

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 676

Introduced by Fulton, 29.

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 the
13 particular abortion procedure to be employed including, when
14 medically accurate, the risks of infection, psychological trauma,
15 hemorrhage, and endometritis, perforated uterus, incomplete
16 abortion, failed abortion, danger to subsequent pregnancies, and
17 infertility;

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

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

22 (d) That an ultrasound of her unborn child of a quality
23 consistent with standard medical practice in the community is
24 available that enables her to view the ultrasound image of her
25 unborn child before the abortion is to be performed;

1 (e) That she has a right to request an ultrasound of a
 2 quality consistent with standard medical practice in the community
 3 be performed at least one hour prior to the performance of the
 4 abortion by the physician who is to perform the abortion;

5 (f) That she has the right to view an ultrasound of her
 6 unborn child; and

7 (g) That she cannot be forced or required by anyone to
 8 have an abortion and is free to withhold or withdraw her consent
 9 for an abortion without affecting her right to future care or
 10 treatment and without the loss of any state or federal benefits to
 11 which she might otherwise be entitled.

12 The person providing the information specified in this
 13 subdivision to the person upon whom the abortion is to be
 14 performed shall be deemed qualified to so advise and provide
 15 such information only if, at a minimum, he or she has had
 16 training in each of the following subjects: Sexual and reproductive
 17 health; abortion technology; contraceptive technology; short-term
 18 counseling skills; community resources and referral; and informed
 19 consent. The physician or the physician's agent may provide this
 20 information by telephone without conducting a physical examination
 21 or tests of the patient, in which case the information required
 22 to be supplied may be based on facts supplied by the patient and
 23 whatever other relevant information is reasonably available to the
 24 physician or the physician's agent;

25 (2) The woman is informed by telephone or in person, by

1 the physician who is to perform the abortion, by the referring
2 physician, or by an agent of either physician, at least twenty-four
3 hours before the abortion:

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

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

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

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

24 (3) If the woman requests the performance of an
25 ultrasound or the display of an ultrasound image of her unborn

1 child as described in subdivision (1) of this section, the
2 physician who is to perform the abortion, or a physician assistant
3 or registered nurse licensed under the Uniform Credentialing Act
4 who is an agent of the physician, shall provide:

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

8 (b) (i) At least one hour prior to the performance of
9 the abortion, a display that is viewed by the woman of the
10 real-time ultrasound image of the woman's unborn child of a
11 quality consistent with standard medical practice in the community
12 containing the dimensions of the unborn child and an accurate
13 portrayal of the presence of external members and internal organs,
14 if present or viewable, of the unborn child; or

15 (ii) At least twenty-four hours prior to the performance
16 of the abortion, a list compiled by the Department of Health and
17 Human Services of health care providers, facilities, and clinics
18 that offer to perform ultrasounds free of charge. The list shall be
19 arranged geographically and shall include the name, address, hours
20 of operation, and telephone number of each entity;

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), and (e) of this section has been furnished
25 her;

1 **(b) That and that** she has been informed of her right
 2 to review or request the information referred to in ~~subdivision~~
 3 subdivisions (1) and (2) (d) of this section; ~~and~~

4 **(c) That she has either requested and received or not**
 5 requested and not received the services or information referred to
 6 in subdivision (3) of this section; and

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

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

15 28-327.01 (1) The Department of Health and Human Services
 16 shall cause to be published, ~~within sixty days after September 9,~~
 17 ~~1993,~~ the following easily comprehensible printed materials:

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

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

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

23 (c) A list of health care providers, facilities, and
24 clinics that offer to perform ultrasounds free of charge. The
25 list shall be arranged geographically and shall include the name,

1 address, hours of operation, and telephone number of each entity.

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

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

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

10 28-327.03 No civil liability for failure to comply with
11 subdivision (2)(d) of section 28-327 or that portion of subdivision
12 ~~(3)~~ (4) of such section requiring a written certification that the
13 woman has been informed of her right to review the information
14 referred to in subdivision (2)(d) of such section may be imposed
15 unless the Department of Health and Human Services has published
16 and made available the printed materials at the time the physician
17 or his or her agent is required to inform the woman of her right
18 to review them.

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

21 28-327.04 Any person upon whom an abortion has been
22 performed or attempted in violation of section 28-327 or the parent
23 or guardian of a minor upon whom an abortion has been performed
24 or attempted in violation of such section shall have a right to
25 maintain a civil cause of action against the person who performed

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

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

19 Sec. 7. Original sections 28-326, 28-327, 28-327.01,
20 28-327.03, and 28-327.04, Reissue Revised Statutes of Nebraska, are
21 repealed.