

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 669

Introduced by Storer, 43; Andersen, 49; Bosn, 25; DeKay, 40; Holdcroft,
36; Ibach, 44; Murman, 38; Rountree, 3.

Read first time January 22, 2025

Committee: Judiciary

1 A BILL FOR AN ACT relating to abortion; to amend sections 28-325,
2 28-327.03, 28-327.04, 28-327.06, 28-327.11, and 28-327.12, Reissue
3 Revised Statutes of Nebraska, and sections 28-326, 28-327, and
4 38-2021, Revised Statutes Cumulative Supplement, 2024; to restate
5 legislative intent; to eliminate defined terms; to change
6 requirements for voluntary and informed consent; to change
7 requirements relating to civil actions; to harmonize provisions; and
8 to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 28-325, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-325 The Legislature hereby finds and declares:

4 (1) That the following provisions were motivated by the legislative
5 intrusion of the United States Supreme Court by virtue of its decision
6 removing the protection afforded the unborn. Sections 28-325 to 28-345
7 are in no way to be construed as legislatively encouraging abortions at
8 any stage of unborn human development, but are rather an expression of
9 the will of the people of the State of Nebraska and the members of the
10 Legislature to provide protection for the life of the unborn child
11 whenever possible;

12 (2) That the members of the Legislature expressly deplore the
13 destruction of the unborn human lives which has and will occur in
14 Nebraska as a consequence of the United States Supreme Court's decision
15 on abortion of January 22, 1973;

16 (3) That it is in the interest of the people of the State of
17 Nebraska that every precaution be taken to insure the protection of every
18 viable unborn child being aborted, and every precaution be taken to
19 provide life-supportive procedures to insure the unborn child its
20 continued life after its abortion;

21 ~~(4) That currently this state is prevented from providing adequate~~
22 ~~legal remedies to protect the life, health, and welfare of pregnant women~~
23 ~~and unborn human life;~~

24 (4) ~~(5)~~ That it is in the interest of the people of the State of
25 Nebraska to maintain accurate statistical data to aid in providing proper
26 maternal health regulations and education;

27 (5) ~~(6)~~ That the existing standard of care for preabortion screening
28 and counseling is not always adequate to protect the health needs of
29 women;

30 (6) ~~(7)~~ That clarifying the minimum standard of care for preabortion
31 screening and counseling in statute is a practical means of protecting

1 the well-being of women and may better ensure that abortion doctors are
2 sufficiently aware of each patient's risk profile so they may give each
3 patient a well-informed medical opinion regarding her unique case; ~~and~~

4 ~~(7) (8)~~ That providing right to redress against nonphysicians who
5 perform illegal abortions or encourage self-abortions is an important
6 means of protecting women's health; and -

7 (8) That abundant research indicates many pregnant women feel
8 coerced or pressured into abortion, and that it is in the interest of the
9 people and the State of Nebraska that these women be given an opportunity
10 to report coercion, abuse, and human trafficking.

11 **Sec. 2.** Section 28-326, Revised Statutes Cumulative Supplement,
12 2024, is amended to read:

13 28-326 For purposes of sections 28-325 to 28-345 and 28-347 to
14 28-347.06, unless the context otherwise requires:

15 (1) Abortion means the use or prescription of any instrument,
16 medicine, drug, or other substance or device intentionally to terminate
17 the pregnancy of a woman known to be pregnant with an intention other
18 than to increase the probability of a live birth, to preserve the life or
19 health of the child after live birth, or to remove a dead unborn child,
20 and which causes the premature termination of the pregnancy;

21 ~~(2) Complications associated with abortion means any adverse~~
22 ~~physical, psychological, or emotional reaction that is reported in a~~
23 ~~peer-reviewed journal to be statistically associated with abortion such~~
24 ~~that there is less than a five percent probability ($P < .05$) that the~~
25 ~~result is due to chance;~~

26 ~~(2) (3)~~ Conception means the fecundation of the ovum by the
27 spermatozoa;

28 ~~(3)(a) (4)(a)~~ Dismemberment abortion means an abortion in which,
29 with the purpose of causing the death of an unborn child, a person
30 purposely dismembers the body of a living unborn child and extracts him
31 or her one piece at a time from the uterus through use of clamps,

1 grasping forceps, tongs, scissors, or similar instruments that, through
2 the convergence of two rigid levers, slice, crush, or grasp a portion of
3 the unborn child's body to cut or rip it off.

4 (b) Dismemberment abortion does not include:

5 (i) An abortion in which suction is used to dismember the body of an
6 unborn child by sucking fetal parts into a collection container; or

7 (ii) The use of instruments or suction to remove the remains of an
8 unborn child who has already died;

9 (4) ~~(5)~~ Emergency situation means that condition which, on the basis
10 of the physician's good faith clinical judgment, so complicates the
11 medical condition of a pregnant woman as to necessitate the immediate
12 abortion of her pregnancy to avert her death or for which a delay will
13 create serious risk of substantial impairment of a major bodily function;

14 (5) ~~(6)~~ Hospital means those institutions licensed by the Department
15 of Health and Human Services pursuant to the Health Care Facility
16 Licensure Act;

17 ~~(7) Negligible risk means a risk that a reasonable person would~~
18 ~~consider to be immaterial to a decision to undergo an elective medical~~
19 ~~procedure;~~

20 (6) ~~(8)~~ Partial-birth abortion means an abortion procedure in which
21 the person performing the abortion partially delivers vaginally a living
22 unborn child before killing the unborn child and completing the delivery.
23 For purposes of this subdivision, the term partially delivers vaginally a
24 living unborn child before killing the unborn child means deliberately
25 and intentionally delivering into the vagina a living unborn child, or a
26 substantial portion thereof, for the purpose of performing a procedure
27 that the person performing such procedure knows will kill the unborn
28 child and does kill the unborn child;

29 (7) ~~(9)~~ Physician means any person licensed to practice medicine in
30 this state as provided in the Uniform Credentialing Act;

31 (8) ~~(10)~~ Pregnant means that condition of a woman who has unborn

1 human life within her as the result of conception;

2 (9) ~~(11)~~ Probable gestational age of the unborn child means what
3 will with reasonable probability, in the judgment of the physician, be
4 the gestational age of the unborn child at the time the abortion is
5 planned to be performed;

6 ~~(12) Risk factor associated with abortion means any factor,~~
7 ~~including any physical, psychological, emotional, demographic, or~~
8 ~~situational factor, for which there is a statistical association with one~~
9 ~~or more complications associated with abortion such that there is less~~
10 ~~than a five percent probability ($P < .05$) that such statistical~~
11 ~~association is due to chance. Such information on risk factors shall have~~
12 ~~been published in any peer-reviewed journals indexed by the United States~~
13 ~~National Library of Medicine's search services (PubMed or MEDLINE) or in~~
14 ~~any journal included in the Thomson Reuters Scientific Master Journal~~
15 ~~List not less than twelve months prior to the day preabortion screening~~
16 ~~was provided;~~

17 (10) ~~(13)~~ Self-induced abortion means any abortion or menstrual
18 extraction attempted or completed by a pregnant woman on her own body;

19 (11) ~~(14)~~ Ultrasound means the use of ultrasonic waves for
20 diagnostic or therapeutic purposes, specifically to monitor an unborn
21 child;

22 (12) ~~(15)~~ Viability means that stage of human development when the
23 unborn child is potentially able to live more than merely momentarily
24 outside the womb of the mother by natural or artificial means; and

25 (13) ~~(16)~~ Woman means any female human being whether or not she has
26 reached the age of majority.

27 **Sec. 3.** Section 28-327, Revised Statutes Cumulative Supplement,
28 2024, is amended to read:

29 28-327 No abortion shall be performed except with the voluntary and
30 informed consent of the woman upon whom the abortion is to be performed.
31 Except in the case of an emergency situation, consent to an abortion is

1 voluntary and informed only if:

2 (1) The woman is told the following by the physician who is to
3 perform the abortion, by the referring physician, or by a physician
4 assistant or registered nurse licensed under the Uniform Credentialing
5 Act who is an agent of either physician, at least twenty-four hours
6 before the abortion:

7 (a) The particular medical risks associated with the particular
8 abortion procedure to be employed including, when medically accurate, the
9 risks of infection, hemorrhage, perforated uterus, danger to subsequent
10 pregnancies, and infertility;

11 (b) The probable gestational age of the unborn child at the time the
12 abortion is to be performed;

13 (c) The medical risks associated with carrying her child to term;

14 (d) That she cannot be forced or required by anyone to have an
15 abortion and is free to withhold or withdraw her consent for an abortion;
16 and

17 (e) Research indicates that mifepristone alone is not always
18 effective in ending a pregnancy. You may still have a viable pregnancy
19 after taking mifepristone. If you change your mind and want to continue
20 your pregnancy after taking mifepristone, information on finding
21 immediate medical assistance is available on the website of the
22 Department of Health and Human Services.

23 The person providing the information specified in this subdivision
24 to the person upon whom the abortion is to be performed shall be deemed
25 qualified to so advise and provide such information only if, at a
26 minimum, he or she has had training in each of the following subjects:
27 Sexual and reproductive health; abortion technology; contraceptive
28 technology; short-term counseling skills; community resources and
29 referral; and informed consent. The physician or the physician's agent
30 may provide this information by telephone without conducting a physical
31 examination or tests of the patient, in which case the information

1 required to be supplied may be based on facts supplied by the patient and
2 whatever other relevant information is reasonably available to the
3 physician or the physician's agent;

4 (2) The woman is informed by telephone or in person, by the
5 physician who is to perform the abortion, by the referring physician, or
6 by an agent of either physician, at least twenty-four hours before the
7 abortion:

8 (a) The name of the physician who will perform the abortion;

9 (b) That medical assistance benefits may be available for prenatal
10 care, childbirth, and neonatal care;

11 (c) That the father is liable to assist in the support of her child,
12 even in instances in which the father has offered to pay for the
13 abortion;

14 (d) That she has the right to review the printed materials described
15 in section 28-327.01. The physician or his or her agent shall orally
16 inform the woman that the materials have been provided by the Department
17 of Health and Human Services and that they describe the unborn child,
18 list agencies which offer alternatives to abortion, and include
19 information on finding immediate medical assistance if she changes her
20 mind after taking mifepristone and wants to continue her pregnancy. If
21 the woman chooses to review the materials, they shall either be given to
22 her at least twenty-four hours before the abortion or mailed to her at
23 least seventy-two hours before the abortion by certified mail, restricted
24 delivery to addressee, which means the postal employee can only deliver
25 the mail to the addressee. The physician and his or her agent may
26 disassociate themselves from the materials and may comment or refrain
27 from commenting on them as they choose; ~~and~~

28 (e) That she has the right to request a comprehensive list, compiled
29 by the Department of Health and Human Services, of health care providers,
30 facilities, and clinics that offer to have ultrasounds performed by a
31 person at least as qualified as a registered nurse licensed under the

1 Uniform Credentialing Act, including and specifying those that offer to
2 perform such ultrasounds free of charge. The list shall be arranged
3 geographically and shall include the name, address, hours of operation,
4 and telephone number of each entity. If requested by the woman, the
5 physician who is to perform the abortion, the referring physician, or his
6 or her agent shall provide such a list as compiled by the department; and
7 (f) The telephone numbers for the national domestic violence hotline
8 and the national human trafficking hotline.

9 (3) If an ultrasound is used prior to the performance of an
10 abortion, the physician who is to perform the abortion, the referring
11 physician, or a physician assistant or registered nurse licensed under
12 the Uniform Credentialing Act who is an agent of either physician, or any
13 qualified agent of either physician, shall:

14 (a) Perform an ultrasound of the woman's unborn child of a quality
15 consistent with standard medical practice in the community at least one
16 hour prior to the performance of the abortion;

17 (b) Simultaneously display the ultrasound images so that the woman
18 may choose to view the ultrasound images or not view the ultrasound
19 images. The woman shall be informed that the ultrasound images will be
20 displayed so that she is able to view them. Nothing in this subdivision
21 shall be construed to require the woman to view the displayed ultrasound
22 images; and

23 (c) If the woman requests information about the displayed ultrasound
24 image, her questions shall be answered. If she requests a detailed,
25 simultaneous, medical description of the ultrasound image, one shall be
26 provided that includes the dimensions of the unborn child, the presence
27 of cardiac activity, if present and viewable, and the presence of
28 external members and internal organs, if present and viewable;

29 (4) At least one hour prior to the performance of an abortion, a
30 physician, psychiatrist, psychologist, mental health practitioner,
31 physician assistant, or registered nurse licensed under the Uniform

1 Credentialing Act; a social worker licensed under the Uniform
2 Credentialing Act or holding a multistate authorization to practice in
3 Nebraska under the Social Worker Licensure Compact; or a professional
4 counselor holding a privilege to practice in Nebraska under the Licensed
5 Professional Counselors Interstate Compact has, in a place and manner
6 that ensures the privacy of the pregnant woman:

7 (a) ~~Asked and evaluated~~ Evaluated the pregnant woman to identify if
8 ~~she is being the pregnant woman had the perception of feeling~~ pressured
9 or coerced into seeking or consenting to an abortion;

10 (b) Asked and evaluated the pregnant woman to identify if she is or
11 has been the victim of interpersonal or domestic violence;

12 (c) Asked and evaluated the pregnant woman to identify if she is or
13 has been the victim of human trafficking, including sex trafficking;

14 (d) In the event the pregnant woman discloses that she: (i) Is being
15 pressured or coerced into seeking or consenting to an abortion pursuant
16 to subdivision (4)(a) of this section; (ii) is or has been the victim of
17 interpersonal or domestic violence pursuant to subdivision (4)(b) of this
18 section; or (iii) is or has been the victim of human trafficking pursuant
19 to subdivision (4)(c) of this section, the licensed person to whom the
20 disclosure has been made has (A) provided the pregnant woman with the
21 telephone numbers for the national domestic violence hotline and the
22 national human trafficking hotline; and (B) offered the pregnant woman an
23 opportunity to make a confidential telephone call.

24 ~~(b) Evaluated the pregnant woman to identify the presence of any~~
25 ~~risk factors associated with abortion;~~

26 (e) ~~(c)~~ Informed the pregnant woman and the physician who is to
27 perform the abortion of the results of the evaluation in writing. The
28 written evaluation shall include, at a minimum, ~~a checklist identifying~~
29 ~~both the positive and negative results of the evaluation for each risk~~
30 ~~factor associated with abortion and both the licensed person's written~~
31 certification and the woman's written certification that the pregnant

1 woman was asked the questions required by subdivisions (4)(a) through (c)
2 of this section and, if applicable, was given the telephone numbers for
3 the national domestic violence hotline and the national human trafficking
4 hotline and the opportunity to make a confidential telephone call
5 ~~informed of the risk factors associated with abortion as discussed; and~~
6 (f) (d) Retained a copy of the written evaluation results in the
7 pregnant woman's permanent record;

8 ~~(5) If any risk factors associated with abortion were identified,~~
9 ~~the pregnant woman was informed of the following in such manner and~~
10 ~~detail that a reasonable person would consider material to a decision of~~
11 ~~undergoing an elective medical procedure:~~

12 ~~(a) Each complication associated with each identified risk factor;~~
13 and

14 ~~(b) Any quantifiable risk rates whenever such relevant data exists;~~

15 ~~(6) The physician performing the abortion has formed a reasonable~~
16 ~~medical judgment, documented in the permanent record, that:~~

17 ~~(a) The preponderance of statistically validated medical studies~~
18 ~~demonstrates that the physical, psychological, and familial risks~~
19 ~~associated with abortion for patients with risk factors similar to the~~
20 ~~patient's risk factors are negligible risks;~~

21 ~~(b) Continuance of the pregnancy would involve risk of injury to the~~
22 ~~physical or mental health of the pregnant woman greater than if the~~
23 ~~pregnancy were terminated by induced abortion; or~~

24 ~~(c) Continuance of the pregnancy would involve less risk of injury~~
25 ~~to the physical or mental health of the pregnant woman than if the~~
26 ~~pregnancy were terminated by an induced abortion;~~

27 (5) (7) The woman certifies in writing, prior to the abortion, that:

28 (a) The information described in subdivisions (1) and (2)(a), (b),
29 and (c) of this section has been furnished her;

30 (b) She has been informed of her right to review the information
31 referred to in subdivision (2)(d) of this section; and

1 (c) The requirements of subdivision (3) of this section have been
2 performed if an ultrasound is performed prior to the performance of the
3 abortion; and

4 (6) ~~(8)~~ Prior to the performance of the abortion, the physician who
5 is to perform the abortion or his or her agent receives a copy of the
6 written certification prescribed by subdivision (5) ~~(7)~~ of this section.
7 The physician or his or her agent shall retain a copy of the signed
8 certification form in the woman's medical record.

9 **Sec. 4.** Section 28-327.03, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 28-327.03 No civil liability for failure to comply with subdivision
12 (2)(d) of section 28-327 or that portion of subdivision (5) ~~(7)~~ of such
13 section requiring a written certification that the woman has been
14 informed of her right to review the information referred to in
15 subdivision (2)(d) of such section may be imposed unless the Department
16 of Health and Human Services has published and made available the printed
17 materials at the time the physician or his or her agent is required to
18 inform the woman of her right to review them.

19 **Sec. 5.** Section 28-327.04, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 28-327.04 Any person upon whom an abortion has been performed or
22 attempted in violation of section 28-327 or the parent or guardian of a
23 minor upon whom an abortion has been performed or attempted in violation
24 of such section shall have a right to maintain a civil cause of action
25 against the person who performed the abortion or attempted to perform the
26 abortion. A violation of subdivision (1), (2), (3), (5), or (6) ~~(7), or~~
27 ~~(8)~~ of section 28-327 shall be prima facie evidence of professional
28 negligence. The written certifications prescribed by subdivisions (4) and
29 (5) ~~(7)~~ of section 28-327 signed by the person upon whom an abortion has
30 been performed or attempted shall constitute and create a rebuttable
31 presumption of full compliance with all provisions of section 28-327 in

1 favor of the physician who performed or attempted to perform the
2 abortion, the referring physician, or the agent of either physician. The
3 written certification shall be admissible as evidence in the cause of
4 action for professional negligence or in any criminal action. If judgment
5 is rendered in favor of the plaintiff in any such action, the court shall
6 also render judgment for a reasonable attorney's fee in favor of the
7 plaintiff against the defendant.

8 **Sec. 6.** Section 28-327.06, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 28-327.06 Any waiver of the evaluations, ~~and~~ notices, and
11 requirements provided ~~for~~ in subdivision (4) of section 28-327 is void
12 and unenforceable.

13 **Sec. 7.** Section 28-327.11, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 28-327.11 In a civil action involving section 28-327, the following
16 shall apply:

17 (1) In determining the liability of the physician and the validity
18 of the consent of a pregnant woman, the failure to comply with the
19 requirements of section 28-327 shall create a rebuttable presumption that
20 the pregnant woman would not have undergone the recommended abortion had
21 section 28-327 been complied with by the physician;

22 (2) The absence of physical injury shall not preclude an award of
23 noneconomic damages including pain, suffering, inconvenience, mental
24 suffering, emotional distress, psychological trauma, loss of society or
25 companionship, loss of consortium, injury to reputation, or humiliation
26 associated with the abortion;

27 (3) The fact that a physician does not perform elective abortions or
28 has not performed elective abortions in the past shall not automatically
29 disqualify such physician from being an expert witness. A licensed
30 obstetrician or family practitioner who regularly assists pregnant women
31 in resolving medical matters related to pregnancy may be qualified to

1 testify as an expert on the screening, counseling, management, and
2 treatment of pregnancies; and

3 ~~(4) Any physician advertising services in this state shall be deemed~~
4 ~~to be transacting business in this state pursuant to section 25-536 and~~
5 ~~shall be subject to the provisions of section 28-327;~~

6 ~~(5) It shall be an affirmative defense to an allegation of~~
7 ~~inadequate disclosure under the requirements of section 28-327 that the~~
8 ~~defendant omitted the contested information because statistically~~
9 ~~validated surveys of the general population of women of reproductive age,~~
10 ~~conducted within the three years before or after the contested abortion,~~
11 ~~demonstrate that less than five percent of women would consider the~~
12 ~~contested information to be relevant to an abortion decision; and~~

13 ~~(4) (6)~~ In addition to the other remedies available under the common
14 or statutory law of this state, a woman or her survivors shall have a
15 cause of action for reckless endangerment against any person, other than
16 a physician or pharmacist licensed under the Uniform Credentialing Act,
17 who attempts or completes an abortion on the pregnant woman or aids or
18 abets the commission of a self-induced abortion. Proof of injury shall
19 not be required to recover an award, including reasonable costs and
20 attorney's fees, for wrongful death under this subdivision.

21 **Sec. 8.** Section 28-327.12, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 28-327.12 (1) In the event that any portion of section 28-327 is
24 enjoined and subsequently upheld, the statute of limitations for filing a
25 civil suit under section 28-327 shall be tolled during the period for
26 which the injunction is pending and for two years thereafter.

27 (2) Nothing in section 28-327 shall be construed as defining a
28 standard of care for any medical procedure other than an induced
29 abortion.

30 (3) A violation of subdivision (4) ~~, (5), or (6)~~ of section 28-327
31 shall not provide grounds for any criminal action or disciplinary action

1 against or revocation of a license to practice medicine and surgery
2 pursuant to the Uniform Credentialing Act.

3 **Sec. 9.** Section 38-2021, Revised Statutes Cumulative Supplement,
4 2024, is amended to read:

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

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

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

18 (3) The intentional and knowing performance of a partial-birth
19 abortion as defined in subdivision ~~(6)~~ ~~(8)~~ of section 28-326, unless such
20 procedure is necessary to save the life of the mother whose life is
21 endangered by a physical disorder, physical illness, or physical injury,
22 including a life-endangering physical condition caused by or arising from
23 the pregnancy itself;

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

26 (5) Violation of the Preborn Child Protection Act.

27 **Sec. 10.** Original sections 28-325, 28-327.03, 28-327.04, 28-327.06,
28 28-327.11, and 28-327.12, Reissue Revised Statutes of Nebraska, and
29 sections 28-326, 28-327, and 38-2021, Revised Statutes Cumulative
30 Supplement, 2024, are repealed.