

Restricting Abortion: North Dakota¹

In far too many places throughout this country, it has become extremely difficult for women to safely and legally end a pregnancy. In too many states, politicians have enacted laws that single out the provision of abortion services for restrictions that are more burdensome than those imposed on medically comparable procedures, do not significantly advance women's health or the safety of abortion services, and make abortion services more difficult to access. It's time for politicians to stop interfering with women's personal decision-making. We need a federal law that puts women's health, safety, and rights first. The Women's Health Protection Act does just that.

In North Dakota, the following restrictions are among those that would be unlawful under the Women's Health Protection Act once enacted:

) **BAN** on abortion after 20 weeks of pregnancy (an unconstitutional pre-viability ban) with unconstitutionally narrow exceptions for when the life or health of a woman is endangered.²

) **REQUIREMENT** that abortion providers have admitting privileges at a local hospital, a medically unnecessary requirement that is designed to prevent qualified, experienced physicians from providing care to their patients.³

) **BAN** on abortions based on sex selection, allowing the state to police women's reasons for ending a pregnancy and perpetuating negative stereotypes about Asian American communities that may result in the denial of health care.⁴

) **REQUIREMENT** that providers who administer medication abortion procedures be licensed physicians,⁵ despite recommendations from the World Health Organization that other highly qualified health care providers can safely provide medication abortion.⁶

"North Dakotans sent a clear message to legislators to stop playing games with women's reproductive rights in our state when they soundly defeated a personhood measure in 2014."

- Tammi Kromenaker, Director of Red River Women's Clinic, the last remaining clinic in North Dakota

-) **RESTRICTIONS** on medication abortion that could prohibit physicians from providing individualized, patient-specific care based on their best medical judgment.⁷
-) **BAN** on abortion after viability without constitutionally adequate exceptions for the woman's life or health.⁸
-) **REQUIREMENT** that all abortion procedures performed after the twelve weeks be provided only at a licensed hospital, although the procedures can be performed safely in clinics.⁹
-) **BAN** on abortion at six weeks of pregnancy with only narrow health exceptions, effectively outlawing abortion before many women know they are pregnant.¹⁰
-) **BAN** on the use of telemedicine to provide medication abortion, reducing the potential for access to safe, nonsurgical abortion services, and eliminating an important way to expand access to many low-income and rural women.¹¹
-) **BAN** on abortions based on genetic anomaly, allowing the state to police women's reasons for ending a pregnancy and intended to politicize the lives of people with disabilities without taking steps to combat deeply rooted structural discrimination against individuals based on their abilities.¹²

(Endnotes)

- ¹ The restrictions highlighted herein are examples of the types of restrictions that the **Women's Health Protection Act** seeks to invalidate. This fact sheet is not intended as a comprehensive guide to abortion restrictions in North Dakota.
- ² N.D. Cent. Code § 14-02.1-05.3.
- ³ N.D. Cent. Code § 14-02.1-04(1), *presumptively unconstitutional under* Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292, 2310-13 (2016).
- ⁴ N.D. Cent. Code § 14-02.1-04.1.; *Replacing Myths with Facts: Sex-Selective Abortion Laws in the United States*, National Asian Pacific American Women's Forum (June 2014), available at <http://napawf.org/wp-content/uploads/2014/06/Replacing-Myths-with-Facts-final.pdf>; *Race and Sex Selective Abortion Bans: Wolves in Sheep's Clothing*, National Asian Pacific American Women's Forum (July 2013), available at http://napawf.org/wp-content/uploads/2013/11/PRENDAIssueBrief_11.26-FINAL.pdf.
- ⁵ N.D. Cent. Code § 14-02.1-04(1).
- ⁶ See World Health Org., *Safe Abortion: Technical and Policy Guidance for Health Systems* 65 (2nd ed. 2012), available at http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf?ua=1.
- ⁷ N.D. Cent. Code § 14-02.1-03.5. This law was temporarily blocked before it could take effect in 2011, but on October 28, 2014, the North Dakota state Supreme Court upheld the law and allowed it to go into effect immediately. *MKB Mgmt. Corp. v. Burdick*, No. 20130259 (N.D. Oct. 28, 2014).
- ⁸ N.D. Cent. Code § 14-02.1-04(3).

THE WOMEN'S HEALTH PROTECTION ACT

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⁹ N.D. Cent. Code § 14-02.1-04, *invalidated by* *Miks v. Olson*, No. A3-82-78 (D.N.D. Aug. 25, 1983) (citing *Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. 416 (1983), and *Planned Parenthood Assoc. of Kansas City, Mo. v. Ashcroft*, 462 U.S. 476 (1983), both holding that the state may not require that second-trimester abortions be performed in hospitals. This holding of *Akron* is unaffected by the Supreme Court's subsequent decision in *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 877 (1992), because the *Akron* Court applied a standard virtually identical to the "undue burden" standard later adopted in *Casey*.)

¹⁰ N.D. Cent. Code § 14-02.1-05.2, *invalidated by* *M.K.B. Mgmt. Corp. v. Burdick*, 16 F. Supp. 3d 1059, (D.N.D. 2014) (issuing permanent injunction); *aff'd sub nom. M.K.B. Mgmt. Corp. v. Stenehjem*, 795 F.3d 768 (8th Cir. 2015), *cert. denied*, 136 S.Ct. 981 (2016).

¹¹ N.D. Cent. Code § 14-02.1-03.5(5).

¹² N.D. Cent. Code § 14-02.1-04.1.