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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 2341

- 02/16/2012 Authored by Peppin, Gottwalt, Hosch, Abeler, Shimanski and others
The bill was read for the first time and referred to the Committee on Health and Human Services Reform
- 03/21/2012 Adoption of Report: Pass and re-referred to the Committee on Civil Law
- 03/26/2012 Adoption of Report: Pass and Read Second Time
- 04/18/2012 Calendar for the Day
Read Third Time
Passed by the House and transmitted to the Senate

1.1 A bill for an act
 1.2 relating to health; requiring a prescribing physician be physically present when
 1.3 certain abortion-inducing drugs are administered; providing for criminal penalty;
 1.4 proposing 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. **[145.4233] ABORTION REGULATION; PHYSICAL PRESENCE**
 1.7 **OF PHYSICIAN REQUIRED.**

1.8 Subdivision 1. **Definitions.** For purposes of this section, the following terms have
 1.9 the meanings given:

1.10 (1) "Abortion" means the use or prescription of any instrument, medicine, drug,
 1.11 or any other substance or device to terminate the pregnancy of a woman known to be
 1.12 pregnant with an intention other than to increase the probability of a live birth, to preserve
 1.13 the life or health of the child after live birth, or to remove a dead unborn child who died as
 1.14 the result of natural causes in utero, accidental trauma, or a criminal assault on the pregnant
 1.15 woman or her unborn child, and which causes the premature termination of the pregnancy.

1.16 (2) "Attempt to perform or induce an abortion" means an act, or an omission of
 1.17 a statutorily required act, that, under the circumstances as the actor believes them to
 1.18 be, constitutes a substantial step in a course of conduct planned to culminate in the
 1.19 performance or induction of an abortion in this state in violation of this act.

1.20 (3) "Physician" means a person licensed to practice medicine in the state pursuant
 1.21 to chapter 147.

1.22 Subd. 2. **Physician's physical presence required.** When RU-486 (mifepristone)
 1.23 or any other drug or chemical is used for the purpose of inducing an abortion, the drug
 1.24 or chemical must be administered in the same room and in the physical presence of the

2.1 physician who prescribed, dispensed, or otherwise provided the drug or chemical to the
2.2 patient. The physician inducing the abortion, or a person acting on behalf of the physician
2.3 inducing the abortion, shall make all reasonable efforts to ensure that the patient returns
2.4 12 to 18 days after the administration or use of RU-486 (mifepristone) or any other drug
2.5 or chemical for a follow-up visit so that the physician can confirm that the pregnancy has
2.6 been terminated and assess the patient's medical condition. A brief description of the
2.7 efforts made to comply with this subdivision, including the date, time, and identification by
2.8 name of the person making such efforts, shall be included in the patient's medical record.

2.9 Subd. 3. **Criminal penalty.** Any person who knowingly or recklessly performs or
2.10 attempts to perform an abortion in violation of this section shall be guilty of a felony. No
2.11 penalty may be assessed against the female upon whom the abortion is performed or
2.12 attempted to be performed.

2.13 Subd. 4. **Civil action.** (a) Any female upon whom an abortion has been performed,
2.14 the father of the unborn child who was the subject of the abortion if the father was married
2.15 to the woman who received the abortion at the time the abortion was performed, or a
2.16 maternal grandparent of the unborn child, may maintain an action against the person who
2.17 performed the abortion in knowing or reckless violation of this section for actual and
2.18 punitive damages. Any female upon whom an abortion has been attempted in knowing or
2.19 reckless violation of this section may maintain an action against the person who attempted
2.20 to perform the abortion for actual and punitive damages.

2.21 (b) A cause of action for injunctive relief against any person who has knowingly or
2.22 recklessly violated this section may be maintained by the woman upon whom an abortion
2.23 was performed or attempted to be performed in violation of this section; by any person
2.24 who is the spouse, parent, sibling, or guardian of, or a current or former licensed health
2.25 care provider of, the woman upon whom an abortion has been performed or attempted
2.26 to be performed in violation of this section; by a county attorney with appropriate
2.27 jurisdiction; or by the attorney general. The injunction shall prevent the abortion provider
2.28 from performing further abortions in violation of this section.

2.29 Subd. 5. **Attorney fees.** A prevailing plaintiff in an action under subdivision 4 is
2.30 entitled to an award of reasonable attorney fees. A prevailing defendant in an action under
2.31 subdivision 4 is entitled to reasonable attorney fees if the court finds that the plaintiff's
2.32 suit was frivolous and brought in bad faith.

2.33 Subd. 6. **No cause of action against pregnant woman.** No pregnant female
2.34 who obtains or possesses RU-486 (mifepristone) or any other drug or chemical for the
2.35 purpose of inducing an abortion to terminate her own pregnancy shall be subject to any
2.36 action brought under subdivision 4.

3.1 Subd. 7. Identity in court proceedings. In every civil or criminal proceeding
3.2 brought under this section, the court shall determine whether the anonymity of any female
3.3 upon whom an abortion has been performed or attempted shall be preserved from public
3.4 disclosure if she does not give her consent to such disclosure. The court, upon motion or
3.5 sua sponte, shall make such a ruling and, upon determining that her anonymity should
3.6 be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the
3.7 sealing of the record and exclusion of individuals from courtrooms or hearing rooms to
3.8 the extent necessary to safeguard her identity from public disclosure. Each order shall be
3.9 accompanied by specific written findings explaining why the anonymity of the female
3.10 should be preserved from public disclosure, why the order is essential to that end, how
3.11 the order is narrowly tailored to serve that interest, and why no reasonable less restrictive
3.12 alternative exists. In the absence of written consent of the female upon whom an abortion
3.13 has been performed or attempted, anyone, other than a public official, who brings an
3.14 action under subdivision 4 shall do so under a pseudonym. This subdivision may not be
3.15 construed to conceal the identity of the plaintiff or witnesses from the defendant.

3.16 Subd. 8. Severability. If any one or more provision, section, subdivision,
3.17 paragraph, sentence, clause, phrase, or word of this section or the application thereof to
3.18 any person or circumstance is found to be unconstitutional, the same is hereby declared
3.19 to be severable and the balance of this section shall remain effective notwithstanding
3.20 such unconstitutionality. The legislature hereby declares that it would have passed this
3.21 section, and each provision, section, subdivision, paragraph, sentence, clause, phrase, or
3.22 word thereof, irrespective of the fact that any one or more provision, section, subdivision,
3.23 paragraph, sentence, clause, phrase, or word be declared unconstitutional.

3.24 EFFECTIVE DATE. This section is effective August 1, 2012, and applies to causes
3.25 of action that arise on or after that date.