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

Section 1. Repeal
Section 36-449, Arizona Revised Statutes, is repealed.

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

36-449.01. Definitions
In this article, unless the context otherwise requires:

1. "Abortion" means the use of a surgical instrument or a machine ANY MEANS 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 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 36-2301.01.

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

36-2151. Definitions
In this article, unless the context otherwise requires:

1. "Abortion" means 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. Abortion 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 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.

2. "Auscultation" means the act of listening for sounds made by internal organs of the unborn child, specifically for a heartbeat, using an ultrasound transducer and fetal heart rate monitor.

3. "Conception" means the fusion of a human spermatozoon with a human ovum.

4. "Gestational age" means the age of the unborn child as calculated from the first day of the last menstrual period of the pregnant woman.

5. "Health professional" has the same meaning prescribed in section 32-3201.

6. "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.
6. "Physician" means a person who is licensed pursuant to title 32, chapter 13 or 17.

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

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

9. "Surgical abortion" means the use of a surgical instrument or a machine 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. Surgical abortion does not include the use of any means 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. Surgical abortion does not include patient care incidental to the procedure.

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

11. "Unborn child" means the offspring of human beings from conception until birth.

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

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

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

B. A judge of the superior court, on petition or motion, and after an appropriate hearing, shall authorize a physician to perform the abortion if the judge determines that the pregnant minor is mature and capable of giving informed consent to the proposed abortion. If the judge determines that the pregnant minor is not mature or if the pregnant minor does not claim to be mature, the judge shall determine whether the performance of an abortion on her without the consent from one of her parents or her guardian or conservator would be in her best interests and shall authorize a physician to perform the abortion without consent if the judge concludes that the pregnant minor's best interests would be served.
C. If the pregnant minor claims to be mature at a proceeding held pursuant to subsection B of this section, the minor must prove by clear and convincing evidence that she is sufficiently mature and capable of giving informed consent without consulting her parent or legal guardian based on her experience level, perspective and judgment. In assessing the pregnant minor's experience level, the court may consider, among other relevant factors, the minor's age and experiences working outside the home, living away from home, traveling on her own, handling personal finances and making other significant decisions. In assessing the pregnant minor's perspective, the court may consider, among other relevant factors, what steps the minor took to explore her options and the extent to which she considered and weighed the potential consequences of each option. In assessing the pregnant minor's judgment, the court may consider, among other relevant factors, the minor's conduct since learning of her pregnancy and her intellectual ability to understand her options and to make an informed decision.

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

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

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

G. An expedited confidential appeal is available to a pregnant minor for whom the court denies an order authorizing an abortion without parental consent. The appellate court shall hold the hearing and issue a ruling within forty-eight hours, excluding weekends and holidays, after the petition for appellate review is filed. Filing fees are not required of the pregnant minor at either the trial or the appellate level.
H. Parental consent or judicial authorization is not required under this section if either:

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

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

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

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

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

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

3. Reasonable attorney fees and costs.

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

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

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

A. AN ABORTION SHALL NOT BE PERFORMED OR INDUCED WITHOUT THE VOLUNTARY AND INFORMED CONSENT OF THE WOMAN ON WHOM THE ABORTION IS TO BE PERFORMED OR INDUCED. EXCEPT IN THE CASE OF A MEDICAL EMERGENCY AND IN ADDITION TO THE
REQUIREMENTS OF SECTION 36-2153, CONSENT TO AN ABORTION IS VOLUNTARY AND INFORMED ONLY IF BOTH OF THE FOLLOWING ARE TRUE:

1. At least one hour before the woman having any part of an abortion performed or induced, and before the administration of any anesthesia or medication in preparation for the abortion on the woman, the physician who is to perform the abortion, the referring physician or a qualified person working in conjunction with either physician shall:
   (a) Perform fetal ultrasound imaging and auscultation of fetal heart tone services on the woman undergoing the abortion.
   (b) Offer to provide the woman with an opportunity to view the active ultrasound image of the unborn child and hear the heartbeat of the unborn child if the heartbeat is audible. The active ultrasound image must be of a quality consistent with standard medical practice in the community, contain the dimensions of the unborn child and accurately portray the presence of external members and internal organs, if present or viewable, of the unborn child. The auscultation of fetal heart tone must be of a quality consistent with standard medical practice in the community.
   (c) Offer to provide the woman with a simultaneous explanation of what the ultrasound is depicting, including the presence and location of the unborn child within the uterus, the number of unborn children depicted, the dimensions of the unborn child and the presence of any external members and internal organs, if present or viewable.
   (d) Offer to provide the patient with a physical picture of the ultrasound image of the unborn child.

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

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

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

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

2. The father of the unborn child if married to the mother at the time she received the abortion, unless the pregnancy resulted from the plaintiff's criminal conduct.

3. The maternal grandparents of the unborn child if the mother was not at least eighteen years of age at the time of the abortion, unless the pregnancy resulted from the plaintiff's criminal conduct.
D. A CIVIL ACTION FILED PURSUANT TO SUBSECTION C OF THIS SECTION SHALL BE BROUGHT IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE WOMAN ON WHOM THE ABORTION WAS PERFORMED RESIDES AND MAY BE BASED ON A CLAIM THAT FAILURE TO OBTAIN INFORMED CONSENT WAS A RESULT OF SIMPLE NEGLIGENCE, GROSS NEGLIGENCE, WANTONNESS, WILFULNESS, INTENTION OR ANY OTHER LEGAL STANDARD OF CARE. RELIEF PURSUANT TO SUBSECTION C OF THIS SECTION INCLUDES ANY OF THE FOLLOWING:

1. MONEY DAMAGES FOR ALL PSYCHOLOGICAL, EMOTIONAL AND PHYSICAL INJURIES RESULTING FROM THE VIOLATION OF THIS SECTION.
2. STATUTORY DAMAGES IN AN AMOUNT EQUAL TO FIVE THOUSAND DOLLARS OR THREE TIMES THE COST OF THE ABORTION, WHICHEVER IS GREATER.
3. REASONABLE ATTORNEY FEES AND COSTS.

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

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

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

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

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

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

Sec. 7. Repeal

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

Sec. 8. Construction

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

Sec. 9. Severability

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.