

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE BILL 1246

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Section 36-449, Arizona Revised Statutes, is repealed.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~~ A 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. "PERFORM" INCLUDES THE INITIAL ADMINISTRATION OF ANY MEDICATION, DRUG OR OTHER SUBSTANCE INTENDED TO CAUSE OR INDUCE AN ABORTION.

~~4-~~ 5. "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.

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

~~3-~~ 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.

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

~~5-~~ 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

1 pregnancy to avert her death or for which a delay will create serious risk of
2 substantial and irreversible impairment of a major bodily function.

3 ~~6-~~ 7. "Physician" means a person who is licensed pursuant to title
4 32, chapter 13 or 17.

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

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

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

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

21 ~~10-~~ 12. "Unborn child" means the offspring of human beings from
22 conception until birth.

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

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

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

36 B. A judge of the superior court, on petition or motion, and after an
37 appropriate hearing, shall authorize a physician to perform the abortion if
38 the judge determines that the pregnant minor is mature and capable of giving
39 informed consent to the proposed abortion. If the judge determines that the
40 pregnant minor is not mature or if the pregnant minor does not claim to be
41 mature, the judge shall determine whether the performance of an abortion on
42 her without the consent from one of her parents or her guardian or
43 conservator would be in her best interests and shall authorize a physician to
44 perform the abortion without consent if the judge concludes that the pregnant
45 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.