

1 **ABORTION LAW AMENDMENTS**

2 2009 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Paul Ray**

5 Senate Sponsor: Curtis S. Bramble

6 Cosponsor: Kerry W. Gibson

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8 **LONG TITLE**

9 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ removes an unconstitutional provision requiring that all abortions performed 90
- 14 days or more after the commencement of a pregnancy be performed in a hospital;
- 15 ▶ defines the term "viable";
- 16 ▶ provides that an abortion may only be performed in this state if:
  - 17 • the unborn child is not viable; or
  - 18 • the unborn child is viable, if the abortion is necessary to avert the death of the
  - 19 woman on whom the abortion is performed, the abortion is necessary to avert a
  - 20 serious risk of substantial and irreversible impairment of a major bodily
  - 21 function of the woman, two physicians who practice maternal fetal medicine
  - 22 concur, in writing, that the fetus has a defect that is uniformly diagnosable and
  - 23 uniformly lethal, or the woman is pregnant as a result of rape, rape of a child, or
  - 24 incest;
- 25 ▶ provides that a violation of the provisions in the preceding paragraph constitute the
- 26 second degree felony offense of "killing an unborn child";
- 27 ▶ provides that a woman who seeks to have, or obtains, an abortion for herself is not
- 28 criminally liable;
- 29 ▶ makes technical changes; and

30           ▶ enacts an uncodified severability clause.

31 **Monies Appropriated in this Bill:**

32           None

33 **Other Special Clauses:**

34           This bill provides a severability clause.

35 **Utah Code Sections Affected:**

36 AMENDS:

37           **76-7-302**, as last amended by Laws of Utah 2004, Chapter 90

38           **76-7-314**, as last amended by Laws of Utah 2004, Chapter 272

39 ENACTS:

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

41 REPEALS:

42           **76-7-317.2**, as last amended by Laws of Utah 2008, Chapter 250

43 **Uncodified Material Affected:**

44 ENACTS UNCODIFIED MATERIAL



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

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

48           **76-7-302. Circumstances under which abortion authorized.**

49           (1) As used in this section, "viable" means that the unborn child has reached a stage of  
50 fetal development when the unborn child is potentially able to live outside the womb, as  
51 determined by the attending physician to a reasonable degree of medical certainty.

52           ~~[(1)] (2)~~ An abortion may be performed in this state only by a physician licensed to  
53 practice medicine under Title 58, Chapter 67, Utah Medical Practice Act or an osteopathic  
54 physician licensed to practice medicine under Title 58, Chapter 68, Utah Osteopathic Medical  
55 Practice Act ~~[and, if performed 90 days or more after the commencement of the pregnancy as~~  
56 ~~defined by competent medical practices, it shall be performed in a hospital].~~

57           ~~[(2)] (3)~~ An abortion may be performed in this state only under the following

58 circumstances:

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

61 ~~[(b) the pregnancy is the result of rape or rape of a child, as defined by Sections~~  
62 ~~76-5-402 and 76-5-402.1, that was reported to a law enforcement agency prior to the~~  
63 ~~abortion;]~~

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

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

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

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

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

78 (a) the unborn child is not viable; or

79 (b) the unborn child is viable, if:

80 (i) the abortion is necessary to avert:

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

82 (B) a serious risk of substantial and irreversible impairment of a major bodily function  
83 of the woman on whom the abortion is performed;

84 (ii) two physicians who practice maternal fetal medicine concur, in writing, in the  
85 patient's medical record that the fetus has a defect that is uniformly diagnosable and uniformly

86 lethal; or

87 (iii) (A) the woman is pregnant as a result of:

88 (I) rape, as described in Section 76-5-402;

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

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

91 (B) before the abortion is performed, the physician who performs the abortion:

92 (I) verifies that the incident described in Subsection (3)(b)(iii)(A) has been reported to

93 law enforcement; and

94 (II) complies with the requirements of Section 62A-4a-403.

95 (4) Notwithstanding any other provision of this section, a woman who seeks to have,

96 or obtains, an abortion for herself is not criminally liable.

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

98 **76-7-314. Violations of abortion laws -- Classifications.**

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

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

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

106 ~~[(2)]~~ (3) A willful violation of Section 76-7-307, 76-7-308, 76-7-310, 76-7-310.5,  
107 76-7-311, or 76-7-312 is a felony of the third degree.

108 ~~[(3)]~~ (4) A violation of Section 76-7-326 or 76-7-329 is a felony of the third degree.

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

110 ~~[(4)]~~ (6) A violation of any other provision of this part is a class A misdemeanor.

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

112 **76-7-314.5. Killing an unborn child.**

113 (1) A person is guilty of killing an unborn child if the person causes the death of an

114 unborn child by performing an abortion of the unborn child in violation of the provisions of  
115 Subsection 76-7-302(3).

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

118 Section 4. **Repealer.**

119 This bill repeals:

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

121 Section 5. **Severability clause.**

122 If any one or more provision, section, subsection, sentence, clause, phrase, or word of  
123 this bill or the application thereof to any person or circumstance is found to be  
124 unconstitutional, the same is hereby declared to be severable and the balance of this bill shall  
125 remain effective notwithstanding such unconstitutionality. The Legislature hereby declares  
126 that it would have passed this bill, and each provision, section, subsection, sentence, clause,  
127 phrase, or word thereof, irrespective of the fact that any one or more provision, section,  
128 subsection, sentence, clause, phrase, or word be declared unconstitutional.