

Representative Carl Wimmer proposes the following substitute bill:

ABORTION CLINIC LICENSING

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl Wimmer

Senate Sponsor: _____

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;
- ▶ ~~H~~→ subject to certain exceptions, ←~~H~~ 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 abortions in Utah in a
28 location other than a hospital;

- 29 ▶ provides intent language; and
- 30 ▶ makes technical changes.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 This bill takes effect on July 1, 2011.

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **26-21-2**, as last amended by Laws of Utah 2005, Chapter 31

38 **26-21-7**, as last amended by Laws of Utah 2004, Chapter 141

39 **26-21-8**, as last amended by Laws of Utah 2003, Chapter 155

40 **58-67-304**, as last amended by Laws of Utah 2005, Chapter 94

41 **58-68-304**, as last amended by Laws of Utah 2005, Chapter 94

42 ENACTS:

43 **26-21-6.5**, Utah Code Annotated 1953

44 **Uncodified Material Affected:**

45 ENACTS UNCODIFIED MATERIAL



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

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

49 **26-21-2. Definitions.**

50 As used in this chapter:

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

54 (1) "Abortion clinic" means a type I abortion clinic or a type II abortion clinic.

55 (2) "Activities of daily living" means essential activities including:

- 56 (a) dressing;

- 57 (b) eating;
- 58 (c) grooming;
- 59 (d) bathing;
- 60 (e) toileting;
- 61 (f) ambulation;
- 62 (g) transferring; and
- 63 (h) self-administration of medication.

64 (3) "Ambulatory surgical facility" means a freestanding facility, which provides
65 surgical services to patients not requiring hospitalization.

66 (4) "Assistance with activities of daily living" means providing of or arranging for the
67 provision of assistance with activities of daily living.

68 (5) (a) "Assisted living facility" means:

69 (i) a type I assisted living facility, which is a residential facility that provides assistance
70 with activities of daily living and social care to two or more residents who:

71 (A) require protected living arrangements; and

72 (B) are capable of achieving mobility sufficient to exit the facility without the
73 assistance of another person; and

74 (ii) a type II assisted living facility, which is a residential facility with a home-like
75 setting that provides an array of coordinated supportive personal and health care services
76 available 24 hours per day to residents who have been assessed under department rule to need
77 any of these services.

78 (b) Each resident in a type I or type II assisted living facility shall have a service plan
79 based on the assessment, which may include:

80 (i) specified services of intermittent nursing care;

81 (ii) administration of medication; and

82 (iii) support services promoting residents' independence and self sufficiency.

83 (6) "Birthing center" means a freestanding facility, receiving maternal clients and
84 providing care during pregnancy, delivery, and immediately after delivery.

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

86 (8) "Consumer" means any person not primarily engaged in the provision of health care
87 to individuals or in the administration of facilities or institutions in which such care is provided

88 and who does not hold a fiduciary position, or have a fiduciary interest in any entity involved in
89 the provision of health care, and does not receive, either directly or through his spouse, more
90 than 1/10 of his gross income from any entity or activity relating to health care.

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

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

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

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

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

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

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

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

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

115 (ii) is compensated, except for copayments, for the provision of the basic health
116 services listed in Subsection (14)(b)(i) to enrolled participants by a payment which is paid on a
117 periodic basis without regard to the date the health services are provided and which is fixed
118 without regard to the frequency, extent, or kind of health services actually provided; and

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

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

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

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

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

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

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

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

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

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

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

149 (b) does not require intensive medical or nursing services as provided in a hospital or

150 nursing care facility.

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

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

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

159 (23) ~~It~~ (a) ~~is~~ "Type I abortion clinic" means ~~it~~, **except as provided in**
159a **Subsection (23)(b),** ~~It~~ a facility, including a physician's office, but not
160 including a general acute or specialty hospital, that:

161 ~~It~~ [(a)] (i) ~~is~~ performs abortions, as defined in Section 76-7-301, during the first
161a trimester of
162 pregnancy; and

163 ~~It~~ [(b)] (ii) ~~is~~ does not perform abortions, as defined in Section 76-7-301, after the
163a first trimester
164 of pregnancy.

164a ~~It~~ (b) "Type I abortion clinic" **does not include a facility or physician's office that only**
164b **performs abortions:**

164c (i) **that are necessary to avert:**

164d (A) **the death of the woman on whom the abortion is performed; or**

164e (B) **a serious risk of substantial and irreversible impairment of a major bodily function**
164f **of the woman on whom the abortion is performed;**

164g (ii) **of a fetus that has a defect that is documented by a physician or physicians to be**
164h **uniformly diagnosable and uniformly lethal; or**

164i (iii) **where:**

164j (A) **the woman is pregnant as a result rape, as described in Section 76-5-402, rape of a**
164k **child, as described in Section 76-5-402.1, or incest, as described in Subsection 76-5-406(10) or**
164l **Section 76-7-102; and**

164m (B) **before the abortion is performed, the physician who performs the abortion verifies**
164n **that the incident described in Subsection (23)(b)(iii)(A) has been reported to law enforcement**
164o **and complies with the requirements of Section 62A-4a-403.** ~~It~~

165 (24) ~~It~~ (a) ~~is~~ "Type II abortion clinic" means ~~it~~, **except as provided in**

165a **Subsection (24)(b),** ~~←H~~ a facility, including a physician's office, but not
 166 including a general acute or specialty hospital, that:

167 ~~H→~~ ~~[(a)]~~ **(i)** ~~←H~~ performs abortions, as defined in Section 76-7-301, after the first
 167a trimester of
 168 pregnancy; or

169 ~~H→~~ ~~[(b)]~~ **(ii)** ~~←H~~ performs abortions, as defined in Section 76-7-301, during the first
 169a trimester of
 170 pregnancy and after the first trimester of pregnancy.

170a ~~H→~~ **(b) "Type II abortion clinic" does not include a facility or physician's office that only**
 170b **performs abortions:**

170c **(i) that are necessary to avert:**

170d **(A) the death of the woman on whom the abortion is performed; or**

170e **(B) a serious risk of substantial and irreversible impairment of a major bodily function**
 170f **of the woman on whom the abortion is performed;**

170g **(ii) of a fetus that has a defect that is documented by a physician or physicians to be**
 170h **uniformly diagnosable and uniformly lethal; or**

170i **(iii) where:**

170j **(A) the woman is pregnant as a result rape, as described in Section 76-5-402, rape of a**
 170k **child, as described in Section 76-5-402.1, or incest, as described in Subsection 76-5-406(10) or**
 170l **Section 76-7-102; and**

170m **(B) before the abortion is performed, the physician who performs the abortion verifies**
 170n **that the incident described in Subsection (24)(b)(iii)(A) has been reported to law enforcement**
 170o **and complies with the requirements of Section 62A-4a-403.** ~~←H~~

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

172 **26-21-6.5. Licensing of an abortion clinic -- Rulemaking authority -- Fee.**

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

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

177 **(3) (a) The department shall make rules establishing minimum health, safety, sanitary,**
 178 **and recordkeeping requirements for:**

179 **(i) a type I abortion clinic; and**

180 **(ii) a type II abortion clinic.**

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

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

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

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

188 (c) comply with the recordkeeping and reporting requirements of Subsection
189 76-7-305.6(4) and Section 76-7-313;

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

191 (e) pay the annual licensing fee; and

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

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

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

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

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

205 **26-21-7. Exempt facilities.**

206 This chapter does not apply to:

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

209 (2) a health care facility owned or operated by an agency of the United States;

210 (3) the office of a physician or dentist whether it is an individual or group practice,
211 except that it does apply to an abortion clinic;

212 (4) a health care facility established or operated by any recognized church or
213 denomination for the practice of religious tenets administered by mental or spiritual means
214 without the use of drugs, whether gratuitously or for compensation, if it complies with statutes
215 and rules on environmental protection and life safety;

216 (5) any health care facility owned or operated by the Department of Corrections,
217 created in Section 64-13-2; and

218 (6) a residential facility providing 24-hour care:

219 (a) that does not employ direct care staff;

220 (b) in which the residents of the facility contract with a licensed hospice agency to
221 receive end-of-life medical care; and

222 (c) that meets other requirements for an exemption as designated by administrative
223 rule.

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

225 **26-21-8. License required -- Not assignable or transferable -- Posting --**

226 **Expiration and renewal -- Time for compliance by operating facilities.**

227 (1) (a) A person or governmental unit acting severally or jointly with any other person
228 or governmental unit, may not establish, conduct, or maintain a health care facility in this state
229 without receiving a license from the department as provided by this chapter and the rules of the
230 committee.

231 (b) This Subsection (1) does not apply to facilities that are exempt under Section
232 26-21-7.

233 (2) A license issued under this chapter is not assignable or transferable.

234 (3) The current license shall at all times be posted in each health care facility in a place
235 readily visible and accessible to the public.

236 (4) (a) The department may issue a license for a period of time not to exceed 12
237 months from the date of issuance for an abortion clinic and not to exceed 24 months from the
238 date of issuance [~~to~~] for other health care facilities that meet the provisions of this chapter and
239 department rules adopted pursuant to this chapter.

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

242 (c) The license shall be renewed upon completion of the application requirements,

243 unless the department finds the health care facility has not complied with the provisions of this
244 chapter or the rules adopted pursuant to this chapter.

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

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

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

251 **58-67-304. License renewal requirements.**

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

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

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

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

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

265 (3) An application to renew a license under this chapter shall require a physician to
266 answer the following question: "Do you perform abortions in Utah in a location other than a
267 hospital?"

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

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

273 (b) that the physician responded positively to the question described in Subsection (3).

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

275 **58-68-304. License renewal requirements.**

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

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

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

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

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

290 (3) An application to renew a license under this chapter shall require a physician to
291 answer the following question: "Do you perform abortions in Utah in a location other than a
292 hospital?"

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

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

298 (b) that the physician responded positively to the question described in Subsection (3).

299 **Section 7. Legislative intent.**

300 The Legislature is aware of the discovery, nationwide, of abortion clinics that operate in
301 unsafe and unsanitary conditions, risking the health and safety of women. The Legislature is
302 very concerned of the risks posed to women in these circumstances and intends to take action
303 to help ensure that these conditions do not exist in Utah. The purpose of this bill is to protect
304 women in Utah from these risks in a manner that does not conflict with the rights, held by state

305 and federal courts to be protected by the United States Constitution, in relation to abortion.
306 The Legislature intends that the department enact rules, and enforce those rules and the
307 provisions of this bill, in a manner that does not place an undue burden on these rights.

308 Section 8. **Effective date.**

309 This bill takes effect on July 1, 2011.

FISCAL NOTE

H.B. 171 1st Sub. (Buff)

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.