



STATE OF NORTH DAKOTA
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Drew H. Wrigley
ATTORNEY GENERAL

June 28, 2022

John Bjornson, Director
North Dakota Legislative Council
600 E. Boulevard Avenue
Bismarck ND 58505-0360

Dear Mr. Bjornson,

The United States Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* has explicitly overruled the Court's prior holdings in *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey*. By this ruling, the United States Supreme Court has restored to the states the authority to regulate and prohibit abortion, such that the legislatively crafted "triggering mechanisms" included in two North Dakota statutes have now been activated.¹

House Bill 1466 was enacted by the 2007 Legislative Assembly and signed into law by then-Governor John Hoeven. This law bans abortion, with delineated exceptions for rape, incest, and preserving the life of the mother, and is now codified as N.D.C.C. § 12.1-31-12. This law also includes a provision by which the statute is, in effect, tolled until such time as the United States Supreme Court overrules *Roe v. Wade* and successive rulings that, combined, disallowed enforcement of N.D.C.C. § 12.1-31-12. The Legislative Assembly's foresight in enacting that tolling or "trigger mechanism" became apparent with the United States Supreme Court's ruling in *Dobbs*, whereby the legal barriers to enforcement of N.D.C.C. § 12.1-31-12 were removed.

Therefore, in my capacity as Attorney General of North Dakota, I hereby certify that the preconditions for enforcement of N.D.C.C. § 12.1-31-12 have been satisfied, and this provision shall be given its full effect on July 28, 2022, the thirtieth day after the date of this certification letter.

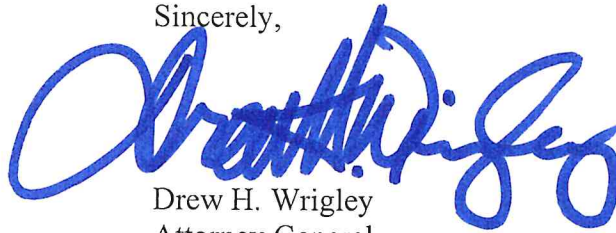
House Bill 1546 was enacted by the 2019 Legislative Assembly and signed into law by Governor Doug Burgum. The law bans the Dilation and Evacuation abortion method, except in circumstances the statute terms "a medical emergency," and is now codified as N.D.C.C. § 14-02.1-04.2. Here again, the Legislative Assembly acted with foresight to enact a "trigger mechanism" in order to avoid immediate litigation that, at that time, was almost certain to prove fruitless. This statute was tolled until such time as the United States Supreme Court overruled *Roe v. Wade* and successive rulings that, combined, prevented enforcement of N.D.C.C. § 14-02.1-04.2. In the wake of the United States Supreme Court's ruling in *Dobbs*, the legal barriers to enforcement of N.D.C.C. § 14-02.1-04.2 have been removed.

¹ *Dobbs, State Health Officer of the Mississippi Department of Health, et. al. v. Jackson Women's Health Organization, et. al.*, 597 U.S. *79 (2022) ("The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. We now overrule those decisions and return that authority to the people and their elected representatives.")

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Therefore, in my capacity as Attorney General of North Dakota, I hereby certify that the preconditions for enforcement of N.D.C.C. § 14-02.1-04.2 have been satisfied, and this provision shall be given full effect on July 28, 2022, the thirtieth day after the date of this certification letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Drew H. Wrigley". The signature is stylized and cursive, with a large initial "D" and "W".

Drew H. Wrigley
Attorney General

12.1-31-12. Abortion - Affirmative defenses. (Contingent effective date - See note)

1. As used in this section:
 - a. "Abortion" means the use or prescription of any substance, device, instrument, medicine, or drug to intentionally terminate the pregnancy of an individual known to be pregnant. The term does not include an act made with the intent to increase the probability of a live birth; preserve the life or health of a child after live birth; or remove a dead, unborn child who died as a result of a spontaneous miscarriage, an accidental trauma, or a criminal assault upon the pregnant female or her unborn child.
 - b. "Physician" means an individual licensed to practice medicine under chapter 43-17.
 - c. "Professional judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
2. It is a class C felony for a person, other than the pregnant female upon whom the abortion was performed, to perform an abortion.
3. The following are affirmative defenses under this section:
 - a. That the abortion was necessary in professional judgment and was intended to prevent the death of the pregnant female.
 - b. That the abortion was to terminate a pregnancy that resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20.
 - c. That the individual was acting within the scope of that individual's regulated profession and under the direction of or at the direction of a physician.

As provided by S.L. 2019, ch. 126, § 2, this section becomes effective on the thirtieth day after:

1. The adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states the authority to prohibit abortion; or
2. The attorney general certifies to the legislative council the issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion.

14-02.1-04.2. Prohibition on human dismemberment abortion - Penalty. (Contingent effective date - See note)

1. For purposes of this section, "human dismemberment abortion" means intentionally dismembering a living unborn child and extracting the unborn child one piece at a time from a uterus, with the purpose of causing the death of an unborn child, through use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two rigid levers, slice, crush, or grasp the head, arm, leg, spinal cord, internal organ, or other portion of the unborn child's body to cut or rip it off, regardless if the fetal body parts are removed by the same instrument, suction, or other means.
2. Except in the case of a medical emergency, it is a class C felony for an individual to intentionally perform a human dismemberment abortion.
3. A woman upon whom a human dismemberment abortion is performed or attempted to be performed in violation of subsection 2 may not be prosecuted for a violation of subsection 2 or for conspiracy to violate subsection 2.

As provided by S.L. 2019, ch. 126, § 3, this section becomes effective on the thirtieth day after the adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states the authority to prohibit abortion, or on the thirtieth day after the attorney general certifies to the legislative council:

1. The issuance of the judgment in any decision of the United States Supreme Court or the United States Court of Appeals for the Eighth Circuit which would allow enforcement of section 1 of this Act; or
2. The issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion.