

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 675

FINAL READING

(SECOND)

Introduced by Fulton, 29; Langemeier, 23; Pirsch, 4; McCoy, 39; Friend, 10; Janssen, 15; Flood, 19; Lautenbaugh, 18; Stuthman, 22; Carlson, 38; Christensen, 44; Fischer, 43; Price, 3; Schilz, 47; Cornett, 45; Harms, 48; Dubas, 34; Nordquist, 7; Mello, 5; Gay, 14; Coash, 27; Gloor, 35; Utter, 33.

Read first time January 21, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to abortion; to amend sections 28-326, 28-327,  
2 28-327.01, 28-327.03, and 28-327.04, Reissue Revised  
3 Statutes of Nebraska; to provide for additional voluntary  
4 and informed consents from the pregnant woman; to define  
5 terms; to harmonize provisions; to provide severability;  
6 and to repeal the original sections.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 28-326, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           28-326 For purposes of sections 28-325 to 28-345, unless  
4 the context otherwise requires:

5           (1) Abortion means the use or prescription of any  
6 instrument, medicine, drug, or other substance or device  
7 intentionally to terminate the pregnancy of a woman known to be  
8 pregnant with an intention other than to increase the probability  
9 of a live birth, to preserve the life or health of the child after  
10 live birth, or to remove a dead unborn child, and which causes the  
11 premature termination of the pregnancy;

12           (2) Hospital means those institutions licensed by the  
13 Department of Health and Human Services pursuant to the Health Care  
14 Facility Licensure Act;

15           (3) Physician means any person licensed to practice  
16 medicine in this state as provided in ~~sections 71-102 to 71-110,~~  
17 the Uniform Credentialing Act;

18           (4) Pregnant means that condition of a woman who has  
19 unborn human life within her as the result of conception;

20           (5) Conception means the fecundation of the ovum by the  
21 spermatozoa;

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

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

7           (8) Probable gestational age of the unborn child means  
8 what will with reasonable probability, in the judgment of the  
9 physician, be the gestational age of the unborn child at the time  
10 the abortion is planned to be performed; and

11           (9) Partial-birth abortion means an abortion procedure  
12 in which the person performing the abortion partially delivers  
13 vaginally a living unborn child before killing the unborn child and  
14 completing the delivery. For purposes of this subdivision, the term  
15 partially delivers vaginally a living unborn child before killing  
16 the unborn child means deliberately and intentionally delivering  
17 into the vagina a living unborn child, or a substantial portion  
18 thereof, for the purpose of performing a procedure that the person  
19 performing such procedure knows will kill the unborn child and does  
20 kill the unborn child;—

21           (10) Woman means any female human being whether or not  
22 she has reached the age of majority; and

23           (11) Ultrasound means the use of ultrasonic waves for  
24 diagnostic or therapeutic purposes, specifically to monitor an  
25 unborn child.

1           Sec. 2. Section 28-327, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           28-327 No abortion shall be performed except with the  
4 voluntary and informed consent of the woman upon whom the abortion  
5 is to be performed. Except in the case of an emergency situation,  
6 consent to an abortion is voluntary and informed only if:

7           (1) The woman is told the following by the physician who  
8 is to perform the abortion, by the referring physician, or by a  
9 licensed physician assistant or registered nurse licensed under the  
10 Uniform Credentialing Act who is an agent of either physician, at  
11 least twenty-four hours before the abortion:

12           (a) The particular medical risks associated with  
13 the particular abortion procedure to be employed including,  
14 when medically accurate, the risks of infection, hemorrhage,  
15 and perforated uterus, danger to subsequent pregnancies, and  
16 infertility;

17           (b) The probable gestational age of the unborn child at  
18 the time the abortion is to be performed; and

19           (c) The medical risks associated with carrying her child  
20 to term; and-

21           (d) That she cannot be forced or required by anyone to  
22 have an abortion and is free to withhold or withdraw her consent  
23 for an abortion.

24           The person providing the information specified in this  
25 subdivision to the person upon whom the abortion is to be

1 performed shall be deemed qualified to so advise and provide  
2 such information only if, at a minimum, he or she has had  
3 training in each of the following subjects: Sexual and reproductive  
4 health; abortion technology; contraceptive technology; short-term  
5 counseling skills; community resources and referral; and informed  
6 consent. The physician or the physician's agent may provide this  
7 information by telephone without conducting a physical examination  
8 or tests of the patient, in which case the information required  
9 to be supplied may be based on facts supplied by the patient and  
10 whatever other relevant information is reasonably available to the  
11 physician or the physician's agent;

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

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

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

20 (c) That the father is liable to assist in the support of  
21 her child, even in instances in which the father has offered to pay  
22 for the abortion; and

23 (d) That she has the right to review the printed  
24 materials described in section 28-327.01. The physician or his  
25 or her agent shall orally inform the woman that the materials

1 have been provided by the Department of Health and Human Services  
2 and that they describe the unborn child and list agencies which  
3 offer alternatives to abortion. If the woman chooses to review the  
4 materials, they shall either be given to her at least twenty-four  
5 hours before the abortion or mailed to her at least seventy-two  
6 hours before the abortion by certified mail, restricted delivery  
7 to addressee, which means the postal employee can only deliver  
8 the mail to the addressee. The physician and his or her agent  
9 may disassociate themselves from the materials and may comment or  
10 refrain from commenting on them as they choose; and

11 (e) That she has the right to request a comprehensive  
12 list, compiled by the Department of Health and Human Services,  
13 of health care providers, facilities, and clinics that offer to  
14 have ultrasounds performed by a person at least as qualified  
15 as a registered nurse licensed under the Uniform Credentialing  
16 Act, including and specifying those that offer to perform  
17 such ultrasounds free of charge. The list shall be arranged  
18 geographically and shall include the name, address, hours of  
19 operation, and telephone number of each entity. If requested by  
20 the woman, the physician who is to perform the abortion, the  
21 referring physician, or his or her agent shall provide such a list  
22 as compiled by the department;

23 (3) If an ultrasound is used prior to the performance  
24 of an abortion, the physician who is to perform the abortion,  
25 the referring physician, or a physician assistant or registered

1 nurse licensed under the Uniform Credentialing Act who is an agent  
2 of either physician, or any qualified agent of either physician,  
3 shall:

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

8 (b) Simultaneously display the ultrasound images so that  
9 the woman may choose to view the ultrasound images or not view the  
10 ultrasound images. The woman shall be informed that the ultrasound  
11 images will be displayed so that she is able to view them. Nothing  
12 in this subdivision shall be construed to require the woman to view  
13 the displayed ultrasound images; and

14 (c) If the woman requests information about the displayed  
15 ultrasound image, her questions shall be answered. If she requests  
16 a detailed, simultaneous, medical description of the ultrasound  
17 image, one shall be provided that includes the dimensions of the  
18 unborn child, the presence of cardiac activity, if present and  
19 viewable, and the presence of external members and internal organs,  
20 if present and viewable;

21 ~~(3)~~ (4) The woman certifies in writing, prior to the  
22 abortion, that:

23 (a) The ~~the~~ information described in subdivisions (1) and  
24 (2) (a), (b), and (c) of this section has been furnished her;

25 (b) She ~~and that she~~ has been informed of her right to

1 review the information referred to in subdivision (2)(d) of this  
2 section; and

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

6 ~~(4)~~ (5) Prior to the performance of the abortion,  
7 the physician who is to perform the abortion or his or her  
8 agent receives a copy of the written certification prescribed by  
9 subdivision ~~(3)~~ (4) of this section. The physician or his or her  
10 agent shall retain a copy of the signed certification form in the  
11 woman's medical record.

12 Sec. 3. Section 28-327.01, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 28-327.01 (1) The Department of Health and Human Services  
15 shall cause to be published, ~~within sixty days after September 9,~~  
16 ~~1993,~~ the following easily comprehensible printed materials:

17 (a) Geographically indexed materials designed to inform  
18 the woman of public and private agencies and services available to  
19 assist a woman through pregnancy, upon childbirth, and while the  
20 child is dependent, including adoption agencies and agencies and  
21 services for prevention of unintended pregnancies, which materials  
22 shall include a comprehensive list of the agencies available,  
23 a description of the services they offer, and a description of  
24 the manner, including telephone numbers and addresses in which  
25 such agencies may be contacted or printed materials including a

1 toll-free, twenty-four-hour-a-day telephone number which may be  
2 called to orally obtain such a list and description of agencies in  
3 the locality of the caller and of the services they offer; and

4 (b) Materials designed to inform the woman of the  
5 probable anatomical and physiological characteristics of the unborn  
6 child at two-week gestational increments from the time when a woman  
7 can be known to be pregnant to full term, including pictures or  
8 drawings representing the development of unborn children at the  
9 two-week gestational increments, and any relevant information on  
10 the possibility of the unborn child's survival. Any such pictures  
11 or drawings shall contain the dimensions of the unborn child and  
12 shall be realistic and appropriate for the stage of pregnancy  
13 depicted. The materials shall be objective, nonjudgmental, and  
14 designed to convey only accurate scientific information about  
15 the unborn child at the various gestational ages. The materials  
16 shall also contain objective information describing the methods of  
17 abortion procedures commonly employed, the medical risks commonly  
18 associated with each such procedure, the possible detrimental  
19 psychological effects of abortion, the medical risks commonly  
20 associated with abortion, and the medical risks commonly associated  
21 with carrying a child to term; ~~and-~~

22 (c) A comprehensive list of health care providers,  
23 facilities, and clinics that offer to have ultrasounds performed by  
24 a person at least as qualified as a registered nurse licensed under  
25 the Uniform Credentialing Act, including and specifying those that

1 offer to perform such ultrasounds free of charge. The list shall be  
2 arranged geographically and shall include the name, address, hours  
3 of operation, and telephone number of each entity.

4 (2) The materials shall be printed in a typeface large  
5 enough to be clearly legible.

6 (3) The materials required under this section shall be  
7 available from the department upon the request by any person,  
8 facility, or hospital for an amount equal to the cost incurred by  
9 the department to publish the materials.

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

12 28-327.03 No civil liability for failure to comply with  
13 subdivision (2) (d) of section 28-327 or that portion of subdivision  
14 ~~(3)~~ (4) of such section requiring a written certification that the  
15 woman has been informed of her right to review the information  
16 referred to in subdivision (2) (d) of such section may be imposed  
17 unless the Department of Health and Human Services has published  
18 and made available the printed materials at the time the physician  
19 or his or her agent is required to inform the woman of her right  
20 to review them.

21 Sec. 5. Section 28-327.04, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 28-327.04 Any person upon whom an abortion has been  
24 performed or attempted in violation of section 28-327 or the parent  
25 or guardian of a minor upon whom an abortion has been performed

1 or attempted in violation of such section shall have a right to  
2 maintain a civil cause of action against the person who performed  
3 the abortion or attempted to perform the abortion. A violation  
4 of such section shall be prima facie evidence of professional  
5 negligence. The written certification prescribed by subdivision ~~(3)~~  
6 (4) of section 28-327 signed by the person upon whom an abortion  
7 has been performed or attempted shall constitute and create a  
8 rebuttable presumption of full compliance with all provisions of  
9 section 28-327 in favor of the physician who performed or attempted  
10 to perform the abortion, the referring physician, or the agent  
11 of either physician. The written certification shall be admissible  
12 as evidence in the cause of action for professional negligence or  
13 in any criminal action. If judgment is rendered in favor of the  
14 plaintiff in any such action, the court shall also render judgment  
15 for a reasonable attorney's fee in favor of the plaintiff against  
16 the defendant.

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

21           Sec. 7. Original sections 28-326, 28-327, 28-327.01,  
22 28-327.03, and 28-327.04, Reissue Revised Statutes of Nebraska, are  
23 repealed.