

HOUSE RESEARCH

Bill Summary

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Overview

This bill would require abortion providers to determine the probable gestational age of a fetus prior to performing an abortion and would prohibit abortions at or after 20 weeks post-fertilization, unless exceptions apply.

- 1 **Short title.** Titles this act the "Pain-capable Unborn Child Protection Act."
- 2 **Litigation defense fund.** Adds § 8.40. Creates a special revenue fund to pay for any costs and expenses incurred by the state attorney general related to defense of Minnesota Statutes, §§ 145.4141 to 145.4148. States that the fund shall consist of appropriations made to the account by the legislature and private donations, gifts or grants.
- 3 **Forms.** Amends § 145.4131, subd. 1. Adds to the current list of information that must be on abortion reporting forms by adding that it must include information about whether a determination of probable postfertilization age was made and the age that was determined, and, for abortions performed at or after 20 weeks, the basis for determination that the woman's condition necessitated an abortion.
- 4 **Definitions.** Adds § 145.4141. Defines the following terms and phrases for purposes of Minnesota Statutes, §§ 145.4141 to 145.4148: "abortion;" "attempt to perform or induce an abortion;" "fertilization;" "medical emergency;" "physicians;" "postfertilization age;" "probable postfertilization age of the unborn child;" "reasonable medical judgment;" "unborn child or fetus;" and "woman."
- 5 **Legislative findings.** Adds § 145.4142. Describes the legislative findings related to pain-capability of a fetus 20 weeks after fertilization.
- 6 **Determination of gestational age.** Adds § 145.4143.
 - Subd. 1. Determination of postfertilization age.** Requires that no abortion be performed or attempted unless there is first a determination of the probable postfertilization age, except in the case of a medical emergency. Requires the physician making a determination of postfertilization age to make such inquires and perform examinations or tests as necessary to make an accurate diagnosis.

Subd. 2. Unprofessional conduct. Provides that failure to conform to any requirement of this

section constitutes unprofessional conduct for a physician.

7 Abortion of unborn child of 20 or more weeks gestational age prohibited; capable of feeling pain. Adds § 145.4144.

Subd. 1. Abortion prohibition; exemption. Prohibits abortions and attempts to perform abortions when it has been determined by a physician that the probable postfertilization age of the fetus is 20 or more weeks, unless, in reasonable medical judgment, the woman has a condition that so complicates her medical condition as to necessitate the abortion, not including psychological or emotional conditions.

Subd. 2. When abortion not prohibited. Requires abortions permitted under this section after a determination of postfertilization age of 20 or more weeks, to be conducted in a manner that provides, in reasonable medical judgment, the best opportunity for the fetus to survive, unless that manner would pose a greater risk of death to the woman or of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.

8 Enforcement. Adds § 145.4145.

Subd. 1. Criminal penalties. Makes it a felony to intentionally or recklessly perform or attempt to perform an abortion in violation of this act. States that no penalty may be assessed against the woman upon whom the abortion is performed or attempted.

Subd. 2. Civil penalties. (a) Establishes a cause of action against a person who intentionally or recklessly performs an abortion in violation of this act.

(b) Establishes a cause of action for injunctive relief against a person who intentionally violates this act. Provides that the injunction would prevent the abortion provider from performing or attempting to perform further abortions in violation of this act.

(c) Requires a judgment for attorney fees against the defendant if the court finds in favor of the plaintiff in an action described in this section.

(d) Requires a judgment for attorney fees against the plaintiff if the court finds in favor of the defendant in an action described in this section and the court finds that the suit was frivolous or brought in bad faith.

(e) Provides that no attorney fees may be assessed against a woman upon whom an abortion was performed or attempted except according to paragraph (d).

9 Protection of privacy in court proceedings. Adds § 145.4146. Requires that in every civil or criminal action brought under this act, the court must rule on whether to preserve the anonymity of the woman upon whom the abortion was performed or attempted if the woman does not give consent to disclosure of her identity. Provides direction to the court as to procedures for preserving the woman's anonymity if such an order is issued and requires written findings as to such an order. Requires anyone who brings an action under § 145.4145, subd. 2, other than a public official, to do so under a pseudonym in the absence of written consent of the woman upon whom an abortion was performed or attempted. Provides that this section may not be used to conceal the identity of the plaintiff or of witnesses from the defendant.

10 Severability. Provides a severability clause stating that any part of this act, or the application of such, found to be unconstitutional is severable and the remainder of the act shall remain effective regardless of any unconstitutional provision.

11 Supreme Court jurisdiction. Provides that the Minnesota Supreme Court has original jurisdiction

over any action challenging the constitutionality of this act and that the Court shall expedite resolution of the action.