

## LEGISLATIVE BILL 316

Approved by the Governor March 22, 1979

Introduced by DeCamp, 40; Labeledz, 5; Dworak, 22

AN ACT to amend sections 28-326, 28-327, 28-329 to 28-331, 28-333, 28-334, 28-342, 28-343, and 28-345, Revised Statutes Supplement, 1978, relating to crimes and punishment; to define terms; to change provisions as to when an abortion may be performed as prescribed; to change provisions relating to abortion procedures; to change penalties; to provide for confidentiality of abortion forms as prescribed; to provide a penalty; to provide an operative date; to provide for severability; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 28-326, Revised Statutes Supplement, 1978, be amended to read as follows:

28-326. As used in sections 28-325 to 28-345, unless the context otherwise requires:

(1) Abortion shall mean an act, procedure, device, or prescription administered to ~~or prescribed for a pregnant woman by any person, including the pregnant woman herself,~~ known by the person so administering to be pregnant and performed with either the intent and result or result of producing the premature expulsion, removal, or termination of the human life within the womb of the pregnant woman, except that in cases in which the unborn child's viability is threatened by continuation of the pregnancy, early delivery after viability by commonly accepted obstetrical practices shall not be construed as an abortion for the purposes of sections 28-325 to 28-345;

(2) Hospital shall mean those institutions licensed by the State Board of Health pursuant to sections 71-2017 to 71-2029;

~~(3) Consent shall mean a signed and witnessed voluntary agreement to the performance of an abortion;~~

~~(4)~~ (3) Physician shall mean any person licensed to practice medicine in this state as provided in sections 71-102 to 71-110;

(5) (4) Pregnant shall mean that condition of a woman who has unborn human life within her as the result of conception;

(6) (5) Conception shall mean the fecundation of the ovum by the spermatozoa;

(7) (6) Viability shall mean that stage of human development when the life of the unborn child may be continued by natural or life-supportive systems outside the womb of the mother; and is potentially able to live outside the womb of the mother by natural or artificial means;

(7) Emergency situation shall mean a condition exists that in the sound medical judgment of the physician the abortion should be performed without delay so as not to adversely affect the best physical or mental health of the woman;

(8) Accepted medical procedures shall mean procedures of the type and performed in a manner and in a facility which is equipped with surgical, anaesthetic, resuscitation, and laboratory equipment sufficient to meet the standards of medical care which physicians in the same neighborhood or in similar communities, engaged in the same or similar lines of work, would ordinarily exercise and devote to the benefit of their patients. Informed consent shall mean a written statement, voluntarily entered into by the person upon whom an abortion is to be performed, whereby she specifically consents to such abortion. Such consent shall be deemed to be an informed consent only if it affirmatively appears in the written statement that the person upon whom the abortion is to be performed has been advised (a) of the reasonably possible medical and mental consequences resulting from an abortion, pregnancy, and childbirth, (b) of possible alternatives to abortion, including childbirth and adoption and including that there are agencies and services available to assist her to carry her pregnancy to a natural term, and (c) of the abortion procedures to be used. Such statement shall bear the signature of the person upon whom the abortion is to be performed and be signed by the attending physician; and

(9) The word signature includes the mark of a person unable to write her name; a mark shall have the same effect as a signature when the name is written by some other person and the mark is made near thereto by the person unable to write her name.

Sec. 2. That section 28-327, Revised Statutes Supplement, 1978, be amended to read as follows:

28-327. ~~Every physician consulted about abortion by an expectant mother shall inform her of agencies and services available to assist her to carry the pregnancy to natural term, and shall further inform the expectant mother as to reasonably possible medical and mental consequences resulting from the performance of an abortion. The expectant mother shall certify in writing that she has been so informed, and the written certification shall be signed by the expectant mother and by her attending physician and shall be retained as part of the permanent record of the attending physician as evidence of compliance with the requirement of informed consent. The written certification shall be in the following form:~~

~~I, \_\_\_\_\_, have been informed that agencies and services are available in Nebraska to assist me to carry my pregnancy to natural term and to provide other pregnancy information:~~

~~I have also been informed of reasonably possible medical and mental consequences resulting from an abortion:~~

~~Date \_\_\_\_\_  
Signed \_\_\_\_\_  
Signed \_\_\_\_\_  
Attending Physician~~

No abortion shall be performed on any woman in the absence of an informed consent, except that an abortion may be performed if, in the sound medical judgment of the physician, an emergency presents imminent peril that substantially endangers the life of the woman and the woman is unable to give informed consent.

No abortion shall be performed on any woman without the passing of at least two days forty-eight hours between the signing of the written certification required by this section the expression of informed consent and the actual performance of the abortion unless, in the sound medical judgment of the physician, an emergency situation presents imminent peril that substantially endangers the life of the woman exists.

Sec. 3. That section 28-329, Revised Statutes Supplement, 1978, be amended to read as follows:

28-329. No abortion shall be performed or prescribed after the time at which, in the sound medical judgment of the attending physician, the unborn child has

clearly appears to have reached viability, except when necessary to preserve the woman from an imminent peril that substantially endangers her life or health.

Sec. 4. That section 28-330, Revised Statutes Supplement, 1978, be amended to read as follows:

28-330. In any abortion performed pursuant to section 28-329, ~~every---precaution~~ all reasonable precautions, shall be taken, whenever possible in accord with the sound medical judgment of the attending physician and compatible with preserving the woman from an imminent peril that substantially endangers her life or health, shall be taken to insure the protection of the viable, unborn child. ~~Any abortion procedure so employed shall be in accordance with accepted medical procedures.~~

Sec. 5. That section 28-331, Revised Statutes Supplement, 1978, be amended to read as follows:

28-331. ~~The commonly accepted means of care~~ All reasonable steps, in accord with the sound medical judgment of the attending physician, shall be employed in the treatment of any child aborted alive with any chance of survival.

Sec. 6. That section 28-333, Revised Statutes Supplement, 1978, be amended to read as follows:

28-333. ~~{1} No abortion shall be performed or prescribed on any minor child under seventeen years of age in the State of Nebraska without her written consent and the consent of the parent or guardian of such minor child.~~

~~{2}~~ {2} No abortion shall be performed on any minor under the age of eighteen minor child in the State of Nebraska without her written informed consent and a written statement by her indicating that she has consulted with her parent or guardian concerning the performance of an abortion, unless an emergency situation exists. The statement of consultation shall be in the following form:

I, ....., a minor, have advised my parent(s) or guardian that I am pregnant and contemplating an abortion and have consulted with them concerning the contemplated abortion.

Date .....

Signed .....

The written informed consent by the minor and the statement of consultation with the parent or guardian

shall be retained as part of the permanent record of the attending physician as evidence of the requirement of consultation for no more than ten years. No person shall disclose any information contained in the informed consent or the statement of consultation, including the identity of the woman seeking the abortion, without the woman's written authorization or pursuant to an order issued by a court of competent jurisdiction. The Legislature hereby establishes a right of privacy in the State of Nebraska for a cause of action against persons making unauthorized disclosure in violation of this act.

Sec. 7. That section 28-334, Revised Statutes Supplement, 1978, be amended to read as follows:

28-334. The performing of an abortion without the informed consent or written statement required in section 28-333 when the attending physician knew or should have known that the woman upon whom the abortion was performed was under the age of eighteen or was not married or the unauthorized disclosure of information protected under section 28-333 is a Class I misdemeanor.

Sec. 8. That section 28-342, Revised Statutes Supplement, 1978, be amended to read as follows:

28-342. The knowing, willful, or intentional sale, transfer, distribution, or giving away of any live or viable aborted child for any form of experimentation is a Class III felony. Consenting The knowing, willful, or intentional consenting to, aiding, or abetting of any such sale, transfer, distribution, or other unlawful disposition of an aborted child is a Class III felony. This section shall not prohibit or regulate diagnostic or remedial procedures the purpose of which is to preserve the life or health of the aborted child or the mother.

Sec. 9. That section 28-343, Revised Statutes Supplement, 1978, be amended to read as follows:

28-343. The Bureau of Vital Statistics, Department of Health, shall establish an abortion reporting form, which shall be used for the reporting of every abortion performed or prescribed in this state. Such form shall include only the following items; in addition to such other information as may be necessary to complete the form:

(1) The age of the pregnant woman;

~~(2) The marital status of the pregnant woman;~~

~~(3)~~ (2) The location of the facility where the abortion was performed; ~~or-prescribed;~~

~~(4)~~ (3) The type of procedure performed; ~~or prescribed;~~

~~(5)~~ (4) Complications, if any;

~~(6)~~ (5) The name of the attending physician;

~~(7)-The-name-of-the-referring-physician;--agency, or-service;-if-any;~~

~~(8)~~ (6) The pregnant woman's obstetrical history regarding previous pregnancies, abortions, and live births;

~~(9)~~ (7) The stated reason or reasons for which the abortion was requested;

~~(10)~~ (8) The state ~~and--county~~ of the pregnant woman's legal residence; ~~and~~

~~(11)~~ (9) The length and weight of the aborted child, when measurable; ~~and~~ :

(10) Whether an emergency situation caused the physician to waive any of the requirements of section 28-327 or 28-333.

The completed form shall be signed by the attending physician and sent to the Bureau of Vital Statistics 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 abortion reporting form required under this section shall not include the name of the person upon whom the abortion was performed. The abortion reporting form required under this section 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. 10. That section 28-345, Revised Statutes Supplement, 1978, be amended to read as follows:

28-345. The Department of Health shall prepare and keep on permanent file compilations of the information submitted on the abortion reporting forms pursuant to such rules and regulations as established by the Department of Health, 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 of Health, in order to maintain and keep such compilations current, shall file with such reports any new or amended information.

Sec. 11. No person shall knowingly, intentionally, or willfully use any premature infant aborted alive for any type of scientific, research, laboratory, or other kind of experimentation except as necessary to protect or preserve the life or health of such premature infant aborted alive. Violation of this section is a Class IV felony.

Sec. 12. This act shall become operative thirty days after its effective date.

Sec. 13. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 14. That original sections 28-326, 28-327, 28-329 to 28-331, 28-333, 28-334, 28-342, 28-343, and 28-345, Revised Statutes Supplement, 1978, are repealed.

Sec. 15. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.