

ABORTION AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill enacts and modifies provisions relating to abortion.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits an abortion from being performed after the unborn child reaches 18 weeks gestational age except under certain circumstances;
- ▶ modifies the circumstances under which an abortion may be performed after the unborn child reaches 18 weeks gestational age;
- ▶ modifies provisions that require a physician to report certain information to the

28 Department of Health relating to an abortion; and
29 ▶ makes technical changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **76-7-301**, as last amended by Laws of Utah 2018, Chapter 282

37 **76-7-302**, as last amended by Laws of Utah 2018, Chapter 282

38 **76-7-313**, as last amended by Laws of Utah 2018, Chapter 282

39 **76-7-314**, as last amended by Laws of Utah 2018, Chapter 282

40 ENACTS:

41 **76-7-302.5**, Utah Code Annotated 1953



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

44 Section 1. Section **76-7-301** is amended to read:

45 **76-7-301. Definitions.**

46 As used in this part:

47 (1) (a) "Abortion" means:

48 (i) the intentional termination or attempted termination of human pregnancy after
49 implantation of a fertilized ovum through a medical procedure carried out by a physician or
50 through a substance used under the direction of a physician;

51 (ii) the intentional killing or attempted killing of a live unborn child through a medical
52 procedure carried out by a physician or through a substance used under the direction of a
53 physician; or

54 (iii) the intentional causing or attempted causing of a miscarriage through a medical

55 procedure carried out by a physician or through a substance used under the direction of a
56 physician.

57 (b) "Abortion" does not include:

58 (i) removal of a dead unborn child;

59 (ii) removal of an ectopic pregnancy; or

60 (iii) the killing or attempted killing of an unborn child without the consent of the
61 pregnant woman, unless:

62 (A) the killing or attempted killing is done through a medical procedure carried out by
63 a physician or through a substance used under the direction of a physician; and

64 (B) the physician is unable to obtain the consent due to a medical emergency.

65 (2) "Abortion clinic" means the same as that term is defined in Section 26-21-2.

66 (3) "Abuse" means the same as that term is defined in Section 78A-6-105.

67 (4) "Department" means the Department of Health.

68 (5) "Gestational age" means the age of an unborn child as calculated from the first day
69 of the last menstrual period of the pregnant woman.

70 [~~5~~] (6) "Hospital" means:

71 (a) a general hospital licensed by the department according to Title 26, Chapter 21,
72 Health Care Facility Licensing and Inspection Act; and

73 (b) a clinic or other medical facility to the extent that such clinic or other medical
74 facility is certified by the department as providing equipment and personnel sufficient in
75 quantity and quality to provide the same degree of safety to the pregnant woman and the
76 unborn child as would be provided for the particular medical procedures undertaken by a
77 general hospital licensed by the department.

78 [~~6~~] (7) "Information module" means the pregnancy termination information module
79 prepared by the department.

80 [~~7~~] (8) "Medical emergency" means that condition which, on the basis of the
81 physician's good faith clinical judgment, so threatens the life of a pregnant woman as to

82 necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay
83 will create serious risk of substantial and irreversible impairment of major bodily function.

84 ~~[(8)]~~ (9) "Minor" means an individual who is:

- 85 (a) under 18 years of age;
- 86 (b) unmarried; and
- 87 (c) not emancipated.

88 ~~[(9)]~~ (10) (a) "Partial birth abortion" means an abortion in which the person performing
89 the abortion:

90 (i) deliberately and intentionally vaginally delivers a living fetus until, in the case of a
91 head first presentation, the entire fetal head is outside the body of the mother, or, in the case of
92 breech presentation, any part of the fetal trunk past the navel is outside the body of the mother,
93 for the purpose of performing an overt act that the person knows will kill the partially delivered
94 living fetus; and

95 (ii) performs the overt act, other than completion of delivery, that kills the partially
96 living fetus.

97 (b) "Partial birth abortion" does not include the dilation and evacuation procedure
98 involving dismemberment prior to removal, the suction curettage procedure, or the suction
99 aspiration procedure for abortion.

100 ~~[(10)]~~ (11) "Physician" means:

101 (a) a medical doctor licensed to practice medicine and surgery under Title 58, Chapter
102 67, Utah Medical Practice Act;

103 (b) an osteopathic physician licensed to practice osteopathic medicine under Title 58,
104 Chapter 68, Utah Osteopathic Medical Practice Act; or

105 (c) a physician employed by the federal government who has qualifications similar to a
106 person described in Subsection ~~[(10)]~~ (11)(a) or (b).

107 (12) (a) "Severe brain abnormality" means a malformation or defect that causes an
108 individual to live in a mentally vegetative state.

- 109 (b) "Severe brain abnormality" does not include:
- 110 (i) Down syndrome;
- 111 (ii) spina bifida;
- 112 (iii) cerebral palsy; or
- 113 (iv) any other malformation, defect, or condition that does not cause an individual to
- 114 live in a mentally vegetative state.

115 Section 2. Section **76-7-302** is amended to read:

116 **76-7-302. Circumstances under which abortion authorized.**

117 (1) As used in this section, "viable" means that the unborn child has reached a stage of

118 fetal development when the unborn child is potentially able to live outside the womb, as

119 determined by the attending physician to a reasonable degree of medical certainty.

120 (2) An abortion may be performed in this state only by a physician.

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

122 (a) the unborn child is not viable; or

123 (b) the unborn child is viable, if:

124 (i) the abortion is necessary to avert:

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

126 (B) a serious risk of substantial and irreversible impairment of a major bodily function

127 of the woman on whom the abortion is performed;

128 (ii) two physicians who practice maternal fetal medicine concur, in writing, in the

129 patient's medical record that the fetus:

130 (A) has a defect that is uniformly diagnosable and uniformly lethal; or

131 (B) has a severe brain abnormality that is uniformly diagnosable; or

132 (iii) (A) the woman is pregnant as a result of:

133 (I) rape, as described in Section [76-5-402](#);

134 (II) rape of a child, as described in Section [76-5-402.1](#); or

135 (III) incest, as described in Subsection [76-5-406\(10\)](#) or Section [76-7-102](#); and

- 136 (B) before the abortion is performed, the physician who performs the abortion:
- 137 (I) verifies that the incident described in Subsection (3)(b)(iii)(A) has been reported to
- 138 law enforcement; and
- 139 (II) complies with the requirements of Section 62A-4a-403.
- 140 (4) An abortion may be performed only in an abortion clinic or a hospital, unless it is
- 141 necessary to perform the abortion in another location due to a medical emergency.

142 Section 3. Section 76-7-302.5 is enacted to read:

143 **76-7-302.5. Circumstances under which abortion prohibited.**

144 Notwithstanding any other provision of this part, a person may not perform or attempt

145 to perform an abortion after the unborn child reaches 18 weeks gestational age unless the

146 abortion is permissible for a reason described in Subsection 76-7-302(3)(b).

147 Section 4. Section 76-7-313 is amended to read:

148 **76-7-313. Department's enforcement responsibility -- Physician's report to**

149 **department.**

150 (1) In order for the department to maintain necessary statistical information and ensure

151 enforcement of the provisions of this part:

- 152 (a) any physician performing an abortion must obtain and record in writing:
 - 153 (i) the age, marital status, and county of residence of the woman on whom the abortion
 - 154 was performed;
 - 155 (ii) the number of previous abortions performed on the woman described in Subsection
 - 156 (1)(a)(i);
 - 157 (iii) the hospital or other facility where the abortion was performed;
 - 158 (iv) the weight in grams of the unborn child aborted, if it is possible to ascertain;
 - 159 (v) the pathological description of the unborn child;
 - 160 (vi) the given [~~menstrual~~] gestational age of the unborn child;
 - 161 (vii) the date the abortion was performed;
 - 162 [~~(vii)~~] (viii) the measurements of the unborn child, if possible to ascertain; and

163 [~~viii~~] (ix) the medical procedure used to abort the unborn child; and
164 (b) the department shall make rules in accordance with Title 63G, Chapter 3, Utah
165 Administrative Rulemaking Act.

166 (2) Each physician who performs an abortion shall provide the following to the
167 department within 30 days after the day on which the abortion is performed:

168 (a) the information described in Subsection (1);
169 (b) a copy of the pathologist's report described in Section [76-7-309](#);
170 (c) an affidavit:
171 (i) that the required consent was obtained pursuant to Sections [76-7-305](#) and
172 [76-7-305.5](#); and
173 (ii) described in Subsection (3), if applicable; and
174 (d) a certificate indicating:
175 (i) whether the unborn child was or was not viable, as defined in Subsection
176 [76-7-302](#)(1), at the time of the abortion; [~~and~~]
177 (ii) whether the unborn child was older than 18 weeks gestational age at the time of the
178 abortion; and
179 [~~ii~~] (iii) if the unborn child was viable, as defined in Subsection [76-7-302](#)(1), or older
180 than 18 weeks gestational age at the time of the abortion, the reason for the abortion.

181 (3) If the information module or the address to the website is not provided to a
182 pregnant woman, the physician who performs the abortion on the woman shall, within 10 days
183 after the day on which the abortion is performed, provide to the department an affidavit that:
184 (a) specifies the information that was not provided to the woman; and
185 (b) states the reason that the information was not provided to the woman.

186 (4) All information supplied to the department shall be confidential and privileged
187 pursuant to Title 26, Chapter 25, Confidential Information Release.

188 (5) The department shall pursue all administrative and legal remedies when the
189 department determines that a physician or a facility has not complied with the provisions of this

190 part.

191 Section 5. Section **76-7-314** is amended to read:

192 **76-7-314. Violations of abortion laws -- Classifications.**

193 (1) A willful violation of Section [76-7-307](#), [76-7-308](#), [76-7-310](#), [76-7-310.5](#), [76-7-311](#),
194 or [76-7-312](#) is a felony of the third degree.

195 (2) A violation of Section [76-7-326](#) is a felony of the third degree.

196 (3) A violation of Section [76-7-302.5](#) or [76-7-314.5](#) is a felony of the second degree.

197 (4) A violation of any other provision of this part, including Subsections
198 [76-7-305\(2\)\(a\)](#) through (c), and (e), is a class A misdemeanor.

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

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

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