

A bill for an act
relating to health; prohibiting abortions at or after 20 weeks postfertilization age
unless certain exceptions apply; providing civil and criminal penalties; amending
Minnesota Statutes 2010, section 145.4131, subdivision 1; proposing coding for
new law in Minnesota Statutes, chapters 8; 145.

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

Section 1. **SHORT TITLE.**

This act may be cited as the "Pain-Capable Unborn Child Protection Act."

Sec. 2. **[8.40] LITIGATION DEFENSE FUND.**

(a) There is created a special revenue fund known as the Pain-Capable Unborn Child
Protection Act litigation fund for the purpose of providing funds to pay for any costs and
expenses incurred by the state attorney general in relation to actions surrounding defense
of sections 145.4141 to 145.4148.

(b) The fund shall be maintained by the state Office of Management and Budget.

(c) The litigation fund shall consist of:

(1) appropriations made to the account by the legislature; and

(2) any donations, gifts, or grants made to the account by private citizens or entities.

(d) The litigation fund shall retain the interest income derived from the money
credited to the fund.

Sec. 3. Minnesota Statutes 2010, section 145.4131, subdivision 1, is amended to read:

Subdivision 1. **Forms.** (a) Within 90 days of July 1, 1998, the commissioner shall
prepare a reporting form for use by physicians or facilities performing abortions. A copy

of this section shall be attached to the form. A physician or facility performing an abortion shall obtain a form from the commissioner.

(b) The form shall require the following information:

(1) the number of abortions performed by the physician in the previous calendar year, reported by month;

(2) the method used for each abortion;

(3) the approximate gestational age expressed in one of the following increments:

(i) less than nine weeks;

(ii) nine to ten weeks;

(iii) 11 to 12 weeks;

(iv) 13 to 15 weeks;

(v) 16 to 20 weeks;

(vi) 21 to 24 weeks;

(vii) 25 to 30 weeks;

(viii) 31 to 36 weeks; or

(ix) 37 weeks to term;

(4) the age of the woman at the time the abortion was performed;

(5) the specific reason for the abortion, including, but not limited to, the following:

(i) the pregnancy was a result of rape;

(ii) the pregnancy was a result of incest;

(iii) economic reasons;

(iv) the woman does not want children at this time;

(v) the woman's emotional health is at stake;

(vi) the woman's physical health is at stake;

(vii) the woman will suffer substantial and irreversible impairment of a major bodily function if the pregnancy continues;

(viii) the pregnancy resulted in fetal anomalies; or

(ix) unknown or the woman refused to answer;

(6) the number of prior induced abortions;

(7) the number of prior spontaneous abortions;

(8) whether the abortion was paid for by:

(i) private coverage;

(ii) public assistance health coverage; or

(iii) self-pay;

(9) whether coverage was under:

(i) a fee-for-service plan;

(ii) a capitated private plan; or

(iii) other;

(10) complications, if any, for each abortion and for the aftermath of each abortion.

Space for a description of any complications shall be available on the form; ~~and~~

(11) the medical specialty of the physician performing the abortion;

(12) whether a determination of probable postfertilization age was made and the probable postfertilization age determined:

(i) the method used to make such a determination; or

(ii) if a determination was not made prior to performing an abortion, the basis of the determination that a medical emergency existed; and

(13) for abortions performed after a determination of postfertilization age of 20 or more weeks, the basis of the determination that the pregnant woman had a condition that so complicated her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.

Sec. 4. **[145.4141] DEFINITIONS.**

Subdivision 1. **Scope.** For purposes of sections 145.4141 to 145.4148, the following terms have the meanings given them.

Subd. 2. **Abortion.** "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma, or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy.

Subd. 3. **Attempt to perform or induce an abortion.** "Attempt to perform or induce an abortion" means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this state in violation of sections 145.4141 to 145.4148.

Subd. 4. **Fertilization.** "Fertilization" means the fusion of a human spermatozoon with a human ovum.

Subd. 5. **Medical emergency.** "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates the immediate abortion of her pregnancy without first

determining postfertilization age to avert her death or for which the delay necessary to determine postfertilization age will create serious risk of substantial and irreversible physical impairment of a major bodily function not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

Subd. 6. **Physician.** "Physician" means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in this state.

Subd. 7. **Postfertilization age.** "Postfertilization age" means the age of the unborn child as calculated from the fusion of a human spermatozoon with a human ovum.

Subd. 8. **Probable postfertilization age of the unborn child.** "Probable postfertilization age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the postfertilization age of the unborn child at the time the abortion is planned to be performed or induced.

Subd. 9. **Reasonable medical judgment.** "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

Subd. 10. **Unborn child or fetus.** "Unborn child" or "fetus" means an individual organism of the species homo sapiens from fertilization until live birth.

Subd. 11. **Woman.** "Woman" means a female human being whether or not she has reached the age of majority.

Sec. 5. [145.4142] LEGISLATIVE FINDINGS.

(a) The legislature makes the following findings.

(b) Pain receptors (nociceptors) are present throughout an unborn child's entire body and nerves link these receptors to the brain's thalamus and subcortical plate by 20 weeks.

(c) By eight weeks after fertilization, an unborn child reacts to touch. After 20 weeks an unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example by recoiling.

(d) In the unborn child, application of such painful stimuli is associated with significant increases in stress hormones known as the stress response.

(e) Subjection to such painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral, and learning disabilities later in life.

5.1 (f) For the purposes of surgery on an unborn child, fetal anesthesia is routinely
5.2 administered and is associated with a decrease in stress hormones compared to the level
5.3 when painful stimuli is applied without anesthesia.

5.4 (g) The position, asserted by some medical experts, that an unborn child is incapable
5.5 of experiencing pain until a point later in pregnancy than 20 weeks after fertilization
5.6 predominately rests on the assumption that the ability to experience pain depends on the
5.7 cerebral cortex and requires nerve connections between the thalamus and the cortex.
5.8 However, recent medical research and analysis, especially since 2007, provides strong
5.9 evidence for the conclusion that a functioning cortex is not necessary to experience pain.

5.10 (h) Substantial evidence indicates that children born missing the bulk of the cerebral
5.11 cortex, those with hydranencephaly, nevertheless experience pain.

5.12 (i) In adults, stimulation or ablation of the cerebral cortex does not alter pain
5.13 perception, while stimulation or ablation of the thalamus does.

5.14 (j) Substantial evidence indicates that structures used for pain processing in early
5.15 development differ from those of adults, using different neural elements available at
5.16 specific times during development, such as the subcortical plate, to fulfill the role of
5.17 pain processing.

5.18 (k) The position asserted by some medical experts, that the unborn child remains in a
5.19 coma-like sleep state that precludes the unborn child experiencing pain is inconsistent with
5.20 the documented reaction of unborn children to painful stimuli and with the experience of
5.21 fetal surgeons who have found it necessary to sedate the unborn child with anesthesia to
5.22 prevent the unborn child from thrashing about in reaction to invasive surgery.

5.23 (l) Consequently, there is substantial medical evidence that an unborn child is
5.24 capable of experiencing pain by 20 weeks after fertilization.

5.25 (m) It is the purpose of the state to assert a compelling state interest in protecting the
5.26 lives of unborn children from the stage at which substantial medical evidence indicates
5.27 that they are capable of feeling pain.

5.28 **Sec. 6. [145.4143] DETERMINATION OF POSTFERTILIZATION AGE.**

5.29 Subdivision 1. **Determination of postfertilization age.** Except in the case of a
5.30 medical emergency, no abortion shall be performed or induced or be attempted to be
5.31 performed or induced unless the physician performing or inducing it has first made a
5.32 determination of the probable postfertilization age of the unborn child or relied upon
5.33 such a determination made by another physician. In making such a determination, the
5.34 physician shall make those inquiries of the woman and perform or cause to be performed
5.35 those medical examinations and tests that a reasonably prudent physician, knowledgeable

about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to postfertilization age.

Subd. 2. **Unprofessional conduct.** Failure by any physician to conform to any requirement of this section constitutes unprofessional conduct under section 147.091, paragraph (k).

Sec. 7. [145.4144] ABORTION OF UNBORN CHILD OF 20 OR MORE WEEKS POSTFERTILIZATION AGE PROHIBITED; CAPABLE OF FEELING PAIN.

Subdivision 1. **Abortion prohibition; exemption.** No person shall perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing or attempting to perform or induce the abortion, or by another physician upon whose determination that physician relies, that the probable postfertilization age of the woman's unborn child is 20 or more weeks unless, in reasonable medical judgment, she has a condition which so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such condition shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

Subd. 2. **When abortion not prohibited.** When an abortion upon a woman whose unborn child has been determined to have a probable postfertilization age of 20 or more weeks is not prohibited by this section, the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the woman than would other available methods. No such greater risk shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

Sec. 8. [145.4145] ENFORCEMENT.

Subdivision 1. **Criminal penalties.** A person who intentionally or recklessly performs or induces or attempts to perform or induce an abortion in violation of sections 145.4141 to 145.4148 shall be guilty of a felony. No penalty may be assessed against the

woman upon whom the abortion is performed or induced or attempted to be performed or induced.

Subd. 2. Civil remedies. (a) A woman upon whom an abortion has been performed or induced in violation of sections 145.4141 to 145.4148, or the father of the unborn child who was the subject of such an abortion, may maintain an action against the person who performed or induced the abortion in intentional or reckless violation of sections 145.4141 to 145.4148 for actual and punitive damages. A woman upon whom an abortion has been attempted in violation of sections 145.4141 to 145.4148 may maintain an action against the person who attempted to perform or induce the abortion in an intentional or reckless violation of sections 145.4141 to 145.4148 for actual and punitive damages.

(b) A cause of action for injunctive relief against a person who has intentionally violated sections 145.4141 to 145.4148 may be maintained by the woman upon whom an abortion was performed or induced or attempted to be performed or induced in violation of sections 145.4141 to 145.4148; by a person who is the father of the unborn child subject to an abortion, parent, sibling, or guardian of, or a current or former licensed health care provider of, the woman upon whom an abortion has been performed or induced or attempted to be performed or induced in violation of sections 145.4141 to 145.4148; by a county attorney with appropriate jurisdiction; or by the attorney general. The injunction shall prevent the abortion provider from performing or inducing or attempting to perform or induce further abortions in this state in violation of sections 145.4141 to 145.4148.

(c) If judgment is rendered in favor of the plaintiff in an action described in this section, the court shall also render judgment for reasonable attorney fees in favor of the plaintiff against the defendant.

(d) If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for reasonable attorney fees in favor of the defendant against the plaintiff.

(e) No damages or attorney fees may be assessed against the woman upon whom an abortion was performed or induced or attempted to be performed or induced except according to paragraph (d).

Sec. 9. [145.4146] PROTECTION OF PRIVACY IN COURT PROCEEDINGS.

In every civil or criminal proceeding or action brought under the Pain-Capable Unborn Child Protection Act, the court shall rule on whether the anonymity of a woman upon whom an abortion has been performed or induced or attempted to be performed or induced shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling

and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable, less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or induced or attempted to be performed or induced, anyone, other than a public official, who brings an action under section 145.4145, subdivision 2, shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

Sec. 10. **[145.4147] SEVERABILITY.**

If any one or more provisions, sections, subsections, sentences, clauses, phrases, or words of sections 145.4141 to 145.4148, or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of sections 145.4141 to 145.4148 shall remain effective notwithstanding such unconstitutionality. The legislature hereby declares that it would have passed sections 145.4141 to 145.4148, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases, or words of sections 145.4141 to 145.4148, or the application of sections 145.4141 to 145.4148, would be declared unconstitutional.

Sec. 11. **[145.4148] SUPREME COURT JURISDICTION.**

The Minnesota Supreme Court has original jurisdiction over an action challenging the constitutionality of sections 145.4141 to 145.4147 and shall expedite the resolution of the action.