



**ARIZONA STATE SENATE**  
*Fiftieth Legislature, Second Regular Session*

**AMENDED**  
FACT SHEET FOR H.B. 2036

~~private attorney retention; contingency fees~~  
(NOW: abortion; procedures; informed consent; requirements)

Purpose

Adds and modifies certain statutes related to the regulation of abortion and abortion clinics.

Background

Various state laws related to the regulation of abortion and abortion clinics are found in Title 36 of the Arizona Revised Statutes, which include the following: parental and informed consent requirements, mandatory reporting requirements and restrictions of abortions under specified circumstances. Additionally, the Director (Director) of the Arizona Department of Health Services (DHS) is required to adopt rules related to the standards for an abortion clinic's physical facilities, supplies and equipment, personnel, medical screening and evaluation of abortion clinic patients, abortion procedures, recovery rooms, follow-up visits and incident reporting.

There is no anticipated fiscal impact to the state General Fund.

Provisions

***Abortion Clinics***

1. Requires the Director to adopt rules that require a physician to be available for a surgical abortion who has admitting privileges at a healthcare institution classified by the Director as a hospital within 30 miles of the abortion clinic.
2. Requires the Director to adopt rules that require a physician to be available for a medication abortion who has admitting privileges at a health care institution classified by the Director as a hospital.
3. States that if a physician is not present, a specified healthcare provider is required to be present and remain at the clinic for monitoring and care of a patient after inducing a medication abortion.
4. Requires the Director to adopt rules that require ultrasound equipment in all abortion clinics and requires an ultrasound evaluation for all abortion clinic patients.

5. States that rules adopted by the Director, in relation to the abortion procedure, must require any medication, drug or other substance used to induce an abortion be administered in compliance with the protocol authorized by the U.S. Food and Drug Administration (FDA) as outlined in the printing labeling instructions for the medication, drug or substance.
6. Requires the Director to adopt rules prescribing minimum recovery room standards for abortion clinics, which include the following:
  - a) immediate post procedure care for a surgical abortion;
  - b) care provided after inducing a medication abortion;
  - c) for a surgical abortion, a physician with admitting privileges at a healthcare institution classified by the Director as a hospital within 30 miles of the abortion clinic must remain on the premises of the abortion clinic until all patients are stable and ready to leave the recovery room and to facilitate the transfer of emergency cases if hospitalization of the patient or viable fetus is necessary; and
  - d) within 24 hours after a surgical abortion, the physician assures that a licensed health professional from the abortion clinic makes a good faith effort to contact the patient by telephone, with the patient's consent, to assess the patient's recovery.
7. Specifies that rules adopted by the Director relating to standards for follow up visits must require:
  - a) for a medication abortion, that a post-abortion medical visit is scheduled between one week and three weeks after the initial dose of a medication to confirm the pregnancy is completely terminated and to assess the degree of bleeding; and
  - b) for a surgical abortion, that a post-abortion medical visit including a medical examination and a review of the results of all laboratory tests is offered and, if requested, scheduled for three weeks after the abortion.
8. Stipulates rules adopted by the Director relating to abortion clinic incident reporting must include any injury or condition that required ambulance transportation of a patient.
9. Instructs the Director to adopt rules related to the enforcement of abortion clinic requirements and provides that, at a minimum, these rules must include the following:
  - a) for an abortion clinic that is not in substantial compliance, or that is in substantial compliance but refuses to carry out an acceptable plan of correction of any deficiencies that are listed on the DHS state of deficiency, DHS is permitted to:
    - i. assess a civil penalty,
    - ii. impose an intermediate sanction,
    - iii. suspend or revoke a license,
    - iv. deny a license, and
    - v. bring an action for an injunction.
  - b) in determining the appropriate enforcement action, DHS must consider the threat of the health, safety and welfare of the abortion clinic's patients or the general public including:
    - i. whether the abortion clinic has had repeated violations,
    - ii. whether the abortion clinic has engaged in a pattern of noncompliance, and
    - iii. the type, severity and number of violations.

***Parental Consent***

10. States that a civil action may be brought against the person who performs an abortion on a pregnant un-emancipated minor, or a person who causes, aids or assists a minor to obtain an abortion, without obtaining the following:
  - a) the secured, written and notarized consent from one of the minor's parents or the minor's guardian or conservator; or
  - b) the authorization of a judge of the superior court for the physician to perform the abortion.
  
11. Requires consent to be obtained on a form prescribed by DHS, and prescribes the form to include the following:
  - a) a list of possible medical risks that may occur with any surgical, medical or diagnostic procedure;
  - b) a list of possible medical risks that may occur with a surgical abortion;
  - c) a list of the possible medical risks that may occur with a medication abortion;
  - d) the patient's and the parent's initials on each page of the form and a full signature on the final page; and
  - e) a space for a notary's signature and seal on the final page of the form.
  
12. Requires the physician to maintain the form in the patient's records for seven years after the date of the procedure, or for five years after the date of the minor's maturity, whichever is longer.

***Informed Consent; Website***

13. Requires, at least 24 hours before the abortion that the physician who is to perform the abortion, or a specified healthcare provider to whom the responsibility has been delegated by the physician, has informed the woman, orally and in person, the following:
  - a) that DHS maintains a website describing the unborn child and lists the agencies offering alternatives to abortion; and
  - b) that the woman has a right to review the website and that a printed copy of the materials on the website will be provided free of charge if she chooses to review the materials.
  
14. Instructs DHS to establish a website within 90 days after the effective date of the legislation and to update the website annually.
  
15. Specifies the website must provide a link to a printable version of all materials listed on the website, and requires the materials to be written in an easily understood manner and printed in a typeface large enough to be clearly legible.
  
16. Requires the website to include the following materials:
  - a) information that is organized geographically by location and is designed to inform the woman about public and private agencies and services available to assist a woman through pregnancy, at childbirth and while her child is dependant, including adoption agencies;
  - b) a comprehensive list of the agencies, a description of services offered and contact information including the agencies' telephone numbers and website addresses;

- c) information on the availability of medical assistance benefits for prenatal care, childbirth and neonatal care;
  - d) a statement that it is unlawful for any person to coerce a woman to undergo an abortion;
  - e) a statement that any physician who performs an abortion on a woman without obtaining the woman's voluntary and informed consent, or without according her a private medical consultation, may be liable to the woman for damages in a civil action;
  - f) a statement that the father of a child is liable to assist in the support of that child, even if the father has offered to pay for an abortion, and that the law allows adoptive parents to pay costs of prenatal care, childbirth and neonatal care;
  - g) information designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full term, including pictures or drawings representing the development of unborn children at two-week gestational increments and any relevant information on the possibility of the unborn child's survival and requires the following:
    - i. the pictures or drawings to be realistic, appropriate for each stage of pregnancy and contain the dimensions of the unborn child; and
    - ii. the information to be objective, nonjudgmental and designed to convey only accurate scientific information about the unborn child at the various gestational ages.
  - h) objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each procedure, the possible detrimental psychological effects of abortion and the medical risks commonly associated with carrying a child to full term.
17. Requires abortion clinics to conspicuously post clearly readable signs, visible to all who enter the abortion clinic that state it is unlawful for any person to force a woman to have an abortion and a woman who is being forced to have an abortion has the right to contact any local or state law enforcement or social service agency to receive protection from any actual or threatened physical, emotional or psychological abuse.
18. Requires the signs to be posted in the waiting rooms, consultation rooms and procedure rooms of abortion clinics.
19. Prohibits a person from requiring a woman to obtain an abortion as a provision in a contract or as a condition of employment.

***Informed Consent; Ultrasound Requirements***

20. Requires, at least 24 hours before the woman having any part of an abortion performed or induced, and before the administration of any anesthesia or medication in preparation for the abortion, the physician who is to perform the abortion, the referring physician or a qualified person working in conjunction with either physician, to do the following:
- a) perform fetal ultrasound imaging on the woman undergoing the abortion;
  - b) offer to provide the woman an opportunity to view the active ultrasound image;
  - c) offer the woman an explanation of what the ultrasound is depicting; and
  - d) offer a physical picture of the ultrasound image.

*Informed Consent; Fetal Condition*

21. Prohibits a person from performing or inducing an abortion without first obtaining the voluntary and informed consent of the woman on whom the abortion is to be performed or induced, and specifies that consent to an abortion is voluntary and informed only if, at least 24 hours before the abortion, all of the following occur:
  - a) for a woman seeking an abortion of her unborn child diagnosed with a lethal fetal condition, the physician who is to perform the abortion or the referring physician must inform the woman, orally and in person, of the following:
    - i. perinatal hospice services are available and the physician has offered this care as an alternative to abortion;
    - ii. DHS maintains a website that lists perinatal programs available both in this state and nationally, and that are organized by geographic location; and
    - iii. the woman has a right to review the website and a printed copy of the materials on the website will be provided free of charge if she chooses to review such materials.
  - b) for a woman seeking an abortion of her unborn child diagnosed with a nonlethal fetal condition the physician who is to perform the abortion or the referring physician must inform the woman, orally and in person, of the following:
    - i. up-to-date, evidence based information concerning the range of outcomes for individuals living with the diagnosed condition, including physical, developmental, educational and psychosocial outcomes;
    - ii. DHS maintains a website that lists information regarding support services, hotlines, resource centers or clearinghouses, national and local peer support groups, and other education and support programs available to assist the woman and the unborn child, any national or local registries of families willing to adopt newborns with the diagnosed condition and contact information for adoption agencies willing to place newborns with the diagnosed condition with families willing to adopt, and;
    - iii. the woman has the right to review the website and a printed copy of the materials on the website will be provided free of charge if she chooses to review such materials.
  - c) the woman certifies in writing, before the abortion, that the required information has been provided.
22. Requires DHS to establish, within 90 days after the effective date of the legislation, a website that is to be annually updated and includes the required information.
23. States a physician who knowingly fails to obtain the required informed consent related to fetal condition commits an act of unprofessional conduct and is subject to license suspension or revocation.
24. Permits the following individuals to file a civil action to obtain appropriate relief:
  - a) a woman on whom an abortion has been performed without her informed consent, as required;

- b) the father of the unborn child, if the father is married to the mother at the time she received the abortion, unless the pregnancy resulted from the father's criminal conduct; or
  - c) the maternal grandparents of the unborn child if the mother was not at least 18 years of age at the time of the abortion, unless the pregnancy resulted from either of the grandparent's criminal conduct.
25. Specifies a civil action must be brought in the superior court in the county in which the woman on whom the abortion was performed resides, and that the action may be based on a claim that failure to obtain informed consent was a result of simple negligence, gross negligence, wantonness, willfulness, intention or any other legal standard of care.
26. States a civil action brought must be initiated within six years after the violation occurred.
27. Specifies relief includes the following:
- a) money damages for all psychological, emotional and physical injuries;
  - b) statutory damages in an amount equal to \$5,000 or three times the cost of the abortion, whichever is greater; and
  - c) reasonable attorney fees and costs.

### *Gestational Age*

28. Prohibits, except in a medical emergency, a person from performing, inducing or attempting to perform or induce an abortion, unless the physician has made a determination of the probable gestational age of the unborn child.
29. Specifies in making a determination relating to the gestational age of an unborn child, the physician is required to make any inquiries of the pregnant woman and perform, or cause to be performed, all medical examinations, imaging studies and tests as a reasonably prudent physician in the community would consider necessary to perform and consider in determining the gestational age of the unborn child.
30. Prohibits, except in a medical emergency, a person from knowingly performing, inducing or attempting to perform or induce an abortion on a pregnant woman if the probable gestational age of the unborn child has been determined to be at least 20 weeks.
31. Classifies, as a class 1 misdemeanor, knowingly violating gestational age related provisions.
32. Specifies that a physician who knowingly violates provisions related to gestational age commits an act of unprofessional conduct and is subject to license suspension or revocation.
33. Permits the following individuals to file a civil action to obtain appropriate relief:
- a) a woman on whom an abortion has been performed;
  - b) the father of the unborn child, if the father is married to the mother at the time she received the abortion, unless the pregnancy resulted from the father's criminal conduct; or

- c) the maternal grandparents of the unborn child if the mother was not at least 18 years of age at the time of the abortion, unless the pregnancy resulted from either of the grandparent's criminal conduct.
34. Specifies a civil action is required to be brought in the superior court in the county in which the woman on whom the abortion was performed resides.
  35. States relief includes the following:
    - a) money damages for all psychological, emotional and physical injuries resulting from a violation;
    - b) statutory damages in an amount equal to \$5,000 or three times the cost of the abortion, whichever is greater; and
    - c) reasonable attorney fees and costs.
  36. States a civil action brought must be initiated within six years after the violation occurred.
  37. States a woman on whom an abortion is performed or induced in violation of gestation age determination requirements may not be subject to prosecution for a violation or for conspiracy to commit a violation.

#### *Miscellaneous*

38. Permits DHS to assess a civil penalty, impose an intermediate sanction, suspend, revoke or deny a license, or bring an action for an injunction, if a licensed abortion clinic facility or organization willfully violates the abortion reporting requirements.
39. Defines *medication abortion*, *surgical abortion*, *lethal fetal condition*, *nonlethal fetal condition*, and *perinatal hospice*.
40. Modifies the definition of *abortion*.
41. Contains a findings and purposes clause, a construction clause and a severability clause.
42. Exempts DHS from administrative procedure rule making requirements for two years after the effective date of the legislation.
43. Makes technical and conforming changes.
44. Becomes effective on the general effective date.

#### Amendments Adopted by Committee

- Adopted the strike everything amendment.
- Makes a technical change.

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Senate Action

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Prepared by Senate Research

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