

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1086

Introduced by Geist, 25.

Read first time January 19, 2022

Committee: Judiciary

1 A BILL FOR AN ACT relating to abortion; to amend sections 28-101 and
2 38-2021, Revised Statutes Cumulative Supplement, 2020; to adopt the
3 Chemical Abortion Safety Protocol Act; to redefine unprofessional
4 conduct relating to abortion under the Medicine and Surgery Practice
5 Act; to provide for severability; and to repeal the original
6 sections.

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

1 Section 1. Section 28-101, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 28-101 Sections 28-101 to 28-1357 and 28-1601 to 28-1603 and
4 sections 2 to 6 of this act shall be known and may be cited as the
5 Nebraska Criminal Code.

6 Sec. 2. Sections 2 to 6 of this act shall be known and may be cited
7 as the Chemical Abortion Safety Protocol Act.

8 Sec. 3. For purposes of the Chemical Abortion Safety Protocol Act:

9 (1) Abortion complication means any harmful event or adverse outcome
10 with respect to a patient related to a chemical abortion that is
11 performed or induced on the patient and includes:

12 (a) Shock;

13 (b) Heavy or prolonged bleeding;

14 (c) Hemorrhage;

15 (d) Aspiration or allergic response;

16 (e) Infection;

17 (f) Sepsis;

18 (g) Endometritis;

19 (h) Pelvic inflammatory disease;

20 (i) Incomplete abortion;

21 (j) Failure to actually terminate the pregnancy;

22 (k) Missed ectopic pregnancy;

23 (l) Hemolytic reaction resulting from the administration of ABO-
24 incompatible blood or blood products;

25 (m) Death of the patient; or

26 (n) Any other adverse event as defined by the United States Food and
27 Drug Administration's criteria provided by the MedWatch Reporting System;

28 (2)(a) Abortion-inducing drug means a drug or any other substance,
29 including a regimen of two or more drugs or substances, that is provided
30 with the intent of terminating a woman's clinically diagnosable pregnancy
31 and with knowledge that the termination will, with reasonable likelihood,

1 cause the death of the woman's unborn child. This includes the off-label
2 use of drugs or substances known to have abortion-inducing properties,
3 including the Mifeprex regimen, misoprostol (Cytotec), and methotrexate.

4 (b) Abortion-inducing drug does not include a drug, medicine, or
5 other substance that may be known to cause an abortion but is provided
6 for other medical reasons;

7 (3) Chemical abortion means the administration or use of an
8 abortion-inducing drug to induce an abortion;

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

10 (5) Physician means any person licensed to practice medicine and
11 surgery or osteopathic medicine in this state as provided in the Uniform
12 Credentialing Act; and

13 (6) Provide, when used with regard to abortion-inducing drugs, means
14 any act of giving, selling, dispensing, administering, otherwise
15 transferring possession of, or prescribing an abortion-inducing drug.

16 Sec. 4. (1) A person shall not knowingly provide an abortion-
17 inducing drug for the purpose of inducing an abortion in a pregnant woman
18 or enabling another person to induce an abortion in a pregnant woman
19 unless:

20 (a) The person who provides the abortion-inducing drug is a
21 physician; and

22 (b) The provision of the abortion-inducing drug complies with the
23 Chemical Abortion Safety Protocol Act.

24 (2) No person shall provide any abortion-inducing drug to a person
25 by courier, delivery, or mail service. This subsection does not apply to
26 delivery of an abortion-inducing drug to a physician or pharmacy or an
27 agent or employee of a physician or pharmacy acting within the scope of
28 such person's agency or employment.

29 (3) A physician shall not provide an abortion-inducing drug for a
30 pregnant woman whose pregnancy is more than forty-nine days of
31 gestational age.

1 (4) Before a physician provides an abortion-inducing drug, the
2 physician shall:

3 (a) Examine the pregnant woman in person;

4 (b) Independently verify that a pregnancy exists;

5 (c) Document, in the woman's medical record, the gestational age and
6 intrauterine location of the pregnancy to determine whether an ectopic
7 pregnancy exists;

8 (d) Determine the pregnant woman's blood type, and for a woman who
9 is Rh negative, offer to administer Rh immunoglobulin (RhoGAM) at the time
10 the abortion-inducing drug is administered or used or the abortion is
11 performed or induced to prevent Rh incompatibility, complications, or
12 miscarriage in future pregnancies;

13 (e) Document whether the pregnant woman received treatment for Rh
14 negativity; and

15 (f) Ensure that the woman's pregnancy is not more than forty-nine
16 days of gestational age.

17 (5) An intentional and knowing violation of this section is a Class
18 IV felony.

19 (6) No woman upon whom an abortion is attempted, induced, or
20 performed shall be liable for a violation of the Chemical Abortion Safety
21 Protocol Act.

22 Sec. 5. (1) A physician who provides an abortion-inducing drug, or
23 the physician's agent, shall schedule a follow-up visit for the woman to
24 whom it was provided. Such follow-up visit shall occur not later than the
25 fourteenth day after the earliest date on which the abortion-inducing
26 drug is administered or used or the abortion is performed or induced. At
27 the follow-up visit, the physician shall:

28 (a) Confirm that the woman's pregnancy is completely terminated; and

29 (b) Assess any continued blood loss.

30 (2) An intentional and knowing violation of this section is a Class
31 II misdemeanor.

1 Sec. 6. (1) For purposes of this section, reporting month means a
2 calendar month in which an event required to be reported under this
3 section occurs.

4 (2) A physician who provides an abortion-inducing drug shall file a
5 report with the department within fifteen days after the end of each
6 reporting month. Such report shall include, in addition to any
7 information required by rules and regulations adopted and promulgated by
8 the department:

9 (a) The name of the physician;

10 (b) The abortion-inducing drug or drugs used and the date each was
11 provided to the pregnant woman;

12 (c) Whether and on what date the woman returned for a follow-up
13 visit;

14 (d) Whether the woman suffered any abortion complication and, if so,
15 what specific complications occurred and what follow-up treatment, if
16 any, was provided by the physician; and

17 (e) Whether the physician referred the woman to another health care
18 provider and if so, for what purpose.

19 (3) Any physician or other health care provider who treats a woman
20 for an abortion complication shall make a report of the complication to
21 the department within fifteen days after the end of each reporting month.

22 Such report shall include:

23 (a) The specific abortion complication;

24 (b) What treatment was provided by the physician or other health
25 care provider; and

26 (c) Whether the physician or other health care provider referred the
27 woman to another health care provider.

28 (4) The department shall produce standard forms for the filing of
29 reports required by this section.

30 (5) A report required under this section shall not include the name
31 or personal identifying information of the pregnant woman or any other

1 information that would make it possible to identify a woman who has
2 obtained or sought to obtain an abortion.

3 (6) An intentional and knowing violation of this section is a Class
4 II misdemeanor.

5 Sec. 7. Section 38-2021, Revised Statutes Cumulative Supplement,
6 2020, is amended to read:

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

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

18 (2) Performing an abortion upon a minor without having satisfied the
19 requirements of sections 71-6901 to 71-6911;

20 (3) The intentional and knowing performance of a partial-birth
21 abortion as defined in subdivision (8) of section 28-326, unless such
22 procedure is necessary to save the life of the mother whose life is
23 endangered by a physical disorder, physical illness, or physical injury,
24 including a life-endangering physical condition caused by or arising from
25 the pregnancy itself;~~and~~

26 (4) Performance by a physician of an abortion in violation of the
27 Pain-Capable Unborn Child Protection Act; and -

28 (5) The provision of an abortion-inducing drug by a physician in
29 violation of the Chemical Abortion Safety Protocol Act.

30 Sec. 8. If any section in this act or any part of any section is
31 declared invalid or unconstitutional, the declaration shall not affect

1 the validity or constitutionality of the remaining portions.

2 Sec. 9. Original sections 28-101 and 38-2021, Revised Statutes

3 Cumulative Supplement, 2020, are repealed.