

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 675

Introduced by Fulton, 29.

Read first time January 21, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to abortion; to amend sections 28-326, 28-327,
2 28-327.01, 28-327.03, and 28-327.04, Reissue Revised
3 Statutes of Nebraska; to provide for additional voluntary
4 and informed consents from the pregnant woman; to define
5 terms; to harmonize provisions; to provide severability;
6 and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

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

3 28-326 For purposes of sections 28-325 to 28-345, unless
4 the context otherwise requires:

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

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

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

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

20 (5) Conception means the fecundation of the ovum by the
21 spermatozoa;

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

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

7 (8) Probable gestational age of the unborn child means
8 what will with reasonable probability, in the judgment of the
9 physician, be the gestational age of the unborn child at the time
10 the abortion is planned to be performed; and

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

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

23 (11) Ultrasound means the use of ultrasonic waves for
24 diagnostic or therapeutic purposes, specifically to monitor an
25 unborn child.

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

3 28-327 No abortion shall be performed except with the
4 voluntary and informed consent of the woman upon whom the abortion
5 is to be performed. Except in the case of an emergency situation,
6 consent to an abortion is voluntary and informed only if:

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

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

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

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

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

1 which she might otherwise be entitled.

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

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

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

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

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

1 (d) That she has the right to review the printed
2 materials described in section 28-327.01. The physician or his
3 or her agent shall orally inform the woman that the materials
4 have been provided by the Department of Health and Human Services
5 and that they describe the unborn child and list agencies which
6 offer alternatives to abortion. If the woman chooses to review the
7 materials, they shall either be given to her at least twenty-four
8 hours before the abortion or mailed to her at least seventy-two
9 hours before the abortion by certified mail, restricted delivery
10 to addressee, which means the postal employee can only deliver
11 the mail to the addressee. The physician and his or her agent
12 may disassociate themselves from the materials and may comment or
13 refrain from commenting on them as they choose; and

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

23 (3) If an ultrasound is used prior to the performance
24 of an abortion, the physician who is to perform the abortion, the
25 referring physician, or a physician assistant or registered nurse

1 licensed under the Uniform Credentialing Act who is an agent of
2 either physician shall:

3 (a) Perform an ultrasound of the woman's unborn child
4 of a quality consistent with standard medical practice in the
5 community at least one hour prior to the performance of the
6 abortion;

7 (b) Simultaneously display the ultrasound images so that
8 the woman may choose to view the ultrasound images or not. Nothing
9 in this subsection shall be construed to prevent a woman from
10 averting her eyes from the ultrasound images displayed; and

11 (c) If the woman requests a medical description of
12 the displayed ultrasound image, provide a simultaneous medical
13 description of the ultrasound image, including the dimensions of
14 the 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

1 the performance of the abortion; and

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

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

10 28-327.01 (1) The Department of Health and Human Services
11 shall cause to be published, ~~within sixty days after September 9,~~
12 ~~1993,~~ the following easily comprehensible printed materials:

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

25 (b) Materials designed to inform the woman of the

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

18 (c) A list of health care providers, facilities, and
19 clinics that offer to perform ultrasounds free of charge. The
20 list shall be arranged geographically and shall include the name,
21 address, hours of operation, and telephone number of each entity.

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

24 (3) The materials required under this section shall be
25 available from the department upon the request by any person,

1 facility, or hospital for an amount equal to the cost incurred by
2 the department to publish the materials.

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

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

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

16 28-327.04 Any person upon whom an abortion has been
17 performed or attempted in violation of section 28-327 or the parent
18 or guardian of a minor upon whom an abortion has been performed
19 or attempted in violation of such section shall have a right to
20 maintain a civil cause of action against the person who performed
21 the abortion or attempted to perform the abortion. A violation
22 of such section shall be prima facie evidence of professional
23 negligence. The written certification prescribed by subdivision ~~(3)~~
24 (4) of section 28-327 signed by the person upon whom an abortion
25 has been performed or attempted shall constitute and create a

1 rebuttable presumption of full compliance with all provisions of
2 section 28-327 in favor of the physician who performed or attempted
3 to perform the abortion, the referring physician, or the agent
4 of either physician. The written certification shall be admissible
5 as evidence in the cause of action for professional negligence or
6 in any criminal action. If judgment is rendered in favor of the
7 plaintiff in any such action, the court shall also render judgment
8 for a reasonable attorney's fee in favor of the plaintiff against
9 the defendant.

10 Sec. 6. If any section in this act or any part of any
11 section is declared invalid or unconstitutional, the declaration
12 shall not affect the validity or constitutionality of the remaining
13 portions.

14 Sec. 7. Original sections 28-326, 28-327, 28-327.01,
15 28-327.03, and 28-327.04, Reissue Revised Statutes of Nebraska, are
16 repealed.