

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 814

FINAL READING

Introduced by Geist, 25; Albrecht, 17; Arch, 14; Bostelman, 23; Brandt, 32; Brewer, 43; Clements, 2; Erdman, 47; Gragert, 40; Groene, 42; Halloran, 33; Hansen, B., 16; Hilgers, 21; Kolterman, 24; La Grone, 49; Linehan, 39; Lowe, 37; McDonnell, 5; Moser, 22; Murman, 38; Slama, 1; Lindstrom, 18; Hughes, 44; Briese, 41; Dorn, 30.

Read first time January 08, 2020

Committee: Judiciary

1 A BILL FOR AN ACT relating to abortion; to amend sections 28-326 and
2 38-2021, Reissue Revised Statutes of Nebraska, and section 28-101,
3 Revised Statutes Supplement, 2019; to define a term; to prohibit
4 dismemberment abortion; to provide for a hearing, immunity from
5 liability, causes of action, injunctions, damages, attorney's fees,
6 a penalty, and anonymity; to state intent; to harmonize provisions;
7 to provide severability; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Supplement, 2019, is
2 amended to read:

3 28-101 Sections 28-101 to 28-1357 and 28-1601 to 28-1603 and
4 sections 3 to 9 of this act shall be known and may be cited as the
5 Nebraska Criminal Code.

6 Sec. 2. Section 28-326, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 28-326 For purposes of sections 28-325 to 28-345 and sections 3 to 9
9 of this act, unless the context otherwise requires:

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

16 (2) Complications associated with abortion means any adverse
17 physical, psychological, or emotional reaction that is reported in a
18 peer-reviewed journal to be statistically associated with abortion such
19 that there is less than a five percent probability ($P < .05$) that the
20 result is due to chance;

21 (3) Conception means the fecundation of the ovum by the spermatozoa;

22 (4)(a) Dismemberment abortion means an abortion in which, with the
23 purpose of causing the death of an unborn child, a person purposely
24 dismembers the body of a living unborn child and extracts him or her one
25 piece at a time from the uterus through use of clamps, grasping forceps,
26 tongs, scissors, or similar instruments that, through the convergence of
27 two rigid levers, slice, crush, or grasp a portion of the unborn child's
28 body to cut or rip it off.

29 (b) Dismemberment abortion does not include:

30 (i) An abortion in which suction is used to dismember the body of an
31 unborn child by sucking fetal parts into a collection container; or

1 (ii) The use of instruments or suction to remove the remains of an
2 unborn child who has already died;

3 (5) (4) Emergency situation means that condition which, on the basis
4 of the physician's good faith clinical judgment, so complicates the
5 medical condition of a pregnant woman as to necessitate the immediate
6 abortion of her pregnancy to avert her death or for which a delay will
7 create serious risk of substantial impairment of a major bodily function;

8 (6) (5) Hospital means those institutions licensed by the Department
9 of Health and Human Services pursuant to the Health Care Facility
10 Licensure Act;

11 (7) (6) Negligible risk means a risk that a reasonable person would
12 consider to be immaterial to a decision to undergo an elective medical
13 procedure;

14 (8) (7) Partial-birth abortion means an abortion procedure in which
15 the person performing the abortion partially delivers vaginally a living
16 unborn child before killing the unborn child and completing the delivery.
17 For purposes of this subdivision, the term partially delivers vaginally a
18 living unborn child before killing the unborn child means deliberately
19 and intentionally delivering into the vagina a living unborn child, or a
20 substantial portion thereof, for the purpose of performing a procedure
21 that the person performing such procedure knows will kill the unborn
22 child and does kill the unborn child;

23 (9) (8) Physician means any person licensed to practice medicine in
24 this state as provided in the Uniform Credentialing Act;

25 (10) (9) Pregnant means that condition of a woman who has unborn
26 human life within her as the result of conception;

27 (11) (10) Probable gestational age of the unborn child means what
28 will with reasonable probability, in the judgment of the physician, be
29 the gestational age of the unborn child at the time the abortion is
30 planned to be performed;

31 (12) (11) Risk factor associated with abortion means any factor,

1 including any physical, psychological, emotional, demographic, or
2 situational factor, for which there is a statistical association with one
3 or more complications associated with abortion such that there is less
4 than a five percent probability ($P < .05$) that such statistical
5 association is due to chance. Such information on risk factors shall have
6 been published in any peer-reviewed journals indexed by the United States
7 National Library of Medicine's search services (PubMed or MEDLINE) or in
8 any journal included in the Thomson Reuters Scientific Master Journal
9 List not less than twelve months prior to the day preabortion screening
10 was provided;

11 ~~(13)~~ ~~(12)~~ Self-induced abortion means any abortion or menstrual
12 extraction attempted or completed by a pregnant woman on her own body;

13 ~~(14)~~ ~~(13)~~ Ultrasound means the use of ultrasonic waves for
14 diagnostic or therapeutic purposes, specifically to monitor an unborn
15 child;

16 ~~(15)~~ ~~(14)~~ Viability means that stage of human development when the
17 unborn child is potentially able to live more than merely momentarily
18 outside the womb of the mother by natural or artificial means; and

19 ~~(16)~~ ~~(15)~~ Woman means any female human being whether or not she has
20 reached the age of majority.

21 Sec. 3. (1) It shall be unlawful for any person to purposely
22 perform or attempt to perform a dismemberment abortion and thereby kill
23 an unborn child unless a dismemberment abortion is necessary due to a
24 medical emergency as defined in subdivision (4) of section 28-3,103.

25 (2) A person accused in any proceeding of unlawful conduct under
26 subsection (1) of this section may seek a hearing before the Board of
27 Medicine and Surgery on whether the performance of a dismemberment
28 abortion was necessary due to a medical emergency as defined in
29 subdivision (4) of section 28-3,103. The board's findings are admissible
30 on that issue at any trial in which such unlawful conduct is alleged.
31 Upon a motion of the person accused, the court shall delay the beginning

1 of the trial for not more than thirty days to permit such a hearing to
2 take place.

3 (3) No woman upon whom an abortion is performed or attempted to be
4 performed shall be liable for performing or attempting to perform a
5 dismemberment abortion. No nurse, secretary, receptionist, or other
6 employee or agent who is not a physician, but who acts at the direction
7 of a physician, shall be liable for performing or attempting to perform a
8 dismemberment abortion. No pharmacist or other individual who is not a
9 physician, but who fills a prescription or provides instruments or
10 materials used in an abortion at the direction of or to a physician,
11 shall be liable for performing or attempting to perform a dismemberment
12 abortion.

13 Sec. 4. (1) A cause of action for injunctive relief against a
14 person who has performed a dismemberment abortion in violation of section
15 3 of this act may be maintained by:

16 (a) A woman upon whom such a dismemberment abortion was performed;

17 (b) If the woman had not attained the age of nineteen years at the
18 time of the dismemberment abortion, a person who is the parent or
19 guardian of the woman upon whom such a dismemberment abortion was
20 performed; or

21 (c) A prosecuting attorney with appropriate jurisdiction.

22 (2) The injunction shall prevent the defendant from performing or
23 attempting to perform dismemberment abortions in this state in violation
24 of section 3 of this act.

25 (3) A cause of action may not be maintained by a plaintiff if the
26 pregnancy resulted from the plaintiff's criminal conduct.

27 Sec. 5. (1) A cause of action for civil damages against a person
28 who performed a dismemberment abortion in violation of section 3 of this
29 act may be maintained by:

30 (a) Any woman upon whom a dismemberment abortion has been performed
31 in violation of section 3 of this act;

1 (b) The father of the unborn child, if married to the woman at the
2 time the dismemberment abortion was performed; or

3 (c) If the woman had not attained the age of nineteen years at the
4 time of the dismemberment abortion or has died as a result of the
5 abortion, the maternal grandparents of the unborn child.

6 (2) No damages may be awarded a plaintiff if the pregnancy resulted
7 from the plaintiff's criminal conduct.

8 (3) Damages awarded in such an action shall include money damages
9 for all injuries, psychological and physical, occasioned by the
10 dismemberment abortion.

11 Sec. 6. (1) If judgment is rendered in favor of the plaintiff in an
12 action described in section 4 or 5 of this act, the court shall also
13 render judgment for reasonable attorney's fees in favor of the plaintiff
14 against the defendant.

15 (2) If judgment is rendered in favor of the defendant in an action
16 described in section 4 or 5 of this act and the court finds that the
17 plaintiff's suit was frivolous and brought in bad faith, the court shall
18 render judgment for reasonable attorney's fees in favor of the defendant
19 against the plaintiff.

20 (3) No attorney's fees may be assessed against the woman upon whom
21 an abortion was performed or attempted to be performed except in
22 accordance with subsection (2) of this section.

23 Sec. 7. The intentional and knowing performance of an unlawful
24 dismemberment abortion in violation of section 3 of this act is a Class
25 IV felony.

26 Sec. 8. In every civil, criminal, or administrative proceeding or
27 action brought under sections 3 to 7 of this act, the court shall rule
28 whether the anonymity of any woman upon whom an abortion has been
29 performed or attempted to be performed shall be preserved from public
30 disclosure if she does not give her consent to such disclosure. The
31 court, upon motion or sua sponte, shall make such a ruling and, upon

1 determining that her anonymity should be preserved, shall issue orders to
2 the parties, witnesses, and counsel and shall direct the sealing of the
3 record and exclusion of individuals from courtrooms or hearing rooms to
4 the extent necessary to safeguard her identity from public disclosure.
5 Each such order shall be accompanied by specific written findings
6 explaining why the anonymity of the woman should be preserved from public
7 disclosure, why the order is essential to that end, how the order is
8 narrowly tailored to serve that interest, and why no reasonable less
9 restrictive alternative exists. In the absence of written consent of the
10 woman upon whom an abortion has been performed or attempted to be
11 performed, any person other than a public official who brings an action
12 under section 4 or 5 of this act shall do so under a pseudonym. This
13 section may not be construed to conceal the identity of the plaintiff or
14 of witnesses from the defendant or from attorneys for the defendant.

15 Sec. 9. Nothing in sections 3 to 7 of this act shall be construed
16 as creating or recognizing a right to abortion or a right to a particular
17 method of abortion.

18 Sec. 10. Section 38-2021, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 38-2021 Unprofessional conduct means any departure from or failure
21 to conform to the standards of acceptable and prevailing practice of
22 medicine and surgery or the ethics of the profession, regardless of
23 whether a person, patient, or entity is injured, or conduct that is
24 likely to deceive or defraud the public or is detrimental to the public
25 interest, including, but not limited to:

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

31 (2) Performing an abortion upon a minor without having satisfied the

1 requirements of sections 71-6901 to 71-6911;

2 (3) The intentional and knowing performance of a partial-birth
3 abortion as defined in subdivision (8) ~~(7)~~ of section 28-326, unless such
4 procedure is necessary to save the life of the mother whose life is
5 endangered by a physical disorder, physical illness, or physical injury,
6 including a life-endangering physical condition caused by or arising from
7 the pregnancy itself; and

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

10 Sec. 11. If any section in this act or any part of any section is
11 declared invalid or unconstitutional, the declaration shall not affect
12 the validity or constitutionality of the remaining portions.

13 Sec. 12. Original sections 28-326 and 38-2021, Reissue Revised
14 Statutes of Nebraska, and section 28-101, Revised Statutes Supplement,
15 2019, are repealed.