

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1109**

Introduced by Riepe, 12.

Read first time January 10, 2024

Committee: Judiciary

1 A BILL FOR AN ACT relating to abortion; to amend section 28-336, Reissue  
2 Revised Statutes of Nebraska, and sections 71-6914, 71-6915, and  
3 71-6916, Revised Statutes Supplement, 2023; to change provisions  
4 relating to a penalty for performing an abortion by other than  
5 accepted medical procedures; to define and redefine terms; to  
6 provide for an exception for an abortion in the case of a fatal  
7 fetal anomaly; to change and provide duties for physicians; to  
8 eliminate a penalty under the Pain-Capable Unborn Child Protection  
9 Act; to harmonize provisions; to repeal the original sections; to  
10 outright repeal section 28-3,108, Reissue Revised Statutes of  
11 Nebraska; and to declare an emergency.  
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-336, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 28-336 The performing of an abortion by using anything other than  
4 accepted medical procedures is a Class IV felony. An abortion that is  
5 performed in violation of the Preborn Child Protection Act that otherwise  
6 used accepted medical procedures is not a violation of this section.

7 Sec. 2. Section 71-6914, Revised Statutes Supplement, 2023, is  
8 amended to read:

9 71-6914 For purposes of the Preborn Child Protection Act:

10 (1)(a) Abortion means the prescription or use of any instrument,  
11 device, medicine, drug, or substance to or upon a woman known to be  
12 pregnant with the specific intent of terminating the life of her preborn  
13 child.

14 (b) Abortion shall under no circumstances be interpreted to include:

15 (i) Removal of an ectopic pregnancy;

16 (ii) Removal of the remains of a preborn child who has already died;

17 (iii) An act done with the intention to save the life or preserve  
18 the health of the preborn child;

19 (iv) The accidental or unintentional termination of the life of a  
20 preborn child; or

21 (v) During the practice of in vitro fertilization or another  
22 assisted reproductive technology, the termination or loss of the life of  
23 a preborn child who is not being carried inside a woman's body;

24 (2) Fatal fetal anomaly means a terminal condition diagnosed before  
25 birth by at least two physicians that, in their reasonable medical  
26 judgment, regardless of the provision of life-saving medical treatment,  
27 is incompatible with life outside the womb and will result in the death  
28 of a preborn child upon birth or inevitably thereafter;

29 (3) (2) Gestational age means the age of a preborn child as  
30 calculated from the first day of the last menstrual period of the  
31 pregnant woman;

1           (4)(a) ~~(3)(a)~~ Medical emergency means any condition which, in  
2 reasonable medical judgment, so complicates the medical condition of the  
3 pregnant woman as to necessitate the termination of her pregnancy to  
4 avert her death or for which a delay in terminating her pregnancy will  
5 create a serious risk of substantial and irreversible physical impairment  
6 of a major bodily function.

7           (b) No condition shall be deemed a medical emergency if based on a  
8 claim or diagnosis that the woman will engage in conduct which would  
9 result in her death or in substantial and irreversible physical  
10 impairment of a major bodily function;

11           (5) ~~(4)~~ Preborn child means an individual living member of the  
12 species homo sapiens, throughout the embryonic and fetal stages of  
13 development to full gestation and childbirth;

14           (6) ~~(5)~~ Pregnant means the condition of having a living preborn  
15 child inside one's body; ~~and~~

16           (7) ~~(6)~~ Reasonable medical judgment means a medical judgment that  
17 could be made by a reasonably prudent physician, knowledgeable about the  
18 case and the treatment possibilities with respect to the medical  
19 conditions involved; ~~and~~ -

20           (8) Writing or written includes records prepared or stored in  
21 physical, electronic, or digital form.

22           Sec. 3. Section 71-6915, Revised Statutes Supplement, 2023, is  
23 amended to read:

24           71-6915 (1) Except as provided in subsection (3) of this section, a  
25 physician, before performing or inducing an abortion, shall first:

26           (a) Determine, using standard medical practice, the gestational age  
27 of the preborn child; and

28           (b) Record in the pregnant woman's medical record:

29           (i) The method used to determine the gestational age of the preborn  
30 child; and

31           (ii) The date, time, and results of such determination.

1 (2) Except as provided in subsection (3) of this section, it shall  
2 be unlawful for any physician to perform or induce an abortion:

3 (a) Before fulfilling the requirements of subsection (1) of this  
4 section; or

5 (b) If the probable gestational age of the preborn child has been  
6 determined to be twelve or more weeks.

7 (3) It shall not be a violation of subsection (1) or (2) of this  
8 section for a physician to perform or induce an abortion in the case of:

9 (a) Medical emergency;

10 (b) A fatal fetal anomaly;

11 (c) ~~(b)~~ Pregnancy resulting from sexual assault as defined in  
12 section 28-319 or 28-319.01; or

13 (d) ~~(c)~~ Pregnancy resulting from incest as defined in section  
14 28-703.

15 Sec. 4. Section 71-6916, Revised Statutes Supplement, 2023, is  
16 amended to read:

17 71-6916 (1) If a physician performs or induces an abortion because  
18 of a medical emergency pursuant to subdivision (3)(a) of section 71-6915,  
19 the physician shall certify in writing that such a medical emergency  
20 existed and explain the ~~medical~~ emergency in such the written  
21 certification. ~~The physician shall keep the written certification in the~~  
22 ~~woman's medical record.~~

23 (2) If a physician performs or induces an abortion because of a  
24 fatal fetal anomaly pursuant to subdivision (3)(b) of section 71-6915,  
25 the physician shall certify the following in writing:

26 (a) That such anomaly existed;

27 (b) The names of the two physicians who diagnosed the anomaly; and

28 (c) An explanation of the nature of the anomaly.

29 (3) ~~(2)~~ If a physician performs or induces an abortion in the case  
30 of sexual assault or incest pursuant to subdivision ~~(3)(c)~~ or ~~(d) ~~(3)(b)~~~~  
31 or ~~(c)~~ of section 71-6915, the physician shall certify in writing that

1 the abortion was performed because of sexual assault or incest and that  
2 the physician complied with all applicable duties imposed by section  
3 28-902.

4 (4) The physician shall keep a ~~the written~~ certification made under  
5 this section in the woman's medical record.

6 Sec. 5. Original section 28-336, Reissue Revised Statutes of  
7 Nebraska, and sections 71-6914, 71-6915, and 71-6916, Revised Statutes  
8 Supplement, 2023, are repealed.

9 Sec. 6. The following section is outright repealed: Section  
10 28-3,108, Reissue Revised Statutes of Nebraska.

11 Sec. 7. Since an emergency exists, this act takes effect when  
12 passed and approved according to law.