

UNBORN CHILD PROTECTION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keven J. Stratton

Senate Sponsor: Curtis S. Bramble

Cosponsors:	Michael S. Kennedy	Val L. Peterson
Kay J. Christofferson	Karianne Lisonbee	Tim Quinn
Kim F. Coleman	A. Cory Maloy	Norman K Thurston
Brian M. Greene	Michael E. Noel	Raymond P. Ward
Timothy D. Hawkes	Derrin R. Owens	
Ken Ivory	Lee B. Perry	

LONG TITLE

General Description:

This bill amends the information that is required to be given to ensure that a woman gives informed consent before the performance of an abortion procedure.

Highlighted Provisions:

This bill:

- requires specified medical personnel to inform a woman seeking an abortion of the options and consequences of aborting a medication-induced abortion; and
- requires the Department of Health to include in its published, printed materials an explanation of the options and consequences of aborting a medication-induced abortion.

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 2016, Chapter 362

76-7-305.5, as last amended by Laws of Utah 2016, Chapter 362

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

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

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

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

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

(b) the provisions of this section.

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

(a) at least 72 hours before the abortion, the physician who is to perform the abortion, the referring physician, a physician, a registered nurse, nurse practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or physician's assistant, in a face-to-face consultation in any location in the state, orally informs the woman:

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

(A) the nature of the proposed abortion procedure;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

103 (i) a description of adoption services, including private and agency adoption methods;
104 and

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

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

110 (c) Nothing in this section shall be construed to prohibit a person described in
111 Subsection (2)(a) from, when providing the information described in Subsection (2)(a)(iv),
112 informing a woman of the person's own opinion regarding the capacity of an unborn child to

experience pain.

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

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

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

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

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

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

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

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

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

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

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

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

(i) the dimensions of the unborn child;

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

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

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

(7) The information described in Subsections (2), (3), (4), and (6) is not required to be

provided to a pregnant woman under this section if the abortion is performed for a reason described in:

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

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

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

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

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

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

(b) shall be subject to:

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

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

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

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

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

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

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

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

(d) the pregnancy was the result of incest, as defined in Subsection 76-5-406(10) and

Section 76-7-102; or

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

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

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

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

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

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

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

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

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

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

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

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

(a) publish printed materials; and

(b) produce an informational video.

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

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

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

- 197 (c) be printed and produced in a manner that conveys the state's preference for
198 childbirth over abortion;
- 199 (d) state that the state prefers childbirth over abortion;
- 200 (e) state that it is unlawful for any person to coerce a woman to undergo an abortion;
- 201 (f) state that any physician who performs an abortion without obtaining the woman's
202 informed consent or without providing her a private medical consultation in accordance with
203 the requirements of this section, may be liable to her for damages in a civil action at law;
- 204 (g) provide information on resources and public and private services available to assist
205 a pregnant woman, financially or otherwise, during pregnancy, at childbirth, and while the
206 child is dependent, including:
- 207 (i) medical assistance benefits for prenatal care, childbirth, and neonatal care;
- 208 (ii) services and supports available under Section [35A-3-308](#);
- 209 (iii) other financial aid that may be available during an adoption; and
- 210 (iv) services available from public adoption agencies, private adoption agencies, and
211 private attorneys whose practice includes adoption;
- 212 (h) describe the adoption-related expenses that may be paid under Section [76-7-203](#);
- 213 (i) describe the persons who may pay the adoption related expenses described in
214 Subsection (2)(h);
- 215 (j) describe the legal responsibility of the father of a child to assist in child support,
216 even if the father has agreed to pay for an abortion;
- 217 (k) describe the services available through the Office of Recovery Services, within the
218 Department of Human Services, to establish and collect the support described in Subsection
219 (2)(j);
- 220 (l) state that private adoption is legal;
- 221 (m) in accordance with Subsection (3), describe the probable anatomical and
222 physiological characteristics of an unborn child at two-week gestational increments from
223 fertilization to full term, including:
- 224 (i) brain and heart function; and

- 225 (ii) the presence and development of external members and internal organs;
226 (n) describe abortion procedures used in current medical practice at the various stages
227 of growth of the unborn child, including:
228 (i) the medical risks associated with each procedure;
229 (ii) the risk related to subsequent childbearing that are associated with each procedure;
230 and
231 (iii) the consequences of each procedure to the unborn child at various stages of fetal
232 development;
233 (o) describe the possible detrimental psychological effects of abortion;
234 (p) describe the medical risks associated with carrying a child to term; and
235 (q) include relevant information on the possibility of an unborn child's survival at the
236 two-week gestational increments described in Subsection (2)(m).
237 (3) The information described in Subsection (2)(m) shall be accompanied by the
238 following for each gestational increment described in Subsection (2)(m):
239 (a) pictures or video segments that accurately represent the normal development of an
240 unborn child at that stage of development; and
241 (b) the dimensions of the fetus at that stage of development.
242 (4) The printed material and video described in Subsection (1) may include a toll-free
243 24-hour telephone number that may be called in order to obtain, orally, a list and description of
244 services, agencies, and adoption attorneys in the locality of the caller.
245 (5) In addition to the requirements described in Subsection (2), the printed material
246 described in Subsection (1)(a) shall:
247 (a) be printed in a typeface large enough to be clearly legible;
248 (b) in accordance with Subsection (6), include a geographically indexed list of public
249 and private services and agencies available to assist a woman, financially or otherwise, through
250 pregnancy, at childbirth, and while the child is dependent; ~~and~~
251 (c) except as provided in Subsection (7), include a separate brochure that contains
252 truthful, nonmisleading information regarding:

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

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

(d) explain the options and consequences of aborting a medication-induced abortion;
and

(e) include the following statement, "Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you have taken mifepristone but have not yet taken the second drug and have questions regarding the health of your fetus or are questioning your decision to terminate your pregnancy, you should consult a physician immediately."

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

(a) private attorneys whose practice includes adoption; and

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

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

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

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

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

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

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

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

- 281 (b) show an ultrasound of the heartbeat of an unborn child at:
- 282 (i) four weeks from conception;
- 283 (ii) six to eight weeks from conception; and
- 284 (iii) each month after 10 weeks gestational age, up to 14 weeks gestational age.