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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 2103

02/08/2012 Authored by Lohmer, Erickson, Franson, Benson, M., LeMieur 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 when fetal heartbeat is detected;
1.3 amending Minnesota Statutes 2010, section 147.091, subdivision 1; proposing
1.4 coding for new law in Minnesota Statutes, chapter 145.

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

1.6 Section 1. [145.4071] LEGISLATIVE FINDINGS.

1.7 The legislature finds, according to contemporary medical research, the following:

1.8 (1) as many as 30 percent of natural pregnancies end in spontaneous miscarriage;

1.9 (2) less than five percent of all natural pregnancies end in spontaneous miscarriage

1.10 after detection of fetal cardiac activity;

1.11 (3) over 90 percent of in vitro pregnancies survive the first trimester if cardiac

1.12 activity is detected in the gestational sac;

1.13 (4) nearly 90 percent of in vitro pregnancies do not survive the first trimester where

1.14 cardiac activity is not detected in the gestational sac;

1.15 (5) fetal heartbeat, therefore, has become a key medical predictor that an unborn

1.16 human individual will reach viability and live birth; and

1.17 (6) cardiac activity begins at a biologically identifiable moment in time, normally

1.18 when the fetal heart is formed in the gestational sac.

1.19 Sec. 2. [145.4072] DEFINITIONS.

1.20 For purposes of sections 145.4071 to 145.4073, the following terms have the

1.21 meanings given.

1.22 (a) "Contraceptive" means a device, drug, or chemical that prevents conception.

2.1 (b) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic
2.2 contraction of the fetal heart within the gestational sac.

2.3 (c) "Fetus" means the human offspring developing during pregnancy from the
2.4 moment of conception and includes the embryonic stage of development.

2.5 (d) "Gestational age" means the age of an unborn child as calculated from the first
2.6 day of the last menstrual period of a pregnant woman.

2.7 (e) "Gestational sac" comprises the extra embryonic membranes that envelop the
2.8 fetus and is typically visible by ultrasound after the fourth week of pregnancy.

2.9 (f) "Medical emergency" means a condition that in the physician's good faith medical
2.10 judgment, based upon the facts known to the physician at that time, so endangers the life
2.11 of the pregnant woman or a major bodily function of the pregnant woman as to necessitate
2.12 the immediate performance or inducement of an abortion.

2.13 (g) "Physician" means a person licensed to practice medicine pursuant to chapter
2.14 147, or a physician in training under the supervision of a licensed physician.

2.15 (h) "Spontaneous abortion" means a miscarriage or the spontaneous loss of a fetus
2.16 before the twentieth week of pregnancy.

2.17 (i) "Unborn child" means an individual organism of the species homo sapiens from
2.18 fertilization until live birth.

2.19 **Sec. 3. [145.4073] PROHIBITED ABORTION; FETAL HEARTBEAT.**

2.20 Subdivision 1. **Determination of presences of fetal heartbeat.** (a) Except when
2.21 a medical emergency exists that prevents compliance with this section, no person shall
2.22 perform an abortion on a pregnant woman prior to determining whether the fetus has a
2.23 detectable fetal heartbeat. Any person who performs an abortion on a pregnant woman
2.24 based on the exception provided in this section shall note in the woman's medical record
2.25 that a medical emergency necessitating the abortion existed.

2.26 (b) A person who intends to perform an abortion on a pregnant woman shall
2.27 determine whether there is the presence of a fetal heartbeat of the unborn child according
2.28 to standard medical practice. A person shall comply with this paragraph regardless of
2.29 whether the commissioner of health has promulgated rules under paragraph (c).

2.30 (c) The commissioner of health may promulgate rules describing the appropriate
2.31 methods of performing an examination for the presence of a fetal heartbeat of an unborn
2.32 child based on standard medical practice.

2.33 (d) If a physician performs an abortion on a pregnant woman prior to determining
2.34 whether the fetus has a detectable fetal heartbeat, that physician is subject to disciplinary
2.35 action under section 147.091.

3.1 Subd. 2. **Detected fetal heartbeat; information provided.** This subdivision
3.2 applies to all abortions that are not otherwise prohibited by state law, except when a
3.3 medical emergency exists that prevents compliance with this subdivision.

3.4 (a) If the person who intends to perform an abortion on a pregnant woman detects
3.5 a fetal heartbeat in the unborn child no later than 24 hours prior to the performance of
3.6 the intended abortion, then the following applies: the person intending to perform the
3.7 abortion shall inform the pregnant woman in writing that the unborn child has a fetal
3.8 heartbeat and, to the best of the person's knowledge, the statistical probability of bringing
3.9 the unborn child to term based on the gestational age of the unborn child possessing a
3.10 detectable fetal heartbeat.

3.11 A person shall comply with this subdivision regardless of whether the commissioner
3.12 of health has promulgated rules under paragraph (c).

3.13 (b) The pregnant woman shall sign a form acknowledging that she received
3.14 information from the person intending to perform the abortion that the unborn child has a
3.15 fetal heartbeat and that she is aware of the statistical probability of bringing the unborn
3.16 child to term.

3.17 (c) The commissioner of health may define and promulgate rules based upon
3.18 available medical evidence of the statistical probability of bringing an unborn child to term
3.19 based on the gestational age of an unborn child who possesses a detectable fetal heartbeat.

3.20 Subd. 3. **Abortion prohibited when fetal heartbeat detected.** (a) Except as
3.21 provided in paragraph (b), no person shall knowingly perform an abortion on a pregnant
3.22 woman with specific intent to cause the termination of the life of the unborn child
3.23 whose fetal heartbeat has been detected according to the requirements of subdivision 1.
3.24 Any person who acts based on an exception provided paragraph (b) shall so note in the
3.25 pregnant woman's medical record and shall specify in the pregnant woman's medical
3.26 record which exception the person invoked.

3.27 (b) A person is not in violation of paragraph (a) if that person performs a medical
3.28 procedure designed or intended, in that person's reasonable medical judgment, to prevent
3.29 the death of a pregnant woman or to prevent a serious risk of the substantial and
3.30 irreversible impairment of a major bodily function of the pregnant woman.

3.31 Any person who performs a medical procedure as described in this paragraph shall
3.32 declare in writing, under penalty of perjury, that the medical procedure is necessary, to the
3.33 best of that person's reasonable medical judgment, to prevent the death of the pregnant
3.34 woman or to prevent a serious risk of the substantial and irreversible impairment of a
3.35 major bodily function of the pregnant woman. The person shall also provide in writing,
3.36 under penalty of perjury, the type of medical condition the pregnant woman experienced

4.1 which required the medical procedure performed as described in paragraph (a), and the
4.2 medical rationale for the conclusion that the medical procedure is necessary to prevent the
4.3 death of the pregnant woman or to prevent a serious risk of the substantial and irreversible
4.4 impairment of a major bodily function of the pregnant woman.

4.5 (c) The person who performs a medical procedure as described in paragraph (b) shall
4.6 include the required written documentation in the pregnant woman's medical record and
4.7 shall maintain a record of the documentation for at least seven years.

4.8 (d) A person is not in violation of paragraph (a) if that person has performed an
4.9 examination for the presence of a fetal heartbeat utilizing standard medical practice and
4.10 that examination does not reveal the presence of a heartbeat, or the person has been
4.11 informed by a physician who has performed the examination for fetal heartbeat that the
4.12 examination did not reveal a heartbeat.

4.13 (e) Whoever violates this subdivision is guilty of a felony and must be sentenced to
4.14 imprisonment for not less than six years, but not more than 12 years, and to payment of
4.15 a fine of up to \$10,000.

4.16 Subd. 4. **Record of medical emergency exceptions.** Any person performing an
4.17 abortion on a pregnant woman carrying an unborn child whose heartbeat has been detected
4.18 pursuant to the requirements of subdivision 1 to preserve the health of the pregnant woman
4.19 shall set forth in a separate document, under penalty of perjury, the medical condition that
4.20 the abortion would assertedly address and the medical rationale for the conclusion that
4.21 the abortion is necessary to address that condition. The person shall include this written
4.22 documentation in the pregnant woman's medical record and shall maintain a copy in
4.23 the person's own records for at least seven years. This documentation requirement is
4.24 independent of the provisions in subdivision 3 of this section.

4.25 Subd. 5. **Pregnant woman not liable.** A pregnant woman on whom an abortion
4.26 is performed in violation of subdivision 1 is not guilty of any violation of this section or
4.27 of attempting to commit or conspiring to commit any violation of this section and is not
4.28 subject to a civil penalty based on that violation.

4.29 Subd. 6. **Contraceptives not prohibited.** Nothing in this section prohibits the
4.30 sale, use, prescription, or administration of a measure, drug, or chemical designed for
4.31 contraceptive purposes.

4.32 Subd. 7. **Severability.** If any one or more provision, section, subdivision, paragraph,
4.33 sentence, clause, phrase, or word of sections 145.4071 to 145.4073 or the application
4.34 thereof to any person or circumstance is found to be unconstitutional, the same is hereby
4.35 declared to be severable and the balance of sections 145.4071 to 145.4073 shall remain
4.36 effective notwithstanding such unconstitutionality. The legislature hereby declares

5.1 that it would have passed sections 145.4071 to 145.4073, and each provision, section,
5.2 subdivision, paragraph, sentence, clause, phrase, or word thereof, irrespective of the fact
5.3 that any one or more provision, section, subdivision, paragraph, sentence, clause, phrase,
5.4 or word be declared unconstitutional.

5.5 Sec. 4. Minnesota Statutes 2010, section 147.091, subdivision 1, is amended to read:

5.6 Subdivision 1. **Grounds listed.** The board may refuse to grant a license, may
5.7 refuse to grant registration to perform interstate telemedicine services, or may impose
5.8 disciplinary action as described in section 147.141 against any physician. The following
5.9 conduct is prohibited and is grounds for disciplinary action:

5.10 (a) Failure to demonstrate the qualifications or satisfy the requirements for a license
5.11 contained in this chapter or rules of the board. The burden of proof shall be upon the
5.12 applicant to demonstrate such qualifications or satisfaction of such requirements.

5.13 (b) Obtaining a license by fraud or cheating, or attempting to subvert the licensing
5.14 examination process. Conduct which subverts or attempts to subvert the licensing
5.15 examination process includes, but is not limited to: (1) conduct which violates the
5.16 security of the examination materials, such as removing examination materials from the
5.17 examination room or having unauthorized possession of any portion of a future, current, or
5.18 previously administered licensing examination; (2) conduct which violates the standard of
5.19 test administration, such as communicating with another examinee during administration
5.20 of the examination, copying another examinee's answers, permitting another examinee
5.21 to copy one's answers, or possessing unauthorized materials; or (3) impersonating an
5.22 examinee or permitting an impersonator to take the examination on one's own behalf.

5.23 (c) Conviction, during the previous five years, of a felony reasonably related to the
5.24 practice of medicine or osteopathy. Conviction as used in this subdivision shall include
5.25 a conviction of an offense which if committed in this state would be deemed a felony
5.26 without regard to its designation elsewhere, or a criminal proceeding where a finding or
5.27 verdict of guilt is made or returned but the adjudication of guilt is either withheld or
5.28 not entered thereon.

5.29 (d) Revocation, suspension, restriction, limitation, or other disciplinary action
5.30 against the person's medical license in another state or jurisdiction, failure to report to the
5.31 board that charges regarding the person's license have been brought in another state or
5.32 jurisdiction, or having been refused a license by any other state or jurisdiction.

5.33 (e) Advertising which is false or misleading, which violates any rule of the board,
5.34 or which claims without substantiation the positive cure of any disease, or professional
5.35 superiority to or greater skill than that possessed by another physician.

6.1 (f) Violating a rule promulgated by the board or an order of the board, a state, or
6.2 federal law which relates to the practice of medicine, or in part regulates the practice of
6.3 medicine including without limitation sections 604.201, 609.344, and 609.345, or a state
6.4 or federal narcotics or controlled substance law.

6.5 (g) Engaging in any unethical conduct; conduct likely to deceive, defraud, or harm
6.6 the public, or demonstrating a willful or careless disregard for the health, welfare or safety
6.7 of a patient; or medical practice which is professionally incompetent, in that it may create
6.8 unnecessary danger to any patient's life, health, or safety, in any of which cases, proof
6.9 of actual injury need not be established.

6.10 (h) Failure to supervise a physician's assistant or failure to supervise a physician
6.11 under any agreement with the board.

6.12 (i) Aiding or abetting an unlicensed person in the practice of medicine, except that
6.13 it is not a violation of this paragraph for a physician to employ, supervise, or delegate
6.14 functions to a qualified person who may or may not be required to obtain a license or
6.15 registration to provide health services if that person is practicing within the scope of that
6.16 person's license or registration or delegated authority.

6.17 (j) Adjudication as mentally incompetent, mentally ill or developmentally disabled,
6.18 or as a chemically dependent person, a person dangerous to the public, a sexually
6.19 dangerous person, or a person who has a sexual psychopathic personality by a court of
6.20 competent jurisdiction, within or without this state. Such adjudication shall automatically
6.21 suspend a license for the duration thereof unless the board orders otherwise.

6.22 (k) Engaging in unprofessional conduct. Unprofessional conduct shall include
6.23 any departure from or the failure to conform to the minimal standards of acceptable
6.24 and prevailing medical practice in which proceeding actual injury to a patient need not
6.25 be established.

6.26 (l) Inability to practice medicine with reasonable skill and safety to patients by
6.27 reason of illness, drunkenness, use of drugs, narcotics, chemicals or any other type of
6.28 material or as a result of any mental or physical condition, including deterioration through
6.29 the aging process or loss of motor skills.

6.30 (m) Revealing a privileged communication from or relating to a patient except when
6.31 otherwise required or permitted by law.

6.32 (n) Failure by a doctor of osteopathy to identify the school of healing in the
6.33 professional use of the doctor's name by one of the following terms: osteopathic physician
6.34 and surgeon, doctor of osteopathy, or D.O.

7.1 (o) Improper management of medical records, including failure to maintain adequate
7.2 medical records, to comply with a patient's request made pursuant to sections 144.291 to
7.3 144.298 or to furnish a medical record or report required by law.

7.4 (p) Fee splitting, including without limitation:

7.5 (1) paying, offering to pay, receiving, or agreeing to receive, a commission, rebate,
7.6 or remuneration, directly or indirectly, primarily for the referral of patients or the
7.7 prescription of drugs or devices;

7.8 (2) dividing fees with another physician or a professional corporation, unless the
7.9 division is in proportion to the services provided and the responsibility assumed by each
7.10 professional and the physician has disclosed the terms of the division;

7.11 (3) referring a patient to any health care provider as defined in sections 144.291 to
7.12 144.298 in which the referring physician has a "financial or economic interest," as defined
7.13 in section 144.6521, subdivision 3, unless the physician has disclosed the physician's
7.14 financial or economic interest in accordance with section 144.6521; and

7.15 (4) dispensing for profit any drug or device, unless the physician has disclosed the
7.16 physician's own profit interest.

7.17 The physician must make the disclosures required in this clause in advance and in writing
7.18 to the patient and must include in the disclosure a statement that the patient is free to
7.19 choose a different health care provider. This clause does not apply to the distribution
7.20 of revenues from a partnership, group practice, nonprofit corporation, or professional
7.21 corporation to its partners, shareholders, members, or employees if the revenues consist
7.22 only of fees for services performed by the physician or under a physician's direct
7.23 supervision, or to the division or distribution of prepaid or capitated health care premiums,
7.24 or fee-for-service withhold amounts paid under contracts established under other state law.

7.25 (q) Engaging in abusive or fraudulent billing practices, including violations of the
7.26 federal Medicare and Medicaid laws or state medical assistance laws.

7.27 (r) Becoming addicted or habituated to a drug or intoxicant.

7.28 (s) Prescribing a drug or device for other than medically accepted therapeutic or
7.29 experimental or investigative purposes authorized by a state or federal agency or referring
7.30 a patient to any health care provider as defined in sections 144.291 to 144.298 for services
7.31 or tests not medically indicated at the time of referral.

7.32 (t) Engaging in conduct with a patient which is sexual or may reasonably be
7.33 interpreted by the patient as sexual, or in any verbal behavior which is seductive or
7.34 sexually demeaning to a patient.

7.35 (u) Failure to make reports as required by section 147.111 or to cooperate with an
7.36 investigation of the board as required by section 147.131.

8.1 (v) Knowingly providing false or misleading information that is directly related
8.2 to the care of that patient unless done for an accepted therapeutic purpose such as the
8.3 administration of a placebo.

8.4 (w) Aiding suicide or aiding attempted suicide in violation of section 609.215 as
8.5 established by any of the following:

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

8.8 (2) a copy of the record of a judgment of contempt of court for violating an
8.9 injunction issued under section 609.215, subdivision 4;

8.10 (3) a copy of the record of a judgment assessing damages under section 609.215,
8.11 subdivision 5; or

8.12 (4) a finding by the board that the person violated section 609.215, subdivision
8.13 1 or 2. The board shall investigate any complaint of a violation of section 609.215,
8.14 subdivision 1 or 2.

8.15 (x) Practice of a board-regulated profession under lapsed or nonrenewed credentials.

8.16 (y) Failure to repay a state or federally secured student loan in accordance with
8.17 the provisions of the loan.

8.18 (z) Providing interstate telemedicine services other than according to section
8.19 147.032.

8.20 (aa) Performing an abortion on a pregnant woman prior to determining if the fetus
8.21 has a detectable fetal heartbeat, as required in section 145.4073.