

DOWN SYNDROME NONDISCRIMINATION ABORTION ACT

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: Curtis S. Bramble

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 that a pregnant woman be provided certain information before receiving an abortion 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 unborn child had or may have had Down syndrome; and
- ▶ 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 last amended by Laws of Utah 2018, Chapter 38

37 **76-7-301**, as last amended by Laws of Utah 2018, Chapter 282

38 **76-7-305**, as last amended by Laws of Utah 2018, Chapter 282

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

40 **76-7-313**, as last amended by Laws of Utah 2018, Chapter 282

41 ENACTS:

42 **26-10-14**, Utah Code Annotated 1953

43 **76-7-302.4**, Utah Code Annotated 1953



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

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

47 **26-10-1. Definitions.**

48 As used in this chapter:

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

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

52 (a) the provision of educational, preventative, diagnostic, and treatment services,
53 including medical care, hospitalization, and other institutional care and aftercare, appliances,
54 and facilitating services directed toward reducing infant mortality and improving the health of
55 mothers and children provided, however, that nothing in this Subsection ~~[(+)]~~ (2) shall be
56 construed to allow any agency of the state to interfere with the rights of the parent of an
57 unmarried minor in decisions about the providing of health information or services;

58 (b) the development, strengthening, and improvement of standards and techniques

59 relating to the services and care;

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

62 (d) necessary administrative services connected with Subsections [~~(1)~~] (2)(a), (b), and
63 (c).

64 [~~(2)~~] (3) "Minor" means a person 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)~~] (4)(a), of preventive,
71 diagnosis, and treatment services, including medical care, hospitalization, and other
72 institutional care and aftercare, appliances, and facilitating services directed toward the
73 diagnosis of the condition of those children or toward the restoration of the children to
74 maximum physical and mental health;

75 (c) the development, strengthening, and improvement of standards and techniques
76 relating to services and care described in this Subsection [~~(3)~~] (4);

77 (d) the training of personnel engaged in the provision, development, strengthening, or
78 improvement of services and care described in this Subsection [~~(3)~~] (4); and

79 (e) necessary administrative services connected with Subsections [~~(3)~~] (4)(a), (b), and
80 (c).

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

82 **26-10-14. Down syndrome diagnosis -- Information and support.**

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

88 (2) The department shall:

89 (a) post the information described in Subsection (1) on the department's website; 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).

95a **Ĥ→ (4) Upon request, the department shall provide a health care facility or health care**
 95b **provider a copy of the informational support sheet described in Subsection (2)(b) to give to a**
 95c **pregnant woman after the result of a prenatal screening or diagnostic test indicates the unborn**
 95d **child has or may have Down syndrome. ←Ĥ**

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

97 **63I-2-276. Repeal dates -- Title 76.**

98 (1) If Section 76-7-302.4 is not in effect before January 1, 2029, Section 76-7-302.4 is
 99 repealed January 1, 2029.

100 (2) Section 76-7-305.7 is repealed January 1, 2023.

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

102 **76-7-301. Definitions.**

103 As used in this part:

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

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

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

111 (iii) the intentional causing or attempted causing of a miscarriage through a medical
 112 procedure carried out by a physician or through a substance used under the direction of a
 113 physician.

114 (b) "Abortion" does not include:

115 (i) removal of a dead unborn child;

116 (ii) removal of an ectopic pregnancy; or

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

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

- 121 (B) the physician is unable to obtain the consent due to a medical emergency.
122 (2) "Abortion clinic" means the same as that term is defined in Section 26-21-2.
123 (3) "Abuse" means the same as that term is defined in Section 78A-6-105.
124 (4) "Department" means the Department of Health.
125 (5) "Down syndrome" means a genetic condition associated with an extra chromosome
126 21, in whole or in part, or an effective trisomy for chromosome 21.

127 [~~5~~] (6) "Hospital" means:

- 128 (a) a general hospital licensed by the department according to Title 26, Chapter 21,
129 Health Care Facility Licensing and Inspection Act; and
130 (b) a clinic or other medical facility to the extent that such clinic or other medical
131 facility is certified by the department as providing equipment and personnel sufficient in
132 quantity and quality to provide the same degree of safety to the pregnant woman and the
133 unborn child as would be provided for the particular medical procedures undertaken by a
134 general hospital licensed by the department.

135 [~~6~~] (7) "Information module" means the pregnancy termination information module
136 prepared by the department.

137 [~~7~~] (8) "Medical emergency" means that condition which, on the basis of the
138 physician's good faith clinical judgment, so threatens the life of a pregnant woman as to
139 necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay
140 will create serious risk of substantial and irreversible impairment of major bodily function.

141 [~~8~~] (9) "Minor" means an individual who is:

- 142 (a) under 18 years of age;
143 (b) unmarried; and
144 (c) not emancipated.

145 [~~9~~] (10) (a) "Partial birth abortion" means an abortion in which the person performing
146 the abortion:

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

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

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

157 [(10)] (11) "Physician" means:

158 (a) a medical doctor licensed to practice medicine and surgery under Title 58, Chapter
159 67, Utah Medical Practice Act;

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

162 (c) a physician employed by the federal government who has qualifications similar to a
163 person described in Subsection [(10)] (11)(a) or (b).

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

165 **76-7-302.4. Abortion restriction of an unborn child with Down syndrome.**

166 Notwithstanding any other provision of this part, an abortion may not be performed if
167 the pregnant mother's sole reason for the abortion is that the unborn child has or may have
168 Down syndrome, unless the abortion is permissible for a reason described in Subsection
169 76-7-302(3)(b).

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

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

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

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

179 (b) the provisions of this section.

180 (2) Except as provided in Subsection (8), consent to an abortion is voluntary and
181 informed only if, at least 72 hours before the abortion:

182 (a) a staff member of an abortion clinic or hospital, physician, registered nurse, nurse

183 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
 184 physician's assistant presents the information module to the pregnant woman;

185 (b) the pregnant woman views the entire information module and presents evidence to
 186 the individual described in Subsection (2)(a) that the pregnant woman viewed the entire
 187 information module;

188 (c) after receiving the evidence described in Subsection (2)(b), the individual described
 189 in Subsection (2)(a):

190 (i) documents that the pregnant woman viewed the entire information module;

191 (ii) gives the pregnant woman, upon her request, a copy of the documentation
 192 described in Subsection (2)(c)(i); and

193 (iii) provides a copy of the statement described in Subsection (2)(c)(i) to the physician
 194 who is to perform the abortion, upon request of that physician or the pregnant woman;

195 (d) after the pregnant woman views the entire information module, the physician who
 196 is to perform the abortion, the referring physician, a physician, a registered nurse, nurse
 197 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
 198 physician's assistant, in a face-to-face consultation in any location in the state, orally informs
 199 the woman of:

200 (i) the nature of the proposed abortion procedure;

201 (ii) specifically how the procedure described in Subsection (2)(d)(i) will affect the
 202 fetus;

203 (iii) the risks and alternatives to the abortion procedure or treatment;

204 (iv) the options and consequences of aborting a medication-induced abortion, if the
 205 proposed abortion procedure is a medication-induced abortion;

206 (v) the probable gestational age and a description of the development of the unborn
 207 child at the time the abortion would be performed;

208 (vi) the medical risks associated with carrying her child to term; ~~and~~

209 (vii) the right to view an ultrasound of the unborn child, at no expense to the pregnant
 210 woman, upon her request; and

211 (viii) when the result of a prenatal screening or diagnostic test indicates that the unborn
 212 child has or may have Down syndrome, the ~~H~~→ **Department of Health website containing**

212a the ~~H~~←~~H~~ information described in Section [26-10-14](#),

213 including the information on the informational support sheet ~~H~~→ **[and the address to the**

213a **website]** ~~H~~←~~H~~ ;

214 and

215 (e) after the pregnant woman views the entire information module, a staff member of
216 the abortion clinic or hospital provides to the pregnant woman:

217 (i) on a document that the pregnant woman may take home:

218 (A) the address for the department's website described in Section 76-7-305.5; and

219 (B) a statement that the woman may request, from a staff member of the abortion clinic
220 or hospital where the woman viewed the information module, a printed copy of the material on
221 the department's website; and

222 (ii) a printed copy of the material on the department's website described in Section
223 76-7-305.5, if requested by the pregnant woman.

224 (3) Before performing an abortion, the physician who is to perform the abortion shall:

225 (a) in a face-to-face consultation, provide the information described in Subsection
226 (2)(d), unless the attending physician or referring physician is the individual who provided the
227 information required under Subsection (2)(d); and

228 (b) (i) obtain from the pregnant woman a written certification that the information
229 required to be provided under Subsection (2) and this Subsection (3) was provided in
230 accordance with the requirements of Subsection (2) and this Subsection (3); and

231 (ii) obtain a copy of the statement described in Subsection (2)(c)(i).

232 (4) When a serious medical emergency compels the performance of an abortion, the
233 physician shall inform the woman prior to the abortion, if possible, of the medical indications
234 supporting the physician's judgment that an abortion is necessary.

235 (5) If an ultrasound is performed on a woman before an abortion is performed, the
236 individual who performs the ultrasound, or another qualified individual, shall:

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

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

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

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

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

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

244 (c) inform the woman that, if she desires, the person performing the ultrasound, or

245 another qualified person shall provide a detailed description of the ultrasound images,
246 including:

- 247 (i) the dimensions of the unborn child;
- 248 (ii) the presence of cardiac activity in the unborn child, if present and viewable; and
- 249 (iii) the presence of external body parts or internal organs, if present and viewable; and
- 250 (d) provide the detailed description described in Subsection [~~(6)~~] (5)(c), if the woman
251 requests it.

252 (6) The information described in Subsections (2), (3), and (5) is not required to be
253 provided to a pregnant woman under this section if the abortion is performed for a reason
254 described in:

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

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

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

261 (7) In addition to the criminal penalties described in this part, a physician who violates
262 the provisions of this section:

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

265 (b) shall be subject to:

- 266 (i) suspension or revocation of the physician's license for the practice of medicine and
267 surgery in accordance with Section 58-67-401 or 58-68-401; and
- 268 (ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.

269 (8) A physician is not guilty of violating this section for failure to furnish any of the
270 information described in Subsection (2) or (3), or for failing to comply with Subsection (5), if:

- 271 (a) the physician can demonstrate by a preponderance of the evidence that the
272 physician reasonably believed that furnishing the information would have resulted in a severely
273 adverse effect on the physical or mental health of the pregnant woman;
- 274 (b) in the physician's professional judgment, the abortion was necessary to avert:
275 (i) the death of the woman on whom the abortion is performed; or

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

278 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
279 76-5-402 and 76-5-402.1;

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

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

283 (9) A physician who complies with the provisions of this section and Section
284 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain
285 informed consent under Section 78B-3-406.

286 (10) (a) The department shall provide an ultrasound, in accordance with the provisions
287 of Subsection (5)(b), at no expense to the pregnant woman.

288 (b) A local health department shall refer a pregnant woman who requests an ultrasound
289 described in Subsection (10)(a) to the department.

290 (11) A physician is not guilty of violating this section if:

291 (a) the information described in Subsection (2) is provided less than 72 hours before
292 the physician performs the abortion; and

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

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

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

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

300 **76-7-309. Pathologist's report.**

301 Any human tissue removed during an abortion shall be submitted to a pathologist who
302 shall make a report, including[, but not limited to whether there was a pregnancy, and if
303 possible,] whether:

304 (1) the pregnancy was aborted by evacuating the uterus[:]; and

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

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

308 **76-7-313. Department's enforcement responsibility -- Physician's report to**
309 **department.**

310 (1) In order for the department to maintain necessary statistical information and ensure
311 enforcement of the provisions of this part:

312 (a) any physician performing an abortion must obtain and record in writing:

313 (i) the age, marital status, and county of residence of the woman on whom the abortion
314 was performed;

315 (ii) the number of previous abortions performed on the woman described in Subsection
316 (1)(a);

317 (iii) the hospital or other facility where the abortion was performed;

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

319 (v) the pathological description of the unborn child;

320 (vi) the given menstrual age of the unborn child;

321 (vii) the measurements of the unborn child, if possible to ascertain; and

322 (viii) the medical procedure used to abort the unborn child; and

323 (b) the department shall make rules in accordance with Title 63G, Chapter 3, Utah
324 Administrative Rulemaking Act.

325 (2) Each physician who performs an abortion shall provide the following to the
326 department within 30 days after the day on which the abortion is performed:

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

328 (b) a copy of the pathologist's report described in Section 76-7-309;

329 (c) an affidavit:

330 (i) [that] indicating whether the required consent was obtained pursuant to Sections
331 76-7-305 and 76-7-305.5; ~~[and]~~

332 (ii) described in Subsection (3), if applicable; and

333 (iii) indicating whether at the time the physician performed the abortion, the physician
334 had any knowledge that the pregnant woman sought the abortion solely because the unborn
335 child had or may have had Down syndrome; and

336 (d) a certificate indicating:

337 (i) whether the unborn child was or was not viable, as defined in Subsection

338 76-7-302(1), at the time of the abortion; and

339 (ii) if the unborn child was viable, as defined in Subsection 76-7-302(1), at the time of
340 the abortion, the reason for the abortion.

341 (3) If the information module or the address to the website is not provided to a
342 pregnant woman, the physician who performs the abortion on the woman shall, within 10 days
343 after the day on which the abortion is performed, provide to the department an affidavit that:

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

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

346 (4) All information supplied to the department shall be confidential and privileged
347 pursuant to Title 26, Chapter 25, Confidential Information Release.

348 (5) The department shall pursue all administrative and legal remedies when the
349 department determines that a physician or a facility has not complied with the provisions of this
350 part.

351 **Section 9. Contingent effective date.**

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

353 (a) the United States Supreme Court; or

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

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

356 (ii) the Utah Supreme Court; or

357 (iii) the Utah Court of Appeals.

358 (2) Except as provided in Subsection (3), this bill takes effect on May 14, 2019.

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

360 certifies to the Legislative Management Committee that a court of binding authority holds that

361 a state may prohibit the abortion of an unborn child before the unborn child is viable outside of

362 the mother if the sole reason for the abortion is that the unborn child has or may have Down

363 syndrome.