

Representative Stephen E. Sandstrom proposes the following substitute bill:

ABORTION LAW REVISIONS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

Cosponsors: Glenn A. Donnelson Kerry W. Gibson

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ provides that no person may perform an abortion, unless:
 - it is necessary in order to avert a woman's death or to avert a serious risk to a woman of substantial and irreversible impairment of a major bodily function; or
 - the woman is pregnant as the result of incest or rape that is reported to law enforcement before the abortion is performed, and the abortion is performed before the unborn child is viable to survive outside the woman's womb;
- ▶ addresses the confidentiality of the name of a victim of incest or rape;
- ▶ provides a severability clause;
- ▶ provides that the law relating to abortion in Utah that was in effect prior to the effective date of this bill shall be in effect during any stay or court order prohibiting the provisions described in the preceding paragraphs from being implemented;
- ▶ enables the Abortion Litigation Trust Account to be utilized for the legal defense of the provisions of this bill; and



26 ▶ makes technical changes.

27 **Monies Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **76-7-302**, as last amended by Chapter 90, Laws of Utah 2004

34 **76-7-317.1**, as enacted by Chapter 288, Laws of Utah 1991



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

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

38 **76-7-302. Circumstances under which abortion authorized.**

39 (1) An abortion may be performed in this state only by a physician licensed to practice
40 medicine under Title 58, Chapter 67, Utah Medical Practice Act or an osteopathic physician
41 licensed to practice medicine under Title 58, Chapter 68, Utah Osteopathic Medical Practice
42 Act and, if performed 90 days or more after the commencement of the pregnancy as defined by
43 competent medical practices, it shall be performed in a hospital.

44 (2) No person may perform an abortion unless:

45 (a) a medical condition exists that, on the basis of the attending physician's good faith
46 clinical judgment, so complicates the medical condition of a woman as to necessitate the
47 abortion of her pregnancy to avert:

48 (i) the woman's death; or

49 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
50 of the woman; or

51 (b) (i) the woman upon whom the abortion is performed is pregnant as a result of:

52 (A) incest, as defined in Subsection 76-5-406(10) or Section 76-7-102;

53 (B) rape, as defined in Section 76-5-402; or

54 (C) rape of a child, as defined in Section 76-5-402.1;

55 (ii) the incident described in Subsection (2)(b)(i) is reported to a law enforcement
56 agency before the abortion is performed; and

57 (iii) the abortion is performed before the unborn child is viable to survive outside the
58 woman's womb.

59 (3) The name of a victim of an incident reported to law enforcement under Subsection
60 (2)(b) is confidential and may not be disclosed by law enforcement or any other person, unless
61 the disclosure:

62 (a) is approved by the victim;

63 (b) is permitted or required under Section 76-7-304 or Section 76-7-304.5; or

64 (c) is required by law or court order.

65 (4) If any one or more provision, subsection, sentence, clause, phrase or word of this
66 section or the application thereof to any person or circumstance is found to be unconstitutional,
67 the same is hereby declared to be severable and the balance of this section shall remain
68 effective notwithstanding such unconstitutionality. The Legislature hereby declares that it
69 would have passed this section, and each provision, subsection, sentence, clause, phrase, or
70 word thereof, irrespective of the fact that any one or more provision, subsection, sentence,
71 clause, phrase, or word be declared unconstitutional.

72 (5) If the implementation of Subsections (2) through (4) is stayed or otherwise ordered
73 by a court of competent jurisdiction to not be implemented, beginning on the day on which the
74 implementation of Subsections (2) through (4) is stayed or otherwise ordered not to be
75 implemented, and ending on the day on which a court of competent jurisdiction lifts the stay or
76 orders that Subsections (2) through (4) may be implemented, the provisions of Subsection (6)
77 shall apply.

78 ~~[(2) An]~~ (6) This Subsection (6) applies only as provided in Subsection (5).

79 (a) Except as otherwise provided by case law that is binding on the state, an abortion
80 may be performed in this state only under the following circumstances:

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

83 ~~[(b)]~~ (ii) the pregnancy is the result of rape or rape of a child, as defined by Sections
84 76-5-402 and 76-5-402.1, that was reported to a law enforcement agency prior to the abortion;

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

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

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

92 ~~[(3)]~~ (b) After 20 weeks gestational age, measured from the date of conception, an
93 abortion may be performed only for those purposes and circumstances described in Subsections
94 ~~[(2)(a), (d), and (e)]~~ (6)(a)(i), (iv), and (v).

95 ~~[(4)]~~ (c) The name of a victim reported pursuant to Subsection ~~[(2)(b) or (c)]~~ (6)(a)(ii)
96 or (iii) is confidential and may not be revealed by law enforcement or any other party except
97 upon approval of the victim. ~~[This subsection]~~

98 (7) Subsection (6) does not ~~[effect]~~ affect or supersede parental notification
99 requirements otherwise provided by law.

100 Section 2. Section **76-7-317.1** is amended to read:

101 **76-7-317.1. Creation of Abortion Litigation Trust Account.**

102 (1) (a) There is created in the General Fund a restricted account known as the Abortion
103 Litigation Trust Account. All money received by the state from private sources for litigation
104 expenses connected with the defense of Senate Bill 23, passed in the 1991 Annual General
105 Session, or 1st Substitute House Bill 235, passed in the 2007 Annual General Session, shall be
106 deposited in that account.

107 (b) On behalf of the Abortion Litigation Trust Account, the Division of Finance may
108 accept grants, gifts, bequests, or any money made available from any private sources to
109 implement this section.

110 (2) Money shall be appropriated by the Legislature from the account to the Office of
111 the Attorney General under Title 63, Chapter 38, Budgetary Procedures Act.

112 (3) The Abortion Litigation Trust Account may be used only for costs, expenses, and
113 attorneys fees connected with the defense of the abortion ~~[law]~~ laws identified in Subsection
114 (1).

115 (4) Any funds remaining in the abortion litigation trust account after final appellate
116 procedures shall revert to the General Fund, to be first used to offset the monies expended by
117 the state in connection with litigation regarding Senate Bill 23 or House Bill 235.

Legislative Review Note

as of 1-30-07 11:58 AM

As required by legislative rule and practice, the Office of Legislative Research and General Counsel provides the following legislative review note to assist the Legislature in making its own determination as to the constitutionality of the bill. The note is based on an analysis of relevant state and federal constitutional law as applied to the bill. The note is not written for the purpose of influencing whether the bill should become law, but is written to provide information relevant to legislators' consideration of this bill. The note is not a substitute for the judgment of the judiciary, which has authority to determine the constitutionality of a law in the context of a specific case.

The United States Supreme Court has held that a woman has a constitutional right to a *pre-viability* abortion without undue interference from the state. Roe v. Wade, 410 U.S. 113 (1973) and Planned Parenthood v. Casey, 505 U.S. 833, 846 (1992). The United States Supreme Court has also held that a state has power to restrict *post-viability* abortions, if the law contains exceptions for pregnancies which endanger the woman's life or health. Planned Parenthood v. Casey, 505 U.S. 833, 846 (1992). Under these cases, there is a high probability that a court would hold that this bill unduly interferes with a woman's right to a *pre-viability* abortion by restricting such abortions to pregnancies that resulted from incest or rape, or where an abortion is necessary in order to avert a woman's death or a serious risk to a woman of substantial and irreversible impairment of a major bodily function.

Office of Legislative Research and General Counsel

H.B. 235 1st Sub. (Buff) - Abortion Law Revisions

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will require additional appropriations for the Attorney General of \$439,700 in FY 2008, FY 2009, and FY 2010 for attorneys, support staff, and expert witnesses. A future one-time payment may be required for the plaintiff's attorneys dependent on the final decision. This bill has a legislative review note.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund	\$0	\$439,700	\$439,700	\$0	\$0	\$0
Total	\$0	\$439,700	\$439,700	\$0	\$0	\$0

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.
