

**Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023**

SENATE BILL NO. 2150
(Senators Myrdal, Boehm, Luick)
(Representatives Porter, Rohr, M. Ruby)

AN ACT to create and enact a new chapter to title 12.1 of the North Dakota Century Code, relating to abortions; to amend and reenact sections 14-02.1-01, 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 12.1-31-12, 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 abortions, 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. 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.

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. ~~†This chapter~~ reaffirms the tradition of the state of North Dakota to protect every human life whether unborn or aged, healthy or sick.

SECTION 3. 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~~
 - ~~e.b. Treat a woman for an ectopic pregnancy; or~~
 - c. Treat a woman for a molar pregnancy.
2. "Abortion facility" means a clinic, ambulatory surgical center, physician's office, or any other place or facility in which abortions are performed or prescribed, other than a hospital.
3. "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed or dispensed with the intent of causing an abortion.

4. ~~"Down syndrome" refers to a chromosome disorder associated with an extra chromosome twenty-one, in whole or in part, or an effective trisomy for chromosome twenty-one.~~
5. "Drug label" means the pamphlet accompanying an abortion-inducing drug which outlines the protocol tested and authorized by the federal food and drug administration and agreed upon by the drug company applying for the federal food and drug administration authorization of that drug. Also known as "final printing labeling instructions", drug label is the federal food and drug administration document that delineates how a drug is to be used according to the federal food and drug administration approval.
- ~~6.5.~~ "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 age of the unborn child at the time the abortion is to be performed; and
 - (5) The medical risks associated with carrying her child to term.
 - b. The woman is informed, by the physician or the physician's agent, at least twenty-four hours before the abortion:
 - (1) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care and that more detailed information on the availability of that assistance is contained in the printed materials given to her as described in section 14-02.1-02.1;
 - (2) That the printed materials given to her and described in section 14-02.1-02.1 describe the unborn child and list agencies that offer alternatives to abortion;

- (3) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion; and
 - (4) That she is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled; ~~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.

~~42.10.~~ "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 serious health risk. ~~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.~~

~~43.11.~~ "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.

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

45. "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.~~

46. ~~"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.~~

~~47.13.~~ "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.

~~48.14.~~ "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. "Unborn child" means the offspring of human beings from conception until birth.
- ~~14-16.~~ "Viable" means the ability of an unborn child to live outside the mother's womb, albeit with artificial aid.

SECTION 4. 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 5. 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;
 - 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; or
 - c. Necessary to prevent a serious health risk.

SECTION 6. 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~~prevent her death or ~~for which a twenty-four-hour delay will create grave peril of immediate and irreversible loss of major bodily function~~prevent a serious health risk, 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, ~~nean~~ 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~~to prevent a serious health risk, 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 7. 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~~ 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 ana 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 8. 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 abortion may be performed except in a hospital, and then only if in the medical judgment of the physician the abortion is necessary to preserve the life of the woman or if in the physician's medical judgment the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health.~~

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

4. An abortion facility may not perform an abortion on a woman without first offering the woman an opportunity to receive and view at the abortion facility or another facility an active ultrasound of her unborn child. The offer and opportunity to receive and view an ultrasound must occur at least twenty-four hours before the abortion is scheduled to be performed. The active ultrasound image must be of a quality consistent with standard medical practice in the community, contain the dimensions of the unborn child, and accurately portray the presence of external members and internal organs, including the heartbeat, if present or viewable, of the unborn child. The auscultation of the fetal heart tone must be of a quality consistent with standard medical practice in the community. The abortion facility shall document the woman's response to the offer, including the date and time of the offer and the woman's signature attesting to her informed decision.
- ~~5.4.~~ Any physician who performs an abortion without complying with the provisions of this section is guilty of a class A misdemeanor.
- ~~6.5.~~ 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 9. 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;
 - (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; or
 - (3) Necessary due to a medical emergency.
 - 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 10. 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 11. REPEAL. Sections 12.1-31-12, 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 12. EMERGENCY. This Act is declared to be an emergency measure.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2150 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 42 Nays 5 Absent 0

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 76 Nays 14 Absent 4

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2023.

Approved at _____ M. on _____, 2023.

Governor

Filed in this office this _____ day of _____, 2023,

at _____ o'clock _____ M.

Secretary of State