

1 **DOWN SYNDROME NONDISCRIMINATION ABORTION ACT**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Karianne Lisonbee**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

9 This bill concerns an unborn child with Down syndrome.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines "Down syndrome";
- 13 ▶ requires the Department of Health to create a Down syndrome informational
- 14 support sheet and publish the same information on the department's website;
- 15 ▶ requires that a pregnant woman be provided certain information before receiving an
- 16 abortion when a prenatal screening or diagnostic test indicates that the pregnant
- 17 woman's unborn child has or may have Down syndrome;
- 18 ▶ after expressly permitted by a court of binding authority, prohibits a person from
- 19 performing, inducing, or attempting to perform or induce an abortion on a pregnant
- 20 woman who is seeking the abortion solely because an unborn child has or may have
- 21 Down syndrome;
- 22 ▶ requires an abortion pathology report to provide information about whether an
- 23 aborted child had or may have had Down syndrome;
- 24 ▶ requires a physician who performed an abortion to state whether the physician had
- 25 any knowledge that the pregnant woman sought the abortion solely because the
- 26 unborn child had or may have had Down syndrome; and
- 27 ▶ makes technical changes.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill provides a special effective date.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **26-10-1**, as last amended by Laws of Utah 2011, Chapters 147, 366 and last amended
35 by Coordination Clause, Laws of Utah 2011, Chapter 366

36 **63I-2-276**, as last amended by Laws of Utah 2018, Chapter 38

37 **76-7-301**, as last amended by Laws of Utah 2018, Chapter 282

38 **76-7-305**, as last amended by Laws of Utah 2018, Chapter 282

39 **76-7-309**, as enacted by Laws of Utah 1974, Chapter 33

40 **76-7-313**, as last amended by Laws of Utah 2018, Chapter 282

41 ENACTS:

42 **26-10-14**, Utah Code Annotated 1953

43 **76-7-302.4**, Utah Code Annotated 1953



44
45 *Be it enacted by the Legislature of the state of Utah:*

46 Section 1. Section **26-10-1** is amended to read:

47 **26-10-1. Definitions.**

48 As used in this chapter:

49 (1) "Down syndrome" means a genetic condition associated with an extra chromosome
50 21, in whole or in part, or an effective trisomy for chromosome 21.

51 ~~(1)~~ (2) "Maternal and child health services" means:

52 (a) the provision of educational, preventative, diagnostic, and treatment services,
53 including medical care, hospitalization, and other institutional care and aftercare, appliances,
54 and facilitating services directed toward reducing infant mortality and improving the health of
55 mothers and children provided, however, that nothing in this Subsection ~~(1)~~ (2) shall be
56 construed to allow any agency of the state to interfere with the rights of the parent of an
57 unmarried minor in decisions about the providing of health information or services;

58 (b) the development, strengthening, and improvement of standards and techniques
59 relating to the services and care;

60 (c) the training of personnel engaged in the provision, development, strengthening, or
61 improvement of the services and care; and

62 (d) necessary administrative services connected with Subsections [~~(1)~~] (2)(a), (b), and
63 (c).

64 [~~(2)~~] (3) "Minor" means a person under the age of 18.

65 [~~(3)~~] (4) "Services to children with disabilities" means:

66 (a) the early location of children with a disability, provided that any program of
67 prenatal diagnosis for the purpose of detecting the possible disease or disabilities of an unborn
68 child will not be used for screening, but rather will be utilized only when there are medical or
69 genetic indications that warrant diagnosis;

70 (b) the provision for children described in Subsection [~~(3)~~] (4)(a), of preventive,
71 diagnosis, and treatment services, including medical care, hospitalization, and other
72 institutional care and aftercare, appliances, and facilitating services directed toward the
73 diagnosis of the condition of those children or toward the restoration of the children to
74 maximum physical and mental health;

75 (c) the development, strengthening, and improvement of standards and techniques
76 relating to services and care described in this Subsection [~~(3)~~] (4);

77 (d) the training of personnel engaged in the provision, development, strengthening, or
78 improvement of services and care described in this Subsection [~~(3)~~] (4); and

79 (e) necessary administrative services connected with Subsections [~~(3)~~] (4)(a), (b), and
80 (c).

81 Section 2. Section **26-10-14** is enacted to read:

82 **26-10-14. Down syndrome diagnosis -- Information and support.**

83 (1) The department shall provide contact information for state and national Down
84 syndrome organizations that are nonprofit and that provide information and support services
85 for parents, including first-call programs and information hotlines specific to Down syndrome,

86 resource centers or clearinghouses, and other education and support programs for Down
87 syndrome.

88 (2) The department shall:

89 (a) post the information described in Subsection (1) on the department's website; and

90 (b) create an informational support sheet with the information described in Subsection
91 (1) and the web address described in Subsection (2)(a).

92 (3) A Down syndrome organization may request that the department include the
93 organization's informational material and contact information on the website. The department
94 may add the information to the website, if the information meets the description under
95 Subsection (1).

96 (4) Upon request, the department shall provide a health care facility or health care
97 provider a copy of the informational support sheet described in Subsection (2)(b) to give to a
98 pregnant woman after the result of a prenatal screening or diagnostic test indicates the unborn
99 child has or may have Down syndrome.

100 Section 3. Section **63I-2-276** is amended to read:

101 **63I-2-276. Repeal dates -- Title 76.**

102 (1) If Section [76-7-302.4](#) is not in effect before January 1, 2029, Section [76-7-302.4](#) is
103 repealed January 1, 2029.

104 (2) Section [76-7-305.7](#) is repealed January 1, 2023.

105 Section 4. Section **76-7-301** is amended to read:

106 **76-7-301. Definitions.**

107 As used in this part:

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

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

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

114 physician; or
115 (iii) the intentional causing or attempted causing of a miscarriage through a medical
116 procedure carried out by a physician or through a substance used under the direction of a
117 physician.
118 (b) "Abortion" does not include:
119 (i) removal of a dead unborn child;
120 (ii) removal of an ectopic pregnancy; or
121 (iii) the killing or attempted killing of an unborn child without the consent of the
122 pregnant woman, unless:
123 (A) the killing or attempted killing is done through a medical procedure carried out by
124 a physician or through a substance used under the direction of a physician; and
125 (B) the physician is unable to obtain the consent due to a medical emergency.
126 (2) "Abortion clinic" means the same as that term is defined in Section 26-21-2.
127 (3) "Abuse" means the same as that term is defined in Section 78A-6-105.
128 (4) "Department" means the Department of Health.
129 (5) "Down syndrome" means a genetic condition associated with an extra chromosome
130 21, in whole or in part, or an effective trisomy for chromosome 21.
131 [~~5~~] (6) "Hospital" means:
132 (a) a general hospital licensed by the department according to Title 26, Chapter 21,
133 Health Care Facility Licensing and Inspection Act; and
134 (b) a clinic or other medical facility to the extent that such clinic or other medical
135 facility is certified by the department as providing equipment and personnel sufficient in
136 quantity and quality to provide the same degree of safety to the pregnant woman and the
137 unborn child as would be provided for the particular medical procedures undertaken by a
138 general hospital licensed by the department.
139 [~~6~~] (7) "Information module" means the pregnancy termination information module
140 prepared by the department.
141 [~~7~~] (8) "Medical emergency" means that condition which, on the basis of the

142 physician's good faith clinical judgment, so threatens the life of a pregnant woman as to
143 necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay
144 will create serious risk of substantial and irreversible impairment of major bodily function.

145 ~~[(8)]~~ (9) "Minor" means an individual who is:

- 146 (a) under 18 years of age;
- 147 (b) unmarried; and
- 148 (c) not emancipated.

149 ~~[(9)]~~ (10) (a) "Partial birth abortion" means an abortion in which the person performing
150 the abortion:

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

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

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

161 ~~[(10)]~~ (11) "Physician" means:

162 (a) a medical doctor licensed to practice medicine and surgery under Title 58, Chapter
163 67, Utah Medical Practice Act;

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

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

168 Section 5. Section **76-7-302.4** is enacted to read:

169 **76-7-302.4. Abortion restriction of an unborn child with Down syndrome.**

170 Notwithstanding any other provision of this part, an abortion may not be performed if
171 the pregnant mother's sole reason for the abortion is that the unborn child has or may have
172 Down syndrome, unless the abortion is permissible for a reason described in Subsection
173 76-7-302(3)(b).

174 Section 6. Section **76-7-305** is amended to read:

175 **76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory**
176 **-- Exceptions.**

177 (1) A person may not perform an abortion, unless, before performing the abortion, the
178 physician who will perform the abortion obtains from the woman on whom the abortion is to
179 be performed a voluntary and informed written consent [~~from the woman on whom the~~
180 ~~abortion is performed;~~] that is consistent with:

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

183 (b) the provisions of this section.

184 (2) Except as provided in Subsection (8), consent to an abortion is voluntary and
185 informed only if, at least 72 hours before the abortion:

186 (a) a staff member of an abortion clinic or hospital, physician, registered nurse, nurse
187 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
188 physician's assistant presents the information module to the pregnant woman;

189 (b) the pregnant woman views the entire information module and presents evidence to
190 the individual described in Subsection (2)(a) that the pregnant woman viewed the entire
191 information module;

192 (c) after receiving the evidence described in Subsection (2)(b), the individual described
193 in Subsection (2)(a):

194 (i) documents that the pregnant woman viewed the entire information module;

195 (ii) gives the pregnant woman, upon her request, a copy of the documentation
196 described in Subsection (2)(c)(i); and

197 (iii) provides a copy of the statement described in Subsection (2)(c)(i) to the physician

198 who is to perform the abortion, upon request of that physician or the pregnant woman;

199 (d) after the pregnant woman views the entire information module, the physician who
200 is to perform the abortion, the referring physician, a physician, a registered nurse, nurse
201 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
202 physician's assistant, in a face-to-face consultation in any location in the state, orally informs
203 the woman of:

204 (i) the nature of the proposed abortion procedure;
205 (ii) specifically how the procedure described in Subsection (2)(d)(i) will affect the
206 fetus;

207 (iii) the risks and alternatives to the abortion procedure or treatment;
208 (iv) the options and consequences of aborting a medication-induced abortion, if the
209 proposed abortion procedure is a medication-induced abortion;

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

212 (vi) the medical risks associated with carrying her child to term; [~~and~~]
213 (vii) the right to view an ultrasound of the unborn child, at no expense to the pregnant
214 woman, upon her request; and

215 (viii) when the result of a prenatal screening or diagnostic test indicates that the unborn
216 child has or may have Down syndrome, the Department of Health website containing the
217 information described in Section 26-10-14, including the information on the informational
218 support sheet; and

219 (e) after the pregnant woman views the entire information module, a staff member of
220 the abortion clinic or hospital provides to the pregnant woman:

221 (i) on a document that the pregnant woman may take home:
222 (A) the address for the department's website described in Section 76-7-305.5; and
223 (B) a statement that the woman may request, from a staff member of the abortion clinic
224 or hospital where the woman viewed the information module, a printed copy of the material on
225 the department's website; and

226 (ii) a printed copy of the material on the department's website described in Section
227 76-7-305.5, if requested by the pregnant woman.

228 (3) Before performing an abortion, the physician who is to perform the abortion shall:

229 (a) in a face-to-face consultation, provide the information described in Subsection
230 (2)(d), unless the attending physician or referring physician is the individual who provided the
231 information required under Subsection (2)(d); and

232 (b) (i) obtain from the pregnant woman a written certification that the information
233 required to be provided under Subsection (2) and this Subsection (3) was provided in
234 accordance with the requirements of Subsection (2) and this Subsection (3); and

235 (ii) obtain a copy of the statement described in Subsection (2)(c)(i).

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

239 (5) If an ultrasound is performed on a woman before an abortion is performed, the
240 individual who performs the ultrasound, or another qualified individual, shall:

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

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

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

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

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

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

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

251 (i) the dimensions of the unborn child;

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

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

254 (d) provide the detailed description described in Subsection ~~[(6)]~~ (5)(c), if the woman
255 requests it.

256 (6) The information described in Subsections (2), (3), and (5) is not required to be
257 provided to a pregnant woman under this section if the abortion is performed for a reason
258 described in:

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

- 261 (i) the death of the woman on whom the abortion is performed; or
- 262 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
263 of the woman on whom the abortion is performed; or

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

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

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

269 (b) shall be subject to:

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

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

273 (8) A physician is not guilty of violating this section for failure to furnish any of the
274 information described in Subsection (2) or (3), or for failing to comply with Subsection (5), if:

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

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

- 279 (i) the death of the woman on whom the abortion is performed; or
- 280 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
281 of the woman on whom the abortion is performed;

282 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
283 76-5-402 and 76-5-402.1;

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

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

287 (9) A physician who complies with the provisions of this section and Section
288 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain
289 informed consent under Section 78B-3-406.

290 (10) (a) The department shall provide an ultrasound, in accordance with the provisions
291 of Subsection (5)(b), at no expense to the pregnant woman.

292 (b) A local health department shall refer a pregnant woman who requests an ultrasound
293 described in Subsection (10)(a) to the department.

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

295 (a) the information described in Subsection (2) is provided less than 72 hours before
296 the physician performs the abortion; and

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

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

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

303 Section 7. Section 76-7-309 is amended to read:

304 **76-7-309. Pathologist's report.**

305 Any human tissue removed during an abortion shall be submitted to a pathologist who
306 shall make a report, including[, but not limited to whether there was a pregnancy, and if
307 possible,] whether:

308 (1) the pregnancy was aborted by evacuating the uterus[-]; and

309 (2) a medical record indicates that, through a prenatal screening or other diagnostic

310 test, the aborted fetus had or may have had Down syndrome.

311 Section 8. Section **76-7-313** is amended to read:

312 **76-7-313. Department's enforcement responsibility -- Physician's report to**
313 **department.**

314 (1) In order for the department to maintain necessary statistical information and ensure
315 enforcement of the provisions of this part:

316 (a) any physician performing an abortion must obtain and record in writing:

317 (i) the age, marital status, and county of residence of the woman on whom the abortion
318 was performed;

319 (ii) the number of previous abortions performed on the woman described in Subsection

320 (1)(a);

321 (iii) the hospital or other facility where the abortion was performed;

322 (iv) the weight in grams of the unborn child aborted, if it is possible to ascertain;

323 (v) the pathological description of the unborn child;

324 (vi) the given menstrual age of the unborn child;

325 (vii) the measurements of the unborn child, if possible to ascertain; and

326 (viii) the medical procedure used to abort the unborn child; and

327 (b) the department shall make rules in accordance with Title 63G, Chapter 3, Utah
328 Administrative Rulemaking Act.

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

331 (a) the information described in Subsection (1);

332 (b) a copy of the pathologist's report described in Section [76-7-309](#);

333 (c) an affidavit:

334 (i) ~~[that]~~ indicating whether the required consent was obtained pursuant to Sections
335 [76-7-305](#) and [76-7-305.5](#); ~~[and]~~

336 (ii) described in Subsection (3), if applicable; and

337 (iii) indicating whether at the time the physician performed the abortion, the physician

338 had any knowledge that the pregnant woman sought the abortion solely because the unborn
339 child had or may have had Down syndrome; and

340 (d) a certificate indicating:

341 (i) whether the unborn child was or was not viable, as defined in Subsection
342 76-7-302(1), at the time of the abortion; and

343 (ii) if the unborn child was viable, as defined in Subsection 76-7-302(1), at the time of
344 the abortion, the reason for the abortion.

345 (3) If the information module or the address to the website is not provided to a
346 pregnant woman, the physician who performs the abortion on the woman shall, within 10 days
347 after the day on which the abortion is performed, provide to the department an affidavit that:

348 (a) specifies the information that was not provided to the woman; and

349 (b) states the reason that the information was not provided to the woman.

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

352 (5) The department shall pursue all administrative and legal remedies when the
353 department determines that a physician or a facility has not complied with the provisions of this
354 part.

355 Section 9. **Contingent effective date.**

356 (1) As used in this section, "a court of binding authority" means:

357 (a) the United States Supreme Court; or

358 (b) after the right to appeal has been exhausted:

359 (i) the United States Court of Appeals for the Tenth Circuit;

360 (ii) the Utah Supreme Court; or

361 (iii) the Utah Court of Appeals.

362 (2) Except as provided in Subsection (3), this bill takes effect on May 14, 2019.

363 (3) Section 76-7-302.4 takes effect on the date that the legislative general counsel

364 certifies to the Legislative Management Committee that a court of binding authority holds that
365 a state may prohibit the abortion of an unborn child before the unborn child is viable outside of

366 the mother if the sole reason for the abortion is that the unborn child has or may have Down
367 syndrome.