

Senator Todd Weiler proposes the following substitute bill:

1 **SEXUAL OFFENSES AND STATUTORY NONCONSENT**

2 **AMENDMENTS**

3 2017 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Justin L. Fawson**

6 Senate Sponsor: Todd Weiler

8 **LONG TITLE**

9 **General Description:**

10 This bill amends and enacts provisions related to sexual offenses without the consent of
11 the victim when the actor is infected with Human Immunodeficiency Virus or Acquired
12 Immunodeficiency Virus and amends provisions related to nonconsensual sexual
13 activity.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ enacts provisions to enhance the classification of a sexual offense if the actor was
17 infected with Human Immunodeficiency Virus or Acquired Immunodeficiency
18 Virus;
- 19 ▶ amends provisions related to sexual offenses without the consent of the victim; and
20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**



26 AMENDS:

27 31A-22-726, as last amended by Laws of Utah 2015, Chapter 283

28 53A-2-206, as last amended by Laws of Utah 2012, Chapter 398

29 62A-15-602, as last amended by Laws of Utah 2012, Chapter 248

30 76-5-406, as last amended by Laws of Utah 2015, Chapter 57

31 76-7-302, as last amended by Laws of Utah 2010, Chapter 13

32 76-7-305, as last amended by Laws of Utah 2016, Chapter 362

33 76-7-305.6, as enacted by Laws of Utah 2010, Chapter 314

34 ENACTS:

35 76-3-203.12, Utah Code Annotated 1953



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

38 Section 1. Section 31A-22-726 is amended to read:

39 31A-22-726. **Abortion coverage restriction in health benefit plan and on health**
40 **insurance exchange.**

41 (1) As used in this section, "permitted abortion coverage" means coverage for abortion:

42 (a) that is necessary to avert:

43 (i) the death of the woman on whom the abortion is performed; or

44 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
45 of the woman on whom the abortion is performed;

46 (b) of a fetus that has a defect that is documented by a physician or physicians to be
47 uniformly diagnosable and uniformly lethal; or

48 (c) where the woman is pregnant as a result of:

49 (i) rape, as described in Section 76-5-402;

50 (ii) rape of a child, as described in Section 76-5-402.1; or

51 (iii) incest, as described in Subsection 76-5-406~~(10)~~(2)(j) or Section 76-7-102.

52 (2) A person may not offer coverage for an abortion in a health benefit plan, unless the
53 coverage is a type of permitted abortion coverage.

54 (3) A person may not offer a health benefit plan that provides coverage for an abortion
55 in a health insurance exchange created under Title 63N, Chapter 11, Health System Reform
56 Act, unless the coverage is a type of permitted abortion coverage.

57 (4) A person may not offer a health benefit plan that provides coverage for an abortion
58 in a health insurance exchange created under the federal Patient Protection and Affordable Care
59 Act, 111 P.L. 148, unless the coverage is a type of permitted abortion coverage.

60 Section 2. Section **53A-2-206** is amended to read:

61 **53A-2-206. Interstate compact students -- Inclusion in attendance count --**
62 **Funding for foreign exchange students -- Annual report -- Requirements for exchange**
63 **student agencies.**

64 (1) A school district or charter school may include the following students in the
65 district's or school's membership and attendance count for the purpose of apportionment of
66 state money:

67 (a) a student enrolled under an interstate compact, established between the State Board
68 of Education and the state education authority of another state, under which a student from one
69 compact state would be permitted to enroll in a public school in the other compact state on the
70 same basis as a resident student of the receiving state; or

71 (b) a student receiving services under Title 62A, Chapter 4a, Part 7, Interstate Compact
72 on Placement of Children.

73 (2) (a) A school district or charter school may include foreign exchange students in the
74 district's or school's membership and attendance count for the purpose of apportionment of
75 state money, except as provided in Subsections (2)(b) through (d).

76 (b) (i) Notwithstanding Section [53A-17a-106](#), foreign exchange students may not be
77 included in average daily membership for the purpose of determining the number of weighted
78 pupil units in the grades 1-12 basic program.

79 (ii) Subject to the limitation in Subsection (2)(c), the number of weighted pupil units in
80 the grades 1-12 basic program attributed to foreign exchange students shall be equal to the
81 number of foreign exchange students who were:

82 (A) enrolled in a school district or charter school on October 1 of the previous fiscal
83 year; and

84 (B) sponsored by an agency approved by the district's local school board or charter
85 school's governing board.

86 (c) (i) The total number of foreign exchange students in the state that may be counted
87 for the purpose of apportioning state money under Subsection (2)(b) shall be the lesser of:

88 (A) the number of foreign exchange students enrolled in public schools in the state on
89 October 1 of the previous fiscal year; or

90 (B) 328 foreign exchange students.

91 (ii) The State Board of Education shall make rules in accordance with Title 63G,
92 Chapter 3, Utah Administrative Rulemaking Act, to administer the cap on the number of
93 foreign exchange students that may be counted for the purpose of apportioning state money
94 under Subsection (2)(b).

95 (d) Notwithstanding Sections 53A-17a-133 and 53A-17a-164, weighted pupil units in
96 the grades 1 through 12 basic program for foreign exchange students, as determined by
97 Subsections (2)(b) and (c), may not be included for the purposes of determining a school
98 district's state guarantee money under the voted or board local levies.

99 (3) A school district or charter school may:

100 (a) enroll foreign exchange students that do not qualify for state money; and

101 (b) pay for the costs of those students with other funds available to the school district
102 or charter school.

103 (4) Due to the benefits to all students of having the opportunity to become familiar
104 with individuals from diverse backgrounds and cultures, school districts are encouraged to
105 enroll foreign exchange students, as provided in Subsection (3), particularly in schools with
106 declining or stable enrollments where the incremental cost of enrolling the foreign exchange
107 student may be minimal.

108 (5) The board shall make an annual report to the Legislature on the number of
109 exchange students and the number of interstate compact students sent to or received from
110 public schools outside the state.

111 (6) (a) A local school board or charter school governing board shall require each
112 approved exchange student agency to provide it with a sworn affidavit of compliance prior to
113 the beginning of each school year.

114 (b) The affidavit shall include the following assurances:

115 (i) that the agency has complied with all applicable policies of the board;

116 (ii) that a household study, including a background check of all adult residents, has
117 been made of each household where an exchange student is to reside, and that the study was of
118 sufficient scope to provide reasonable assurance that the exchange student will receive proper

119 care and supervision in a safe environment;

120 (iii) that host parents have received training appropriate to their positions, including
121 information about enhanced criminal penalties under Subsection ~~76-5-406~~(10)(2)(j) for
122 persons who are in a position of special trust;

123 (iv) that a representative of the exchange student agency shall visit each student's place
124 of residence at least once each month during the student's stay in Utah;

125 (v) that the agency will cooperate with school and other public authorities to ensure
126 that no exchange student becomes an unreasonable burden upon the public schools or other
127 public agencies;

128 (vi) that each exchange student will be given in the exchange student's native language
129 names and telephone numbers of agency representatives and others who could be called at any
130 time if a serious problem occurs; and

131 (vii) that alternate placements are readily available so that no student is required to
132 remain in a household if conditions appear to exist which unreasonably endanger the student's
133 welfare.

134 (7) (a) A local school board or charter school governing board shall provide each
135 approved exchange student agency with a list of names and telephone numbers of individuals
136 not associated with the agency who could be called by an exchange student in the event of a
137 serious problem.

138 (b) The agency shall make a copy of the list available to each of its exchange students
139 in the exchange student's native language.

140 (8) Notwithstanding Subsection (2)(c)(i), a school district or charter school shall enroll
141 a foreign exchange student if the foreign exchange student:

142 (a) is sponsored by an agency approved by the State Board of Education;

143 (b) attends the same school during the same time period that another student from the
144 school is:

145 (i) sponsored by the same agency; and

146 (ii) enrolled in a school in a foreign country; and

147 (c) is enrolled in the school for one year or less.

148 Section 3. Section **62A-15-602** is amended to read:

149 **62A-15-602. Definitions.**

150 As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of
151 Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah
152 Forensic Mental Health Facility, and Part 10, Declaration for Mental Health Treatment:

153 (1) "Adult" means a person 18 years of age or older.

154 (2) "Commitment to the custody of a local mental health authority" means that an adult
155 is committed to the custody of the local mental health authority that governs the mental health
156 catchment area in which the proposed patient resides or is found.

157 (3) "Designated examiner" means a licensed physician familiar with severe mental
158 illness, preferably a psychiatrist, designated by the division as specially qualified by training or
159 experience in the diagnosis of mental or related illness or another licensed mental health
160 professional designated by the division as specially qualified by training and at least five years'
161 continual experience in the treatment of mental or related illness. At least one designated
162 examiner in any case shall be a licensed physician. No person who is the applicant, or who
163 signs the certification, under Section 62A-15-631 may be a designated examiner in the same
164 case.

165 (4) "Designee" means a physician who has responsibility for medical functions
166 including admission and discharge, an employee of a local mental health authority, or an
167 employee of an agency that has contracted with a local mental health authority to provide
168 mental health services under Section 17-43-304.

169 (5) "Harmful sexual conduct" means any of the following conduct upon an individual
170 without the individual's consent, or upon an individual who cannot legally consent to the
171 conduct including under the circumstances described in Subsections 76-5-406~~[(1) through (12)]~~
172 (2)(a) through (1):

173 (a) sexual intercourse;

174 (b) penetration, however slight, of the genital or anal opening of the individual;

175 (c) any sexual act involving the genitals or anus of the actor or the individual and the
176 mouth or anus of either individual, regardless of the gender of either participant; or

177 (d) any sexual act causing substantial emotional injury or bodily pain.

178 (6) "Institution" means a hospital, or a health facility licensed under the provisions of
179 Section 26-21-9.

180 (7) "Licensed physician" means an individual licensed under the laws of this state to

181 practice medicine, or a medical officer of the United States government while in this state in
182 the performance of official duties.

183 (8) "Local comprehensive community mental health center" means an agency or
184 organization that provides treatment and services to residents of a designated geographic area,
185 operated by or under contract with a local mental health authority, in compliance with state
186 standards for local comprehensive community mental health centers.

187 (9) "Mental health facility" means the Utah State Hospital or other facility that
188 provides mental health services under contract with the division, a local mental health
189 authority, or organization that contracts with a local mental health authority.

190 (10) "Mental health officer" means an individual who is designated by a local mental
191 health authority as qualified by training and experience in the recognition and identification of
192 mental illness, to interact with and transport persons to any mental health facility.

193 (11) "Mental illness" means a psychiatric disorder as defined by the current edition of
194 the Diagnostic and Statistical Manual of Mental Disorders published by the American
195 Psychiatric Association which substantially impairs a person's mental, emotional, behavioral,
196 or related functioning.

197 (12) "Patient" means an individual under commitment to the custody or to the
198 treatment services of a local mental health authority.

199 (13) "Serious bodily injury" means bodily injury which involves a substantial risk of
200 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
201 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

202 (14) "Substantial danger" means the person, by his or her behavior, due to mental
203 illness:

204 (a) is at serious risk to:

205 (i) commit suicide;

206 (ii) inflict serious bodily injury on himself or herself; or

207 (iii) because of his or her actions or inaction, suffer serious bodily injury because he or
208 she is incapable of providing the basic necessities of life, such as food, clothing, and shelter; or

209 (b) is at serious risk to cause or attempt to cause serious bodily injury or engage in
210 harmful sexual conduct.

211 (15) "Treatment" means psychotherapy, medication, including the administration of

212 psychotropic medication, and other medical treatments that are generally accepted medical and
213 psychosocial interventions for the purpose of restoring the patient to an optimal level of
214 functioning in the least restrictive environment.

215 Section 4. Section **76-3-203.12** is enacted to read:

216 **76-3-203.12. Enhanced penalty for sexual offenses committed by a person with**
217 **Human Immunodeficiency Virus or Acquired Immunodeficiency Virus.**

218 (1) A person convicted of a sexual offense described in Chapter 5, Part 4, Sexual
219 Offenses, is subject to an enhanced penalty if at the time of the sexual offense the person was
220 infected with Human Immunodeficiency Virus or Acquired Immunodeficiency Virus and the
221 person knew of the infection.

222 (2) (a) Except as provided in Subsection (2)(b), the enhancement of a penalty described
223 in Subsection (1) shall be an enhancement of one classification higher than the root offense for
224 which the person was convicted.

225 (b) A felony of the first degree is not enhanced under this section.

226 Section 5. Section **76-5-406** is amended to read:

227 **76-5-406. Sexual offenses against the victim without consent of victim --**
228 **Circumstances.**

229 (1) For purposes of this section, "sexual activity" means:

230 (a) sexual intercourse;

231 (b) any sexual act involving the genitals of one person and the mouth or anus of
232 another person, regardless of the sex of either participant;

233 (c) penetration, however slight, of the genital or anal opening of another person by any
234 foreign object, substance, instrument, or device, including a part of the human body, with the
235 intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or
236 gratify the sexual desire of any person, regardless of the sex of any participant;

237 (d) touching the breast of a female;

238 (e) taking indecent liberties with another; or

239 (f) an attempt of any of the activities described in Subsections (1)(a) through (e).

240 (2) [~~An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape~~
241 ~~of a child, object rape, attempted object rape, object rape of a child, attempted object rape of a~~
242 ~~child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a~~

243 ~~child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse,~~
244 ~~sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child,~~
245 ~~attempted aggravated sexual abuse of a child, or simple sexual abuse] Sexual activity is
246 without consent of the victim under any of the following circumstances:~~

247 [~~1~~] (a) the victim expresses lack of consent through words or conduct;

248 [~~2~~] (b) the actor overcomes the victim through the actual application of physical force
249 or violence;

250 [~~3~~] (c) the actor is able to overcome the victim through concealment or by the
251 element of surprise;

252 [~~4~~]-~~(a)~~-~~(i)~~] (d) (i) (A) the actor coerces the victim to submit by threatening to retaliate
253 in the immediate future against the victim or any other person, and the victim perceives at the
254 time that the actor has the ability to execute this threat; or

255 [~~ii~~] (B) the actor coerces the victim to submit by threatening to retaliate in the future
256 against the victim or any other person, and the victim believes at the time that the actor has the
257 ability to execute this threat;

258 [~~b~~] (ii) as used in this Subsection [~~4~~] (2)(d), "to retaliate" includes threats of
259 physical force, kidnapping, or extortion;

260 [~~5~~] (e) the actor knows the victim is unconscious, unaware that the act is occurring, or
261 physically unable to resist;

262 [~~6~~] (f) the actor knows that as a result of mental disease or defect, or for any other
263 reason the victim is at the time of the act incapable either of appraising the nature of the act or
264 of resisting it;

265 [~~7~~] (g) the actor knows that the victim submits or participates because the victim
266 erroneously believes that the actor is the victim's spouse;

267 [~~8~~] (h) the actor intentionally impaired the power of the victim to appraise or control
268 his or her conduct by administering any substance without the victim's knowledge;

269 [~~9~~] (i) the victim is younger than 14 years of age;

270 [~~10~~] (j) the victim is younger than 18 years of age and at the time of the offense the
271 actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a
272 position of special trust in relation to the victim as defined in Section [76-5-404.1](#);

273 [~~11~~] (k) the victim is 14 years of age or older, but younger than 18 years of age, and

274 the actor is more than three years older than the victim and entices or coerces the victim to
275 submit or participate, under circumstances not amounting to the force or threat required under
276 Subsection (2) [~~(a)~~] (b) or (d); or

277 [~~(1)~~] (1) the actor is a health professional or religious counselor, as those terms are
278 defined in this Subsection [~~(2)~~] (2)(1), the act is committed under the guise of providing
279 professional diagnosis, counseling, or treatment, and at the time of the act the victim
280 reasonably believed that the act was for medically or professionally appropriate diagnosis,
281 counseling, or treatment to the extent that resistance by the victim could not reasonably be
282 expected to have been manifested; for purposes of this Subsection [~~(2)~~] (2)(1):

283 [~~(a)~~] (i) "health professional" means an individual who is licensed or who holds
284 himself or herself out to be licensed, or who otherwise provides professional physical or mental
285 health services, diagnosis, treatment, or counseling including, but not limited to, a physician,
286 osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,
287 social service worker, clinical social worker, certified social worker, marriage and family
288 therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse
289 specialist, or substance abuse counselor; and

290 [~~(b)~~] (ii) "religious counselor" means a minister, priest, rabbi, bishop, or other
291 recognized member of the clergy.

292 Section 6. Section **76-7-302** is amended to read:

293 **76-7-302. Circumstances under which abortion authorized.**

294 (1) As used in this section, "viable" means that the unborn child has reached a stage of
295 fetal development when the unborn child is potentially able to live outside the womb, as
296 determined by the attending physician to a reasonable degree of medical certainty.

297 (2) An abortion may be performed in this state only by a physician.

298 (3) An abortion may be performed in this state only under the following circumstances:

299 (a) the unborn child is not viable; or

300 (b) the unborn child is viable, if:

301 (i) the abortion is necessary to avert:

302 (A) the death of the woman on whom the abortion is performed; or

303 (B) a serious risk of substantial and irreversible impairment of a major bodily function
304 of the woman on whom the abortion is performed;

305 (ii) two physicians who practice maternal fetal medicine concur, in writing, in the
306 patient's medical record that the fetus has a defect that is uniformly diagnosable and uniformly
307 lethal; or

308 (iii) (A) the woman is pregnant as a result of:

309 (I) rape, as described in Section 76-5-402;

310 (II) rape of a child, as described in Section 76-5-402.1; or

311 (III) incest, as described in Subsection 76-5-406~~(10)~~(2)(j) or Section 76-7-102; and

312 (B) before the abortion is performed, the physician who performs the abortion:

313 (I) verifies that the incident described in Subsection (3)(b)(iii)(A) has been reported to
314 law enforcement; and

315 (II) complies with the requirements of Section 62A-4a-403.

316 Section 7. Section 76-7-305 is amended to read:

317 **76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory**
318 **-- Exceptions.**

319 (1) A person may not perform an abortion, unless, before performing the abortion, the
320 physician who will perform the abortion obtains a voluntary and informed written consent from
321 the woman on whom the abortion is performed, that is consistent with:

322 (a) Section 8.08 of the American Medical Association's Code of Medical Ethics,
323 Current Opinions; and

324 (b) the provisions of this section.

325 (2) Except as provided in Subsection (9), consent to an abortion is voluntary and
326 informed only if:

327 (a) at least 72 hours before the abortion, the physician who is to perform the abortion,
328 the referring physician, a physician, a registered nurse, nurse practitioner, advanced practice
329 registered nurse, certified nurse midwife, genetic counselor, or physician's assistant, in a
330 face-to-face consultation in any location in the state, orally informs the woman:

331 (i) consistent with Subsection (3)(a), of:

332 (A) the nature of the proposed abortion procedure;

333 (B) specifically how the procedure described in Subsection (2)(a)(i)(A) will affect the
334 fetus; and

335 (C) the risks and alternatives to an abortion procedure or treatment;

336 (ii) of the probable gestational age and a description of the development of the unborn
337 child at the time the abortion would be performed;

338 (iii) of the medical risks associated with carrying her child to term; and

339 (iv) if the abortion is to be performed on an unborn child who is at least 20 weeks
340 gestational age:

341 (A) that substantial medical evidence from studies concludes that an unborn child who
342 is at least 20 weeks gestational age may be capable of experiencing pain during an abortion
343 procedure; and

344 (B) the measures that shall be taken in accordance with Section [76-7-308.5](#);

345 (b) at least 72 hours prior to the abortion the physician who is to perform the abortion,
346 the referring physician, or, as specifically delegated by either of those physicians, a physician, a
347 registered nurse, licensed practical nurse, certified nurse-midwife, advanced practice registered
348 nurse, clinical laboratory technologist, psychologist, marriage and family therapist, clinical
349 social worker, genetic counselor, or certified social worker orally, in a face-to-face consultation
350 in any location in the state, informs the pregnant woman that:

351 (i) the Department of Health, in accordance with Section [76-7-305.5](#), publishes printed
352 material and an informational video that:

353 (A) provides medically accurate information regarding all abortion procedures that may
354 be used;

355 (B) describes the gestational stages of an unborn child; and

356 (C) includes information regarding public and private services and agencies available
357 to assist her through pregnancy, at childbirth, and while the child is dependent, including
358 private and agency adoption alternatives;

359 (ii) the printed material and a viewing of or a copy of the informational video shall be
360 made available to her, free of charge, on the Department of Health's website;

361 (iii) medical assistance benefits may be available for prenatal care, childbirth, and
362 neonatal care, and that more detailed information on the availability of that assistance is
363 contained in the printed materials and the informational video published by the Department of
364 Health;

365 (iv) except as provided in Subsection (3)(b):

366 (A) the father of the unborn child is legally required to assist in the support of her

367 child, even if he has offered to pay for the abortion; and

368 (B) the Office of Recovery Services within the Department of Human Services will
369 assist her in collecting child support; and

370 (v) she has the right to view an ultrasound of the unborn child, at no expense to her,
371 upon her request;

372 (c) the information required to be provided to the pregnant woman under Subsection
373 (2)(a) is also provided by the physician who is to perform the abortion, in a face-to-face
374 consultation, prior to performance of the abortion, unless the attending or referring physician is
375 the individual who provides the information required under Subsection (2)(a);

376 (d) a copy of the printed materials published by the Department of Health has been
377 provided to the pregnant woman;

378 (e) the informational video, published by the Department of Health, has been provided
379 to the pregnant woman in accordance with Subsection (4); and

380 (f) the pregnant woman has certified in writing, prior to the abortion, that the
381 information required to be provided under Subsections (2)(a) through (e) was provided, in
382 accordance with the requirements of those subsections.

383 (3) (a) The alternatives required to be provided under Subsection (2)(a)(i) include:

384 (i) a description of adoption services, including private and agency adoption methods;
385 and

386 (ii) a statement that it is legal for adoptive parents to financially assist in pregnancy and
387 birth expenses.

388 (b) The information described in Subsection (2)(b)(iv) may be omitted from the
389 information required to be provided to a pregnant woman under this section if the woman is
390 pregnant as the result of rape.

391 (c) Nothing in this section shall be construed to prohibit a person described in
392 Subsection (2)(a) from, when providing the information described in Subsection (2)(a)(iv),
393 informing a woman of the person's own opinion regarding the capacity of an unborn child to
394 experience pain.

395 (4) When the informational video described in Section [76-7-305.5](#) is provided to a
396 pregnant woman, the person providing the information shall:

397 (a) request that the woman view the video at that time or at another specifically

398 designated time and location; or

399 (b) if the woman chooses not to view the video at a time described in Subsection (4)(a),
400 inform the woman that she can access the video on the Department of Health's website.

401 (5) When a serious medical emergency compels the performance of an abortion, the
402 physician shall inform the woman prior to the abortion, if possible, of the medical indications
403 supporting the physician's judgment that an abortion is necessary.

404 (6) If an ultrasound is performed on a woman before an abortion is performed, the
405 person who performs the ultrasound, or another qualified person, shall:

406 (a) inform the woman that the ultrasound images will be simultaneously displayed in a
407 manner to permit her to:

408 (i) view the images, if she chooses to view the images; or

409 (ii) not view the images, if she chooses not to view the images;

410 (b) simultaneously display the ultrasound images in order to permit the woman to:

411 (i) view the images, if she chooses to view the images; or

412 (ii) not view the images, if she chooses not to view the images;

413 (c) inform the woman that, if she desires, the person performing the ultrasound, or
414 another qualified person shall provide a detailed description of the ultrasound images,
415 including:

416 (i) the dimensions of the unborn child;

417 (ii) the presence of cardiac activity in the unborn child, if present and viewable; and

418 (iii) the presence of external body parts or internal organs, if present and viewable; and

419 (d) provide the detailed description described in Subsection (6)(c), if the woman
420 requests it.

421 (7) The information described in Subsections (2), (3), (4), and (6) is not required to be
422 provided to a pregnant woman under this section if the abortion is performed for a reason
423 described in:

424 (a) Subsection 76-7-302(3)(b)(i), if the treating physician and one other physician
425 concur, in writing, that the abortion is necessary to avert:

426 (i) the death of the woman on whom the abortion is performed; or

427 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
428 of the woman on whom the abortion is performed; or

429 (b) Subsection 76-7-302(3)(b)(ii).

430 (8) In addition to the criminal penalties described in this part, a physician who violates
431 the provisions of this section:

432 (a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102;

433 and

434 (b) shall be subject to:

435 (i) suspension or revocation of the physician's license for the practice of medicine and
436 surgery in accordance with Section 58-67-401 or 58-68-401; and

437 (ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.

438 (9) A physician is not guilty of violating this section for failure to furnish any of the
439 information described in Subsection (2), or for failing to comply with Subsection (6), if:

440 (a) the physician can demonstrate by a preponderance of the evidence that the
441 physician reasonably believed that furnishing the information would have resulted in a severely
442 adverse effect on the physical or mental health of the pregnant woman;

443 (b) in the physician's professional judgment, the abortion was necessary to avert:

444 (i) the death of the woman on whom the abortion is performed; or

445 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
446 of the woman on whom the abortion is performed;

447 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
448 76-5-402 and 76-5-402.1;

449 (d) the pregnancy was the result of incest, as defined in Subsection
450 76-5-406~~(10)~~(2)(j) and Section 76-7-102; or

451 (e) at the time of the abortion, the pregnant woman was 14 years of age or younger.

452 (10) A physician who complies with the provisions of this section and Section
453 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain
454 informed consent under Section 78B-3-406.

455 (11) (a) The Department of Health shall provide an ultrasound, in accordance with the
456 provisions of Subsection (2)(b), at no expense to the pregnant woman.

457 (b) A local health department shall refer a person who requests an ultrasound described
458 in Subsection (11)(a) to the Department of Health.

459 (12) A physician is not guilty of violating this section if:

460 (a) the physician provides the information described in Subsection (2) less than 72
461 hours before performing the abortion; and

462 (b) in the physician's professional judgment, the abortion was necessary in a case
463 where:

464 (i) a ruptured membrane, documented by the attending or referring physician, will
465 cause a serious infection; or

466 (ii) a serious infection, documented by the attending or referring physician, will cause a
467 ruptured membrane.

468 Section 8. Section 76-7-305.6 is amended to read:

469 **76-7-305.6. Abortion facilities required to provide printed materials and**
470 **informational video -- Department of Health to make printed materials and**
471 **informational video available.**

472 (1) Except as provided in Subsection 76-7-305.5(7), every facility in which abortions
473 are performed shall provide the printed materials and a viewing or a copy of the video
474 described in Section 76-7-305.5 to each patient or potential patient at least 24 hours before the
475 abortion is performed, unless:

476 (a) the physician can demonstrate by a preponderance of the evidence that the
477 physician reasonably believed that furnishing the information would have resulted in a severely
478 adverse effect on the physical or mental health of the pregnant woman;

479 (b) in the physician's professional judgment, the abortion was necessary to avert:

480 (i) the death of the woman on whom the abortion is performed; or

481 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
482 of the woman on whom the abortion is performed;

483 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
484 76-5-402 and 76-5-402.1;

485 (d) the pregnancy was the result of incest, as defined in Subsection
486 76-5-406~~(10)~~(2)(j) and Section 76-7-102; or

487 (e) at the time of the abortion, the pregnant woman was 14 years of age or younger.

488 (2) The Department of Health and each local health department shall make the printed
489 materials and the video described in Section 76-7-305.5 available at no cost to any person.

490 (3) The Department of Health shall make the printed materials and the video described

491 in Section [76-7-305.5](#) available for viewing on the Department of Health's website by clicking
492 on a conspicuous link on the home page of the website.

493 (4) If the printed materials or a viewing of the video are not provided to a pregnant
494 woman under Subsection (1), the physician who performs the abortion on the woman shall,
495 within 10 days after the day on which the abortion is performed, provide to the Department of
496 Health an affidavit that:

- 497 (a) specifies the information that was not provided to the woman; and
498 (b) states the reason that the information was not provided to the woman.