

## LEGISLATIVE BILL 695

Approved by the Governor April 3, 1984

Introduced by Labeledz, 5; Higgins, 9; DeCamp, 40

AN ACT relating to crimes and offenses; to amend sections 28-326 to 28-332 and section 28-343, Reissue Revised Statutes of Nebraska, 1943; to define and redefine terms; to change provisions relating to abortion; to eliminate certain duties and requirements; to provide duties; to change penalties; to harmonize provisions; to eliminate provisions relating to abortions involving certain minors; to eliminate a penalty; to repeal the original sections, and also sections 28-333 and 28-334, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 28-326, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows: 28-326. As used in sections 28-325 to 28-345, unless the context otherwise requires:

(1) Abortion shall mean an act, procedure, device, or prescription administered to a woman known by the person so administering to be pregnant and performed 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 for the purposes of sections 28-325 to 28-345;

(2) Hospital shall mean those institutions licensed by the Department of Health pursuant to sections 71-2017 to 71-2029;

(3) Physician shall mean any person licensed to practice medicine in this state as provided in sections 71-102 to 71-110;

(4) Pregnant shall mean that condition of a woman who has unborn human life within her as the result of conception;

(5) Conception shall mean the fecundation of the ovum by the spermatozoa;

(6) Viability shall mean that stage of human development when the unborn child is potentially able to live more than merely momentarily outside the womb of the mother by natural or artificial means;

(7) Emergency situation shall mean a condition exists that in the sound medical judgment of the physician

the abortion should be performed without delay so as not to adversely affect the best physical or mental health of the woman;

(8) Informed consent shall mean a written statement, voluntarily entered into by the person upon whom an abortion is to be performed, whereby she specifically consents to such abortion. Such consent shall be deemed to be an informed consent only if it affirmatively appears in the written statement that the person upon whom the abortion is to be performed has been advised ~~(a) of the reasonably possible medical and mental consequences resulting from an abortion, pregnancy, and childbirth,~~ ~~(b)~~ (a) of possible alternatives to abortion, including childbirth and adoption and including that there are agencies and services available to assist her to carry her pregnancy to a natural term, and ~~(c)~~ (b) of the abortion procedures to be used. Such statement shall bear the signature of the person upon whom the abortion is to be performed and be signed by the attending physician; and

(9) The word signature includes the mark of a person unable to write her name. A - a mark shall have the same effect as a signature when the name is written by some other person and the mark is made near thereto by the person unable to write her name.

Sec. 2. That section 28-327, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-327. No abortion shall be performed on any woman in the absence of an informed consent, except that an abortion may be performed if, in the sound medical judgment of the physician, an emergency ~~presents imminent peril that substantially~~ endangers the life or health of the woman and the woman is unable to give informed consent.

~~No abortion shall be performed on any woman without the passing of at least forty-eight hours between the expression of informed consent and the actual performance of the abortion unless, in the sound medical judgment of the physician, an emergency situation exists.~~

Sec. 3. That section 28-328, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-328. ~~Violation~~ The intentional and knowing violation of section 28-327 is a Class II misdemeanor.

Sec. 4. That section 28-329, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-329. No abortion shall be performed after the time at which, in the sound medical judgment of the attending physician, the unborn child clearly appears to have reached viability, except when necessary to preserve the woman from an imminent peril that substantially endangers her life or health of the mother.

Sec. 5. That section 28-330, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-330. In any abortion performed pursuant to section 28-329, all reasonable precautions, in accord

with the sound medical judgment of the attending physician and compatible with preserving the woman from an imminent peril that substantially endangers her life or health of the mother, shall be taken to insure the protection of the viable, unborn child.

Sec. 6. That section 28-331, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-331. All reasonable steps, in accord with the sound medical judgment of the attending physician, shall be employed in the treatment of any child aborted alive with any chance of survival. When as the result of an abortion a child is, in the sound medical judgment of the attending physician, born alive, then all reasonable steps, in accordance with the sound medical judgment of the attending physician, shall be employed to preserve the life of the child. For purposes of this section, born alive shall mean the complete expulsion or extraction of the child from the mother irrespective of the duration of the pregnancy and after such expulsion or extraction such child breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles whether or not the umbilical cord has been cut or the placenta is attached.

Sec. 7. That section 28-332, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-332. ~~Violation~~ The intentional and knowing violation of section 28-329, 28-330, or 28-331 is a Class IV felony.

Sec. 8. That section 28-343, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-343. The Bureau of Vital Statistics, Department of Health, shall establish an abortion reporting form, which shall be used for the reporting of every abortion performed ~~or prescribed~~ in this state. Such form shall include only the following items:

- (1) The age of the pregnant woman;
- (2) The location of the facility where the abortion was performed;
- (3) The type of procedure performed;
- (4) Complications, if any;
- (5) The name of the attending physician;
- (6) The pregnant woman's obstetrical history regarding previous pregnancies, abortions, and live births;
- (7) The stated reason or reasons for which the abortion was requested;
- (8) The state of the pregnant woman's legal residence;
- (9) The length and weight of the aborted child, when measurable; and
- (10) Whether an emergency situation caused the physician to waive any of the requirements of section 28-327, ~~or 28-333.~~

The completed form shall be signed by the attending physician and sent to the Bureau of Vital Statistics within fifteen days after each reporting month. The completed form shall be an original, typed or written legibly in durable ink, and shall not be deemed complete unless the omission of any item of information required shall have been disclosed or satisfactorily accounted for. Carbon copies shall not be acceptable. The abortion reporting form required under this section shall not include the name of the person upon whom the abortion was performed. The abortion reporting form required under this section shall be confidential and shall not be revealed except upon the order of a court of competent jurisdiction in a civil or criminal proceeding.

Sec. 9. That original sections 28-326 to 28-332 and 28-343, Reissue Revised Statutes of Nebraska, 1943, and also sections 28-333 and 28-334, Reissue Revised Statutes of Nebraska, 1943, are repealed.