

REFERENCE TITLE: **abortion clinics; inspection; minors; reporting**

State of Arizona
House of Representatives
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HB 2284

Introduced by

Representatives Lesko, Allen, Borrelli, Mesnard, Smith, Thorpe, Senators Barto, Burges, Farnsworth D, Murphy, Ward, Yarbrough, Yee: Representatives Forese, Gray, Livingston, Montenegro, Senators Crandell, Griffin, Melvin

AN ACT

**AMENDING SECTIONS 36-449.02, 36-2152 AND 36-2161, ARIZONA REVISED STATUTES;
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 36-449.02, Arizona Revised Statutes, is amended to
3 read:

4 36-449.02. Abortion clinics; licensure requirements; rules;
5 inspections

6 A. Beginning on April 1, 2000, an abortion clinic shall meet the same
7 licensure requirements as prescribed in article 2 of this chapter for health
8 care institutions.

9 B. An abortion clinic that holds an unclassified health care facility
10 license issued before ~~the effective date of this article~~ AUGUST 6, 1999 may
11 retain that classification until April 1, 2000 subject to compliance with all
12 laws that relate to unclassified health care facilities.

13 C. Beginning on April 1, 2000, abortion clinics shall comply with
14 department requirements for abortion clinics and department rules that govern
15 abortion clinics.

16 D. IF THE DIRECTOR DETERMINES THAT THERE IS REASONABLE CAUSE TO
17 BELIEVE AN ABORTION CLINIC IS NOT ADHERING TO THE LICENSING REQUIREMENTS OF
18 THIS ARTICLE OR ANY OTHER LAW OR RULE CONCERNING ABORTION, THE DIRECTOR AND
19 ANY DULY DESIGNATED EMPLOYEE OR AGENT OF THE DIRECTOR, INCLUDING COUNTY
20 HEALTH REPRESENTATIVES AND COUNTY OR MUNICIPAL FIRE INSPECTORS, CONSISTENT
21 WITH STANDARD MEDICAL PRACTICES, MAY ENTER ON AND INTO THE PREMISES OF THE
22 ABORTION CLINIC THAT IS LICENSED OR REQUIRED TO BE LICENSED PURSUANT TO THIS
23 ARTICLE DURING REGULAR BUSINESS HOURS OF THE ABORTION CLINIC TO DETERMINE
24 COMPLIANCE WITH THIS ARTICLE, RULES ADOPTED PURSUANT TO THIS ARTICLE, LOCAL
25 FIRE ORDINANCES OR RULES AND ANY OTHER LAW OR RULE RELATING TO ABORTION.

26 E. AN APPLICATION FOR LICENSURE PURSUANT TO THIS ARTICLE CONSTITUTES
27 PERMISSION FOR, AND COMPLETE ACQUIESCENCE IN, AN ENTRY OR INSPECTION OF THE
28 PREMISES DURING THE PENDENCY OF THE APPLICATION AND, IF LICENSED, DURING THE
29 TERM OF THE LICENSE.

30 F. IF AN INSPECTION CONDUCTED PURSUANT TO THIS SECTION REVEALS THAT AN
31 ABORTION CLINIC IS NOT ADHERING TO THE LICENSING REQUIREMENTS PRESCRIBED
32 PURSUANT TO THIS ARTICLE OR ANY OTHER LAW OR RULE CONCERNING ABORTION, THE
33 DIRECTOR MAY TAKE ACTION AUTHORIZED BY THIS ARTICLE.

34 G. AN ABORTION CLINIC WHOSE LICENSE HAS BEEN SUSPENDED OR REVOKED
35 PURSUANT TO THIS ARTICLE OR SECTION 36-424 IS SUBJECT TO INSPECTION ON
36 APPLICATION FOR RELICENSURE OR REINSTATEMENT OF THE LICENSE.

37 Sec. 2. Section 36-2152, Arizona Revised Statutes, is amended to read:

38 36-2152. Parental consent; exception; hearings; time limits;
39 violations; classification; civil relief; statute of
40 limitations

41 A. In addition to the other requirements of this chapter, a person
42 shall not knowingly perform an abortion on a pregnant unemancipated minor
43 unless the attending physician has secured the written and notarized consent
44 from one of the minor's parents or the minor's guardian or conservator or
45 unless a judge of the superior court authorizes the physician to perform the

1 abortion pursuant to subsection B of this section. Notwithstanding section
2 41-319, the notarized statement of parental consent and the description of
3 the document or notarial act recorded in the notary journal are confidential
4 and are not public records.

5 B. A judge of the superior court, on petition or motion, and after an
6 appropriate hearing, shall authorize a physician to perform the abortion if
7 the judge determines that the pregnant minor is mature and capable of giving
8 informed consent to the proposed abortion. If the judge determines that the
9 pregnant minor is not mature or if the pregnant minor does not claim to be
10 mature, the judge shall determine whether the performance of an abortion on
11 her without the consent from one of her parents or her guardian or
12 conservator would be in her best interests and shall authorize a physician to
13 perform the abortion without consent if the judge concludes that the pregnant
14 minor's best interests would be served.

15 C. If the pregnant minor claims to be mature at a proceeding held
16 pursuant to subsection B of this section, the minor must prove by clear and
17 convincing evidence that she is sufficiently mature and capable of giving
18 informed consent without consulting her parent or legal guardian based on her
19 experience level, perspective and judgment. In assessing the pregnant
20 minor's experience level, the court may consider, among other relevant
21 factors, the minor's age and experiences working outside the home, living
22 away from home, traveling on her own, handling personal finances and making
23 other significant decisions. In assessing the pregnant minor's perspective,
24 the court may consider, among other relevant factors, what steps the minor
25 took to explore her options and the extent to which she considered and
26 weighed the potential consequences of each option. In assessing the pregnant
27 minor's judgment, the court may consider, among other relevant factors, the
28 minor's conduct since learning of her pregnancy and her intellectual ability
29 to understand her options and to make an informed decision.

30 D. The pregnant minor may participate in the court proceedings on her
31 own behalf. The court shall appoint a guardian ad litem for her. The court
32 shall advise her that she has the right to court appointed counsel and, on
33 her request, shall provide her with counsel unless she appears through
34 private counsel or she knowingly and intelligently waives her right to
35 counsel.

36 E. Proceedings in the court under this section are confidential and
37 have precedence over other pending matters. Members of the public shall not
38 inspect, obtain copies of or otherwise have access to records of court
39 proceedings under this section unless authorized by law. A judge who
40 conducts proceedings under this section shall make in writing specific
41 factual findings and legal conclusions supporting the decision and shall
42 order a confidential record of the evidence to be maintained, including the
43 judge's own findings and conclusions. The minor may file the petition using
44 a fictitious name. For purposes of this subsection, public does not include
45 judges, clerks, administrators, professionals or other persons employed by or

1 working under the supervision of the court or employees of other public
2 agencies who are authorized by state or federal rule or law to inspect and
3 copy closed court records.

4 F. The court shall hold the hearing and shall issue a ruling within
5 forty-eight hours, excluding weekends and holidays, after the petition is
6 filed. If the court fails to issue a ruling within this time period, the
7 petition is deemed to have been granted and the consent requirement is
8 waived.

9 G. An expedited confidential appeal is available to a pregnant minor
10 for whom the court denies an order authorizing an abortion without parental
11 consent. The appellate court shall hold the hearing and issue a ruling
12 within forty-eight hours, excluding weekends and holidays, after the petition
13 for appellate review is filed. Filing fees are not required of the pregnant
14 minor at either the trial or the appellate level.

15 H. Parental consent or judicial authorization is not required under
16 this section if either:

17 1. The pregnant minor certifies to the attending physician that the
18 pregnancy resulted from sexual conduct with a minor by the minor's parent,
19 stepparent, uncle, grandparent, sibling, adoptive parent, legal guardian or
20 foster parent or by a person who lives in the same household with the minor
21 and the minor's mother. The physician performing the abortion shall report
22 the sexual conduct with a minor to the proper law enforcement officials
23 pursuant to section 13-3620 and shall preserve and forward a sample of the
24 fetal tissue to these officials for use in a criminal investigation.

25 2. The attending physician certifies in the pregnant minor's medical
26 record that, on the basis of the physician's good faith clinical judgment,
27 the pregnant minor has a condition that so complicates her medical condition
28 as to necessitate the immediate abortion of her pregnancy to avert her death
29 or for which a delay will create serious risk of substantial and irreversible
30 impairment of major bodily function.

31 I. A person who performs an abortion in violation of this section is
32 guilty of a class 1 misdemeanor. **A PERSON WHO INTENTIONALLY CAUSES, AIDS OR**
33 **ASSISTS A MINOR IN OBTAINING AN ABORTION IN VIOLATION OF THIS SECTION IS**
34 **GUILTY OF A CLASS 1 MISDEMEANOR.** A person is not subject to any liability
35 under this section if the person establishes by written evidence that the
36 person relied on evidence sufficient to convince a careful and prudent person
37 that the representations of the pregnant minor regarding information
38 necessary to comply with this section are true.

39 J. In addition to other remedies available under the common or
40 statutory law of this state, one or both of the minor's parents or the
41 minor's guardian may bring a civil action in the superior court in the county
42 in which the parents or the guardian resides to obtain appropriate relief for
43 a violation of this section, unless the pregnancy resulted from the criminal
44 conduct of the parent or guardian. The civil action may be based on a claim
45 that failure to obtain consent was a result of simple negligence, gross

1 negligence, wantonness, wilfulness, intention or any other legal standard of
2 care. The civil action may be brought against the person who performs the
3 abortion in violation of this section and any person who causes, aids or
4 assists a minor to obtain an abortion without meeting the requirements of
5 this section. Relief pursuant to this subsection includes the following:

6 1. Money damages for all psychological, emotional and physical
7 injuries that result from the violation of this section.

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

10 3. Reasonable attorney fees and costs.

11 K. A civil action brought pursuant to this section must be initiated
12 within six years after the violation occurred.

13 L. The consent required by this section must be obtained on a form
14 prescribed by the department of health services. At a minimum, the form
15 must:

16 1. List the possible medical risks that may occur with any surgical,
17 medical or diagnostic procedure, including the potential for infection, blood
18 clots, hemorrhage, allergic reactions and death.

19 2. List the possible medical risks that may occur with a surgical
20 abortion, including hemorrhage, uterine perforation, sterility, injury to the
21 bowel or bladder, a possible hysterectomy as a result of a complication or
22 injury during the procedure and failure to remove all products of conception
23 that may result in an additional procedure.

24 3. List the possible medical risks that may occur with a medication
25 abortion, including hemorrhage, infection, failure to remove all products of
26 conception that may result in an additional procedure, sterility and the
27 possible continuation of the pregnancy.

28 4. Require the pregnant minor's and the pregnant minor's parent's
29 initials on each page of the form and a full signature on the final page of
30 the form.

31 5. Include a space for the notary's signature and seal on the final
32 page of the form.

33 M. The physician must maintain the form in the pregnant minor's
34 records for seven years after the date of the procedure or five years after
35 the date of the minor's maturity, whichever is longer.

36 Sec. 3. Section 36-2161, Arizona Revised Statutes, is amended to read:

37 36-2161. Abortions; reporting requirements

38 A. A hospital or facility in this state where abortions are performed
39 must submit to the department of health services on a form prescribed by the
40 department a report of each abortion performed in the hospital or facility.
41 The report shall not identify the individual patient by name but must include
42 the following information:

43 1. The name and address of the facility where the abortion was
44 performed.

45 2. The type of facility where the abortion was performed.

- 1 3. The county where the abortion was performed.
- 2 4. The woman's age.
- 3 5. The woman's educational background by highest grade completed and,
- 4 if applicable, level of college completed.
- 5 6. The county and state in which the woman resides.
- 6 7. The woman's race and ethnicity.
- 7 8. The woman's marital status.
- 8 9. The number of prior pregnancies and prior abortions of the woman.
- 9 10. The number of previous spontaneous terminations of pregnancy of the
- 10 woman.
- 11 11. The gestational age of the unborn child at the time of the
- 12 abortion.
- 13 12. The reason for the abortion, including whether the abortion is
- 14 elective or due to maternal or fetal health considerations.
- 15 13. The type of procedure performed or prescribed and the date of the
- 16 abortion.
- 17 14. Any preexisting medical conditions of the woman that would
- 18 complicate pregnancy and any known medical complication that resulted from
- 19 the abortion.
- 20 15. The basis for any medical judgment that a medical emergency existed
- 21 that excused the physician from compliance with the requirements of this
- 22 chapter.
- 23 16. The physician's statement if required pursuant to section
- 24 36-2301.01.
- 25 17. If applicable, the weight of the aborted fetus for any abortion
- 26 performed pursuant to section 36-2301.01.
- 27 18. WHETHER AN INFANT WAS BORN ALIVE DURING OR IMMEDIATELY AFTER AN
- 28 ATTEMPTED ABORTION AND THE EFFORTS MADE TO PROMOTE, PRESERVE AND MAINTAIN THE
- 29 LIFE OF THE INFANT PURSUANT TO SECTION 36-2301.
- 30 B. The report must be signed by the physician who performed the
- 31 abortion or, if a health professional other than a physician is authorized by
- 32 law to prescribe or administer abortion medication, the signature and title
- 33 of the person who prescribed or administered the abortion medication. The
- 34 form may be signed electronically and shall indicate that the person who
- 35 signs the report is attesting that the information in the report is correct
- 36 to the best of the person's knowledge. The hospital or facility must
- 37 transmit the report to the department within fifteen days after the last day
- 38 of each reporting month.
- 39 C. Any report filed pursuant to this section shall be filed
- 40 electronically at an internet website that is designated by the department
- 41 unless the person required to file the report applies for a waiver from
- 42 electronic reporting by submitting a written request to the department.

1 Sec. 4. Exemption from rulemaking

2 For the purposes of implementing this act, the department of health
3 services is exempt from the rulemaking requirements of title 41, chapter 6,
4 Arizona Revised Statutes, for one year after the effective date of this act.

5 Sec. 5. Legislative findings

6 A. Concerning section 36-449.02, Arizona Revised Statutes, as amended
7 by this act, the legislature finds that abortion clinics are closely
8 regulated health care entities. The legislature further finds that the
9 authority of the director of the department of health services to inspect
10 abortion clinics is essential for maintaining adequate health and safety
11 standards. The same public health considerations that apply to the
12 inspection of other health care institutions pursuant to section 36-424,
13 Arizona Revised Statutes, supported by a determination of reasonable cause,
14 also apply to abortion clinics.

15 B. Concerning section 36-2152, Arizona Revised Statutes, as amended by
16 this act, the legislature recognizes that the decision whether to have an
17 abortion is serious and "fraught with consequences." *Planned Parenthood of*
18 *Southeastern Pa. v. Casey*, 505 U.S. 833, 852 (1992). Immature minors often
19 lack the ability to make fully informed choices that take into account both
20 immediate and long-term consequences; therefore, parental involvement in the
21 abortion decision is usually desirable and in the best interests of the
22 minor. See *In re B.S.*, 205 Ariz. 611, 616-17, 74 P.3d 285, 290-91 (App.
23 2003). The legislature further finds that Arizona has a compelling interest
24 in its public policy favoring parental involvement for minors facing
25 pregnancy and ensuring that parental rights under the law are not
26 circumvented by individuals other than a parent or guardian transporting
27 minors across state lines to avoid Arizona's parental involvement laws. The
28 law of Arizona should be followed and any judicial relief should be confined
29 to that provided under Arizona statutes. See *Jackie Doe v. Hon. Michael Ryan*
30 *and Arizona Dept. of Economic Security*, CV-99-0343-SA (1999) (Zlaket, C.J.,
31 and Jones, J., dissenting).

32 Sec. 6. Severability

33 If a provision of this act or its application to any person or
34 circumstance is held invalid, the invalidity does not affect other provisions
35 or applications of the act that can be given effect without the invalid
36 provision or application, and to this end the provisions of this act are
37 severable.