

HB0205S03 compared with HB0205S02

~~{deleted text}~~ shows text that was in HB0205S02 but was deleted in HB0205S03.

Inserted text shows text that was not in HB0205S02 but was inserted into HB0205S03.

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~~{Representative Raymond P}~~Senator Lyle W. ~~{Ward}~~Hillyard proposes the following substitute bill:

DOWN SYNDROME NONDISCRIMINATION ABORTION ACT

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill ~~{prohibits the abortion of}~~concerns an unborn child ~~{because of Down syndrome and requires the Division of Services for People with Disabilities provide services to individuals}~~ with Down syndrome ~~{who are waiting for services}~~.

Highlighted Provisions:

This bill:

- ▶ defines "Down syndrome";
- ▶ requires the ~~{Division of Services for People with Disabilities to provide services to individuals with Down syndrome who are waiting for services}~~Department of Health to create a Down syndrome informational support sheet and publish the same information on the department's website;

HB0205S03 compared with HB0205S02

- ▶ requires a physician to provide certain information to a pregnant woman when a prenatal screening or diagnostic test indicates that the pregnant woman's unborn child has or may have Down syndrome;
- ▶ after expressly permitted by a court of binding authority, prohibits a person from performing, inducing, or attempting to perform or induce an abortion on a pregnant woman who is seeking the abortion solely because an unborn child has ~~{,}~~ or may have ~~{,}~~ Down syndrome;
- ▶ requires ~~{the}~~ an abortion pathology report to provide information about whether an aborted child had or may have had Down syndrome;
- ▶ requires a physician who performed an abortion to ~~{affirm that}~~ state whether the physician ~~{did not have}~~ had any knowledge that the pregnant woman sought the abortion solely because the unborn child had or may have had Down syndrome; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

~~{This bill appropriates in fiscal year 2019:~~

- ~~→ to the Department of Human Services -- Division of Services for People with Disabilities -- Community Supports Waiver as an ongoing appropriation:~~
- ~~• from the General Fund, \$1,883,600; and~~
- ~~• from Revenue Transfers, \$4,401,800.} None~~

Other Special Clauses:

~~{None}~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

26-10-1, as last amended by Laws of Utah 2011, Chapters 147, 366 and last amended by Coordination Clause, Laws of Utah 2011, Chapter 366

~~{631-1-262}~~ 631-2-276, as ~~{last}~~ renumbered and amended by Laws of Utah ~~{2017}~~ 2008, Chapter ~~{459}~~ 382

76-7-301, as last amended by Laws of Utah 2010, Chapter 13

~~{76-7-302}~~ 76-7-305, as last amended by Laws of Utah ~~{2010}~~ 2017, Chapter ~~{13}~~ 399

76-7-309, as enacted by Laws of Utah 1974, Chapter 33

~~{76-7-310}~~, as enacted by Laws of Utah 1974, Chapter 33

HB0205S03 compared with HB0205S02

† 76-7-313, as last amended by Laws of Utah 2010, Chapter 314

76-7-317, as enacted by Laws of Utah 1974, Chapter 33

ENACTS:

~~{62A-5-111}~~26-10-14, Utah Code Annotated 1953

76-7-302.4, Utah Code Annotated 1953

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

Section 1. Section 26-10-1 is amended to read:

26-10-1. Definitions.

As used in this chapter:

(1) "Down syndrome" means a genetic condition associated with an extra chromosome 21, in whole or in part, or an effective trisomy for chromosome 21.

~~[(+)]~~(2) "Maternal and child health services" means:

(a) the provision of educational, preventative, diagnostic, and treatment services, including medical care, hospitalization, and other institutional care and aftercare, appliances, and facilitating services directed toward reducing infant mortality and improving the health of mothers and children provided, however, that nothing in this Subsection (1) shall be construed to allow any agency of the state to interfere with the rights of the parent of an unmarried minor in decisions about the providing of health information or services;

(b) the development, strengthening, and improvement of standards and techniques relating to the services and care;

(c) the training of personnel engaged in the provision, development, strengthening, or improvement of the services and care; and

(d) necessary administrative services connected with Subsections (1)(a), (b), and (c).

~~[(2)]~~(3) "Minor" means ~~[a person]~~ an individual under the age of 18.

~~[(3)]~~(4) "Services to children with disabilities" means:

(a) the early location of children with a disability, provided that any program of prenatal diagnosis for the purpose of detecting the possible disease or disabilities of an unborn child will not be used for screening, but rather will be utilized only when there are medical or genetic indications that warrant diagnosis;

(b) the provision for children described in Subsection (3)(a), of preventive, diagnosis,

HB0205S03 compared with HB0205S02

and treatment services, including medical care, hospitalization, and other institutional care and aftercare, appliances, and facilitating services directed toward the diagnosis of the condition of those children or toward the restoration of the children to maximum physical and mental health;

(c) the development, strengthening, and improvement of standards and techniques relating to services and care described in this Subsection (3);

(d) the training of personnel engaged in the provision, development, strengthening, or improvement of services and care described in this Subsection (3); and

(e) necessary administrative services connected with Subsections (3)(a), (b), and (c).

Section ~~{1}~~2. Section ~~{62A-5-111}~~26-10-14 is enacted to read:

~~{62A-5-111. Services for Individuals with Down syndrome.~~

~~—— (1) As used in this part, "Down syndrome" means a genetic condition associated with an extra chromosome 21, in whole or in part, or an effective trisomy for chromosome 21.~~

~~—— (2) Notwithstanding Subsection 62A-5-102(4), the division shall provide the services}~~26-10-14. Down syndrome diagnosis -- Information and support.

(1) The department shall provide contact information for state and national Down syndrome organizations that are nonprofit and that provide information and support services for parents, including first-call programs and information hotlines specific to Down syndrome, resource centers or clearinghouses, and other education and support programs for Down syndrome.

(2) The department shall:

(a) post the information described in Subsection (1) on the department's website under a unique, easy-to-recall web address; and

(b) create an informational support sheet with the information described in Subsection (1) and the web address described in Subsection ~~{62A-5-102(2)}~~ to all individuals who:

~~—— (a) have been waiting for division services}~~(2)(a).

(3) A Down syndrome organization may request that the department include the organization's informational material and contact information on the website. The department may add the information to the website, if the information meets the description under Subsection ~~{62A-5-102(4)}~~ for at least one year; and

HB0205S03 compared with HB0205S02

~~(b) have been diagnosed}(1).~~

(4) When the result of any prenatal screening or diagnostic test indicates that an unborn child has or may have Down syndrome, the physician who ordered the prenatal screening or diagnostic test shall, at an in-person consultation or a scheduled telemedicine or telephone conference, provide the pregnant woman with the information on the informational support, including the address of the website described in Subsection (2)(a).

(5) The information described in Subsection (1):

(a) may promote parenting or adopting a child with Down syndrome; and

(b) may not promote or include information regarding the abortion of a child with

Down syndrome.

Section ~~{2}~~3. Section ~~{63I-1-262}~~63I-2-276 is amended to read:

~~{63I-1-262. Repeal dates, Title 62A.~~

~~(1) Section 62A-4a-213 is repealed July 1, 2019.~~

~~(2) Section 62A-4a-202.9 is repealed December 31, 2019.~~

~~(3) Section 62A-5-111 is repealed December 31, 2018.~~

~~{(3)} (4) Subsection 62A-15-1101(5) is repealed July 1, 2018.~~

~~}63I-2-276. Repeal dates -- Title 76.~~

If Section 76-7-302.4 is not in effect before January 1, 2028, Section 76-7-302.4 is repealed January 1, 2028.

Section ~~{3}~~4. Section **76-7-301** is amended to read:

76-7-301. Definitions.

As used in this part:

(1) (a) "Abortion" means:

(i) the intentional termination or attempted termination of human pregnancy after implantation of a fertilized ovum through a medical procedure carried out by a physician or through a substance used under the direction of a physician;

(ii) the intentional killing or attempted killing of a live unborn child through a medical procedure carried out by a physician or through a substance used under the direction of a physician; or

(iii) the intentional causing or attempted causing of a miscarriage through a medical procedure carried out by a physician or through a substance used under the direction of a

HB0205S03 compared with HB0205S02

physician.

(b) "Abortion" does not include:

(i) removal of a dead unborn child;

(ii) removal of an ectopic pregnancy; or

(iii) the killing or attempted killing of an unborn child without the consent of the pregnant woman, unless:

(A) the killing or attempted killing is done through a medical procedure carried out by a physician or through a substance used under the direction of a physician; and

(B) the physician is unable to obtain the consent due to a medical emergency.

(2) "Down syndrome" means a genetic condition associated with an extra chromosome 21, in whole or in part, or an effective trisomy for chromosome 21.

~~[(5)]~~ (3) "Hospital" means:

(a) a general hospital licensed by the Department of Health according to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; and

(b) a clinic or other medical facility to the extent that such clinic or other medical facility is certified by the Department of Health as providing equipment and personnel sufficient in quantity and quality to provide the same degree of safety to the pregnant woman and the unborn child as would be provided for the particular medical procedures undertaken by a general hospital licensed by the Department of Health.

~~[(2)]~~ (4) "Medical emergency" means that condition which, on the basis of the physician's good faith clinical judgment, so threatens the life of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function.

~~[(3)]~~ (5) (a) "Partial birth abortion" means an abortion in which the person performing the abortion:

(i) deliberately and intentionally vaginally delivers a living fetus until, in the case of a head first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and

(ii) performs the overt act, other than completion of delivery, that kills the partially

HB0205S03 compared with HB0205S02

living fetus.

(b) "Partial birth abortion" does not include the dilation and evacuation procedure involving dismemberment prior to removal, the suction curettage procedure, or the suction aspiration procedure for abortion.

~~[(4)]~~ (6) "Physician" means:

(a) a medical doctor licensed to practice medicine and surgery under Title 58, Chapter 67, Utah Medical Practice Act;

(b) an osteopathic physician licensed to practice osteopathic medicine under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or

(c) a physician employed by the federal government who has qualifications similar to a person described in Subsection ~~[(4)]~~ (6)(a) or (b).

Section ~~{4}~~ 5. Section 76-7-302.4 is ~~{amended}~~ enacted to read:

76-7-302.4. ~~Circumstances under which abortion authorized.~~

~~(1) As used in this section, "viable" means~~ 4. Abortion restriction of an unborn child with Down syndrome.

Notwithstanding Subsection 76-7-302(3)(a), an abortion may not be performed if the pregnant mother's sole reason for the abortion is 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) except as provided in Subsection 76-7-310(3), 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~~ or may have Down syndrome, unless 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~~~~

HB0205S03 compared with HB0205S02

- ~~(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 } permissible for a reason described in Subsection ~~{76-5-406(10) 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.~~ 76-7-302(3)(b).~~

Section 6. 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;
 - (C) the risks and alternatives to an abortion procedure or treatment; and
 - (D) the options and consequences of aborting a medication-induced abortion;
- (ii) of the probable gestational age and a description of the development of the unborn

HB0205S03 compared with HB0205S02

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 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

HB0205S03 compared with HB0205S02

(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) the information required to be provided under Subsection 26-10-14(4) is provided:

(i) when a result of a prenatal screening or diagnostic test indicates that the unborn child has or may have Down syndrome; and

(ii) (A) in a manner permissible under Subsection 26-10-14(4); or

(B) by an individual and in the manner described in Subsection (2)(a);

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

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

~~[(f)]~~ (g) 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

HB0205S03 compared with HB0205S02

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 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

HB0205S03 compared with HB0205S02

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:

(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) 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

HB0205S03 compared with HB0205S02

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

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

Section ~~{5}~~7. Section **76-7-309** is amended to read:

76-7-309. Pathologist's report.

Any human tissue removed during an abortion shall be submitted to a pathologist who shall make a report, including~~[, but not limited to whether there was a pregnancy, and if possible,]~~ whether:

(1) the pregnancy was aborted by evacuating the uterus~~[-];~~ and

(2) a medical record indicates that, through a prenatal screening or other diagnostic test, the aborted fetus had or may have had Down syndrome.

Section ~~{6}~~8. Section ~~{76-7-310}~~76-7-313 is amended to read:

~~{~~ **76-7-310. Experimentation with unborn children prohibited -- Testing for genetic defects -- Providing test results -- Prohibition of abortion due to Down syndrome:**

~~—— (1) Live unborn children may not be used for experimentation, but when advisable, in the best medical judgment of [the] a physician, may be tested for genetic defects.~~

~~—— (2) The result of any prenatal screening or diagnostic test that indicates that an unborn child has or may have Down syndrome shall be delivered to the pregnant woman:~~

~~—— (a) by a licensed prenatal health care provider at an in-person consultation or a telemedicine or telephone conference;~~

~~—— (b) with contact information for a state or national Down syndrome parents' group; and~~

~~—— (c) with a referral to a physician or other specialist who is knowledgeable about~~

HB0205S03 compared with HB0205S02

~~providing medical care to a child with Down syndrome:~~

~~(3) A person may not intentionally perform or attempt to perform an abortion if that person has knowledge that the pregnant woman is seeking the abortion because:~~

~~(a) the unborn child has been diagnosed with Down syndrome; or~~

~~(b) the pregnant woman believes that the unborn child may have Down syndrome.~~

~~(4) A person who performs an abortion described in Subsection (3) is guilty of a class A misdemeanor:~~

~~(5) A pregnant woman upon whom an abortion is performed in violation of this section may not be prosecuted for violating or conspiring to violate this section.~~

~~Section 7. Section 76-7-313 is amended to read:~~

‡ **76-7-313. Physician's report to Department of Health.**

(1) In order for the state Department of Health to maintain necessary statistical information and ensure enforcement of the provisions of this part, any physician performing an abortion must obtain and record in writing:

(a) the age, marital status, and county of residence of the woman on whom the abortion was performed;

(b) the number of previous abortions performed on the woman described in Subsection (1)(a);

(c) the hospital or other facility where the abortion was performed;

(d) the weight in grams of the unborn child aborted, if it is possible to ascertain;

(e) the pathological description of the unborn child;

(f) the given menstrual age of the unborn child;

(g) the measurements of the unborn child, if possible to ascertain; and

(h) the medical procedure used to abort the unborn child.

(2) Each physician who performs an abortion shall provide the following to the Department of Health within 30 days after the day on which the abortion is performed:

(a) the information described in Subsection (1);

(b) a copy of the pathologist's report described in Section 76-7-309;

(c) an affidavit indicating whether:

(i) ~~[that]~~ the required consent was obtained pursuant to Sections 76-7-305, 76-7-305.5, and 76-7-305.6; and

HB0205S03 compared with HB0205S02

~~[(ii) described in Subsection 76-7-305.6(4), if applicable; and]~~

(ii) at the time the physician performed the abortion, the physician had any knowledge that the pregnant woman sought the abortion solely because the unborn child had or may have had Down syndrome;

(d) a certificate indicating:

(i) whether the unborn child was or was not viable, as defined in Subsection 76-7-302(1), at the time of the abortion; and

(ii) if the unborn child was viable, as defined in Subsection 76-7-302(1), at the time of the abortion, the reason for the abortion[~~;~~]; and

(e) the affidavit described in Subsection 76-7-305.6(4), if applicable.

(3) All information supplied to the Department of Health shall be confidential and privileged pursuant to Title 26, Chapter 25, Confidential Information Release.

Section ~~{8}~~9. Section 76-7-317 is amended to read:

76-7-317. Severability clause.

If any [one or more] provision, section, subsection, sentence, clause, phrase, or word of this part or the application thereof to any person or circumstance is found to be unconstitutional, the same is [hereby declared to be] severable and the balance of this part shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed this part, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

Section ~~{9}~~10. ~~{Appropriation:~~

~~—————The following sums of money are appropriated for the fiscal year beginning July 1, 2018, and ending June 30, 2019. These are additions to amounts previously appropriated for fiscal year 2019. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah:~~

~~FTEM-1~~

~~—————To Department of Human Services—Division of Services for People with Disabilities~~

HB0205S03 compared with HB0205S02

From General Fund \$1,883,600

From Revenue Transfers \$4,401,800

Schedule of Programs:

Community Supports Waiver \$6,285,400

Under Section 63J-1-603 the Legislature intends that appropriations provided under this section not lapse at the close of fiscal year 2019. The use of any nonlapsing funds is limited to the purpose described in Section 62A-5-111.

Legislative Review Note

~~The Utah Legislature's Joint Rule 4-2-402 requires~~ Contingent effective date.

(1) As used in this section, "a court of binding authority" means:

(a) the United States Supreme Court; or

(b) after the right to appeal has been exhausted:

(i) the United States Court of Appeals for the Tenth Circuit;

(ii) the Utah Supreme Court; or

(iii) the Utah Court of Appeals.

(2) Except as provided in Subsection (3), this bill takes effect on May 8, 2018.

(3) Section 76-7-302.4 takes effect on the date that the legislative general counsel certifies to ~~place a legislative review note on legislation. The~~ the Legislative Management Committee ~~has further directed legislative general counsel to include legal analysis in the legislative review note only if legislative general counsel determines there is a high probability that a court would declare the legislation to be unconstitutional under the Utah Constitution, the United States Constitution, or both. As explained in the legal analysis below, legislative general counsel has determined, based on applicable state and federal constitutional language and current interpretations of that language in state and federal court case law, that this legislation has a high probability of being declared unconstitutional by a court.~~

HB0205S03 compared with HB0205S02

~~This bill prohibits that a court of binding authority holds that a state may prohibit the abortion of an unborn child if before the unborn child is viable outside of the pregnant mother's mother if the sole reason for seeking the abortion is because that the unborn child has or may have Down syndrome.~~

~~The U.S. Supreme Court has recognized the competing interests of the state's desire to "protect . . . the life of the fetus that may become a child" and a mother's right "to choose to have an abortion." Planned Parenthood v. Casey, 505 U.S. 833, 846 (1992). Analyzing these competing interests, the Court determined that "viability" is "the point at which the balance of interests tips." Id. at 861. Accordingly, "viability marks the earliest point at which the State's interest in fetal life is constitutionally adequate to justify a legislative ban on nontherapeutic abortions." Id. at 860. Prior to a fetus's viability, outside of the womb, "[a] State may not prohibit any woman from making the ultimate decision to terminate her pregnancy." Id. at 879; see also Roe v. Wade, 410 U.S. 113, 163-65 (1973); Gonzales v. Carhart, 550 U.S. 124, 146 (2007); Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292, 2299, 195 L. Ed. 2d 665 (2016), as revised (June 27, 2016). Since Roe was decided in 1973 and was reaffirmed by Casey in 1992, "circuit courts have consistently held that any type of outright ban on pre-viability abortions is unconstitutional." Planned Parenthood of Indiana and Kentucky v. Commissioner, No. 1:16-cv-00763-TWP-DML, 2017 WL 4224750, at *6 (S.D. Ind. Sept. 22, 2017) (holding that prior to viability, a State cannot restrict a woman from exercising her right to choose an abortion, regardless of the reason for her choice).~~

~~The United States District Court for the Southern District of Indiana adjudicated a constitutional challenge of an Indiana statute that created a similar abortion ban to the ban proposed by this legislation. Id. at *1. That court determined that Roe and its progeny create a "categorical" right for a pregnant woman to obtain an abortion prior to the fetus's viability, regardless of whether the woman exercises that right because she does not want a baby or because she wants a baby but not a particular baby. Id. at *7. At this time, no court has held to the contrary.~~

~~Assuming a court follows and applies the United States Supreme Court holdings and reasoning~~

HB0205S03 compared with HB0205S02

~~from Roe and its progeny, there is a high probability that the court would find the proposed legislation unconstitutional because the legislation violates current case law establishing a woman's constitutional right to a nontherapeutic previability abortion.~~

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~~Office of Legislative Research and General Counsel†~~