

This Document can be made available in alternative formats upon request

State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 1809

02/15/2023 Authored by Demuth, Torkelson, Neu Brindley, Kiel, Urdahl and others
The bill was read for the first time and referred to the Committee on Health Finance and Policy

1.1 A bill for an act
1.2 relating to health care; prohibiting partial-birth abortions and abortions in the third
1.3 trimester of pregnancy; requiring licensure of abortion facilities; requiring notice
1.4 in certain circumstances to a parent or guardian of a minor on whom an abortion
1.5 is performed; requiring an unborn child who is born alive following an attempted
1.6 abortion to be treated as a person under the law; appropriating money; amending
1.7 Laws 2023, chapter 4, section 1.

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

1.9 Section 1. Laws 2023, chapter 4, section 1, is amended to read:

1.10 Section 1. 145.409 REPRODUCTIVE HEALTH RIGHTS.

1.11 Subdivision 1. Short title. This section may be cited as the "Protect Reproductive Options
1.12 Act."

1.13 Subd. 2. Definition Definitions. (a) For purposes of this section, the following definitions
1.14 apply.

1.15 (b) "Abortion" has the meaning given in section 145.411, subdivision 5.

1.16 (c) "Abortion facility" means a clinic, health center, or other facility in which the
1.17 pregnancies of ten or more women known to be pregnant are willfully terminated or aborted
1.18 each month. A facility licensed as a hospital or as an outpatient surgical center pursuant to
1.19 sections 144.50 to 144.56 shall not be considered an abortion facility.

1.20 (d) "Accrediting or membership organization" means a national organization that
1.21 establishes evidence-based clinical standards for abortion care and accredits abortion facilities
1.22 or accepts as members abortion facilities following an application and inspection process.

2.1 (e) "Commissioner" means the commissioner of health.

2.2 (f) "Health care provider" means a physician licensed to practice medicine in Minnesota
2.3 or other health care professional authorized to practice that individual's profession in
2.4 Minnesota and whose scope of practice and qualifications include the performance of
2.5 abortions.

2.6 (g) "Medical emergency" means a condition that, in reasonable medical judgment, so
2.7 complicates the medical condition of the pregnant woman as to necessitate the immediate
2.8 abortion of her pregnancy to avert her death or for which a delay will create serious risk of
2.9 substantial and irreversible physical impairment of a major bodily function, not including
2.10 psychological or emotional conditions. A condition is not a medical emergency if it is based
2.11 on a claim, diagnosis, or determination that the woman may engage in conduct which she
2.12 intends to result in her death or in the substantial and irreversible physical impairment of a
2.13 major bodily function.

2.14 (h) "Partial-birth abortion" means an abortion in which the individual performing the
2.15 abortion:

2.16 (1) deliberately and intentionally vaginally delivers a living fetus until, in the case of a
2.17 head-first presentation, the entire fetal head is outside the body of the mother, or, in the case
2.18 of breech presentation, any part of the fetal trunk past the navel is outside the body of the
2.19 mother, for the purpose of performing an overt act that the individual knows will kill the
2.20 partially delivered fetus; and

2.21 (2) performs the overt act, other than completion of delivery, that kills the partially
2.22 delivered fetus.

2.23 (i) "Reproductive health care" means health care offered, arranged, or furnished for the
2.24 purpose of preventing pregnancy, terminating a pregnancy, managing pregnancy loss, or
2.25 improving maternal health and birth outcomes. Reproductive health care includes, but is
2.26 not limited to, contraception; sterilization; preconception care; maternity care; abortion care;
2.27 family planning and fertility services; and counseling regarding reproductive health care.

2.28 (j) "Third trimester" means the stage of pregnancy that begins at the end of the 26th
2.29 week from the beginning of the pregnant woman's last menstrual period.

2.30 Subd. 3. **Reproductive freedom.** (a) Every individual has a fundamental right to make
2.31 autonomous decisions about the individual's own reproductive health, including the
2.32 fundamental right to use or refuse reproductive health care.

3.1 (b) Every individual who becomes pregnant has a fundamental right to continue the
 3.2 pregnancy and give birth, or obtain an abortion, and to make autonomous decisions about
 3.3 how to exercise this fundamental right.

3.4 (c) This subdivision does not:

3.5 (1) authorize the performance of partial-birth abortions in a manner that is prohibited
 3.6 under subdivision 6;

3.7 (2) authorize the performance of abortions in the third trimester in a manner that is
 3.8 prohibited under subdivision 7;

3.9 (3) limit the authority of the commissioner to license abortion facilities under subdivisions
 3.10 9 to 16;

3.11 (4) prohibit notice, following an abortion, to a parent or guardian of a minor on whom
 3.12 an abortion is performed in a medical emergency under subdivision 17; and

3.13 (5) prohibit an unborn child who is born alive following an attempted abortion from
 3.14 being treated as a person under the law under subdivision 18.

3.15 Subd. 4. **Right to reproductive freedom recognized.** The Minnesota Constitution
 3.16 establishes the principles of individual liberty, personal privacy, and equality. Such principles
 3.17 ensure the fundamental right to reproductive freedom.

3.18 Subd. 5. **Local unit of government limitation.** A local unit of government may not
 3.19 regulate an individual's ability to freely exercise the fundamental rights set forth in this
 3.20 section in a manner that is more restrictive than that set forth in this section.

3.21 Subd. 6. **Partial-birth abortions prohibited; exception.** (a) It is prohibited for any
 3.22 individual to knowingly perform a partial-birth abortion that causes the death of a human
 3.23 fetus.

3.24 (b) Paragraph (a) does not apply to a partial-birth abortion that is necessary to save the
 3.25 life of a mother whose life is endangered by a physical disorder, physical illness, or physical
 3.26 injury, including a life-endangering physical condition caused by or arising from the
 3.27 pregnancy itself.

3.28 Subd. 7. **Abortion in third trimester prohibited; exceptions.** (a) Except as provided
 3.29 in paragraphs (b) and (c), it is prohibited for any individual to knowingly or intentionally
 3.30 cause an abortion in the third trimester of pregnancy that results in the death of the unborn
 3.31 child.

4.1 (b) Medical treatment provided to a pregnant woman that results in the accidental death
4.2 of, or unintentional injury to, the unborn child is not a violation of paragraph (a).

4.3 (c) Paragraph (a) does not apply to an abortion performed:

4.4 (1) if the pregnancy is the result of conduct that would constitute a violation of section
4.5 609.342, 609.343, 609.344, 609.345, or 609.3451, provided documentation is presented to
4.6 the attending health care provider that the conduct was reported to law enforcement within
4.7 the first 15 weeks of pregnancy;

4.8 (2) if the pregnancy is the result of conduct that would constitute a violation of section
4.9 609.365, provided documentation is presented to the attending health care provider that the
4.10 conduct was reported to law enforcement within the first 15 weeks of pregnancy; or

4.11 (3) to avert the death of the pregnant woman or to prevent a serious risk of substantial
4.12 and irreversible physical impairment of a major bodily function of the pregnant woman,
4.13 not including psychological or emotional conditions.

4.14 Subd. 8. **Pregnant woman not subject to criminal penalties.** A pregnant woman who
4.15 sought or obtained an abortion that violates subdivision 6 or 7 shall not be subject to criminal
4.16 penalties for violating subdivision 6 or 7.

4.17 Subd. 9. **License required for abortion facilities.** (a) Beginning July 1, 2024, no abortion
4.18 facility shall be established, operated, or maintained in the state without first obtaining a
4.19 license from the commissioner according to this subdivision and subdivisions 10 to 16.

4.20 (b) A license issued under this subdivision and subdivisions 10 to 16 is not transferable
4.21 or assignable and is subject to suspension or revocation at any time for failure to comply
4.22 with this subdivision and subdivisions 10 to 16.

4.23 (c) If a single entity maintains abortion facilities on different premises, each facility
4.24 must obtain a separate license.

4.25 (d) To be eligible for licensure under this subdivision and subdivisions 10 to 16, an
4.26 abortion facility must be accredited or a member of an accrediting or membership
4.27 organization or must obtain accreditation or membership within six months of the date of
4.28 the application for licensure. If the abortion facility loses its accreditation or membership,
4.29 the abortion facility must immediately notify the commissioner.

4.30 (e) The commissioner, the attorney general, an appropriate county attorney, or a woman
4.31 upon whom an abortion has been performed or attempted to be performed at an unlicensed
4.32 facility may seek an injunction in district court against the continued operation of the facility.

5.1 Proceedings for securing an injunction may be brought by the attorney general or by the
5.2 appropriate county attorney.

5.3 (f) Sanctions provided in this subdivision do not restrict other available sanctions.

5.4 Subd. 10. **Temporary license.** For new abortion facilities planning to begin operations
5.5 on or after July 1, 2024, the commissioner may issue a temporary license to the abortion
5.6 facility that is valid for a period of six months from the date of issuance. The abortion facility
5.7 must submit to the commissioner an application and applicable fee for licensure as required
5.8 under subdivisions 11 and 14. The application must include the information required under
5.9 subdivision 11, clauses (1), (2), (3), (5), and (6), and provide documentation that the abortion
5.10 facility has submitted the application for accreditation or membership from an accrediting
5.11 or membership organization. Upon receipt of accreditation or membership verification, the
5.12 abortion facility must submit to the commissioner the information required in subdivision
5.13 11, clause (4), and the applicable fee under subdivision 14. The commissioner shall then
5.14 issue a new license.

5.15 Subd. 11. **Application.** An application for a license to operate an abortion facility and
5.16 the applicable fee under subdivision 14 must be submitted to the commissioner on a form
5.17 provided by the commissioner and must contain:

5.18 (1) the name of the applicant;

5.19 (2) the site location of the abortion facility;

5.20 (3) the name of the person in charge of the abortion facility;

5.21 (4) documentation that the abortion facility is accredited or a member of an accrediting
5.22 or membership organization, including the effective date and the expiration date of the
5.23 accreditation or membership, and the date of the last site visit by the accrediting or
5.24 membership organization;

5.25 (5) the names and license numbers, if applicable, of the health care professionals on
5.26 staff at the abortion facility; and

5.27 (6) any other information the commissioner deems necessary.

5.28 Subd. 12. **Inspections.** Prior to initial licensure and at least once every two years
5.29 thereafter, the commissioner shall perform a routine and comprehensive inspection of each
5.30 abortion facility. Facilities shall be open at all reasonable times to an inspection authorized
5.31 in writing by the commissioner. No notice need be given to any person prior to an inspection
5.32 authorized by the commissioner.

6.1 Subd. 13. **Suspension, revocation, and refusal to renew.** The commissioner may refuse
6.2 to grant or renew, or may suspend or revoke, a license on any of the grounds described
6.3 under section 144.55, subdivision 6, paragraph (a), clause (2), (3), or (4), or upon the loss
6.4 of accreditation or membership described in subdivision 11, clause (4). The applicant or
6.5 licensee is entitled to a notice and a hearing as described under section 144.55, subdivision
6.6 7, and a new license may be issued after proper inspection of an abortion facility has been
6.7 conducted.

6.8 Subd. 14. **Fees.** (a) The biennial license fee for abortion facilities is \$365.

6.9 (b) The temporary license fee is \$365.

6.10 (c) Fees shall be collected and deposited according to section 144.122.

6.11 Subd. 15. **Renewal.** (a) A license issued under this section expires two years from the
6.12 date of issuance.

6.13 (b) A temporary license issued under this section expires six months from the date of
6.14 issuance and may be renewed for one additional six-month period.

6.15 Subd. 16. **Records.** All health records maintained on each client by an abortion facility
6.16 are subject to sections 144.292 to 144.298.

6.17 Subd. 17. **Notice to parent or guardian.** If a health care provider did not obtain the
6.18 consent of a parent or guardian of a pregnant minor before performing an abortion on the
6.19 pregnant minor because of a medical emergency, the health care provider must notify the
6.20 minor's parent or guardian within 24 hours after the abortion and must so certify in the
6.21 minor's medical record.

6.22 Subd. 18. **Born alive child.** Any unborn child who is born alive following an attempted
6.23 abortion shall be treated as a person under the law, and a birth certificate shall be issued
6.24 certifying the child's birth. If the child later dies, a death certificate shall be issued.

6.25 Subd. 19. **Severability.** If any one or more provision, section, subdivision, sentence,
6.26 clause, phrase, or word of this section or the application of it to any person or circumstance
6.27 is found to be unconstitutional, it is declared to be severable and the balance of this section
6.28 shall remain effective notwithstanding such unconstitutionality. The legislature intends that
6.29 it would have passed this section, and each provision, section, subdivision, sentence, clause,
6.30 phrase, or word, regardless of the fact that any one provision, section, subdivision, sentence,
6.31 clause, phrase, or word is declared unconstitutional.

7.1 Sec. 2. **APPROPRIATIONS; LICENSURE OF ABORTION FACILITIES.**

7.2 \$55,000 in fiscal year 2024 and \$8,000 in fiscal year 2025 are appropriated from the
7.3 state government special revenue fund to the commissioner of health for licensing activities
7.4 under Minnesota Statutes, section 145.409, subdivisions 9 to 16. The base for this program
7.5 is \$42,000 in fiscal year 2026 and \$8,000 in fiscal year 2027.