

LEGISLATIVE BILL 574

Approved by the Governor May 22, 2023

Introduced by Kauth, 31; Aguilar, 35; Albrecht, 17; Bostelman, 23; Brewer, 43; Clements, 2; DeKay, 40; Dorn, 30; Dover, 19; Erdman, 47; Halloran, 33; Hardin, 48; Holdcroft, 36; Hughes, 24; Ibach, 44; Jacobson, 42; Linehan, 39; Lippincott, 34; Lowe, 37; McDonnell, 5; Murman, 38; Sanders, 45; von Gillern, 4; Slama, 1; Hansen, B., 16.

A BILL FOR AN ACT relating to public health and welfare; to amend sections 38-192, 38-193, and 38-196, Reissue Revised Statutes of Nebraska, and sections 38-178, 38-179, 38-2021, and 38-2894, Revised Statutes Cumulative Supplement, 2022; to adopt the Preborn Child Protection Act and the Let Them Grow Act; to provide for discipline under the Uniform Credentialing Act; to harmonize provisions; to provide operative dates; to provide severability; to repeal the original sections; and to declare an emergency.

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

Section 1. Sections 1 to 6 of this act shall be known and may be cited as the Preborn Child Protection Act.

Sec. 2. The Preborn Child Protection Act only applies to intrauterine pregnancies.

Sec. 3. For purposes of the Preborn Child Protection Act:

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

(b) Abortion shall under no circumstances be interpreted to include:

(i) Removal of an ectopic pregnancy;

(ii) Removal of the remains of a preborn child who has already died;

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

(iv) The accidental or unintentional termination of the life of a preborn child; or

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

(2) Gestational age means the age of a preborn child as calculated from the first day of the last menstrual period of the pregnant woman;

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

(b) 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;

(4) Preborn child means an individual living member of the species homo sapiens, throughout the embryonic and fetal stages of development to full gestation and childbirth;

(5) Pregnant means the condition of having a living preborn child inside one's body; and

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

Sec. 4. (1) Except as provided in subsection (3) of this section, a physician, before performing or inducing an abortion, shall first:

(a) Determine, using standard medical practice, the gestational age of the preborn child; and

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

(i) The method used to determine the gestational age of the preborn child; and

(ii) The date, time, and results of such determination.

(2) Except as provided in subsection (3) of this section, it shall be unlawful for any physician to perform or induce an abortion:

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

(b) If the probable gestational age of the preborn child has been determined to be twelve or more weeks.

(3) It shall not be a violation of subsection (1) or (2) of this section for a physician to perform or induce an abortion in the case of:

(a) Medical emergency;

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

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

Sec. 5. (1) If a physician performs or induces an abortion because of a

medical emergency pursuant to subdivision (3)(a) of section 4 of this act, the physician shall certify in writing that a medical emergency existed and explain the medical emergency in the written certification. The physician shall keep the written certification in the woman's medical record.

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

Sec. 6. No woman upon whom an abortion is attempted, induced, or performed shall be liable for a violation of the Preborn Child Protection Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(23) Failure to pay an administrative penalty;

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

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

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

(27) Violation of the Preborn Child Protection Act.

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

38-179 For purposes of section 38-178, unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of a profession or the ethics of the profession, regardless of whether a person, consumer, or entity is injured, or conduct that is likely

to deceive or defraud the public or is detrimental to the public interest, including, but not limited to:

- (1) Receipt of fees on the assurance that an incurable disease can be permanently cured;
- (2) Division of fees, or agreeing to split or divide the fees, received for professional services with any person for bringing or referring a consumer other than (a) with a partner or employee of the applicant or credential holder or his or her office or clinic, (b) with a landlord of the applicant or credential holder pursuant to a written agreement that provides for payment of rent based on gross receipts, or (c) with a former partner or employee of the applicant or credential holder based on a retirement plan or separation agreement;
- (3) Obtaining any fee for professional services by fraud, deceit, or misrepresentation, including, but not limited to, falsification of third-party claim documents;
- (4) Cheating on or attempting to subvert the credentialing examination;
- (5) Assisting in the care or treatment of a consumer without the consent of such consumer or his or her legal representative;
- (6) Use of any letters, words, or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that such person is entitled to practice a profession for which he or she is not credentialed;
- (7) Performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion;
- (8) Knowingly disclosing confidential information except as otherwise permitted by law;
- (9) Commission of any act of sexual abuse, misconduct, or exploitation related to the practice of the profession of the applicant or credential holder;
- (10) Failure to keep and maintain adequate records of treatment or service;
- (11) Prescribing, administering, distributing, dispensing, giving, or selling any controlled substance or other drug recognized as addictive or dangerous for other than a medically accepted therapeutic purpose;
- (12) Prescribing any controlled substance to (a) oneself or (b) except in the case of a medical emergency (i) one's spouse, (ii) one's child, (iii) one's parent, (iv) one's sibling, or (v) any other person living in the same household as the prescriber;
- (13) Failure to comply with any federal, state, or municipal law, ordinance, rule, or regulation that pertains to the applicable profession;
- (14) Disruptive behavior, whether verbal or physical, which interferes with consumer care or could reasonably be expected to interfere with such care;

and
(15) Violation of the Preborn Child Protection Act;

(16) Beginning October 1, 2023, performing gender-altering procedures for an individual younger than nineteen years of age in violation of section 17 of this act; and

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

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

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

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

(2) Except as provided in subsection (3) of this section, ~~the~~ director shall have the authority through entry of an order to exercise in his or her discretion any or all of the sanctions authorized under subsection (1) of section 38-196.

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

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

38-193 (1) If the petition is brought with respect to subdivision (3) of section 38-2021, the director shall make findings as to whether the licensee'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. The director shall have the authority through entry of an order to exercise in his or her discretion any or all of the sanctions authorized under section 38-196, irrespective of the petition.

(2) If the petition is brought with respect to subdivision (5) of section 38-2021, the director shall make findings as to whether the licensee performed or induced an unlawful abortion in violation of section 4 of this act. If the director finds such a violation, the director shall enter an order revoking the licensee's credential to practice pursuant to the Uniform Credentialing Act in

the State of Nebraska in accordance with subsection (2) of section 38-196 and section 38-1,100.

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

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

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

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

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

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

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

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

(3) The intentional and knowing performance of a partial-birth abortion as defined in subdivision (8) of section 28-326, 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; ~~and~~

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

(5) Violation of the Preborn Child Protection Act.

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

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

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

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

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

Sec. 14. Sections 14 to 20 of this act shall be known and may be cited as the Let Them Grow Act.

Sec. 15. The Legislature finds that:

(1) The state has a compelling government interest in protecting the health and safety of its citizens, especially vulnerable children;

(2) Genital and nongenital gender-altering surgeries are generally not recommended for children, although evidence indicates referral for children to have such surgeries are becoming more frequent; and

(3) Genital and nongenital gender-altering surgery includes several irreversible and invasive procedures for biological males and biological females and involves the alteration of biologically healthy and functional body parts.

Sec. 16. For purposes of the Let Them Grow Act:

(1) Biological sex means the biological indication of male and female in the context of reproductive potential or capacity, such as sex chromosomes, naturally occurring sex hormones, gonads, and nonambiguous internal and external genitalia present at birth, without regard to an individual's psychological, chosen, or subjective experience of gender;

(2) Cross-sex hormones means testosterone or other androgens given to biological females in amounts that are larger or more potent than would normally occur naturally in healthy biological sex females and estrogen given to biological males in amounts that are larger or more potent than would

normally occur naturally in healthy biological sex males;

(3) Gender means the psychological, behavioral, social, and cultural aspects of being male or female;

(4) Gender-altering surgery means any medical or surgical service that seeks to surgically alter or remove healthy physical or anatomical characteristics or features that are typical for the individual's biological sex in order to instill or create physiological or anatomical characteristics that resemble a sex different from the individual's biological sex, including without limitation, genital or nongenital gender-altering surgery performed for the purpose of assisting an individual with a gender alteration;

(5) Gender alteration means the process in which a person goes from identifying with and living as a gender that corresponds to his or her biological sex to identifying with and living as a gender different from his or her biological sex and may involve social, legal, or physical changes;

(6)(a) Gender-altering procedures includes any medical or surgical service, including without limitation physician's services, inpatient and outpatient hospital services, or prescribed drugs related to gender alteration, that seeks to:

(i) Alter or remove physical or anatomical characteristics or features that are typical for the individual's biological sex; or

(ii) Instill or create physiological or anatomical characteristics that resemble a sex different from the individual's biological sex, including without limitation medical services that provide puberty-blocking drugs, cross-sex hormones, or other mechanisms to promote the development of feminizing or masculinizing features in the opposite biological sex, or genital or nongenital gender-altering surgery performed for the purpose of assisting an individual with a gender alteration;

(b) Gender-altering procedures does not include:

(i) Services to persons born with a medically verifiable disorder of sex development, including a person with external biological sex characteristics that are irresolvably ambiguous, such as those born with 46 XX chromosomes with virilization, 46 XY chromosomes with undervirilization, or having both ovarian and testicular tissue;

(ii) Services provided when a health care practitioner has otherwise diagnosed a disorder of sexual development that the health care practitioner has determined, through genetic or biochemical testing, that the person does not have normal sex-chromosome structure, sex-steroid production, or sex-steroid hormone action;

(iii) The acute and chronic treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of a gender-altering procedure, whether or not the gender-altering procedure was performed in accordance with state and federal law; or

(iv) Any procedure undertaken because the individual suffers from a physical disorder, physical injury, or physical illness that would, as certified by the health care practitioner, place the individual in imminent danger of death or impairment of major bodily function unless surgery is performed;

(7) Genital gender-altering surgery means a medical procedure performed for the purpose of assisting an individual with a gender alteration, including without limitation:

(a) Surgical procedures such as penectomy, orchiectomy, vaginoplasty, clitoroplasty, or vulvoplasty for biologically male patients or hysterectomy or ovariectomy for biologically female patients;

(b) Reconstruction of the fixed part of the urethra with or without a metoidioplasty; or

(c) Phalloplasty, vaginectomy, scrotoplasty, or implantation of erection or testicular prostheses for biologically female patients;

(8) Health care practitioner means a person licensed or certified under the Uniform Credentialing Act;

(9) Puberty-blocking drugs means gonadotropin-releasing hormone analogues or other synthetic drugs used in biological males to stop luteinizing hormone secretion and therefore testosterone secretion, or synthetic drugs used in biological females which stop the production of estrogens and progesterone, when used to delay or suppress pubertal development in children for the purpose of assisting an individual with a gender alteration; and

(10) Nongenital gender-altering surgery means medical procedures performed for the purpose of assisting an individual with a gender alteration, including without limitation:

(a) Surgical procedures for biologically male patients, such as voice surgery or thyroid cartilage reduction; or

(b) Surgical procedures for biologically female patients, such as subcutaneous mastectomy or voice surgery.

Sec. 17. (1) Except as provided in the Let Them Grow Act and the rules and regulations adopted and promulgated pursuant to the act, a health care practitioner shall not perform gender-altering procedures in this state for an individual younger than nineteen years of age.

(2) The intentional and knowing performance of gender-altering procedures by a health care practitioner for an individual younger than nineteen years of age in violation of subsection (1) of this section shall be considered unprofessional conduct as defined in section 38-179.

(3) This section does not apply to the continuation of treatment using puberty-blocking drugs, cross-sex hormones, or both when the course of treatment began before the operative date of this section.

(4) This section does not apply to nonsurgical gender-altering procedures when such procedures are provided in compliance with the rules and regulations adopted and promulgated pursuant to section 18 of this act.

Sec. 18. (1) The chief medical officer as designated in section 81-3115 shall adopt and promulgate such rules and regulations as are necessary to provide for nonsurgical gender-altering procedures for individuals younger than nineteen years of age, such as puberty-blocking drugs, cross-sex hormones, or both. Such rules and regulations shall be consistent with the Let Them Grow Act and, at a minimum, include the following:

(a) Specify that a health care practitioner may prescribe approved puberty-blocking drugs, cross-sex hormones, or both to an individual younger than nineteen years of age if such individual has a long-lasting and intense pattern of gender nonconformity or gender dysphoria which began or worsened at the start of puberty;

(b) Specific criteria, obligations, or conditions regulating the administration, prescribing, delivery, sale, or use of puberty-blocking drugs, cross-sex hormones, or both involving an individual younger than nineteen years of age in accordance with subdivision (1)(a) of this section, which shall, at a minimum, set forth the following:

(i) The minimum number of gender-identity-focused therapeutic hours required prior to an individual receiving puberty-blocking drugs, cross-sex hormones, or both;

(ii) Patient advisory requirements necessary for a health care practitioner to obtain informed patient consent;

(iii) Patient medical record documentation requirements to ensure compliance with the act; and

(iv) A minimum waiting period between the time the health care practitioner obtains informed patient consent and the administration, prescribing, or delivery of puberty-blocking drugs, cross-sex hormones, or both to such patient; and

(c) Specify that section 17 of this act does not apply to nonsurgical gender-altering procedures when such procedures are provided in compliance with the rules and regulations adopted and promulgated pursuant to this section.

(2) The Department of Health and Human Services may adopt and promulgate rules and regulations not inconsistent with the rules and regulations adopted and promulgated by the chief medical officer that are necessary to carry out the Let Them Grow Act.

Sec. 19. State funds shall not be directly or indirectly used, granted, paid, or distributed to any entity, organization, or individual for providing gender-altering procedures to an individual younger than nineteen years of age in violation of the Let Them Grow Act and the rules and regulations adopted and promulgated pursuant to the act.

Sec. 20. An individual that received a gender-altering procedure in violation of section 17 of this act after the operative date of this section and while such individual was younger than nineteen years of age, or the parent or guardian of such an individual, may bring a civil action for appropriate relief against the health care practitioner who performed the gender-altering procedure. Appropriate relief in an action under this section includes actual damages and reasonable attorney's fees. An action under this section shall be brought within two years after discovery of damages.

Sec. 21. Sections 14, 15, 16, 17, 18, 19, and 20 of this act become operative on October 1, 2023. The other sections of this act become operative on their effective date.

Sec. 22. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 23. Original sections 38-192, 38-193, and 38-196, Reissue Revised Statutes of Nebraska, and sections 38-178, 38-179, 38-2021, and 38-2894, Revised Statutes Cumulative Supplement, 2022, are repealed.

Sec. 24. Since an emergency exists, this act takes effect when passed and approved according to law.