

**ONE HUNDRED EIGHTH LEGISLATURE - FIRST SESSION - 2023**  
**MINORITY STATEMENT**  
**LB626**

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**Hearing Date:** Wednesday February 01, 2023  
**Committee On:** Health and Human Services  
**Introducer:** Albrecht  
**One Liner:** Adopt the Nebraska Heartbeat Act

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File

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**Vote Results:**

<b>Aye:</b>	4	Senators Ballard, Hansen, B., Hardin, Riepe
<b>Nay:</b>	3	Senators Cavanaugh, M., Day, Walz
<b>Absent:</b>		
<b>Present Not Voting:</b>		

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**Objections to the bill, proposed amendment , or majority statement**

**SUMMARY**

This is a Minority Committee Statement prepared by the Minority Members voting against advancing LB 626 from Committee. This is filed pursuant to Rule 3, Section 19(b) and is signed by its proponents herein.

Legislative Bill 626 would prohibit medical professionals from providing abortion and related medical services. The bill would amend various scopes of approved practice for abortion care and would establish a standard in Nebraska law for what is accepted medical procedure for providing abortions.

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The Minority Members object to the form of the listing of various proponents and opponents to the bill, and to the description of or characterization of certain witnesses. Some apparent misspellings are noted but not corrected. Known misspellings are corrected. The characterization of opponents is modified to match the characterization of proponents. One opponent who testified in person, but is not listed in the Majority Committee Statement, is added. Additionally, a significant number of testifiers who appeared to testify at the Committee Hearing, but were denied that opportunity due to arbitrary time limitations set on testimony. Those individuals are listed in this Minority Statement, to the best of our ability.

**Testimony**

Proponents: Representing  
Angela Himmelberg Self  
Tara Sander Lee Charlotte Lozier Institute  
Elena Kraus OB-GYN  
Ingrid Skop Charlotte Lozier Institute

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Theresa [sic] Kenney Self  
Robert Bonebrake Self  
Katie Patrick Self  
Sean Kennedy [sic] Self  
Marion Miner Nebraska Catholic Conference  
Angela Giles Self  
Nate Grasz Nebraska Family Alliance  
Cori Mooberry Self  
Michelle Witt Essential Pregnancy Services  
Sandy Danek Nebraska Right to Life  
Jess Meeth Democrats for Life of America  
Martin A Cannon Thomas Moore [sic] Society  
Nicole Shassere [sic] Self  
Julie Sykes Self  
Jennifer Roush The SperaVita Institute  
Haile Kucera Self  
Dale Michels American Academy of Medical Ethics  
Danielle Pimentel Americans United for Life  
Orrin Petska Self  
Gary Nelson Self  
Courtney Miller Immaculate Heart of Mary Counseling  
Center  
Dawn Liphart [sic] Self  
Ben Stangl Self  
Sherry Jones Self  
George Boll Self  
Carol Watson Self  
Lisa McInerny [sic] Sidewalk Advocates for Life  
David Zavolsky [sic] Nebraskans Embracing Life  
Jennifer Butcher Self  
Melissa Hume Self  
Rick Everhardt [sic] Self  
Brandi Burkett Self  
Dan Buhrdorf Self  
Jaehne Moebius Lamm Self  
Jeanne Greisen Nebraskans For Founders Values  
John Sciara Self  
Ward Greisen Self  
Greg Epp Self

Heidi Gilliland Self  
Seth Brauning Self  
Amy Codr Self  
Sara Louise Peterson Self  
Mike Davis Nebraska Right to Life  
Elizabeth Davids Self  
Kathleen Horsley Self  
Isaac Davids Self  
Christina St Hilaire Self

Mary Doher Self  
Hannah Yohman Self  
Anna Olson Self  
Alex Stephens Self  
Norman Haas Self  
Taylor Hickey UNL Students for Life  
Merlyn Bartels Self  
Kyle Poen Students for Life Action  
Non-In person Proponents: Representing  
Kristi Refior Self  
Roland D Cook Self  
Leslie Sims Self  
John Milnar Self  
Gregg Kremer Self  
Cooper Kremer Self  
Elaine Anderson Self  
Connie Albers Self  
Jacqueline Gomez Self  
Larry Fox Self  
Riley Fischer Self  
Norman Haas Self  
Lori Bruns Self  
Jennifer Otte Self  
Amber Parker Self  
Thomas Artz Self  
Koren Christensen Self  
Neal Christensen Self  
Cortney Girmus Self  
Dawn Liphardt Self  
Mary Leighton Self  
Rich Riley Self  
Steve Davies Self  
Mike Davis Self  
George Meiers Self  
George Boll Self  
Uyen Tran Self

Maureen Bausch Self  
Karen Anderson Self  
Allyssa Meyers Self  
Theresa Petok Self  
Jose Jaimes Self  
Deborah Ritz Self  
Sterling Ritz Self  
Karen Carr Self  
Mike Ferevce Self  
Susan Feldner Self  
Barbara Hart Self  
Diana Kavanaugh Self

Kathryn L. Nauman Self  
Kristen Fowler Self  
Mary Hilton Self  
Mary E. Buckley Self  
Samuel  
Lyon Self  
Harding James Jenssen Self  
Jon Moberry Self  
Steven  
W. Schepers Self  
Andrew  
Vinton Self  
Isabel  
Vinton Self  
Marybeth  
Vinton Self  
Brooke Fullerton Self  
Bob Ertz Self  
Phil Buhman Self  
Jeana Buhman Self  
Nancy Hayden Self  
Maria Whitmore Self  
Catherine Chandler Self  
Richard Haden Self  
Barbara Chall Self  
Connie  
Weiss Self  
Caroline Epp Self  
Joan Ertz Self  
Joe Schmit Self  
Lisa Schmit Self  
Gerald Stech Self  
Nancy Stech Self  
Dawn Stamp Self  
Amanda  
Taylor Self  
Sandra Sullivan Self  
Gale Poe Self  
Patrick Grave Self  
Jody Pederson Self  
Debra Kirsten Self  
Ruth Schneider Self

Opponents: Representing:

Megan Wilcox Self  
Libby Crockett OB-GYN  
Emily Patel OB-GYN/Maternal and Fetal Medicine  
Mary Kinyoun American College of Obstetricians and Gynecologists  
Christon MacTaggart Coalition to End Sexual and Domestic Violence

Deyanna Boston Family Physician  
Meghan Sheehan Self  
Daniel Rosenquist Nebraska Medical Association  
Jennifer Griffin Miller Nebraska Medicine  
Linda Hardy Nebraska Nurses Association  
Julia Keown Self  
Shannon Vaccaro Self  
Jodeanne Hedrick OB-GYN  
Meghan Oakes Self  
Rebecca Wells Self  
Abigail Delaney OB-GYN  
Janet Price Self  
Brady Kerr Self  
Toni Christensen Self  
Kacie Ware Self  
Macy Walz OB-GYN  
Katie Anania Self  
Darci O'Neel Self  
Rosemary Thornton Self  
Harper Schubach Self  
Carol Hinkle Self  
Smriti Ganesh Self  
Jennifer Hill OB-GYN  
Jennifer Harney Self  
Kerry Rodabaugh OB-GYN  
Tyne Tyson Self  
Deann Paulson OB-GYN  
Lauren Nelson OB-GYN  
Alyssa Rutan OB-GYN  
Karen Bell-Dancy YWCA Lincoln  
Stephanie Gustin OB-GYN  
Alyson Kavanaugh Self  
Elizabeth Constance OB-GYN  
Stephanie Hartman Self

Non-In Person Opponents: Representing

Mark Loscutt Self  
Wendy Hamilton Self  
Nicole Paul Self  
Lizbeth Campuzano Self  
Jessica Fernandez Erazo Self  
Alivia Rodriguez Self  
Aiden Whalen Self  
Mika Takamori Self  
Kieran Kissler Self  
Andrew Aleman Self  
Chris Cole Self  
LeeAnn Pancharoen Self

Mimi Arabalo Self  
Kimmy Leposky Self  
Grace Kelly Self  
Cass Ward Self  
Crystal Zamora Self  
Lillian M Stecker Self  
Etta Salzman Self  
Mike Kratville Self  
Justin Linoges Self  
Sarah Johnson Self  
Jessica Andersen-Anschutz Self  
Jennifer Gradowski Self  
Mandy Ratn Self  
Mia Perales Self  
Jill Ziegenbein Self  
Anna Wilwerding Self  
Judzia Bombard Self  
Anjali Mishra Self  
Anna Rupp Self  
Chelsea Driscoll Self  
Mary McKeigher Self  
Darci O'Neel Self  
Allison Barg Self  
Barbara Herzing Self  
Linda Hess Self  
Rolinda Thompson Self  
Neva Cozine Self  
Toni Christensen Self  
Rachel Cooper Self  
Carol Ramsey Self  
Elizabeth Peck Self  
Jordan Blake-Oxley Self  
Lilli Knaub Self

Matt Copich Self  
Elle Mostek Self  
Tuesday Metcalf-Hofts Self  
Derek Beltran Self  
Brenna Poindexter Self  
Breanna Corrin Self  
Dan Houser Self  
Tess Houser Self  
Mallory Barry Self  
Melissa Mathes Self  
Laura Cudzilo-Kelsey Self  
Jordan McColm Self  
Grace Binter Self  
Rosa Cancino Self  
Kaitlin Hehnke Self

Maureen Boyle Self  
Erin Morganaro Self  
Kayla McKain Self  
Margan Sayler Self  
Kaylene Nievand Self  
Chelsea Richardson Self  
Kyle Carson Self  
Anna Eickholt Self  
Sarah Hughes Self  
Elizabeth Covoves Self  
Susan Hiley Self  
Anne Savery Self  
Torri Janecek Self  
Sarah Smole Self  
Nancy Grant Colson Self  
Judith King Self  
Verity Wegener Self  
Emily Griffin-Overocker Self  
Joan Griffin Self  
Jean Amoura Self  
Maggie Weber Self  
Keenan Hawkotte Self  
Emily Doe Self  
Seth Thompson Self  
Suzanne King Self  
Karen Grauberg Self  
Levi Hagen Self  
Milissa Mayer Self  
Shaina Barros-Santiago Self  
Lindsey Clements Self  
Chelsea Sader Self  
Natalia Tu Self  
Cindy Copich Self  
Jenne Lozano Self  
Luke Schroer Self  
Alexis Pappas Self  
Madeline Walker Self  
Katherine Kough Self  
Kathryn Thompson Self  
Cass Ward Self  
Abby Kuntz Self  
Susan Soriente Self  
Allee Barton Self  
Carmen Marley Self  
Cat Henning Self  
Claudia Granillo Self  
Maggie Pierson Self  
Henry Nelson Self  
Jacob Carmichael Self

Judy Garlock Self  
Megan Prickett Self  
Carol Ashford Self  
Levi White Self  
Anna Buhman Self  
Christina Grosshans Self  
Kimberly Metzger Self  
Alyssa Payton Self  
Katie VanDerZwag Self  
Jamie Bish Self  
Rev. Shari Woodbury Self  
Sharon Brodkey Self  
Sarah Starkey Self  
Laurel Winsor Self  
Spike Eickhold Self  
Kim Donovan Self  
Ryan Nickell Self  
Charles Yale Self  
Noemi Gilbert Self  
Jane McGill Self  
Chloe Patzloff Self  
Shelley Stall Self  
Christy Knorr Self  
Jessica Scott Self  
Bridgette Foerster Self  
Heather Ropes Self  
Rachel Gibson Self  
Sam Zeleski Self

Lynn Zeleski Self  
Zoe Miller Self  
Karlee Liberty Self  
Kelly Arthur Self  
Scout Richters Self  
Zoe Petersen Self  
Megan Kalata Self  
Emily Peterson Self  
Bridget Krupa Self  
Arianna Lempke Self  
Ilene D Arnold Self  
Alana D'Agostino Self  
Kris Kinzie Self  
Christine Jackson Self  
Mackenzie Freed Self  
Rick Goodman Self  
Carrie Gangwish Self  
David Chipman Self  
Sarah Sweaney Self  
Nicole Kent Self

Sarah Dutt Self  
Maghie Miller Jenkins Self  
Emily Schulenberg Self  
Rebecca Matinez Self  
Claire Covert-ByBee Self  
Julia Kedown Self  
Linda Hardy Self  
Brittany Bowman Self  
Jamie Patzloff Self  
Joan Sangimino Self  
Carla Woeppel Self  
Emily Joelle Weber McKean Self  
Rebecca Rakstad Self  
Claire Wood Self  
Michelle Boss Self  
Doug Hayko Self  
Dean Tarmey Self  
Barbara Rahmann Self  
Nicky Clark Self  
Liliana Menjurez-Falcon Self  
Cassidy Pham Self  
Jacqueline Gomez Self  
Donna White Self  
Matthew Cocke Self  
Nancy Bare Self  
Althea McMickell Self  
Earl Wayne Boles Self

Mari Pilling Self  
Amber Rodregez Self  
Stephanie Motgomery Self  
Shannan Vaccarro Self  
Kyla Clark Self  
Melissa Bugay Self  
Julie Wood Self  
Ruth Ann Thompson Self  
Megan Dinsmoor Self  
Janet Price Self  
Carina McCormick Self  
Sara Bevans Self  
Bill Bevans Self  
Julie Frampton Self  
Elit Gray Self  
Abbi Swatsworth Self  
Kristine Morton Self  
Jessica Todd Self  
Amanda Auberry Self  
Ali Loker Self  
Maggie Thompson Self

Rosa Godinez Self  
Sharon Conlon Self  
Mary Zlomke Self  
Michael Zlomke Self  
Michaela Ciulla Self  
Sara Adkisson Joyner Self  
Allyson Gibbs Self  
Brittany Bedor Self  
Connie Jones Self  
Allyson Westby Self  
Abby Burke Self  
Sue Kratville Self  
Peyton Davis Schmidt Self  
Isabel Rose Kratville Self  
Charlene Wozny Self  
Mel Plaut Self  
Connie McMillan Self  
James Pals Self  
Carol Wardich Self  
H. Edmunds Self  
Lindsey Cody Self  
Morgan Groninger Self  
Anne Boyle Self  
David Greiner Self  
Liz Tylander Self

Tyne Tyson Self  
Belinda Better Self  
Anna Howard Self  
Stephanie Sullivan Self  
Cathy Solarana Self  
Megan Lyons Self  
Mary Reynolds Self  
Deb Cawley Self  
John Lempke Self  
Darcy Covert Self  
Bud Mathey Self  
Megan Hamis Self  
Cindy Ryman Yost Self  
Nancy Phillips Self  
Kimberly Joyce Self  
Emly Varenhorst-Johnson Self  
Crysta Plautz Self  
Kaitlin Mason Self  
Cale Drayer Self  
Hannah Johnson Self  
Sarah O'Neill Self  
Keilly Ponce-Merida Self  
Karla Ponce-Merida Self

Cecilia Zahm Self  
Betel Aga Self  
Lucia Pedroza Self  
Kyra Britt Self  
Mary Allen Self  
Sherry Doman Self  
Susan Scholz Self  
Joan Wilson Self  
Lynda Waring Self  
Megan Rannells Self  
Rachel Scheet Self  
Eric Davis Self  
Margaret Williams Self  
Ann Chambers Self  
Katherine Wilson Self  
Courtney Thompson Self

Neutral: Representing:

Mindy L Lester Nebraska Attorney General's Office  
Angie Phillips Nebraska Legislative Study Group  
Jeff Spahr End Abortion Now Nebraska  
Gina Frank Self  
Timothy C Melcher Self  
Susan L Kirchmann Self  
Will Stewart-Starks Self

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## SECTION-BY-SECTION SUMMARY

LB 626 would create the Nebraska Heartbeat Act. Specifically, the bill requires physicians and medical professionals, before performing or inducing an abortion, to estimate the gestational age of the fetus and perform an ultrasound to determine if the fetus has a “fetal heartbeat”. Specific sections are summarized along with listed objections by the Minority Members.

### Section 3

Section 3 of the bill defines “fetal heartbeat” as “cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac”. Cardiac activity can be detected by ultrasound in cells within an embryo that will eventually become the heart as early as six weeks from a woman’s last menstruation cycle. This is why LB 626 is a near total or six week abortion ban.

### Section 4

Section 4 of the bill provides that it “shall be unlawful for any physician to perform or induce an abortion (a) Before fulfilling the requirements of [performing an ultrasound to detect fetal cardiac activity] or (b) After determining that the unborn child has a detectable fetal heartbeat.”

Section 4 provides that it is not “a violation” of the act if a physician performs or induces an abortion in the case of “medical emergency” or pregnancy resulting from “sexual assault as defined in sections 28-319 or 28-319.01” or pregnancy resulting from “incest as defined in section 28-703.”

The Minority Members of the Committee objected to the narrow exception for “medical emergency” because, as opposition testimony illustrated, the language in LB 626, that was not amended by the committee prevents medical professionals from exercising professional judgment and making professional decisions to protect the life and health of a patient in many situations, including, but not limited to, those that impair bodily functions, infection, hemorrhage, sepsis, complications relating to a fetal anomaly, complications relating to cancer treatments, complications such as twin to twin transfusion syndrome, mental health complications, and other scenarios that threaten the life and health of pregnant woman. Discussion within the Committee to broaden or clarify the definition of “medical emergency” was not accommodated by the Majority.

The Minority Members of the Committee questioned whether the exception for sexual assault or incest required that a perpetrator be convicted of sexual assault or incest since this section specifically refers the statutory references for these crimes. In other words, the section does not characterize a “reported sexual assault” or “an alleged crime of incest”, but instead references the actual crimes themselves, which would indicate that these crimes must be established or proven to permit the abortion procedure. This would effectively nullify the purported rape exception due to the time it would take to reach a conclusion in a criminal case, if one is reached at all, and fails to recognize the clearly established data that many rape and sexual assault victims do not report or initiate a criminal case. Discussion within the Committee to amend or clarify this section was not accommodated by the Majority.

#### Section 5

Section 5 directs that if a physician performs an abortion in the case of sexual assault or incest, the physician shall certify in writing that the abortion was performed because of sexual assault or incest and that the physician complied with all the duties of a health care provider required by Section 28-902 that are applicable to that case. The physician shall keep the written certification in the woman's medical record.

The Minority Members inquired as to how the protection for anonymous sexual assault reporting provided in Section 28-902(2) could be maintained with the bill's requirement that the physician shall keep a written certification as to sexual assault in the woman's medical record. Discussion within the Committee to amend or clarify this section was not accommodated by the Majority.

#### Section 6

Section 6 provides that no woman upon whom an abortion is attempted, induced, or performed shall be liable for a violation of the act. The Minority Members note that this section is conspicuous and peculiar. Statistically, most women who seek abortion care are not credentialed medical professionals in Nebraska. Thus, what liability are proponents seeking to mitigate for patients seeking and receiving abortion care? Discussion within the Committee to amend or clarify this section was not accommodated by the Majority. The minority position reads this section to provide full civil and criminal immunity for women in Nebraska regardless of pregnancy outcomes.

Additionally, the terminology of “liable” for a “violation” of the act connotes that there is some other state sanction aside from licensing revocation. In other words, medical professionals who lose their credentials are subject to discipline by the regulatory entity, they are not “liable” to it. Discussion within the Committee to amend or clarify this section was not accommodated by the Majority.

### Sections 7 through 13

Sections 7 through 13 amends various credentialing statutes to delineate the grounds and procedure by which a medical professional could have their license revoked or be disciplined by the director for violating the Nebraska Heartbeat Act.

### Section 16

Section 16 contains the emergency clause, meaning the bill takes effect when signed by the Governor. The Minority Members of the Committee objected to the emergency clause because the passage of the bill will have a profound impact on the practice of maternal medicine throughout the state, as many testifiers expressed at the Committee Hearing. Inclusion of the emergency clause will mean that the practice of medicine will literally be revamped overnight. It will be difficult, if not impossible, for practitioners and clinics to accommodate changing practices and protocols, instructing staff, and appreciating the consequences of this law change. Discussion within the Committee to strike this section was not accommodated by the Majority.

### Current law not referenced by the bill

The text of LB 626 provides for professional sanction for violating its provisions.

However, LB 626 does not repeal any of the current criminal laws regulating or prohibiting abortions. LB 626 does prevent current criminal laws from being applied against a person seeking an abortion. This means that a medical professional could be charged criminally under other existing sections of statute for failing to comply with LB626.

Nebraska has a number of statutes relating to abortion procedures and imposing requirements on medical practitioners that are enforceable by prosecution for felony and misdemeanor violations. For example, Section 28-336 provides that it is a Class IV felony for performing “an abortion by using anything other than accepted medical procedures”. The introducer of this measure confirmed that LB 626 will establish the accepted medical procedure in Nebraska (Floor Debate Transcript 1/26/23, p.16-17). Dr. Daniel Rosenquist, appearing on behalf of the Nebraska Medical Association, testified in opposition to LB 626 and specifically referenced this current felony offense and explained that many of the members of the Nebraska Medical Association were concerned that passage of LB 626 would make it a Class IV felony if they were to perform an abortion outside the scope of what is permitted by LB 626.

Section 28-336 is a general, default felony offense for providing abortions. Nebraska has other criminal laws relating to abortion practice, none of which repealed by LB 626: Section 28-332 provides for a Class IV felony for aborting a viable fetus, failure to aid viable fetus, and related crimes; Section 28-335 provides for a Class IV felony for performing an abortion when not a licensed physician; Section 28-339 makes is a Class II misdemeanor to for a hospital or medical practice to discriminate against someone for their refusal to participate in the performance of an abortion; Section 28-342 provides for a Class III felony for the experimental use of aborted fetal tissue; Section 28-344 provides for a Class II misdemeanor for failure to properly complete reporting forms; Section 28-346 provides for a Class IV felony for the experimental use of “premature infant aborted”; Section 28-347.04 provides for a Class IV felony to perform a “dismemberment” abortion; and Section 28-3.108 provides for a Class IV felony to perform an abortion after 20 weeks of gestation.

The Minority Members noted that none of these existing crimes are repealed by LB 626.

The Minority Members expressed concern that courts will assume that the Legislature was well aware of existing laws when enacting new legislation. Thus, it undermines proponents' claims that there are no criminal penalties for doctors in LB 626 as there are. If the Legislature does not repeal those measures or make an exception for the applicability of a bill's provision under existing laws, then the courts will conclude the Legislature did not intend to repeal or provide for an exception and in fact intended that the new law would be incorporated into the existing legal

framework. Discussion within the Committee to amend or clarify the bill in this regard was not accommodated by the Majority.

Machaela Cavanaugh  
Member of the Health and Human Services Committee

Jen Day  
Member of the Health and Human Services Committee

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Cavanaugh, M., 6

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Day, 49