

**Senator Lyle W. Hillyard** proposes the following substitute bill:

**DOWN SYNDROME NONDISCRIMINATION ABORTION ACT**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karianne Lisonbee**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill concerns an unborn child with Down syndrome.

**Highlighted Provisions:**

This bill:

- ▶ defines "Down syndrome";
- ▶ requires the Department of Health to create a Down syndrome informational support sheet and publish the same information on the department's website;
- ▶ requires a physician to provide certain information to a pregnant woman when a prenatal screening or diagnostic test indicates that the pregnant woman's unborn child has or may have Down syndrome;
- ▶ after expressly permitted by a court of binding authority, prohibits a person from performing, inducing, or attempting to perform or induce an abortion on a pregnant woman who is seeking the abortion solely because an unborn child has or may have Down syndrome;
- ▶ requires an abortion pathology report to provide information about whether an aborted child had or may have had Down syndrome;
- ▶ requires a physician who performed an abortion to state whether the physician had any knowledge that the pregnant woman sought the abortion solely because the



26 unborn child had or may have had Down syndrome; and

27       ▶ makes technical changes.

28 **Money Appropriated in this Bill:**

29       None

30 **Other Special Clauses:**

31       This bill provides a special effective date.

32 **Utah Code Sections Affected:**

33 AMENDS:

34       **26-10-1**, as last amended by Laws of Utah 2011, Chapters 147, 366 and last amended  
35 by Coordination Clause, Laws of Utah 2011, Chapter 366

36       **63I-2-276**, as renumbered and amended by Laws of Utah 2008, Chapter 382

37       **76-7-301**, as last amended by Laws of Utah 2010, Chapter 13

38       **76-7-305**, as last amended by Laws of Utah 2017, Chapter 399

39       **76-7-309**, as enacted by Laws of Utah 1974, Chapter 33

40       **76-7-313**, as last amended by Laws of Utah 2010, Chapter 314

41       **76-7-317**, as enacted by Laws of Utah 1974, Chapter 33

42 ENACTS:

43       **26-10-14**, Utah Code Annotated 1953

44       **76-7-302.4**, Utah Code Annotated 1953



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

47       Section 1. Section **26-10-1** is amended to read:

48       **26-10-1. Definitions.**

49       As used in this chapter:

50       (1) "Down syndrome" means a genetic condition associated with an extra chromosome  
51 21, in whole or in part, or an effective trisomy for chromosome 21.

52       [(+)] (2) "Maternal and child health services" means:

53       (a) the provision of educational, preventative, diagnostic, and treatment services,  
54 including medical care, hospitalization, and other institutional care and aftercare, appliances,  
55 and facilitating services directed toward reducing infant mortality and improving the health of  
56 mothers and children provided, however, that nothing in this Subsection (1) shall be construed

57 to allow any agency of the state to interfere with the rights of the parent of an unmarried minor  
58 in decisions about the providing of health information or services;

59 (b) the development, strengthening, and improvement of standards and techniques  
60 relating to the services and care;

61 (c) the training of personnel engaged in the provision, development, strengthening, or  
62 improvement of the services and care; and

63 (d) necessary administrative services connected with Subsections (1)(a), (b), and (c).

64 ~~[(2)]~~ (3) "Minor" means ~~[a person]~~ an individual under the age of 18.

65 ~~[(3)]~~ (4) "Services to children with disabilities" means:

66 (a) the early location of children with a disability, provided that any program of  
67 prenatal diagnosis for the purpose of detecting the possible disease or disabilities of an unborn  
68 child will not be used for screening, but rather will be utilized only when there are medical or  
69 genetic indications that warrant diagnosis;

70 (b) the provision for children described in Subsection (3)(a), of preventive, diagnosis,  
71 and treatment services, including medical care, hospitalization, and other institutional care and  
72 aftercare, appliances, and facilitating services directed toward the diagnosis of the condition of  
73 those children or toward the restoration of the children to maximum physical and mental  
74 health;

75 (c) the development, strengthening, and improvement of standards and techniques  
76 relating to services and care described in this Subsection (3);

77 (d) the training of personnel engaged in the provision, development, strengthening, or  
78 improvement of services and care described in this Subsection (3); and

79 (e) necessary administrative services connected with Subsections (3)(a), (b), and (c).

80 Section 2. Section **26-10-14** is enacted to read:

81 **26-10-14. Down syndrome diagnosis -- Information and support.**

82 (1) The department shall provide contact information for state and national Down  
83 syndrome organizations that are nonprofit and that provide information and support services  
84 for parents, including first-call programs and information hotlines specific to Down syndrome,  
85 resource centers or clearinghouses, and other education and support programs for Down  
86 syndrome.

87 (2) The department shall:

88 (a) post the information described in Subsection (1) on the department's website under  
89 a unique, easy-to-recall web address; and

90 (b) create an informational support sheet with the information described in Subsection  
91 (1) and the web address described in Subsection (2)(a).

92 (3) A Down syndrome organization may request that the department include the  
93 organization's informational material and contact information on the website. The department  
94 may add the information to the website, if the information meets the description under  
95 Subsection (1).

96 (4) When the result of any prenatal screening or diagnostic test indicates that an unborn  
97 child has or may have Down syndrome, the physician who ordered the prenatal screening or  
98 diagnostic test shall, at an in-person consultation or a scheduled telemedicine or telephone  
99 conference, provide the pregnant woman with the information on the informational support,  
100 including the address of the website described in Subsection (2)(a).

101 (5) The information described in Subsection (1):

102 (a) may promote parenting or adopting a child with Down syndrome; and

103 (b) may not promote or include information regarding the abortion of a child with  
104 Down syndrome.

105 Section 3. Section **63I-2-276** is amended to read:

106 **63I-2-276. Repeal dates -- Title 76.**

107 If Section [76-7-302.4](#) is not in effect before January 1, 2028, Section [76-7-302.4](#) is  
108 repealed January 1, 2028.

109 Section 4. Section **76-7-301** is amended to read:

110 **76-7-301. Definitions.**

111 As used in this part:

112 (1) (a) "Abortion" means:

113 (i) the intentional termination or attempted termination of human pregnancy after  
114 implantation of a fertilized ovum through a medical procedure carried out by a physician or  
115 through a substance used under the direction of a physician;

116 (ii) the intentional killing or attempted killing of a live unborn child through a medical  
117 procedure carried out by a physician or through a substance used under the direction of a  
118 physician; or

119 (iii) the intentional causing or attempted causing of a miscarriage through a medical  
120 procedure carried out by a physician or through a substance used under the direction of a  
121 physician.

122 (b) "Abortion" does not include:

123 (i) removal of a dead unborn child;

124 (ii) removal of an ectopic pregnancy; or

125 (iii) the killing or attempted killing of an unborn child without the consent of the  
126 pregnant woman, unless:

127 (A) the killing or attempted killing is done through a medical procedure carried out by  
128 a physician or through a substance used under the direction of a physician; and

129 (B) the physician is unable to obtain the consent due to a medical emergency.

130 (2) "Down syndrome" means a genetic condition associated with an extra chromosome  
131 21, in whole or in part, or an effective trisomy for chromosome 21.

132 [~~5~~] (3) "Hospital" means:

133 (a) a general hospital licensed by the Department of Health according to Title 26,  
134 Chapter 21, Health Care Facility Licensing and Inspection Act; and

135 (b) a clinic or other medical facility to the extent that such clinic or other medical  
136 facility is certified by the Department of Health as providing equipment and personnel  
137 sufficient in quantity and quality to provide the same degree of safety to the pregnant woman  
138 and the unborn child as would be provided for the particular medical procedures undertaken by  
139 a general hospital licensed by the Department of Health.

140 [~~2~~] (4) "Medical emergency" means that condition which, on the basis of the  
141 physician's good faith clinical judgment, so threatens the life of a pregnant woman as to  
142 necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay  
143 will create serious risk of substantial and irreversible impairment of major bodily function.

144 [~~3~~] (5) (a) "Partial birth abortion" means an abortion in which the person performing  
145 the abortion:

146 (i) deliberately and intentionally vaginally delivers a living fetus until, in the case of a  
147 head first presentation, the entire fetal head is outside the body of the mother, or, in the case of  
148 breech presentation, any part of the fetal trunk past the navel is outside the body of the mother,  
149 for the purpose of performing an overt act that the person knows will kill the partially delivered

150 living fetus; and

151 (ii) performs the overt act, other than completion of delivery, that kills the partially  
152 living fetus.

153 (b) "Partial birth abortion" does not include the dilation and evacuation procedure  
154 involving dismemberment prior to removal, the suction curettage procedure, or the suction  
155 aspiration procedure for abortion.

156 [~~(4)~~] (6) "Physician" means:

157 (a) a medical doctor licensed to practice medicine and surgery under Title 58, Chapter  
158 67, Utah Medical Practice Act;

159 (b) an osteopathic physician licensed to practice osteopathic medicine under Title 58,  
160 Chapter 68, Utah Osteopathic Medical Practice Act; or

161 (c) a physician employed by the federal government who has qualifications similar to a  
162 person described in Subsection [~~(4)~~] (6)(a) or (b).

163 Section 5. Section **76-7-302.4** is enacted to read:

164 **76-7-302.4. Abortion restriction of an unborn child with Down syndrome.**

165 Notwithstanding Subsection [76-7-302\(3\)\(a\)](#), an abortion may not be performed if the  
166 pregnant mother's sole reason for the abortion is that the unborn child has or may have Down  
167 syndrome, unless the abortion is permissible for a reason described in Subsection  
168 [76-7-302\(3\)\(b\)](#).

169 Section 6. Section **76-7-305** is amended to read:

170 **76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory**  
171 **-- Exceptions.**

172 (1) A person may not perform an abortion, unless, before performing the abortion, the  
173 physician who will perform the abortion obtains a voluntary and informed written consent from  
174 the woman on whom the abortion is performed, that is consistent with:

175 (a) Section 8.08 of the American Medical Association's Code of Medical Ethics,  
176 Current Opinions; and

177 (b) the provisions of this section.

178 (2) Except as provided in Subsection (9), consent to an abortion is voluntary and  
179 informed only if:

180 (a) at least 72 hours before the abortion, the physician who is to perform the abortion,

181 the referring physician, a physician, a registered nurse, nurse practitioner, advanced practice  
182 registered nurse, certified nurse midwife, genetic counselor, or physician's assistant, in a  
183 face-to-face consultation in any location in the state, orally informs the woman:

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

185 (A) the nature of the proposed abortion procedure;

186 (B) specifically how the procedure described in Subsection (2)(a)(i)(A) will affect the  
187 fetus;

188 (C) the risks and alternatives to an abortion procedure or treatment; and

189 (D) the options and consequences of aborting a medication-induced abortion;

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

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

193 (iv) if the abortion is to be performed on an unborn child who is at least 20 weeks  
194 gestational age:

195 (A) that substantial medical evidence from studies concludes that an unborn child who  
196 is at least 20 weeks gestational age may be capable of experiencing pain during an abortion  
197 procedure; and

198 (B) the measures that shall be taken in accordance with Section [76-7-308.5](#);

199 (b) at least 72 hours prior to the abortion the physician who is to perform the abortion,  
200 the referring physician, or, as specifically delegated by either of those physicians, a physician, a  
201 registered nurse, licensed practical nurse, certified nurse-midwife, advanced practice registered  
202 nurse, clinical laboratory technologist, psychologist, marriage and family therapist, clinical  
203 social worker, genetic counselor, or certified social worker orally, in a face-to-face consultation  
204 in any location in the state, informs the pregnant woman that:

205 (i) the Department of Health, in accordance with Section [76-7-305.5](#), publishes printed  
206 material and an informational video that:

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

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

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

212 private and agency adoption alternatives;

213 (ii) the printed material and a viewing of or a copy of the informational video shall be  
214 made available to her, free of charge, on the Department of Health's website;

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

219 (iv) except as provided in Subsection (3)(b):

220 (A) the father of the unborn child is legally required to assist in the support of her  
221 child, even if he has offered to pay for the abortion; and

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

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

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

230 (d) the information required to be provided under Subsection [26-10-14\(4\)](#) is provided:

231 (i) when a result of a prenatal screening or diagnostic test indicates that the unborn  
232 child has or may have Down syndrome; and

233 (ii) (A) in a manner permissible under Subsection [26-10-14\(4\)](#); or

234 (B) by an individual and in the manner described in Subsection (2)(a);

235 [~~(d)~~] (e) a copy of the printed materials published by the Department of Health has  
236 been provided to the pregnant woman;

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

239 [~~(f)~~] (g) the pregnant woman has certified in writing, prior to the abortion, that the  
240 information required to be provided under Subsections (2)(a) through (e) was provided, in  
241 accordance with the requirements of those subsections.

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



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

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

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

250 (c) Nothing in this section shall be construed to prohibit a person described in  
251 Subsection (2)(a) from, when providing the information described in Subsection (2)(a)(iv),  
252 informing a woman of the person's own opinion regarding the capacity of an unborn child to  
253 experience pain.

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

256 (a) request that the woman view the video at that time or at another specifically  
257 designated time and location; or

258 (b) if the woman chooses not to view the video at a time described in Subsection (4)(a),  
259 inform the woman that she can access the video on the Department of Health's website.

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

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

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

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

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

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

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

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

272 (c) inform the woman that, if she desires, the person performing the ultrasound, or  
273 another qualified person shall provide a detailed description of the ultrasound images,

274 including:

- 275 (i) the dimensions of the unborn child;
- 276 (ii) the presence of cardiac activity in the unborn child, if present and viewable; and
- 277 (iii) the presence of external body parts or internal organs, if present and viewable; and
- 278 (d) provide the detailed description described in Subsection (6)(c), if the woman
- 279 requests it.

280 (7) The information described in Subsections (2), (3), (4), and (6) is not required to be  
281 provided to a pregnant woman under this section if the abortion is performed for a reason  
282 described in:

283 (a) Subsection 76-7-302(3)(b)(i), if the treating physician and one other physician  
284 concur, in writing, that the abortion is necessary to avert:

- 285 (i) the death of the woman on whom the abortion is performed; or
- 286 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
- 287 of the woman on whom the abortion is performed; or

288 (b) Subsection 76-7-302(3)(b)(ii).

289 (8) In addition to the criminal penalties described in this part, a physician who violates  
290 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

293 (b) shall be subject to:

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

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

297 (9) A physician is not guilty of violating this section for failure to furnish any of the  
298 information described in Subsection (2), or for failing to comply with Subsection (6), if:

299 (a) the physician can demonstrate by a preponderance of the evidence that 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 the physician's professional judgment, the abortion was necessary to avert:

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

304 (ii) a serious risk of substantial and irreversible impairment of a major bodily function

305 of the woman on whom the abortion is performed;

306 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections  
307 76-5-402 and 76-5-402.1;

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

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

311 (10) A physician who complies with the provisions of this section and Section  
312 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain  
313 informed consent under Section 78B-3-406.

314 (11) (a) The Department of Health shall provide an ultrasound, in accordance with the  
315 provisions of Subsection (2)(b), at no expense to the pregnant woman.

316 (b) A local health department shall refer a person who requests an ultrasound described  
317 in Subsection (11)(a) to the Department of Health.

318 (12) A physician is not guilty of violating this section if:

319 (a) the physician provides the information described in Subsection (2) less than 72  
320 hours before performing the abortion; and

321 (b) in the physician's professional judgment, the abortion was necessary in a case  
322 where:

323 (i) a ruptured membrane, documented by the attending or referring physician, will  
324 cause a serious infection; or

325 (ii) a serious infection, documented by the attending or referring physician, will cause a  
326 ruptured membrane.

327 Section 7. Section 76-7-309 is amended to read:

328 **76-7-309. Pathologist's report.**

329 Any human tissue removed during an abortion shall be submitted to a pathologist who  
330 shall make a report, including~~[-, but not limited to whether there was a pregnancy, and if~~  
331 ~~possible,]~~ whether:

332 (1) the pregnancy was aborted by evacuating the uterus~~[-];~~ and

333 (2) a medical record indicates that, through a prenatal screening or other diagnostic  
334 test, the aborted fetus had or may have had Down syndrome.

335 Section 8. Section 76-7-313 is amended to read:

336 **76-7-313. Physician's report to Department of Health.**

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

340 (a) the age, marital status, and county of residence of the woman on whom the abortion  
341 was performed;

342 (b) the number of previous abortions performed on the woman described in Subsection  
343 (1)(a);

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

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

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

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

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

349 (h) the medical procedure used to abort the unborn child.

350 (2) Each physician who performs an abortion shall provide the following to the  
351 Department of Health within 30 days after the day on which the abortion is performed:

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

353 (b) a copy of the pathologist's report described in Section [76-7-309](#);

354 (c) an affidavit indicating whether:

355 (i) ~~[that]~~ the required consent was obtained pursuant to Sections [76-7-305](#), [76-7-305.5](#),  
356 and [76-7-305.6](#); and

357 ~~[(ii) described in Subsection [76-7-305.6\(4\)](#), if applicable, and]~~

358 (ii) at the time the physician performed the abortion, the physician had any knowledge  
359 that the pregnant woman sought the abortion solely because the unborn child had or may have  
360 had Down syndrome;

361 (d) a certificate indicating:

362 (i) whether the unborn child was or was not viable, as defined in Subsection  
363 [76-7-302\(1\)](#), at the time of the abortion; and

364 (ii) if the unborn child was viable, as defined in Subsection [76-7-302\(1\)](#), at the time of  
365 the abortion, the reason for the abortion[-]; and

366 (e) the affidavit described in Subsection [76-7-305.6\(4\)](#), if applicable.

367 (3) All information supplied to the Department of Health shall be confidential and  
368 privileged pursuant to Title 26, Chapter 25, Confidential Information Release.

369 Section 9. Section ~~76-7-317~~ is amended to read:

370 **76-7-317. Severability clause.**

371 If any [~~one or more~~] provision, section, subsection, sentence, clause, phrase, or word of  
372 this part or the application thereof to any person or circumstance is found to be  
373 unconstitutional, the same is [~~hereby declared to be~~] severable and the balance of this part shall  
374 remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that  
375 it would have passed this part, and each provision, section, subsection, sentence, clause, phrase  
376 or word thereof, irrespective of the fact that any one or more provision, section, subsection,  
377 sentence, clause, phrase, or word be declared unconstitutional.

378 Section 10. **Contingent effective date.**

379 (1) As used in this section, "a court of binding authority" means:

380 (a) the United States Supreme Court; or

381 (b) after the right to appeal has been exhausted:

382 (i) the United States Court of Appeals for the Tenth Circuit;

383 (ii) the Utah Supreme Court; or

384 (iii) the Utah Court of Appeals.

385 (2) Except as provided in Subsection (3), this bill takes effect on May 8, 2018.

386 (3) Section ~~76-7-302.4~~ takes effect on the date that the legislative general counsel

387 certifies to the Legislative Management Committee that a court of binding authority holds that  
388 a state may prohibit the abortion of an unborn child before the unborn child is viable outside of  
389 the mother if the sole reason for the abortion is that the unborn child has or may have Down  
390 syndrome.