

1 **UNBORN CHILD PAIN PREVENTION ACT**

2 2009 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Carl Wimmer**

5 Senate Sponsor: D. Chris Butters

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6  
7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions of the Utah Criminal Code relating to abortion.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ requires that at least 24 hours before a physician performs an abortion of an unborn  
13 child who is at least 20 weeks gestational age, the woman on whom the abortion is  
14 performed shall ~~§→~~, **except when a medical emergency exists and there is not adequate time to**  
14a **comply with the requirements of this bill**, ~~←§~~ be informed ~~§→~~ **[of any]** :

14b • **that, upon the woman's request, an ←§ anesthetic or analgesic §→ [that would] will**  
14c **be administered to the unborn child, [either directly or] through the woman, to ←§ eliminate or**  
15 **alleviate organic pain to the unborn child §→ ; ←§ and**  
15a **§→ • of ←§ any medical risks §→ to the woman ←§ associated with the**  
16 **anesthetic or analgesic §→ [, unless:**

17 ~~————— • a medical emergency exists; or~~

18 ~~————— • the abortion is being performed to save the life of the woman or to prevent grave~~  
19 ~~**damage to her medical health] ←§ ;**~~

20 ▶ provides that a person providing the information described in the preceding  
21 paragraph is not prohibited from informing the woman of the person's own opinion  
22 regarding the administration of an anesthetic or analgesic to alleviate fetal pain;

23 ▶ requires the Department of Health to produce a brochure that:

24 • subject to certain exceptions, is to be provided to a woman seeking an abortion  
25 of an unborn child who is at least 20 weeks gestational age; and

26 • includes information ~~§→~~ **[, from both sides of the issue,] ←§** relating to the ability of  
26a an  
27 unborn child to experience pain during an abortion procedure and the methods



28 of alleviating or eliminating that pain;

29       ▶ provides that a physician who performs an abortion of an unborn child who is at  
30 least 20 weeks gestational age shall administer an anesthetic or analgesic to the  
31 unborn child if the woman having the abortion consents to the administration of the  
32 anesthetic or analgesic, unless ~~§~~ [:

33 ~~—————▶] ←§~~ a medical emergency exists; ~~§~~ [or

34 ~~—————•~~ ~~the physician informs the woman that the physician, or the facility at which the~~  
35 ~~abortion is to be performed, cannot or does not provide the service of~~

36 ~~administering an anesthetic or analgesic to an unborn child; and] and there is not adequate time to~~  
36a ~~comply with the requirements of this bill; and ←§~~

37       ▶ makes technical changes.

38 **Monies Appropriated in this Bill:**

39       None

40 **Other Special Clauses:**

41       ~~§~~ [None] This bill coordinates with H.B. 90 by providing substantive and technical  
41a amendments. ←§

42 **Utah Code Sections Affected:**

43 AMENDS:

44       **76-7-305**, as last amended by Laws of Utah 2008, Chapter 3

45       **76-7-305.5**, as last amended by Laws of Utah 2006, Chapters 116 and 207

46       **76-7-315**, as last amended by Laws of Utah 2006, Chapter 207

47 ENACTS:

48       **76-7-308.5**, Utah Code Annotated 1953

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

51       Section 1. Section **76-7-305** is amended to read:

52       **76-7-305. Informed consent requirements for abortion -- 24-hour wait mandatory**  
53 **-- Emergency exceptions.**

54       (1) No abortion may be performed unless a voluntary and informed written consent,  
55 consistent with Section 8.08 of the American Medical Association's Code of Medical Ethics,  
56 Current Opinions, and the provisions of this section is first obtained by the attending physician  
57 from the woman upon whom the abortion is to be performed.

58       (2) Except in the case of a medical emergency, consent to an abortion is voluntary and

59 informed only if:

60 (a) at least 24 hours prior to the abortion, the physician who is to perform the abortion,  
61 the referring physician, a registered nurse, nurse practitioner, advanced practice registered  
62 nurse, certified nurse midwife, or physician's assistant, in a face-to-face consultation, orally  
63 informs the woman ~~§~~ **[of]** ~~§~~ :

64 (i) consistent with Subsection (3)(a), ~~§~~ **of** ~~§~~ the nature of the proposed abortion  
64a procedure or  
65 treatment, specifically how that procedure will affect the fetus, and the risks and alternatives to  
66 an abortion procedure or treatment that any person would consider material to the decision of  
67 whether or not to undergo an abortion;

68 (ii) ~~§~~ **of** ~~§~~ the probable gestational age and a description of the development of the  
68a unborn  
69 child at the time the abortion would be performed; ~~and~~

70 (iii) ~~§~~ **of** ~~§~~ the medical risks associated with carrying her child to term; ~~and~~

71 (iv) except as provided in Subsection (3)(b), if the abortion is to be performed on an  
72 unborn child who is at least 20 weeks gestational age:

73 (A) ~~§~~ **[any] that, upon the woman's request, an** ~~§~~ anesthetic or analgesic ~~§~~ **[that**  
73a **would] will be administered to the unborn child, [either directly or] through the woman, to** ~~§~~  
73b eliminate or alleviate organic pain to the  
74 unborn child that may be caused by the particular method of abortion to be employed; and

75 (B) ~~§~~ **of** ~~§~~ any medical risks ~~§~~ **to the woman that are** ~~§~~ associated with  
75a administering ~~§~~ the anesthetic or analgesic described in  
76 Subsection (2)(a)(iv)(A);

77 (b) at least 24 hours prior to the abortion the physician who is to perform the abortion,  
78 the referring physician, or, as specifically delegated by either of those physicians, a registered  
79 nurse, licensed practical nurse, certified nurse-midwife, advanced practice registered nurse,  
80 clinical laboratory technologist, psychologist, marriage and family therapist, clinical social  
81 worker, or certified social worker has orally, in a face-to-face consultation, informed the  
82 pregnant woman that:

83 (i) the Department of Health, in accordance with Section 76-7-305.5, publishes printed  
84 material and an informational video that:

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

87 (B) describes the gestational stages of an unborn child; and

88 (C) includes information regarding public and private services and agencies available  
89 to assist her through pregnancy, at childbirth, and while the child is dependent, including

90 private and agency adoption alternatives;

91 (ii) the printed material and a viewing of or a copy of the informational video shall be  
92 provided to her free of charge;

93 (iii) medical assistance benefits may be available for prenatal care, childbirth, and  
94 neonatal care, and that more detailed information on the availability of that assistance is  
95 contained in the printed materials and the informational video published by the Department of  
96 Health;

97 (iv) except as provided in Subsection (3)~~(b)~~(c), the father of the unborn child is  
98 legally required to assist in the support of her child, even in instances where he has offered to  
99 pay for the abortion, and that the Office of Recovery Services within the Department of Human  
100 Services will assist her in collecting child support; and

101 (v) she has the right to view an ultrasound of the unborn child, at no expense to her,  
102 upon her request;

103 (c) the information required to be provided to the pregnant woman under Subsection  
104 (2)(a) is also provided by the physician who is to perform the abortion, in a face-to-face  
105 consultation, prior to performance of the abortion, unless the attending or referring physician is  
106 the individual who provides the information required under Subsection (2)(a);

107 (d) a copy of the printed materials published by the Department of Health has been  
108 provided to the pregnant woman;

109 (e) the informational video, published by the Department of Health, has been provided  
110 to the pregnant woman in accordance with Subsection (4); and

111 (f) the pregnant woman has certified in writing, prior to the abortion, that the  
112 information required to be provided under Subsections (2)(a) through (e) was provided, in  
113 accordance with the requirements of those subsections.

114 (3) (a) The alternatives required to be provided under Subsection (2)(a)(i) shall include:

115 (i) a description of adoption services, including private and agency adoption methods;  
116 and

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

119 (b) The information described in Subsection (2)(a)(iv) may be omitted from the  
120 information required to be provided to a pregnant woman under this section if ~~§~~ :

120a (i) ~~§~~ the abortion is

121 performed for a reason described in Subsection 76-7-302(2)(a) or (d) ~~§~~ → [ ] ; and

121a **(ii) due to a serious medical emergency, time does not permit compliance with the**  
 121b **requirement to provide the information described in Subsection (2)(a)(iv).** ←§

122 ~~[(b)]~~ (c) The information described in Subsection (2)(b)(iv) may be omitted from the  
 123 information required to be provided to a pregnant woman under this section if the woman is  
 124 pregnant as the result of rape.

125 (d) Nothing in this section shall be construed to prohibit a person described in  
 126 Subsection (2)(a) from, when providing the information described in Subsection (2)(a)(iv),  
 127 informing a woman of the person's own opinion regarding:

128 (i) the capacity of an unborn child to experience pain;

129 (ii) the advisability of administering an anesthetic or analgesic to an unborn child; or

130 (iii) any other matter related to fetal pain.

131 (4) When the informational video described in Section 76-7-305.5 is provided to a  
 132 pregnant woman, the person providing the information shall first request that the woman view  
 133 the video at that time or at another specifically designated time and location. If the woman  
 134 chooses not to do so, a copy of the video shall be provided to her.

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

138 (6) Any physician who violates the provisions of this section:

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

140 and

141 (b) shall be subject to:

142 (i) suspension or revocation of the physician's license for the practice of medicine and  
 143 surgery in accordance with [Sections] Section 58-67-401 [and 58-67-402, Utah Medical  
 144 Practice Act,] or [Sections] 58-68-401 [and 58-68-402, Utah Osteopathic Medical Practice  
 145 Act.]; and

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

147 (7) A physician is not guilty of violating this section for failure to furnish any of the  
 148 information described in Subsection (2), if:

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

152 (b) in the physician's professional judgment, the abortion was necessary to save the  
153 pregnant woman's life;

154 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections  
155 76-5-402 and 76-5-402.1;

156 (d) the pregnancy was the result of incest, as defined in Subsection 76-5-406(10) and  
157 Section 76-7-102; or

158 [~~(e) in his professional judgment the abortion was to prevent the birth of a child who~~  
159 ~~would have been born with grave defects; or]~~

160 [(f)] (e) the pregnant woman was 14 years of age or younger.

161 **§→ [(8) A physician is not guilty of violating this section for failure to furnish any of the**  
162 **information described in Subsections (2)(a)(i) through (iii) or (2)(b) through (f), if, in the**  
163 **physician's professional judgment, the abortion was to prevent the birth of a child who would**  
164 **have been born with grave defects.**

165 ——— [(8)] (9) (8) ←§ A physician who complies with the provisions of this section and Section  
166 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain  
167 informed consent under Section 78B-3-406.

168 Section 2. Section 76-7-305.5 is amended to read:

169 **76-7-305.5. Requirements for printed materials and informational video --**  
170 **Annual report of Department of Health.**

171 (1) In order to insure that a woman's consent to an abortion is truly an informed  
172 consent, the Department of Health shall publish printed materials and produce an informational  
173 video in accordance with the requirements of this section. The department and each local  
174 health department shall make those materials and a viewing of the video available at no cost to  
175 any person. The printed material and the informational video shall be comprehensible and  
176 contain all of the following:

177 (a) geographically indexed materials informing the woman of public and private  
178 services and agencies available to assist her, financially and otherwise, through pregnancy, at  
179 childbirth, and while the child is dependent, including services and supports available under  
180 Section 35A-3-308. Those materials shall contain a description of available adoption services,  
181 including a comprehensive list of the names, addresses, and telephone numbers of public and  
182 private agencies and private attorneys whose practice includes adoption, and explanations of

183 possible available financial aid during the adoption process. The information regarding  
184 adoption services shall include the fact that private adoption is legal, and that the law permits  
185 adoptive parents to pay the costs of prenatal care, childbirth, and neonatal care. The printed  
186 information and video shall present adoption as a preferred and positive choice and alternative  
187 to abortion. The department may, at its option, include printed materials that describe the  
188 availability of a toll-free 24-hour telephone number that may be called in order to obtain,  
189 orally, the list and description of services, agencies, and adoption attorneys in the locality of the  
190 caller;

191 (b) truthful and nonmisleading descriptions of the probable anatomical and  
192 physiological characteristics of the unborn child at two-week gestational increments from  
193 fertilization to full term, accompanied by pictures or video segments representing the  
194 development of an unborn child at those gestational increments. The descriptions shall include  
195 information about brain and heart function and the presence of external members and internal  
196 organs during the applicable stages of development. Any pictures used shall contain the  
197 dimensions of the fetus and shall be realistic and appropriate for that woman's stage of  
198 pregnancy. The materials shall be designed to convey accurate scientific information about an  
199 unborn child at the various gestational ages, and to convey the state's preference for childbirth  
200 over abortion;

201 (c) truthful, nonmisleading descriptions of abortion procedures used in current medical  
202 practice at the various stages of growth of the unborn child, the medical risks commonly  
203 associated with each procedure, including those related to subsequent childbearing, the  
204 consequences of each procedure to the fetus at various stages of fetal development, the possible  
205 detrimental psychological effects of abortion, and the medical risks associated with carrying a  
206 child to term;

207 (d) any relevant information on the possibility of an unborn child's survival at the  
208 two-week gestational increments described in Subsection (1)(b);

209 (e) information on the availability of medical assistance benefits for prenatal care,  
210 childbirth, and neonatal care;

211 (f) a statement conveying that it is unlawful for any person to coerce a woman to  
212 undergo an abortion;

213 (g) a statement conveying that any physician who performs an abortion without

214 obtaining the woman's informed consent or without according her a private medical  
 215 consultation in accordance with the requirements of this section, may be liable to her for  
 216 damages in a civil action at law;

217 (h) a statement conveying that the state prefers childbirth over abortion; and

218 (i) information regarding the legal responsibility of the father to assist in child support,  
 219 even in instances where he has agreed to pay for an abortion, including a description of the  
 220 services available through the Office of Recovery Services, within the Department of Human  
 221 Services, to establish and collect that support.

222 (2) (a) The printed material described in Subsection (1) shall include a separate  
 223 brochure that contains truthful, nonmisleading information ~~§~~→ **[on both sides of the issue]** ←~~§~~  
 223a regarding:

224 (i) the ability of an unborn child to experience pain during an abortion procedure;

225 (ii) the measures that may be taken, including the administration of an anesthetic or  
 226 analgesic to an unborn child, to alleviate or eliminate pain to an unborn child during an  
 227 abortion procedure;

228 (iii) the effectiveness and advisability of taking the measures described in Subsection  
 229 (2)(a)(ii); and

230 (iv) potential medical risks ~~H~~→ **to a pregnant woman that are** ←~~H~~ associated with the  
 230a administration of an anesthetic or  
 231 analgesic to an unborn child during an abortion procedure.

232 (b) A person or facility is not required to provide the information described in  
 233 Subsection (2)(a) to a patient or potential patient. ~~§~~→ **[unless] if** ←~~§~~ the abortion is to be  
 233a performed:

234 (i) on an unborn child who is ~~§~~→ **[at least] less than** ←~~§~~ 20 weeks gestational age at the  
 234a time of the

235 abortion; ~~§~~→ **[and] or**

235a (ii) **on an unborn child who is at least 20 weeks gestational age at the time of the**  
 235b **abortion, if:**

235c (A) **the abortion is being performed**

236 **[(ii)]** ←~~§~~ for a reason ~~§~~→ **[other than a reason]** ←~~§~~ described in Subsection  
 236a 76-7-302(2)(a) or (d) ~~§~~→ **[:] ; and**

236b (B) **due to a serious medical emergency, time does not permit compliance with the**  
 236c **requirement to provide the information described in Subsection (2)(a).** ←~~§~~

237 ~~(2)~~ (3) (a) The materials described in ~~[Subsection]~~ Subsections (1) and (2) shall be  
 238 produced and printed in a way that conveys the state's preference for childbirth over abortion.

239 (b) The printed material described in ~~[Subsection]~~ Subsections (1) and (2) shall be  
 240 printed in a typeface large enough to be clearly legible.

241 ~~[(3) Every]~~ (4) Except as provided in Subsection (2)(b), every facility in which

242 abortions are performed shall immediately provide the printed informed consent materials and  
243 a viewing of or a copy of the informational video described in [~~Subsection~~] Subsections (1) and  
244 (2) to any patient or potential patient prior to the performance of an abortion, unless the

245 patient's attending or referring physician certifies in writing that he reasonably believes that  
246 provision of the materials or video to that patient would result in a severely adverse effect on  
247 her physical or mental health.

248 ~~[(4)]~~ (5) The Department of Health shall produce a standardized videotape that may be  
249 used statewide, containing all of the information described in Subsection (1), in accordance  
250 with the requirements of ~~[that subsection and Subsection (2)]~~ Subsections (1) and (3). In  
251 preparing the video, the department may summarize and make reference to the printed  
252 comprehensive list of geographically indexed names and services described in Subsection  
253 (1)(a). The videotape shall, in addition to the information described in Subsection (1), show an  
254 ultrasound of the heart beat of an unborn child at three weeks gestational age, at six to eight  
255 weeks gestational age, and each month thereafter, until 14 weeks gestational age. That  
256 information shall be presented in a truthful, nonmisleading manner designed to convey accurate  
257 scientific information, the state's preference for childbirth over abortion, and the positive  
258 aspects of adoption.

259 ~~[(5)]~~ (6) The Department of Health and local health departments shall provide  
260 ultrasounds in accordance with the provisions of Subsection 76-7-305(2)(b), at no expense to  
261 the pregnant woman.

262 ~~[(6)]~~ (7) The Department of Health shall compile and report the following information  
263 annually, preserving physician and patient anonymity:

264 (a) the total amount of informed consent material described in ~~[Subsection]~~  
265 Subsections (1) and (2) that was distributed;

266 (b) the number of women who obtained abortions in this state without receiving those  
267 materials;

268 (c) the number of statements signed by attending physicians certifying to ~~[his]~~ the  
269 physicians' opinion regarding adverse effects on the patient under Subsection ~~[(3)]~~ (4); and

270 (d) any other information pertaining to protecting the informed consent of women  
271 seeking abortions.

272 Section 3. Section **76-7-308.5** is enacted to read:

273 **76-7-308.5. Administration of anesthetic or analgesic to an unborn child.**

274 A physician who performs an abortion of an unborn child who is at least 20 weeks  
275 gestational age shall administer an anesthetic or analgesic to eliminate or alleviate organic pain

276 to the unborn child that may be caused by the particular method of abortion to be employed, if  
 277 the woman having the abortion consents to the administration of an anesthetic or analgesic to  
 278 the unborn child, unless ~~§~~ → [;]

279 ~~—— (1) ←§~~ the physician is prevented from administering the anesthetic or analgesic by a  
 280 medical emergency ~~§~~ → [; or

281 ~~—— (2) prior to performing the abortion, the physician informs the woman that the~~  
 282 ~~physician, or the facility at which the abortion is to be performed, cannot or does not provide~~  
 283 ~~the service of administering an anesthetic or analgesic to an unborn child]~~ ←§ .

284 Section 4. Section **76-7-315** is amended to read:

285 **76-7-315. Exceptions to certain requirements in serious medical emergencies.**

286 When due to a serious medical emergency, time does not permit compliance with  
 287 Section 76-7-302, 76-7-305, 76-7-305.5, 76-7-308.5, or 76-7-310.5 the provisions of those  
 288 sections do not apply.

288a ~~§~~ → "Section 5. Coordinating H.B. 222 with H.B. 90 -- Substantive and technical  
 288b amendments.

288c If this H.B. 222 and H.B. 90, Abortion Law Amendments, both pass, it is the intent of  
 288d the Legislature that the Office of Legislative Research and General Counsel shall prepare the  
 288e Utah Code database for publication by modifying:

288f (1) Subsection 76-7-305(3)(b)(i) to read as follows:

288g "(i) the abortion is performed for a reason described in Subsection  
 288h 76-7-302(3)(b)(i); and"; and

288i (2) Subsection 76-7-305.5(2)(b)(ii)(A) to read as follows:

288j "(A) the abortion is being performed for a reason described in  
 288k Subsection 76-7-302(3)(b)(i); and";" ←§

Legislative Review Note  
 as of 12-1-08 7:13 AM

Office of Legislative Research and General Counsel

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**H.B. 222 - Unborn Child Pain Prevention Act**

**Fiscal Note**

2009 General Session  
State of Utah

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**State Impact**

Enactment of this bill will require \$5,000 ongoing from the General Fund for Department of Health publication costs. Provisions of this bill can be handled within existing Department of Health budgets.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$5,000	\$5,000	\$0	\$0	\$0
<b>Total</b>	<b>\$0</b>	<b>\$5,000</b>	<b>\$5,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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**Individual, Business and/or Local Impact**

A limited number of physicians performing certain abortions may incur additional costs under provisions of this bill.