LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 209

FINAL READING

Introduced by Albrecht, 17; Arch, 14; Bostelman, 23; Brewer, 43; Briese, 41; Clements, 2; Erdman, 47; Geist, 25; Gragert, 40; Halloran, 33; Hansen, B., 16; Hilgers, 21; Kolterman, 24; La Grone, 49; Linehan, 39; Lowe, 37; McDonnell, 5; Murman, 38; Quick, 35; Scheer, 19; Slama, 1; Dorn, 30; Groene, 42; Moser, 22; Hughes, 44.

Read first time January 11, 2019

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections 28-327, 28-327.01, 28-345, and 28-806, Reissue Revised Statutes of Nebraska; to provide requirements for the provision of information and materials regarding finding medical assistance and continuing a viable pregnancy after taking mifepristone; to provide duties for the Department of Health and Human Services; to require a confidential reporting form as prescribed; to change provisions relating to public indecency; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 28-327, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

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

and

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

The person providing the information specified in this subdivision to the person upon whom the abortion is to be performed shall be deemed qualified to so advise and provide such information only if, at a
minimum, he or she has had training in each of the following subjects:

Sexual and reproductive health; abortion technology; contraceptive
technology; short-term counseling skills; community resources and
referral; and informed consent. The physician or the physician's agent
may provide this information by telephone without conducting a physical
examination or tests of the patient, in which case the information
required to be supplied may be based on facts supplied by the patient and
whatever other relevant information is reasonably available to the
physician or the physician's agent;

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

(a) The name of the physician who will perform the abortion;

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

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

(d) That she has the right to review the printed materials described
in section 28-327.01. The physician or his or her agent shall orally
inform the woman that the materials have been provided by the Department
of Health and Human Services and that they describe the unborn child, and
list agencies which offer alternatives to abortion, and include
information on finding immediate medical assistance if she changes her
mind after taking mifepristone and wants to continue her pregnancy. If
the woman chooses to review the materials, they shall either be given to
her at least twenty-four hours before the abortion or mailed to her at
least seventy-two hours before the abortion by certified mail, restricted
delivery to addressee, which means the postal employee can only deliver
the mail to the addressee. The physician and his or her agent may
disassociate themselves from the materials and may comment or refrain from commenting on them as they choose; and

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

(3) If an ultrasound is used prior to the performance of an abortion, the physician who is to perform the abortion, the referring physician, or a physician assistant or registered nurse licensed under the Uniform Credentialing Act who is an agent of either physician, or any qualified agent of either physician, shall:

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

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

(c) If the woman requests information about the displayed ultrasound image, her questions shall be answered. If she requests a detailed, simultaneous, medical description of the ultrasound image, one shall be provided that includes the dimensions of the unborn child, the presence of cardiac activity, if present and viewable, and the presence of
(4) At least one hour prior to the performance of an abortion, a physician, psychiatrist, psychologist, mental health practitioner, physician assistant, registered nurse, or social worker licensed under the Uniform Credentialing Act has:

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

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

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

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

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

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

and

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

(6) The physician performing the abortion has formed a reasonable medical judgment, documented in the permanent record, that:

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

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

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

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

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

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

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

(8) Prior to the performance of the abortion, the physician who is
to perform the abortion or his or her agent receives a copy of the
written certification prescribed by subdivision (7) of this section. The
physician or his or her agent shall retain a copy of the signed
certification form in the woman's medical record.

Sec. 2. Section 28-327.01, Reissue Revised Statutes of Nebraska, is
amended to read:

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

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

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

(c) A comprehensive list of health care providers, facilities, and clinics that offer to have ultrasounds performed by a person at least as qualified as a registered nurse licensed under the Uniform Credentialing Act, including and specifying those that offer to perform such ultrasounds free of charge. The list shall be arranged geographically and shall include the name, address, hours of operation, and telephone number of each entity;

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

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

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

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

(4) The Department of Health and Human Services shall make available on its Internet web site a printable publication of geographically indexed materials designed to inform the woman of public and private agencies with services available to assist a woman with mental health concerns, following a risk factor evaluation. Such services shall include, but not be limited to, outpatient and crisis intervention services and crisis hotlines. The materials shall include a comprehensive list of the agencies available, a description of the services offered, and a description of the manner in which such agencies may be contacted, including addresses and telephone numbers of such agencies, as well as a toll-free, twenty-four-hour-a-day telephone number to be provided by the department which may be called to orally obtain the names of the agencies and the services they provide in the locality of the woman. The department shall update the publication as necessary.

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

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

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

(i) The age of the pregnant woman;
(ii) The location of the facility where the service was performed;
(iii) The type of service provided;
(iv) Complications, if any;
(v) The name of the attending medical professional;
(vi) The pregnant woman's obstetrical history regarding previous pregnancies, abortions, and live births;
(vii) The state of the pregnant woman's legal residence;
(viii) Whether an emergency situation caused the physician to waive any of the requirements of section 28-327; and
(ix) Such other information as may be prescribed in accordance with section 71-602.

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

Sec. 3. Section 28-345, Reissue Revised Statutes of Nebraska, is
amended to read:

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

Sec. 4. Section 28-806, Reissue Revised Statutes of Nebraska, is
amended to read:

28-806 (1) A person, eighteen years of age or over, commits public
indecency if such person performs or procures, or assists any other
person to perform, in a public place and where the conduct may reasonably
be expected to be viewed by members of the public:

(a) An act of sexual penetration; or

(b) An exposure of the genitals of the body done with intent to
affront or alarm any person; or

(c) A lewd fondling or caressing of the body of another person of
the same or opposite sex.

(2) Public indecency is a Class II misdemeanor.

(3) It shall not be a violation of this section for an individual to breast-feed a child in a public place.

Sec. 5. Original sections 28-327, 28-327.01, 28-345, and 28-806, Reissue Revised Statutes of Nebraska, are repealed.