



**ARIZONA STATE SENATE**  
*Fifty-Second Legislature, Second Regular Session*

**FINAL AMENDED**  
FACT SHEET FOR S.B. 1474

human fetus; embryo; prohibited actions

Purpose

Broadens prohibited actions related to the use of a human fetus, embryo or any part resulting from an abortion.

Background

Current statute prohibits a person from knowingly using any human fetus or embryo, living or dead, or any parts, organs or fluids or any such fetus or embryo resulting from an induced abortion in any manner for any medical experimentation or scientific or medical investigation purposes except as is strictly necessary to diagnose a disease or condition in the mother of the fetus or embryo and only if the abortion was performed because of such disease or condition. Pathological examinations conducted by a medical examiner or hospital laboratory are exempt from this prohibition, provided such pathological examination is not a part of or in any way related to any medical or scientific experimentation. Furthermore, statute exempts investigations concerning abortions from the physician-patient privilege, in which a physician or surgeon, without consent of the physician's patient or surgeon's patient, is prohibited from being examined as a witness regarding any information acquired in attending the patient which was necessary to enable the physician or surgeon to prescribe or act for the patient. Any person who violates these provisions is guilty of a class 5 felony (A.R.S. §§ 36-2302 and 36-2303).

In *Forbes v. Napolitano*, the Ninth Circuit ruled A.R.S. § 36-2302 void for vagueness; specifically, the words *experimentation*, *investigation* and *routine* were found ambiguous. Due to this decision, Arizona's prohibition on experimentation and research is permanently enjoined and unenforceable.

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Removes the prohibition on knowingly using any human fetus or embryo or parts, organs or fluids of any such fetus or embryo resulting from an induced abortion in any manner for any medical experimentation or scientific or medical investigation purposes, and instead prohibits a person from using a human fetus or embryo or any part, organ or fluid of the fetus or embryo resulting from an abortion in animal or human research, experimentation or study or for transplantation.

2. Exempts the following from the prohibition:
  - a) diagnostic or remedial procedures for the purpose of determining the life or health of the human fetus or embryo or the mother or for preserving the life or health of the human fetus or embryo or the mother; or
  - b) a pathological study.
3. Prohibits a person from experimenting on a human fetus or embryo who is intended to be aborted.
4. Prohibits a person from performing or offering to perform an abortion for which part or all of the justification or reason is that the fetus or embryo or any part, organ or fluid of the human fetus or embryo may be used for animal or human research, experimentation or study or for transplantation.
5. Prohibits a person from knowingly selling, transferring, distributing, giving away, accepting, using or attempting to use any human fetus or embryo or any part, organ or fluid of the human fetus or embryo resulting from an abortion.
6. Prohibits a person from aiding or abetting the sale, transfer, distribution, other unlawful disposition, acceptance, use or attempted use of a human fetus or embryo or any part, organ or fluid of the human fetus or embryo resulting from an abortion.
7. Permits the Director of the Department of Health Services to suspend or revoke, in whole or in part, the license of any health care institution if its owners, operators, agents or employees for violation of provisions related to experimentation on or transferring of a human fetus or embryo or any of its parts.
8. Adds to the definition of *unprofessional conduct* for certain licensed physicians any violation of provisions related to experimentation on or transferring of a human fetus or embryo or any of its parts.
9. Prohibits the physician-privilege from preventing the production of documents or records relevant to an investigation arising under this section. All documents or records produced in an action brought must be inspected by the court in camera, and, before the documents or records are released to the requesting party, the court must remove the names and other identifying information, if any, of the patients and substitute pseudonyms.
10. Removes the provision that allows routine pathological examinations conducted by a medical examiner or hospital laboratory provided such pathological examination is not a part of or in any way related to any medical or scientific experimentation.
11. Defines:
  - a) *abortion* as the use of any means to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will cause, with reasonable likelihood, the death of the unborn child, and does not include birth control devices, oral contraceptives used to inhibit or prevent ovulation, conception or the implantation of a fertilized ovum in the uterus or the use of any means to save the life or preserve the

health of the unborn child, to preserve the life or health of the child after a live birth, to terminate an ectopic pregnancy or to remove a dead fetus;

- b) *experimentation* as the use of a human fetus or embryo or any part, organ or fluid of the human fetus or embryo resulting from an abortion in any trial, test, procedure or observation carried out with the goal of verifying , refuting or establishing the validity of a hypothesis, and does not include a pathological study or a diagnostic or remedial test, procedure or observation that has the purpose of determining the life or health of the human fetus or embryo or preserving the life or health of the human fetus or embryo or the mother; and
- c) *pathological study* as the examination of body tissue for diagnostic or forensic purposes.

12. States this act does not establish or recognize a right to an abortion and does not make lawful an abortion that is currently prohibited by law.

13. States if a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

14. Makes technical and conforming changes.

15. Becomes effective on the general effective date.

Amendments Adopted by the Committee of the Whole

- 1. Prohibits the physician-patient privilege from preventing the production of documents or records relevant to an investigation arising under this section.
- 2. Permits the Director of the Department of Health Services to suspend or revoke the license of a health institution for violation of the prohibition on fetal or embryonic experimentation or transfer.
- 3. Modifies the definition of unprofessional conduct to include violation of the prohibition on fetal or embryonic experimentation or transfer.
- 4. Makes technical and conforming changes.

Senate Action

House Action

HHS	2/17/16	DP	4-3-0	JUD	3/16/16	DP	4-2-0
3 <sup>rd</sup> Read	2/24/16		18-11-1	3 <sup>rd</sup> Read	3/24/16		41-17-2

Signed by the Governor 3/30/16

Chapter 77

Prepared by Senate Research

April 6, 2016

EM/PB/lS