

**Representative Jennifer Dailey-Provost** proposes the following substitute bill:

**ABORTION PROHIBITION AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel McCay**

House Sponsor: Karianne Lisonbee

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**LONG TITLE**

**General Description:**

This bill prohibits a pregnant woman from receiving an abortion, with limited exceptions.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ prohibits an abortion at any stage of a pregnant woman's pregnancy, except under certain circumstances;
- ▶ provides penalties for a physician who performs an unlawful abortion; and
- ▶ provides that, upon enactment, the provisions of this bill supercede any conflicting provisions.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a contingent effective date.

**Utah Code Sections Affected:**

ENACTS:

**59-10-1115**, Utah Code Annotated 1953

**1st Sub. S.B. 174**



- 26 76-7a-101, Utah Code Annotated 1953
- 27 76-7a-201, Utah Code Annotated 1953
- 28 76-7a-301, Utah Code Annotated 1953

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

31 Section 1. Section **59-10-1115** is enacted to read:

32 **59-10-1115. Refundable tax credit.**

33 (1) As used in this section:

34 (a) "Federal poverty level" means the poverty level as defined by the most recently  
35 revised poverty income guidelines published by the United States Department of Health and  
36 Human Services in the Federal Register.

37 (b) "Qualifying claimant" means a claimant whose adjusted gross income is less than  
38 138% of the federal poverty level.

39 (c) "Travel companion" means an individual who travels with a qualifying claimant.

40 (d) "Travel expense" means an expense paid or incurred by a qualifying claimant for  
41 the purpose of traveling to another state to receive an abortion, including:

42 (i) flight expenses;

43 (ii) milage expenses;

44 (iii) room and board;

45 (iv) foregone wages; and

46 (v) an expense described in Subsections (1)(d)(i) through (iv) paid or incurred by or on  
47 behalf of a travel companion.

48 (2) A qualifying claimant may claim a refundable tax credit:

49 (a) if the qualifying claimant:

50 (i) travels to another state for the primary purpose of receiving an abortion; and

51 (ii) was a resident of this state:

52 (A) for at least 60 days before the day on which the qualifying claimant began the  
53 travel described in Subsection (2)(a)(i); or

54 (B) on the day on which conception that resulted in the qualifying claimant's pregnancy  
55 occurred; and

56 (b) in an amount equal to the greater of:

57 (i) the qualifying claimant's travel expenses; or  
58 (ii) \$1,500.

59 Section 2. Section **76-7a-101** is enacted to read:

60 **CHAPTER 7a. ABORTION PROHIBITION**

61 **76-7a-101. Definitions.**

62 As used in this chapter:

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

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

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

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

73 (b) "Abortion" does not include:

74 (i) removal of a dead unborn child;

75 (ii) removal of an ectopic pregnancy; or

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

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

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

81 (2) "Abortion clinic" means a type I abortion clinic licensed by the state or a type II  
82 abortion clinic licensed by the state.

83 (3) "Department" means the Department of Health.

84 (4) "Down syndrome" means a genetic condition associated with an extra chromosome  
85 21, in whole or in part, or an effective trisomy for chromosome 21.

86 (5) "Hospital" means:

87 (a) a general hospital licensed by the department; or

88 (b) a clinic or other medical facility to the extent the clinic or other medical facility is  
89 certified by the department as providing equipment and personnel sufficient in quantity and  
90 quality to provide the same degree of safety to a pregnant woman and an unborn child as would  
91 be provided for the particular medical procedure undertaken by a general hospital licensed by  
92 the department.

93 (6) "Incest" means the same as that term is defined in Title 78A, Chapter 6, Juvenile  
94 Court Act.

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

99 (8) "Physician" means:

100 (a) a medical doctor licensed to practice medicine and surgery in the state;

101 (b) an osteopathic physician licensed to practice osteopathic medicine in the state; or

102 (c) a physician employed by the federal government who has qualifications similar to  
103 an individual described in Subsection (8)(a) or (b).

104 (9) "Rape" means the same as that term is defined in Title 76, Utah Criminal Code.

105 (10) (a) "Severe brain abnormality" means a malformation or defect that causes an  
106 individual to live in a mentally vegetative state.

107 (b) "Severe brain abnormality" does not include:

108 (i) Down syndrome;

109 (ii) spina bifida;

110 (iii) cerebral palsy; or

111 (iv) any other malformation, defect, or condition that does not cause an individual to  
112 live in a mentally vegetative state.

113 Section 3. Section **76-7a-201** is enacted to read:

114 **Part 2. Prohibition**

115 **76-7a-201. Abortion prohibition -- Exceptions -- Penalties.**

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

117 (a) the abortion is necessary to avert:

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

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

121 (b) two physicians who practice maternal fetal medicine concur, in writing, in the  
122 patient's medical record that the fetus:

123 (i) has a defect that is uniformly diagnosable and uniformly lethal; or

124 (ii) has a severe brain abnormality that is uniformly diagnosable; or

125 (c) (i) the woman is pregnant as a result of:

126 (A) rape;

127 (B) rape of a child; or

128 (C) incest; and

129 (ii) before the abortion is performed, the physician who performs the abortion:

130 (A) verifies that the incident described in Subsection (1)(c)(i) has been reported to law  
131 enforcement; and

132 (B) if applicable, complies with requirements related to reporting suspicions of or  
133 known child abuse.

134 (2) An abortion may be performed only:

135 (a) by a physician; and

136 (b) in an abortion clinic or a hospital, unless it is necessary to perform the abortion in  
137 another location due to a medical emergency.

138 (3) A person who violates this section is guilty of a second degree felony.

139 (4) In addition to the penalty described in Subsection (3), the department may take  
140 appropriate corrective action against an abortion clinic, including revoking the abortion clinic's  
141 license, if a violation of this chapter occurs at the abortion clinic.

142 (5) The department shall report a physician's violation of any provision of this section  
143 to the state entity that regulates the licensing of a physician.

144 Section 4. Section **76-7a-301** is enacted to read:

145 **Part 3. Superseding Clause**

146 **76-7a-301. Superseding clause.**

147 If, at the time this chapter takes effect, any provision in the Utah Code conflicts with a  
148 provision of this chapter, the provision of this chapter supersedes the conflicting provision.

149 Section 5. **Contingent effective date.**

150           (1) As used in this section, "a court of binding authority" means:  
151           (a) the United States Supreme Court; or  
152           (b) after the right to appeal has been exhausted:  
153           (i) the United States Court of Appeals for the Tenth Circuit;  
154           (ii) the Utah Supreme Court; or  
155           (iii) the Utah Court of Appeals.  
156           (2) The provisions of this bill take effect on the date that the legislative general counsel  
157 certifies to the Legislative Management Committee that a court of binding authority has held  
158 that a state may prohibit the abortion of an unborn child at any time during the gestational  
159 period, subject to the exceptions enumerated in this bill.