

AMENDMENTS TO LB669

Introduced by Storer, 43.

1 1. Strike the original sections and insert the following new
2 sections:

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

5 28-325 The Legislature hereby finds and declares:

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

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

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

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

26 ~~(4) (5) That it is in the interest of the people of the State of~~
27 Nebraska to maintain accurate statistical data to aid in providing proper

1 maternal health regulations and education;

2 (5) (6) That the existing standard of care for preabortion screening
3 and counseling is not always adequate to protect the health needs of
4 women;

5 (6) (7) That clarifying the minimum standard of care for preabortion
6 screening and counseling in statute is a practical means of protecting
7 the well-being of women and may better ensure that abortion doctors are
8 sufficiently aware of each patient's risk profile so they may give each
9 patient a well-informed medical opinion regarding her unique case; and

10 (7) (8) That providing right to redress against nonphysicians who
11 perform illegal abortions or encourage self-abortions is an important
12 means of protecting women's health; and -

13 (8) That many pregnant women feel coerced or pressured and that it
14 is in the interest of the people and the State of Nebraska that these
15 women be given an opportunity to report coercion, abuse, and human
16 trafficking.

17 **Sec. 2.** Section 28-326, Revised Statutes Cumulative Supplement,
18 2024, is amended to read:

19 28-326 For purposes of sections 28-325 to 28-345 and 28-347 to
20 28-347.06, unless the context otherwise requires:

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

27 ~~(2) Complications associated with abortion means any adverse~~
28 ~~physical, psychological, or emotional reaction that is reported in a~~
29 ~~peer-reviewed journal to be statistically associated with abortion such~~
30 ~~that there is less than a five percent probability (P < .05) that the~~
31 ~~result is due to chance;~~

1 (2) (3) Conception means the fecundation of the ovum by the
2 spermatozoa;

3 (3)(a) (4)(a) Dismemberment abortion means an abortion in which,
4 with the purpose of causing the death of an unborn child, a person
5 purposely dismembers the body of a living unborn child and extracts him
6 or her one piece at a time from the uterus through use of clamps,
7 grasping forceps, tongs, scissors, or similar instruments that, through
8 the convergence of two rigid levers, slice, crush, or grasp a portion of
9 the unborn child's body to cut or rip it off.

10 (b) Dismemberment abortion does not include:

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

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

15 (4) (5) Emergency situation means that condition which, on the basis
16 of the physician's good faith clinical judgment, so complicates the
17 medical condition of a pregnant woman as to necessitate the immediate
18 abortion of her pregnancy to avert her death or for which a delay will
19 create serious risk of substantial impairment of a major bodily function;

20 (5) (6) Hospital means those institutions licensed by the Department
21 of Health and Human Services pursuant to the Health Care Facility
22 Licensure Act;

23 ~~(7) Negligible risk means a risk that a reasonable person would
24 consider to be immaterial to a decision to undergo an elective medical
25 procedure;~~

26 (6) (8) Partial-birth abortion means an abortion procedure in which
27 the person performing the abortion partially delivers vaginally a living
28 unborn child before killing the unborn child and completing the delivery.

29 For purposes of this subdivision, the term partially delivers vaginally a
30 living unborn child before killing the unborn child means deliberately
31 and intentionally delivering into the vagina a living unborn child, or a

1 substantial portion thereof, for the purpose of performing a procedure
2 that the person performing such procedure knows will kill the unborn
3 child and does kill the unborn child;

4 (7) (9) Physician means any person licensed to practice medicine in
5 this state as provided in the Uniform Credentialing Act;

6 (8) (10) Pregnant means that condition of a woman who has unborn
7 human life within her as the result of conception;

8 (9) (11) Probable gestational age of the unborn child means what
9 will with reasonable probability, in the judgment of the physician, be
10 the gestational age of the unborn child at the time the abortion is
11 planned to be performed;

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

23 (10) (13) Self-induced abortion means any abortion or menstrual extraction attempted or completed by a pregnant woman on her own body;

25 (11) (14) Ultrasound means the use of ultrasonic waves for diagnostic or therapeutic purposes, specifically to monitor an unborn child;

28 (12) (15) Viability means that stage of human development when the unborn child is potentially able to live more than merely momentarily outside the womb of the mother by natural or artificial means; and

31 (13) (16) Woman means any female human being whether or not she has

1 reached the age of majority.

2 **Sec. 3.** Section 28-327, Revised Statutes Cumulative Supplement,
3 2024, is amended to read:

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

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

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

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

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

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

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

29 The person providing the information specified in this subdivision
30 to the person upon whom the abortion is to be performed shall be deemed
31 qualified to so advise and provide such information only if, at a

1 minimum, he or she has had training in each of the following subjects:
2 Sexual and reproductive health; abortion technology; contraceptive
3 technology; short-term counseling skills; community resources and
4 referral; and informed consent. The physician or the physician's agent
5 may provide this information by telephone without conducting a physical
6 examination or tests of the patient, in which case the information
7 required to be supplied may be based on facts supplied by the patient and
8 whatever other relevant information is reasonably available to the
9 physician or the physician's agent;

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

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

1 disassociate themselves from the materials and may comment or refrain
2 from commenting on them as they choose; and

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

13 (f) The telephone numbers for the national domestic violence hotline
14 and the national human trafficking hotline.

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

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

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

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

1 provided that includes the dimensions of the unborn child, the presence
2 of cardiac activity, if present and viewable, and the presence of
3 external members and internal organs, if present and viewable;

4 (4) At least one hour prior to the performance of an abortion, a
5 physician, psychiatrist, psychologist, mental health practitioner,
6 physician assistant, or registered nurse licensed under the Uniform
7 Credentialing Act; a social worker licensed under the Uniform
8 Credentialing Act or holding a multistate authorization to practice in
9 Nebraska under the Social Worker Licensure Compact; or a professional
10 counselor holding a privilege to practice in Nebraska under the Licensed
11 Professional Counselors Interstate Compact has, in a place and manner
12 that ensures the privacy of the pregnant woman:

13 (a) Asked and evaluated ~~Evaluated~~ the pregnant woman to identify if
14 ~~she is being, or has been, the pregnant woman had the perception of~~
15 ~~feeling~~ pressured or coerced into seeking or consenting to an abortion
16 ~~and if she is being, or has been, pressured or coerced to become~~
17 pregnant;

18 (b) Asked and evaluated the pregnant woman to identify if she is or
19 has been the victim of interpersonal or domestic violence;

20 (c) Asked and evaluated the pregnant woman to identify if she is or
21 has been the victim of human trafficking, including sex trafficking;

22 (d) In the event the pregnant woman discloses that she: (i) Is
23 being, or has been, pressured or coerced into seeking or consenting to an
24 abortion or that she is being, or has been, pressured or coerced to
25 become pregnant pursuant to subdivision (4)(a) of this section; (ii) is
26 or has been the victim of interpersonal or domestic violence pursuant to
27 subdivision (4)(b) of this section; or (iii) is or has been the victim of
28 human trafficking pursuant to subdivision (4)(c) of this section, the
29 licensed person to whom the disclosure has been made has (A) provided the
30 pregnant woman with the telephone numbers for the national domestic
31 violence hotline and the national human trafficking hotline; and (B)

1 offered the pregnant woman an opportunity to make a confidential
2 telephone call;

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

5 (e) (c) Informed the pregnant woman and the physician who is to
6 perform the abortion of the results of the evaluation in writing. The
7 written evaluation shall include, at a minimum, a checklist identifying
8 both the positive and negative results of the evaluation for each risk
9 factor associated with abortion and both the licensed person's written
10 certification and the woman's written certification that the pregnant
11 woman was asked the questions required by subdivisions (4)(a) through (c)
12 of this section and, if applicable, was given the telephone numbers for
13 the national domestic violence hotline and the national human trafficking
14 hotline and the opportunity to make a confidential telephone call
15 informed of the risk factors associated with abortion as discussed; and

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

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

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

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

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

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

31 (b) Continuance of the pregnancy would involve risk of injury to the

1 physical or mental health of the pregnant woman greater than if the
2 pregnancy were terminated by induced abortion; or

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

6 (5) (7) The woman certifies in writing, prior to the abortion, that:

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

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

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

14 (6) (8) Prior to the performance of the abortion, the physician who
15 is to perform the abortion or his or her agent receives a copy of the
16 written certification prescribed by subdivision (5) (7) of this section.
17 The physician or his or her agent shall retain a copy of the signed
18 certification form in the woman's medical record.

19 **Sec. 4.** Section 28-327.03, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 28-327.03 No civil liability for failure to comply with subdivision
22 (2)(d) of section 28-327 or that portion of subdivision (5) (7) of such
23 section requiring a written certification that the woman has been
24 informed of her right to review the information referred to in
25 subdivision (2)(d) of such section may be imposed unless the Department
26 of Health and Human Services has published and made available the printed
27 materials at the time the physician or his or her agent is required to
28 inform the woman of her right to review them.

29 **Sec. 5.** Section 28-327.04, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 28-327.04 Any person upon whom an abortion has been performed or

1 attempted in violation of section 28-327 or the parent or guardian of a
2 minor upon whom an abortion has been performed or attempted in violation
3 of such section shall have a right to maintain a civil cause of action
4 against the person who performed the abortion or attempted to perform the
5 abortion. A violation of subdivision (1), (2), (3), (5), or (6) (7), or
6 ~~(8)~~ of section 28-327 shall be prima facie evidence of professional
7 negligence. The written certifications prescribed by subdivisions (4) and
8 (5) (7) of section 28-327 signed by the person upon whom an abortion has
9 been performed or attempted shall constitute and create a rebuttable
10 presumption of full compliance with all provisions of section 28-327 in
11 favor of the physician who performed or attempted to perform the
12 abortion, the referring physician, or the agent of either physician. The
13 written certification shall be admissible as evidence in the cause of
14 action for professional negligence or in any criminal action. If judgment
15 is rendered in favor of the plaintiff in any such action, the court shall
16 also render judgment for a reasonable attorney's fee in favor of the
17 plaintiff against the defendant.

18 **Sec. 6.** Section 28-327.06, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 28-327.06 Any waiver of the evaluations, and notices, and
21 requirements provided for in subdivision (4) of section 28-327 is void
22 and unenforceable.

23 **Sec. 7.** Section 28-327.11, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 28-327.11 In a civil action involving section 28-327, the following
26 shall apply:

27 (1) In determining the liability of the physician and the validity
28 of the consent of a pregnant woman, the failure to comply with the
29 requirements of section 28-327 shall create a rebuttable presumption that
30 the pregnant woman would not have undergone the recommended abortion had
31 section 28-327 been complied with by the physician;

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

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

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

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

23 (4) ~~(6) In addition to the other remedies available under the common~~
24 ~~or statutory law of this state, a woman or her survivors shall have a~~
25 ~~cause of action for reckless endangerment against any person, other than~~
26 ~~a physician or pharmacist licensed under the Uniform Credentialing Act,~~
27 ~~who attempts or completes an abortion on the pregnant woman or aids or~~
28 ~~abets the commission of a self-induced abortion. Proof of injury shall~~
29 ~~not be required to recover an award, including reasonable costs and~~
30 ~~attorney's fees, for wrongful death under this subdivision.~~

31 **Sec. 8.** Section 28-327.12, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 28-327.12 (1) In the event that any portion of section 28-327 is
3 enjoined and subsequently upheld, the statute of limitations for filing a
4 civil suit under section 28-327 shall be tolled during the period for
5 which the injunction is pending and for two years thereafter.

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

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

13 **Sec. 9.** Section 38-2001, Revised Statutes Cumulative Supplement,
14 2024, is amended to read:

15 38-2001 Sections 38-2001 to 38-2064 and section 10 of this act shall
16 be known and may be cited as the Medicine and Surgery Practice Act.

17 **Sec. 10.** (1) Upon a pregnant woman's first recorded visit with a
18 licensed health care professional to consult on a pregnancy, the licensed
19 health care professional, in a place and manner that ensures the privacy
20 of the pregnant woman, shall:

21 (a) Ask and evaluate the pregnant woman to identify if she is being,
22 or has been, pressured or coerced into seeking or consenting to an
23 abortion and if she is being, or has been, pressured or coerced to become
24 pregnant;

25 (b) Ask and evaluate the pregnant woman to identify if she is being,
26 or has been, the victim of interpersonal violence or domestic violence;
27 and

28 (c) Ask and evaluate the pregnant woman to identify if she is, or
29 has been, the victim of human trafficking, including sex trafficking.

30 (2) If the pregnant woman discloses that she (a) is being, or has
31 been, pressured or coerced into seeking or consenting to an abortion, or

1 that she is being, or has been, pressured or coerced to become pregnant,
2 (b) is, or has been, a victim of interpersonal or domestic violence, or
3 (c) is, or has been, a victim of human trafficking, including sex
4 trafficking, the licensed health care professional shall (i) provide the
5 pregnant woman with the telephone number for the national domestic
6 violence hotline or the national human trafficking hotline, as
7 appropriate, and (ii) offer the pregnant woman an opportunity to make a
8 confidential telephone call.

9 **Sec. 11.** Section 38-2021, Revised Statutes Cumulative Supplement,
10 2024, is amended to read:

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

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

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

24 (3) The intentional and knowing performance of a partial-birth
25 abortion as defined in subdivision (6) (8) of section 28-326, unless such
26 procedure is necessary to save the life of the mother whose life is
27 endangered by a physical disorder, physical illness, or physical injury,
28 including a life-endangering physical condition caused by or arising from
29 the pregnancy itself;

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

1 (5) Violation of the Preborn Child Protection Act.

2 **Sec. 12.** Original sections 28-325, 28-327.03, 28-327.04, 28-327.06,

3 28-327.11, and 28-327.12, Reissue Revised Statutes of Nebraska, and

4 sections 28-326, 28-327, 38-2001, and 38-2021, Revised Statutes

5 Cumulative Supplement, 2024, are repealed.