

UNBORN CHILD PAIN PREVENTION ACT

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl Wimmer

Senate Sponsor: D. Chris Buttars

6	Cosponsors:	Gregory H. Hughes	Michael E. Noel
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LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

requires that at least 24 hours before a physician performs an abortion of an unborn child who is at least 20 weeks gestational age, the woman on whom the abortion is performed shall, except when a medical emergency exists and there is not adequate time to comply with the requirements of this bill, be informed:

that, upon the woman's request, an anesthetic or analgesic will be administered to the unborn child, through the woman, to eliminate or alleviate organic pain to the unborn child; and

of any medical risks to the woman associated with the anesthetic or analgesic; provides that a person providing the information described in the preceding paragraph is not prohibited from informing the woman of the person's own opinion regarding the administration of an anesthetic or analgesic to alleviate fetal pain;

requires the Department of Health to produce a brochure that:

subject to certain exceptions, is to be provided to a woman seeking an abortion

31 of an unborn child who is at least 20 weeks gestational age; and

32 • includes information relating to the ability of an unborn child to experience
33 pain during an abortion procedure and the methods of alleviating or eliminating
34 that pain;

35 ▶ provides that a physician who performs an abortion of an unborn child who is at
36 least 20 weeks gestational age shall administer an anesthetic or analgesic to the
37 unborn child if the woman having the abortion consents to the administration of the
38 anesthetic or analgesic, unless a medical emergency exists and there is not adequate
39 time to comply with the requirements of this bill; and

40 ▶ makes technical changes.

41 **Monies Appropriated in this Bill:**

42 None

43 **Other Special Clauses:**

44 This bill coordinates with H.B. 90 by providing substantive and technical amendments.

45 **Utah Code Sections Affected:**

46 AMENDS:

47 **76-7-305**, as last amended by Laws of Utah 2008, Chapter 3

48 **76-7-305.5**, as last amended by Laws of Utah 2006, Chapters 116 and 207

49 **76-7-315**, as last amended by Laws of Utah 2006, Chapter 207

50 ENACTS:

51 **76-7-308.5**, Utah Code Annotated 1953



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

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

55 **76-7-305. Informed consent requirements for abortion -- 24-hour wait**
56 **mandatory -- Emergency exceptions.**

57 (1) No abortion may be performed unless a voluntary and informed written consent,
58 consistent with Section 8.08 of the American Medical Association's Code of Medical Ethics,

59 Current Opinions, and the provisions of this section is first obtained by the attending
60 physician from the woman upon whom the abortion is to be performed.

61 (2) Except in the case of a medical emergency, consent to an abortion is voluntary and
62 informed only if:

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

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

71 (ii) of the probable gestational age and a description of the development of the unborn
72 child at the time the abortion would be performed; [~~and~~]

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

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

76 (A) that, upon the woman's request, an anesthetic or analgesic will be administered to
77 the unborn child, through the woman, to eliminate or alleviate organic pain to the unborn child
78 that may be caused by the particular method of abortion to be employed; and

79 (B) of any medical risks to the woman that are associated with administering the
80 anesthetic or analgesic described in Subsection (2)(a)(iv)(A);

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

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

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

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

92 (C) includes information regarding public and private services and agencies available
93 to assist her through pregnancy, at childbirth, and while the child is dependent, including
94 private and agency adoption alternatives;

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

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

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

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

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

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

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

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

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

120 (i) a description of adoption services, including private and agency adoption methods;
121 and

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

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

126 (i) the abortion is performed for a reason described in Subsection 76-7-302(2)(a) or
127 (d); and

128 (ii) due to a serious medical emergency, time does not permit compliance with the
129 requirement to provide the information described in Subsection (2)(a)(iv).

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

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

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

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

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

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

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

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

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

149 (b) shall be subject to:

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

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

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

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

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

162 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
163 76-5-402 and 76-5-402.1;

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

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

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

169 (8) A physician who complies with the provisions of this section and Section
170 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain

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

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

173 **76-7-305.5. Requirements for printed materials and informational video --**

174 **Annual report of Department of Health.**

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

181 (a) geographically indexed materials informing the woman of public and private
182 services and agencies available to assist her, financially and otherwise, through pregnancy, at
183 childbirth, and while the child is dependent, including services and supports available under
184 Section 35A-3-308. Those materials shall contain a description of available adoption services,
185 including a comprehensive list of the names, addresses, and telephone numbers of public and
186 private agencies and private attorneys whose practice includes adoption, and explanations of
187 possible available financial aid during the adoption process. The information regarding
188 adoption services shall include the fact that private adoption is legal, and that the law permits
189 adoptive parents to pay the costs of prenatal care, childbirth, and neonatal care. The printed
190 information and video shall present adoption as a preferred and positive choice and alternative
191 to abortion. The department may, at its option, include printed materials that describe the
192 availability of a toll-free 24-hour telephone number that may be called in order to obtain,
193 orally, the list and description of services, agencies, and adoption attorneys in the locality of
194 the caller;

195 (b) truthful and nonmisleading descriptions of the probable anatomical and
196 physiological characteristics of the unborn child at two-week gestational increments from
197 fertilization to full term, accompanied by pictures or video segments representing the
198 development of an unborn child at those gestational increments. The descriptions shall

199 include information about brain and heart function and the presence of external members and
200 internal organs during the applicable stages of development. Any pictures used shall contain
201 the dimensions of the fetus and shall be realistic and appropriate for that woman's stage of
202 pregnancy. The materials shall be designed to convey accurate scientific information about an
203 unborn child at the various gestational ages, and to convey the state's preference for childbirth
204 over abortion;

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

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

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

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

217 (g) a statement conveying that any physician who performs an abortion without
218 obtaining the woman's informed consent or without according her a private medical
219 consultation in accordance with the requirements of this section, may be liable to her for
220 damages in a civil action at law;

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

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

226 (2) (a) The printed material described in Subsection (1) shall include a separate

227 brochure that contains truthful, nonmisleading information regarding:

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

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

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

234 (iv) potential medical risks to a pregnant woman that are associated with the
235 administration of an anesthetic or analgesic to an unborn child during an abortion procedure.

236 (b) A person or facility is not required to provide the information described in
237 Subsection (2)(a) to a patient or potential patient, if the abortion is to be performed:

238 (i) on an unborn child who is less than 20 weeks gestational age at the time of the
239 abortion; or

240 (ii) on an unborn child who is at least 20 weeks gestational age at the time of the
241 abortion, if:

242 (A) the abortion is being performed for a reason described in Subsection
243 76-7-302(2)(a) or (d); and

244 (B) due to a serious medical emergency, time does not permit compliance with the
245 requirement to provide the information described in Subsection (2)(a).

246 ~~[(2)]~~ (3) (a) The materials described in ~~[Subsection]~~ Subsections (1) and (2) shall be
247 produced and printed in a way that conveys the state's preference for childbirth over abortion.

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

250 ~~[(3) Every]~~ (4) Except as provided in Subsection (2)(b), every facility in which
251 abortions are performed shall immediately provide the printed informed consent materials and
252 a viewing of or a copy of the informational video described in ~~[Subsection]~~ Subsections (1)
253 and (2) to any patient or potential patient prior to the performance of an abortion, unless the
254 patient's attending or referring physician certifies in writing that he reasonably believes that

255 provision of the materials or video to that patient would result in a severely adverse effect on
256 her physical or mental health.

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

268 ~~[(5)]~~ (6) The Department of Health and local health departments shall provide
269 ultrasounds in accordance with the provisions of Subsection 76-7-305(2)(b), at no expense to
270 the pregnant woman.

271 ~~[(6)]~~ (7) The Department of Health shall compile and report the following information
272 annually, preserving physician and patient anonymity:

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

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

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

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

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

282 **76-7-308.5. Administration of anesthetic or analgesic to an unborn child.**

283 A physician who performs an abortion of an unborn child who is at least 20 weeks
284 gestational age shall administer an anesthetic or analgesic to eliminate or alleviate organic
285 pain to the unborn child that may be caused by the particular method of abortion to be
286 employed, if the woman having the abortion consents to the administration of an anesthetic or
287 analgesic to the unborn child, unless the physician is prevented from administering the
288 anesthetic or analgesic by a medical emergency.

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

290 **76-7-315. Exceptions to certain requirements in serious medical emergencies.**

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

294 Section 5. **Coordinating H.B. 222 with H.B. 90 -- Substantive and technical**
295 **amendments.**

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

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

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

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

303 "(A) the abortion is being performed for a reason described in Subsection
304 76-7-302(3)(b)(i); and".