Introducing by Albrecht, 17; Flood, 19.
Read first time January 10, 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 Nebraska Human Life Protection Act; to provide a penalty; to provide for severability of provisions as prescribed; to redefine unprofessional conduct; to harmonize provisions; 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:

28-101 Sections 28-101 to 28-1357 and 28-1601 to 28-1603 and sections 2 to 9 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 2. Sections 2 to 9 of this act shall be known and may be cited as the Nebraska Human Life Protection Act.

Sec. 3. For purposes of the Nebraska Human Life Protection Act, unborn child means an individual living member of the species homo sapiens, throughout the embryonic and fetal stages of development from fertilization to full gestation and childbirth.

Sec. 4. (1) Notwithstanding any other provision of law, it shall be unlawful for any person to administer, prescribe, sell, or otherwise provide any medicine, drug, or other substance with the specific intent of causing or abetting the termination of the life of an unborn child.

(2) Notwithstanding any other provision of law, it shall be unlawful for any person to use or employ any instrument or procedure upon a pregnant woman with the specific intent of causing or abetting the termination of the life of an unborn child.

(3) The intentional and knowing violation of subsection (1) or (2) of this section is a Class IIA felony.

(4) No woman upon whom an abortion is performed or attempted shall be liable for a violation of this section.

Sec. 5. Nothing in the Nebraska Human Life Protection Act may be construed to prohibit the administration, prescription, or sale of a contraceptive measure, drug, or chemical if the contraceptive measure, drug, or chemical is administered, prescribed, or sold in accordance with manufacturer's instructions and is not administered, prescribed, or sold to cause or abet the termination of the life of an unborn child.

Sec. 6. Medical treatment provided to a pregnant mother by a licensed physician which results in accidental or unintentional injury or
death to her unborn child shall not be a violation of section 4 of this act.

Sec. 7. In any prosecution of a licensed physician under section 4 of this act, it shall be an affirmative defense that it was necessary in reasonable medical judgment for the physician to perform the medical procedure to prevent the death of the pregnant woman, to prevent a substantial risk of death to the pregnant woman because of a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of the pregnant woman, and that the physician who performed such medical procedure made every reasonable effort under the circumstances to preserve both the life of the mother and the life of the unborn child in a manner consistent with reasonable medical practice.

Sec. 8. The Nebraska Human Life Protection Act shall become operative only upon the occurrence of one or more of the following events:

(1) The United States Supreme Court overrules, in whole or in part, Roe v. Wade, 410 U.S. 113 (1973), restoring or granting to the State of Nebraska the authority to regulate abortion to the extent set forth in the act;

(2) An amendment to the Constitution of the United States has been adopted that has the effect of restoring or granting to the State of Nebraska the authority to regulate abortion to the extent set forth in the act; or

(3) The United States Congress has enacted a law that has the effect of restoring or granting to the State of Nebraska the authority to regulate abortion to the extent set forth in the act.

Sec. 9. If any section, any part of any section, or any application of any section or part of any section of the Nebraska Human Life Protection Act to any person or circumstance is declared invalid or unconstitutional, the remaining portions of the act and the application of the act to any person or circumstance shall not be affected.
Sec. 10. 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

(5) Performance of an abortion in violation of the Nebraska Human Life Protection Act.

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