

1 **UNBORN CHILD PAIN PREVENTION ACT**

2 2009 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Carl Wimmer**

5 Senate Sponsor: D. Chris Butters

6
7 **LONG TITLE**

8 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

12 ▶ requires that at least 24 hours before a physician performs an abortion of an unborn
13 child who is at least 20 weeks gestational age, the woman on whom the abortion is
14 performed shall ~~§→~~, **except when a medical emergency exists and there is not adequate time to**
14a **comply with the requirements of this bill**, ~~←§~~ be informed ~~§→~~ [of any] :

14b • **that, upon the woman's request, an ←§ anesthetic or analgesic §→ [that would] will**
14c **be administered to the unborn child, [either directly or] through the woman, to ←§ eliminate or**
15 **alleviate organic pain to the unborn child §→ ; ←§ and**
15a **§→ • of ←§ any medical risks §→ to the woman ←§ associated with the**
16 **anesthetic or analgesic §→ [, unless:**

17 ~~————— • a medical emergency exists; or~~

18 ~~————— • the abortion is being performed to save the life of the woman or to prevent grave~~
19 ~~**damage to her medical health] ←§ ;**~~

20 ▶ provides that a person providing the information described in the preceding
21 paragraph is not prohibited from informing the woman of the person's own opinion
22 regarding the administration of an anesthetic or analgesic to alleviate fetal pain;

23 ▶ requires the Department of Health to produce a brochure that:

24 • subject to certain exceptions, is to be provided to a woman seeking an abortion
25 of an unborn child who is at least 20 weeks gestational age; and

26 • includes information ~~§→~~ [~~from both sides of the issue,~~] ~~←§~~ relating to the ability of
26a an
27 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] and there is not adequate time to~~
36a ~~comply with the requirements of this bill; and ←§~~

37 ▶ makes technical changes.

38 **Monies Appropriated in this Bill:**

39 None

40 **Other Special Clauses:**

41 ~~§~~ [None] This bill coordinates with H.B. 90 by providing substantive and technical
41a amendments. ←§

42 **Utah Code Sections Affected:**

43 AMENDS:

44 **76-7-305**, as last amended by Laws of Utah 2008, Chapter 3

45 **76-7-305.5**, as last amended by Laws of Utah 2006, Chapters 116 and 207

46 **76-7-315**, as last amended by Laws of Utah 2006, Chapter 207

47 ENACTS:

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

49

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, in a face-to-face consultation, orally
63 informs the woman ~~§~~ of ~~§~~ :

64 (i) consistent with Subsection (3)(a), ~~§~~ of ~~§~~ the nature of the proposed abortion
64a 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;

68 (ii) ~~§~~ of ~~§~~ the probable gestational age and a description of the development of the
68a unborn
69 child at the time the abortion would be performed; ~~and~~

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

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

73 (A) ~~§~~ [any] that, upon the woman's request, an ~~§~~ anesthetic or analgesic ~~§~~ [that
73a would] will be administered to the unborn child, [either directly or] through the woman, to ~~§~~
73b eliminate or alleviate organic pain to the
74 unborn child that may be caused by the particular method of abortion to be employed; and

75 (B) ~~§~~ of ~~§~~ any medical risks ~~§~~ to the woman that are ~~§~~ associated with
75a administering ~~§~~ the anesthetic or analgesic described in
76 Subsection (2)(a)(iv)(A);

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

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

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

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

88 (C) includes information regarding public and private services and agencies available
89 to assist her through pregnancy, at childbirth, and while the child is dependent, including

90 private and agency adoption alternatives;

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

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

97 (iv) except as provided in Subsection (3)~~(b)~~(c), the father of the unborn child is
98 legally required to assist in the support of her child, even in instances where he has offered to
99 pay for the abortion, and that the Office of Recovery Services within the Department of Human
100 Services will assist her in collecting child support; and

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

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

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

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

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

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

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

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

119 (b) The information described in Subsection (2)(a)(iv) may be omitted from the
120 information required to be provided to a pregnant woman under this section if ~~§~~ :

120a (i) ~~§~~ the abortion is

121 performed for a reason described in Subsection 76-7-302(2)(a) or (d) ~~§~~ → [] ; and

121a **(ii) due to a serious medical emergency, time does not permit compliance with the**
 121b **requirement to provide the information described in Subsection (2)(a)(iv).** ←§

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

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

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

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

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

131 (4) When the informational video described in Section 76-7-305.5 is provided to a
 132 pregnant woman, the person providing the information shall first request that the woman view
 133 the video at that time or at another specifically designated time and location. If the woman
 134 chooses not to do so, a copy of the video shall be provided to her.

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

138 (6) Any physician who violates the provisions of this section:

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

140 and

141 (b) shall be subject to:

142 (i) suspension or revocation of the physician's license for the practice of medicine and
 143 surgery in accordance with [Sections] Section 58-67-401 [and 58-67-402, Utah Medical
 144 Practice Act,] or [Sections] 58-68-401 [and 58-68-402, Utah Osteopathic Medical Practice
 145 Act.]; and

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

147 (7) A physician is not guilty of violating this section for failure to furnish any of the
 148 information described in Subsection (2), if:

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

152 (b) in the physician's professional judgment, the abortion was necessary to save the
153 pregnant woman's life;

154 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
155 76-5-402 and 76-5-402.1;

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

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

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

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

165 ——— [(8)] (9) (8) ←§ A physician who complies with the provisions of this section and Section
166 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain
167 informed consent under Section 78B-3-406.

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

169 **76-7-305.5. Requirements for printed materials and informational video --**
170 **Annual report of Department of Health.**

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

177 (a) geographically indexed materials informing the woman of public and private
178 services and agencies available to assist her, financially and otherwise, through pregnancy, at
179 childbirth, and while the child is dependent, including services and supports available under
180 Section 35A-3-308. Those materials shall contain a description of available adoption services,
181 including a comprehensive list of the names, addresses, and telephone numbers of public and
182 private agencies and private attorneys whose practice includes adoption, and explanations of

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

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

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

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

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

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

213 (g) a statement conveying that any physician who performs an abortion without

214 obtaining the woman's informed consent or without according her a private medical
 215 consultation in accordance with the requirements of this section, may be liable to her for
 216 damages in a civil action at law;

217 (h) a statement conveying that the state prefers childbirth over abortion; and

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

222 (2) (a) The printed material described in Subsection (1) shall include a separate
 223 brochure that contains truthful, nonmisleading information ~~§~~→ **[on both sides of the issue]** ←~~§~~
 223a regarding:

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

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

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

230 (iv) potential medical risks ~~H~~→ **to a pregnant woman that are** ←~~H~~ associated with the
 230a administration of an anesthetic or
 231 analgesic to an unborn child during an abortion procedure.

232 (b) A person or facility is not required to provide the information described in
 233 Subsection (2)(a) to a patient or potential patient. ~~§~~→ **[unless] if** ←~~§~~ the abortion is to be
 233a performed:

234 (i) on an unborn child who is ~~§~~→ **[at least] less than** ←~~§~~ 20 weeks gestational age at the
 234a time of the

235 abortion; ~~§~~→ **[and] or**

235a (ii) **on an unborn child who is at least 20 weeks gestational age at the time of the**
 235b **abortion, if:**

235c (A) **the abortion is being performed**

236 **[(ii)]** ←~~§~~ for a reason ~~§~~→ **[other than a reason]** ←~~§~~ described in Subsection
 236a 76-7-302(2)(a) or (d) ~~§~~→ **[:] ; and**

236b (B) **due to a serious medical emergency, time does not permit compliance with the**
 236c **requirement to provide the information described in Subsection (2)(a).** ←~~§~~

237 ~~(2)~~ (3) (a) The materials described in ~~[Subsection]~~ Subsections (1) and (2) shall be
 238 produced and printed in a way that conveys the state's preference for childbirth over abortion.

239 (b) The printed material described in ~~[Subsection]~~ Subsections (1) and (2) shall be
 240 printed in a typeface large enough to be clearly legible.

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

242 abortions are performed shall immediately provide the printed informed consent materials and
243 a viewing of or a copy of the informational video described in [~~Subsection~~] Subsections (1) and
244 (2) to any patient or potential patient prior to the performance of an abortion, unless the

245 patient's attending or referring physician certifies in writing that he reasonably believes that
246 provision of the materials or video to that patient would result in a severely adverse effect on
247 her physical or mental health.

248 ~~[(4)]~~ (5) The Department of Health shall produce a standardized videotape that may be
249 used statewide, containing all of the information described in Subsection (1), in accordance
250 with the requirements of ~~[that subsection and Subsection (2)]~~ Subsections (1) and (3). In
251 preparing the video, the department may summarize and make reference to the printed
252 comprehensive list of geographically indexed names and services described in Subsection
253 (1)(a). The videotape shall, in addition to the information described in Subsection (1), show an
254 ultrasound of the heart beat of an unborn child at three weeks gestational age, at six to eight
255 weeks gestational age, and each month thereafter, until 14 weeks gestational age. That
256 information shall be presented in a truthful, nonmisleading manner designed to convey accurate
257 scientific information, the state's preference for childbirth over abortion, and the positive
258 aspects of adoption.

259 ~~[(5)]~~ (6) The Department of Health and local health departments shall provide
260 ultrasounds in accordance with the provisions of Subsection 76-7-305(2)(b), at no expense to
261 the pregnant woman.

262 ~~[(6)]~~ (7) The Department of Health shall compile and report the following information
263 annually, preserving physician and patient anonymity:

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

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

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

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

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

273 **76-7-308.5. Administration of anesthetic or analgesic to an unborn child.**

274 A physician who performs an abortion of an unborn child who is at least 20 weeks
275 gestational age shall administer an anesthetic or analgesic to eliminate or alleviate organic pain

276 to the unborn child that may be caused by the particular method of abortion to be employed, if
 277 the woman having the abortion consents to the administration of an anesthetic or analgesic to
 278 the unborn child, unless ~~§~~ → [;]

279 ~~—— (1) ←§~~ the physician is prevented from administering the anesthetic or analgesic by a
 280 medical emergency ~~§~~ → [; or

281 ~~—— (2) prior to performing the abortion, the physician informs the woman that the~~
 282 ~~physician, or the facility at which the abortion is to be performed, cannot or does not provide~~
 283 ~~the service of administering an anesthetic or analgesic to an unborn child] ←§ .~~

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

285 **76-7-315. Exceptions to certain requirements in serious medical emergencies.**

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

288a ~~§~~ → "Section 5. Coordinating H.B. 222 with H.B. 90 -- Substantive and technical
 288b amendments.

288c If this H.B. 222 and H.B. 90, Abortion Law Amendments, both pass, it is the intent of
 288d the Legislature that the Office of Legislative Research and General Counsel shall prepare the
 288e Utah Code database for publication by modifying:

288f (1) Subsection 76-7-305(3)(b)(i) to read as follows:

288g "(i) the abortion is performed for a reason described in Subsection
 288h 76-7-302(3)(b)(i); and"; and

288i (2) Subsection 76-7-305.5(2)(b)(ii)(A) to read as follows:

288j "(A) the abortion is being performed for a reason described in
 288k Subsection 76-7-302(3)(b)(i); and"; ←§

Legislative Review Note
 as of 12-1-08 7:13 AM

Office of Legislative Research and General Counsel

H.B. 222 - Unborn Child Pain Prevention Act

Fiscal Note

2009 General Session
State of Utah

State Impact

Enactment of this bill will require \$5,000 ongoing from the General Fund for Department of Health publication costs. Provisions of this bill can be handled within existing Department of Health budgets.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$5,000	\$5,000	\$0	\$0	\$0
Total	\$0	\$5,000	\$5,000	\$0	\$0	\$0

Individual, Business and/or Local Impact

A limited number of physicians performing certain abortions may incur additional costs under provisions of this bill.