

Government policy must find a balanced way which respects the freedom of women in this difficult area. This bill does not do so.

That is why I have vetoed HB 1515.

Sincerely,

GEORGE A. SINNER  
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

~~14-02.1-01. Purpose Legislative findings and purposes. 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.~~

1. The legislative assembly finds that:

- a. Unborn children are human beings, and abortion is the taking of the life of an unborn child who is a member of the human race;
- b. The most basic of all human rights is the right to life. It has properly been called "the right to have rights". Therefore, the first obligation of any legitimate government is to protect the lives of those human beings within its jurisdiction;
- c. This state has a compelling interest in protecting the lives of unborn children throughout pregnancy;
- d. This state has a compelling interest in protecting the lives of women, and specifically the lives of pregnant women;
- e. This state affirms the longstanding tradition in American law of prosecuting those who perform illegal abortions, and not the pregnant women who undergo them;
- f. Alternatives are available in this state to support women with unplanned and difficult pregnancies and to enable them to give birth, including publicly funded services, high-risk pregnancy and pediatric services, as well as privately funded alternative agencies, such as crisis pregnancy centers and adoption agencies.

2. Based on the findings in subsection 1, it is the purpose of this Act to protect the lives of unborn children; prevent arbitrary, invidious and unconstitutional discrimination against unborn children; protect pregnant women's lives by permitting those medical procedures necessary to preserve their lives; encourage childbirth for pregnant women; and reasonably regulate abortion in conformance with current decisions of the United States supreme court.

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

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

1. "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead embryo or fetus the use or prescription of any instrument, medicine, drug, or any other substance or device with the intent to terminate the pregnancy of a woman known to be pregnant, except to save the life or preserve the health of an unborn child, to produce a live birth, to remove a dead unborn child by accepted medical procedures, or to deliver an unborn child prematurely in order to preserve the health of either the mother or the unborn child. However, the termination of a woman's pregnancy with the intent to produce a live birth is not an abortion.
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. For purposes of this Act, an abortion clinic is one operated substantially for the performance of abortions and performs thirty or more abortions per month any two months of a calendar year or which holds itself out to the public as an abortion provider or applies for a license as an abortion provider.
3. "Conception" means the fusion of a human spermatozoon with a human ovum.
4. "Hospital" means an institution licensed by the state department of health and consolidated laboratories under chapter 23-16, and any hospital operated by the United States or this state.
- ~~4-~~ 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.
- ~~5-~~ 6. "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed only after full disclosure to her by the physician who is to perform the abortion of as much of the following information as is reasonably chargeable to the knowledge of the physician in his professional capacity:
  - a. According to the best judgment of her attending physician, she is pregnant.
  - b. The number of weeks elapsed from the probable time of the conception of her unborn child, based upon the information provided by her as to the time of her last menstrual period or based upon a history and physical examination and appropriate laboratory tests.
  - c. The probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed.

- d. The immediate and long-term physical dangers of abortion, psychological trauma resulting from abortion, sterility and increases in the incidence of premature births, tubal pregnancies and stillbirths in subsequent pregnancies, as compared to the dangers in carrying the pregnancy to term.
- e. The particular risks associated with her own pregnancy and the abortion technique to be performed.
- f. Alternatives to abortion such as childbirth and adoption and information concerning public and private agencies that will provide the woman with economic and other assistance and encouragement to carry her child to term including, if the woman so requests, a list of the agencies and the services available from each.
- g. In cases where the fetus may reasonably be expected to have reached viability and thus be capable of surviving outside of her womb, the attending physician shall inform the woman of the extent to which he is legally obligated to preserve the life and health of her viable unborn child during and after the abortion.

In addition, the physician may inform the woman of any other material facts or opinions or provide any explanation of the above information which, in the exercise of ~~his~~ the physician's best medical judgment, is reasonably necessary to allow the woman to give her informed consent to the proposed abortion, with full knowledge of its nature and consequences.

Informed consent shall be evidenced by a written statement, in the form prescribed by the state department of health and consolidated laboratories and approved by the attorney general, signed by the physician and the woman upon whom the abortion is to be performed, in which statement the physician certifies that ~~he has made the~~ full disclosure has been made as provided above; and in which statement the woman upon whom the abortion is to be performed acknowledges that the above disclosures have been made to her and that she voluntarily consents to the abortion.

Informed consent shall not be required in the event of a medical emergency when the woman is incapable of giving her consent if a licensed physician certifies the abortion is necessary to prevent her death.

- ~~6-~~ 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. "Pregnant" or "pregnancy" means that female reproductive condition of having an unborn child in the mother's body, beginning with conception.
9. "Unborn child" means an individual organism of the species homo sapiens from conception until birth.

- 7- 10. "Viable" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid.

SECTION 3. 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 ~~such performance~~ the abortion the physician certified in writing that the woman gave her informed consent fully and without coercion, after the attending physician had informed the woman of the information contained in section 14-02.1-02 not more than thirty days nor less than forty-eight hours prior to her consent to the abortion 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~~ may 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 ~~he~~ 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 where the rights and interests of both parents have been legally terminated, this subsection ~~shall apply~~ applies to the guardian or other person standing in loco parentis.
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~~ may 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 4. AMENDMENT. Subsection 2 of section 14-02.1-03.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Any pregnant woman under the age of eighteen ~~or next friend shall be~~ is entitled to apply to the juvenile court of her place of domicile or permanent residence, or in the place of domicile of her parents for authorization to obtain an abortion without parental consent. Proceedings on such application ~~shall must~~ be conducted in the juvenile court of the county ~~of the minor's residence~~ of her place of domicile or permanent residence, or in the place of domicile of her parents 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 ~~shall are not be~~ applicable to proceedings under this section. All applications in accordance with this section ~~shall 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 ~~shall be is~~ 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, with abortion being considered only as a last resort.

SECTION 5. 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. ~~No~~ An abortion ~~shall be done~~ may not be performed 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.~~ Except as provided in subsection 3, no person may perform an abortion upon a pregnant woman unless her attending physician reasonably determines, in the physician's medical

judgment, that the woman's life would be endangered if the unborn child were carried to full term and records, either before or after the abortion, the basis for the physician's determination in the woman's medical record.

3. After the point in pregnancy where 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 him in writing, setting forth in detail the facts upon which he 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 where the abortion is necessary to preserve the life of the patient. An abortion is also authorized if:

- a. The pregnancy resulted from gross sexual imposition, sexual imposition, or sexual abuse of a ward, as those offenses are defined in chapter 12.1-20, and the offense was reported to a law enforcement agency within twenty-one days after the offense or within fifteen days after the time the victim becomes capable of reporting the offense.
- b. The pregnancy resulted from incest, as that offense is defined in chapter 12.1-20, and both the offense and the identity of the perpetrator are reported to a law enforcement agency before the pregnancy is terminated.
4. Any licensed physician who performs an abortion without complying with the provisions of this section is guilty of a class A misdemeanor. In addition to any other penalty, upon notice and hearing, if the evidence supports the allegation that a physician has not complied with this section in performing abortions, the physician's license must be revoked for at least one year.
5. It shall be 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 6. AMENDMENT. Section 14-02.1-12 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-12. Short title. This chapter may be cited as the North Dakota ~~Abortion Control~~ Human Life Protection Act.

Disapproved April 1, 1991  
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