

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																																						
	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																																						

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	Prohibited																																						
Rape	Allowed	Allowed	Allowed	Allowed	Allowed	Prohibited																																	
Incest	Allowed	Allowed	Allowed	Allowed	Allowed	Prohibited																																	
Medical Emergency	Allowed	Allowed																																					
Life	Allowed	Allowed																																					

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