

## **CHAPTER 14-02.1 ABORTION CONTROL ACT**

**14-02.1-01. Purpose.** The purpose of this chapter is to protect unborn human life and maternal health within present constitutional limits. It reaffirms the tradition of the state of North Dakota to protect every human life whether unborn or aged, healthy or sick.

**14-02.1-02. Definitions.** As used in this chapter:

1. "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead embryo or fetus.
2. "Abortion facility" means a clinic, ambulatory surgical center, physician's office, or any other place or facility in which abortions are performed, other than a hospital.
3. "Hospital" means an institution licensed by the state department of health under chapter 23-16 and any hospital operated by the United States or this state.
4. "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.
5. "Infant born alive" or "live born child" 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.
6. "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed provided that:
  - a. The woman is told the following by the physician who is to perform the abortion, by the referring physician, or by the physician's agent, at least twenty-four hours before the abortion:
    - (1) The name of the physician who will perform the abortion;
    - (2) The abortion will terminate the life of a whole, separate, unique, living human being;
    - (3) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies, and infertility;
    - (4) The probable gestational age of the unborn child at the time the abortion is to be performed; and
    - (5) The medical risks associated with carrying her child to term.
  - b. The woman is informed, by the physician or the physician's agent, at least twenty-four hours before the abortion:
    - (1) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;
    - (2) 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

- (3) That she has the right to review the printed materials described in section 14-02.1-02.1. The physician or the physician's agent shall orally inform the woman the materials have been provided by the state of North Dakota and that they describe the unborn child and list agencies that offer alternatives to abortion. If the woman chooses to view the materials, copies of them must be furnished to her. The physician and the physician's agent may disassociate themselves from the materials and may comment or refrain from comment on them, as they choose.
  - c. The woman certifies in writing, prior to the abortion, that the information described in subdivisions a and b has been furnished to her and that she has been informed of her opportunity to review the information referred to in paragraph 3 of subdivision b.
  - d. Prior to 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.
7. "Licensed physician" means a person who is licensed to practice medicine or osteopathy under chapter 43-17 or a physician practicing in the armed services of the United States or in the employ of the United States.
  8. "Medical emergency" means that condition which, on the basis of the physician's best clinical judgment, so complicates a pregnancy as to necessitate an immediate abortion to avert the death of the mother or for which a twenty-four-hour delay will create grave peril of immediate and irreversible loss of major bodily function.
  9. "Probable gestational age of the unborn child" means what, in the judgment of the attending physician, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed.
  10. "Viable" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid.

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

1. The state department of health shall publish in English, and in every other language that the department determines is the primary language of a significant number of state residents, the following easily comprehensible printed materials:
  - a. Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies. The materials must include a comprehensive list of the agencies available, a description of the services they offer and a description of the manner, including telephone numbers, in which they might be contacted, or, at the option of the department, printed materials, including a toll-free, twenty-four-hour-a-day telephone number that may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer.
  - b. Materials, published in a booklet format, designed to inform the woman of the probable anatomical and physiological characteristics of the fetus 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 fetus and pictures representing the development of a fetus at two-week gestational increments. The majority of the pictures included in the booklet must be full color photograph-style images and the pictures must contain the dimensions of the fetus and must be realistic and appropriate for the stage of pregnancy depicted. The materials must be objective,

nonjudgmental, and designed to convey only accurate scientific information about the fetus at the various gestational ages. The materials required under this subsection must be reviewed, updated, and reprinted as needed.

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

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

1. No physician shall perform an abortion unless prior to such performance the physician certified in writing that the woman gave her informed consent as defined and provided in section 14-02.1-02 and shall certify in writing the pregnant woman's marital status and age based upon proof of age offered by her. Prior to the period of pregnancy when the fetus may reasonably be expected to have reached viability, no abortion shall 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 prior to the minor's consent to the performance of abortion or unless the attending physician certifies in writing that the physician has caused materials of section 14-02.1-02 to be posted by certified mail to each of the parents of the minor separately to the last-known addresses at least forty-eight hours prior to the minor's consent to the performance of abortion. When a parent of the minor has died or rights and interests of such parent have been legally terminated, this subsection shall apply to the sole remaining parent. When both parents have died or the rights and interests of both parents have been legally terminated, this subsection shall apply 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, prior to the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or for which a twenty-four-hour delay will create grave peril of immediate and irreversible loss of major bodily function, and shall certify those indications in writing.
2. Subsequent to the period of pregnancy when the fetus may reasonably be expected to have reached viability, no abortion, other than an abortion necessary to preserve her life, or because the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health, may be performed upon any woman in the absence of:
  - a. The written consent of her husband unless her husband is voluntarily separated from her; or
  - b. The written consent of a parent, if living, or the custodian or legal guardian of the woman, if the woman is unmarried and under eighteen years of age.
3. No executive officer, administrative agency, or public employee of the state of North Dakota or any local governmental body has power to issue any order requiring an abortion, nor shall any such officer or entity coerce any woman to have an abortion, nor shall any other person coerce any woman to have an abortion.

**14-02.1-03.1. Parental consent or judicial authorization for abortion of unmarried minor - Statement of intent.** The legislative assembly intends to encourage unmarried

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

1. No person may knowingly perform an abortion upon a pregnant woman under the age of eighteen years unless:
  - a. The attending physician has secured the written consent of the minor woman and both parents, if living, or the surviving parent if one parent is deceased, or the custodial parent if the parents are separated or divorced, or the legal guardian or guardians if the minor is subject to guardianship;
  - b. The minor woman is married and the attending physician has secured her informed written consent; or
  - c. The abortion has been authorized by the juvenile court in accordance with the provisions of this section.
2. Any pregnant woman under the age of eighteen or next friend is entitled to apply to the juvenile court for authorization to obtain an abortion without parental consent. Proceedings on such application must be conducted in the juvenile court of the county of the minor's residence before a juvenile judge or referee, if authorized by the juvenile court judge in accordance with the provisions of chapter 27-05, except that the parental notification requirements of chapter 27-20 are not applicable to proceedings under this section. 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 purpose of the hearing before the juvenile judge or referee must be to determine:
  - 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.
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.
  - (3) Issue an order authorizing an abortion by a competent physician if the court has determined that it would not be in the best interests of the minor to call in her parents or guardian but has found that it would be in the minor's best interests to authorize the abortion.
6. The minor or next friend may appeal the determination of the juvenile court directly to the state supreme court. In the event of such an appeal, any and all orders of the juvenile court must be automatically stayed pending determination of the issues on appeal. Any appeal taken pursuant to this section by anyone other than the minor or next friend must be taken within forty-eight hours of the determination of the juvenile court by the filing of written notice with the juvenile court and a written application in the supreme court. Failure to file notice and application within the prescribed time results in a forfeiture of the right to appeal and render the juvenile court order or orders effective for all intents and purposes.
7. Upon receipt of written notice of appeal, the juvenile court shall immediately cause to be transmitted to the supreme court the record of proceedings had in the juvenile court.
8. An application for appeal pursuant to this section must be treated as an expedited appeal by the supreme court and must be set down for hearing within four days of receipt of the application, excluding Saturdays and Sundays.
9. The hearing, inquiry, and determination of the supreme court must be limited to a determination of the sufficiency of the inquiry and information considered by the juvenile court and whether or not the order or orders of the juvenile court accord with the information considered with respect to the maturity and information available to the minor and the best interests of the minor as determined by the juvenile court. The determination of the juvenile court may not be overturned unless found to be clearly erroneous.
10. After hearing the matter the supreme court shall issue its decision within twenty-four hours.
11. Within forty-eight hours of the hearing by the supreme court, the record of the juvenile court must be returned to the juvenile court and the juvenile court shall seal it at the earliest practicable time.
12. Nothing in this section may be construed to prevent the immediate performance of an abortion on an unmarried minor woman in an emergency where such action is necessary to preserve her life and no physician may be prevented from acting in good faith in such circumstances or made to suffer any sanction thereby other than

those applicable in the normal course of events to the general review of emergency and nonemergency medical procedures.

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

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

**14-02.1-03.3. Privacy of woman upon whom an abortion is performed or attempted.** In every proceeding or action brought under section 14-02.1-03.2, the court shall rule whether the anonymity of any woman upon whom an abortion is performed or attempted should be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel, and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms, to the extent necessary to safeguard her identity from public disclosure. Each such order must be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

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

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

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

1. No abortion may be done by any person other than a licensed physician using medical standards applicable to all other surgical procedures.
2. After the first twelve weeks of pregnancy but prior to the time at which the fetus may reasonably be expected to have reached viability, no abortion may be performed in any facility other than a licensed hospital.

3. After the point in pregnancy when the fetus 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 fetus. 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 fetus, and accurately portray the presence of external members and internal organs, including the heartbeat, if present or viewable, of the fetus. The auscultation of the fetal heart tone must be of a quality consistent with standard medical practice in the community. The abortion facility shall document the woman's response to the offer, including the date and time of the offer and the woman's signature attesting to her informed decision.
5. Any licensed physician who performs an abortion without complying with the provisions of this section is guilty of a class A misdemeanor.
6. It is a class B felony for any person, other than a physician licensed under chapter 43-17, to perform an abortion in this state.

**14-02.1-05. Preserving life of a viable child - Penalty.** An abortion of a viable child may be performed only when there is in attendance a physician other than the physician performing the abortion who shall take control and provide immediate medical care for the viable child born as a result of the abortion. The physician performing it, and subsequent to the abortion, the physician required by this section to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the unborn child. Failure to do so is a class C felony.

**14-02.1-06. Soliciting abortions.** Repealed by S.L. 1999, ch. 50, § 79.

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

1. Records:
  - a. All abortion facilities and hospitals in which abortions are performed shall keep records, including admission and discharge notes, histories, results of tests and examinations, nurses' worksheets, social service records, and progress notes, and shall further keep a copy of all written certifications provided for in this chapter as well as a copy of the constructive notice forms, consent forms, court orders, abortion reports, and complication reports. All abortion facilities shall keep records of the number of women who availed themselves of the opportunity to receive and view an ultrasound image of their fetuses 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. Records must be

maintained in the permanent files of the hospital or abortion facility for a period of not less than seven years.

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

2. Reporting:

- a. An individual abortion report for each abortion performed upon a woman must be completed by her attending physician. The report must be confidential and may not contain the name of the woman. This reporting must include the data called for in the United States standard report of induced termination of pregnancy as recommended by the national center for health statistics.
- b. All abortion reports must be signed by the attending physician and submitted to the state department of health within thirty days from the date of the abortion. All complication reports must be signed by the physician providing the post-abortion care and submitted to the state department of health within thirty days from the date of the post-abortion care.
- c. A copy of the abortion report must be made a part of the medical record of the patient at the facility or hospital in which the abortion was performed. In cases when post-abortion complications are discovered, diagnosed, or treated by physicians not associated with the facility or hospital where the abortion was performed, the state department of health shall forward a copy of the report to that facility or hospital to be made a part of the patient's permanent record.
- d. The state department of health is responsible for collecting all abortion reports and complication reports and collating and evaluating all data gathered therefrom and shall annually publish a statistical report based on data from abortions performed in the previous calendar year.
- e. The state department of health shall report to the attorney general any apparent violation of this chapter.

**14-02.1-07.1. Forms.** The state department of health shall make available to physicians, hospitals, and all abortion facilities the forms required by this chapter.

**14-02.1-08. Protection of viable fetus born alive - Penalty.**

1. A person is guilty of a class C felony if the person knowingly, or negligently, causes the death of a viable fetus born alive.
2. Whenever a fetus which is the subject of abortion is born alive and is viable, it becomes an abandoned and deprived child, unless:
  - a. The termination of the pregnancy is necessary to preserve the life of the mother; or
  - b. The mother and her spouse, or either of them, have agreed in writing in advance of the abortion, or within seventy-two hours thereafter, to accept the parental rights and responsibilities for the fetus if it survives the abortion procedure.

**14-02.1-09. Humane disposal of nonviable fetus.** The licensed physician performing the abortion, if performed outside of a hospital, must see to it that the fetus is disposed of in a humane fashion under regulations established by the state department of health. A licensed

hospital in which an abortion is performed must dispose of a dead fetus in a humane fashion in compliance with regulations promulgated by the state department of health.

**14-02.1-10. Concealing stillbirth or death of infant - Penalty.** It is a class A misdemeanor for a person to conceal the stillbirth of a fetus or to fail to report to a physician or to the county coroner the death of an infant under two years of age.

**14-02.1-11. General penalty.** A person violating any provision of this chapter for which another penalty is not specifically prescribed is guilty of a class A misdemeanor. Any person willfully violating a rule or regulation promulgated under this chapter is guilty of an infraction.

**14-02.1-12. Short title.** This chapter may be cited as the North Dakota Abortion Control Act.