

Representative Carl Wimmer proposes the following substitute bill:

ABORTION CLINIC LICENSING

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl Wimmer

Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill amends provisions of the Health Care Facility Licensing and Inspection Act in relation to abortion clinics.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires annual licensing for abortion clinics that provide abortions during the first and second trimesters of pregnancy;
- ▶ grants rulemaking authority to the Department of Health (department) in relation to licensing of abortion clinics;
- ▶ requires, in order for an abortion clinic to obtain and maintain a license, that the abortion clinic comply with statutory requirements, rules, health and safety standards, and recordkeeping requirements;
- ▶ requires inspection of abortion clinics;
- ▶ requires the department to establish a fee on abortion clinics to pay for the costs relating to this bill;
- ▶ modifies exemptions from the Health Care Facility Licensing and Inspection Act;
- ▶ in order to assist the department in fulfilling the requirements of this bill, requires



26 the Division of Occupational and Professional Licensing to provide the department with the
27 name and address of each physician who reports that they perform elective abortions in Utah in
28 a location other than a hospital;

29 ▶ provides that the information described in the preceding paragraph is a protected
30 record;

31 ▶ provides intent language; and

32 ▶ makes technical changes.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 This bill takes effect on July 1, 2011.

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **26-21-2**, as last amended by Laws of Utah 2005, Chapter 31

40 **26-21-7**, as last amended by Laws of Utah 2004, Chapter 141

41 **26-21-8**, as last amended by Laws of Utah 2003, Chapter 155

42 **58-67-304**, as last amended by Laws of Utah 2005, Chapter 94

43 **58-68-304**, as last amended by Laws of Utah 2005, Chapter 94

44 **63G-2-305**, as last amended by Laws of Utah 2010, Chapters 6, 113, and 247

45 ENACTS:

46 **26-21-6.5**, Utah Code Annotated 1953

47 **Uncodified Material Affected:**

48 ENACTS UNCODIFIED MATERIAL



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

51 Section 1. Section **26-21-2** is amended to read:

52 **26-21-2. Definitions.**

53 As used in this chapter:

54 ~~[(1) "Abortion clinic" means a facility, other than a general acute or specialty hospital,~~
55 ~~that performs abortions and provides abortion services during the second trimester of~~
56 ~~pregnancy.]~~

- 57 (1) "Abortion clinic" means a type I abortion clinic or a type II abortion clinic.
- 58 (2) "Activities of daily living" means essential activities including:
- 59 (a) dressing;
- 60 (b) eating;
- 61 (c) grooming;
- 62 (d) bathing;
- 63 (e) toileting;
- 64 (f) ambulation;
- 65 (g) transferring; and
- 66 (h) self-administration of medication.
- 67 (3) "Ambulatory surgical facility" means a freestanding facility, which provides
- 68 surgical services to patients not requiring hospitalization.
- 69 (4) "Assistance with activities of daily living" means providing of or arranging for the
- 70 provision of assistance with activities of daily living.
- 71 (5) (a) "Assisted living facility" means:
- 72 (i) a type I assisted living facility, which is a residential facility that provides assistance
- 73 with activities of daily living and social care to two or more residents who:
- 74 (A) require protected living arrangements; and
- 75 (B) are capable of achieving mobility sufficient to exit the facility without the
- 76 assistance of another person; and
- 77 (ii) a type II assisted living facility, which is a residential facility with a home-like
- 78 setting that provides an array of coordinated supportive personal and health care services
- 79 available 24 hours per day to residents who have been assessed under department rule to need
- 80 any of these services.
- 81 (b) Each resident in a type I or type II assisted living facility shall have a service plan
- 82 based on the assessment, which may include:
- 83 (i) specified services of intermittent nursing care;
- 84 (ii) administration of medication; and
- 85 (iii) support services promoting residents' independence and self sufficiency.
- 86 (6) "Birthing center" means a freestanding facility, receiving maternal clients and
- 87 providing care during pregnancy, delivery, and immediately after delivery.

88 (7) "Committee" means the Health Facility Committee created in Section 26-1-7.

89 (8) "Consumer" means any person not primarily engaged in the provision of health care
90 to individuals or in the administration of facilities or institutions in which such care is provided
91 and who does not hold a fiduciary position, or have a fiduciary interest in any entity involved in
92 the provision of health care, and does not receive, either directly or through his spouse, more
93 than 1/10 of his gross income from any entity or activity relating to health care.

94 (9) "End stage renal disease facility" means a facility which furnishes staff-assisted
95 kidney dialysis services, self-dialysis services, or home-dialysis services on an outpatient basis.

96 (10) "Freestanding" means existing independently or physically separated from another
97 health care facility by fire walls and doors and administrated by separate staff with separate
98 records.

99 (11) "General acute hospital" means a facility which provides diagnostic, therapeutic,
100 and rehabilitative services to both inpatients and outpatients by or under the supervision of
101 physicians.

102 (12) "Governmental unit" means the state, or any county, municipality, or other
103 political subdivision or any department, division, board, or agency of the state, a county,
104 municipality, or other political subdivision.

105 (13) (a) "Health care facility" means general acute hospitals, specialty hospitals, home
106 health agencies, hospices, nursing care facilities, residential-assisted living facilities, birthing
107 centers, ambulatory surgical facilities, small health care facilities, abortion clinics, facilities
108 owned or operated by health maintenance organizations, end stage renal disease facilities, and
109 any other health care facility which the committee designates by rule.

110 (b) "Health care facility" does not include the offices of private physicians or dentists,
111 whether for individual or group practice, except that it does include an abortion clinic.

112 (14) "Health maintenance organization" means an organization, organized under the
113 laws of any state which:

114 (a) is a qualified health maintenance organization under 42 U.S.C. Sec. 300e-9; or

115 (b) (i) provides or otherwise makes available to enrolled participants at least the
116 following basic health care services: usual physician services, hospitalization, laboratory, x-ray,
117 emergency, and preventive services and out-of-area coverage;

118 (ii) is compensated, except for copayments, for the provision of the basic health

119 services listed in Subsection (14)(b)(i) to enrolled participants by a payment which is paid on a
120 periodic basis without regard to the date the health services are provided and which is fixed
121 without regard to the frequency, extent, or kind of health services actually provided; and

122 (iii) provides physicians' services primarily directly through physicians who are either
123 employees or partners of such organizations, or through arrangements with individual
124 physicians or one or more groups of physicians organized on a group practice or individual
125 practice basis.

126 (15) (a) "Home health agency" means an agency, organization, or facility or a
127 subdivision of an agency, organization, or facility which employs two or more direct care staff
128 persons who provide licensed nursing services, therapeutic services of physical therapy, speech
129 therapy, occupational therapy, medical social services, or home health aide services on a
130 visiting basis.

131 (b) "Home health agency" does not mean an individual who provides services under
132 the authority of a private license.

133 (16) "Hospice" means a program of care for the terminally ill and their families which
134 occurs in a home or in a health care facility and which provides medical, palliative,
135 psychological, spiritual, and supportive care and treatment.

136 (17) "Nursing care facility" means a health care facility, other than a general acute or
137 specialty hospital, constructed, licensed, and operated to provide patient living
138 accommodations, 24-hour staff availability, and at least two of the following patient services:

139 (a) a selection of patient care services, under the direction and supervision of a
140 registered nurse, ranging from continuous medical, skilled nursing, psychological, or other
141 professional therapies to intermittent health-related or paraprofessional personal care services;

142 (b) a structured, supportive social living environment based on a professionally
143 designed and supervised treatment plan, oriented to the individual's habilitation or
144 rehabilitation needs; or

145 (c) a supervised living environment that provides support, training, or assistance with
146 individual activities of daily living.

147 (18) "Person" means any individual, firm, partnership, corporation, company,
148 association, or joint stock association, and the legal successor thereof.

149 (19) "Resident" means a person 21 years of age or older who:

150 (a) as a result of physical or mental limitations or age requires or requests services
151 provided in an assisted living facility; and

152 (b) does not require intensive medical or nursing services as provided in a hospital or
153 nursing care facility.

154 (20) "Small health care facility" means a four to 16 bed facility that provides licensed
155 health care programs and services to residents.

156 (21) "Specialty hospital" means a facility which provides specialized diagnostic,
157 therapeutic, or rehabilitative services in the recognized specialty or specialties for which the
158 hospital is licensed.

159 (22) "Substantial compliance" means in a department survey of a licensee, the
160 department determines there is an absence of deficiencies which would harm the physical
161 health, mental health, safety, or welfare of patients or residents of a licensee.

162 (23) "Type I abortion clinic" means a facility, including a physician's office, but not
163 including a general acute or specialty hospital, that:

164 (a) performs abortions, as defined in Section 76-7-301, during the first trimester of
165 pregnancy; and

166 (b) does not perform abortions, as defined in Section 76-7-301, after the first trimester
167 of pregnancy.

168 (24) "Type II abortion clinic" means a facility, including a physician's office, but not
169 including a general acute or specialty hospital, that:

170 (a) performs abortions, as defined in Section 76-7-301, after the first trimester of
171 pregnancy; or

172 (b) performs abortions, as defined in Section 76-7-301, during the first trimester of
173 pregnancy and after the first trimester of pregnancy.

174 Section 2. Section **26-21-6.5** is enacted to read:

175 **26-21-6.5. Licensing of an abortion clinic -- Rulemaking authority -- Fee.**

176 (1) Beginning on April 1, 2012, a type I abortion clinic may not operate in the state
177 without a license issued by the department to operate a type I abortion clinic.

178 (2) A type II abortion clinic may not operate in the state without a license issued by the
179 department to operate a type II abortion clinic.

180 (3) (a) The department shall make rules establishing minimum health, safety, sanitary,

181 and recordkeeping requirements for:

182 (i) a type I abortion clinic; and

183 (ii) a type II abortion clinic.

184 (b) The rules established under Subsection (3)(a) shall take effect on April 1, 2012.

185 (4) Beginning on April 1, 2012, in order to receive and maintain a license described in
186 this section, an abortion clinic shall:

187 (a) apply for a license on a form prescribed by the department;

188 (b) satisfy and maintain the minimum health, safety, sanitary, and recordkeeping
189 requirements established under Subsection (3)(a) that relate to the type of abortion clinic
190 licensed;

191 (c) comply with the recordkeeping and reporting requirements of Subsection
192 76-7-305.6(4) and Section 76-7-313;

193 (d) comply with the requirements of Title 76, Chapter 7, Part 3, Abortion;

194 (e) pay the annual licensing fee; and

195 (f) cooperate with inspections conducted by the department.

196 (5) Beginning on April 1, 2012, the department shall, at least twice per year, inspect
197 each abortion clinic in the state to ensure that the abortion clinic is complying with all statutory
198 and licensing requirements relating to the abortion clinic. At least one of the inspections shall
199 be made without providing notice to the abortion clinic.

200 (6) Beginning on April 1, 2012, the department shall charge an annual license fee, set
201 by the department in accordance with the procedures described in Section 63J-1-504, to an
202 abortion clinic in an amount that will pay for the cost of the licensing requirements described in
203 this section and the cost of inspecting abortion clinics.

204 (7) The department shall deposit the licensing fees described in this section in the
205 General Fund as a dedicated credit to be used solely to pay for the cost of the licensing
206 requirements described in this section and the cost of inspecting abortion clinics.

207 Section 3. Section **26-21-7** is amended to read:

208 **26-21-7. Exempt facilities.**

209 This chapter does not apply to:

210 (1) a dispensary or first aid facility maintained by any commercial or industrial plant,
211 educational institution, or convent;

- 212 (2) a health care facility owned or operated by an agency of the United States;
- 213 (3) the office of a physician or dentist whether it is an individual or group practice,
214 except that it does apply to an abortion clinic;
- 215 (4) a health care facility established or operated by any recognized church or
216 denomination for the practice of religious tenets administered by mental or spiritual means
217 without the use of drugs, whether gratuitously or for compensation, if it complies with statutes
218 and rules on environmental protection and life safety;
- 219 (5) any health care facility owned or operated by the Department of Corrections,
220 created in Section 64-13-2; and
- 221 (6) a residential facility providing 24-hour care:
 - 222 (a) that does not employ direct care staff;
 - 223 (b) in which the residents of the facility contract with a licensed hospice agency to
224 receive end-of-life medical care; and
 - 225 (c) that meets other requirements for an exemption as designated by administrative
226 rule.

227 Section 4. Section **26-21-8** is amended to read:

228 **26-21-8. License required -- Not assignable or transferable -- Posting --**
229 **Expiration and renewal -- Time for compliance by operating facilities.**

- 230 (1) (a) A person or governmental unit acting severally or jointly with any other person
231 or governmental unit, may not establish, conduct, or maintain a health care facility in this state
232 without receiving a license from the department as provided by this chapter and the rules of the
233 committee.
- 234 (b) This Subsection (1) does not apply to facilities that are exempt under Section
235 26-21-7.
- 236 (2) A license issued under this chapter is not assignable or transferable.
- 237 (3) The current license shall at all times be posted in each health care facility in a place
238 readily visible and accessible to the public.
- 239 (4) (a) The department may issue a license for a period of time not to exceed 12
240 months from the date of issuance for an abortion clinic and not to exceed 24 months from the
241 date of issuance [~~to~~] for other health care facilities that meet the provisions of this chapter and
242 department rules adopted pursuant to this chapter.

243 (b) Each license expires at midnight on the day designated on the license as the
244 expiration date, unless previously revoked by the department.

245 (c) The license shall be renewed upon completion of the application requirements,
246 unless the department finds the health care facility has not complied with the provisions of this
247 chapter or the rules adopted pursuant to this chapter.

248 (5) A license may be issued under this section only for the operation of a specific
249 facility at a specific site by a specific person.

250 (6) Any health care facility in operation at the time of adoption of any applicable rules
251 as provided under this chapter shall be given a reasonable time for compliance as determined
252 by the committee.

253 Section 5. Section **58-67-304** is amended to read:

254 **58-67-304. License renewal requirements.**

255 (1) As a condition precedent for license renewal, each licensee shall, during each
256 two-year licensure cycle or other cycle defined by division rule:

257 (a) complete qualified continuing professional education requirements in accordance
258 with the number of hours and standards defined by division rule made in collaboration with the
259 board;

260 (b) appoint a contact person for access to medical records and an alternate contact
261 person for access to medical records in accordance with Subsection 58-67-302(1)(j); and

262 (c) if the licensee practices medicine in a location with no other persons licensed under
263 this chapter, provide some method of notice to the licensee's patients of the identity and
264 location of the contact person and alternate contact person for the licensee.

265 (2) If a renewal period is extended or shortened under Section 58-67-303, the
266 continuing education hours required for license renewal under this section are increased or
267 decreased proportionally.

268 (3) An application to renew a license under this chapter shall:

269 (a) require a physician to answer the following question: "Do you perform elective
270 abortions in Utah in a location other than a hospital?"; and

271 (b) immediately following the question, contain the following statement: "For purposes
272 of the immediately preceding question, elective abortion means an abortion other than one of
273 the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is

274 necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of
275 substantial and irreversible impairment of a major bodily function of a woman, an abortion of a
276 fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where
277 the woman is pregnant as a result of rape or incest."

278 (4) In order to assist the Department of Health in fulfilling its responsibilities relating
279 to the licensing of an abortion clinic, if a physician responds positively to the question
280 described in Subsection (3)(a), the division shall, within 30 days after the day on which it
281 renews the physician's license under this chapter, inform the Department of Health in writing:

282 (a) of the name and address of the physician; and

283 (b) that the physician responded positively to the question described in Subsection

284 (3)(a).

285 Section 6. Section **58-68-304** is amended to read:

286 **58-68-304. License renewal requirements.**

287 (1) As a condition precedent for license renewal, each licensee shall, during each
288 two-year licensure cycle or other cycle defined by division rule:

289 (a) complete qualified continuing professional education requirements in accordance
290 with the number of hours and standards defined by division rule in collaboration with the
291 board;

292 (b) appoint a contact person for access to medical records and an alternate contact
293 person for access to medical records in accordance with Subsection 58-68-302(1)(j); and

294 (c) if the licensee practices osteopathic medicine in a location with no other persons
295 licensed under this chapter, provide some method of notice to the licensee's patients of the
296 identity and location of the contact person and alternate contact person for access to medical
297 records for the licensee in accordance with Subsection 58-68-302(1)(k).

298 (2) If a renewal period is extended or shortened under Section 58-68-303, the
299 continuing education hours required for license renewal under this section are increased or
300 decreased proportionally.

301 (3) An application to renew a license under this chapter shall:

302 (a) require a physician to answer the following question: "Do you perform elective
303 abortions in Utah in a location other than a hospital?"; and

304 (b) immediately following the question, contain the following statement: "For purposes

305 of the immediately preceding question, elective abortion means an abortion other than one of
306 the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is
307 necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of
308 substantial and irreversible impairment of a major bodily function of a woman, an abortion of a
309 fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where
310 the woman is pregnant as a result of rape or incest."

311 (4) In order to assist the Department of Health in fulfilling its responsibilities relating
312 to the licensing of an abortion clinic, if a physician responds positively to the question
313 described in Subsection (3)(a), the division shall, within 30 days after the day on which it
314 renews the physician's license under this chapter, inform the Department of Health in writing:

315 (a) of the name and address of the physician; and

316 (b) that the physician responded positively to the question described in Subsection

317 (3)(a).

318 Section 7. Section **63G-2-305** is amended to read:

319 **63G-2-305. Protected records.**

320 The following records are protected if properly classified by a governmental entity:

321 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
322 has provided the governmental entity with the information specified in Section 63G-2-309;

323 (2) commercial information or nonindividual financial information obtained from a
324 person if:

325 (a) disclosure of the information could reasonably be expected to result in unfair
326 competitive injury to the person submitting the information or would impair the ability of the
327 governmental entity to obtain necessary information in the future;

328 (b) the person submitting the information has a greater interest in prohibiting access
329 than the public in obtaining access; and

330 (c) the person submitting the information has provided the governmental entity with
331 the information specified in Section 63G-2-309;

332 (3) commercial or financial information acquired or prepared by a governmental entity
333 to the extent that disclosure would lead to financial speculations in currencies, securities, or
334 commodities that will interfere with a planned transaction by the governmental entity or cause
335 substantial financial injury to the governmental entity or state economy;

336 (4) records the disclosure of which could cause commercial injury to, or confer a
337 competitive advantage upon a potential or actual competitor of, a commercial project entity as
338 defined in Subsection 11-13-103(4);

339 (5) test questions and answers to be used in future license, certification, registration,
340 employment, or academic examinations;

341 (6) records the disclosure of which would impair governmental procurement
342 proceedings or give an unfair advantage to any person proposing to enter into a contract or
343 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
344 Subsection (6) does not restrict the right of a person to have access to, once the contract or
345 grant has been awarded, a bid, proposal, or application submitted to or by a governmental
346 entity in response to:

347 (a) a request for bids;

348 (b) a request for proposals;

349 (c) a grant; or

350 (d) other similar document;

351 (7) records that would identify real property or the appraisal or estimated value of real
352 or personal property, including intellectual property, under consideration for public acquisition
353 before any rights to the property are acquired unless:

354 (a) public interest in obtaining access to the information outweighs the governmental
355 entity's need to acquire the property on the best terms possible;

356 (b) the information has already been disclosed to persons not employed by or under a
357 duty of confidentiality to the entity;

358 (c) in the case of records that would identify property, potential sellers of the described
359 property have already learned of the governmental entity's plans to acquire the property;

360 (d) in the case of records that would identify the appraisal or estimated value of
361 property, the potential sellers have already learned of the governmental entity's estimated value
362 of the property; or

363 (e) the property under consideration for public acquisition is a single family residence
364 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
365 the property as required under Section 78B-6-505;

366 (8) records prepared in contemplation of sale, exchange, lease, rental, or other

367 compensated transaction of real or personal property including intellectual property, which, if
368 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
369 of the subject property, unless:

370 (a) the public interest in access outweighs the interests in restricting access, including
371 the governmental entity's interest in maximizing the financial benefit of the transaction; or

372 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
373 the value of the subject property have already been disclosed to persons not employed by or
374 under a duty of confidentiality to the entity;

375 (9) records created or maintained for civil, criminal, or administrative enforcement
376 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
377 release of the records:

378 (a) reasonably could be expected to interfere with investigations undertaken for
379 enforcement, discipline, licensing, certification, or registration purposes;

380 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
381 proceedings;

382 (c) would create a danger of depriving a person of a right to a fair trial or impartial
383 hearing;

384 (d) reasonably could be expected to disclose the identity of a source who is not
385 generally known outside of government and, in the case of a record compiled in the course of
386 an investigation, disclose information furnished by a source not generally known outside of
387 government if disclosure would compromise the source; or

388 (e) reasonably could be expected to disclose investigative or audit techniques,
389 procedures, policies, or orders not generally known outside of government if disclosure would
390 interfere with enforcement or audit efforts;

391 (10) records the disclosure of which would jeopardize the life or safety of an
392 individual;

393 (11) records the disclosure of which would jeopardize the security of governmental
394 property, governmental programs, or governmental recordkeeping systems from damage, theft,
395 or other appropriation or use contrary to law or public policy;

396 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
397 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere

398 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

399 (13) records that, if disclosed, would reveal recommendations made to the Board of
400 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
401 Board of Pardons and Parole, or the Department of Human Services that are based on the
402 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
403 jurisdiction;

404 (14) records and audit workpapers that identify audit, collection, and operational
405 procedures and methods used by the State Tax Commission, if disclosure would interfere with
406 audits or collections;

407 (15) records of a governmental audit agency relating to an ongoing or planned audit
408 until the final audit is released;

409 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
410 litigation that are not available under the rules of discovery;

411 (17) records disclosing an attorney's work product, including the mental impressions or
412 legal theories of an attorney or other representative of a governmental entity concerning
413 litigation;

414 (18) records of communications between a governmental entity and an attorney
415 representing, retained, or employed by the governmental entity if the communications would be
416 privileged as provided in Section 78B-1-137;

417 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
418 from a member of the Legislature; and

419 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
420 legislative action or policy may not be classified as protected under this section; and

421 (b) (i) an internal communication that is part of the deliberative process in connection
422 with the preparation of legislation between:

423 (A) members of a legislative body;

424 (B) a member of a legislative body and a member of the legislative body's staff; or

425 (C) members of a legislative body's staff; and

426 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
427 legislative action or policy may not be classified as protected under this section;

428 (20) (a) records in the custody or control of the Office of Legislative Research and

429 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
430 legislation or contemplated course of action before the legislator has elected to support the
431 legislation or course of action, or made the legislation or course of action public; and

432 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
433 Office of Legislative Research and General Counsel is a public document unless a legislator
434 asks that the records requesting the legislation be maintained as protected records until such
435 time as the legislator elects to make the legislation or course of action public;

436 (21) research requests from legislators to the Office of Legislative Research and
437 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
438 in response to these requests;

439 (22) drafts, unless otherwise classified as public;

440 (23) records concerning a governmental entity's strategy about collective bargaining or
441 pending litigation;

442 (24) records of investigations of loss occurrences and analyses of loss occurrences that
443 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
444 Uninsured Employers' Fund, or similar divisions in other governmental entities;

445 (25) records, other than personnel evaluations, that contain a personal recommendation
446 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
447 personal privacy, or disclosure is not in the public interest;

448 (26) records that reveal the location of historic, prehistoric, paleontological, or
449 biological resources that if known would jeopardize the security of those resources or of
450 valuable historic, scientific, educational, or cultural information;

451 (27) records of independent state agencies if the disclosure of the records would
452 conflict with the fiduciary obligations of the agency;

453 (28) records of an institution within the state system of higher education defined in
454 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
455 retention decisions, and promotions, which could be properly discussed in a meeting closed in
456 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
457 the final decisions about tenure, appointments, retention, promotions, or those students
458 admitted, may not be classified as protected under this section;

459 (29) records of the governor's office, including budget recommendations, legislative

460 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
461 policies or contemplated courses of action before the governor has implemented or rejected
462 those policies or courses of action or made them public;

463 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
464 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
465 recommendations in these areas;

466 (31) records provided by the United States or by a government entity outside the state
467 that are given to the governmental entity with a requirement that they be managed as protected
468 records if the providing entity certifies that the record would not be subject to public disclosure
469 if retained by it;

470 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
471 except as provided in Section 52-4-206;

472 (33) records that would reveal the contents of settlement negotiations but not including
473 final settlements or empirical data to the extent that they are not otherwise exempt from
474 disclosure;

475 (34) memoranda prepared by staff and used in the decision-making process by an
476 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
477 other body charged by law with performing a quasi-judicial function;

478 (35) records that would reveal negotiations regarding assistance or incentives offered
479 by or requested from a governmental entity for the purpose of encouraging a person to expand
480 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
481 person or place the governmental entity at a competitive disadvantage, but this section may not
482 be used to restrict access to a record evidencing a final contract;

483 (36) materials to which access must be limited for purposes of securing or maintaining
484 the governmental entity's proprietary protection of intellectual property rights including patents,
485 copyrights, and trade secrets;

486 (37) the name of a donor or a prospective donor to a governmental entity, including an
487 institution within the state system of higher education defined in Section 53B-1-102, and other
488 information concerning the donation that could reasonably be expected to reveal the identity of
489 the donor, provided that:

490 (a) the donor requests anonymity in writing;

491 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
492 classified protected by the governmental entity under this Subsection (37); and

493 (c) except for an institution within the state system of higher education defined in
494 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
495 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
496 over the donor, a member of the donor's immediate family, or any entity owned or controlled
497 by the donor or the donor's immediate family;

498 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
499 73-18-13;

500 (39) a notification of workers' compensation insurance coverage described in Section
501 34A-2-205;

502 (40) (a) the following records of an institution within the state system of higher
503 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
504 or received by or on behalf of faculty, staff, employees, or students of the institution:

505 (i) unpublished lecture notes;

506 (ii) unpublished notes, data, and information:

507 (A) relating to research; and

508 (B) of:

509 (I) the institution within the state system of higher education defined in Section
510 53B-1-102; or

511 (II) a sponsor of sponsored research;

512 (iii) unpublished manuscripts;

513 (iv) creative works in process;

514 (v) scholarly correspondence; and

515 (vi) confidential information contained in research proposals;

516 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
517 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

518 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

519 (41) (a) records in the custody or control of the Office of Legislative Auditor General
520 that would reveal the name of a particular legislator who requests a legislative audit prior to the
521 date that audit is completed and made public; and

522 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
523 Office of the Legislative Auditor General is a public document unless the legislator asks that
524 the records in the custody or control of the Office of Legislative Auditor General that would
525 reveal the name of a particular legislator who requests a legislative audit be maintained as
526 protected records until the audit is completed and made public;

527 (42) records that provide detail as to the location of an explosive, including a map or
528 other document that indicates the location of:

529 (a) a production facility; or

530 (b) a magazine;

531 (43) information:

532 (a) contained in the statewide database of the Division of Aging and Adult Services
533 created by Section 62A-3-311.1; or

534 (b) received or maintained in relation to the Identity Theft Reporting Information
535 System (IRIS) established under Section 67-5-22;

536 (44) information contained in the Management Information System and Licensing
537 Information System described in Title 62A, Chapter 4a, Child and Family Services;

538 (45) information regarding National Guard operations or activities in support of the
539 National Guard's federal mission;

540 (46) records provided by any pawn or secondhand business to a law enforcement
541 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
542 Secondhand Merchandise Transaction Information Act;

543 (47) information regarding food security, risk, and vulnerability assessments performed
544 by the Department of Agriculture and Food;

545 (48) except to the extent that the record is exempt from this chapter pursuant to Section
546 63G-2-106, records related to an emergency plan or program prepared or maintained by the
547 Division of Homeland Security the disclosure of which would jeopardize:

548 (a) the safety of the general public; or

549 (b) the security of:

550 (i) governmental property;

551 (ii) governmental programs; or

552 (iii) the property of a private person who provides the Division of Homeland Security

553 information;

554 (49) records of the Department of Agriculture and Food relating to the National
555 Animal Identification System or any other program that provides for the identification, tracing,
556 or control of livestock diseases, including any program established under Title 4, Chapter 24,
557 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
558 Quarantine;

559 (50) as provided in Section 26-39-501:

560 (a) information or records held by the Department of Health related to a complaint
561 regarding a child care program or residential child care which the department is unable to
562 substantiate; and

563 (b) information or records related to a complaint received by the Department of Health
564 from an anonymous complainant regarding a child care program or residential child care;

565 (51) unless otherwise classified as public under Section 63G-2-301 and except as
566 provided under Section 41-1a-116, an individual's home address, home telephone number, or
567 personal mobile phone number, if:

568 (a) the individual is required to provide the information in order to comply with a law,
569 ordinance, rule, or order of a government entity; and

570 (b) the subject of the record has a reasonable expectation that this information will be
571 kept confidential due to:

572 (i) the nature of the law, ordinance, rule, or order; and

573 (ii) the individual complying with the law, ordinance, rule, or order;

574 (52) the name, home address, work addresses, and telephone numbers of an individual
575 that is engaged in, or that provides goods or services for, medical or scientific research that is:

576 (a) conducted within the state system of higher education, as defined in Section
577 53B-1-102; and

578 (b) conducted using animals;

579 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement
580 Private Proposal Program, to the extent not made public by rules made under that chapter;

581 (54) information collected and a report prepared by the Judicial Performance
582 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
583 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,

584 the information or report;

585 (55) (a) records of the Utah Educational Savings Plan created under Section
586 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

587 (b) proposals submitted to the Utah Educational Savings Plan; and

588 (c) contracts entered into by the Utah Educational Savings Plan and the related
589 payments;

590 (56) records contained in the Management Information System created in Section
591 62A-4a-1003;

592 (57) records provided or received by the Public Lands Policy Coordinating Office in
593 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

594 (58) information requested by and provided to the Utah State 911 Committee under
595 Section 53-10-602;

596 (59) recorded Children's Justice Center investigative interviews, both video and audio,
597 the release of which are governed by Section 77-37-4; ~~and~~

598 (60) in accordance with Section 73-10-33:

599 (a) a management plan for a water conveyance facility in the possession of the Division
600 of Water Resources or the Board of Water Resources; or

601 (b) an outline of an emergency response plan in possession of the state or a county or
602 municipality[-]; and

603 (61) information provided to the Department of Health or the Division of Occupational
604 and Professional Licensing under Subsection 58-68-304(3) or (4).

605 Section 8. **Legislative intent.**

606 The Legislature is aware of the discovery, nationwide, of abortion clinics that operate in
607 unsafe and unsanitary conditions, risking the health and safety of women. The Legislature is
608 very concerned of the risks posed to women in these circumstances and intends to take action
609 to help ensure that these conditions do not exist in Utah. The purpose of this bill is to protect
610 women in Utah from these risks in a manner that does not conflict with the rights, held by state
611 and federal courts to be protected by the United States Constitution, in relation to abortion.

612 The Legislature intends that the department enact rules, and enforce those rules and the
613 provisions of this bill, in a manner that does not place an undue burden on these rights.

614 Section 9. **Effective date.**

615

This bill takes effect on July 1, 2011.

FISCAL NOTE

H.B. 171 2nd Sub. (Gray)

SHORT TITLE: **Abortion Clinic Licensing**

SPONSOR: **Wimmer, C.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

The bill costs the Department of Health \$10,000 one-time General Fund in FY 2012 to establish safety rules and \$6,000 ongoing dedicated credits beginning in FY 2012 for staff time for facility inspections. The bill generates \$6,000 ongoing dedicated credits from licensing revenues beginning in FY 2012. Additionally, the bill costs the Department of Commerce \$3,500 one-time from the Commerce Service Fund in FY 2012 for programming changes to the physician renewal forms. Commerce Service Fund expenditures impact annual deposits to the General Fund.

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue:			
General Fund, One-Time	\$0	(\$3,500)	\$0
Dedicated Credits	\$0	\$6,000	\$6,000
Commerce Service, One-time	\$0	\$3,500	\$0
Total Revenue	\$0	\$6,000	\$6,000
Expenditure:			
General Fund, One-Time	\$0	\$10,000	\$0
Dedicated Credits	\$0	\$6,000	\$6,000
Commerce Service, One-time	\$0	\$3,500	\$0
Total Expenditure	\$0	\$19,500	\$6,000
Net Impact, All Funds (Rev.-Exp.)	\$0	(\$13,500)	\$0
Net Impact, General/Education Funds	\$0	(\$13,500)	\$0

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

The \$6,000 ongoing revenues estimate comes \$857 licensing fees from 7 abortion clinics that must now be licensed. Additionally, a total of 8 abortion clinics will be inspected more frequently by State personnel, which generates costs of staff time and document preparation to comply with the inspections.