{deleted text} shows text that was in HB0369S03 but was deleted in HB0369S04.

Inserted text shows text that was not in HB0369S03 but was inserted into HB0369S04.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Todd Weiler proposes the following substitute bill:

CRIMINAL PENALTY ENHANCEMENTS FOR 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 to enhance penalties 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:

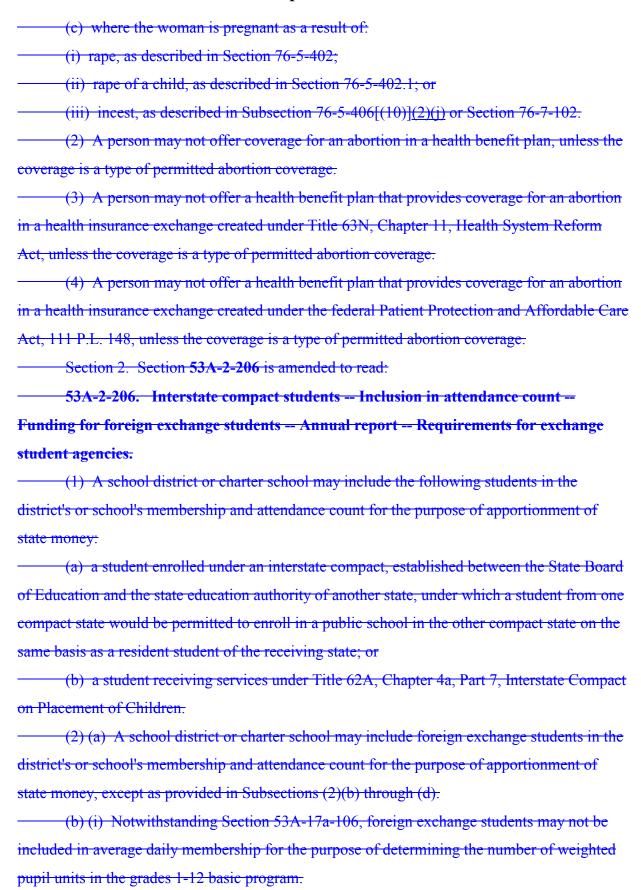
This bill:

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

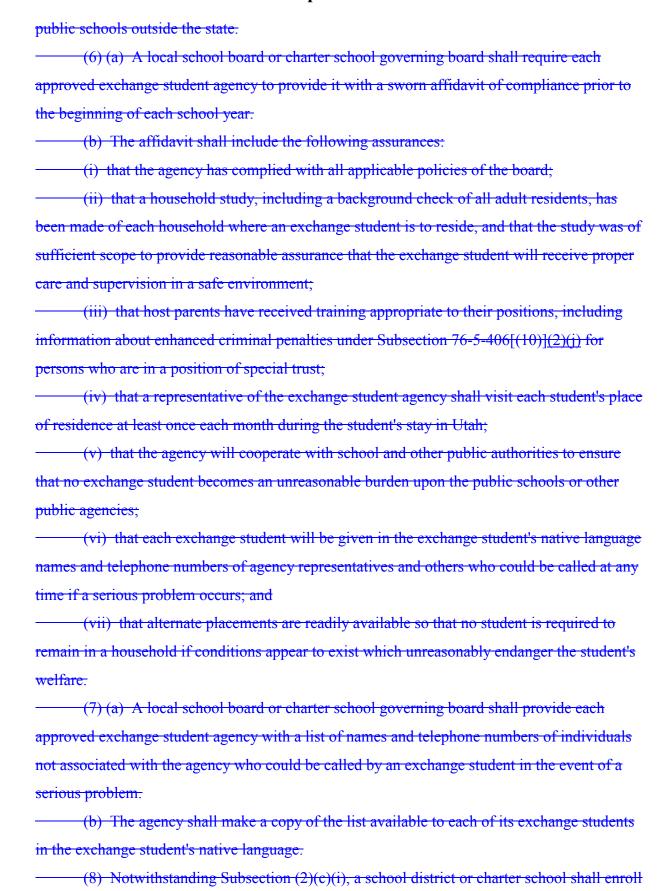
Virus : amends provisions related to sexual offenses without the consent of the victim; and makes technical changes. }. **Money Appropriated in this Bill:** None **Other Special Clauses:** None **Utah Code Sections Affected:** {AMENDS: 31A-22-726, as last amended by Laws of Utah 2015, Chapter 283 53A-2-206, 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 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 of the woman on whom the abortion is performed;

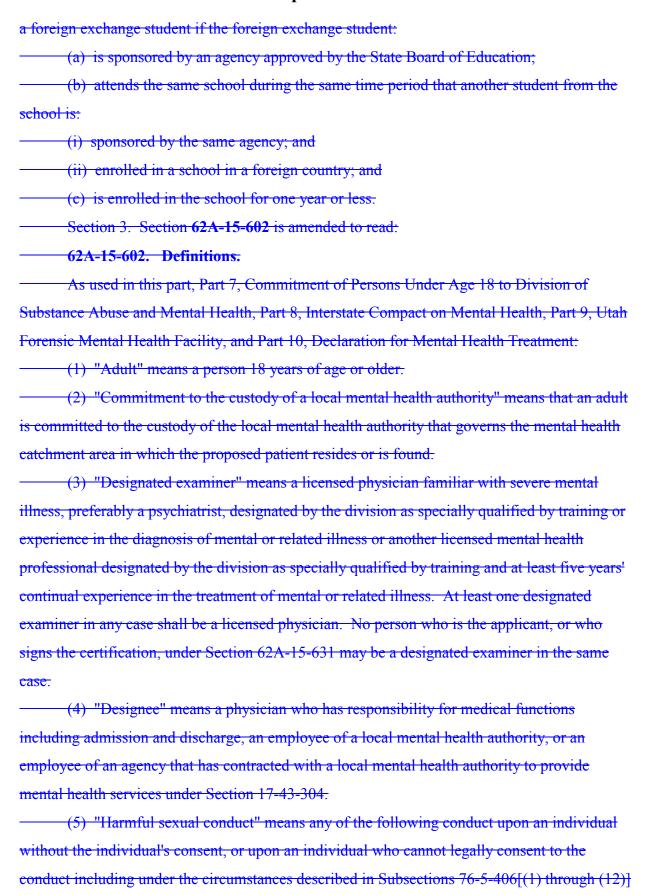
uniformly diagnosable and uniformly lethal; or

(b) of a fetus that has a defect that is documented by a physician or physicians to be

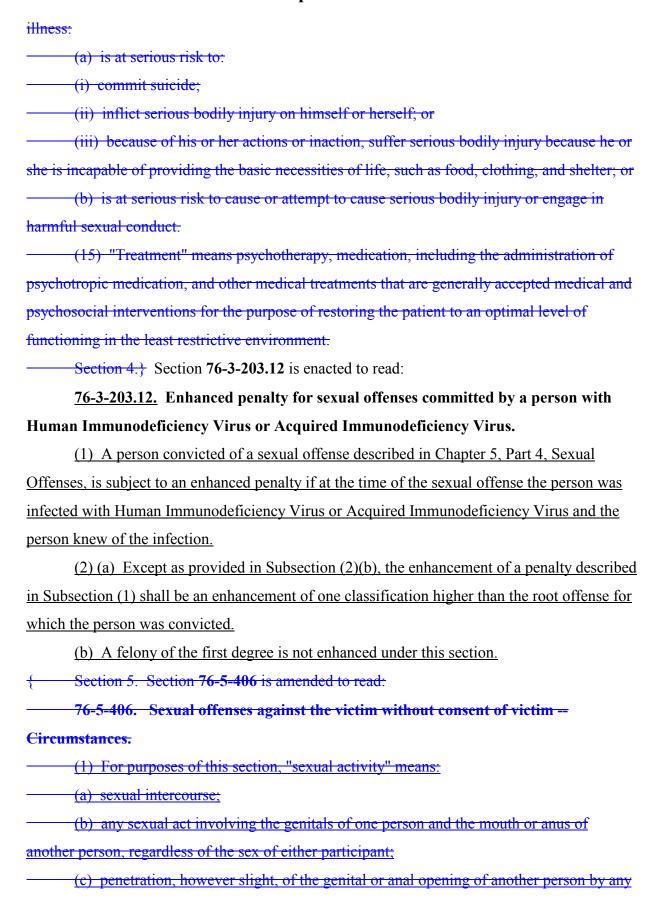


(ii) Subject to the limitation in Subsection (2)(c), the number of weighted pupil units in the grades 1-12 basic program attributed to foreign exchange students shall be equal to the number of foreign exchange students who were: (A) enrolled in a school district or charter school on October 1 of the 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 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

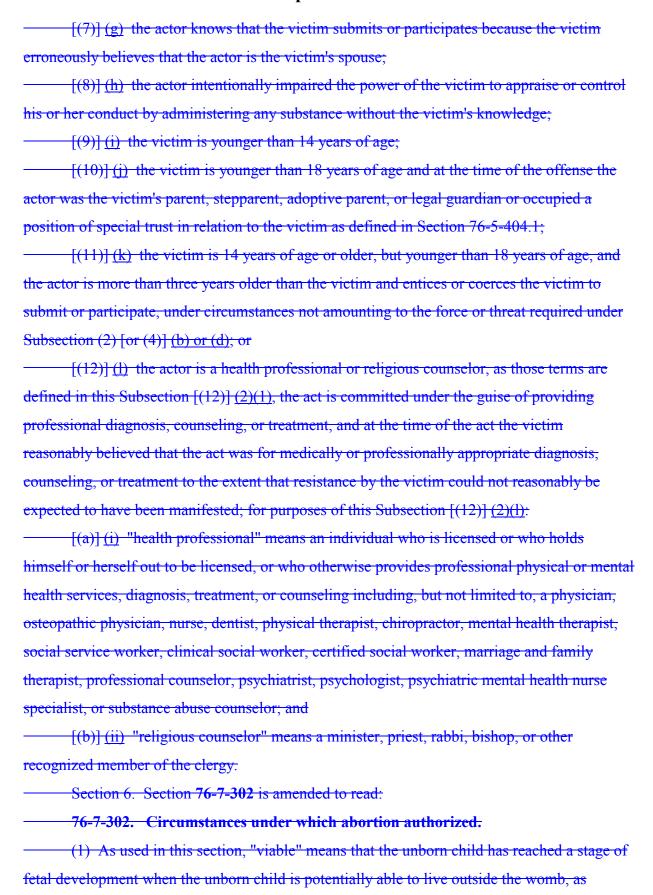




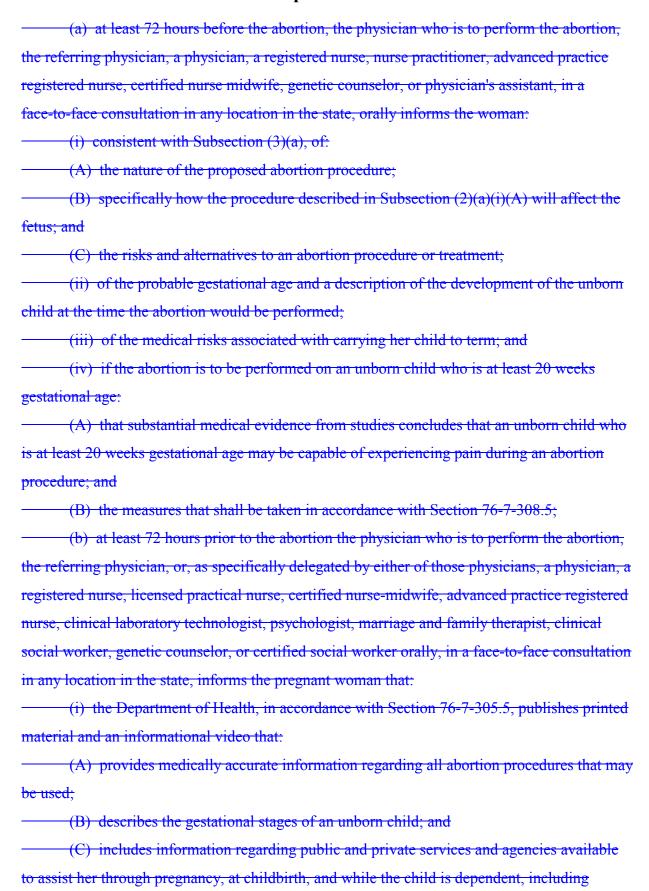
(2)(a) through (1): (a) sexual intercourse; (b) penetration, however slight, of the genital or anal opening of the individual; (c) any sexual act involving the genitals or anus of the actor or the individual and the mouth or anus of either individual, regardless of the gender of either participant; or (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 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



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

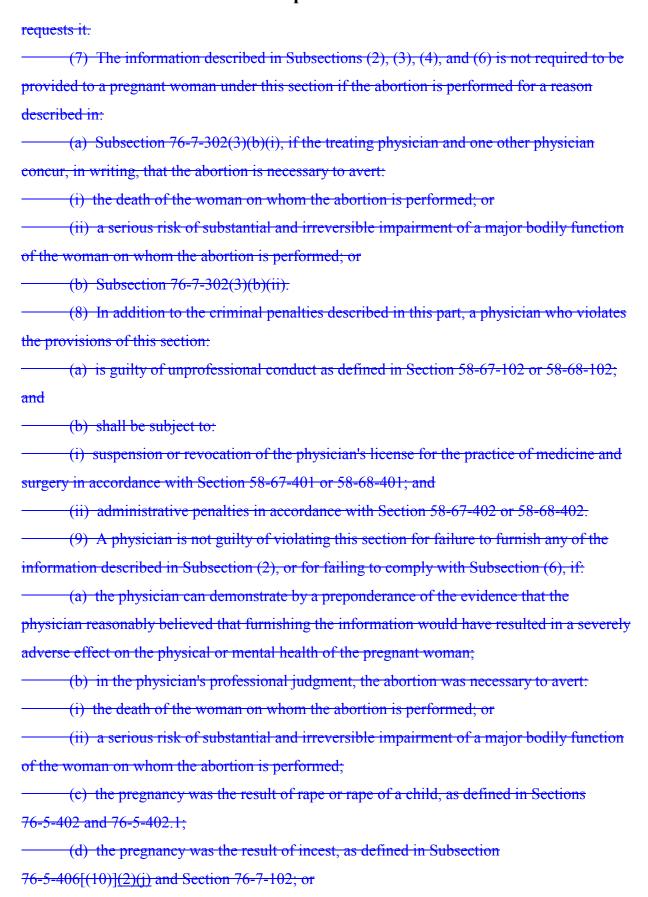


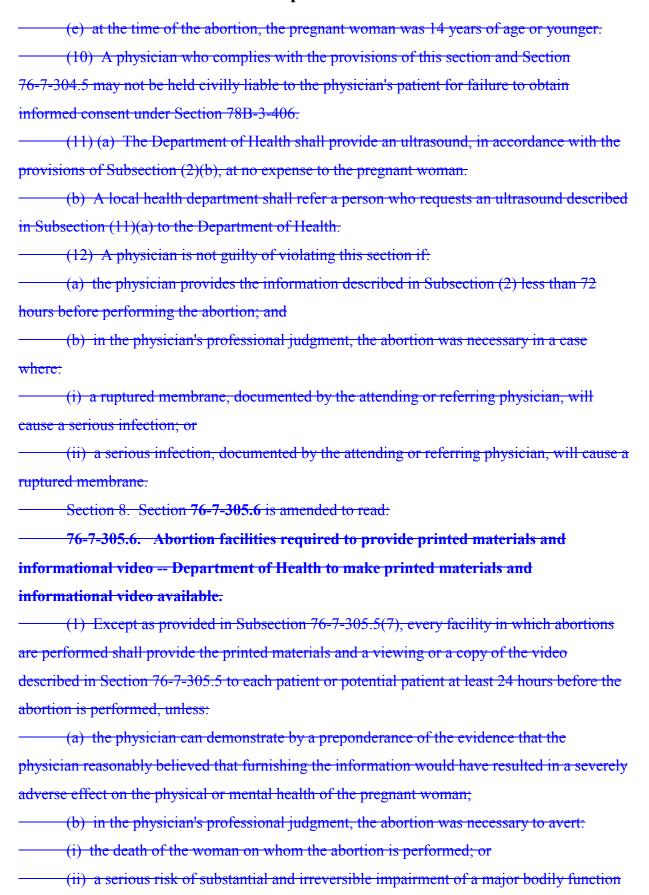
determined by the attending physician to a reasonable degree of medical certainty.
(2) An abortion may be performed in this state only by a physician.
(3) An abortion may be performed in this state only under the following circumstances
(a) the unborn child is not viable; or
(b) the unborn child is viable, 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
(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 7. Section 76-7-305 is amended to read:
76-7-305. Informed consent requirements for abortion 72-hour wait mandator
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:



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 (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. (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





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: (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.

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