

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 690

Introduced by Brasch, 16; Bloomfield, 17; Carlson, 38; Christensen, 44; Fulton, 29; Hansen, 42; Heidemann, 1; Janssen, 15; Krist, 10; Langemeier, 23; Larson, 40; Lautenbaugh, 18; McCoy, 39; Schilz, 47; Schumacher, 22; Smith, 14; Wallman, 30.

Read first time January 19, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to abortion; to amend sections 71-6901, 71-6902,
2 71-6903, 71-6904, 71-6905, 71-6906, 71-6907, and 71-6908,
3 Reissue Revised Statutes of Nebraska, and section
4 38-2021, Revised Statutes Cumulative Supplement, 2010; to
5 change provisions relating to consent and parental
6 notification; to harmonize provisions; to provide
7 severability; and to repeal the original sections.

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

1 Section 1. Section 38-2021, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 38-2021 Unprofessional conduct means any departure from
4 or failure to conform to the standards of acceptable and prevailing
5 practice of medicine and surgery or the ethics of the profession,
6 regardless of whether a person, patient, or entity is injured, or
7 conduct that is likely to deceive or defraud the public or is
8 detrimental to the public interest, including, but not limited to:

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

14 (2) Performing an abortion upon a minor without having
15 satisfied the notice requirements of sections 71-6901 to 71-6908 and
16 sections 4, 5, 11, 13, and 14 of this act;

17 (3) The intentional and knowing performance of a partial-
18 birth abortion as defined in subdivision (7) of section 28-326,
19 unless such procedure is necessary to save the life of the mother
20 whose life is endangered by a physical disorder, physical illness, or
21 physical injury, including a life-endangering physical condition
22 caused by or arising from the pregnancy itself; and

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

25 Sec. 2. Section 71-6901, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 71-6901 For purposes of sections 71-6901 to 71-6908 and
3 sections 4, 5, 11, 13, and 14 of this act:

4 ~~(1) Abortion shall mean an act, procedure, device, or~~
5 ~~prescription administered to a woman known by the person so~~
6 ~~administering to be pregnant and administered with the intent and~~
7 ~~result of producing the premature expulsion, removal, or termination~~
8 ~~of the human life within the womb of the pregnant woman, except that~~
9 ~~in cases in which the unborn child's viability is threatened by~~
10 ~~continuation of the pregnancy, early delivery after viability shall~~
11 ~~not be construed as an abortion;~~

12 ~~(2) Facsimile copy shall mean a copy generated by a~~
13 ~~system that encodes a document or photograph into electrical signals,~~
14 ~~transmits those signals over telecommunications lines, and then~~
15 ~~reconstructs the signals to create an exact duplicate of the original~~
16 ~~document at the receiving end;~~

17 ~~(3) Parent shall mean one parent or guardian of the~~
18 ~~pregnant woman selected by the pregnant woman. The attending~~
19 ~~physician shall certify in writing in the pregnant woman's medical~~
20 ~~record the parent or guardian selected by the woman;~~

21 ~~(4) Physician or attending physician shall mean the~~
22 ~~physician intending to perform the abortion; and~~

23 ~~(5) Pregnant woman shall mean an unemancipated woman~~
24 ~~under eighteen years of age who is pregnant or a pregnant woman for~~
25 ~~whom a guardian has been appointed pursuant to sections 30-2620 to~~

1 ~~30-2629 because of a finding of incapacity, disability, or~~
2 ~~incompetency.~~

3 (1) Abortion means the act of using or prescribing any
4 instrument, medicine, drug, or any other substance, device, or means
5 with the intent to terminate the clinically diagnosable pregnancy of
6 a woman with knowledge that the termination by those means will with
7 reasonable likelihood cause the death of the unborn child. Such use,
8 prescription, or means is not an abortion if done with the intent to:

9 (a) Save the life or preserve the health of an unborn
10 child;

11 (b) Remove a dead unborn child caused by a spontaneous
12 abortion; or

13 (c) Remove an ectopic pregnancy;

14 (2) Coercion means restraining or dominating the choice
15 of a minor female by force, threat of force, or deprivation of food
16 and shelter;

17 (3) Consent means a notarized written statement signed by
18 a parent, legal guardian, or an alternate person as described in
19 section 4 of this act if the pregnant woman declaring that the
20 affiant has been informed that the pregnant woman intends to seek an
21 abortion and that the affiant consents to the abortion;

22 (4) Department means the Department of Health and Human
23 Services;

24 (5) Emancipated means a situation in which a person under
25 eighteen years of age has been married or legally emancipated;

1 (6) Facsimile copy means a copy generated by a system
2 that encodes a document or photograph into electrical signals,
3 transmits those signals over telecommunications lines, and then
4 reconstructs the signals to create an exact duplicate of the original
5 document at the receiving end;

6 (7) Incompetent means any person who has been adjudged a
7 disabled person and has had a guardian appointed under sections
8 30-2617 to 30-2629;

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

15 (9) Physician means any person licensed to practice
16 medicine in this state as provided in the Uniform Credentialing Act.
17 Physician includes a person who practices osteopathy; and

18 (10) Pregnant woman means an unemancipated woman under
19 eighteen years of age who is pregnant or a woman for whom a guardian
20 has been appointed pursuant to sections 30-2617 to 30-2629 because of
21 a finding of incapacity, disability, or incompetency who is pregnant.

22 Sec. 3. Section 71-6902, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 71-6902 ~~(1) No abortion shall be performed upon a~~
25 ~~pregnant woman until at least forty eight hours after written notice~~

1 ~~of the pending abortion has been delivered in the manner specified in~~
2 ~~subsection (2) or (3) of this section.~~

3 ~~(2) The notice shall be addressed to the parent at his or~~
4 ~~her usual place of residence and shall be delivered personally to the~~
5 ~~parent by the physician or an agent.~~

6 ~~(3) In lieu of the delivery required by subsection (2) of~~
7 ~~this section, notice shall be made by registered or certified mail~~
8 ~~addressed to the parent at his or her usual place of residence with~~
9 ~~return receipt requested and restricted delivery to the addressee,~~
10 ~~which means the postal employee can only deliver mail to the~~
11 ~~authorized addressee. Time of delivery shall be deemed to occur at~~
12 ~~twelve o'clock noon on the next day on which regular mail delivery~~
13 ~~takes place subsequent to the mailing.~~

14 Except in the case of a medical emergency, or except as
15 provided in sections 71-6903 and 71-6906 and section 4 of this act,
16 no person shall perform an abortion upon a pregnant woman unless, in
17 the case of a woman who is less than eighteen years of age, he or she
18 first obtains the notarized written consent of both the pregnant
19 woman and one of her parents or a legal guardian or, in the case of a
20 woman for whom a guardian has been appointed pursuant to sections
21 30-2617 to 30-2629, he or she first obtains the notarized written
22 consent of her guardian. In deciding whether to grant such consent, a
23 pregnant woman's parent or guardian shall consider only their child
24 or ward's best interest.

25 Sec. 4. If the pregnant woman declares in a signed

1 written statement that she is a victim of abuse as defined in section
2 28-351, sexual abuse as defined in section 28-367, or child abuse or
3 neglect as defined in section 28-710 by either of her parents or her
4 legal guardians, then the attending physician shall obtain the
5 notarized written consent required by section 71-6902 from a brother
6 or sister of the pregnant woman who is over twenty-one years of age
7 or from a stepparent or grandparent specified by the pregnant woman.
8 The physician who intends to perform the abortion shall certify in
9 the pregnant woman's medical record that he or she has received the
10 written declaration of abuse or neglect. Any physician relying in
11 good faith on a written statement under this section shall not be
12 civilly or criminally liable under sections 71-6901 to 71-6908 and
13 sections 4, 5, 11, 13, and 14 of this act for failure to obtain
14 consent. If such a declaration is made, the attending physician or
15 his or her agent shall inform the pregnant woman of his or her duty
16 to notify the proper authorities pursuant to sections 28-372 and
17 28-711.

18 Sec. 5. No parent, guardian, or any other person shall
19 coerce a pregnant woman to obtain an abortion. If a pregnant woman is
20 denied financial support by her parents, guardians, or custodians due
21 to her refusal to obtain an abortion, the pregnant woman shall be
22 deemed emancipated for purposes of eligibility for public-assistance
23 benefits, except that such benefits may not be used to obtain an
24 abortion.

25 Sec. 6. Section 71-6903, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 71-6903 (1) The requirements and procedures under this
3 section are available to pregnant women whether or not they are
4 residents of this state.

5 ~~(1)-(2) If a pregnant woman elects not to notify her~~
6 ~~parent, obtain the consent of her parents or guardians, a judge of a~~
7 ~~district court, separate juvenile court, or county court sitting as a~~
8 ~~juvenile court shall, upon petition or motion and after an~~
9 ~~appropriate hearing, authorize a physician to perform the abortion if~~
10 ~~the court determines by clear and convincing evidence that the~~
11 ~~pregnant woman is both sufficiently mature and capable of giving~~
12 ~~informed consent to the proposed abortion. If the court determines~~
13 ~~that the pregnant woman is not mature or if the pregnant woman does~~
14 ~~not claim to be mature, the court shall determine whether the~~
15 ~~performance of an abortion upon her without notification of her~~
16 ~~parent would be in her best interests and shall authorize a physician~~
17 ~~to perform the abortion without such notification if the court~~
18 ~~concludes that the best interests of the pregnant woman would be~~
19 ~~served thereby. well-informed to decide whether to have an abortion.~~
20 If the court does not make the finding specified in this subsection
21 or subsection (3) of this section, it shall dismiss the petition.

22 (3) If the court finds, by clear and convincing evidence,
23 that there is a pattern of abuse as defined in section 28-351, sexual
24 abuse as defined in section 28-367, or child abuse or neglect as
25 defined in section 28-710 of the pregnant woman by a parent or a

1 guardian or that the notification of a parent or a guardian is not in
2 the best interest of the pregnant woman, the court shall issue an
3 order authorizing the pregnant woman to consent to the performance or
4 inducement of an abortion without the consent of a parent or a
5 guardian. If the court does not make the finding specified in this
6 subsection or subsection (2) of this section, it shall dismiss the
7 petition.

8 ~~(2)-(4)~~ A facsimile copy of the petition or motion may be
9 transmitted directly to the court for filing. If a facsimile copy is
10 filed in lieu of the original document, the party filing the
11 facsimile copy shall retain the original document for production to
12 the court if requested to do so.

13 ~~(3)-(5)~~ A court shall not be required to have a facsimile
14 machine nor shall the court be required to transmit orders or other
15 material to attorneys or parties via facsimile transmission.

16 ~~(4)-An-(6)~~ The pregnant woman may commence an action for
17 waiver of notification shall be commenced the consent requirement by
18 the filing of a petition or motion personally, by mail, or by
19 facsimile on a form provided by the State Court Administrator.

20 (7) The State Court Administrator shall develop the
21 petition form and accompanying instructions on the procedure for
22 petitioning the court for a waiver of ~~notification,~~ consent,
23 including the name, address, telephone number, and facsimile number
24 of each court in the state. A sufficient number of petition forms and
25 instructions shall be made available in each courthouse in such place

1 that members of the general public may obtain a form and instructions
2 without requesting such form and instructions from the clerk of the
3 court or other court personnel. The clerk of the court shall, upon
4 request, assist in completing and filing the petition for waiver of
5 ~~notification.~~ consent.

6 ~~(5)~~ (8) Proceedings in court pursuant to this section
7 shall be confidential and shall ensure the anonymity of the pregnant
8 woman. The pregnant woman shall have the right to file her petition
9 in the court using a pseudonym or using solely her initials.
10 Proceedings shall be held in camera. Only the pregnant woman, the
11 pregnant woman's guardian ad litem, the pregnant woman's attorney,
12 and a person whose presence is specifically requested by the pregnant
13 woman, ~~the pregnant woman's guardian ad litem,~~ or the pregnant
14 woman's attorney may attend the hearing on the petition. All
15 testimony, all documents, all other evidence presented to the court,
16 the petition and any order entered, and all records of any nature and
17 kind relating to the matter shall be sealed by the clerk of the court
18 and shall not be open to any person except upon order of the court
19 for good cause shown. A separate docket for the purposes of this
20 section shall be maintained by the clerk of the court and shall
21 likewise be sealed and not opened to inspection by any person except
22 upon order of the court for good cause shown.

23 ~~(6)~~ (9) A pregnant woman who is subject to this section
24 may participate in the court proceedings on her own behalf, and the
25 court may appoint a guardian ad litem for her. The court shall advise

1 the pregnant woman that she has a right to court-appointed counsel
2 and shall, upon her request, provide her with such counsel. Such
3 counsel shall receive a fee to be fixed by the court and to be paid
4 out of the treasury of the county in which the proceeding was held.

5 ~~(7)~~(10) Proceedings in court pursuant to this section
6 shall be given such precedence over other pending matters so that the
7 court may reach a decision promptly and without delay to serve the
8 best interests of the pregnant woman. In no case shall the court fail
9 to rule within seven calendar days from the time the petition is
10 filed. If the court fails to rule within the required time period,
11 the pregnant woman may file an application for a writ of mandamus
12 with the Supreme Court. If cause for a writ of mandamus exists, the
13 writ shall issue within three days. ~~If the judge issues a ruling~~
14 ~~adverse to the pregnant woman, the judge shall issue written findings~~
15 ~~of fact and conclusions of law.~~

16 ~~(8)~~(11) The court shall issue a written order which
17 shall be provided immediately to the pregnant woman, the pregnant
18 woman's guardian ad litem, the pregnant woman's attorney, or any
19 other person designated by the pregnant woman to receive the order.
20 which includes specific factual findings and legal conclusions
21 supporting its decision which shall be provided immediately to the
22 pregnant woman, the pregnant woman's guardian ad litem, the pregnant
23 woman's attorney, and any other person designated by the pregnant
24 woman to receive the order. Further, the court shall order that a
25 confidential record of the evidence and the judge's findings and

1 conclusions be maintained. At the hearing, the court shall hear
2 evidence relating to the emotional development, maturity, intellect,
3 and understanding of the pregnant woman.

4 Sec. 7. Section 71-6904, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 71-6904 (1) An appeal to the Supreme Court shall be
7 available to any pregnant woman for whom a court denies an order
8 authorizing an abortion without ~~notification.~~ consent. An order
9 authorizing an abortion without ~~notification~~ consent shall not be
10 subject to appeal.

11 (2) An adverse ruling by the court may be appealed to the
12 Supreme Court.

13 (3) A pregnant woman may file a notice of appeal of any
14 final order to the Supreme Court. The State Court Administrator shall
15 develop the form for notice of appeal and accompanying instructions
16 on the procedure for an appeal. A sufficient number of forms for
17 notice of appeal and instructions shall be made available in each
18 courthouse in such place that members of the general public can
19 obtain a form and instructions without requesting such form and
20 instructions from the clerk of the court or other court personnel.

21 (4) The clerk of the court shall cause the court
22 transcript and bill of exceptions to be filed with the Supreme Court
23 within four business days, but in no event later than seven calendar
24 days, from the date of the filing of the notice of appeal.

25 (5) In all appeals under this section the pregnant woman

1 shall have the right of a confidential and expedited appeal and the
2 right to counsel at the appellate level if not already represented.
3 Such counsel shall be appointed by the court and shall receive a fee
4 to be fixed by the court and to be paid out of the treasury of the
5 county in which the proceeding was held. The pregnant woman shall not
6 be required to appear.

7 (6) The Supreme Court shall hear the appeal de novo on
8 the record and issue a written decision which shall be provided
9 immediately to the pregnant woman, the pregnant woman's guardian ad
10 litem, the pregnant woman's attorney, or any other person designated
11 by the pregnant woman to receive the order.

12 (7) The Supreme Court shall rule within seven calendar
13 days from the time of the docketing of the appeal in the Supreme
14 Court.

15 (8) The Supreme Court shall adopt and promulgate rules to
16 ensure that proceedings under this section are handled in a
17 confidential and expeditious manner.

18 Sec. 8. Section 71-6905, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 71-6905 No filing fees or costs shall be required of any
21 pregnant woman at either the trial or appellate level for any
22 proceedings pursuant to sections 71-6901 to 71-6908 and sections 4,
23 5, 11, 13, and 14 of this act.

24 Sec. 9. Section 71-6906, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 71-6906 ~~Notification—Consent~~ shall not be required
2 pursuant to sections 71-6901 to 71-6908 and sections 4, 5, 11, 13,
3 and 14 of this act if any of the following conditions exist:

4 ~~(1) The attending physician certifies in writing in the~~
5 ~~pregnant woman's medical record that continuation of the pregnancy~~
6 ~~provides an immediate threat and grave risk to the life or health of~~
7 ~~the pregnant woman and there is insufficient time to provide the~~
8 ~~required notification;~~

9 ~~(2) The abortion is authorized in writing by the person~~
10 ~~who is entitled to notification; or~~

11 ~~(3) The pregnant woman declares that she is a victim of~~
12 ~~abuse as defined in section 28-351, sexual abuse as defined in~~
13 ~~section 28-367, or child abuse or neglect as defined in section~~
14 ~~28-710. Notice of such a declaration shall be made to the proper~~
15 ~~authorities as provided in sections 28-372 and 28-711. If such a~~
16 ~~declaration is made, the attending physician or his or her agent~~
17 ~~shall inform the pregnant woman of his or her duty to notify the~~
18 ~~proper authorities as provided in sections 28-372 and 28-711.~~

19 (1) The attending physician certifies in the pregnant
20 woman's medical record that a medical emergency exists and there is
21 insufficient time to obtain the required consent; or

22 (2) Consent is waived under section 71-6903.

23 Sec. 10. Section 71-6907, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 71-6907 (1) Any physician or attending physician who

1 knowingly and intentionally or with reckless disregard performs an
2 abortion in violation of sections 71-6901 to 71-6906 and sections 4,
3 5, 11, 13, and 14 of this act shall be guilty of a Class III
4 misdemeanor.

5 (2) Performance of an abortion in violation of such
6 sections shall be grounds for a civil action by a person wrongfully
7 ~~denied notification. the right and opportunity to consent.~~

8 (3) A person shall be immune from liability under such
9 sections (a) if he or she establishes by written evidence that he or
10 she relied upon evidence sufficient to convince a careful and prudent
11 person that the representations of the pregnant woman regarding
12 information necessary to comply with such sections are bona fide and
13 true, ~~(b) if the person has attempted with reasonable diligence to~~
14 ~~deliver notification as required by section 71-6902 but has been~~
15 ~~unable to do so,~~ or ~~(c)~~ (b) if the person has performed an abortion
16 authorized by a court order issued pursuant to section 71-6903 or
17 71-6904.

18 (4) Any person not authorized to provide consent under
19 sections 71-6901 to 71-6908 and sections 4, 5, 11, 13, and 14 of this
20 act who provides consent is guilty of a Class III misdemeanor.

21 (5) Any person who coerces a minor to have an abortion is
22 guilty of a Class III misdemeanor.

23 Sec. 11. A monthly report indicating the number of
24 consents obtained under sections 71-6901 to 71-6908 and sections 4,
25 5, 11, 13, and 14 of this act, the number of times in which

1 exceptions were made to the consent requirement under such sections,
2 the type of exception, the pregnant woman's age, and the number of
3 prior pregnancies and prior abortions of the pregnant woman shall be
4 filed with the department on forms prescribed by the department. The
5 name of the pregnant woman shall not be used on the forms. A
6 compilation of the data reported shall be made by the department on
7 an annual basis and shall be available to the public.

8 Sec. 12. Section 71-6908, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 71-6908 The Legislature recognizes and hereby declares
11 that some teenage pregnancies are a direct or indirect result of
12 family or foster family abuse, neglect, or sexual assault. The
13 Legislature further recognizes that the actions of abuse, neglect, or
14 sexual assault are crimes regardless of whether they are committed by
15 strangers, acquaintances, or family members. The Legislature further
16 recognizes the need for a parent ~~or guardian notification consent~~
17 bypass system as set out in section 71-6903 due to the number of
18 unhealthy family environments in which some pregnant women reside.
19 The Legislature encourages county attorneys to prosecute persons
20 accused of committing acts of abuse, incest, neglect, or sexual
21 assault pursuant to sections 28-319, 28-319.01, 28-320, 28-320.01,
22 28-703, and 28-707 even if the alleged crime is committed by a
23 biological or adoptive parent, foster parent, or other biological,
24 adoptive, or foster family member.

25 Sec. 13. (1) Nothing in sections 71-6901 to 71-6908 and

1 sections 4, 5, 11, 13, and 14 of this act shall be construed as
2 creating or recognizing a right to abortion.

3 (2) It is not the intent of sections 71-6901 to 71-6908
4 and sections 4, 5, 11, 13, and 14 of this act to make lawful an
5 abortion that is currently unlawful.

6 Sec. 14. Any provision of sections 71-6901 to 71-6908 and
7 sections 4, 5, 11, 13, and 14 of this act held to be invalid or
8 unenforceable by its terms, or as applied to any person or
9 circumstance, shall be construed so as to give it the maximum effect
10 permitted by law, unless such holding shall be one of utter
11 invalidity or unenforceability, in which event such provision shall
12 be deemed severable herefrom and shall not affect the remainder
13 hereof or the application of such provision to other persons not
14 similarly situated or to other, dissimilar circumstances.

15 Sec. 15. Original sections 71-6901, 71-6902, 71-6903,
16 71-6904, 71-6905, 71-6906, 71-6907, and 71-6908, Reissue Revised
17 Statutes of Nebraska, and section 38-2021, Revised Statutes
18 Cumulative Supplement, 2010, are repealed.