

HOUSE RESEARCH

Bill Summary

FILE NUMBER: H. F. 262

DATE: March 27, 2001

Version: As Introduced

Authors: Boudreau and Others

Subject: Informed Consent for Abortions

Analyst: Elisabeth M. Loehrke

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: www.house.mn/hrd.

Overview

This bill prohibits any woman from receiving an abortion unless the woman provides voluntary, informed consent to the abortion. For her consent to be informed, the woman must receive the specified information at least twenty-four hours before the procedure and must be told of the availability of additional printed information. Voluntary, informed consent is not required in medical emergency situations. The bill establishes civil penalties for any woman, and for the parents of any minor woman, on whom an abortion was performed without complying with the informed consent requirements.

Section

- 1 **Definitions.** Adds § 145.4241. Defines the following terms, for a series of sections establishing informed consent requirements for abortions: abortion, attempt to perform an abortion, medical emergency, physician, and probable gestational age of the unborn child.
- 2 **Informed consent.** Adds § 145.4242. Prohibits abortions from being performed unless the woman on whom the abortion is to be performed gives voluntary, informed consent. Specifies that the following requirements must be met for the woman's consent to be voluntary and informed:
 - at least 24 hours before the abortion, a physician who will perform the abortion or a referring physician must tell the woman the name of the physician who will perform the abortion, the particular medical risks associated with the procedure to be employed, the probable gestational age of the unborn child at the time the abortion is to be performed, and medical risks associated with carrying a child to term. This information may be conveyed by phone or in person, but not by tape recording. Also requires the physician to provide revised information if the information known to the physician changes;
 - at least 24 hours before the abortion, a physician who will perform the abortion, a referring physician, or a physician's agent must tell the woman that MA benefits may be available for prenatal and childbirth costs, that the father must help support the child,

and that the woman has the right to review printed information describing agencies and services that are available and describing probable anatomical and physiological characteristics of the unborn child. This information may be provided by tape recording; the female must certify in writing before the abortion that she has been furnished with the required information and has been given the opportunity to review additional information; and

before the abortion, the physician who will perform the abortion or the physician's agent must receive a copy of the female's certification.

- 3 **Printed information.** Adds § 145.4243. Requires the commissioner of health to publish the following information, in English and each language that is the primary language for 2% or more of the population in Minnesota:

a geographically indexed list of the public and private agencies available to help women through pregnancy, childbirth, and child-rearing; descriptions of the services they provide; and how to contact them. This information may also be provided through a toll-free phone line at the Health Department;

information on the probable anatomical and physiological characteristics of the unborn child, describing the child in two-week gestational increments. The materials are required to be objective, nonjudgmental, and conveying scientific information only; and descriptions of the methods of abortion commonly used, medical risks associated with each procedure, detrimental psychological effects of abortions, and medical risks associated with carrying a child to term.

- 4 **Procedure in case of medical emergency.** Adds § 145.4244. In medical emergency situations when an abortion is required, requires the physician to inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or that a 24-hour delay would cause a serious risk of substantial and irreversible impairment of a major bodily function.

- 5 **Remedies.** Adds § 145.4245. Establishes circumstances under which civil remedies may be sought, allows attorney's fees in certain situations, and directs the court to rule on whether the identity of the woman on whom the abortion was performed or attempted must be shielded from public disclosure.

Subd. 1. Civil remedies. Allows any person on whom an abortion has been performed or attempted without complying with the informed consent requirements, or the parents of any minor on whom an abortion has been performed without complying with the informed consent requirements, to bring suit against the person who performed the abortion for actual and punitive damages.

Subd. 2. Attorney fees. Awards attorney's fees to the plaintiff in cases in which the plaintiff prevails. Awards attorney's fees to the defendant in cases in which the defendant prevails and the court finds that the plaintiff's suit was frivolous and brought in bad faith.

Subd. 3. Protection of privacy in court proceedings. Requires the court to determine whether the identity of a woman on whom an abortion has been performed or attempted will be preserved from public disclosure, in civil suits brought under subdivision 1. If the woman's identity is to be shielded, requires the court to issue an order sealing the record and excluding people from the courtroom to preserve her identity. Requires the court to also make certain findings. Without written consent from the woman on whom the abortion was performed, requires anyone other than a public official who brings a suit under subdivision 1 to do so under a pseudonym.

- 6 **Severability.** Adds § 145.4246. Specifies that if any provision of the statutes requiring informed

consent for abortions is found unconstitutional, the unconstitutional provision is severable and the rest of the provisions remain in effect.