

HB0218S03 compared with HB0218S02

~~deleted text~~ shows text that was in HB0218S02 but was deleted in HB0218S03.

inserted text shows text that was not in HB0218S02 but was inserted into HB0218S03.

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Representative **Brian S. King** proposes the following substitute bill:

REPORTING REQUIREMENT AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian S. King

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses reporting requirements for the abuse, neglect, or exploitation of certain individuals.

Highlighted Provisions:

This bill:

- ▶ amends the reporting requirement for the suspected abuse, neglect, or exploitation of a vulnerable adult;
- ▶ provides exceptions to the reporting requirement for suspected abuse, neglect, or exploitation of a vulnerable adult;
- ▶ clarifies the physician-patient privilege in regards to reporting suspected abuse, neglect, or exploitation of a vulnerable adult;
- ▶ requires Adult Protective Services to file a complaint in certain circumstances;

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- ▶ addresses civil and criminal liability for reporting, or failing to report, suspected abuse, neglect, or exploitation of a vulnerable adult to Adult Protective Services or the nearest police officer or law enforcement agency;
- ▶ addresses prosecution for willful failure to report suspected abuse, neglect, or exploitation of a vulnerable adult;
- ▶ amends the reporting requirement for the suspected abuse or neglect of a child;
- ▶ provides exceptions to the reporting requirement for suspected abuse or neglect of a child;
- ▶ clarifies the physician-patient privilege in regards to reporting suspected abuse or neglect of a child;
- ▶ requires the Division of Child and Family Services to file a complaint in certain circumstances;
- ▶ addresses civil and criminal liability for reporting, or failing to report, suspected abuse or neglect of a child to the Division of Child and Family Services or the nearest police officer or law enforcement agency;
- ▶ addresses prosecution for willful failure to report suspected abuse or neglect of a child;
- ▶ makes it a crime for an individual to threaten, intimidate, or attempt to intimidate certain individuals when a report is made, or an investigation is being conducted, in regards to the abuse or neglect of a child;
- ▶ repeals a statute with a reporting requirement for abuse, neglect, or exploitation of a vulnerable adult; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-3-305, as last amended by Laws of Utah 2012, Chapter 328

62A-4a-403, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20

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62A-4a-410, as last amended by Laws of Utah 2008, Chapters 382 and 395

62A-4a-411, as last amended by Laws of Utah 2008, Chapter 299

62A-4a-412, as last amended by Laws of Utah 2020, Chapters 193 and 258

REPEALS:

76-5-111.1, as last amended by Laws of Utah 2004, Chapter 50

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

Section 1. Section **62A-3-305** is amended to read:

62A-3-305. Reporting requirements -- Investigation -- Exceptions -- Immunity -- Penalties -- Nonmedical healing.

~~[(1) A person who has reason to believe that a vulnerable adult has been the subject of abuse, neglect, or exploitation shall immediately notify Adult Protective Services intake or the nearest law enforcement agency. When the initial report is made to law enforcement, law enforcement shall immediately notify Adult Protective Services intake. Adult Protective Services and law enforcement shall coordinate, as appropriate, their efforts to provide protection to the vulnerable adult.]~~

(1) Except as provided in Subsection (4), if an individual has reason to believe that a vulnerable adult is, or has been, the subject of abuse, neglect, or exploitation, the individual shall immediately report the suspected abuse, neglect, or exploitation to Adult Protective Services or to the nearest peace officer or law enforcement agency.

(2) (a) If a peace officer or a law enforcement agency receives a report under Subsection (1), the peace officer ~~for~~ or the law enforcement agency shall immediately notify Adult Protective Services.

(b) Adult Protective Services and the peace officer or the law enforcement agency shall coordinate, as appropriate, efforts to investigate the report under Subsection (1) and to provide protection to the vulnerable adult.

~~[(2)]~~ (3) When [the initial report or] a report under Subsection (1), or a subsequent investigation by Adult Protective Services, indicates that a criminal offense may have occurred against a vulnerable adult:

(a) Adult Protective Services shall notify the nearest local law enforcement agency regarding the potential offense; and

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(b) the law enforcement agency [~~may~~] shall initiate an investigation in cooperation with Adult Protective Services.

~~[(3) A person who in good faith makes a report or otherwise notifies a law enforcement agency or Adult Protective Services of suspected abuse, neglect, or exploitation is immune from civil and criminal liability in connection with the report or other notification.]~~

~~[(4) (a) A person who willfully fails to report suspected abuse, neglect, or exploitation of a vulnerable adult is guilty of a class B misdemeanor.]~~

~~[(b) A covered provider or covered contractor, as defined in Section 26-21-201, that knowingly fails to report suspected abuse or neglect, as required by this section, is subject to a private right of action and liability for the abuse or neglect of another person that is committed by the individual who was not reported to Adult Protective Services in accordance with this section.]~~

(4) Subject to Subsection (5), the reporting requirement described in Subsection (1) does not apply to:

(a) a member of the clergy, with regard to any confession made to the member of the clergy while functioning in the ministerial capacity of the member of the clergy and without the consent of the individual making the confession, if:

(i) the perpetrator made the confession directly to the member of the clergy; and

(ii) the member of the clergy is, under canon law or church doctrine or practice, bound to maintain the confidentiality of that confession; or

(b) an attorney, or an individual employed by the attorney, if knowledge of the suspected abuse, neglect, or exploitation of a vulnerable adult arises from the representation of a client, unless the attorney is permitted to reveal the suspected abuse, neglect, or exploitation of the vulnerable adult to prevent reasonably certain death or substantial bodily harm in accordance with Utah Rules of Professional Conduct, Rule 1.6~~(c)~~; or.

~~(c) an individual who reasonably believes that reporting the suspected abuse, neglect, or exploitation of the vulnerable adult places the individual, or another individual, in danger.~~

(5) (a) When a member of the clergy receives information about abuse, neglect, or exploitation of a vulnerable adult from any source other than confession of the perpetrator, the member of the clergy is required to report that information even though the member of the clergy may have also received information about abuse or neglect from the confession of the

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perpetrator.

(b) Exemption of the reporting requirement for an individual described in Subsection (4) does not exempt the individual from any other efforts required by law to prevent further abuse, neglect, or exploitation of a vulnerable adult by the perpetrator.

(~~f~~6) (a) As used in this Subsection (6), "physician" means an individual licensed to practice as a physician or osteopath in this state under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(b) The physician-patient privilege does not:

(i) excuse a physician from reporting suspected abuse, neglect, or exploitation of a vulnerable adult under Subsection (1); or

(ii) constitute grounds for excluding evidence regarding a vulnerable adult's injuries, or the cause of the vulnerable adult's injuries, in any judicial or administrative proceeding resulting from a report under Subsection (1).

(~~f~~7) (a) An individual who in good faith makes a report under Subsection (1), or who otherwise notifies Adult Protective Services or a peace officer or law enforcement agency, is immune from civil and criminal liability in connection with the report or notification.

(b) A covered provider or covered contractor, as defined in Section 26-21-201, that knowingly fails to report suspected abuse, neglect, or exploitation of a vulnerable adult to Adult Protective Services, or to the nearest peace officer or law enforcement agency, under Subsection (1), is subject to a private right of action and liability for the abuse, neglect, or exploitation of a vulnerable adult that is committed by the individual who was not reported to Adult Protective Services or to the nearest peace officer or law enforcement agency.

(c) This Subsection (~~f~~7) does not provide immunity with respect to acts or omissions of a governmental employee except as provided in Title 63G, Chapter 7, Governmental Immunity Act of Utah.

(~~f~~8) If Adult Protective Services has substantial grounds to believe that an individual has knowingly failed to report suspected abuse, neglect, or exploitation of a vulnerable adult in accordance with this section, Adult Protective Services shall file a complaint with:

(a) the Division of Occupational and Professional Licensing if the individual is a health care provider, as defined in Section 62A-4a-404, or a mental health therapist, as defined in Section 58-6-102;

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(b) the appropriate law enforcement agency if the individual is a law enforcement officer, as defined in Section 53-13-103; and

(c) the State Board of Education if the individual is an educator, as defined in Section 53E-6-102; and;

~~{ (d) the individual's employer.~~

~~{~~ (~~8~~9) (a) An individual is guilty of a class B misdemeanor if the individual willfully fails to report suspected abuse, neglect, or exploitation of a vulnerable adult to Adult Protective Services, or to the nearest peace officer or law enforcement agency under Subsection (1).

(b) If an individual is convicted under Subsection (~~8~~9)(a), the court may order the individual, in addition to any other sentence the court imposes, to:

(i) complete community service hours; or

(ii) complete a program on preventing abuse, neglect, and exploitation of vulnerable adults.

(c) In determining whether it would be appropriate to charge an individual with a violation of Subsection (9)(a), the prosecuting attorney shall take into account whether a reasonable individual would not have reported suspected abuse, neglect, or exploitation of a vulnerable adult because reporting would have placed the individual in immediate danger of death or serious bodily injury.

~~(~~c~~d)~~ Notwithstanding any contrary provision of law, a prosecuting attorney may not use an individual's violation of Subsection (~~8~~9)(a) as the basis for charging the individual with another offense.

~~(~~d~~e)~~ A prosecution for failure to report under Subsection (~~8~~9)(a) shall be commenced within ~~four~~two years ~~from~~after the ~~date that~~day on which the individual had knowledge of the ~~offense~~suspected abuse, neglect, or exploitation and willfully failed to report.

~~(5)~~ (~~9~~10) Under circumstances not amounting to a violation of Section 76-8-508, [a person who] an individual is guilty of a class B misdemeanor if the individual threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a report[; a witness, the person who made the report] under Subsection (1), the individual who made the report under Subsection (1), a witness, or any other person cooperating with an investigation conducted [pursuant to] in accordance with this chapter [is guilty of a class B misdemeanor].

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~~[(6)]~~ ~~(10;11)~~ An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.

Section 2. Section **62A-4a-403** is amended to read:

62A-4a-403. Reporting requirements -- Exceptions.

~~[(1)(a) Except as provided in Subsection (2), when any individual, including an individual licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 67, Utah Medical Practice Act, has reason to believe that a child has been subjected to abuse or neglect, or observes a child being subjected to conditions or circumstances that would reasonably result in abuse or neglect, that individual shall immediately report the alleged abuse or neglect to the nearest peace officer, law enforcement agency, or office of the division.]~~

~~[(b)(i) Upon receipt of a report described in Subsection (1)(a)]~~

(1) Except as provided in ~~(Subsections)~~ **Subsection** (3), if an individual, including an individual licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 67, Utah Medical Practice Act, has reason to believe that a child is, or has been, the subject of abuse or neglect, or observes a child being subjected to conditions or circumstances that would reasonably result in abuse or neglect, the individual shall immediately report the suspected abuse or neglect to the division or to the nearest peace office or law enforcement agency.

(2) (a) (i) If a peace officer or a law enforcement agency receives a report under Subsection (1), the peace officer or law enforcement agency shall immediately notify the nearest office of the division.

(ii) ~~[If an initial report of abuse or neglect is made to the division]~~ If the division receives a report under Subsection (1), the division shall immediately notify the appropriate local law enforcement agency.

~~[(c)]~~ (b) (i) The division shall, in addition to the division's own investigation in accordance with Section 62A-4a-409, coordinate with the law enforcement agency on investigations ~~[by law enforcement undertaken to investigate {}]~~ a report described in Subsection (1)(a) **undertaken by the law enforcement agency to investigate** the report of abuse or neglect under Subsection (1).

(ii) If a law enforcement agency undertakes an investigation of a ~~[report described in Subsection (1)(a)]~~ report under Subsection (1), the law enforcement agency ~~[~~undertaking the

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~~investigation~~ shall provide a final investigatory report to the division upon request.

~~(2)~~ (3) Subject to Subsection ~~(3)~~ (4), the ~~notification~~ reporting requirement described in Subsection ~~(1)(a)~~ (1) does not apply to:

(a) a member of the clergy, with regard to any confession made to the member of the clergy while functioning in the ministerial capacity of the member of the clergy and without the consent of the individual making the confession, if:

~~(a)~~ (i) the perpetrator made the confession directly to the member of the clergy; and

~~(b)~~ (ii) the member of the clergy is, under canon law or church doctrine or practice, bound to maintain the confidentiality of that confession~~[-];~~ or

(b) an attorney, or an individual employed by the attorney, if the knowledge or belief of the suspected abuse or neglect of a child arises from the representation of a client, unless the attorney is permitted to reveal the suspected abuse or neglect of the child to prevent reasonably certain death or substantial bodily harm in accordance with Utah Rules of Professional Conduct, Rule 1.6~~[-; or];~~

~~{~~ (c) an individual who reasonably believes that reporting the suspected abuse or neglect of the child places the individual, or another individual, in danger.

~~}~~ ~~(3)~~ (4) (a) When a member of the clergy receives information about abuse or neglect from any source other than confession of the perpetrator, the member of the clergy is required to report that information even though the member of the clergy may have also received information about abuse or neglect from the confession of the perpetrator.

(b) Exemption of the reporting requirement for ~~[a member of the clergy]~~ an individual described in Subsection (3) does not exempt the ~~[member of the clergy]~~ individual from any other efforts required by law to prevent further abuse or neglect by the perpetrator.

Section 3. Section **62A-4a-410** is amended to read:

62A-4a-410. Immunity from liability -- Exception.

(1) (a) Any person who in good faith makes a report under Section 62A-4a-403, 62A-4a-404, or 62A-4a-405, or who otherwise notifies the division or a peace officer or law enforcement agency of suspected abuse or neglect of a child, is immune from civil and criminal liability in connection with the report or notification.

~~(1)~~ (b) Except as provided in Subsection (3), any person, official, or institution ~~[participating in good faith in making a report,]~~ taking photographs or X-rays, assisting an

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investigator from the division, serving as a member of a child protection team, or taking a child into protective custody [~~pursuant to~~] in accordance with this part, is immune from [~~any liability, civil or criminal, that otherwise might result by reason of those actions~~] civil or criminal liability in connection with those actions.

(2) This section does not provide immunity with respect to acts or omissions of a governmental employee except as provided in Title 63G, Chapter 7, Governmental Immunity Act of Utah.

(3) The immunity described in Subsection (1)~~(b)~~ does not apply if the person, official, or institution:

(a) acted or failed to act through fraud or willful misconduct;

(b) in a judicial or administrative proceeding, intentionally or knowingly gave, upon a lawful oath or in any form allowed by law as a substitute for an oath, false testimony material to the issue or matter of inquiry in the proceeding; or

(c) intentionally or knowingly:

(i) fabricated evidence; or

(ii) except as provided in Subsection (4), with a conscious disregard for the rights of others, failed to disclose evidence that:

(A) was known to the person, official, or institution; and

(B) (I) was known by the person, official, or institution to be relevant to a material issue or matter of inquiry in a pending judicial or administrative proceeding if the person, official, or institution knew of the pending judicial or administrative proceeding; or

(II) was known by the person, official, or institution to be relevant to a material issue or matter of inquiry in a judicial or administrative proceeding, if disclosure of the evidence was requested of the employee by a party to the proceeding or counsel for a party to the proceeding.

(4) Immunity is not lost under Subsection (3)(c)(ii), if the person, official, or institution:

(a) failed to disclose evidence described in Subsection (3)(c)(ii), because the person, official, or institution is prohibited by law from disclosing the evidence; or

(b) (i) [~~pursuant to~~] in accordance with the provisions of 45 [CFR] C.F.R. 164.502(g)(5), refused to disclose evidence described in Subsection (3)(c)(ii) to a person who requested the evidence; and

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(ii) after refusing to disclose the evidence under Subsection (4)(b)(i), complied with or responded to a valid court order or valid subpoena received by the person, official, or institution to disclose the evidence described in Subsection (3)(c)(ii).

Section 4. Section **62A-4a-411** is amended to read:

62A-4a-411. Failure to report -- Threats and intimidation -- Penalties.

~~[Any person, official, or institution required to report a case of suspected abuse, neglect, fetal alcohol syndrome, or fetal drug dependency, who willfully fails to do so is guilty of a class B misdemeanor. Action for failure to report must be commenced within four years from the date of knowledge of the offense and the willful failure to report.]~~

(1) If the division has substantial grounds to believe that an individual has knowingly failed to report suspected abuse, neglect, fetal alcohol syndrome, or fetal drug dependency in accordance with this part, the division shall file a complaint with:

(a) the Division of Occupational and Professional Licensing if the individual is a health care provider, as defined in Section 62A-4a-404, or a mental health therapist, as defined in Section 58-6-102;

(b) the appropriate law enforcement agency if the individual is a law enforcement officer, as defined in Section 53-13-103; **and**

(c) the State Board of Education if the individual is an educator, as defined in Section 53E-6-102 ~~}; and};~~

~~{ — (d) the individual's employer.~~

(2) (a) An individual is guilty of a class B misdemeanor if the individual willfully fails to report the suspected abuse, neglect, fetal alcohol syndrome, or fetal drug dependency in accordance with this part.

(b) If an individual is convicted under Subsection (2)(a), the court may order the individual, in addition to any other sentence the court imposes, to:

(i) complete community service hours; or

(ii) complete a program on preventing abuse and neglect of children.

(c) **In determining whether it would be appropriate to charge an individual with a violation of Subsection (2)(a), the prosecuting attorney shall take into account whether a reasonable individual would not have reported suspected abuse or neglect of a child because reporting would have placed the individual in immediate danger of death or serious bodily**

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injury.

(~~f~~~~c~~~~d~~) Notwithstanding any contrary provision of law, a prosecuting attorney may not use an individual's violation of Subsection (2)(a) as the basis for charging the individual with another offense.

(~~f~~~~d~~~~e~~) A prosecution for failure to report under Subsection (2)(a) shall be commenced within ~~four~~two years ~~from~~after the ~~date that~~day on which the individual had knowledge of the ~~offense~~suspected abuse, neglect, fetal alcohol syndrome, or fetal drug dependency and willfully failed to report.

(3) Under circumstances not amounting to a violation of Section 76-8-508, an individual is guilty of a class B misdemeanor if the individual threatens, intimidates, or attempts to intimidate a child who is the subject of a report under this part, the individual who made the report, a witness, or any other person cooperating with an investigation conducted in accordance with this chapter.

Section 5. Section 62A-4a-412 is amended to read:

62A-4a-412. Reports, information, and referrals confidential.

(1) Except as otherwise provided in this chapter, reports made under this part, as well as any other information in the possession of the division obtained as the result of a report are private, protected, or controlled records under Title 63G, Chapter 2, Government Records Access and Management Act, and may only be made available to:

(a) a police or law enforcement agency investigating a report of known or suspected abuse or neglect, including members of a child protection unit;

(b) a physician who reasonably believes that a child may be the subject of abuse or neglect;

(c) an agency that has responsibility or authority to care for, treat, or supervise a minor who is the subject of a report;

(d) a contract provider that has a written contract with the division to render services to a minor who is the subject of a report;

(e) except as provided in Subsection 63G-2-202(10), a subject of the report, the natural parents of the child, and the guardian ad litem;

(f) a court, upon a finding that access to the records may be necessary for the determination of an issue before the court, provided that in a divorce, custody, or related

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proceeding between private parties, the record alone is:

(i) limited to objective or undisputed facts that were verified at the time of the investigation; and

(ii) devoid of conclusions drawn by the division or any of the division's workers on the ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or neglect of another person;

(g) an office of the public prosecutor or its deputies in performing an official duty;

(h) a person authorized by a Children's Justice Center, for the purposes described in Section 67-5b-102;

(i) a person engaged in bona fide research, when approved by the director of the division, if the information does not include names and addresses;

(j) the State Board of Education, acting on behalf of itself or on behalf of a local education agency, as defined in Section 63J-5-102, for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, limited to information with substantiated or supported findings involving an alleged sexual offense, an alleged felony or class A misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person, and with the understanding that the office must provide the subject of a report received under Subsection (1)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment;

(k) any person identified in the report as a perpetrator or possible perpetrator of abuse or neglect, after being advised of the screening prohibition in Subsection (2);

(l) except as provided in Subsection 63G-2-202(10), a person filing a petition for a child protective order on behalf of a child who is the subject of the report;

(m) a licensed child-placing agency or person who is performing a preplacement adoptive evaluation in accordance with the requirements of Sections 78B-6-128 and 78B-6-130;

(n) an Indian tribe to:

(i) certify or license a foster home;

(ii) render services to a subject of a report; or

(iii) investigate an allegation of abuse, neglect, or dependency; or

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(o) the Division of Substance Abuse and Mental Health, the Department of Health, or a local substance abuse authority, described in Section 17-43-201, for the purpose of providing substance abuse treatment to a pregnant woman, or the services described in Subsection 62A-15-103(2)(o).

(2) (a) A person, unless listed in Subsection (1), may not request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection (1)(k) to screen for potential perpetrators of abuse or neglect.

(b) A person who requests information knowing that the request is a violation of Subsection (2)(a) is subject to the criminal penalty in Subsection (4).

(3) (a) Except as provided in Section 62A-4a-1007 and Subsection (3)(b), the division and law enforcement officials shall ensure the anonymity of the person or persons making the initial report and any others involved in [its] a subsequent investigation.

(b) Notwithstanding any other provision of law, excluding Section 78A-6-317, but including this chapter and Title 63G, Chapter 2, Government Records Access and Management Act, when the division makes a report or other information in the division's possession available under Subsection (1)(e) to a subject of the report or a parent of a child, the division shall remove from the report or other information only the names, addresses, and telephone numbers of individuals or specific information that could:

(i) identify the referent;

(ii) impede a criminal investigation; or

(iii) endanger a person's safety.

(4) Any person who [wilfully] willfully permits, or aides and abets the release of data or information obtained as a result of this part, in the possession of the division or contained on any part of the Management Information System, in violation of this part or Sections 62A-4a-1003 through 62A-4a-1007, is guilty of a class C misdemeanor.

~~[(5) The physician-patient privilege is not a ground for excluding evidence regarding a child's injuries or the cause of those injuries, in any proceeding resulting from a report made in good faith pursuant to this part.]~~

(5) (a) As used in this Subsection (5), "physician" means an individual licensed to practice as a physician or osteopath in this state under Title 58, Chapter 67, Utah Medical

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Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(b) The physician-patient privilege does not:

(i) excuse a physician from reporting suspected abuse, neglect, fetal alcohol syndrome, or fetal drug dependency under this part; and

(ii) constitute grounds for excluding evidence regarding a child's injuries, or the cause of the child's injuries, in any judicial or administrative proceeding resulting from a report under this part.

(6) A child-placing agency or person who receives a report in connection with a preplacement adoptive evaluation pursuant to Sections 78B-6-128 and 78B-6-130:

(a) may provide this report to the person who is the subject of the report; and

(b) may provide this report to a person who is performing a preplacement adoptive evaluation in accordance with the requirement of Sections 78B-6-128 and 78B-6-130, or to a licensed child-placing agency or to an attorney seeking to facilitate an adoption.

Section ~~5~~6. Repealer.

This bill repeals:

Section 76-5-111.1, Reporting requirements -- Investigation -- Immunity -- Violation -- Penalty -- Physician-patient privilege -- Nonmedical healing.