

AMENDMENTS TO LB 462

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

3 "Section 1. Section 28-325, Revised Statutes Supplement,
4 2000, is amended to read:

5 28-325. The Legislature hereby finds and declares:

6 (1) That the following provisions were motivated by the
7 legislative intrusion of the United States Supreme Court by virtue
8 of its decision removing the protection afforded ~~the unborn~~
9 fetuses. Sections 28-325 to 28-345 are in no way to be construed
10 as legislatively encouraging abortions at any stage of ~~unborn fetal~~
11 human development, but are rather an expression of the will of the
12 people of the State of Nebraska and the members of the Legislature
13 to provide protection for the life of the ~~unborn child~~ fetus
14 whenever possible;

15 (2) That the members of the Legislature expressly deplore
16 the destruction of the ~~unborn human lives~~ fetuses which has and
17 will occur in Nebraska as a consequence of the United States
18 Supreme Court's decision on abortion of January 22, 1973;

19 (3) That it is in the interest of the people of the State
20 of Nebraska that every precaution be taken to insure the protection
21 of every viable ~~unborn child~~ fetus being aborted, and every
22 precaution be taken to provide life-supportive procedures to insure
23 the ~~unborn child~~ fetus its continued life after its abortion;

24 (4) That currently this state is prevented from providing

1 adequate legal remedies to protect the life, health, and welfare of
2 pregnant women and ~~unborn human life~~ fetuses; and

3 (5) That it is in the interest of the people of the State
4 of Nebraska to maintain accurate statistical data to aid in
5 providing proper maternal health regulations and education.

6 Sec. 2. Section 28-326, Revised Statutes Supplement,
7 2000, is amended to read:

8 28-326. For purposes of sections 28-325 to 28-345,
9 unless the context otherwise requires:

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

17 (2) Hospital means those institutions licensed by the
18 Department of Health and Human Services Regulation and Licensure
19 pursuant to the Health Care Facility Licensure Act;

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

22 (4) Pregnant means that condition of a woman who has
23 ~~unborn human life~~ a fetus within her as the result of conception;

24 (5) Conception means the fecundation of the ovum by the
25 spermatozoa;

26 (6) Viability means that stage of human development when
27 the ~~unborn child~~ fetus is potentially able to live more than merely

1 momentarily outside the womb of the mother by natural or artificial
2 means;

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

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

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

24 Sec. 3. Section 28-327, Revised Statutes Supplement,
25 2000, is amended to read:

26 28-327. No abortion shall be performed except with the
27 voluntary and informed consent of the woman upon whom the abortion

1 is to be performed. Except in the case of an emergency situation,
2 consent to an abortion is voluntary and informed only if:

3 (1) The woman is told the following by the physician who
4 is to perform the abortion, by the referring physician, or by a
5 licensed physician assistant or registered nurse who is an agent of
6 either, at least twenty-four hours before the abortion:

7 (a) The particular medical risks associated with the
8 particular abortion procedure to be employed including, when
9 medically accurate, the risks of infection, hemorrhage, and danger
10 to subsequent pregnancies and infertility;

11 (b) The probable gestational age of the ~~unborn child~~
12 fetus at the time the abortion is to be performed; and

13 (c) The medical risks associated with carrying ~~her child~~
14 the fetus to term.

15 The person providing the information specified in this
16 subdivision to the person upon whom the abortion is to be performed
17 shall be deemed qualified to so advise and provide such information
18 only if, at a minimum, he or she has had training in each of the
19 following subjects: Sexual and reproductive health; abortion
20 technology; contraceptive technology; short-term counseling skills;
21 community resources and referral; and informed consent. The
22 physician or the physician's agent may provide this information by
23 telephone without conducting a physical examination or tests of the
24 patient, in which case the information required to be supplied may
25 be based on facts supplied by the patient and whatever other
26 relevant information is reasonably available to the physician or
27 the physician's agent;

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

5 (a) The name of the physician who will perform the
6 abortion;

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

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

12 (d) That she has the right to review the printed
13 materials described in section 28-327.01. The physician or his or
14 her agent shall orally inform the woman that the materials have
15 been provided by the Department of Health and Human Services and
16 that they describe the ~~unborn child~~ fetus and list agencies which
17 offer alternatives to abortion. If the woman chooses to review the
18 materials, they shall either be given to her at least twenty-four
19 hours before the abortion or mailed to her at least seventy-two
20 hours before the abortion by certified mail, restricted delivery to
21 addressee, which means the postal employee can only deliver the
22 mail to the addressee. The physician and his or her agent may
23 disassociate themselves from the materials and may comment or
24 refrain from commenting on them as they choose;

25 (3) The woman certifies in writing, prior to the
26 abortion, that the information described in subdivisions (1) and
27 (2)(a), (b), and (c) of this section has been furnished her and

1 that she has been informed of her right to review the information
2 referred to in subdivision (2)(d) of this section; and

3 (4) Prior to the performance of the abortion, the
4 physician who is to perform the abortion or his or her agent
5 receives a copy of the written certification prescribed by
6 subdivision (3) of this section.

7 Sec. 4. Section 28-327.01, Revised Statutes Supplement,
8 2000, is amended to read:

9 28-327.01. (1) The Department of Health and Human
10 Services shall cause to be published, within sixty days after
11 September 9, 1993, the following easily comprehensible printed
12 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, a
19 description of the services they offer, and a description of the
20 manner, including telephone numbers and addresses in which such
21 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
26 probable anatomical and physiological characteristics of the ~~unborn~~
27 ~~child~~ fetus at two-week gestational increments from the time when a

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

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

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

23 Sec. 5. Section 28-329, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 28-329. No abortion shall be performed after the time at
26 which, in the sound medical judgment of the attending physician,
27 the ~~unborn child~~ fetus clearly appears to have reached viability,

1 except when necessary to preserve the life or health of the mother.

2 Sec. 6. Section 28-330, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 28-330. In any abortion performed pursuant to section
5 28-329, all reasonable precautions, in accord with the sound
6 medical judgment of the attending physician and compatible with
7 preserving the life or health of the mother, shall be taken to
8 insure the protection of the viable, ~~unborn~~ child fetus.

9 Sec. 7. Section 30-3417, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 30-3417. (1) When the authority conferred by a power of
12 attorney for health care has commenced, the attorney in fact,
13 subject to any instructions and limitations set forth in the power
14 of attorney for health care or elsewhere, shall make health care
15 decisions on the principal's behalf, except that the attorney in
16 fact shall not have authority (a) to consent to any act or omission
17 to which the principal could not consent under law, (b) to make any
18 decision when the principal is known to be pregnant that will
19 result in the death of the principal's ~~unborn~~ child fetus and it is
20 probable that the ~~unborn~~ child fetus will develop to the point of
21 live birth with continued application of health care, or (c) to
22 make decisions regarding withholding or withdrawing a
23 life-sustaining procedure or withholding or withdrawing
24 artificially administered nutrition and hydration except as
25 provided under section 30-3418.

26 (2) The attorney in fact shall have priority over any
27 person other than the principal to act for the principal in all

1 health care decisions, except that the attorney in fact shall not
2 have the authority to make any health care decision unless and
3 until the principal has been determined to be incapable of making
4 health care decisions pursuant to section 30-3412.

5 (3) The attorney in fact shall not be personally
6 responsible for the cost of health care provided to the principal.

7 (4) Except to the extent that the right is limited by the
8 power of attorney for health care, an attorney in fact shall have
9 the same right as the principal to receive information regarding
10 the proposed health care, to receive and review medical and
11 clinical records, and to consent to the disclosures of such
12 records, except that the right to access such records shall not be
13 a waiver of any evidentiary privilege.

14 (5) Notwithstanding a determination pursuant to section
15 30-3412 that the principal is incapable of making health care
16 decisions, when a principal objects to the determination or to a
17 health care decision made by an attorney in fact, the principal's
18 objection or decision shall prevail unless the principal is
19 determined by a county court to be incapable of making health care
20 decisions.

21 (6) No health care provider shall be required to accept
22 health care decisions from an attorney in fact until such health
23 care provider has received a signed original or a photostatic copy
24 of a signed original power of attorney for health care.

25 Sec. 8. Section 43-504, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 43-504. (1) The term dependent child shall mean a child

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1 under the age of nineteen years who is living with a relative or
2 with a caretaker who is the child's legal guardian or conservator
3 in a place of residence maintained by one or more of such relatives
4 or caretakers as his, her, or their own home, or which child has
5 been removed from the home of his or her father, mother,
6 grandfather, grandmother, brother, sister, stepfather, stepmother,
7 stepbrother, stepsister, uncle, aunt, first or second cousin,
8 nephew, or niece as a result of judicial determination to the
9 effect that continuation in the home would be contrary to the
10 safety and welfare of the child and such child has been placed in a
11 foster family home or child care institution as a result of such
12 determination, when the state or any court having jurisdiction of
13 such child is responsible for the care and placement of such child
14 and one of the following conditions exists: (a) Such child received
15 aid from the state in or for the month in which court proceedings
16 leading to such determination were initiated; (b) such child would
17 have received assistance in or for such month if application had
18 been made therefor; or (c) such child had been living with such a
19 relative specified in this subsection at any time within six months
20 prior to the month in which such proceedings were initiated and
21 would have received such aid in or for the month that such
22 proceedings were initiated if in such month the child had been
23 living with, and removed from the home of, such a relative and
24 application had been made therefor.

25 (2) Except as provided in subdivision (2)(b) of section
26 68-1724, in awarding aid to dependent children payments, the term
27 dependent child shall include ~~an unborn child~~ a fetus but only

1 during the last three months of pregnancy. A pregnant woman may be
2 eligible but only (a) if it has been medically verified that the
3 child is expected to be born in the month such payments are made or
4 expected to be born within the three-month period following such
5 month of payment and (b) if such child had been born and was living
6 with her in the month of payment, she would be eligible for aid to
7 families with dependent children. As soon as it is medically
8 determined that pregnancy exists, a pregnant woman who meets the
9 other requirements for aid to dependent children shall be eligible
10 for medical assistance.

11 (3) A physically or medically handicapped child shall
12 mean a child who, by reason of a physical defect or infirmity,
13 whether congenital or acquired by accident, injury, or disease, is
14 or may be expected to be totally or partially incapacitated for
15 education or for remunerative occupation.

16 Sec. 9. Section 44-2821, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 44-2821. (1) Any health care provider who fails to
19 qualify under the Nebraska Hospital-Medical Liability Act shall not
20 be covered by the provisions of such act and shall be subject to
21 liability under doctrines of common law. If a health care provider
22 shall not so qualify, the patient's remedy shall not be affected by
23 the terms and provisions of the act.

24 (2) If a health care provider shall qualify under the
25 act, the patient's exclusive remedy against the health care
26 provider or his or her partner, limited liability company member,
27 employer, or employees for alleged malpractice, professional

1 negligence, failure to provide care, breach of contract relating to
2 providing medical care, or other claim based upon failure to obtain
3 informed consent for an operation or treatment shall be as provided
4 by the act unless the patient shall have elected not to come under
5 the provisions of the act. Unless the patient or his or her
6 representative shall have (a) elected not to be bound by the terms
7 of the act, (b) filed such election with the director in advance of
8 any treatment, act, or omission upon which any claim or cause of
9 action is based, and (c) notified the health care provider of
10 election as soon as is reasonable under the circumstances that such
11 patient has so elected, it shall be conclusively presumed that the
12 patient has elected to be bound by the terms and provisions of the
13 act. Such election may be made by either legal parent for ~~an~~
14 ~~unborn~~ a fetus or newborn child. Unless a legal parent of ~~an~~
15 ~~unborn child~~ a fetus or the guardian or other representative of a
16 minor or incompetent makes the election in the manner provided in
17 the act for such ~~unborn person~~ fetus, minor, or incompetent, such
18 person shall be deemed to be subject to the terms and provisions of
19 the act.

20 (3) An election of a patient not to be bound by the act
21 shall be effective for a period of two years after filing unless
22 such election is withdrawn by the patient and shall be ineffective
23 after such two-year period unless renewed in writing and filed with
24 the director. The patient or his or her representative may revoke
25 the election in writing at any time and a copy of such revocation
26 shall be forwarded to the director within five days after the same
27 is made.

1 (4) Each health care provider who has qualified under the
2 act shall post and keep posted in his or her waiting room or other
3 suitable location a sign of a size and type to be prescribed by the
4 director stating: (name of health care provider) has qualified
5 under the provisions of the Nebraska Hospital-Medical Liability
6 Act. Patients will be subject to the terms and provisions of that
7 act unless they file a refusal to be bound by the act with the
8 Director of Insurance of the State of Nebraska.

9 Sec. 10. Section 71-6901, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 71-6901. For purposes of sections 71-6901 to 71-6908:

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

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

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

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1 record the parent or guardian selected by the woman;

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

4 (5) Pregnant woman shall mean an unemancipated woman
5 under eighteen years of age who is pregnant or a pregnant woman for
6 whom a guardian has been appointed pursuant to sections 30-2620 to
7 30-2629 because of a finding of incapacity, disability, or
8 incompetency.

9 Sec. 11. Original sections 28-329, 28-330, 30-3417,
10 43-504, 44-2821, and 71-6901, Reissue Revised Statutes of Nebraska,
11 and sections 28-325 to 28-327.01, Revised Statutes Supplement,
12 2000, are repealed."