

# HOUSE RESEARCH

## Bill Summary

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**Subject:** Woman's Right to Know Act (Abortion)

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### 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 24 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 remedies for any woman on whom an abortion was performed without complying with the informed consent requirements.

#### Section

- 1** **Short title.** "Woman's Right to Know Act."
- 2** **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, probable gestational age of the unborn child, stable Internet web site, unborn child.
- 3** **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 (except in emergencies):

At least 24 hours before the abortion, a physician who will perform the abortion or a referring physician must tell the woman by phone or in person the particular medical risks associated with the procedure to be employed, the probable gestational age of the

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unborn child at the time the abortion is to be performed, and medical risks associated with carrying a child to term. Also requires the physician to provide revised information if the information known to the physician changes. Allows communicating with a woman through a translator.

At least 24 hours before the abortion, a physician who will perform the abortion, a referring physician, or either physician's agent must tell the woman that MA benefits may be available for prenatal, childbirth, and neonatal 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.

**4 Printed information.** Adds § 145.4243. Requires the commissioner of health to publish and place on the state web site the following information, in English and each language that is the primary language for two percent or more of the population in Minnesota:

- ▶ a geographically indexed list of the public and private agencies available to help women through pregnancy, childbirth, child-rearing and adoption; descriptions of the services they provide; and how to contact them. This information may also be provided through a toll-free phone line provided by 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.
- ▶ with regard to an unborn child of 20 weeks or more, information on the development of the nervous system of an unborn child, fetal response to adverse stimuli, and the impact on fetal organic pain of each commonly employed abortion procedure.

**5 Internet web site.** Adds § 144.4244. Requires the commissioner of health to develop and maintain a stable web site for the information in § 145.4243. Prohibits collecting information regarding who visits the site. Requires weekly monitoring to prevent and correct tampering.

**6 Procedure in case of medical emergency.** Adds § 145.4245. 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.

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### **7 Reporting requirements.** Adds § 145.4246.

**Subd. 1. Reporting form.** By December 1, 2003, and annually thereafter by December 1, requires the commissioner of health to prepare a reporting form for physicians. Specifies categories of statistical information physicians must report, relating to the number of women who received information by telephone and in person; the number of women who obtained printed information under § 145.4243; and the number of emergency abortions performed without providing information.

**Subd. 2. Distribution of forms.** By April 1, 2005, and annually thereafter by April 1, forms must be provided to all physicians in the state and thereafter (1) new physicians, upon licensure, and (2) each December 1 to all physicians.

**Subd. 3. Reporting requirement.** Physicians must file reports under subdivision 1 each April 1.

**Subd. 4. Additional reporting.** This section does not preclude other voluntary or required reports or forms regarding abortion.

**Subd. 5. Failure to report.** Provides a \$500 late fee beginning 30 days after the due date. An additional \$500 fee is imposed for each 30 day period or portion thereof that the report is late. Provides for court enforcement by the commissioner if a physician fails to report more than a year after a report is due.

**Subd. 6. Public statistics.** Requires the commissioner to issue a public statistical report by July 1, 2005, and annually thereafter by July 1, for the prior year; and including all previous calendar years. Requires the report not to disclose information that might identify a reporter or individual who received information.

**Subd. 7. Modifications by rule.** Allows the commissioner to consolidate forms or reports in this section with other forms or reports to achieve administrative convenience or fiscal savings or to reduce the burden of reporting requirements.

### **8 Remedies.** Adds § 145.4247. 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 information requirements, to bring suit against the person who performed or attempted the abortion for actual and punitive damages. Provides that no civil liability may be assessed for failure to provide written information if the commissioner has not made the printed materials or web site available.

**Subd. 2. Suit to compel statistical report.** Allows suit by ten or more citizens to compel issuance of the annual report if the commissioner fails to publish the report or enforcement of other portions of the act.

**Subd. 3. 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

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in bad faith.

**Subd. 4. 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 if necessary 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. Provides for the defendant to know the identity of the plaintiff and witnesses.

- 9**        **Severability.** Adds § 145.4248. Specifies that if any provision of sections 145.4241 to 145.4249 is found unconstitutional, the unconstitutional provision is severable and the rest of the provisions remain in effect.
- 10**      **Supreme court jurisdiction.** Adds § 145.4249. Gives the state supreme court original jurisdiction of constitutional challenges to the bill and provides for expediting the case.
- 11**      **Appropriation.** Appropriates \$274,000 in FY 2004 and \$214,000 in FY 2005 for purposes of this act. Base thereafter to be \$207,000 per year.