

State of Arizona  
Senate  
Fiftieth Legislature  
First Regular Session  
2011

## **SB 1246**

Introduced by

Senators Barto, Bundgaard, Pearce R, Smith, Yarbrough; Representatives Court, Dial, Gowan, Harper, Judd, Kavanagh, Seel, Urie, Yee; Senators Allen, Antenori, Biggs, Crandall, Driggs, Gould, Gray, Griffin, Klein, McComish, Melvin, Murphy, Nelson, Pierce S, Shooter; Representatives Ash, Barton, Farnsworth, Forese, Goodale, Lesko, McLain, Mesnard, Olson, Pratt, Vogt

### **AN ACT**

REPEALING SECTION 36-449, ARIZONA REVISED STATUTES; AMENDING SECTIONS 36-449.01, 36-2151 AND 36-2152, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 20, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-2156; AMENDING TITLE 36, CHAPTER 36, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-3604; REPEALING LAWS 1999, CHAPTER 311, SECTIONS 12 AND 13; 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. Repeal

3 Section ~~36-449~~, Arizona Revised Statutes, is repealed.

4 Sec. 2. Section 36-449.01, Arizona Revised Statutes, is amended to  
5 read:

6 ~~36-449.01.~~ Definitions

7 In this article, unless the context otherwise requires:

8 1. "Abortion" means the use of ~~a surgical instrument or a machine~~ ANY  
9 MEANS with the intent to terminate a woman's pregnancy for reasons other than  
10 to increase the probability of a live birth, to preserve the life or health  
11 of the child after A live birth, to terminate an ectopic pregnancy or to  
12 remove a dead fetus. Abortion does not include birth control devices or oral  
13 contraceptives.

14 2. "Abortion clinic" means a facility, other than ~~an accredited~~ A  
15 hospital, in which five or more first trimester abortions in any month or any  
16 second or third trimester abortions are performed.

17 3. "Director" means the director of the department of health services.

18 4. "Viable fetus" has the same meaning prescribed in section  
19 36-2301.01.

20 Sec. 3. Section 36-2151, Arizona Revised Statutes, is amended to read:

21 ~~36-2151.~~ Definitions

22 In this article, unless the context otherwise requires:

23 1. "Abortion" means the use of any means to terminate the clinically  
24 diagnosable pregnancy of a woman with knowledge that the termination by those  
25 means will cause, with reasonable likelihood, the death of the unborn child.  
26 Abortion does not include birth control devices, oral contraceptives used to  
27 inhibit or prevent ovulation, conception or the implantation of a fertilized  
28 ovum in the uterus or the use of any means to increase the probability of a  
29 live birth, to preserve the life or health of the child after a live birth,  
30 to terminate an ectopic pregnancy or to remove a dead fetus.

31 2. "AUSCULTATION" MEANS THE ACT OF LISTENING FOR SOUNDS MADE BY  
32 INTERNAL ORGANS OF THE UNBORN CHILD, SPECIFICALLY FOR A HEARTBEAT, USING AN  
33 ULTRASOUND TRANSDUCER AND FETAL HEART RATE MONITOR.

34 ~~2-~~ 3. "Conception" means the fusion of a human spermatozoon with a  
35 human ovum.

36 ~~3-~~ 4. "Gestational age" means the age of the unborn child as  
37 calculated from the first day of the last menstrual period of the pregnant  
38 woman.

39 ~~4-~~ 5. "Health professional" has the same meaning prescribed in  
40 section 32-3201.

41 ~~5-~~ 6. "Medical emergency" means a condition that, on the basis of the  
42 physician's good faith clinical judgment, so complicates the medical  
43 condition of a pregnant woman as to necessitate the immediate abortion of her  
44 pregnancy to avert her death or for which a delay will create serious risk of  
45 substantial and irreversible impairment of a major bodily function.

1           ~~6-~~ 7. "Physician" means a person who is licensed pursuant to title  
2 32, chapter 13 or 17.

3           ~~7-~~ 8. "Pregnant" or "pregnancy" means a female reproductive condition  
4 of having a developing unborn child in the body and that begins with  
5 conception.

6           ~~8-~~ 9. "Probable gestational age" means the gestational age of the  
7 unborn child at the time the abortion is planned to be performed and as  
8 determined with reasonable probability by the attending physician.

9           ~~9-~~ 10. "Surgical abortion" means the use of a surgical instrument or  
10 a machine to terminate the clinically diagnosable pregnancy of a woman with  
11 knowledge that the termination by those means will cause, with reasonable  
12 likelihood, the death of the unborn child. Surgical abortion does not  
13 include the use of any means to increase the probability of a live birth, to  
14 preserve the life or health of the child after a live birth, to terminate an  
15 ectopic pregnancy or to remove a dead fetus. Surgical abortion does not  
16 include patient care incidental to the procedure.

17           11. "ULTRASOUND" MEANS THE USE OF ULTRASONIC WAVES FOR DIAGNOSTIC OR  
18 THERAPEUTIC PURPOSES TO MONITOR A DEVELOPING UNBORN CHILD.

19           ~~10-~~ 12. "Unborn child" means the offspring of human beings from  
20 conception until birth.

21           Sec. 4. Section 36-2152, Arizona Revised Statutes, is amended to read:

22           36-2152. Parental consent; exception; hearings; time limits;  
23   violation; classification; civil relief; statute of  
24   limitations

25           A. In addition to the requirements of section 36-2153, a person shall  
26 not knowingly perform an abortion on a pregnant unemancipated minor unless  
27 the attending physician has secured the written and notarized consent from  
28 one of the minor's parents or the minor's guardian or conservator or unless a  
29 judge of the superior court authorizes the physician to perform the abortion  
30 pursuant to subsection B of this section. Notwithstanding section 41-319,  
31 the notarized statement of parental consent and the description of the  
32 document or notarial act recorded in the notary journal are confidential and  
33 are not public records.

34           B. A judge of the superior court, on petition or motion, and after an  
35 appropriate hearing, shall authorize a physician to perform the abortion if  
36 the judge determines that the pregnant minor is mature and capable of giving  
37 informed consent to the proposed abortion. If the judge determines that the  
38 pregnant minor is not mature or if the pregnant minor does not claim to be  
39 mature, the judge shall determine whether the performance of an abortion on  
40 her without the consent from one of her parents or her guardian or  
41 conservator would be in her best interests and shall authorize a physician to  
42 perform the abortion without consent if the judge concludes that the pregnant  
43 minor's best interests would be served.

1 C. If the pregnant minor claims to be mature at a proceeding held  
2 pursuant to subsection B of this section, the minor must prove by clear and  
3 convincing evidence that she is sufficiently mature and capable of giving  
4 informed consent without consulting her parent or legal guardian based on her  
5 experience level, perspective and judgment. In assessing the pregnant  
6 minor's experience level, the court may consider, among other relevant  
7 factors, the minor's age and experiences working outside the home, living  
8 away from home, traveling on her own, handling personal finances and making  
9 other significant decisions. In assessing the pregnant minor's perspective,  
10 the court may consider, among other relevant factors, what steps the minor  
11 took to explore her options and the extent to which she considered and  
12 weighed the potential consequences of each option. In assessing the pregnant  
13 minor's judgment, the court may consider, among other relevant factors, the  
14 minor's conduct since learning of her pregnancy and her intellectual ability  
15 to understand her options and to make an informed decision.

16 D. The pregnant minor may participate in the court proceedings on her  
17 own behalf. The court ~~may~~ SHALL appoint a guardian ad litem for her. The  
18 court shall advise her that she has the right to court appointed counsel and,  
19 on her request, shall provide her with counsel unless she appears through  
20 private counsel or she knowingly and intelligently waives her right to  
21 counsel.

22 E. Proceedings in the court under this section are confidential and  
23 have precedence over other pending matters. Members of the public shall not  
24 inspect, obtain copies of or otherwise have access to records of court  
25 proceedings under this section unless authorized by law. A judge who  
26 conducts proceedings under this section shall make in writing specific  
27 factual findings and legal conclusions supporting the decision and shall  
28 order a confidential record of the evidence to be maintained, including the  
29 judge's own findings and conclusions. The minor may file the petition using  
30 a fictitious name. For purposes of this subsection, public does not include  
31 judges, clerks, administrators, professionals or other persons employed by or  
32 working under the supervision of the court or employees of other public  
33 agencies who are authorized by state or federal rule or law to inspect and  
34 copy closed court records.

35 F. The court shall hold the hearing and shall issue a ruling within  
36 forty-eight hours, excluding weekends and holidays, after the petition is  
37 filed. If the court fails to issue a ruling within this time period, the  
38 petition is deemed to have been granted and the consent requirement is  
39 waived.

40 G. An expedited confidential appeal is available to a pregnant minor  
41 for whom the court denies an order authorizing an abortion without parental  
42 consent. The appellate court shall hold the hearing and issue a ruling  
43 within forty-eight hours, excluding weekends and holidays, after the petition  
44 for appellate review is filed. Filing fees are not required of the pregnant  
45 minor at either the trial or the appellate level.

1 H. Parental consent or judicial authorization is not required under  
2 this section if either:

3 1. The pregnant minor certifies to the attending physician that the  
4 pregnancy resulted from sexual conduct with a minor by the minor's parent,  
5 stepparent, uncle, grandparent, sibling, adoptive parent, legal guardian or  
6 foster parent or by a person who lives in the same household with the minor  
7 and the minor's mother. The physician performing the abortion shall report  
8 the sexual conduct with a minor to the proper law enforcement officials  
9 pursuant to section 13-3620 and shall preserve and forward a sample of the  
10 fetal tissue to these officials for use in a criminal investigation.

11 2. The attending physician certifies in the pregnant minor's medical  
12 record that, on the basis of the physician's good faith clinical judgment,  
13 the pregnant minor has a condition that so complicates her medical condition  
14 as to necessitate the immediate abortion of her pregnancy to avert her death  
15 or for which a delay will create serious risk of substantial and irreversible  
16 impairment of major bodily function.

17 I. A person who performs an abortion in violation of this section is  
18 guilty of a class 1 misdemeanor. A person is not subject to any liability  
19 under this section if the person establishes by written evidence that the  
20 person relied on evidence sufficient to convince a careful and prudent person  
21 that the representations of the pregnant minor regarding information  
22 necessary to comply with this section are true.

23 J. In addition to other remedies available under the common or  
24 statutory law of this state, one or both of the minor's parents or the  
25 minor's guardian may bring a civil action in the superior court in the county  
26 in which the parents or the guardian resides to obtain appropriate relief for  
27 a violation of this section, unless the pregnancy resulted from the criminal  
28 conduct of the parent or guardian. The civil action may be based on a claim  
29 that failure to obtain consent was a result of simple negligence, gross  
30 negligence, wantonness, wilfulness, intention or any other legal standard of  
31 care. Relief pursuant to this subsection includes the following:

32 1. Money damages for all psychological, emotional and physical  
33 injuries that result from the violation of this section.

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

36 3. Reasonable attorney fees and costs.

37 K. A civil action brought pursuant to this section must be initiated  
38 within six years after the violation occurred.

39 Sec. 5. Title 36, chapter 20, article 1, Arizona Revised Statutes, is  
40 amended by adding section 36-2156, to read:

41 36-2156. Informed consent; ultrasound required; violation;  
42 civil relief; statute of limitations

43 A. AN ABORTION SHALL NOT BE PERFORMED OR INDUCED WITHOUT THE VOLUNTARY  
44 AND INFORMED CONSENT OF THE WOMAN ON WHOM THE ABORTION IS TO BE PERFORMED OR  
45 INDUCED. EXCEPT IN THE CASE OF A MEDICAL EMERGENCY AND IN ADDITION TO THE

1 REQUIREMENTS OF SECTION 36-2153, CONSENT TO AN ABORTION IS VOLUNTARY AND  
2 INFORMED ONLY IF BOTH OF THE FOLLOWING ARE TRUE:

3 1. AT LEAST ONE HOUR BEFORE THE WOMAN HAVING ANY PART OF AN ABORTION  
4 PERFORMED OR INDUCED, AND BEFORE THE ADMINISTRATION OF ANY ANESTHESIA OR  
5 MEDICATION IN PREPARATION FOR THE ABORTION ON THE WOMAN, THE PHYSICIAN WHO IS  
6 TO PERFORM THE ABORTION, THE REFERRING PHYSICIAN OR A QUALIFIED PERSON  
7 WORKING IN CONJUNCTION WITH EITHER PHYSICIAN SHALL:

8 (a) PERFORM FETAL ULTRASOUND IMAGING AND AUSCULTATION OF FETAL HEART  
9 TONE SERVICES ON THE WOMAN UNDERGOING THE ABORTION.

10 (b) OFFER TO PROVIDE THE WOMAN WITH AN OPPORTUNITY TO VIEW THE ACTIVE  
11 ULTRASOUND IMAGE OF THE UNBORN CHILD AND HEAR THE HEARTBEAT OF THE UNBORN  
12 CHILD IF THE HEARTBEAT IS AUDIBLE. THE ACTIVE ULTRASOUND IMAGE MUST BE OF A  
13 QUALITY CONSISTENT WITH STANDARD MEDICAL PRACTICE IN THE COMMUNITY, CONTAIN  
14 THE DIMENSIONS OF THE UNBORN CHILD AND ACCURATELY PORTRAY THE PRESENCE OF  
15 EXTERNAL MEMBERS AND INTERNAL ORGANS, IF PRESENT OR VIEWABLE, OF THE UNBORN  
16 CHILD. THE AUSCULTATION OF FETAL HEART TONE MUST BE OF A QUALITY CONSISTENT  
17 WITH STANDARD MEDICAL PRACTICE IN THE COMMUNITY.

18 (c) OFFER TO PROVIDE THE WOMAN WITH A SIMULTANEOUS EXPLANATION OF WHAT  
19 THE ULTRASOUND IS DEPICTING, INCLUDING THE PRESENCE AND LOCATION OF THE  
20 UNBORN CHILD WITHIN THE UTERUS, THE NUMBER OF UNBORN CHILDREN DEPICTED, THE  
21 DIMENSIONS OF THE UNBORN CHILD AND THE PRESENCE OF ANY EXTERNAL MEMBERS AND  
22 INTERNAL ORGANS, IF PRESENT OR VIEWABLE.

23 (d) OFFER TO PROVIDE THE PATIENT WITH A PHYSICAL PICTURE OF THE  
24 ULTRASOUND IMAGE OF THE UNBORN CHILD.

25 2. THE WOMAN CERTIFIES IN WRITING BEFORE THE ABORTION THAT SHE HAS  
26 BEEN GIVEN THE OPPORTUNITY TO VIEW THE ACTIVE ULTRASOUND IMAGE AND HEAR THE  
27 HEARTBEAT OF THE UNBORN CHILD IF THE HEARTBEAT IS AUDIBLE AND THAT SHE OPTED  
28 TO VIEW OR NOT VIEW THE ACTIVE ULTRASOUND IMAGE AND HEAR OR NOT HEAR THE  
29 HEARTBEAT OF THE UNBORN CHILD.

30 B. A PHYSICIAN WHO KNOWINGLY VIOLATES THIS SECTION COMMITS AN ACT OF  
31 UNPROFESSIONAL CONDUCT AND IS SUBJECT TO LICENSE SUSPENSION OR REVOCATION  
32 PURSUANT TO TITLE 32, CHAPTER 13 OR 17.

33 C. IN ADDITION TO OTHER REMEDIES AVAILABLE UNDER THE COMMON OR  
34 STATUTORY LAW OF THIS STATE, ANY OF THE FOLLOWING MAY FILE A CIVIL ACTION TO  
35 OBTAIN APPROPRIATE RELIEF FOR A VIOLATION OF THIS SECTION:

36 1. A WOMAN ON WHOM AN ABORTION HAS BEEN PERFORMED WITHOUT HER INFORMED  
37 CONSENT AS REQUIRED BY THIS SECTION.

38 2. THE FATHER OF THE UNBORN CHILD IF MARRIED TO THE MOTHER AT THE TIME  
39 SHE RECEIVED THE ABORTION, UNLESS THE PREGNANCY RESULTED FROM THE PLAINTIFF'S  
40 CRIMINAL CONDUCT.

41 3. THE MATERNAL GRANDPARENTS OF THE UNBORN CHILD IF THE MOTHER WAS NOT  
42 AT LEAST EIGHTEEN YEARS OF AGE AT THE TIME OF THE ABORTION, UNLESS THE  
43 PREGNANCY RESULTED FROM THE PLAINTIFF'S CRIMINAL CONDUCT.

1 D. A CIVIL ACTION FILED PURSUANT TO SUBSECTION C OF THIS SECTION SHALL  
2 BE BROUGHT IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE WOMAN ON WHOM THE  
3 ABORTION WAS PERFORMED RESIDES AND MAY BE BASED ON A CLAIM THAT FAILURE TO  
4 OBTAIN INFORMED CONSENT WAS A RESULT OF SIMPLE NEGLIGENCE, GROSS NEGLIGENCE,  
5 WANTONNESS, WILFULNESS, INTENTION OR ANY OTHER LEGAL STANDARD OF CARE.  
6 RELIEF PURSUANT TO SUBSECTION C OF THIS SECTION INCLUDES ANY OF THE  
7 FOLLOWING:

8 1. MONEY DAMAGES FOR ALL PSYCHOLOGICAL, EMOTIONAL AND PHYSICAL  
9 INJURIES RESULTING FROM THE VIOLATION OF THIS SECTION.

10 2. STATUTORY DAMAGES IN AN AMOUNT EQUAL TO FIVE THOUSAND DOLLARS OR  
11 THREE TIMES THE COST OF THE ABORTION, WHICHEVER IS GREATER.

12 3. REASONABLE ATTORNEY FEES AND COSTS.

13 E. A CIVIL ACTION BROUGHT PURSUANT TO THIS SECTION MUST BE INITIATED  
14 WITHIN SIX YEARS AFTER THE VIOLATION OCCURRED.

15 Sec. 6. Title 36, chapter 36, article 1, Arizona Revised Statutes, is  
16 amended by adding section 36-3604, to read:

17 36-3604. Use of telemedicine for abortion prohibited; penalty;  
18 definition

19 A. A HEALTH CARE PROVIDER SHALL NOT USE TELEMEDICINE TO PROVIDE AN  
20 ABORTION.

21 B. A HEALTH CARE PROVIDER WHO KNOWINGLY VIOLATES THIS SECTION COMMITS  
22 AN ACT OF UNPROFESSIONAL CONDUCT AND IS SUBJECT TO LICENSE SUSPENSION OR  
23 REVOCATION PURSUANT TO TITLE 32.

24 C. FOR THE PURPOSES OF THIS SECTION, "ABORTION" HAS THE SAME MEANING  
25 PRESCRIBED IN SECTION 36-2151.

26 Sec. 7. Repeal

27 Laws 1999, chapter 311, sections 12 and 13 are repealed

28 Sec. 8. Construction

29 This act does not establish or recognize a right to an abortion and  
30 does not make lawful an abortion that is currently unlawful.

31 Sec. 9. Severability

32 If a provision of this act or its application to any person or  
33 circumstance is held invalid, the invalidity does not affect other provisions  
34 or applications of the act that can be given effect without the invalid  
35 provision or application, and to this end the provisions of this act are  
36 severable.