

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

State of Arizona  
Senate  
Fifty-second Legislature  
Second Regular Session  
2016

# **SB 1483**

Introduced by  
Senators Sherwood: Quezada; Representative Andrade

**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 RAPE, INCEST OR a medical emergency 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.

44 (e) The woman is free to withhold or withdraw her consent to the  
45 abortion at any time without affecting her right to future care or treatment

1 and without the loss of any state or federally funded benefits to which she  
2 might otherwise be entitled.

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

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

9 (h) It may be possible to reverse the effects of a medication abortion  
10 if the woman changes her mind but that time is of the essence.

11 (i) Information on and assistance with reversing the effects of a  
12 medication abortion is available on the department of health services'  
13 website.

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

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

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

26 C. The department of health services shall establish and shall  
27 annually update a website that includes a link to a printable version of all  
28 materials listed on the website. The materials must be written in an easily  
29 understood manner and printed in a typeface that is large enough to be  
30 clearly legible. The website must include all of the following materials:

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

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

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

43 4. A statement that any physician who performs an abortion on a woman  
44 without obtaining the woman's voluntary and informed consent or without

1 affording her a private medical consultation may be liable to the woman for  
2 damages in a civil action.

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

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

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

21 8. Information on the potential ability of qualified medical  
22 professionals to reverse a medication abortion, including information  
23 directing women where to obtain further information and assistance in  
24 locating a medical professional who can aid in the reversal of a medication  
25 abortion.

26 D. An individual who is not a physician shall not perform a surgical  
27 abortion.

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

33 ~~F.~~ E. A person shall not intimidate or coerce in any way any person  
34 to obtain an abortion. A parent, a guardian or any other person shall not  
35 coerce a minor to obtain an abortion. If a minor is denied financial support  
36 by the minor's parents, guardians or custodian due to the minor's refusal to  
37 have an abortion performed, the minor is deemed emancipated for the purposes  
38 of eligibility for public assistance benefits, except that the emancipated  
39 minor may not use these benefits to obtain an abortion.

40 ~~G.~~ F. An abortion clinic as defined in section 36-449.01 shall  
41 conspicuously post signs that are visible to all who enter the abortion  
42 clinic, that are clearly readable and that state it is unlawful for any  
43 person to force a woman to have an abortion and a woman who is being forced  
44 to have an abortion has the right to contact any local or state law  
45 enforcement or social service agency to receive protection from any actual or

1 threatened physical, emotional or psychological abuse. The signs shall be  
2 posted in the waiting room, consultation rooms and procedure rooms.

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

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

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

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

13 2. The father of the unborn child if **THE FATHER WAS** married to the  
14 mother at the time she received the abortion, unless the pregnancy resulted  
15 from the plaintiff's criminal conduct.

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

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

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

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

30 3. Reasonable attorney fees and costs.

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

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

34 **36-2156. Informed consent; ultrasound required; violation;**  
35 **civil relief; statute of limitations**

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

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

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

3 (b) Offer to provide the woman with an opportunity to view the active  
4 ultrasound image of the unborn child and hear the heartbeat of the unborn  
5 child if the heartbeat is audible. The active ultrasound image must be of a  
6 quality consistent with standard medical practice in the community, contain  
7 the dimensions of the unborn child and accurately portray the presence of  
8 external members and internal organs, if present or viewable, of the unborn  
9 child. The auscultation of fetal heart tone must be of a quality consistent  
10 with standard medical practice in the community.

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

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

18 2. The woman certifies in writing before the abortion that she has  
19 been given the opportunity to view the active ultrasound image and hear the  
20 heartbeat of the unborn child if the heartbeat is audible and that she opted  
21 to view or not view the active ultrasound image and hear or not hear the  
22 heartbeat of the unborn child.

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

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

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

31 2. The father of the unborn child if ~~THE FATHER WAS~~ married to the  
32 mother at the time she received the abortion, unless the pregnancy resulted  
33 from the plaintiff's criminal conduct.

34 3. ~~The A maternal grandparents~~ GRANDPARENT of the unborn child if the  
35 mother was not at least eighteen years of age at the time of the abortion,  
36 unless the pregnancy resulted from the plaintiff's criminal conduct.

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

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

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

3           3. Reasonable attorney fees and costs.

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

6           Sec. 3. Section 36-2158, Arizona Revised Statutes, is amended to read:  
7 36-2158. Informed consent; fetal condition; website;  
8 unprofessional conduct; civil relief; statute of  
9 limitations; definitions

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

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

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

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

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

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

31           (a) Of up-to-date, evidence-based information concerning the range of  
32 outcomes for individuals living with the diagnosed condition, including  
33 physical, developmental, educational and psychosocial outcomes.

34           (b) That the department of health services maintains a website that  
35 lists information regarding support services, hotlines, resource centers or  
36 clearinghouses, national and local peer support groups and other education  
37 and support programs available to assist the woman and her unborn child, any  
38 national or local registries of families willing to adopt newborns with the  
39 nonlethal fetal condition and contact information for adoption agencies  
40 willing to place newborns with the nonlethal fetal condition with families  
41 willing to adopt.

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

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

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

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

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

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

17           2. The father of the unborn child if the father ~~is~~ WAS married to the  
18 mother at the time she received the abortion, unless the pregnancy resulted  
19 from the father's criminal conduct.

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

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

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

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

34           3. Reasonable attorney fees and costs.

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

37           G. For the purposes of this section:

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

41           2. "Nonlethal fetal condition" means a fetal condition that is  
42 diagnosed before birth and that will not result in the death of the unborn  
43 child within three months after birth but may result in physical or mental  
44 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.