A BILL FOR AN ACT relating to abortion; to amend sections 28-101 and 38-2021, Revised Statutes Cumulative Supplement, 2020; to adopt the Heartbeat Act; to provide a penalty; to redefine unprofessional conduct; 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 28-101, 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 8 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 2. Sections 2 to 8 of this act shall be known and may be cited as the Heartbeat Act.

Sec. 3. For purposes of the Heartbeat Act:

(1) Abortion has the same meaning as in section 28-326;

(2) Fetal heartbeat means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac;

(3) Medical emergency has the same meaning as in section 28-3,103; and

(4) Ultrasound has the same meaning as in section 28-326.

Sec. 4. (1) Prior to performing any abortion, the physician shall perform an ultrasound of the pregnant woman's unborn child in accordance with standard medical practice to determine if a fetal heartbeat is detectable. The physician shall record in the pregnant woman's medical record the date and time of the ultrasound, the estimated gestational age of the unborn child, and whether a fetal heartbeat was detected.

(2) It shall be unlawful for any person to knowingly perform an abortion when it has been determined that the unborn child has a detectable fetal heartbeat.

Sec. 5. Violation of section 4 of this act is a Class IIA felony.

Sec. 6. In any prosecution under the Heartbeat Act, it shall be an affirmative defense that a medical emergency existed.

Sec. 7. No woman upon whom an abortion is attempted, induced, or performed shall be subject to prosecution for a violation of the Heartbeat Act.

Sec. 8. Nothing in the Heartbeat Act shall be construed to create
or recognize a right to abortion.

Sec. 9. 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; and

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


Sec. 10. 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. 11. Original sections 28-101 and 38-2021, Revised Statutes
Cumulative Supplement, 2020, are repealed.