

ABORTION WAITING PERIOD

2012 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill modifies Title 76, Chapter 7, Offenses Against the Family, relating to the required waiting period before performing an abortion.

Highlighted Provisions:

This bill:

- ▶ extends the waiting period for an abortion from 24 hours to 72 hours, unless an exception exists;
- ▶ clarifies that the face-to-face initial consultation prior to an abortion procedure may take place anywhere in the state;
- ▶ states that a physician is not in violation of Section 76-7-305 if the physician provides information necessary for informed consent less than 72 hours before performing the abortion if, in the physician's professional judgment, an abortion is necessary to avert a ruptured membrane causing, or resulting from, a serious infection; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **76-7-305**, as last amended by Laws of Utah 2010, Chapter 314



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

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

36 **76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory**

37 **-- Exceptions.**

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

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

43 (b) the provisions of this section.

44 (2) Except as provided in Subsection (8), consent to an abortion is voluntary and
45 informed only if:

46 (a) at least [~~24~~] 72 hours before the abortion, the physician who is to perform the
47 abortion, the referring physician, a physician, a registered nurse, nurse practitioner, advanced
48 practice registered nurse, certified nurse midwife, genetic counselor, or physician's assistant, in
49 a face-to-face consultation in any location in the state, orally informs the woman:

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

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

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

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

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

57 (iii) of the medical risks associated with carrying her child to term; and
58 (iv) except as provided in Subsection (3)(b), if the abortion is to be performed on an
59 unborn child who is at least 20 weeks gestational age:
60 (A) that, upon the woman's request, an anesthetic or analgesic will be administered to
61 the unborn child, through the woman, to eliminate or alleviate organic pain to the unborn child
62 that may be caused by the particular method of abortion to be employed; and
63 (B) of any medical risks to the woman that are associated with administering the
64 anesthetic or analgesic described in Subsection (2)(a)(iv)(A);
65 (b) at least [~~24~~] 72 hours prior to the abortion the physician who is to perform the
66 abortion, the referring physician, or, as specifically delegated by either of those physicians, a
67 physician, a registered nurse, licensed practical nurse, certified nurse-midwife, advanced
68 practice registered nurse, clinical laboratory technologist, psychologist, marriage and family
69 therapist, clinical social worker, genetic counselor, or certified social worker orally, in a
70 face-to-face consultation in any location in the state, informs the pregnant woman that:
71 (i) the Department of Health, in accordance with Section 76-7-305.5, publishes printed
72 material and an informational video that:
73 (A) provides medically accurate information regarding all abortion procedures that may
74 be used;
75 (B) describes the gestational stages of an unborn child; and
76 (C) includes information regarding public and private services and agencies available
77 to assist her through pregnancy, at childbirth, and while the child is dependent, including
78 private and agency adoption alternatives;
79 (ii) the printed material and a viewing of or a copy of the informational video shall be
80 made available to her, free of charge, on the Department of Health's website;
81 (iii) medical assistance benefits may be available for prenatal care, childbirth, and
82 neonatal care, and that more detailed information on the availability of that assistance is
83 contained in the printed materials and the informational video published by the Department of
84 Health;

85 (iv) except as provided in Subsection (3)(c):

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

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

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

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

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

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

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

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

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

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

108 (b) The information described in Subsection (2)(a)(iv) may be omitted from the
109 information required to be provided to a pregnant woman under this section if the abortion is
110 performed for a reason described in Subsection 76-7-302(3)(b)(i).

111 (c) The information described in Subsection (2)(b)(iv) may be omitted from the
112 information required to be provided to a pregnant woman under this section if the woman is

113 pregnant as the result of rape.

114 (d) Nothing in this section shall be construed to prohibit a person described in
115 Subsection (2)(a) from, when providing the information described in Subsection (2)(a)(iv),
116 informing a woman of the person's own opinion regarding:

- 117 (i) the capacity of an unborn child to experience pain;
- 118 (ii) the advisability of administering an anesthetic or analgesic to an unborn child; or
- 119 (iii) any other matter related to fetal pain.

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

- 122 (a) request that the woman view the video at that time or at another specifically
123 designated time and location; or
- 124 (b) if the woman chooses not to view the video at a time described in Subsection (4)(a),
125 inform the woman that she can access the video on the Department of Health's website.

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

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

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

- 133 (i) view the images, if she chooses to view the images; or
- 134 (ii) not view the images, if she chooses not to view the images;
- 135 (b) simultaneously display the ultrasound images in order to permit the woman to:
136 (i) view the images, if she chooses to view the images; or
137 (ii) not view the images, if she chooses not to view the images;

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

- 141 (i) the dimensions of the unborn child;
- 142 (ii) the presence of cardiac activity in the unborn child, if present and viewable; and
- 143 (iii) the presence of external body parts or internal organs, if present and viewable; and
- 144 (d) provide the detailed description described in Subsection (6)(c), if the woman
- 145 requests it.

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

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

149 and

- 150 (b) shall be subject to:

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

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

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

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

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

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

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

- 163 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
164 76-5-402 and 76-5-402.1;

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

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

- 168 (9) A physician who complies with the provisions of this section and Section

169 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain
170 informed consent under Section 78B-3-406.

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

173 (b) A local health department shall refer a person who requests an ultrasound described
174 in Subsection (10)(a) to the Department of Health.

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

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

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

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

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