

HB0369S03 compared with HB0369S02

~~{deleted text}~~ shows text that was in HB0369S02 but was deleted in HB0369S03.

Inserted text shows text that was not in HB0369S02 but was inserted into HB0369S03.

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~~{Representative Justin L. Fawson}~~Senator Todd Weiler proposes the following substitute bill:

SEXUAL OFFENSES AND STATUTORY NONCONSENT AMENDMENTS

2017 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Justin L. Fawson

Senate Sponsor: ~~{~~Todd Weiler

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ enacts provisions to enhance the classification of a sexual offense if the actor was infected with Human Immunodeficiency Virus or Acquired Immunodeficiency

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Virus;

- ▶ amends provisions related to sexual offenses without the consent of the victim;~~{~~
→ enacts provisions criminalizing sexual conduct by a person infected with Human Immunodeficiency Virus or Acquired Immunodeficiency Virus without informing the other person of the infection;~~}~~ and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

ENACTS:

76-3-203.12, Utah Code Annotated 1953

~~{~~ **76-5-406.1**, Utah Code Annotated 1953
~~}~~

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

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

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

- (1) As used in this section, "permitted abortion coverage" means coverage for abortion:
 - (a) that is necessary to avert:
 - (i) the death of the woman on whom the abortion is performed; or
 - (ii) a serious risk of substantial and irreversible impairment of a major bodily function

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of the woman on whom the abortion is performed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) 328 foreign exchange students.

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

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

(3) A school district or charter school may:

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

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

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

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student may be minimal.

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

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

(b) The affidavit shall include the following assurances:

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

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

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

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

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

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

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

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

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

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

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

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

(i) sponsored by the same agency; and

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

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

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

62A-15-602. Definitions.

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

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

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

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

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

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

(a) sexual intercourse;

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

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

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

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

(7) "Licensed physician" means an individual licensed under the laws of this state to practice medicine, or a medical officer of the United States government while in this state in the performance of official duties.

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

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

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

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

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

(13) "Serious bodily injury" means bodily injury which involves a substantial risk of

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death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

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

(a) is at serious risk to:

(i) commit suicide;

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

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

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

(15) "Treatment" means psychotherapy, medication, including the administration of psychotropic medication, and other medical treatments that are generally accepted medical and psychosocial interventions for the purpose of restoring the patient to an optimal level of functioning in the least restrictive environment.

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

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

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

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

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

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

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

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

(a) sexual intercourse;

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

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

(d) touching the breast of a female;

(e) taking indecent liberties with another; or

~~(d)~~ an attempt of any of the activities described in Subsections (1)(a) through ~~(c)~~.

(2) [An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a child, object rape, attempted object rape, object rape of a child, attempted object rape of a child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse, sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child, attempted aggravated sexual abuse of a child, or simple sexual abuse] Sexual activity is without consent of the victim under any of the following circumstances:

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

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

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

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

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

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

~~(5)~~ (e) the actor knows the victim is unconscious, unaware that the act is occurring, or

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physically unable to resist;

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

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

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

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

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

~~[(11)]~~ (k) the victim is 14 years of age or older, but younger than 18 years of age, and the actor is more than three years older than the victim and entices or coerces the victim to submit or participate, under circumstances not amounting to the force or threat required under Subsection (2) ~~[or (4)]~~ (b) or (d); or

~~[(12)]~~ (l) the actor is a health professional or religious counselor, as those terms are defined in this Subsection ~~[(12)]~~ (2)(1), the act is committed under the guise of providing professional diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed that the act was for medically or professionally appropriate diagnosis, counseling, or treatment to the extent that resistance by the victim could not reasonably be expected to have been manifested; for purposes of this Subsection ~~[(12)]~~ (2)(1):

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

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

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Section 6. Section ~~{76-5-406.1 is enacted to read:~~

~~76-5-406.1. Nonconsensual sexual conduct by person who is Human Immunodeficiency Virus positive.~~

~~(1) A person commits nonconsensual sexual conduct when the person engages in sexual intercourse or any sexual act involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant, and:~~

~~(a) the actor knows that the actor is infected with the Human Immunodeficiency Virus or Acquired Immunodeficiency Virus; and~~

~~(b) the actor engages in the sexual conduct knowing that the victim is unaware of the actor's infected status.~~

~~(2) Nonconsensual sexual conduct is a class A misdemeanor.~~

~~Section 7. Section ~~76-7-302 is amended to read:~~~~

~~76-7-302 is amended to read:~~

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

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

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

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

(a) the unborn child is not viable; or

(b) the unborn child is viable, if:

(i) the abortion is necessary to avert:

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

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

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

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

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

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

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

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

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

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

Section ~~8~~7. Section **76-7-305** is amended to read:

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

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

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

(b) the provisions of this section.

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

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

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

(A) the nature of the proposed abortion procedure;

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

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

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

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

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

(A) that substantial medical evidence from studies concludes that an unborn child who

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is at least 20 weeks gestational age may be capable of experiencing pain during an abortion procedure; and

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

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

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

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

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

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

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

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

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

(A) the father of the unborn child is legally required to assist in the support of her child, even if he has offered to pay for the abortion; and

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

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

(c) the information required to be provided to the pregnant woman under Subsection

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

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

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

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

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

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

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

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

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

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

(a) request that the woman view the video at that time or at another specifically designated time and location; or

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

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

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

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

- (i) view the images, if she chooses to view the images; or
- (ii) not view the images, if she chooses not to view the images;

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

- (i) view the images, if she chooses to view the images; or
- (ii) not view the images, if she chooses not to view the images;

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

- (i) the dimensions of the unborn child;
- (ii) the presence of cardiac activity in the unborn child, if present and viewable; and
- (iii) the presence of external body parts or internal organs, if present and viewable; and
- (d) provide the detailed description described in Subsection (6)(c), if the woman

requests it.

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

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

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

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

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

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

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

(b) shall be subject to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section ~~79~~8. Section 76-7-305.6 is amended to read:

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

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

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

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

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

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

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

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

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

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

(3) The Department of Health shall make the printed materials and the video described in Section 76-7-305.5 available for viewing on the Department of Health's website by clicking on a conspicuous link on the home page of the website.

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

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