

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

3                                   2006 GENERAL SESSION

4                                   STATE OF UTAH

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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 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 one or both of a pregnant minor's parents or the minor's guardian refuses to  
150 consent to the performance of an abortion, or if the minor chooses not to seek the consent of  
151 one or both of her parents or guardian, the minor may file a petition with the 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 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 ~~[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.

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**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**