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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 734

02/09/2015 Authored by Newberger, Lohmer and Lucero
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; requiring a prescribing physician to be physically present
1.3 when certain abortion-inducing drugs are administered; providing for criminal
1.4 penalties; 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. (a) For purposes of this section, the following terms
1.9 have the meanings given.

1.10 (b) "Abortion" means the use or prescription of any instrument, medicine, drug,
1.11 or any other substance or device:

1.12 (1) to purposely kill the unborn child of a woman known to be pregnant; or

1.13 (2) to purposely terminate the pregnancy of a woman known to be pregnant, with a
1.14 purpose other than:

1.15 (i) after viability to produce a live birth and preserve the life and health of the child
1.16 born alive; or

1.17 (ii) to remove a dead unborn child.

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

1.22 (d) "Physician" means a doctor of medicine or osteopathy licensed to practice
1.23 medicine in this state under chapter 147.

2.1 Subd. 2. **Physician's presence required.** When RU-486 (mifepristone) or any drug
2.2 or chemical is used for the purpose of inducing an abortion, the initial administration of
2.3 the drug or chemical must be administered in the same room and in the physical presence
2.4 of the physician who prescribed, dispensed, or otherwise provided the drug or chemical
2.5 to the patient. The physician inducing the abortion, or a person acting on behalf of the
2.6 physician inducing the abortion, shall make all reasonable efforts to ensure that the patient
2.7 returns 12 to 18 days after the administration or use of RU-486 (mifepristone) or any drug
2.8 or chemical for a follow-up visit so that the physician can confirm that the pregnancy has
2.9 been terminated and assess the patient's medical condition. A brief description of the
2.10 efforts made to comply with this subdivision, including the date, time, and identification by
2.11 name of the person making such efforts, shall be included in the patient's medical record.

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

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

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

2.32 Subd. 5. **Attorney fees.** If a judgment is rendered in favor of the plaintiff in any
2.33 action described in subdivision 4, the court shall render judgment for reasonable attorney
2.34 fees in favor of the plaintiff against the defendant. If a judgment is rendered in favor of
2.35 the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad

3.1 faith, the court shall render judgment for reasonable attorney fees in favor of the defendant
3.2 against the plaintiff.

3.3 Subd. 6. **No cause of action against the woman.** No pregnant female who obtains
3.4 or possesses RU-486 (mifepristone) or any drug or chemical for the purpose of inducing
3.5 an abortion to terminate her own pregnancy shall be subject to any action brought under
3.6 subdivision 3.

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

3.22 Subd. 8. **Severability.** If any one or more provision, subdivision, sentence, clause,
3.23 phrase, or word of this section, or the application thereof to any person or circumstance
3.24 is found to be unconstitutional, the same is hereby declared to be severable and the
3.25 balance of this section shall remain effective notwithstanding such unconstitutionality.
3.26 The legislature hereby declares that it would have passed this section, and each provision,
3.27 subdivision, sentence, clause, phrase, or word thereof, irrespective of the fact that any
3.28 one or more provisions, subdivisions, sentences, clauses, phrases, or words be declared
3.29 unconstitutional.

3.30 **EFFECTIVE DATE.** This section is effective August 1, 2015, and applies to causes
3.31 of action that arise on or after that date.