

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:

- 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.