

LEGISLATIVE BILL 425

Approved by the Governor May 29, 1991

Introduced by Labeledz, 5; Lindsay, 9; Dierks, 40;
Robinson, 16; Byars, 30; R. Johnson, 34;
Kristensen, 37; Coordsen, 32; Abboud, 12;
Schmit, 23; Conway, 17; Horgan, 4;
Smith, 33; Hall, 7; Robak, 22; Crosby, 29;
Rogers, 41; Beyer, 3; Pirsch, 10;
Hefner, 19; Schrock, 39; Cudaback, 36;
Chizek, 31; Elmer, 38; Peterson, 21;
Wehrbein, 2; Hartnett, 45; L. Johnson, 15;
Lamb, 43; Schellpeper, 18

AN ACT relating to public health and welfare; to amend sections 25-1914 and 71-148, Reissue Revised Statutes of Nebraska, 1943; to define terms; to require parental notice and provide for judicial authorization of abortion as prescribed; to provide a penalty; to provide for immunity from liability; to state findings and encourage prosecution of certain crimes; to provide duties relating to informing students; to eliminate a notice requirement; to harmonize provisions; to provide severability; and to repeal the original sections, and also section 28-347, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. For purposes of sections 1 to 8 of this act:

(1) Abortion shall mean an act, procedure, device, or prescription administered to a woman known by the person so administering to be pregnant and administered with the intent and result of producing the premature expulsion, removal, or termination of the human life within the womb of the pregnant woman, except that in cases in which the unborn child's viability is threatened by continuation of the pregnancy, early delivery after viability shall not be construed as an abortion;

(2) Facsimile copy shall mean a copy generated by a system that encodes a document or photograph into electrical signals, transmits those signals over telecommunications lines, and then reconstructs the signals to create an exact duplicate of the original

document at the receiving end;

(3) Parent shall mean one parent or guardian of the pregnant woman selected by the pregnant woman. The attending physician shall certify in writing in the pregnant woman's medical record the parent or guardian selected by the woman;

(4) Physician or attending physician shall mean the physician intending to perform the abortion; and

(5) Pregnant woman shall mean an unemancipated woman under eighteen years of age who is pregnant or a pregnant woman for whom a guardian has been appointed pursuant to sections 30-2620 to 30-2629 because of a finding of incapacity, disability, or incompetency.

Sec. 2. (1) No abortion shall be performed upon a pregnant woman until at least forty-eight hours after written notice of the pending abortion has been delivered in the manner specified in subsection (2) or (3) of this section.

(2) The notice shall be addressed to the parent at his or her usual place of residence and shall be delivered personally to the parent by the physician or an agent.

(3) In lieu of the delivery required by subsection (2) of this section, notice shall be made by registered or certified mail addressed to the parent at his or her usual place of residence with return receipt requested and restricted delivery to the addressee, which means the postal employee can only deliver mail to the authorized addressee. Time of delivery shall be deemed to occur at twelve o'clock noon on the next day on which regular mail delivery takes place subsequent to the mailing.

Sec. 3. (1) If a pregnant woman elects not to notify her parent, a judge of a district court, separate juvenile court, or county court sitting as a juvenile court shall, upon petition or motion and after an appropriate hearing, authorize a physician to perform the abortion if the court determines that the pregnant woman is mature and capable of giving informed consent to the proposed abortion. If the court determines that the pregnant woman is not mature or if the pregnant woman does not claim to be mature, the court shall determine whether the performance of an abortion upon her without notification of her parent would be in her best interests and shall authorize a physician to perform the abortion without such notification if the court concludes that the best interests of the pregnant woman would be served thereby.

(2) A facsimile copy of the petition or motion may be transmitted directly to the court for filing. If a facsimile copy is filed in lieu of the original document, the party filing the facsimile copy shall retain the original document for production to the court if requested to do so.

(3) A court shall not be required to have a facsimile machine nor shall the court be required to transmit orders or other material to attorneys or parties via facsimile transmission.

(4) An action for waiver of notification shall be commenced by the filing of a petition or motion personally, by mail, or by facsimile on a form provided by the State Court Administrator. The State Court Administrator shall develop the petition form and accompanying instructions on the procedure for petitioning the court for a waiver of notification, including the name, address, telephone number, and facsimile number of each court in the state. A sufficient number of petition forms and instructions shall be made available in each courthouse in such place that members of the general public may obtain a form and instructions without requesting such form and instructions from the clerk of the court or other court personnel. The clerk of the court shall, upon request, assist in completing and filing the petition for waiver of notification.

(5) Proceedings in court pursuant to this section shall be confidential. Proceedings shall be held in camera. Only the pregnant woman, the pregnant woman's guardian ad litem, the pregnant woman's attorney, and a person whose presence is specifically requested by the pregnant woman, the pregnant woman's guardian ad litem, or the pregnant woman's attorney may attend the hearing on the petition. All testimony, all documents, all other evidence presented to the court, the petition and any order entered, and all records of any nature and kind relating to the matter shall be sealed by the clerk of the court and shall not be open to any person except upon order of the court for good cause shown. A separate docket for the purposes of this section shall be maintained by the clerk of the court and shall likewise be sealed and not opened to inspection by any person except upon order of the court for good cause shown.

(6) A pregnant woman who is subject to this section may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for her. The court shall advise the pregnant

woman that she has a right to court-appointed counsel and shall, upon her request, provide her with such counsel. Such counsel shall receive a fee to be fixed by the court and to be paid out of the treasury of the county in which the proceeding was held.

(7) Proceedings in court pursuant to this section shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay to serve the best interests of the pregnant woman. In no case shall the court fail to rule within seven calendar days from the time the petition is filed. If the court fails to rule within the required time period, the pregnant woman may file an application for a writ of mandamus with the Supreme Court. If cause for a writ of mandamus exists, the writ shall issue within three days. If the judge issues a ruling adverse to the pregnant woman, the judge shall issue written findings of fact and conclusions of law.

(8) The court shall issue a written order which shall be provided immediately to the pregnant woman, the pregnant woman's guardian ad litem, the pregnant woman's attorney, or any other person designated by the pregnant woman to receive the order.

Sec. 4. (1) An appeal to the Supreme Court shall be available to any pregnant woman for whom a court denies an order authorizing an abortion without notification. An order authorizing an abortion without notification shall not be subject to appeal.

(2) An adverse ruling by the court may be appealed to the Supreme Court.

(3) A pregnant woman may file a notice of appeal of any final order to the Supreme Court. The State Court Administrator shall develop the form for notice of appeal and accompanying instructions on the procedure for an appeal. A sufficient number of forms for notice of appeal and instructions shall be made available in each courthouse in such place that members of the general public can obtain a form and instructions without requesting such form and instructions from the clerk of the court or other court personnel.

(4) The clerk of the court shall cause the court transcript and bill of exceptions to be filed with the Supreme Court within four business days, but in no event later than seven calendar days, from the date of the filing of the notice of appeal.

(5) In all appeals under this section the pregnant woman shall have the right of a confidential and expedited appeal and the right to counsel at the appellate level if not already represented. Such

counsel shall be appointed by the court and shall receive a fee to be fixed by the court and to be paid out of the treasury of the county in which the proceeding was held. The pregnant woman shall not be required to appear.

(6) The Supreme Court shall hear the appeal de novo on the record and issue a written decision which shall be provided immediately to the pregnant woman, the pregnant woman's guardian ad litem, the pregnant woman's attorney, or any other person designated by the pregnant woman to receive the order.

(7) The Supreme Court shall rule within seven calendar days from the time of the docketing of the appeal in the Supreme Court.

(8) The Supreme Court shall adopt and promulgate rules to ensure that proceedings under this section are handled in a confidential and expeditious manner.

Sec. 5. No filing fees or costs shall be required of any pregnant woman at either the trial or appellate level for any proceedings pursuant to sections 1 to 8 of this act.

Sec. 6. Notification shall not be required pursuant to sections 1 to 8 of this act if any of the following conditions exist:

(1) The attending physician certifies in writing in the pregnant woman's medical record that continuation of the pregnancy provides an immediate threat and grave risk to the life or health of the pregnant woman and there is insufficient time to provide the required notification;

(2) The abortion is authorized in writing by the person who is entitled to notification; or

(3) The pregnant woman declares that she is a victim of abuse as defined in section 28-351, sexual abuse as defined in section 28-367, or abuse or neglect as defined in section 28-710. Notice of such a declaration shall be made to the proper authorities as provided in sections 28-372 and 28-711. If such a declaration is made, the attending physician or his or her agent shall inform the pregnant woman of his or her duty to notify the proper authorities as provided in sections 28-372 and 28-711.

Sec. 7. (1) Any physician or attending physician who knowingly and intentionally performs an abortion in violation of sections 1 to 6 of this act shall be guilty of a Class III misdemeanor.

(2) Performance of an abortion in violation of such sections shall be grounds for a civil action by a

person wrongfully denied notification.

(3) A person shall be immune from liability under such sections (a) if he or she establishes by written evidence that he or she relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant woman regarding information necessary to comply with such sections are bona fide and true, (b) if the person has attempted with reasonable diligence to deliver notification as required by section 2 of this act but has been unable to do so, or (c) if the person has performed an abortion authorized by a court order issued pursuant to section 3 or 4 of this act.

Sec. 8. The Legislature recognizes and hereby declares that some teenage pregnancies are a direct or indirect result of family or foster family abuse, neglect, or sexual assault. The Legislature further recognizes that the actions of abuse, neglect, or sexual assault are crimes regardless of whether they are committed by strangers, acquaintances, or family members. The Legislature further recognizes the need for a parent or guardian notification bypass system as set out in section 3 of this act due to the number of unhealthy family environments in which some pregnant women reside. The Legislature encourages county attorneys to prosecute persons accused of committing acts of abuse, incest, neglect, or sexual assault pursuant to sections 28-319, 28-320, 28-320.01, 28-703, and 28-707 even if the alleged crime is committed by a biological or adoptive parent, foster parent, or other biological, adoptive, or foster family member.

Sec. 9. On or before October 1 of each school year, each school district shall provide written information to all students in grades seven through twelve explaining the provisions of section 2 of this act with regard to the requirements for parental notification as a condition for obtaining an abortion. The information shall also explain the provisions of sections 3 and 4 of this act with regard to seeking a judicial waiver of the parental notification requirements. The provisions of this section shall be narrowly construed to require a school district to provide only the information specified in this section. The provisions of this section shall not be construed to require a school district to provide specific information regarding how students may implement the judicial bypass provisions of section 3 of this act. The State Department of Education shall develop and distribute to all public schools a standardized

information form which may be used to comply with this section. The standardized information form shall be approved by the State Board of Education following opportunity for public testimony at a public hearing of the board.

Sec. 10. That section 25-1914, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1914. On appeal in any case taken from the district court to the Supreme Court other than an appeal pursuant to section 4 of this act, the appellant or appellants shall, within thirty days after the rendition of the judgment or decree or the making of the final order sought to be reversed, vacated, or modified, or within thirty days from the overruling of a motion for a new trial in such cause, (1) file in the district court a bond or undertaking in the sum of seventy-five dollars to be approved by the clerk of the district court, conditioned that the appellant shall pay all costs adjudged against him or her in the Supreme Court, or (2) make a cash deposit with the clerk of at least seventy-five dollars for the same purpose. If a supersedeas bond is executed, no bond for costs shall be required. The giving of either form of bond or the making of such deposit shall be certified to by the clerk of the district court in the transcript for the Supreme Court. The appeal may be dismissed on motion and notice in the Supreme Court if no bond has been given and certified in the transcript or within such additional time as may be fixed by the Supreme Court for good cause shown.

Sec. 11. That section 71-148, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-148. For the purpose of section 71-147, unprofessional conduct shall include any of the following acts:

(1) Solicitation of professional patronage by agents or persons, popularly known as cappers or steerers, or profiting by the acts of those representing themselves to be agents of the licensee or certificate holder;

(2) ~~receipt~~ Receipt of fees on the assurance that a manifestly incurable disease can be permanently cured;

(3) ~~division~~ Division of fees, or agreeing to split or divide the fees, received for professional services with any person for bringing or referring a patient;

(4) ~~obtaining~~ Obtaining any fee for professional services by fraud, deceit, or misrepresentation, including, but not limited to, falsification of third-party claim documents;

(5) ~~cheating~~ Cheating on or attempting to subvert the licensing or certification examination;

(6) ~~assisting~~ Assisting in the care or treatment of a patient without the consent of such patient or his or her legal representative;

(7) ~~the use~~ Use of any letters, words, or term or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that such person is entitled to practice a system or mode of healing for which he or she is not licensed or certified;

(8) ~~performing~~ Performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion;

(9) ~~willful~~ Willful betrayal of a professional secret except as otherwise provided by law;

(10) ~~making~~ Making use of any advertising statements of a character tending to deceive or mislead the public;

(11) ~~advertising~~ Advertising professional superiority or the performance of professional services in a superior manner;

(12) ~~advertising~~ Advertising to guarantee any professional service or to perform any operations painlessly;

(13) ~~the performance~~ Performance by a physician of an abortion, as defined in subdivision (1) of section 28-326, under circumstances when he or she will not be available for a period of at least forty-eight hours for postoperative care unless such postoperative care is delegated to and accepted by another physician;

(14) ~~performing~~ Performing an abortion upon a minor without having satisfied the notice requirements of ~~section 28-347~~ sections 1 to 8 of this act; and

(15) ~~the~~ The providing by a massage therapist of sexual stimulation as part of massage therapy.

Sec. 12. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 13. That original sections 25-1914 and 71-148, Reissue Revised Statutes of Nebraska, 1943, and also section 28-347, Reissue Revised Statutes of

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Nebraska, 1943, are repealed.