

State of Arizona  
House of Representatives  
Forty-fourth Legislature  
First Regular Session  
1999

# HOUSE BILL 2706

## AN ACT

AMENDING SECTION 36-402, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 4, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 10; AMENDING SECTION 36-2301.01, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 23, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-2301.02; PROVIDING FOR THE CONDITIONAL REPEAL OF SECTION 36-449.01, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT; PROVIDING FOR CONDITIONAL ENACTMENT; RELATING TO ABORTION FACILITIES.

1 Be it enacted by the Legislature of the State of Arizona:

2       Section 1. Section 36-402, Arizona Revised Statutes, is amended to  
3 read:

4       36-402. Exemptions

5       ~~Nothing in~~ This chapter or the rules adopted by the director pursuant  
6 to ~~the provisions of~~ this chapter ~~authorizes~~ DOES NOT AUTHORIZE the  
7 licensure, supervision, regulation or control of:

8       1. The remedial care or treatment of residents or patients in any home  
9 or institution conducted only for those who rely solely ~~upon~~ ON treatment by  
10 prayer or spiritual means in accordance with the creed or tenets of any well  
11 recognized church or religious denomination.

12       2. Establishments, such as motels, hotels and boarding houses, which  
13 provide domiciliary and ancillary commercial services, but do not provide  
14 adaptive, medical, hospital, nursing, health-related or supervisory care  
15 services.

16       3. Private offices and clinics of health care providers licensed under  
17 title 32 unless:

18           (a) Patients are kept overnight as bed patients or treated otherwise  
19 under general anesthesia except where treatment by general anesthesia is  
20 regulated by title 32, chapter 11.

(b) THE OFFICE OR CLINIC IS AN ABORTION CLINIC. FOR THE PURPOSES OF THIS SUBDIVISION, "ABORTION CLINIC" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-449.01.

4. Dispensaries and first aid stations located within business or industrial establishments maintained solely for the use of employees if the facility does not contain inpatient beds and is under the supervision of a physician.

5. The collection, processing or distribution of whole human blood, blood components, plasma, blood fractions or derivatives procured, processed or distributed by federally licensed and regulated blood banks.

6. Adult foster care homes certified by the county or the department pursuant to section 11-293.01 or 36-410.

7. Places where four or fewer adults not related to the administrator or owner receive adult day health services for compensation on a regular basis.

8. Places at which persons receive health related services only from relatives or from legal guardians or places that do not purport to be establishments that regularly provide health related services **AND** at which **~~two or fewer~~ ONE OR TWO** persons receive health related services on a twenty-four hour basis.

9. The Arizona pioneers' home. However, the department of health services shall evaluate the health and sanitation conditions at the Arizona pioneers' home annually using the standards applicable to licensed nursing care institutions. **THE DEPARTMENT SHALL PREPARE AND DISTRIBUTE** reports of **such THESE** visits **~~shall be prepared and disseminated~~** to the president of the senate, the speaker of the house of representatives and the governor within thirty days of **such visits EACH VISIT**. Reports shall include information as to the extent of compliance with applicable standards as compared to licensed nursing care institutions and recommendations for the improvement of care and services provided.

10. The personal residence of a terminally ill person, or the personal residence of that person's relative or guardian, where that person receives hospice services from a hospice service agency.

11. All medical and health related facilities and services that are provided to inmates who are confined in a state prison. The state department of corrections shall annually evaluate the medical and health related facilities and services that are provided to inmates to determine that the facilities and services meet the applicable standards that are adopted by the director of the department of health services. The state department of corrections shall report the results of its annual evaluation and the actual findings, including a plan of correction for any deficiencies, to the director of the department of health services. The department of health services shall conduct validation surveys on a percentage of the medical and

health related facilities, the number of which shall be determined by the state department of corrections and the department of health services. The director of the state department of corrections shall maintain the annual evaluation reports. This paragraph does not apply to licensed behavioral or mental health inpatient treatment facilities that the state department of corrections operates.

Sec. 2. Title 36, chapter 4, Arizona Revised Statutes, is amended by adding article 10, to read:

## ARTICLE 10. ABORTION CLINICS

### 36-449. Definitions

A. IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ABORTION" MEANS THE USE OF A SURGICAL INSTRUMENT OR A MACHINE WITH THE INTENT TO TERMINATE A WOMAN'S PREGNANCY FOR REASONS OTHER THAN TO INCREASE THE PROBABILITY OF A LIVE BIRTH, TO PRESERVE THE LIFE OR HEALTH OF THE CHILD AFTER A LIVE BIRTH, TO TERMINATE AN ECTOPIC PREGNANCY OR TO REMOVE A DEAD FETUS. ABORTION DOES NOT INCLUDE BIRTH CONTROL DEVICES OR ORAL CONTRACEPTIVES.

2. "ABORTION CLINIC" MEANS A FACILITY, OTHER THAN AN ACCREDITED HOSPITAL, IN WHICH FIRST, SECOND OR THIRD TRIMESTER ABORTIONS ARE PERFORMED.

3. "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES.

4. "VIALE FETUS" HAS THE SAME MEANING PRESCRIBED IN SECTION 01.01.

### 36-449.01. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ABORTION" MEANS THE USE OF A SURGICAL INSTRUMENT OR A MACHINE WITH THE INTENT TO TERMINATE A WOMAN'S PREGNANCY FOR REASONS OTHER THAN TO INCREASE THE PROBABILITY OF A LIVE BIRTH, TO PRESERVE THE LIFE OR HEALTH OF THE CHILD AFTER LIVE BIRTH, TO TERMINATE AN ECTOPIC PREGNANCY OR TO REMOVE A DEAD FETUS. ABORTION DOES NOT INCLUDE BIRTH CONTROL DEVICES OR ORAL CONTRACEPTIVES.

2. "ABORTION CLINIC" MEANS A FACILITY, OTHER THAN AN ACCREDITED HOSPITAL, IN WHICH FIVE OR MORE FIRST TRIMESTER ABORTIONS IN ANY MONTH OR ANY SECOND OR THIRD TRIMESTER ABORTIONS ARE PERFORMED.

3. "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES.

4. "Viable fetus" has the same meaning prescribed in section 01.01.

## 36-449.02. Abortion clinics; licensure requirements; rules

A. BEGINNING ON APRIL 1, 2000, AN ABORTION CLINIC SHALL MEET THE SAME LICENSURE REQUIREMENTS AS PRESCRIBED IN ARTICLE 2 OF THIS CHAPTER FOR HEALTH CARE INSTITUTIONS.

B. AN ABORTION CLINIC THAT HOLDS AN UNCLASSIFIED HEALTH CARE FACILITY LICENSE ISSUED BEFORE THE EFFECTIVE DATE OF THIS ARTICLE MAY RETAIN THAT

1 CLASSIFICATION UNTIL APRIL 1, 2000 SUBJECT TO COMPLIANCE WITH ALL LAWS THAT  
2 RELATE TO UNCLASSIFIED HEALTH CARE FACILITIES.

3 C. BEGINNING ON APRIL 1, 2000, ABORTION CLINICS SHALL COMPLY WITH  
4 DEPARTMENT REQUIREMENTS FOR ABORTION CLINICS AND DEPARTMENT RULES THAT GOVERN  
5 ABORTION CLINICS.

6 36-449.03. Abortion clinics: rules

7 A. THE DIRECTOR SHALL ADOPT RULES FOR AN ABORTION CLINIC'S PHYSICAL  
8 FACILITIES. AT A MINIMUM THESE RULES SHALL PRESCRIBE STANDARDS FOR:

9 1. ADEQUATE PRIVATE SPACE THAT IS SPECIFICALLY DESIGNATED FOR  
10 INTERVIEWING, COUNSELING AND MEDICAL EVALUATIONS.  
11 2. DRESSING ROOMS FOR STAFF AND PATIENTS.  
12 3. APPROPRIATE LAVATORY AREAS.  
13 4. AREAS FOR PREPROCEDURE HAND WASHING.  
14 5. PRIVATE PROCEDURE ROOMS.  
15 6. ADEQUATE LIGHTING AND VENTILATION FOR ABORTION PROCEDURES.  
16 7. SURGICAL OR GYNECOLOGIC EXAMINATION TABLES AND OTHER FIXED  
17 EQUIPMENT.

18 8. POST-PROCEDURE RECOVERY ROOMS THAT ARE SUPERVISED, STAFFED AND  
19 EQUIPPED TO MEET THE PATIENTS' NEEDS.

20 9. EMERGENCY EXITS TO ACCOMMODATE A STRETCHER OR GURNEY.  
21 10. AREAS FOR CLEANING AND STERILIZING INSTRUMENTS.  
22 11. ADEQUATE AREAS FOR THE SECURE STORAGE OF MEDICAL RECORDS AND  
23 NECESSARY EQUIPMENT AND SUPPLIES.

24 12. THE DISPLAY IN THE ABORTION CLINIC, IN A PLACE THAT IS CONSPICUOUS  
25 TO ALL PATIENTS, OF THE CLINIC'S CURRENT LICENSE ISSUED BY THE DEPARTMENT.

26 B. THE DIRECTOR SHALL ADOPT RULES TO PRESCRIBE ABORTION CLINIC  
27 SUPPLIES AND EQUIPMENT STANDARDS, INCLUDING SUPPLIES AND EQUIPMENT THAT ARE  
28 REQUIRED TO BE IMMEDIATELY AVAILABLE FOR USE OR IN AN EMERGENCY. AT A  
29 MINIMUM THESE RULES SHALL:

30 1. PRESCRIBE REQUIRED EQUIPMENT AND SUPPLIES, INCLUDING MEDICATIONS,  
31 REQUIRED FOR THE CONDUCT, IN AN APPROPRIATE FASHION, OF ANY ABORTION  
32 PROCEDURE THAT THE MEDICAL STAFF OF THE CLINIC ANTICIPATES PERFORMING AND FOR  
33 MONITORING THE PROGRESS OF EACH PATIENT THROUGHOUT THE PROCEDURE AND RECOVERY  
34 PERIOD.

35 2. REQUIRE THAT THE NUMBER OR AMOUNT OF EQUIPMENT AND SUPPLIES AT THE  
36 CLINIC IS ADEQUATE AT ALL TIMES TO ASSURE SUFFICIENT QUANTITIES OF CLEAN AND  
37 STERILIZED DURABLE EQUIPMENT AND SUPPLIES TO MEET THE NEEDS OF EACH PATIENT.

38 3. PRESCRIBE REQUIRED EQUIPMENT, SUPPLIES AND MEDICATIONS THAT SHALL  
39 BE AVAILABLE AND READY FOR IMMEDIATE USE IN AN EMERGENCY AND REQUIREMENTS FOR  
40 WRITTEN PROTOCOLS AND PROCEDURES TO BE FOLLOWED BY STAFF IN AN EMERGENCY,  
41 SUCH AS THE LOSS OF ELECTRICAL POWER.

42 4. PRESCRIBE REQUIRED EQUIPMENT AND SUPPLIES FOR REQUIRED LABORATORY  
43 TESTS AND REQUIREMENTS FOR PROTOCOLS TO CALIBRATE AND MAINTAIN LABORATORY  
44 EQUIPMENT AT THE ABORTION CLINIC OR OPERATED BY CLINIC STAFF.

1       5. REQUIRE ULTRASOUND EQUIPMENT IN THOSE FACILITIES THAT PROVIDE  
2       ABORTIONS AFTER TWELVE WEEKS' GESTATION.

3       6. REQUIRE THAT ALL EQUIPMENT IS SAFE FOR THE PATIENT AND THE STAFF,  
4       MEETS APPLICABLE FEDERAL STANDARDS AND IS CHECKED ANNUALLY TO ENSURE SAFETY  
5       AND APPROPRIATE CALIBRATION.

6       C. THE DIRECTOR SHALL ADOPT RULES RELATING TO ABORTION CLINIC  
7       PERSONNEL. AT A MINIMUM THESE RULES SHALL REQUIRE THAT:

8       1. THE ABORTION CLINIC DESIGNATE A MEDICAL DIRECTOR OF THE ABORTION  
9       CLINIC WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13, 17 OR 29.

10       2. PHYSICIANS PERFORMING SURGERY ARE LICENSED PURSUANT TO TITLE 32,  
11       CHAPTER 13 OR 17, DEMONSTRATE COMPETENCE IN THE PROCEDURE INVOLVED AND ARE  
12       ACCEPTABLE TO THE MEDICAL DIRECTOR OF THE ABORTION CLINIC.

13       3. A PHYSICIAN WITH ADMITTING PRIVILEGES AT AN ACCREDITED HOSPITAL IN  
14       THIS STATE IS AVAILABLE.

15       4. A REGISTERED NURSE, NURSE PRACTITIONER, LICENSED PRACTICAL NURSE  
16       OR PHYSICIAN'S ASSISTANT IS PRESENT AND REMAINS AT THE CLINIC WHEN ABORTIONS  
17       ARE PERFORMED TO PROVIDE POST-OPERATIVE MONITORING AND CARE UNTIL EACH  
18       PATIENT WHO HAD AN ABORTION THAT DAY IS DISCHARGED.

19       5. SURGICAL ASSISTANTS RECEIVE TRAINING IN COUNSELING, PATIENT  
20       ADVOCACY AND THE SPECIFIC RESPONSIBILITIES OF THE SERVICES THE SURGICAL  
21       ASSISTANTS PROVIDE.

22       6. VOLUNTEERS RECEIVE TRAINING IN THE SPECIFIC RESPONSIBILITIES OF THE  
23       SERVICES THE VOLUNTEERS PROVIDE, INCLUDING COUNSELING AND PATIENT ADVOCACY  
24       AS PROVIDED IN THE RULES ADOPTED BY THE DIRECTOR FOR DIFFERENT TYPES OF  
25       VOLUNTEERS BASED ON THEIR RESPONSIBILITIES.

26       D. THE DIRECTOR SHALL ADOPT RULES RELATING TO THE MEDICAL SCREENING  
27       AND EVALUATION OF EACH ABORTION CLINIC PATIENT. AT A MINIMUM THESE RULES  
28       SHALL REQUIRE:

29       1. A MEDICAL HISTORY INCLUDING THE FOLLOWING:

- 30       (a) REPORTED ALLERGIES TO MEDICATIONS, ANTISEPTIC SOLUTIONS OR LATEX.
- 31       (b) OBSTETRIC AND GYNECOLOGIC HISTORY.
- 32       (c) PAST SURGERIES.

33       2. A PHYSICAL EXAMINATION INCLUDING A BIMANUAL EXAMINATION ESTIMATING  
34       UTERINE SIZE AND PALPATION OF THE ADNEXA.

35       3. THE APPROPRIATE LABORATORY TESTS INCLUDING:

36       (a) FOR AN ABORTION IN WHICH AN ULTRASOUND IS NOT PERFORMED BEFORE THE  
37       ABORTION PROCEDURE, URINE OR BLOOD TESTS FOR PREGNANCY PERFORMED BEFORE THE  
38       ABORTION PROCEDURE.

39       (b) A TEST FOR ANEMIA.

40       (c) Rh TYPING, UNLESS RELIABLE WRITTEN DOCUMENTATION OF BLOOD TYPE IS  
41       AVAILABLE.

42       (d) OTHER TESTS AS INDICATED FROM THE PHYSICAL EXAMINATION.

1       4. AN ULTRASOUND EVALUATION FOR ALL PATIENTS WHO ELECT TO HAVE AN  
2       ABORTION AFTER TWELVE WEEKS' GESTATION. THE RULES SHALL REQUIRE THAT A  
3       PERSON WHO PERFORMS AN ULTRASOUND EXAMINATION SHALL HAVE DOCUMENTED EVIDENCE  
4       THAT THE PERSON COMPLETED A COURSE IN THE OPERATION OF ULTRASOUND EQUIPMENT  
5       AS PRESCRIBED IN RULE. THE PHYSICIAN OR OTHER HEALTH CARE PROFESSIONAL SHALL  
6       REVIEW, AT THE REQUEST OF THE PATIENT, THE ULTRASOUND RESULTS WITH THE  
7       PATIENT BEFORE THE ABORTION PROCEDURE IS PERFORMED, INCLUDING THE PROBABLE  
8       GESTATIONAL AGE OF THE FETUS.

9       5. THAT THE PHYSICIAN IS RESPONSIBLE FOR ESTIMATING THE GESTATIONAL  
10      AGE OF THE FETUS BASED ON THE ULTRASOUND EXAMINATION AND OBSTETRIC STANDARDS  
11      IN KEEPING WITH ESTABLISHED STANDARDS OF CARE REGARDING THE ESTIMATION OF  
12      FETAL AGE AS DEFINED IN RULE AND SHALL WRITE THE ESTIMATE IN THE PATIENT'S  
13      MEDICAL HISTORY. THE PHYSICIAN SHALL KEEP ORIGINAL PRINTS OF EACH ULTRASOUND  
14      EXAMINATION OF A PATIENT IN THE PATIENT'S MEDICAL HISTORY FILE.

15      E. THE DIRECTOR SHALL ADOPT RULES RELATING TO THE ABORTION PROCEDURE.  
16      AT A MINIMUM THESE RULES SHALL REQUIRE:

17      1. THAT MEDICAL PERSONNEL IS AVAILABLE TO ALL PATIENTS THROUGHOUT THE  
18      ABORTION PROCEDURE.

19      2. STANDARDS FOR THE SAFE CONDUCT OF ABORTION PROCEDURES THAT CONFORM  
20      TO OBSTETRIC STANDARDS IN KEEPING WITH ESTABLISHED STANDARDS OF CARE  
21      REGARDING THE ESTIMATION OF FETAL AGE AS DEFINED IN RULE.

22      3. APPROPRIATE USE OF LOCAL ANESTHESIA, ANALGESIA AND SEDATION IF  
23      ORDERED BY THE PHYSICIAN.

24      4. THE USE OF APPROPRIATE PRECAUTIONS, SUCH AS THE ESTABLISHMENT OF  
25      INTRAVENOUS ACCESS AT LEAST FOR PATIENTS UNDERGOING SECOND OR THIRD TRIMESTER  
26      ABORTIONS.

27      5. THE USE OF APPROPRIATE MONITORING OF THE VITAL SIGNS AND OTHER  
28      DEFINED SIGNS AND MARKERS OF THE PATIENT'S STATUS THROUGHOUT THE ABORTION  
29      PROCEDURE AND DURING THE RECOVERY PERIOD UNTIL THE PATIENT'S CONDITION IS  
30      DEEMED TO BE STABLE IN THE RECOVERY ROOM.

31      F. THE DIRECTOR SHALL ADOPT RULES THAT PRESCRIBE MINIMUM RECOVERY ROOM  
32      STANDARDS. AT A MINIMUM THESE RULES SHALL REQUIRE THAT:

33      1. IMMEDIATE POST-PROCEDURE CARE CONSISTS OF OBSERVATION IN A  
34      SUPERVISED RECOVERY ROOM FOR AS LONG AS THE PATIENT'S CONDITION WARRANTS.

35      2. THE CLINIC ARRANGE HOSPITALIZATION IF ANY COMPLICATION BEYOND THE  
36      MANAGEMENT CAPABILITY OF THE STAFF OCCURS OR IS SUSPECTED.

37      3. A LICENSED HEALTH PROFESSIONAL WHO IS TRAINED IN THE MANAGEMENT OF  
38      THE RECOVERY AREA AND IS CAPABLE OF PROVIDING BASIC CARDIOPULMONARY  
39      RESUSCITATION AND RELATED EMERGENCY PROCEDURES REMAINS ON THE PREMISES OF THE  
40      ABORTION CLINIC UNTIL ALL PATIENTS ARE DISCHARGED.

41      4. A PHYSICIAN WITH ADMITTING PRIVILEGES AT AN ACCREDITED HOSPITAL IN  
42      THIS STATE REMAINS ON THE PREMISES OF THE ABORTION CLINIC UNTIL ALL PATIENTS  
43      ARE STABLE AND ARE READY TO LEAVE THE RECOVERY ROOM AND TO FACILITATE THE  
44      TRANSFER OF EMERGENCY CASES IF HOSPITALIZATION OF THE PATIENT OR Viable FETUS

1 IS NECESSARY. A PHYSICIAN SHALL SIGN THE DISCHARGE ORDER AND BE READILY  
2 ACCESSIBLE AND AVAILABLE UNTIL THE LAST PATIENT IS DISCHARGED.

3 5. A PHYSICIAN DISCUSSES Rh<sub>O</sub>(d) IMMUNE GLOBULIN WITH EACH PATIENT FOR  
4 WHOM IT IS INDICATED AND ASSURES IT IS OFFERED TO THE PATIENT IN THE  
5 IMMEDIATE POSTOPERATIVE PERIOD OR THAT IT WILL BE AVAILABLE TO HER WITHIN  
6 SEVENTY-TWO HOURS AFTER COMPLETION OF THE ABORTION PROCEDURE. IF THE PATIENT  
7 REFUSES, A REFUSAL FORM APPROVED BY THE DEPARTMENT SHALL BE SIGNED BY THE  
8 PATIENT AND A WITNESS AND INCLUDED IN THE MEDICAL RECORD.

9 6. WRITTEN INSTRUCTIONS WITH REGARD TO POSTABORTION COITUS, SIGNS OF  
10 POSSIBLE PROBLEMS AND GENERAL AFTERCARE ARE GIVEN TO EACH PATIENT. EACH  
11 PATIENT SHALL HAVE SPECIFIC INSTRUCTIONS REGARDING ACCESS TO MEDICAL CARE FOR  
12 COMPLICATIONS, INCLUDING A TELEPHONE NUMBER TO CALL FOR MEDICAL EMERGENCIES.

13 7. THERE IS A SPECIFIED MINIMUM LENGTH OF TIME THAT A PATIENT REMAINS  
14 IN THE RECOVERY ROOM BY TYPE OF ABORTION PROCEDURE AND DURATION OF GESTATION.

15 8. THE PHYSICIAN ASSURES THAT A LICENSED HEALTH PROFESSIONAL FROM THE  
16 ABORTION CLINIC TELEPHONES THE PATIENT, WITH THE PATIENT'S CONSENT, WITHIN  
17 TWENTY-FOUR HOURS AFTER SURGERY TO ASSESS THE PATIENT'S RECOVERY.

18 9. EQUIPMENT AND SERVICES ARE LOCATED IN THE RECOVERY ROOM TO PROVIDE  
19 APPROPRIATE EMERGENCY RESUSCITATIVE AND LIFE SUPPORT PROCEDURES PENDING THE  
20 TRANSFER OF THE PATIENT OR VIABLE FETUS TO THE HOSPITAL.

21 G. THE DIRECTOR SHALL ADOPT RULES THAT PRESCRIBE STANDARDS FOR  
22 FOLLOW-UP VISITS. AT A MINIMUM THESE RULES SHALL REQUIRE THAT:

23 1. A POST-ABORTION MEDICAL VISIT IS OFFERED AND, IF REQUESTED,  
24 SCHEDULED FOR THREE WEEKS AFTER THE ABORTION, INCLUDING A MEDICAL EXAMINATION  
25 AND A REVIEW OF THE RESULTS OF ALL LABORATORY TESTS.

26 2. A URINE PREGNANCY TEST IS OBTAINED AT THE TIME OF THE FOLLOW-UP  
27 VISIT TO RULE OUT CONTINUING PREGNANCY. IF A CONTINUING PREGNANCY IS  
28 SUSPECTED, THE PATIENT SHALL BE EVALUATED AND A PHYSICIAN WHO PERFORMS  
29 ABORTIONS SHALL BE CONSULTED.

30 H. THE DIRECTOR SHALL ADOPT RULES TO PRESCRIBE MINIMUM ABORTION CLINIC  
31 INCIDENT REPORTING. AT A MINIMUM THESE RULES SHALL REQUIRE THAT:

32 1. THE ABORTION CLINIC RECORDS EACH INCIDENT RESULTING IN A PATIENT'S  
33 OR VIABLE FETUS' SERIOUS INJURY OCCURRING AT AN ABORTION CLINIC AND SHALL  
34 REPORT THEM IN WRITING TO THE DEPARTMENT WITHIN TEN DAYS AFTER THE INCIDENT.  
35 FOR THE PURPOSES OF THIS PARAGRAPH, "SERIOUS INJURY" MEANS AN INJURY THAT  
36 OCCURS AT AN ABORTION CLINIC AND THAT CREATES A SERIOUS RISK OF SUBSTANTIAL  
37 IMPAIRMENT OF A MAJOR BODY ORGAN.

38 2. IF A PATIENT'S DEATH OCCURS, OTHER THAN A FETAL DEATH PROPERLY  
39 REPORTED PURSUANT TO LAW, THE ABORTION CLINIC REPORTS IT TO THE DEPARTMENT  
40 NOT LATER THAN THE NEXT DEPARTMENT WORK DAY.

41 3. INCIDENT REPORTS ARE FILED WITH THE DEPARTMENT AND APPROPRIATE  
42 PROFESSIONAL REGULATORY BOARDS.

1           I. NO PERSONALLY IDENTIFIABLE PATIENT OR PHYSICIAN INFORMATION SHALL  
2 BE RELEASED BY THE DEPARTMENT.

3           J. THE RULES ADOPTED BY THE DIRECTOR PURSUANT TO THIS SECTION DO NOT  
4 LIMIT THE ABILITY OF A PHYSICIAN OR OTHER HEALTH PROFESSIONAL TO ADVISE A  
5 PATIENT ON ANY HEALTH ISSUE.

6           Sec. 3. Section 36-2301.01, Arizona Revised Statutes, is amended to  
7 read:

8           36-2301.01. Abortion of viable fetus; requirements; definition

9           A. Before a physician performs an abortion of a viable fetus, the  
10 physician shall state in writing that the abortion is necessary to preserve  
11 the life or health of the woman, specifying the medical indications for and  
12 the probable health consequences of the abortion. The physician shall attach  
13 a copy of this statement to any fetal death report filed pursuant to section  
14 11-593 or fetal death registration filed pursuant to section 36-329,  
15 **SUBSECTION C.**

16           B. A physician performing an abortion of a viable fetus shall use the  
17 available method or technique of abortion most likely to preserve the life  
18 and health of the fetus, unless the use of such method or technique would  
19 present a greater risk to the life or health of the woman than the use of  
20 another available method or technique. When a physician performs an abortion  
21 of a viable fetus, the physician shall state in writing the available methods  
22 or techniques considered, the method or technique used and the reasons for  
23 choosing that method or technique. The physician shall attach a copy of this  
24 statement to any fetal death report filed pursuant to section 11-593 or fetal  
25 death registration filed pursuant to section 36-329, **SUBSECTION C.**

26           C. A physician shall not perform an abortion of a viable fetus unless,  
27 in addition to the physician performing the abortion, there is another  
28 physician in attendance who shall take control of and provide immediate  
29 medical care for a living child born as a result of the abortion. During the  
30 performance of the abortion the physician performing the abortion shall take  
31 all reasonable steps, consistent with the procedure used and in keeping with  
32 good medical practice, to preserve the life and health of the fetus, if these  
33 steps do not pose an increased risk to the life or health of the woman on  
34 whom the abortion is performed.

35           D. **THIS SECTION DOES NOT APPLY IF THERE IS A MEDICAL EMERGENCY.**

36           D. E. As used in this section,--:

37           1. "ABORTION" MEANS THE USE OF AN INSTRUMENT, MEDICINE OR DRUG OR  
38 OTHER SUBSTANCE OR DEVICE WITH THE INTENT TO TERMINATE A PREGNANCY FOR  
39 REASONS OTHER THAN TO INCREASE THE PROBABILITY OF A LIVE BIRTH, TO PRESERVE  
40 THE LIFE OR HEALTH OF THE CHILD AFTER LIVE BIRTH, TO TERMINATE AN ECTOPIC  
41 PREGNANCY OR TO REMOVE A DEAD FETUS. ABORTION DOES NOT INCLUDE BIRTH CONTROL  
42 DEVICES OR ORAL CONTRACEPTIVES.

1           2. "MEDICAL EMERGENCY" MEANS A CONDITION THAT, ON THE BASIS OF THE  
2 PHYSICIAN'S GOOD FAITH CLINICAL JUDGMENT, SO COMPLICATES A PREGNANCY AS TO  
3 NECESSITATE THE IMMEDIATE ABORTION OF THE PREGNANCY TO AVOID THE WOMAN'S  
4 DEATH OR FOR WHICH A DELAY WILL CREATE SERIOUS RISK OF SUBSTANTIAL AND  
5 IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION.

6           3. "Viable fetus" means the unborn offspring of human beings ~~which~~  
7 THAT has reached a stage of fetal development so that, in the judgment of the  
8 attending physician on the particular facts of the case, there is a  
9 reasonable probability of the fetus' sustained survival outside the uterus,  
10 with or without artificial support.

11          Sec. 4. Title 36, chapter 23, article 1, Arizona Revised Statutes, is  
12 amended by adding section 36-2301.02, to read:

13          36-2301.02. Pathological examination of fetal and embryonic  
14            tissues

15          A. A PERSON WHO PERFORMS AN ABORTION SHALL ESTIMATE THE GESTATIONAL  
16 AGE OF THE FETUS USING OBSTETRIC STANDARDS IN KEEPING WITH ESTABLISHED  
17 STANDARDS OF CARE REGARDING THE ESTIMATION OF FETAL AGE AS DEFINED IN RULE.

18          B. A PERSON WHO PERFORMS AN ABORTION SHALL ENSURE THAT THE FETAL AND  
19 EMBRYONIC TISSUES REMOVED FROM A WOMAN AS A RESULT OF A SECOND OR THIRD  
20 TRIMESTER ABORTION ARE SENT TO PERSONS OR CORPORATIONS CONTRACTED PURSUANT  
21 TO THIS SECTION. THE PERSON PERFORMING THE ABORTION SHALL ENSURE THAT EACH  
22 SET OF FETAL REMAINS IS SENT IN A MANNER THAT IT IS DISTINGUISHABLE FROM, AND  
23 NOT MIXED WITH, ANY OTHER SET OF REMAINS AND IS ACCCOMPANIED WITH A COPY OF  
24 ANY REPORT THAT NOTES THE ESTIMATE OF THE FETUS' GESTATIONAL AGE THAT WAS  
25 MADE BEFORE THE ABORTION.

26          C. THE DEPARTMENT OF HEALTH SERVICES SHALL CONTRACT WITH QUALIFIED  
27 PUBLIC OR PRIVATE PERSONS OR CORPORATIONS FOR THE DELIVERY OF PATHOLOGY  
28 SERVICES. THE DEPARTMENT SHALL ISSUE REQUESTS FOR PROPOSALS FOR THE PURPOSE  
29 OF ESTABLISHING CONTRACTS PURSUANT TO THIS SECTION. AT A MINIMUM, THE  
30 CONTRACTS SHALL REQUIRE THE CONTRACTOR TO:

31           1. PERFORM A PATHOLOGICAL EXAMINATION OF FETAL AND EMBRYONIC TISSUES  
32 TO VERIFY THE ACCURACY OF THE ESTIMATE OF THE FETUS' GESTATIONAL AGE MADE  
33 BEFORE THE ABORTION.

34           2. PERFORM A PATHOLOGICAL EXAMINATION OF FETAL AND EMBRYONIC TISSUES  
35 TO VERIFY THAT THE ESTIMATE OF THE FETUS' GESTATIONAL AGE MADE BEFORE THE  
36 ABORTION WAS MADE IN REASONABLE COMPLIANCE WITH OBSTETRIC STANDARDS IN  
37 KEEPING WITH ESTABLISHED STANDARDS OF CARE REGARDING THE ESTIMATION OF FETAL  
38 AGE AS DEFINED IN RULE.

39           3. MAKE AVAILABLE ADDITIONAL EVALUATION OF THE FETAL AND EMBRYONIC  
40 TISSUES AT THE DIRECTION AND COST OF EITHER THE PERSON WHO PERFORMED THE  
41 ABORTION OR THE ABORTION CLINIC.

42           D. THE CONTRACTOR SHALL USE A STATISTICALLY VALID METHOD OF SAMPLING  
43 TO CONDUCT THE PATHOLOGICAL EXAMINATION OF FETAL AND EMBRYONIC TISSUES

1 RESULTING FROM IMPLANTATION IN THE UTERUS FROM A WOMAN AS A RESULT OF A  
2 SECOND TRIMESTER ABORTION OF A FETUS OF UP TO EIGHTEEN WEEKS' GESTATION. THE  
3 CONTRACTOR SHALL CONDUCT A PATHOLOGICAL EXAMINATION OF ALL FETAL AND  
4 EMBRYONIC TISSUES RESULTING FROM IMPLANTATION IN THE UTERUS FROM A WOMAN AS  
5 A RESULT OF AN ABORTION OF A FETUS OF EIGHTEEN OR MORE WEEKS' GESTATION.

6 E. ON A MONTHLY BASIS, PERSONS OR CORPORATIONS PROVIDING PATHOLOGY  
7 SERVICES TO THE DEPARTMENT PURSUANT TO THIS SECTION SHALL FILE A REPORT WITH  
8 THE DIRECTOR REGARDING TEST RESULTS, NOTING:

9 1. ANY INSTANCES IN WHICH THE CONTRACTOR BELIEVES THERE WAS A  
10 SIGNIFICANT INACCURACY IN THE AGE ESTIMATE MADE BEFORE THE ABORTION.

11 2. ANY CIRCUMSTANCES THAT, BASED ON THE CONTRACTOR'S PROFESSIONAL  
12 JUDGMENT, MIGHT EXPLAIN A SIGNIFICANT INACCURACY REPORTED PURSUANT TO  
13 PARAGRAPH 1 OF THIS SUBSECTION.

14 3. WHETHER THERE WAS REASONABLE COMPLIANCE PURSUANT TO SUBSECTION C,  
15 PARAGRAPH 2 OF THIS SECTION.

16 4. WHETHER, BASED ON THE RESULTS OF THE PATHOLOGIST'S EXAMINATION, THE  
17 DOCTOR SHOULD HAVE FILED A FETAL DEATH CERTIFICATE WITH THE DEPARTMENT OF  
18 HEALTH SERVICES AS REQUIRED BY SECTION 36-329, SUBSECTION C.

19 F. THE DEPARTMENT OF HEALTH SERVICES SHALL FORWARD THE REPORT OR  
20 PORTIONS OF THE REPORT WITHIN THIRTY WORKING DAYS TO THE APPROPRIATE  
21 PROFESSIONAL REGULATORY BOARDS FOR THEIR REVIEW AND APPROPRIATE ACTION.

22 G. EXCEPT AS PROVIDED BY SUBSECTION F OF THIS SECTION, THE REPORTS  
23 REQUIRED BY THIS SECTION ARE CONFIDENTIAL AND DISCLOSABLE BY THE DEPARTMENT  
24 OR ITS CONTRACTOR ONLY IN AGGREGATE FORM FOR STATISTICAL OR RESEARCH  
25 PURPOSES. EXCEPT AS PROVIDED BY SUBSECTION F OF THIS SECTION, INFORMATION  
26 RELATING TO ANY PHYSICIAN, HOSPITAL, CLINIC OR OTHER INSTITUTION SHALL NOT  
27 BE RELEASED. PERSONALLY IDENTIFIABLE PATIENT INFORMATION SHALL NOT BE  
28 RELEASED BY THE DEPARTMENT OR ITS CONTRACTOR.

29 Sec. 5. Abortion clinics, rules; exemption for rule making;  
30 effective date of rules

31 A. On or before December 31, 1999, the department of health services  
32 shall adopt rules, in addition to any other applicable rules for health care  
33 institutions, that at a minimum meet the requirements of title 36, chapter  
34 4, article 10, Arizona Revised Statutes, as added by this act, relating to  
35 abortion clinics' physical facilities, supplies and equipment, personnel,  
36 medical screening and evaluation, the abortion procedure, the recovery room  
37 and the follow-up visit.

38 B. On or before March 31, 2000, the department of health services  
39 shall adopt rules regarding the pathological examination of fetal and  
40 embryonic tissues pursuant to section 36-2301.02, Arizona Revised Statutes,  
41 as added by this act.

42 C. The department of health services is exempt from the provisions of  
43 title 41, chapter 6, Arizona Revised Statutes, until March 31, 2000 with  
44 respect to the adoption of rules required pursuant to title 36, chapter 4,

1       article 10, Arizona Revised Statutes, as added by this act and section  
2       36-2301.02, Arizona Revised Statutes, as added by this act.

3       D. The department shall provide the public with an opportunity to  
4       comment on the proposed rules and shall hold at least one public hearing on  
5       the proposed rules.

6       E. Rules adopted pursuant to title 36, chapter 4, article 10, Arizona  
7       Revised Statutes, as added by this act, are effective from and after March  
8       31, 2000.

9       F. Rules adopted pursuant to section 36-2301.02, Arizona Revised  
10      Statutes, as added by this act, are effective from and after June 30, 2000.

11      Sec. 6. Exemption from procurement code

12      The department of health services is exempt from the procurement code  
13      requirements of title 41, chapter 23, Arizona Revised Statutes, until April  
14      1, 2000 to contract with qualified public or private persons or corporations  
15      for the delivery of pathology services for fetal and embryonic tissues.

16      Sec. 7. Pathology examination of fetal and embryonic tissues:  
17                   auditor general report

18      By December 31, 2002, the auditor general shall evaluate the first two  
19      years' operation of the effectiveness of the pathological examination of  
20      fetal and embryonic tissues required by section 36-2301.02, Arizona Revised  
21      Statutes, in ensuring compliance with the provisions of section 36-2301.01,  
22      Arizona Revised Statutes. The auditor general's report shall be delivered  
23      to the governor, the president of the senate and the speaker of the house of  
24      representatives and a copy of this report shall be provided to the secretary  
25      of state and the director of the department of library, archives and public  
26      records.

27      Sec. 8. Report

28      On or before December 31, 1999, the department of health services shall  
29      submit a report to the governor, the president of the senate and the speaker  
30      of the house of representatives and shall provide a copy of this report to  
31      the secretary of state and the director of the department of library,  
32      archives and public records to make recommendations on whether any of the  
33      rules adopted for clinics performing surgical abortions should be extended  
34      to facilities performing abortions with medicine or drugs.

35      Sec. 9. Joint health committee of reference; offices and  
36                   clinics of health care providers: review of exemption

37      The joint health committee of reference shall review the types of  
38      facilities that remain exempt from regulation by the department of health  
39      services pursuant to section 36-402, paragraph 3, Arizona Revised Statutes,  
40      after the legislature eliminated the exemptions for urgent care centers and  
41      abortion clinics during the first regular session of the forty-fourth  
42      legislature. The committee shall make recommendations by no later than  
43      December 31, 1999 to the governor, the speaker of the house of  
44      representatives and the president of the senate as to which classes of

1 exempt facilities should be regulated by the department of health services  
2 to ensure the public health. The board of medical examiners and the  
3 department of health services shall provide assistance to the committee as  
4 requested by the committee chairmen.

5 Sec. 10. Severability

6 If a provision of this act is held invalid, the invalidity of that  
7 specific provision does not affect the validity of any other section of this  
8 act that is not specifically held to be invalid, and to this end the  
9 provisions of this act are severable.

10 Sec. 11. Delayed effective dates

11 A. Section 36-402, Arizona Revised Statutes, as amended by this act,  
12 is effective from and after March 31, 2000.

13 B. Section 36-2301.02, Arizona Revised Statutes, as added by this act,  
14 is effective from and after June 30, 2000.

15 Sec. 12. Conditional repeal

16 Section 36-449.01, Arizona Revised Statutes, as added by this act, is  
17 repealed only if, and on the date that, there is a final court ruling that  
18 the definition of "abortion clinic" in section 36-449.01, Arizona Revised  
19 Statutes, as added by this act, is unconstitutional.

20 Sec. 13. Conditional enactment

21 Section 36-449, Arizona Revised Statutes, as added by this act, does  
22 not become effective unless, and on the date that, there is a final court  
23 ruling that the definition of "abortion clinic" in section 36-449.01, Arizona  
24 Revised Statutes, as added by this act, is unconstitutional.

25 Sec. 14. Emergency

26 This act is an emergency measure that is necessary to preserve the  
27 public peace, health or safety and is operative immediately as provided by  
28 law.