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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 1047

02/18/2015 Authored by Whelan, Mack, Pelowski, Lohmer, Lucero and others
The bill was read for the first time and referred to the Committee on Health and Human Services Reform
03/09/2015 Adoption of Report: Amended and re-referred to the Committee on Civil Law and Data Practices
03/19/2015 Adoption of Report: Placed on the General Register
Read Second Time
05/18/2015 Pursuant to Rule 4.20, returned to the Committee on Civil Law and Data Practices

1.1 A bill for an act
1.2 relating to health; creating the Born Alive Infants Protection Act; providing for
1.3 civil remedies and protections; amending Minnesota Statutes 2014, sections
1.4 145.4131, subdivision 1; 145.423.

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

1.6 Section 1. Minnesota Statutes 2014, section 145.4131, subdivision 1, is amended to read:

1.7 Subdivision 1. **Forms.** (a) Within 90 days of July 1, 1998, the commissioner shall
1.8 prepare a reporting form for use by physicians or facilities performing abortions. A copy
1.9 of this section shall be attached to the form. A physician or facility performing an abortion
1.10 shall obtain a form from the commissioner.

1.11 (b) The form shall require the following information:

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

1.14 (2) the method used for each abortion;

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

1.16 (i) less than nine weeks;

1.17 (ii) nine to ten weeks;

1.18 (iii) 11 to 12 weeks;

1.19 (iv) 13 to 15 weeks;

1.20 (v) 16 to 20 weeks;

1.21 (vi) 21 to 24 weeks;

1.22 (vii) 25 to 30 weeks;

1.23 (viii) 31 to 36 weeks; or

1.24 (ix) 37 weeks to term;

- 2.1 (4) the age of the woman at the time the abortion was performed;
- 2.2 (5) the specific reason for the abortion, including, but not limited to, the following:
- 2.3 (i) the pregnancy was a result of rape;
- 2.4 (ii) the pregnancy was a result of incest;
- 2.5 (iii) economic reasons;
- 2.6 (iv) the woman does not want children at this time;
- 2.7 (v) the woman's emotional health is at stake;
- 2.8 (vi) the woman's physical health is at stake;
- 2.9 (vii) the woman will suffer substantial and irreversible impairment of a major bodily
- 2.10 function if the pregnancy continues;
- 2.11 (viii) the pregnancy resulted in fetal anomalies; or
- 2.12 (ix) unknown or the woman refused to answer;
- 2.13 (6) the number of prior induced abortions;
- 2.14 (7) the number of prior spontaneous abortions;
- 2.15 (8) whether the abortion was paid for by:
- 2.16 (i) private coverage;
- 2.17 (ii) public assistance health coverage; or
- 2.18 (iii) self-pay;
- 2.19 (9) whether coverage was under:
- 2.20 (i) a fee-for-service plan;
- 2.21 (ii) a capitated private plan; or
- 2.22 (iii) other;
- 2.23 (10) complications, if any, for each abortion and for the aftermath of each abortion.
- 2.24 Space for a description of any complications shall be available on the form; ~~and~~
- 2.25 (11) the medical specialty of the physician performing the abortion;
- 2.26 (12) whether the abortion resulted in a born alive infant, as defined in section
- 2.27 145.423, subdivision 4, and:
- 2.28 (i) any medical actions taken to preserve the life of the born alive infant;
- 2.29 (ii) whether the born alive infant survived; and
- 2.30 (iii) the status of the born alive infant, should the infant survive.

2.31 Sec. 2. Minnesota Statutes 2014, section 145.423, is amended to read:

2.32 **145.423 ABORTION; LIVE BIRTHS.**

2.33 Subdivision 1. **Recognition; medical care.** A ~~live-child born~~ born alive infant as a

2.34 result of an abortion shall be fully recognized as a human person, and accorded immediate

2.35 protection under the law. All reasonable measures consistent with good medical practice,

3.1 including the compilation of appropriate medical records, shall be taken by the responsible
3.2 medical personnel to preserve the life and health of the ~~child~~ born alive infant.

3.3 Subd. 2. **Physician required.** When an abortion is performed after the twentieth
3.4 week of pregnancy, a physician, other than the physician performing the abortion, shall
3.5 be immediately accessible to take all reasonable measures consistent with good medical
3.6 practice, including the compilation of appropriate medical records, to preserve the life and
3.7 health of any ~~live-birth~~ born alive infant that is the result of the abortion.

3.8 Subd. 3. **Death.** If a ~~child~~ born alive infant described in subdivision 1 dies after
3.9 birth, the body shall be disposed of in accordance with the provisions of section 145.1621.

3.10 Subd. 4. **Definition of born alive infant.** (a) In determining the meaning of
3.11 any Minnesota statute, or of any ruling, regulation, or interpretation of the various
3.12 administrative bureaus and agencies of Minnesota, the words "person," "human being,"
3.13 "child," and "individual" shall include every infant member of the species Homo sapiens
3.14 who is born alive at any stage of development.

3.15 (b) As used in this section, the term "born alive," with respect to a member of the
3.16 species Homo sapiens, means the complete expulsion or extraction from his or her mother
3.17 of that member, at any stage of development, who, after such expulsion or extraction,
3.18 breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of
3.19 voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless
3.20 of whether the expulsion or extraction occurs as a result of a natural or induced labor,
3.21 cesarean section, or induced abortion.

3.22 (c) Nothing in this section shall be construed to affirm, deny, expand, or contract any
3.23 legal status or legal right applicable to any member of the species Homo sapiens at any
3.24 point prior to being born alive, as defined in this section.

3.25 Subd. 5. **Civil and disciplinary actions.** (a) Any person upon whom an abortion
3.26 has been performed, or the parent or guardian of the mother if the mother is a minor,
3.27 and the abortion results in the infant having been born alive, may maintain an action for
3.28 death of or injury to the born alive infant against the person who performed the abortion
3.29 if the death or injury was a result of simple negligence, gross negligence, wantonness,
3.30 willfulness, intentional conduct, or another violation of the legal standard of care.

3.31 (b) If judgment is rendered in favor of the plaintiff in any action described in
3.32 paragraph (a), the court shall also render judgment for reasonable attorney fees in favor of
3.33 the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the
3.34 court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also
3.35 render judgment for reasonable attorney fees in favor of the defendant against the plaintiff.

4.1 (c) Any responsible medical personnel that does not take all reasonable measures
4.2 consistent with good medical practice to preserve the life and health of the born alive
4.3 infant, as required by subdivision 1, may be subject to the suspension or revocation of that
4.4 person's professional license by the professional board with authority over that person.
4.5 Any person who has performed an abortion and against whom judgment has been rendered
4.6 pursuant to paragraph (a) shall be subject to an automatic suspension of the person's
4.7 professional license for at least one year and said license shall be reinstated only after the
4.8 person's professional board requires compliance with this section by all board licensees.

4.9 (d) Nothing in this subdivision shall be construed to hold the mother of the born alive
4.10 infant criminally or civilly liable for the actions of a physician, nurse, or other licensed
4.11 health care provider in violation of this section to which the mother did not give her consent.

4.12 Subd. 6. **Protection of privacy in court proceedings.** In every civil action
4.13 brought under this section, the court shall rule whether the anonymity of any female
4.14 upon whom an abortion has been performed or attempted shall be preserved from public
4.15 disclosure if she does not give her consent to such disclosure. The court, upon motion or
4.16 sua sponte, shall make such a ruling and, upon determining that her anonymity should
4.17 be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the
4.18 sealing of the record and exclusion of individuals from courtrooms or hearing rooms to
4.19 the extent necessary to safeguard her identity from public disclosure. Each order must be
4.20 accompanied by specific written findings explaining why the anonymity of the female
4.21 should be preserved from public disclosure, why the order is essential to that end, how the
4.22 order is narrowly tailored to serve that interest, and why no reasonable, less restrictive
4.23 alternative exists. This section may not be construed to conceal the identity of the plaintiff
4.24 or of witnesses from the defendant.

4.25 Subd. 7. **Status of born alive infant.** Unless the abortion is performed to save the
4.26 life of the woman or fetus, or, unless one or both of the parents of the born alive infant
4.27 agree within 30 days of the birth to accept the parental rights and responsibilities for the
4.28 child, the child shall be an abandoned ward of the state and the parents shall have no
4.29 parental rights or obligations as if the parental rights had been terminated pursuant to
4.30 section 260C.301. The child shall be provided for pursuant to chapter 256J.

4.31 Subd. 8. **Severability.** If any one or more provision, section, subdivision, sentence,
4.32 clause, phrase, or word of this section or the application of it to any person or circumstance
4.33 is found to be unconstitutional, it is declared to be severable and the balance of this section
4.34 shall remain effective notwithstanding such unconstitutionality. The legislature intends
4.35 that it would have passed this section, and each provision, section, subdivision, sentence,

- 5.1 clause, phrase, or word, regardless of the fact that any one provision, section, subdivision,
- 5.2 sentence, clause, phrase, or word is declared unconstitutional.
- 5.3 Subd. 9. **Short title.** This act may be cited as the "Born Alive Infants Protection Act."