

# Nebraska

*Stenberg v. Carhart*, 530 U.S. 914 (2000) (holding that Neb. Rev. Stat. § 28-328, which bans “partial-birth abortions” lacks any exception for preservation of the health of the mother and unduly burdens women’s ability to choose a D&E abortion and is therefore unconstitutional as per *Casey* and *Roe*.)

*Rhode Island Med. Soc. v. Whitehouse*, 239 F.3d 104 (1st Cir. 2001) (Court of Appeals for the First Circuit finding Rhode Island’s partial-birth abortion ban unconstitutional, and recognizing that Neb. Rev. Stat. § 28-326(9) and § 28-328(1) unconstitutional due to banning partial-birth abortions.)

## **Neb. Rev. Stat. § 28-326 Terms, defined**

For purposes of [sections 28-325](#) to [28-345](#) and [28-347](#) to [28-347.06](#), unless the context otherwise requires:

- (1)** Abortion means the use or prescription of any instrument, medicine, drug, or other substance or device intentionally to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child, and which causes the premature termination of the pregnancy;
- (2)** Complications associated with abortion means any adverse physical, psychological, or emotional reaction that is reported in a peer-reviewed journal to be statistically associated with abortion such that there is less than a five percent probability ( $P < .05$ ) that the result is due to chance;
- (3)** Conception means the fecundation of the ovum by the spermatozoa;
- (4)**
  - (a)** Dismemberment abortion means an abortion in which, with the purpose of causing the death of an unborn child, a person purposely dismembers the body of a living unborn child and extracts him or her one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two rigid levers, slice, crush, or grasp a portion of the unborn child's body to cut or rip it off.
  - (b)** Dismemberment abortion does not include:
    - (i)** An abortion in which suction is used to dismember the body of an unborn child by sucking fetal parts into a collection container; or
    - (ii)** The use of instruments or suction to remove the remains of an unborn child who has already died;
- (5)** Emergency situation means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to

necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial impairment of a major bodily function;

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

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

**(8)** Partial-birth abortion means an abortion procedure in which the person performing the abortion partially delivers vaginally a living unborn child before killing the unborn child and completing the delivery. For purposes of this subdivision, the term partially delivers vaginally a living unborn child before killing the unborn child means deliberately and intentionally delivering into the vagina a living unborn child, or a substantial portion thereof, for the purpose of performing a procedure that the person performing such procedure knows will kill the unborn child and does kill the unborn child;

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

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

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

**(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;

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

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

**(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

**(16)** Woman means any female human being whether or not she has reached the age of majority.

(See *Rhode Island Med. Soc. v. Whitehouse*, finding § 28-326(9) unconstitutional.)

**Neb. Rev. Stat. § 28-327. Abortion; voluntary and informed consent required; exception**

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;

(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 website 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, 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 external members and internal organs, if present and viewable;

**(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 or a professional counselor holding

a privilege to practice in Nebraska under the Licensed Professional Counselors Interstate Compact 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.

**Neb. Rev. Stat. § 28-327.02.** Abortion; emergency situation; physician; duties

When an emergency situation compels the performance of an abortion, the physician shall inform the woman, prior to the abortion if possible, of the medical indications supporting his or her judgment that an abortion is necessary to avert her death or to avert substantial impairment of a major bodily function.

**§ 28-327.03. Civil liability; limitation.**

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

[R.R.S. Neb. § 28-327.03](#)

**Neb. Rev. Stat. § 28-327.10.** Time requirement

Except in the case of an emergency situation, if a pregnant woman is provided with the information required by [section 28-327](#) less than twenty-four hours before her scheduled abortion, the physician shall bear the burden of proving that the pregnant woman had sufficient reflection time, given her age, maturity, emotional state, and mental capacity, to comprehend and consider such information.

**Neb. Rev. Stat. § 28-328.** Partial-birth abortion; prohibition; violation; penalties

(1) No partial-birth abortion shall be performed in this state, unless such procedure is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

(2) The intentional and knowing performance of an unlawful partial-birth abortion in violation of subsection (1) of this section is a Class III felony.

(3) No woman upon whom an unlawful partial-birth abortion is performed shall be prosecuted under this section or for conspiracy to violate this section.

(4) The intentional and knowing performance of an unlawful partial-birth abortion shall result in the automatic suspension and revocation of an attending physician's license to practice medicine in Nebraska by the Division of Public Health pursuant to [sections 38-177](#) to [38-1,102](#).

(5) Upon the filing of criminal charges under this section by the Attorney General or a county attorney, the Attorney General shall also file a petition to suspend and revoke the attending physician's license to practice medicine pursuant to [section 38-186](#). A hearing on such administrative petition shall be set in accordance with [section 38-188](#). At such hearing, the attending physician shall have the opportunity to present evidence that the physician's conduct was necessary to save the life of a mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself. A defendant against whom criminal charges are brought under this section may bring a motion to delay the beginning of the trial until after the entry of an order by the Director of Public Health pursuant to [section 38-196](#). The findings of the director as to whether the attending physician's conduct was necessary to save the life of a mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, shall be admissible in the criminal proceedings brought pursuant to this section.

(See *Stenberg v. Carhart* and *Rhode Island Med. Soc. v. Whitehouse*, both cases finding § 28-328(1) unconstitutional.)

#### **Neb. Rev. Stat. § 28-329. Abortion; when not to be performed**

No abortion shall be performed after the time at which, in the sound medical judgment of the attending physician, the unborn child clearly appears to have reached viability, except when necessary to preserve the life or health of the mother.

#### **Neb. Rev. Stat. § 28-330. Abortion procedure; protection of viable, unborn child**

In any abortion performed pursuant to [section 28-329](#), all reasonable precautions, in accord with the sound medical judgment of the attending physician and compatible with preserving the life or health of the mother, shall be taken to insure the protection of the viable, unborn child.

#### **Neb. Rev. Stat. § 28-331. Care and treatment of child aborted**

When as the result of an abortion a child is, in the sound medical judgment of the attending physician, born alive, then all reasonable steps, in accordance with the sound medical judgment of the attending physician, shall be employed to preserve the life of the child. For purposes of this section, born alive shall mean the complete expulsion or extraction of the child from the mother irrespective of the duration of the pregnancy and after such expulsion or extraction such child breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles whether or not the umbilical cord has been cut or the placenta is attached.

**Neb. Rev. Stat. § 28-332. Violation; penalty**

The intentional and knowing violation of [section 28-329](#), [28-330](#), or [28-331](#) is a Class IV felony.

**Neb. Rev. Stat. § 28-335. Abortion by other than licensed physician; penalty; physical presence; violation; penalty**

(1) The performing of an abortion by any person other than a licensed physician is a Class IV felony.

(2) No abortion shall be performed, induced, or attempted unless the physician who uses or prescribes any instrument, device, medicine, drug, or other substance to perform, induce, or attempt the abortion is physically present in the same room with the patient when the physician performs, induces, or attempts to perform or induce the abortion. Any person who knowingly or recklessly violates this subsection shall be guilty of a Class IV felony. No civil or criminal penalty shall be assessed against the patient upon whom the abortion is performed, induced, or attempted to be performed or induced.

**Neb. Rev. Stat. § 28-336. Abortion by other than accepted medical procedures; penalty**

The performing of an abortion by using anything other than accepted medical procedures is a Class IV felony.

**Neb. Rev. Stat. § 28-337. Hospital, clinic, institution; not required to admit patient for abortion**

No hospital, clinic, institution, or other facility in this state shall be required to admit any patient for the purpose of performing an abortion nor required to allow the performance of an abortion therein, but the hospital, clinic, institution, or other facility shall inform the patient of its policy not to participate in abortion procedures. No cause of action shall arise against any hospital, clinic, institution, or other facility for refusing to perform or allow an abortion.

**Neb. Rev. Stat. § 28-338. No person required to perform an abortion; no liability for refusal**

No person shall be required to perform or participate in any abortion, and the refusal of any person to participate in an abortion shall not be a basis for civil liability to any person. No hospital, governing board, or any other person, firm, association, or group shall terminate the employment or alter the position of, prevent or impair the practice or occupation of, or impose any other sanction or otherwise discriminate against any person who refuses to participate in an abortion.

**Neb. Rev. Stat. § 28-339. Discrimination against person refusing to participate in an abortion; violation; penalty**

Any violation of [section 28-338](#) is a Class II misdemeanor.



**Neb. Rev. Stat. § 28-340. Discrimination against person refusing to participate in an abortion; damages**

Any person whose employment or position has been in any way altered, impaired, or terminated in violation of [sections 28-325 to 28-345](#) may sue in the district court for all consequential damages, lost wages, reasonable attorney's fees incurred, and the cost of litigation.

**Neb. Rev. Stat. § 28-341. Discrimination against person refusing to participate in an abortion; injunctive relief**

Any person whose employment or position has in any way been altered, impaired, or terminated because of his refusal to participate in an abortion shall have the right to injunctive relief, including temporary relief, pending trial upon showing of an emergency, in the district court, in accordance with the statutes, rules, and practices applicable in other similar cases.

**Neb. Rev. Stat. § 28-342. Aborted child; sell, transfer, distribute, give away; violation; penalty**

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. 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.

**Neb. Rev. Stat. § 28-343. Department of Health and Human Services; abortion reporting form; items included; confidential**

The Department of Health and Human Services shall prescribe an abortion reporting form which shall be used for the reporting of every abortion performed in this state. Such form shall include the following items:

- (1) The age of the pregnant woman;
- (2) The location of the facility where the abortion was performed;
- (3) The type of procedure performed;
- (4) Complications, if any;
- (5) The name of the attending physician;
- (6) The pregnant woman's obstetrical history regarding previous pregnancies, abortions, and live births;
- (7) The stated reason or reasons for which the abortion was requested;
- (8) The state of the pregnant woman's legal residence;
- (9) The length and weight of the aborted child, when measurable;

(10) Whether an emergency situation caused the physician to waive any of the requirements of [section 28-327](#); and

(11) Such other information as may be prescribed in accordance with [section 71-602](#).

The completed form shall be signed by the attending physician 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 abortion reporting form shall not include the name of the person upon whom the abortion was performed. The abortion 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.

**Neb. Rev. Stat. § 28-344. Reporting form; violation; penalty**

Violation of [section 28-343](#) is a Class II misdemeanor.

**Neb. Rev. Stat. § 28-346. Aborted infant; experimentation; prohibited; exception; penalty**

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.

**Neb. Rev. Stat. § 28-347. Dismemberment abortion; unlawful; when; medical emergency; Board of Medicine and Surgery; hearing; findings admissible at trial; persons not liable**

(1) It shall be unlawful for any person to purposely perform or attempt to perform a dismemberment abortion and thereby kill an unborn child unless a dismemberment abortion is necessary due to a medical emergency as defined in subdivision (4) of section 28-3,103.

(2) A person accused in any proceeding of unlawful conduct under subsection (1) of this section may seek a hearing before the Board of Medicine and Surgery on whether the performance of a dismemberment abortion was necessary due to a medical emergency as defined in subdivision (4) of section 28-3,103. The board's findings are admissible on that issue at any trial in which such unlawful conduct is alleged. Upon a motion of the person accused, the court shall delay the beginning of the trial for not more than thirty days to permit such a hearing to take place.

(3) No woman upon whom an abortion is performed or attempted to be performed shall be liable for performing or attempting to perform a dismemberment abortion. No nurse, secretary, receptionist, or other employee or agent who is not a physician, but who acts at the direction of a physician, shall be liable for performing or attempting to perform a dismemberment abortion. No pharmacist or other individual who is not a physician, but who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician, shall be liable for performing or attempting to perform a dismemberment abortion.

### **§ 28-347.01. Dismemberment abortion; injunction; cause of action; who may maintain.**

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- (1) A cause of action for injunctive relief against a person who has performed a dismemberment abortion in violation of section 28-347 may be maintained by:
  - (a) A woman upon whom such a dismemberment abortion was performed;
  - (b) If the woman had not attained the age of nineteen years at the time of the dismemberment abortion, a person who is the parent or guardian of the woman upon whom such a dismemberment abortion was performed; or
  - (c) A prosecuting attorney with appropriate jurisdiction.
- (2) The injunction shall prevent the defendant from performing or attempting to perform dismemberment abortions in this state in violation of section 28-347.
- (3) A cause of action may not be maintained by a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct.

[R.R.S. Neb. § 28-347.01](#)

### **§ 28-347.02. Dismemberment abortion; damages; cause of action; who may maintain.**

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- (1) A cause of action for civil damages against a person who performed a dismemberment abortion in violation of section 28-347 may be maintained by:
  - (a) Any woman upon whom a dismemberment abortion has been performed in violation of section 28-347;
  - (b) The father of the unborn child, if married to the woman at the time the dismemberment abortion was performed; or
  - (c) If the woman had not attained the age of nineteen years at the time of the dismemberment abortion or has died as a result of the abortion, the maternal grandparents of the unborn child.
- (2) No damages may be awarded a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct.
- (3) Damages awarded in such an action shall include money damages for all injuries, psychological and physical, occasioned by the dismemberment abortion.

[R.R.S. Neb. § 28-347.02](#)

### **§ 28-347.03. Dismemberment abortion; cause of action; judgment; attorney's fees.**

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- (1) If judgment is rendered in favor of the plaintiff in an action described in section 28-347.01 or 28-347.02, the court shall also render judgment for reasonable attorney's fees in favor of the plaintiff against the defendant.
- (2) If judgment is rendered in favor of the defendant in an action described in section 28-347.01 or 28-347.02 and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall render judgment for reasonable attorney's fees in favor of the defendant against the plaintiff.
- (3) No attorney's fees may be assessed against the woman upon whom an abortion was performed or attempted to be performed except in accordance with subsection (2) of this section.

[R.R.S. Neb. § 28-347.03](#)

### **Neb. Rev. Stat. § 28-347.04. Dismemberment abortion; penalty**

The intentional and knowing performance of an unlawful dismemberment abortion in violation of [section 28-347](#) is a Class IV felony.

### **§ 28-347.05. Dismemberment abortion; action or proceeding; anonymity of woman; preserved; court order.**

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In every civil, criminal, or administrative proceeding or action brought under sections 28-347 to 28-347.04, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted to be performed shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted to be performed, any person other than a public official who brings an action under section 28-347.01 or 28-347.02 shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

[R.R.S. Neb. § 28-347.05](#)

### **Neb. Rev. Stat. § 28-389. Terms, defined**

For purposes of the Homicide of the Unborn Child Act, unless the context otherwise requires:

- (1) Premeditation means a design formed to do something before it is done; and
- (2) Unborn child means an individual member of the species *Homo sapiens*, at any stage of development in utero, who was alive at the time of the homicidal act and died as a result thereof whether before, during, or after birth.

### **28-390. Applicability of sections**

[Sections 28-391](#) to [28-394](#) do not apply to an act or conduct causing or contributing to the death of an unborn child when the act or conduct is:

- (1) Committed or engaged in by the mother of the unborn child;
- (2) Any medical procedure performed with the consent of the mother; or
- (3) Dispensing a drug or device in accordance with law or administering a drug or device prescribed in accordance with law.

**Neb. Rev. Stat. § 28-391. Murder of an unborn child in the first degree; penalty**

(1) A person commits murder of an unborn child in the first degree if he or she in committing an act or engaging in conduct that causes the death of an unborn child, intends, with deliberate and premeditated malice, to kill the unborn child or the mother of the unborn child with knowledge of the pregnancy.

(2) Murder of an unborn child in the first degree is a Class IA felony.

**Neb. Rev. Stat. § 28-392. Murder of an unborn child in the second degree; penalty**

(1) A person commits murder of an unborn child in the second degree if he or she, in committing an act or engaging in conduct that causes the death of an unborn child, intends, but without premeditation, to kill the unborn child or another.

(2) Murder of an unborn child in the second degree is a Class IB felony.

**Neb. Rev. Stat. § 28-393. Manslaughter of an unborn child; penalty**

(1) A person commits manslaughter of an unborn child if he or she (a) kills an unborn child without malice upon a sudden quarrel with any person or (b) causes the death of an unborn child unintentionally while in the perpetration of or attempt to perpetrate any criminal assault, any sexual assault, arson, robbery, kidnapping, intentional child abuse, hijacking of any public or private means of transportation, or burglary.

(2) Manslaughter of an unborn child is a Class IIA felony.

**Neb. Rev. Stat. § 28-394. Motor vehicle homicide of an unborn child; penalty**

(1) A person who causes the death of an unborn child unintentionally while engaged in the operation of a motor vehicle in violation of the law of the State of Nebraska or in violation of any city or village ordinance commits motor vehicle homicide of an unborn child.

(2) Except as provided in subsection (3) of this section, motor vehicle homicide of an unborn child is a Class I misdemeanor.

(3)

(a) If the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of [section 60-6,213](#) or [60-6,214](#), motor vehicle homicide of an unborn child is a Class IIIA felony.

(b) Except as provided in subdivision (3)(c) of this section, if the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of [section 60-6,196](#) or [60-6,197.06](#), motor vehicle homicide of an unborn child is a Class IIIA felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years after the date ordered by the court and shall order that the operator's license of such person be revoked for the same period. The revocation shall not run concurrently with any jail term imposed.

(c) If the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of [section 60-6,196](#) or [60-6,197.06](#) and the defendant has a prior conviction for a violation of [section 60-6,196](#) or a city or village ordinance enacted in conformance with [section 60-6,196](#), motor vehicle homicide of an unborn child is a Class IIA felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years after the date ordered by the court and shall order that the operator's license of such person be revoked for the same period. The revocation shall not run concurrently with any jail term imposed.

(4) The crime punishable under this section shall be treated as a separate and distinct offense from any other offense arising out of acts alleged to have been committed while the person was in violation of this section.

### **§ 28-396. Unborn child, defined.**

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For purposes of the Assault of an Unborn Child Act, unborn child means an individual member of the species *Homo sapiens* at any stage of development in utero.

[R.R.S. Neb. § 28-396](#)

### **Neb. Rev. Stat. § 28-397. Assault of an unborn child in the first degree; penalty**

(1) A person commits the offense of assault of an unborn child in the first degree if he or she, during the commission of any criminal assault on a pregnant woman, intentionally or knowingly causes serious bodily injury to her unborn child.

(2) Assault of an unborn child in the first degree is a Class IIA felony.

### **Neb. Rev. Stat. § 28-398. Assault of an unborn child in the second degree; penalty**

(1) A person commits the offense of assault of an unborn child in the second degree if he or she, during the commission of any criminal assault on a pregnant woman, recklessly causes serious bodily injury to her unborn child with a dangerous instrument.

(2) Assault of an unborn child in the second degree is a Class IIIA felony.

### **Neb. Rev. Stat. § 28-399. Assault of an unborn child in the third degree; penalty**

(1) A person commits the offense of assault of an unborn child in the third degree if he or she, during the commission of any criminal assault on a pregnant woman, recklessly causes serious bodily injury to her unborn child.

(2) Assault of an unborn child in the third degree is a Class I misdemeanor.

### **Neb. Rev. Stat. § 28-3,100. Applicability of act**

The Assault of an Unborn Child Act does not apply to:

- (1) Any act or conduct that is committed or engaged in by the mother of the unborn child;
- (2) Any medical procedure performed with the consent of the mother; or
- (3) Dispensing a drug or device in accordance with law or administering a drug or device prescribed in accordance with law.

### **Neb. Rev. Stat. § 28-3,101. Prosecution of separate acts**

Assault on a pregnant woman and assault on her unborn child shall be considered as separate acts or conduct for purposes of prosecution.

### **Neb. Rev. Stat. § 28-3,103. Terms, defined**

For purposes of the Pain-Capable Unborn Child Protection Act:

- (1) Abortion means the use or prescription of any instrument, medicine, drug, or other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma, or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy;
- (2) Attempt to perform or induce an abortion means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this state in violation of the Pain-Capable Unborn Child Protection Act;
- (3) Fertilization means the fusion of a human spermatozoon with a human ovum;
- (4) Medical emergency means a condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function;
- (5) Postfertilization age means the age of the unborn child as calculated from the fertilization of the human ovum;
- (6) Reasonable medical judgment means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved;
- (7) Physician means any person licensed to practice medicine and surgery or osteopathic medicine under the Uniform Credentialing Act;

(8) Probable postfertilization age of the unborn child means what, in reasonable medical judgment, will with reasonable probability be the postfertilization age of the unborn child at the time the abortion is planned to be performed;

(9) Unborn child or fetus each mean an individual organism of the species homo sapiens from fertilization until live birth; and

(10) Woman means a female human being whether or not she has reached the age of majority.

**Neb. Rev. Stat. § 28-3,105. Determination of probable postfertilization age of unborn child; physician; duties**

(1) Except in the case of a medical emergency which prevents compliance with this section, no abortion shall be performed or induced or be attempted to be performed or induced unless the physician performing or inducing it has first made a determination of the probable postfertilization age of the unborn child or relied upon such a determination made by another physician. In making such a determination, a physician shall make such inquiries of the woman and perform or cause to be performed such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to postfertilization age.

(2) Failure by any physician to conform to any requirement of this section constitutes unprofessional conduct pursuant to [section 38-2021](#).

**Neb. Rev. Stat. § 28-3,106. Abortion; performance; restrictions**

No person shall perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing the abortion or by another physician upon whose determination that physician relies, that the probable postfertilization age of the woman's unborn child is twenty or more weeks unless, in reasonable medical judgment (1) she has a condition which so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function or (2) it is necessary to preserve the life of an unborn child. No such condition shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function. In such a case, the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive, unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the woman than would another available method. No such greater risk shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.



**Neb. Rev. Stat. § 28-3,107. Report to Department of Health and Human Services; contents; department; issue public report; failure to file report; late fee; prohibited acts; penalty**

(1) Any physician who performs or induces or attempts to perform or induce an abortion shall report to the Department of Health and Human Services, on a schedule and in accordance with forms and rules and regulations adopted and promulgated by the department:

- (a) If a determination of probable postfertilization age was made, the probable postfertilization age determined and the method and basis of the determination;
- (b) If a determination of probable postfertilization age was not made, the basis of the determination that a medical emergency existed;
- (c) If the probable postfertilization age was determined to be twenty or more weeks, the basis of the determination that the pregnant woman had a condition which so complicated her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, or the basis of the determination that it was necessary to preserve the life of an unborn child; and
- (d) The method used for the abortion and, in the case of an abortion performed when the probable postfertilization age was determined to be twenty or more weeks, whether the method of abortion used was one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive or, if such a method was not used, the basis of the determination that termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the woman than would other available methods.

(2) By June 30 of each year, the department shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection (1) of this section. Each such report shall also provide the statistics for all previous calendar years during which this section was in effect, adjusted to reflect any additional information from late or corrected reports. The department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any pregnant woman upon whom an abortion was performed.

(3) Any physician who fails to submit a report by the end of thirty days following the due date shall be subject to a late fee of five hundred dollars for each additional thirty-day period or portion of a thirty-day period the report is overdue. Any physician required to report in accordance with the Pain-Capable Unborn Child Protection Act who has not submitted a report, or has submitted only an incomplete report, more than one year following the due date, may, in an action brought in the manner in which actions are brought to enforce the Uniform Credentialing Act pursuant to [section 38-1,139](#), be directed by a court of competent jurisdiction to submit a complete report within a time period stated by court order or be subject to civil contempt. Failure by any physician to conform to any requirement of this section, other than late filing of a report, constitutes unprofessional conduct pursuant to [section 38-2021](#). Failure by any physician to submit a complete report in accordance with a court order constitutes unprofessional

conduct pursuant to [section 38-2021](#). Intentional or reckless falsification of any report required under this section is a Class V misdemeanor.

(4) Within ninety days after October 15, 2010, the department shall adopt and promulgate rules and regulations to assist in compliance with this section.

### **Neb. Rev. Stat. § 28-3,108. Prohibited abortion; penalty**

Any person who intentionally or recklessly performs or attempts to perform an abortion in violation of [section 28-3,106](#) is guilty of a Class IV felony. No penalty shall be assessed against the woman upon whom the abortion is performed or attempted to be performed.

### **§ 71-6902. Performance of abortion; notarized written consent required.**

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Except in the case of a medical emergency or except as provided in sections 71-6902.01, 71-6903, and 71-6906, no person shall perform an abortion upon a pregnant woman unless, in the case of a woman who is less than eighteen years of age, he or she first obtains the notarized written consent of both the pregnant woman and one of her parents or a legal guardian or, in the case of a woman for whom a guardian has been appointed pursuant to sections 30-2617 to 30-2629, he or she first obtains the notarized written consent of her guardian. In deciding whether to grant such consent, a pregnant woman's parent or guardian shall consider only his or her child's or ward's best interest.

[R.R.S. Neb. § 71-6902](#)

### **§ 71-6902.01. Victim of abuse, sexual abuse, or child abuse or neglect; attending physician; duties; liability.**

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If the pregnant woman declares in a signed written statement that she is a victim of abuse as defined in section 28-351, sexual abuse as defined in section 28-367, or child abuse or neglect as defined in section 28-710 by either of her parents or her legal guardians, then the attending physician shall obtain the notarized written consent required by section 71-6902 from a grandparent specified by the pregnant woman. The physician who intends to perform the abortion shall certify in the pregnant woman's medical record that he or she has received the written declaration of abuse or neglect. Any physician relying in good faith on a written statement under this section shall not be civilly or criminally liable under sections 71-6901 to 71-6911 for failure to obtain consent. If such a declaration is made, the attending physician or his or her agent shall inform the pregnant woman of his or her duty to notify the proper authorities pursuant to sections 28-372 and 28-711.

[R.R.S. Neb. § 71-6902.01](#)

## **§ 71-6902.02. Coercion to obtain abortion; prohibited; denial of financial support; effect.**

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No parent, guardian, or any other person shall coerce a pregnant woman to obtain an abortion. If a pregnant woman is denied financial support by her parents, guardians, or custodians due to her refusal to obtain an abortion, the pregnant woman shall be deemed emancipated for purposes of eligibility for public assistance benefits, except that such benefits may not be used to obtain an abortion.

[R.R.S. Neb. § 71-6902.02](#)

## **§ 71-6903. Abortion; authorized by court; when; procedures; confidentiality and anonymity; guardian ad litem; court order; specific factual findings and legal conclusions.**

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(1) The requirements and procedures under this section are available to pregnant women whether or not they are residents of this state.

(2) If a pregnant woman elects not to obtain the consent of her parents or guardians, a judge of a district court, separate juvenile court, or county court sitting as a juvenile court shall, upon petition or motion and after an appropriate hearing, authorize a physician to perform the abortion if the court determines by clear and convincing evidence that the pregnant woman is both sufficiently mature and well-informed to decide whether to have an abortion. If the court does not make the finding specified in this subsection or subsection (3) of this section, it shall dismiss the petition.

(3) If the court finds, by clear and convincing evidence, that there is evidence of abuse as defined in section 28-351, sexual abuse as defined in section 28-367, or child abuse or neglect as defined in section 28-710 of the pregnant woman by a parent or a guardian or that an abortion without the consent of a parent or a guardian is in the best interest of the pregnant woman, the court shall issue an order authorizing the pregnant woman to consent to the performance or inducement of an abortion without the consent of a parent or a guardian. If the court does not make the finding specified in this subsection or subsection (2) of this section, it shall dismiss the petition.

(4) The pregnant woman may commence an action for waiver of the consent requirement by the filing of a petition or motion personally, by mail, or by facsimile on a form provided by the State Court Administrator.

(5) The State Court Administrator shall develop the petition form and accompanying instructions on the procedure for petitioning the court for a waiver of consent, including the name, address, telephone number, and facsimile number of each court in the state. A sufficient number of petition forms and instructions shall be made available in each courthouse in such place that members of the general public may obtain a form and instructions without requesting such form and instructions from the clerk of the court or other court personnel. The State Court Administrator shall also make such forms and instructions available on a web site maintained by the Supreme Court. The clerk of the court shall assist in administrative matters and filing the petition for waiver of consent.

(6) Proceedings in court pursuant to this section shall be confidential and shall ensure the anonymity of the pregnant woman. The pregnant woman shall have the right to file her petition in the court using a pseudonym or using solely her initials. Proceedings shall be held in camera. Only the pregnant woman, the pregnant woman's guardian ad litem, the pregnant woman's

attorney, and a person whose presence is specifically requested by the pregnant woman or the pregnant woman's attorney may attend the hearing on the petition. All testimony, all documents, all other evidence presented to the court, the petition and any order entered, and all records of any nature and kind relating to the matter shall be maintained and sealed by the clerk of the court and shall not be open to any person except upon order of the court for good cause shown. A separate docket or the confidential index within the electronic case management system for the purposes of this section shall be maintained by the clerk of the court and shall likewise be sealed and not opened to inspection by any person except upon order of the court for good cause shown.

(7) A pregnant woman who is subject to this section may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for her. The court shall advise the pregnant woman that she has a right to court-appointed counsel and shall, upon her request, provide her with such counsel. Such counsel shall receive a fee to be fixed by the court and to be paid out of the treasury of the county in which the proceeding was held.

(8) Proceedings in court pursuant to this section shall be given such precedence on the trial docket over other pending matters so that the court may reach a decision promptly and without delay to serve the best interest of the pregnant woman. In no case shall the court fail to rule within seven calendar days from the time the petition is filed. If the court fails to rule within the required time period, the pregnant woman may file an application for a writ of mandamus with the Supreme Court. If cause for a writ of mandamus exists, the writ shall issue within three days.

(9) The court shall issue a written order which includes specific factual findings and legal conclusions supporting its decision which shall be provided immediately to the pregnant woman, the pregnant woman's guardian ad litem, the pregnant woman's attorney, and any other person designated by the pregnant woman to receive the order. Further, the court shall order that a confidential record of the evidence and the judge's findings and conclusions be maintained. At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect, and understanding of the pregnant woman.

[R.R.S. Neb. § 71-6903](#)

### **§ 71-6904. Appeal; procedure; confidentiality.**

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(1) An appeal to the Supreme Court shall be available to any pregnant woman for whom a court denies an order authorizing an abortion without consent. An order authorizing an abortion without consent shall not be subject to appeal.

(2) An adverse ruling by the court may be appealed to the Supreme Court.

(3) A pregnant woman may file a notice of appeal of any final order to the Supreme Court. The State Court Administrator shall develop the form for notice of appeal and accompanying instructions on the procedure for an appeal. A sufficient number of forms for notice of appeal and instructions shall be made available in each courthouse in such place that members of the general public can obtain a form and instructions without requesting such form and instructions from the clerk of the court or other court personnel.

(4) The clerk of the court shall cause the court transcript and bill of exceptions to be filed with the Supreme Court within four business days, but in no event later than seven calendar days, from the date of the filing of the notice of appeal.

(5) In all appeals under this section the pregnant woman shall have the right of a confidential and expedited appeal and the right to counsel at the appellate level if not already represented. Such counsel shall be appointed by the court and shall receive a fee to be fixed by the court and to be

paid out of the treasury of the county in which the proceeding was held. The pregnant woman shall not be required to appear.

(6) The Supreme Court shall hear the appeal de novo on the record and issue a written decision which shall be provided immediately to the pregnant woman, the pregnant woman's guardian ad litem, the pregnant woman's attorney, or any other person designated by the pregnant woman to receive the order.

(7) The Supreme Court shall rule within seven calendar days from the time of the docketing of the appeal in the Supreme Court.

(8) The Supreme Court shall adopt and promulgate rules to ensure that proceedings under this section are handled in a confidential and expeditious manner.

[R.R.S. Neb. § 71-6904](#)

### **§ 71-6906. Performance of abortion; consent not required; when.**

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Consent shall not be required pursuant to sections 71-6901 to 71-6911 if any of the following conditions exist:

(1) The attending physician certifies in the pregnant woman's medical record that a medical emergency exists and there is insufficient time to obtain the required consent; or

(2) Consent is waived under section 71-6903.

[R.R.S. Neb. § 71-6906](#)

### **§ 71-6907. Violation by physician; penalty; civil action; immunity; prohibited acts; violation; penalty.**

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(1) Any physician or attending physician who knowingly and intentionally or with reckless disregard performs an abortion in violation of sections 71-6901 to 71-6906 and 71-6909 to 71-6911 shall be guilty of a Class III misdemeanor.

(2) Performance of an abortion in violation of such sections shall be grounds for a civil action by a person wrongfully denied the right and opportunity to consent.

(3) A person shall be immune from liability under such sections (a) if he or she establishes by written evidence that he or she relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant woman regarding information necessary to comply with such sections are bona fide and true or (b) if the person has performed an abortion authorized by a court order issued pursuant to section 71-6903 or 71-6904.

(4) Any person not authorized to provide consent under sections 71-6901 to 71-6911 who provides consent is guilty of a Class III misdemeanor.

(5) Any person who coerces a pregnant woman to have an abortion is guilty of a Class III misdemeanor.

[R.R.S. Neb. § 71-6907](#)

### **§ 71-6909. Physician; report; contents; form; compilation by department.**

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A monthly report indicating only the number of consents obtained under sections 71-6901 to 71-6911, the number of times in which exceptions were made to the consent requirement under such sections, the type of exception, the pregnant woman's age, and the number of prior pregnancies

and prior abortions of the pregnant woman shall be filed by the physician with the department on forms prescribed by the department. The name of the pregnant woman shall not be used on the forms. A compilation of the data reported shall be made by the department on an annual basis and shall be available to the public.

[R.R.S. Neb. § 71-6909](#)