

REFERENCE TITLE: **abortion; informed consent**

State of Arizona  
Senate  
Fiftieth Legislature  
Second Regular Session  
2012

# **SB 1494**

Introduced by  
Senator Smith

AN ACT

AMENDING SECTIONS 36-2151 AND 36-2153, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 20, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-2158; RELATING TO ABORTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-2151, Arizona Revised Statutes, is amended to  
3 read:

4 36-2151. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Abortion" means the use of any means to terminate the clinically  
7 diagnosable pregnancy of a woman with knowledge that the termination by those  
8 means will cause, with reasonable likelihood, the death of the unborn child.  
9 Abortion does not include birth control devices, oral contraceptives used to  
10 inhibit or prevent ovulation, conception or the implantation of a fertilized  
11 ovum in the uterus or the use of any means to increase the probability of a  
12 live birth, to preserve the life or health of the child after a live birth,  
13 to terminate an ectopic pregnancy or to remove a dead fetus.

14 2. "Auscultation" means the act of listening for sounds made by  
15 internal organs of the unborn child, specifically for a heartbeat, using an  
16 ultrasound transducer and fetal heart rate monitor.

17 3. "Conception" means the fusion of a human spermatozoon with a human  
18 ovum.

19 4. "Gestational age" means the age of the unborn child as calculated  
20 from the first day of the last menstrual period of the pregnant woman.

21 5. "Health professional" has the same meaning prescribed in section  
22 32-3201.

23 6. "HUMAN BEING" MEANS AN INDIVIDUAL LIVING MEMBER OF THE SPECIES OF  
24 HOMO SAPIENS, INCLUDING THE UNBORN HUMAN BEING DURING THE ENTIRE EMBRYONIC  
25 AND FETAL AGES FROM CONCEPTION TO FULL GESTATION.

26 ~~6-~~ 7. "Medical emergency" means a condition that, on the basis of the  
27 physician's good faith clinical judgment, so complicates the medical  
28 condition of a pregnant woman as to necessitate the immediate abortion of her  
29 pregnancy to avert her death or for which a delay will create serious risk of  
30 substantial and irreversible impairment of a major bodily function.

31 ~~7-~~ 8. "Physician" means a person who is licensed pursuant to title  
32 32, chapter 13 or 17.

33 ~~8-~~ 9. "Pregnant" or "pregnancy" means a female reproductive condition  
34 of having a developing unborn child in the body and that begins with  
35 conception.

36 ~~9-~~ 10. "Probable gestational age" means the gestational age of the  
37 unborn child at the time the abortion is planned to be performed and as  
38 determined with reasonable probability by the attending physician.

39 ~~10-~~ 11. "Surgical abortion" means the use of a surgical instrument or  
40 a machine to terminate the clinically diagnosable pregnancy of a woman with  
41 knowledge that the termination by those means will cause, with reasonable  
42 likelihood, the death of the unborn child. Surgical abortion does not  
43 include the use of any means to increase the probability of a live birth, to  
44 preserve the life or health of the child after a live birth, to terminate an  
45 ectopic pregnancy or to remove a dead fetus. Surgical abortion does not  
46 include patient care incidental to the procedure.

1       ~~11-~~ 12. "Ultrasound" means the use of ultrasonic waves for diagnostic  
2 or therapeutic purposes to monitor a developing unborn child.

3       ~~12-~~ 13. "Unborn child" means the offspring of human beings from  
4 conception until birth.

5       Sec. 2. Section 36-2153, Arizona Revised Statutes, is amended to read:

6       36-2153. Informed consent; requirements; information;  
7               violation; civil relief; statute of limitations

8       A. An abortion shall not be performed or induced without the voluntary  
9 and informed consent of the woman on whom the abortion is to be performed or  
10 induced. Except in the case of a medical emergency, consent to an abortion  
11 is voluntary and informed only if all of the following are true:

12       1. At least twenty-four hours before the abortion, the physician who  
13 is to perform the abortion or the referring physician has informed the woman,  
14 orally and in person, of ALL OF THE FOLLOWING:

15       (a) The name of the physician who will perform the abortion.

16       (b) THAT THE ABORTION WILL TERMINATE THE LIFE OF A WHOLE, SEPARATE,  
17 UNIQUE, LIVING HUMAN BEING.

18       (c) THAT THE PREGNANT WOMAN HAS AN EXISTING RELATIONSHIP WITH THAT  
19 UNBORN HUMAN BEING AND THAT THE RELATIONSHIP ENJOYS PROTECTION UNDER THE  
20 UNITED STATES CONSTITUTION AND THE LAWS OF THIS STATE.

21       (d) THAT BY HAVING AN ABORTION, THE WOMAN'S EXISTING RELATIONSHIP AND  
22 HER EXISTING CONSTITUTIONAL RIGHTS WITH REGARDS TO THAT RELATIONSHIP WILL BE  
23 TERMINATED.

24       ~~(b)~~ (e) The nature of the proposed procedure or treatment.

25       ~~(e)~~ (f) ~~The~~ ALL KNOWN immediate and long-term medical risks  
26 associated with the procedure that a reasonable patient would consider  
27 material to the decision of whether or not to undergo the abortion,  
28 INCLUDING:

29       (i) DEPRESSION AND RELATED PSYCHOLOGICAL DISTRESS.

30       (ii) THE RISK OF INFECTION, HEMORRHAGE, DANGER TO SUBSEQUENT  
31 PREGNANCIES AND INFERTILITY.

32       (g) A STATEMENT SETTING FORTH AN ACCURATE RATE OF DEATHS IN WHICH THE  
33 ABORTION PROCEDURE WAS A SUBSTANTIAL CONTRIBUTING FACTOR.

34       ~~(d)~~ (h) Alternatives to the procedure or treatment that a reasonable  
35 patient would consider material to the decision of whether or not to undergo  
36 the abortion.

37       ~~(e)~~ (i) The probable gestational age of the unborn child at the time  
38 the abortion is to be performed.

39       ~~(f)~~ (j) The probable anatomical and physiological characteristics of  
40 the unborn child at the time the abortion is to be performed.

41       ~~(g)~~ (k) The medical risks associated with carrying the child to term  
42 COMPARED TO UNDERGOING AN INDUCED ABORTION.

43       2. At least twenty-four hours before the abortion, the physician who  
44 is to perform the abortion, the referring physician or a qualified physician,  
45 physician assistant, nurse, psychologist or licensed behavioral health

1 professional to whom the responsibility has been delegated by either  
2 physician has informed the woman, orally and in person, that:

3 (a) Medical assistance benefits may be available for prenatal care,  
4 childbirth and neonatal care.

5 (b) The father of the unborn child is liable to assist in the support  
6 of the child, even if he has offered to pay for the abortion. In the case of  
7 rape or incest, this information may be omitted.

8 (c) Public and private agencies and services are available to assist  
9 the woman during her pregnancy and after the birth of her child if she  
10 chooses not to have an abortion, whether she chooses to keep the child or  
11 place the child for adoption.

12 (d) PREGNANCY HELP CENTERS ARE AVAILABLE TO PROVIDE INFORMATION AND  
13 ASSISTANCE TO THE WOMAN. THE PHYSICIAN OR OTHER HEALTH PROFESSIONAL SHALL  
14 PROVIDE THE NAME, ADDRESS AND TELEPHONE NUMBER OF A PREGNANCY HELP CENTER IN  
15 REASONABLE PROXIMITY OF THE FACILITY WHERE THE ABORTION WILL BE PERFORMED.

16 ~~(d)~~ (e) It is unlawful for any person to coerce a woman to undergo an  
17 abortion.

18 ~~(e)~~ (f) The woman is free to withhold or withdraw her consent to the  
19 abortion at any time without affecting her right to future care or treatment  
20 and without the loss of any state or federally funded benefits to which she  
21 might otherwise be entitled.

22 3. The information in paragraphs 1 and 2 of this subsection is  
23 provided to the woman individually and in a private room to protect her  
24 privacy and to ensure that the information focuses on her individual  
25 circumstances and that she has adequate opportunity to ask questions.

26 4. The woman certifies in writing before the abortion that the  
27 information required to be provided pursuant to ~~paragraphs 1 and 2 of~~ this  
28 ~~subsection~~ SECTION has been provided.

29 5. THE WOMAN HAS BEEN INFORMED BY THE PHYSICIAN OR THE PHYSICIAN'S  
30 AGENT THAT SHE HAS A RIGHT TO REVIEW ALL OF THE MATERIAL AND INFORMATION  
31 DESCRIBED IN THIS SECTION, AS WELL AS THE PRINTED MATERIALS DESCRIBED IN  
32 SECTION 36-2158. THE PHYSICIAN OR THE PHYSICIAN'S AGENT SHALL INFORM THE  
33 PREGNANT WOMAN, ORALLY OR IN WRITING, THAT THE MATERIALS WILL BE PROVIDED TO  
34 HER BY THE STATE OF ARIZONA AT NO CHARGE. IF THE PREGNANT WOMAN INDICATES AT  
35 ANY TIME THAT SHE WANTS TO REVIEW ANY OF THE MATERIALS DESCRIBED, THIS REVIEW  
36 SHALL BE EITHER GIVEN TO HER AT LEAST TWENTY-FOUR HOURS BEFORE THE ABORTION  
37 OR MAILED TO HER AT LEAST SEVENTY-TWO HOURS BEFORE THE ABORTION BY CERTIFIED  
38 MAIL, RESTRICTED DELIVERY ONLY TO ADDRESSEE.

39 6. BEFORE PERFORMING THE ABORTION, THE PHYSICIAN WHO IS TO PERFORM THE  
40 ABORTION OBTAINS A COPY OF THE WRITTEN DISCLOSURE DOCUMENTS REQUIRED BY THIS  
41 SECTION AND CERTIFIES IN WRITING THAT ALL OF THE INFORMATION DESCRIBED IN  
42 THOSE DOCUMENTS HAS BEEN PROVIDED TO THE PREGNANT WOMAN, THAT THE PHYSICIAN  
43 IS, TO THE BEST OF THE PHYSICIAN'S ABILITY, SATISFIED THAT THE PREGNANT WOMAN  
44 HAS READ THE REQUIRED MATERIALS AND THAT THE PHYSICIAN BELIEVES SHE  
45 UNDERSTANDS THE INFORMATION PROVIDED TO HER.

1           B. THE DISCLOSURES IN SUBSECTION A, PARAGRAPH 1 OF THIS SECTION MUST  
2 BE PROVIDED TO THE PREGNANT WOMAN IN WRITING AND IN PERSON NOT LATER THAN TWO  
3 HOURS BEFORE THE PROCEDURE IS TO BE PERFORMED. THE PHYSICIAN MUST ENSURE  
4 THAT THE PREGNANT WOMAN SIGNS EACH PAGE OF THE WRITTEN DISCLOSURE WITH THE  
5 CERTIFICATION THAT SHE HAS READ AND UNDERSTANDS ALL OF THE DISCLOSURES,  
6 BEFORE SHE SIGNS A CONSENT FOR THE PROCEDURE. THE INFORMATION PRESCRIBED  
7 PURSUANT TO SUBSECTION A, PARAGRAPH 1 OF THIS SECTION MUST BE PROVIDED TO THE  
8 WOMAN IN A CLEAR AND CONCISE PRINTED FORMAT USING FOURTEEN-POINT FONT. IF  
9 THE PREGNANT WOMAN ASKS FOR A CLARIFICATION OR EXPLANATION OF ANY PARTICULAR  
10 DISCLOSURE, OR ASKS ANY OTHER QUESTION ABOUT A MATTER OF SIGNIFICANCE TO HER,  
11 THE EXPLANATION OR ANSWER MUST BE PROVIDED IN WRITING TO THE PREGNANT WOMAN  
12 BEFORE SHE SIGNS A CONSENT FOR THE PROCEDURE AND MUST BE MADE PART OF HER  
13 PERMANENT MEDICAL RECORDS.

14           ~~B.~~ C. If a medical emergency compels the performance of an abortion,  
15 the physician shall inform the woman, before the abortion if possible, of the  
16 medical indications supporting the physician's judgment that an abortion is  
17 necessary to avert the woman's death or to avert substantial and irreversible  
18 impairment of a major bodily function.

19           ~~C.~~ D. An individual who is not a physician shall not perform a  
20 surgical abortion.

21           ~~D.~~ E. A person shall not write or communicate a prescription for a  
22 drug or drugs to induce an abortion or require or obtain payment for a  
23 service provided to a patient who has inquired about an abortion or scheduled  
24 an abortion until the expiration of the twenty-four hour reflection period  
25 required by subsection A OF THIS SECTION.

26           ~~E.~~ F. A person shall not intimidate or coerce in any way any person  
27 to obtain an abortion. A parent, A guardian or any other person shall not  
28 coerce a minor to obtain an abortion. If a minor is denied financial support  
29 by the minor's parents, guardians or custodian due to the minor's refusal to  
30 have an abortion performed, the minor is deemed emancipated for the purposes  
31 of eligibility for public assistance benefits, except that the emancipated  
32 minor may not use these benefits to obtain an abortion.

33           ~~F.~~ G. A physician who knowingly violates this section commits an act  
34 of unprofessional conduct and is subject to license suspension or revocation  
35 pursuant to title 32, chapter 13 or 17.

36           ~~G.~~ H. In addition to other remedies available under the common or  
37 statutory law of this state, any of the following may file a civil action to  
38 obtain appropriate relief for a violation of this section:

39           1. A woman on whom an abortion has been performed without her informed  
40 consent as required by this section.

41           2. The father of the unborn child if married to the mother at the time  
42 she received the abortion, unless the pregnancy resulted from the plaintiff's  
43 criminal conduct.

44           3. The maternal grandparents of the unborn child if the mother was not  
45 at least eighteen years of age at the time of the abortion, unless the  
46 pregnancy resulted from the plaintiff's criminal conduct.

1           ~~H.~~ I. A civil action filed pursuant to subsection ~~G~~ H OF THIS  
2 SECTION shall be brought in the superior court in the county in which the  
3 woman on whom the abortion was performed resides and may be based on a claim  
4 that failure to obtain informed consent was a result of simple negligence,  
5 gross negligence, wantonness, wilfulness, intention or any other legal  
6 standard of care. Relief pursuant to subsection ~~G~~ H OF THIS SECTION  
7 includes the following:

8           1. Money damages for all psychological, emotional and physical  
9 injuries resulting from the violation of this section.

10           2. Statutory damages in an amount equal to five thousand dollars or  
11 three times the cost of the abortion, whichever is greater.

12           3. Reasonable attorney fees and costs.

13           ~~I.~~ J. A civil action brought pursuant to this section must be  
14 initiated within six years after the violation occurred.

15           Sec. 3. Title 36, chapter 20, article 1, Arizona Revised Statutes, is  
16 amended by adding section 36-2158, to read:

17           36-2158. Informed consent materials; requirements

18           A. ON OR BEFORE JANUARY 1, 2013, THE DEPARTMENT OF HEALTH SERVICES  
19 SHALL PUBLISH THE FOLLOWING MATERIALS, IN AN EASILY COMPREHENSIBLE MANNER AND  
20 IN CULTURALLY SENSITIVE LANGUAGES, TO INFORM A PREGNANT WOMAN OF ALL OF THE  
21 FOLLOWING:

22           1. THE DISCLOSURES REQUIRED PURSUANT TO SECTION 36-2153.

23           2. PUBLIC AND PRIVATE AGENCIES AND SERVICES AVAILABLE TO ASSIST THE  
24 WOMAN THROUGHOUT PREGNANCY, DURING CHILDBIRTH AND WHILE THE CHILD IS  
25 DEPENDENT, INCLUDING ADOPTION AGENCIES. THIS INFORMATION SHALL INCLUDE A  
26 LIST OF THE AGENCIES AVAILABLE AND A DESCRIPTION OF THE SERVICES THEY OFFER.

27           3. THE PROBABLE ANATOMICAL AND PHYSIOLOGICAL CHARACTERISTICS OF THE  
28 UNBORN CHILD AT TWO-WEEK GESTATIONAL INCREMENTS FROM THE TIME A PREGNANT  
29 WOMAN CAN BE KNOWN TO BE PREGNANT TO FULL TERM, INCLUDING ANY RELEVANT  
30 INFORMATION ON THE POSSIBILITY OF THE UNBORN CHILD'S SURVIVAL AND PICTURES OR  
31 DRAWINGS REPRESENTING THE DEVELOPMENT OF UNBORN CHILDREN AT TWO-WEEK  
32 GESTATIONAL INCREMENTS. PICTURES OR DRAWINGS SHALL CONTAIN THE DIMENSIONS OF  
33 THE FETUS AND SHALL BE REALISTIC AND APPROPRIATE FOR THE STAGE OF PREGNANCY  
34 DEPICTED. THE MATERIALS SHALL BE OBJECTIVE, NONJUDGMENTAL AND DESIGNED TO  
35 CONVEY ONLY ACCURATE SCIENTIFIC INFORMATION ABOUT THE UNBORN CHILD AT THE  
36 VARIOUS GESTATIONAL AGES.

37           B. THE DEPARTMENT SHALL PRINT THE MATERIAL PRESCRIBED PURSUANT TO THIS  
38 SECTION IN CLEARLY LEGIBLE FOURTEEN-POINT FONT AND SHALL MAKE IT AVAILABLE  
39 FREE OF CHARGE ON REQUEST AND IN AN APPROPRIATE NUMBER TO ANY PERSON,  
40 FACILITY OR HOSPITAL.