CRIMINAL HOMICIDE ABORTION

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Utah Criminal Code by enacting the second degree felony of "criminal homicide abortion."

Highlighted Provisions:

This bill:

‣ includes "criminal homicide abortion" as "criminal homicide";

‣ describes the elements of criminal homicide abortion;

‣ provides that a person is not guilty of criminal homicide abortion if the abortion performed by the person is:

• necessary to avert the death of the woman on whom the abortion is performed;

• necessary to avert a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed; or

• performed on an unborn child who has a naturally occurring medical condition that makes it highly unlikely that the unborn child will survive more than 24 hours after birth, if there is not a medically acceptable intervention or procedure that: may be performed before or after the child's birth, may be performed without risk to the mother's health, and has a reasonable chance of extending the child's life beyond 24 hours;

‣ provides that a woman who seeks to have, or obtains, an abortion for herself is not criminally liable under this bill;

28   ▸   makes criminal homicide abortion a second degree felony; and

29   ▸   makes technical changes.

30   **Monies Appropriated in this Bill:**

31   None

32   **Other Special Clauses:**

33   None

34   **Utah Code Sections Affected:**

35   AMENDS:

36   **76-5-201**, as last amended by Laws of Utah 2002, Chapter 327

37   **76-7-314**, as last amended by Laws of Utah 2004, Chapter 272

38   **76-7-329**, as enacted by Laws of Utah 2004, Chapter 272

39   ENACTS:

40   **76-7-314.5**, Utah Code Annotated 1953

41

42   *Be it enacted by the Legislature of the state of Utah:*

43   Section 1. Section **76-5-201** is amended to read:

44   **76-5-201.   Criminal homicide -- Elements -- Designations of offenses.**

45   (1) (a) A person commits criminal homicide if he intentionally, knowingly, recklessly,

46   with criminal negligence, or acting with a mental state otherwise specified in the statute

47   defining the offense, causes the death of another human being, including an unborn child at any

48   stage of its development.

49   (b) There shall be no cause of action for criminal homicide for the death of an unborn

50   child caused by an abortion, unless the abortion constitutes criminal homicide abortion under

51   Section 76-7-314.5.

52   (2) Criminal homicide is aggravated murder, murder, manslaughter, child abuse

53   homicide, criminal homicide abortion, homicide by assault, negligent homicide, or automobile

54   homicide.

55   Section 2. Section **76-7-314** is amended to read:

56   **76-7-314.   Violations of abortion laws -- Classifications.**

57   (1) (a) Any person who intentionally performs an abortion other than as authorized by

58   this part is guilty of a felony of the third degree.

59   (b) (i) Notwithstanding any other provision of law, a woman who seeks to have or

60   obtains an abortion for herself is not criminally liable.

61   (ii) A woman upon whom a partial birth abortion is performed may not be prosecuted

62   under Section 76-7-314.5, 76-7-326, or 76-7-329 for a conspiracy to violate Section

63   76-7-314.5, 76-7-326, or 76-7-329.

64   (2) A willful violation of Section 76-7-307, 76-7-308, 76-7-310, 76-7-310.5, 76-7-311,

65   or 76-7-312 is a felony of the third degree.

66   (3) A violation of Section 76-7-326 or 76-7-329 is a felony of the third degree.

67   (4) A violation of any other provision of this part is a class A misdemeanor.

68   (5) The provisions and penalties of Section 76-7-314.5 supercede any conflicting

69   provisions or penalties of this section.

70   Section 3. Section **76-7-314.5** is enacted to read:

71   **76-7-314.5. Criminal homicide abortion.**

72   (1) Except as provided in Subsection (2), a person is guilty of criminal homicide

73   abortion if the person causes the death of an unborn child by intentionally performing an

74   abortion of the unborn child after the unborn child is viable to survive outside the womb.

75   (2) It is not a violation of this section if the abortion is:

76   (a) necessary to avert:

77   (i) the death of the woman on whom the abortion is performed; or

78   (ii) a serious risk of substantial and irreversible impairment of a major bodily function

79   of the woman on whom the abortion is performed; or

80   (b) (i) performed on an unborn child who has a naturally occurring medical condition

81   that makes it highly unlikely that the unborn child will survive more than 24 hours after birth;

82   and

83   (ii) there is not a medically acceptable intervention or procedure that:

84   (A) may be performed before or after the child's birth;

85   (B) may be performed without risk to the health of the woman on whom the abortion is

86   performed; and

87   (C) has a reasonable chance of extending the child's life beyond 24 hours.

88   (3) Notwithstanding any other provision of this section, a woman who seeks to have, or

89   obtains, an abortion for herself is not criminally liable.

90   (4) Criminal homicide abortion is a second degree felony.

91   Section 4. Section **76-7-329** is amended to read:

92   **76-7-329.   Person unauthorized to perform abortions -- Penalties.**

93   A person who is not legally authorized by the state to perform abortions, but who

94   nevertheless directly performs a partial birth abortion, is subject to Sections 76-7-301,

95   76-7-314, 76-7-314.5, 76-7-326, and 76-7-327.

Legislative Review Note
      as of   1-5-09 5:10 PM

Office of Legislative Research and General Counsel

Fiscal Note

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/30/2009, 7:52:08 AM, Lead Analyst: Syphus, G.

Office of the Legislative Fiscal Analyst