

AMENDMENTS TO LB574

(Amendments to Final Reading copy)

Introduced by Walz, 15.

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

3           Section 1. Section 28-347, Revised Statutes Cumulative Supplement,  
4 2022, is amended to read:

5           28-347 (1) It shall be unlawful for any person to purposely perform  
6 or attempt to perform a dismemberment abortion and thereby kill an unborn  
7 child unless a dismemberment abortion is necessary due to a medical  
8 emergency as defined in ~~subdivision (4)~~ of section 28-3,103.

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

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

1 abortion.

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

4 28-3,102 Sections 28-3,102 to 28-3,111 shall be known and may be  
5 cited as the ~~Pain-Capable~~ Unborn Child Protection Act.

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

8 28-3,103 For purposes of the ~~Pain-Capable~~ Unborn Child Protection  
9 Act:

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

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

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

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

30 (5) (4) Medical emergency means a condition which, in reasonable  
31 medical judgment, so complicates the medical condition of the pregnant

1 woman as to necessitate the immediate abortion of her pregnancy to avert  
2 her death or for which a delay will create a serious risk of substantial  
3 and irreversible physical impairment of a major bodily function. No  
4 condition shall be deemed a medical emergency if based on a claim or  
5 diagnosis that the woman will engage in conduct which would result in her  
6 death or in substantial and irreversible physical impairment of a major  
7 bodily function;

8 (6) ~~(5)~~ Postfertilization age means the age of the unborn child as  
9 calculated from the fertilization of the human ovum;

10 (7) ~~(6)~~ Reasonable medical judgment means a medical judgment that  
11 would be made by a reasonably prudent physician, knowledgeable about the  
12 case and the treatment possibilities with respect to the medical  
13 conditions involved;

14 (8) ~~(7)~~ Physician means any person licensed to practice medicine and  
15 surgery or osteopathic medicine under the Uniform Credentialing Act;

16 (9) ~~(8)~~ Probable postfertilization age of the unborn child means  
17 what, in reasonable medical judgment, will with reasonable probability be  
18 the postfertilization age of the unborn child at the time the abortion is  
19 planned to be performed;

20 (10) ~~(9)~~ Unborn child or fetus each mean an individual organism of  
21 the species homo sapiens from fertilization until live birth; and

22 (11) ~~(10)~~ Woman means a female human being whether or not she has  
23 reached the age of majority.

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

26 28-3,106 (1) Except as provided in subsection (2) of this section,  
27 no ~~Ne~~ person shall perform or induce or attempt to perform or induce an  
28 abortion upon a woman when it has been determined, by the physician  
29 performing or inducing the abortion or by another physician upon whose  
30 determination that physician relies, that the probable postfertilization  
31 age of the woman's unborn child is twelve ~~twenty~~ or more weeks.

1           (2) Subsection (1) of this section does not apply if:

2           (a) In ~~unless, in~~ reasonable medical judgment:

3           (i) The woman ~~(1)~~ she has a condition which so complicates her  
4 medical condition as to necessitate the abortion of her pregnancy to  
5 avert her death or to avert serious risk of substantial and irreversible  
6 physical impairment of a major bodily function ~~or (2) it is necessary to~~  
7 preserve the life of an unborn child. No such condition shall be deemed  
8 to exist if it is based on a claim or diagnosis that the woman will  
9 engage in conduct which would result in her death or in substantial and  
10 irreversible physical impairment of a major bodily function; -

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

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

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

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

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

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

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

31           (5) If an abortion is necessary under subdivision (2)(a)(i) of this

1 ~~section~~ In such a case, the physician shall terminate the pregnancy in  
2 the manner which, in reasonable medical judgment, provides the best  
3 opportunity for the unborn child to survive, unless, in reasonable  
4 medical judgment, termination of the pregnancy in that manner would pose  
5 a greater risk either of the death of the pregnant woman or of the  
6 substantial and irreversible physical impairment of a major bodily  
7 function of the woman than would another available method. No such  
8 greater risk shall be deemed to exist if it is based on a claim or  
9 diagnosis that the woman will engage in conduct which would result in her  
10 death or in substantial and irreversible physical impairment of a major  
11 bodily function.

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

14 28-3,107 (1) Any physician who performs or induces or attempts to  
15 perform or induce an abortion shall report to the Department of Health  
16 and Human Services, on a schedule and in accordance with forms and rules  
17 and regulations adopted and promulgated by the department:

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

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

23 (c) If the probable postfertilization age was determined to be  
24 twelve ~~twenty~~ or more weeks, the basis of the determination that an  
25 abortion was necessary for a reason provided in subsection (2) of section  
26 28-3,106 ~~the pregnant woman had a condition which so complicated her~~  
27 ~~medical condition as to necessitate the abortion of her pregnancy to~~  
28 ~~avert her death or to avert serious risk of substantial and irreversible~~  
29 ~~physical impairment of a major bodily function, or the basis of the~~  
30 ~~determination that it was necessary to preserve the life of an unborn~~  
31 ~~child; and~~

1 (d) The method used for the abortion and, in the case of an abortion  
2 performed pursuant to subdivision (2)(a)(i) of section 28-3,106 ~~when the~~  
3 ~~probable postfertilization age was determined to be twenty or more weeks,~~  
4 whether the method of abortion used was one that, in reasonable medical  
5 judgment, provided the best opportunity for the unborn child to survive  
6 or, if such a method was not used, the basis of the determination that  
7 termination of the pregnancy in that manner would pose a greater risk  
8 either of the death of the pregnant woman or of the substantial and  
9 irreversible physical impairment of a major bodily function of the woman  
10 than would other available methods.

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

21 (3) Any physician who fails to submit a report by the end of thirty  
22 days following the due date shall be subject to a late fee of five  
23 hundred dollars for each additional thirty-day period or portion of a  
24 thirty-day period the report is overdue. Any physician required to report  
25 in accordance with the ~~Pain-Capable~~ Unborn Child Protection Act who has  
26 not submitted a report, or has submitted only an incomplete report, more  
27 than one year following the due date, may, in an action brought in the  
28 manner in which actions are brought to enforce the Uniform Credentialing  
29 Act pursuant to section 38-1,139, be directed by a court of competent  
30 jurisdiction to submit a complete report within a time period stated by  
31 court order or be subject to civil contempt. Failure by any physician to

1 conform to any requirement of this section, other than late filing of a  
2 report, constitutes unprofessional conduct pursuant to section 38-2021.  
3 Failure by any physician to submit a complete report in accordance with a  
4 court order constitutes unprofessional conduct pursuant to section  
5 38-2021. Intentional or reckless falsification of any report required  
6 under this section is a Class V misdemeanor.

7 (4) ~~The~~ Within ninety days after October 15, 2010, the department  
8 ~~may shall~~ adopt and promulgate rules and regulations to carry out assist  
9 ~~in compliance with~~ this section.

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

12 28-3,108 No woman upon whom an abortion is attempted, induced, or  
13 performed shall be liable for a violation of the Unborn Child Protection  
14 Act. ~~Any person who intentionally or recklessly performs or attempts to~~  
15 ~~perform an abortion in violation of section 28-3,106 is guilty of a Class~~  
16 ~~IV felony. No penalty shall be assessed against the woman upon whom the~~  
17 ~~abortion is performed or attempted to be performed.~~

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

20 28-3,111 If any one or more provisions, sections, subsections,  
21 sentences, clauses, phrases, or words of the ~~Pain-Capable~~ Unborn Child  
22 Protection Act or the application thereof to any person or circumstance  
23 is found to be unconstitutional, the same is hereby declared to be  
24 severable and the balance of the ~~Pain-Capable~~ Unborn Child Protection Act  
25 shall remain effective notwithstanding such unconstitutionality. The  
26 Legislature hereby declares that it would have passed the ~~Pain-Capable~~  
27 Unborn Child Protection Act, and each provision, section, subsection,  
28 sentence, clause, phrase, or word thereof, irrespective of the fact that  
29 any one or more provisions, sections, subsections, sentences, clauses,  
30 phrases, or words of the ~~Pain-Capable~~ Unborn Child Protection Act, or the  
31 application of the ~~Pain-Capable~~ Unborn Child Protection Act, would be

1 declared unconstitutional.

2 Sec. 8. Section 38-178, Revised Statutes Cumulative Supplement,  
3 2022, is amended to read:

4 38-178 Except as otherwise provided in sections 38-1,119 to  
5 38-1,123, a credential to practice a profession may be issued subject to  
6 discipline, denied, refused renewal, or have other disciplinary measures  
7 taken against it in accordance with section 38-183, 38-185, or 38-186 on  
8 any of the following grounds:

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

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

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

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

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

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

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

31 (8) Physical or mental incapacity to practice the profession as



1 evidenced by a legal judgment or a determination by other lawful means;

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

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

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

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

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

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

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

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

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

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

26 (19) Failure to file a report required by section 38-1,124,  
27 38-1,125, or 71-552;

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

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

31 (22) Violation of an assurance of compliance entered into under

1 section 38-1,108;

2 (23) Failure to pay an administrative penalty;

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

4 (25) Violation of the Automated Medication Systems Act;~~or~~

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

6 (27) Violation of the Unborn Child Protection Act.

7 Sec. 9. Section 38-179, Revised Statutes Cumulative Supplement,  
8 2022, is amended to read:

9 38-179 For purposes of section 38-178, unprofessional conduct means  
10 any departure from or failure to conform to the standards of acceptable  
11 and prevailing practice of a profession or the ethics of the profession,  
12 regardless of whether a person, consumer, or entity is injured, or  
13 conduct that is likely to deceive or defraud the public or is detrimental  
14 to the public interest, including, but not limited to:

15 (1) Receipt of fees on the assurance that an incurable disease can  
16 be permanently cured;

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

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

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

30 (5) Assisting in the care or treatment of a consumer without the  
31 consent of such consumer or his or her legal representative;

1 (6) Use of any letters, words, or terms, either as a prefix, affix,  
2 or suffix, on stationery, in advertisements, or otherwise, indicating  
3 that such person is entitled to practice a profession for which he or she  
4 is not credentialed;

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

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

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

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

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

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

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

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

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

28 (16) Beginning October 1, 2023, performing gender-affirming genital  
29 surgery or gender-affirming nongenital surgery or providing gender-  
30 affirming medical treatment for an individual younger than nineteen years  
31 of age in violation of section 15 of this act; and

1           ~~(17)~~ ~~(15)~~ Such other acts as may be defined in rules and  
2 regulations.

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

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

8           38-192 (1) If the director determines upon completion of a hearing  
9 under section 38-183 or 38-186 that a violation has occurred, the  
10 director may, at his or her discretion, consult with the appropriate  
11 board concerning sanctions to be imposed or terms and conditions of the  
12 sanctions. When the director consults with a board, the credential holder  
13 and the Attorney General shall be provided with a copy of the director's  
14 request, the recommendation of the board, and an opportunity to respond  
15 in such manner as the director determines.

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

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

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

27           38-193 (1) If the petition is brought with respect to subdivision  
28 (3) of section 38-2021, the director shall make findings as to whether  
29 the licensee's conduct was necessary to save the life of a mother whose  
30 life was endangered by a physical disorder, physical illness, or physical  
31 injury, including a life-endangering physical condition caused by or

1 arising from the pregnancy itself. The director shall have the authority  
2 through entry of an order to exercise in his or her discretion any or all  
3 of the sanctions authorized under section 38-196, irrespective of the  
4 petition.

5 (2) If the petition is brought with respect to subdivision (4) of  
6 section 38-2021, the director shall make findings as to whether the  
7 licensee performed or induced or attempted to perform or induce an  
8 abortion in violation of the Unborn Child Protection Act. If the director  
9 finds such a violation, the director shall enter an order revoking the  
10 licensee's credential to practice pursuant to the Uniform Credentialing  
11 Act in the State of Nebraska in accordance with subsection (2) of section  
12 38-196 and section 38-1,100.

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

15 38-196 (1) Except as provided in subsection (2) of this section,  
16 upon ~~upon~~ the completion of any hearing held regarding discipline of a  
17 credential, the director may dismiss the action or impose any of the  
18 following sanctions:

- 19 (a) ~~(1)~~ Censure;
- 20 (b) ~~(2)~~ Probation;
- 21 (c) ~~(3)~~ Limitation;
- 22 (d) ~~(4)~~ Civil penalty;
- 23 (e) ~~(5)~~ Suspension; or
- 24 (f) ~~(6)~~ Revocation.

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

30 Sec. 13. Section 38-2021, Revised Statutes Cumulative Supplement,  
31 2022, is amended to read:

1           38-2021 Unprofessional conduct means any departure from or failure  
2 to conform to the standards of acceptable and prevailing practice of  
3 medicine and surgery or the ethics of the profession, regardless of  
4 whether a person, patient, or entity is injured, or conduct that is  
5 likely to deceive or defraud the public or is detrimental to the public  
6 interest, including, but not limited to:

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

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

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

20           (4) ~~Performing or inducing or attempting to perform or induce~~  
21 ~~Performance by a physician of an abortion in violation of the Pain-~~  
22 ~~Capable Unborn Child Protection Act.~~

23           Sec. 14. Section 38-2894, Revised Statutes Cumulative Supplement,  
24 2022, is amended to read:

25           38-2894 (1) A registration to practice as a pharmacy technician may  
26 be denied, refused renewal, removed, or suspended or have other  
27 disciplinary measures taken against it by the department, with the  
28 recommendation of the board, for failure to meet the requirements of or  
29 for violation of any of the provisions of subdivisions (1) through (18)  
30 and (20) through (27) ~~(26)~~ of section 38-178 and sections 38-2890 to  
31 38-2897 or the rules and regulations adopted under such sections.

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

8 (3) Notice may be served by any method specified in section  
9 25-505.01, or the department may permit substitute or constructive  
10 service as provided in section 25-517.02 when service cannot be made with  
11 reasonable diligence by any of the methods specified in section  
12 25-505.01.

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

15 Sec. 15. (1) For purposes of this section:

16 (a) Gender-affirming genital surgery means genital reconstruction  
17 surgery to affirm a person's gender identity for the treatment of gender  
18 incongruence;

19 (b) Gender-affirming nongenital surgery means surgery other than  
20 genital reconstruction surgery to affirm a person's gender identity for  
21 the treatment of gender incongruence;

22 (c) Gender-affirming medical treatment means medical interventions,  
23 provided by a health care practitioner to treat gender incongruence,  
24 including services by a health care practitioner or hospital services and  
25 the prescribing of medications. Gender-affirming medical treatment does  
26 not include mental or behavioral health care services, gender-affirming  
27 genital surgery, or gender-affirming nongenital surgery;

28 (d) Gender incongruence means a diagnostic term that describes an  
29 individual's marked and persistent experience of an incompatibility  
30 between that individual's gender identity and the gender expected of such  
31 individual based on such individual's birth-assigned sex; and

1       (e) Health care practitioner means a physician, physician assistant,  
2 advanced practice registered nurse, or nurse practitioner licensed or  
3 certified under the Uniform Credentialing Act.

4       (2) No health care practitioner shall perform gender-affirming  
5 genital surgery in this state for an individual younger than nineteen  
6 years of age.

7       (3) No health care practitioner shall perform gender-affirming  
8 nongenital surgery in this state for an individual younger than nineteen  
9 years of age unless the following criteria are met:

10       (a) The parent or guardian of such individual has provided voluntary  
11 and informed written consent. A health care practitioner shall make an  
12 effort to seek consent from all parents or guardians of the patient and  
13 shall document such efforts;

14       (b) The patient demonstrates the emotional and cognitive maturity  
15 required to provide informed assent for the surgery;

16       (c) The patient meets the diagnostic criteria of gender incongruence  
17 and the patient's gender incongruence is marked and sustained over time;

18       (d) The patient has written documentation recommending gender-  
19 affirming nongenital surgery from at least two licensed mental health  
20 professionals, psychologists, or psychiatrists who are not part of the  
21 same clinic as each other;

22       (e) The patient has been informed of any reproductive effects and  
23 any other potential side effects or consequences of such surgery;

24       (f) The patient has reached the Tanner stage two of puberty;

25       (g) Mental health concerns, if any, that may interfere with  
26 diagnostic clarity, capacity to consent, or gender-affirming nongenital  
27 surgery have been addressed sufficiently so that such surgery can be  
28 provided optimally; and

29       (h) The patient has been under the care of a health care  
30 practitioner, licensed mental health provider, psychologist, or  
31 psychiatrist for the treatment of gender incongruence for at least twelve



1 months prior to surgery.

2 (4) No health care practitioner shall provide irreversible gender-  
3 affirming medical treatment for an individual younger than nineteen years  
4 of age unless the following criteria are met:

5 (a) The parent or guardian of such individual has provided voluntary  
6 and informed written consent. A health care practitioner shall make an  
7 effort to seek consent from all parents or guardians of the patient and  
8 shall document such efforts;

9 (b) The patient demonstrates the emotional and cognitive maturity  
10 required to provide informed assent for the treatment;

11 (c) The patient meets the diagnostic criteria of gender incongruence  
12 and the patient's gender incongruence is marked and sustained over time;

13 (d) The patient has written documentation recommending gender-  
14 affirming medical treatment from at least two licensed mental health  
15 professionals, psychologists, or psychiatrists that are not part of the  
16 same clinic as each other;

17 (e) The patient has been informed of any reproductive effects and  
18 any other potential side effects or consequences of such treatment;

19 (f) The patient has reached the Tanner stage two of puberty; and

20 (g) Mental health concerns, if any, that may interfere with  
21 diagnostic clarity, capacity to consent, or gender-affirming medical  
22 treatment have been addressed sufficiently so that such medical treatment  
23 can be provided optimally.

24 (5) The intentional and knowing performance of gender-affirming  
25 genital surgery, gender-affirming nongenital surgery, or irreversible  
26 gender-affirming medical treatment by a health care practitioner for an  
27 individual younger than nineteen years of age in violation of subsection  
28 (2), (3), or (4) of this section shall be considered unprofessional  
29 conduct as defined in section 38-179.

30 (6) The denial of consent for gender-affirming nongenital surgery or  
31 gender-affirming medical treatment by a parent or guardian of an

1 individual younger than nineteen years of age shall not require mandatory  
2 reporting under 28-711.

3       Sec. 16. Section 15 of this act becomes operative on October 1,  
4 2023. The other sections of this act become operative on their effective  
5 date.

6       Sec. 17. If any section in this act or any part of any section is  
7 declared invalid or unconstitutional, the declaration shall not affect  
8 the validity or constitutionality of the remaining portions.

9       Sec. 18. Original sections 28-3,102, 28-3,103, 28-3,106, 28-3,107,  
10 28-3,108, 28-3,111, 38-192, 38-193, and 38-196, Reissue Revised Statutes  
11 of Nebraska, and sections 28-347, 38-178, 38-179, 38-2021, and 38-2894,  
12 Revised Statutes Cumulative Supplement, 2022, are repealed.

13       Sec. 19. The following sections are outright repealed: Sections  
14 28-3,104, 28-3,109, and 28-3,110, Reissue Revised Statutes of Nebraska.

15       Sec. 20. Since an emergency exists, this act takes effect when  
16 passed and approved according to law.

17       2. On page 1, strike beginning with "section" in line 1 through line  
18 4 and insert "sections 28-3,102, 28-3,103, 28-3,106, 28-3,107, 28-3,108,  
19 28-3,111, 38-192, 38-193, and 38-196, Reissue Revised Statutes of  
20 Nebraska, and sections 28-347, 38-178, 38-179, 38-2021, and 38-2894,  
21 Revised Statutes Cumulative Supplement, 2022; to rename and change  
22 provisions of the Pain Capable Unborn Child Protection Act; to prohibit  
23 gender-affirming genital surgery, gender-affirming nongenital surgery,  
24 and irreversible gender-affirming medical treatment for an individual  
25 younger than nineteen years of age as prescribed; to provide for  
26 discipline under the Uniform Credentialing Act; to harmonize provisions;  
27 to eliminate provisions relating to legislative findings, an action for  
28 damages, and anonymity in court orders under the Pain Capable Unborn  
29 Child Protection Act; to provide operative dates; to provide  
30 severability; to repeal the original sections; to outright repeal  
31 sections 28-3,104, 28-3,109, and 28-3,110, Reissue Revised Statutes of

1 Nebraska; and to declare an emergency.".