

1 **INFORMED CONSENT AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Wayne A. Harper**

5 House Sponsor: Paul Ray

7 **LONG TITLE**

8 **General Description:**

9 This bill amends informed consent provisions for certain abortions.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ removes the requirement for informed consent if the abortion is performed when:

13 • the treating physician and one other physician concur, in writing, that an
14 abortion is necessary to avert the woman's death or a serious risk of substantial
15 and irreversible impairment of a major bodily function of the woman; or

16 • two physicians who practice maternal fetal medicine concur, in writing, in the
17 patient's medical record that the fetus has a defect that is uniformly diagnosable
18 and uniformly lethal.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **76-7-305**, as last amended by Laws of Utah 2012, Chapter 228

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



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

29 **76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory**
30 **-- Exceptions.**

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

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

36 (b) the provisions of this section.

37 (2) Except as provided in Subsection (8), consent to an abortion is voluntary and
38 informed only if:

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

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

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

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

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

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

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

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

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

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

58 (b) at least 72 hours prior to the abortion the physician who is to perform the abortion,

59 the referring physician, or, as specifically delegated by either of those physicians, a physician, a
60 registered nurse, licensed practical nurse, certified nurse-midwife, advanced practice registered
61 nurse, clinical laboratory technologist, psychologist, marriage and family therapist, clinical
62 social worker, genetic counselor, or certified social worker orally, in a face-to-face consultation
63 in any location in the state, informs the pregnant woman that:

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

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

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

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

72 (ii) the printed material and a viewing of or a copy of the informational video shall be
73 made available to her, free of charge, on the Department of Health's website;

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

78 (iv) except as provided in Subsection (3)(c):

79 (A) the father of the unborn child is legally required to assist in the support of her
80 child, even if he has offered to pay for the abortion; and

81 (B) the Office of Recovery Services within the Department of Human Services will
82 assist her in collecting child support; and

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

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

89 (d) a copy of the printed materials published by the Department of Health has been

90 provided to the pregnant woman;

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

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

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

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

98 and

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

101 ~~[(b) The information described in Subsection (2)(a)(iv) may be omitted from the~~
102 ~~information required to be provided to a pregnant woman under this section if the abortion is~~
103 ~~performed for a reason described in Subsection 76-7-302(3)(b)(i).]~~

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

107 ~~[(d)]~~ (c) Nothing in this section shall be construed to prohibit a person described in
108 Subsection (2)(a) from, when providing the information described in Subsection (2)(a)(iv),
109 informing a woman of the person's own opinion regarding:

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

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

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

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

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

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

119 (5) When a serious medical emergency compels the performance of an abortion, the
120 physician shall inform the woman prior to the abortion, if possible, of the medical indications

121 supporting the physician's judgment that an abortion is necessary.

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

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

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

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

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

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

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

131 (c) inform the woman that, if she desires, the person performing the ultrasound, or
132 another qualified person shall provide a detailed description of the ultrasound images,

133 including:

134 (i) the dimensions of the unborn child;

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

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

137 (d) provide the detailed description described in Subsection (6)(c), if the woman
138 requests it.

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

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

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

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

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

148 [~~7~~] (8) In addition to the criminal penalties described in this part, a physician who
149 violates the provisions of this section:

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

151 and

152 (b) shall be subject to:

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

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

156 ~~[(8)]~~ (9) A physician is not guilty of violating this section for failure to furnish any of
157 the information described in Subsection (2), or for failing to comply with Subsection (6), if:

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

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

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

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

165 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
166 76-5-402 and 76-5-402.1;

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

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

170 ~~[(9)]~~ (10) A physician who complies with the provisions of this section and Section
171 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain
172 informed consent under Section 78B-3-406.

173 ~~[(10)]~~ (11) (a) The Department of Health shall provide an ultrasound, in accordance
174 with the provisions of Subsection (2)(b), at no expense to the pregnant woman.

175 (b) A local health department shall refer a person who requests an ultrasound described
176 in Subsection ~~[(10)]~~ (11)(a) to the Department of Health.

177 ~~[(11)]~~ (12) A physician is not guilty of violating this section if:

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

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

182 (i) a ruptured membrane, documented by the attending or referring physician, will

183 cause a serious infection; or

184 (ii) a serious infection, documented by the attending or referring physician, will cause a

185 ruptured membrane.

Legislative Review Note

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Office of Legislative Research and General Counsel