

SENATE BILL NO. 2150

Introduced by

Senators Myrdal, Boehm, Luick

Representatives Porter, Rohr, M. Ruby

1 A BILL for an Act to amend and reenact sections 12.1-31-12, 14-02.1-02, 14-02.1-02.1,
2 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
3 section 43-17-31 of the North Dakota Century Code, relating to abortion and grounds for
4 disciplinary action imposed against a physician; to repeal sections 14-02.1-04.1, 14-02.1-04.2,
5 14-02.1-05.1, 14-02.1-05.2, and 14-02.1-05.3 of the North Dakota Century Code, relating to
6 sex-selective abortions, genetic abnormality abortions, human dismemberment abortions, and
7 abortions after a detectable heartbeat; to provide a penalty; and to declare an emergency.

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

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

11 **12.1-31-12. Abortion - ~~Affirmative defenses~~Exceptions.**

12 1. As used in this section:

13 a. "Abortion" means the ~~use or prescription of any substance, device, instrument,~~
14 ~~medicine, or drug to intentionally terminate the pregnancy of an individual known~~
15 ~~to be pregnant. The term does not include an act made with the intent to increase~~
16 ~~the probability of a live birth; preserve the life or health of a child after live birth; or~~
17 ~~remove a dead, unborn child who died as a result of a spontaneous miscarriage,~~
18 ~~an accidental trauma, or a criminal assault upon the pregnant female or her~~
19 ~~unborn child~~act of using or prescribing any instrument, medicine, drug, or any
20 other substance, device, or means with the intent to terminate the clinically
21 diagnosable pregnancy of a woman, including the elimination of one or more
22 unborn children in a multifetal pregnancy, with knowledge the termination by
23 those means will with reasonable likelihood cause the death of the unborn child.
24 Such use, prescription, or means is not an abortion if done with the intent to:

- 1 (1) Save the life or preserve the health of the unborn child;
2 (2) Remove a dead unborn child caused by spontaneous abortion; or
3 (3) Treat a woman for an ectopic pregnancy.
- 4 b. "Medical emergency" means a condition that, in reasonable medical judgment, so
5 complicates the medical condition of the pregnant woman that it necessitates an
6 immediate abortion to prevent her death or substantial and irreversible physical
7 impairment of a major bodily function, not including any psychological or
8 emotional condition. A condition may not be deemed a medical emergency if
9 based on a claim or diagnosis that the woman will engage in conduct that she
10 intends to result in her death or in substantial and irreversible physical
11 impairment of a major bodily function.
- 12 c. "Physician" means an individual licensed to practice medicine or osteopathy
13 under chapter 43-17 or a physician who practices in the armed services of the
14 United States or in the employ of the United States.
- 15 e. "Professional
- 16 d. "Reasonable medical judgment" means a medical judgment that would be made
17 by a reasonably prudent physician who is knowledgeable about the case and the
18 treatment possibilities with respect to the medical conditions involved.
- 19 2. It is a class C felony for a person, other than the pregnant female upon whom the
20 abortion was performed, to perform an abortion.
- 21 3. ~~The following are affirmative defenses under this~~ This section does not apply to:
- 22 a. ~~That the~~ An abortion was deemed necessary in professional ~~based on reasonable~~
23 medical judgment and ~~which~~ was intended to prevent the death of the pregnant
24 female.
- 25 b. ~~That the~~ An abortion was to terminate a pregnancy that resulted from gross
26 sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those
27 offenses are defined in chapter 12.1-20, if the probable postfertilization age of the
28 unborn child is six weeks or less.
- 29 c. ~~That the~~ An individual assisting in performing an abortion if the individual was
30 acting within the scope of that individual's regulated profession and, was under

1 the direction of or at the direction of a physician, and did not know the physician
2 was performing an abortion in violation of this section.

3 d. An abortion necessary due to a medical emergency.

4 **SECTION 2. AMENDMENT.** Section 14-02.1-02 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **14-02.1-02. Definitions.**

7 As used in this chapter:

- 8 1. "Abortion" means the act of using or prescribing any instrument, medicine, drug, or
9 any other substance, device, or means with the intent to terminate the clinically
10 diagnosable ~~intrauterine~~ pregnancy of a woman, including the elimination of one or
11 more unborn children in a multifetal pregnancy, with knowledge that the termination by
12 those means will with reasonable likelihood cause the death of the unborn child. Such
13 use, prescription, or means is not an abortion if done with the intent to:
 - 14 a. Save the life or preserve the health of the unborn child;
 - 15 b. Remove a dead unborn child caused by spontaneous abortion; or
 - 16 c. Treat a woman for an ectopic pregnancy.
- 17 2. "Abortion facility" means a clinic, ambulatory surgical center, physician's office, or any
18 other place or facility in which abortions are performed or prescribed, other than a
19 hospital.
- 20 3. "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed
21 or dispensed with the intent of causing an abortion.
- 22 4. ~~"Down syndrome" refers to a chromosome disorder associated with an extra-~~
23 ~~chromosome twenty-one, in whole or in part, or an effective trisomy for chromosome-~~
24 ~~twenty-one.~~
- 25 5. "Drug label" means the pamphlet accompanying an abortion-inducing drug which
26 outlines the protocol tested and authorized by the federal food and drug administration
27 and agreed upon by the drug company applying for the federal food and drug
28 administration authorization of that drug. Also known as "final printing labeling
29 instructions", drug label is the federal food and drug administration document that
30 delineates how a drug is to be used according to the federal food and drug
31 administration approval.

1 ~~6-5.~~ "Fertilization" means the fusion of a human spermatozoon with a human ovum.

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

6 ~~8-6.~~ "Hospital" means an institution licensed by the department of health and human
7 services under chapter 23-16 and any hospital operated by the United States or this
8 state.

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

12 ~~10-8.~~ "Infant born alive" means a born child which exhibits either heartbeat, spontaneous
13 respiratory activity, spontaneous movement of voluntary muscles or pulsation of the
14 umbilical cord if still attached to the child.

15 ~~11-9.~~ "Informed consent" means voluntary consent to abortion by the woman upon whom
16 the abortion is to be performed or induced provided:

17 a. The woman is told the following by the physician who is to perform the abortion,
18 by the referring physician, or by the physician's agent, at least twenty-four hours
19 before the abortion:

20 (1) The name of the physician who will perform the abortion;

21 (2) The abortion will terminate the life of a whole, separate, unique, living
22 human being;

23 (3) The particular medical risks associated with the particular abortion
24 procedure to be employed including, when medically accurate, the risks of
25 infection, hemorrhage, danger to subsequent pregnancies, and infertility;

26 (4) The probable ~~gestational~~postfertilization age of the unborn child at the time
27 the abortion is to be performed; and

28 (5) The medical risks associated with carrying her child to term.

29 b. The woman is informed, by the physician or the physician's agent, at least
30 twenty-four hours before the abortion:

- 1 (1) That medical assistance benefits may be available for prenatal care,
2 childbirth, and neonatal care and that more detailed information on the
3 availability of that assistance is contained in the printed materials given to
4 her as described in section 14-02.1-02.1;
- 5 (2) That the printed materials given to her and described in section
6 14-02.1-02.1 describe the unborn child and list agencies that offer
7 alternatives to abortion;
- 8 (3) That the father is liable to assist in the support of her child, even in
9 instances in which the father has offered to pay for the abortion;
- 10 (4) That she is free to withhold or withdraw her consent to the abortion at any
11 time without affecting her right to future care or treatment and without the
12 loss of any state or federally funded benefits to which she might otherwise
13 be entitled; and
- 14 (5) That it may be possible to reverse the effects of an abortion-inducing drug if
15 she changes her mind, but time is of the essence, and information and
16 assistance with reversing the effects of an abortion-inducing drug are
17 available in the printed materials given to her as described in section
18 14-02.1-02.1.
- 19 c. The woman certifies in writing, ~~prior to~~before the abortion, that the information
20 described in subdivisions a and b has been furnished to her.
- 21 d. Before the performance of the abortion, the physician who is to perform or induce
22 the abortion or the physician's agent receives a copy of the written certification
23 prescribed by subdivision c.
- 24 e. The physician has not received or obtained payment for a service provided to a
25 patient who has inquired about an abortion or has scheduled an abortion before
26 the twenty-four-hour period required by this section.
- 27 ~~12-10.~~ "Medical emergency" means a condition that, in reasonable medical judgment, so
28 complicates the medical condition of the pregnant woman that it necessitates an
29 immediate abortion ~~of her pregnancy without first determining postfertilization age to~~
30 avert~~prevent~~ her death or ~~for which the delay necessary to determine postfertilization~~
31 age ~~will create serious risk of~~ substantial and irreversible physical impairment of a

1 major bodily function, not including psychological or emotional conditions. A condition
2 may not be deemed a medical emergency if based on a claim or diagnosis that the
3 woman will engage in conduct that she intends to result in her death or in substantial
4 and irreversible physical impairment of a major bodily function.

5 ~~43.11.~~ "Physician" means an individual ~~who is~~ licensed to practice medicine or osteopathy
6 under chapter 43-17 or a physician who practices in the armed services of the United
7 States or in the employ of the United States.

8 ~~44.12.~~ "Postfertilization age" means the age of the unborn child as calculated from
9 fertilization.

10 ~~45.~~ ~~"Probable gestational age of the unborn child" means what, in reasonable medical~~
11 ~~judgment, will with reasonable probability be the gestational age of the unborn child at~~
12 ~~the time the abortion is planned to be performed.~~

13 ~~46.13.~~ "Probable postfertilization age of the unborn child" means what, in reasonable medical
14 judgment, will with reasonable probability be the postfertilization age of the unborn
15 child at the time the abortion is planned to be performed or induced.

16 ~~47.14.~~ "Reasonable medical judgment" means a medical judgment that would be made by a
17 reasonably prudent physician, knowledgeable about the case and the treatment
18 possibilities with respect to the medical conditions involved.

19 ~~48.15.~~ "Unborn child" means the offspring of human beings from conception until birth.

20 ~~49.16.~~ "Viable" means the ability of an unborn child to live outside the mother's womb, albeit
21 with artificial aid.

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

24 **14-02.1-02.1. Printed information - Referral service.**

25 1. The department of health and human services shall publish in English, and in every
26 other language that the department determines is the primary language of a significant
27 number of state residents, the following easily comprehensible printed materials:

28 a. Geographically indexed materials designed to inform the woman of public and
29 private agencies and services available to assist a woman through pregnancy,
30 upon childbirth, and while the child is dependent, including adoption agencies.

31 The materials must include a comprehensive list of the agencies available, a

1 description of the services they offer and a description of the manner, including
2 telephone numbers, in which they might be contacted, or, at the option of the
3 department, printed materials, including a toll-free, twenty-four-hour-a-day
4 telephone number that may be called to obtain, orally, such a list and description
5 of agencies in the locality of the caller and of the services they offer. The
6 materials must state that it is unlawful for any individual to coerce a woman to
7 undergo an abortion and that if a minor is denied financial support by the minor's
8 parent, guardian, or custodian due to the minor's refusal to have an abortion
9 performed, the minor is deemed to be emancipated for the purposes of eligibility
10 for public assistance benefits, except that those benefits may not be used to
11 obtain an abortion. The materials also must state that any physician who
12 performs an abortion upon a woman without her informed consent may be liable
13 to her for damages in a civil action and that the law permits adoptive parents to
14 pay costs of prenatal care, childbirth, and neonatal care. The materials must
15 include the following statement: There are many public and private agencies
16 willing and able to help you to carry your child to term and to assist you and your
17 child after your child is born, whether you choose to keep your child or to place
18 your child for adoption. The state of North Dakota strongly urges you to contact
19 one or more of these agencies before making a final decision about abortion. The
20 law requires that your physician or your physician's agent give you the
21 opportunity to call agencies like these before you undergo an abortion.

- 22 b. Materials, published in a booklet format, designed to inform the woman of the
23 probable anatomical and physiological characteristics of the unborn child at
24 two-week gestational increments from the time when a woman can be known to
25 be pregnant to full term, including any relevant information on the possibility of
26 the survival of the unborn child and color photographs of the development of an
27 unborn child at two-week gestational increments. The descriptions must include
28 information about brain and heart function, the presence of external members
29 and internal organs during the applicable states of development, and any
30 relevant information on the possibility of the unborn child's survival. The materials
31 must be objective, nonjudgmental, and designed to convey only accurate

1 scientific information about the unborn child at the various gestational ages. The
2 materials required under this subsection must be reviewed, updated, and
3 reprinted as needed.

4 c. Materials that include information on the support obligations of the father of a
5 child who is born alive, including the father's legal duty to support his child, which
6 may include child support payments and health insurance, and the fact that
7 paternity may be established by the father's signature on an acknowledgment of
8 paternity or by court action. The printed material must also state that more
9 information concerning paternity establishment and child support services and
10 enforcement may be obtained by calling state public assistance agencies or
11 human service zones.

12 d. Materials that contain objective information describing the various surgical and
13 drug-induced methods of abortion as well as the immediate and long-term
14 medical risks commonly associated with each abortion method, including the
15 risks of infection, hemorrhage, cervical or uterine perforation or rupture, danger to
16 subsequent pregnancies, the possible increased risk of breast cancer, the
17 possible adverse psychological effects associated with an abortion, and the
18 medical risks associated with carrying a child to term.

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

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

26 2. The materials required under subsection 1 must be available at no cost from the
27 department of health and human services upon request and in appropriate number to
28 any person, facility, or hospital, and, except for copyrighted material, must be available
29 on the department's internet website. The department may make the copyrighted
30 material available on its internet website if the department pays the copyright royalties.

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

3 **14-02.1-02.2. Abortion report form.**

4 The department of health and human services shall prepare an abortion compliance report
5 form and an abortion data report form to be used by the physician for each abortion performed,
6 as required by section 14-02.1-07. The abortion compliance report form must include a checklist
7 designed to confirm compliance with all provisions of this chapter, chapter 14-02.3, chapter
8 14-02.6, and section 23-16-14. The abortion data report form must include the:

9 1. The data called for in the United States standard report of induced termination of
10 pregnancy as recommended by the national center for health statistics; and

11 2. Whether the abortion was:

12 a. Necessary in reasonable medical judgment and was intended to prevent the
13 death of the pregnant female; or

14 b. To terminate a pregnancy that resulted from gross sexual imposition, sexual
15 imposition, sexual abuse of a ward, or incest, as those offenses are defined in
16 chapter 12.1-20.

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

19 **14-02.1-03. Consent to abortion - Notification requirements.**

20 1. ~~No~~A physician shall ~~shall~~may not perform an abortion unless ~~prior to~~before such
21 performance the physician certified in writing that the woman gave her informed
22 consent as defined and provided in section 14-02.1-02 and shall certify in writing the
23 pregnant woman's marital status and age based upon proof of age offered by her.
24 Before the period of pregnancy when the unborn child may reasonably be expected to
25 have reached viability, an abortion may not be performed upon an unemancipated
26 minor unless the attending physician certifies in writing that each of the parents of the
27 minor requesting the abortion has been provided by the physician in person with the
28 information provided for in section 14-02.1-02 at least twenty-four hours before the
29 minor's consent to the performance of abortion or unless the attending physician
30 certifies in writing that the physician has caused materials of section 14-02.1-02 to be
31 posted by certified mail to each of the parents of the minor separately to the

1 last-known addresses at least forty-eight hours ~~prior to~~before the minor's consent to
2 the performance of abortion. If a parent of the minor has died or rights and interests of
3 that parent have been legally terminated, this subsection applies to the sole remaining
4 parent. When both parents have died or the rights and interests of both parents have
5 been legally terminated, this subsection applies to the guardian or other person
6 standing in loco parentis. Notification by the attending physician is not required if the
7 minor elects not to allow the notification of one or both parents or her guardian and the
8 abortion is authorized by the juvenile court in accordance with section 14-02.1-03.1.
9 None of the requirements of this subsection apply in the case of a medical emergency,
10 except that when a medical emergency compels the performance of an abortion, the
11 physician shall inform the woman, before the abortion if possible, of the medical
12 indications supporting the physician's judgment that an abortion is necessary to avert
13 her death or for which a twenty-four-hour delay will create grave peril of immediate
14 and irreversible loss of major bodily function, and shall certify those indications in
15 writing.

16 2. Subsequent to the period of pregnancy when the unborn child may reasonably be
17 expected to have reached viability, ~~nean~~ abortion, other than an abortion necessary to
18 preserve her life, or because the continuation of her pregnancy will impose on her a
19 substantial risk of grave impairment of her physical ~~or mental~~ health, may not be
20 performed upon any woman in the absence of:

21 a. ~~The written consent of her husband unless her husband is voluntarily separated~~
22 ~~from her; or~~

23 b. ~~The~~ the written consent of a parent, if living, or the custodian or legal guardian of
24 the woman, if the woman is unmarried and under eighteen years of age.

25 3. No executive officer, administrative agency, or public employee of the state of North
26 Dakota or any local governmental body has power to issue any order requiring an
27 abortion, nor shall any such officer or entity coerce any woman to have an abortion,
28 nor shall any other person coerce any woman to have an abortion.

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

1 **14-02.1-03.1. Parental consent or judicial authorization for abortion of unmarried**
2 **minor - Statement of intent.**

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

8 1. ~~No~~A person may not knowingly perform an abortion upon a pregnant woman under
9 the age of eighteen years unless:

- 10 a. The attending physician has secured the written consent of the minor woman and
11 both parents, if living, or the surviving parent if one parent is deceased, or the
12 custodial parent if the parents are separated or divorced, or the legal guardian or
13 guardians if the minor is subject to guardianship;
- 14 b. The minor woman is married and the attending physician has secured her
15 informed written consent; or
- 16 c. The abortion has been authorized by the juvenile court in accordance with the
17 provisions of this section.

18 2. Any pregnant woman under the age of eighteen or next friend is entitled to apply to
19 the juvenile court for authorization to obtain an abortion without parental consent. All
20 proceedings on such application must be conducted in the juvenile court of the county
21 of the minor's residence before a juvenile judge or referee, if authorized by the juvenile
22 court judge in accordance with the provisions of chapter 27-05, except that the
23 parental notification requirements of rules 3, 4, and 5 of the North Dakota Rules of
24 Juvenile Procedure are not applicable to proceedings under this section. A court may
25 change the venue of proceedings under this section to another county only upon
26 finding that a transfer is required in the best interests of the minor. All applications in
27 accordance with this section must be heard by a juvenile judge or referee within
28 forty-eight hours, excluding Saturdays and Sundays, of receipt of the application. The
29 juvenile judge or referee shall find by clear and convincing evidence:

- 1 a. Whether or not the minor is sufficiently mature and well informed with regard to
2 the nature, effects, and possible consequences of both having an abortion and
3 bearing her child to be able to choose intelligently among the alternatives.
- 4 b. If the minor is not sufficiently mature and well informed to choose intelligently
5 among the alternatives without the advice and counsel of her parents or
6 guardian, whether or not it would be in the best interests of the minor to notify her
7 parents or guardian of the proceedings and call in the parents or guardian to
8 advise and counsel the minor and aid the court in making its determination and to
9 assist the minor in making her decision.
- 10 c. If the minor is not sufficiently mature and well informed to choose intelligently
11 among the alternatives and it is found not to be in the best interests of the minor
12 to notify and call in her parents or guardian for advice and counsel, whether an
13 abortion or some other alternative would be in the best interests of the minor.
- 14 3. All proceedings in connection with this section must be kept confidential and the
15 identity of the minor must be protected in accordance with provisions relating to all
16 juvenile court proceedings. This section does not limit the release, upon request, of
17 statistical information regarding applications made under this section and their
18 disposition.
- 19 4. The court shall keep a stenographic or mechanically recorded record of the
20 proceedings which must be maintained on record for forty-eight hours following the
21 proceedings. If no appeal is taken from an order of the court pursuant to the
22 proceedings, the record of the proceedings must be sealed as soon as practicable
23 following such forty-eight-hour period.
- 24 5. Following the hearing and the court's inquiry of the minor, the court shall issue one of
25 the following orders:
 - 26 a. If the minor is sufficiently mature and well informed concerning the alternatives
27 and without the need for further information, advice, or counseling, the court shall
28 issue an order authorizing a competent physician to perform the abortion
29 procedure on the minor.
 - 30 b. If the minor is not sufficiently mature and well informed, the court may:

- 1 (1) Issue an order to provide the minor with any necessary information to assist
2 her in her decision if the minor is mature enough to make the decision but
3 not well informed enough to do so.
- 4 (2) Issue an order to notify the minor's parents or guardian of the pendency of
5 the proceedings and calling for their attendance at a reconvening of the
6 hearing in order to advise and counsel the minor and assist the court in
7 making its determination if the court finds that to do so would be in the best
8 interests of the minor and the pregnancy resulted from gross sexual
9 imposition, sexual imposition, sexual abuse of a ward, or incest, as those
10 offenses are defined in chapter 12.1-20.
- 11 (3) Issue an order authorizing an abortion by a competent physician if the court
12 has determined that it would not be in the best interests of the minor to call
13 in her parents or guardian but has found that it would be in the minor's best
14 interests to authorize the abortion.
- 15 6. The minor or next friend may appeal the determination of the juvenile court directly to
16 the state supreme court. In the event of such an appeal, any and all orders of the
17 juvenile court must be automatically stayed pending determination of the issues on
18 appeal. Any appeal taken pursuant to this section by anyone other than the minor or
19 next friend must be taken within forty-eight hours of the determination of the juvenile
20 court by the filing of written notice with the juvenile court and a written application in
21 the supreme court. Failure to file notice and application within the prescribed time
22 results in a forfeiture of the right to appeal and render the juvenile court order or orders
23 effective for all intents and purposes.
- 24 7. Upon receipt of written notice of appeal, the juvenile court shall immediately cause to
25 be transmitted to the supreme court the record of proceedings had in the juvenile
26 court.
- 27 8. An application for appeal pursuant to this section must be treated as an expedited
28 appeal by the supreme court and must be set down for hearing within four days of
29 receipt of the application, excluding Saturdays and Sundays.
- 30 9. The hearing, inquiry, and determination of the supreme court must be limited to a
31 determination of the sufficiency of the inquiry and information considered by the

1 juvenile court and whether or not the order or orders of the juvenile court accord with
2 the information considered with respect to the maturity and information available to the
3 minor and the best interests of the minor as determined by the juvenile court. The
4 determination of the juvenile court may not be overturned unless found to be clearly
5 erroneous.

6 10. After hearing the matter the supreme court shall issue its decision within twenty-four
7 hours.

8 11. Within forty-eight hours of the hearing by the supreme court, the record of the juvenile
9 court must be returned to the juvenile court and the juvenile court shall seal it at the
10 earliest practicable time.

11 12. Nothing in this section may be construed to prevent the immediate performance of an
12 abortion on an unmarried minor woman in ana medical emergency ~~where such action~~
13 ~~is necessary to preserve her life and no physician may be prevented from acting in~~
14 ~~good faith in such circumstances or made to suffer any sanction thereby other than~~
15 ~~those applicable in the normal course of events to the general review of emergency~~
16 ~~and nonemergency medical procedures.~~

17 13. Nothing in this section may be construed to alter the effects of any other section of this
18 chapter or to expand the rights of any minor to obtain an abortion beyond the limits to
19 such rights recognized under the Constitution of the United States or under other
20 provisions of this code.

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

23 **14-02.1-04. Limitations on the performance of abortions - Penalty.**

24 1. An abortion may not be performed by any person other than a physician who is using
25 applicable medical standards and who is licensed to practice in this state. All
26 physicians performing abortion procedures must have admitting privileges at a hospital
27 located within thirty miles [42.28 kilometers] of the abortion facility and staff privileges
28 to replace hospital on-staff physicians at that hospital. These privileges must include
29 the abortion procedures the physician will be performing at abortion facilities. An
30 abortion facility must have a staff member trained in cardiopulmonary resuscitation

1 present at all times when the abortion facility is open and abortions are scheduled to
2 be performed.

3 2. After the first twelve weeks of pregnancy but ~~prior to~~before the time at which the
4 unborn child may reasonably be expected to have reached viability, ~~nean~~an abortion may
5 not be performed in any facility other than a licensed hospital.

6 3. After the point in pregnancy when the unborn child may reasonably be expected to
7 have reached viability, ~~nean~~an abortion may be performed ~~except in a hospital, and then~~
8 only if in the medical judgment of the physician the abortion is necessary to preserve
9 the life of the woman ~~or if in the physician's medical judgment the continuation of her~~
10 ~~pregnancy will impose on her a substantial risk of grave impairment of her physical or~~
11 ~~mental health.~~

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

19 4. An abortion facility may not perform an abortion on a woman without first offering the
20 woman an opportunity to receive and view at the abortion facility or another facility an
21 active ultrasound of her unborn child. The offer and opportunity to receive and view an
22 ultrasound must occur at least twenty-four hours before the abortion is scheduled to
23 be performed. The active ultrasound image must be of a quality consistent with
24 standard medical practice in the community, contain the dimensions of the unborn
25 child, and accurately portray the presence of external members and internal organs,
26 including the heartbeat, if present or viewable, of the unborn child. The auscultation of
27 the fetal heart tone must be of a quality consistent with standard medical practice in
28 the community. The abortion facility shall document the woman's response to the offer,
29 including the date and time of the offer and the woman's signature attesting to her
30 informed decision.

1 5. Any physician who performs an abortion without complying with the provisions of this
2 section is guilty of a class A misdemeanor.

3 6. It is a class B felony for any person, other than a physician licensed under chapter
4 43-17, to perform an abortion in this state.

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

7 **14-02.1-07. Records required - Reporting of practice of abortion.**

8 1. Records:

9 a. All abortion facilities and hospitals in which abortions are performed shall keep
10 records, including admission and discharge notes, histories, results of tests and
11 examinations, nurses' worksheets, social service records, and progress notes,
12 and shall further keep a copy of all written certifications provided for in this
13 chapter as well as a copy of the constructive notice forms, consent forms, court
14 orders, abortion data reports, adverse event reports, abortion compliance reports,
15 and complication reports. All abortion facilities shall keep the following records:

16 (1) The number of women who availed themselves of the opportunity to receive
17 and view an ultrasound image of their unborn children pursuant to section
18 14-02.1-04, and the number who did not; and of each of those numbers, the
19 number who, to the best of the reporting abortion facility's information and
20 belief, went on to obtain the abortion.

21 (2) ~~Postfertilization age:~~

22 ~~(a) If a determination of probable postfertilization age was not made, the~~
23 ~~basis of the determination that a medical emergency existed.~~

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

27 b. The medical records of abortion facilities and hospitals in which abortions are
28 performed and all information contained therein must remain confidential and
29 may be used by the department of health and human services only for gathering
30 statistical data and ensuring compliance with the provisions of this chapter.

- 1 c. Records must be maintained in the permanent files of the hospital or abortion
2 facility for a period of not less than seven years.
- 3 2. Reporting:
- 4 a. An individual abortion compliance report and an individual abortion data report for
5 each abortion performed upon a woman must be completed by her attending
6 physician. The abortion data report must be confidential and may not contain the
7 name of the woman. The abortion data report must include the data called for in
8 the United States standard report of induced termination of pregnancy as
9 recommended by the national center for health statistics and whether:
- 10 (1) The abortion was performed to prevent the death of the pregnant female; or
11 (2) The pregnancy resulted from gross sexual imposition, sexual imposition,
12 sexual abuse of a ward, or incest, as those offenses are defined in chapter
13 12.1-20.
- 14 b. All abortion compliance reports must be signed by the attending physician within
15 twenty-four hours and submitted to the department of health and human services
16 within ten business days from the date of the abortion. All abortion data and
17 complication reports must be signed by the attending physician and submitted to
18 the department of health and human services within thirty days from the date of
19 the abortion. If a physician provides an abortion-inducing drug to another for the
20 purpose of inducing an abortion and the physician knows that the individual
21 experiences during or after the use an adverse event, the physician shall provide
22 a written report of the adverse event within thirty days of the event to the
23 department of health and human services and the federal food and drug
24 administration via the medwatch reporting system. For purposes of this section,
25 "adverse event" is defined based upon the federal food and drug administration
26 criteria given in the medwatch reporting system. If a determination of probable
27 postfertilization age was not made, the abortion compliance report must state the
28 basis of the determination that a medical emergency existed. If the probable
29 postfertilization age was determined to be twenty or more weeks and an abortion
30 was performed, the abortion compliance report must state the basis of the
31 determination that a medical emergency existed.

- 1 c. A copy of the abortion report, any complication report, and any adverse event
2 report must be made a part of the medical record of the patient at the facility or
3 hospital in which the abortion was performed. In cases when post-abortion
4 complications are discovered, diagnosed, or treated by physicians not associated
5 with the facility or hospital where the abortion was performed, the department of
6 health and human services shall forward a copy of the report to that facility or
7 hospital to be made a part of the patient's permanent record.
- 8 d. The department of health and human services is responsible for collecting all
9 abortion compliance reports, abortion data reports, complication reports, and
10 adverse event reports and collating and evaluating all data gathered from these
11 reports and shall annually publish a statistical report based on data from
12 abortions performed in the previous calendar year. All abortion compliance
13 reports received by the department of health and human services are public
14 records. Except for disclosure to a law enforcement officer or state agency, the
15 department may not disclose an abortion compliance report without first removing
16 any individually identifiable health information and any other demographic
17 information, including race, marital status, number of previous live births, and
18 education regarding the woman upon whom the abortion was performed.
- 19 e. The department of health and human services shall report to the attorney general
20 any apparent violation of this chapter.

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

- 23 1. Disciplinary action may be imposed against a physician upon any of the following
24 grounds:
- 25 a. The use of any false, fraudulent, or forged statement or document, or the use of
26 any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of
27 the licensing requirements.
- 28 b. The making of false or misleading statements about the physician's skill or the
29 efficacy of any medicine, treatment, or remedy.
- 30 c. The conviction of any misdemeanor determined by the board to have a direct
31 bearing upon a person's ability to serve the public as a practitioner of medicine or

- 1 any felony. A license may not be withheld contrary to the provisions of
2 chapter 12.1-33.
- 3 d. Habitual use of alcohol or drugs.
- 4 e. Physical or mental disability materially affecting the ability to perform the duties of
5 a physician in a competent manner.
- 6 f. The performance of any dishonorable, unethical, or unprofessional conduct likely
7 to deceive, defraud, or harm the public.
- 8 g. Obtaining any fee by fraud, deceit, or misrepresentation.
- 9 h. Aiding or abetting the practice of medicine by an unlicensed, incompetent, or
10 impaired person.
- 11 i. The violation of any provision of a medical practice act or the rules and
12 regulations of the board, or any action, stipulation, condition, or agreement
13 imposed by the board or its investigative panels.
- 14 j. The practice of medicine under a false or assumed name.
- 15 k. The advertising for the practice of medicine in an untrue or deceptive manner.
- 16 l. The representation to a patient that a manifestly incurable condition, sickness,
17 disease, or injury can be cured.
- 18 m. The willful or negligent violation of the confidentiality between physician and
19 patient, except as required by law.
- 20 n. The failure of a doctor of osteopathy to designate that person's school of practice
21 in the professional use of that person's name by such terms as "osteopathic
22 physician and surgeon", "doctor of osteopathy", "D.O.", or similar terms.
- 23 o. Gross negligence in the practice of medicine.
- 24 p. Sexual abuse, misconduct, or exploitation related to the licensee's practice of
25 medicine.
- 26 q. The prescription, sale, administration, distribution, or gift of any drug legally
27 classified as a controlled substance or as an addictive or dangerous drug for
28 other than medically accepted therapeutic purposes.
- 29 r. The payment or receipt, directly or indirectly, of any fee, commission, rebate, or
30 other compensation for medical services not actually or personally rendered, or
31 for patient referrals; this prohibition does not affect the lawful distributions of

- 1 professional partnerships, corporations, limited liability companies, or
2 associations.
- 3 s. The failure to comply with the reporting requirements of section 43-17.1-05.1.
- 4 t. The failure to transfer medical records to another physician or to supply copies of
5 those records to the patient or to the patient's representative when requested to
6 do so by the patient or the patient's designated representative, except if the
7 disclosure is otherwise limited or prohibited by law. A reasonable charge for
8 record copies may be assessed.
- 9 u. A continued pattern of inappropriate care as a physician, including unnecessary
10 surgery.
- 11 v. The use of any false, fraudulent, or deceptive statement in any document
12 connected with the practice of medicine.
- 13 w. The prescribing, selling, administering, distributing, or giving to oneself or to one's
14 spouse or child any drug legally classified as a controlled substance or
15 recognized as an addictive or dangerous drug.
- 16 x. The violation of any state or federal statute or regulation relating to controlled
17 substances.
- 18 y. The imposition by another state or jurisdiction of disciplinary action against a
19 license or other authorization to practice medicine based upon acts or conduct by
20 the physician that would constitute grounds for disciplinary action as set forth in
21 this section. A certified copy of the record of the action taken by the other state or
22 jurisdiction is conclusive evidence of that action.
- 23 z. The lack of appropriate documentation in medical records for diagnosis, testing,
24 and treatment of patients.
- 25 aa. The failure to properly monitor a fluoroscopy technologist or an emergency
26 medical technician.
- 27 bb. The failure to furnish the board or the investigative panel, their investigators, or
28 representatives information legally requested by the board or the investigative
29 panel.

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

4 ~~dd.~~ Noncompliance with the physician health program established under chapter
5 43-17.3.

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

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