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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 2898

01/31/2022 Authored by Miller, Drazkowski and Poston
The bill was read for the first time and referred to the Committee on Health Finance and Policy

1.1 A bill for an act
1.2 relating to health; prohibiting a physician from performing or inducing an abortion
1.3 when a fetal heartbeat is detected; providing a civil cause of action against a person
1.4 who performs, induces, or aids or abets the performance or inducement of an
1.5 abortion; providing for venue, limitations, immunity, and recovery of attorney fees
1.6 and costs; providing for construction of abortion statutes; proposing coding for
1.7 new law in Minnesota Statutes, chapters 145; 645.

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

1.9 Section 1. LEGISLATIVE FINDINGS.

1.10 The legislature of the state of Minnesota finds, according to contemporary medical
1.11 research, that:

1.12 (1) fetal heartbeat has become a key medical predictor that an unborn child will reach
1.13 live birth;

1.14 (2) cardiac activity begins at a biologically identifiable moment in time, normally when
1.15 the fetal heart is formed in the gestational sac;

1.16 (3) the state of Minnesota has a compelling interest from the outset of a woman's
1.17 pregnancy in protecting the health of the woman and the life of the unborn child; and

1.18 (4) to make an informed choice about whether to continue her pregnancy, the pregnant
1.19 woman has a compelling interest in knowing the likelihood of her unborn child surviving
1.20 to full-term birth based on the presence of cardiac activity.

2.1 Sec. 2. [145.551] DEFINITIONS.

2.2 Subdivision 1. **Scope.** The terms defined in this section apply to sections 145.551 to  
2.3 145.552.

2.4 Subd. 2. **Abortion.** "Abortion" means the act of using or prescribing an instrument,  
2.5 drug, medicine, or any other substance, device, or means with the intent to cause the death  
2.6 of an unborn child of a woman known to be pregnant. Abortion does not include birth control  
2.7 devices or oral contraceptives. An act is not an abortion if the act is done with the intent to  
2.8 save the life or preserve the health of an unborn child, remove a dead unborn child whose  
2.9 death was caused by spontaneous abortion, or remove an ectopic pregnancy.

2.10 Subd. 3. **Fetal heartbeat.** "Fetal heartbeat" means cardiac activity or the steady and  
2.11 repetitive rhythmic contraction of the fetal heart within the gestational sac.

2.12 Subd. 4. **Gestational age.** "Gestational age" means the amount of time that has elapsed  
2.13 from the first day of a woman's last menstrual period.

2.14 Subd. 5. **Gestational sac.** "Gestational sac" means the structure comprising the  
2.15 extraembryonic membranes that envelop the unborn child and that is typically visible by  
2.16 ultrasound after the fourth week of pregnancy.

2.17 Subd. 6. **Medical emergency.** "Medical emergency" means a life-threatening physical  
2.18 condition aggravated by, caused by, or arising from a pregnancy that, as certified by a  
2.19 physician, places the woman in danger of death or a serious risk of substantial impairment  
2.20 of a major bodily function unless an abortion is performed.

2.21 Subd. 7. **Physician.** "Physician" means an individual licensed as a physician or  
2.22 osteopathic physician under chapter 147.

2.23 Subd. 8. **Pregnancy.** "Pregnancy" means the human female reproductive condition that:

2.24 (1) begins with fertilization;

2.25 (2) occurs when the woman is carrying a developing human offspring; and

2.26 (3) is calculated from the first day of the woman's last menstrual period.

2.27 Subd. 9. **Standard medical practice.** "Standard medical practice" means the degree of  
2.28 skill, care, and diligence that an obstetrician of ordinary judgment, learning, and skill would  
2.29 employ in like circumstances. For purposes of determining the presence of a fetal heartbeat  
2.30 under section 145.5511, standard medical practice includes employing the appropriate means  
2.31 of detecting the heartbeat based on the estimated gestational age of the unborn child and  
2.32 the condition of the pregnant woman and her pregnancy.

3.1 Subd. 10. **Unborn child.** "Unborn child" means a human fetus or embryo in any stage  
3.2 of gestation from fertilization until birth.

3.3 Sec. 3. **[145.5511] DETERMINATION OF PRESENCE OF FETAL HEARTBEAT**  
3.4 **REQUIRED; RECORD.**

3.5 Subdivision 1. **Determining whether unborn child has detectable fetal**  
3.6 **heartbeat.** Except as provided in section 145.5513, a physician must not knowingly perform  
3.7 or induce an abortion on a pregnant woman unless the physician has determined, in  
3.8 accordance with this section, whether the woman's unborn child has a detectable fetal  
3.9 heartbeat.

3.10 Subd. 2. **Test for detecting fetal heartbeat.** In making a determination under subdivision  
3.11 1, a physician must use a test that is:

3.12 (1) consistent with the physician's good faith and reasonable understanding of standard  
3.13 medical practice; and

3.14 (2) appropriate for the estimated gestational age of the unborn child and the condition  
3.15 of the pregnant woman and her pregnancy.

3.16 Subd. 3. **Information in medical record.** A physician making a determination under  
3.17 subdivision 1 must record in the pregnant woman's medical record:

3.18 (1) the estimated gestational age of the unborn child;

3.19 (2) the method used to estimate the unborn child's gestational age; and

3.20 (3) the test used for detecting a fetal heartbeat and the date, time, and results of the test.

3.21 Sec. 4. **[145.5512] PROHIBITED ABORTION OF UNBORN CHILD WITH**  
3.22 **DETECTABLE FETAL HEARTBEAT; EFFECT.**

3.23 Subdivision 1. **Prohibition.** (a) Except as provided in section 145.5513, a physician  
3.24 must not knowingly perform or induce an abortion on a pregnant woman if the physician  
3.25 detected a fetal heartbeat for the unborn child according to section 145.5511 or failed to  
3.26 perform a test to detect a fetal heartbeat.

3.27 (b) A physician does not violate this section if the physician performed a test for a fetal  
3.28 heartbeat for the unborn child according to section 145.5511 and did not detect a fetal  
3.29 heartbeat.

3.30 Subd. 2. **Laws not affected.** This section does not affect:

4.1 (1) any law that restricts or regulates an abortion by a particular method or during a  
4.2 particular stage of pregnancy; or

4.3 (2) any law that otherwise regulates or prohibits abortion.

4.4 **Sec. 5. [145.5513] EXCEPTION FOR MEDICAL EMERGENCY; RECORDS.**

4.5 Subdivision 1. **Exception.** Sections 145.5511 and 145.5512 do not apply if a physician  
4.6 believes a medical emergency exists that prevents compliance with section 145.5511 or  
4.7 145.5512.

4.8 Subd. 2. **Information in medical record and practice record.** (a) A physician who  
4.9 performs or induces an abortion under the circumstances described in subdivision 1 shall  
4.10 make written notations in the pregnant woman's medical record of:

4.11 (1) the physician's belief that a medical emergency necessitated the abortion; and

4.12 (2) the medical condition of the pregnant woman that prevented compliance with section  
4.13 145.5511 or 145.5512.

4.14 (b) A physician performing or inducing an abortion under this section shall maintain in  
4.15 the physician's practice records a copy of the notations made according to paragraph (a).

4.16 **Sec. 6. [145.5514] CONSTRUCTION.**

4.17 Subdivision 1. **Right to abortion not created or recognized.** Sections 145.551 to  
4.18 145.552 do not create or recognize a right to abortion before a fetal heartbeat is detected.

4.19 Subd. 2. **Construction.** Sections 145.551 to 145.552 must not be construed to:

4.20 (1) authorize the initiation of a cause of action against or the prosecution of a woman  
4.21 on whom an abortion is performed or induced or attempted to be performed or induced in  
4.22 violation of sections 145.551 to 145.552;

4.23 (2) wholly or partly repeal, either expressly or by implication, any other statute that  
4.24 regulates or prohibits abortion; or

4.25 (3) restrict a political subdivision from regulating or prohibiting abortion in a manner  
4.26 that is at least as stringent as state law.

4.27 **Sec. 7. [145.5515] LIMITATIONS ON PUBLIC ENFORCEMENT.**

4.28 Subdivision 1. **Enforcement.** Notwithstanding any other law, the requirements of sections  
4.29 145.551 to 145.552 shall be enforced exclusively through the private civil actions described  
4.30 in section 145.5516. No enforcement of sections 145.551 to 145.552, and no enforcement

5.1 of chapter 609 in response to violations of sections 145.551 to 145.552, may be taken or  
5.2 threatened by the state, a political subdivision, a district or county attorney, or an executive  
5.3 or administrative officer or employee of the state or of a political subdivision against any  
5.4 person, except as provided in section 145.5516.

5.5 Subd. 2. **Construction.** Subdivision 1 must not be construed to:

5.6 (1) legalize the conduct prohibited by sections 145.551 to 145.552, this chapter, or  
5.7 chapter 609;

5.8 (2) limit in any way or affect the availability of a remedy established under section  
5.9 145.5516; or

5.10 (3) limit the enforceability of any other laws that regulate or prohibit abortion.

5.11 Sec. 8. **[145.5516] CIVIL LIABILITY FOR VIOLATION OR AIDING OR**  
5.12 **ABETTING VIOLATION.**

5.13 Subdivision 1. **Civil action.** Any person, other than an officer or employee of a state or  
5.14 local governmental entity in this state, may bring a civil action against any person who:

5.15 (1) performs or induces an abortion in violation of sections 145.551 to 145.552;

5.16 (2) knowingly engages in conduct that aids or abets the performance or inducement of  
5.17 an abortion, including paying for or reimbursing the costs of an abortion through insurance  
5.18 or otherwise, if the abortion is performed or induced in violation of sections 145.551 to  
5.19 145.552, regardless of whether the person knew or should have known that the abortion  
5.20 would be performed or induced in violation of sections 145.551 to 145.552; or

5.21 (3) intends to engage in the conduct described in clause (1) or (2).

5.22 Subd. 2. **Remedies.** (a) If a claimant prevails in an action brought under this section,  
5.23 the court shall award:

5.24 (1) injunctive relief sufficient to prevent the defendant from violating sections 145.551  
5.25 to 145.552 or engaging in acts that aid or abet violations of sections 145.551 to 145.552;

5.26 (2) statutory damages in an amount of not less than \$10,000 for each abortion that the  
5.27 defendant performed or induced in violation of sections 145.551 to 145.552 and for each  
5.28 abortion performed or induced in violation of sections 145.551 to 145.552 that the defendant  
5.29 aided or abetted; and

5.30 (3) costs and attorney fees.

6.1 (b) Notwithstanding paragraph (a), a court must not award relief under this section in  
6.2 response to a violation of subdivision 1, clause (1) or (2), if the defendant demonstrates that  
6.3 the defendant previously paid the full amount of statutory damages under paragraph (a),  
6.4 clause (2), in a previous action for that particular abortion performed or induced in violation  
6.5 of sections 145.551 to 145.552 or for the particular conduct that aided or abetted an abortion  
6.6 performed or induced in violation of sections 145.551 to 145.552.

6.7 Subd. 3. **Statute of limitations.** A person may bring an action under this section not  
6.8 later than the fourth anniversary of the date the cause of action accrues.

6.9 Subd. 4. **Not a defense.** The following are not a defense to an action brought under this  
6.10 section:

6.11 (1) ignorance or mistake of law;

6.12 (2) a defendant's belief that the requirements of sections 145.551 to 145.552 are  
6.13 unconstitutional or were unconstitutional;

6.14 (3) a defendant's reliance on any court decision that has been overruled on appeal or by  
6.15 a subsequent court, even if that court decision had not been overruled when the defendant  
6.16 engaged in conduct that violates sections 145.551 to 145.552;

6.17 (4) a defendant's reliance on any state or federal court decision that is not binding on  
6.18 the court in which the action has been brought;

6.19 (5) nonmutual issue preclusion or nonmutual claim preclusion;

6.20 (6) the consent of the unborn child's mother to the abortion; or

6.21 (7) any claim that the enforcement of sections 145.551 to 145.552 or the imposition of  
6.22 civil liability against the defendant will violate the constitutional rights of third parties,  
6.23 except as provided in section 145.5517.

6.24 Subd. 5. **Affirmative defense.** (a) It is an affirmative defense if:

6.25 (1) a person sued under subdivision 1, clause (2), reasonably believed, after conducting  
6.26 a reasonable investigation, that the physician performing or inducing the abortion had  
6.27 complied or would comply with sections 145.551 to 145.552; or

6.28 (2) a person sued under subdivision 1, clause (3), reasonably believed, after conducting  
6.29 a reasonable investigation, that the physician performing or inducing the abortion will  
6.30 comply with sections 145.551 to 145.552.

6.31 (b) The defendant has the burden of proving an affirmative defense under this subdivision  
6.32 by a preponderance of the evidence.

7.1 Subd. 6. **Liability not imposed.** This section may not be construed to impose liability  
7.2 on any speech or conduct protected by the first amendment to the United States Constitution,  
7.3 as made applicable to the states through the United States Supreme Court's interpretation  
7.4 of the fourteenth amendment to the United States Constitution, or by the rights conferred  
7.5 by the Minnesota Constitution.

7.6 Subd. 7. **Intervention.** Notwithstanding any other law, this state, a state official, or a  
7.7 district or county attorney may not intervene in an action brought under this section. This  
7.8 subdivision does not prohibit a person described in this subdivision from filing an amicus  
7.9 curiae brief in the action.

7.10 Subd. 8. **Defendant costs or attorney fees.** Notwithstanding any other law, a court may  
7.11 not award costs or attorney fees under the Minnesota Rules of Civil Procedure or any other  
7.12 rule adopted by the supreme court to a defendant in an action brought under this section.

7.13 Subd. 9. **Civil action not permitted.** Notwithstanding any other law, a civil action under  
7.14 this section may not be brought by a person who impregnated the abortion patient through  
7.15 an act of rape, sexual assault, incest, or any other act prohibited by chapter 609.

7.16 Sec. 9. **[145.5517] CIVIL LIABILITY; UNDUE BURDEN DEFENSE LIMITATIONS.**

7.17 (a) A defendant against whom an action is brought under section 145.5516 does not  
7.18 have standing to assert the rights of women seeking an abortion as a defense to liability  
7.19 under that section unless the United States Supreme Court holds that the courts of this state  
7.20 must confer standing on that defendant to assert the third-party rights of women seeking an  
7.21 abortion in state court as a matter of federal constitutional law or the defendant has standing  
7.22 to assert the rights of women seeking an abortion under the tests for third-party standing  
7.23 established by the United States Supreme Court.

7.24 (b) A defendant in an action brought under section 145.5516 may assert an affirmative  
7.25 defense to liability under that section if:

7.26 (1) the defendant has standing to assert the third-party rights of a woman or group of  
7.27 women seeking an abortion in accordance with paragraph (a); and

7.28 (2) the defendant demonstrates that the relief sought by the claimant will impose an  
7.29 undue burden on that woman or that group of women seeking an abortion.

7.30 (c) A court may not find an undue burden under paragraph (b) unless the defendant  
7.31 introduces evidence proving that an award of relief will prevent a woman or group of women  
7.32 from obtaining an abortion or an award of relief will place a substantial obstacle in the path  
7.33 of a woman or group of women who are seeking an abortion.

8.1 (d) A defendant may not establish an undue burden under this section by merely  
8.2 demonstrating that an award of relief will prevent women from obtaining support or  
8.3 assistance, financial or otherwise, from others in their effort to obtain an abortion or arguing  
8.4 or attempting to demonstrate that an award of relief against other defendants or other potential  
8.5 defendants will impose an undue burden on women seeking an abortion.

8.6 (e) The affirmative defense in paragraph (b) is not available if the United States Supreme  
8.7 Court overrules Roe v. Wade, 410 U.S. 113 (1973) or Planned Parenthood v. Casey, 505  
8.8 U.S. 833 (1992), regardless of whether the conduct on which the cause of action is based  
8.9 under section 145.5516 occurred before the United States Supreme Court overruled either  
8.10 of those decisions.

8.11 (f) Nothing in this section shall in any way limit or preclude a defendant from asserting  
8.12 the defendant's personal constitutional rights as a defense to liability under section 145.5516,  
8.13 and a court may not award relief under section 145.5516 if the conduct for which the  
8.14 defendant has been sued was an exercise of state or federal constitutional rights that  
8.15 personally belong to the defendant.

8.16 **Sec. 10. [145.5518] CIVIL LIABILITY; VENUE.**

8.17 (a) A civil action brought under section 145.5516 shall be brought in:

8.18 (1) the county in which all or a substantial part of the events or omissions giving rise to  
8.19 the claim occurred;

8.20 (2) the county of residence of any one of the natural person defendants at the time the  
8.21 cause of action accrued;

8.22 (3) the county of the principal office in this state of any one of the defendants that is not  
8.23 a natural person; or

8.24 (4) the county of residence of the claimant if the claimant is a natural person residing  
8.25 in this state.

8.26 (b) If a civil action is brought under section 145.5516 in any one of the venues described  
8.27 in paragraph (a), the action may not be transferred to a different venue without the written  
8.28 consent of all parties.

8.29 **Sec. 11. [145.5519] SOVEREIGN, GOVERNMENTAL, AND OFFICIAL IMMUNITY**  
8.30 **PRESERVED.**

8.31 (a) This section prevails over any conflicting law.



9.1 (b) This state has sovereign immunity, a political subdivision has governmental immunity,  
9.2 and each officer and employee of this state or a political subdivision has official immunity  
9.3 in any action, claim, or counterclaim or any type of legal or equitable action that challenges  
9.4 the validity of any provision or application of sections 145.551 to 145.552 on constitutional  
9.5 grounds or otherwise.

9.6 (c) A provision of state law may not be construed to waive or abrogate an immunity  
9.7 described in paragraph (b) unless it expressly waives immunity under this section.

9.8 **Sec. 12. [145.552] SEVERABILITY.**

9.9 (a) It is the intent of the legislature of the state of Minnesota that every provision, section,  
9.10 subdivision, paragraph, clause, sentence, phrase, or word in sections 145.551 to 145.552,  
9.11 and every application of the provisions of sections 145.551 to 145.552, are severable from  
9.12 each other.

9.13 (b) If any application of any provision of sections 145.551 to 145.552 to any person,  
9.14 group of persons, or circumstances is found by a court to be invalid or unconstitutional, the  
9.15 remaining application of that provision to all other persons and circumstances shall be  
9.16 severed and shall not be affected. All constitutionally valid applications of this chapter shall  
9.17 be severed from any application that a court finds to be invalid, leaving the valid application  
9.18 in force, because it is the legislature's intent and priority that the valid applications be allowed  
9.19 to stand alone. If a reviewing court finds a provision of sections 145.551 to 145.552 imposes  
9.20 an undue burden in a large or substantial fraction of relevant cases, the applications that do  
9.21 not present an undue burden shall be severed from the remaining applications, shall remain  
9.22 in force, and shall be treated as if the legislature had enacted a statute limited to the persons,  
9.23 group of persons, or circumstances for which the statute's application does not present an  
9.24 undue burden. If any court declares or finds a provision of this chapter facially  
9.25 unconstitutional, when discrete applications of that provision can be enforced against a  
9.26 person, group of persons, or circumstances without violating the United States Constitution  
9.27 and Minnesota Constitution, those applications shall be severed from all remaining  
9.28 applications of the provision, and the provision shall be interpreted as if the legislature had  
9.29 enacted a provision limited to the persons, group of persons, or circumstances for which  
9.30 the provision's application will not violate the United States Constitution and Minnesota  
9.31 Constitution.

9.32 (c) The legislature further declares that it would have enacted each provision, section,  
9.33 subdivision, paragraph, clause, sentence, phrase, or word, and all constitutional applications  
9.34 of sections 145.551 to 145.552, whether any provision, section, subdivision, paragraph,

10.1 clause, sentence, phrase, word, or application of sections 145.551 to 145.552 were declared  
 10.2 unconstitutional or to represent an undue burden.

10.3 (d) If any provision of sections 145.551 to 145.552 is found by any court to be  
 10.4 unconstitutionally vague, then the applications of that provision that do not present  
 10.5 constitutional vagueness problems shall be severed and remain in force.

10.6 (e) No court may decline to enforce the severability requirements of paragraphs (a) to  
 10.7 (d) on the ground that severance would rewrite the statute or involve the court in legislative  
 10.8 or lawmaking activity. A court that declines to enforce or that enjoins a state official from  
 10.9 enforcing a statutory provision does not rewrite a statute, as the statute continues to contain  
 10.10 the same words as before the court's decision. A judicial injunction or declaration of  
 10.11 unconstitutionality:

10.12 (1) is nothing more than an edict prohibiting enforcement that may subsequently be  
 10.13 vacated by a later court if that court has a different understanding of the requirements of  
 10.14 the Minnesota Constitution or United States Constitution;

10.15 (2) is not a formal amendment of the language in a statute; and

10.16 (3) no more rewrites a statute than a decision by the executive not to enforce a duly  
 10.17 enacted statute in a limited and defined set of circumstances.

10.18 **Sec. 13. [145.555] AWARD OF ATTORNEY FEES IN ACTIONS CHALLENGING**  
 10.19 **ABORTION LAWS.**

10.20 (a) Notwithstanding any other law, any person, including an entity, attorney, or law firm,  
 10.21 who seeks declaratory or injunctive relief in a state or federal court to prevent the state, a  
 10.22 political subdivision, any governmental entity or public official in this state, or any person  
 10.23 in this state from enforcing any statute, ordinance, rule, regulation, or any other type of law  
 10.24 that regulates or restricts abortion or that limits taxpayer funding for individuals or entities  
 10.25 that perform or promote abortions, or that represents any litigant seeking such relief in a  
 10.26 state or federal court is jointly and severally liable to pay the costs and attorney fees of the  
 10.27 prevailing party.

10.28 (b) For purposes of this section, a party is considered a prevailing party if a state or  
 10.29 federal court:

10.30 (1) dismisses any claim or cause of action brought against the party that seeks declaratory  
 10.31 or injunctive relief described in paragraph (a), regardless of the reason for the dismissal; or

10.32 (2) enters judgment in the party's favor on any such claim or cause of action.

11.1 (c) Regardless of whether a prevailing party sought to recover costs or attorney fees in  
 11.2 the underlying action, a prevailing party under this section may bring a civil action to recover  
 11.3 costs and attorney fees against a person, including an entity, attorney, or law firm, that  
 11.4 sought declaratory or injunctive relief described in paragraph (a) not later than the third  
 11.5 anniversary of the date on which, as applicable:

11.6 (1) the dismissal or judgment described in paragraph (b) becomes final on the conclusion  
 11.7 of appellate review; or

11.8 (2) the time for seeking appellate review expires.

11.9 (d) It is not a defense to an action brought under paragraph (c) that a prevailing party  
 11.10 under this section failed to seek recovery of costs or attorney fees in the underlying action,  
 11.11 the court in the underlying action declined to recognize or enforce the requirements of this  
 11.12 section, or the court in the underlying action held that any provisions of this section are  
 11.13 invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of  
 11.14 issue or claim preclusion.

11.15 **Sec. 14. [645.205] CONSTRUCTION OF ABORTION STATUTES.**

11.16 (a) A statute that regulates or prohibits abortion shall not be construed to repeal any  
 11.17 other statute that regulates or prohibits abortion, either wholly or partly, unless the repealing  
 11.18 statute explicitly repeals the other statute.

11.19 (b) A statute shall not be construed to restrict a political subdivision from regulating or  
 11.20 prohibiting abortion in a manner that is at least as stringent as the laws of this state unless  
 11.21 that statute explicitly states that political subdivisions are prohibited from regulating or  
 11.22 prohibiting abortion in the manner described by the statute.

11.23 (c) Every statute that regulates or prohibits abortion is severable in each of its applications  
 11.24 to every person and circumstance. If any statute that regulates or prohibits abortion is found  
 11.25 by any court to be unconstitutional, either on its face or as applied, then all applications of  
 11.26 that statute that do not violate the United States Constitution and Minnesota Constitution  
 11.27 shall be severed from the unconstitutional applications and shall remain enforceable,  
 11.28 notwithstanding any other law, and the statute shall be interpreted as if containing language  
 11.29 limiting the statute's application to the persons, group of persons, or circumstances for which  
 11.30 the statute's application will not violate the United States Constitution and Minnesota  
 11.31 Constitution.