

ABORTION WAITING PERIOD

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Curtis S. Bramble

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; ~~H~~→ [and]

- ▶ 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 ~~H~~←

- ▶ 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 2010, Chapter 314

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 (8), consent to an abortion is voluntary and informed only if:

(a) at least [24] 72 hours before the abortion, the physician who is to perform the abortion, the referring physician, ~~H~~→ **a physician**, ~~←H~~ a registered nurse, nurse practitioner, advanced practice

registered nurse, certified nurse midwife, genetic counselor, or physician's assistant, in a face-to-face consultation ~~H~~→ **in any location in the state** ~~←H~~ , 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;

(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) except as provided in Subsection (3)(b), if the abortion is to be performed on an unborn child who is at least 20 weeks gestational age:

(A) that, upon the woman's request, an anesthetic or analgesic will be administered to the unborn child, through the woman, to eliminate or alleviate organic pain to the unborn child that may be caused by the particular method of abortion to be employed; and

(B) of any medical risks to the woman that are associated with administering the anesthetic or analgesic described in Subsection (2)(a)(iv)(A);

(b) at least [24] 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,

~~H~~→ **a physician**, ~~←H~~ a

registered nurse, licensed practical nurse, certified nurse-midwife, advanced practice registered nurse, clinical laboratory technologist, psychologist, marriage and family therapist, clinical

59 social worker, genetic counselor, or certified social worker orally, in a face-to-face
60 consultation ~~in any location in the state~~ , informs the pregnant woman that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the capacity of an unborn child to experience pain;

(ii) the advisability of administering an anesthetic or analgesic to an unborn child; or

(iii) any other matter related to fetal 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:

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

- 123 (i) view the images, if she chooses to view the images; or
124 (ii) not view the images, if she chooses not to view the images;

125 (b) simultaneously display the ultrasound images in order to permit the woman to:
126 (i) view the images, if she chooses to view the images; or
127 (ii) not view the images, if she chooses not to view the images;
128 (c) inform the woman that, if she desires, the person performing the ultrasound, or
129 another qualified person shall provide a detailed description of the ultrasound images,
130 including:

- 131 (i) the dimensions of the unborn child;
132 (ii) the presence of cardiac activity in the unborn child, if present and viewable; and
133 (iii) the presence of external body parts or internal organs, if present and viewable; and
134 (d) provide the detailed description described in Subsection (6)(c), if the woman
135 requests it.

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

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

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

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

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

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

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

- 150 (i) the death of the woman on whom the abortion is performed; or
151 (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.

(9) 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.

(10) (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 (10)(a) to the Department of Health.

↯→ (11) 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. ↯↯

Legislative Review Note

as of 2-9-12 10:13 AM

Office of Legislative Research and General Counsel