

**Representative Justin L. Fawson** proposes the following substitute bill:

**SEXUAL OFFENSES AND STATUTORY NONCONSENT**

**AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Justin L. Fawson**

Senate Sponsor: Todd Weiler

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**LONG TITLE**

**General Description:**

This bill amends and enacts provisions related to sexual offenses without the consent of the victim when the actor is infected with Human Immunodeficiency Virus or Acquired Immunodeficiency Virus.

**Highlighted Provisions:**

This bill:

- ▶ enacts provisions to enhance the classification of a sexual offense if the actor was infected with Human Immunodeficiency Virus or Acquired Immunodeficiency Virus;
- ▶ amends provisions related to sexual offenses without the consent of the victim;
- ▶ enacts provisions criminalizing sexual conduct by a person infected with Human Immunodeficiency Virus or Acquired Immunodeficiency Virus without informing the other person of the infection; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **31A-22-726**, as last amended by Laws of Utah 2015, Chapter 283

30 **53A-2-206**, as last amended by Laws of Utah 2012, Chapter 398

31 **62A-15-602**, as last amended by Laws of Utah 2012, Chapter 248

32 **76-5-406**, as last amended by Laws of Utah 2015, Chapter 57

33 **76-7-302**, as last amended by Laws of Utah 2010, Chapter 13

34 **76-7-305**, as last amended by Laws of Utah 2016, Chapter 362

35 **76-7-305.6**, as enacted by Laws of Utah 2010, Chapter 314

36 ENACTS:

37 **76-3-203.12**, Utah Code Annotated 1953

38 **76-5-406.1**, Utah Code Annotated 1953



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

41 Section 1. Section **31A-22-726** is amended to read:

42 **31A-22-726. Abortion coverage restriction in health benefit plan and on health**  
43 **insurance exchange.**

44 (1) As used in this section, "permitted abortion coverage" means coverage for abortion:

45 (a) that is necessary to avert:

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

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

49 (b) of a fetus that has a defect that is documented by a physician or physicians to be  
50 uniformly diagnosable and uniformly lethal; or

51 (c) where the woman is pregnant as a result of:

52 (i) rape, as described in Section **76-5-402**;

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

54 (iii) incest, as described in Subsection **76-5-406**~~(10)~~**(2)(j)** or Section **76-7-102**.

55 (2) A person may not offer coverage for an abortion in a health benefit plan, unless the  
56 coverage is a type of permitted abortion coverage.

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

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

63 Section 2. Section **53A-2-206** is amended to read:

64 **53A-2-206. Interstate compact students -- Inclusion in attendance count --**  
65 **Funding for foreign exchange students -- Annual report -- Requirements for exchange**  
66 **student agencies.**

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

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

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

76 (2) (a) A school district or charter school may include foreign exchange students in the  
77 district's or school's membership and attendance count for the purpose of apportionment of  
78 state money, except as provided in Subsections (2)(b) through (d).

79 (b) (i) Notwithstanding Section **53A-17a-106**, foreign exchange students may not be  
80 included in average daily membership for the purpose of determining the number of weighted  
81 pupil units in the grades 1-12 basic program.

82 (ii) Subject to the limitation in Subsection (2)(c), the number of weighted pupil units in  
83 the grades 1-12 basic program attributed to foreign exchange students shall be equal to the  
84 number of foreign exchange students who were:

85 (A) enrolled in a school district or charter school on October 1 of the previous fiscal  
86 year; and

87 (B) sponsored by an agency approved by the district's local school board or charter

88 school's governing board.

89 (c) (i) The total number of foreign exchange students in the state that may be counted  
90 for the purpose of apportioning state money under Subsection (2)(b) shall be the lesser of:

91 (A) the number of foreign exchange students enrolled in public schools in the state on  
92 October 1 of the previous fiscal year; or

93 (B) 328 foreign exchange students.

94 (ii) The State Board of Education shall make rules in accordance with Title 63G,  
95 Chapter 3, Utah Administrative Rulemaking Act, to administer the cap on the number of  
96 foreign exchange students that may be counted for the purpose of apportioning state money  
97 under Subsection (2)(b).

98 (d) Notwithstanding Sections 53A-17a-133 and 53A-17a-164, weighted pupil units in  
99 the grades 1 through 12 basic program for foreign exchange students, as determined by  
100 Subsections (2)(b) and (c), may not be included for the purposes of determining a school  
101 district's state guarantee money under the voted or board local levies.

102 (3) A school district or charter school may:

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

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

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

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

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

117 (b) The affidavit shall include the following assurances:

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

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

123 (iii) that host parents have received training appropriate to their positions, including  
124 information about enhanced criminal penalties under Subsection 76-5-406~~(+0)~~(2)(j) for  
125 persons who are in a position of special trust;

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

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

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

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

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

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

143 (8) Notwithstanding Subsection (2)(c)(i), a school district or charter school shall enroll  
144 a foreign exchange student if the foreign exchange student:

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

146 (b) attends the same school during the same time period that another student from the  
147 school is:

148 (i) sponsored by the same agency; and

149 (ii) enrolled in a school in a foreign country; and

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

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

152 **62A-15-602. Definitions.**

153 As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of  
154 Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah  
155 Forensic Mental Health Facility, and Part 10, Declaration for Mental Health Treatment:

156 (1) "Adult" means a person 18 years of age or older.

157 (2) "Commitment to the custody of a local mental health authority" means that an adult  
158 is committed to the custody of the local mental health authority that governs the mental health  
159 catchment area in which the proposed patient resides or is found.

160 (3) "Designated examiner" means a licensed physician familiar with severe mental  
161 illness, preferably a psychiatrist, designated by the division as specially qualified by training or  
162 experience in the diagnosis of mental or related illness or another licensed mental health  
163 professional designated by the division as specially qualified by training and at least five years'  
164 continual experience in the treatment of mental or related illness. At least one designated  
165 examiner in any case shall be a licensed physician. No person who is the applicant, or who  
166 signs the certification, under Section 62A-15-631 may be a designated examiner in the same  
167 case.

168 (4) "Designee" means a physician who has responsibility for medical functions  
169 including admission and discharge, an employee of a local mental health authority, or an  
170 employee of an agency that has contracted with a local mental health authority to provide  
171 mental health services under Section 17-43-304.

172 (5) "Harmful sexual conduct" means any of the following conduct upon an individual  
173 without the individual's consent, or upon an individual who cannot legally consent to the  
174 conduct including under the circumstances described in Subsections 76-5-406~~[(1) through (12)]~~  
175 (2)(a) through (l):

176 (a) sexual intercourse;

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

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

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

181 (6) "Institution" means a hospital, or a health facility licensed under the provisions of  
182 Section 26-21-9.

183 (7) "Licensed physician" means an individual licensed under the laws of this state to  
184 practice medicine, or a medical officer of the United States government while in this state in  
185 the performance of official duties.

186 (8) "Local comprehensive community mental health center" means an agency or  
187 organization that provides treatment and services to residents of a designated geographic area,  
188 operated by or under contract with a local mental health authority, in compliance with state  
189 standards for local comprehensive community mental health centers.

190 (9) "Mental health facility" means the Utah State Hospital or other facility that  
191 provides mental health services under contract with the division, a local mental health  
192 authority, or organization that contracts with a local mental health authority.

193 (10) "Mental health officer" means an individual who is designated by a local mental  
194 health authority as qualified by training and experience in the recognition and identification of  
195 mental illness, to interact with and transport persons to any mental health facility.

196 (11) "Mental illness" means a psychiatric disorder as defined by the current edition of  
197 the Diagnostic and Statistical Manual of Mental Disorders published by the American  
198 Psychiatric Association which substantially impairs a person's mental, emotional, behavioral,  
199 or related functioning.

200 (12) "Patient" means an individual under commitment to the custody or to the  
201 treatment services of a local mental health authority.

202 (13) "Serious bodily injury" means bodily injury which involves a substantial risk of  
203 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or  
204 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

205 (14) "Substantial danger" means the person, by his or her behavior, due to mental  
206 illness:

207 (a) is at serious risk to:

208 (i) commit suicide;

209 (ii) inflict serious bodily injury on himself or herself; or

210 (iii) because of his or her actions or inaction, suffer serious bodily injury because he or  
211 she is incapable of providing the basic necessities of life, such as food, clothing, and shelter; or

212 (b) is at serious risk to cause or attempt to cause serious bodily injury or engage in  
213 harmful sexual conduct.

214 (15) "Treatment" means psychotherapy, medication, including the administration of  
215 psychotropic medication, and other medical treatments that are generally accepted medical and  
216 psychosocial interventions for the purpose of restoring the patient to an optimal level of  
217 functioning in the least restrictive environment.

218 Section 4. Section 76-3-203.12 is enacted to read:

219 **76-3-203.12. Enhanced penalty for sexual offenses committed by a person with**  
220 **Human Immunodeficiency Virus or Acquired Immunodeficiency Virus.**

221 (1) A person convicted of a sexual offense described in Chapter 5, Part 4, Sexual  
222 Offenses, is subject to an enhanced penalty if at the time of the sexual offense the person was  
223 infected with Human Immunodeficiency Virus or Acquired Immunodeficiency Virus and the  
224 person knew of the infection.

225 (2) (a) Except as provided in Subsection (2)(b), the enhancement of a penalty described  
226 in Subsection (1) shall be an enhancement of one classification higher than the root offense for  
227 which the person was convicted.

228 (b) A felony of the first degree is not enhanced under this section.

229 Section 5. Section 76-5-406 is amended to read:

230 **76-5-406. Sexual offenses against the victim without consent of victim --**  
231 **Circumstances.**

232 (1) For purposes of this section, "sexual activity" means:

233 (a) sexual intercourse;

234 (b) any sexual act involving the genitals of one person and the mouth or anus of  
235 another person, regardless of the sex of either participant;

236 (c) penetration, however slight, of the genital or anal opening of another person by any  
237 foreign object, substance, instrument, or device, including a part of the human body, with the  
238 intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or  
239 gratify the sexual desire of any person, regardless of the sex of any participant; or

240 (d) an attempt of any of the activities described in Subsections (1)(a) through (c).

241 ~~(2) [An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape~~  
242 ~~of a child, object rape, attempted object rape, object rape of a child, attempted object rape of a~~



243 ~~child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a~~  
244 ~~child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse,~~  
245 ~~sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child,~~  
246 ~~attempted aggravated sexual abuse of a child, or simple sexual abuse] Sexual activity is~~

247 without consent of the victim under any of the following circumstances:

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

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

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

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

256 ~~[(i)]~~ (B) the actor coerces the victim to submit by threatening to retaliate in the future  
257 against the victim or any other person, and the victim believes at the time that the actor has the  
258 ability to execute this threat;

259 ~~[(b)]~~ (ii) as used in this Subsection ~~[(4)]~~ (2)(d), "to retaliate" includes threats of  
260 physical force, kidnapping, or extortion;

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

263 ~~[(6)]~~ (f) the actor knows that as a result of mental disease or defect, or for any other  
264 reason the victim is at the time of the act incapable either of appraising the nature of the act or  
265 of resisting it;

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

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

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

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

274 [H] (k) the victim is 14 years of age or older, but younger than 18 years of age, and  
275 the actor is more than three years older than the victim and entices or coerces the victim to  
276 submit or participate, under circumstances not amounting to the force or threat required under  
277 Subsection (2) [or (4)] (b) or (d); or

278 [H] (1) the actor is a health professional or religious counselor, as those terms are  
279 defined in this Subsection [H] (2)(1), the act is committed under the guise of providing  
280 professional diagnosis, counseling, or treatment, and at the time of the act the victim  
281 reasonably believed that the act was for medically or professionally appropriate diagnosis,  
282 counseling, or treatment to the extent that resistance by the victim could not reasonably be  
283 expected to have been manifested; for purposes of this Subsection [H] (2)(1):

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

291 [b] (ii) "religious counselor" means a minister, priest, rabbi, bishop, or other  
292 recognized member of the clergy.

293 Section 6. Section 76-5-406.1 is enacted to read:

294 **76-5-406.1. Nonconsensual sexual conduct by person who is Human**  
295 **Immunodeficiency Virus positive.**

296 (1) A person commits nonconsensual sexual conduct when the person engages in  
297 sexual intercourse or any sexual act involving the genitals of one person and the mouth or anus  
298 of another person, regardless of the sex of either participant, and:

299 (a) the actor knows that the actor is infected with the Human Immunodeficiency Virus  
300 or Acquired Immunodeficiency Virus; and

301 (b) the actor engages in the sexual conduct knowing that the victim is unaware of the  
302 actor's infected status.

303 (2) Nonconsensual sexual conduct is a class A misdemeanor.

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

305 **76-7-302. Circumstances under which abortion authorized.**

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

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

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

311 (a) the unborn child is not viable; or

312 (b) the unborn child is viable, if:

313 (i) the abortion is necessary to avert:

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

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

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

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

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

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

323 (III) incest, as described in Subsection 76-5-406~~(10)~~(2)(j) or Section 76-7-102; and

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

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

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

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

329 **76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory**  
330 **-- Exceptions.**

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

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

336 (b) the provisions of this section.

337 (2) Except as provided in Subsection (9), consent to an abortion is voluntary and  
338 informed only if:

339 (a) at least 72 hours before the abortion, the physician who is to perform the abortion,  
340 the referring physician, a physician, a registered nurse, nurse practitioner, advanced practice  
341 registered nurse, certified nurse midwife, genetic counselor, or physician's assistant, in a  
342 face-to-face consultation in any location in the state, orally informs the woman:

343 (i) consistent with Subsection (3)(a), of:

344 (A) the nature of the proposed abortion procedure;

345 (B) specifically how the procedure described in Subsection (2)(a)(i)(A) will affect the  
346 fetus; and

347 (C) the risks and alternatives to an abortion procedure or treatment;

348 (ii) of the probable gestational age and a description of the development of the unborn  
349 child at the time the abortion would be performed;

350 (iii) of the medical risks associated with carrying her child to term; and

351 (iv) if the abortion is to be performed on an unborn child who is at least 20 weeks  
352 gestational age:

353 (A) that substantial medical evidence from studies concludes that an unborn child who  
354 is at least 20 weeks gestational age may be capable of experiencing pain during an abortion  
355 procedure; and

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

357 (b) at least 72 hours prior to the abortion the physician who is to perform the abortion,  
358 the referring physician, or, as specifically delegated by either of those physicians, a physician, a  
359 registered nurse, licensed practical nurse, certified nurse-midwife, advanced practice registered  
360 nurse, clinical laboratory technologist, psychologist, marriage and family therapist, clinical  
361 social worker, genetic counselor, or certified social worker orally, in a face-to-face consultation  
362 in any location in the state, informs the pregnant woman that:

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

365 (A) provides medically accurate information regarding all abortion procedures that may  
366 be used;

367 (B) describes the gestational stages of an unborn child; and  
368 (C) includes information regarding public and private services and agencies available  
369 to assist her through pregnancy, at childbirth, and while the child is dependent, including  
370 private and agency adoption alternatives;  
371 (ii) the printed material and a viewing of or a copy of the informational video shall be  
372 made available to her, free of charge, on the Department of Health's website;  
373 (iii) medical assistance benefits may be available for prenatal care, childbirth, and  
374 neonatal care, and that more detailed information on the availability of that assistance is  
375 contained in the printed materials and the informational video published by the Department of  
376 Health;  
377 (iv) except as provided in Subsection (3)(b):  
378 (A) the father of the unborn child is legally required to assist in the support of her  
379 child, even if he has offered to pay for the abortion; and  
380 (B) the Office of Recovery Services within the Department of Human Services will  
381 assist her in collecting child support; and  
382 (v) she has the right to view an ultrasound of the unborn child, at no expense to her,  
383 upon her request;  
384 (c) the information required to be provided to the pregnant woman under Subsection  
385 (2)(a) is also provided by the physician who is to perform the abortion, in a face-to-face  
386 consultation, prior to performance of the abortion, unless the attending or referring physician is  
387 the individual who provides the information required under Subsection (2)(a);  
388 (d) a copy of the printed materials published by the Department of Health has been  
389 provided to the pregnant woman;  
390 (e) the informational video, published by the Department of Health, has been provided  
391 to the pregnant woman in accordance with Subsection (4); and  
392 (f) the pregnant woman has certified in writing, prior to the abortion, that the  
393 information required to be provided under Subsections (2)(a) through (e) was provided, in  
394 accordance with the requirements of those subsections.  
395 (3) (a) The alternatives required to be provided under Subsection (2)(a)(i) include:  
396 (i) a description of adoption services, including private and agency adoption methods;  
397 and

398 (ii) a statement that it is legal for adoptive parents to financially assist in pregnancy and  
399 birth expenses.

400 (b) The information described in Subsection (2)(b)(iv) may be omitted from the  
401 information required to be provided to a pregnant woman under this section if the woman is  
402 pregnant as the result of rape.

403 (c) Nothing in this section shall be construed to prohibit a person described in  
404 Subsection (2)(a) from, when providing the information described in Subsection (2)(a)(iv),  
405 informing a woman of the person's own opinion regarding the capacity of an unborn child to  
406 experience pain.

407 (4) When the informational video described in Section 76-7-305.5 is provided to a  
408 pregnant woman, the person providing the information shall:

409 (a) request that the woman view the video at that time or at another specifically  
410 designated time and location; or

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

413 (5) When a serious medical emergency compels the performance of an abortion, the  
414 physician shall inform the woman prior to the abortion, if possible, of the medical indications  
415 supporting the physician's judgment that an abortion is necessary.

416 (6) If an ultrasound is performed on a woman before an abortion is performed, the  
417 person who performs the ultrasound, or another qualified person, shall:

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

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

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

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

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

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

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

428 (i) the dimensions of the unborn child;

429 (ii) the presence of cardiac activity in the unborn child, if present and viewable; and  
430 (iii) the presence of external body parts or internal organs, if present and viewable; and  
431 (d) provide the detailed description described in Subsection (6)(c), if the woman  
432 requests it.

433 (7) The information described in Subsections (2), (3), (4), and (6) is not required to be  
434 provided to a pregnant woman under this section if the abortion is performed for a reason  
435 described in:

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

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

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

442 (8) In addition to the criminal penalties described in this part, a physician who violates  
443 the provisions of this section:

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

446 (b) shall be subject to:

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

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

450 (9) A physician is not guilty of violating this section for failure to furnish any of the  
451 information described in Subsection (2), or for failing to comply with Subsection (6), if:

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

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

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

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

459 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections

460 76-5-402 and 76-5-402.1;

461 (d) the pregnancy was the result of incest, as defined in Subsection

462 76-5-406~~(10)~~(2)(j) and Section 76-7-102; or

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

464 (10) A physician who complies with the provisions of this section and Section

465 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain

466 informed consent under Section 78B-3-406.

467 (11) (a) The Department of Health shall provide an ultrasound, in accordance with the  
468 provisions of Subsection (2)(b), at no expense to the pregnant woman.

469 (b) A local health department shall refer a person who requests an ultrasound described  
470 in Subsection (11)(a) to the Department of Health.

471 (12) A physician is not guilty of violating this section if:

472 (a) the physician provides the information described in Subsection (2) less than 72  
473 hours before performing the abortion; and

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

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

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

480 Section 9. Section 76-7-305.6 is amended to read:

481 **76-7-305.6. Abortion facilities required to provide printed materials and**  
482 **informational video -- Department of Health to make printed materials and**  
483 **informational video available.**

484 (1) Except as provided in Subsection 76-7-305.5(7), every facility in which abortions  
485 are performed shall provide the printed materials and a viewing or a copy of the video  
486 described in Section 76-7-305.5 to each patient or potential patient at least 24 hours before the  
487 abortion is performed, unless:

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



- 491 (b) in the physician's professional judgment, the abortion was necessary to avert:
- 492 (i) the death of the woman on whom the abortion is performed; or
- 493 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
- 494 of the woman on whom the abortion is performed;
- 495 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
- 496 [76-5-402](#) and [76-5-402.1](#);
- 497 (d) the pregnancy was the result of incest, as defined in Subsection
- 498 [76-5-406](#)~~(10)~~(2)(j) and Section [76-7-102](#); or
- 499 (e) at the time of the abortion, the pregnant woman was 14 years of age or younger.
- 500 (2) The Department of Health and each local health department shall make the printed
- 501 materials and the video described in Section [76-7-305.5](#) available at no cost to any person.
- 502 (3) The Department of Health shall make the printed materials and the video described
- 503 in Section [76-7-305.5](#) available for viewing on the Department of Health's website by clicking
- 504 on a conspicuous link on the home page of the website.
- 505 (4) If the printed materials or a viewing of the video are not provided to a pregnant
- 506 woman under Subsection (1), the physician who performs the abortion on the woman shall,
- 507 within 10 days after the day on which the abortion is performed, provide to the Department of
- 508 Health an affidavit that:
- 509 (a) specifies the information that was not provided to the woman; and
- 510 (b) states the reason that the information was not provided to the woman.