AMENDMENTS TO LB626

(Amendments to E & R amendments, ER24)

Introduced by Riepe, 12.

1. Strike the original sections and all amendments thereto and insert the following new sections:

Section 1. Section 28-347, Revised Statutes Cumulative Supplement, 2022, is amended to read:

28-347 (1) It shall be unlawful for any person to purposely perform or attempt to perform a dismemberment abortion and thereby kill an unborn child unless a dismemberment abortion is necessary due to a medical emergency as defined in subdivision (4) of section 28-3,103.

(2) A person accused in any proceeding of unlawful conduct under subsection (1) of this section may seek a hearing before the Board of Medicine and Surgery on whether the performance of a dismemberment abortion was necessary due to a medical emergency as defined in subdivision (4) of section 28-3,103. The board's findings are admissible on that issue at any trial in which such unlawful conduct is alleged. Upon a motion of the person accused, the court shall delay the beginning of the trial for not more than thirty days to permit such a hearing to take place.

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

Sec. 2. Section 28-3,102, Reissue Revised Statutes of Nebraska, is amended to read:

28-3,102 Sections 28-3,102 to 28-3,111 shall be known and may be cited as the Pain-Capable Unborn Child Protection Act.

Sec. 3. Section 28-3,103, Reissue Revised Statutes of Nebraska, is amended to read:

28-3,103 For purposes of the Pain-Capable Unborn Child Protection Act:

(1) Abortion means the use or prescription of any instrument, medicine, drug, or other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma, or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy;

(2) Attempt to perform or induce an abortion means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this state in violation of the Pain-Capable Unborn Child Protection Act;

(3) Fertilization means the fusion of a human spermatozoon with a human ovum;

(4) Fetal anomaly incompatible with life means a fetal anomaly diagnosed before birth that will with reasonable certainty result in the death of the unborn child within three months. Fetal anomaly incompatible with life does not include a condition which can be treated;

(5) Medical emergency means a condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant
woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function;

(6) Postfertilization age means the age of the unborn child as calculated from the fertilization of the human ovum;

(7) Reasonable medical judgment means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved;

(8) Physician means any person licensed to practice medicine and surgery or osteopathic medicine under the Uniform Credentialing Act;

(9) Probable postfertilization age of the unborn child means what, in reasonable medical judgment, will with reasonable probability be the postfertilization age of the unborn child at the time the abortion is planned to be performed;

(10) Unborn child or fetus each mean an individual organism of the species homo sapiens from fertilization until live birth; and

(11) Woman means a female human being whether or not she has reached the age of majority.

Sec. 4. Section 28-3,106, Reissue Revised Statutes of Nebraska, is amended to read:

28-3,106  (1) Except as provided in subsection (2) of this section, no person shall perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing the abortion or by another physician upon whose determination that physician relies, that the probable postfertilization age of the woman’s unborn child is twelve twenty or more weeks.
(2) Subsection (1) of this section does not apply if:

(a) Unless, in reasonable medical judgment:

(i) The woman has a condition which so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function; or (2) it is necessary to preserve the life of an unborn child. No such condition shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function;

(ii) An abortion is necessary to preserve the life of another unborn child; or

(iii) There is a fetal anomaly incompatible with life; or

(b) The woman informs the physician that the pregnancy resulted from a sexual assault as defined in section 28-319 or 28-319.01 or incest as defined in section 28-703. No person shall perform or induce or attempt to perform or induce an abortion upon a woman under this subdivision (2) (b) when it has been determined, by the physician performing or inducing the abortion or by another physician upon whose determination that physician relies, that the probable postfertilization age of the woman's unborn child is twenty or more weeks.

(3) If a physician performs or induces or attempts to perform or induce an abortion pursuant to:

(a) Subdivision (2)(a) of this section, the physician shall certify in writing the reason for the abortion; or

(b) Subdivision (2)(b) of this section, the physician shall comply with section 28-902 and shall certify in writing the reason for the abortion and the physician's compliance with such section.

(4) The physician shall include any certification made under subsection (3) of this section in the woman's medical records.

(5) If an abortion is necessary under subdivision (2)(a)(i) of this
In such a case, the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive, unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the woman than would another available method. No such greater risk shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

Sec. 5. Section 28-3,107, Reissue Revised Statutes of Nebraska, is amended to read:

28-3,107 (1) Any physician who performs or induces or attempts to perform or induce an abortion shall report to the Department of Health and Human Services, on a schedule and in accordance with forms and rules and regulations adopted and promulgated by the department:

(a) If a determination of probable postfertilization age was made, the probable postfertilization age determined and the method and basis of the determination;

(b) If a determination of probable postfertilization age was not made, the basis of the determination that a medical emergency existed;

(c) If the probable postfertilization age was determined to be twelve or more weeks, the basis of the determination that an abortion was necessary for a reason provided in subsection (2) of section 28-3,106 the pregnant woman had a condition which so complicated her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, or the basis of the determination that it was necessary to preserve the life of an unborn child; and
(d) The method used for the abortion and, in the case of an abortion performed pursuant to subdivision (2)(a)(i) of section 28-3,106 when the probable postfertilization age was determined to be twenty or more weeks, whether the method of abortion used was one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive or, if such a method was not used, the basis of the determination that termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the woman than would other available methods.

(2) By June 30 of each year, the department shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection (1) of this section. Each such report shall also provide the statistics for all previous calendar years during which this section was in effect, adjusted to reflect any additional information from late or corrected reports. The department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any pregnant woman upon whom an abortion was performed.

(3) Any physician who fails to submit a report by the end of thirty days following the due date shall be subject to a late fee of five hundred dollars for each additional thirty-day period or portion of a thirty-day period the report is overdue. Any physician required to report in accordance with the Pain-Capable Unborn Child Protection Act who has not submitted a report, or has submitted only an incomplete report, more than one year following the due date, may, in an action brought in the manner in which actions are brought to enforce the Uniform Credentialing Act pursuant to section 38-1,139, be directed by a court of competent jurisdiction to submit a complete report within a time period stated by court order or be subject to civil contempt. Failure by any physician to
conform to any requirement of this section, other than late filing of a report, constitutes unprofessional conduct pursuant to section 38-2021. Failure by any physician to submit a complete report in accordance with a court order constitutes unprofessional conduct pursuant to section 38-2021. Intentional or reckless falsification of any report required under this section is a Class V misdemeanor.

(4) The department may adopt and promulgate rules and regulations to assist in compliance with this section.

Sec. 6. Section 28-3,108, Reissue Revised Statutes of Nebraska, is amended to read:

28-3,108 No woman upon whom an abortion is attempted, induced, or performed shall be liable for a violation of the Unborn Child Protection Act. Any person who intentionally or recklessly performs or attempts to perform an abortion in violation of section 28-3,106 is guilty of a Class IV felony. No penalty shall be assessed against the woman upon whom the abortion is performed or attempted to be performed.

Sec. 7. Section 28-3,111, Reissue Revised Statutes of Nebraska, is amended to read:

28-3,111 If any one or more provisions, sections, subsections, sentences, clauses, phrases, or words of the Pain-Capable Unborn Child Protection Act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of the Pain-Capable Unborn Child Protection Act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed the Pain-Capable Unborn Child Protection Act, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases, or words of the Pain-Capable Unborn Child Protection Act, or the application of the Pain-Capable Unborn Child Protection Act, would be
declared unconstitutional.

Sec. 8. Section 38-178, Revised Statutes Cumulative Supplement, 2022, is amended to read:

38-178 Except as otherwise provided in sections 38-1,119 to 38-1,123, a credential to practice a profession may be issued subject to discipline, denied, refused renewal, or have other disciplinary measures taken against it in accordance with section 38-183, 38-185, or 38-186 on any of the following grounds:

(1) Misrepresentation of material facts in procuring or attempting to procure a credential;

(2) Immoral or dishonorable conduct evidencing unfitness to practice the profession in this state;

(3) Abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance;

(4) Failure to comply with a treatment program or an aftercare program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to section 38-175;

(5) Conviction of (a) a misdemeanor or felony under Nebraska law or federal law, or (b) a crime in any jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under Nebraska law and which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession;

(6) Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with gross incompetence or gross negligence, or (d) in a pattern of incompetent or negligent conduct;

(7) Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, drugs, mind-altering substances, physical disability, mental disability, or emotional disability;

(8) Physical or mental incapacity to practice the profession as
evidenced by a legal judgment or a determination by other lawful means;

(9) Illness, deterioration, or disability that impairs the ability
to practice the profession;

(10) Permitting, aiding, or abetting the practice of a profession or
the performance of activities requiring a credential by a person not
credentialled to do so;

(11) Performing or offering to perform scleral tattooing as defined
in section 38-10,172 by a person not credentialled to do so;

(12) Having had his or her credential denied, refused renewal,
limited, suspended, revoked, or disciplined in any manner similar to
section 38-196 by another state or jurisdiction based upon acts by the
applicant or credential holder similar to acts described in this section;

(13) Use of untruthful, deceptive, or misleading statements in
advertisements, including failure to comply with section 38-124;

(14) Conviction of fraudulent or misleading advertising or
conviction of a violation of the Uniform Deceptive Trade Practices Act;

(15) Distribution of intoxicating liquors, controlled substances, or
drugs for any other than lawful purposes;

(16) Violations of the Uniform Credentialing Act or the rules and
regulations relating to the particular profession;

(17) Unlawful invasion of the field of practice of any profession
regulated by the Uniform Credentialing Act which the credential holder is
not credentialled to practice;

(18) Violation of the Uniform Controlled Substances Act or any rules
and regulations adopted pursuant to the act;

(19) Failure to file a report required by section 38-1,124,
38-1,125, or 71-552;

(20) Failure to maintain the requirements necessary to obtain a
credential;

(21) Violation of an order issued by the department;

(22) Violation of an assurance of compliance entered into under
section 38-1,108;

(23) Failure to pay an administrative penalty;

(24) Unprofessional conduct as defined in section 38-179;

(25) Violation of the Automated Medication Systems Act;

(26) Failure to comply with section 38-1,147; or

(27) Violation of the Unborn Child Protection Act.

Sec. 9. Section 38-179, Revised Statutes Cumulative Supplement, 2022, is amended to read:

38-179 For purposes of section 38-178, unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of a profession or the ethics of the profession, regardless of whether a person, consumer, 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) Receipt of fees on the assurance that an incurable disease can be permanently cured;

(2) Division of fees, or agreeing to split or divide the fees, received for professional services with any person for bringing or referring a consumer other than (a) with a partner or employee of the applicant or credential holder or his or her office or clinic, (b) with a landlord of the applicant or credential holder pursuant to a written agreement that provides for payment of rent based on gross receipts, or (c) with a former partner or employee of the applicant or credential holder based on a retirement plan or separation agreement;

(3) Obtaining any fee for professional services by fraud, deceit, or misrepresentation, including, but not limited to, falsification of third-party claim documents;

(4) Cheating on or attempting to subvert the credentialing examination;

(5) Assisting in the care or treatment of a consumer without the consent of such consumer or his or her legal representative;
(6) Use of any letters, words, or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that such person is entitled to practice a profession for which he or she is not credentialed;

(7) Performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion;

(8) Knowingly disclosing confidential information except as otherwise permitted by law;

(9) Commission of any act of sexual abuse, misconduct, or exploitation related to the practice of the profession of the applicant or credential holder;

(10) Failure to keep and maintain adequate records of treatment or service;

(11) Prescribing, administering, distributing, dispensing, giving, or selling any controlled substance or other drug recognized as addictive or dangerous for other than a medically accepted therapeutic purpose;

(12) Prescribing any controlled substance to (a) oneself or (b) except in the case of a medical emergency (i) one's spouse, (ii) one's child, (iii) one's parent, (iv) one's sibling, or (v) any other person living in the same household as the prescriber;

(13) Failure to comply with any federal, state, or municipal law, ordinance, rule, or regulation that pertains to the applicable profession;

(14) Disruptive behavior, whether verbal or physical, which interferes with consumer care or could reasonably be expected to interfere with such care; and

(15) Violation of the Unborn Child Protection Act; and

(16) Such other acts as may be defined in rules and regulations.

Nothing in this section shall be construed to exclude determination of additional conduct that is unprofessional by adjudication in
individual contested cases.

Sec. 10. Section 38-192, Reissue Revised Statutes of Nebraska, is amended to read:

38-192 (1) If the director determines upon completion of a hearing under section 38-183 or 38-186 that a violation has occurred, the director may, at his or her discretion, consult with the appropriate board concerning sanctions to be imposed or terms and conditions of the sanctions. When the director consults with a board, the credential holder and the Attorney General shall be provided with a copy of the director's request, the recommendation of the board, and an opportunity to respond in such manner as the director determines.

(2) Except as provided in subsection (3) of this section, the director shall have the authority through entry of an order to exercise in his or her discretion any or all of the sanctions authorized under subsection (1) of section 38-196.

(3) If the director determines upon completion of a hearing under section 38-183 or 38-186 that a licensee has performed or induced or attempted to perform or induce an abortion in violation of the Unborn Child Protection Act, the director shall enter an order imposing a sanction authorized under subdivision (2) of section 38-196.

Sec. 11. Section 38-193, Reissue Revised Statutes of Nebraska, is amended to read:

38-193 (1) If the petition is brought with respect to subdivision (3) of section 38-2021, the director shall make findings as to whether the licensee's conduct was necessary to save the life of a mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself. The director shall have the authority through entry of an order to exercise in his or her discretion any or all of the sanctions authorized under section 38-196, irrespective of the petition.
(2) If the petition is brought with respect to subdivision (4) of section 38-2021, the director shall make findings as to whether the licensee performed or induced or attempted to perform or induce an abortion in violation of the Unborn Child Protection Act. If the director finds such a violation, the director shall enter an order revoking the licensee's credential to practice pursuant to the Uniform Credentialing Act in the State of Nebraska in accordance with subsection (2) of section 38-196 and section 38-1,100.

Sec. 12. Section 38-196, Reissue Revised Statutes of Nebraska, is amended to read:

38-196 (1) Except as provided in subsection (2) of this section, upon the completion of any hearing held regarding discipline of a credential, the director may dismiss the action or impose any of the following sanctions:

(a) Censure;
(b) Probation;
(c) Limitation;
(d) Civil penalty;
(e) Suspension; or
(f) Revocation.

(2) Upon completion of any hearing regarding discipline of a credential for performing or inducing or attempting to perform or induce an abortion in violation of the Unborn Child Protection Act, if the director determines that such violation occurred, the director shall impose a sanction of revocation in accordance with section 38-1,100.

Sec. 13. Section 38-2021, Revised Statutes Cumulative Supplement, 2022, 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) Performing or inducing or attempting to perform or induce Performance by a physician of an abortion in violation of the Pain-Capable Unborn Child Protection Act.

Sec. 14. Section 38-2894, Revised Statutes Cumulative Supplement, 2022, is amended to read:

38-2894 (1) A registration to practice as a pharmacy technician may be denied, refused renewal, removed, or suspended or have other disciplinary measures taken against it by the department, with the recommendation of the board, for failure to meet the requirements of or for violation of any of the provisions of subdivisions (1) through (18) and (20) through (27) (26) of section 38-178 and sections 38-2890 to 38-2897 or the rules and regulations adopted under such sections.

(2) If the department proposes to deny, refuse renewal of, or remove or suspend a registration, it shall send the applicant or registrant a notice setting forth the action to be taken and the reasons for the determination. The denial, refusal to renew, removal, or suspension shall...
become final thirty days after mailing the notice unless the applicant or registrant gives written notice to the department of his or her desire for an informal conference or for a formal hearing.

(3) Notice may be served by any method specified in section 25-505.01, or the department may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01.

(4) Pharmacy technicians may participate in the Licensee Assistance Program described in section 38-175.

Sec. 15. 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. 17. The following sections are outright repealed: Sections 28-3,104, 28-3,109, and 28-3,110, Reissue Revised Statutes of Nebraska.

Sec. 18. Since an emergency exists, this act takes effect when passed and approved according to law.