

HB0287S01 compared with HB0287

~~{deleted text}~~ shows text that was in HB0287 but was deleted in HB0287S01.

Inserted text shows text that was not in HB0287 but was inserted into HB0287S01.

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Representative Ken Ivory proposes the following substitute bill:

SEX OFFENSE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

LONG TITLE

General Description:

This bill ~~{provides that sexual contact is without the consent of the victim if the victim is over the age of 18 and the actor holds a}~~ adds to the definition of position of special trust.

Highlighted Provisions:

This bill:

- ▶ expands the definition of "position of special trust" to a ~~{teacher}~~ professor, instructor, or teaching assistant at an institution of higher education; ~~{~~
 - ▶ ~~provides that sexual contact is without consent if the victim is over the age of 18 and the actor holds a position of special trust;~~
 - ▶ ~~requires that the actor have the ability to adversely affect the victim's livelihood;}~~
- and

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- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~{ 31A-22-726, as last amended by Laws of Utah 2015, Chapter 283~~
~~53G-6-707, as renumbered and amended by Laws of Utah 2018, Chapter 3~~
~~{ 62A-15-602} 76-5-404.1, as last amended by Laws of Utah 2018, Chapter ~~{322}~~ 192~~
~~76-5-406, as last amended by Laws of Utah 2018, Chapter 176~~
~~{ 76-7-302, as last amended by Laws of Utah 2018, Chapter 282~~
~~76-7-305, as last amended by Laws of Utah 2018, Chapter 282~~
~~}~~

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

Section 1. Section ~~{31A-22-726}~~ 76-5-404.1 is amended to read:

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

- ~~(1) As used in this section, "permitted abortion coverage" means coverage for abortion:~~
- ~~(a) that is necessary to avert:~~
 - ~~(i) the death of the woman on whom the abortion is performed; or~~
 - ~~(ii) a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed;~~
 - ~~(b) of a fetus that has a defect that is documented by a physician or physicians to be uniformly diagnosable and uniformly lethal; or~~
 - ~~(c) where the woman is pregnant as a result of:~~
 - ~~(i) rape, as described in Section 76-5-402;~~
 - ~~(ii) rape of a child, as described in Section 76-5-402.1; or~~
 - ~~(iii) incest, as described in Subsection 76-5-406[(10)](1)(j) or Section 76-7-102.~~
 - ~~(2) A person may not offer coverage for an abortion in a health benefit plan, unless the coverage is a type of permitted abortion coverage.~~

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

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

~~—— Section 2. Section 53G-6-707 is amended to read:~~

~~—— **53G-6-707. Interstate compact students -- Inclusion in attendance count -- Foreign exchange students -- Annual report -- Requirements for exchange student agencies.**~~

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

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

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

~~—— (2) A school district or charter school may:~~

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

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

~~—— (3) Due to the benefits to all students of having the opportunity to become familiar with individuals from diverse backgrounds and cultures, school districts are encouraged to enroll foreign exchange students, as provided in Subsection (2), particularly in schools with declining or stable enrollments where the incremental cost of enrolling the foreign exchange student may be minimal.~~

~~—— (4) The board shall make an annual report to the Legislature on the number of exchange students and the number of interstate compact students sent to or received from public schools outside the state.~~

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~~—— (5) (a) A local school board or charter school governing board shall require each approved exchange student agency to provide it with a sworn affidavit of compliance prior to the beginning of each school year.~~

~~—— (b) The affidavit shall include the following assurances:~~

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

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

~~—— (iii) that host parents have received training appropriate to their positions, including information about enhanced criminal penalties under Subsection 76-5-406[(10)](1)(j) for persons who are in a position of special trust;~~

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

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

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

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

~~—— (6) (a) A local school board or charter school governing board shall provide each approved exchange student agency with a list of names and telephone numbers of individuals not associated with the agency who could be called by an exchange student in the event of a serious problem.~~

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

~~—— (7) Notwithstanding Subsection 53F-2-303(3)(a), a school district or charter school shall enroll a foreign exchange student if the foreign exchange student:~~

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

~~_____ (b) attends the same school during the same time period that another student from the school is;~~

~~_____ (i) sponsored by the same agency; and~~

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

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

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

~~_____ **62A-15-602. Definitions.**~~

~~_____ As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah Forensic Mental Health Facility, Part 10, Declaration for Mental Health Treatment, and Part 12, Essential Treatment and Intervention Act:~~

~~_____ (1) "Adult" means an individual 18 years of age or older.~~

~~_____ (2) "Approved treatment facility or program" means a treatment provider that meets the standards described in Subsection ~~62A-15-103(2)(a)(v)~~.~~

~~_____ (3) "Commitment to the custody of a local mental health authority" means that an adult is committed to the custody of the local mental health authority that governs the mental health catchment area where the adult resides or is found.~~

~~_____ (4) "Community mental health center" means an entity that provides treatment and services to a resident of a designated geographical area, that operates by or under contract with a local mental health authority, and that complies with state standards for community mental health centers.~~

~~_____ (5) "Designated examiner" means:~~

~~_____ (a) a licensed physician, preferably a psychiatrist, who is designated by the division as specially qualified by training or experience in the diagnosis of mental or related illness; or~~

~~_____ (b) a licensed mental health professional designated by the division as specially qualified by training and who has at least five years' continual experience in the treatment of mental illness.~~

~~_____ (6) "Designee" means a physician who has responsibility for medical functions including admission and discharge, an employee of a local mental health authority, or an employee of a person that has contracted with a local mental health authority to provide mental~~

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~~health services under Section 17-43-304.~~

~~—— (7) "Essential treatment" and "essential treatment and intervention" mean court-ordered treatment at a local substance abuse authority or an approved treatment facility or program for the treatment of an adult's substance use disorder.~~

~~—— (8) "Harmful sexual conduct" means the following conduct upon an individual without the individual's consent, including the nonconsensual circumstances described in [Subsections] Section 76-5-406[(1) through (12)]:~~

~~—— (a) sexual intercourse;~~

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

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

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

~~—— (9) "Institution" means a hospital or a health facility licensed under Section 26-21-8.~~

~~—— (10) "Local substance abuse authority" means the same as that term is defined in Section 62A-15-102 and described in Section 17-43-201.~~

~~—— (11) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, a person that contracts with a local mental health authority, or a person that provides acute inpatient psychiatric services to a patient.~~

~~—— (12) "Mental health officer" means an individual who is designated by a local mental health authority as qualified by training and experience in the recognition and identification of mental illness, to:~~

~~—— (a) apply for and provide certification for a temporary commitment; or~~

~~—— (b) assist in the arrangement of transportation to a designated mental health facility.~~

~~—— (13) "Mental illness" means:~~

~~—— (a) a psychiatric disorder that substantially impairs an individual's mental, emotional, behavioral, or related functioning; or~~

~~—— (b) the same as that term is defined in:~~

~~—— (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or~~

~~—— (ii) the current edition of the International Statistical Classification of Diseases and~~

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Related Health Problems:

- ~~—— (14) "Patient" means an individual who is:~~
 - ~~—— (a) under commitment to the custody or to the treatment services of a local mental health authority; or~~
 - ~~—— (b) undergoing essential treatment and intervention.~~
- ~~—— (15) "Physician" means an individual who is:~~
 - ~~—— (a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or~~
 - ~~—— (b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.~~
- ~~—— (16) "Serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.~~
- ~~—— (17) "Substantial danger" means that due to mental illness, an individual is at serious risk of:~~
 - ~~—— (a) suicide;~~
 - ~~—— (b) serious bodily self-injury;~~
 - ~~—— (c) serious bodily injury because the individual is incapable of providing the basic necessities of life, including food, clothing, or shelter;~~
 - ~~—— (d) causing or attempting to cause serious bodily injury to another individual; or~~
 - ~~—— (e) engaging in harmful sexual conduct.~~
- ~~—— (18) "Treatment" means psychotherapy, medication, including the administration of psychotropic medication, or other medical treatments that are generally accepted medical or psychosocial interventions for the purpose of restoring the patient to an optimal level of functioning in the least restrictive environment.~~

‡ **76-5-404.1. Sexual abuse of a child -- Aggravated sexual abuse of a child.**

- (1) As used in this section:
 - (a) "Adult" means an individual 18 years of age or older.
 - (b) "Child" means an individual under the age of 14.
 - (c) "Position of special trust" means:
 - (i) an adoptive parent;
 - (ii) an athletic manager who is an adult;

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- (iii) an aunt;
- (iv) a babysitter;
- (v) a coach;
- (vi) a cohabitant of a parent if the cohabitant is an adult;
- (vii) a counselor;
- (viii) a doctor or physician;
- (ix) an employer;
- (x) a foster parent;
- (xi) a grandparent;
- (xii) a legal guardian;
- (xiii) a natural parent;
- (xiv) a recreational leader who is an adult;
- (xv) a religious leader;
- (xvi) a sibling or a stepsibling who is an adult;
- (xvii) a scout leader who is an adult;
- (xviii) a stepparent;
- (xix) a teacher or any other individual employed by or volunteering at a public or private elementary school or secondary school, and who is 18 years of age or older;

~~{(xx) an uncle;~~

~~—(xxi);~~ (xx) an instructor, professor, or teaching assistant at a public or private institution of higher education;

[(xx)] (xxi) an uncle;

[(xxi)] (xxii) a youth leader who is an adult; or

[(xxii)] (xxiii) any individual in a position of authority, other than those individuals listed in Subsections (1)(c)(i) through ~~[(xxi)] (xxiii)~~, which enables the individual to exercise undue influence over the child.

(2) An individual commits sexual abuse of a child if, under circumstances not amounting to rape of a child, object rape of a child, sodomy on a child, or an attempt to commit any of these offenses, the actor touches the anus, buttocks, pubic area, or genitalia of any child, the breast of a female child, or otherwise takes indecent liberties with a child, with intent to cause substantial emotional or bodily pain to any individual or with the intent to arouse or

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gratify the sexual desire of any individual regardless of the sex of any participant.

(3) Sexual abuse of a child is a second degree felony.

(4) An individual commits aggravated sexual abuse of a child when in conjunction with the offense described in Subsection (2) any of the following circumstances have been charged and admitted or found true in the action for the offense:

(a) the offense was committed by the use of a dangerous weapon as defined in Section 76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or was committed during the course of a kidnapping;

(b) the accused caused bodily injury or severe psychological injury to the victim during or as a result of the offense;

(c) the accused was a stranger to the victim or made friends with the victim for the purpose of committing the offense;

(d) the accused used, showed, or displayed pornography or caused the victim to be photographed in a lewd condition during the course of the offense;

(e) the accused, prior to sentencing for this offense, was previously convicted of any sexual offense;

(f) the accused committed the same or similar sexual act upon two or more victims at the same time or during the same course of conduct;

(g) the accused committed, in Utah or elsewhere, more than five separate acts, which if committed in Utah would constitute an offense described in this chapter, and were committed at the same time, or during the same course of conduct, or before or after the instant offense;

(h) the offense was committed by an individual who occupied a position of special trust in relation to the victim;

(i) the accused encouraged, aided, allowed, or benefitted from acts of prostitution or sexual acts by the victim with any other individual, or sexual performance by the victim before any other individual, human trafficking, or human smuggling; or

(j) the accused caused the penetration, however slight, of the genital or anal opening of the child by any part or parts of the human body other than the genitals or mouth.

(5) Aggravated sexual abuse of a child is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in Subsection (5)(b), (5)(c), or (6), not less than 15 years and

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which may be for life;

(b) except as provided in Subsection (5)(c) or (6), life without parole, if the trier of fact finds that during the course of the commission of the aggravated sexual abuse of a child the defendant caused serious bodily injury to another; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual abuse of a child, the defendant was previously convicted of a grievous sexual offense.

(6) If, when imposing a sentence under Subsection (5)(a) or (b), a court finds that a lesser term than the term described in Subsection (5)(a) or (b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) for purposes of Subsection (5)(b), 15 years and which may be for life; or

(b) for purposes of Subsection (5)(a) or (b):

(i) 10 years and which may be for life; or

(ii) six years and which may be for life.

(7) The provisions of Subsection (6) do not apply when an individual is sentenced under Subsection (5)(c).

(8) Subsections (5)(b) and (5)(c) do not apply if the defendant was younger than 18 years of age at the time of the offense.

(9) Imprisonment under this section is mandatory in accordance with Section 76-3-406. Section ~~76-5-2~~2. Section **76-5-406** is amended to read:

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

Circumstances.

~~(1)~~ An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a child, object rape, attempted object rape, object rape of a child, attempted object rape of a child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse, sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child, attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the victim under any of the following circumstances:

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

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

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

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

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

~~(b)(iii)~~ as used in this Subsection ~~(4)~~, ~~(1)(d)~~ "to retaliate" includes threats of physical force, kidnapping, or extortion;

~~(5)(e)~~ the actor knows the victim is unconscious, unaware that the act is occurring, or physically unable to resist;

~~(6)(f)~~ the actor knows or reasonably should know that the victim has a mental disease or defect, which renders the victim unable to:

~~(a)(i)~~ appraise the nature of the act;

~~(b)(ii)~~ resist the act;

~~(c)(iii)~~ understand the possible consequences to the victim's health or safety; or

~~(d)(iv)~~ appraise the nature of the relationship between the actor and the victim ~~.~~

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

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

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

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

~~(k) the victim is 18 years of age or older at the time of the act, the actor occupied a position of special trust as defined in Subsection (2), and the actor at the time of the act had the~~

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~~ability to adversely affect the victim's employment, educational opportunities, livelihood, access to health care, or ability to gain pay or promotion opportunities;~~

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

~~††~~(12)~~††(m)~~ the actor is a health professional or religious counselor, as those terms are defined in ~~††~~this~~††~~ Subsection ~~††~~(12),~~††(2): and~~

~~————(i)~~ the act is committed under the guise of providing professional diagnosis, counseling, or treatment~~††, ††~~ and~~†~~

~~————(ii)~~ at the time of the act the victim reasonably believed that the act was for medically or professionally appropriate diagnosis, counseling, or treatment to the extent that resistance by the victim could not reasonably be expected to have been manifested~~[, for].†~~

~~————(2)~~ For purposes of ~~††~~this~~††~~ Subsection ~~††~~(12)~~††(††)~~:

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

~~————(b) "livelihood" means the means of supporting an individual's basic necessities of life, including food, clothing, or shelter;~~

~~————(c) "position of special trust" includes a teacher, instructor, professor, or teaching assistant at a public or private institution of higher education in addition to the same actors as listed in Section 76-5-404.1; and~~

~~————(b)~~ ~~(d)~~ ~~and~~

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

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

~~————~~ 76-7-302. ~~Circumstances under which abortion authorized:~~

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~~(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)](1)(j) or Section 76-7-102; and~~

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

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

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

~~(4) An abortion may be performed only in an abortion clinic or a hospital, unless it is necessary to perform the abortion in another location due to a medical emergency.~~

~~Section 6. Section 76-7-305 is amended to read:~~

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

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

~~(a) Section 8.08 of the American Medical Association's Code of Medical Ethics;~~

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~~Current Opinions; and~~

~~—— (b) the provisions of this section;~~

~~—— (2) Except as provided in Subsection (8), consent to an abortion is voluntary and informed only if, at least 72 hours before the abortion:~~

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

~~—— (b) the pregnant woman views the entire information module and presents evidence to the individual described in Subsection (2)(a) that the pregnant woman viewed the entire information module;~~

~~—— (c) after receiving the evidence described in Subsection (2)(b), the individual described in Subsection (2)(a):~~

~~—— (i) documents that the pregnant woman viewed the entire information module;~~

~~—— (ii) gives the pregnant woman, upon her request, a copy of the documentation 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 the woman of:~~

~~—— (i) the nature of the proposed abortion procedure;~~

~~—— (ii) specifically how the procedure described in Subsection (2)(d)(i) will affect the fetus;~~

~~—— (iii) the risks and alternatives to the abortion procedure or treatment;~~

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

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

~~—— (vi) the medical risks associated with carrying her child to term; and~~

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

~~—— (c) 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 Subsection (2) and this Subsection (3) was provided in accordance with the requirements of Subsection (2) and this Subsection (3); and~~

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

~~—— (4) When a serious medical emergency compels the performance of an abortion, the physician shall inform the woman prior to the abortion, if possible, of the medical indications supporting the physician's judgment that an abortion is necessary:~~

~~—— (5) If an ultrasound is performed on a woman before an abortion is performed, the individual who performs the ultrasound, or another qualified 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;~~

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~~— (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)] (5)(c), if the woman requests it.~~

~~— (6) The information described in Subsections (2), (3), 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).~~

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

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

~~— (b) shall be subject to:~~

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

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

~~— (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 (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:~~

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- ~~—— (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)] (1)(j) and Section 76-7-102; or~~
- ~~—— (e) at the time of the abortion, the pregnant woman was 14 years of age or younger.~~
- ~~—— (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.~~
- ~~—— (10) (a) The department shall provide an ultrasound, in accordance with the provisions of Subsection (5)(b), at no expense to the pregnant woman.~~
- ~~—— (b) A local health department shall refer a pregnant woman who requests an ultrasound described in Subsection (10)(a) to the department.~~
- ~~—— (11) A physician is not guilty of violating this section if:~~
 - ~~—— (a) the information described in Subsection (2) is provided less than 72 hours before 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.~~

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