

AMENDMENTS TO LB 675

Introduced by Judiciary.

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Section 28-326, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 28-326 For purposes of sections 28-325 to 28-345, unless
6 the context otherwise requires:

7 (1) Abortion means the use or prescription of any
8 instrument, medicine, drug, or other substance or device
9 intentionally to terminate the pregnancy of a woman known to be
10 pregnant with an intention other than to increase the probability
11 of a live birth, to preserve the life or health of the child after
12 live birth, or to remove a dead unborn child, and which causes the
13 premature termination of the pregnancy;

14 (2) Hospital means those institutions licensed by the
15 Department of Health and Human Services pursuant to the Health Care
16 Facility Licensure Act;

17 (3) Physician means any person licensed to practice
18 medicine in this state as provided in ~~sections 71-102 to 71-110;~~
19 the Uniform Credentialing Act;

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

22 (5) Conception means the fecundation of the ovum by the
23 spermatozoa;

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

5 (7) Emergency situation means that condition which, on
6 the basis of the physician's good faith clinical judgment, so
7 complicates the medical condition of a pregnant woman as to
8 necessitate the immediate abortion of her pregnancy to avert her
9 death or for which a delay will create serious risk of substantial
10 impairment of a major bodily function;

11 (8) Probable gestational age of the unborn child means
12 what will with reasonable probability, in the judgment of the
13 physician, be the gestational age of the unborn child at the time
14 the abortion is planned to be performed; ~~and~~

15 (9) Partial-birth abortion means an abortion procedure
16 in which the person performing the abortion partially delivers
17 vaginally a living unborn child before killing the unborn child and
18 completing the delivery. For purposes of this subdivision, the term
19 partially delivers vaginally a living unborn child before killing
20 the unborn child means deliberately and intentionally delivering
21 into the vagina a living unborn child, or a substantial portion
22 thereof, for the purpose of performing a procedure that the person
23 performing such procedure knows will kill the unborn child and does
24 kill the unborn child;—

25 (10) Woman means any female human being whether or not
26 she has reached the age of majority; and

27 (11) Ultrasound means the use of ultrasonic waves for

1 diagnostic or therapeutic purposes, specifically to monitor an
2 unborn child.

3 Sec. 2. Section 28-327, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 28-327 No abortion shall be performed except with the
6 voluntary and informed consent of the woman upon whom the abortion
7 is to be performed. Except in the case of an emergency situation,
8 consent to an abortion is voluntary and informed only if:

9 (1) The woman is told the following by the physician who
10 is to perform the abortion, by the referring physician, or by a
11 licensed physician assistant or registered nurse licensed under the
12 Uniform Credentialing Act who is an agent of either physician, at
13 least twenty-four hours before the abortion:

14 (a) The particular medical risks associated with
15 the particular abortion procedure to be employed including,
16 when medically accurate, the risks of infection, hemorrhage,
17 and perforated uterus, danger to subsequent pregnancies, and
18 infertility;

19 (b) The probable gestational age of the unborn child at
20 the time the abortion is to be performed; and

21 (c) The medical risks associated with carrying her child
22 to term; and-

23 (d) That she cannot be forced or required by anyone to
24 have an abortion and is free to withhold or withdraw her consent
25 for an abortion without affecting her right to future care or
26 treatment and without the loss of any state or federal benefits to
27 which she might otherwise be entitled.

1 The person providing the information specified in this
2 subdivision to the person upon whom the abortion is to be
3 performed shall be deemed qualified to so advise and provide
4 such information only if, at a minimum, he or she has had
5 training in each of the following subjects: Sexual and reproductive
6 health; abortion technology; contraceptive technology; short-term
7 counseling skills; community resources and referral; and informed
8 consent. The physician or the physician's agent may provide this
9 information by telephone without conducting a physical examination
10 or tests of the patient, in which case the information required
11 to be supplied may be based on facts supplied by the patient and
12 whatever other relevant information is reasonably available to the
13 physician or the physician's agent;

14 (2) The woman is informed by telephone or in person, by
15 the physician who is to perform the abortion, by the referring
16 physician, or by an agent of either physician, at least twenty-four
17 hours before the abortion:

18 (a) The name of the physician who will perform the
19 abortion;

20 (b) That medical assistance benefits may be available for
21 prenatal care, childbirth, and neonatal care;

22 (c) That the father is liable to assist in the support of
23 her child, even in instances in which the father has offered to pay
24 for the abortion; and

25 (d) That she has the right to review the printed
26 materials described in section 28-327.01. The physician or his
27 or her agent shall orally inform the woman that the materials

1 have been provided by the Department of Health and Human Services
2 and that they describe the unborn child and list agencies which
3 offer alternatives to abortion. If the woman chooses to review the
4 materials, they shall either be given to her at least twenty-four
5 hours before the abortion or mailed to her at least seventy-two
6 hours before the abortion by certified mail, restricted delivery
7 to addressee, which means the postal employee can only deliver
8 the mail to the addressee. The physician and his or her agent
9 may disassociate themselves from the materials and may comment or
10 refrain from commenting on them as they choose; and

11 (e) That she has the right to request a comprehensive
12 list, compiled by the Department of Health and Human Services,
13 of health care providers, facilities, and clinics that offer to
14 perform ultrasounds, including and specifying those that offer to
15 perform ultrasounds free of charge. The list shall be arranged
16 geographically and shall include the name, address, hours of
17 operation, and telephone number of each entity. If requested by
18 the woman, the physician who is to perform the abortion, the
19 referring physician, or his or her agent shall provide such a list
20 as compiled by the department;

21 (3) If an ultrasound is used prior to the performance
22 of an abortion, the physician who is to perform the abortion,
23 the referring physician, or a physician assistant or registered
24 nurse licensed under the Uniform Credentialing Act who is an agent
25 of either physician, or any qualified agent of either physician,
26 shall:

27 (a) Perform an ultrasound of the woman's unborn child

1 of a quality consistent with standard medical practice in the
2 community at least one hour prior to the performance of the
3 abortion;

4 (b) Simultaneously display the ultrasound images so that
5 the woman may choose to view the ultrasound images or not view the
6 ultrasound images. The woman shall be informed that the ultrasound
7 images will be displayed so that she is able to view them. Nothing
8 in this subsection shall be construed to require the woman to view
9 the displayed ultrasound images; and

10 (c) If the woman requests information about the displayed
11 ultrasound image, her questions shall be answered. If she requests
12 a detailed, simultaneous, medical description of the ultrasound
13 image, one shall be provided that includes the dimensions of the
14 unborn child, the presence of cardiac activity, if present and
15 viewable, and the presence of external members and internal organs,
16 if present and viewable;

17 ~~(3)~~ (4) The woman certifies in writing, prior to the
18 abortion, that:

19 (a) The ~~the~~ information described in subdivisions (1) and
20 (2) (a), (b), and (c) of this section has been furnished her;

21 (b) That ~~and that~~ she has been informed of her right to
22 review the information referred to in subdivision (2) (d) of this
23 section; and

24 (c) That the requirements of subdivision (3) of this
25 section have been performed, if an ultrasound is performed prior to
26 the performance of the abortion; and

27 ~~(4)~~ (5) Prior to the performance of the abortion,

1 the physician who is to perform the abortion or his or her
2 agent receives a copy of the written certification prescribed by
3 subdivision ~~(3)~~ (4) of this section. The physician or his or her
4 agent shall retain a copy of the signed certification form in the
5 woman's medical record.

6 Sec. 3. Section 28-327.01, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 28-327.01 (1) The Department of Health and Human Services
9 shall cause to be published ~~within sixty days after September 9,~~
10 ~~1993,~~ the following easily comprehensible printed materials:

11 (a) Geographically indexed materials designed to inform
12 the woman of public and private agencies and services available to
13 assist a woman through pregnancy, upon childbirth, and while the
14 child is dependent, including adoption agencies and agencies and
15 services for prevention of unintended pregnancies, which materials
16 shall include a comprehensive list of the agencies available,
17 a description of the services they offer, and a description of
18 the manner, including telephone numbers and addresses in which
19 such agencies may be contacted or printed materials including a
20 toll-free, twenty-four-hour-a-day telephone number which may be
21 called to orally obtain such a list and description of agencies in
22 the locality of the caller and of the services they offer; and

23 (b) Materials designed to inform the woman of the
24 probable anatomical and physiological characteristics of the unborn
25 child at two-week gestational increments from the time when a woman
26 can be known to be pregnant to full term, including pictures or
27 drawings representing the development of unborn children at the

1 two-week gestational increments, and any relevant information on
2 the possibility of the unborn child's survival. Any such pictures
3 or drawings shall contain the dimensions of the unborn child and
4 shall be realistic and appropriate for the stage of pregnancy
5 depicted. The materials shall be objective, nonjudgmental, and
6 designed to convey only accurate scientific information about
7 the unborn child at the various gestational ages. The materials
8 shall also contain objective information describing the methods of
9 abortion procedures commonly employed, the medical risks commonly
10 associated with each such procedure, the possible detrimental
11 psychological effects of abortion, the medical risks commonly
12 associated with abortion, and the medical risks commonly associated
13 with carrying a child to term; and-

14 (c) A comprehensive list of health care providers,
15 facilities, and clinics that offer to perform ultrasounds,
16 including and specifying those that offer to perform ultrasounds
17 free of charge. The list shall be arranged geographically and shall
18 include the name, address, hours of operation, and telephone number
19 of each entity.

20 (2) The materials shall be printed in a typeface large
21 enough to be clearly legible.

22 (3) The materials required under this section shall be
23 available from the department upon the request by any person,
24 facility, or hospital for an amount equal to the cost incurred by
25 the department to publish the materials.

26 Sec. 4. Section 28-327.03, Reissue Revised Statutes of
27 Nebraska, is amended to read:

1 28-327.03 No civil liability for failure to comply with
2 subdivision (2) (d) of section 28-327 or that portion of subdivision
3 ~~(3)~~ (4) of such section requiring a written certification that the
4 woman has been informed of her right to review the information
5 referred to in subdivision (2) (d) of such section may be imposed
6 unless the Department of Health and Human Services has published
7 and made available the printed materials at the time the physician
8 or his or her agent is required to inform the woman of her right
9 to review them.

10 Sec. 5. Section 28-327.04, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 28-327.04 Any person upon whom an abortion has been
13 performed or attempted in violation of section 28-327 or the parent
14 or guardian of a minor upon whom an abortion has been performed
15 or attempted in violation of such section shall have a right to
16 maintain a civil cause of action against the person who performed
17 the abortion or attempted to perform the abortion. A violation
18 of such section shall be prima facie evidence of professional
19 negligence. The written certification prescribed by subdivision ~~(3)~~
20 (4) of section 28-327 signed by the person upon whom an abortion
21 has been performed or attempted shall constitute and create a
22 rebuttable presumption of full compliance with all provisions of
23 section 28-327 in favor of the physician who performed or attempted
24 to perform the abortion, the referring physician, or the agent
25 of either physician. The written certification shall be admissible
26 as evidence in the cause of action for professional negligence or
27 in any criminal action. If judgment is rendered in favor of the

1 plaintiff in any such action, the court shall also render judgment
2 for a reasonable attorney's fee in favor of the plaintiff against
3 the defendant.

4 Sec. 6. If any section in this act or any part of any
5 section is declared invalid or unconstitutional, the declaration
6 shall not affect the validity or constitutionality of the remaining
7 portions.

8 Sec. 7. Original sections 28-326, 28-327, 28-327.01,
9 28-327.03, and 28-327.04, Reissue Revised Statutes of Nebraska, are
10 repealed.