

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1109**

Introduced by Conrad, 46.

Read first time January 22, 2014

Committee: Judiciary

A BILL

1 FOR AN ACT relating to abortion; to amend sections 38-2021, 64-113,  
2 71-6901, 71-6902, 71-6903, 71-6904, 71-6905, 71-6906,  
3 71-6907, and 71-6908, Revised Statutes Cumulative  
4 Supplement, 2012; to change and eliminate provisions  
5 relating to consent and parental notification; to  
6 eliminate certain penalties; to repeal the original  
7 sections; and to outright repeal sections 71-6902.01,  
8 71-6902.02, 71-6909, 71-6910, and 71-6911, Revised  
9 Statutes Cumulative Supplement, 2012.  
10 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 38-2021, Revised Statutes Cumulative  
2 Supplement, 2012, is amended to read:

3           38-2021 Unprofessional conduct means any departure from  
4 or failure to conform to the standards of acceptable and prevailing  
5 practice of medicine and surgery or the ethics of the profession,  
6 regardless of whether a person, patient, or entity is injured, or  
7 conduct that is likely to deceive or defraud the public or is  
8 detrimental to the public interest, including, but not limited to:

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

14           (2) Performing an abortion upon a minor without having  
15 satisfied the requirements of sections 71-6901 to ~~71-6911~~; 71-6908;

16           (3) The intentional and knowing performance of a partial-  
17 birth abortion as defined in subdivision (7) of section 28-326,  
18 unless such procedure is necessary to save the life of the mother  
19 whose life is endangered by a physical disorder, physical illness, or  
20 physical injury, including a life-endangering physical condition  
21 caused by or arising from the pregnancy itself; and

22           (4) Performance by a physician of an abortion in  
23 violation of the Pain-Capable Unborn Child Protection Act.

24           Sec. 2. Section 64-113, Revised Statutes Cumulative  
25 Supplement, 2012, is amended to read:

1                   64-113 (1) Whenever charges of malfeasance in office are  
2 preferred to the Secretary of State against any notary public in this  
3 state, or whenever the Secretary of State has reasonable cause to  
4 believe any notary public in this state is guilty of acts of  
5 malfeasance in office, the Secretary of State may appoint any  
6 disinterested person, not related by consanguinity to either the  
7 notary public or person preferring the charges, and authorized by law  
8 to take testimony of witnesses by deposition, to notify such notary  
9 public to appear before him or her on a day and at an hour certain,  
10 after at least ten days from the day of service of such notice. At  
11 such appearance, the notary public may show cause as to why his or  
12 her commission should not be canceled or temporarily revoked. The  
13 appointee may issue subpoenas to require the attendance and testimony  
14 of witnesses and the production of any pertinent records, papers, or  
15 documents, may administer oaths, and may accept any evidence he or  
16 she deems pertinent to a proper determination of the charge. The  
17 notary public may appear, at such time and place, and cross-examine  
18 witnesses and produce witnesses in his or her behalf. Upon the  
19 receipt of such examination, duly certified in the manner prescribed  
20 for taking depositions to be used in suits in the district courts of  
21 this state, the Secretary of State shall examine the same, and if  
22 therefrom he or she finds that the notary public is guilty of acts of  
23 malfeasance in office, he or she may remove the person charged from  
24 the office of notary public or temporarily revoke such person's  
25 commission. Within fifteen days after such removal or revocation and

1 notice thereof, such notary public shall deposit, with the Secretary  
2 of State, the commission as notary public and notarial seal. The  
3 commission shall be canceled or temporarily revoked by the Secretary  
4 of State. A person so removed from office shall be forever  
5 disqualified from holding the office of notary public. A person whose  
6 commission is temporarily revoked shall be returned his or her  
7 commission and seal upon completion of the revocation period and  
8 passing the examination described in section 64-101.01. The fees for  
9 taking such testimony shall be paid by the state at the same rate as  
10 fees for taking depositions by notaries public. The failure of the  
11 notary public to deposit his or her commission and seal with the  
12 Secretary of State as required by this section shall subject him or  
13 her to a penalty of one thousand dollars, to be recovered in the name  
14 of the state.

15 (2) For purposes of this section, malfeasance in office  
16 means, while serving as a notary public, (a) failure to follow the  
17 requirements and procedures for notarial acts provided for in Chapter  
18 64, articles 1 and 2, ~~(b) violating the confidentiality provisions of~~  
19 ~~section 71-6911,~~ or ~~(c)~~ (b) being convicted of a felony or other  
20 crime involving fraud or dishonesty.

21 Sec. 3. Section 71-6901, Revised Statutes Cumulative  
22 Supplement, 2012, is amended to read:

23 71-6901 For purposes of sections 71-6901 to ~~71-6911:~~  
24 71-6908:

25 (1) Abortion shall mean an act, procedure, device, or

1 prescription administered to a woman known by the person so  
2 administering to be pregnant and administered with the intent and  
3 result of producing the premature expulsion, removal, or termination  
4 of the human life within the womb of the pregnant woman, except that  
5 in cases in which the unborn child's viability is threatened by  
6 continuation of the pregnancy, early delivery after viability shall  
7 not be construed as an abortion;

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

13 (3) Parent shall mean one parent or guardian of the  
14 pregnant woman selected by the pregnant woman. The attending  
15 physician shall certify in writing in the pregnant woman's medical  
16 record the parent or guardian selected by the woman;

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

19 (5) Pregnant woman shall mean an unemancipated woman  
20 under eighteen years of age who is pregnant or a pregnant woman for  
21 whom a guardian has been appointed pursuant to sections 30-2620 to  
22 30-2629 because of a finding of incapacity, disability, or  
23 incompetency.

24 ~~(1) Abortion means the act of using or prescribing any~~  
25 ~~instrument, medicine, drug, or any other substance, device, or means~~

1 ~~with the intent to terminate the clinically diagnosable pregnancy of~~  
2 ~~a woman with knowledge that the termination by those means will with~~  
3 ~~reasonable likelihood cause the death of the unborn child. Such use,~~  
4 ~~prescription, or means is not an abortion if done with the intent to:~~

5 ~~(a) Save the life or preserve the health of an unborn~~  
6 ~~child;~~

7 ~~(b) Remove a dead unborn child caused by a spontaneous~~  
8 ~~abortion; or~~

9 ~~(c) Remove an ectopic pregnancy;~~

10 ~~(2) Coercion means restraining or dominating the choice~~  
11 ~~of a pregnant woman by force, threat of force, or deprivation of food~~  
12 ~~and shelter;~~

13 ~~(3) Consent means a declaration acknowledged before a~~  
14 ~~notary public and signed by a parent or legal guardian of the~~  
15 ~~pregnant woman or an alternate person as described in section~~  
16 ~~71-6902.01 declaring that the principal has been informed that the~~  
17 ~~pregnant woman intends to undergo a procedure pursuant to subdivision~~  
18 ~~(1) of section 71-6901 and that the principal consents to the~~  
19 ~~procedure;~~

20 ~~(4) Department means the Department of Health and Human~~  
21 ~~Services;~~

22 ~~(5) Emancipated means a situation in which a person under~~  
23 ~~eighteen years of age has been married or legally emancipated;~~

24 ~~(6) Facsimile copy means a copy generated by a system~~  
25 ~~that encodes a document or photograph into electrical signals,~~

1 ~~transmits those signals over telecommunications lines, and then~~  
2 ~~reconstructs the signals to create an exact duplicate of the original~~  
3 ~~document at the receiving end;~~

4 ~~(7) Incompetent means any person who has been adjudged a~~  
5 ~~disabled person and has had a guardian appointed under sections~~  
6 ~~30-2617 to 30-2629;~~

7 ~~(8) Medical emergency means a condition that, on the~~  
8 ~~basis of the physician's good faith clinical judgment, so complicates~~  
9 ~~the medical condition of a pregnant woman as to necessitate the~~  
10 ~~immediate abortion of her pregnancy to avert her death or for which a~~  
11 ~~delay will create serious risk of substantial and irreversible~~  
12 ~~impairment of a major bodily function;~~

13 ~~(9) Physician means any person licensed to practice~~  
14 ~~medicine in this state as provided in the Uniform Credentialing Act.~~  
15 ~~Physician includes a person who practices osteopathy; and~~

16 ~~(10) Pregnant woman means an unemancipated woman under~~  
17 ~~eighteen years of age who is pregnant or a woman for whom a guardian~~  
18 ~~has been appointed pursuant to sections 30-2617 to 30-2629 because of~~  
19 ~~a finding of incapacity, disability, or incompetency who is pregnant.~~

20 ~~Sec. 4. Section 71-6902, Revised Statutes Cumulative~~  
21 ~~Supplement, 2012, is amended to read:~~

22 ~~71-6902 Except in the case of a medical emergency or~~  
23 ~~except as provided in sections 71-6902.01, 71-6903, and 71-6906, no~~  
24 ~~person shall perform an abortion upon a pregnant woman unless, in the~~  
25 ~~case of a woman who is less than eighteen years of age, he or she~~

1 ~~first obtains the notarized written consent of both the pregnant~~  
2 ~~woman and one of her parents or a legal guardian or, in the case of a~~  
3 ~~woman for whom a guardian has been appointed pursuant to sections~~  
4 ~~30-2617 to 30-2629, he or she first obtains the notarized written~~  
5 ~~consent of her guardian. In deciding whether to grant such consent, a~~  
6 ~~pregnant woman's parent or guardian shall consider only his or her~~  
7 ~~child's or ward's best interest.~~

8 (1) No abortion shall be performed upon a pregnant woman  
9 until at least forty-eight hours after written notice of the pending  
10 abortion has been delivered in the manner specified in subsection (2)  
11 or (3) of this section.

12 (2) The notice shall be addressed to the parent at his or  
13 her usual place of residence and shall be delivered personally to the  
14 parent by the physician or an agent.

15 (3) In lieu of the delivery required by subsection (2) of  
16 this section, notice shall be made by registered or certified mail  
17 addressed to the parent at his or her usual place of residence with  
18 return receipt requested and restricted delivery to the addressee,  
19 which means the postal employee can only deliver mail to the  
20 authorized addressee. Time of delivery shall be deemed to occur at  
21 twelve o'clock noon on the next day on which regular mail delivery  
22 takes place subsequent to the mailing.

23 Sec. 5. Section 71-6903, Revised Statutes Cumulative  
24 Supplement, 2012, is amended to read:

25 71-6903 (1) ~~The requirements and procedures under this~~

1 ~~section are available to pregnant women whether or not they are~~  
2 ~~residents of this state.~~

3 ~~(2)-(1) If a pregnant woman elects not to obtain the~~  
4 ~~consent of her parents or guardians, notify her parent, a judge of a~~  
5 ~~district court, separate juvenile court, or county court sitting as a~~  
6 ~~juvenile court shall, upon petition or motion and after an~~  
7 ~~appropriate hearing, authorize a physician to perform the abortion if~~  
8 ~~the court determines by clear and convincing evidence that the~~  
9 ~~pregnant woman is both sufficiently mature and well-informed to~~  
10 ~~decide whether to have an abortion. If the court does not make the~~  
11 ~~finding specified in this subsection or subsection (3) of this~~  
12 ~~section, it shall dismiss the petition. capable of giving informed~~  
13 ~~consent to the proposed abortion. If the court determines that the~~  
14 ~~pregnant woman is not mature or if the pregnant woman does not claim~~  
15 ~~to be mature, the court shall determine whether the performance of an~~  
16 ~~abortion upon her without notification of her parent would be in her~~  
17 ~~best interests and shall authorize a physician to perform the~~  
18 ~~abortion without such notification if the court concludes that the~~  
19 ~~best interests of the pregnant woman would be served thereby.~~

20 ~~(3) If the court finds, by clear and convincing evidence,~~  
21 ~~that there is evidence of abuse as defined in section 28-351, sexual~~  
22 ~~abuse as defined in section 28-367, or child abuse or neglect as~~  
23 ~~defined in section 28-710 of the pregnant woman by a parent or a~~  
24 ~~guardian or that an abortion without the consent of a parent or a~~  
25 ~~guardian is in the best interest of the pregnant woman, the court~~

1 ~~shall issue an order authorizing the pregnant woman to consent to the~~  
2 ~~performance or inducement of an abortion without the consent of a~~  
3 ~~parent or a guardian. If the court does not make the finding~~  
4 ~~specified in this subsection or subsection (2) of this section, it~~  
5 ~~shall dismiss the petition.~~

6 ~~(4)~~(2) A facsimile copy of the petition or motion may be  
7 transmitted directly to the court for filing. If a facsimile copy is  
8 filed in lieu of the original document, the party filing the  
9 facsimile copy shall retain the original document for production to  
10 the court if requested to do so.

11 ~~(5)~~(3) A court shall not be required to have a facsimile  
12 machine nor shall the court be required to transmit orders or other  
13 material to attorneys or parties via facsimile transmission.

14 ~~(6) The pregnant woman may commence an~~(4) An action for  
15 waiver of ~~the consent requirement~~notification shall be commenced by  
16 the filing of a petition or motion personally, by mail, or by  
17 facsimile on a form provided by the State Court Administrator.

18 ~~(7)~~The State Court Administrator shall develop the  
19 petition form and accompanying instructions on the procedure for  
20 petitioning the court for a waiver of ~~consent,~~notification,  
21 including the name, address, telephone number, and facsimile number  
22 of each court in the state. A sufficient number of petition forms and  
23 instructions shall be made available in each courthouse in such place  
24 that members of the general public may obtain a form and instructions  
25 without requesting such form and instructions from the clerk of the

1 court or other court personnel. The clerk of the court shall, upon  
2 request, assist in completing and filing the petition for waiver of  
3 ~~consent.~~ notification.

4 ~~(8)-(5)~~ Proceedings in court pursuant to this section  
5 shall be confidential, and shall ensure the anonymity of the pregnant  
6 woman. ~~The pregnant woman shall have the right to file her petition~~  
7 ~~in the court using a pseudonym or using solely her initials.~~  
8 Proceedings shall be held in camera. Only the pregnant woman, the  
9 pregnant woman's guardian ad litem, the pregnant woman's attorney,  
10 and a person whose presence is specifically requested by the pregnant  
11 woman or the pregnant woman's attorney may attend the hearing on the  
12 petition. All testimony, all documents, all other evidence presented  
13 to the court, the petition and any order entered, and all records of  
14 any nature and kind relating to the matter shall be sealed by the  
15 clerk of the court and shall not be open to any person except upon  
16 order of the court for good cause shown. A separate docket for the  
17 purposes of this section shall be maintained by the clerk of the  
18 court and shall likewise be sealed and not opened to inspection by  
19 any person except upon order of the court for good cause shown.

20 ~~(9)-(6)~~ A pregnant woman who is subject to this section  
21 may participate in the court proceedings on her own behalf, and the  
22 court may appoint a guardian ad litem for her. The court shall advise  
23 the pregnant woman that she has a right to court-appointed counsel  
24 and shall, upon her request, provide her with such counsel. Such  
25 counsel shall receive a fee to be fixed by the court and to be paid

1 out of the treasury of the county in which the proceeding was held.

2 ~~(10)~~(7) Proceedings in court pursuant to this section  
3 shall be given such precedence over other pending matters so that the  
4 court may reach a decision promptly and without delay to serve the  
5 best interest of the pregnant woman. In no case shall the court fail  
6 to rule within seven calendar days from the time the petition is  
7 filed. If the court fails to rule within the required time period,  
8 the pregnant woman may file an application for a writ of mandamus  
9 with the Supreme Court. If cause for a writ of mandamus exists, the  
10 writ shall issue within three days.

11 ~~(11)~~(8) The court shall issue a written order which  
12 ~~includes specific factual findings and legal conclusions supporting~~  
13 ~~its decision which shall be provided immediately to the pregnant~~  
14 ~~woman, the pregnant woman's guardian ad litem, the pregnant woman's~~  
15 ~~attorney, and any other person designated by the pregnant woman to~~  
16 ~~receive the order. Further, the court shall order that a confidential~~  
17 ~~record of the evidence and the judge's findings and conclusions be~~  
18 ~~maintained. At the hearing, the court shall hear evidence relating to~~  
19 ~~the emotional development, maturity, intellect, and understanding of~~  
20 ~~the pregnant woman. shall be provided immediately to the pregnant~~  
21 ~~woman, the pregnant woman's guardian ad litem, the pregnant woman's~~  
22 ~~attorney, or any other person designated by the pregnant woman to~~  
23 ~~receive the order.~~

24 Sec. 6. Section 71-6904, Revised Statutes Cumulative  
25 Supplement, 2012, is amended to read:

1                   71-6904 (1) An appeal to the Supreme Court shall be  
2 available to any pregnant woman for whom a court denies an order  
3 authorizing an abortion without ~~consent.~~notification. An order  
4 authorizing an abortion without ~~consent~~notification shall not be  
5 subject to appeal.

6                   (2) An adverse ruling by the court may be appealed to the  
7 Supreme Court.

8                   (3) A pregnant woman may file a notice of appeal of any  
9 final order to the Supreme Court. The State Court Administrator shall  
10 develop the form for notice of appeal and accompanying instructions  
11 on the procedure for an appeal. A sufficient number of forms for  
12 notice of appeal and instructions shall be made available in each  
13 courthouse in such place that members of the general public can  
14 obtain a form and instructions without requesting such form and  
15 instructions from the clerk of the court or other court personnel.

16                   (4) The clerk of the court shall cause the court  
17 transcript and bill of exceptions to be filed with the Supreme Court  
18 within four business days, but in no event later than seven calendar  
19 days, from the date of the filing of the notice of appeal.

20                   (5) In all appeals under this section the pregnant woman  
21 shall have the right of a confidential and expedited appeal and the  
22 right to counsel at the appellate level if not already represented.  
23 Such counsel shall be appointed by the court and shall receive a fee  
24 to be fixed by the court and to be paid out of the treasury of the  
25 county in which the proceeding was held. The pregnant woman shall not

1 be required to appear.

2 (6) The Supreme Court shall hear the appeal de novo on  
3 the record and issue a written decision which shall be provided  
4 immediately to the pregnant woman, the pregnant woman's guardian ad  
5 litem, the pregnant woman's attorney, or any other person designated  
6 by the pregnant woman to receive the order.

7 (7) The Supreme Court shall rule within seven calendar  
8 days from the time of the docketing of the appeal in the Supreme  
9 Court.

10 (8) The Supreme Court shall adopt and promulgate rules to  
11 ensure that proceedings under this section are handled in a  
12 confidential and expeditious manner.

13 Sec. 7. Section 71-6905, Revised Statutes Cumulative  
14 Supplement, 2012, is amended to read:

15 71-6905 No filing fees or costs shall be required of any  
16 pregnant woman at either the trial or appellate level for any  
17 proceedings pursuant to sections 71-6901 to ~~71-6911~~. 71-6908.

18 Sec. 8. Section 71-6906, Revised Statutes Cumulative  
19 Supplement, 2012, is amended to read:

20 71-6906 ~~Consent~~ Notification shall not be required  
21 pursuant to sections 71-6901 to ~~71-6911~~ 71-6908 if any of the  
22 following conditions exist:

23 ~~(1) The attending physician certifies in the pregnant~~  
24 ~~woman's medical record that a medical emergency exists and there is~~  
25 ~~insufficient time to obtain the required consent; or~~

1           ~~(2) Consent is waived under section 71-6903.~~

2           (1) The attending physician certifies in writing in the  
3 pregnant woman's medical record that continuation of the pregnancy  
4 provides an immediate threat and grave risk to the life or health of  
5 the pregnant woman and there is insufficient time to provide the  
6 required notification;

7           (2) The abortion is authorized in writing by the person  
8 who is entitled to notification; or

9           (3) The pregnant woman declares that she is a victim of  
10 abuse as defined in section 28-351, sexual abuse as defined in  
11 section 28-367, or child abuse or neglect as defined in section  
12 28-710. Notice of such a declaration shall be made to the proper  
13 authorities as provided in sections 28-372 and 28-711. If such a  
14 declaration is made, the attending physician or his or her agent  
15 shall inform the pregnant woman of his or her duty to notify the  
16 proper authorities as provided in sections 28-372 and 28-711.

17           Sec. 9. Section 71-6907, Revised Statutes Cumulative  
18 Supplement, 2012, is amended to read:

19           71-6907 (1) Any physician or attending physician who  
20 knowingly and intentionally ~~or with reckless disregard~~ performs an  
21 abortion in violation of sections 71-6901 to 71-6906 ~~and 71-6909 to~~  
22 ~~71-6911~~ shall be guilty of a Class III misdemeanor.

23           (2) Performance of an abortion in violation of such  
24 sections shall be grounds for a civil action by a person wrongfully  
25 ~~denied the right and opportunity to consent.~~ notification.

1           (3) A person shall be immune from liability under such  
2 sections (a) if he or she establishes by written evidence that he or  
3 she relied upon evidence sufficient to convince a careful and prudent  
4 person that the representations of the pregnant woman regarding  
5 information necessary to comply with such sections are bona fide and  
6 true, ~~or~~ (b) if the person has attempted with reasonable diligence to  
7 deliver notification as required by section 71-6902 but has been  
8 unable to do so, or (c) if the person has performed an abortion  
9 authorized by a court order issued pursuant to section 71-6903 or  
10 71-6904.

11           ~~(4) Any person not authorized to provide consent under~~  
12 ~~sections 71-6901 to 71-6911 who provides consent is guilty of a Class~~  
13 ~~III misdemeanor.~~

14           ~~(5) Any person who coerces a pregnant woman to have an~~  
15 ~~abortion is guilty of a Class III misdemeanor.~~

16           Sec. 10. Section 71-6908, Revised Statutes Cumulative  
17 Supplement, 2012, is amended to read:

18           71-6908 The Legislature recognizes and hereby declares  
19 that some teenage pregnancies are a direct or indirect result of  
20 family or foster family abuse, neglect, or sexual assault. The  
21 Legislature further recognizes that the actions of abuse, neglect, or  
22 sexual assault are crimes regardless of whether they are committed by  
23 strangers, acquaintances, or family members. The Legislature further  
24 recognizes the need for a parental consent parent or guardian  
25 notification bypass system as set out in section 71-6903 due to the

1 number of unhealthy family environments in which some pregnant women  
2 reside. The Legislature encourages county attorneys to prosecute  
3 persons accused of committing acts of abuse, incest, neglect, or  
4 sexual assault pursuant to sections 28-319, 28-319.01, 28-320,  
5 28-320.01, 28-703, and 28-707 even if the alleged crime is committed  
6 by a biological or adoptive parent, foster parent, or other  
7 biological, adoptive, or foster family member.

8           Sec. 11. Original sections 38-2021, 64-113, 71-6901,  
9 71-6902, 71-6903, 71-6904, 71-6905, 71-6906, 71-6907, and 71-6908,  
10 Revised Statutes Cumulative Supplement, 2012, are repealed.

11           Sec. 12. The following sections are outright repealed:  
12 Sections 71-6902.01, 71-6902.02, 71-6909, 71-6910, and 71-6911,  
13 Revised Statutes Cumulative Supplement, 2012.