

**Subject** Repeal of statutes and rules regulating abortions

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**Date** January 12, 2023

## Overview

This bill repeals certain statutes and rules regulating abortions. The statutes repealed include provisions requiring parental notification or judicial approval for minors seeking an abortion; provisions establishing requirements for the performance of abortions; abortion reporting requirements; a section requiring the commissioner of health to regulate abortion facilities; a section providing for treatment of infants born alive after an attempted abortion; provisions requiring women to be provided with certain information at least 24 hours before an abortion; and statutes prohibiting state and local funds from being used for abortions not covered under Medical Assistance. The bill also repeals statutes that prohibit certain sex acts, and repeals statutes governing the sale of certain articles and prohibiting certain advertisements. Additionally, this bill amends statutes governing MA and MinnesotaCare coverage of abortion services, removes language prohibiting abortions from being provided at birth centers, and makes conforming changes.

## Summary

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<b>1</b>	<b>Health data generally.</b>
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Amends § 13.3805, subd. 1. In a subdivision governing health data, strikes a paragraph that allows summary data derived from data collected under section 145.413 to be provided according to section 13.05, subd. 7. This paragraph is being stricken to conform with the repeal of section 145.413, subd. 1, which was repealed in 2003.

This section is effective the day following final enactment.

<b>2</b>	<b>Fetal death report required.</b>
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Amends § 144.222, subd. 1. In a subdivision in the Vital Records Act requiring the death of a fetus of 20 weeks or more gestation, not including abortions, to be

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reported to the commissioner of health, changes the citation to the definition of abortion from section 145.4241 (the abortion definition in that section is being repealed) to section 145.411, subd. 5.

This section is effective the day following final enactment.

**3 Limitation of services.**

Amends § 144.615, subd. 7. Strikes language prohibiting an abortion from being administered at a birth center.

This section is effective the day following final enactment.

**4 Terms.**

Amends § 145.411, subd. 1. Modifies a reference to the sections to which the definitions in section 145.411 apply, by replacing a reference to a section being repealed.

This section is effective the day following final enactment.

**5 Abortion.**

Amends § 145.411, subd. 5. Amends the definition of abortion by replacing the term “pregnant woman” with “individual” and adding a requirement that the instrument, medicine, or drug be supplied, prescribed, or administered with the intention of terminating a pregnancy.

This section is effective the day following final enactment.

**6 Eligibility for grants.**

Amends § 145.4235, subd. 2. In a subdivision governing eligibility for positive alternatives grants, strikes a reference to section 145.4243, which is being repealed. Specifies the information on development of babies and unborn children provided by a grant recipient must be accurate as determined by the commissioner of health.

This section is effective the day following final enactment.

**7 Grounds listed.**

Amends § 148.261, subd. 1. Strikes language making it a ground for disciplinary action for a nurse to perform an act prohibited by section 145.412, to conform with the repeal of section 145.412.

This section is effective the day following final enactment.

<b>Section</b>	<b>Description</b>
8	<p><b>Abortion services.</b></p> <p>Amends § 256B.0625, subd. 16. Strikes language limiting medical assistance coverage of abortion services to situations in which the abortion is a medical necessity to prevent the death of the mother, as certified by two physicians, or is the result of rape or incest. These limitations were found unconstitutional under the state constitution in <i>Doe v. Gomez</i>, a 1995 Minnesota Supreme Court case. Requires medical assistance coverage of abortion services determined to be medically necessary by the treating provider and delivered according to state law.</p> <p>This section is effective the day following final enactment.</p>
9	<p><b>Duties of commissioner of health.</b></p> <p>Amends § 256B.692, subd. 2. Strikes section 62Q.145 from the list of sections a county-based purchasing plan must assure the commissioner of health it will meet; this section is being stricken to conform with the repeal of section 62Q.145. Section 62Q.145 in turn is being repealed to conform with the repeal of section 145.412.</p> <p>This section is effective the day following final enactment.</p>
10	<p><b>Covered health services.</b></p> <p>Amends § 256L.03, subd. 1. Strikes language limiting public funds used to cover abortions under MinnesotaCare to cases in which the life of the female would be endangered or substantial and irreversible impairment of a major bodily function would result if the fetus were carried to term, or where the pregnancy is the result of rape or incest.</p> <p>This section is effective the day following final enactment.</p>
11	<p><b>Modification.</b></p> <p>Amends § 518A.39, subd. 2. In a subdivision governing modifications of child support orders, strikes a reference to section 256B.40 to conform with the repeal of that section.</p> <p>This section is effective the day following final enactment.</p>
12	<p><b>Exception.</b></p> <p>Amends § 609.269. In a section providing that abortions are not covered by statutes establishing penalties for crimes against unborn children, changes the citation to the description of abortion from section 145.412, which is being repealed, to section 145.411, subd. 5.</p> <p>This section is effective the day following final enactment.</p>

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**13 Concealing birth.**

Amends § 617.22. Amends a section establishing criminal penalties for concealing the birth of a child by disposing of its body, to specify that this section applies to a child who dies after its birth, and that it does not apply to the disposition of remains resulting from abortion or miscarriage.

This section is effective the day following final enactment.

**14 Mailing and carrying obscene material.**

Amends § 617.26. In a section establishing a criminal penalty for mailing certain articles and information prohibited under other law, strikes a reference to section 617.201 to conform with the repeal of that section.

This section is effective the day following final enactment.

**15 Repealer.**

Repeals the following statutes and rule, effective the day following final enactment:

Citation	Headnote and Subject
Section 62Q.145	<b>Abortion and scope of practice.</b> Requires health plan company policies on scope of practice for nonphysician health care professions to comply with the requirements for performing abortions in section 145.412, subd. 1, which is being repealed.
Section 144.343, subds. 2, 3, 4, 5, 6, 7	<b>Notification concerning abortion. Parent, abortion; definitions. Limitations. Penalty. Substitute notification provisions. Severability.</b> Requires notification to parents or a guardian for minors or women for whom a guardian was appointed, who are seeking an abortion, establishes a judicial bypass procedure, establishes a criminal penalty and authorizes a civil action for violations, and establishes exceptions to the notification requirement. Subd. 2 was upheld through incorporation of the judicial bypass procedure in subd. 6, in <i>Hodgson v. Minnesota</i> (1990). Subds. 2 to 6 were found unconstitutional in <i>Doe v. Minnesota</i> (Minn. Dist. Ct. July 11, 2022). Subd. 7 is a severability subdivision.
Section 145.1621	<b>Disposition of aborted or miscarried fetuses.</b> Establishes requirements for the disposition by hospitals, clinics, medical facilities, and laboratories of the remains of a human fetus resulting from abortion or miscarriage.

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<p>Section 145.411, subds. 2, 4</p>	<p><b>Viable; abortion facility.</b> Definitions of viable and abortion facility for statutes regulating abortions. Subd. 2, defining viable and potentially viable, was found unconstitutional in <i>Hodgson v. Lawson</i> (8<sup>th</sup> Cir. 1976). Subd. 4, defining abortion facility, is being repealed to conform with the repeal of sections 145.412 and 145.416.</p>
<p>Section 145.412</p>	<p><b>Criminal acts.</b> Establishes requirements for the performance of abortions and makes it a felony to perform an abortion in violation of this section.</p> <p><b>Requirements.</b> Subd. 1 prohibits an abortion from being performed unless it is performed by a physician or physician in training; in a hospital or abortion facility after the first trimester; in a manner consistent with rules adopted by the commissioner of health; and with the consent of the woman submitting to the abortion. This subd. was found unconstitutional in <i>Doe v. Minnesota</i>.</p> <p><b>Unconsciousness; lifesaving.</b> Subd. 2 prohibits an abortion from being performed on a woman who is unconscious, unless the woman was rendered unconscious to have an abortion or if the abortion is necessary to save the woman’s life. This subd. was found unconstitutional in <i>Hodgson v. Lawson</i>.</p> <p><b>Viability.</b> Subd. 3 prohibits an abortion when the fetus is potentially viable unless the abortion is performed in a hospital, an attending physician certifies that the abortion is necessary to preserve the woman’s life or health, and the abortion is performed in a way that will assure live birth and survival of the fetus. The requirement that the abortion be performed in a hospital was found unconstitutional in <i>Doe v. Minnesota</i>. The physician certification requirement and requirement that the abortion be performed in a way that will assure live birth were found unconstitutional in <i>Hodgson v. Lawson</i>.</p> <p><b>Penalty.</b> Subd. 4 makes it a felony to perform an abortion in violation of this section. This subd. was found unconstitutional in <i>Doe v. Minnesota</i>.</p>
<p>Section 145.413, subds. 2, 3</p>	<p><b>Death of woman; penalty.</b> Subd. 2 requires a report to the commissioner of health if a woman who had an abortion dies within a certain period after the abortion, and subd. 3 makes it a misdemeanor to perform an abortion but fail to comply with the</p>

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	reporting requirement. Subd. 3 was found unconstitutional in <i>Doe v. Minnesota</i> .
Section 145.4131	<b>Recording and reporting abortion data.</b> Requires physicians and facilities that perform abortions to annually report to the commissioner of health, and lists information that must be reported.
Section 145.4132	<b>Recording and reporting abortion complication data.</b> Requires physicians to annually report to the commissioner of health on abortion complications encountered.
Section 145.4133	<b>Reporting out-of-state abortions.</b> Requires the commissioner of human services to annually report to the commissioner of health certain information on abortions paid for with state funds and performed out of state.
Section 145.4134	<b>Commissioner's public report.</b> Requires the commissioner to annually issue a public report with statistics compiled from the abortion reports, abortion complication reports, and reports of out-of-state abortions.
Section 145.4135	<b>Enforcement; penalties.</b> Establishes penalties for a physician or facility that fails to submit the required report; allows a group of citizens to seek injunctive relief if the commissioner of health fails to issue the required public report; provides immunity from liability for physicians and facilities that report in good faith; allows the commissioner to take reasonable steps to ensure compliance with sections 145.4131 to 145.4133; and requires the commissioner to develop recommendations on appropriate penalties and enforcement methods.
Section 145.4136	<b>Severability.</b> Provides that any provision of sections 145.4131 to 145.4135 that is found unconstitutional is severable.
Section 145.415	<b>Live fetus after abortion, treatment.</b> Recognizes a potentially viable fetus that is live born following an attempted abortion as a human person; requires medical care to preserve its life and health if a potentially viable fetus is born alive after an attempted abortion; provides for parental rights regarding the child. This section was found unconstitutional in <i>Hodgson v. Lawson</i> .

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<p>Section 145.416</p>	<p><b>Licensing and regulation of facilities.</b> Requires the commissioner of health to license and adopt rules for abortion facilities. Rules adopted under this section were permanently enjoined in <i>Hodgson v. Lawson</i>, a 1977 federal district court decision, except for rules regarding maintenance of consent forms and submission of data regarding abortions.</p>
<p>Section 145.423</p>	<p><b>Abortion; live birth.</b> Also referred to as the Born Alive Infants Protection Act. Requires an infant born alive as a result of abortion to be recognized as a human person, and requires all reasonable measures to preserve the born alive infant’s life and health. Requires a second physician to be available for abortions performed after the 20<sup>th</sup> week of pregnancy, and specifies disposition of the body of a born alive infant who dies after birth. Defines terms, and establishes civil liability and grounds for disciplinary action. Directs courts to rule as to whether, in a civil action, the identity of the woman who received the abortion is disclosed. Provides for parental rights of a born alive infant and provides for severability.</p>
<p>Section 145.4241</p>	<p><b>Definitions; Woman’s Right to Know Act.</b> Defines abortion, attempt to perform an abortion, fetal anomaly incompatible with life, medical emergency, perinatal hospice, physician, probable gestational age of the unborn child, stable Internet website, and unborn child.</p>
<p>Section 145.4242</p>	<p><b>Informed consent; Woman’s Right to Know Act.</b> Prohibits an abortion from being performed except with the informed consent of the woman on whom the abortion is being performed, and lists information that must be provided to the woman seeking the abortion at least 24 hours before the abortion. This section was found unconstitutional in <i>Doe v. Minnesota</i>.</p>
<p>Section 145.4243</p>	<p><b>Printed information; Woman’s Right to Know Act.</b> Requires the commissioner of health to prepare and make available printed materials containing the listed information on services available to assist through pregnancy, childbirth, and parenthood; on fetal development; and on fetal responsiveness to adverse stimuli.</p>
<p>Section 145.4244</p>	<p><b>Internet website; Woman’s Right to Know Act.</b> Requires the commissioner of health to maintain a website with the information listed in section 145.4243.</p>

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Section 145.4245	<b>Procedure in case of medical emergency;</b> Woman’s Right to Know Act. If an abortion is needed because of a medical emergency, requires the physician to tell the woman, if possible, of the medical indications that make the abortion necessary to prevent her death or injury to a major bodily function.
Section 145.4246	<b>Reporting requirements;</b> Woman’s Right to Know Act. Establishes reporting requirements for physicians who provided required information to women seeking an abortion, and requires the commissioner of health to issue an annual public report with statistics from the reports received. Establishes penalties for failing to report, and allows the commissioner to consolidate the forms or reports with other forms or reports.
Section 145.4247	<b>Remedies;</b> Woman’s Right to Know Act. Authorizes civil actions for abortions performed in violation of the Woman’s Right to Know Act, authorizes a suit against the commissioner of health to compel issuance of a public report if the commissioner fails to issue the report, authorizes awarding of attorney fees, and directs courts to rule as to whether, in a civil action, the identity of the woman who received the abortion is disclosed.
Section 145.4248	<b>Severability;</b> Woman’s Right to Know Act. Provides for severability if any provision of sections 145.4241 to 145.4249 is found unconstitutional.
Section 145.4249	<b>Supreme Court jurisdiction;</b> Woman’s Right to Know Act. States that the Minnesota Supreme Court has original jurisdiction over an action challenging the constitutionality of sections 145.4241 to 145.4249.
Section 145.925, subds. 2, 4	<b>Family planning grants; prohibition.</b> Subd. 2 prohibits the commissioner from issuing family planning grants to a nonprofit corporation, other than a hospital or HMO, that performs abortions, and prohibits grant recipients from using state funds for contracts with a nonprofit corporation, other than a hospital or HMO, that performs abortions. This subd. was found unconstitutional in <i>Planned Parenthood of Minnesota v. State of Minnesota</i> , (8th Cir. 1980).  <b>Parental notification.</b> Subd. 4 requires a person who provides family planning services funded under this section and who advises abortion or sterilization for an unemancipated minor to notify the

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	minor’s parent or guardian, except when minors are authorized under other law to consent to health services.
Section 256B.011	<b>Policy for childbirth and abortion funding.</b> States that it is the policy of the state of Minnesota to give preference to childbirth over abortion.
Section 256B.40	<b>Subsidy for abortions prohibited.</b> Prohibits medical assistance funds from being used for abortions that are not eligible for funding under sections 256B.02 and 256B.0625. This section was found unconstitutional with regard to public funding for therapeutic abortions in <i>Doe v. Gomez</i> .
Section 261.28	<b>Subsidy for abortions prohibited.</b> Prohibits funds from the state and political subdivisions from being used for abortions that are not eligible for funding under sections 256B.02 and 256B.0625. This section was found unconstitutional with regard to public funding for therapeutic abortions in <i>Doe v. Gomez</i> .
Section 393.07, subd. 11	<b>Abortion services; policy and powers.</b> Prohibits local social services agencies from providing medical assistance grants or reimbursement for abortions that are not eligible for funding under sections 256B.02 and 256B.0625. This section was found unconstitutional with regard to public funding for therapeutic abortions in <i>Doe v. Gomez</i> .
Section 609.293, subds. 1, 5	<b>Sodomy.</b> Establishes criminal penalties for persons who voluntarily engage in sodomy. This section was found unconstitutional as applied to private, noncommercial acts by consenting adults in <i>Doe v. Ventura</i> (4 <sup>th</sup> Dist. Ct. Hennepin County, 2001).
Section 609.34	<b>Fornication.</b> Makes it a misdemeanor for a man and a single woman to have sexual intercourse with each other.
Section 609.36	<b>Adultery.</b> Establishes criminal penalties for both parties when a married woman has sexual intercourse with a man other than her husband.
Section 617.20	<b>Drugs to produce miscarriage.</b> Makes it a felony to manufacture, give, or sell an instrument or substance that may be unlawfully used to produce a miscarriage.

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Section 617.201	<b>Indecent articles and information.</b> Establishes criminal penalties for selling, giving away, or advertising or offering for sale or distribution, any instrument or drug to cause an unlawful abortion, or for providing written or oral information about how to obtain an instrument or drug to cause an unlawful abortion.
Section 617.202	<b>Sale of articles relating to prevention of conception or disease.</b> Limits the sale or distribution of instruments and drugs to prevent conception or disease to persons and organizations that deal primarily with health or welfare, and establishes criminal penalties for violating this section.
Section 617.21	<b>Evidence.</b> In a prosecution for abortion or attempted abortion, provides that no person shall be excused from testifying on the ground that the person's testimony would be self-incriminating.
Section 617.28	<b>Certain medical advertisements.</b> Establishes criminal penalties for advertising for the treatment or curing of venereal diseases, advertising that a person is a specialist in diseases of the sexual organs or diseases caused by sexual weakness or sexual indulgence, or advertising any medicine or other means to cure sexual diseases or cause miscarriage or abortion. Also establishes criminal penalties for publishing or distributing advertising with prohibited content. This section was found unconstitutional as it applies to advertising and publication of information on inducing miscarriages or abortions in <i>Meadowbrook Women's Clinic, P.A. v. State of Minnesota</i> (D. Minn. 1983).
Section 617.29	<b>Evidence.</b> Provides that the production of an advertisement published or distributed contrary to this section and section 617.28, which is being repealed, is prima facie evidence of guilt.
Minn. Rules p. 4615.3600	<b>Reports to the commissioner of health.</b> Requires ambulatory facilities (defined as institutions or portions of institutions devoted primarily to outpatient pregnancy terminations) to submit reports on pregnancy terminations and complications from pregnancy terminations to the commissioner of health.
Minn. Rules p. 9505.0235	<b>Abortion services.</b> Defines abortion related services and limits medical assistance payment for these services to abortions that meet one of the listed criteria, unless otherwise provided by law.



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