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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 2792

02/20/2018 Authored by Whelan, Lohmer, Poston, Scott, Pugh and others
The bill was read for the first time and referred to the Committee on Health and Human Services Reform

1.1 A bill for an act
1.2 relating to health; prohibiting abortions of unborn children; establishing criminal
1.3 penalties; amending Minnesota Statutes 2016, sections 62Q.145; 148.261,
1.4 subdivision 1; 609.269; proposing coding for new law in Minnesota Statutes,
1.5 chapter 145; repealing Minnesota Statutes 2016, section 145.412.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2016, section 62Q.145, is amended to read:

1.8 62Q.145 ABORTION AND SCOPE OF PRACTICE.

1.9 Health plan company policies related to scope of practice for allied independent health
1.10 providers as defined in section 62Q.095, subdivision 5, midlevel practitioners as defined in
1.11 section 144.1501, subdivision 1, and other nonphysician health care professionals must
1.12 comply with the requirements governing the performance of abortions in section 145.412,
1.13 subdivision 1 145.417.

1.14 EFFECTIVE DATE. This section is effective August 1, 2018, and applies to policies
1.15 offered, sold, issued, or renewed on or after that date.

1.16 Sec. 2. [145.417] ABORTION OF UNBORN CHILD PROHIBITED.

1.17 Subdivision 1. Definitions. (a) The definitions in this subdivision apply to this section.

1.18 (b) "Abortion" means the use or prescription of any instrument, medicine, drug, or other
1.19 substance or device with the intent to terminate a clinically diagnosable pregnancy for
1.20 reasons other than to increase the probability of a live birth, preserve the life or health of
1.21 the unborn child, terminate an ectopic pregnancy, or remove a deceased unborn child who
1.22 did not die as a result of an intentional, knowing, or reckless action to terminate a pregnancy.

2.1 (c) "Fertilization" means that point in time when a male human sperm penetrates the
2.2 zona pellucida of a female human ovum.

2.3 (d) "Pregnant" or "pregnancy" means the human female reproductive condition of having
2.4 a living unborn child within her body throughout the entire embryonic and fetal ages of the
2.5 unborn child from fertilization to birth.

2.6 (e) "Unborn child" means an individual living member of the species Homo sapiens
2.7 from fertilization until birth.

2.8 Subd. 2. **Abortion of an unborn child prohibited.** A person shall not knowingly:

2.9 (1) administer to, prescribe for, procure for, or sell to a pregnant mother any medicine,
2.10 drug, or other substance with the specific intent of causing an abortion; or

2.11 (2) use or employ any instrument or procedure upon a pregnant mother with the specific
2.12 intent of causing an abortion.

2.13 Subd. 3. **Certain conduct not prohibited.** (a) It is not a violation of subdivision 2 for
2.14 a health care provider to:

2.15 (1) perform a medical procedure designed or intended to prevent the death of a pregnant
2.16 mother, provided the provider makes reasonable medical efforts to preserve both the life of
2.17 the mother and the life of her unborn child in a manner consistent with conventional medical
2.18 practice; or

2.19 (2) provide medical treatment, including chemotherapy and the termination of ectopic
2.20 pregnancies, to a pregnant mother that results in the accidental or unintentional injury to or
2.21 death of her unborn child.

2.22 (b) A pregnant mother on whom an abortion is performed or attempted is not guilty of
2.23 violating subdivision 2.

2.24 Subd. 4. **Contraceptives.** Nothing in this section shall be construed to prohibit the sale,
2.25 use, prescription, or administration of a contraceptive measure, device, drug, or chemical.

2.26 Subd. 5. **Penalty.** A person who performs an abortion in violation of this section is guilty
2.27 of a felony.

2.28 **EFFECTIVE DATE.** This section is effective August 1, 2018, and applies to crimes
2.29 committed on or after that date.

3.1 Sec. 3. Minnesota Statutes 2016, section 148.261, subdivision 1, is amended to read:

3.2 Subdivision 1. **Grounds listed.** The board may deny, revoke, suspend, limit, or condition
3.3 the license and registration of any person to practice advanced practice, professional, or
3.4 practical nursing under sections 148.171 to 148.285, or to otherwise discipline a licensee
3.5 or applicant as described in section 148.262. The following are grounds for disciplinary
3.6 action:

3.7 (1) Failure to demonstrate the qualifications or satisfy the requirements for a license
3.8 contained in sections 148.171 to 148.285 or rules of the board. In the case of a person
3.9 applying for a license, the burden of proof is upon the applicant to demonstrate the
3.10 qualifications or satisfaction of the requirements.

3.11 (2) Employing fraud or deceit in procuring or attempting to procure a permit, license,
3.12 or registration certificate to practice advanced practice, professional, or practical nursing
3.13 or attempting to subvert the licensing examination process. Conduct that subverts or attempts
3.14 to subvert the licensing examination process includes, but is not limited to:

3.15 (i) conduct that violates the security of the examination materials, such as removing
3.16 examination materials from the examination room or having unauthorized possession of
3.17 any portion of a future, current, or previously administered licensing examination;

3.18 (ii) conduct that violates the standard of test administration, such as communicating with
3.19 another examinee during administration of the examination, copying another examinee's
3.20 answers, permitting another examinee to copy one's answers, or possessing unauthorized
3.21 materials; or

3.22 (iii) impersonating an examinee or permitting an impersonator to take the examination
3.23 on one's own behalf.

3.24 (3) Conviction of a felony or gross misdemeanor reasonably related to the practice of
3.25 professional, advanced practice registered, or practical nursing. Conviction as used in this
3.26 subdivision includes a conviction of an offense that if committed in this state would be
3.27 considered a felony or gross misdemeanor without regard to its designation elsewhere, or
3.28 a criminal proceeding where a finding or verdict of guilt is made or returned but the
3.29 adjudication of guilt is either withheld or not entered.

3.30 (4) Revocation, suspension, limitation, conditioning, or other disciplinary action against
3.31 the person's professional or practical nursing license or advanced practice registered nursing
3.32 credential, in another state, territory, or country; failure to report to the board that charges
3.33 regarding the person's nursing license or other credential are pending in another state,

4.1 territory, or country; or having been refused a license or other credential by another state,
4.2 territory, or country.

4.3 (5) Failure to or inability to perform professional or practical nursing as defined in section
4.4 148.171, subdivision 14 or 15, with reasonable skill and safety, including failure of a
4.5 registered nurse to supervise or a licensed practical nurse to monitor adequately the
4.6 performance of acts by any person working at the nurse's direction.

4.7 (6) Engaging in unprofessional conduct, including, but not limited to, a departure from
4.8 or failure to conform to board rules of professional or practical nursing practice that interpret
4.9 the statutory definition of professional or practical nursing as well as provide criteria for
4.10 violations of the statutes, or, if no rule exists, to the minimal standards of acceptable and
4.11 prevailing professional or practical nursing practice, or any nursing practice that may create
4.12 unnecessary danger to a patient's life, health, or safety. Actual injury to a patient need not
4.13 be established under this clause.

4.14 (7) Failure of an advanced practice registered nurse to practice with reasonable skill and
4.15 safety or departure from or failure to conform to standards of acceptable and prevailing
4.16 advanced practice registered nursing.

4.17 (8) Delegating or accepting the delegation of a nursing function or a prescribed health
4.18 care function when the delegation or acceptance could reasonably be expected to result in
4.19 unsafe or ineffective patient care.

4.20 (9) Actual or potential inability to practice nursing with reasonable skill and safety to
4.21 patients by reason of illness, use of alcohol, drugs, chemicals, or any other material, or as
4.22 a result of any mental or physical condition.

4.23 (10) Adjudication as mentally incompetent, mentally ill, a chemically dependent person,
4.24 or a person dangerous to the public by a court of competent jurisdiction, within or without
4.25 this state.

4.26 (11) Engaging in any unethical conduct, including, but not limited to, conduct likely to
4.27 deceive, defraud, or harm the public, or demonstrating a willful or careless disregard for
4.28 the health, welfare, or safety of a patient. Actual injury need not be established under this
4.29 clause.

4.30 (12) Engaging in conduct with a patient that is sexual or may reasonably be interpreted
4.31 by the patient as sexual, or in any verbal behavior that is seductive or sexually demeaning
4.32 to a patient, or engaging in sexual exploitation of a patient or former patient.

5.1 (13) Obtaining money, property, or services from a patient, other than reasonable fees
5.2 for services provided to the patient, through the use of undue influence, harassment, duress,
5.3 deception, or fraud.

5.4 (14) Revealing a privileged communication from or relating to a patient except when
5.5 otherwise required or permitted by law.

5.6 (15) Engaging in abusive or fraudulent billing practices, including violations of federal
5.7 Medicare and Medicaid laws or state medical assistance laws.

5.8 (16) Improper management of patient records, including failure to maintain adequate
5.9 patient records, to comply with a patient's request made pursuant to sections 144.291 to
5.10 144.298, or to furnish a patient record or report required by law.

5.11 (17) Knowingly aiding, assisting, advising, or allowing an unlicensed person to engage
5.12 in the unlawful practice of advanced practice, professional, or practical nursing.

5.13 (18) Violating a rule adopted by the board, an order of the board, or a state or federal
5.14 law relating to the practice of advanced practice, professional, or practical nursing, or a
5.15 state or federal narcotics or controlled substance law.

5.16 (19) Knowingly providing false or misleading information that is directly related to the
5.17 care of that patient unless done for an accepted therapeutic purpose such as the administration
5.18 of a placebo.

5.19 (20) Aiding suicide or aiding attempted suicide in violation of section 609.215 as
5.20 established by any of the following:

5.21 (i) a copy of the record of criminal conviction or plea of guilty for a felony in violation
5.22 of section 609.215, subdivision 1 or 2;

5.23 (ii) a copy of the record of a judgment of contempt of court for violating an injunction
5.24 issued under section 609.215, subdivision 4;

5.25 (iii) a copy of the record of a judgment assessing damages under section 609.215,
5.26 subdivision 5; or

5.27 (iv) a finding by the board that the person violated section 609.215, subdivision 1 or 2.
5.28 The board shall investigate any complaint of a violation of section 609.215, subdivision 1
5.29 or 2.

5.30 (21) Practicing outside the scope of practice authorized by section 148.171, subdivision
5.31 5, 10, 11, 13, 14, 15, or 21.

6.1 (22) Making a false statement or knowingly providing false information to the board,
 6.2 failing to make reports as required by section 148.263, or failing to cooperate with an
 6.3 investigation of the board as required by section 148.265.

6.4 (23) Engaging in false, fraudulent, deceptive, or misleading advertising.

6.5 (24) Failure to inform the board of the person's certification or recertification status as
 6.6 a certified registered nurse anesthetist, certified nurse-midwife, certified nurse practitioner,
 6.7 or certified clinical nurse specialist.

6.8 (25) Engaging in clinical nurse specialist practice, nurse-midwife practice, nurse
 6.9 practitioner practice, or registered nurse anesthetist practice without a license and current
 6.10 certification or recertification by a national nurse certification organization acceptable to
 6.11 the board.

6.12 (26) Engaging in conduct that is prohibited under section ~~145.412~~ 145.417.

6.13 (27) Failing to report employment to the board as required by section 148.211, subdivision
 6.14 2a, or knowingly aiding, assisting, advising, or allowing a person to fail to report as required
 6.15 by section 148.211, subdivision 2a.

6.16 **EFFECTIVE DATE.** This section is effective August 1, 2018.

6.17 Sec. 4. Minnesota Statutes 2016, section 609.269, is amended to read:

6.18 **609.269 EXCEPTION.**

6.19 Sections 609.2661 to 609.268 do not apply to any act described in section ~~145.412~~
 6.20 145.417.

6.21 **EFFECTIVE DATE.** This section is effective August 1, 2018.

6.22 Sec. 5. **REPEALER.**

6.23 Minnesota Statutes 2016, section 145.412, is repealed effective August 1, 2018.

145.412 CRIMINAL ACTS.

Subdivision 1. **Requirements.** It shall be unlawful to willfully perform an abortion unless the abortion is performed:

(1) by a physician licensed to practice medicine pursuant to chapter 147, or a physician in training under the supervision of a licensed physician;

(2) in a hospital or abortion facility if the abortion is performed after the first trimester;

(3) in a manner consistent with the lawful rules promulgated by the state commissioner of health; and

(4) with the consent of the woman submitting to the abortion after a full explanation of the procedure and effect of the abortion.

Subd. 2. **Unconsciousness; lifesaving.** It shall be unlawful to perform an abortion upon a woman who is unconscious except if the woman has been rendered unconscious for the purpose of having an abortion or if the abortion is necessary to save the life of the woman.

Subd. 3. **Viability.** It shall be unlawful to perform an abortion when the fetus is potentially viable unless:

(1) the abortion is performed in a hospital;

(2) the attending physician certifies in writing that in the physician's best medical judgment the abortion is necessary to preserve the life or health of the pregnant woman; and

(3) to the extent consistent with sound medical practice the abortion is performed under circumstances which will reasonably assure the live birth and survival of the fetus.

Subd. 4. **Penalty.** A person who performs an abortion in violation of this section is guilty of a felony.