

ABORTION REQUIREMENTS AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Raymond P. Ward

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to information that is provided to a woman before an abortion.

Highlighted Provisions:

This bill:

- ▶ requires the Department of Health to include the department's abortion information module on the department's website;
- ▶ allows a pregnant woman to view the abortion information module on the department's website before an abortion;
- ▶ deletes provisions requiring an abortion clinic or hospital to provide instructions to a pregnant woman about how to request a printed copy of the information on the department's website before an abortion; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-7-305, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 4



28 [76-7-305.5](#), as last amended by Laws of Utah 2020, Chapter 251



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

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

32 **76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory**
33 **-- Exceptions.**

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

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

39 (b) the provisions of this section.

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

42 (a) a staff member of an abortion clinic or hospital, physician, registered nurse, nurse
43 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
44 physician's assistant;

45 (i) presents the information module to the pregnant woman; or

46 (ii) provides the address of the department's website described in Section [76-7-305.5](#) to
47 the pregnant woman and directs the pregnant woman to view the information module on the
48 website;

49 (b) the pregnant woman views the entire information module and presents evidence to
50 the individual described in Subsection (2)(a) that the pregnant woman viewed the entire
51 information module;

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

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

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

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

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

- 64 (i) the nature of the proposed abortion procedure;
- 65 (ii) specifically how the procedure described in Subsection (2)(d)(i) will affect the
66 fetus;
- 67 (iii) the risks and alternatives to the abortion procedure or treatment;
- 68 (iv) the options and consequences of aborting a medication-induced abortion, if the
69 proposed abortion procedure is a medication-induced abortion;
- 70 (v) the probable gestational age and a description of the development of the unborn
71 child at the time the abortion would be performed;
- 72 (vi) the medical risks associated with carrying her child to term;
- 73 (vii) the right to view an ultrasound of the unborn child, at no expense to the pregnant
74 woman, upon her request; and
- 75 (viii) when the result of a prenatal screening or diagnostic test indicates that the unborn
76 child has or may have Down syndrome, the Department of Health website containing the
77 information described in Section 26-10-14, including the information on the informational
78 support sheet; and

79 (e) after the pregnant woman views the entire information module, a staff member of
80 the abortion clinic or hospital [~~provides to the pregnant woman:~~];

81 [~~(i) on a document that the pregnant woman may take home;~~]

82 [~~(A) the address for the department's website described in Section 76-7-305.5; and]~~

83 [~~(B) a statement that the woman may request, from a staff member of the abortion
84 clinic or hospital where the woman viewed the information module;]~~

85 (i) informs the pregnant woman that the pregnant woman may request from a staff
86 member of the abortion clinic or hospital a printed copy of the material on the department's
87 website; and

88 [~~(ii) a printed copy of the material on the department's website described in Section
89 76-7-305.5, if requested by the pregnant woman; and]~~

90 [(iii)] (ii) provides a copy of the form described in Subsection 26-21-33(3)(a)(i)
91 regarding the disposition of the aborted fetus.

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

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

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

99 (ii) obtain a copy of the statement described in Subsection (2)(c)(i); and

100 (iii) ensure that:

101 (A) the woman has received the information described in Subsections 26-21-33(3) and
102 (4); and

103 (B) if the woman has a preference for the disposition of the aborted fetus, the woman
104 has informed the health care facility of the woman's decision regarding the disposition of the
105 aborted fetus.

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

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

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

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

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

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

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

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

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

121 (i) the dimensions of the unborn child;
122 (ii) the presence of cardiac activity in the unborn child, if present and viewable; and
123 (iii) the presence of external body parts or internal organs, if present and viewable; and
124 (d) provide the detailed description described in Subsection (5)(c), if the woman
125 requests ~~it~~ the detailed description.

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

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

131 (i) the death of the woman on whom the abortion is performed; or
132 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
133 of the woman on whom the abortion is performed; or

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

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

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

139 (b) shall be subject to:

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

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

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

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

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

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

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

152 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
153 76-5-402 and 76-5-402.1;

154 (d) the pregnancy was the result of incest, as [~~defined~~] described in Subsection
155 76-5-406(2)(j) and Section 76-7-102; or

156 (e) at the time of the abortion, the pregnant woman was 14 years [~~of age~~] old or
157 younger.

158 (9) A physician who complies with the provisions of this section and Section
159 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain
160 informed consent under Section 78B-3-406.

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

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

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

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

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

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

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

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

175 **76-7-305.5. Requirements for information module and website.**

176 (1) In order to ensure that a woman's consent to an abortion is truly an informed
177 consent, the department shall, in accordance with the requirements of this section, develop an
178 information module and maintain a public website.

179 (2) The information module and public website described in Subsection (1) shall:

180 (a) be scientifically accurate, comprehensible, and presented in a truthful,
181 nonmisleading manner;

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

- 183 (c) be produced in a manner that conveys the state's preference for childbirth over
184 abortion;
- 185 (d) state that the state prefers childbirth over abortion;
- 186 (e) state that it is unlawful for any person to coerce a woman to undergo an abortion;
- 187 (f) state that any physician who performs an abortion without obtaining the woman's
188 informed consent or without providing her a private medical consultation in accordance with
189 the requirements of this section, may be liable to her for damages in a civil action at law;
- 190 (g) provide a geographically indexed list of resources and public and private services
191 available to assist, financially or otherwise, a pregnant woman during pregnancy, at childbirth,
192 and while the child is dependent, including:
- 193 (i) medical assistance benefits for prenatal care, childbirth, and neonatal care;
- 194 (ii) services and supports available under Section [35A-3-308](#);
- 195 (iii) other financial aid that may be available during an adoption;
- 196 (iv) services available from public adoption agencies, private adoption agencies, and
197 private attorneys whose practice includes adoption; and
- 198 (v) the names, addresses, and telephone numbers of each person listed under this
199 Subsection (2)(g);
- 200 (h) describe the adoption-related expenses that may be paid under Section [76-7-203](#);
- 201 (i) describe the persons who may pay the adoption related expenses described in
202 Subsection (2)(h);
- 203 (j) except as provided in Subsection (4), describe the legal responsibility of the father
204 of a child to assist in child support, even if the father has agreed to pay for an abortion;
- 205 (k) except as provided in Subsection (4), describe the services available through the
206 Office of Recovery Services, within the Department of Human Services, to establish and
207 collect the support described in Subsection (2)(j);
- 208 (l) state that private adoption is legal;
- 209 (m) describe and depict, with pictures or video segments, the probable anatomical and
210 physiological characteristics of an unborn child at two-week gestational increments from
211 fertilization to full term, including:
- 212 (i) brain and heart function;
- 213 (ii) the presence and development of external members and internal organs; and

- 214 (iii) the dimensions of the fetus;
- 215 (n) show an ultrasound of the heartbeat of an unborn child at:
- 216 (i) four weeks from conception;
- 217 (ii) six to eight weeks from conception; and
- 218 (iii) each month after 10 weeks gestational age, up to 14 weeks gestational age;
- 219 (o) describe abortion procedures used in current medical practice at the various stages
- 220 of growth of the unborn child, including:
- 221 (i) the medical risks associated with each procedure;
- 222 (ii) the risk related to subsequent childbearing that are associated with each procedure;
- 223 and
- 224 (iii) the consequences of each procedure to the unborn child at various stages of fetal
- 225 development;
- 226 (p) describe the possible detrimental psychological effects of abortion;
- 227 (q) describe the medical risks associated with carrying a child to term;
- 228 (r) include relevant information on the possibility of an unborn child's survival at the
- 229 two-week gestational increments described in Subsection (2)(m);
- 230 (s) except as provided in Subsection (5), include:
- 231 (i) information regarding substantial medical evidence from studies concluding that an
- 232 unborn child who is at least 20 weeks gestational age may be capable of experiencing pain
- 233 during an abortion procedure; and
- 234 (ii) the measures that will be taken in accordance with Section [76-7-308.5](#);
- 235 (t) explain the options and consequences of aborting a medication-induced abortion;
- 236 (u) include the following statement regarding a medication-induced abortion,
- 237 "Research indicates that mifepristone alone is not always effective in ending a pregnancy. You
- 238 may still have a viable pregnancy after taking mifepristone. If you have taken mifepristone but
- 239 have not yet taken the second drug and have questions regarding the health of your fetus or are
- 240 questioning your decision to terminate your pregnancy, you should consult a physician
- 241 immediately.";
- 242 (v) inform a pregnant woman that she has the right to view an ultrasound of the unborn
- 243 child, at no expense to her, upon her request;
- 244 (w) inform a pregnant woman that she has the right to:

- 245 (i) determine the final disposition of the remains of the aborted fetus;
- 246 (ii) unless the woman waives this right in writing, wait up to 72 hours after the
247 abortion procedure is performed to make a determination regarding the disposition of the
248 aborted fetus before the health care facility may dispose of the fetal remains;
- 249 (iii) receive information about options for disposition of the aborted fetus, including
250 the method of disposition that is usual and customary for a health care facility; and
- 251 (iv) for a medication-induced abortion, return the aborted fetus to the health care
252 facility for disposition; ~~and~~
- 253 (x) provide a digital copy of the form described in Subsection 26-21-33(3)(a)(i); and
254 (y) be in a typeface large enough to be clearly legible.
- 255 (3) The information module and website described in Subsection (1) may include a
256 toll-free 24-hour telephone number that may be called in order to obtain, orally, a list and
257 description of services, agencies, and adoption attorneys in the locality of the caller.
- 258 (4) The department may develop a version of the information module and website that
259 omits the information in Subsections (2)(j) and (k) for a viewer who is pregnant as the result of
260 rape.
- 261 (5) The department may develop a version of the information module and website that
262 omits the information described in Subsection (2)(s) for a viewer who will have an abortion
263 performed:
- 264 (a) on an unborn child who is less than 20 weeks gestational age at the time of the
265 abortion; or
- 266 (b) on an unborn child who is at least 20 weeks gestational age at the time of the
267 abortion, if:
- 268 (i) the abortion is being performed for a reason described in Subsection
269 76-7-302(3)(b)(i) or (ii); and
- 270 (ii) due to a serious medical emergency, time does not permit compliance with the
271 requirement to provide the information described in Subsection (2)(s).
- 272 (6) The department and each local health department shall make the information
273 module and the website described in Subsection (1) available at no cost to any person.
- 274 (7) The department shall make the website described in Subsection (1) available for
275 viewing on the department's website by clicking on a conspicuous link on the home page of the

276 website.

277 (8) The department shall ensure that the information module is:

278 (a) available to be viewed on the website and at all facilities where an abortion may be
279 performed;

280 (b) interactive for the individual viewing the module, including the provision of
281 opportunities to answer questions and manually engage with the module before the module
282 transitions from one substantive section to the next;

283 (c) produced in English and may include subtitles in Spanish or another language; and

284 (d) capable of being viewed on a tablet or other portable device.

285 (9) After the department releases the initial version of the information module, for the
286 use described in Section [76-7-305](#), the department shall:

287 (a) update the information module, as required by law; and

288 (b) present an updated version of the information module to the Health and Human
289 Services Interim Committee for the committee's review and recommendation before releasing
290 the updated version for the use described in Section [76-7-305](#).