

SB0118S01 compared with SB0118

~~text~~ shows text that was in SB0118 but was deleted in SB0118S01.

Inserted text shows text that was not in SB0118 but was inserted into SB0118S01.

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Senator Todd Weiler proposes the following substitute bill:

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;

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- ▶ requires the Department of Health to present the information module, or an update to the information module, to the Health and Human Services Interim Committee;
- ▶ establishes additional penalties for a violation of an abortion law provision;
- ▶ 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:

AMENDS:

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

58-67-304 (Superseded 07/01/18), as last amended by Laws of Utah 2011, Chapters 161 and 214

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

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

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

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

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

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

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

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

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

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

REPEALS:

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

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

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

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

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

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

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

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

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

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

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

(a) apply for a license on a form prescribed by the department;

(b) satisfy and maintain the minimum health, safety, sanitary, and recordkeeping requirements established under Subsection (3)[~~(a)~~] that relate to the type of abortion clinic licensed;

(c) comply with the recordkeeping and reporting requirements of [~~Subsection 76-7-305.6(4) and~~] Section 76-7-313;

(d) comply with the requirements of Title 76, Chapter 7, Part 3, Abortion;

(e) pay the annual licensing fee; and

(f) cooperate with inspections conducted by the department.

(5) [~~Beginning on April 1, 2012, the~~] The department shall, at least twice per year, inspect each abortion clinic in the state to ensure that the abortion clinic is complying with all statutory and licensing requirements relating to the abortion clinic. At least one of the inspections shall be made without providing notice to the abortion clinic.

(6) [~~Beginning on April 1, 2012, the~~] The department shall charge an annual license fee, set by the department in accordance with the procedures described in Section 63J-1-504, to an abortion clinic in an amount that will pay for the cost of the licensing requirements described in this section and the cost of inspecting abortion clinics.

(7) The department shall deposit the licensing fees described in this section in the General Fund as a dedicated credit to be used solely to pay for the cost of the licensing requirements described in this section and the cost of inspecting abortion clinics.

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Section 2. Section **58-67-304 (Superseded 07/01/18)** is amended to read:

58-67-304 (Superseded 07/01/18). License renewal requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) In order to assist the Department of Health in fulfilling its responsibilities relating

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to the licensing of an abortion clinic and the enforcement of Title 76, Chapter 7, Part 3, Abortion, if a physician responds positively to the question described in Subsection (3)(a), the division shall, within 30 days after the day on which it renews the physician's license under this chapter, inform the Department of Health in writing:

- (a) of the name and business address of the physician; and
- (b) that the physician responded positively to the question described in Subsection (3)(a).

Section 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 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) "Abortion clinic" means the same as that term is defined in Section 26-21-2.
- (3) "Abuse" means the same as that term is defined in Section 78A-6-105.
- (4) "Department" means the Department of Health.

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(5) "Hospital" means:

(a) a general hospital licensed by the [~~Department of Health~~] department 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~~] department 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~~] department.

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

~~[(2)]~~ (7) "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.

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

(a) under 18 years of age;

(b) unmarried; and

(c) not emancipated.

~~[(3)]~~ (9) (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 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)]~~ (10) "Physician" means:

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(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)]~~ (10)(a) or (b).

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

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

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

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

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

(a) the unborn child is not viable; or

(b) the unborn child is viable, if:

(i) the abortion is necessary to avert:

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

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

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

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

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

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

(III) incest, as 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.

(4) An abortion may be performed only in an abortion clinic or a hospital, unless it is

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

- (a) her physical, emotional, and psychological health and safety;
- (b) her age; and
- (c) her familial situation.

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

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

- (a) subject to Subsection ~~[(5)]~~ (4)(a):
 - (i) a medical condition exists that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant minor as to necessitate the abortion of her pregnancy to avert:
 - (A) the minor's death; or
 - (B) a serious risk of substantial and irreversible impairment of a major bodily function of the minor; and
 - (ii) there is not sufficient time to give the notice required under Subsection ~~[(3)]~~ (2) before it is necessary to terminate the minor's pregnancy in order to avert the minor's death or impairment described in Subsection ~~[(4)]~~ (3)(a)(i);
- (b) subject to Subsection ~~[(5)]~~ (4)(b):

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- (i) the physician complies with Subsection ~~[(6)]~~ (5); and
- (ii) (A) the minor is pregnant as a result of incest to which the parent or guardian was a party; or
- (B) the parent or guardian has abused the minor; or
- (c) subject to Subsection ~~[(5)]~~ (4)(b), the parent or guardian has not assumed responsibility for the minor's care and upbringing.

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

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

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

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

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

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

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

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

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

(c) (i) a medical condition exists that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant minor as to necessitate the

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abortion of her pregnancy to avert:

(A) the minor's death; or

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

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

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

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

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

[~~(4)~~] (3) If a pregnant minor fails to obtain the consent of a parent or guardian of the minor to the performance of an abortion, or if the minor chooses not to seek the consent of a parent or guardian, the minor may file a petition with the juvenile court to obtain a court order under Subsection [~~(2)~~] (1)(b).

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

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

(i) the minor:

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

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

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

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

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

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

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

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

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

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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)] (8), consent to an abortion is voluntary and informed only if [:(a)], at least 72 hours before the abortion[:];

(a) a physician, registered nurse, nurse practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, physician's assistant, or staff member of ~~the~~ an abortion clinic or hospital ~~where the abortion will be performed~~ presents the information module to the pregnant woman;

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

~~the staff member of the abortion clinic or hospital documents~~ the individual described in Subsection (2)(a);

(c) after receiving the evidence described in Subsection (2)(b), the individual described in Subsection (2)(a);

(i) signs a written statement that the pregnant woman viewed the entire information module;

(ii) gives the pregnant woman a copy of the statement described in Subsection (2)(c)(i);
and

(iii) provides a copy of the statement described in Subsection (2)(c)(i) to the physician who is to perform the abortion, upon request of that physician or the pregnant woman.

(d) after the pregnant woman views the entire information module, 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

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the woman of:

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

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

~~[(B)] (ii) specifically how the procedure described in Subsection (2)[(a)(i)(A)](d)(i)~~

will affect the fetus;

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

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

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

~~[(iii) of] (vi) 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;]~~

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~~[(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~~

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~~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.]~~

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

~~(e) after the pregnant woman views the entire information module, a staff member of the abortion clinic or hospital provides to the pregnant woman~~

~~(i) on a document that the pregnant woman may take home~~

~~(A) the address for the department's website described in Section 76-7-305.5; and~~

~~(B) a statement that the woman may request, from a staff member of the abortion clinic or hospital where the woman viewed the information module, a printed copy of the material on the department's website; and~~

~~(ii) a printed copy of the material on the department's website described in Section 76-7-305.5, if requested by the pregnant woman.~~

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

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

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

~~(ii) obtain a copy of the statement described in Subsection (2)(c)(i).~~

~~(5) (4) When a serious medical emergency compels the performance of an abortion,~~

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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)]~~ (5) If an ultrasound is performed on a woman before an abortion is performed, the ~~[person]~~ individual who performs the ultrasound, or another qualified ~~[person]~~ individual, 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)]~~ (6) The information described in Subsections (2), (3), ~~[(4), and (6)]~~ and (5) is not required to be provided to a pregnant woman under this section if the abortion is performed for a reason described in:

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

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

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

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

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(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)]~~ (8) A physician is not guilty of violating this section for failure to furnish any of the information described in Subsection (2) or (3), or for failing to comply with Subsection ~~[(6)]~~ (5), 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)]~~ (9) 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)]~~ (10) (a) The ~~[Department of Health]~~ department shall provide an ultrasound, in accordance with the provisions of Subsection ~~[(2)]~~ (5)(b), at no expense to the pregnant woman.

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

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

(a) ~~[the physician provides]~~ the information described in Subsection (2) is provided

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less than 72 hours before ~~[performing]~~ the physician performs 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 9. Section **76-7-305.5** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(g) provide ~~[information on]~~ a geographically indexed list of resources and public and private services available to assist, financially or otherwise, a pregnant woman~~[- financially or otherwise,]~~ during pregnancy, at childbirth, and while the child is dependent, including:

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

(ii) services and supports available under Section 35A-3-308;

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

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

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

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

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

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

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

(l) state that private adoption is legal;

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

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

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

(iii) the dimensions of the fetus;

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

(i) four weeks from conception;

(ii) six to eight weeks from conception; and

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

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

(i) the medical risks associated with each procedure;

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

and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The information module and website described in Subsection (1) may include a toll-free 24-hour telephone number that may be called in order to obtain, orally, a list and description of services, agencies, and adoption attorneys in the locality of the caller.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) on an unborn child who is at least 20 weeks gestational age at the time of the

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abortion, if:

(i) the abortion is being performed for a reason described in Subsection 76-7-302(3)(b)(i) or (ii); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) The department shall present the information module to the Health and Human Services Interim Committee for the committee's review and recommendation before November 1, 2018.

(10) The department shall release the information module, for the use described in Section 76-7-305, before January 1, 2018.

(11) After the department releases the initial version of the information module, for the use described in Section 76-7-305, the department shall:

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(a) update the information module, as required by law; and

(b) present an updated version of the information module to the Health and Human Services Interim Committee for the committee's review and recommendation before releasing the updated version for the use described in Section 76-7-305.

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

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

(1) In accordance with Subsection (2), the [~~Department of Health~~] department shall, on an annual basis, after December 31 of each year, compile and report the following information, relating to the preceding calendar year, to the Health and Human Services Interim Committee:

(a) the total number of abortions that were performed in the state;

(b) the reported reasons, if any, the women sought the abortions described in

Subsection (1)(a);

(c) the stage of pregnancy in which the abortions described in Subsection (1)(a) were performed, including:

(i) the trimester; and

(ii) estimated week of pregnancy;

(d) the races and ethnicities of the women who obtained the abortions described in

Subsection (1)(a), including:

(i) Alaska Native;

(ii) American Indian;

(iii) Asian;

(iv) Black or African American;

(v) Hispanic or Latino;

(vi) Native Hawaiian or Pacific Islander;

(vii) White, not Hispanic or Latino; and

(viii) some other race;

(e) the total amount of informed consent material described in this section that was distributed or accessed;

(f) the number of women who obtained abortions in this state without receiving the informed consent materials described in this section;

(g) the number of statements signed by attending physicians under Subsection

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~~[76-7-305.6(4)]~~ 76-7-313(3); and

(h) any other information pertaining to obtaining informed consent from a woman who seeks an abortion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Each physician who performs an abortion shall provide the following to the [~~Department of Health~~] department 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:

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

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

(3) If the information module or the address to the website is not provided to a pregnant woman, 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 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.

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

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

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

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

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

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

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

(4) A violation of any other provision of this part, including Subsections 76-7-305(2)(a) through (c), and (e) is a class A misdemeanor.

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

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

(7) In addition to the penalties described in this section, the department may take any action described in Section 26-21-11 against an abortion clinic if a violation of this chapter occurs at the abortion clinic.

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Section 13. Repealer.

This bill repeals:

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

Section 14. Effective date.

This bill takes effect on May 8, 2018, except that:

(1) the amendments to Section 58-67-304 (Effective 07/01/18) ~~take~~ take effect on July 1, 2018.

Legislative Review Note

Office of Legislative Research and General Counsel; and

(2) the amendments to Sections 76-7-305, 76-7-313, and 76-7-314 take effect on January 1, 2019.