowed by limited definitions that restrict their ability to treat patients. North Dakotans deserve to receive medical care that is not hindered by interference from the government.

North Dakotans deserve healthcare that preserves their personal liberty, dignity, and privacy and laws that grant latitude for decisions best left to individuals and their families. We ask for a Do Not Pass recommendation on SB2150.

Thank you.

Kayla Schmidt
director@ndwomen.org

23.0137.06002
Title.

Prepared by the Legislative Council staff for
Representative Dobervich
March 13, 2023

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2150

Page 2, line 17, remove ""Probable gestational age of the unborn child" means what, in reasonable"

Page 2, remove lines 18 and 19

Page 2, line 20, remove "e."

Page 3, line 2, remove ", if the probable gestational age of the unborn child is six weeks or less"

Renumber accordingly

23.0137.06006
Title.

Prepared by the Legislative Council staff for
Representative Weisz
April 3, 2023

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2150

Page 1, line 1, after "to" insert "create and enact a new chapter to title 12.1 of the North Dakota Century Code, relating to abortions; to"

Page 1, line 1, remove "12.1-31-12,"

Page 1, line 4, after "sections" insert "12.1-31-12,"

Page 1, line 6, after "to" insert "abortions,"

Page 1, remove lines 10 through 23

Page 2, remove lines 1 through 30

Page 3, replace lines 1 through 7 with:

"**SECTION 1.** A new chapter to title 12.1 of the North Dakota Century Code is created and enacted as follows:

Definitions.

As used in this chapter:

1. "Abortion" means the act of using, selling, or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge the termination by those means will with reasonable likelihood cause the death of the unborn child. The use, sale, or prescription, or means is not an abortion if done with the intent to:

   a. Remove a dead unborn child caused by spontaneous abortion;

   b. Treat a woman for an ectopic pregnancy; or

   c. Treat a woman for a molar pregnancy.

2. "Physician" means an individual 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.

3. "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.

4. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

5. "Serious health risk" means a condition that, in reasonable medical judgment, complicates the medical condition of the pregnant woman so

that it necessitates an abortion to prevent substantial physical impairment of a major bodily function, not including any psychological or emotional condition. The term may not be based on a claim or diagnosis that the woman will engage in conduct that will result in her death or in substantial physical impairment of a major bodily function.

Abortion prohibited - Penalty.

It is a class C felony for a person, other than the pregnant female upon whom the abortion was performed, to perform an abortion.

Exceptions.

This chapter does not apply to:

1. An abortion deemed necessary based on reasonable medical judgment which was intended to prevent the death or a serious health risk to the pregnant female.

2. An abortion to terminate a pregnancy that based on reasonable medical judgment resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20, if the probable gestational age of the unborn child is six weeks or less.

3. An individual assisting in performing an abortion if the individual was acting within the scope of that individual's regulated profession, was under the direction of or at the direction of a physician, and did not know the physician was performing an abortion in violation of this chapter."

Page 3, line 26, overstrike "or"

Page 3, line 27, after "pregnancy" insert "; or

c. Treat a woman for a molar pregnancy"

Page 6, line 11, overstrike "substantial"

Page 6, line 11, overstrike "physical impairment of a"

Page 6, line 12, overstrike "major bodily function, not including psychological or emotional conditions" and insert immediately thereafter "a serious health risk"

Page 6, line 12, overstrike "A condition"

Page 6, overstrike lines 13 through 15

Page 6, line 30, after "14." insert ""Serious health risk" means a condition that, in reasonable medical judgment, complicates the medical condition of the pregnant woman so that it necessitates an abortion to prevent substantial physical impairment of a major bodily function, not including any psychological or emotional condition. The term may not be based on a claim or diagnosis that the woman will engage in conduct that will result in her death or in substantial physical impairment of a major bodily function.

15."

Page 7, line 1, replace "15." with "16."

Page 9, line 19, remove "section 12.1-31-12."

Page 9, line 29, replace "due to a medical emergency" with "to prevent a serious health risk"

Page 10, line 25, overstrike "avert" and insert immediately thereafter "prevent"

Page 10, line 26, overstrike "for which a twenty-four-hour delay will create grave peril of immediate"

Page 10, line 27, overstrike "and irreversible loss of major bodily function" and insert immediately thereafter "prevent a serious health risk"

Page 10, line 31, overstrike the comma

Page 10, line 31, overstrike "because the continuation of her pregnancy will impose on her a"

Page 11, line 1, overstrike "substantial risk of grave impairment of her physical"

Page 11, line 1, overstrike "health" and insert immediately thereafter "to prevent a serious health risk"

Page 15, line 16, overstrike "After the point in pregnancy when the unborn child may reasonably be expected to"

Page 15, line 17, overstrike "have reached viability,"

Page 15, line 17, remove "an"

Page 15, line 17, overstrike "abortion may be performed"

Page 15, overstrike line 18

Page 15, line 19, overstrike "the life of the woman"

Page 15, overstrike lines 22 through 26

Page 15, line 27, overstrike "concurrence is not required in the case of"

Page 15, line 27, remove "a medical"

Page 15, line 27, overstrike "emergency when the abortion"

Page 15, overstrike line 28

Page 15, line 29, overstrike "4."

Page 16, line 10, overstrike "5." and insert immediately thereafter "4."

Page 16, line 12, overstrike "6." and insert immediately thereafter "5."

Page 21, line 20, after "Sections" insert "12.1-31-12,"

Renumber accordingly

23.0137.06004
Title.

Prepared by the Legislative Council staff for
Representative Dobervich
March 23, 2023

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2150

Page 2, line 8, remove "not"

Page 3, line 2, replace "six" with "twelve"

Page 6, line 12, overstrike "not"

Page 11, line 1, remove the overstrike over "~~or mental~~"

Renumber accordingly