



2025 House Bill 1373
House Human Services Committee
Representative Matthew Ruby, Chairman
February 5, 2025

Chairman Ruby and members of the House Human Services Committee, I am Melissa Hauer, General Counsel/VP of the North Dakota Hospital Association (NDHA). I am here to testify in opposition to House Bill 1373. We ask that you give this bill a Do Not Pass recommendation.

Hospitals are here today in opposition to this bill for a number of reasons related to how it would interfere with patient health care and medical practice. Although it appears that the primary goal of this bill is to further restrict abortion, it would, ironically, have a negative impact on those who are trying very hard to have a baby and who must rely on fertility treatment to do so. While we have other concerns with this bill, such as how it could interfere with management of pregnancy complications, this testimony will focus on the significant threat it poses to fertility treatments such as in vitro fertilization (IVF).

This bill would interfere with IVF treatment and likely result in no such treatment being offered in our state because of the threat of criminal prosecution and civil penalties. During IVF, doctors collect eggs from a patient's ovaries and fertilize them with sperm in a lab to create embryos. They either transfer those embryos to a uterus, discard them, or freeze them to be used later. This bill would restrict what patients and doctors are allowed to do with embryos. The bill defines "person" and "human being" as including an individual living human child before birth from the beginning of biological development at the moment of fertilization upon the fusion of a human spermatozoon with a human ovum. In other words, it would classify an embryo as a legal person, making all embryos unborn children under state law and extending to them all the same legal rights as people. This "personhood" is fundamentally incompatible with IVF treatment, which generally involves creating more embryos than are used and either freezing or discarding unused embryos.

The bill amends the homicide and assault chapters and the wrongful death act of the North Dakota Century Code to provide criminal, civil, and administrative penalties for causing the death of a "person" or "human being" which includes, as newly defined, embryos. For

example, a person is guilty of murder, a class AA felony, if the person intentionally or knowingly causes the death of another human being. If this bill passes it would become illegal to discard unused embryos, to selectively reduce multiple pregnancies, or to transfer an embryo that then does not implant, thus subjecting the health care provider and patient to class AA felony charges, wrongful death lawsuits, and loss of professional licensing.

The threat that the legal concept of personhood poses to IVF legality and availability is not hypothetical. Just last year, the Alabama Supreme Court analyzed that state's personhood law and ruled that frozen embryos created through IVF and stored at fertility clinics are "unborn children" under that state's personhood law. This caused fertility clinics to suspend IVF treatments to avoid liability, leaving many patients - who had invested substantial time and financial resources - to pause their IVF cycles. It left IVF treatment in limbo until the Alabama legislature passed a law specifically shielding IVF providers from prosecutions related to the handling of embryos. Without such protection, anyone involved in the IVF process could be held criminally and civilly responsible for any damage - including accidental- that occurred to embryos. This bill would, at a minimum, force IVF clinics to change how they manage embryos, including storage, disposal, and genetic testing, making IVF more expensive as clinics try to comply with the laws. This adds more stress for not only the providers but also the patients who are already going through a difficult and complicated process in order to try to have a child.

In summary, this bill will limit access to IVF treatment. It will interfere with a patient's ability to make decisions about her own fertility and, ironically, make it more difficult or impossible for certain patients to have a baby if they cannot access IVF treatment. Health care providers will be unwilling or very reluctant to provide such treatment knowing that it could lead to criminal prosecution, civil lawsuits, and loss of professional licensing.

For these reasons, we ask that you give the bill a **Do Not Pass** recommendation.

I would be happy to respond to any questions you may have. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel/VP
North Dakota Hospital Association