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H.B. 85

ABORTION BY A MINOR - PARENTAL

NOTIFICATION AND CONSENT

2006 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill amends the Utah Criminal Code, the Utah Human Services Code, and the Utah Health Care Malpractice Act to require parental consent and notification for abortions performed upon minors, subject to certain exceptions.

Highlighted Provisions:

This bill:

- defines terms;
- provides that a written report of incest or abuse made in connection with a minor

35 seeking an abortion may not disclose that the minor obtained or considered an abortion;

36 ▶ requires that at least 24 hours before a physician performs an abortion on a minor,
37 the physician shall notify a parent or guardian of the minor that the minor intends to
38 have an abortion, unless:

39 • a medical emergency exists;
40 • the physician reports that the parent or guardian abused the minor or caused the
41 minor's pregnancy by engaging in incest with the minor; or

42 • the parent or guardian has not assumed responsibility for the minor's care and
43 upbringing;

44 ▶ provides that, in a medical emergency, except when it is necessary to immediately
45 perform an abortion, the physician shall notify a parent or guardian of the minor, as
46 early as possible before the abortion, that the minor intends to have an abortion;

47 ▶ removes the requirement that a physician notify the spouse of a married woman that
48 she intends to obtain an abortion;

49 ▶ requires that a minor obtain parental consent before obtaining an abortion unless:

50 • the minor obtains the right, by court order, to consent to an abortion without
51 parental consent; or

52 • a medical emergency exists;

53 ▶ provides that a minor may petition a court to determine whether a minor should be
54 granted the right to consent to an abortion without parental consent;

55 ▶ provides that the proceedings described above are closed to the public;

56 ▶ provides that a court shall order that a minor may consent to an abortion without
57 parental consent only if the court finds by a preponderance of the evidence that:

58 • the minor is mature and capable of giving informed consent to the abortion and
59 has given her informed consent; or

60 • an abortion would be in the minor's best interest;

61 ▶ grants rulemaking authority to the Judicial Council to:

62 • administer the proceedings described in this bill;

- 63 • provide for an appeal of a decision described in the preceding paragraph;
- 64 • ensure the confidentiality of proceedings described in this bill and the records
- 65 relating to the proceedings; and
- 66 • establish procedures to expedite the hearing and appeal proceedings described in
- 67 this bill;
- 68 ▶ amends the Utah Health Care Malpractice Act and related provisions to conform to
- 69 the consent requirements of this bill; and
- 70 ▶ makes technical changes.

71 Monies Appropriated in this Bill:

72 None

73 Other Special Clauses:

74 None

75 Utah Code Sections Affected:**76 AMENDS:**

77 **62A-4a-408**, as renumbered and amended by Chapter 260, Laws of Utah 1994

78 **76-7-304**, as enacted by Chapter 33, Laws of Utah 1974

79 **76-7-305**, as last amended by Chapter 221, Laws of Utah 1997

80 **76-7-305.5**, as last amended by Chapter 13, Laws of Utah 1998

81 **76-7-315**, as last amended by Chapter 5, Laws of Utah 1996, Second Special Session

82 **78-14-5**, as last amended by Chapter 9, Laws of Utah 2001

83 ENACTS:

84 **76-7-304.5**, Utah Code Annotated 1953

85

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

87 Section 1. Section **62A-4a-408** is amended to read:

88 **62A-4a-408. Written reports.**

89 (1) Reports made pursuant to this part shall be followed by a written report within 48
90 hours, if requested by the division. The division shall immediately forward a copy of that

report to the statewide central register, on forms supplied by the register.

(2) If, in connection with an intended or completed abortion by a minor, a physician is required to make a report of incest or abuse of a minor, the report may not include information that would in any way disclose that the report was made in connection with:

(a) an abortion; or

(b) a consultation regarding an abortion.

Section 2. Section 76-7-304 is amended to read:

76-7-304. Considerations by physician -- Notice to a parent or guardian --

Exceptions.

(1) As used in this section:

(a) "abuse" is as defined in Section 62A-4a-101; and

(b) "minor" means a person who is:

(i) under 18 years of age;

(ii) unmarried; and

(iii) not emancipated.

(2) To enable the physician to exercise ~~[his]~~ the physician's best medical judgment, ~~[he]~~ the physician shall ~~[-(1) Consider]~~ consider all factors relevant to the well-being of the woman upon whom the abortion is to be performed including ~~[-but not limited to;-]~~

(a) her physical, emotional and psychological health and safety~~[-];~~

(b) her age~~[-]; and~~

(c) her familial situation.

~~[(2) Notify, if possible, the parents or guardian of the woman upon whom the abortion is to be performed, if she is a minor or the husband of the woman, if she is married:]~~

(3) Subject to Subsection (4), at least 24 hours before a physician performs an abortion on a minor, the physician shall notify a parent or guardian of the minor that the minor intends to have an abortion.

(4) A physician is not required to comply with Subsection (3) if:

(a) subject to Subsection (5)(a):

(i) a medical condition exists that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant minor as to necessitate the abortion of her pregnancy to avert:

(A) the minor's death; or

(B) a serious risk of substantial and irreversible impairment of a major bodily function of the minor; and

(ii) there is not sufficient time to give the notice required under Subsection (3) before it is necessary to terminate the minor's pregnancy in order to avert the minor's death or impairment described in Subsection (4)(a)(i);

(b) subject to Subsection (5)(b):

(i) the physician complies with Subsection (6); and

(ii) (A) the minor is pregnant as a result of incest to which the parent or guardian was a party; or

(B) the parent or guardian has abused the minor; or

(c) subject to Subsection (5)(b), the parent or guardian has not assumed responsibility for the minor's care and upbringing.

(5) (a) If, for the reason described in Subsection (4)(a), a physician does not give the 24-hour notice described in Subsection (3), the physician shall give the required notice as early as possible before the abortion, unless it is necessary to perform the abortion immediately in order to avert the minor's death or impairment described in Subsection (4)(a)(i).

(b) If, for a reason described in Subsection (4)(b) or (c), a parent or guardian of a minor is not notified that the minor intends to have an abortion, the physician shall notify another parent or guardian of the minor, if the minor has another parent or guardian that is not exempt from notification under Subsection (4)(b) or (c).

(6) If, for a reason described in Subsection (4)(b)(ii)(A) or (B), a physician does not notify a parent or guardian of a minor that the minor intends to have an abortion, the physician shall report the incest or abuse to the Division of Child and Family Services within the Department of Human Services.

Section 3. Section 76-7-304.5 is enacted to read:

76-7-304.5. Consent required for abortions performed on minors -- Hearing to allow a minor to self-consent -- Appeals.

(1) As used in this section, "minor" is as defined in Subsection 76-7-304(1).

(2) In addition to the other requirements of this part, a physician may not perform an abortion on a minor unless:

(a) the physician obtains the informed written consent of a parent or guardian of the minor, consistent with Section 76-7-305;

(b) the minor is granted the right, by court order under Subsection (5)(b), to consent to the abortion without obtaining consent from a parent or guardian; or

(c) (i) a medical condition exists that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant minor as to necessitate the abortion of her pregnancy to avert:

(A) the minor's death; or

(B) a serious risk of substantial and irreversible impairment of a major bodily function of the minor; and

(ii) there is not sufficient time to obtain the consent in the manner chosen by the minor under Subsection (3) before it is necessary to terminate the minor's pregnancy in order to avert the minor's death or impairment described in Subsection (2)(c)(i).

(3) A pregnant minor who wants to have an abortion may choose:

(a) to seek consent from a parent or guardian under Subsection (2)(a); or

(b) to seek a court order under Subsection (2)(b).

(4) If a pregnant minor fails to obtain the consent of a parent or guardian of the minor to the performance of an abortion, or if the minor chooses not to seek the consent of a parent or guardian, the minor may file a petition with the juvenile court to obtain a court order under Subsection (2)(b).

(5) (a) A hearing on a petition described in Subsection (4) shall be closed to the public.

(b) After considering the evidence presented at the hearing, the court shall order that

(*) all private
all files private
all appeals.
appealed + private

175 the minor may obtain an abortion without the consent of a parent or guardian of the minor if
176 the court finds by a preponderance of the evidence that:

177 (i) the minor:

178 (A) has given her informed consent to the abortion; and

179 (B) is mature and capable of giving informed consent to the abortion; or

180 (ii) an abortion would be in the minor's best interest.

181 (6) The Judicial Council shall make rules that:

182 (a) provide for the administration of the proceedings described in this section;

183 (b) provide for the appeal of a court's decision under this section;

184 (c) ensure the confidentiality of the proceedings described in this section and the
185 records related to the proceedings; and

186 (d) establish procedures to expedite the hearing and appeal proceedings described in
187 this section.

188 Section 4. Section 76-7-305 is amended to read:

189 **76-7-305. Informed consent requirements for abortion -- 24-hour wait mandatory**
190 **-- Emergency exceptions.**

191 (1) No abortion may be performed unless a voluntary and informed written consent,
192 consistent with Section 8.08 of the American Medical Association's Code of Medical Ethics,
193 Current Opinions, and the provisions of this section is first obtained by the attending physician
194 from the woman upon whom the abortion is to be performed.

195 (2) Except in the case of a medical emergency, consent to an abortion is voluntary and
196 informed only if:

197 (a) at least 24 hours prior to the abortion, the physician who is to perform the abortion,
198 the referring physician, a registered nurse, nurse practitioner, advanced practice registered
199 nurse, certified nurse midwife, or physician's assistant [~~shall~~], in a face-to-face consultation,
200 orally [~~inform~~] informs the woman of:

201 (i) consistent with Subsection (3)(a), the nature of the proposed abortion procedure or
202 treatment, specifically how that procedure will affect the fetus, and the risks and alternatives to

an abortion procedure or treatment that any person would consider material to the decision of whether or not to undergo an abortion~~[- The alternatives required to be provided under this subsection shall include a description of adoption services, including private and agency adoption methods, and a statement that it is legal for adoptive parents to financially assist in pregnancy and birth expenses];~~

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

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

(b) at least 24 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 registered nurse, licensed practical nurse, certified nurse-midwife, advanced practice registered nurse, clinical laboratory technologist, psychologist, marriage and family therapist, clinical social worker, or certified social worker has orally, in a face-to-face consultation, informed 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; ~~and~~

(ii) the printed material and a viewing of or a copy of the informational video shall be provided to her free of charge;

(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;

231 (iv) except as provided in Subsection (3)(b), the father of the unborn child is legally
232 required to assist in the support of her child, even in instances where he has offered to pay for
233 the abortion, and that the Office of Recovery Services within the Department of Human
234 Services will assist her in collecting child support[~~-In the case of rape, this information may~~
235 ~~be omitted~~]; and

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

238 (c) the information required to be provided to the pregnant woman under Subsection
239 (2)(a) is also provided by the physician who is to perform the abortion, in a face-to-face
240 consultation, prior to performance of the abortion, unless the attending or referring physician
241 ~~[was]~~ is the individual ~~[providing]~~ who provides the information required under Subsection
242 (2)(a);

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

245 (e) the informational video, published by the Department of Health, has been provided
246 to the pregnant woman in accordance with Subsection ~~[(2)]~~ (4); and

247 (f) the pregnant woman has certified in writing, prior to the abortion, that the
248 information required to be provided under Subsections (2)(a)~~[(b), (c), (d), and]~~ through (e)
249 was provided, in accordance with the requirements of those subsections.

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

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

252 and

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

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

258 ~~[(2)]~~ (4) When the informational video described in Section 76-7-305.5 is provided to a

pregnant woman, the person providing the information shall first request that the woman view the video at that time or at another specifically designated time and location. If the woman chooses not to do so, a copy of the video shall be provided to her.

~~[(3)]~~ (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 ~~[his]~~ the physician's judgment that an abortion is necessary.

~~[(4)]~~ (6) Any 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 ~~[his license for the practice of medicine and surgery]~~

(b) shall be subject to suspension or revocation of the physician's license for the practice of medicine and surgery in accordance with Sections 58-67-401 and 58-67-402, Utah Medical Practice Act, or Sections 58-68-401 and 58-68-402, Utah Osteopathic Medical Practice Act.

~~[(5)]~~ (7) A physician is not guilty of violating this section for failure to furnish any of the information described in Subsection ~~[(1)]~~ (2), if:

(a) ~~[he]~~ the physician can demonstrate by a preponderance of the evidence that ~~[he]~~ 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 ~~[his]~~ the physician's professional judgment, the abortion was necessary to save the pregnant woman's life;

(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;

(e) in his professional judgment the abortion was to prevent the birth of a child who would have been born with grave defects; or

(f) the pregnant woman was 14 years of age or younger.

~~[(6)]~~ (8) A physician who complies with the provisions of this section and Section

287 76-7-304.5 may not be held civilly liable to [~~his~~] the physician's patient for failure to obtain
288 informed consent under Section 78-14-5.

289 Section 5. Section **76-7-305.5** is amended to read:

290 **76-7-305.5. Requirements for printed materials and informational video --**
291 **Annual report of Department of Health.**

292 (1) In order to insure that a woman's consent to an abortion is truly an informed
293 consent, the Department of Health shall publish printed materials and produce an informational
294 video in accordance with the requirements of this section. The department and each local
295 health department shall make those materials and a viewing of the video available at no cost to
296 any person. The printed material and the informational video shall be comprehensible and
297 contain all of the following:

298 (a) geographically indexed materials informing the woman of public and private
299 services and agencies available to assist her, financially and otherwise, through pregnancy, at
300 childbirth, and while the child is dependent, including services and supports available under
301 Section 35A-3-308. Those materials shall contain a description of available adoption services,
302 including a comprehensive list of the names, addresses, and telephone numbers of public and
303 private agencies and private attorneys whose practice includes adoption, and explanations of
304 possible available financial aid during the adoption process. The information regarding
305 adoption services shall include the fact that private adoption is legal, and that the law permits
306 adoptive parents to pay the costs of prenatal care, childbirth, and neonatal care. The printed
307 information and video shall present adoption as a preferred and positive choice and alternative
308 to abortion. The department may, at its option, include printed materials that describe the
309 availability of a toll-free 24-hour telephone number that may be called in order to obtain,
310 orally, the list and description of services, agencies, and adoption attorneys in the locality of the
311 caller;

312 (b) truthful and nonmisleading descriptions of the probable anatomical and
313 physiological characteristics of the unborn child at two-week gestational increments from
314 fertilization to full term, accompanied by pictures or video segments representing the

development of an unborn child at those gestational increments. The descriptions shall include information about brain and heart function and the presence of external members and internal organs during the applicable stages of development. Any pictures used shall contain the dimensions of the fetus and shall be realistic and appropriate for that woman's stage of pregnancy. The materials shall be designed to convey accurate scientific information about an unborn child at the various gestational ages, and to convey the state's preference for childbirth over abortion;

(c) truthful, nonmisleading descriptions of abortion procedures used in current medical practice at the various stages of growth of the unborn child, the medical risks commonly associated with each procedure, including those related to subsequent childbearing, the consequences of each procedure to the fetus at various stages of fetal development, the possible detrimental psychological effects of abortion, and the medical risks associated with carrying a child to term;

(d) any relevant information on the possibility of an unborn child's survival at the two-week gestational increments described in Subsection (1)(b);

(e) information on the availability of medical assistance benefits for prenatal care, childbirth, and neonatal care;

(f) a statement conveying that it is unlawful for any person to coerce a woman to undergo an abortion;

(g) a statement conveying that any physician who performs an abortion without obtaining the woman's informed consent or without according her a private medical consultation in accordance with the requirements of this section, may be liable to her for damages in a civil action at law;

(h) a statement conveying that the state of Utah prefers childbirth over abortion; and

(i) information regarding the legal responsibility of the father to assist in child support, even in instances where he has agreed to pay for an abortion, including a description of the services available through the Office of Recovery Services, within the Department of Human Services, to establish and collect that support.

343 (2) (a) The materials described in Subsection (1) shall be produced and printed in a
344 way that conveys the state's preference for childbirth over abortion.

345 (b) The printed material described in Subsection (1) shall be printed in a typeface large
346 enough to be clearly legible.

347 (3) Every facility in which abortions are performed shall immediately provide the
348 printed informed consent materials and a viewing of or a copy of the informational video
349 described in Subsection (1) to any patient or potential patient prior to the performance of an
350 abortion, unless the patient's attending or referring physician certifies in writing that he
351 reasonably believes that provision of the materials or video to that patient would result in a
352 severely adverse effect on her physical or mental health.

353 (4) The Department of Health shall produce a standardized videotape that may be used
354 statewide, containing all of the information described in Subsection (1), in accordance with the
355 requirements of that subsection and Subsection (2). In preparing the video, the department may
356 summarize and make reference to the printed comprehensive list of geographically indexed
357 names and services described in Subsection (1)(a). The videotape shall, in addition to the
358 information described in Subsection (1), show an ultrasound of the heart beat of an unborn
359 child at three weeks gestational age, at six to eight weeks gestational age, and each month
360 thereafter, until 14 weeks gestational age. That information shall be presented in a truthful,
361 nonmisleading manner designed to convey accurate scientific information, the state's
362 preference for childbirth over abortion, and the positive aspects of adoption.

363 (5) The Department of Health and local health departments shall provide ultrasounds in
364 accordance with the provisions of Subsection 76-7-305~~(1)~~(2)(b), at no expense to the
365 pregnant woman.

366 (6) The Department of Health shall compile and report the following information
367 annually, preserving physician and patient anonymity:

368 (a) the total amount of informed consent material described in Subsection (1) that was
369 distributed;

370 (b) the number of women who obtained abortions in this state without receiving those

materials;

(c) the number of statements signed by attending physicians certifying to his opinion regarding adverse effects on the patient under Subsection (3); and

(d) any other information pertaining to protecting the informed consent of women seeking abortions.

(7) The Department of Health shall annually report to the Health and Human Services Interim Committee regarding the information described in Subsection (6), and provide a copy of the printed materials and the videotape produced in accordance with this section to that committee.

Section 6. Section **76-7-315** is amended to read:

76-7-315. Exceptions to certain requirements in serious medical emergencies.

When due to a serious medical emergency, time does not permit compliance with Section 76-7-302, ~~[76-7-304,]~~ 76-7-305, 76-7-305.5, or 76-7-310.5 the provisions of those sections do not apply.

Section 7. Section **78-14-5** is amended to read:

78-14-5. Failure to obtain informed consent -- Proof required of patient --

Defenses -- Consent to health care.

(1) When a person submits to health care rendered by a health care provider, it shall be presumed that what the health care provider did was either expressly or impliedly authorized to be done. For a patient to recover damages from a health care provider in an action based upon the provider's failure to obtain informed consent, the patient must prove the following:

(a) that a provider-patient relationship existed between the patient and health care provider;

(b) the health care provider rendered health care to the patient;

(c) the patient suffered personal injuries arising out of the health care rendered;

(d) the health care rendered carried with it a substantial and significant risk of causing the patient serious harm;

(e) the patient was not informed of the substantial and significant risk;

399 (f) a reasonable, prudent person in the patient's position would not have consented to
400 the health care rendered after having been fully informed as to all facts relevant to the decision
401 to give consent. In determining what a reasonable, prudent person in the patient's position
402 would do under the circumstances, the finder of fact shall use the viewpoint of the patient
403 before health care was provided and before the occurrence of any personal injuries alleged to
404 have arisen from said health care; and

405 (g) the unauthorized part of the health care rendered was the proximate cause of
406 personal injuries suffered by the patient.

407 (2) It shall be a defense to any malpractice action against a health care provider based
408 upon alleged failure to obtain informed consent if:

409 (a) the risk of the serious harm which the patient actually suffered was relatively
410 minor;

411 (b) the risk of serious harm to the patient from the health care provider was commonly
412 known to the public;

413 (c) the patient stated, prior to receiving the health care complained of, that he would
414 accept the health care involved regardless of the risk; or that he did not want to be informed of
415 the matters to which he would be entitled to be informed;

416 (d) the health care provider, after considering all of the attendant facts and
417 circumstances, used reasonable discretion as to the manner and extent to which risks were
418 disclosed, if the health care provider reasonably believed that additional disclosures could be
419 expected to have a substantial and adverse effect on the patient's condition; or

420 (e) the patient or his representative executed a written consent which sets forth the
421 nature and purpose of the intended health care and which contains a declaration that the patient
422 accepts the risk of substantial and serious harm, if any, in hopes of obtaining desired beneficial
423 results of health care and which acknowledges that health care providers involved have
424 explained his condition and the proposed health care in a satisfactory manner and that all
425 questions asked about the health care and its attendant risks have been answered in a manner
426 satisfactory to the patient or his representative; such written consent shall be a defense to an

427 action against a health care provider based upon failure to obtain informed consent unless the
428 patient proves that the person giving the consent lacked capacity to consent or shows by clear
429 and convincing proof that the execution of the written consent was induced by the defendant's
430 affirmative acts of fraudulent misrepresentation or fraudulent omission to state material facts.

431 (3) Nothing contained in this act shall be construed to prevent any person 18 years of
432 age or over from refusing to consent to health care for his own person upon personal or
433 religious grounds.

434 (4) ~~[The]~~ Except as provided in Section 76-7-304.5, the following persons are
435 authorized and empowered to consent to any health care not prohibited by law:

- 436 (a) any parent, whether an adult or a minor, for ~~[his]~~ the parent's minor child;
437 (b) any married person, for a spouse;
438 (c) any person temporarily standing in loco parentis, whether formally serving or not,
439 for the minor under ~~[his]~~ that person's care and any guardian for ~~[his]~~ the guardian's ward;
440 (d) any person 18 years of age or over for ~~[his or her]~~ that person's parent who is unable
441 by reason of age, physical or mental condition, to provide such consent;
442 (e) any patient 18 years of age or over;
443 (f) any female regardless of age or marital status, when given in connection with her
444 pregnancy or childbirth;
445 (g) in the absence of a parent, any adult for ~~[his]~~ the adult's minor brother or sister; and
446 (h) in the absence of a parent, any grandparent for ~~[his]~~ the grandparent's minor
447 grandchild.

448 (5) No person who in good faith consents or authorizes health care treatment or
449 procedures for another as provided by this act shall be subject to civil liability.