

State of Arizona
Senate
Fifty-second Legislature
First Regular Session
2015

SENATE BILL 1318

AN ACT

AMENDING SECTIONS 20-121, 36-404, 36-449.02 AND 36-2153, 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 20-121, Arizona Revised Statutes, is amended to
3 read:

4 20-121. Health care exchange; abortion coverage; prohibition;
5 exceptions

6 A. Consistent with the provisions of the patient protection and
7 affordable care act (P.L. 111-148), any qualified health insurance policy,
8 contract or plan offered through any ~~state~~ health care exchange ~~established~~
9 ~~OPERATING~~ in this state shall not provide coverage for abortions ~~unless the~~
10 ~~coverage is offered as a separate optional rider for which an additional~~
11 ~~insurance premium is charged.~~

12 B. Subsection A ~~OF THIS SECTION~~ does not apply to coverage for any
13 abortion ~~that is necessary to either:~~

14 1. ~~THAT IS NECESSARY TO~~ save the life of the woman having the
15 abortion.

16 2. ~~THAT IS NECESSARY TO~~ avert substantial and irreversible impairment
17 of a major bodily function of the woman having the abortion.

18 3. ~~WHEN THE PREGNANCY IS THE RESULT OF RAPE OR INCEST.~~

19 Sec. 2. Section 36-404, Arizona Revised Statutes, is amended to read:

20 36-404. Limitation of disclosure of information

21 A. Information received and records kept by the department for the
22 purpose of administering this chapter are available to the public except:

23 1. Information obtained for purposes of articles 4 and 5 of this
24 chapter.

25 2. Personally identifiable medical information or any information from
26 which a patient or the patient's family might be identified.

27 3. Sources of information that cause the department to believe that an
28 inspection of an institution is needed to determine the extent of compliance
29 with this chapter and rules adopted pursuant to this chapter.

30 4. ~~PERSONALLY IDENTIFIABLE INFORMATION OF A PHYSICIAN THAT IS RECEIVED~~
31 ~~AND ANY RECORDS KEPT REGARDING THE PHYSICIAN'S ADMITTING PRIVILEGES PURSUANT~~
32 ~~TO SECTION 36-449.02.~~

33 B. The department may release information listed under subsection A ~~OF~~
34 ~~THIS SECTION~~ to an officer of the court pursuant to a court order, a
35 department or agency of this state or the federal government, a law
36 enforcement agency or a county medical examiner if the release of this
37 information is necessary and pertinent to an investigation or proceeding
38 unless the release of this information is prohibited by federal or state law.
39 The recipient shall maintain patient and source name confidentiality.

40 Sec. 3. Section 36-449.02, Arizona Revised Statutes, is amended to
41 read:

42 36-449.02. Abortion clinics; licensure requirements; rules;
43 inspections; standing to intervene; legal counsel

44 A. Beginning on April 1, 2000, an abortion clinic shall meet the same
45 licensure requirements as prescribed in article 2 of this chapter for health

1 care institutions. ON INITIAL LICENSURE AND ANY SUBSEQUENT RENEWAL, AN
2 ABORTION CLINIC SHALL SUBMIT TO THE DIRECTOR ALL DOCUMENTATION REQUIRED BY
3 THIS ARTICLE, INCLUDING VERIFICATION THAT THE CLINIC'S PHYSICIANS WHO ARE
4 REQUIRED TO BE AVAILABLE HAVE ADMITTING PRIVILEGES AT A HEALTH CARE
5 INSTITUTION AS REQUIRED BY SECTION 36-449.03, SUBSECTION C, PARAGRAPH 3.

6 B. An abortion clinic that holds an unclassified health care facility
7 license issued before August 6, 1999 may retain that classification until
8 April 1, 2000 subject to compliance with all laws that relate to unclassified
9 health care facilities.

10 C. Beginning on April 1, 2000, abortion clinics shall comply with
11 department requirements for abortion clinics and department rules that govern
12 abortion clinics.

13 D. If the director determines that there is reasonable cause to
14 believe an abortion clinic is not adhering to the licensing requirements of
15 this article or any other law or rule concerning abortion, the director and
16 any duly designated employee or agent of the director, including county
17 health representatives and county or municipal fire inspectors, consistent
18 with standard medical practices, may enter on and into the premises of the
19 abortion clinic that is licensed or required to be licensed pursuant to this
20 article during regular business hours of the abortion clinic to determine
21 compliance with this article, rules adopted pursuant to this article, local
22 fire ordinances or rules and any other law or rule relating to abortion.

23 E. An application for licensure pursuant to this article constitutes
24 permission for, and complete acquiescence in, an entry or inspection of the
25 premises during the pendency of the application and, if licensed, during the
26 term of the license.

27 F. If an inspection conducted pursuant to this section reveals that an
28 abortion clinic is not adhering to the licensing requirements prescribed
29 pursuant to this article or any other law or rule concerning abortion, the
30 director may take action authorized by this article.

31 G. An abortion clinic whose license has been suspended or revoked
32 pursuant to this article or section 36-424 is subject to inspection on
33 application for relicensure or reinstatement of the license.

34 H. In any proceeding in which the constitutionality, legality or
35 application of this section is challenged, the attorney general or any county
36 or city attorney who wishes to defend the law has the right to intervene as a
37 party and is deemed to have proper standing in the matter. The only
38 objection that may be raised to a motion to intervene as of right pursuant to
39 this subsection is that the proposed intervenor does not have a good faith
40 intention to defend the law. Any party or proposed intervenor may raise this
41 objection. Notwithstanding section 41-192, the department may employ legal
42 counsel and make an expenditure or incur an indebtedness for legal services
43 for the purposes of defending this section.

1 Sec. 4. Section 36-2153, Arizona Revised Statutes, is amended to read:
2 36-2153. Informed consent; requirements; information; website;
3 signs; violation; civil relief; statute of
4 limitations

5 A. An abortion shall not be performed or induced without the voluntary
6 and informed consent of the woman on whom the abortion is to be performed or
7 induced. Except in the case of a medical emergency and in addition to the
8 other requirements of this chapter, consent to an abortion is voluntary and
9 informed only if all of the following are true:

10 1. At least twenty-four hours before the abortion, the physician who
11 is to perform the abortion or the referring physician has informed the woman,
12 orally and in person, of:

13 (a) The name of the physician who will perform the abortion.

14 (b) The nature of the proposed procedure or treatment.

15 (c) The immediate and long-term medical risks associated with the
16 procedure that a reasonable patient would consider material to the decision
17 of whether or not to undergo the abortion.

18 (d) Alternatives to the procedure or treatment that a reasonable
19 patient would consider material to the decision of whether or not to undergo
20 the abortion.

21 (e) The probable gestational age of the unborn child at the time the
22 abortion is to be performed.

23 (f) The probable anatomical and physiological characteristics of the
24 unborn child at the time the abortion is to be performed.

25 (g) The medical risks associated with carrying the child to term.

26 2. At least twenty-four hours before the abortion, the physician who
27 is to perform the abortion, the referring physician or a qualified physician,
28 physician assistant, nurse, psychologist or licensed behavioral health
29 professional to whom the responsibility has been delegated by either
30 physician has informed the woman, orally and in person, that:

31 (a) Medical assistance benefits may be available for prenatal care,
32 childbirth and neonatal care.

33 (b) The father of the unborn child is liable to assist in the support
34 of the child, even if he has offered to pay for the abortion. In the case of
35 rape or incest, this information may be omitted.

36 (c) Public and private agencies and services are available to assist
37 the woman during her pregnancy and after the birth of her child if she
38 chooses not to have an abortion, whether she chooses to keep the child or
39 place the child for adoption.

40 (d) It is unlawful for any person to coerce a woman to undergo an
41 abortion.

42 (e) The woman is free to withhold or withdraw her consent to the
43 abortion at any time without affecting her right to future care or treatment
44 and without the loss of any state or federally funded benefits to which she
45 might otherwise be entitled.

1 (f) The department of health services maintains a website that
2 describes the unborn child and lists the agencies that offer alternatives to
3 abortion.

4 (g) The woman has a right to review the website and that a printed
5 copy of the materials on the website will be provided to her free of charge
6 if she chooses to review these materials.

7 (h) IT MAY BE POSSIBLE TO REVERSE THE EFFECTS OF A MEDICATION ABORTION
8 IF THE WOMAN CHANGES HER MIND BUT THAT TIME IS OF THE ESSENCE.

9 (i) INFORMATION ON AND ASSISTANCE WITH REVERSING THE EFFECTS OF A
10 MEDICATION ABORTION IS AVAILABLE ON THE DEPARTMENT OF HEALTH SERVICES'
11 WEBSITE.

12 3. The information in paragraphs 1 and 2 of this subsection is
13 provided to the woman individually and in a private room to protect her
14 privacy and to ensure that the information focuses on her individual
15 circumstances and that she has adequate opportunity to ask questions.

16 4. The woman certifies in writing before the abortion that the
17 information required to be provided pursuant to paragraphs 1 and 2 of this
18 subsection has been provided.

19 B. If a medical emergency compels the performance of an abortion, the
20 physician shall inform the woman, before the abortion if possible, of the
21 medical indications supporting the physician's judgment that an abortion is
22 necessary to avert the woman's death or to avert substantial and irreversible
23 impairment of a major bodily function.

24 C. The department of health services shall establish ~~a website within~~
25 ~~ninety days after the effective date of this amendment to this section~~ and
26 shall annually update ~~the A website. The website must include~~ THAT INCLUDES
27 a link to a printable version of all materials listed on the website. The
28 materials must be written in an easily understood manner and printed in a
29 typeface that is large enough to be clearly legible. The website must
30 include all of the following materials:

31 1. Information that is organized geographically by location and that
32 is designed to inform the woman about public and private agencies and
33 services that are available to assist a woman through pregnancy, at
34 childbirth and while her child is dependent, including adoption agencies.
35 The materials shall include a comprehensive list of the agencies, a
36 description of the services they offer and the manner in which these agencies
37 may be contacted, including the agencies' telephone numbers and website
38 addresses.

39 2. Information on the availability of medical assistance benefits for
40 prenatal care, childbirth and neonatal care.

41 3. A statement that it is unlawful for any person to coerce a woman to
42 undergo an abortion.

43 4. A statement that any physician who performs an abortion on a woman
44 without obtaining the woman's voluntary and informed consent or without

1 affording her a private medical consultation may be liable to the woman for
2 damages in a civil action.

3 5. A statement that the father of a child is liable to assist in the
4 support of that child, even if the father has offered to pay for an abortion,
5 and that the law allows adoptive parents to pay costs of prenatal care,
6 childbirth and neonatal care.

7 6. Information that is designed to inform the woman of the probable
8 anatomical and physiological characteristics of the unborn child at two-week
9 gestational increments from fertilization to full term, including pictures or
10 drawings representing the development of unborn children at two-week
11 gestational increments and any relevant information on the possibility of the
12 unborn child's survival. The pictures or drawings must contain the
13 dimensions of the unborn child and must be realistic and appropriate for each
14 stage of pregnancy. The information provided pursuant to this paragraph must
15 be objective, nonjudgmental and designed to convey only accurate scientific
16 information about the unborn child at the various gestational ages.

17 7. Objective information that describes the methods of abortion
18 procedures commonly employed, the medical risks commonly associated with each
19 procedure, the possible detrimental psychological effects of abortion and the
20 medical risks commonly associated with carrying a child to term.

21 8. INFORMATION ON THE POTENTIAL ABILITY OF QUALIFIED MEDICAL
22 PROFESSIONALS TO REVERSE A MEDICATION ABORTION, INCLUDING INFORMATION
23 DIRECTING WOMEN WHERE TO OBTAIN FURTHER INFORMATION AND ASSISTANCE IN
24 LOCATING A MEDICAL PROFESSIONAL WHO CAN AID IN THE REVERSAL OF A MEDICATION
25 ABORTION.

26 D. An individual who is not a physician shall not perform a surgical
27 abortion.

28 E. A person shall not write or communicate a prescription for a drug
29 or drugs to induce an abortion or require or obtain payment for a service
30 provided to a patient who has inquired about an abortion or scheduled an
31 abortion until the expiration of the twenty-four-hour reflection period
32 required by subsection A of this section.

33 F. A person shall not intimidate or coerce in any way any person to
34 obtain an abortion. A parent, a guardian or any other person shall not
35 coerce a minor to obtain an abortion. If a minor is denied financial support
36 by the minor's parents, guardians or custodian due to the minor's refusal to
37 have an abortion performed, the minor is deemed emancipated for the purposes
38 of eligibility for public assistance benefits, except that the emancipated
39 minor may not use these benefits to obtain an abortion.

40 G. An abortion clinic as defined in section 36-449.01 shall
41 conspicuously post signs that are visible to all who enter the abortion
42 clinic, that are clearly readable and that state it is unlawful for any
43 person to force a woman to have an abortion and a woman who is being forced
44 to have an abortion has the right to contact any local or state law
45 enforcement or social service agency to receive protection from any actual or

1 threatened physical, emotional or psychological abuse. The signs shall be
2 posted in the waiting room, consultation rooms and procedure rooms.

3 H. A person shall not require a woman to obtain an abortion as a
4 provision in a contract or as a condition of employment.

5 I. A physician who knowingly violates this section commits an act of
6 unprofessional conduct and is subject to license suspension or revocation
7 pursuant to title 32, chapter 13 or 17.

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

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

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

16 3. The maternal grandparents of the unborn child if the mother was not
17 at least eighteen years of age at the time of the abortion, unless the
18 pregnancy resulted from the plaintiff's criminal conduct.

19 K. A civil action filed pursuant to subsection J of this section shall
20 be brought in the superior court in the county in which the woman on whom the
21 abortion was performed resides and may be based on a claim that failure to
22 obtain informed consent was a result of simple negligence, gross negligence,
23 wantonness, wilfulness, intention or any other legal standard of care.
24 Relief pursuant to subsection J of this section includes the following:

25 1. Money damages for all psychological, emotional and physical
26 injuries resulting from the violation of this section.

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

29 3. Reasonable attorney fees and costs.

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