

1 **PROTECTING UNBORN CHILDREN AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Keven J. Stratton

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies sections of the Utah Criminal Code related to abortion.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ amends informed consent requirements for abortion;
- 13 ▶ amends provisions related to the Department of Health's requirements for

14 publishing printed materials; and

- 15 ▶ requires a physician who performs an abortion of an unborn child who is at least 20
- 16 weeks gestational age to administer an anesthetic or analgesic to eliminate or
- 17 alleviate organic pain to the unborn child.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **76-7-305**, as last amended by Laws of Utah 2015, Chapter 258

25 **76-7-305.5**, as last amended by Laws of Utah 2013, Chapter 278

26 **76-7-308.5**, as enacted by Laws of Utah 2009, Chapter 57

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

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

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

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

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

37 (b) the provisions of this section.

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

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

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

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

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

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

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

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

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

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

57 ~~[(B) of any medical risks to the woman that are associated with administering the~~

58 ~~anesthetic or analgesic described in Subsection (2)(a)(iv)(A);]~~

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

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

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

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

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

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

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

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

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

83 (iv) except as provided in Subsection (3)(b):

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

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

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

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

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

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

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

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

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

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

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

109 (c) Nothing in this section shall be construed to prohibit a person described in
110 Subsection (2)(a) from, when providing the information described in Subsection (2)(a)(iv),
111 informing a woman of the person's own opinion regarding[:(+)] the capacity of an unborn child
112 to experience pain[;].

113 [~~(ii) the advisability of administering an anesthetic or analgesic to an unborn child; or~~]

114 ~~[(iii) any other matter related to fetal pain.]~~

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

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

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

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

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

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

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

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

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

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

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

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

135 including:

136 (i) the dimensions of the unborn child;

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

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

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

141 (7) The information described in Subsections (2), (3), (4), and (6) is not required to be

142 provided to a pregnant woman under this section if the abortion is performed for a reason
143 described in:

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

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

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

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

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

154 (b) shall be subject to:

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

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

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

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

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

- 164 (i) the death of the woman on whom the abortion is performed; or
- 165 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
166 of the woman on whom the abortion is performed;

167 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
168 76-5-402 and 76-5-402.1;

169 (d) the pregnancy was the result of incest, as defined in Subsection 76-5-406(10) and

170 Section 76-7-102; or

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

172 (10) A physician who complies with the provisions of this section and Section
173 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain
174 informed consent under Section 78B-3-406.

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

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

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

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

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

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

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

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

189 **76-7-305.5. Requirements for printed materials and informational video.**

190 (1) In order to ensure that a woman's consent to an abortion is truly an informed
191 consent, the Department of Health shall, in accordance with the requirements of this section:

192 (a) publish printed materials; and

193 (b) produce an informational video.

194 (2) The printed materials and the informational video described in Subsection (1) shall:

195 (a) be scientifically accurate, comprehensible, and presented in a truthful,
196 nonmisleading manner;

197 (b) present adoption as a preferred and positive choice and alternative to abortion;

- 198 (c) be printed and produced in a manner that conveys the state's preference for
199 childbirth over abortion;
- 200 (d) state that the state prefers childbirth over abortion;
- 201 (e) state that it is unlawful for any person to coerce a woman to undergo an abortion;
- 202 (f) state that any physician who performs an abortion without obtaining the woman's
203 informed consent or without providing her a private medical consultation in accordance with
204 the requirements of this section, may be liable to her for damages in a civil action at law;
- 205 (g) provide information on resources and public and private services available to assist
206 a pregnant woman, financially or otherwise, during pregnancy, at childbirth, and while the
207 child is dependent, including:
- 208 (i) medical assistance benefits for prenatal care, childbirth, and neonatal care;
- 209 (ii) services and supports available under Section [35A-3-308](#);
- 210 (iii) other financial aid that may be available during an adoption; and
- 211 (iv) services available from public adoption agencies, private adoption agencies, and
212 private attorneys whose practice includes adoption;
- 213 (h) describe the adoption-related expenses that may be paid under Section [76-7-203](#);
- 214 (i) describe the persons who may pay the adoption related expenses described in
215 Subsection (2)(h);
- 216 (j) describe the legal responsibility of the father of a child to assist in child support,
217 even if the father has agreed to pay for an abortion;
- 218 (k) describe the services available through the Office of Recovery Services, within the
219 Department of Human Services, to establish and collect the support described in Subsection
220 (2)(j);
- 221 (l) state that private adoption is legal;
- 222 (m) in accordance with Subsection (3), describe the probable anatomical and
223 physiological characteristics of an unborn child at two-week gestational increments from
224 fertilization to full term, including:
- 225 (i) brain and heart function; and

- 226 (ii) the presence and development of external members and internal organs;
- 227 (n) describe abortion procedures used in current medical practice at the various stages
- 228 of growth of the unborn child, including:
- 229 (i) the medical risks associated with each procedure;
- 230 (ii) the risk related to subsequent childbearing that are associated with each procedure;
- 231 and
- 232 (iii) the consequences of each procedure to the unborn child at various stages of fetal
- 233 development;
- 234 (o) describe the possible detrimental psychological effects of abortion;
- 235 (p) describe the medical risks associated with carrying a child to term; and
- 236 (q) include relevant information on the possibility of an unborn child's survival at the
- 237 two-week gestational increments described in Subsection (2)(m).
- 238 (3) The information described in Subsection (2)(m) shall be accompanied by the
- 239 following for each gestational increment described in Subsection (2)(m):
- 240 (a) pictures or video segments that accurately represent the normal development of an
- 241 unborn child at that stage of development; and
- 242 (b) the dimensions of the fetus at that stage of development.
- 243 (4) The printed material and video described in Subsection (1) may include a toll-free
- 244 24-hour telephone number that may be called in order to obtain, orally, a list and description of
- 245 services, agencies, and adoption attorneys in the locality of the caller.
- 246 (5) In addition to the requirements described in Subsection (2), the printed material
- 247 described in Subsection (1)(a) shall:
- 248 (a) be printed in a typeface large enough to be clearly legible;
- 249 (b) in accordance with Subsection (6), include a geographically indexed list of public
- 250 and private services and agencies available to assist a woman, financially or otherwise, through
- 251 pregnancy, at childbirth, and while the child is dependent; and
- 252 (c) except as provided in Subsection (7), include a separate brochure that contains
- 253 truthful, nonmisleading information regarding:

254 ~~[(i) the ability of an unborn child to experience pain during an abortion procedure;]~~

255 ~~[(ii) the measures that may be taken, including the administration of an anesthetic or~~
256 ~~analgesic to an unborn child, to alleviate or eliminate pain to an unborn child during an~~
257 ~~abortion procedure;]~~

258 ~~[(iii) the effectiveness and advisability of taking the measures described in Subsection~~
259 ~~(5)(c)(ii); and]~~

260 ~~[(iv) potential medical risks to a pregnant woman that are associated with the~~
261 ~~administration of an anesthetic or analgesic to an unborn child during an abortion procedure.]~~

262 (i) substantial medical evidence from studies concluding that an unborn child who is at
263 least 20 weeks gestational age may be capable of experiencing pain during an abortion
264 procedure; and

265 (ii) the measures that shall be taken in accordance with Section [76-7-308.5](#).

266 (6) The list described in Subsection (5)(b) shall include:

267 (a) private attorneys whose practice includes adoption; and

268 (b) the names, addresses, and telephone numbers of each person listed under
269 Subsection (5)(b) or (6)(a).

270 (7) A person or facility is not required to provide the information described in
271 Subsection (5)(c) to a patient or potential patient, if the abortion is to be performed:

272 (a) on an unborn child who is less than 20 weeks gestational age at the time of the
273 abortion; or

274 (b) on an unborn child who is at least 20 weeks gestational age at the time of the
275 abortion, if:

276 (i) the abortion is being performed for a reason described in Subsection
277 [76-7-302\(3\)\(b\)\(i\)](#) or [\(ii\)](#); and

278 (ii) due to a serious medical emergency, time does not permit compliance with the
279 requirement to provide the information described in Subsection (5)(c).

280 (8) In addition to the requirements described in Subsection (2), the video described in
281 Subsection (1)(b) shall:

- 282 (a) make reference to the list described in Subsection (5)(b); and
- 283 (b) show an ultrasound of the heartbeat of an unborn child at:
 - 284 (i) four weeks from conception;
 - 285 (ii) six to eight weeks from conception; and
 - 286 (iii) each month after 10 weeks gestational age, up to 14 weeks gestational age.

287 Section 3. Section **76-7-308.5** is amended to read:

288 **76-7-308.5. Administration of anesthetic or analgesic to an unborn child.**

289 A physician who performs an abortion of an unborn child who is at least 20 weeks
290 gestational age shall administer an anesthetic or analgesic to eliminate or alleviate organic pain
291 to the unborn child [~~that may be~~] caused by the particular method of abortion to be employed,
292 [~~if the woman having the abortion consents to the administration of an anesthetic or analgesic~~
293 ~~to the unborn child,~~] unless:

294 (1) [~~the physician is prevented from administering the anesthetic or analgesic by a~~
295 ~~medical emergency;~~] the abortion is necessary to avert:

- 296 (a) the death of the woman on whom the abortion is performed; or
- 297 (b) a serious risk of substantial and irreversible impairment of a major bodily function
298 of the woman on whom the abortion is performed;

299 (2) the abortion is performed because the fetus has a defect that is uniformly
300 diagnosable and uniformly lethal, based on the written concurrence of two physicians who
301 practice maternal fetal medicine; or

302 (3) the treating physician and one other physician concur, in writing, that the
303 administration of an anesthetic or analgesic would:

- 304 (a) cause the death of the woman on whom the abortion is performed; or
- 305 (b) create a serious risk of substantial or irreversible impairment of a major bodily
306 function of the woman on whom the abortion is performed.