

A bill for an act
relating to health; prohibiting saline amniocentesis; providing civil and criminal
penalties; proposing coding for new law in Minnesota Statutes, chapter 145.

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

Section 1. **[145.417] SALINE AMNIOCENTESIS PROHIBITED.**

Subdivision 1. Definitions. (a) "Abortion" means the use or prescription of any
instrument, medicine, drug, or any other substance or device used intentionally to
terminate the pregnancy of a female 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 a live
birth, or to remove a dead unborn child who died as the result of a spontaneous abortion,
accidental trauma, or a criminal assault on the pregnant female or her unborn child.

(b) "Saline amniocentesis abortion" is a procedure whereby a saline solution is
inserted into the amniotic sac for the purpose of killing the unborn child and artificially
inducing labor.

(c) "Unborn child" means an individual organism of the species Homo sapiens
from fertilization until live birth.

(d) "Attempt to perform or induce an abortion" means to do or omit to do anything
that, under the circumstances as the actor believes them to be, is an act or omission
constituting a substantial step in a course of conduct planned to culminate in performing
an abortion. Such substantial steps include, but are not limited to:

(1) agreeing with an individual to perform an abortion on that individual or on
some other person, whether or not the term "abortion" is used in the agreement, and
whether or not the agreement is contingent on another factor such as receipt of payment or
a determination of pregnancy; or

(2) scheduling or planning a time to perform an abortion on an individual, whether or not the term "abortion" is used, and whether or not the performance is contingent on another factor such as receipt of payment or a determination of pregnancy.

This definition shall not be construed to require that an abortion procedure actually must be initiated for an attempt to occur.

Subd. 2. **Saline amniocentesis abortions prohibited.** It is unlawful to perform or induce, or attempt to perform or induce, a saline amniocentesis abortion.

Subd. 3. **Exception.** It shall not be a violation of subdivision 2 when, in the certified professional judgment of the attending or referring physician, a saline amniocentesis abortion is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself. The certified professional judgment of the attending or referring physician must be 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. 3a. **Immunity from liability.** No nurse, technician, secretary, receptionist, or other employee or agent who is not a physician but who acts at the direction of a physician, and no pharmacist or other individual who is not a physician but who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician shall be liable for an attempt to perform an abortion.

Subd. 4. **Affirmative defenses.** In any proceeding under subdivision 5 or 6 relating to a violation of subdivision 2, it is an affirmative defense that the defendant performed or attempted to perform an abortion for a reason specified in subdivision 3.

Subd. 5. **Criminal penalty.** (a) A person who knowingly performs or induces the performance or induction of an abortion contrary to the provisions of this section shall be guilty of a felony.

(b) A person who knowingly attempts to perform or induce the performance or induction of an abortion contrary to the provisions of this section shall be guilty of a felony.

Subd. 6. **Injunctive remedies.** (a) A person with standing may maintain an action against the performance or attempted performance of abortions unlawful under subdivision 2. Those with standing are:

(1) the attorney general;

(2) county attorneys;

(3) a woman upon whom an abortion unlawful under subdivision 2 has been performed or attempted to be performed;

3.1 (4) the parent of a minor upon whom an abortion unlawful under subdivision 2 has
3.2 been or is about to be performed or attempted to be performed; and

3.3 (5) the father of the unborn child subject to an abortion unlawful under subdivision 2
3.4 that has been, or is about to be, performed or attempted to be performed.

3.5 (b) The attorney general and county attorneys may maintain an action only against
3.6 those shown to have performed, attempted to perform, or about to perform, an abortion
3.7 unlawful under subdivision 2. A woman under paragraph (a), clause (3), may maintain
3.8 an action only against the person or persons who performed or attempted to perform the
3.9 unlawful abortion. Persons under paragraph (a), clauses (4) and (5), may maintain an
3.10 action against the person or persons who performed or attempted to perform the unlawful
3.11 abortion that is the source of their standing and may seek to enjoin other individuals from
3.12 performing or attempting to perform an unlawful abortion on the relative of the plaintiff or
3.13 the woman specified in paragraph (a), clause (3).

3.14 (c) Parties bringing actions against the performance or attempted performance of
3.15 unlawful abortions may seek temporary restraining orders, preliminary injunctions, and
3.16 injunctions according to the rules of civil procedure. If oral or documentary information
3.17 is sought from a defendant or witness by the plaintiff through discovery or other means,
3.18 and the defendant or witness claims a privilege against self-incrimination, the court shall
3.19 rule on whether the defendant or witness is entitled to claim the privilege. If the court
3.20 rules the privilege is properly claimed, it shall issue an order identifying what is subject to
3.21 the privilege, and neither the identified material nor any evidence derived from it may
3.22 thereafter be used in any criminal prosecution against the person from whom it was
3.23 obtained after the claim of privilege unless the prosecutor proves that it was obtained
3.24 from entirely independent sources. The court shall direct that the information be deemed
3.25 privileged as provided.

3.26 (d) A person who knowingly violates the terms of an injunction against the
3.27 performance or attempted performance of unlawful abortions shall be subject to civil
3.28 contempt, and shall be fined \$10,000 for the first violation, \$50,000 for the second
3.29 violation, \$100,000 for the third violation, and for each succeeding violation an amount in
3.30 excess of \$100,000 sufficient to deter future violations. The fines shall be the exclusive
3.31 penalties for such contempt. Each performance or attempted performance of an unlawful
3.32 abortion in violation of the terms of an injunction is a separate violation. These fines shall
3.33 be cumulative. No fine may be assessed against the woman on whom an abortion is
3.34 performed or attempted.

3.35 (e) If judgment is rendered in favor of the plaintiff in any action for an injunction
3.36 or if a defendant is adjudged in contempt of a temporary restraining order, preliminary

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injunction, or injunction, the court shall also render judgment for reasonable attorney fees in favor of the plaintiff against the defendant. No attorney fee may be assessed against the woman on whom an abortion is performed or attempted. The attorney fee shall be taxed and collected as other costs of the action, and when collected, shall be paid to the attorney for the plaintiff. If the attorney is the attorney general, the attorney fee shall be paid into the state treasury. If the attorney is a county attorney, the attorney fee shall be paid into the county treasury.

Subd. 7. **Civil damages for unlawful abortions.** Any person with standing under subdivision 6 may maintain an action against the person who performed or attempted an abortion unlawful under subdivision 2 with knowledge that or with reckless disregard for whether it was such an abortion. The action may seek \$10,000 in punitive damages and treble whatever actual damages the plaintiff may have sustained. Those with standing under subdivision 6, paragraph (a), clauses (3) to (5), may maintain an action only against a person who performed or attempted to perform the unlawful abortion that is the source of their standing. No damages may be assessed against the woman on whom an abortion is performed or attempted. No person shall be estopped from recovery in such a suit on the grounds that either the plaintiff or the person upon whom the abortion was performed or attempted gave consent to the abortion. Any contract of indemnification for such damages shall be void.

Subd. 8. **Privacy of woman upon whom an unlawful abortion is performed or attempted.** In every proceeding or action brought under subdivision 6 or 7, the court shall rule whether the anonymity of any woman upon whom an abortion is performed or attempted should 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 attempted, anyone, other than a public official, who brings an action under subdivision 6 or 7, shall do so under a pseudonym. This subdivision shall not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

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5.1 Subd. 9. **Savings provision.** This section shall not be construed to repeal or modify,
5.2 by implication or otherwise, any provision of state law not expressly altered by this section.

5.3 Subd. 10. **Severability.** If any one or more provision, section, subdivision,
5.4 sentence, clause, phrase, or word of this act or the application thereof to any person or
5.5 circumstance is found to be unconstitutional, the same is hereby declared to be severable
5.6 and the balance of this act shall remain effective notwithstanding such unconstitutionality.
5.7 The legislature hereby declares that it would have passed this act, and each provision,
5.8 section, subdivision, sentence, clause, phrase, or word thereof, irrespective of the fact that
5.9 any one or more provision, section, subdivision, sentence, clause, phrase, or word be
5.10 declared unconstitutional.

5.11 Subd. 11. **Supreme Court jurisdiction.** The Minnesota Supreme Court has original
5.12 jurisdiction over an action challenging the constitutionality of this act and shall expedite
5.13 the resolution of the action.

5.14 **EFFECTIVE DATE.** This section is effective the day following final enactment.