

UNBORN CHILD PAIN PREVENTION ACT

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ requires that at least 24 hours before a physician performs an abortion of an unborn child who is at least 20 weeks gestational age, the woman on whom the abortion is performed shall be informed of any anesthetic or analgesic that would eliminate or alleviate organic pain to the unborn child and any medical risks associated with the anesthetic or analgesic, unless:
 - a medical emergency exists; or
 - the abortion is being performed to save the life of the woman or to prevent grave damage to her medical health;
- ▶ provides that a person providing the information described in the preceding paragraph is not prohibited from informing the woman of the person's own opinion regarding the administration of an anesthetic or analgesic to alleviate fetal pain;
- ▶ requires the Department of Health to produce a brochure that:
 - subject to certain exceptions, is to be provided to a woman seeking an abortion of an unborn child who is at least 20 weeks gestational age; and
 - includes information, from both sides of the issue, relating to the ability of an unborn child to experience pain during an abortion procedure and the methods



28 of alleviating or eliminating that pain;

29 ▶ provides that a physician who performs an abortion of an unborn child who is at
30 least 20 weeks gestational age shall administer an anesthetic or analgesic to the
31 unborn child if the woman having the abortion consents to the administration of the
32 anesthetic or analgesic, unless:

- 33 • a medical emergency exists; or
- 34 • the physician informs the woman that the physician, or the facility at which the
35 abortion is to be performed, cannot, or does not, provide the service of
36 administering an anesthetic or analgesic to an unborn child; and
- 37 ▶ makes technical changes.

38 **Monies Appropriated in this Bill:**

39 None

40 **Other Special Clauses:**

41 None

42 **Utah Code Sections Affected:**

43 AMENDS:

44 **76-7-305**, as last amended by Chapter 221, Laws of Utah 1997

45 **76-7-305.5**, as last amended by Chapter 13, Laws of Utah 1998

46 **76-7-315**, as last amended by Chapter 5, Laws of Utah 1996, Second Special Session

47 ENACTS:

48 **76-7-308.5**, Utah Code Annotated 1953



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

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

52 **76-7-305. Informed consent requirements for abortion -- 24-hour wait mandatory**
53 **-- Emergency exceptions.**

54 (1) No abortion may be performed unless a voluntary and informed written consent,
55 consistent with Section 8.08 of the American Medical Association's Code of Medical Ethics,
56 Current Opinions, and the provisions of this section is first obtained by the attending physician
57 from the woman upon whom the abortion is to be performed.

58 (2) Except in the case of a medical emergency, consent to an abortion is voluntary and

59 informed only if:

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

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

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

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

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

76 (A) any anesthetic or analgesic that would eliminate or alleviate organic pain to the
77 unborn child that may be caused by the particular method of abortion to be employed; and

78 (B) any medical risks associated with the anesthetic or analgesic described in
79 Subsection (2)(a)(iv)(A);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

121 and

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

124 (b) The information described in Subsection (2)(a)(iv) may be omitted from the
 125 information required to be provided to a pregnant woman under this section if the abortion is
 126 being performed for a reason described in Subsection 76-7-302(2)(a) or (d).

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

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

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

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

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

136 ~~[(2)]~~ (4) When the informational video described in Section 76-7-305.5 is provided to a
 137 pregnant woman, the person providing the information shall first request that the woman view
 138 the video at that time or at another specifically designated time and location. If the woman
 139 chooses not to do so, a copy of the video shall be provided to her.

140 ~~[(3)]~~ (5) When a serious medical emergency compels the performance of an abortion,
 141 the physician shall inform the woman prior to the abortion, if possible, of the medical
 142 indications supporting ~~[his]~~ the physician's judgment that an abortion is necessary.

143 ~~[(4)]~~ (6) Any physician who violates the provisions of this section:

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

146 (b) shall be subject to suspension or revocation of the physician's license for the
 147 practice of medicine and surgery in accordance with Sections 58-67-401 ~~[and]~~, 58-67-402,
 148 ~~[Utah Medical Practice Act, or Sections]~~ 58-68-401, and 58-68-402~~[-Utah Osteopathic~~
 149 ~~Medical Practice Act]~~.

150 ~~[(5)]~~ (7) A physician is not guilty of violating this section for failure to furnish any of
 151 the information described in Subsection ~~[(1)]~~ (2), if:

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

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

157 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
158 76-5-402 and 76-5-402.1;

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

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

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

164 (8) A physician is not guilty of violating this section for failure to furnish any of the
165 information described in Subsections (2)(a)(i) through (iii) or (2)(b) through (f), if, in the
166 physician's professional judgment, the abortion was to prevent the birth of a child who would
167 have been born with grave defects.

168 ~~[(6)]~~ (9) A physician who complies with the provisions of this section may not be held
169 civilly liable to ~~[his]~~ the physician's patient for failure to obtain informed consent under Section
170 78-14-5.

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

172 **76-7-305.5. Requirements for printed materials and informational video --**
173 **Annual report of Department of Health.**

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

180 (a) geographically indexed materials informing the woman of public and private
181 services and agencies available to assist her, financially and otherwise, through pregnancy, at
182 childbirth, and while the child is dependent, including services and supports available under

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

194 (b) truthful and nonmisleading descriptions of the probable anatomical and
195 physiological characteristics of the unborn child at two-week gestational increments from
196 fertilization to full term, accompanied by pictures or video segments representing the
197 development of an unborn child at those gestational increments. The descriptions shall include
198 information about brain and heart function and the presence of external members and internal
199 organs during the applicable stages of development. Any pictures used shall contain the
200 dimensions of the fetus and shall be realistic and appropriate for that woman's stage of
201 pregnancy. The materials shall be designed to convey accurate scientific information about an
202 unborn child at the various gestational ages, and to convey the state's preference for childbirth
203 over abortion;

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

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

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

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

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

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

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

225 (2) (a) The printed material described in Subsection (1) shall include a separate
226 brochure that contains truthful, nonmisleading information on both sides of the issue regarding:

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

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

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

233 (iv) potential medical risks associated with the administration of an anesthetic or
234 analgesic to an unborn child during an abortion procedure.

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

237 (i) on an unborn child who is at least 20 weeks gestational age at the time of the
238 abortion; and

239 (ii) for a reason other than a reason described in Subsection 76-7-302(2)(a) or (d).

240 [~~2~~] (3) (a) The materials described in [Subsection] Subsections (1) and (2) shall be
241 produced and printed in a way that conveys the state's preference for childbirth over abortion.

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

244 [~~3~~ ~~Every~~] (4) Except as provided in Subsection (2)(b), every facility in which

245 abortions are performed shall immediately provide the printed informed consent materials and
246 a viewing of or a copy of the informational video described in ~~[Subsection]~~ Subsections (1) and
247 (2) to any patient or potential patient prior to the performance of an abortion, unless the
248 patient's attending or referring physician certifies in writing that he reasonably believes that
249 provision of the materials or video to that patient would result in a severely adverse effect on
250 her physical or mental health.

251 ~~[(4)]~~ (5) The Department of Health shall produce a standardized videotape that may be
252 used statewide, containing all of the information described in Subsection (1), in accordance
253 with the requirements of ~~[that subsection and Subsection (2)]~~ Subsections (1) and (3). In
254 preparing the video, the department may summarize and make reference to the printed
255 comprehensive list of geographically indexed names and services described in Subsection
256 (1)(a). The videotape shall, in addition to the information described in Subsection (1), show an
257 ultrasound of the heart beat of an unborn child at three weeks gestational age, at six to eight
258 weeks gestational age, and each month thereafter, until 14 weeks gestational age. That
259 information shall be presented in a truthful, nonmisleading manner designed to convey accurate
260 scientific information, the state's preference for childbirth over abortion, and the positive
261 aspects of adoption.

262 ~~[(5)]~~ (6) The Department of Health and local health departments shall provide
263 ultrasounds in accordance with the provisions of Subsection 76-7-305~~[(1)]~~(2)(b), at no expense
264 to the pregnant woman.

265 ~~[(6)]~~ (7) The Department of Health shall compile and report the following information
266 annually, preserving physician and patient anonymity:

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

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

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

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

275 ~~[(7)]~~ (8) The Department of Health shall annually report to the Health and Human

276 Services Interim Committee regarding the information described in Subsection [(6)] (7), and
277 provide a copy of the printed materials and the videotape produced in accordance with this
278 section to that committee.

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

280 **76-7-308.5. Administration of anesthetic or analgesic to an unborn child.**

281 A physician who performs an abortion of an unborn child who is at least 20 weeks
282 gestational age shall administer an anesthetic or analgesic to eliminate or alleviate organic pain
283 to the unborn child that may be caused by the particular method of abortion to be employed, if
284 the woman having the abortion consents to the administration of an anesthetic or analgesic to
285 the unborn child, unless:

286 (1) the physician is prevented from administering the anesthetic or analgesic by a
287 medical emergency; or

288 (2) prior to performing the abortion, the physician informs the woman that the
289 physician, or the facility at which the abortion is to be performed, cannot, or does not, provide
290 the service of administering an anesthetic or analgesic to an unborn child.

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

292 **76-7-315. Exceptions to certain requirements in serious medical emergencies.**

293 When due to a serious medical emergency, time does not permit compliance with
294 Section 76-7-302, 76-7-304, 76-7-305, 76-7-305.5, 76-7-308.5 or 76-7-310.5 the provisions of
295 those sections do not apply.

Legislative Review Note
as of 12-6-05 1:17 PM

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