STATE OF NORTH DAKOTA
COUNTY OF CASS

IN DISTRICT COURT
EAST CENTRAL JUDICIAL DISTRICT

MKB MANAGEMENT CORP, d/b/a RED RIVER WOMEN'S CLINIC, KATHRYN L. EGGLESTON, M.D.,	)	Civil No. 09-2011-CV-02205
Plaintiffs,	)	
vs.	)	
BIRCH BURDICK, in his official capacity as State Attorney for Cass County, TERRY DWELLE, M.D., in his official capacity as the chief administrator of the North Dakota Department of Health,	)	
Defendants.	)	

COMPLAINT

1. Plaintiffs MKB Management Corporation, doing business as Red River Women's Clinic ("the Clinic"), and Kathryn Eggleston, M.D., by and through their undersigned attorneys, bring this complaint against the above-named defendants, their employees, agents, and successors in office, and in support thereof allege the following:

I. PRELIMINARY STATEMENT

2. This is a civil rights action challenging certain provisions of North Dakota House Bill 1297 ("HB 1297"), under the Constitution of the State of North Dakota. House Bill 1297 is attached hereto as Exhibit A.

3. House Bill 1297 was enacted by the legislature and signed by the Governor during the 2011 legislative session, and is scheduled to take effect on August 1, 2011.

4. House Bill 1297 violates the rights of the Clinic, Dr. Eggleston and their staff and patients because: 1) it bans all medication abortions; 2) it places unconstitutional burdens on women seeking medication abortions; 3) it is impermissibly vague; 4) it constitutes an improper delegation of legislative authority; 5) it constitutes an impermissible special law; 6) it violates the privileges and immunities rights of women seeking and physicians providing medication abortions; and 7) it violates the right to bodily integrity of women seeking medication abortions.

5. The Plaintiffs therefore seeks declaratory and injunctive relief against the challenged provisions in HB 1297.

II. JURISDICTION AND VENUE

6. Jurisdiction is conferred on this Court by N.D. Const. art. VI, § 8 and N.D. CENT. CODE ANN. § 27-05-06.

7. Plaintiffs' claims for declaratory and injunctive relief are authorized by N.D. CENT. CODE ANN. §§ 32-06-02, 32-23-01 and by the general equitable powers of this Court.

8. Venue is appropriate under N.D. CENT. CODE ANN. § 28-04-03 because Plaintiffs' cause of action arises in Cass County, where Plaintiffs are located and where the challenged provisions will be enforced against Plaintiffs.

III. PARTIES

9. Plaintiff Red River Women's Clinic, located in Fargo, North Dakota, has been in operation since 1988. The Clinic provides a range of reproductive health care to women, including medication abortions. The Clinic brings claims on behalf of itself, its staff, and its patients seeking medication abortions.

10. Plaintiff Kathryn Eggleston, M.D., is a physician licensed to practice in North Dakota. Dr. Eggleston is the medical director of Red River Women's Clinic. She provides

medication and surgical abortions at the Clinic. Dr. Eggleston brings claims on behalf of herself and her patients seeking medication abortions.

11. Defendant Birch P. Burdick is the State's Attorney for Cass County where the Clinic is located. The State's Attorney's office is charged with prosecuting all public offenses on behalf of the State of North Dakota. N.D. CENT. CODE ANN. § 11-16-01(1). He is sued in his official capacity.

12. Defendant Terry Dwelle, M.D., is the State Health Officer for North Dakota, serving as the chief administrator of the North Dakota Department of Health. Physicians performing medication abortions must produce the contract they have executed with another physician to handle emergencies to the Department of Health upon demand and must submit reports to the Department of adverse events associated with the provision of abortion inducing drugs. He is sued in his official capacity.

IV. FACTUAL ALLEGATIONS

A. Red River Women's Clinic

13. Red River Women's Clinic, located in Fargo, is the only abortion provider in the State of North Dakota.

14. The Clinic provides abortions through sixteen weeks of pregnancy, and also offers a number of other reproductive health care services, including contraception, gynecological examinations, cancer screening, and pregnancy testing.

15. The Clinic serves women who reside throughout North Dakota as well as women who travel to the Clinic from South Dakota and Minnesota.

16. Abortions are provided at the Clinic approximately four to six days per month.

17. The Clinic offers both surgical and medication abortions. Medication abortions are offered through the 63rd day of pregnancy.

18. In 2010, physicians at the Clinic performed approximately 1300 abortions. Approximately 20% of the abortions provided by the Clinic in 2010 were medication abortions.

19. At this time, the cost of a medication abortion through 63 days pregnancy and a surgical abortion through 63 days pregnancy at the clinic is the same.

B. Medication Abortion

20. The availability of medication abortion represents an advance in medical care for women seeking to terminate a pregnancy. As a result of the availability of mifepristone, a larger proportion of abortions take place at earlier gestations than they did before the drug was approved.

21. There are various means of inducing abortion using only medication. The vast majority of medication abortions in the United States utilize two drugs – mifepristone and misoprostol.

22. Mifepristone blocks the hormone progesterone, which is needed to maintain a pregnancy. It is sold in the United States under the brand name Mifeprex. Mifeprex is the only medication in the United States that has received FDA approval for marketing for the purpose of inducing abortions in the first trimester.

23. Misoprostol, which is taken after mifepristone, is a prostaglandin that causes the cervix to open and the uterus to contract and expel its contents. It is sold in the United States under the brand name Cytotec.

24. The Food and Drug Administration (FDA) is an agency within the U.S. Department of Health and Human Services. Drug manufacturers wishing to market a new

prescription drug in the United States must obtain FDA approval. The drug manufacturer submits to the FDA an application called a New Drug Application (NDA), which "includes the drug's test results; manufacturing information to demonstrate the company can properly manufacture the drug; and the company's proposed label for the drug." http://www.fda.gov/AboutFDA/Transparency/Basics/ucm194949.htm. The label ("FPL") provides necessary information about the drug related to the NDA, including the use and dosage for which the drug company seeks FDA approval. If the FDA determines that the benefits of the drug outweigh its known risks, it is approved for marketing in the United States.

25. The FDA does not itself test protocols or conduct clinical trials on new drugs, but rather reviews reports of tests that are submitted by the drug's manufacturer. Moreover, the FPL is not an FDA document. The drug sponsor bears responsibility for creating the label and submitting it to the FDA for approval.

26. The FPL for a drug includes dosage and administration directions for the safe and effective use of the drug for the purpose for which marketing approval was sought and received. Neither the FPL nor any regulation of the FDA makes it illegal to use approved drugs with other dosage and administration regimens, or for entirely different purposes. Indeed, these practices, known as "off-label" uses, are not only common throughout the United States, but sometimes required by good medical practice.

27. The FDA approved Mifeprex for use to terminate a pregnancy in the United States in September 2000. The FDA's approval was based on the agency's review of three medical trials demonstrating the safety and efficacy of mifepristone, which had been submitted to the FDA with the drug's new drug application. All three trials followed the same dosage regimen: oral ingestion of 600 mg of mifepristone followed two days later by oral ingestion of

400 μg of misoprostol, administered at a health center. The trials demonstrated that this regimen is safe and effective for terminating pregnancies through 49 days of gestation, as measured by from the first day of the woman's last menstrual period ("LMP").

28. The FDA issued an approval letter for Mifeprex to Population Council, a nonprofit organization dedicated to improving reproductive health worldwide, on September 28, 2000. The FDA issued a second approval letter for Mifeprex to Danco Laboratories, LLC on November 15, 2004. Danco is the sole distributor of mifepristone in the United States.

29. The FPL for Mifeprex, which has been modified several times since it was first approved, consists of four parts: Prescribing Information, Medication Guide; Patient Agreement, and Prescriber's Agreement. One part of the FPL, within the Prescribing Information, contains Dosage and Administration information. The Dosage and Administration information reflects the regimen used during the clinical trials relied upon in the NDA: Day One, the patient reads the Medication Guide, signs the Patient Agreement, and receives three 200 mg tables of Mifeprex, taken orally at the health care facility; Day Three, the patient returns to the health care facility and, unless the abortion has already occurred, receives two 200 ug of misoprostol taken orally; Day 14, approximately fourteen days after taking the mifepristone, the patient returns to the health facility to confirm that the pregnancy has been terminated.

30. The FPL for Mifeprex lists the use of misoprostol as part of the described regimen. Cytotec/misoprostol has not, however, been approved for marketing for medication abortions. In fact, the FPL for Cytotec, which is labeled for treatment of gastric ulcers, contains several warnings that it can act as an abortifacient and should not be taken by women who are pregnant.

31. Subsequent to the clinical trials conducted in the early 1990s, researchers have

developed new protocols for the dosage and administration of Mifeprex and misoprostol. Several studies have been conducted using such alternative dosage and administration protocols ("evidence-based protocols"). Three notable aspects of these studies are that 200 mg of mifepristone (combined with varying dosages and administration routes of misoprostol) is effective; women can safely self-administer the misoprostol at a location other than the health care facility; and that these regimens are effective through 63 days of pregnancy.

32. Studies specifically support the safety and efficacy of the protocol utilized by the Clinic, through 63 days of pregnancy, under which patients take 200 mg of Mifeprex at the Clinic, and self-administer 800 ug of misoprostol bucally (dissolving the pill against the gum) at a location of their choosing approximately 48 hours later.

33. As a result of the medical evidence, leading health organizations, including the American College of Obstetricians & Gynecologists and the World Health Organization, have recognized that evidence-based regimens for Mifeprex and misoprostol are safe and effective, are less expensive and can have fewer side effects.

34. Medication abortion has expanded access to abortion nationwide. In fact, medication abortions now account for approximately 20% of all abortions performed in the United States.

35. Complications associated with medication abortion are not common. Complications include hemorrhage, infection and ongoing pregnancy, while side effects include nausea, diarrhea, cramps, and fever. Hospitalization due to complications from medication abortion is rare.

36. All of the Clinic's abortion patients, whether surgical or medication, are given both oral and written aftercare instructions. Included in those instructions is a telephone number for patients to use 24 hours a day, seven days a week, if they have questions or concerns.

37. Patients receiving medication abortions are instructed to call the Clinic if they are experiencing an emergency, are concerned about what they are experiencing, or if they experience any of several listed symptoms.

38. When a woman believes she needs emergency treatment or when is advised by a health care professional to seek such treatment, she should immediately proceed to a hospital that is nearby. The clinic advises its patients accordingly.

39. Medwatch is an FDA reporting system for the collection of information about serious adverse events associated with drugs or medical devices.

40. Drug manufacturers are required to report serious adverse events of the FDA. Medwatch also has a voluntary reporting system whereby any patient, consumer or healthcare professional may voluntarily report serious adverse events related to medications.

41. The Medwatch instructions for voluntary reporters directs that not all adverse events should be reported, but only those that come within the FDA's definition of "serious" adverse events.

42. Like all drug manufactures, Danco is required to report all serious adverse events associated with the use of Mifeprex to the FDA. In order to collect this information, physicians wishing to prescribe Mifeprex sign an agreement indicating that they will report the occurrence of any of a listed number of serious adverse events directly to Danco. In turn, Danco reports these events to the FDA. Thus, under the current reporting system, the FDA already receives report of all serious adverse events associated with the use of Mifeprex.

V. THE CHALLENGED STATUTE

43. House Bill 1297 consists of fourteen separate sections, which both amend and create new sections of the Abortion Control Act found within the North Dakota Century Code at § 14-02.1-01, et seq. The Clinic challenges sections 1, 6 and parts of section 8 of HB 1297, which restrict the provision of abortion by means of medication.

44. Section 6 of HB 1297 provides:

> 1. For purposes of this chapter, an abortion accomplished by the use of an abortion – inducing drug is deemed to occur when the drug is prescribed, in the case of a prescription, or when the drug is administered directly to the woman by the physician.
>
> 2. It is unlawful to knowingly give, sell, dispense, administer, otherwise provide, or prescribe any abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion in that pregnant woman, or enabling another person to induce an abortion in a pregnant woman, unless the person who gives, sells, dispenses, administers, or otherwise provides or prescribes the abortion-inducing drug is a physician, and the provision or prescription of the abortion-inducing drug satisfies the protocol tested and authorized by the federal food and drug administration and as outlined in the label for the abortion-inducing drug.
>
> 3. Every pregnant woman to whom a physician gives, sells, dispenses, administers, otherwise provides, or prescribes any abortion-inducing drug must be provided with a copy of the drug's label.
>
> 4. Any physician who gives, sells, dispenses, administers, prescribes, or otherwise provides an abortion-inducing drug shall enter a signed contract with another physician who agrees to handle emergencies associated with the use or ingestion of the abortion-inducing drug. The physician shall produce the signed contract on demand by the patient, the department of health, or a criminal justice agency. Every pregnant woman to whom a physician gives, sells, dispenses, administers, prescribes, or otherwise provides any abortion-inducing drug must be provided the name and telephone number of the physician who will be handling emergencies and the hospital at which any emergencies will be handled. The physician who contracts to handle emergencies must have active admitting privileges and gynecological and surgical privileges at the hospital designated to handle any emergencies associated with the use or ingestion of the abortion-inducing drug.

5. When an abortion-inducing drug or chemical is used for the purpose of inducing an abortion, the drug or chemical must be administered by or in the same room and in the physical presence of the physician who prescribed, dispensed, or otherwise provided the drug or chemical to the patient.

HB 1297, Section 6 (creating a new provision within N.D. Cent. Code § 14-02.1).

45. House Bill 1297 provides the following definitions:

"Abortion-inducing drug" means a medicine, drug, or any other substance prescribed or dispensed with the intent of causing an abortion.

"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.

HB 1297, Section 1 (amending N.D. Cent. Code § 14.02.01.02).

46. The relevant new part of Section 8 of HB 1297 provides:

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 state department of health 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.

HB 1297, Section 8 (amending N.D. Cent. Code § 14.02.1-07(b)).

47. Violation of the restrictions on the use of "abortion-inducing drugs" is a class A misdemeanor offense. N.D. Cent. Code § 14-02.1-11.

48. House Bill 1297 places restrictions on particular medications when they are used to induce abortions, but not when used for other purposes.

49. House Bill 1297 reflects an animus towards abortion, physicians who perform abotions, and women who obtain abortions. Its purpose is to burden and reduce access to abortion in North Dakota.

50. No other provision of North Dakota law denies access to off-label uses of medication. In fact, other provisions of North Dakota law seek to protect access to off-label use of medication.

VI. THE IMPACT OF HB 1297 ON THE CLINIC, ITS STAFF AND ITS PATIENTS

51. House Bill 1297 will ban outright or severely curtail the ability of the Clinic and its staff to provide medication abortions and will harm its patients.

A. Impact on Patient Access to Medication Abortion

52. House Bill 1297 will prohibit the provision of medication abortions in North Dakota because no drug satisfies the Act's requirements.

53. No drug protocols are tested or authorized by the FDA.

54. No aspect of a drug label is an FDA document.

55. There is no document called "final printing label*ing instructions*." Abortion inducing drugs have final print*ed* labeling (FPL), and no subpart of that document is identified as "instructions." Nor are FPLs pamphlets.

56. Even if HB 1297 could be construed to permit the use of abortion-inducing drugs under their FPLs, the Act would still operate as a complete ban on medication abortions because misoprostol, an indispensible part of medication abortions, is not labeled for use to induce abortions.

57. Even if HB 1297 were interpreted to allow the Clinic to provide medication abortions as long as the FPL for Mifeprex were followed (a reading that is unsupportable under

the language of the Act), the provision of medication abortions in North Dakota will nonetheless be severely limited, to the detriment of the Clinic's patients.

58. Even under the FPL for Mifeprex, the Clinic would be from prohibited from providing, and patients from obtaining, medication abortions between 50 and 63 days of pregnancy.

59. Even under the FPL for Mifeprex, the Clinic would be prohibited from providing, and patients from obtaining, safer, more effective and more common regimens for medication abortion.

60. For some women, medication abortion is the preferable abortion method for medical reasons that make surgical abortion more difficult. These circumstances include women with certain conditions such as cervical stenosis (tightly closed uterus), uterine anomalies, obesity, obstructive uterine fibroids, or malformations of the genital tract.

61. For some women, surgical abortion may be much more traumatic, including some women who are abused or are pregnant as a result of sexual assault.

62. Other women prefer medical abortion because they feel that it is more private or more natural than a surgical procedure.

63. If under HB 1297 the Clinic is were permitted to provide medication abortions following the Mifeprex FPL, patients wishing to have a medication abortion would be forced to make an additional trip to the Clinic in order to obtain the misoprostol. This will create unnecessary burdens and expense, and could be especially problematic for women in abusive relationships, and also for women who have to travel a long distance to the clinic, or who have very limited financial resources.

64. In addition, it may be medically inadvisable for women to travel to the clinic to ingest the misoprostol. Some women may have already begun to pass the products of conception prior to receiving the misoprostol, or may begin to do so very soon after ingesting it. Traveling to and from the Clinic during this time may make it more difficult for women to monitor their bleeding, temperature, pain and possibility of infection, and to access any needed medication.

65. Moreover, having to provide 600 mg of mifepristone under the Mifeprex FPL instead of 200 mg will increase the cost of a medication abortion by about $200, an expense that some of the Clinic's patients who would otherwise choose medication abortion will not be able to bear, especially in conjunction with the additional trip that would be required.

B. Threat of Criminal Prosecution Under Vague Provisions

66. House Bill 1297 conditions the legal use of an "abortion-inducing drug" upon factors that do not reflect the FDA approval process. Taken literally, it is a complete prohibition on medication abortions.

67. The provisions of HB 1297 restricting medication abortion are so vague that the Clinic, Dr. Eggleston, and the Clinic's staff cannot be certain, no matter what they do, that they will not be subject to criminal prosecution once the law takes effect.

68. Specifically, HB 1297's prohibits the provision of an "abortion-inducing drug" unless the provision "satisfies the *protocol tested and authorized by the federal food and drug administration* and as outlined in *the label* for the abortion-inducing drug" (emphases added)." Neither prong of the conditions that must be met for the provision of an abortion-inducing drug to be legal makes any sense, yet both must be satisfied.

69. With respect to the first prong, the FDA neither tests nor authorizes protocols – it reviews tests submitted by the drug manufacturer and approves product labeling.

70. Regarding the second prong, HB 1297 defines "'drug label,' as "the *pamphlet* accompanying an abortion-inducing drug which outlines the protocol tested and authorized by the federal food and drug administration. . . . Also known as "*final* print*ing 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." (emphases added) But that definition is internally inconsistent and no part of it makes any sense.

71. As applied to the medications used by the Clinic for medication abortions, HB 1297 is incomprehensible.

72. In the first instance, HB 1297 on its face appears to ban the use of misoprostol because its FPL does not contain any information regarding its use as an abortifacient, except to warn physicians and consumers against its use to treat gastric ulcers if the patient is pregnant. If HB 1297 does not ban the use of misoprostol, then the definition of "abortion-inducing drug" and all operative provisions that use that term are unintelligible.

73. Moreover, as explained above, the FDA does not test drugs or authorize protocols. Thus, neither Mifeprex nor misoprostol could, under any circumstances, satisfy the Act's requirements.

74. There is no document identified by either the FDA or Danco as a "pamphlet" in relation to information pertaining to Mifeprex.

75. It is also not clear what the definition "drug label" is referring to by "final print*ing* labeling *instructions*"—there is no such document. As for most drugs, there is Final Print*ed* Labeling (FPL) for Mifeprex, but no subpart of that document is identified as "instructions."

76. Nor is any part of any drug's label an "FDA document." The drug sponsor bears responsibility for creating the label and submits it to the FDA for approval. The FDA is not mentioned anywhere within the FPL.

77. While HB 1297 purports to create a category of drugs that can be legally used to perform medication abortions, it has done so in a way that no drug can be used.

78. Even if HB 1297 were construed to refer to the FPL for Mifeprex, which again would be a reading contrary to the plain language HB 1297, that language lacks the clarity required of a criminal statute. For example, the Dosage and Administration section states: "Day 14: Post-Treatment Examination. Patients will return for a follow-up visit approximately 14 days after the administration of Mifeprex." The Clinic instructs all patients to return for a follow-up visit. While many patients do return, the show-rate is less than one-hundred percent. And the clinic has no control over whether a woman actually comes back.

79. Moreover, the language regarding a follow-up visit fails to give adequate guidance as to what would be an acceptable range of time under the language of the FPL. "Approximately" in this context could mean 3-21 days or 13-15 days or something else.

80. Finally, HB 1297's requirement that physicians providing an abortion-inducing drug report any adverse event following a medication abortion to both the state department of health and the FDA via Medwatch (a requirement not placed upon any other physicians) also lacks the clarity required by the North Dakota Constitution. The Act states that "'adverse event' is defined based upon the federal food and drug administration criteria given in the Medwatch reporting system." Medwatch, however, seeks the reporting of only "serious adverse events" specifically defined, yet provides at least two different, broad, and incongruous descriptions of what constitutes an "adverse event." Accordingly, HB 1297 fails to provide physicians with

sufficient guidance for them to determine what constitutes an adverse event requiring reporting under the Act.

81. If the Act takes effect, the Clinic and its staff would be forced to choose between ceasing the provision of medication abortions, thereby denying women access to legal abortion care in North Dakota, or risking prosecution and conviction in order to continue providing abortion services.

C. Impact of Contract Requirement In Medical Emergencies

82. House Bill 1297's requirement that physicians providing medication abortions at the Clinic enter into a contract with "another physician who agrees to handle emergencies" and to provide the name and telephone number of that physician, and the name of the hospital "at which emergencies will be handled," requires the provision of information that could be false and/or undermine the health of women facing medical emergencies.

83. An overwhelming majority of the Clinic's medication abortion patients do not contact the Clinic with questions or concerns. Among the group that does contact the Clinic, nearly all of their issues are dealt with through the provision of information or the prescription of additional medication, which is phoned in to the pharmacy of the patient's choice, without the patient having to return to the clinic. In some instances, a patient is instructed to return to the clinic sooner than her scheduled follow-up appointment.

84. It is very rare for a medication abortion patient to experience an emergency that requires that she seek immediate medical care. In that event, the patient may proceed to a health care facility without contacting the Clinic, or she may contact the Clinic, at which point she would be advised to proceed immediately to an appropriate facility near her location.

85. Under HB 1297, however, all medication abortion patients must be provided with the name and telephone number of "*the* physician who will be handling emergencies and *the* hospital at which any emergencies will be handled."

86. This provision requires physicians providing abortions to give women receiving medication abortions false and misleading information regarding access to medical care in emergencies. The information mandated by HB 1297 suggests that patients can receive emergency care only from the physician named in the contract and only at the named hospital.

87. Given that the Clinic sees women from a wide geographic area, regardless of where the designated hospital might be located, it will not be the nearest hospital for a significant number of the Clinic's patients. The language is not only irrational, but dangerous, in that it may lead patients to believe that they must travel to that hospital, regardless of where they are when the emergency occurs.

88. This provision of HB 1297 will therefore require that physicians provide and women receive misleading information about their options for medical care in an emergency that may cause confusion and dangerous delay.

89. No other medical care provided in North Dakota is subject to restrictions like the medical emergency contract required under HB 1297. Physicians providing any care other than medication abortions are permitted to use their best medical judgment regarding the instructions given to patients experiencing medical emergencies, and are not required to enter into a contract with another physician regarding that care.

90. In addition, the provision's requirement that the patient be given the name and telephone number of the doctor who enters a contract regarding the handling of emergencies could act as a ban on the provision of medication abortion. Physicians who would otherwise be

willing to enter into such contracts if they remained confidential have refused to do so out of fear of harassment, retaliation, or even violence, from those opposed to abortion.

91. These fears are well-founded. The Clinic and its staff has endured picketing, harassment and veiled threats from those opposed to abortion. In other states, physicians providing abortion have been subject to violent attacks, including murder.

92. It has been difficult for the clinic to recruit North Dakota physicians to work at the Clinic. At this time, none of the three physicians who provide abortion services at the Clinic have hospital privileges and so they cannot enter into the required contracts.

93. Despite efforts to do so, the Clinic has been unable to find a physician willing to enter into the contract required by HB 1297.

VII. CLAIMS FOR RELIEF

First Claim for Relief

(Right to Terminate a Pregnancy)

94. The allegations of paragraphs 1 through 93 are incorporated as though fully set forth herein.

95. House Bill 1297 impermissibly burdens the Clinic's patients seeking medication abortions in violation of Article I, §§ 1 and 12 of the Constitution of the State of North Dakota by:

a. banning all medication abortions;

b. banning medication abortion for women between 50 and 63 days of pregnancy;

c. banning safer and more effective regimens for the provision of medication abortions;

d. banning medication abortions even when a surgical abortion would threaten a woman's health; and

e. requiring women to receive misleading information regarding treatment in the case of an emergency.

Second Claim for Relief

(Vagueness)

96. The allegations of paragraphs 1 through 95 are incorporated as though fully set forth herein.

97. House Bill 1297 fails to give the Clinic, Dr. Eggleston and the Clinic's staff adequate notice of the conduct that will subject abortion providers to criminal liability and subjects them to arbitrary enforcement by:

a. using terms that are nonsensical;

b. setting forth conditions that cannot be satisfied;

c. incorporating standards that are imprecise.

98. The Act's vagueness deprives the Clinic, Dr. Eggleston and the Clinic's staff of the due process rights guaranteed by Article I, § 12 of the Constitution of the State of North Dakota.

Third Claim for Relief

(Improper Delegation)

99. The allegations of paragraphs 1 through 98 are incorporated as though fully set forth herein.

100. House Bill 1297 constitutes an improper delegation of legislative power in violation of Article III, § 1 of the Constitution of the State of North Dakota.

Fourth Claim for Relief

(Bodily Integrity)

101. The allegations of paragraphs 1 through 100 are incorporated as though fully set forth herein.

102. House Bill 1297 violates the right to bodily integrity of women seeking medication abortions within the State of North Dakota in violation of Article I, §§ 1 and 12 of the Constitution of the State of North Dakota.

Fifth Claim for Relief

(Special Law)

103. The allegations of paragraphs 1 through 102 are incorporated as though fully set forth herein.

104. House Bill 1297 creates a special in violation of Article IV, § 13 of the North Dakota Constitution by:

a. imposing restrictions on the off-label use of prescription medications only on women seeking medication;

b. imposing restrictions on the off-label use of prescription medications only on physicians providing medication abortions;

c. placing requirements regarding a contract with a back-up physician for emergency care only upon physicians providing medication abortions; and

d. imposing requirements for the reporting of adverse events experienced during or after provision of a drug upon only those physicians prescribing abortion-inducing drugs.

Sixth Claim for Relief

(Privileges and Immunities)

105. The allegations of paragraphs 1 through 104 are incorporated as though fully set forth herein.

106. House Bill 1297 denies women seeking medication abortions in North Dakota equal protection of the law in violation of the privileges and immunities clause, Article 1, § 21 of the North Dakota Constitution.

107. House Bill 1297 denies physicians providing medication abortions in North Dakota equal protection of the law in violation of the privileges and immunities clause, Article I, § 21 of the North Dakota Constitution.

Seventh Claim for Relief

(Free Speech)

108. The allegations of paragraphs 1 through 107 are incorporated as though fully set forth herein.

109. House Bill 1297 violates Article I, § 4 of the North Dakota Constitution by forcing physicians to make, and women to hear, false and misleading statements.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

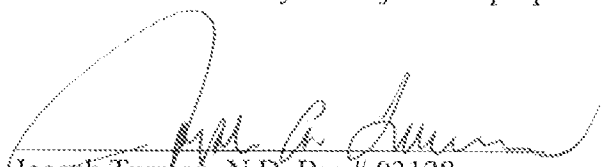
110. Issue a declaratory judgment that the challenged provisions of HB 1297, as applied to the Clinic, its staff and Dr. Eggleston, and their patients seeking medication abortions, violate the North Dakota Constitution and are void and of no effect; and

111. Issue permanent injunctive relief, without bond, restraining Defendants, their employees, agents, and successors in office from enforcing the challenged provisions of HB

1297 against the Clinic, its staff and Dr. Eggleston; and

112. Grant such other and further relief as the Court may deem just and proper.

Dated this 15th day of July 2011.



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*Applications for admission *pro hac vice* to be filed

Exhibit A

Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011

HOUSE BILL NO. 1297
(Representatives Grande, Kilichowski, Metcalf)
(Senators Berry, Christmann, Hogue)

AN ACT to create and enact two new sections to chapter 14-02.1 of the North Dakota Century Code, relating to an abortion report form and abortion-inducing drugs; to amend and reenact sections 14-02.1-02, 14-02.1-02.1, and 14-02.1-03, subsections 2 and 3 of section 14-02.1-03.1, and sections 14-02.1-04, 14-02.1-07, 14-02.1-08, 14-02.1-09, 14-02.3-01, 14-02.3-03, 15.1-19-06, and 23-16-14 of the North Dakota Century Code, relating to the regulation of abortion; to provide a penalty; to provide for a report; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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~~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

   c. Treat a woman for an ectopic pregnancy.

2. "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed or dispensed with the intent of causing an abortion.

3. "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.

4. "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.

~~3.~~5. "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.~~6. "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.~~7. "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.~~8. "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed or induced 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 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;

~~(2)~~(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

~~(3)~~(4) 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~~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.

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~~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.

~~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.~~9. "Medical emergency" means ~~that~~a 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~~that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates an immediate abortion to avert her death or for which the twenty-four-hour delay will create serious risk of substantial and irreversible physical impairment of a major bodily function. A condition may not be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct that would result in her death or in substantial and irreversible physical impairment of a major bodily function.

~~9.~~10. "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.

11. "Probable gestational age of the unborn child" means what, in ~~the judgment of the attending physician~~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.

12. "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.

13. "Unborn child" means the offspring of human beings from conception until birth.

~~10.~~14. "Viable" means the ability of ~~a fetus~~an unborn child to live outside the mother's womb, albeit with artificial aid.

SECTION 2. 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 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. 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 ~~fetus~~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 ~~fetus~~unborn child and ~~pictures representing~~color photographs of the development of ~~a fetus~~an unborn child 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 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 ~~fetus~~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 or county public assistance agencies.

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.

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.

SECTION 3. A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

Abortion report form.

The state department of health 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 data called for in the United States standard report of induced termination of pregnancy as recommended by the national center for health statistics.

SECTION 4. 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 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~~Before the period of pregnancy when the ~~fetus~~unborn child may reasonably be expected to have reached viability, ~~no~~an abortion ~~shall~~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 ~~prior to~~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 the minor's consent to the performance of abortion. ~~When~~If a parent of the minor has died or rights and interests of ~~such~~that parent have been legally terminated, this subsection ~~shall apply~~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 ~~shall apply~~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, ~~prior to~~before 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~~unborn child 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.

SECTION 5. AMENDMENT. Subsections 2 and 3 of section 14-02.1-03.1 of the North Dakota Century Code are amended and reenacted as follows:

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~~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 chapter 27-20 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 ~~purpose of the hearing before the juvenile judge or referee must be to determine~~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.

SECTION 6. A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

Abortion-inducing drugs.

1. For purposes of this chapter, an abortion accomplished by the use of an abortion-inducing drug is deemed to occur when the drug is prescribed, in the case of a prescription, or when the drug is administered directly to the woman by the physician.

2. It is unlawful to knowingly give, sell, dispense, administer, otherwise provide, or prescribe any abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion in that pregnant woman, or enabling another person to induce an abortion in a pregnant woman, unless the person who gives, sells, dispenses, administers, or otherwise provides or prescribes the abortion-inducing drug is a physician, and the provision or prescription of the abortion-inducing drug satisfies the protocol tested and authorized by the federal food and drug administration and as outlined in the label for the abortion-inducing drug.

3. Every pregnant woman to whom a physician gives, sells, dispenses, administers, otherwise provides, or prescribes any abortion-inducing drug must be provided with a copy of the drug's label.

4. Any physician who gives, sells, dispenses, administers, prescribes, or otherwise provides an abortion-inducing drug shall enter a signed contract with another physician who agrees to handle emergencies associated with the use or ingestion of the abortion-inducing drug. The physician shall produce the signed contract on demand by the patient, the department of health, or a criminal justice agency. Every pregnant woman to whom a physician gives, sells, dispenses, administers, prescribes, or otherwise provides any abortion-inducing drug must be provided the name and telephone number of the physician who will be handling emergencies

and the hospital at which any emergencies will be handled. The physician who contracts to handle emergencies must have active admitting privileges and gynecological and surgical privileges at the hospital designated to handle any emergencies associated with the use or ingestion of the abortion-inducing drug.

5. When an abortion-inducing drug or chemical is used for the purpose of inducing an abortion, the drug or chemical must be administered by or in the same room and in the physical presence of the physician who prescribed, dispensed, or otherwise provided the drug or chemical to the patient.

SECTION 7. 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 abortion may be done by any person other than a ~~licensed~~ physician using applicable 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~~unborn child 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~~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 ~~fetus~~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 ~~fetus~~unborn child, and accurately portray the presence of external members and internal organs, including the heartbeat, if present or viewable, of the ~~fetus~~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. 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.

SECTION 8. 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 records of the number of women who availed themselves of the opportunity to receive and view an ultrasound image of their ~~fetuses~~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. 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 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. ~~This reporting~~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.

   b. All abortion compliance reports must be signed by the attending physician within twenty-four hours and submitted to the state department of health within ~~thirty~~ten business days from the date of the abortion. All abortion data and complication reports must be signed by the attending 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~~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 state department of health 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.

   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 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 compliance reports ~~and~~, abortion data reports, complication reports, and adverse event reports and collating and evaluating all data gathered ~~therefrom~~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 state department of health 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 state department of health shall report to the attorney general any apparent violation of this chapter.

SECTION 9. AMENDMENT. Section 14-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-08. Protection of ~~viable fetus~~infant 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~~an infant born alive.

2. Whenever ~~a fetus which~~an unborn child who 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~~unborn child if it survives the abortion procedure.

SECTION 10. AMENDMENT. Section 14-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-09. Humane disposal of nonviable ~~fetus~~unborn child.

The ~~licensed~~ physician performing the abortion, if performed outside of a hospital, must see to it that the ~~fetus~~unborn child 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~~unborn child in a humane fashion in compliance with regulations promulgated by the state department of health.

SECTION 11. AMENDMENT. Section 14-02.3-01 of the North Dakota Century Code is amended and reenacted as follows:

14-02.3-01. State policy on abortion and childbirth - Use of public funds restricted.

1. Between normal childbirth and abortion, it is the policy of the state of North Dakota that normal childbirth is to be given preference, encouragement, and support by law and by state action, it being in the best interests of the well-being and common good of North Dakota citizens.

2. An agency of this state may not produce, distribute, publish, disseminate, endorse, or approve materials of any type that, between normal childbirth and abortion, do not give preference, encouragement, and support to normal childbirth. An agency of the state may not fund, endorse, or support any program that, between normal childbirth and abortion, does not give preference, encouragement, and support to normal childbirth.

3. No funds of this state or any agency, county, municipality, or any other subdivision thereof and no federal funds passing through the state treasury or a state agency may be used to pay for the performance, or for promoting the performance, of an abortion unless the abortion is necessary to prevent the death of the woman.

SECTION 12. AMENDMENT. Section 14-02.3-03 of the North Dakota Century Code is amended and reenacted as follows:

14-02.3-03. Payment for abortions by health insurance policies delivered or issued in North Dakota restricted.

No health insurance contracts, plans, or policies delivered or issued for delivery in this state may provide coverage for abortions, including the elimination of one or more unborn children in a multifetal pregnancy, except by an optional rider for which there must be paid an additional premium. Provided, however, that this section does not apply to the performance of an abortion necessary to prevent the death of the woman.

SECTION 13. AMENDMENT. Section 15.1-19-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-19-06. Abortion referrals.

1. No person while acting in an official capacity as an employee or agent of a school district may refer a student to another person, agency, or entity for the purpose of obtaining an abortion. This provision does not extend to private communications between the employee or agent and a child of the employee or agent.

2. Between normal childbirth and abortion, it is the policy of the state of North Dakota that normal childbirth is to be given preference, encouragement, and support by law and by state action. A person acting in an official capacity as an employee or agent of a school district, between normal childbirth and abortion, shall give preference, encouragement, and support to normal childbirth. No public school in the state may endorse or support any program that, between normal childbirth and abortion, does not give preference, encouragement, and support to normal childbirth. No public school of the state may authorize a presentation to students that, between normal childbirth and abortion, does not give preference, encouragement, and support to normal childbirth.

SECTION 14. AMENDMENT. Section 23-16-14 of the North Dakota Century Code is amended and reenacted as follows:

23-16-14. Participation in abortion - Not mandatory.

No hospital, physician, nurse, hospital employee, nor any other person is under any duty, by law or contract, nor may such hospital or person in any circumstances be required to participate in the performance of an abortion, if such hospital or person objects to such abortion. No such person or institution may be discriminated against because the person or institution so objects. For purposes of this section, "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 save the life or preserve the health of the unborn child; remove a dead unborn child caused by spontaneous abortion; or treat a woman for an ectopic pregnancy.

SECTION 15. STATE DEPARTMENT OF HEALTH REPORT TO LEGISLATIVE MANAGEMENT - ABORTION DATA. During the 2011-12 interim, the state department of health shall:

1. Create an inventory of the data, reports, records, and other material the department is required to gather, receive, create, or maintain relating to abortions as required under chapter 14-02.1. The inventory must include information regarding the frequency with which the items in the inventory must be gathered, received, or created.

2. Create a report that outlines the department's practices in gathering, receiving, and creating the items in the inventory.

3. Make three reports to the legislative management on the status and outcome of the creation of the inventory and the practices report. The first report must be made before January 1, 2012; the second before April 1, 2012; and the third before September 1, 2012.

SECTION 16. STATEMENT OF LEGISLATIVE INTENT. The costs incurred by the state department of health as a result of producing the printed information required under section 2 of this Act may not exceed fifty thousand dollars.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1297.

House Vote:	Yeas 70	Nays 17	Absent 7
Senate Vote:	Yeas 42	Nays 5	Absent 0

Chief Clerk of the House

Received by the Governor at _____M. on _____, 2011.

Approved at _____M. on _____, 2011.

Governor

Filed in this office this _____day of _____, 2011,

at _____ o'clock _____M.

Secretary of State