

ABORTION PENALTY AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Angela Romero

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to abortions and criminal penalties.

Highlighted Provisions:

This bill:

- ▶ makes revisions to the relationship between the issuance of civil penalties and actions that affect professional licensing status;
- ▶ moves provisions referencing criminal status in relation to abortion;
- ▶ removes criminal penalties related to abortion;
- ▶ requires the Department of Health and Human Services to impose civil penalties for violations of abortion-related regulations; and
- ▶ makes technical 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 2022, Chapter 181

76-7-310.5, as last amended by Laws of Utah 2004, Chapter 272

76-7-314, as last amended by Laws of Utah 2019, Chapter 208



28 **76-7-314.5**, as last amended by Laws of Utah 2010, Chapter 13

29 **76-7a-201**, as enacted by Laws of Utah 2020, Chapter 279



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

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

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

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

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

40 (b) the provisions of this section.

41 (2) Except as provided in Subsection [(8)] (7), consent to an abortion is voluntary and
42 informed only if, at least 72 hours before the abortion:

43 (a) a staff member of an abortion clinic or hospital, physician, registered nurse, nurse
44 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
45 physician's assistant presents the information module to the pregnant woman;

46 (b) the pregnant woman views the entire information module and presents evidence to
47 the individual described in Subsection (2)(a) that the pregnant woman viewed the entire
48 information module;

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

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

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

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

56 (d) after the pregnant woman views the entire information module, the physician who
57 is to perform the abortion, the referring physician, a physician, a registered nurse, nurse
58 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or

59 physician's assistant, in a face-to-face consultation in any location in the state, orally informs
60 the woman of:

- 61 (i) the nature of the proposed abortion procedure;
- 62 (ii) specifically how the procedure described in Subsection (2)(d)(i) will affect the
63 fetus;
- 64 (iii) the risks and alternatives to the abortion procedure or treatment;
- 65 (iv) the options and consequences of aborting a medication-induced abortion, if the
66 proposed abortion procedure is a medication-induced abortion;
- 67 (v) the probable gestational age and a description of the development of the unborn
68 child at the time the abortion would be performed;
- 69 (vi) the medical risks associated with carrying her child to term;
- 70 (vii) the right to view an ultrasound of the unborn child, at no expense to the pregnant
71 woman, upon her request; and
- 72 (viii) when the result of a prenatal screening or diagnostic test indicates that the unborn
73 child has or may have Down syndrome, the Department of Health and Human Services website
74 containing the information described in Section 26-10-14, including the information on the
75 informational support sheet; and
- 76 (e) after the pregnant woman views the entire information module, a staff member of
77 the abortion clinic or hospital provides to the pregnant woman:
- 78 (i) on a document that the pregnant woman may take home:
- 79 (A) the address for the department's website described in Section 76-7-305.5; and
- 80 (B) a statement that the woman may request, from a staff member of the abortion clinic
81 or hospital where the woman viewed the information module, a printed copy of the material on
82 the department's website;
- 83 (ii) a printed copy of the material on the department's website described in Section
84 76-7-305.5, if requested by the pregnant woman; and
- 85 (iii) a copy of the form described in Subsection 26-21-33(3)(a)(i) regarding the
86 disposition of the aborted fetus.
- 87 (3) Before performing an abortion, the physician who is to perform the abortion shall:
- 88 (a) in a face-to-face consultation, provide the information described in Subsection
89 (2)(d), unless the attending physician or referring physician is the individual who provided the

90 information required under Subsection (2)(d); and

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

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

95 (iii) ensure that:

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

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

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

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

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

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

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

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

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

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

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

116 (i) the dimensions of the unborn child;

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

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

119 (d) provide the detailed description described in Subsection (5)(c), if the woman
120 requests it.

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

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

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

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

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

132 [~~(a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102;~~
133 ~~and]~~

134 [~~(b) shall be subject to:]~~

135 [~~(i) suspension or revocation of the physician's license for the practice of medicine and~~
136 ~~surgery in accordance with Section 58-67-401 or 58-68-401; and]~~

137 [~~(ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.]~~

138 [~~(8)~~] (7) A physician is not guilty of violating this section for failure to furnish any of
139 the information described in Subsection (2) or (3), or for failing to comply with Subsection (5),
140 if:

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

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

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

148 (c) the pregnancy was the result of rape or rape of a child, as described in Sections
149 76-5-402 and 76-5-402.1;

150 (d) the pregnancy was the result of incest, as defined in Subsection 76-5-406(2)(j) and
151 Section 76-7-102; or

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

153 ~~[(9)]~~ (8) A physician who complies with the provisions of this section and Section
154 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain
155 informed consent under Section 78B-3-406.

156 ~~[(10)]~~ (9) (a) The department shall provide an ultrasound, in accordance with the
157 provisions of Subsection (5)(b), at no expense to the pregnant woman.

158 (b) A local health department shall refer a pregnant woman who requests an ultrasound
159 described in Subsection ~~[(10)(a)]~~ (9)(a) to the department.

160 ~~[(11)]~~ (10) A physician is not guilty of violating this section if:

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

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

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

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

169 Section 2. Section 76-7-310.5 is amended to read:

170 **76-7-310.5. Prohibition of specified abortion procedures -- Viability defined --**
171 **Civil penalty.**

172 (1) As used in this section, "saline abortion procedure" means performance of
173 amniocentesis and injection of saline into the amniotic sac within the uterine cavity.

174 (2) (a) After viability has been determined in accordance with Subsection (2)(b), no
175 person may knowingly perform a saline abortion procedure unless all other available abortion
176 procedures would pose a risk to the life or the health of the pregnant woman.

177 (b) For purposes of this section, determination of viability shall be made by the
178 physician, based upon ~~[his]~~ the physician's own best clinical judgment. The physician shall
179 determine whether, based on the particular facts of a woman's pregnancy that are known to
180 ~~[him]~~ the physician, and in light of medical technology and information reasonably available to
181 ~~[him]~~ the physician, there is a realistic possibility of maintaining and nourishing a life outside
182 of the womb, with or without temporary, artificial life-sustaining support.

183 (3) ~~[Intentional]~~ The department may impose a civil penalty of up to \$750 for an
 184 individual's intentional, knowing, and willful violation of this section [is a third degree felony].

185 Section 3. Section **76-7-314** is amended to read:

186 **76-7-314. Civil penalties -- Licensing implications.**

187 (1) [A] The department may impose a civil penalty of up to \$750 for an individual's
 188 willful violation of Section 76-7-307, 76-7-308, 76-7-310, 76-7-310.5, 76-7-311, or 76-7-312
 189 [is a felony of the third degree].

190 (2) [A] The department may impose a civil penalty of up to \$750 for an individual's
 191 violation of Section 76-7-326 [is a felony of the third degree].

192 (3) [A] The department may impose a civil penalty of up to \$1,000 for an individual's
 193 violation of Section 76-7-302.5 or 76-7-314.5 [is a felony of the second degree].

194 (4) [A] The department may impose a civil penalty of up to \$500 for an individual's
 195 violation of any other provision of this part, including Subsections 76-7-305(2)(a) through (c),
 196 and (e)[, is a class A misdemeanor].

197 ~~[(5) The Department of Health shall report a physician's violation of any provision of~~
 198 ~~this part to the Physicians Licensing Board, described in Section 58-67-201.]~~

199 ~~[(6) Any person with knowledge of a physician's violation of any provision of this part~~
 200 ~~may report the violation to the Physicians Licensing Board, described in Section 58-67-201.]~~

201 ~~[(7) In addition to the penalties described in this section, the department may take any~~
 202 ~~action described in Section 26-21-11 against an abortion clinic if a violation of this chapter~~
 203 ~~occurs at the abortion clinic.]~~

204 (5) (a) The department's imposition of a civil penalty under this section may not, in and
 205 of itself, adversely affect an individual's professional licensing status.

206 (b) Notwithstanding Subsection (5)(a), the department may consider the following
 207 when reviewing an individual's professional licensing status:

208 (i) the individual's failure to timely pay a civil penalty imposed by the department; and

209 (ii) criminal or unprofessional conduct committed by the individual that is in addition
 210 to an action resulting in the imposition of a civil penalty.

211 Section 4. Section **76-7-314.5** is amended to read:

212 **76-7-314.5. Violation of provisions resulting in the death of an unborn child.**

213 (1) ~~[A person is guilty of killing an unborn child if the person]~~ The department may

214 impose a civil penalty as provided in Section 76-7-314, on an individual that causes the death
215 of an unborn child by performing an abortion of the unborn child in violation of the provisions
216 of Subsection 76-7-302(3).

217 (2) A woman is not criminally or civilly liable for:

218 (a) seeking to obtain, or obtaining, an abortion [~~that is permitted by this part~~]; or

219 (b) a physician's failure to comply with Subsection 76-7-302(3)(b)(ii) or Section
220 76-7-305.

221 Section 5. Section 76-7a-201 is amended to read:

222 **76-7a-201. Abortion prohibition -- Exceptions -- Civil penalties.**

223 (1) An abortion may be performed in this state only under the following circumstances:

224 (a) the abortion is necessary to 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 (b) two physicians who practice maternal fetal medicine concur, in writing, in the
229 patient's medical record that the fetus:

230 (i) has a defect that is uniformly diagnosable and uniformly lethal; or

231 (ii) has a severe brain abnormality that is uniformly diagnosable; or

232 (c) (i) the woman is pregnant as a result of:

233 (A) rape;

234 (B) rape of a child; or

235 (C) incest; and

236 (ii) before the abortion is performed, the physician who performs the abortion:

237 (A) verifies that the incident described in Subsection (1)(c)(i) has been reported to law
238 enforcement; and

239 (B) if applicable, complies with requirements related to reporting suspicions of or
240 known child abuse.

241 (2) An abortion may be performed only:

242 (a) by a physician; and

243 (b) in an abortion clinic or a hospital, unless it is necessary to perform the abortion in
244 another location due to a medical emergency.

245 (3) ~~[A person]~~ The department may impose a civil penalty of up to \$1,000 on an
246 individual who performs an abortion in violation of this section ~~[is guilty of a second degree~~
247 ~~felony].~~

248 ~~[(4) In addition to the penalty described in Subsection (3), the department may take~~
249 ~~appropriate corrective action against an abortion clinic, including revoking the abortion clinic's~~
250 ~~license, if a violation of this chapter occurs at the abortion clinic.]~~

251 ~~[(5) The department shall report a physician's violation of any provision of this section~~
252 ~~to the state entity that regulates the licensing of a physician.]~~

253 (4) (a) The department's imposition of a civil penalty under this section may not, in and
254 of itself, adversely affect an individual's professional licensing status.

255 (b) Notwithstanding Subsection (4)(a) the department may consider the following
256 when reviewing an individual's professional licensing status:

257 (i) the individual's failure to timely pay a civil penalty imposed by the department; or

258 (ii) criminal or unprofessional conduct committed by the individual that is in addition
259 to an action resulting in the imposition of a civil penalty.