FOR AN ACT relating to abortion; to amend sections 28-326, 28-327, 28-327.01, 28-327.03, and 28-327.04, Reissue Revised Statutes of Nebraska; to provide for additional voluntary and informed consents from the pregnant woman; to define terms; to harmonize provisions; to provide severability; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 28-326, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

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

(6) Viability means that stage of human development when the unborn child is potentially able to live more than merely momentarily outside the womb of the mother by natural or artificial means;
(7) Emergency situation means that condition which, on the basis of the physician’s good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial impairment of a major bodily function;

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

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

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

(11) Ultrasound means the use of ultrasonic waves for diagnostic or therapeutic purposes, specifically to monitor an unborn child.
Sec. 2. Section 28-327, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

(d) That she cannot be forced or required by anyone to have an abortion and is free to withhold or withdraw her consent for an abortion.

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

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

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

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

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

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

(e) That she has the right to request a comprehensive
list, compiled by the Department of Health and Human Services,
of health care providers, facilities, and clinics that offer to
have ultrasounds performed by a person at least as qualified
as a registered nurse licensed under the Uniform Credentialing
Act, including and specifying those that offer to perform
such ultrasounds free of charge. The list shall be arranged
geographically and shall include the name, address, hours of
operation, and telephone number of each entity. If requested by
the woman, the physician who is to perform the abortion, the
referring physician, or his or her agent shall provide such a list
as compiled by the department;

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

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

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

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

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

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

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

  (c) The requirements of subdivision (3) of this section have been performed if an ultrasound is performed prior to the performance of the abortion; and

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

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

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

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

(b) Materials designed to inform the woman of the
probable anatomical and physiological characteristics of the unborn
child at two-week gestational increments from the time when a woman
can be known to be pregnant to full term, including pictures or
drawings representing the development of unborn children at the
two-week gestational increments, and any relevant information on
the possibility of the unborn child’s survival. Any such pictures
or drawings shall contain the dimensions of the unborn child and
shall be realistic and appropriate for the stage of pregnancy
depicted. The materials shall be objective, nonjudgmental, and
designed to convey only accurate scientific information about
the unborn child at the various gestational ages. The materials
shall also contain objective information describing the methods of
abortion procedures commonly employed, the medical risks commonly
associated with each such procedure, the possible detrimental
psychological effects of abortion, the medical risks commonly
associated with abortion, and the medical risks commonly associated
with carrying a child to term; and-

(c) A comprehensive list of health care providers,
facilities, and clinics that offer to have ultrasounds performed by
a person at least as qualified as a registered nurse licensed under
the Uniform Credentialing Act, including and specifying those that
offer to perform such ultrasounds free of charge. The list shall be
arranged geographically and shall include the name, address, hours
of operation, and telephone number of each entity.

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

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

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

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

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

28-327.04 Any person upon whom an abortion has been
performed or attempted in violation of section 28-327 or the parent
or guardian of a minor upon whom an abortion has been performed
or attempted in violation of such section shall have a right to
maintain a civil cause of action against the person who performed
the abortion or attempted to perform the abortion. A violation
of such section shall be prima facie evidence of professional
negligence. The written certification prescribed by subdivision (3)
(4) of section 28-327 signed by the person upon whom an abortion
has been performed or attempted shall constitute and create a
rebuttable presumption of full compliance with all provisions of
section 28-327 in favor of the physician who performed or attempted
to perform the abortion, the referring physician, or the agent
of either physician. The written certification shall be admissible
as evidence in the cause of action for professional negligence or
in any criminal action. If judgment is rendered in favor of the
plaintiff in any such action, the court shall also render judgment
for a reasonable attorney’s fee in favor of the plaintiff against
the defendant.

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

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