

1 **ABORTION BY A MINOR - PARENTAL**
2 **NOTIFICATION AND CONSENT**

3 2006 GENERAL SESSION

4 STATE OF UTAH

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17
18 **LONG TITLE**

19 **General Description:**

20 This bill amends the Utah Criminal Code, the Utah Human Services Code, and the Utah
21 Health Care Malpractice Act to require parental consent and notification for abortions
22 performed upon minors, subject to certain exceptions.

23 **Highlighted Provisions:**

24 This bill:

- 25 ▶ defines terms;
- 26 ▶ provides that a written report of incest or abuse made in connection with a minor
27 seeking an abortion may not disclose that the minor obtained or considered an
28 abortion;
- 29 ▶ requires that at least 24 hours before a physician performs an abortion on a minor,
30 the physician shall notify a parent or guardian of the minor that the minor intends to



31 have an abortion, unless:

- 32 • a medical emergency exists;
- 33 • the physician reports that the parent or guardian abused the woman or caused
- 34 the woman's pregnancy by engaging in incest with the woman; or
- 35 • the parent or guardian has not assumed responsibility for the minor's care and
- 36 upbringing;
- 37 ▶ provides that, in a medical emergency, except when it is necessary to immediately
- 38 perform an abortion, the physician shall notify a parent or guardian of the minor, as
- 39 early as possible before the abortion, that the minor intends to have an abortion;
- 40 ▶ removes the requirement that a physician notify the spouse of a married woman that
- 41 she intends to obtain an abortion;
- 42 ▶ requires that a minor obtain parental consent before obtaining an abortion unless:
- 43 • the minor obtains the right, by court order, to consent to an abortion without
- 44 parental consent; or
- 45 • a medical emergency exists;
- 46 ▶ establishes a procedure for a court to determine whether a minor should be granted
- 47 the right to consent to an abortion without parental consent;
- 48 ▶ provides that the proceedings described above are closed and that the name of the
- 49 juvenile, the nature of the proceedings, and the records relating thereto, are
- 50 confidential;
- 51 ▶ provides that a court shall order that a minor may consent to an abortion without
- 52 parental consent only if the court finds ~~H~~→ **by a preponderance of the evidence** ←~~H~~ that:
- 53 • the minor is mature and capable of giving informed consent to the abortion and
- 54 has given her informed consent; or
- 55 • an abortion would be in the minor's best interest;
- 56 ▶ establishes expedited, confidential, appellate procedures;
- 57 ▶ grants rulemaking authority to the Judicial Council;
- 58 ▶ amends the Utah Health Care Malpractice Act and related provisions to conform to
- 59 the consent requirements of this bill; and
- 60 ▶ makes technical changes.

61 **Monies Appropriated in this Bill:**

62 None

63 **Other Special Clauses:**

64 None

65 **Utah Code Sections Affected:**

66 AMENDS:

67 **62A-4a-408**, as renumbered and amended by Chapter 260, Laws of Utah 1994

68 **76-7-304**, as enacted by Chapter 33, Laws of Utah 1974

69 **76-7-305**, as last amended by Chapter 221, Laws of Utah 1997

70 **76-7-305.5**, as last amended by Chapter 13, Laws of Utah 1998

71 **76-7-315**, as last amended by Chapter 5, Laws of Utah 1996, Second Special Session

72 **78-14-5**, as last amended by Chapter 9, Laws of Utah 2001

73 ENACTS:

74 **76-7-304.5**, Utah Code Annotated 1953



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

77 Section 1. Section **62A-4a-408** is amended to read:

78 **62A-4a-408. Written reports.**

79 (1) Reports made pursuant to this part shall be followed by a written report within 48
80 hours, if requested by the division. The division shall immediately forward a copy of that
81 report to the statewide central register, on forms supplied by the register.

82 (2) If, in connection with an intended or completed abortion by a minor, a physician is
83 required to make a report of incest or abuse pursuant to Subsection 76-7-304(5), the report may
84 not include information that would in any way disclose that the report was made in connection
85 with:

86 (a) an abortion; or

87 (b) a consultation regarding an abortion.

88 Section 2. Section **76-7-304** is amended to read:

89 **76-7-304. Considerations by physician -- Notice to a parent or guardian --**

90 **Exceptions.**

91 (1) As used in this section, "minor" means a person who is:

92 (a) under 18 years of age;

- 93 (b) unmarried; and
- 94 (c) not emancipated.

95 (2) To enable the physician to exercise [his] the physician's best medical judgment,
96 [he] the physician shall[:-(1) Consider] consider all factors relevant to the well-being of the
97 woman upon whom the abortion is to be performed including[,-but not limited to,];

- 98 (a) her physical, emotional and psychological health and safety[-];
- 99 (b) her age[-]; and
- 100 (c) her familial situation.

101 ~~[(2) Notify, if possible, the parents or guardian of the woman upon whom the abortion~~
102 ~~is to be performed, if she is a minor or the husband of the woman, if she is married.]~~

103 (3) Subject to Subsection (4), at least 24 hours before a physician performs an abortion
104 on a minor, the physician shall notify a parent or guardian of the minor that the minor intends
105 to have an abortion.

106 (4) A physician is not required to comply with Subsection (3) if:

107 (a) subject to Subsection (6)(a):

108 (i) a medical condition exists that poses a significant threat of harm to the life or health
109 of the minor; and

110 (ii) there is not sufficient time to give the notice required under Subsection (3) before it
111 is necessary to terminate the minor's pregnancy in order to prevent the threatened harm
112 described in Subsection (4)(a)(i);

113 (b) subject to Subsection (6)(b):

114 (i) the physician complies with Subsection (5); and

115 (ii) (A) the minor is pregnant as a result of incest to which the parent or guardian was a
116 party; or

117 (B) the parent or guardian has abused the minor; or

118 (c) subject to Subsection (6)(b), the parent or guardian has not assumed responsibility
119 for the minor's care and upbringing.

120 (5) If, for a reason described in Subsection (4)(b)(ii)(A) or (B), a physician does not
121 notify a parent or guardian of a minor that the minor intends to have an abortion, the physician
122 shall report the incest or abuse to the Division of Child and Family Services within the
123 Department of Human Services.

124 (6) (a) If, for the reason described in Subsection (4)(a), a physician does not give the
 125 24-hour notice described in Subsection (3), the physician shall give the required notice as early
 126 as possible before the abortion, unless it is necessary to perform the abortion immediately in
 127 order to prevent the threatened harm described in Subsection (4)(a)(i).

128 (b) If, for a reason described in Subsection (4)(b) or (c), a parent or guardian of a minor
 129 is not notified that the minor intends to have an abortion, the physician shall notify another
 130 parent or guardian of the minor, if the minor has another parent or guardian that is not exempt
 131 from notification under Subsection (4)(b) or (c).

132 Section 3. Section **76-7-304.5** is enacted to read:

133 **76-7-304.5. Consent required for abortions performed on minors -- Hearing to**
 134 **allow a minor to self-consent -- Appeals.**

135 (1) As used in this section, "minor" is as defined in Subsection 76-7-304(1).

136 (2) In addition to the other requirements of this part, an abortion may not be performed
 137 on a minor unless:

138 (a) the minor obtains the informed written consent of a parent or guardian of the minor;

139 (b) the minor is granted the right, by court order under Subsection (6), to consent to the
 140 abortion without obtaining consent from a parent or guardian; or

141 (c) (i) a medical condition exists that poses a significant threat of harm to the life or
 142 health of a pregnant minor; and

143 (ii) there is not sufficient time to obtain the consent in the manner chosen by the minor
 144 under Subsection (3) before it is necessary to terminate the minor's pregnancy in order to
 145 prevent the threatened harm described in Subsection (2)(c)(i).

146 (3) A pregnant minor who wants to have an abortion may choose:

147 (a) to seek consent from a parent or guardian under Subsection (2)(a); or

148 (b) to seek the right to consent to the abortion under Subsection (2)(b).

149 (4) (a) If ~~Ŧ→~~ **[one or both of a pregnant minor's parents or the minor's guardian refuses to**
 150 **consent] a pregnant minor fails to obtain the consent of a parent or guardian of the minor** ~~←Ŧ~~
 150a to the performance of an abortion, or if the minor chooses not to seek the consent of
 151 **Ŧ→** ~~[one or both of her parents]~~ **a parent** ~~←Ŧ~~ or guardian, the minor may file a petition with the
 151a juvenile court to

152 obtain the right to consent to the abortion without the consent of the minor's parent or guardian.

153 (b) If the minor chooses to file the petition described in Subsection (4)(a), the court
 154 shall assist the minor, or a person designated by the minor, in preparing the petition required by

155 this section.

156 (c) The petition described in Subsection (4)(a) shall include:

157 (i) the initials of the minor;

158 (ii) the age of the minor;

159 (iii) a statement that:

160 (A) the minor has been fully informed regarding the abortion pursuant to the

161 requirements of Section 76-7-305; or

162 (B) under Section 76-7-305, the minor is not required to be fully informed regarding

163 the abortion;

164 (iv) a claim that:

165 (A) the minor is sufficiently mature to make the decision to have an abortion; or

166 (B) an abortion is in the minor's best interest; and

167 (v) the name of each parent or guardian of the minor.

168 (5) If a petition is filed under Subsection (4), the court:

169 (a) may appoint a guardian ad litem for the minor;

170 (b) shall, if the minor is not already represented by an attorney:

171 (i) advise the minor that she has the right to a court-appointed attorney; and

172 (ii) appoint an attorney to represent the minor upon the minor's request;

173 (c) shall preserve the confidentiality of:

174 (i) the minor's identity;

175 (ii) the nature of the proceeding; and

176 (iii) all records related to the proceeding; and

177 (d) shall hold a hearing and render a decision on the petition no later than five calendar

178 days after the day on which the petition is filed.

179 (6) (a) The hearing described in Subsection (5)(d) shall be closed to the public.

180 (b) After considering the evidence presented at the hearing, the court shall order that

181 the minor may consent to an abortion without the consent of a parent or guardian of the minor

182 if the court finds ~~it~~ **→** by a preponderance of the evidence **←** ~~it~~ that:

183 (i) the minor:

184 (A) has given her informed consent to the abortion; and

185 (B) is mature and capable of giving informed consent to the abortion; or

186 (ii) an abortion would be in the minor's best interest.

187 (c) If the court does not make the finding described in Subsection (6)(b), the court shall
188 order that the minor must obtain consent from the minor's parent or guardian before the minor
189 may obtain an abortion.

190 (d) A parent or guardian of a woman who is under the age of 18 may not be informed
191 of the proceedings under this section, unless the minor gives written authorization for the
192 parent or guardian to be informed.

193 (7) (a) The minor may appeal the decision of the juvenile court by filing a written
194 notice of appeal at any time after the entry of the order described in Subsection (6).

195 (b) The appeal described in Subsection (7)(a) shall be:

196 (i) closed to the public; and

197 (ii) considered and decided no later than five calendar days from the day on which the
198 notice of appeal is filed.

199 (c) The decision described in Subsection (7)(b)(ii) may be issued in the form of a
200 written order.

201 (d) Nothing in this Subsection (7) shall require the court to write an opinion within five
202 calendar days from the day on which the notice of appeal is filed.

203 (e) The court hearing the appeal shall preserve the confidentiality of:

204 (i) the minor's identity; and

205 (ii) subject to Subsection (7)(f), all records related to the proceeding.

206 (f) Notwithstanding Subsection (7)(e)(ii), the court may publish an opinion relating to
207 the appeal, if the opinion protects the minor's identity.

208 (8) The Judicial Council shall make rules that:

209 (a) ensure the confidentiality of the proceedings described in this section and the
210 records related to the proceedings; and

211 (b) establish procedures to expedite the hearing and appeal proceedings described in
212 this section.

213 Section 4. Section **76-7-305** is amended to read:

214 **76-7-305. Informed consent requirements for abortion -- 24-hour wait mandatory**
215 **-- Emergency exceptions.**

216 (1) No abortion may be performed unless a voluntary and informed written consent,

217 consistent with Section 8.08 of the American Medical Association's Code of Medical Ethics,
218 Current Opinions, and the provisions of this section is first obtained by the attending physician
219 from the woman upon whom the abortion is to be performed.

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

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

226 (i) consistent with Subsection (3)(a), the nature of the proposed abortion procedure or
227 treatment, specifically how that procedure will affect the fetus, and the risks and alternatives to
228 an abortion procedure or treatment that any person would consider material to the decision of
229 whether or not to undergo an abortion[~~. The alternatives required to be provided under this~~
230 ~~subsection shall include a description of adoption services, including private and agency~~
231 ~~adoption methods, and a statement that it is legal for adoptive parents to financially assist in~~
232 ~~pregnancy and birth expenses];~~

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

235 (iii) the medical risks associated with carrying her child to term;

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

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

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

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

247 (C) includes information regarding public and private services and agencies available

248 to assist her through pregnancy, at childbirth, and while the child is dependent, including
249 private and agency adoption alternatives; ~~and~~

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

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

256 (iv) except as provided in Subsection (3)(b), the father of the unborn child is legally
257 required to assist in the support of her child, even in instances where he has offered to pay for
258 the abortion, and that the Office of Recovery Services within the Department of Human
259 Services will assist her in collecting child support~~[-In the case of rape, this information may
260 be omitted];~~ and

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

263 (c) the information required to be provided to the pregnant woman under Subsection
264 (2)(a) is also provided by the physician who is to perform the abortion, in a face-to-face
265 consultation, prior to performance of the abortion, unless the attending or referring physician
266 ~~[was]~~ is the individual ~~[providing]~~ who provides the information required under Subsection
267 (2)(a);

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

270 (e) the informational video, published by the Department of Health, has been provided
271 to the pregnant woman in accordance with Subsection ~~[(2)]~~ (4); and

272 (f) the pregnant woman has certified in writing, prior to the abortion, that the
273 information required to be provided under Subsections (2)(a)~~[-(b), (c), (d), and]~~ through (e)
274 was provided, in accordance with the requirements of those subsections.

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

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

278 (ii) a statement that it is legal for adoptive parents to financially assist in pregnancy and

279 birth expenses.

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

283 ~~[(2)]~~ (4) When the informational video described in Section 76-7-305.5 is provided to a
284 pregnant woman, the person providing the information shall first request that the woman view
285 the video at that time or at another specifically designated time and location. If the woman
286 chooses not to do so, a copy of the video shall be provided to her.

287 ~~[(3)]~~ (5) When a serious medical emergency compels the performance of an abortion,
288 the physician shall inform the woman prior to the abortion, if possible, of the medical
289 indications supporting ~~[his]~~ the physician's judgment that an abortion is necessary.

290 ~~[(4)]~~ (6) Any physician who violates the provisions of this section:

291 (a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102[;];
292 ~~and [his license for the practice of medicine and surgery]~~

293 (b) shall be subject to suspension or revocation of the physician's license for the
294 practice of medicine and surgery in accordance with Sections 58-67-401 and 58-67-402, Utah
295 Medical Practice Act, or Sections 58-68-401 and 58-68-402, Utah Osteopathic Medical
296 Practice Act.

297 ~~[(5)]~~ (7) A physician is not guilty of violating this section for failure to furnish any of
298 the information described in Subsection ~~[(1)]~~ (2), if:

299 (a) [he] the physician can demonstrate by a preponderance of the evidence that [he] the
300 physician reasonably believed that furnishing the information would have resulted in a severely
301 adverse effect on the physical or mental health of the pregnant woman;

302 (b) in [his] the physician's professional judgment, the abortion was necessary to save
303 the pregnant woman's life;

304 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
305 76-5-402 and 76-5-402.1;

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

308 (e) in his professional judgment the abortion was to prevent the birth of a child who
309 would have been born with grave defects; or

310 (f) the pregnant woman was 14 years of age or younger.

311 [~~(6)~~] (8) A physician who complies with the provisions of this section and Section
312 76-7-304.5 may not be held civilly liable to [~~his~~] the physician's patient for failure to obtain
313 informed consent under Section 78-14-5.

314 Section 5. Section **76-7-305.5** is amended to read:

315 **76-7-305.5. Requirements for printed materials and informational video --**
316 **Annual report of Department of Health.**

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

323 (a) geographically indexed materials informing the woman of public and private
324 services and agencies available to assist her, financially and otherwise, through pregnancy, at
325 childbirth, and while the child is dependent, including services and supports available under
326 Section 35A-3-308. Those materials shall contain a description of available adoption services,
327 including a comprehensive list of the names, addresses, and telephone numbers of public and
328 private agencies and private attorneys whose practice includes adoption, and explanations of
329 possible available financial aid during the adoption process. The information regarding
330 adoption services shall include the fact that private adoption is legal, and that the law permits
331 adoptive parents to pay the costs of prenatal care, childbirth, and neonatal care. The printed
332 information and video shall present adoption as a preferred and positive choice and alternative
333 to abortion. The department may, at its option, include printed materials that describe the
334 availability of a toll-free 24-hour telephone number that may be called in order to obtain,
335 orally, the list and description of services, agencies, and adoption attorneys in the locality of the
336 caller;

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

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

347 (c) truthful, nonmisleading descriptions of abortion procedures used in current medical
348 practice at the various stages of growth of the unborn child, the medical risks commonly
349 associated with each procedure, including those related to subsequent childbearing, the
350 consequences of each procedure to the fetus at various stages of fetal development, the possible
351 detrimental psychological effects of abortion, and the medical risks associated with carrying a
352 child to term;

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

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

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

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

363 (h) a statement conveying that the state of Utah prefers childbirth over abortion; and

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

368 (2) (a) The materials described in Subsection (1) shall be produced and printed in a
369 way that conveys the state's preference for childbirth over abortion.

370 (b) The printed material described in Subsection (1) shall be printed in a typeface large
371 enough to be clearly legible.

372 (3) Every facility in which abortions are performed shall immediately provide the
373 printed informed consent materials and a viewing of or a copy of the informational video
374 described in Subsection (1) to any patient or potential patient prior to the performance of an
375 abortion, unless the patient's attending or referring physician certifies in writing that he
376 reasonably believes that provision of the materials or video to that patient would result in a
377 severely adverse effect on her physical or mental health.

378 (4) The Department of Health shall produce a standardized videotape that may be used
379 statewide, containing all of the information described in Subsection (1), in accordance with the
380 requirements of that subsection and Subsection (2). In preparing the video, the department may
381 summarize and make reference to the printed comprehensive list of geographically indexed
382 names and services described in Subsection (1)(a). The videotape shall, in addition to the
383 information described in Subsection (1), show an ultrasound of the heart beat of an unborn
384 child at three weeks gestational age, at six to eight weeks gestational age, and each month
385 thereafter, until 14 weeks gestational age. That information shall be presented in a truthful,
386 nonmisleading manner designed to convey accurate scientific information, the state's
387 preference for childbirth over abortion, and the positive aspects of adoption.

388 (5) The Department of Health and local health departments shall provide ultrasounds in
389 accordance with the provisions of Subsection 76-7-305[~~(1)~~](2)(b), at no expense to the
390 pregnant woman.

391 (6) The Department of Health shall compile and report the following information
392 annually, preserving physician and patient anonymity:

393 (a) the total amount of informed consent material described in Subsection (1) that was
394 distributed;

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

397 (c) the number of statements signed by attending physicians certifying to his opinion
398 regarding adverse effects on the patient under Subsection (3); and

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

401 (7) The Department of Health shall annually report to the Health and Human Services
402 Interim Committee regarding the information described in Subsection (6), and provide a copy

403 of the printed materials and the videotape produced in accordance with this section to that
404 committee.

405 Section 6. Section **76-7-315** is amended to read:

406 **76-7-315. Exceptions to certain requirements in serious medical emergencies.**

407 When due to a serious medical emergency, time does not permit compliance with
408 Section 76-7-302, [~~76-7-304,~~] 76-7-305, 76-7-305.5, or 76-7-310.5 the provisions of those
409 sections do not apply.

410 Section 7. Section **78-14-5** is amended to read:

411 **78-14-5. Failure to obtain informed consent -- Proof required of patient --**
412 **Defenses -- Consent to health care.**

413 (1) When a person submits to health care rendered by a health care provider, it shall be
414 presumed that what the health care provider did was either expressly or impliedly authorized to
415 be done. For a patient to recover damages from a health care provider in an action based upon
416 the provider's failure to obtain informed consent, the patient must prove the following:

417 (a) that a provider-patient relationship existed between the patient and health care
418 provider;

419 (b) the health care provider rendered health care to the patient;

420 (c) the patient suffered personal injuries arising out of the health care rendered;

421 (d) the health care rendered carried with it a substantial and significant risk of causing
422 the patient serious harm;

423 (e) the patient was not informed of the substantial and significant risk;

424 (f) a reasonable, prudent person in the patient's position would not have consented to
425 the health care rendered after having been fully informed as to all facts relevant to the decision
426 to give consent. In determining what a reasonable, prudent person in the patient's position
427 would do under the circumstances, the finder of fact shall use the viewpoint of the patient
428 before health care was provided and before the occurrence of any personal injuries alleged to
429 have arisen from said health care; and

430 (g) the unauthorized part of the health care rendered was the proximate cause of
431 personal injuries suffered by the patient.

432 (2) It shall be a defense to any malpractice action against a health care provider based
433 upon alleged failure to obtain informed consent if:

434 (a) the risk of the serious harm which the patient actually suffered was relatively
435 minor;

436 (b) the risk of serious harm to the patient from the health care provider was commonly
437 known to the public;

438 (c) the patient stated, prior to receiving the health care complained of, that he would
439 accept the health care involved regardless of the risk; or that he did not want to be informed of
440 the matters to which he would be entitled to be informed;

441 (d) the health care provider, after considering all of the attendant facts and
442 circumstances, used reasonable discretion as to the manner and extent to which risks were
443 disclosed, if the health care provider reasonably believed that additional disclosures could be
444 expected to have a substantial and adverse effect on the patient's condition; or

445 (e) the patient or his representative executed a written consent which sets forth the
446 nature and purpose of the intended health care and which contains a declaration that the patient
447 accepts the risk of substantial and serious harm, if any, in hopes of obtaining desired beneficial
448 results of health care and which acknowledges that health care providers involved have
449 explained his condition and the proposed health care in a satisfactory manner and that all
450 questions asked about the health care and its attendant risks have been answered in a manner
451 satisfactory to the patient or his representative; such written consent shall be a defense to an
452 action against a health care provider based upon failure to obtain informed consent unless the
453 patient proves that the person giving the consent lacked capacity to consent or shows by clear
454 and convincing proof that the execution of the written consent was induced by the defendant's
455 affirmative acts of fraudulent misrepresentation or fraudulent omission to state material facts.

456 (3) Nothing contained in this act shall be construed to prevent any person 18 years of
457 age or over from refusing to consent to health care for his own person upon personal or
458 religious grounds.

459 (4) ~~[The]~~ Except as provided in Section 76-7-304.5, the following persons are
460 authorized and empowered to consent to any health care not prohibited by law:

461 (a) any parent, whether an adult or a minor, for ~~[his]~~ the parent's minor child;

462 (b) any married person, for a spouse;

463 (c) any person temporarily standing in loco parentis, whether formally serving or not,
464 for the minor under ~~[his]~~ that person's care and any guardian for ~~[his]~~ the guardian's ward;

465 (d) any person 18 years of age or over for [~~his or her~~] that person's parent who is unable
466 by reason of age, physical or mental condition, to provide such consent;

467 (e) any patient 18 years of age or over;

468 (f) any female regardless of age or marital status, when given in connection with her
469 pregnancy or childbirth;

470 (g) in the absence of a parent, any adult for [~~his~~] the adult's minor brother or sister; and

471 (h) in the absence of a parent, any grandparent for [~~his~~] the grandparent's minor
472 grandchild.

473 (5) No person who in good faith consents or authorizes health care treatment or
474 procedures for another as provided by this act shall be subject to civil liability.

Legislative Review Note

as of 1-4-06 11:07 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0085

Abortion by a Minor - Parental Notification and Consent 16-Jan-06
12:45 PM

State Impact

Due to the possibility of more minors seeking court consent, this bill will require \$31,500 in ongoing General Fund for the Courts.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>
General Fund	\$31,500	\$31,500	\$0	\$0
TOTAL	\$31,500	\$31,500	\$0	\$0

Individual and Business Impact

No Fiscal Impact.

Office of the Legislative Fiscal Analyst