

Impact Document: HB 467

Overview: The goal of this document is to describe which aspects of HB 467 are currently blocked by court injunctions, and which aspects took effect on May 3, 2023.

Reference Links:

HB 467 "Clinic Ban" (2023) - <https://le.utah.gov/~2023/bills/static/HB0467.html>

SB 174 "Trigger Ban" (2020) - <https://le.utah.gov/~2020/bills/static/SB0174.html>

HB 136 "18-week Ban" (2019) - <https://le.utah.gov/~2019/bills/static/HB0136.html>

Blocked HB 467 provisions due to May 2, 2023 injunction:

-All abortions must take place at a general hospital, or at a hospital-equivalent clinic;

-The Utah Department of Health and Human Services (DHHS) is required to deny or revoke the license of any health care facility that violates the hospital requirement by providing an abortion somewhere other than a hospital or a hospital-equivalent clinic;

-DHHS is prohibited from issuing new licenses for abortion clinics after May 2, 2023;

-Abortion clinics are prohibited from operating in Utah after December 31, 2023, or the last effective date of a license issued before May 2, 2023—whichever occurs later;

-Physicians and other providers who perform an abortion in violation of the law's hospital requirement are subject to the unprofessional conduct penalties even if the provider is not found guilty of a crime in connection with the violation;

Note: While the unprofessional conduct penalties related to the hospital requirement are blocked by the May 2 injunction, providers and health centers can still be subject to the unprofessional conduct and licensing penalties for all other violations of state law.

-A provider who performs an abortion at a hospital equivalent clinic must be credentialed to perform abortion by the same method at a general hospital;

Note: Section 76-7-301 of HB 467 is restricted by the May 2 injunction because it refers to the new definitions of a hospital and hospital equivalent clinic in HB 467 that the injunction blocks from taking effect.

-Due to the May 2 injunction, the effective definition of a hospital in Utah is as follows:

"Hospital" means:

(a) general hospital licensed by the department according to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; and

(b) a clinic or other medical facility to the extent that such clinic or other medical facility is certified by the department as providing equipment and personnel sufficient in quantity and quality to provide the same degree of safety to the pregnant woman and the unborn child as would be provided for the particular medical procedures undertaken by a general hospital licensed by the department

Blocked HB 467 provisions due to July 2022 injunction against “trigger ban:”

-Revisions to the abortion exception language in SB 174 “trigger ban” related to protecting the health and life of the patient and diagnosing fetal abnormalities did not take effect because the trigger ban statutes (76-7a-201) are enjoined by the courts;

Note: The same exception language revisions made to the sections of Utah code related to the new 18-week ban (76-7-302) took effect on May 3.

See text in the next section explaining the statute difference between 76-7-302 (18-week ban) and 76-7a-201 (trigger ban).

HB 467 provisions that took effect May 3:

-HB 467 lowered the gestational age cutoff from viability to 18 weeks gestation. This change consolidated the limits in the 18-week ban (2019), which previously appeared in section 76-7-302.5, with another section of code (76-7-302) to set limits on abortion access;

Note: HB 467 repealed the statute (76-7-302.5) establishing an 18-week ban that was passed by the Legislature as HB 136 in 2019. In addition, HB 467 amended the older statute related to the post-viability ban (76-7-302) to lower the gestational age limit to 18 weeks. In summary, HB 467 moved the 18-week ban between two sections of code: from 76-7-302.5 to 76-7-302 and repealed 76-7-302.5.

-Abortion is redefined as “the act, by a physician, of using an instrument, or prescribing a drug, with the intent to cause the death of an unborn child of a woman known to be pregnant;”

-Providers who perform an abortion contrary to state law (except for the hospital requirement of HB 467 blocked by the May 3 injunction) are subject to disciplinary action for “unprofessional conduct” regardless of whether the provider is found guilty of a crime;

-Survivors of rape or incest can only access an abortion before 18 weeks gestation.

Note: A new 18-week limit to abortion access for cases of rape or incest is also included in HB 297 (Victims Services Amendments, 2023)

-Providers are required to verify that patients seeking abortions due to rape or incest made a report to law enforcement prior to the procedure;

Note: HB 467’s law enforcement reporting requirement to receive abortion care for rape or incest prior to 18 weeks gestation is null while the injunctions against both the trigger ban and clinic ban remain in effect. Under these injunctions, people can seek abortion care in Utah up to 18 weeks without meeting a defined exception or reporting a crime to law enforcement.

-Children under age 14 cannot access abortion after 18 weeks. When providing an abortion before 18 weeks of pregnancy, the physician providing the abortion does not need to verify a report to law enforcement for children under 14, but the physician does need to comply with any applicable child-abuse reporting obligations;

-Several revisions to the 18-week abortion ban took effect, including these conditions that trigger exceptions:

--Abortion is necessary to prevent the death of the patient on whom the abortion is performed;

--Abortion is necessary to prevent a serious "physical" risk of substantial impairment of a major bodily function [Note: HB 467 revisions added the word "physical" and removed the word "irreversible"];

--Two physicians who practice maternal fetal medicine concur, in writing, in the patient's medical record that the fetus[:] has a fetal abnormality that in the physicians' reasonable medical judgment is incompatible with life;

Note: These revisions to abortion exceptions occur in code section 76-7-302. The same exception language revisions made to other sections of Utah code related to "trigger ban" (76-7a-201) DID NOT take effect due to the injunction against that section of code. See description in the above section. The section of Utah code related to the 18-week ban is now 76-7-302. The section of Utah code related to the blocked "trigger ban" is 76-7a-201.

-Physicians conducting an abortion based on a fetal anomaly must inform the pregnant person in writing and verbally about perinatal hospice options;

-Revisions to definition of "medical emergency" as:

"a life threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the pregnant patient at risk of death, or poses a serious risk of substantial impairment of a major bodily function, unless the abortion is performed or induced."

-Medical providers not licensed by the state of Utah and non-physicians licensed in Utah who prescribe medication to cause an abortion are subject to criminal penalties under Utah law;

-Violating the state licensed physician requirement for providing medication abortions is a class B misdemeanor;

-Any prescription for a drug that is known to possibly cause an abortion shall be presumed by a pharmacy to be for an indication other than for the termination of a pregnancy;

-Pharmacy dispensing a prescription or medical order for a drug that is known to possibly cause an abortion shall not be required to verify whether the prescription or medical order violates any provision of this chapter;

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