

Representative Paul Ray proposes the following substitute bill:

ABORTION LAW AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends portions of the Utah Criminal Code relating to abortion.

Highlighted Provisions:

This bill:

▶ removes an unconstitutional provision requiring that all abortions performed 90 days or more after the commencement of a pregnancy be performed in a hospital;

⌚→ ▶ defines the term "viable"; ⌚←

▶ provides that an abortion may only be performed in this state if:

- the unborn child is not viable **⌚→ [to survive outside the mother's womb] ⌚←** ; or
- the unborn child is viable **⌚→ [to survive outside the mother's womb] ⌚←** , if the abortion

is necessary to avert the death of the woman on whom the abortion is

performed, the abortion is necessary to avert a serious risk of substantial and

irreversible impairment of a major bodily function of the woman, **⌚→ [or] [the**

abortion is performed, under certain circumstances, on an unborn child who has

a naturally occurring medical condition that makes it highly unlikely that the

child will survive more than 24 hours after birth] two physicians who practice maternal fetal

medicine concur, in writing, that the fetus has a defect that is uniformly diagnosable and

uniformly lethal , or the woman is pregnant as a result of rape, rape of a child, or incest ⌚← ;

▶ provides that a violation of the provisions in the preceding paragraph constitute the second degree felony offense of "killing an unborn child";

▶ provides that a woman who seeks to have, or obtains, an abortion for herself is not



26 criminally liable;

- 27 ▶ makes technical changes; and
- 28 ▶ enacts an uncodified severability clause.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill provides a severability clause.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **76-7-302**, as last amended by Laws of Utah 2004, Chapter 90

36 **76-7-314**, as last amended by Laws of Utah 2004, Chapter 272

37 ENACTS:

38 **76-7-314.5**, Utah Code Annotated 1953

39 REPEALS:

40 **76-7-317.2**, as last amended by Laws of Utah 2008, Chapter 250

41 **Uncodified Material Affected:**

42 ENACTS UNCODIFIED MATERIAL

43

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

45 Section 1. Section **76-7-302** is amended to read:

46 **76-7-302. Circumstances under which abortion authorized.**

46a ~~Ĥ~~→ (1) As used in this section, "viable" means that the unborn child has reached a
 46b stage of fetal development when the unborn child is potentially able to live outside the womb
 46c ~~Š~~→ [by natural or artificial life-supportive systems] ←Š, as determined by the attending physician to a
 46d reasonable degree of medical certainty.

47 ~~[(1)] (2)~~ ←Ĥ An abortion may be performed in this state only by a physician licensed to
 47a practice

48 medicine under Title 58, Chapter 67, Utah Medical Practice Act or an osteopathic physician
 49 licensed to practice medicine under Title 58, Chapter 68, Utah Osteopathic Medical Practice
 50 Act [and, if performed 90 days or more after the commencement of the pregnancy as defined by
 51 competent medical practices, it shall be performed in a hospital].

52 ~~Ĥ~~→ ~~[(2)] (3)~~ ←Ĥ An abortion may be performed in this state only under the following
 52a circumstances:

53 ~~[(a) in the professional judgment of the pregnant woman's attending physician, the~~
 54 ~~abortion is necessary to save the pregnant woman's life;]~~

55 ~~[(b) the pregnancy is the result of rape or rape of a child, as defined by Sections~~
 56 ~~76-5-402 and 76-5-402.1, that was reported to a law enforcement agency prior to the abortion;]~~

57 ~~[(c) the pregnancy is the result of incest, as defined by Subsection 76-5-406(10) or~~
 58 ~~Section 76-7-102, and the incident was reported to a law enforcement agency prior to the~~
 59 ~~abortion;]~~

60 ~~[(d) in the professional judgment of the pregnant woman's attending physician, to~~
 61 ~~prevent grave damage to the pregnant woman's medical health; or]~~

62 ~~[(e) in the professional judgment of the pregnant woman's attending physician, to~~
 63 ~~prevent the birth of a child that would be born with grave defects;]~~

64 ~~[(3) After 20 weeks gestational age, measured from the date of conception, an abortion~~
 65 ~~may be performed only for those purposes and circumstances described in Subsections (2)(a),~~
 66 ~~(d), and (e);]~~

67 ~~[(4) The name of a victim reported pursuant to Subsection (2)(b) or (c) is confidential~~
 68 ~~and may not be revealed by law enforcement or any other party except upon approval of the~~
 69 ~~victim. This subsection does not effect or supersede parental notification requirements~~
 70 ~~otherwise provided by law;]~~

71 ~~(a) the unborn child is not viable $\hat{H} \rightarrow$ [to survive outside the mother's womb] $\leftarrow \hat{H}$; or~~

72 ~~(b) the unborn child is viable $\hat{H} \rightarrow$ [to survive outside the mother's womb] $\leftarrow \hat{H}$, if:~~

73 ~~(i) the abortion is necessary to avert:~~

74 ~~(A) the death of the woman on whom the abortion is performed; or~~

75 ~~(B) a serious risk of substantial and irreversible impairment of a major bodily function~~
 76 ~~of the woman on whom the abortion is performed; $\hat{H} \rightarrow$ [or]~~

77 ~~[(ii) (A) the abortion is performed on an unborn child who has a naturally occurring~~
 78 ~~medical condition that makes it highly unlikely that the child will survive more than 24 hours~~
 79 ~~after birth; and~~

80 ~~—— (B) there is not a medically acceptable intervention or procedure that:~~

81 ~~—— (I) may be performed before or after the child's birth;~~

82 ~~—— (II) may be performed without risk to the health of the woman on whom the abortion is~~
 83 ~~performed; and~~

84 ~~—— (III) has a reasonable chance of extending the child's life beyond 24 hours;]~~

84a ~~(ii) two physicians who practice maternal fetal medicine concur, in writing, in the~~
 84b ~~patient's medical record that the fetus has a defect that is uniformly diagnosable and~~
 84c ~~uniformly lethal [;] ; or~~

84d ~~(iii) (A) the woman is pregnant as a result of:~~

84e ~~(I) rape, as described in Section 76-5-402;~~

84f ~~(II) rape of a child, as described in Section 76-5-402.1; or~~

84g ~~(III) incest, as described in Subsection 76-5-406(10) or Section 76-7-102; and~~

84h **(B) before the abortion is performed, the physician who performs the**
84i **abortion:**
84j **(I) verifies that the incident described in Subsection (3)(b)(iii)(A) has been**
84k **reported to law enforcement; and**
84l **(II) complies with the requirements of Section 62A-4a-403.**
85 **[(3)] (4) ←H Notwithstanding any other provision of this section, a woman who seeks to**
85a **have, or**
86 **obtains, an abortion for herself is not criminally liable.**
87 Section 2. Section **76-7-314** is amended to read:

88 **76-7-314. Violations of abortion laws -- Classifications.**

89 ~~[(1) (a) Any person who intentionally performs an abortion other than as authorized by~~
 90 ~~this part is guilty of a felony of the third degree.]~~

91 ~~[(b) (i)]~~ (1) Notwithstanding any other provision of law, a woman who seeks to have or
 92 obtains an abortion for herself is not criminally liable.

93 ~~[(ii)]~~ (2) A woman upon whom a partial birth abortion is performed may not be
 94 prosecuted under Section 76-7-326 or 76-7-329 for a conspiracy to violate Section 76-7-326 or
 95 76-7-329.

96 ~~[(2)]~~ (3) A willful violation of Section 76-7-307, 76-7-308, 76-7-310, 76-7-310.5,
 97 76-7-311, or 76-7-312 is a felony of the third degree.

98 ~~[(3)]~~ (4) A violation of Section 76-7-326 or 76-7-329 is a felony of the third degree.

99 (5) A violation of Section 76-7-314.5 is a felony of the second degree.

100 ~~[(4)]~~ (6) A violation of any other provision of this part is a class A misdemeanor.
 101 Section 3. Section **76-7-314.5** is enacted to read:

102 **76-7-314.5. Killing an unborn child.**

103 (1) A person is guilty of killing an unborn child if the person causes the death of an
 104 unborn child by performing an abortion of the unborn child in violation of the provisions of
 105 Subsection 76-7-302 ~~H~~ → ~~(2)~~ (3) ← ~~H~~ .

106 (2) Notwithstanding any other provision of this section, a woman who seeks to have, or
 107 obtains, an abortion for herself is not criminally liable.

108 Section 4. **Repealer.**

109 This bill repeals:

110 Section **76-7-317.2, Finding of unconstitutionality -- Revival of old law.**

111 Section 5. **Severability clause.**

112 If any one or more provision, section, subsection, sentence, clause, phrase, or word of
 113 this bill or the application thereof to any person or circumstance is found to be unconstitutional,
 114 the same is hereby declared to be severable and the balance of this bill shall remain effective
 115 notwithstanding such unconstitutionality. The Legislature hereby declares that it would have
 116 passed this bill, and each provision, section, subsection, sentence, clause, phrase, or word
 117 thereof, irrespective of the fact that any one or more provision, section, subsection, sentence,
 118 clause, phrase, or word be declared unconstitutional.

H.B. 90 1st Sub. (Buff) - Abortion Law Amendments

Fiscal Note

2009 General Session

State of Utah

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.
