

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 716**

Introduced by Hunt, 8.

Read first time January 05, 2022

Committee: Health and Human Services

1 A BILL FOR AN ACT relating to abortion; to amend sections 28-325,  
2 28-327.02, 28-327.03, 28-327.04, 28-327.07, 28-327.09, 28-327.10,  
3 28-327.11, 28-327.12, 28-328, 28-329, 28-330, 28-331, 28-335,  
4 28-343, 28-3,103, 28-3,105, 28-3,106, 28-3,107, 38-193, 38-201,  
5 38-601, 44-1615.01, 44-8403, 71-6901, 71-6902.01, 71-6903, 71-6906,  
6 71-6907, and 71-6909, Reissue Revised Statutes of Nebraska, and  
7 sections 28-326, 28-327, 28-327.01, 28-345, 28-347, and 38-2021,  
8 Revised Statutes Cumulative Supplement, 2020; to allow advanced  
9 practice registered nurses, certified nurse midwives, and physician  
10 assistants to perform abortions as prescribed; to define and  
11 redefine terms; to change applicability of provisions relating to  
12 unprofessional conduct; to harmonize provisions; and to repeal the  
13 original sections.

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

1 Section 1. Section 28-325, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 28-325 The Legislature hereby finds and declares:

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

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

16 (3) That it is in the interest of the people of the State of  
17 Nebraska that every precaution be taken to insure the protection of every  
18 viable unborn child being aborted, and every precaution be taken to  
19 provide life-supportive procedures to insure the unborn child its  
20 continued life after its abortion;

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

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

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

29 (7) That clarifying the minimum standard of care for preabortion  
30 screening and counseling in statute is a practical means of protecting  
31 the well-being of women and may better ensure that qualified

1 practitioners providing abortions ~~abortion doctors~~ are sufficiently aware  
2 of each patient's risk profile so they may give each patient a well-  
3 informed medical opinion regarding her unique case; and

4 (8) That providing right to redress against persons other than  
5 qualified practitioners ~~nonphysicians~~ who perform illegal abortions or  
6 encourage self-abortions is an important means of protecting women's  
7 health.

8 Sec. 2. Section 28-326, Revised Statutes Cumulative Supplement,  
9 2020, is amended to read:

10 28-326 For purposes of sections 28-325 to 28-345 and 28-347 to  
11 28-347.06, unless the context otherwise requires:

12 (1) Abortion means the use or prescription of any instrument,  
13 medicine, drug, or other substance or device intentionally to terminate  
14 the pregnancy of a woman known to be pregnant with an intention other  
15 than to increase the probability of a live birth, to preserve the life or  
16 health of the child after live birth, or to remove a dead unborn child,  
17 and which causes the premature termination of the pregnancy;

18 (2) Agent means a person who is a qualified practitioner or a  
19 registered nurse licensed under the Uniform Credentialing Act;

20 (3) ~~(2)~~ Complications associated with abortion means any adverse  
21 physical, psychological, or emotional reaction that is reported in a  
22 peer-reviewed journal to be statistically associated with abortion such  
23 that there is less than a five percent probability ( $P < .05$ ) that the  
24 result is due to chance;

25 (4) ~~(3)~~ Conception means the fecundation of the ovum by the  
26 spermatozoa;

27 (5)(a) ~~(4)(a)~~ Dismemberment abortion means an abortion in which,  
28 with the purpose of causing the death of an unborn child, a person  
29 purposely dismembers the body of a living unborn child and extracts him  
30 or her one piece at a time from the uterus through use of clamps,  
31 grasping forceps, tongs, scissors, or similar instruments that, through

1 the convergence of two rigid levers, slice, crush, or grasp a portion of  
2 the unborn child's body to cut or rip it off.

3 (b) Dismemberment abortion does not include:

4 (i) An abortion in which suction is used to dismember the body of an  
5 unborn child by sucking fetal parts into a collection container; or

6 (ii) The use of instruments or suction to remove the remains of an  
7 unborn child who has already died;

8 ~~(6)~~ ~~(5)~~ Emergency situation means that condition which, on the basis  
9 of the qualified practitioner's ~~physician's~~ good faith clinical judgment,  
10 so complicates the medical condition of a pregnant woman as to  
11 necessitate the immediate abortion of her pregnancy to avert her death or  
12 for which a delay will create serious risk of substantial impairment of a  
13 major bodily function;

14 ~~(7)~~ ~~(6)~~ Hospital means those institutions licensed by the Department  
15 of Health and Human Services pursuant to the Health Care Facility  
16 Licensure Act;

17 ~~(8)~~ ~~(7)~~ Negligible risk means a risk that a reasonable person would  
18 consider to be immaterial to a decision to undergo an elective medical  
19 procedure;

20 ~~(9)~~ ~~(8)~~ Partial-birth abortion means an abortion procedure in which  
21 the person performing the abortion partially delivers vaginally a living  
22 unborn child before killing the unborn child and completing the delivery.  
23 For purposes of this subdivision, the term partially delivers vaginally a  
24 living unborn child before killing the unborn child means deliberately  
25 and intentionally delivering into the vagina a living unborn child, or a  
26 substantial portion thereof, for the purpose of performing a procedure  
27 that the person performing such procedure knows will kill the unborn  
28 child and does kill the unborn child;

29 ~~(10)~~ ~~(9)~~ Physician means any person licensed to practice medicine in  
30 this state as provided in the Uniform Credentialing Act;

31 ~~(11)~~ ~~(10)~~ Pregnant means that condition of a woman who has unborn

1 human life within her as the result of conception;

2 (12) ~~(11)~~ Probable gestational age of the unborn child means what  
3 will with reasonable probability, in the judgment of the qualified  
4 practitioner ~~physician~~, be the gestational age of the unborn child at the  
5 time the abortion is planned to be performed;

6 (13) Qualified practitioner means a physician, including an  
7 osteopathic physician, an advanced practice registered nurse, a certified  
8 nurse midwife, or a physician assistant licensed to practice in this  
9 state as provided in the Uniform Credentialing Act;

10 (14) ~~(12)~~ Risk factor associated with abortion means any factor,  
11 including any physical, psychological, emotional, demographic, or  
12 situational factor, for which there is a statistical association with one  
13 or more complications associated with abortion such that there is less  
14 than a five percent probability ( $P < .05$ ) that such statistical  
15 association is due to chance. Such information on risk factors shall have  
16 been published in any peer-reviewed journals indexed by the United States  
17 National Library of Medicine's search services (PubMed or MEDLINE) or in  
18 any journal included in the Thomson Reuters Scientific Master Journal  
19 List not less than twelve months prior to the day preabortion screening  
20 was provided;

21 (15) ~~(13)~~ Self-induced abortion means any abortion or menstrual  
22 extraction attempted or completed by a pregnant woman on her own body;

23 (16) ~~(14)~~ Ultrasound means the use of ultrasonic waves for  
24 diagnostic or therapeutic purposes, specifically to monitor an unborn  
25 child;

26 (17) ~~(15)~~ Viability means that stage of human development when the  
27 unborn child is potentially able to live more than merely momentarily  
28 outside the womb of the mother by natural or artificial means; and

29 (18) ~~(16)~~ Woman means any female human being whether or not she has  
30 reached the age of majority.

31 Sec. 3. Section 28-327, Revised Statutes Cumulative Supplement,

1 2020, is amended to read:

2 28-327 No abortion shall be performed except with the voluntary and  
3 informed consent of the woman upon whom the abortion is to be performed.  
4 Except in the case of an emergency situation, consent to an abortion is  
5 voluntary and informed only if:

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

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

15 (b) The probable gestational age of the unborn child at the time the  
16 abortion is to be performed;

17 (c) The medical risks associated with carrying her child to term;

18 (d) That she cannot be forced or required by anyone to have an  
19 abortion and is free to withhold or withdraw her consent for an abortion;  
20 and

21 (e) Research indicates that mifepristone alone is not always  
22 effective in ending a pregnancy. You may still have a viable pregnancy  
23 after taking mifepristone. If you change your mind and want to continue  
24 your pregnancy after taking mifepristone, information on finding  
25 immediate medical assistance is available on the website of the  
26 Department of Health and Human Services.

27 The person providing the information specified in this subdivision  
28 to the person upon whom the abortion is to be performed shall be deemed  
29 qualified to so advise and provide such information only if, at a  
30 minimum, he or she has had training in each of the following subjects:  
31 Sexual and reproductive health; abortion technology; contraceptive

1 technology; short-term counseling skills; community resources and  
2 referral; and informed consent. The qualified practitioner, referring  
3 physician, or ~~the physician's~~ agent may provide this information by  
4 telephone without conducting a physical examination or tests of the  
5 patient, in which case the information required to be supplied may be  
6 based on facts supplied by the patient and whatever other relevant  
7 information is reasonably available to the qualified practitioner,  
8 referring physician, or ~~the physician's~~ agent of either;

9 (2) The woman is informed by telephone or in person, by the  
10 qualified practitioner ~~physician~~ who is to perform the abortion, by the  
11 referring physician, or by an agent of either ~~physician,~~ at least twenty-  
12 four hours before the abortion:

13 (a) The name of the qualified practitioner ~~physician~~ who will  
14 perform the abortion;

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

17 (c) That the father is liable to assist in the support of her child,  
18 even in instances in which the father has offered to pay for the  
19 abortion;

20 (d) That she has the right to review the printed materials described  
21 in section 28-327.01. The qualified practitioner, referring physician, or  
22 ~~his or her~~ agent shall orally inform the woman that the materials have  
23 been provided by the Department of Health and Human Services and that  
24 they describe the unborn child, list agencies which offer alternatives to  
25 abortion, and include information on finding immediate medical assistance  
26 if she changes her mind after taking mifepristone and wants to continue  
27 her pregnancy. If the woman chooses to review the materials, they shall  
28 either be given to her at least twenty-four hours before the abortion or  
29 mailed to her at least seventy-two hours before the abortion by certified  
30 mail, restricted delivery to addressee, which means the postal employee  
31 can only deliver the mail to the addressee. The qualified practitioner,

1 ~~referring physician, and his~~ or her agent may disassociate themselves  
2 from the materials and may comment or refrain from commenting on them as  
3 they choose; and

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

15 (3) If an ultrasound is used prior to the performance of an  
16 abortion, the ~~qualified practitioner physician~~ who is to perform the  
17 abortion, the referring physician, or a ~~physician assistant or registered~~  
18 ~~nurse licensed under the Uniform Credentialing Act who is~~ an agent of  
19 either ~~physician,~~ or any other qualified person acting on behalf of the  
20 qualified practitioner or referring agent of either physician, shall:

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

24 (b) Simultaneously display the ultrasound images so that the woman  
25 may choose to view the ultrasound images or not view the ultrasound  
26 images. The woman shall be informed that the ultrasound images will be  
27 displayed so that she is able to view them. Nothing in this subdivision  
28 shall be construed to require the woman to view the displayed ultrasound  
29 images; and

30 (c) If the woman requests information about the displayed ultrasound  
31 image, her questions shall be answered. If she requests a detailed,



1 simultaneous, medical description of the ultrasound image, one shall be  
2 provided that includes the dimensions of the unborn child, the presence  
3 of cardiac activity, if present and viewable, and the presence of  
4 external members and internal organs, if present and viewable;

5 (4) At least one hour prior to the performance of an abortion, a  
6 physician, psychiatrist, psychologist, mental health practitioner,  
7 physician assistant, registered nurse, advanced practice registered  
8 nurse, certified nurse midwife, or social worker licensed under the  
9 Uniform Credentialing Act has:

10 (a) Evaluated the pregnant woman to identify if the pregnant woman  
11 had the perception of feeling pressured or coerced into seeking or  
12 consenting to an abortion;

13 (b) Evaluated the pregnant woman to identify the presence of any  
14 risk factors associated with abortion;

15 (c) Informed the pregnant woman and the qualified practitioner  
16 ~~physician~~ who is to perform the abortion of the results of the evaluation  
17 in writing. The written evaluation shall include, at a minimum, a  
18 checklist identifying both the positive and negative results of the  
19 evaluation for each risk factor associated with abortion and both the  
20 licensed person's written certification and the woman's written  
21 certification that the pregnant woman was informed of the risk factors  
22 associated with abortion as discussed; and

23 (d) Retained a copy of the written evaluation results in the  
24 pregnant woman's permanent record;

25 (5) If any risk factors associated with abortion were identified,  
26 the pregnant woman was informed of the following in such manner and  
27 detail that a reasonable person would consider material to a decision of  
28 undergoing an elective medical procedure:

29 (a) Each complication associated with each identified risk factor;  
30 and

31 (b) Any quantifiable risk rates whenever such relevant data exists;

1 (6) The qualified practitioner ~~physician~~ performing the abortion has  
2 formed a reasonable medical judgment, documented in the permanent record,  
3 that:

4 (a) The preponderance of statistically validated medical studies  
5 demonstrates that the physical, psychological, and familial risks  
6 associated with abortion for patients with risk factors similar to the  
7 patient's risk factors are negligible risks;

8 (b) Continuance of the pregnancy would involve risk of injury to the  
9 physical or mental health of the pregnant woman greater than if the  
10 pregnancy were terminated by induced abortion; or

11 (c) Continuance of the pregnancy would involve less risk of injury  
12 to the physical or mental health of the pregnant woman than if the  
13 pregnancy were terminated by an induced abortion;

14 (7) The woman certifies in writing, prior to the abortion, that:

15 (a) The information described in subdivisions (1) and (2)(a), (b),  
16 and (c) of this section has been furnished her;

17 (b) She has been informed of her right to review the information  
18 referred to in subdivision (2)(d) of this section; and

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

22 (8) Prior to the performance of the abortion, the qualified  
23 practitioner ~~physician~~ who is to perform the abortion, or any other  
24 qualified person acting on behalf of the qualified practitioner, his or  
25 her agent receives a copy of the written certification prescribed by  
26 subdivision (7) of this section. The qualified practitioner ~~physician~~ or  
27 any other qualified person acting on behalf of the qualified  
28 practitioner, his or her agent shall retain a copy of the signed  
29 certification form in the woman's medical record.

30 Sec. 4. Section 28-327.01, Revised Statutes Cumulative Supplement,  
31 2020, is amended to read:

1           28-327.01 (1) The Department of Health and Human Services shall  
2 cause to be published the following easily comprehensible printed  
3 materials:

4           (a) Geographically indexed materials designed to inform the woman of  
5 public and private agencies and services available to assist a woman  
6 through pregnancy, upon childbirth, and while the child is dependent,  
7 including adoption agencies and agencies and services for prevention of  
8 unintended pregnancies, which materials shall include a comprehensive  
9 list of the agencies available, a description of the services they offer,  
10 and a description of the manner, including telephone numbers and  
11 addresses in which such agencies may be contacted or printed materials  
12 including a toll-free, twenty-four-hour-a-day telephone number which may  
13 be called to orally obtain such a list and description of agencies in the  
14 locality of the caller and of the services they offer;

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

31           (c) A comprehensive list of health care providers, facilities, and

1 clinics that offer to have ultrasounds performed by a person at least as  
2 qualified as a registered nurse licensed under the Uniform Credentialing  
3 Act, including and specifying those that offer to perform such  
4 ultrasounds free of charge. The list shall be arranged geographically and  
5 shall include the name, address, hours of operation, and telephone number  
6 of each entity;

7 (d) Materials designed to inform the woman that she may still have a  
8 viable pregnancy after taking mifepristone. The materials shall include  
9 the following statements: "Research indicates that mifepristone alone is  
10 not always effective in ending a pregnancy. You may still have a viable  
11 pregnancy after taking mifepristone. If you change your mind and want to  
12 continue your pregnancy after taking mifepristone, it may not be too  
13 late."; and

14 (e) Materials, including contact information, that will assist the  
15 woman in finding a medical professional who can help her continue her  
16 pregnancy after taking mifepristone.

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

19 (3) The printed materials required under this section shall be  
20 available from the department upon the request by any person, facility,  
21 or hospital for an amount equal to the cost incurred by the department to  
22 publish the materials.

23 (4) The Department of Health and Human Services shall make available  
24 on its Internet website a printable publication of geographically indexed  
25 materials designed to inform the woman of public and private agencies  
26 with services available to assist a woman with mental health concerns,  
27 following a risk factor evaluation. Such services shall include, but not  
28 be limited to, outpatient and crisis intervention services and crisis  
29 hotlines. The materials shall include a comprehensive list of the  
30 agencies available, a description of the services offered, and a  
31 description of the manner in which such agencies may be contacted,

1 including addresses and telephone numbers of such agencies, as well as a  
2 toll-free, twenty-four-hour-a-day telephone number to be provided by the  
3 department which may be called to orally obtain the names of the agencies  
4 and the services they provide in the locality of the woman. The  
5 department shall update the publication as necessary.

6 (5) The Department of Health and Human Services shall publish and  
7 make available on its website materials designed to inform the woman that  
8 she may still have a viable pregnancy after taking mifepristone. The  
9 materials shall include the following statements: "Research indicates  
10 that mifepristone alone is not always effective in ending a pregnancy.  
11 You may still have a viable pregnancy after taking mifepristone. If you  
12 change your mind and want to continue your pregnancy after taking  
13 mifepristone, it may not be too late." The materials shall also include  
14 information, including contact information, that will assist the woman in  
15 finding a medical professional who can help her continue her pregnancy  
16 after taking mifepristone.

17 (6) The Department of Health and Human Services shall review and  
18 update, as necessary, the materials, including contact information,  
19 regarding medical professionals who can help a woman continue her  
20 pregnancy after taking mifepristone.

21 (7)(a) The Department of Health and Human Services shall prescribe a  
22 reporting form which shall be used for the reporting of every attempt at  
23 continuing a woman's pregnancy after taking mifepristone as described in  
24 this section performed in this state. Such form shall include the  
25 following items:

- 26 (i) The age of the pregnant woman;
- 27 (ii) The location of the facility where the service was performed;
- 28 (iii) The type of service provided;
- 29 (iv) Complications, if any;
- 30 (v) The name of the attending qualified practitioner or agent  
31 ~~medical professional~~;

1 (vi) The pregnant woman's obstetrical history regarding previous  
2 pregnancies, abortions, and live births;

3 (vii) The state of the pregnant woman's legal residence;

4 (viii) Whether an emergency situation caused the qualified  
5 practitioner ~~physician~~ to waive any of the requirements of section  
6 28-327; and

7 (ix) Such other information as may be prescribed in accordance with  
8 section 71-602.

9 (b) The completed form shall be signed by the attending qualified  
10 practitioner or agent ~~medical professional~~ and sent to the department  
11 within fifteen days after each reporting month. The completed form shall  
12 be an original, typed or written legibly in durable ink, and shall not be  
13 deemed complete unless the omission of any item of information required  
14 shall have been disclosed or satisfactorily accounted for. Carbon copies  
15 shall not be acceptable. The reporting form shall not include the name of  
16 the person for whom the service was provided. The reporting form shall be  
17 confidential and shall not be revealed except upon the order of a court  
18 of competent jurisdiction in a civil or criminal proceeding.

19 Sec. 5. Section 28-327.02, Reissue Revised Statutes of Nebraska, is  
20 amended to read:

21 28-327.02 When an emergency situation compels the performance of an  
22 abortion, the qualified practitioner ~~physician~~ shall inform the woman,  
23 prior to the abortion if possible, of the medical indications supporting  
24 his or her judgment that an abortion is necessary to avert her death or  
25 to avert substantial impairment of a major bodily function.

26 Sec. 6. Section 28-327.03, Reissue Revised Statutes of Nebraska, is  
27 amended to read:

28 28-327.03 No civil liability for failure to comply with subdivision  
29 (2)(d) of section 28-327 or that portion of subdivision (7) of such  
30 section requiring a written certification that the woman has been  
31 informed of her right to review the information referred to in

1 subdivision (2)(d) of such section may be imposed unless the Department  
2 of Health and Human Services has published and made available the printed  
3 materials at the time the qualified practitioner, the referring  
4 physician, or the agent of either ~~physician or his or her agent~~ is  
5 required to inform the woman of her right to review them.

6 Sec. 7. Section 28-327.04, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

8 28-327.04 Any person upon whom an abortion has been performed or  
9 attempted in violation of section 28-327 or the parent or guardian of a  
10 minor upon whom an abortion has been performed or attempted in violation  
11 of such section shall have a right to maintain a civil cause of action  
12 against the person who performed the abortion or attempted to perform the  
13 abortion. A violation of subdivision (1), (2), (3), (7), or (8) of  
14 section 28-327 shall be prima facie evidence of professional negligence.  
15 The written certifications prescribed by subdivisions (4) and (7) of  
16 section 28-327 signed by the person upon whom an abortion has been  
17 performed or attempted shall constitute and create a rebuttable  
18 presumption of full compliance with all provisions of section 28-327 in  
19 favor of the qualified practitioner ~~physician~~ who performed or attempted  
20 to perform the abortion, the referring physician, or the agent of either  
21 ~~physician~~. The written certification shall be admissible as evidence in  
22 the cause of action for professional negligence or in any criminal  
23 action. If judgment is rendered in favor of the plaintiff in any such  
24 action, the court shall also render judgment for a reasonable attorney's  
25 fee in favor of the plaintiff against the defendant.

26 Sec. 8. Section 28-327.07, Reissue Revised Statutes of Nebraska, is  
27 amended to read:

28 28-327.07 In addition to whatever remedies are available under the  
29 common or statutory laws of this state, the intentional, knowing, or  
30 negligent failure to comply with the requirements of section 28-327 shall  
31 provide a basis for the following damages:

1 (1) The award of reasonable costs and attorney's fees; and

2 (2) A recovery for the pregnant woman for the wrongful death of her  
3 unborn child under section 30-809 upon proving by a preponderance of  
4 evidence that the qualified practitioner ~~physician~~ knew or should have  
5 known that the pregnant woman's consent was either not fully informed or  
6 not fully voluntary pursuant to section 28-327.

7 Sec. 9. Section 28-327.09, Reissue Revised Statutes of Nebraska, is  
8 amended to read:

9 28-327.09 If a qualified practitioner ~~physician~~ performed an  
10 abortion on a pregnant woman who is a minor without providing the  
11 information required in section 28-327 to the pregnant woman's parent or  
12 legal guardian, then the qualified practitioner ~~physician~~ bears the  
13 burden of proving that the pregnant woman was capable of independently  
14 evaluating the information given to her.

15 Sec. 10. Section 28-327.10, Reissue Revised Statutes of Nebraska, is  
16 amended to read:

17 28-327.10 Except in the case of an emergency situation, if a  
18 pregnant woman is provided with the information required by section  
19 28-327 less than twenty-four hours before her scheduled abortion, the  
20 qualified practitioner ~~physician~~ shall bear the burden of proving that  
21 the pregnant woman had sufficient reflection time, given her age,  
22 maturity, emotional state, and mental capacity, to comprehend and  
23 consider such information.

24 Sec. 11. Section 28-327.11, Reissue Revised Statutes of Nebraska, is  
25 amended to read:

26 28-327.11 In a civil action involving section 28-327, the following  
27 shall apply:

28 (1) In determining the liability of the qualified practitioner  
29 ~~physician~~ and the validity of the consent of a pregnant woman, the  
30 failure to comply with the requirements of section 28-327 shall create a  
31 rebuttable presumption that the pregnant woman would not have undergone



1 the recommended abortion had section 28-327 been complied with by the  
2 qualified practitioner ~~physician~~;

3 (2) The absence of physical injury shall not preclude an award of  
4 noneconomic damages including pain, suffering, inconvenience, mental  
5 suffering, emotional distress, psychological trauma, loss of society or  
6 companionship, loss of consortium, injury to reputation, or humiliation  
7 associated with the abortion;

8 (3) The fact that a qualified practitioner ~~physician~~ does not  
9 perform elective abortions or has not performed elective abortions in the  
10 past shall not automatically disqualify such qualified practitioner  
11 ~~physician~~ from being an expert witness. A licensed obstetrician or family  
12 practitioner who regularly assists pregnant women in resolving medical  
13 matters related to pregnancy may be qualified to testify as an expert on  
14 the screening, counseling, management, and treatment of pregnancies;

15 (4) Any qualified practitioner ~~physician~~ advertising services in  
16 this state shall be deemed to be transacting business in this state  
17 pursuant to section 25-536 and shall be subject to the provisions of  
18 section 28-327;

19 (5) It shall be an affirmative defense to an allegation of  
20 inadequate disclosure under the requirements of section 28-327 that the  
21 defendant omitted the contested information because statistically  
22 validated surveys of the general population of women of reproductive age,  
23 conducted within the three years before or after the contested abortion,  
24 demonstrate that less than five percent of women would consider the  
25 contested information to be relevant to an abortion decision; and

26 (6) In addition to the other remedies available under the common or  
27 statutory law of this state, a woman or her survivors shall have a cause  
28 of action for reckless endangerment against any person, other than a  
29 qualified practitioner ~~physician~~ or pharmacist licensed under the Uniform  
30 Credentialing Act, who attempts or completes an abortion on the pregnant  
31 woman or aids or abets the commission of a self-induced abortion. Proof

1 of injury shall not be required to recover an award, including reasonable  
2 costs and attorney's fees, for wrongful death under this subdivision.

3 Sec. 12. Section 28-327.12, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5 28-327.12 (1) In the event that any portion of section 28-327 is  
6 enjoined and subsequently upheld, the statute of limitations for filing a  
7 civil suit under section 28-327 shall be tolled during the period for  
8 which the injunction is pending and for two years thereafter.

9 (2) Nothing in section 28-327 shall be construed as defining a  
10 standard of care for any medical procedure other than an induced  
11 abortion.

12 (3) A violation of subdivision (4), (5), or (6) of section 28-327  
13 shall not provide grounds for any criminal action or disciplinary action  
14 against or revocation of a license ~~to practice medicine and surgery~~  
15 pursuant to the Uniform Credentialing Act.

16 Sec. 13. Section 28-328, Reissue Revised Statutes of Nebraska, is  
17 amended to read:

18 28-328 (1) No partial-birth abortion shall be performed in this  
19 state, 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 caused  
22 by or arising from the pregnancy itself.

23 (2) The intentional and knowing performance of an unlawful partial-  
24 birth abortion in violation of subsection (1) of this section is a Class  
25 III felony.

26 (3) No woman upon whom an unlawful partial-birth abortion is  
27 performed shall be prosecuted under this section or for conspiracy to  
28 violate this section.

29 (4) The intentional and knowing performance of an unlawful partial-  
30 birth abortion shall result in the automatic suspension and revocation of  
31 a qualified practitioner's ~~an attending physician's~~ license to practice

1 ~~medicine in Nebraska~~ by the Division of Public Health pursuant to  
2 sections 38-177 to 38-1,102.

3 (5) Upon the filing of criminal charges under this section by the  
4 Attorney General or a county attorney, the Attorney General shall also  
5 file a petition to suspend and revoke the qualified practitioner's  
6 ~~attending physician's~~ license to ~~practice medicine~~ pursuant to section  
7 38-186. A hearing on such administrative petition shall be set in  
8 accordance with section 38-188. At such hearing, the qualified  
9 practitioner ~~attending physician~~ shall have the opportunity to present  
10 evidence that the qualified practitioner's ~~physician's~~ conduct was  
11 necessary to save the life of a mother whose life was endangered by a  
12 physical disorder, physical illness, or physical injury, including a  
13 life-endangering physical condition caused by or arising from the  
14 pregnancy itself. A defendant against whom criminal charges are brought  
15 under this section may bring a motion to delay the beginning of the trial  
16 until after the entry of an order by the Director of Public Health  
17 pursuant to section 38-196. The findings of the director as to whether  
18 the qualified practitioner's ~~attending physician's~~ conduct was necessary  
19 to save the life of a mother whose life was endangered by a physical  
20 disorder, physical illness, or physical injury, including a life-  
21 endangering physical condition caused by or arising from the pregnancy  
22 itself, shall be admissible in the criminal proceedings brought pursuant  
23 to this section.

24 Sec. 14. Section 28-329, Reissue Revised Statutes of Nebraska, is  
25 amended to read:

26 28-329 No abortion shall be performed after the time at which, in  
27 the sound medical judgment of the qualified practitioner ~~attending~~  
28 ~~physician~~, the unborn child clearly appears to have reached viability,  
29 except when necessary to preserve the life or health of the mother.

30 Sec. 15. Section 28-330, Reissue Revised Statutes of Nebraska, is  
31 amended to read:

1           28-330 In any abortion performed pursuant to section 28-329, all  
2 reasonable precautions, in accord with the sound medical judgment of the  
3 qualified practitioner attending physician and compatible with preserving  
4 the life or health of the mother, shall be taken to insure the protection  
5 of the viable, unborn child.

6           Sec. 16. Section 28-331, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

8           28-331 When as the result of an abortion a child is, in the sound  
9 medical judgment of the qualified practitioner attending physician, born  
10 alive, then all reasonable steps, in accordance with the sound medical  
11 judgment of the qualified practitioner attending physician, shall be  
12 employed to preserve the life of the child. For purposes of this section,  
13 born alive shall mean the complete expulsion or extraction of the child  
14 from the mother irrespective of the duration of the pregnancy and after  
15 such expulsion or extraction such child breathes or shows any other  
16 evidence of life such as beating of the heart, pulsation of the umbilical  
17 cord, or definite movement of voluntary muscles whether or not the  
18 umbilical cord has been cut or the placenta is attached.

19           Sec. 17. Section 28-335, Reissue Revised Statutes of Nebraska, is  
20 amended to read:

21           28-335 (1) The performing of an abortion by any person other than a  
22 qualified practitioner licensed physician is a Class IV felony.

23           (2) No abortion shall be performed, induced, or attempted unless the  
24 qualified practitioner physician who uses or prescribes any instrument,  
25 device, medicine, drug, or other substance to perform, induce, or attempt  
26 the abortion is physically present in the same room with the patient when  
27 the qualified practitioner physician performs, induces, or attempts to  
28 perform or induce the abortion. Any person who knowingly or recklessly  
29 violates this subsection shall be guilty of a Class IV felony. No civil  
30 or criminal penalty shall be assessed against the patient upon whom the  
31 abortion is performed, induced, or attempted to be performed or induced.

1           Sec. 18. Section 28-343, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3           28-343 The Department of Health and Human Services shall prescribe  
4 an abortion reporting form which shall be used for the reporting of every  
5 abortion performed in this state. Such form shall include the following  
6 items:

7           (1) The age of the pregnant woman;

8           (2) The location of the facility where the abortion was performed;

9           (3) The type of procedure performed;

10          (4) Complications, if any;

11          (5) The name of the attending qualified practitioner ~~physician~~;

12          (6) The pregnant woman's obstetrical history regarding previous  
13 pregnancies, abortions, and live births;

14          (7) The stated reason or reasons for which the abortion was  
15 requested;

16          (8) The state of the pregnant woman's legal residence;

17          (9) The length and weight of the aborted child, when measurable;

18          (10) Whether an emergency situation caused the qualified  
19 practitioner ~~physician~~ to waive any of the requirements of section  
20 28-327; and

21          (11) Such other information as may be prescribed in accordance with  
22 section 71-602.

23           The completed form shall be signed by the qualified practitioner  
24 ~~attending physician~~ and sent to the department within fifteen days after  
25 each reporting month. The completed form shall be an original, typed or  
26 written legibly in durable ink, and shall not be deemed complete unless  
27 the omission of any item of information required shall have been  
28 disclosed or satisfactorily accounted for. Carbon copies shall not be  
29 acceptable. The abortion reporting form shall not include the name of the  
30 person upon whom the abortion was performed. The abortion reporting form  
31 shall be confidential and shall not be revealed except upon the order of

1 a court of competent jurisdiction in a civil or criminal proceeding.

2 Sec. 19. Section 28-345, Revised Statutes Cumulative Supplement,  
3 2020, is amended to read:

4 28-345 The Department of Health and Human Services shall prepare and  
5 keep on permanent file compilations of the information submitted on the  
6 abortion reporting forms and reporting forms regarding attempts at  
7 continuing a woman's pregnancy after taking mifepristone pursuant to such  
8 rules and regulations as established by the department, which  
9 compilations shall be a matter of public record. Under no circumstances  
10 shall the compilations of information include the name of any qualified  
11 practitioner attending ~~physician~~ or identify in any respect facilities  
12 where abortions are performed. The department, in order to maintain and  
13 keep such compilations current, shall file with such reports any new or  
14 amended information.

15 Sec. 20. Section 28-347, Revised Statutes Cumulative Supplement,  
16 2020, is amended to read:

17 28-347 (1) It shall be unlawful for any person to purposely perform  
18 or attempt to perform a dismemberment abortion and thereby kill an unborn  
19 child unless a dismemberment abortion is necessary due to a medical  
20 emergency as defined in subdivision (4) of section 28-3,103.

21 (2) A person accused in any proceeding of unlawful conduct under  
22 subsection (1) of this section may seek a hearing before the Board of  
23 Medicine and Surgery or the Board of Advanced Practice Registered Nurses  
24 on whether the performance of a dismemberment abortion was necessary due  
25 to a medical emergency as defined in subdivision (4) of section 28-3,103.  
26 The board's findings are admissible on that issue at any trial in which  
27 such unlawful conduct is alleged. Upon a motion of the person accused,  
28 the court shall delay the beginning of the trial for not more than thirty  
29 days to permit such a hearing to take place.

30 (3) No woman upon whom an abortion is performed or attempted to be  
31 performed shall be liable for performing or attempting to perform a

1 dismemberment abortion. No nurse, secretary, receptionist, or other  
2 employee or ~~person agent~~ who is not a qualified practitioner ~~physician~~,  
3 but who acts at the direction of a qualified practitioner ~~physician~~,  
4 shall be liable for performing or attempting to perform a dismemberment  
5 abortion. No pharmacist or other individual who is not a qualified  
6 practitioner ~~physician~~, but who fills a prescription or provides  
7 instruments or materials used in an abortion at the direction of or to a  
8 qualified practitioner ~~physician~~, shall be liable for performing or  
9 attempting to perform a dismemberment abortion.

10       Sec. 21. Section 28-3,103, Reissue Revised Statutes of Nebraska, is  
11 amended to read:

12       28-3,103 For purposes of the Pain-Capable Unborn Child Protection  
13 Act:

14       (1) Abortion means the use or prescription of any instrument,  
15 medicine, drug, or other substance or device to terminate the pregnancy  
16 of a woman known to be pregnant with an intention other than to increase  
17 the probability of a live birth, to preserve the life or health of the  
18 child after live birth, or to remove a dead unborn child who died as the  
19 result of natural causes in utero, accidental trauma, or a criminal  
20 assault on the pregnant woman or her unborn child, and which causes the  
21 premature termination of the pregnancy;

22       (2) Attempt to perform or induce an abortion means an act, or an  
23 omission of a statutorily required act, that, under the circumstances as  
24 the actor believes them to be, constitutes a substantial step in a course  
25 of conduct planned to culminate in the performance or induction of an  
26 abortion in this state in violation of the Pain-Capable Unborn Child  
27 Protection Act;

28       (3) Fertilization means the fusion of a human spermatozoon with a  
29 human ovum;

30       (4) Medical emergency means a condition which, in reasonable medical  
31 judgment, so complicates the medical condition of the pregnant woman as

1 to necessitate the immediate abortion of her pregnancy to avert her death  
2 or for which a delay will create a serious risk of substantial and  
3 irreversible physical impairment of a major bodily function. No condition  
4 shall be deemed a medical emergency if based on a claim or diagnosis that  
5 the woman will engage in conduct which would result in her death or in  
6 substantial and irreversible physical impairment of a major bodily  
7 function;

8 (5) Postfertilization age means the age of the unborn child as  
9 calculated from the fertilization of the human ovum;

10 (6) Reasonable medical judgment means a medical judgment that would  
11 be made by a reasonably prudent qualified practitioner ~~physician~~,  
12 knowledgeable about the case and the treatment possibilities with respect  
13 to the medical conditions involved;

14 ~~(7) Physician means any person licensed to practice medicine and~~  
15 ~~surgery or osteopathic medicine under the Uniform Credentialing Act;~~

16 (7) ~~(8)~~ Probable postfertilization age of the unborn child means  
17 what, in reasonable medical judgment, will with reasonable probability be  
18 the postfertilization age of the unborn child at the time the abortion is  
19 planned to be performed;

20 (8) Qualified practitioner means a physician, including an  
21 osteopathic physician, an advanced practice registered nurse, a certified  
22 nurse midwife, or a physician assistant licensed to practice in this  
23 state as provided in the Uniform Credentialing Act;

24 (9) Unborn child or fetus each mean an individual organism of the  
25 species homo sapiens from fertilization until live birth; and

26 (10) Woman means a female human being whether or not she has reached  
27 the age of majority.

28 Sec. 22. Section 28-3,105, Reissue Revised Statutes of Nebraska, is  
29 amended to read:

30 28-3,105 (1) Except in the case of a medical emergency which  
31 prevents compliance with this section, no abortion shall be performed or



1 induced or be attempted to be performed or induced unless the qualified  
2 practitioner ~~physician~~ performing or inducing it has first made a  
3 determination of the probable postfertilization age of the unborn child  
4 or relied upon such a determination made by another qualified  
5 practitioner ~~physician~~. In making such a determination, a qualified  
6 practitioner ~~physician~~ shall make such inquiries of the woman and perform  
7 or cause to be performed such medical examinations and tests as a  
8 reasonably prudent qualified practitioner ~~physician~~, knowledgeable about  
9 the case and the medical conditions involved, would consider necessary to  
10 perform in making an accurate diagnosis with respect to postfertilization  
11 age.

12 (2) Failure by any qualified practitioner ~~physician~~ to conform to  
13 any requirement of this section constitutes unprofessional conduct  
14 pursuant to section 38-2021 and section 27 of this act.

15 Sec. 23. Section 28-3,106, Reissue Revised Statutes of Nebraska, is  
16 amended to read:

17 28-3,106 No person shall perform or induce or attempt to perform or  
18 induce an abortion upon a woman when it has been determined, by the  
19 qualified practitioner ~~physician~~ performing or inducing the abortion or  
20 by another qualified practitioner ~~physician~~ upon whose determination that  
21 qualified practitioner ~~physician~~ relies, that the probable  
22 postfertilization age of the woman's unborn child is twenty or more weeks  
23 unless, in reasonable medical judgment (1) she has a condition which so  
24 complicates her medical condition as to necessitate the abortion of her  
25 pregnancy to avert her death or to avert serious risk of substantial and  
26 irreversible physical impairment of a major bodily function or (2) it is  
27 necessary to preserve the life of an unborn child. No such condition  
28 shall be deemed to exist if it is based on a claim or diagnosis that the  
29 woman will engage in conduct which would result in her death or in  
30 substantial and irreversible physical impairment of a major bodily  
31 function. In such a case, the qualified practitioner ~~physician~~ shall

1 terminate the pregnancy in the manner which, in reasonable medical  
2 judgment, provides the best opportunity for the unborn child to survive,  
3 unless, in reasonable medical judgment, termination of the pregnancy in  
4 that manner would pose a greater risk either of the death of the pregnant  
5 woman or of the substantial and irreversible physical impairment of a  
6 major bodily function of the woman than would another available method.  
7 No such greater risk shall be deemed to exist if it is based on a claim  
8 or diagnosis that the woman will engage in conduct which would result in  
9 her death or in substantial and irreversible physical impairment of a  
10 major bodily function.

11 Sec. 24. Section 28-3,107, Reissue Revised Statutes of Nebraska, is  
12 amended to read:

13 28-3,107 (1) Any qualified practitioner ~~physician~~ who performs or  
14 induces or attempts to perform or induce an abortion shall report to the  
15 Department of Health and Human Services, on a schedule and in accordance  
16 with forms and rules and regulations adopted and promulgated by the  
17 department:

18 (a) If a determination of probable postfertilization age was made,  
19 the probable postfertilization age determined and the method and basis of  
20 the determination;

21 (b) If a determination of probable postfertilization age was not  
22 made, the basis of the determination that a medical emergency existed;

23 (c) If the probable postfertilization age was determined to be  
24 twenty or more weeks, the basis of the determination that the pregnant  
25 woman had a condition which so complicated her medical condition as to  
26 necessitate the abortion of her pregnancy to avert her death or to avert  
27 serious risk of substantial and irreversible physical impairment of a  
28 major bodily function, or the basis of the determination that it was  
29 necessary to preserve the life of an unborn child; and

30 (d) The method used for the abortion and, in the case of an abortion  
31 performed when the probable postfertilization age was determined to be

1 twenty or more weeks, whether the method of abortion used was one that,  
2 in reasonable medical judgment, provided the best opportunity for the  
3 unborn child to survive or, if such a method was not used, the basis of  
4 the determination that termination of the pregnancy in that manner would  
5 pose a greater risk either of the death of the pregnant woman or of the  
6 substantial and irreversible physical impairment of a major bodily  
7 function of the woman than would other available methods.

8 (2) By June 30 of each year, the department shall issue a public  
9 report providing statistics for the previous calendar year compiled from  
10 all of the reports covering that year submitted in accordance with this  
11 section for each of the items listed in subsection (1) of this section.  
12 Each such report shall also provide the statistics for all previous  
13 calendar years during which this section was in effect, adjusted to  
14 reflect any additional information from late or corrected reports. The  
15 department shall take care to ensure that none of the information  
16 included in the public reports could reasonably lead to the  
17 identification of any pregnant woman upon whom an abortion was performed.

18 (3) Any qualified practitioner ~~physician~~ who fails to submit a  
19 report by the end of thirty days following the due date shall be subject  
20 to a late fee of five hundred dollars for each additional thirty-day  
21 period or portion of a thirty-day period the report is overdue. Any  
22 qualified practitioner ~~physician~~ required to report in accordance with  
23 the Pain-Capable Unborn Child Protection Act who has not submitted a  
24 report, or has submitted only an incomplete report, more than one year  
25 following the due date, may, in an action brought in the manner in which  
26 actions are brought to enforce the Uniform Credentialing Act pursuant to  
27 section 38-1,139, be directed by a court of competent jurisdiction to  
28 submit a complete report within a time period stated by court order or be  
29 subject to civil contempt. Failure by any qualified practitioner  
30 ~~physician~~ to conform to any requirement of this section, other than late  
31 filing of a report, constitutes unprofessional conduct pursuant to

1 section 38-2021 and section 27 of this act. Failure by any qualified  
2 practitioner physician to submit a complete report in accordance with a  
3 court order constitutes unprofessional conduct pursuant to section  
4 38-2021 and section 27 of this act. Intentional or reckless falsification  
5 of any report required under this section is a Class V misdemeanor.

6 (4) Within ninety days after October 15, 2010, the department shall  
7 adopt and promulgate rules and regulations to assist in compliance with  
8 this section.

9 Sec. 25. Section 38-193, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

11 38-193 If the petition is brought with respect to subdivision (3) of  
12 section 38-2021 or subdivision (1)(c) of section 27 of this act, the  
13 director shall make findings as to whether the licensee's conduct was  
14 necessary to save the life of a mother whose life was endangered by a  
15 physical disorder, physical illness, or physical injury, including a  
16 life-endangering physical condition caused by or arising from the  
17 pregnancy itself. The director shall have the authority through entry of  
18 an order to exercise in his or her discretion any or all of the sanctions  
19 authorized under section 38-196, irrespective of the petition.

20 Sec. 26. Section 38-201, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 38-201 Sections 38-201 to 38-212 and section 27 of this act shall be  
23 known and may be cited as the Advanced Practice Registered Nurse Practice  
24 Act.

25 Sec. 27. (1) Unprofessional conduct includes, but is not limited  
26 to:

27 (a) Performance by an advanced practice registered nurse of an  
28 abortion under circumstances when such nurse will not be available for a  
29 period of at least forty-eight hours for postoperative care unless such  
30 postoperative care is delegated to and accepted by another qualified  
31 practitioner;

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

3       (c) The intentional and knowing performance of a partial-birth  
4 abortion, unless such procedure is necessary to save the life of the  
5 mother whose life is endangered by a physical disorder, physical illness,  
6 or physical injury, including a life-endangering physical condition  
7 caused by or arising from the pregnancy itself; and

8       (d) Performance by an advanced practice registered nurse of an  
9 abortion in violation of the Pain-Capable Unborn Child Protection Act.

10       (2) For purposes of this section:

11       (a) Abortion has the same meaning as in section 28-326;

12       (b) Qualified practitioner has the same meaning as in section  
13 28-326; and

14       (c) Partial-birth abortion has the same meaning as in section  
15 28-326.

16       Sec. 28. Section 38-601, Reissue Revised Statutes of Nebraska, is  
17 amended to read:

18       38-601 Sections 38-601 to 38-618 and section 29 of this act shall be  
19 known and may be cited as the Certified Nurse Midwifery Practice Act.

20       Sec. 29. (1) Unprofessional conduct includes, but is not limited  
21 to:

22       (a) Performance by a certified nurse midwife of an abortion under  
23 circumstances when such nurse will not be available for a period of at  
24 least forty-eight hours for postoperative care unless such postoperative  
25 care is delegated to and accepted by another qualified practitioner;

26       (b) Performing an abortion upon a minor without having satisfied the  
27 requirements of sections 71-6901 to 71-6911;

28       (c) The intentional and knowing performance of a partial-birth  
29 abortion, unless such procedure is necessary to save the life of the  
30 mother whose life is endangered by a physical disorder, physical illness,  
31 or physical injury, including a life-endangering physical condition

1 caused by or arising from the pregnancy itself; and

2 (d) Performance by a certified nurse midwife of an abortion in  
3 violation of the Pain-Capable Unborn Child Protection Act.

4 (2) For purposes of this section:

5 (a) Abortion has the same meaning as in section 28-326;

6 (b) Qualified practitioner has the same meaning as in section  
7 28-326; and

8 (c) Partial-birth abortion has the same meaning as in section  
9 28-326.

10 Sec. 30. Section 38-2021, Revised Statutes Cumulative Supplement,  
11 2020, is amended to read:

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

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

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

25 (3) The intentional and knowing performance of a partial-birth  
26 abortion as defined in subdivision (9) ~~(8)~~ of section 28-326, unless such  
27 procedure is necessary to save the life of the mother whose life is  
28 endangered by a physical disorder, physical illness, or physical injury,  
29 including a life-endangering physical condition caused by or arising from  
30 the pregnancy itself; and

31 (4) Performance by a physician or physician assistant of an abortion

1 in violation of the Pain-Capable Unborn Child Protection Act.

2 Sec. 31. Section 44-1615.01, Reissue Revised Statutes of Nebraska,  
3 is amended to read:

4 44-1615.01 No group insurance contract or health maintenance  
5 agreement providing hospitalization, medical, surgical, accident,  
6 sickness, or other health coverage paid for in whole or in part with  
7 public funds shall include coverage for abortion, as defined in section  
8 28-326. This section shall not apply to coverage for an abortion which is  
9 verified in writing by the qualified practitioner ~~attending physician~~ as  
10 necessary to prevent the death of the woman or to coverage for medical  
11 complications arising from an abortion. This section shall not prohibit  
12 the insurer from offering individual employees special coverage for  
13 abortion if the costs for such coverage are borne solely by the employee.

14 Sec. 32. Section 44-8403, Reissue Revised Statutes of Nebraska, is  
15 amended to read:

16 44-8403 (1) No abortion coverage shall be provided by a qualified  
17 health insurance plan offered through a health insurance exchange created  
18 pursuant to the federal Patient Protection and Affordable Care Act,  
19 Public Law 111-148, within the State of Nebraska. This subsection shall  
20 not apply to coverage for an abortion which is verified in writing by the  
21 qualified practitioner ~~attending physician~~ as necessary to prevent the  
22 death of the woman or to coverage for medical complications arising from  
23 an abortion.

24 (2) No health insurance plan, contract, or policy delivered or  
25 issued for delivery in the State of Nebraska shall provide coverage for  
26 an elective abortion except through an optional rider to the policy for  
27 which an additional premium is paid solely by the insured. This  
28 subsection applies to any health insurance plan, contract, or policy  
29 delivered or issued for delivery in the State of Nebraska by any health  
30 insurer, any nonprofit hospital, medical, surgical, dental, or health  
31 service corporation, any group health insurer, and any health maintenance

1 organization subject to the laws of insurance in this state and any  
2 employer providing self-funded health insurance for his or her employees.  
3 This subsection also applies to any plan provision of hospital, medical,  
4 surgical, or funeral benefits or of coverage against accidental death or  
5 injury if such benefits or coverage are incidental to or a part of any  
6 other insurance plan delivered or issued for delivery in the State of  
7 Nebraska.

8 (3) The issuer of a health insurance plan, contract, or policy in  
9 the State of Nebraska shall not provide any incentive or discount to an  
10 insured if the insured elects abortion coverage.

11 (4) For purposes of this section:

12 (a) Elective ~~, elective~~ abortion means an abortion (i) ~~(a)~~ other  
13 than a spontaneous abortion or (ii) ~~(b)~~ that is performed for any reason  
14 other than to prevent the death of the female upon whom the abortion is  
15 performed; and ~~-~~

16 (b) Qualified practitioner has the same meaning as in section  
17 28-326.

18 Sec. 33. Section 71-6901, Reissue Revised Statutes of Nebraska, is  
19 amended to read:

20 71-6901 For purposes of sections 71-6901 to 71-6911:

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

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

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

29 (c) Remove an ectopic pregnancy;

30 (2) Coercion means restraining or dominating the choice of a  
31 pregnant woman by force, threat of force, or deprivation of food and



1 shelter;

2 (3) Consent means a declaration acknowledged before a notary public  
3 and signed by a parent or legal guardian of the pregnant woman or an  
4 alternate person as described in section 71-6902.01 declaring that the  
5 principal has been informed that the pregnant woman intends to undergo a  
6 procedure pursuant to subdivision (1) of section 71-6901 and that the  
7 principal consents to the procedure;

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

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

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

15 (7) Incompetent means any person who has been adjudged a disabled  
16 person and has had a guardian appointed under sections 30-2617 to  
17 30-2629;

18 (8) Medical emergency means a condition that, on the basis of the  
19 qualified practitioner's ~~physician's~~ good faith clinical judgment, so  
20 complicates the medical condition of a pregnant woman as to necessitate  
21 the immediate abortion of her pregnancy to avert her death or for which a  
22 delay will create serious risk of substantial and irreversible impairment  
23 of a major bodily function;

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

27 (9) ~~(10)~~ Pregnant woman means an unemancipated woman under eighteen  
28 years of age who is pregnant or a woman for whom a guardian has been  
29 appointed pursuant to sections 30-2617 to 30-2629 because of a finding of  
30 incapacity, disability, or incompetency who is pregnant; and -

31 (10) Qualified practitioner means a physician, including an

1 osteopathic physician, an advanced practice registered nurse, a certified  
2 nurse midwife, or a physician assistant licensed to practice in this  
3 state as provided in the Uniform Credentialing Act.

4       Sec. 34. Section 71-6902.01, Reissue Revised Statutes of Nebraska,  
5 is amended to read:

6       71-6902.01 If the pregnant woman declares in a signed written  
7 statement that she is a victim of abuse as defined in section 28-351,  
8 sexual abuse as defined in section 28-367, or child abuse or neglect as  
9 defined in section 28-710 by either of her parents or her legal  
10 guardians, then the qualified practitioner ~~attending physician~~ shall  
11 obtain the notarized written consent required by section 71-6902 from a  
12 grandparent specified by the pregnant woman. The qualified practitioner  
13 ~~physician~~ who intends to perform the abortion shall certify in the  
14 pregnant woman's medical record that he or she has received the written  
15 declaration of abuse or neglect. Any qualified practitioner ~~physician~~  
16 relying in good faith on a written statement under this section shall not  
17 be civilly or criminally liable under sections 71-6901 to 71-6911 for  
18 failure to obtain consent. If such a declaration is made, the qualified  
19 practitioner ~~attending physician~~ or his or her agent shall inform the  
20 pregnant woman of his or her duty to notify the proper authorities  
21 pursuant to sections 28-372 and 28-711.

22       Sec. 35. Section 71-6903, Reissue Revised Statutes of Nebraska, is  
23 amended to read:

24       71-6903 (1) The requirements and procedures under this section are  
25 available to pregnant women whether or not they are residents of this  
26 state.

27       (2) If a pregnant woman elects not to obtain the consent of her  
28 parents or guardians, a judge of a district court, separate juvenile  
29 court, or county court sitting as a juvenile court shall, upon petition  
30 or motion and after an appropriate hearing, authorize a qualified  
31 practitioner ~~physician~~ to perform the abortion if the court determines by

1 clear and convincing evidence that the pregnant woman is both  
2 sufficiently mature and well-informed to decide whether to have an  
3 abortion. If the court does not make the finding specified in this  
4 subsection or subsection (3) of this section, it shall dismiss the  
5 petition.

6 (3) If the court finds, by clear and convincing evidence, that there  
7 is evidence of abuse as defined in section 28-351, sexual abuse as  
8 defined in section 28-367, or child abuse or neglect as defined in  
9 section 28-710 of the pregnant woman by a parent or a guardian or that an  
10 abortion without the consent of a parent or a guardian is in the best  
11 interest of the pregnant woman, the court shall issue an order  
12 authorizing the pregnant woman to consent to the performance or  
13 inducement of an abortion without the consent of a parent or a guardian.  
14 If the court does not make the finding specified in this subsection or  
15 subsection (2) of this section, it shall dismiss the petition.

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

20 (5) The State Court Administrator shall develop the petition form  
21 and accompanying instructions on the procedure for petitioning the court  
22 for a waiver of consent, including the name, address, telephone number,  
23 and facsimile number of each court in the state. A sufficient number of  
24 petition forms and instructions shall be made available in each  
25 courthouse in such place that members of the general public may obtain a  
26 form and instructions without requesting such form and instructions from  
27 the clerk of the court or other court personnel. The State Court  
28 Administrator shall also make such forms and instructions available on a  
29 website maintained by the Supreme Court. The clerk of the court shall  
30 assist in administrative matters and filing the petition for waiver of  
31 consent.

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

18 (7) A pregnant woman who is subject to this section may participate  
19 in the court proceedings on her own behalf, and the court may appoint a  
20 guardian ad litem for her. The court shall advise the pregnant woman that  
21 she has a right to court-appointed counsel and shall, upon her request,  
22 provide her with such counsel. Such counsel shall receive a fee to be  
23 fixed by the court and to be paid out of the treasury of the county in  
24 which the proceeding was held.

25 (8) Proceedings in court pursuant to this section shall be given  
26 such precedence on the trial docket over other pending matters so that  
27 the court may reach a decision promptly and without delay to serve the  
28 best interest of the pregnant woman. In no case shall the court fail to  
29 rule within seven calendar days from the time the petition is filed. If  
30 the court fails to rule within the required time period, the pregnant  
31 woman may file an application for a writ of mandamus with the Supreme

1 Court. If cause for a writ of mandamus exists, the writ shall issue  
2 within three days.

3 (9) The court shall issue a written order which includes specific  
4 factual findings and legal conclusions supporting its decision which  
5 shall be provided immediately to the pregnant woman, the pregnant woman's  
6 guardian ad litem, the pregnant woman's attorney, and any other person  
7 designated by the pregnant woman to receive the order. Further, the court  
8 shall order that a confidential record of the evidence and the judge's  
9 findings and conclusions be maintained. At the hearing, the court shall  
10 hear evidence relating to the emotional development, maturity, intellect,  
11 and understanding of the pregnant woman.

12 Sec. 36. Section 71-6906, Reissue Revised Statutes of Nebraska, is  
13 amended to read:

14 71-6906 Consent shall not be required pursuant to sections 71-6901  
15 to 71-6911 if any of the following conditions exist:

16 (1) The attending qualified practitioner ~~physician~~ certifies in the  
17 pregnant woman's medical record that a medical emergency exists and there  
18 is insufficient time to obtain the required consent; or

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

20 Sec. 37. Section 71-6907, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 71-6907 (1) Any qualified practitioner ~~physician~~ ~~or~~ ~~attending~~  
23 ~~physician~~ who knowingly and intentionally or with reckless disregard  
24 performs an abortion in violation of sections 71-6901 to 71-6906 and  
25 71-6909 to 71-6911 shall be guilty of a Class III misdemeanor.

26 (2) Performance of an abortion in violation of such sections shall  
27 be grounds for a civil action by a person wrongfully denied the right and  
28 opportunity to consent.

29 (3) A person shall be immune from liability under such sections (a)  
30 if he or she establishes by written evidence that he or she relied upon  
31 evidence sufficient to convince a careful and prudent person that the

1 representations of the pregnant woman regarding information necessary to  
2 comply with such sections are bona fide and true or (b) if the person has  
3 performed an abortion authorized by a court order issued pursuant to  
4 section 71-6903 or 71-6904.

5 (4) Any person not authorized to provide consent under sections  
6 71-6901 to 71-6911 who provides consent is guilty of a Class III  
7 misdemeanor.

8 (5) Any person who coerces a pregnant woman to have an abortion is  
9 guilty of a Class III misdemeanor.

10 Sec. 38. Section 71-6909, Reissue Revised Statutes of Nebraska, is  
11 amended to read:

12 71-6909 A monthly report indicating only the number of consents  
13 obtained under sections 71-6901 to 71-6911, the number of times in which  
14 exceptions were made to the consent requirement under such sections, the  
15 type of exception, the pregnant woman's age, and the number of prior  
16 pregnancies and prior abortions of the pregnant woman shall be filed by  
17 the qualified practitioner ~~physician~~ with the department on forms  
18 prescribed by the department. The name of the pregnant woman shall not be  
19 used on the forms. A compilation of the data reported shall be made by  
20 the department on an annual basis and shall be available to the public.

21 Sec. 39. Original sections 28-325, 28-327.02, 28-327.03, 28-327.04,  
22 28-327.07, 28-327.09, 28-327.10, 28-327.11, 28-327.12, 28-328, 28-329,  
23 28-330, 28-331, 28-335, 28-343, 28-3,103, 28-3,105, 28-3,106, 28-3,107,  
24 38-193, 38-201, 38-601, 44-1615.01, 44-8403, 71-6901, 71-6902.01,  
25 71-6903, 71-6906, 71-6907, and 71-6909, Reissue Revised Statutes of  
26 Nebraska, and sections 28-326, 28-327, 28-327.01, 28-345, 28-347, and  
27 38-2021, Revised Statutes Cumulative Supplement, 2020, are repealed.