

AMENDMENTS TO LB626

Introduced by Riepe, 12.

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

3 Section 1. Section 28-3,102, Reissue Revised Statutes of Nebraska,
4 is amended to read:

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

7 Sec. 2. Section 28-3,103, Reissue Revised Statutes of Nebraska, is
8 amended to read:

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

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

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

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

27 (4) Medical emergency means a condition which, in reasonable medical

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

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

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

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

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

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

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

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

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

1 age of the woman's unborn child is twelve ~~twenty~~ or more weeks.

2 (2) Subsection (1) of this section does not apply if unless, in
3 reasonable medical judgment;

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

12 (b) An abortion is necessary to preserve the life of an unborn
13 child; or

14 (c) There is a fetal anomaly incompatible with life.

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

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

1 Sec. 4. Section 28-3,107, Reissue Revised Statutes of Nebraska, is
2 amended to read:

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

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

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

12 (c) If the probable postfertilization age was determined to be
13 twelve ~~twenty~~ or more weeks, the basis of the determination that an
14 abortion was necessary for a reason provided in subsection (2) of section
15 28-3,106 ~~the pregnant woman had a condition which so complicated her~~
16 ~~medical condition as to necessitate the abortion of her pregnancy to~~
17 ~~avert her death or to avert serious risk of substantial and irreversible~~
18 ~~physical impairment of a major bodily function, or the basis of the~~
19 ~~determination that it was necessary to preserve the life of an unborn~~
20 ~~child; and~~

21 (d) The method used for the abortion and, in the case of an abortion
22 performed when the probable postfertilization age was determined to be
23 twelve ~~twenty~~ or more weeks, whether the method of abortion used was one
24 that, in reasonable medical judgment, provided the best opportunity for
25 the unborn child to survive or, if such a method was not used, the basis
26 of the determination that termination of the pregnancy in that manner
27 would pose a greater risk either of the death of the pregnant woman or of
28 the substantial and irreversible physical impairment of a major bodily
29 function of the woman than would other available methods.

30 (2) By June 30 of each year, the department shall issue a public
31 report providing statistics for the previous calendar year compiled from

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

9 (3) Any physician who fails to submit a report by the end of thirty
10 days following the due date shall be subject to a late fee of five
11 hundred dollars for each additional thirty-day period or portion of a
12 thirty-day period the report is overdue. Any physician required to report
13 in accordance with the ~~Pain-Capable~~ Unborn Child Protection Act who has
14 not submitted a report, or has submitted only an incomplete report, more
15 than one year following the due date, may, in an action brought in the
16 manner in which actions are brought to enforce the Uniform Credentialing
17 Act pursuant to section 38-1,139, be directed by a court of competent
18 jurisdiction to submit a complete report within a time period stated by
19 court order or be subject to civil contempt. Failure by any physician to
20 conform to any requirement of this section, other than late filing of a
21 report, constitutes unprofessional conduct pursuant to section 38-2021.
22 Failure by any physician to submit a complete report in accordance with a
23 court order constitutes unprofessional conduct pursuant to section
24 38-2021. Intentional or reckless falsification of any report required
25 under this section is a Class V misdemeanor.

26 (4) Within ninety days after October 15, 2010, the department shall
27 adopt and promulgate rules and regulations to assist in compliance with
28 this section.

29 Sec. 5. Section 28-3,109, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 28-3,109 (1) Any woman upon whom an abortion has been performed in

1 violation of the ~~Pain-Capable~~ Unborn Child Protection Act or the father
2 of the unborn child who was the subject of such an abortion may maintain
3 an action against the person who performed the abortion in an intentional
4 or a reckless violation of the ~~Pain-Capable~~ Unborn Child Protection Act
5 for actual damages. Any woman upon whom an abortion has been attempted in
6 violation of the ~~Pain-Capable~~ Unborn Child Protection Act may maintain an
7 action against the person who attempted to perform the abortion in an
8 intentional or a reckless violation of the ~~Pain-Capable~~ Unborn Child
9 Protection Act for actual damages.

10 (2) A cause of action for injunctive relief against any person who
11 has intentionally violated the ~~Pain-Capable~~ Unborn Child Protection Act
12 may be maintained by the woman upon whom an abortion was performed or
13 attempted to be performed in violation of the ~~Pain-Capable~~ Unborn Child
14 Protection Act, by any person who is the spouse, parent, sibling, or
15 guardian of, or a current or former licensed health care provider of, the
16 woman upon whom an abortion has been performed or attempted to be
17 performed in violation of the ~~Pain-Capable~~ Unborn Child Protection Act,
18 by a county attorney with appropriate jurisdiction, or by the Attorney
19 General. The injunction shall prevent the abortion provider from
20 performing further abortions in violation of the ~~Pain-Capable~~ Unborn
21 Child Protection Act in this state.

22 (3) If judgment is rendered in favor of the plaintiff in an action
23 described in this section, the court shall also render judgment for
24 reasonable attorney's fees in favor of the plaintiff against the
25 defendant.

26 (4) If judgment is rendered in favor of the defendant and the court
27 finds that the plaintiff's suit was frivolous and brought in bad faith,
28 the court shall also render judgment for reasonable attorney's fees in
29 favor of the defendant against the plaintiff.

30 (5) No damages or attorney's fees may be assessed against the woman
31 upon whom an abortion was performed or attempted to be performed except

1 as provided in subsection (4) of this section.

2 Sec. 6. Section 28-3,110, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 28-3,110 In every civil or criminal proceeding or action brought
5 under the ~~Pain-Capable~~ Unborn Child Protection Act, the court shall rule
6 whether the anonymity of any woman upon whom an abortion has been
7 performed or attempted shall be preserved from public disclosure if she
8 does not give her consent to such disclosure. The court, upon motion or
9 sua sponte, shall make such a ruling and, upon determining that her
10 anonymity should be preserved, shall issue orders to the parties,
11 witnesses, and counsel and shall direct the sealing of the record and
12 exclusion of individuals from courtrooms or hearing rooms to the extent
13 necessary to safeguard her identity from public disclosure. Each such
14 order shall be accompanied by specific written findings explaining why
15 the anonymity of the woman should be preserved from public disclosure,
16 why the order is essential to that end, how the order is narrowly
17 tailored to serve that interest, and why no reasonable less restrictive
18 alternative exists. In the absence of written consent of the woman upon
19 whom an abortion has been performed or attempted, anyone, other than a
20 public official, who brings an action under section 28-3,109 shall do so
21 under a pseudonym. This section shall not be construed to conceal the
22 identity of the plaintiff or of witnesses from the defendant or from
23 attorneys for the defendant.

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

26 28-3,111 If any one or more provisions, sections, subsections,
27 sentences, clauses, phrases, or words of the ~~Pain-Capable~~ Unborn Child
28 Protection Act or the application thereof to any person or circumstance
29 is found to be unconstitutional, the same is hereby declared to be
30 severable and the balance of the ~~Pain-Capable~~ Unborn Child Protection Act
31 shall remain effective notwithstanding such unconstitutionality. The

1 Legislature hereby declares that it would have passed the ~~Pain-Capable~~
2 Unborn Child Protection Act, and each provision, section, subsection,
3 sentence, clause, phrase, or word thereof, irrespective of the fact that
4 any one or more provisions, sections, subsections, sentences, clauses,
5 phrases, or words of the ~~Pain-Capable~~ Unborn Child Protection Act, or the
6 application of the ~~Pain-Capable~~ Unborn Child Protection Act, would be
7 declared unconstitutional.

8 Sec. 8. Section 38-2021, Revised Statutes Cumulative Supplement,
9 2022, is amended to read:

10 38-2021 Unprofessional conduct means any departure from or failure
11 to conform to the standards of acceptable and prevailing practice of
12 medicine and surgery or the ethics of the profession, regardless of
13 whether a person, patient, or entity is injured, or conduct that is
14 likely to deceive or defraud the public or is detrimental to the public
15 interest, including, but not limited to:

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

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

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

29 (4) Performance by a physician of an abortion in violation of the
30 ~~Pain-Capable~~ Unborn Child Protection Act.

31 Sec. 9. Original sections 28-3,102, 28-3,103, 28-3,106, 28-3,107,

1 28-3,109, 28-3,110, and 28-3,111, Reissue Revised Statutes of Nebraska,
2 and section 38-2021, Revised Statutes Cumulative Supplement, 2022, are
3 repealed.

4 Sec. 10. The following section is outright repealed: Section
5 28-3,104, Reissue Revised Statutes of Nebraska.

6 Sec. 11. Since an emergency exists, this act takes effect when
7 passed and approved according to law.