

LICENSING MODIFICATIONS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill modifies licensing provisions related to abortion.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ allows the licensing of abortion clinics;
- ▶ allows abortions to be performed in licensed abortion clinics; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

26B-2-201, as last amended by Laws of Utah 2023, Chapter 301 and renumbered and amended by Laws of Utah 2023, Chapter 305

26B-2-204, as last amended by Laws of Utah 2023, Chapter 301 and renumbered and amended by Laws of Utah 2023, Chapter 305

26B-2-205, as last amended by Laws of Utah 2023, Chapter 301 and renumbered and amended by Laws of Utah 2023, Chapter 305



28 **26B-2-206**, as last amended by Laws of Utah 2023, Chapter 301 and renumbered and
29 amended by Laws of Utah 2023, Chapter 305

30 **26B-2-224**, as last amended by Laws of Utah 2023, Chapter 301 and renumbered and
31 amended by Laws of Utah 2023, Chapter 305

32 **76-7-301**, as last amended by Laws of Utah 2023, Chapters 301, 330

33 **76-7-302**, as last amended by Laws of Utah 2023, Chapters 158, 301

34 **76-7-305**, as last amended by Laws of Utah 2023, Chapters 301, 330

35 **76-7a-101**, as last amended by Laws of Utah 2023, Chapters 158, 301

36 **76-7a-201**, as last amended by Laws of Utah 2023, Chapters 158, 301

37

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

39 Section 1. Section **26B-2-201** is amended to read:

40 **26B-2-201. Definitions.**

41 As used in this part:

42 (1) [(a)] "Abortion clinic" means a type I abortion clinic or a type II abortion clinic.

43 ~~[(b) "Abortion clinic" does not mean a clinic that meets the definition of hospital under~~

44 ~~Section 76-7-301 or Section 76-71-101.]~~

45 (2) "Activities of daily living" means essential activities including:

46 (a) dressing;

47 (b) eating;

48 (c) grooming;

49 (d) bathing;

50 (e) toileting;

51 (f) ambulation;

52 (g) transferring; and

53 (h) self-administration of medication.

54 (3) "Ambulatory surgical facility" means a freestanding facility, which provides
55 surgical services to patients not requiring hospitalization.

56 (4) "Assistance with activities of daily living" means providing of or arranging for the
57 provision of assistance with activities of daily living.

58 (5) (a) "Assisted living facility" means:

59 (i) a type I assisted living facility, which is a residential facility that provides assistance
60 with activities of daily living and social care to two or more residents who:

61 (A) require protected living arrangements; and

62 (B) are capable of achieving mobility sufficient to exit the facility without the
63 assistance of another person; and

64 (ii) a type II assisted living facility, which is a residential facility with a home-like
65 setting that provides an array of coordinated supportive personal and health care services
66 available 24 hours per day to residents who have been assessed under department rule to need
67 any of these services.

68 (b) Each resident in a type I or type II assisted living facility shall have a service plan
69 based on the assessment, which may include:

70 (i) specified services of intermittent nursing care;

71 (ii) administration of medication; and

72 (iii) support services promoting residents' independence and self-sufficiency.

73 (6) "Birthing center" means a facility that:

74 (a) receives maternal clients and provides care during pregnancy, delivery, and
75 immediately after delivery; and

76 (b) (i) is freestanding; or

77 (ii) is not freestanding, but meets the requirements for an alongside midwifery unit
78 described in Subsection [26B-2-228\(7\)](#).

79 (7) "Committee" means the Health Facility Committee created in Section [26B-1-204](#).

80 (8) "Consumer" means any person not primarily engaged in the provision of health care
81 to individuals or in the administration of facilities or institutions in which such care is provided
82 and who does not hold a fiduciary position, or have a fiduciary interest in any entity involved in
83 the provision of health care, and does not receive, either directly or through his spouse, more
84 than 1/10 of his gross income from any entity or activity relating to health care.

85 (9) "End stage renal disease facility" means a facility which furnishes staff-assisted
86 kidney dialysis services, self-dialysis services, or home-dialysis services on an outpatient basis.

87 (10) "Freestanding" means existing independently or physically separated from another
88 health care facility by fire walls and doors and administrated by separate staff with separate
89 records.

90 (11) "General acute hospital" means a facility which provides diagnostic, therapeutic,
91 and rehabilitative services to both inpatients and outpatients by or under the supervision of
92 physicians.

93 (12) "Governmental unit" means the state, or any county, municipality, or other
94 political subdivision or any department, division, board, or agency of the state, a county,
95 municipality, or other political subdivision.

96 (13) (a) "Health care facility" means general acute hospitals, specialty hospitals, home
97 health agencies, hospices, nursing care facilities, residential-assisted living facilities, birthing
98 centers, ambulatory surgical facilities, small health care facilities, abortion clinics, [~~a clinic that~~
99 ~~meets the definition of hospital under Section 76-7-301 or 76-71-201;~~] facilities owned or
100 operated by health maintenance organizations, end stage renal disease facilities, and any other
101 health care facility which the committee designates by rule.

102 (b) "Health care facility" does not include the offices of private physicians or dentists,
103 whether for individual or group practice, except that it does include an abortion clinic.

104 (14) "Health maintenance organization" means an organization, organized under the
105 laws of any state which:

106 (a) is a qualified health maintenance organization under 42 U.S.C. Sec. 300e-9; or

107 (b) (i) provides or otherwise makes available to enrolled participants at least the
108 following basic health care services: usual physician services, hospitalization, laboratory, x-ray,
109 emergency, and preventive services and out-of-area coverage;

110 (ii) is compensated, except for copayments, for the provision of the basic health
111 services listed in Subsection (14)(b)(i) to enrolled participants by a payment which is paid on a
112 periodic basis without regard to the date the health services are provided and which is fixed
113 without regard to the frequency, extent, or kind of health services actually provided; and

114 (iii) provides physicians' services primarily directly through physicians who are either
115 employees or partners of such organizations, or through arrangements with individual
116 physicians or one or more groups of physicians organized on a group practice or individual
117 practice basis.

118 (15) (a) "Home health agency" means an agency, organization, or facility or a
119 subdivision of an agency, organization, or facility which employs two or more direct care staff
120 persons who provide licensed nursing services, therapeutic services of physical therapy, speech

121 therapy, occupational therapy, medical social services, or home health aide services on a
122 visiting basis.

123 (b) "Home health agency" does not mean an individual who provides services under
124 the authority of a private license.

125 (16) "Hospice" means a program of care for the terminally ill and their families which
126 occurs in a home or in a health care facility and which provides medical, palliative,
127 psychological, spiritual, and supportive care and treatment.

128 (17) "Nursing care facility" means a health care facility, other than a general acute or
129 specialty hospital, constructed, licensed, and operated to provide patient living
130 accommodations, 24-hour staff availability, and at least two of the following patient services:

131 (a) a selection of patient care services, under the direction and supervision of a
132 registered nurse, ranging from continuous medical, skilled nursing, psychological, or other
133 professional therapies to intermittent health-related or paraprofessional personal care services;

134 (b) a structured, supportive social living environment based on a professionally
135 designed and supervised treatment plan, oriented to the individual's habilitation or
136 rehabilitation needs; or

137 (c) a supervised living environment that provides support, training, or assistance with
138 individual activities of daily living.

139 (18) "Person" means any individual, firm, partnership, corporation, company,
140 association, or joint stock association, and the legal successor thereof.

141 (19) "Resident" means a person 21 years old or older who:

142 (a) as a result of physical or mental limitations or age requires or requests services
143 provided in an assisted living facility; and

144 (b) does not require intensive medical or nursing services as provided in a hospital or
145 nursing care facility.

146 (20) "Small health care facility" means a four to 16 bed facility that provides licensed
147 health care programs and services to residents.

148 (21) "Specialty hospital" means a facility which provides specialized diagnostic,
149 therapeutic, or rehabilitative services in the recognized specialty or specialties for which the
150 hospital is licensed.

151 (22) "Substantial compliance" means in a department survey of a licensee, the

152 department determines there is an absence of deficiencies which would harm the physical
153 health, mental health, safety, or welfare of patients or residents of a licensee.

154 (23) "Type I abortion clinic" means a facility, including a physician's office, but not
155 including a general acute or specialty hospital, that:

156 (a) performs abortions, as defined in Section 76-7-301, during the first trimester of
157 pregnancy; and

158 (b) does not perform abortions, as defined in Section 76-7-301, after the first trimester
159 of pregnancy.

160 (24) "Type II abortion clinic" means a facility, including a physician's office, but not
161 including a general acute or specialty hospital, that:

162 (a) performs abortions, as defined in Section 76-7-301, after the first trimester of
163 pregnancy; or

164 (b) performs abortions, as defined in Section 76-7-301, during the first trimester of
165 pregnancy and after the first trimester of pregnancy.

166 Section 2. Section 26B-2-204 is amended to read:

167 **26B-2-204. Licensing of an abortion clinic -- Rulemaking authority -- Fee.**

168 [~~(1) (a) No abortion clinic may operate in the state on or after January 1, 2024, or the~~
169 ~~last valid date of an abortion clinic license issued under the requirements of this section,~~
170 ~~whichever date is later.~~]

171 [~~(b) Notwithstanding Subsection (1)(a), a licensed abortion clinic may not perform an~~
172 ~~abortion in violation of any provision of state law.~~]

173 [~~(2) The state may not issue a license for an abortion clinic after May 2, 2023.~~]

174 [~~(3) For any license for an abortion clinic that is issued under this section:~~]

175 [~~(a)~~] (1) A type I abortion clinic may not operate in the state without a license issued by
176 the department to operate a type I abortion clinic.

177 [~~(b)~~] (2) A type II abortion clinic may not operate in the state without a license issued
178 by the department to operate a type II abortion clinic.

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

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

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

183 ~~[(d)]~~ (4) To receive and maintain a license described in this section, an abortion clinic
 184 shall:

185 ~~[(i)]~~ (a) apply for a license on a form prescribed by the department;

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

189 ~~[(iii)]~~ (c) comply with the recordkeeping and reporting requirements of Section
 190 [76-7-313](#);

191 ~~[(iv)]~~ (d) comply with the requirements of Title 76, Chapter 7, Part 3, Abortion, and
 192 Title 76, Chapter 7a, Abortion Prohibition;

193 ~~[(v)]~~ (e) pay the annual licensing fee; and

194 ~~[(vi)]~~ (f) cooperate with inspections conducted by the department.

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

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

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

206 ~~[(4) (a) Notwithstanding any other provision of this section, the department may
 207 license a clinic that meets the definition of hospital under Section [76-7-301](#) or Section
 208 [76-7a-101.](#)]~~

209 ~~[(b) A clinic described in Subsection (4)(a) is not defined as an abortion clinic.]~~
 210 Section 3. Section **26B-2-205** is amended to read:

211 **26B-2-205. Exempt facilities.**

212 This part does not apply to:

213 (1) a dispensary or first aid facility maintained by any commercial or industrial plant,

214 educational institution, or convent;

215 (2) a health care facility owned or operated by an agency of the United States;

216 (3) the office of a physician, physician assistant, or dentist whether it is an individual
217 or group practice, except that it does apply to an abortion clinic;

218 (4) a health care facility established or operated by any recognized church or
219 denomination for the practice of religious tenets administered by mental or spiritual means
220 without the use of drugs, whether gratuitously or for compensation, if it complies with statutes
221 and rules on environmental protection and life safety;

222 (5) any health care facility owned or operated by the Department of Corrections,
223 created in Section 64-13-2; and

224 (6) a residential facility providing 24-hour care:

225 (a) that does not employ direct care staff;

226 (b) in which the residents of the facility contract with a licensed hospice agency to
227 receive end-of-life medical care; and

228 (c) that meets other requirements for an exemption as designated by administrative
229 rule.

230 Section 4. Section 26B-2-206 is amended to read:

231 **26B-2-206. License required -- Not assignable or transferable -- Posting --**

232 **Expiration and renewal -- Time for compliance by operating facilities.**

233 (1) (a) A person or governmental unit acting severally or jointly with any other person
234 or governmental unit, may not establish, conduct, or maintain a health care facility in this state
235 without receiving a license from the department as provided by this part and the rules adopted
236 pursuant to this part .

237 (b) This Subsection (1) does not apply to facilities that are exempt under Section
238 26B-2-205.

239 (2) A license issued under this part is not assignable or transferable.

240 (3) The current license shall at all times be posted in each health care facility in a place
241 readily visible and accessible to the public.

242 (4) (a) The department may issue a license for a period of time not to exceed 12
243 months from the date of issuance for an abortion clinic and not to exceed 24 months from the
244 date of issuance for other health care facilities that meet the provisions of this part and

245 department rules adopted pursuant to this part.

246 (b) Each license expires at midnight on the day designated on the license as the
247 expiration date, unless previously revoked by the department.

248 (c) The license shall be renewed upon completion of the application requirements,
249 unless the department finds the health care facility has not complied with the provisions of this
250 part or the rules adopted pursuant to this part.

251 (5) A license may be issued under this section only for the operation of a specific
252 facility at a specific site by a specific person.

253 (6) Any health care facility in operation at the time of adoption of any applicable rules
254 as provided under this part shall be given a reasonable time for compliance as determined by
255 the committee.

256 Section 5. Section **26B-2-224** is amended to read:

257 **26B-2-224. Patient identity protection.**

258 (1) As used in this section:

259 (a) "EMTALA" means the federal Emergency Medical Treatment and Active Labor
260 Act.

261 (b) "Health professional office" means:

262 (i) a physician's office; or

263 (ii) a dental office.

264 (c) "Medical facility" means:

265 (i) a general acute hospital;

266 (ii) a specialty hospital;

267 (iii) a home health agency;

268 (iv) a hospice;

269 (v) a nursing care facility;

270 (vi) a residential-assisted living facility;

271 (vii) a birthing center;

272 (viii) an ambulatory surgical facility;

273 (ix) a small health care facility;

274 (x) an abortion clinic;

275 [~~(xi) a clinic that meets the definition of hospital under Section 76-7-301 or Section~~]

276 ~~76-7a-101;~~]

277 [~~(xii)~~] (xi) a facility owned or operated by a health maintenance organization;

278 [~~(xiii)~~] (xii) an end stage renal disease facility;

279 [~~(xiv)~~] (xiii) a health care clinic; or

280 [~~(xv)~~] (xiv) any other health care facility that the committee designates by rule.

281 (2) (a) In order to discourage identity theft and health insurance fraud, and to reduce
282 the risk of medical errors caused by incorrect medical records, a medical facility or a health
283 professional office shall request identification from an individual prior to providing in-patient
284 or out-patient services to the individual.

285 (b) If the individual who will receive services from the medical facility or a health
286 professional office lacks the legal capacity to consent to treatment, the medical facility or a
287 health professional office shall request identification:

288 (i) for the individual who lacks the legal capacity to consent to treatment; and

289 (ii) from the individual who consents to treatment on behalf of the individual described
290 in Subsection (2)(b)(i).

291 (3) A medical facility or a health professional office:

292 (a) that is subject to EMTALA:

293 (i) may not refuse services to an individual on the basis that the individual did not
294 provide identification when requested; and

295 (ii) shall post notice in its emergency department that informs a patient of the patient's
296 right to treatment for an emergency medical condition under EMTALA;

297 (b) may not be penalized for failing to ask for identification;

298 (c) is not subject to a private right of action for failing to ask for identification; and

299 (d) may document or confirm patient identity by:

300 (i) photograph;

301 (ii) fingerprinting;

302 (iii) palm scan; or

303 (iv) other reasonable means.

304 (4) The identification described in this section:

305 (a) is intended to be used for medical records purposes only; and

306 (b) shall be kept in accordance with the requirements of the Health Insurance

307 Portability and Accountability Act of 1996.

308 Section 6. Section **76-7-301** is amended to read:

309 **76-7-301. Definitions.**

310 As used in this part:

311 (1) (a) "Abortion" means the act, by a physician, of using an instrument, or prescribing
312 a drug, with the intent to cause the death of an unborn child of a woman known to be pregnant,
313 except as permitted under this part.

314 (b) "Abortion" does not include:

315 (i) removal of a dead unborn child;

316 (ii) removal of an ectopic pregnancy; or

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

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

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

322 (2) "Abortion clinic" means the same as that term is defined in Section 26B-2-201.

323 ~~[(2)]~~ (3) "Abuse" means the same as that term is defined in Section 80-1-102.

324 ~~[(3)]~~ (4) "Department" means the Department of Health and Human Services.

325 ~~[(4)]~~ (5) "Down syndrome" means a genetic condition associated with an extra
326 chromosome 21, in whole or in part, or an effective trisomy for chromosome 21.

327 ~~[(5)]~~ (6) "Gestational age" means the age of an unborn child as calculated from the first
328 day of the last menstrual period of the pregnant woman.

329 ~~[(6)]~~ (7) "Hospital" means:

330 (a) a general hospital licensed by the department according to Title 26B, Chapter 2,
331 Part 2, Health Care Facility Licensing and Inspection; and

332 (b) a clinic or other medical facility ~~[that meets the following criteria:]~~ to the extent
333 that such clinic or other medical facility is certified by the department as providing equipment
334 and personnel sufficient in quantity and quality to provide the same degree of safety to the
335 pregnant woman and the unborn child as would be provided for the particular medical
336 procedures undertaken by a general hospital licensed by the department.

337 ~~[(i) a clinician who performs procedures at the clinic is required to be credentialed to~~

338 ~~perform the same procedures at a general hospital licensed by the department; and]~~

339 ~~[(ii) any procedures performed at the clinic are done with the same level of safety for~~
340 ~~the pregnant woman and unborn child as would be available in a general hospital licensed by~~
341 ~~the department.]~~

342 ~~[(7)]~~ (8) "Information module" means the pregnancy termination information module
343 prepared by the department.

344 ~~[(8)]~~ (9) "Medical emergency" means a life threatening physical condition aggravated
345 by, caused by, or arising from a pregnancy that places the pregnant woman at risk of death, or
346 poses a serious risk of substantial impairment of a major bodily function, unless the abortion is
347 performed or induced.

348 ~~[(9)]~~ (10) "Minor" means an individual who is:

349 (a) under 18 years old;

350 (b) unmarried; and

351 (c) not emancipated.

352 ~~[(10)]~~ (11) (a) "Partial birth abortion" means an abortion in which the person
353 performing the abortion:

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

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

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

364 ~~[(11)]~~ (12) "Perinatal hospice" means comprehensive support to the mother and her
365 family from the time of the diagnosis of a lethal fetal anomaly, through the time of the child's
366 birth, and through the postpartum period, that:

367 (a) focuses on alleviating fear and ensuring that the woman and her family experience
368 the life and death of a child in a comfortable and supportive environment; and

- 369 (b) may include counseling or medical care by:
- 370 (i) maternal-fetal medical specialists;
- 371 (ii) obstetricians;
- 372 (iii) neonatologists;
- 373 (iv) anesthesia specialists;
- 374 (v) psychiatrists, psychologists, or other mental health providers;
- 375 (vi) clergy;
- 376 (vii) social workers; or
- 377 (viii) specialty nurses.

378 [~~12~~] (13) "Physician" means:

379 (a) a medical doctor licensed to practice medicine and surgery under Title 58, Chapter
380 67, Utah Medical Practice Act;

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

383 (c) a physician employed by the federal government who has qualifications similar to
384 an individual described in Subsection [~~12~~](a) (13)(a) or (b).

385 [~~13~~] (14) (a) "Severe brain abnormality" means a malformation or defect that causes
386 an individual to live in a mentally vegetative state.

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

- 388 (i) Down syndrome;
- 389 (ii) spina bifida;
- 390 (iii) cerebral palsy; or
- 391 (iv) any other malformation, defect, or condition that does not cause an individual to
392 live in a mentally vegetative state.

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

394 **76-7-302. Circumstances under which abortion authorized.**

- 395 (1) An abortion may be performed in this state only by a physician.
- 396 (2) An abortion may be performed in this state only under the following circumstances:
- 397 (a) the unborn child has not reached 18 weeks gestational age;
- 398 (b) the unborn child has reached 18 weeks gestational age, and:
- 399 (i) the abortion is necessary to avert:

400 (A) the death of the woman on whom the abortion is performed; or
401 (B) a serious physical risk of substantial impairment of a major bodily function of the
402 woman on whom the abortion is performed; or

403 (ii) subject to Subsection (4), two physicians who practice maternal fetal medicine
404 concur, in writing, in the patient's medical record that the fetus has a fetal abnormality that in
405 the physicians' reasonable medical judgment is incompatible with life; or

406 (c) the unborn child has not reached 18 weeks gestational age and:

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

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

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

410 (III) incest, as described in Subsection 76-5-406(2)(j) or Section 76-7-102; or

411 (B) the pregnant child is under the age of 14; and

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

413 (A) for an abortion authorized under Subsection (2)(c)(i)(A), verifies that the incident
414 described in Subsection (2)(c)(i)(A) has been reported to law enforcement; and

415 (B) if applicable, complies with the requirements of Section 80-2-602.

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

418 (4) If the unborn child has been diagnosed with a fetal abnormality that is incompatible
419 with life, at the time of the diagnosis, the physician shall inform the woman, both verbally and
420 in writing, that perinatal hospice and perinatal palliative care services are available and are an
421 alternative to abortion.

422 (5) A physician who performs an abortion under Subsection (2)(c) shall:

423 (a) maintain an accurate record as to the manner in which the physician conducted the
424 verification under Subsection (2)(c)(ii)(A); and

425 (b) report the information described in Subsection (5)(a) to the department in
426 accordance with Section 76-7-313.

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

428 **76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory**
429 **-- Exceptions.**

430 (1) A person may not perform an abortion, unless, before performing the abortion, the

431 physician who will perform the abortion obtains from the woman on whom the abortion is to
432 be performed a voluntary and informed written consent that is consistent with:

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

435 (b) the provisions of this section.

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

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

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

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

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

447 (ii) gives the pregnant woman, upon her request, a copy of the documentation
448 described in Subsection (2)(c)(i); and

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

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

456 (i) the nature of the proposed abortion procedure;

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

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

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

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

464 (vi) the medical risks associated with carrying her child to term;

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

467 (viii) when the result of a prenatal screening or diagnostic test indicates that the unborn
468 child has or may have Down syndrome, the department's website, which contains the
469 information described in Section 26B-7-106, including the information on the informational
470 support sheet; and

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

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

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

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

478 (ii) a printed copy of the material on the department's website described in Section
479 76-7-305.5, if requested by the pregnant woman; and

480 (iii) a copy of the form described in Subsection 26B-2-232(3)(a)(i) regarding the
481 disposition of the aborted fetus.

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

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

486 (b) (i) obtain from the pregnant woman a written certification that the information
487 required to be provided under Subsection (2) and this Subsection (3) was provided in
488 accordance with the requirements of Subsection (2) and this Subsection (3);

489 (ii) obtain a copy of the statement described in Subsection (2)(c)(i); and

490 (iii) ensure that:

491 (A) the woman has received the information described in Subsections 26B-2-232(3)
492 and (4); and

493 (B) if the woman has a preference for the disposition of the aborted fetus, the woman
494 has informed the health care facility of the woman's decision regarding the disposition of the
495 aborted fetus.

496 (4) When a medical emergency compels the performance of an abortion, the physician
497 shall inform the woman prior to the abortion, if possible, of the medical indications supporting
498 the physician's judgment that an abortion is necessary.

499 (5) If an ultrasound is performed on a woman before an abortion is performed, the
500 individual who performs the ultrasound, or another qualified individual, shall:

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

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

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

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

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

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

508 (c) inform the woman that, if she desires, the person performing the ultrasound, or
509 another qualified person shall provide a detailed description of the ultrasound images,
510 including:

511 (i) the dimensions of the unborn child;

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

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

514 (d) provide the detailed description described in Subsection (5)(c), if the woman
515 requests it.

516 (6) The information described in Subsections (2), (3), and (5) is not required to be
517 provided to a pregnant woman under this section if the abortion is performed for a reason
518 described in:

519 (a) Subsection 76-7-302(2)(b)(i), if the treating physician and one other physician
520 concur, in writing, that the abortion is necessary to avert:

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

522 (ii) a risk described in Subsection 76-7-302(2)(b)(i)(B); or

523 (b) Subsection 76-7-302(2)(b)(ii).

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

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

528 (b) shall be subject to:

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

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

532 (8) A physician is not guilty of violating this section for failure to furnish any of the
533 information described in Subsection (2) or (3), or for failing to comply with Subsection (5), if:

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

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

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

539 (ii) a risk described in Subsection 76-7-302(2)(b)(i)(B);

540 (c) the pregnancy was the result of rape or rape of a child, as described in Sections
541 76-5-402 and 76-5-402.1;

542 (d) the pregnancy was the result of incest, as defined in Subsection 76-5-406(2)(j) and
543 Section 76-7-102; or

544 (e) at the time of the abortion, the pregnant child was 14 years old or younger.

545 (9) A physician who complies with the provisions of this section and Section
546 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain
547 informed consent under Section 78B-3-406.

548 (10) (a) The department shall provide an ultrasound, in accordance with the provisions
549 of Subsection (5)(b), at no expense to the pregnant woman.

550 (b) A local health department shall refer a pregnant woman who requests an ultrasound
551 described in Subsection (10)(a) to the department.

552 (11) A physician is not guilty of violating this section if:

553 (a) the information described in Subsection (2) is provided less than 72 hours before
554 the physician performs the abortion; and

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

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

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

561 Section 9. Section **76-7a-101** is amended to read:

562 **76-7a-101. Definitions.**

563 As used in this chapter:

564 (1) (a) "Abortion" means the act, by a physician, of using an instrument, or prescribing
565 a drug, with the intent to cause the death of an unborn child of a woman known to be pregnant,
566 except as permitted under this chapter.

567 (b) "Abortion" does not include:

568 (i) removal of a dead unborn child;

569 (ii) removal of an ectopic pregnancy; or

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

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

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

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

577 (3) "Department" means the Department of Health and Human Services.

578 ~~(3)~~ (4) "Down syndrome" means a genetic condition associated with an extra
579 chromosome 21, in whole or in part, or an effective trisomy for chromosome 21.

580 ~~(4)~~ (5) "Hospital" means:

581 (a) a general hospital licensed by the department; ~~and~~ or

582 (b) a clinic or other medical facility ~~[that meets the following criteria:]~~ to the extent the
583 clinic or other medical facility is certified by the department as providing equipment and
584 personnel sufficient in quantity and quality to provide the same degree of safety to a pregnant
585 woman and an unborn child as would be provided for the particular medical procedure

586 undertaken by a general hospital licensed by the department.

587 ~~[(i) a clinician who performs procedures at the clinic is required to be credentialed to~~
588 ~~perform the same procedures at a general hospital licensed by the department, and]~~

589 ~~[(ii) any procedures performed at the clinic are done with the same level of safety for~~
590 ~~the pregnant woman and unborn child as would be available in a general hospital licensed by~~
591 ~~the department.]~~

592 ~~[(5)]~~ (6) "Medical emergency" means a life threatening physical condition aggravated
593 by, caused by, or arising from a pregnancy that places the pregnant woman at risk of death, or
594 poses a serious risk of substantial impairment of a major bodily function, unless the abortion is
595 performed or induced.

596 ~~[(6)]~~ (7) "Perinatal hospice" means comprehensive support to the mother and her
597 family from the time of the diagnosis of a lethal fetal anomaly, through the time of the child's
598 birth, and through the postpartum period, that:

599 (a) focuses on alleviating fear and ensuring that the woman and her family experience
600 the life and death of a child in a comfortable and supportive environment; and

601 (b) may include counseling or medical care by:

602 (i) maternal-fetal medical specialists;

603 (ii) obstetricians;

604 (iii) neonatologists;

605 (iv) anesthesia specialists;

606 (v) psychiatrists, psychologists, or other mental health providers;

607 (vi) clergy;

608 (vii) social workers; or

609 (viii) specialty nurses.

610 ~~[(7)]~~ (8) "Physician" means:

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

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

613 (c) a physician employed by the federal government who has qualifications similar to
614 an individual described in Subsection (7)(a) or (b).

615 ~~[(8)]~~ (9) (a) "Severe brain abnormality" means a malformation or defect that causes an
616 individual to live in a mentally vegetative state.

- 617 (b) "Severe brain abnormality" does not include:
618 (i) Down syndrome;
619 (ii) spina bifida;
620 (iii) cerebral palsy; or
621 (iv) any other malformation, defect, or condition that does not cause an individual to
622 live in a mentally vegetative state.

623 Section 10. Section **76-7a-201** is amended to read:

624 **76-7a-201. Abortion prohibition -- Exceptions -- Penalties.**

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

626 (a) the abortion is necessary to avert:

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

630 (b) subject to Subsection (3), two physicians who practice maternal fetal medicine
631 concur, in writing, in the patient's medical record that the fetus has a fetal abnormality that in
632 the physicians' reasonable medical judgment is incompatible with life; or

633 (c) the unborn child has not reached 18 weeks gestational age and:

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

635 (I) rape, as described in Section [76-5-402](#);

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

637 (III) incest, as described in Subsection [76-5-406\(2\)\(j\)](#) or Section [76-7-102](#); or

638 (B) the pregnant child is under the age of 14; and

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

640 (A) for an abortion authorized under Subsection (1)(c)(i)(A), verifies that the incident
641 described in Subsection (1)(c)(i)(A) has been reported to law enforcement; and

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

644 (2) An abortion may be performed only:

645 (a) by a physician; and

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

648 (3) If the unborn child has been diagnosed with a fetal abnormality that is incompatible
649 with life, at the time of the diagnosis, the physician shall inform the woman, both verbally and
650 in writing, that perinatal hospice services and perinatal palliative care are available and are an
651 alternative to abortion.

652 (4) A person who performs an abortion in violation of this section is guilty of a second
653 degree felony.

654 (5) In addition to the penalty described in Subsection (4), the department may take
655 appropriate corrective action against a health care facility, including revoking the health care
656 facility's license, if a violation of this chapter occurs at the health care facility.

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

659 (7) A physician who performs an abortion under Subsection (1)(c) shall:

660 (a) maintain an accurate record as to the manner in which the physician conducted the
661 verification under Subsection (1)(c)(ii)(A); and

662 (b) report the information described in Subsection (7)(a) to the department in
663 accordance with Section 76-7-313.

664 Section 11. **Effective date.**

665 (1) Except as provided in Subsection (2), if approved by two-thirds of all the members
666 elected to each house, this bill takes effect upon approval by the governor, or the day following
667 the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's
668 signature, or in the case of a veto, the date of veto override.

669 (2) If this bill is not approved by two-thirds of all members elected to each house, this
670 bill takes effect May 1, 2024.