

REFERENCE TITLE: **abortion; live delivery; report; definition**

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SB 1367

Introduced by

Senators Smith: Allen S, Barto, Borrelli, Burges, Fann, Farnsworth D, Griffin, Kavanagh, Lesko, Miranda, Montenegro, Petersen, Pratt, Worsley, Yee; Representatives Allen J, Barton, Bowers, Boyer, Cobb, Farnsworth E, Finchem, Grantham, John, Lawrence, Leach, Livingston, Mesnard, Mitchell, Mosley, Norgaard, Nutt, Payne, Shope, Townsend

AN ACT

AMENDING SECTIONS 36-449.03, 36-2161, 36-2163 AND 36-2301, 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 36-449.03, Arizona Revised Statutes, is amended
3 to read:

4 36-449.03. *Abortion clinics; rules; civil penalties*

5 A. The director shall adopt rules for an abortion clinic's physical
6 facilities. At a minimum these rules shall prescribe standards for:

7 1. Adequate private space that is specifically designated for
8 interviewing, counseling and medical evaluations.

9 2. Dressing rooms for staff and patients.

10 3. Appropriate lavatory areas.

11 4. Areas for preprocedure hand washing.

12 5. Private procedure rooms.

13 6. Adequate lighting and ventilation for abortion procedures.

14 7. Surgical or gynecologic examination tables and other fixed
15 equipment.

16 8. Postprocedure recovery rooms that are supervised, staffed and
17 equipped to meet the patients' needs.

18 9. Emergency exits to accommodate a stretcher or gurney.

19 10. Areas for cleaning and sterilizing instruments.

20 11. Adequate areas for the secure storage of medical records and
21 necessary equipment and supplies.

22 12. The display in the abortion clinic, in a place that is
23 conspicuous to all patients, of the clinic's current license issued by the
24 department.

25 B. The director shall adopt rules to prescribe abortion clinic
26 supplies and equipment standards, including supplies and equipment that
27 are required to be immediately available for use or in an emergency. At a
28 minimum these rules shall:

29 1. Prescribe required equipment and supplies, including
30 medications, required for the conduct, in an appropriate fashion, of any
31 abortion procedure that the medical staff of the clinic anticipates
32 performing and for monitoring the progress of each patient throughout the
33 procedure and recovery period.

34 2. Require that the number or amount of equipment and supplies at
35 the clinic is adequate at all times to assure sufficient quantities of
36 clean and sterilized durable equipment and supplies to meet the needs of
37 each patient.

38 3. Prescribe required equipment, supplies and medications that
39 shall be available and ready for immediate use in an emergency and
40 requirements for written protocols and procedures to be followed by staff
41 in an emergency, such as the loss of electrical power.

42 4. Prescribe required equipment and supplies for required
43 laboratory tests and requirements for protocols to calibrate and maintain
44 laboratory equipment at the abortion clinic or operated by clinic staff.

45 5. Require ultrasound equipment.

1 6. Require that all equipment is safe for the patient and the
2 staff, meets applicable federal standards and is checked annually to
3 ensure safety and appropriate calibration.

4 C. The director shall adopt rules relating to abortion clinic
5 personnel. At a minimum these rules shall require that:

6 1. The abortion clinic designate a medical director of the abortion
7 clinic who is licensed pursuant to title 32, chapter 13, 17 or 29.

8 2. Physicians performing abortions are licensed pursuant to title
9 32, chapter 13 or 17, demonstrate competence in the procedure involved and
10 are acceptable to the medical director of the abortion clinic.

11 3. A physician is available:

12 (a) For a surgical abortion who has admitting privileges at a
13 health care institution that is classified by the director as a hospital
14 pursuant to section 36-405, subsection B and that is within thirty miles
15 of the abortion clinic.

16 (b) For a medication abortion who has admitting privileges at a
17 health care institution that is classified by the director as a hospital
18 pursuant to section 36-405, subsection B.

19 4. If a physician is not present, a registered nurse, nurse
20 practitioner, licensed practical nurse or physician assistant is present
21 and remains at the clinic when abortions are performed to provide
22 postoperative monitoring and care, or monitoring and care after inducing a
23 medication abortion, until each patient who had an abortion that day is
24 discharged.

25 5. Surgical assistants receive training in counseling, patient
26 advocacy and the specific responsibilities of the services the surgical
27 assistants provide.

28 6. Volunteers receive training in the specific responsibilities of
29 the services the volunteers provide, including counseling and patient
30 advocacy as provided in the rules adopted by the director for different
31 types of volunteers based on their responsibilities.

32 D. The director shall adopt rules relating to the medical screening
33 and evaluation of each abortion clinic patient. At a minimum these rules
34 shall require:

35 1. A medical history, including the following:

36 (a) Reported allergies to medications, antiseptic solutions or
37 latex.

38 (b) Obstetric and gynecologic history.

39 (c) Past surgeries.

40 2. A physical examination, including a bimanual examination
41 estimating uterine size and palpation of the adnexa.

42 3. The appropriate laboratory tests, including:

43 (a) Urine or blood tests for pregnancy performed before the
44 abortion procedure.

45 (b) A test for anemia.

(c) Rh typing, unless reliable written documentation of blood type is available.

(d) Other tests as indicated from the physical examination.

4 4. An ultrasound evaluation for all patients. The rules shall
5 require that if a person who is not a physician performs an ultrasound
6 examination, that person shall have documented evidence that the person
7 completed a course in the operation of ultrasound equipment as prescribed
8 in rule. The physician or other health care professional shall review, at
9 the request of the patient, the ultrasound evaluation results with the
10 patient before the abortion procedure is performed, including the probable
11 gestational age of the fetus.

12 5. That the physician is responsible for estimating the gestational
13 age of the fetus based on the ultrasound examination and obstetric
14 standards in keeping with established standards of care regarding the
15 estimation of fetal age as defined in rule and shall write the estimate in
16 the patient's medical history. The physician shall keep original prints
17 of each ultrasound examination of a patient in the patient's medical
18 history file.

19 E. The director shall adopt rules relating to the abortion
20 procedure. At a minimum these rules shall require:

21 1. That medical personnel is available to all patients throughout
22 the abortion procedure.

23 2. Standards for the safe conduct of abortion procedures that
24 conform to obstetric standards in keeping with established standards of
25 care regarding the estimation of fetal age as defined in rule.

26 3. Appropriate use of local anesthesia, analgesia and sedation if
27 ordered by the physician.

28 4. The use of appropriate precautions, such as the establishment of
29 intravenous access at least for patients undergoing second or third
30 trimester abortions.

31 5. The use of appropriate monitoring of the vital signs and other
32 defined signs and markers of the patient's status throughout the abortion
33 procedure and during the recovery period until the patient's condition is
34 deemed to be stable in the recovery room.

35 6. FOR ABORTION CLINICS PERFORMING OR INDUCING AN ABORTION FOR A
36 WOMAN WHOSE UNBORN CHILD IS THE GESTATIONAL AGE OF TWENTY WEEKS OR MORE,
37 MINIMUM EQUIPMENT STANDARDS TO ASSIST THE PHYSICIAN IN COMPLYING WITH
38 SECTION 36-2301.

39 7. STANDARDS OF CARE TO SATISFY THE REQUIREMENT THAT ALL AVAILABLE
40 MEANS AND MEDICAL SKILLS BE USED TO PROMOTE, PRESERVE AND MAINTAIN THE
41 LIFE OF A FETUS OR EMBRYO PURSUANT TO SECTION 36-2301.

42 F. The director shall adopt rules that prescribe minimum recovery
43 room standards. At a minimum these rules shall require that:

44 1. For a surgical abortion, immediate postprocedure care, or care
45 provided after inducing a medication abortion, consists of observation in

1 a supervised recovery room for as long as the patient's condition
2 warrants.

3 2. The clinic arrange hospitalization if any complication beyond
4 the management capability of the staff occurs or is suspected.

5 3. A licensed health professional who is trained in the management
6 of the recovery area and is capable of providing basic cardiopulmonary
7 resuscitation and related emergency procedures remains on the premises of
8 the abortion clinic until all patients are discharged.

9 4. For a surgical abortion, a physician with admitting privileges
10 at a health care institution that is classified by the director as a
11 hospital pursuant to section 36-405, subsection B and that is within
12 thirty miles of the abortion clinic remains on the premises of the
13 abortion clinic until all patients are stable and are ready to leave the
14 recovery room and to facilitate the transfer of emergency cases if
15 hospitalization of the patient or viable fetus is necessary. A physician
16 shall sign the discharge order and be readily accessible and available
17 until the last patient is discharged.

18 5. A physician discusses Rh0(d) immune globulin with each patient
19 for whom it is indicated and assures it is offered to the patient in the
20 immediate postoperative period or that it will be available to her within
21 seventy-two hours after completion of the abortion procedure. If the
22 patient refuses, a refusal form approved by the department shall be signed
23 by the patient and a witness and included in the medical record.

24 6. Written instructions with regard to postabortion coitus, signs
25 of possible problems and general aftercare are given to each patient.
26 Each patient shall have specific instructions regarding access to medical
27 care for complications, including a telephone number to call for medical
28 emergencies.

29 7. There is a specified minimum length of time that a patient
30 remains in the recovery room by type of abortion procedure and duration of
31 gestation.

32 8. The physician assures that a licensed health professional from
33 the abortion clinic makes a good faith effort to contact the patient by
34 telephone, with the patient's consent, within twenty-four hours after a
35 surgical abortion to assess the patient's recovery.

36 9. Equipment and services are located in the recovery room to
37 provide appropriate emergency resuscitative and life support procedures
38 pending the transfer of the patient or viable fetus to the hospital.

39 G. The director shall adopt rules that prescribe standards for
40 follow-up visits. At a minimum these rules shall require that:

41 1. For a surgical abortion, a postabortion medical visit is offered
42 and, if requested, scheduled for three weeks after the abortion, including
43 a medical examination and a review of the results of all laboratory tests.
44 For a medication abortion, the rules shall require that a postabortion
45 medical visit is scheduled between one week and three weeks after the

1 initial dose for a medication abortion to confirm the pregnancy is
2 completely terminated and to assess the degree of bleeding.

3 2. A urine pregnancy test is obtained at the time of the follow-up
4 visit to rule out continuing pregnancy. If a continuing pregnancy is
5 suspected, the patient shall be evaluated and a physician who performs
6 abortions shall be consulted.

7 H. The director shall adopt rules to prescribe minimum abortion
8 clinic incident reporting. At a minimum these rules shall require that:

9 1. The abortion clinic records each incident resulting in a
10 patient's or viable fetus' serious injury occurring at an abortion clinic
11 and shall report them in writing to the department within ten days after
12 the incident. For the purposes of this paragraph, "serious injury" means
13 an injury that occurs at an abortion clinic and that creates a serious
14 risk of substantial impairment of a major body organ and includes any
15 injury or condition that requires ambulance transportation of the patient.

16 2. If a patient's death occurs, other than a fetal death properly
17 reported pursuant to law, the abortion clinic reports it to the department
18 not later than the next department work day.

19 3. Incident reports are filed with the department and appropriate
20 professional regulatory boards.

21 I. The director shall adopt rules relating to enforcement of this
22 article. At a minimum, these rules shall require that:

23 1. For an abortion clinic that is not in substantial compliance
24 with this article and the rules adopted pursuant to this article or that
25 is in substantial compliance but refuses to carry out a plan of correction
26 acceptable to the department of any deficiencies that are listed on the
27 department's statement of deficiency, the department may do any of the
28 following:

- 29 (a) Assess a civil penalty pursuant to section 36-431.01.
- 30 (b) Impose an intermediate sanction pursuant to section 36-427.
- 31 (c) Suspend or revoke a license pursuant to section 36-427.
- 32 (d) Deny a license.

33 (e) Bring an action for an injunction pursuant to section 36-430.

34 2. In determining the appropriate enforcement action, the
35 department consider the threat to the health, safety and welfare of the
36 abortion clinic's patients or the general public, including:

37 (a) Whether the abortion clinic has repeated violations of statutes
38 or rules.

39 (b) Whether the abortion clinic has engaged in a pattern of
40 noncompliance.

41 (c) The type, severity and number of violations.

42 J. The department shall not release personally identifiable patient
43 or physician information.

1 K. The rules adopted by the director pursuant to this section do
2 not limit the ability of a physician or other health professional to
3 advise a patient on any health issue.

4 Sec. 2. Section 36-2161, Arizona Revised Statutes, is amended to
5 read:

6 36-2161. **Abortions; reporting requirements**

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

12 1. The name and address of the facility where the abortion was
13 performed.

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

15 3. The county where the abortion was performed.

16 4. The woman's age.

17 5. The woman's educational background by highest grade completed
18 and, if applicable, level of college completed.

19 6. The county and state in which the woman resides.

20 7. The woman's race and ethnicity.

21 8. The woman's marital status.

22 9. The number of prior pregnancies and prior abortions of the
23 woman.

24 10. The number of previous spontaneous terminations of pregnancy of
25 the woman.

26 11. The gestational age of the unborn child at the time of the
27 abortion.

28 12. The reason for the abortion, including whether the abortion is
29 elective or due to maternal or fetal health considerations.

30 13. The type of procedure performed or prescribed and the date of
31 the abortion.

32 14. Any preexisting medical conditions of the woman that would
33 complicate pregnancy and any known medical complication that resulted from
34 the abortion.

35 15. The basis for any medical judgment that a medical emergency
36 existed that excused the physician from compliance with the requirements
37 of this chapter.

38 16. The physician's statement if required pursuant to section
39 36-2301.01.

40 17. If applicable, the weight of the aborted fetus for any abortion
41 performed pursuant to section 36-2301.01.

42 18. Whether ~~an infant~~ A FETUS OR EMBRYO was ~~born~~ DELIVERED alive AS
43 DEFINED IN SECTION 36-2301 during or immediately after an attempted
44 abortion and the efforts made to promote, preserve and maintain the life
45 of the ~~infant~~ FETUS OR EMBRYO pursuant to section 36-2301.

1 19. STATEMENTS BY THE PHYSICIAN AND ALL STAFF PRESENT DURING THE
2 ABORTION CERTIFYING UNDER PENALTY OF PERJURY THAT THE ABORTED FETUS OR
3 EMBRYO WAS NOT DELIVERED ALIVE AS DEFINED IN SECTION 36-2301.

4 B. The report must be signed by the physician who performed the
5 abortion or, if a health professional other than a physician is authorized
6 by law to prescribe or administer abortion medication, the signature and
7 title of the person who prescribed or administered the abortion
8 medication. The form may be signed electronically and shall indicate that
9 the person who signs the report is attesting that the information in the
10 report is correct to the best of the person's knowledge. The hospital or
11 facility must transmit the report to the department within fifteen days
12 after the last day of each reporting month.

13 C. Any report filed pursuant to this section shall be filed
14 electronically at an internet website that is designated by the department
15 unless the person required to file the report applies for a waiver from
16 electronic reporting by submitting a written request to the department.

17 Sec. 3. Section 36-2163, Arizona Revised Statutes, is amended to
18 read:

19 36-2163. Reports; confidentiality; annual statistical report;
20 violations; classification; unprofessional
21 conduct; penalties

22 A. A report required by this article shall not contain the name of
23 the woman, common identifiers such as the woman's social security number,
24 driver license number or insurance carrier identification numbers or any
25 other information or identifiers that would make it possible to identify
26 in any manner or under any circumstances an individual who has obtained or
27 seeks to obtain an abortion.

28 B. The department of health services shall collect all abortion
29 reports and complication reports and prepare a comprehensive annual
30 statistical report based on the data gathered in the reports. **THE
31 STATISTICAL REPORT SHALL INCLUDE A BREAKDOWN OF THE NUMBER OF ABORTIONS BY
32 GESTATIONAL AGE OF THE UNBORN CHILD AT THE TIME OF THE ABORTION AND THE
33 TYPE OF PROCEDURE PERFORMED OR PRESCRIBED.** The statistical report shall
34 not lead to the disclosure of the identity of any person filing a report
35 or about whom a report is filed. The department shall make the
36 statistical report available on its website and for public inspection and
37 copying.

38 C. The **STATISTICAL** report prepared by the department pursuant to
39 subsection B of this section shall include statistics from the
40 administrative office of the courts containing the following information:

41 1. The number of petitions filed pursuant to section 36-2152,
42 subsection B.

1 2. Of the petitions filed pursuant to section 36-2152, subsection
2 B, the number in which the judge appointed a guardian ad litem or
3 court-appointed counsel for the minor pursuant to section 36-2152,
4 subsection D.

5 3. Of the petitions filed pursuant to section 36-2152, subsection
6 B, the number in which the judge issued an order authorizing an abortion
7 without parental consent.

8 4. Of the petitions filed pursuant to section 36-2152, subsection
9 B, the number in which the judge issued an order denying the petition.

10 5. Of the petitions denied, the number appealed to the court of
11 appeals.

12 6. The number of those appeals that resulted in the denials being
13 affirmed.

14 7. The number of those appeals that resulted in the denial being
15 reversed.

16 D. Except for a statistical report as provided in subsection B of
17 this section, a report filed pursuant to this article is not a public
18 record and is not available for public inspection, except that disclosure
19 may be made to law enforcement officials on an order of a court after
20 application showing good cause. The court may condition disclosure of the
21 information on any appropriate safeguards it may impose.

22 E. Original copies of all reports filed pursuant to sections
23 36-2161 and 36-2162 shall be available to the Arizona medical board and
24 the Arizona board of osteopathic examiners in medicine and surgery for use
25 in the performance of their official duties. The Arizona medical board
26 and the Arizona board of osteopathic examiners in medicine and surgery
27 shall maintain the confidentiality of any reports obtained pursuant to
28 this subsection.

29 F. An employee, agent or contractor of the department who wilfully
30 discloses any information obtained from reports filed pursuant to this
31 article, other than disclosure authorized under subsections B, D and E of
32 this section or as otherwise authorized by law, is guilty of a class 3
33 misdemeanor.

34 G. A person who is required by this article to file a report, keep
35 any records or supply any information and who wilfully fails to file that
36 report, keep records or supply information as required by law is guilty of
37 unprofessional conduct and is subject to discipline, including license
38 suspension or revocation.

39 H. A person who wilfully delivers or discloses to the department
40 any report, record or information known by that person to be false commits
41 a class 1 misdemeanor.

42 I. In addition to the penalties prescribed by subsections F, G and
43 H of this section, an organization or facility that wilfully violates the
44 reporting requirements of this article is subject to discipline by the
45 department, including the civil penalties prescribed in section 36-431.01.

1 If an organization or facility that is licensed pursuant to chapter 4,
2 article 10 of this title wilfully violates the reporting requirements of
3 this article, the department may assess a civil penalty pursuant to
4 section 36-431.01, impose an intermediate sanction pursuant to section
5 36-427, suspend or revoke a license pursuant to section 36-427, deny a
6 license or bring an action for an injunction pursuant to section 36-430.

7 Sec. 4. Section 36-2301, Arizona Revised Statutes, is amended to
8 read:

9 36-2301. Duty to promote life of fetus or embryo delivered
10 alive: judicial enforcement: definition

11 A. If an abortion is performed and a human fetus or embryo is
12 delivered alive, it is the duty of any physician performing such ~~AN~~
13 abortion and any additional physician in attendance as required by section
14 36-2301.01 to see that all available means and medical skills are used to
15 promote, preserve and maintain the life of such ~~A~~ fetus or embryo.

16 B. IF A HUMAN FETUS OR EMBRYO IS DELIVERED ALIVE, THE PHYSICIAN
17 PERFORMING THE ABORTION SHALL DOCUMENT AND REPORT TO THE DEPARTMENT THE
18 MEASURES THE PHYSICIAN PERFORMED TO MAINTAIN THE LIFE OF THE FETUS OR
19 EMBRYO.

20 C. AN ACTION TO ENFORCE THIS SECTION SHALL BE BROUGHT IN THE NAME
21 OF THE STATE BY THE ATTORNEY GENERAL OR THE COUNTY ATTORNEY IN THE
22 SUPERIOR COURT IN THE COUNTY IN WHICH THE VIOLATION OCCURRED.

23 D. FOR THE PURPOSES OF THIS SECTION, "DELIVERED ALIVE" MEANS THE
24 COMPLETE EXPULSION OR EXTRACTION FROM A MOTHER OF A FETUS OR EMBRYO,
25 REGARDLESS OF THE STATE OF GESTATIONAL DEVELOPMENT, WHO, AFTER EXPULSION
26 OR EXTRACTION, WHETHER OR NOT THE UMBILICAL CORD HAS BEEN CUT OR THE
27 PLACENTA IS ATTACHED, SHOWS ANY EVIDENCE OF LIFE, INCLUDING ONE OR MORE OF
28 THE FOLLOWING:

- 29 1. BREATHING.
- 30 2. A HEARTBEAT.
- 31 3. UMBILICAL CORD PULSATION.
- 32 4. DEFINITE MOVEMENT OF VOLUNTARY MUSCLES.

33 Sec. 5. Legislative findings and purpose

34 A. The legislature finds that:

35 1. This state has a paramount interest in protecting all human
36 life.

37 2. If an attempted abortion results in the live delivery of an
38 infant, the infant is a person for all purposes under the laws of this
39 state.

40 3. It is not an infringement on the right to abortion articulated
41 by the United States supreme court for this state to assert its interest
42 in protecting an infant whose live delivery occurred as the result of an
43 attempted abortion.

44 4. Due to advances in neonatal care, the gestational age at which
45 an infant may survive if delivered alive continues to decrease.

1 5. Two recent reports of incidents in this state demonstrate that
2 some doctors are not using all available means to promote, preserve and
3 maintain the lives of infants delivered alive as required by section
4 36-2301, Arizona Revised Statutes, as amended by this act. *See 911 tapes;*
5 *Aborted fetus was breathing*, 12NEWS.COM,
6 [http://www.12news.com/mb/news/local/valley/911-tapes-aborted-fetus-was-](http://www.12news.com/mb/news/local/valley/911-tapes-aborted-fetus-was-breathing/208414143)
7 [breathing/208414143](http://azcapitoltimes.com/news/2015/06/05/fbi-agents-description-raises-question-about-whether-aborted-baby-was-born-alive/) (last visited Jan. 20, 2017); Gary Grado, *FBI agent's*
8 *description raises question about whether aborted baby was born alive*,
9 ARIZ. CAP. TIMES (June 5, 2015, 4:58 AM)
10 [http://azcapitoltimes.com/news/2015/06/05/fbi-agents-description-raises-](http://azcapitoltimes.com/news/2015/06/05/fbi-agents-description-raises-question-about-whether-aborted-baby-was-born-alive/)
11 [question-about-whether-aborted-baby-was-born-alive/](http://azcapitoltimes.com/news/2015/06/05/fbi-agents-description-raises-question-about-whether-aborted-baby-was-born-alive/).

12 B. For these reasons, the legislature's purposes in promulgating
13 this act include to:

14 1. Ensure the protection and promotion of the health and well-being
15 of all infants delivered alive in this state.

16 2. Require providers to document the life-saving and
17 life-sustaining medical care and treatment given to all infants delivered
18 alive as a result of an attempted abortion.

19 Sec. 6. Construction

20 This act does not create or recognize a right to abortion. It is
21 not the intention of this act to make lawful an abortion that is currently
22 unlawful.

23 Sec. 7. Severability

24 If a provision of this act or its application to any person or
25 circumstance is held invalid, the invalidity does not affect other
26 provisions or applications of the act that can be given effect without the
27 invalid provision or application, and to this end the provisions of this
28 act are severable.