

REFERENCE TITLE: **abortion; waiting period; informed consent**

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HB 2679

Introduced by
Representative Sherwood

AN ACT

**AMENDING SECTIONS 36-2153, 36-2156 AND 36-2158, 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 36-2153, Arizona Revised Statutes, is amended to
3 read:

4 36-2153. Informed consent; requirements; information; website;
5 signs; violation; civil relief; statute of
6 limitations

7 A. An abortion shall not be performed or induced without the voluntary
8 and informed consent of the woman on whom the abortion is to be performed or
9 induced. Except in the case of a medical emergency, **RAPE OR INCEST** and in
10 addition to the other requirements of this chapter, consent to an abortion is
11 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:

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

16 (b) The nature of the proposed procedure or treatment.

17 (c) The immediate and long-term medical risks associated with the
18 procedure that a reasonable patient would consider material to the decision
19 of whether or not to undergo the abortion.

20 (d) Alternatives to the procedure or treatment that a reasonable
21 patient would consider material to the decision of whether or not to undergo
22 the abortion.

23 (e) The probable gestational age of the unborn child at the time the
24 abortion is to be performed.

25 (f) The probable anatomical and physiological characteristics of the
26 unborn child at the time the abortion is to be performed.

27 (g) The medical risks associated with carrying the child to term.

28 2. ~~At least twenty-four hours before the abortion,~~ The physician who
29 is to perform the abortion, the referring physician or a qualified physician,
30 physician assistant, nurse, psychologist or licensed behavioral health
31 professional to whom the responsibility has been delegated by either
32 physician has informed the woman, orally and in person, that:

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

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

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

42 (d) It is unlawful for any person to coerce a woman to undergo an
43 abortion.

1 (e) The woman is free to withhold or withdraw her consent to the
2 abortion at any time without affecting her right to future care or treatment
3 and without the loss of any state or federally funded benefits to which she
4 might otherwise be entitled.

5 (f) The department of health services maintains a website that
6 describes the unborn child and lists the agencies that offer alternatives to
7 abortion.

8 (g) The woman has a right to review the website and that a printed
9 copy of the materials on the website will be provided to her free of charge
10 if she chooses to review these materials.

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

15 4. The woman certifies in writing before the abortion that the
16 information required to be provided pursuant to paragraphs 1 and 2 of this
17 subsection has been provided.

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

23 C. The department of health services shall establish a website ~~within~~
24 ~~ninety days after the effective date of this amendment to this section~~ and
25 shall annually update the website. The website must include a link to a
26 printable version of all materials listed on the website. The materials must
27 be written in an easily understood manner and printed in a typeface that is
28 large enough to be clearly legible. The website must include all of the
29 following materials:

30 1. Information that is organized geographically by location and that
31 is designed to inform the woman about public and private agencies and
32 services that are available to assist a woman through pregnancy, at
33 childbirth and while her child is dependent, including adoption agencies.
34 The materials shall include a comprehensive list of the agencies, a
35 description of the services they offer and the manner in which these agencies
36 may be contacted, including the agencies' telephone numbers and website
37 addresses.

38 2. Information on the availability of medical assistance benefits for
39 prenatal care, childbirth and neonatal care.

40 3. A statement that it is unlawful for any person to coerce a woman to
41 undergo an abortion.

42 4. A statement that any physician who performs an abortion on a woman
43 without obtaining the woman's voluntary and informed consent or without
44 affording her a private medical consultation may be liable to the woman for
45 damages in a civil action.

1 5. A statement that the father of a child is liable to assist in the
2 support of that child, even if the father has offered to pay for an abortion,
3 and that the law allows adoptive parents to pay costs of prenatal care,
4 childbirth and neonatal care.

5 6. Information that is designed to inform the woman of the probable
6 anatomical and physiological characteristics of the unborn child at two-week
7 gestational increments from fertilization to full term, including pictures or
8 drawings representing the development of unborn children at two-week
9 gestational increments and any relevant information on the possibility of the
10 unborn child's survival. The pictures or drawings must contain the
11 dimensions of the unborn child and must be realistic and appropriate for each
12 stage of pregnancy. The information provided pursuant to this paragraph must
13 be objective, nonjudgmental and designed to convey only accurate scientific
14 information about the unborn child at the various gestational ages.

15 7. Objective information that describes the methods of abortion
16 procedures commonly employed, the medical risks commonly associated with each
17 procedure, the possible detrimental psychological effects of abortion and the
18 medical risks commonly associated with carrying a child to term.

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

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

26 F. E. 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 ~~G.~~ F. An abortion clinic as defined in section 36-449.01 shall
34 conspicuously post signs that are visible to all who enter the abortion
35 clinic, that are clearly readable and that state it is unlawful for any
36 person to force a woman to have an abortion and a woman who is being forced
37 to have an abortion has the right to contact any local or state law
38 enforcement or social service agency to receive protection from any actual or
39 threatened physical, emotional or psychological abuse. The signs shall be
40 posted in the waiting room, consultation rooms and procedure rooms.

41 ~~H.~~ G. A person shall not require a woman to obtain an abortion as a
42 provision in a contract or as a condition of employment.

43 ~~I.~~ H. A physician who knowingly violates this section commits an act
44 of unprofessional conduct and is subject to license suspension or revocation
45 pursuant to title 32, chapter 13 or 17.

1 ~~I.~~ I. In addition to other remedies available under the common or
2 statutory law of this state, any of the following may file a civil action to
3 obtain appropriate relief for a violation of this section:

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

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

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

12 ~~K.~~ J. A civil action filed pursuant to subsection ~~I~~ I of this
13 section shall be brought in the superior court in the county in which the
14 woman on whom the abortion was performed resides and may be based on a claim
15 that failure to obtain informed consent was a result of simple negligence,
16 gross negligence, wantonness, wilfulness, intention or any other legal
17 standard of care. Relief pursuant to subsection ~~I~~ I of this section
18 includes the following:

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

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

23 3. Reasonable attorney fees and costs.

24 ~~L.~~ K. A civil action brought pursuant to this section must be
25 initiated within six years after the violation occurred.

26 Sec. 2. Section 36-2156, Arizona Revised Statutes, is amended to read:

27 36-2156. Informed consent; ultrasound required; violation;
28 civil relief; statute of limitations

29 A. An abortion shall not be performed or induced without the voluntary
30 and informed consent of the woman on whom the abortion is to be performed or
31 induced. Except in the case of a medical emergency, RAPE OR INCEST and in
32 addition to the other requirements of this chapter, consent to an abortion is
33 voluntary and informed only if both of the following are true:

34 1. ~~At least twenty-four hours before the woman having any part of an~~
35 ~~abortion performed or induced, and~~ Before the administration of any
36 anesthesia or medication in preparation for the abortion on the woman, the
37 physician who is to perform the abortion, the referring physician or a
38 qualified person working in conjunction with either physician shall:

39 (a) Perform fetal ultrasound imaging and auscultation of fetal heart
40 tone services on the woman undergoing the abortion.

41 (b) Offer to provide the woman with an opportunity to view the active
42 ultrasound image of the unborn child and hear the heartbeat of the unborn
43 child if the heartbeat is audible. The active ultrasound image must be of a
44 quality consistent with standard medical practice in the community, contain
45 the dimensions of the unborn child and accurately portray the presence of

1 external members and internal organs, if present or viewable, of the unborn
2 child. The auscultation of fetal heart tone must be of a quality consistent
3 with standard medical practice in the community.

4 (c) Offer to provide the woman with a simultaneous explanation of what
5 the ultrasound is depicting, including the presence and location of the
6 unborn child within the uterus, the number of unborn children depicted, the
7 dimensions of the unborn child and the presence of any external members and
8 internal organs, if present or viewable.

9 (d) Offer to provide the patient with a physical picture of the
10 ultrasound image of the unborn child.

11 2. The woman certifies in writing before the abortion that she has
12 been given the opportunity to view the active ultrasound image and hear the
13 heartbeat of the unborn child if the heartbeat is audible and that she opted
14 to view or not view the active ultrasound image and hear or not hear the
15 heartbeat of the unborn child.

16 B. A physician who knowingly violates this section commits an act of
17 unprofessional conduct and is subject to license suspension or revocation
18 pursuant to title 32, chapter 13 or 17.

19 C. In addition to other remedies available under the common or
20 statutory law of this state, any of the following may file a civil action to
21 obtain appropriate relief for a violation of this section:

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

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

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

30 D. A civil action filed pursuant to subsection C of this section shall
31 be brought in the superior court in the county in which the woman on whom the
32 abortion was performed resides and may be based on a claim that failure to
33 obtain informed consent was a result of simple negligence, gross negligence,
34 wantonness, wilfulness, intention or any other legal standard of care.
35 Relief pursuant to subsection C of this section includes any of the
36 following:

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

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

41 3. Reasonable attorney fees and costs.

42 E. A civil action brought pursuant to this section must be initiated
43 within six years after the violation occurred.

Sec. 3. Section 36-2158, Arizona Revised Statutes, is amended to read:

36-2158. Informed consent; fetal condition; website; unprofessional conduct; civil relief; statute of limitations; definitions

A. A person shall not perform or induce an abortion without first obtaining the voluntary and informed consent of the woman on whom the abortion is to be performed or induced. Except in the case of a medical emergency and in addition to the other requirements of this chapter, consent to an abortion is voluntary and informed only if all of the following occur:

1. In the case of a woman seeking an abortion of her unborn child diagnosed with a lethal fetal condition, ~~at least twenty-four hours~~ before the abortion the physician who is to perform the abortion or the referring physician has informed the woman, orally and in person, that:

(a) Perinatal hospice services are available and the physician has offered this care as an alternative to abortion.

(b) The department of health services maintains a website that lists perinatal hospice programs that are available both in this state and nationally and that are organized geographically by location.

(c) The woman has a right to review the website and that a printed copy of the materials on the website will be provided to her free of charge if she chooses to review these materials.

2. In the case of a woman seeking an abortion of her unborn child diagnosed with a nonlethal fetal condition, ~~at least twenty-four hours~~ before the abortion the physician who is to perform the abortion or the referring physician has informed the woman, orally and in person:

(a) Of 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.

(b) That the department of health services 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 her unborn child, any national or local registries of families willing to adopt newborns with the nonlethal fetal condition and contact information for adoption agencies willing to place newborns with the nonlethal fetal condition with families willing to adopt.

(c) That the woman has a right to review the website and that a printed copy of the materials on the website will be provided to her free of charge if she chooses to review these materials.

3. The woman certifies in writing before the abortion that the information required to be provided pursuant to this subsection has been provided.

1 B. The department of health services shall establish a website ~~within~~
2 ~~ninety days after the effective date of this section~~ and shall annually
3 update the website. The website shall include the information prescribed in
4 subsection A, paragraph 1, subdivision (b) and paragraph 2, subdivision (b)
5 of this section.

6 C. A physician who knowingly violates this section commits an act of
7 unprofessional conduct and is subject to license suspension or revocation
8 pursuant to title 32, chapter 13 or 17.

9 D. In addition to other remedies available under the common or
10 statutory law of this state, any of the following individuals may file a
11 civil action to obtain appropriate relief for a violation of this section:

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

14 2. The father of the unborn child if the father is married to the
15 mother at the time she received the abortion, unless the pregnancy resulted
16 from the father's criminal conduct.

17 3. ~~The A~~ maternal ~~grandparents~~ GRANDPARENT of the unborn child if the
18 mother was not at least eighteen years of age at the time of the abortion,
19 unless the pregnancy resulted from ~~either of~~ the maternal grandparent's
20 criminal conduct.

21 E. A civil action filed pursuant to subsection D of this section shall
22 be brought in the superior court in the county in which the woman on whom the
23 abortion was performed resides and may be based on a claim that failure to
24 obtain informed consent was a result of simple negligence, gross negligence,
25 wantonness, wilfulness, intention or any other legal standard of care.
26 Relief pursuant to this subsection includes the following:

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

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

31 3. Reasonable attorney fees and costs.

32 F. A civil action brought pursuant to this section must be initiated
33 within six years after the violation occurred.

34 G. For the purposes of this section:

35 1. "Lethal fetal condition" means a fetal condition that is diagnosed
36 before birth and that will result, with reasonable certainty, in the death of
37 the unborn child within three months after birth.

38 2. "Nonlethal fetal condition" means a fetal condition that is
39 diagnosed before birth and that will not result in the death of the unborn
40 child within three months after birth but may result in physical or mental
41 disability or abnormality.

1 3. "Perinatal hospice" means comprehensive support to the pregnant
2 woman and her family that includes supportive care from the time of diagnosis
3 through the time of birth and death of the infant and through the postpartum
4 period. Supportive care may include counseling and medical care by
5 maternal-fetal medical specialists, obstetricians, neonatologists, anesthesia
6 specialists, clergy, social workers and specialty nurses who are focused on
7 alleviating fear and ensuring that the woman and her family experience the
8 life and death of the child in a comfortable and supportive environment.