

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 626

Introduced by Albrecht, 17; Aguilar, 35; Ballard, 21; Bostelman, 23; Brewer, 43; Briese, 41; Clements, 2; DeKay, 40; Dorn, 30; Dover, 19; Erdman, 47; Geist, 25; Halloran, 33; Hardin, 48; Holdcroft, 36; Hughes, 24; Ibach, 44; Jacobson, 42; Kauth, 31; Linehan, 39; Lippincott, 34; Lowe, 37; McDonnell, 5; Moser, 22; Murman, 38; Riepe, 12; Sanders, 45; Slama, 1; von Gillern, 4.

Read first time January 17, 2023

Committee: Health and Human Services

- 1 A BILL FOR AN ACT relating to abortion; to amend sections 38-192, 38-193,
2 and 38-196, Reissue Revised Statutes of Nebraska, and sections
3 38-178, 38-179, 38-2021, and 38-2894, Revised Statutes Cumulative
4 Supplement, 2022; to adopt the Nebraska Heartbeat Act; to provide
5 for discipline under the Uniform Credentialing Act; to harmonize
6 provisions; to provide severability; to repeal the original
7 sections; and to declare an emergency.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 6 of this act shall be known and may be
2 cited as the Nebraska Heartbeat Act.

3 Sec. 2. The Nebraska Heartbeat Act shall only apply to intrauterine
4 pregnancies.

5 Sec. 3. For purposes of the Nebraska Heartbeat Act:

6 (1)(a) Abortion means the prescription or use of any instrument,
7 device, medicine, drug, or substance to or upon a woman known to be
8 pregnant with the specific intent of terminating the life of her unborn
9 child.

10 (b) Abortion shall under no circumstances be interpreted to include
11 the following:

12 (i) Removal of ectopic pregnancy;

13 (ii) Removal of the remains of an unborn child who has already died;

14 (iii) An act done with the intention to save the life or preserve
15 the health of the unborn child;

16 (iv) The accidental or unintentional termination of the life of an
17 unborn child; or

18 (v) During the practice of in vitro fertilization or another
19 assisted reproductive technology, the termination or loss of the life of
20 an unborn child who is not being carried inside a woman's body;

21 (2) Fetal heartbeat means cardiac activity or the steady and
22 repetitive rhythmic contraction of the fetal heart within the gestational
23 sac;

24 (3)(a) Medical emergency means any condition which, in reasonable
25 medical judgment, so complicates the medical condition of the pregnant
26 woman as to necessitate the termination of her pregnancy to avert her
27 death or for which a delay in terminating her pregnancy will create a
28 serious risk of substantial and irreversible physical impairment of a
29 major bodily function.

30 (b) No condition shall be deemed a medical emergency if based on a
31 claim or diagnosis that the woman will engage in conduct which would

1 result in her death or in substantial and irreversible physical
2 impairment of a major bodily function;

3 (4) Pregnant means the condition of having a living unborn child
4 inside one's body;

5 (5) Reasonable medical judgment means a medical judgment that could
6 be made by a reasonably prudent physician, knowledgeable about the case
7 and the treatment possibilities with respect to the medical conditions
8 involved; and

9 (6) Unborn child means an individual living member of the species
10 homo sapiens, throughout the embryonic and fetal stages of development to
11 full gestation and childbirth.

12 Sec. 4. (1) Any physician, before performing or inducing an
13 abortion, shall first:

14 (a) Estimate the gestational age of the unborn child;

15 (b) Perform an ultrasound in accordance with standard medical
16 procedure to determine if a fetal heartbeat is present; and

17 (c) Record in the pregnant woman's medical record:

18 (i) The method used to estimate the gestational age of the unborn
19 child;

20 (ii) The method used to test for a fetal heartbeat; and

21 (iii) The date, time, and results of such estimate and test.

22 (2) Notwithstanding any provision of law in conflict with the
23 Nebraska Heartbeat Act, it shall be unlawful for any physician to perform
24 or induce an abortion:

25 (a) Before fulfilling the requirements of subsection (1) of this
26 section; or

27 (b) After determining that the unborn child has a detectable fetal
28 heartbeat.

29 (3) It shall not be a violation of this section for a physician to
30 perform or induce an abortion in the case of:

31 (a) Medical emergency;

1 (b) Pregnancy resulting from sexual assault as defined in section
2 28-319 or 28-319.01; or

3 (c) Pregnancy resulting from incest as defined in section 28-703.

4 Sec. 5. (1) If a physician performs or induces an abortion because
5 of a medical emergency pursuant to subdivision (3)(a) of section 4 of
6 this act, the physician shall certify in writing that a medical emergency
7 existed and explain the medical emergency in the written certification.
8 The physician shall keep the written certification in the woman's medical
9 record.

10 (2) If the physician performs or induces an abortion in the case of
11 sexual assault or incest pursuant to subdivision (3)(b) or (c) of section
12 4 of this act, the physician shall certify in writing that the abortion
13 was performed because of sexual assault or incest and that the physician
14 complied with all the duties of a health care provider required by
15 section 28-902 that are applicable to that case. The physician shall keep
16 the written certification in the woman's medical record.

17 Sec. 6. No woman upon whom an abortion is attempted, induced, or
18 performed shall be liable for a violation of the Nebraska Heartbeat Act.

19 Sec. 7. Section 38-178, Revised Statutes Cumulative Supplement,
20 2022, is amended to read:

21 38-178 Except as otherwise provided in sections 38-1,119 to
22 38-1,123, a credential to practice a profession may be issued subject to
23 discipline, denied, refused renewal, or have other disciplinary measures
24 taken against it in accordance with section 38-183, 38-185, or 38-186 on
25 any of the following grounds:

26 (1) Misrepresentation of material facts in procuring or attempting
27 to procure a credential;

28 (2) Immoral or dishonorable conduct evidencing unfitness to practice
29 the profession in this state;

30 (3) Abuse of, dependence on, or active addiction to alcohol, any
31 controlled substance, or any mind-altering substance;

1 (4) Failure to comply with a treatment program or an aftercare
2 program, including, but not limited to, a program entered into under the
3 Licensee Assistance Program established pursuant to section 38-175;

4 (5) Conviction of (a) a misdemeanor or felony under Nebraska law or
5 federal law, or (b) a crime in any jurisdiction which, if committed
6 within this state, would have constituted a misdemeanor or felony under
7 Nebraska law and which has a rational connection with the fitness or
8 capacity of the applicant or credential holder to practice the
9 profession;

10 (6) Practice of the profession (a) fraudulently, (b) beyond its
11 authorized scope, (c) with gross incompetence or gross negligence, or (d)
12 in a pattern of incompetent or negligent conduct;

13 (7) Practice of the profession while the ability to practice is
14 impaired by alcohol, controlled substances, drugs, mind-altering
15 substances, physical disability, mental disability, or emotional
16 disability;

17 (8) Physical or mental incapacity to practice the profession as
18 evidenced by a legal judgment or a determination by other lawful means;

19 (9) Illness, deterioration, or disability that impairs the ability
20 to practice the profession;

21 (10) Permitting, aiding, or abetting the practice of a profession or
22 the performance of activities requiring a credential by a person not
23 credentialed to do so;

24 (11) Performing or offering to perform scleral tattooing as defined
25 in section 38-10,172 by a person not credentialed to do so;

26 (12) Having had his or her credential denied, refused renewal,
27 limited, suspended, revoked, or disciplined in any manner similar to
28 section 38-196 by another state or jurisdiction based upon acts by the
29 applicant or credential holder similar to acts described in this section;

30 (13) Use of untruthful, deceptive, or misleading statements in
31 advertisements, including failure to comply with section 38-124;

1 (14) Conviction of fraudulent or misleading advertising or
2 conviction of a violation of the Uniform Deceptive Trade Practices Act;

3 (15) Distribution of intoxicating liquors, controlled substances, or
4 drugs for any other than lawful purposes;

5 (16) Violations of the Uniform Credentialing Act or the rules and
6 regulations relating to the particular profession;

7 (17) Unlawful invasion of the field of practice of any profession
8 regulated by the Uniform Credentialing Act which the credential holder is
9 not credentialed to practice;

10 (18) Violation of the Uniform Controlled Substances Act or any rules
11 and regulations adopted pursuant to the act;

12 (19) Failure to file a report required by section 38-1,124,
13 38-1,125, or 71-552;

14 (20) Failure to maintain the requirements necessary to obtain a
15 credential;

16 (21) Violation of an order issued by the department;

17 (22) Violation of an assurance of compliance entered into under
18 section 38-1,108;

19 (23) Failure to pay an administrative penalty;

20 (24) Unprofessional conduct as defined in section 38-179;

21 (25) Violation of the Automated Medication Systems Act;~~or~~

22 (26) Failure to comply with section 38-1,147; or -

23 (27) Violation of the Nebraska Heartbeat Act.

24 Sec. 8. Section 38-179, Revised Statutes Cumulative Supplement,
25 2022, is amended to read:

26 38-179 For purposes of section 38-178, unprofessional conduct means
27 any departure from or failure to conform to the standards of acceptable
28 and prevailing practice of a profession or the ethics of the profession,
29 regardless of whether a person, consumer, or entity is injured, or
30 conduct that is likely to deceive or defraud the public or is detrimental
31 to the public interest, including, but not limited to:

1 (1) Receipt of fees on the assurance that an incurable disease can
2 be permanently cured;

3 (2) Division of fees, or agreeing to split or divide the fees,
4 received for professional services with any person for bringing or
5 referring a consumer other than (a) with a partner or employee of the
6 applicant or credential holder or his or her office or clinic, (b) with a
7 landlord of the applicant or credential holder pursuant to a written
8 agreement that provides for payment of rent based on gross receipts, or
9 (c) with a former partner or employee of the applicant or credential
10 holder based on a retirement plan or separation agreement;

11 (3) Obtaining any fee for professional services by fraud, deceit, or
12 misrepresentation, including, but not limited to, falsification of third-
13 party claim documents;

14 (4) Cheating on or attempting to subvert the credentialing
15 examination;

16 (5) Assisting in the care or treatment of a consumer without the
17 consent of such consumer or his or her legal representative;

18 (6) Use of any letters, words, or terms, either as a prefix, affix,
19 or suffix, on stationery, in advertisements, or otherwise, indicating
20 that such person is entitled to practice a profession for which he or she
21 is not credentialed;

22 (7) Performing, procuring, or aiding and abetting in the performance
23 or procurement of a criminal abortion;

24 (8) Knowingly disclosing confidential information except as
25 otherwise permitted by law;

26 (9) Commission of any act of sexual abuse, misconduct, or
27 exploitation related to the practice of the profession of the applicant
28 or credential holder;

29 (10) Failure to keep and maintain adequate records of treatment or
30 service;

31 (11) Prescribing, administering, distributing, dispensing, giving,

1 or selling any controlled substance or other drug recognized as addictive
2 or dangerous for other than a medically accepted therapeutic purpose;

3 (12) Prescribing any controlled substance to (a) oneself or (b)
4 except in the case of a medical emergency (i) one's spouse, (ii) one's
5 child, (iii) one's parent, (iv) one's sibling, or (v) any other person
6 living in the same household as the prescriber;

7 (13) Failure to comply with any federal, state, or municipal law,
8 ordinance, rule, or regulation that pertains to the applicable
9 profession;

10 (14) Disruptive behavior, whether verbal or physical, which
11 interferes with consumer care or could reasonably be expected to
12 interfere with such care; ~~and~~

13 (15) Violation of the Nebraska Heartbeat Act; and

14 (16) ~~(15)~~ Such other acts as may be defined in rules and
15 regulations.

16 Nothing in this section shall be construed to exclude determination
17 of additional conduct that is unprofessional by adjudication in
18 individual contested cases.

19 Sec. 9. Section 38-192, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 38-192 (1) If the director determines upon completion of a hearing
22 under section 38-183 or 38-186 that a violation has occurred, the
23 director may, at his or her discretion, consult with the appropriate
24 board concerning sanctions to be imposed or terms and conditions of the
25 sanctions. When the director consults with a board, the credential holder
26 and the Attorney General shall be provided with a copy of the director's
27 request, the recommendation of the board, and an opportunity to respond
28 in such manner as the director determines.

29 (2) Except as provided in subsection (3) of this section, the The
30 director shall have the authority through entry of an order to exercise
31 in his or her discretion any or all of the sanctions authorized under

1 subsection (1) of section 38-196.

2 (3) If the director determines upon completion of a hearing under
3 section 38-183 or 38-186 that a licensee has performed or induced an
4 unlawful abortion in violation of section 4 of this act, the director
5 shall enter an order imposing a sanction authorized under subdivision (2)
6 of section 38-196.

7 Sec. 10. Section 38-193, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 38-193 (1) If the petition is brought with respect to subdivision
10 (3) of section 38-2021, the director shall make findings as to whether
11 the licensee's conduct was necessary to save the life of a mother whose
12 life was endangered by a physical disorder, physical illness, or physical
13 injury, including a life-endangering physical condition caused by or
14 arising from the pregnancy itself. The director shall have the authority
15 through entry of an order to exercise in his or her discretion any or all
16 of the sanctions authorized under section 38-196, irrespective of the
17 petition.

18 (2) If the petition is brought with respect to subdivision (5) of
19 section 38-2021, the director shall make findings as to whether the
20 licensee performed or induced an unlawful abortion in violation of
21 section 4 of this act. If the director finds such a violation, the
22 director shall enter an order revoking the licensee's credential to
23 practice pursuant to the Uniform Credentialing Act in the State of
24 Nebraska in accordance with subsection (2) of section 38-196 and section
25 38-1,100.

26 Sec. 11. Section 38-196, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 38-196 (1) Except as provided in subsection (2) of this section,
29 upon ~~upon~~ the completion of any hearing held regarding discipline of a
30 credential, the director may dismiss the action or impose any of the
31 following sanctions:

- 1 ~~(a) (1)~~ Censure;
- 2 ~~(b) (2)~~ Probation;
- 3 ~~(c) (3)~~ Limitation;
- 4 ~~(d) (4)~~ Civil penalty;
- 5 ~~(e) (5)~~ Suspension; or
- 6 ~~(f) (6)~~ Revocation.

7 (2) Upon completion of any hearing regarding discipline of a
8 credential for performing or inducing an unlawful abortion in violation
9 of section 4 of this act, if the director determines that such violation
10 occurred, the director shall impose a sanction of revocation in
11 accordance with section 38-1,100.

12 Sec. 12. Section 38-2021, Revised Statutes Cumulative Supplement,
13 2022, is amended to read:

14 38-2021 Unprofessional conduct means any departure from or failure
15 to conform to the standards of acceptable and prevailing practice of
16 medicine and surgery or the ethics of the profession, regardless of
17 whether a person, patient, or entity is injured, or conduct that is
18 likely to deceive or defraud the public or is detrimental to the public
19 interest, including, but not limited to:

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

25 (2) Performing an abortion upon a minor without having satisfied the
26 requirements of sections 71-6901 to 71-6911;

27 (3) The intentional and knowing performance of a partial-birth
28 abortion as defined in subdivision (8) of section 28-326, unless such
29 procedure is necessary to save the life of the mother whose life is
30 endangered by a physical disorder, physical illness, or physical injury,
31 including a life-endangering physical condition caused by or arising from

1 the pregnancy itself; ~~and~~

2 (4) Performance by a physician of an abortion in violation of the
3 Pain-Capable Unborn Child Protection Act; and -

4 (5) Violation of the Nebraska Heartbeat Act.

5 Sec. 13. Section 38-2894, Revised Statutes Cumulative Supplement,
6 2022, is amended to read:

7 38-2894 (1) A registration to practice as a pharmacy technician may
8 be denied, refused renewal, removed, or suspended or have other
9 disciplinary measures taken against it by the department, with the
10 recommendation of the board, for failure to meet the requirements of or
11 for violation of any of the provisions of subdivisions (1) through (18)
12 and (20) through (27) ~~(26)~~ of section 38-178 and sections 38-2890 to
13 38-2897 or the rules and regulations adopted under such sections.

14 (2) If the department proposes to deny, refuse renewal of, or remove
15 or suspend a registration, it shall send the applicant or registrant a
16 notice setting forth the action to be taken and the reasons for the
17 determination. The denial, refusal to renew, removal, or suspension shall
18 become final thirty days after mailing the notice unless the applicant or
19 registrant gives written notice to the department of his or her desire
20 for an informal conference or for a formal hearing.

21 (3) Notice may be served by any method specified in section
22 25-505.01, or the department may permit substitute or constructive
23 service as provided in section 25-517.02 when service cannot be made with
24 reasonable diligence by any of the methods specified in section
25 25-505.01.

26 (4) Pharmacy technicians may participate in the Licensee Assistance
27 Program described in section 38-175.

28 Sec. 14. If any section in this act or any part of any section is
29 declared invalid or unconstitutional, the declaration shall not affect
30 the validity or constitutionality of the remaining portions.

31 Sec. 15. Original sections 38-192, 38-193, and 38-196, Reissue

1 Revised Statutes of Nebraska, and sections 38-178, 38-179, 38-2021, and
2 38-2894, Revised Statutes Cumulative Supplement, 2022, are repealed.

3 Sec. 16. Since an emergency exists, this act takes effect when
4 passed and approved according to law.