

## Summary: 2023 Nebraska Heartbeat Act

What it is:

- The Nebraska Heartbeat Act would provide *babies who have a heartbeat* protection under the law from abortion.

How it works:

- The Nebraska Heartbeat Act would require that a doctor, before proceeding with any abortion, first perform an ultrasound in accordance with standard medical procedure to listen for a fetal heartbeat.
- If there is a heartbeat present, an abortion may not be performed.

Are there exceptions?

- An abortion performed in the event of a medical emergency would not be a violation.
- An abortion performed in case of rape or incest would not be a violation.

How will it be enforced?

- No woman may be held liable for a violation of this act—only abortionists.
- There are no criminal or civil penalties, even for the doctor/abortionist.
- A doctor/abortionist who has allegedly violated the Nebraska Heartbeat Act would have a hearing pursuant to the Uniform Credentialing Act, just like any other instance where a doctor has allegedly committed an act of unprofessional conduct under Nebraska law.
  - At the hearing, the Director of Public Health would, in consultation with the Nebraska Board of Medicine and Surgery, determine whether the Nebraska Heartbeat Act has been violated.
  - If the director finds the Nebraska Heartbeat Act has been violated, the doctor/abortionist's medical license will be subject to discipline. If the doctor/abortionist performed an unlawful abortion in violation of the Nebraska Heartbeat Act, his medical license will be subject to revocation.

What about contraception, IVF, care after miscarriage, or ectopic pregnancies?

- 1) Section 2 states that the act applies only to *intrauterine pregnancies*—where an unborn child is already *inside the uterus*. That takes care of IVF, contraception, and treatment of ectopic pregnancy. They are not affected.
- 2) In addition, the bill's protections are not applicable unless *there is a heartbeat present* in that baby inside the uterus. (That is approximately 6 weeks into the pregnancy.)
- 3) To be triply sure and triply clear, Section 3(1) states that the removal of ectopic pregnancy, the removal of the remains of a child who has already died (such as by miscarriage), and the termination or loss of life of a child outside the womb due to IVF are all *not affected* by the Nebraska Heartbeat Act.

## Section-by-section breakdown of the Nebraska Heartbeat Act:

- **Section 1** names the act: The Nebraska Heartbeat Act.
- **Section 2** provides that the act shall apply *only to intrauterine pregnancies*—those existing inside the uterus. (By definition, this excludes ectopic pregnancies and embryos that have not implanted in the mother’s womb, including in the case of in vitro fertilization.)
- **Section 3** defines terms.
  - 3(1) defines “Abortion.” It includes both surgically-performed and chemical abortions. It also makes clear that **none of the following may be considered abortions** under the Nebraska Heartbeat Act:
    - Removal of ectopic pregnancies; removal of the remains of a child who has already died (such as in the case of miscarriage); an act done with the intention to save the life of the unborn child; the accidental or unintentional death of an unborn child; or the termination or loss of an unborn child’s life before implantation in the uterus, including due to IVF.
  - 3(3) defines “Medical emergency.” Under this definition, medical emergency means any condition which in reasonable medical judgment so complicates the condition of a pregnant woman that is necessary to terminate the pregnancy to save her life.
  - 3(5) defines “Reasonable medical judgment” as a medical judgment that could be made by a reasonably prudent physician knowledgeable about the case and the circumstances.
  - 3(6) defines “Unborn child.” Remember that **not every unborn child is protected by the Nebraska Heartbeat Act**—only those who are in the uterus and have a heartbeat (and where an exception is not present).
- **Section 4** is the heart of the bill—it says what a doctor is required to do when asked to perform an abortion.
  - 4(1) says the doctor must estimate and record the child’s gestational age, perform an ultrasound in accordance with standard medical procedure to listen for a heartbeat, and record the result of the ultrasound.
  - 4(2) says that **it shall be unlawful for the doctor to perform an abortion:**
    - (i) Before estimating and recording gestational age and testing for a heartbeat; or
    - (ii) After determining the unborn child has a **detectable heartbeat**.
  - 4(3) lays out the **exceptions**: Life of the mother (medical emergency); rape; and incest. If an exception exists, the doctor may perform the abortion **and** is not required to test for a heartbeat.
- **Section 5** lays out the rules for what the doctor must do if he performs an abortion due to one of the exceptions (medical emergency, rape, or incest).
  - 5(1) says that if the abortion is performed due to **medical emergency**, the doctor has to explain the medical emergency in the woman’s medical record.
  - 5(2) says that if the abortion is performed due to **rape or incest**, the doctor has to note in the medical record that rape or incest is the reason for the abortion, and must also note in the record that he has complied with all the duties that a health

care provider *already has under Nebraska law* (under Neb. Rev. Stat. § 28-902) when he is approached by a victim of sexual assault or incest and which are *applicable to that case*.

- **Section 6** says that **no woman who has an abortion** will be liable for a violation of the Nebraska Heartbeat Act.
- **Sections 7-13** lay out the process for what happens when a doctor is alleged to have violated the Nebraska Heartbeat Act—the same process that happens anytime a doctor is alleged to have committed any kind of unprofessional conduct under the already-existing Uniform Credentialing Act.
  - **Sections 9, 10, and 11** specifically state that if it is found the doctor/abortionist has performed an **unlawful abortion** in violation of the Nebraska Heartbeat Act, his license is to be subject to revocation.
- **Section 14** is the severability clause, stating that if for some reason a court finds something in the act to be unconstitutional, the rest of the act shall not be affected.
- **Section 15** is the repealer clause, stating that the old, unamended statutes shall be repealed and make way for the new, amended statutes as outlined in this bill.
- **Section 16** is the emergency clause, stating that the bill shall take effect upon passage and approval.

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL**

Introduced by

Read first time

Committee:

- 1 A BILL FOR AN ACT relating to abortion; to amend sections 38-192, 38-193,  
2 and 38-196, Reissue Revised Statutes of Nebraska, and sections  
3 38-178, 38-179, 38-2021, and 38-2894, Revised Statutes Cumulative  
4 Supplement, 2022; to adopt the Nebraska Heartbeat Act; to provide  
5 for discipline under the Uniform Credentialing Act; to harmonize  
6 provisions; to provide severability; to repeal the original  
7 sections; and to declare an emergency.  
8 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 6 of this act shall be known and may be  
2 cited as the Nebraska Heartbeat Act.

3           Sec. 2. The Nebraska Heartbeat Act shall only apply to intrauterine  
4 pregnancies.

5           Sec. 3. For purposes of the Nebraska Heartbeat Act:

6           (1)(a) Abortion means the prescription or use of any instrument,  
7 device, medicine, drug, or substance to or upon a woman known to be  
8 pregnant with the specific intent of terminating the life of her unborn  
9 child.

10          (b) Abortion shall under no circumstances be interpreted to include  
11 the following:

12           (i) Removal of ectopic pregnancy;

13           (ii) Removal of the remains of an unborn child who has already died;

14           (iii) An act done with the intention to save the life or preserve  
15 the health of the unborn child;

16           (iv) The accidental or unintentional termination of the life of an  
17 unborn child; or

18           (v) During the practice of in vitro fertilization or another  
19 assisted reproductive technology, the termination or loss of the life of  
20 an unborn child who is not being carried inside a woman's body;

21          (2) Fetal heartbeat means cardiac activity or the steady and  
22 repetitive rhythmic contraction of the fetal heart within the gestational  
23 sac;

24          (3)(a) Medical emergency means any condition which, in reasonable  
25 medical judgment, so complicates the medical condition of the pregnant  
26 woman as to necessitate the termination of her pregnancy to avert her  
27 death or for which a delay in terminating her pregnancy will create a  
28 serious risk of substantial and irreversible physical impairment of a  
29 major bodily function.

30          (b) No condition shall be deemed a medical emergency if based on a  
31 claim or diagnosis that the woman will engage in conduct which would

1 result in her death or in substantial and irreversible physical  
2 impairment of a major bodily function;

3 (4) Pregnant means the condition of having a living unborn child  
4 inside one's body;

5 (5) Reasonable medical judgment means a medical judgment that could  
6 be made by a reasonably prudent physician, knowledgeable about the case  
7 and the treatment possibilities with respect to the medical conditions  
8 involved; and

9 (6) Unborn child means an individual living member of the species  
10 homo sapiens, throughout the embryonic and fetal stages of development to  
11 full gestation and childbirth.

12 Sec. 4. (1) Any physician, before performing or inducing an  
13 abortion, shall first:

14 (a) Estimate the gestational age of the unborn child;

15 (b) Perform an ultrasound in accordance with standard medical  
16 procedure to determine if a fetal heartbeat is present; and

17 (c) Record in the pregnant woman's medical record:

18 (i) The method used to estimate the gestational age of the unborn  
19 child;

20 (ii) The method used to test for a fetal heartbeat; and

21 (iii) The date, time, and results of such estimate and test.

22 (2) Notwithstanding any provision of law in conflict with the  
23 Nebraska Heartbeat Act, it shall be unlawful for any physician to perform  
24 or induce an abortion:

25 (a) Before fulfilling the requirements of subsection (1) of this  
26 section; or

27 (b) After determining that the unborn child has a detectable fetal  
28 heartbeat.

29 (3) It shall not be a violation of this section for a physician to  
30 perform or induce an abortion in the case of:

31 (a) Medical emergency;

1           (b) Pregnancy resulting from sexual assault as defined in section  
2           28-319 or 28-319.01; or

3           (c) Pregnancy resulting from incest as defined in section 28-703.

4           Sec. 5. (1) If a physician performs or induces an abortion because  
5           of a medical emergency pursuant to subdivision (3)(a) of section 4 of  
6           this act, the physician shall certify in writing that a medical emergency  
7           existed and explain the medical emergency in the written certification.  
8           The physician shall keep the written certification in the woman's medical  
9           record.

10           (2) If the physician performs or induces an abortion in the case of  
11           sexual assault or incest pursuant to subdivision (3)(b) or (c) of section  
12           4 of this act, the physician shall certify in writing that the abortion  
13           was performed because of sexual assault or incest and that the physician  
14           complied with all the duties of a health care provider required by  
15           section 28-902 that are applicable to that case. The physician shall keep  
16           the written certification in the woman's medical record.

17           Sec. 6. No woman upon whom an abortion is attempted, induced, or  
18           performed shall be liable for a violation of the Nebraska Heartbeat Act.

19           Sec. 7. Section 38-178, Revised Statutes Cumulative Supplement,  
20           2022, is amended to read:

21           38-178 Except as otherwise provided in sections 38-1,119 to  
22           38-1,123, a credential to practice a profession may be issued subject to  
23           discipline, denied, refused renewal, or have other disciplinary measures  
24           taken against it in accordance with section 38-183, 38-185, or 38-186 on  
25           any of the following grounds:

26           (1) Misrepresentation of material facts in procuring or attempting  
27           to procure a credential;

28           (2) Immoral or dishonorable conduct evidencing unfitness to practice  
29           the profession in this state;

30           (3) Abuse of, dependence on, or active addiction to alcohol, any  
31           controlled substance, or any mind-altering substance;

1 (4) Failure to comply with a treatment program or an aftercare  
2 program, including, but not limited to, a program entered into under the  
3 Licensee Assistance Program established pursuant to section 38-175;

4 (5) Conviction of (a) a misdemeanor or felony under Nebraska law or  
5 federal law, or (b) a crime in any jurisdiction which, if committed  
6 within this state, would have constituted a misdemeanor or felony under  
7 Nebraska law and which has a rational connection with the fitness or  
8 capacity of the applicant or credential holder to practice the  
9 profession;

10 (6) Practice of the profession (a) fraudulently, (b) beyond its  
11 authorized scope, (c) with gross incompetence or gross negligence, or (d)  
12 in a pattern of incompetent or negligent conduct;

13 (7) Practice of the profession while the ability to practice is  
14 impaired by alcohol, controlled substances, drugs, mind-altering  
15 substances, physical disability, mental disability, or emotional  
16 disability;

17 (8) Physical or mental incapacity to practice the profession as  
18 evidenced by a legal judgment or a determination by other lawful means;

19 (9) Illness, deterioration, or disability that impairs the ability  
20 to practice the profession;

21 (10) Permitting, aiding, or abetting the practice of a profession or  
22 the performance of activities requiring a credential by a person not  
23 credentialed to do so;

24 (11) Performing or offering to perform scleral tattooing as defined  
25 in section 38-10,172 by a person not credentialed to do so;

26 (12) Having had his or her credential denied, refused renewal,  
27 limited, suspended, revoked, or disciplined in any manner similar to  
28 section 38-196 by another state or jurisdiction based upon acts by the  
29 applicant or credential holder similar to acts described in this section;

30 (13) Use of untruthful, deceptive, or misleading statements in  
31 advertisements, including failure to comply with section 38-124;



1 (14) Conviction of fraudulent or misleading advertising or  
2 conviction of a violation of the Uniform Deceptive Trade Practices Act;

3 (15) Distribution of intoxicating liquors, controlled substances, or  
4 drugs for any other than lawful purposes;

5 (16) Violations of the Uniform Credentialing Act or the rules and  
6 regulations relating to the particular profession;

7 (17) Unlawful invasion of the field of practice of any profession  
8 regulated by the Uniform Credentialing Act which the credential holder is  
9 not credentialed to practice;

10 (18) Violation of the Uniform Controlled Substances Act or any rules  
11 and regulations adopted pursuant to the act;

12 (19) Failure to file a report required by section 38-1,124,  
13 38-1,125, or 71-552;

14 (20) Failure to maintain the requirements necessary to obtain a  
15 credential;

16 (21) Violation of an order issued by the department;

17 (22) Violation of an assurance of compliance entered into under  
18 section 38-1,108;

19 (23) Failure to pay an administrative penalty;

20 (24) Unprofessional conduct as defined in section 38-179;

21 (25) Violation of the Automated Medication Systems Act;~~or~~

22 (26) Failure to comply with section 38-1,147; or ~~or~~

23 (27) Violation of the Nebraska Heartbeat Act.

24 Sec. 8. Section 38-179, Revised Statutes Cumulative Supplement,  
25 2022, is amended to read:

26 38-179 For purposes of section 38-178, unprofessional conduct means  
27 any departure from or failure to conform to the standards of acceptable  
28 and prevailing practice of a profession or the ethics of the profession,  
29 regardless of whether a person, consumer, or entity is injured, or  
30 conduct that is likely to deceive or defraud the public or is detrimental  
31 to the public interest, including, but not limited to:

1 (1) Receipt of fees on the assurance that an incurable disease can  
2 be permanently cured;

3 (2) Division of fees, or agreeing to split or divide the fees,  
4 received for professional services with any person for bringing or  
5 referring a consumer other than (a) with a partner or employee of the  
6 applicant or credential holder or his or her office or clinic, (b) with a  
7 landlord of the applicant or credential holder pursuant to a written  
8 agreement that provides for payment of rent based on gross receipts, or  
9 (c) with a former partner or employee of the applicant or credential  
10 holder based on a retirement plan or separation agreement;

11 (3) Obtaining any fee for professional services by fraud, deceit, or  
12 misrepresentation, including, but not limited to, falsification of third-  
13 party claim documents;

14 (4) Cheating on or attempting to subvert the credentialing  
15 examination;

16 (5) Assisting in the care or treatment of a consumer without the  
17 consent of such consumer or his or her legal representative;

18 (6) Use of any letters, words, or terms, either as a prefix, affix,  
19 or suffix, on stationery, in advertisements, or otherwise, indicating  
20 that such person is entitled to practice a profession for which he or she  
21 is not credentialed;

22 (7) Performing, procuring, or aiding and abetting in the performance  
23 or procurement of a criminal abortion;

24 (8) Knowingly disclosing confidential information except as  
25 otherwise permitted by law;

26 (9) Commission of any act of sexual abuse, misconduct, or  
27 exploitation related to the practice of the profession of the applicant  
28 or credential holder;

29 (10) Failure to keep and maintain adequate records of treatment or  
30 service;

31 (11) Prescribing, administering, distributing, dispensing, giving,

1 or selling any controlled substance or other drug recognized as addictive  
2 or dangerous for other than a medically accepted therapeutic purpose;

3 (12) Prescribing any controlled substance to (a) oneself or (b)  
4 except in the case of a medical emergency (i) one's spouse, (ii) one's  
5 child, (iii) one's parent, (iv) one's sibling, or (v) any other person  
6 living in the same household as the prescriber;

7 (13) Failure to comply with any federal, state, or municipal law,  
8 ordinance, rule, or regulation that pertains to the applicable  
9 profession;

10 (14) Disruptive behavior, whether verbal or physical, which  
11 interferes with consumer care or could reasonably be expected to  
12 interfere with such care; ~~and~~

13 (15) Violation of the Nebraska Heartbeat Act; and

14 (16) ~~(15)~~ Such other acts as may be defined in rules and  
15 regulations.

16 Nothing in this section shall be construed to exclude determination  
17 of additional conduct that is unprofessional by adjudication in  
18 individual contested cases.

19 Sec. 9. Section 38-192, Reissue Revised Statutes of Nebraska, is  
20 amended to read:

21 38-192 (1) If the director determines upon completion of a hearing  
22 under section 38-183 or 38-186 that a violation has occurred, the  
23 director may, at his or her discretion, consult with the appropriate  
24 board concerning sanctions to be imposed or terms and conditions of the  
25 sanctions. When the director consults with a board, the credential holder  
26 and the Attorney General shall be provided with a copy of the director's  
27 request, the recommendation of the board, and an opportunity to respond  
28 in such manner as the director determines.

29 (2) Except as provided in subsection (3) of this section, the The  
30 director shall have the authority through entry of an order to exercise  
31 in his or her discretion any or all of the sanctions authorized under

1 subsection (1) of section 38-196.

2 (3) If the director determines upon completion of a hearing under  
3 section 38-183 or 38-186 that a licensee has performed or induced an  
4 unlawful abortion in violation of section 4 of this act, the director  
5 shall enter an order imposing a sanction authorized under subdivision (2)  
6 of section 38-196.

7 Sec. 10. Section 38-193, Reissue Revised Statutes of Nebraska, is  
8 amended to read:

9 38-193 (1) If the petition is brought with respect to subdivision  
10 (3) of section 38-2021, the director shall make findings as to whether  
11 the licensee's conduct was necessary to save the life of a mother whose  
12 life was endangered by a physical disorder, physical illness, or physical  
13 injury, including a life-endangering physical condition caused by or  
14 arising from the pregnancy itself. The director shall have the authority  
15 through entry of an order to exercise in his or her discretion any or all  
16 of the sanctions authorized under section 38-196, irrespective of the  
17 petition.

18 (2) If the petition is brought with respect to subdivision (5) of  
19 section 38-2021, the director shall make findings as to whether the  
20 licensee performed or induced an unlawful abortion in violation of  
21 section 4 of this act. If the director finds such a violation, the  
22 director shall enter an order revoking the licensee's credential to  
23 practice pursuant to the Uniform Credentialing Act in the State of  
24 Nebraska in accordance with subsection (2) of section 38-196 and section  
25 38-1,100.

26 Sec. 11. Section 38-196, Reissue Revised Statutes of Nebraska, is  
27 amended to read:

28 38-196 (1) Except as provided in subsection (2) of this section,  
29 upon ~~upon~~ the completion of any hearing held regarding discipline of a  
30 credential, the director may dismiss the action or impose any of the  
31 following sanctions:

- 1           (a) ~~(1)~~ Censure;
- 2           (b) ~~(2)~~ Probation;
- 3           (c) ~~(3)~~ Limitation;
- 4           (d) ~~(4)~~ Civil penalty;
- 5           (e) ~~(5)~~ Suspension; or
- 6           (f) ~~(6)~~ Revocation.

7           (2) Upon completion of any hearing regarding discipline of a  
8 credential for performing or inducing an unlawful abortion in violation  
9 of section 4 of this act, if the director determines that such violation  
10 occurred, the director shall impose a sanction of revocation in  
11 accordance with section 38-1,100.

12           Sec. 12. Section 38-2021, Revised Statutes Cumulative Supplement,  
13 2022, is amended to read:

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

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

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

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

1 the pregnancy itself;~~and~~

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

4 (5) Violation of the Nebraska Heartbeat Act.

5 Sec. 13. Section 38-2894, Revised Statutes Cumulative Supplement,  
6 2022, is amended to read:

7 38-2894 (1) A registration to practice as a pharmacy technician may  
8 be denied, refused renewal, removed, or suspended or have other  
9 disciplinary measures taken against it by the department, with the  
10 recommendation of the board, for failure to meet the requirements of or  
11 for violation of any of the provisions of subdivisions (1) through (18)  
12 and (20) through (27) ~~(26)~~ of section 38-178 and sections 38-2890 to  
13 38-2897 or the rules and regulations adopted under such sections.

14 (2) If the department proposes to deny, refuse renewal of, or remove  
15 or suspend a registration, it shall send the applicant or registrant a  
16 notice setting forth the action to be taken and the reasons for the  
17 determination. The denial, refusal to renew, removal, or suspension shall  
18 become final thirty days after mailing the notice unless the applicant or  
19 registrant gives written notice to the department of his or her desire  
20 for an informal conference or for a formal hearing.

21 (3) Notice may be served by any method specified in section  
22 25-505.01, or the department may permit substitute or constructive  
23 service as provided in section 25-517.02 when service cannot be made with  
24 reasonable diligence by any of the methods specified in section  
25 25-505.01.

26 (4) Pharmacy technicians may participate in the Licensee Assistance  
27 Program described in section 38-175.

28 Sec. 14. 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. 15. Original sections 38-192, 38-193, and 38-196, Reissue

1 Revised Statutes of Nebraska, and sections 38-178, 38-179, 38-2021, and  
2 38-2894, Revised Statutes Cumulative Supplement, 2022, are repealed.

3 Sec. 16. Since an emergency exists, this act takes effect when  
4 passed and approved according to law.