

1   **ABORTION CLINIC LICENSING**

2   2011 GENERAL SESSION

3   STATE OF UTAH

4   **Chief Sponsor: Carl Wimmer**

5   Senate Sponsor: J. Stuart Adams

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6

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12           This bill:

- 13           ▶ defines terms;
- 14           ▶ requires annual licensing for abortion clinics that provide abortions during the first  
15 and second trimesters of pregnancy;
- 16           ▶ grants rulemaking authority to the Department of Health (department) in relation to  
17 licensing of abortion clinics;
- 18           ▶ requires, in order for an abortion clinic to obtain and maintain a license, that the  
19 abortion clinic comply with statutory requirements, rules, health and safety  
20 standards, and recordkeeping requirements;
- 21           ▶ requires inspection of abortion clinics;
- 22           ▶ requires the department to establish a fee on abortion clinics to pay for the costs  
23 relating to this bill;
- 24           ▶ modifies exemptions from the Health Care Facility Licensing and Inspection Act;
- 25           ▶ 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  
27 with the name and address of each physician who reports that they perform elective  
28 abortions in Utah in 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 business 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 business 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.