

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 781**

Introduced by Slama, 1; Aguilar, 35; Albrecht, 17; Bostelman, 23; Brewer, 43; Briese, 41; Clements, 2; Erdman, 47; Flood, 19; Friesen, 34; Geist, 25; Gragert, 40; Groene, 42; Halloran, 33; Hansen, B., 16; Lindstrom, 18; Lowe, 37; McDonnell, 5; Moser, 22; Murman, 38; Sanders, 45.

Read first time January 05, 2022

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to abortion; to amend sections 28-101 and  
2 38-2021, Revised Statutes Cumulative Supplement, 2020; to adopt the  
3 Heartbeat Act; to provide a penalty; to redefine unprofessional  
4 conduct; to harmonize provisions; to provide severability; and to  
5 repeal the original sections.  
6 Be it enacted by the people of the State of Nebraska,

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

3 28-101 Sections 28-101 to 28-1357 and 28-1601 to 28-1603 and  
4 sections 2 to 8 of this act shall be known and may be cited as the  
5 Nebraska Criminal Code.

6 Sec. 2. Sections 2 to 8 of this act shall be known and may be cited  
7 as the Heartbeat Act.

8 Sec. 3. For purposes of the Heartbeat Act:

9 (1) Abortion has the same meaning as in section 28-326;

10 (2) Fetal heartbeat means cardiac activity or the steady and  
11 repetitive rhythmic contraction of the fetal heart within the gestational  
12 sac;

13 (3) Medical emergency has the same meaning as in section 28-3,103;  
14 and

15 (4) Ultrasound has the same meaning as in section 28-326.

16 Sec. 4. (1) Prior to performing any abortion, the physician shall  
17 perform an ultrasound of the pregnant woman's unborn child in accordance  
18 with standard medical practice to determine if a fetal heartbeat is  
19 detectable. The physician shall record in the pregnant woman's medical  
20 record the date and time of the ultrasound, the estimated gestational age  
21 of the unborn child, and whether a fetal heartbeat was detected.

22 (2) It shall be unlawful for any person to knowingly perform an  
23 abortion when it has been determined that the unborn child has a  
24 detectable fetal heartbeat.

25 Sec. 5. Violation of section 4 of this act is a Class IIA felony.

26 Sec. 6. In any prosecution under the Heartbeat Act, it shall be an  
27 affirmative defense that a medical emergency existed.

28 Sec. 7. No woman upon whom an abortion is attempted, induced, or  
29 performed shall be subject to prosecution for a violation of the  
30 Heartbeat Act.

31 Sec. 8. Nothing in the Heartbeat Act shall be construed to create

1 or recognize a right to abortion.

2 Sec. 9. Section 38-2021, Revised Statutes Cumulative Supplement,  
3 2020, is amended to read:

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

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

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

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

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

25 (5) Performance of an abortion, except in the case of a medical  
26 emergency as defined in section 28-3,103, in violation of the Heartbeat  
27 Act.

28 Sec. 10. If any section in this act or any part of any section is  
29 declared invalid or unconstitutional, the declaration shall not affect  
30 the validity or constitutionality of the remaining portions.

31 Sec. 11. Original sections 28-101 and 38-2021, Revised Statutes

1 Cumulative Supplement, 2020, are repealed.