

ABORTION LAW AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions relating to abortion law.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits certain abortions outside of an abortion clinic or a hospital;
- ▶ amends provisions relating to informed consent;
- ▶ removes the requirement for the Department of Health to create a brochure and an informational video;
- ▶ requires the Department of Health to maintain a website with specified information;
- ▶ requires the Department of Health to develop an information module with specified information;
- ▶ requires the Department of Health to make rules and pursue administrative and legal remedies to ensure compliance with provisions of abortion law; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:



28 AMENDS:

29 **26-21-6.5**, as enacted by Laws of Utah 2011, Chapter 161

30 **58-67-304 (Superseded 07/01/18)**, as last amended by Laws of Utah 2011, Chapters
31 161 and 214

32 **58-67-304 (Effective 07/01/18)**, as last amended by Laws of Utah 2017, Chapter 299

33 **76-7-301**, as last amended by Laws of Utah 2010, Chapter 13

34 **76-7-302**, as last amended by Laws of Utah 2010, Chapter 13

35 **76-7-304**, as last amended by Laws of Utah 2008, Chapter 299

36 **76-7-304.5**, as last amended by Laws of Utah 2010, Chapter 314

37 **76-7-305**, as last amended by Laws of Utah 2017, Chapter 399

38 **76-7-305.5**, as last amended by Laws of Utah 2017, Chapter 399

39 **76-7-305.7**, as last amended by Laws of Utah 2013, Chapter 61

40 **76-7-313**, as last amended by Laws of Utah 2010, Chapter 314

41 **76-7-314**, as last amended by Laws of Utah 2010, Chapter 13

42 REPEALS:

43 **76-7-305.6**, as enacted by Laws of Utah 2010, Chapter 314



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

46 Section 1. Section **26-21-6.5** is amended to read:

47 **26-21-6.5. Licensing of an abortion clinic -- Rulemaking authority -- Fee.**

48 (1) [~~Beginning on April 1, 2012, a~~] A type I abortion clinic may not operate in the state
49 without a license issued by the department to operate a type I abortion clinic.

50 (2) A type II abortion clinic may not operate in the state without a license issued by the
51 department to operate a type II abortion clinic.

52 (3) [~~(a)~~] The department shall make rules establishing minimum health, safety,
53 sanitary, and recordkeeping requirements for:

54 [(i)] (a) a type I abortion clinic; and

55 [(ii)] (b) a type II abortion clinic.

56 [~~(b) The rules established under Subsection (3)(a) shall take effect on April 1, 2012.~~]

57 (4) [~~Beginning on April 1, 2012, in order to~~] To receive and maintain a license
58 described in this section, an abortion clinic shall:

- 59 (a) apply for a license on a form prescribed by the department;
- 60 (b) satisfy and maintain the minimum health, safety, sanitary, and recordkeeping
61 requirements established under Subsection (3)~~(a)~~ that relate to the type of abortion clinic
62 licensed;
- 63 (c) comply with the recordkeeping and reporting requirements of ~~Subsection~~
64 ~~76-7-305.6(4) and~~ Section 76-7-313;
- 65 (d) comply with the requirements of Title 76, Chapter 7, Part 3, Abortion;
- 66 (e) pay the annual licensing fee; and
- 67 (f) cooperate with inspections conducted by the department.
- 68 (5) ~~[Beginning on April 1, 2012, the]~~ The department shall, at least twice per year,
69 inspect each abortion clinic in the state to ensure that the abortion clinic is complying with all
70 statutory and licensing requirements relating to the abortion clinic. At least one of the
71 inspections shall be made without providing notice to the abortion clinic.
- 72 (6) ~~[Beginning on April 1, 2012, the]~~ The department shall charge an annual license
73 fee, set by the department in accordance with the procedures described in Section 63J-1-504, to
74 an abortion clinic in an amount that will pay for the cost of the licensing requirements
75 described in this section and the cost of inspecting abortion clinics.
- 76 (7) The department shall deposit the licensing fees described in this section in the
77 General Fund as a dedicated credit to be used solely to pay for the cost of the licensing
78 requirements described in this section and the cost of inspecting abortion clinics.
- 79 Section 2. Section **58-67-304 (Superseded 07/01/18)** is amended to read:
80 **58-67-304 (Superseded 07/01/18). License renewal requirements.**
- 81 (1) As a condition precedent for license renewal, each licensee shall, during each
82 two-year licensure cycle or other cycle defined by division rule:
- 83 (a) complete qualified continuing professional education requirements in accordance
84 with the number of hours and standards defined by division rule made in collaboration with the
85 board;
- 86 (b) appoint a contact person for access to medical records and an alternate contact
87 person for access to medical records in accordance with Subsection 58-67-302(1)(i); and
- 88 (c) if the licensee practices medicine in a location with no other persons licensed under
89 this chapter, provide some method of notice to the licensee's patients of the identity and

90 location of the contact person and alternate contact person for the licensee.

91 (2) If a renewal period is extended or shortened under Section 58-67-303, the
92 continuing education hours required for license renewal under this section are increased or
93 decreased proportionally.

94 (3) An application to renew a license under this chapter shall:

95 (a) require a physician to answer the following question: "Do you perform elective
96 abortions in Utah in a location other than a hospital?"; and

97 (b) immediately following the question, contain the following statement: "For purposes
98 of the immediately preceding question, elective abortion means an abortion other than one of
99 the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is
100 necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of
101 substantial and irreversible impairment of a major bodily function of a woman, an abortion of a
102 fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where
103 the woman is pregnant as a result of rape or incest."

104 (4) In order to assist the Department of Health in fulfilling its responsibilities relating
105 to the licensing of an abortion clinic and the enforcement of Title 76, Chapter 7, Part 3,
106 Abortion, if a physician responds positively to the question described in Subsection (3)(a), the
107 division shall, within 30 days after the day on which it renews the physician's license under this
108 chapter, inform the Department of Health in writing:

109 (a) of the name and business address of the physician; and

110 (b) that the physician responded positively to the question described in Subsection
111 (3)(a).

112 Section 3. Section 58-67-304 (Effective 07/01/18) is amended to read:

113 **58-67-304 (Effective 07/01/18). License renewal requirements.**

114 (1) As a condition precedent for license renewal, each licensee shall, during each
115 two-year licensure cycle or other cycle defined by division rule:

116 (a) complete qualified continuing professional education requirements in accordance
117 with the number of hours and standards defined by division rule made in collaboration with the
118 board;

119 (b) appoint a contact person for access to medical records and an alternate contact
120 person for access to medical records in accordance with Subsection 58-67-302(1)(i);

121 (c) if the licensee practices medicine in a location with no other persons licensed under
122 this chapter, provide some method of notice to the licensee's patients of the identity and
123 location of the contact person and alternate contact person for the licensee; and

124 (d) if the licensee is an associate physician licensed under Section 58-67-302.8,
125 successfully complete the educational methods and programs described in Subsection
126 58-67-807(4).

127 (2) If a renewal period is extended or shortened under Section 58-67-303, the
128 continuing education hours required for license renewal under this section are increased or
129 decreased proportionally.

130 (3) An application to renew a license under this chapter shall:

131 (a) require a physician to answer the following question: "Do you perform elective
132 abortions in Utah in a location other than a hospital?"; and

133 (b) immediately following the question, contain the following statement: "For purposes
134 of the immediately preceding question, elective abortion means an abortion other than one of
135 the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is
136 necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of
137 substantial and irreversible impairment of a major bodily function of a woman, an abortion of a
138 fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where
139 the woman is pregnant as a result of rape or incest."

140 (4) In order to assist the Department of Health in fulfilling its responsibilities relating
141 to the licensing of an abortion clinic and the enforcement of Title 76, Chapter 7, Part 3,
142 Abortion, if a physician responds positively to the question described in Subsection (3)(a), the
143 division shall, within 30 days after the day on which it renews the physician's license under this
144 chapter, inform the Department of Health in writing:

145 (a) of the name and business address of the physician; and

146 (b) that the physician responded positively to the question described in Subsection

147 (3)(a).

148 Section 4. Section 76-7-301 is amended to read:

149 **76-7-301. Definitions.**

150 As used in this part:

151 (1) (a) "Abortion" means:

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

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

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

161 (b) "Abortion" does not include:

162 (i) removal of a dead unborn child;

163 (ii) removal of an ectopic pregnancy; or

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

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

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

169 (2) "Abortion clinic" means the same as that term is defined in Section [26-21-2](#).

170 (3) "Abuse" means the same as that term is defined in Section [78A-6-105](#).

171 (4) "Department" means the Department of Health.

172 (5) "Hospital" means:

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

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

180 (6) "Information module" means the pregnancy termination information module
181 prepared by the department.

182 [~~(2)~~] (7) "Medical emergency" means that condition which, on the basis of the

183 physician's good faith clinical judgment, so threatens the life of a pregnant woman as to
184 necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay
185 will create serious risk of substantial and irreversible impairment of major bodily function.

186 (8) "Minor" means an individual who is:

187 (a) under 18 years of age;

188 (b) unmarried; and

189 (c) not emancipated.

190 [~~3~~] (9) (a) "Partial birth abortion" means an abortion in which the person performing
191 the abortion:

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

197 (ii) performs the overt act, other than completion of delivery, that kills the partially
198 living fetus.

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

202 [~~4~~] (10) "Physician" means:

203 (a) a medical doctor licensed to practice medicine and surgery under Title 58, Chapter
204 67, Utah Medical Practice Act;

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

207 (c) a physician employed by the federal government who has qualifications similar to a
208 person described in Subsection [~~4~~] (10)(a) or (b).

209 Section 5. Section **76-7-302** is amended to read:

210 **76-7-302. Circumstances under which abortion authorized.**

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

- 214 (2) An abortion may be performed in this state only by a physician.
- 215 (3) An abortion may be performed in this state only under the following circumstances:
- 216 (a) the unborn child is not viable; or
- 217 (b) the unborn child is viable, if:
- 218 (i) the abortion is necessary to avert:
- 219 (A) the death of the woman on whom the abortion is performed; or
- 220 (B) a serious risk of substantial and irreversible impairment of a major bodily function
- 221 of the woman on whom the abortion is performed;
- 222 (ii) two physicians who practice maternal fetal medicine concur, in writing, in the
- 223 patient's medical record that the fetus has a defect that is uniformly diagnosable and uniformly
- 224 lethal; or
- 225 (iii) (A) the woman is pregnant as a result of:
- 226 (I) rape, as described in Section 76-5-402;
- 227 (II) rape of a child, as described in Section 76-5-402.1; or
- 228 (III) incest, as described in Subsection 76-5-406(10) or Section 76-7-102; and
- 229 (B) before the abortion is performed, the physician who performs the abortion:
- 230 (I) verifies that the incident described in Subsection (3)(b)(iii)(A) has been reported to
- 231 law enforcement; and
- 232 (II) complies with the requirements of Section 62A-4a-403.
- 233 (4) An abortion may be performed only in an abortion clinic or a hospital, unless it is
- 234 necessary to perform the abortion in another location due to a medical emergency.

Section 6. Section 76-7-304 is amended to read:

76-7-304. Considerations by physician -- Notice to a parent or guardian --

Exceptions.

~~[(1) As used in this section:]~~

~~[(a) "abuse" is as defined in Section 78A-6-105; and]~~

~~[(b) "minor" means a person who is:]~~

~~[(i) under 18 years of age;]~~

~~[(ii) unmarried; and]~~

~~[(iii) not emancipated.]~~

~~[(2)]~~ (1) To enable the physician to exercise the physician's best medical judgment, the

245 physician shall consider all factors relevant to the well-being of ~~[the]~~ a pregnant woman upon
246 whom ~~[the]~~ an abortion is to be performed, including:

247 (a) her physical, emotional, and psychological health and safety;

248 (b) her age; and

249 (c) her familial situation.

250 ~~[(3)]~~ (2) Subject to Subsection ~~[(4)]~~ (3), at least 24 hours before a physician performs
251 an abortion on a minor, the physician shall notify a parent or guardian of the minor that the
252 minor intends to have an abortion.

253 ~~[(4)]~~ (3) A physician is not required to comply with Subsection ~~[(3)]~~ (2) if:

254 (a) subject to Subsection ~~[(5)]~~ (4)(a):

255 (i) a medical condition exists that, on the basis of the physician's good faith clinical
256 judgment, so complicates the medical condition of a pregnant minor as to necessitate the
257 abortion of her pregnancy to avert:

258 (A) the minor's death; or

259 (B) a serious risk of substantial and irreversible impairment of a major bodily function
260 of the minor; and

261 (ii) there is not sufficient time to give the notice required under Subsection ~~[(3)]~~ (2)
262 before it is necessary to terminate the minor's pregnancy in order to avert the minor's death or
263 impairment described in Subsection ~~[(4)]~~ (3)(a)(i);

264 (b) subject to Subsection ~~[(5)]~~ (4)(b):

265 (i) the physician complies with Subsection ~~[(6)]~~ (5); and

266 (ii) (A) the minor is pregnant as a result of incest to which the parent or guardian was a
267 party; or

268 (B) the parent or guardian has abused the minor; or

269 (c) subject to Subsection ~~[(5)]~~ (4)(b), the parent or guardian has not assumed
270 responsibility for the minor's care and upbringing.

271 ~~[(5)]~~ (4) (a) If, for the reason described in Subsection ~~[(4)]~~ (3)(a), a physician does not
272 give the 24-hour notice described in Subsection ~~[(3)]~~ (2), the physician shall give the required
273 notice as early as possible before the abortion, unless it is necessary to perform the abortion
274 immediately in order to avert the minor's death or impairment described in Subsection ~~[(4)]~~
275 (3)(a)(i).

276 (b) If, for a reason described in Subsection [~~(4)~~] (3)(b) or (c), a parent or guardian of a
 277 minor is not notified that the minor intends to have an abortion, the physician shall notify
 278 another parent or guardian of the minor, if the minor has another parent or guardian that is not
 279 exempt from notification under Subsection [~~(4)~~] (3)(b) or (c).

280 [~~(6)~~] (5) If, for a reason described in Subsection [~~(4)~~] (3)(b)(ii)(A) or (B), a physician
 281 does not notify a parent or guardian of a minor that the minor intends to have an abortion, the
 282 physician shall report the incest or abuse to the Division of Child and Family Services within
 283 the Department of Human Services.

284 Section 7. Section **76-7-304.5** is amended to read:

285 **76-7-304.5. Consent required for abortions performed on minors -- Hearing to**
 286 **allow a minor to self-consent -- Appeals.**

287 [~~(1)~~ As used in this section, "minor" is as defined in Subsection ~~76-7-304(1).~~]

288 [~~(2)~~] (1) In addition to the other requirements of this part, a physician may not perform
 289 an abortion on a minor unless:

290 (a) the physician obtains the informed written consent of a parent or guardian of the
 291 minor, consistent with Sections ~~76-7-305[;]~~ and 76-7-305.5[, ~~and 76-7-305.6~~];

292 (b) the minor is granted the right, by court order under Subsection [~~(5)~~] (4)(b), to
 293 consent to the abortion without obtaining consent from a parent or guardian; or

294 (c) (i) a medical condition exists that, on the basis of the physician's good faith clinical
 295 judgment, so complicates the medical condition of a pregnant minor as to necessitate the
 296 abortion of her pregnancy to avert:

297 (A) the minor's death; or

298 (B) a serious risk of substantial and irreversible impairment of a major bodily function
 299 of the minor; and

300 (ii) there is not sufficient time to obtain the consent in the manner chosen by the minor
 301 under Subsection [~~(3)~~] (2) before it is necessary to terminate the minor's pregnancy in order to
 302 avert the minor's death or impairment described in Subsection [~~(2)~~] (1)(c)(i).

303 [~~(3)~~] (2) A pregnant minor who wants to have an abortion may choose:

304 (a) to seek consent from a parent or guardian under Subsection [~~(2)~~] (1)(a); or

305 (b) to seek a court order under Subsection [~~(2)~~] (1)(b).

306 [~~(4)~~] (3) If a pregnant minor fails to obtain the consent of a parent or guardian of the

307 minor to the performance of an abortion, or if the minor chooses not to seek the consent of a
 308 parent or guardian, the minor may file a petition with the juvenile court to obtain a court order
 309 under Subsection [~~(2)~~] (1)(b).

310 [~~(5)~~] (4) (a) A hearing on a petition described in Subsection [~~(4)~~] (3) shall be closed to
 311 the public.

312 (b) After considering the evidence presented at the hearing, the court shall order that
 313 the minor may obtain an abortion without the consent of a parent or guardian of the minor if
 314 the court finds by a preponderance of the evidence that:

315 (i) the minor:

316 (A) has given her informed consent to the abortion; and

317 (B) is mature and capable of giving informed consent to the abortion; or

318 (ii) an abortion would be in the minor's best interest.

319 [~~(6)~~] (5) The Judicial Council shall make rules that:

320 (a) provide for the administration of the proceedings described in this section;

321 (b) provide for the appeal of a court's decision under this section;

322 (c) ensure the confidentiality of the proceedings described in this section and the
 323 records related to the proceedings; and

324 (d) establish procedures to expedite the hearing and appeal proceedings described in
 325 this section.

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

327 **76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory**
 328 **-- Exceptions.**

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

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

334 (b) the provisions of this section.

335 (2) Except as provided in Subsection [~~(9)~~] (8), consent to an abortion is voluntary and
 336 informed only if [~~(a)~~], at least 72 hours before the abortion[~~;~~];

337 (a) a staff member of the abortion clinic or hospital where the abortion will be

338 performed presents the information module to the pregnant woman;

339 (b) the pregnant woman views the entire information module and presents evidence
340 that the pregnant woman viewed the entire information module to a staff member of the
341 abortion clinic or hospital;

342 (c) the staff member of the abortion clinic or hospital documents that the pregnant
343 woman viewed the entire information module;

344 (d) after the pregnant woman views the entire information module, the physician who
345 is to perform the abortion, the referring physician, a physician, a registered nurse, nurse
346 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
347 physician's assistant, in a face-to-face consultation in any location in the state, orally informs
348 the woman of:

349 [~~(i) consistent with Subsection (3)(a), of:~~]

350 [~~(A)~~] (i) the nature of the proposed abortion procedure;

351 [~~(B)~~] (ii) specifically how the procedure described in Subsection (2)[~~(a)(i)(A)~~](d)(i)
352 will affect the fetus;

353 [~~(C)~~] (iii) the risks and alternatives to [~~an~~] the abortion procedure or treatment; [~~and~~]

354 [~~(D)~~] (iv) the options and consequences of aborting a medication-induced abortion, if
355 the proposed abortion procedure is a medication-induced abortion;

356 [~~(ii) of~~] (v) the probable gestational age and a description of the development of the
357 unborn child at the time the abortion would be performed;

358 [~~(iii) of~~] (vi) the medical risks associated with carrying her child to term; and

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

361 [~~(A) that substantial medical evidence from studies concludes that an unborn child who~~
362 ~~is at least 20 weeks gestational age may be capable of experiencing pain during an abortion~~
363 ~~procedure; and]~~

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

365 [(b) at least 72 hours prior to the abortion the physician who is to perform the abortion,
366 the referring physician, or, as specifically delegated by either of those physicians, a physician, a
367 registered nurse, licensed practical nurse, certified nurse-midwife, advanced practice registered
368 nurse, clinical laboratory technologist, psychologist, marriage and family therapist, clinical

369 ~~social worker, genetic counselor, or certified social worker orally, in a face-to-face consultation~~
370 ~~in any location in the state, informs the pregnant woman that:]~~

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

373 ~~[(A) provides medically accurate information regarding all abortion procedures that~~
374 ~~may be used;]~~

375 ~~[(B) describes the gestational stages of an unborn child; and]~~

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

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

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

385 ~~[(iv) except as provided in Subsection (3)(b):]~~

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

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

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

392 ~~[(c) the information required to be provided to the pregnant woman under Subsection~~
393 ~~(2)(a) is also provided by the physician who is to perform the abortion, in a face-to-face~~
394 ~~consultation, prior to performance of the abortion, unless the attending or referring physician is~~
395 ~~the individual who provides the information required under Subsection (2)(a);]~~

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

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

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

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

404 ~~[(i) a description of adoption services, including private and agency adoption methods;~~
405 ~~and]~~

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

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

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

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

417 ~~[(a) request that the woman view the video at that time or at another specifically~~
418 ~~designated time and location; or]~~

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

421 ~~(vii) the right to view an ultrasound of the unborn child, at no expense to the pregnant~~
422 ~~woman, upon her request; and~~

423 ~~(e) after the pregnant woman views the entire information module, a staff member of~~
424 ~~the abortion clinic or hospital provides to the pregnant woman, on a document that the pregnant~~
425 ~~woman may take home, the address for the department's website described in Section~~
426 ~~[76-7-305.5](#).~~

427 ~~(3) Before performing an abortion, the physician who is to perform the abortion shall:~~

428 ~~(a) in a face-to-face consultation, provide the information described in Subsection~~
429 ~~(2)(d), unless the attending physician or referring physician is the individual who provided the~~
430 ~~information required under Subsection (2)(d); and~~

431 (b) obtain from the pregnant woman a written certification that the information
432 required to be provided under Subsections (2) and (3) was provided in accordance with the
433 requirements of Subsections (2) and (3).

434 ~~[(5)]~~ (4) When a serious medical emergency compels the performance of an abortion,
435 the physician shall inform the woman prior to the abortion, if possible, of the medical
436 indications supporting the physician's judgment that an abortion is necessary.

437 ~~[(6)]~~ (5) If an ultrasound is performed on a woman before an abortion is performed, the
438 ~~[person]~~ individual who performs the ultrasound, or another qualified ~~[person]~~ individual,
439 shall:

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

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

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

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

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

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

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

449 including:

450 (i) the dimensions of the unborn child;

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

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

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

455 ~~[(7)]~~ (6) The information described in Subsections (2), (3), ~~[(4), and (6)]~~ and (5) is not
456 required to be provided to a pregnant woman under this section if the abortion is performed for
457 a reason described in:

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

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

461 (ii) a serious risk of substantial and irreversible impairment of a major bodily function

462 of the woman on whom the abortion is performed; or

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

464 ~~[(8)]~~ (7) In addition to the criminal penalties described in this part, a physician who
465 violates the provisions of this section:

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

468 (b) shall be subject to:

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

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

472 ~~[(9)]~~ (8) A physician is not guilty of violating this section for failure to furnish any of
473 the information described in Subsection (2) or (3), or for failing to comply with Subsection
474 ~~[(6)]~~ (5), if:

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

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

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

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

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

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

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

487 ~~[(10)]~~ (9) A physician who complies with the provisions of this section and Section
488 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain
489 informed consent under Section 78B-3-406.

490 ~~[(11)]~~ (10) (a) The ~~[Department of Health]~~ department shall provide an ultrasound, in
491 accordance with the provisions of Subsection ~~[(2)]~~ (5)(b), at no expense to the pregnant
492 woman.

493 (b) A local health department shall refer a ~~[person]~~ pregnant woman who requests an
494 ultrasound described in Subsection ~~[(11)]~~ (10)(a) to the ~~[Department of Health]~~ department.

495 ~~[(12)]~~ (11) A physician is not guilty of violating this section if:

496 (a) ~~[the physician provides]~~ the information described in Subsection (2) is provided
497 less than 72 hours before ~~[performing]~~ the physician performs the abortion; and

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

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

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

504 Section 9. Section ~~76-7-305.5~~ is amended to read:

505 **76-7-305.5. Requirements for information module and website.**

506 (1) In order to ensure that a woman's consent to an abortion is truly an informed
507 consent, the ~~[Department of Health]~~ department shall, in accordance with the requirements of
508 this section~~[-]~~, develop an information module and maintain a public website.

509 ~~[(a) publish printed materials; and]~~

510 ~~[(b) produce an informational video.]~~

511 (2) The ~~[printed materials and the informational video]~~ information module and public
512 website described in Subsection (1) shall:

513 (a) be scientifically accurate, comprehensible, and presented in a truthful,
514 nonmisleading manner;

515 (b) present adoption as a preferred and positive choice and alternative to abortion;

516 (c) be ~~[printed and]~~ produced in a manner that conveys the state's preference for
517 childbirth over abortion;

518 (d) state that the state prefers childbirth over abortion;

519 (e) state that it is unlawful for any person to coerce a woman to undergo an abortion;

520 (f) state that any physician who performs an abortion without obtaining the woman's
521 informed consent or without providing her a private medical consultation in accordance with
522 the requirements of this section, may be liable to her for damages in a civil action at law;

523 (g) provide ~~[information on]~~ a geographically indexed list of resources and public and

524 private services available to assist, financially or otherwise, a pregnant woman[, ~~financially or~~
525 ~~otherwise,~~] during pregnancy, at childbirth, and while the child is dependent, including:

526 (i) medical assistance benefits for prenatal care, childbirth, and neonatal care;

527 (ii) services and supports available under Section [35A-3-308](#);

528 (iii) other financial aid that may be available during an adoption; [~~and~~]

529 (iv) services available from public adoption agencies, private adoption agencies, and
530 private attorneys whose practice includes adoption; and

531 (v) the names, addresses, and telephone numbers of each person listed under this
532 Subsection (2)(g);

533 (h) describe the adoption-related expenses that may be paid under Section [76-7-203](#);

534 (i) describe the persons who may pay the adoption related expenses described in
535 Subsection (2)(h);

536 (j) except as provided in Subsection (4), describe the legal responsibility of the father
537 of a child to assist in child support, even if the father has agreed to pay for an abortion;

538 (k) except as provided in Subsection (4), describe the services available through the
539 Office of Recovery Services, within the Department of Human Services, to establish and
540 collect the support described in Subsection (2)(j);

541 (l) state that private adoption is legal;

542 (m) [~~in accordance with Subsection (3);~~] describe and depict, with pictures or video
543 segments, the probable anatomical and physiological characteristics of an unborn child at
544 two-week gestational increments from fertilization to full term, including:

545 (i) brain and heart function; [~~and~~]

546 (ii) the presence and development of external members and internal organs; and

547 (iii) the dimensions of the fetus;

548 (n) show an ultrasound of the heartbeat of an unborn child at:

549 (i) four weeks from conception;

550 (ii) six to eight weeks from conception; and

551 (iii) each month after 10 weeks gestational age, up to 14 weeks gestational age;

552 [~~(n)~~] (o) describe abortion procedures used in current medical practice at the various
553 stages of growth of the unborn child, including:

554 (i) the medical risks associated with each procedure;

555 (ii) the risk related to subsequent childbearing that are associated with each procedure;
556 and

557 (iii) the consequences of each procedure to the unborn child at various stages of fetal
558 development;

559 ~~[(o)]~~ (p) describe the possible detrimental psychological effects of abortion;

560 ~~[(p)]~~ (q) describe the medical risks associated with carrying a child to term; ~~[and]~~

561 ~~[(q)]~~ (r) include relevant information on the possibility of an unborn child's survival at
562 the two-week gestational increments described in Subsection (2)(m)[-];

563 ~~[(3) The information described in Subsection (2)(m) shall be accompanied by the~~
564 ~~following for each gestational increment described in Subsection (2)(m):]~~

565 ~~[(a) pictures or video segments that accurately represent the normal development of an~~
566 ~~unborn child at that stage of development; and]~~

567 ~~[(b) the dimensions of the fetus at that stage of development.]~~

568 ~~[(4) The printed material and video]~~

569 (s) except as provided in Subsection (5), include:

570 (i) information regarding substantial medical evidence from studies concluding that an
571 unborn child who is at least 20 weeks gestational age may be capable of experiencing pain
572 during an abortion procedure; and

573 (ii) the measures that will be taken in accordance with Section [76-7-308.5](#);

574 (t) explain the options and consequences of aborting a medication-induced abortion;

575 (u) include the following statement regarding a medication-induced abortion,

576 "Research indicates that mifepristone alone is not always effective in ending a pregnancy. You
577 may still have a viable pregnancy after taking mifepristone. If you have taken mifepristone but
578 have not yet taken the second drug and have questions regarding the health of your fetus or are
579 questioning your decision to terminate your pregnancy, you should consult a physician
580 immediately.";

581 (v) inform a pregnant woman that she has the right to view an ultrasound of the unborn
582 child, at no expense to her, upon her request; and

583 (w) be in a typeface large enough to be clearly legible.

584 (3) The information module and website described in Subsection (1) may include a
585 toll-free 24-hour telephone number that may be called in order to obtain, orally, a list and

586 description of services, agencies, and adoption attorneys in the locality of the caller.

587 ~~[(5) In addition to the requirements described in Subsection (2), the printed material~~
588 ~~described in Subsection (1)(a) shall:]~~

589 ~~[(a) be printed in a typeface large enough to be clearly legible;]~~

590 ~~[(b) in accordance with Subsection (6), include a geographically indexed list of public~~
591 ~~and private services and agencies available to assist a woman, financially or otherwise, through~~
592 ~~pregnancy, at childbirth, and while the child is dependent;]~~

593 ~~[(c) except as provided in Subsection (7), include a separate brochure that contains~~
594 ~~truthful, nonmisleading information regarding:]~~

595 ~~[(i) substantial medical evidence from studies concluding that an unborn child who is~~
596 ~~at least 20 weeks gestational age may be capable of experiencing pain during an abortion~~
597 ~~procedure; and]~~

598 ~~[(ii) the measures that shall be taken in accordance with Section 76-7-308.5;]~~

599 ~~[(d) explain the options and consequences of aborting a medication-induced abortion;~~
600 ~~and]~~

601 ~~[(e) include the following statement, "Research indicates that mifepristone alone is not~~
602 ~~always effective in ending a pregnancy. You may still have a viable pregnancy after taking~~
603 ~~mifepristone. If you have taken mifepristone but have not yet taken the second drug and have~~
604 ~~questions regarding the health of your fetus or are questioning your decision to terminate your~~
605 ~~pregnancy, you should consult a physician immediately."]~~

606 ~~[(6) The list described in Subsection (5)(b) shall include:]~~

607 ~~[(a) private attorneys whose practice includes adoption; and]~~

608 ~~[(b) the names, addresses, and telephone numbers of each person listed under~~
609 ~~Subsection (5)(b) or (6)(a).]~~

610 ~~[(7) A person or facility is not required to provide the information described in~~
611 ~~Subsection (5)(c) to a patient or potential patient, if the abortion is to be performed:]~~

612 (4) The department may develop a version of the information module and website that
613 omits the information in Subsections (2)(j) and (k) for a viewer who is pregnant as the result of
614 rape.

615 (5) The department may develop a version of the information module and website that
616 omits the information described in Subsection (2)(s) for a viewer who will have an abortion

617 performed:

618 (a) on an unborn child who is less than 20 weeks gestational age at the time of the
619 abortion; or

620 (b) on an unborn child who is at least 20 weeks gestational age at the time of the
621 abortion, if:

622 (i) the abortion is being performed for a reason described in Subsection

623 76-7-302(3)(b)(i) or (ii); and

624 (ii) due to a serious medical emergency, time does not permit compliance with the
625 requirement to provide the information described in Subsection ~~[(5)(c)]~~ (2)(s).

626 ~~[(8) In addition to the requirements described in Subsection (2), the video described in~~
627 ~~Subsection (1)(b) shall:]~~

628 ~~[(a) make reference to the list described in Subsection (5)(b); and]~~

629 ~~[(b) show an ultrasound of the heartbeat of an unborn child at:]~~

630 ~~[(i) four weeks from conception;]~~

631 ~~[(ii) six to eight weeks from conception; and]~~

632 ~~[(iii) each month after 10 weeks gestational age, up to 14 weeks gestational age.]~~

633 (6) The department and each local health department shall make the information
634 module and the website described in Subsection (1) available at no cost to any person.

635 (7) The department shall make the website described in Subsection (1) available for
636 viewing on the department's website by clicking on a conspicuous link on the home page of the
637 website.

638 (8) The department shall ensure that the information module is:

639 (a) available to be viewed at all facilities where an abortion may be performed;

640 (b) interactive for the individual viewing the module, including the provision of
641 opportunities to answer questions and manually engage with the module before the module
642 transitions from one substantive section to the next;

643 (c) produced in English and may include subtitles in Spanish or another language; and

644 (d) capable of being viewed on a tablet or other portable device.

645 Section 10. Section **76-7-305.7** is amended to read:

646 **76-7-305.7. Statistical report by the Department of Health.**

647 (1) In accordance with Subsection (2), the ~~[Department of Health]~~ department shall, on

648 an annual basis, after December 31 of each year, compile and report the following information,
649 relating to the preceding calendar year, to the Health and Human Services Interim Committee:

- 650 (a) the total number of abortions that were performed in the state;
- 651 (b) the reported reasons, if any, the women sought the abortions described in
652 Subsection (1)(a);
- 653 (c) the stage of pregnancy in which the abortions described in Subsection (1)(a) were
654 performed, including:
 - 655 (i) the trimester; and
 - 656 (ii) estimated week of pregnancy;
- 657 (d) the races and ethnicities of the women who obtained the abortions described in
658 Subsection (1)(a), including:
 - 659 (i) Alaska Native;
 - 660 (ii) American Indian;
 - 661 (iii) Asian;
 - 662 (iv) Black or African American;
 - 663 (v) Hispanic or Latino;
 - 664 (vi) Native Hawaiian or Pacific Islander;
 - 665 (vii) White, not Hispanic or Latino; and
 - 666 (viii) some other race;
- 667 (e) the total amount of informed consent material described in this section that was
668 distributed or accessed;
- 669 (f) the number of women who obtained abortions in this state without receiving the
670 informed consent materials described in this section;
- 671 (g) the number of statements signed by attending physicians under Subsection
672 ~~[76-7-305.6(4)]~~ [76-7-313\(3\)](#); and
- 673 (h) any other information pertaining to obtaining informed consent from a woman who
674 seeks an abortion.

675 (2) The report described in Subsection (1) shall be prepared and presented in a manner
676 that preserves physician and patient anonymity.

677 Section 11. Section **76-7-313** is amended to read:

678 **76-7-313. Department's enforcement responsibility -- Physician's report to**

679 **department.**

680 (1) In order for the [~~state Department of Health~~] department to maintain necessary
681 statistical information and ensure enforcement of the provisions of this part[-];

682 (a) any physician performing an abortion must obtain and record in writing:

683 [~~(a)~~] (i) the age, marital status, and county of residence of the woman on whom the
684 abortion was performed;

685 [~~(b)~~] (ii) the number of previous abortions performed on the woman described in
686 Subsection (1)(a);

687 [~~(c)~~] (iii) the hospital or other facility where the abortion was performed;

688 [~~(d)~~] (iv) the weight in grams of the unborn child aborted, if it is possible to ascertain;

689 [~~(e)~~] (v) the pathological description of the unborn child;

690 [~~(f)~~] (vi) the given menstrual age of the unborn child;

691 [~~(g)~~] (vii) the measurements of the unborn child, if possible to ascertain; and

692 [~~(h)~~] (viii) the medical procedure used to abort the unborn child[-]; and

693 (b) the department shall make rules in accordance with Title 63G, Chapter 3, Utah
694 Administrative Rulemaking Act.

695 (2) Each physician who performs an abortion shall provide the following to the
696 [~~Department of Health~~] department within 30 days after the day on which the abortion is
697 performed:

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

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

700 (c) an affidavit:

701 (i) that the required consent was obtained pursuant to Sections 76-7-305[-]; and
702 76-7-305.5[-], and 76-7-305.6[-]; and

703 (ii) described in Subsection [~~76-7-305.6(4)~~] (3), if applicable; and

704 (d) a certificate indicating:

705 (i) whether the unborn child was or was not viable, as defined in Subsection
706 76-7-302(1), at the time of the abortion; and

707 (ii) if the unborn child was viable, as defined in Subsection 76-7-302(1), at the time of
708 the abortion, the reason for the abortion.

709 (3) If the information module or the address to the website is not provided to a

710 pregnant woman, the physician who performs the abortion on the woman shall, within 10 days
711 after the day on which the abortion is performed, provide to the department an affidavit that:

712 (a) specifies the information that was not provided to the woman; and

713 (b) states the reason that the information was not provided to the woman.

714 ~~[(3)]~~ (4) All information supplied to the ~~[Department of Health]~~ department shall be
715 confidential and privileged pursuant to Title 26, Chapter 25, Confidential Information Release.

716 (5) The department shall pursue all administrative and legal remedies when the
717 department determines that a physician or a facility has not complied with the provisions of this
718 part.

719 Section 12. Section **76-7-314** is amended to read:

720 **76-7-314. Violations of abortion laws -- Classifications.**

721 (1) A willful violation of Section [76-7-307](#), [76-7-308](#), [76-7-310](#), [76-7-310.5](#), [76-7-311](#),
722 or [76-7-312](#) is a felony of the third degree.

723 (2) A violation of Section [76-7-326](#) is a felony of the third degree.

724 (3) A violation of Section [76-7-314.5](#) is a felony of the second degree.

725 (4) A violation of any other provision of this part is a class A misdemeanor.

726 (5) The Department of Health shall report a physician's violation of any provision of
727 this part to the Physicians Licensing Board, described in Section [58-67-201](#).

728 (6) Any person with knowledge of a physician's violation of any provision of this part
729 may report the violation to the Physicians Licensing Board, described in Section [58-67-201](#).

730 Section 13. **Repealer.**

731 This bill repeals:

732 Section [76-7-305.6](#), **Abortion facilities required to provide printed materials and**
733 **informational video -- Department of Health to make printed materials and**
734 **informational video available.**

735 Section 14. **Effective date.**

736 This bill takes effect on May 8, 2018, except that the amendments to Section [58-67-304](#)
737 (Effective 07/01/18) takes effect on July 1, 2018.

Legislative Review Note
Office of Legislative Research and General Counsel