

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 209

FINAL READING

Introduced by Albrecht, 17; Arch, 14; Bostelman, 23; Brewer, 43; Brieese, 41; Clements, 2; Erdman, 47; Geist, 25; Gragert, 40; Halloran, 33; Hansen, B., 16; Hilgers, 21; Kolterman, 24; La Grone, 49; Linehan, 39; Lowe, 37; McDonnell, 5; Murman, 38; Quick, 35; Scheer, 19; Slama, 1; Dorn, 30; Groene, 42; Moser, 22; Hughes, 44.

Read first time January 11, 2019

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
2 28-327, 28-327.01, 28-345, and 28-806, Reissue Revised Statutes of
3 Nebraska; to provide requirements for the provision of information
4 and materials regarding finding medical assistance and continuing a
5 viable pregnancy after taking mifepristone; to provide duties for
6 the Department of Health and Human Services; to require a
7 confidential reporting form as prescribed; to change provisions
8 relating to public indecency; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-327, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-327 No abortion shall be performed except with the voluntary and
4 informed consent of the woman upon whom the abortion is to be performed.
5 Except in the case of an emergency situation, consent to an abortion is
6 voluntary and informed only if:

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

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

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

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

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

23 (e) Research indicates that mifepristone alone is not always
24 effective in ending a pregnancy. You may still have a viable pregnancy
25 after taking mifepristone. If you change your mind and want to continue
26 your pregnancy after taking mifepristone, information on finding
27 immediate medical assistance is available on the web site of the
28 Department of Health and Human Services.

29 The person providing the information specified in this subdivision
30 to the person upon whom the abortion is to be performed shall be deemed
31 qualified to so advise and provide such information only if, at a

1 minimum, he or she has had training in each of the following subjects:
2 Sexual and reproductive health; abortion technology; contraceptive
3 technology; short-term counseling skills; community resources and
4 referral; and informed consent. The physician or the physician's agent
5 may provide this information by telephone without conducting a physical
6 examination or tests of the patient, in which case the information
7 required to be supplied may be based on facts supplied by the patient and
8 whatever other relevant information is reasonably available to the
9 physician or the physician's agent;

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

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

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

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

20 (d) That she has the right to review the printed materials described
21 in section 28-327.01. The physician or his or her agent shall orally
22 inform the woman that the materials have been provided by the Department
23 of Health and Human Services and that they describe the unborn child, ~~and~~
24 list agencies which offer alternatives to abortion, and include
25 information on finding immediate medical assistance if she changes her
26 mind after taking mifepristone and wants to continue her pregnancy. If
27 the woman chooses to review the materials, they shall either be given to
28 her at least twenty-four hours before the abortion or mailed to her at
29 least seventy-two hours before the abortion by certified mail, restricted
30 delivery to addressee, which means the postal employee can only deliver
31 the mail to the addressee. The physician and his or her agent may

1 disassociate themselves from the materials and may comment or refrain
2 from commenting on them as they choose; and

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

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

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

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

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

1 external members and internal organs, if present and viewable;

2 (4) At least one hour prior to the performance of an abortion, a
3 physician, psychiatrist, psychologist, mental health practitioner,
4 physician assistant, registered nurse, or social worker licensed under
5 the Uniform Credentialing Act has:

6 (a) Evaluated the pregnant woman to identify if the pregnant woman
7 had the perception of feeling pressured or coerced into seeking or
8 consenting to an abortion;

9 (b) Evaluated the pregnant woman to identify the presence of any
10 risk factors associated with abortion;

11 (c) Informed the pregnant woman and the physician who is to perform
12 the abortion of the results of the evaluation in writing. The written
13 evaluation shall include, at a minimum, a checklist identifying both the
14 positive and negative results of the evaluation for each risk factor
15 associated with abortion and both the licensed person's written
16 certification and the woman's written certification that the pregnant
17 woman was informed of the risk factors associated with abortion as
18 discussed; and

19 (d) Retained a copy of the written evaluation results in the
20 pregnant woman's permanent record;

21 (5) If any risk factors associated with abortion were identified,
22 the pregnant woman was informed of the following in such manner and
23 detail that a reasonable person would consider material to a decision of
24 undergoing an elective medical procedure:

25 (a) Each complication associated with each identified risk factor;
26 and

27 (b) Any quantifiable risk rates whenever such relevant data exists;

28 (6) The physician performing the abortion has formed a reasonable
29 medical judgment, documented in the permanent record, that:

30 (a) The preponderance of statistically validated medical studies
31 demonstrates that the physical, psychological, and familial risks

1 associated with abortion for patients with risk factors similar to the
2 patient's risk factors are negligible risks;

3 (b) Continuance of the pregnancy would involve risk of injury to the
4 physical or mental health of the pregnant woman greater than if the
5 pregnancy were terminated by induced abortion; or

6 (c) Continuance of the pregnancy would involve less risk of injury
7 to the physical or mental health of the pregnant woman than if the
8 pregnancy were terminated by an induced abortion;

9 (7) The woman certifies in writing, prior to the abortion, that:

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

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

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

17 (8) Prior to the performance of the abortion, the physician who is
18 to perform the abortion or his or her agent receives a copy of the
19 written certification prescribed by subdivision (7) of this section. The
20 physician or his or her agent shall retain a copy of the signed
21 certification form in the woman's medical record.

22 Sec. 2. Section 28-327.01, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 28-327.01 (1) The Department of Health and Human Services shall
25 cause to be published the following easily comprehensible printed
26 materials:

27 (a) Geographically indexed materials designed to inform the woman of
28 public and private agencies and services available to assist a woman
29 through pregnancy, upon childbirth, and while the child is dependent,
30 including adoption agencies and agencies and services for prevention of
31 unintended pregnancies, which materials shall include a comprehensive

1 list of the agencies available, a description of the services they offer,
2 and a description of the manner, including telephone numbers and
3 addresses in which such agencies may be contacted or printed materials
4 including a toll-free, twenty-four-hour-a-day telephone number which may
5 be called to orally obtain such a list and description of agencies in the
6 locality of the caller and of the services they offer;

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

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

30 (d) Materials designed to inform the woman that she may still have a
31 viable pregnancy after taking mifepristone. The materials shall include

1 the following statements: "Research indicates that mifepristone alone is
2 not always effective in ending a pregnancy. You may still have a viable
3 pregnancy after taking mifepristone. If you change your mind and want to
4 continue your pregnancy after taking mifepristone, it may not be too
5 late."; and

6 (e) Materials, including contact information, that will assist the
7 woman in finding a medical professional who can help her continue her
8 pregnancy after taking mifepristone.

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

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

15 (4) The Department of Health and Human Services shall make available
16 on its Internet web site a printable publication of geographically
17 indexed materials designed to inform the woman of public and private
18 agencies with services available to assist a woman with mental health
19 concerns, following a risk factor evaluation. Such services shall
20 include, but not be limited to, outpatient and crisis intervention
21 services and crisis hotlines. The materials shall include a comprehensive
22 list of the agencies available, a description of the services offered,
23 and a description of the manner in which such agencies may be contacted,
24 including addresses and telephone numbers of such agencies, as well as a
25 toll-free, twenty-four-hour-a-day telephone number to be provided by the
26 department which may be called to orally obtain the names of the agencies
27 and the services they provide in the locality of the woman. The
28 department shall update the publication as necessary.

29 (5) The Department of Health and Human Services shall publish and
30 make available on its web site materials designed to inform the woman
31 that she may still have a viable pregnancy after taking mifepristone. The

1 materials shall include the following statements: "Research indicates
2 that mifepristone alone is not always effective in ending a pregnancy.
3 You may still have a viable pregnancy after taking mifepristone. If you
4 change your mind and want to continue your pregnancy after taking
5 mifepristone, it may not be too late." The materials shall also include
6 information, including contact information, that will assist the woman in
7 finding a medical professional who can help her continue her pregnancy
8 after taking mifepristone.

9 (6) The Department of Health and Human Services shall review and
10 update, as necessary, the materials, including contact information,
11 regarding medical professionals who can help a woman continue her
12 pregnancy after taking mifepristone.

13 (7)(a) The Department of Health and Human Services shall prescribe a
14 reporting form which shall be used for the reporting of every attempt at
15 continuing a woman's pregnancy after taking mifepristone as described in
16 this section performed in this state. Such form shall include the
17 following items:

18 (i) The age of the pregnant woman;

19 (ii) The location of the facility where the service was performed;

20 (iii) The type of service provided;

21 (iv) Complications, if any;

22 (v) The name of the attending medical professional;

23 (vi) The pregnant woman's obstetrical history regarding previous
24 pregnancies, abortions, and live births;

25 (vii) The state of the pregnant woman's legal residence;

26 (viii) Whether an emergency situation caused the physician to waive
27 any of the requirements of section 28-327; and

28 (ix) Such other information as may be prescribed in accordance with
29 section 71-602.

30 (b) The completed form shall be signed by the attending medical
31 professional and sent to the department within fifteen days after each

1 reporting month. The completed form shall be an original, typed or
2 written legibly in durable ink, and shall not be deemed complete unless
3 the omission of any item of information required shall have been
4 disclosed or satisfactorily accounted for. Carbon copies shall not be
5 acceptable. The reporting form shall not include the name of the person
6 for whom the service was provided. The reporting form shall be
7 confidential and shall not be revealed except upon the order of a court
8 of competent jurisdiction in a civil or criminal proceeding.

9 Sec. 3. Section 28-345, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 28-345 The Department of Health and Human Services shall prepare and
12 keep on permanent file compilations of the information submitted on the
13 abortion reporting forms and reporting forms regarding attempts at
14 continuing a woman's pregnancy after taking mifepristone pursuant to such
15 rules and regulations as established by the department, which
16 compilations shall be a matter of public record. Under no circumstances
17 shall the compilations of information include the name of any attending
18 physician or identify in any respect facilities where abortions are
19 performed. The department, in order to maintain and keep such
20 compilations current, shall file with such reports any new or amended
21 information.

22 Sec. 4. Section 28-806, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 28-806 (1) A person, eighteen years of age or over, commits public
25 indecency if such person performs or procures, or assists any other
26 person to perform, in a public place and where the conduct may reasonably
27 be expected to be viewed by members of the public:

28 (a) An act of sexual penetration; or

29 (b) An exposure of the genitals of the body done with intent to
30 affront or alarm any person; or

31 (c) A lewd fondling or caressing of the body of another person of

1 the same or opposite sex.

2 (2) Public indecency is a Class II misdemeanor.

3 (3) It shall not be a violation of this section for an individual to
4 breast-feed a child in a public place.

5 Sec. 5. Original sections 28-327, 28-327.01, 28-345, and 28-806,
6 Reissue Revised Statutes of Nebraska, are repealed.