Introduced by Geist, 25.

Read first time January 19, 2022

Committee: Judiciary

A BILL FOR AN ACT relating to abortion; to amend sections 28-101 and 38-2021, Revised Statutes Cumulative Supplement, 2020; to adopt the Chemical Abortion Safety Protocol Act; to redefine unprofessional conduct relating to abortion under the Medicine and Surgery Practice Act; to provide for severability; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 28-101, Revised Statutes Cumulative Supplement, 2020, is amended to read:

Section 28-101 Sections 28-101 to 28-1357 and 28-1601 to 28-1603 and sections 2 to 6 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 2. Sections 2 to 6 of this act shall be known and may be cited as the Chemical Abortion Safety Protocol Act.

Sec. 3. For purposes of the Chemical Abortion Safety Protocol Act:

(1) Abortion complication means any harmful event or adverse outcome with respect to a patient related to a chemical abortion that is performed or induced on the patient and includes:

(a) Shock;

(b) Heavy or prolonged bleeding;

(c) Hemorrhage;

(d) Aspiration or allergic response;

(e) Infection;

(f) Sepsis;

(g) Endometritis;

(h) Pelvic inflammatory disease;

(i) Incomplete abortion;

(j) Failure to actually terminate the pregnancy;

(k) Missed ectopic pregnancy;

(l) Hemolytic reaction resulting from the administration of ABO-incompatible blood or blood products;

(m) Death of the patient; or

(n) Any other adverse event as defined by the United States Food and Drug Administration's criteria provided by the MedWatch Reporting System;

(2)(a) Abortion-inducing drug means a drug or any other substance, including a regimen of two or more drugs or substances, that is provided with the intent of terminating a woman's clinically diagnosable pregnancy and with knowledge that the termination will, with reasonable likelihood,
cause the death of the woman's unborn child. This includes the off-label use of drugs or substances known to have abortion-inducing properties, including the Mifeprex regimen, misoprostol (Cytotec), and methotrexate.

(b) Abortion-inducing drug does not include a drug, medicine, or other substance that may be known to cause an abortion but is provided for other medical reasons;

(3) Chemical abortion means the administration or use of an abortion-inducing drug to induce an abortion;

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

(5) Physician means any person licensed to practice medicine and surgery or osteopathic medicine in this state as provided in the Uniform Credentialing Act; and

(6) Provide, when used with regard to abortion-inducing drugs, means any act of giving, selling, dispensing, administering, otherwise transferring possession of, or prescribing an abortion-inducing drug.

Sec. 4. (1) A person shall not knowingly provide an abortion-inducing drug for the purpose of inducing an abortion in a pregnant woman or enabling another person to induce an abortion in a pregnant woman unless:

(a) The person who provides the abortion-inducing drug is a physician; and

(b) The provision of the abortion-inducing drug complies with the Chemical Abortion Safety Protocol Act.

(2) No person shall provide any abortion-inducing drug to a person by courier, delivery, or mail service. This subsection does not apply to delivery of an abortion-inducing drug to a physician or pharmacy or an agent or employee of a physician or pharmacy acting within the scope of such person's agency or employment.

(3) A physician shall not provide an abortion-inducing drug for a pregnant woman whose pregnancy is more than forty-nine days of gestational age.
(4) Before a physician provides an abortion-inducing drug, the physician shall:

(a) Examine the pregnant woman in person;

(b) Independently verify that a pregnancy exists;

(c) Document, in the woman's medical record, the gestational age and intrauterine location of the pregnancy to determine whether an ectopic pregnancy exists;

(d) Determine the pregnant woman's blood type, and for a woman who is Rh negative, offer to administer Rh immunoglobin (RhoGAM) at the time the abortion-inducing drug is administered or used or the abortion is performed or induced to prevent Rh incompatibility, complications, or miscarriage in future pregnancies;

(e) Document whether the pregnant woman received treatment for Rh negativity; and

(f) Ensure that the woman's pregnancy is not more than forty-nine days of gestational age.

(5) An intentional and knowing violation of this section is a Class IV felony.

(6) No woman upon whom an abortion is attempted, induced, or performed shall be liable for a violation of the Chemical Abortion Safety Protocol Act.

Sec. 5. (1) A physician who provides an abortion-inducing drug, or the physician's agent, shall schedule a follow-up visit for the woman to whom it was provided. Such follow-up visit shall occur not later than the fourteenth day after the earliest date on which the abortion-inducing drug is administered or used or the abortion is performed or induced. At the follow-up visit, the physician shall:

(a) Confirm that the woman's pregnancy is completely terminated; and

(b) Assess any continued blood loss.

(2) An intentional and knowing violation of this section is a Class II misdemeanor.
Sec. 6. (1) For purposes of this section, reporting month means a calendar month in which an event required to be reported under this section occurs.

(2) A physician who provides an abortion-inducing drug shall file a report with the department within fifteen days after the end of each reporting month. Such report shall include, in addition to any information required by rules and regulations adopted and promulgated by the department:

(a) The name of the physician;

(b) The abortion-inducing drug or drugs used and the date each was provided to the pregnant woman;

(c) Whether and on what date the woman returned for a follow-up visit;

(d) Whether the woman suffered any abortion complication and, if so, what specific complications occurred and what follow-up treatment, if any, was provided by the physician; and

(e) Whether the physician referred the woman to another health care provider and if so, for what purpose.

(3) Any physician or other health care provider who treats a woman for an abortion complication shall make a report of the complication to the department within fifteen days after the end of each reporting month. Such report shall include:

(a) The specific abortion complication;

(b) What treatment was provided by the physician or other health care provider; and

(c) Whether the physician or other health care provider referred the woman to another health care provider.

(4) The department shall produce standard forms for the filing of reports required by this section.

(5) A report required under this section shall not include the name or personal identifying information of the pregnant woman or any other
information that would make it possible to identify a woman who has
obtained or sought to obtain an abortion.

(6) An intentional and knowing violation of this section is a Class
II misdemeanor.

Sec. 7. Section 38-2021, Revised Statutes Cumulative Supplement,
2020, is amended to read:

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

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

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

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

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

(5) The provision of an abortion-inducing drug by a physician in

Sec. 8. 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. 9. Original sections 28-101 and 38-2021, Revised Statutes Cumulative Supplement, 2020, are repealed.