

## LEGISLATIVE BILL 824

Approved by the Governor February 27, 2002

Introduced by Foley, 29; Aguilar, 35; Baker, 44; Bromm, 23; Bruning, 3; Burling, 33; Coordsen, 32; Cudaback, 36; Cunningham, 18; Dierks, 40; Engel, 17; Erdman, 47; Hartnett, 45; Hilgert, 7; Hudkins, 21; Jensen, 20; Jones, 43; Kremer, 34; Maxwell, 9; Dw. Pedersen, 39; Preister, 5; Quandahl, 31; Redfield, 12; Schrock, 38; Smith, 48; Stuhr, 24; Tyson, 19; Vrtiska, 1; Kristensen, 37; Robak, 22; McDonald, 41; Byars, 30

AN ACT relating to homicide; to amend section 28-101, Revised Statutes Supplement, 2000; to adopt the Homicide of the Unborn Child Act; to provide penalties; to harmonize provisions; to provide severability; to repeal the original section; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 28-101, Revised Statutes Supplement, 2000, is amended to read:

28-101. Sections 28-101 to 28-1348 and sections 2 to 8 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 2. Sections 2 to 8 of this act shall be known and may be cited as the Homicide of the Unborn Child Act.

Sec. 3. For purposes of the Homicide of the Unborn Child Act, unless the context otherwise requires:

(1) Premeditation means a design formed to do something before it is done; and

(2) Unborn child means an individual member of the species *Homo sapiens*, at any stage of development in utero, who was alive at the time of the homicidal act and died as a result thereof whether before, during, or after birth.

Sec. 4. Sections 5 to 8 of this act do not apply to an act or conduct causing or contributing to the death of an unborn child when the act or conduct is:

(1) Committed or engaged in by the mother of the unborn child;

(2) Any medical procedure performed with the consent of the mother;

or

(3) Dispensing a drug or device in accordance with law or administering a drug or device prescribed in accordance with law.

Sec. 5. (1) A person commits murder of an unborn child in the first degree if he or she in committing an act or engaging in conduct that causes the death of an unborn child, intends, with deliberate and premeditated malice, to kill the unborn child or the mother of the unborn child with knowledge of the pregnancy.

(2) Murder of an unborn child in the first degree is a Class IA felony.

Sec. 6. (1) A person commits murder of an unborn child in the second degree if he or she, in committing an act or engaging in conduct that causes the death of an unborn child, intends, but without premeditation, to kill the unborn child or another.

(2) Murder of an unborn child in the second degree is a Class IB felony.

Sec. 7. (1) A person commits manslaughter of an unborn child if he or she (a) kills an unborn child without malice upon a sudden quarrel with any person or (b) causes the death of an unborn child unintentionally while in the perpetration of or attempt to perpetrate any criminal assault, any sexual assault, arson, robbery, kidnapping, intentional child abuse, hijacking of any public or private means of transportation, or burglary.

(2) Manslaughter of an unborn child is a Class III felony.

Sec. 8. (1) A person who causes the death of an unborn child unintentionally while engaged in the operation of a motor vehicle in violation of the law of the State of Nebraska or in violation of any city or village ordinance commits motor vehicle homicide of an unborn child.

(2) Except as provided in subsection (3) of this section, motor vehicle homicide of an unborn child is a Class I misdemeanor.

(3) (a) If the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of section 60-6,213 or 60-6,214, motor vehicle homicide of an unborn child is a Class IV felony.

(b) Except as provided in subdivision (3) (c) of this section, if the proximate cause of the death of an unborn child is the operation of a motor

vehicle in violation of section 60-6,196, motor vehicle homicide of an unborn child is a Class IV felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years after the date ordered by the court and shall order that the operator's license of such person be revoked for the same period. The revocation shall not run concurrently with any jail term imposed.

(c) If the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of section 60-6,196 and the defendant has a prior conviction under such section or a city or village ordinance enacted pursuant to such section, motor vehicle homicide of an unborn child is a Class III felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years after the date ordered by the court and shall order that the operator's license of such person be revoked for the same period. The revocation shall not run concurrently with any jail term imposed.

Sec. 9. 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. 10. Original section 28-101, Revised Statutes Supplement, 2000, is repealed.

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