

shall approve or disapprove the plan. If the plan is disapproved, reasons for the disapproval must be provided.

(f) After initial approval, each plan must be updated and submitted for approval at least every five ten years. The plan must be revised as necessary so that it is not inconsistent with state law.

(g) Rules that regulate plan content under subdivision 2 must reflect demographic, geographic, regional, and solid waste system differences that exist among the counties.

Presented to the governor April 14, 2003

Signed by the governor April 17, 2003, 10:40 a.m.

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## CHAPTER 14—S.F.No. 187

*An act relating to health; requiring informed consent of a female upon whom an abortion is performed; providing civil remedies; repealing an obsolete law; appropriating money; amending Minnesota Statutes 2002, section 145.4134; proposing coding for new law in Minnesota Statutes, chapter 145; repealing Minnesota Statutes 2002, section 145.413, subdivision 1.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

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### ARTICLE 1

#### Section 1. **SHORT TITLE.**

Sections 1 to 10 shall be known and may be cited as the “Woman’s Right to Know Act.”

#### Sec. 2. **[145.4241] DEFINITIONS.**

Subdivision 1. **APPLICABILITY.** As used in sections 145.4241 to 145.4249, the following terms have the meaning given them.

Subd. 2. **ABORTION.** “Abortion” means the use or prescription of any instrument, medicine, drug, or any other substance or device to intentionally terminate the pregnancy of a female known to be pregnant, with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

Subd. 3. **ATTEMPT TO PERFORM AN ABORTION.** “Attempt to perform an abortion” means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course

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of conduct planned to culminate in the performance of an abortion in Minnesota in violation of sections 145.4241 to 145.4249.

Subd. 4. MEDICAL EMERGENCY. "Medical emergency" means any condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

Subd. 5. PHYSICIAN. "Physician" means a person licensed as a physician or osteopath under chapter 147.

Subd. 6. PROBABLE GESTATIONAL AGE OF THE UNBORN CHILD. "Probable gestational age of the unborn child" means what will, in the judgment of the physician, with reasonable probability, be the gestational age of the unborn child at the time the abortion is planned to be performed.

Subd. 7. STABLE INTERNET WEB SITE. "Stable Internet Web site" means a Web site that, to the extent reasonably practicable, is safeguarded from having its content altered other than by the commissioner of health.

Subd. 8. UNBORN CHILD. "Unborn child" means a member of the species Homo sapiens from fertilization until birth.

### Sec. 3. [145.4242] INFORMED CONSENT.

No abortion shall be performed in this state except with the voluntary and informed consent of the female upon whom the abortion is to be performed. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if:

(1) the female is told the following, by telephone or in person, by the physician who is to perform the abortion or by a referring physician, at least 24 hours before the abortion:

(i) the particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, breast cancer, danger to subsequent pregnancies, and infertility;

(ii) the probable gestational age of the unborn child at the time the abortion is to be performed; and

(iii) the medical risks associated with carrying her child to term.

The information required by this clause may be provided by telephone without conducting a physical examination or tests of the patient, in which case the information required to be provided may be based on facts supplied to the physician by the female and whatever other relevant information is reasonably available to the physician. It may not be provided by a tape recording, but must be provided during a consultation in which the physician is able to ask questions of the female and the female is able to ask questions of the physician. If a physical examination, tests, or the availability of other information to the physician subsequently indicate, in the medical judgment of

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the physician, a revision of the information previously supplied to the patient, that revised information may be communicated to the patient at any time prior to the performance of the abortion. Nothing in this section may be construed to preclude provision of required information in a language understood by the patient through a translator;

(2) the female is informed, by telephone or in person, by the physician who is to perform the abortion, by a referring physician, or by an agent of either physician at least 24 hours before the abortion:

(i) that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(ii) that the father is liable to assist in the support of her child, even in instances when the father has offered to pay for the abortion; and

(iii) that she has the right to review the printed materials described in section 145.4243, that these materials are available on a state-sponsored Web site, and what the Web site address is. The physician or the physician's agent shall orally inform the female that the materials have been provided by the state of Minnesota and that they describe the unborn child, list agencies that offer alternatives to abortion, and contain information on fetal pain. If the female chooses to view the materials other than on the Web site, they shall either be given to her at least 24 hours before the abortion or mailed to her at least 72 hours before the abortion by certified mail, restricted delivery to addressee, which means the postal employee can only deliver the mail to the addressee.

The information required by this clause may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to have the printed materials given or mailed to her;

(3) the female certifies in writing, prior to the abortion, that the information described in clauses (1) and (2) has been furnished to her and that she has been informed of her opportunity to review the information referred to in clause (2), subclause (iii); and

(4) prior to the performance of the abortion, the physician who is to perform the abortion or the physician's agent obtains a copy of the written certification prescribed by clause (3) and retains it on file with the female's medical record for at least three years following the date of receipt.

#### **Sec. 4. [145.4243] PRINTED INFORMATION.**

(a) Within 90 days after the effective date of sections 145.4241 to 145.4249, the commissioner of health shall cause to be published, in English and in each language that is the primary language of two percent or more of the state's population, and shall cause to be available on the state Web site provided for under section 145.4244 the following printed materials in such a way as to ensure that the information is easily comprehensible:

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(1) geographically indexed materials designed to inform the female of public and private agencies and services available to assist a female through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies, which shall include a comprehensive list of the agencies available, a description of the services they offer, and a description of the manner, including telephone numbers, in which they might be contacted or, at the option of the commissioner of health, printed materials including a toll-free, 24-hours-a-day telephone number that may be called to obtain, orally or by a tape recorded message tailored to a zip code entered by the caller, such a list and description of agencies in the locality of the caller and of the services they offer;

(2) materials designed to inform the female of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a female can be known to be pregnant to full term, including any relevant information on the possibility of the unborn child's survival and pictures or drawings representing the development of unborn children at two-week gestational increments, provided that any such pictures or drawings must contain the dimensions of the fetus and must be realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages. The material shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each procedure, the possible detrimental psychological effects of abortion, and the medical risks commonly associated with carrying a child to term; and

(3) materials with the following information concerning an unborn child of 20 weeks gestational age and at two weeks gestational increments thereafter in such a way as to ensure that the information is easily comprehensible:

(i) the development of the nervous system of the unborn child;

(ii) fetal responsiveness to adverse stimuli and other indications of capacity to experience organic pain; and

(iii) the impact on fetal organic pain of each of the methods of abortion procedures commonly employed at this stage of pregnancy.

The material under this clause shall be objective, nonjudgmental, and designed to convey only accurate scientific information.

(b) The materials referred to in this section must be printed in a typeface large enough to be clearly legible. The Web site provided for under section 145.4244 shall be maintained at a minimum resolution of 70 DPI (dots per inch). All pictures appearing on the Web site shall be a minimum of 200x300 pixels. All letters on the Web site shall be a minimum of 11-point font. All information and pictures shall be accessible with an industry standard browser, requiring no additional plug-ins. The materials required under this section must be available at no cost from the commissioner of health upon request and in appropriate number to any person, facility, or hospital.

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**Sec. 5. [145.4244] INTERNET WEB SITE.**

The commissioner of health shall develop and maintain a stable Internet Web site to provide the information described under section 145.4243. No information regarding who uses the Web site shall be collected or maintained. The commissioner of health shall monitor the Web site on a weekly basis to prevent and correct tampering.

**Sec. 6. [145.4245] PROCEDURE IN CASE OF MEDICAL EMERGENCY.**

When a medical emergency compels the performance of an abortion, the physician shall inform the female, prior to 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 will create serious risk of substantial and irreversible impairment of a major bodily function.

**Sec. 7. [145.4246] REPORTING REQUIREMENTS.**

Subdivision 1. REPORTING FORM. Within 90 days after the effective date of sections 145.4241 to 145.4249, the commissioner of health shall prepare a reporting form for physicians containing a reprint of sections 145.4241 to 145.4249 and listing:

(1) the number of females to whom the physician provided the information described in section 145.4242, clause (1); of that number, the number provided by telephone and the number provided in person; and of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion;

(2) the number of females to whom the physician or an agent of the physician provided the information described in section 145.4242, clause (2); of that number, the number provided by telephone and the number provided in person; of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion; and of each of those numbers, the number provided by the physician and the number provided by an agent of the physician;

(3) the number of females who availed themselves of the opportunity to obtain a copy of the printed information described in section 145.4243 other than on the Web site and the number who did not; and of each of those numbers, the number who, to the best of the reporting physician's information and belief, went on to obtain the abortion; and

(4) the number of abortions performed by the physician in which information otherwise required to be provided at least 24 hours before the abortion was not so provided because an immediate abortion was necessary to avert the female's death and the number of abortions in which such information was not so provided because a delay would create serious risk of substantial and irreversible impairment of a major bodily function.

Subd. 2. DISTRIBUTION OF FORMS. The commissioner of health shall ensure that copies of the reporting forms described in subdivision 1 are provided:

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(1) by December 1, 2003, and by December 1 of each subsequent year thereafter to all physicians licensed to practice in this state; and

(2) to each physician who subsequently becomes newly licensed to practice in this state, at the same time as official notification to that physician that the physician is so licensed.

**Subd. 3. REPORTING REQUIREMENT.** By April 1, 2005, and by April 1 of each subsequent year thereafter, each physician who provided, or whose agent provided, information to one or more females in accordance with section 145.4242 during the previous calendar year shall submit to the commissioner of health a copy of the form described in subdivision 1 with the requested data entered accurately and completely.

**Subd. 4. ADDITIONAL REPORTING.** Nothing in this section shall be construed to preclude the voluntary or required submission of other reports or forms regarding abortions.

**Subd. 5. FAILURE TO REPORT AS REQUIRED.** Reports that are not submitted by the end of a grace period of 30 days following the due date shall be subject to a late fee of \$500 for each additional 30-day period or portion of a 30-day period they are overdue. Any physician required to report according to this section who has not submitted a report, or has submitted only an incomplete report, more than one year following the due date, may, in an action brought by the commissioner of health, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

**Subd. 6. PUBLIC STATISTICS.** By July 1, 2005, and by July 1 of each subsequent year thereafter, the commissioner of health shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted according to this section for each of the items listed in subdivision 1. Each report shall also provide the statistics for all previous calendar years, adjusted to reflect any additional information from late or corrected reports. The commissioner of health shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual providing or provided information according to section 145.4242.

**Subd. 7. CONSOLIDATION.** The commissioner of health may consolidate the forms or reports described in this section with other forms or reports to achieve administrative convenience or fiscal savings or to reduce the burden of reporting requirements.

#### **Sec. 8. [145.4247] REMEDIES.**

**Subdivision 1. CIVIL REMEDIES.** Any person upon whom an abortion has been performed without complying with sections 145.4241 to 145.4249 may maintain an action against the person who performed the abortion in knowing or reckless violation of sections 145.4241 to 145.4249 for actual and punitive damages. Any person upon whom an abortion has been attempted without complying with sections 145.4241 to 145.4249 may maintain an action against the person who attempted to

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perform the abortion in knowing or reckless violation of sections 145.4241 to 145.4249 for actual and punitive damages. No civil liability may be assessed for failure to comply with section 145.4242, clause (2), item (iii), or that portion of section 145.4242, clause (2), requiring written certification that the female has been informed of her opportunity to review the information referred to in section 145.4242, clause (2), item (iii), unless the commissioner of health has made the printed materials or Web site address available at the time the physician or the physician's agent is required to inform the female of her right to review them.

**Subd. 2. SUIT TO COMPEL STATISTICAL REPORT.** If the commissioner of health fails to issue the public report required under section 145.4246, subdivision 6, or fails in any way to enforce this act, any group of ten or more citizens of this state may seek an injunction in a court of competent jurisdiction against the commissioner of health requiring that a complete report be issued within a period stated by court order. Failure to abide by such an injunction shall subject the commissioner to sanctions for civil contempt.

**Subd. 3. ATTORNEY FEES.** If judgment is rendered in favor of the plaintiff in any action described in this section, the court shall also render judgment for reasonable attorney fees in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for reasonable attorney fees in favor of the defendant against the plaintiff.

**Subd. 4. PROTECTION OF PRIVACY IN COURT PROCEEDINGS.** In every civil action brought under sections 145.4241 to 145.4249, the court shall rule whether the anonymity of any female upon whom an abortion has been performed or attempted shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each order must be accompanied by specific written findings explaining why the anonymity of the female should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable, less restrictive alternative exists. In the absence of written consent of the female upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings an action under subdivision 1, shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

**Sec. 9. [145.4248] SEVERABILITY.**

If any one or more provision, section, subsection, sentence, clause, phrase, or word of sections 145.4241 to 145.4249 or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of sections 145.4241 to 145.4249 shall remain effective notwithstanding such unconstitutionality. The legislature hereby declares that it would

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have passed sections 145.4241 to 145.4249, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

**Sec. 10. [145.4249] SUPREME COURT JURISDICTION.**

The Minnesota supreme court has original jurisdiction over an action challenging the constitutionality of sections 145.4241 to 145.4249 and shall expedite the resolution of the action.

**Sec. 11. APPROPRIATION.**

\$274,000 in fiscal year 2004 and \$214,000 in fiscal year 2005 are appropriated from the general fund to the commissioner of health for the purposes of this act. The base for this program in fiscal year 2006 and thereafter is \$207,000.

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**ARTICLE 2**

Section 1. Minnesota Statutes 2002, section 145.4134, is amended to read:

**145.4134 COMMISSIONER'S PUBLIC REPORT.**

(a) By July 1 of each year, except for 1998 and 1999 information, the commissioner shall issue a public report providing statistics for the previous calendar year compiled from the data submitted under sections 145.4131 to 145.4133 and sections 145.4241 to 145.4249. For 1998 and 1999 information, the report shall be issued October 1, 2000. Each report shall provide the statistics for all previous calendar years, adjusted to reflect any additional information from late or corrected reports. The commissioner shall ensure that none of the information included in the public reports can reasonably lead to identification of an individual having performed or having had an abortion. All data included on the forms under sections 145.4131 to 145.4133 and sections 145.4241 to 145.4249 must be included in the public report, except that the commissioner shall maintain as confidential, data which alone or in combination may constitute information from which an individual having performed or having had an abortion may be identified using epidemiologic principles. The commissioner shall submit the report to the senate health and family security committee and the house health and human services committee.

(b) The commissioner may, by rules adopted under chapter 14, alter the submission dates established under sections 145.4131 to 145.4133 for administrative convenience, fiscal savings, or other valid reason, provided that physicians or facilities and the commissioner of human services submit the required information once each year and the commissioner issues a report once each year.

**Sec. 2. REPEALER.**

Minnesota Statutes 2002, section 145.413, subdivision 1, is repealed. Notwithstanding Minnesota Statutes, section 14.05, repeal of section 145.413, subdivision 1,

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does not repeal rules adopted under that subdivision.

Presented to the governor April 14, 2003

Signed by the governor April 14, 2003, 4:45 p.m.

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## CHAPTER 15—S.F.No. 790

*An act relating to human services; recodifying and reorganizing the background study provisions in the Human Services Licensing Act; making conforming changes; amending Minnesota Statutes 2002, sections 245A.04, subdivisions 1, 3, 3a, 3b, 3c, 3d, 3e, 3f; 245A.041; proposing coding for new law as Minnesota Statutes, chapter 245C.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

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### ARTICLE 1

#### BACKGROUND STUDIES

##### Section 1. [245C.01] TITLE.

This chapter may be cited as the "Department of Human Services Background Studies Act."

##### Sec. 2. [245C.02] DEFINITIONS.

Subdivision 1. SCOPE. The definitions in this section apply to this chapter.

Subd. 2. ACCESS TO PERSONS SERVED BY A PROGRAM. "Access to persons served by a program" means physical access to persons receiving services or the persons' personal property without continuous, direct supervision, as defined in subdivision 8.

Subd. 3. ANNUAL OR ANNUALLY. "Annual" or "annually" has the meaning given in section 245A.02, subdivision 2b.

Subd. 4. APPLICANT. "Applicant" has the meaning given in section 245A.02, subdivision 3.

Subd. 5. BACKGROUND STUDY. "Background study" means the review of records conducted by the commissioner to determine whether a subject is disqualified from direct contact with persons served by a program and, where specifically provided in statutes, whether a subject is disqualified from having access to persons served by a program.

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