

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 521

Introduced by Fulton, 29.

Read first time January 18, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to abortion; to amend sections 28-101, 28-325,
2 28-326, and 28-340, Revised Statutes Cumulative
3 Supplement, 2010; to provide how certain drugs used to
4 induce an abortion shall be administered; to provide for
5 followup medical examinations and recordkeeping as
6 prescribed; to provide for a civil action; to provide a
7 penalty; to harmonize provisions; to provide
8 severability; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 28-101 Sections 28-101 to 28-1356 and section 5 of this
4 act shall be known and may be cited as the Nebraska Criminal Code.

5 Sec. 2. Section 28-325, Revised Statutes Cumulative
6 Supplement, 2010, is amended to read:

7 28-325 The Legislature hereby finds and declares:

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

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

21 (3) That it is in the interest of the people of the State
22 of Nebraska that every precaution be taken to insure the protection
23 of every viable unborn child being aborted, and every precaution be
24 taken to provide life-supportive procedures to insure the unborn
25 child its continued life after its abortion;

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

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

7 (6) That the existing standard of care for preabortion
8 screening and counseling is not always adequate to protect the health
9 needs of women;

10 (7) That clarifying the minimum standard of care for
11 preabortion screening and counseling in statute is a practical means
12 of protecting the well-being of women and may better ensure that
13 abortion doctors are sufficiently aware of each patient's risk
14 profile so they may give each patient a well-informed medical opinion
15 regarding her unique case; and

16 (8) That providing right to redress against nonphysicians
17 who perform illegal abortions or encourage self-abortions is an
18 important means of protecting women's health.

19 Sec. 3. Section 28-326, Revised Statutes Cumulative
20 Supplement, 2010, is amended to read:

21 28-326 For purposes of sections 28-325 to 28-345 and
22 section 5 of this act, unless the context otherwise requires:

23 (1) Abortion means the use or prescription of any
24 instrument, medicine, drug, or other substance or device
25 intentionally to terminate the pregnancy of a woman known to be

1 pregnant with an intention other than to increase the probability of
2 a live birth, to preserve the life or health of the child after live
3 birth, or to remove a dead unborn child, and which causes the
4 premature termination of the pregnancy;

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

10 (3) Conception means the fecundation of the ovum by the
11 spermatozoa;

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

18 (5) Hospital means those institutions licensed by the
19 Department of Health and Human Services pursuant to the Health Care
20 Facility Licensure Act;

21 (6) Negligible risk means a risk that a reasonable person
22 would consider to be immaterial to a decision to undergo an elective
23 medical procedure;

24 (7) Partial-birth abortion means an abortion procedure in
25 which the person performing the abortion partially delivers vaginally

1 a living unborn child before killing the unborn child and completing
2 the delivery. For purposes of this subdivision, the term partially
3 delivers vaginally a living unborn child before killing the unborn
4 child means deliberately and intentionally delivering into the vagina
5 a living unborn child, or a substantial portion thereof, for the
6 purpose of performing a procedure that the person performing such
7 procedure knows will kill the unborn child and does kill the unborn
8 child;

9 (8) Physician means any person licensed to practice
10 medicine in this state as provided in the Uniform Credentialing Act;

11 (9) Pregnant means that condition of a woman who has
12 unborn human life within her as the result of conception;

13 (10) Probable gestational age of the unborn child means
14 what will with reasonable probability, in the judgment of the
15 physician, be the gestational age of the unborn child at the time the
16 abortion is planned to be performed;

17 (11) Risk factor associated with abortion means any
18 factor, including any physical, psychological, emotional,
19 demographic, or situational factor, for which there is a statistical
20 association with one or more complications associated with abortion
21 such that there is less than a five percent probability ($P < .05$)
22 that such statistical association is due to chance. Such information
23 on risk factors shall have been published in any peer-reviewed
24 journals indexed by the United States National Library of Medicine's
25 search services (PubMed or MEDLINE) or in any journal included in the

1 Thomson Reuters Scientific Master Journal List not less than twelve
2 months prior to the day preabortion screening was provided;

3 (12) Self-induced abortion means any abortion or
4 menstrual extraction attempted or completed by a pregnant woman on
5 her own body;

6 (13) Ultrasound means the use of ultrasonic waves for
7 diagnostic or therapeutic purposes, specifically to monitor an unborn
8 child;

9 (14) Viability means that stage of human development when
10 the unborn child is potentially able to live more than merely
11 momentarily outside the womb of the mother by natural or artificial
12 means; and

13 (15) Woman means any female human being whether or not
14 she has reached the age of majority.

15 Sec. 4. Section 28-340, Revised Statutes Cumulative
16 Supplement, 2010, is amended to read:

17 28-340 Any person whose employment or position has been
18 in any way altered, impaired, or terminated in violation of sections
19 28-325 to 28-345 and section 5 of this act may sue in the district
20 court for all consequential damages, lost wages, reasonable
21 attorney's fees incurred, and the cost of litigation.

22 Sec. 5. (1) When mifepristone, otherwise known as RU-486,
23 misoprostol, or any other drug is used for the purpose of inducing an
24 abortion, the drug shall be administered by or in the same room and
25 in the physical presence of the physician who prescribed, dispensed,

1 or otherwise provided the drug to the patient. The physician inducing
2 the abortion, or a person acting on behalf of the physician inducing
3 the abortion, shall make all reasonable efforts to ensure that the
4 patient returns twelve to eighteen days after the administration or
5 use of such a drug or drugs for a followup visit so that the
6 physician can confirm that the pregnancy has been terminated and
7 assess the patient's medical condition. A brief description of the
8 efforts made to comply with this subsection, including the date,
9 time, and identification by name of the person making such efforts,
10 shall be included in the patient's medical record.

11 (2) Any person who knowingly or recklessly violates
12 subsection (1) of this section shall be guilty of a Class I
13 misdemeanor. No penalty may be assessed against the patient upon whom
14 the abortion is performed or attempted to be performed.

15 (3)(a) Any patient upon whom an abortion has been
16 performed, the father of the unborn child who was the subject of the
17 abortion if the father was married to the patient who received the
18 abortion at the time the abortion was performed, or a maternal
19 grandparent of the unborn child, may maintain an action against the
20 person who performed the abortion in knowing or reckless violation of
21 subsection (1) of this section for actual and consequential damages.
22 Any patient upon whom an abortion has been attempted in knowing or
23 reckless violation of subsection (1) of this section may maintain an
24 action against the person who attempted to perform the abortion for
25 actual and consequential damages. Any action under this subdivision

1 shall be commenced in accordance with section 25-222 or 44-2828.

2 (b) A cause of action for injunctive relief against any
3 person who has violated subsection (1) of this section may be
4 maintained by the patient upon whom an abortion was performed or
5 attempted to be performed in violation of subsection (1) of this
6 section; by any person who is the spouse, parent, sibling, or
7 guardian of, or a current or former licensed health care provider of,
8 the patient upon whom an abortion has been performed or attempted to
9 be performed in violation of subsection (1) of this section; by a
10 county attorney with appropriate jurisdiction; or by the Attorney
11 General. The injunction shall prevent the person performing or
12 attempting to perform the abortion from performing further abortions
13 in violation of subsection (1) of this section in this state.

14 (4) If a judgment is rendered in favor of the plaintiff
15 in any action described in subsection (3) of this section, the court
16 shall also render judgment for reasonable attorney's fees in favor of
17 the plaintiff against the defendant. If a judgment is rendered in
18 favor of the defendant and the court finds that the plaintiff's suit
19 was frivolous and brought in bad faith, the court shall also render
20 judgment for reasonable attorney's fees in favor of the defendant
21 against the plaintiff.

22 (5) No patient who obtains or possesses mifepristone,
23 otherwise known as RU-486, misoprostol, or any other drug for the
24 purpose of inducing an abortion to terminate her own pregnancy shall
25 be subject to any civil or criminal action brought under this

1 section.

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

23 Sec. 6. If any one or more provisions, sections,
24 subsections, sentences, clauses, phrases, or words of this act or the
25 application thereof to any person or circumstance is found to be

1 unconstitutional, the same is hereby declared to be severable and the
2 balance of this act shall remain effective notwithstanding such
3 unconstitutionality. The Legislature hereby declares that it would
4 have passed this act, and each provision, section, subsection,
5 sentence, clause, phrase, or word thereof, irrespective of the fact
6 that any one or more provisions, sections, subsections, sentences,
7 clauses, phrases, or words be declared unconstitutional.

8 Sec. 7. Original sections 28-101, 28-325, 28-326, and
9 28-340, Revised Statutes Cumulative Supplement, 2010, are repealed.