

House Bill 1572 would have far-reaching impact, potentially affecting nearly 10,000 separate laws in the North Dakota Century Code.

If these changes took place, thousands of laws would become confusing and vague, and lead to potentially absurd results that would have to be clarified by the North Dakota courts and legislature. HB 1572 could criminalize lawful behavior, prevent ordinary every-day activities for pregnant women, and could result in huge administrative burdens for the state.

Some examples include:

Criminal Code

- This bill could allow criminal investigation and prosecution of women who suffered miscarriages because it would include fetuses as victims throughout the criminal code. Although there are already laws on the books in ND that allow prosecution for crimes against the unborn, those laws contain important exceptions for pregnant women's behavior which do not exist in the general homicide and assault crimes. *See* N.D. Cent. Code §12.1-16; 12.1-17; 12.1-17.1. Women who suffer miscarriages or pregnancy complications could potentially be investigated for homicide, manslaughter or reckless endangerment if this bill were to be enacted. *See* N.D. Cent. Code §12.1.-16.01(1)(a); -16.02; -17.03.
- This bill could allow criminal investigation and prosecution of doctors who treat pregnant women, if the treatment of a pregnant woman resulted in any harm to the fetus. For example, a doctor who gave a pregnant woman life-saving cancer treatment could potentially be prosecuted for any harm to the fetus. The bill could also permit the prosecution of abortion providers for legal abortions. *See* N.D. Cent. Code §12.1-16; 12.1-17; 12.1-17.1.

Civil Liability

- Wrongful death statutes allow someone acting on behalf of a deceased person (usually a surviving relative) to recover damages for a wrongful or negligent act that has caused a person's death. HB 1572 could expand the wrongful death statute in North Dakota to allow actions to be brought on behalf of a fetus against a pregnant woman or a doctor for his/her actions that arguably contributed to the death of the fetus. A relative could potentially bring a wrongful death claim against a woman for having a consensual abortion. The expansion of the law could also be used to bring claims against a woman who suffered a miscarriage—for example, if a pregnant woman miscarried as a result of a car accident that was attributed to her driving, she could face a lawsuit on behalf of her fetus. *See* N.D. Cent. Code §32-21.

Domestic Relations

- HB 1572 could also create problems for the domestic relations code. For example, this change in definition could potentially allow an action for domestic violence to be brought against a pregnant woman for her actions during pregnancy. The domestic violence section of the code defines domestic violence as “physical harm, bodily injury...or...assault” against “any person with a sufficient relationship to the abuser.” *See* N.D. Cent. Code §14-07.1-01.

If “person” is expanded to include unborn children, fetuses would almost certainly be found to have a sufficient relationship to the pregnant woman, and under the code, a pregnant women’s actions could be in direct conflict with the interest of the fetus. Moreover, a family member or person with a relationship to the pregnant woman could bring a protective action on behalf of the fetus against the pregnant woman for her actions during pregnancy. *See* N.D. Cent. Code §14-07.1-02.

Discrimination Laws

- This bill opens the door to claims that an embryo or fetus was the victim of “discrimination” in violation of public accommodations laws. The North Dakota law states that anyone who provides public accommodations or public services must provide people with access to the use of any benefit from the public accommodations or public services, without discrimination on the basis of age, race, gender, ability or a series of other factors. *See* N.D. Cent. Code §14-02.4-14; 14-02.4-15. “Public accommodations” include every place, establishment, or facility that offers services, facilities, or goods to the general public, so everything from hotels, to restaurants, to shopping malls could potentially have to make sure that they were not discriminating against fetuses in their operation or services. “Public service” means a public facility, department, agency, board, or commission owned, operated, or managed by or on behalf of the state, so this could also have a serious impact on the state. *See* N.D. Cent. Code §14-02.4-02.
- This bill could also create great confusion around the interpretation of discrimination laws, such as the housing discrimination law. For example, if this bill were enacted, the definition of “family” under N.D. housing law could be read to mean a single unborn child, and the application of these laws would need to be determined by the courts and administrative agencies *See* N.D. Cent. Code §14-2.5-01. Additionally, if this bill were enacted, a landlord could refuse to rent an apartment or home to a pregnant woman because he decided that her tenancy would create a direct threat to the health or safety of her fetus, because he can take the health and safety of other “individuals” into account. *See* N.D. Cent. Code §14-2.5-06(6).

Health Care Institutions & Facilities

- The bill could also impose serious administrative costs on health care facilities and institutions, as well as create impossible treatment situations. For example:
- Basic health facilities, which provide room and board to individuals who, because of impaired capacity for independent living, require health, social, or personal care services, would have to count fetuses in the numbers of individuals they serve, would have to provide medical care and other services to the fetuses, and would have to make sure that the fetuses’ condition was consistent with national fire protection association 101 life safety code requirements.” *See* N.D. Cent. Code § 23-09.3-08.1. It is difficult to image how an embryo or fetus could meet those requirements if counted as a separate person. All basic care facilities would also have to record “every individual admitted,” adding an extra

administrative burden to these facilities and requiring them to track pregnant women as two people. *See* N.D. Cent. Code §23-09.3-08.

- Similarly, public and private hospitals and other health care institutions must keep meticulous records of any admitted person, in a form as directed by the state health officer. *See* N.D. Cent. Code §23-01-12.

Safety Laws

- HB 1572 would cause certain safety laws under the motor vehicle code to become, at best, vague and unintelligible, and at worst, absurd and burdensome on the state and on pregnant women. For example:
 - A pregnant woman who rode a motorcycle or a bicycle, could, from the moment of conception, be considered to be violating the vehicle safety laws. North Dakota law currently states that “[n]o bicycle may be used to carry more persons at one time than the number for which it is designed and equipped.” *See* N.D. Cent. Code §39-10.1-03. The change in meaning of the word “person” renders this law mysterious at best – a bicycle is normally designed for one person, so a woman could not ride a bicycle so long as she was pregnant and carrying a fetus, which would be considered a separate person. Similarly, North Dakota law could prevent pregnant women from riding motorcycles at all, because she would be prohibited from carrying a passenger with no protective headgear, which could include a fetus if this bill were enacted. *See* N.D. Cent. Code §39-10.2-06.
 - A pregnant woman with a teenage child could potentially be prevented from helping that child learn to drive, because she would not be able to sit in the front seat while pregnant and driving with a permit holder. *See* N.D. Cent. Code §39-06-04.

State/Municipal/Locality Laws

- HB 1572 could have a serious impact on any state law or local ordinance that requires counting of individuals. North Dakota relies on population counts to establish costs of municipal services, funding owed to municipalities by the state, and even the types of private and public services that may be offered to residents of certain areas. If this bill were enacted, North Dakota could find it necessary to create an entirely new method of doing a population count and/or taking a census, and could be required to recount the entire state population. For example:
 - North Dakota determines what system of government a city is required to have based on the population count. *See* N.D. Cent. Code § 40-02-01 (2008). If fetuses were to be counted in the population count as a result of HB 1572, North Dakota could have to re-evaluate the systems of government of every municipality in the state to make sure that the municipality is complying with the law.

- North Dakota cities might face difficulties appointing zoning boards, which are appointed in a way that depends on how many people live within the city. *See* N.D. Cent. Code §40-47-06.
- In addition, how cities may use their funds often depend on the population of the city, which would change if fetuses needed to be counted as persons. Whether or not cities can participate in bonded highway and transportation projects, operate waste water treatment plants, or enter into garbage removal contracts all depends on the cities' population count. *See* N.D. Cent. Code §§21-03-08(8); 40-05-18; 23-26-08.
- Municipalities and localities would also face paying additional premiums to the state for volunteer firefighters and emergency volunteers, as well as foster care costs, which are determined as a percentage of cities' populations. N.D. Cent. Code §§65-06-04; 50-09-21.1.

Other Laws

- HB 1572 would also potentially impact the N.D. tax laws, inheritance laws, access to the courts, and hundreds of other laws in the Century Code.