

INFORMED CONSENT AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl Wimmer

Senate Sponsor: D. Chris Buttars

LONG TITLE

General Description:

This bill amends provisions of the Utah Criminal Code relating to providing informed consent to a woman who is seeking an abortion.

Highlighted Provisions:

This bill:

- ▶ describes informed consent requirements relating to a woman who is seeking an abortion;
- ▶ requires that, if an ultrasound is performed on a woman before an abortion is performed, the ultrasound images will be simultaneously displayed in a manner to permit the woman to choose to view the images or not to view the images;
- ▶ requires that, if a woman described in the preceding paragraph desires, the woman shall be given a detailed description of the ultrasound images;
- ▶ describes exceptions to the informed consent provisions contained in this bill;
- ▶ describes the printed materials and informational video relating to abortion that the Department of Health is required to produce;
- ▶ subject to certain exceptions, requires a facility that performs an abortion on a woman to provide the printed materials and informational video described in the preceding paragraph to the woman at least 24 hours before the abortion is performed;
- ▶ requires that the printed materials and video described in this bill be made available:



- 28 • at no cost; and
- 29 • for viewing on the Department of Health's website;
- 30 ▶ requires the Department of Health to make an annual report to the Health and
- 31 Human Services Interim Committee on statistics relating to the informed consent
- 32 provisions described in this bill;
- 33 ▶ describes reporting requirements for physicians; and
- 34 ▶ makes technical changes.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **76-7-304.5**, as enacted by Laws of Utah 2006, Chapter 207

42 **76-7-305**, as last amended by Laws of Utah 2009, Chapter 57

43 **76-7-313**, as enacted by Laws of Utah 1981, Chapter 126

44 ENACTS:

45 **76-7-305.6**, Utah Code Annotated 1953

46 **76-7-305.7**, Utah Code Annotated 1953

47 REPEALS AND REENACTS:

48 **76-7-305.5**, as last amended by Laws of Utah 2009, Chapter 57



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

51 Section 1. Section **76-7-304.5** is amended to read:

52 **76-7-304.5. Consent required for abortions performed on minors -- Hearing to**
53 **allow a minor to self-consent -- Appeals.**

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

55 (2) In addition to the other requirements of this part, a physician may not perform an
56 abortion on a minor unless:

57 (a) the physician obtains the informed written consent of a parent or guardian of the
58 minor, consistent with ~~[Section]~~ Sections 76-7-305, 76-7-305.5, and 76-7-305.6;

59 (b) the minor is granted the right, by court order under Subsection (5)(b), to consent to
60 the abortion without obtaining consent from a parent or guardian; or

61 (c) (i) a medical condition exists that, on the basis of the physician's good faith clinical
62 judgment, so complicates the medical condition of a pregnant minor as to necessitate the
63 abortion of her pregnancy to avert:

64 (A) the minor's death; or

65 (B) a serious risk of substantial and irreversible impairment of a major bodily function
66 of the minor; and

67 (ii) there is not sufficient time to obtain the consent in the manner chosen by the minor
68 under Subsection (3) before it is necessary to terminate the minor's pregnancy in order to avert
69 the minor's death or impairment described in Subsection (2)(c)(i).

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

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

72 (b) to seek a court order under Subsection (2)(b).

73 (4) If a pregnant minor fails to obtain the consent of a parent or guardian of the minor
74 to the performance of an abortion, or if the minor chooses not to seek the consent of a parent or
75 guardian, the minor may file a petition with the juvenile court to obtain a court order under
76 Subsection (2)(b).

77 (5) (a) A hearing on a petition described in Subsection (4) shall be closed to the public.

78 (b) After considering the evidence presented at the hearing, the court shall order that
79 the minor may obtain an abortion without the consent of a parent or guardian of the minor if
80 the court finds by a preponderance of the evidence that:

81 (i) the minor:

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

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

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

85 (6) The Judicial Council shall make rules that:

86 (a) provide for the administration of the proceedings described in this section;

87 (b) provide for the appeal of a court's decision under this section;

88 (c) ensure the confidentiality of the proceedings described in this section and the
89 records related to the proceedings; and

90 (d) establish procedures to expedite the hearing and appeal proceedings described in
91 this section.

92 Section 2. Section **76-7-305** is amended to read:

93 **76-7-305. Informed consent requirements for abortion -- 24-hour wait mandatory**
94 **-- Exceptions.**

95 (1) ~~[No abortion may be performed unless]~~ A person may not perform an abortion,
96 unless, before performing the abortion, the attending physician obtains a voluntary and
97 informed written consent[;] from the woman on whom the abortion is performed, that is
98 consistent with:

99 (a) Section 8.08 of the American Medical Association's Code of Medical Ethics,
100 Current Opinions[;]; and

101 (b) the provisions of this section ~~[is first obtained by the attending physician from the~~
102 ~~woman upon whom the abortion is to be performed].~~

103 (2) Except ~~[in the case of a medical emergency]~~ as provided in Subsection (8), consent
104 to an abortion is voluntary and informed only if:

105 (a) at least 24 hours ~~[prior to]~~ before the abortion, the physician who is to perform the
106 abortion, the referring physician, a registered nurse, nurse practitioner, advanced practice
107 registered nurse, certified nurse midwife, or physician's assistant, in a face-to-face consultation,
108 orally informs the woman:

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

110 (A) the nature of the proposed abortion procedure ~~[or treatment,];~~

111 (B) specifically how ~~[that]~~ the procedure described in Subsection (2)(a)(i)(A) will
112 affect the fetus[;]; and

113 (C) the risks and alternatives to an abortion procedure or treatment ~~[that any person~~
114 ~~would consider material to the decision of whether or not to undergo an abortion];~~

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

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

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

120 (A) that, upon the woman's request, an anesthetic or analgesic will be administered to

121 the unborn child, through the woman, to eliminate or alleviate organic pain to the unborn child
122 that may be caused by the particular method of abortion to be employed; and

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

125 (b) at least 24 hours prior to the abortion the physician who is to perform the abortion,
126 the referring physician, or, as specifically delegated by either of those physicians, a registered
127 nurse, licensed practical nurse, certified nurse-midwife, advanced practice registered nurse,
128 clinical laboratory technologist, psychologist, marriage and family therapist, clinical social
129 worker, or certified social worker has orally, in a face-to-face consultation, ~~[informed]~~ informs
130 the pregnant woman that:

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

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

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

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

139 (ii) the printed material and a viewing of or a copy of the informational video;

140 (A) shall be provided to her free of charge; and

141 (B) is also available on the Department of Health's website;

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

146 (iv) except as provided in Subsection (3)(c)[;];

147 (A) the father of the unborn child is legally required to assist in the support of her
148 child, even ~~[in instances where]~~ if he has offered to pay for the abortion~~[, and that]; and~~

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

151 (v) she has the right to view an ultrasound of the unborn child, at no expense to her,

152 upon her request;

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

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

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

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

164 (3) (a) The alternatives required to be provided under Subsection (2)(a)(i) [~~shall~~]
165 include:

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

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

170 (b) The information described in Subsection (2)(a)(iv) may be omitted from the
171 information required to be provided to a pregnant woman under this section if ~~if~~ the
172 abortion is performed for a reason described in Subsection 76-7-302(3)(b)(i) ~~and~~.

173 ~~[(ii) due to a serious medical emergency, time does not permit compliance with the
174 requirement to provide the information described in Subsection (2)(a)(iv).]~~

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

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

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

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

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

184 (4) (a) When the informational video described in Section 76-7-305.5 is provided to a
185 pregnant woman, the person providing the information shall ~~[first]~~:

186 (i) request that the woman view the video at that time or at another specifically
187 designated time and location~~[-If]~~; or

188 (ii) if the woman chooses not to ~~[do so]~~ view the video at a time described in
189 Subsection (4)(a), give a copy of the video [shall be provided to her] to the woman.

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

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

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

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

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

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

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

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

202 (c) inform the woman that, if she desires, the person performing the ultrasound, or
203 another qualified person shall provide a detailed description of the ultrasound images,
204 including:

205 (i) the dimensions of the unborn child;

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

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

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

210 ~~[(6)]~~ (7) [Any] In addition to the criminal penalties described in this part, a physician
211 who violates the provisions of this section:

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

213 and

214 (b) shall be subject to:

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

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

218 ~~[(7)]~~ (8) A physician is not guilty of violating this section for failure to furnish any of
219 the information described in Subsection (2), or for failing to comply with Subsection (6), if:

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

223 (b) in the physician's professional judgment, the abortion was necessary to ~~[save the~~
224 ~~pregnant woman's life;]~~ avert:

225 (i) the death of the woman on whom the abortion is performed; or

226 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
227 of the woman on whom the abortion is performed;

228 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
229 76-5-402 and 76-5-402.1;

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

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

233 ~~[(8)]~~ (9) A physician who complies with the provisions of this section and Section
234 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain
235 informed consent under Section 78B-3-406.

236 (10) The Department of Health and local health departments shall provide an
237 ultrasound, in accordance with the provisions of Subsection (2)(b), at no expense to the
238 pregnant woman.

239 Section 3. Section **76-7-305.5** is repealed and reenacted to read:

240 **76-7-305.5. Requirements for printed materials and informational video.**

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

243 (a) publish printed materials; and

244 (b) produce an informational video.

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

246 (a) be scientifically accurate, comprehensible, and presented in a truthful,

247 nonmisleading manner;

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

249 (c) be printed and produced in a manner that conveys the state's preference for

250 childbirth over abortion;

251 (d) state that the state prefers childbirth over abortion;

252 (e) state that it is unlawful for any person to coerce a woman to undergo an abortion;

253 (f) state that any physician who performs an abortion without obtaining the woman's

254 informed consent or without providing her a private medical consultation in accordance with

255 the requirements of this section, may be liable to her for damages in a civil action at law;

256 (g) provide information on resources and public and private services available to assist

257 a pregnant woman, financially or otherwise, during pregnancy, at childbirth, and while the

258 child is dependent, including:

259 (i) medical assistance benefits for prenatal care, childbirth, and neonatal care;

260 (ii) services and supports available under Section 35A-3-308;

261 (iii) other financial aid that may be available during an adoption; and

262 (iv) services available from public adoption agencies, private adoption agencies, and

263 private attorneys whose practice includes adoption;

264 (h) describe the adoption-related expenses that may be paid under Section 76-7-203;

265 (i) describe the persons who may pay the adoption related expenses described in

266 Subsection (2)(h);

267 (j) describe the legal responsibility of the father of a child to assist in child support,

268 even if the father has agreed to pay for an abortion;

269 (k) describe the services available through the Office of Recovery Services, within the

270 Department of Human Services, to establish and collect the support described in Subsection

271 (2)(j);

272 (l) state that private adoption is legal;

273 (m) in accordance with Subsection (3), describe the probable anatomical and

274 physiological characteristics of an unborn child at two-week gestational increments from

275 fertilization to full term, including:

276 (i) brain and heart function; and
277 (ii) the presence and development of external members and internal organs;
278 (n) describe abortion procedures used in current medical practice at the various stages
279 of growth of the unborn child, including:
280 (i) the medical risks associated with each procedure;
281 (ii) the risk related to subsequent childbearing that are associated with each procedure;
282 and
283 (iii) the consequences of each procedure to the unborn child at various stages of fetal
284 development;
285 (o) describe the possible detrimental psychological effects of abortion;
286 (p) describe the medical risks associated with carrying a child to term; and
287 (q) include relevant information on the possibility of an unborn child's survival at the
288 two-week gestational increments described in Subsection (2)(m).
289 (3) The information described in Subsection (2)(m) shall be accompanied by the
290 following for each gestational increment described in Subsection (2)(m):
291 (a) pictures or video segments that accurately represent the normal development of an
292 unborn child at that stage of development; and
293 (b) the dimensions of the fetus at that stage of development.
294 (4) The printed material and video described in Subsection (1) may include a toll-free
295 24-hour telephone number that may be called in order to obtain, orally, a list and description of
296 services, agencies, and adoption attorneys in the locality of the caller.
297 (5) In addition to the requirements described in Subsection (2), the printed material
298 described in Subsection (1)(a) shall:
299 (a) be printed in a typeface large enough to be clearly legible;
300 (b) in accordance with Subsection (6), include a geographically indexed list of public
301 and private services and agencies available to assist a woman, financially or otherwise, through
302 pregnancy, at childbirth, and while the child is dependent;
303 (c) except as provided in Subsection (7), include a separate brochure that contains
304 truthful, nonmisleading information regarding:
305 (i) the ability of an unborn child to experience pain during an abortion procedure;
306 (ii) the measures that may be taken, including the administration of an anesthetic or

307 analgesic to an unborn child, to alleviate or eliminate pain to an unborn child during an
308 abortion procedure;

309 (iii) the effectiveness and advisability of taking the measures described in Subsection
310 (5)(c)(ii); and

311 (iv) potential medical risks to a pregnant woman that are associated with the
312 administration of an anesthetic or analgesic to an unborn child during an abortion procedure.

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

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

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

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

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

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

323 (i) the abortion is being performed for a reason described in Subsection
324 76-7-302(3)(b)(i); and

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

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

329 (a) make reference to the list described in Subsection (5)(b); and

330 (b) show an ultrasound of the heartbeat of an unborn child at:

331 (i) three weeks gestational age;

332 (ii) six to eight weeks gestational age; and

333 (iii) each month after eight weeks gestational age, up to 14 weeks gestational age.

334 Section 4. Section **76-7-305.6** is enacted to read:

335 **76-7-305.6. Abortion facilities required to provide printed materials and**
336 **informational video -- Department of Health to make printed materials and**
337 **informational video available.**

338 (1) Except as provided in Subsection 76-7-305.5(7), every facility in which abortions
339 are performed shall provide the printed materials and a viewing or a copy of the video
340 described in Section 76-7-305.5 to each patient or potential patient at least 24 hours before the
341 abortion is performed, unless:

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

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

346 (i) the death of the woman on whom the abortion is performed; or

347 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
348 of the woman on whom the abortion is performed;

349 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
350 76-5-402 and 76-5-402.1;

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

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

354 (2) The Department of Health and each local health department shall make the printed
355 materials and the video described in Section 76-7-305.5 available at no cost to any person.

356 (3) The Department of Health shall make the printed materials and the video described
357 in Section 76-7-305.5 available for viewing on the Department of Health's website by clicking
358 on a conspicuous link on the home page of the website.

359 (4) If the printed materials or a viewing of the video are not provided to a pregnant
360 woman under Subsection (1), the physician who performs the abortion on the woman shall,
361 within 10 days after the day on which the abortion is performed, provide to the Department of
362 Health an affidavit that:

363 (a) specifies the information that was not provided to the woman; and

364 (b) states the reason that the information was not provided to the woman.

365 Section 5. Section **76-7-305.7** is enacted to read:

366 **76-7-305.7. Statistical report by the Department of Health.**

367 (1) In accordance with Subsection (2), the Department of Health shall, on an annual
368 basis, after July 1 of each year, compile and report the following information, relating to the

369 preceding fiscal year, to the Health and Human Services Interim Committee:

370 (a) the total amount of informed consent material described in this section that was
371 distributed;

372 (b) the number of women who obtained abortions in this state without receiving the
373 informed consent materials described in this section;

374 (c) the number of statements signed by attending physicians under Subsection
375 76-7-305.6(4); and

376 (d) any other information pertaining to obtaining informed consent from a woman who
377 seeks an abortion.

378 (2) The report described in Subsection (1) shall be prepared and presented in a manner
379 that preserves physician and patient anonymity.

380 Section 6. Section **76-7-313** is amended to read:

381 **76-7-313. Physician's report to Department of Health.**

382 (1) In order for the state Department of Health to maintain necessary statistical
383 information and ensure enforcement of the provisions of this part, any physician performing an
384 abortion must obtain and record in writing:

385 (a) the age [of the pregnant woman; her], marital status, and county of residence of the
386 woman on whom the abortion was performed;

387 (b) the number of previous abortions performed on [her] the woman described in
388 Subsection (1)(a);

389 (c) the hospital or other facility where the abortion was performed;

390 (d) the weight in grams of the unborn child aborted, if it is possible to ascertain;

391 (e) the pathological description of the unborn child;

392 (f) the given menstrual age of the unborn child;

393 (g) the measurements of the unborn child, if possible to ascertain; and

394 (h) the medical procedure used to abort the unborn child. [This information, and]

395 (2) Each physician who performs an abortion shall provide the following to the
396 Department of Health within 10 days after the day on which the abortion is performed:

397 (a) the information described in Subsection (1);

398 (b) a copy of the pathologist's report[, as required] described in Section 76-7-309[;
399 together with];

400 (c) an affidavit;

401 (i) that the required consent was obtained pursuant to ~~[Section]~~ Sections 76-7-305

402 [and], 76-7-305.5, and 76-7-305.6; and

403 (ii) described in Subsection 76-7-305.6(4), if applicable; and

404 (d) a certificate ~~[by the physician that]~~ indicating:

405 (i) whether the unborn child was or was not capable of survival outside of the mother's

406 womb~~[-, must be filed by the physician with the state Department of Health within 10 days~~

407 ~~after]~~ at the time of the abortion[-]; and

408 (ii) if the unborn child was capable of survival outside of the mother's womb at the

409 time of the abortion, the reason for the abortion.

410 (3) All information supplied to the ~~[state]~~ Department of Health shall be confidential

411 and privileged pursuant to Title 26, Chapter 25, Confidential Information Release.

Legislative Review Note
as of 12-4-09 1:36 PM

Office of Legislative Research and General Counsel