

SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 1233

(SENATE AUTHORS: BENSON, Rosen and Fischbach)

DATE	D-PG	OFFICIAL STATUS
03/02/2015	495	Introduction and first reading Referred to Judiciary

A bill for an act

relating to children; requiring reports of maltreatment; establishing a crime of chemical endangerment of unborn children; amending Minnesota Statutes 2014, section 626.5561, subdivisions 1, 2, 5; proposing coding for new law in Minnesota Statutes, chapter 152.

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

Section 1. **[152.40] CHEMICAL ENDANGERMENT OF AN UNBORN CHILD.**

Subdivision 1. **Definition.** For purposes of this section, "unborn child" has the definition provided in section 609.266, paragraph (a).

Subd. 2. **Misdemeanor.** A person who knowingly causes or permits an unborn child to be exposed to a controlled substance is guilty of a misdemeanor.

Subd. 3. **Gross misdemeanor.** A person who violates subdivision 2 and the exposure to the controlled substance results in substantial bodily harm to an unborn child is guilty of a gross misdemeanor.

Subd. 4. **Felony.** A person who violates subdivision 2 and the exposure to the controlled substance results in the death of an unborn child is guilty of a felony.

Subd. 5. **Affirmative defense.** It is an affirmative defense if a mother of an unborn child charged under this section proves that she had a lawful prescription for the controlled substance, that she was complying with the prescribing physician's instructions, and the prescribing physician knew that the accused was pregnant at the time the prescription was issued.

Sec. 2. Minnesota Statutes 2014, section 626.5561, subdivision 1, is amended to read:

Subdivision 1. **Reports required.** (a) ~~Except as provided in paragraph (b),~~ A person mandated to report under section 626.556, subdivision 3, shall immediately report to the

2.1 local welfare agency if the person knows or has reason to believe that a woman is pregnant
 2.2 and has used a controlled substance for a nonmedical purpose during the pregnancy,
 2.3 including, but not limited to, tetrahydrocannabinol, or has consumed alcoholic beverages
 2.4 during the pregnancy in any way that is habitual or excessive.

2.5 ~~(b) A health care professional or a social service professional who is mandated to~~
 2.6 ~~report under section 626.556, subdivision 3, is exempt from reporting under paragraph~~
 2.7 ~~(a) a woman's use or consumption of tetrahydrocannabinol or alcoholic beverages~~
 2.8 ~~during pregnancy if the professional is providing the woman with prenatal care or other~~
 2.9 ~~healthcare services.~~

2.10 ~~(e)~~ (b) Any person may make a voluntary report if the person knows or has reason to
 2.11 believe that a woman is pregnant and has used a controlled substance for a nonmedical
 2.12 purpose during the pregnancy, including, but not limited to, tetrahydrocannabinol, or
 2.13 has consumed alcoholic beverages during the pregnancy in any way that is habitual or
 2.14 excessive.

2.15 ~~(d)~~ (c) An oral report shall be made immediately by telephone or otherwise. An oral
 2.16 report made by a person required to report shall be followed within 72 hours, exclusive
 2.17 of weekends and holidays, by a report in writing to the local welfare agency. Any report
 2.18 shall be of sufficient content to identify the pregnant woman, the nature and extent of the
 2.19 use, if known, and the name and address of the reporter. The local welfare agency shall
 2.20 accept a report made under paragraph (c) notwithstanding refusal by a voluntary reporter
 2.21 to provide the reporter's name or address as long as the report is otherwise sufficient.

2.22 ~~(e)~~ (d) For purposes of this section, "prenatal care" means the comprehensive
 2.23 package of medical and psychological support provided throughout the pregnancy.

2.24 Sec. 3. Minnesota Statutes 2014, section 626.5561, subdivision 2, is amended to read:

2.25 Subd. 2. **Local welfare agency.** Upon receipt of a report ~~required~~ under subdivision
 2.26 1, the local welfare agency shall immediately notify law enforcement and conduct
 2.27 an ~~appropriate~~ investigation or assessment and offer services indicated under the
 2.28 circumstances. Services offered may include, but are not limited to, a referral for chemical
 2.29 dependency assessment, a referral for chemical dependency treatment if recommended, and
 2.30 a referral for prenatal care. The local welfare agency may also take any appropriate action
 2.31 under chapter 253B, including seeking an emergency admission under section 253B.05.
 2.32 The local welfare agency shall seek an emergency admission under section 253B.05 if the
 2.33 pregnant woman refuses recommended voluntary services or fails recommended treatment.

2.34 Sec. 4. Minnesota Statutes 2014, section 626.5561, subdivision 5, is amended to read:

3.1 Subd. 5. **Immunity.** (a) A person making a voluntary or mandated report under
3.2 subdivision 1 or assisting in an investigation or assessment under subdivision 2 is immune
3.3 from any civil or criminal liability that otherwise might result from the person's actions, if
3.4 the person is acting in good faith.

3.5 (b) This subdivision does not provide immunity to any person for failure to make a
3.6 required report or for committing neglect, physical abuse, or sexual abuse of a child.