

Senate Engrossed

unborn child; statutory language.

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

SENATE BILL 1838

AN ACT

AMENDING SECTIONS 36-301, 36-326, 36-329 AND 36-2152, ARIZONA REVISED
STATUTES; RELATING TO PUBLIC HEALTH.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 36-301, Arizona Revised Statutes, is amended to
3 read:

4 36-301. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Administrative order" means a written decision issued by an
7 administrative law judge or quasi-judicial entity.

8 2. "Amend" means to make a change, other than a correction, to a
9 registered certificate by adding, deleting or substituting information on
10 that certificate.

11 3. "Birth" or "live birth" means the complete expulsion or
12 extraction of ~~a product of human conception~~ AN UNBORN CHILD from ~~its~~ THE
13 CHILD'S mother, irrespective of the duration of the pregnancy, that shows
14 evidence of life, with or without a cut umbilical cord or an attached
15 placenta, such as breathing, heartbeat, umbilical cord pulsation or
16 definite voluntary muscle movement after expulsion or extraction of the
17 ~~product of human conception~~ UNBORN CHILD.

18 4. "Certificate" means a record that documents a birth or death.

19 5. "Certified copy" means a written reproduction of a registered
20 certificate that a local registrar, a deputy local registrar or the state
21 registrar has authenticated as a true and exact written reproduction of a
22 registered certificate.

23 6. "Correction" means a change made to a registered certificate
24 because of a typographical error, including misspelling and missing or
25 transposed letters or numbers.

26 7. "Court order" means a written decision issued by:

27 (a) The superior court, an appellate court or the supreme court or
28 an equivalent court in another state.

29 (b) A commissioner or judicial hearing officer of the superior
30 court.

31 (c) A judge of a tribal court in this state.

32 8. "Current care" means that a health care provider has examined,
33 treated or provided care for a person for a chronic or acute condition
34 within eighteen months preceding that person's death. Current care does
35 not include services provided in connection with a single event of
36 emergency or urgent care. For the purposes of this paragraph, "treated"
37 includes prescribing medication.

38 9. "Custody" means legal authority to act on behalf of a child.

39 10. "Department" means the department of health services.

40 11. "Electronic" means technology that has electrical, digital,
41 magnetic, wireless, optical or electromagnetic capabilities or technology
42 with similar capabilities.

43 12. "Evidentiary document" means written information used to prove
44 the fact for which ~~it~~ THE DOCUMENT is presented.

1 13. "Family member" means:

2 (a) A person's spouse, natural or adopted offspring, father,
3 mother, grandparent, grandchild to any degree, brother, sister, aunt,
4 uncle or first or second cousin.

5 (b) The natural or adopted offspring, father, mother, grandparent,
6 grandchild to any degree, brother, sister, aunt, uncle or first or second
7 cousin of the person's spouse.

8 14. "Fetal death" means the cessation of life before the complete
9 expulsion or extraction of ~~a product of human conception~~ AN UNBORN CHILD
10 from ~~its~~ THE CHILD'S mother that is evidenced by the absence of breathing,
11 heartbeat, umbilical cord pulsation or definite voluntary muscle movement
12 after expulsion or extraction.

13 15. "Final disposition" means the interment, cremation, removal
14 from this state or other disposition of human remains.

15 16. "Foundling" means:

16 (a) A newborn infant left with a safe haven provider pursuant to
17 section 13-3623.01.

18 (b) A child whose father and mother cannot be determined.

19 17. "Funeral establishment" has the same meaning prescribed in
20 section 32-1301.

21 18. "Health care institution" has the same meaning prescribed in
22 section 36-401.

23 19. "Health care provider" means:

24 (a) A physician licensed pursuant to title 32, chapter 13 or 17.

25 (b) A doctor of naturopathic medicine licensed pursuant to title
26 32, chapter 14.

27 (c) A midwife licensed pursuant to chapter 6, article 7 of this
28 title.

29 (d) A nurse midwife certified pursuant to title 32, chapter 15.

30 (e) A nurse practitioner licensed and certified pursuant to
31 title 32, chapter 15.

32 (f) A physician assistant licensed pursuant to title 32,
33 chapter 25.

34 (g) A health care provider who is licensed or certified by another
35 state or jurisdiction of the United States and who works in a federal
36 health care facility.

37 20. "Human remains" means a lifeless human body or parts of a human
38 body that permit a reasonable inference that death occurred.

39 21. "Issue" means:

40 (a) To provide a copy of a registered certificate.

41 (b) An action taken by a court of competent jurisdiction,
42 administrative law judge or quasi-judicial entity.

43 22. "Legal age" means a person who is at least eighteen years of
44 age or who is emancipated by a court order.

1 23. "Medical certification of death" means the opinion of the
2 health care provider who signs the certificate of probable or presumed
3 cause of death that complies with rules adopted by the state registrar of
4 vital records and that is based on any of the following that ~~are~~ IS
5 reasonably available:

- 6 (a) Personal examination.
- 7 (b) Medical history.
- 8 (c) Medical records.
- 9 (d) Other reasonable forms of evidence.

10 24. "Medical examiner" means a medical examiner or alternate
11 medical examiner as defined in section 11-591.

12 25. "Name" means a designation that identifies a person, including
13 a first name, middle name, last name or suffix.

14 26. "Natural causes" means those causes that are due solely or
15 nearly entirely to disease or the aging process.

16 27. "Presumptive death" means a determination by a court that a
17 death has occurred or is presumed to have occurred but the human remains
18 have not been located or recovered.

19 28. "Register" means to assign an official state number and to
20 incorporate into the state registrar's official records.

21 29. "Responsible person" means a person listed in section 36-831.

22 30. "Seal" means to bar from access.

23 31. "Submit" means to present, physically or electronically, a
24 certificate, evidentiary document or form provided for in this chapter to
25 a local registrar, a deputy local registrar or the state registrar.

26 32. "System of public health statistics" means the processes and
27 procedures for:

28 (a) Tabulating, analyzing and publishing public health information
29 derived from vital records data and other sources authorized pursuant to
30 section 36-125.05 or section 36-132, subsection A, paragraph 3.

31 (b) Performing other activities related to public health
32 information.

33 33. "System of vital records" means the statewide processes and
34 procedures for:

35 (a) Electronically or physically collecting, creating, registering,
36 maintaining, copying and preserving vital records.

37 (b) Preparing and issuing certified and noncertified copies of
38 vital records.

39 (c) Performing other activities related to vital records.

40 34. "UNBORN CHILD" HAS THE SAME MEANING PRESCRIBED IN SECTION
41 36-2151.

42 ~~34.~~ 35. "Vital record" means a registered birth certificate or a
43 registered death certificate.

1 Sec. 2. Section 36-326, Arizona Revised Statutes, is amended to
2 read:

3 36-326. Disposition-transit permits

4 A. A funeral establishment or responsible person who takes
5 possession of human remains shall obtain a disposition-transit permit from
6 a local registrar, a deputy local registrar or the state registrar before
7 ~~DOING~~ either of the following:

- 8 1. Providing final disposition of the human remains.
- 9 2. Moving the human remains out of this state.

10 B. Human remains ~~THAT ARE~~ moved from a hospital, nursing care
11 institution or hospice inpatient facility must be accompanied by a form
12 provided by the hospital, nursing care institution or hospice inpatient
13 facility authorizing the release of the human remains. The form shall
14 contain the information required in rules adopted pursuant to this
15 chapter.

16 C. A funeral establishment or responsible person may move human
17 remains from a hospital, nursing care institution or hospice inpatient
18 facility where death occurred without obtaining a disposition-transit
19 permit if the funeral establishment or responsible person does not remove
20 the human remains from this state and provides notice to the local
21 registrar or deputy local registrar in the registration district where the
22 death occurred within twenty-four hours after moving the human remains.

23 D. A funeral establishment or responsible person may move human
24 remains from a place other than a hospital, nursing care institution or
25 hospice inpatient facility where death occurred without obtaining a
26 disposition-transit permit if the funeral establishment or responsible
27 person does not remove the human remains from this state and provides
28 notice to the local registrar or deputy local registrar in the
29 registration district where death occurred within seventy-two hours after
30 moving the human remains.

31 E. Embalmed human remains, disinterred human remains and human
32 remains that are not embalmed that are shipped by common carrier inside or
33 outside of this state for the purposes of burial, cremation or funeral
34 services shall be placed in a suitable shipping container that is designed
35 for ~~the transportation of~~ TRANSPORTING human remains. Human remains that
36 are not embalmed and that are shipped inside or outside of this state are
37 not required to be transported within twenty-four hours after death.

38 F. A hospital or abortion clinic is not required to obtain a
39 disposition-transit permit if ~~a product of human conception~~ AN UNBORN
40 CHILD is expelled or extracted at the hospital or abortion clinic and all
41 the following apply:

- 42 1. The gestation period of the ~~product of human conception~~ UNBORN
43 CHILD is less than twenty weeks or, if the gestation period is unknown,
44 the weight of the ~~product of human conception~~ UNBORN CHILD is less than
45 three hundred fifty grams.

1 2. A county medical examiner's investigation is not required.

2 3. The woman on whom the abortion was performed has authorized the
3 hospital or abortion clinic to dispose of the ~~product of human conception~~
4 UNBORN CHILD.

5 G. To obtain a disposition-transit permit, a funeral establishment
6 or responsible person must submit the information required pursuant to
7 this chapter and rules adopted pursuant to this chapter to the state
8 registrar or to the local registrar or deputy local registrar of the
9 registration district where the death occurred.

10 H. A local registrar, a deputy local registrar or the state
11 registrar shall provide a disposition-transit permit to a funeral
12 establishment or other responsible person if the information provided
13 pursuant to subsection B OF THIS SECTION complies with this chapter and
14 rules adopted pursuant to this chapter.

15 I. A local registrar, a deputy local registrar or the state
16 registrar shall provide a disposition-transit permit for interment of
17 human remains in a cemetery only if the location of the cemetery has been
18 recorded in the office of the county recorder in the county where the
19 cemetery is located or the cemetery is located on federal or tribal land.

20 J. A local registrar, a deputy local registrar or the state
21 registrar shall provide a disposition-transit permit issued by this state
22 for the final disposition of human remains in this state on receipt of a
23 disposition-transit permit from another state that accompanies the human
24 remains from the other state.

25 Sec. 3. Section 36-329, Arizona Revised Statutes, is amended to
26 read:

27 36-329. Fetal death certificate registration

28 A. A hospital, abortion clinic, physician or midwife shall submit a
29 completed fetal death certificate to the state registrar for registration
30 within seven days after the fetal death for each fetal death occurring in
31 this state after a gestational period of twenty completed weeks or if the
32 ~~product of human conception~~ UNBORN CHILD weighs more than three hundred
33 fifty grams.

34 B. The requirements for registering a fetal death certificate are
35 the same as the requirements for registering a death certificate
36 prescribed in section 36-325.

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

39 36-2152. Parental consent; exception; hearings; time limits;
40 violations; classification; civil relief; statute
41 of limitations

42 A. In addition to the other requirements of this chapter, a person
43 shall not knowingly perform an abortion on a pregnant unemancipated minor
44 unless the attending physician has secured the written and notarized
45 consent from one of the minor's parents or the minor's guardian or

1 conservator or unless a judge of the superior court authorizes the
2 physician to perform the abortion pursuant to subsection B of this
3 section. Notwithstanding section 41-319, the notarized statement of
4 parental consent and the description of the document or notarial act
5 recorded in the notary journal are confidential and are not public
6 records.

7 B. A judge of the superior court, on petition or motion, and after
8 an appropriate hearing, shall authorize a physician to perform the
9 abortion if the judge determines that the pregnant minor is mature and
10 capable of giving informed consent to the proposed abortion. If the judge
11 determines that the pregnant minor is not mature or if the pregnant minor
12 does not claim to be mature, the judge shall determine whether the
13 performance of an abortion on her without the consent from one of her
14 parents or her guardian or conservator would be in her best interests and
15 shall authorize a physician to perform the abortion without consent if the
16 judge concludes that the pregnant minor's best interests would be served.

17 C. If the pregnant minor claims to be mature at a proceeding held
18 pursuant to subsection B of this section, the minor must prove by clear
19 and convincing evidence that she is sufficiently mature and capable of
20 giving informed consent without consulting her parent or legal guardian
21 based on her experience level, perspective and judgment. In assessing the
22 pregnant minor's experience level, the court may consider, among other
23 relevant factors, the minor's age and experiences working outside the
24 home, living away from home, traveling on her own, handling personal
25 finances and making other significant decisions. In assessing the
26 pregnant minor's perspective, the court may consider, among other relevant
27 factors, what steps the minor took to explore her options and the extent
28 to which she considered and weighed the potential consequences of each
29 option. In assessing the pregnant minor's judgment, the court may
30 consider, among other relevant factors, the minor's conduct since learning
31 of her pregnancy and her intellectual ability to understand her options
32 and to make an informed decision.

33 D. The pregnant minor may participate in the court proceedings on
34 her own behalf. The court shall appoint a guardian ad litem for her. The
35 court shall advise her that she has the right to ~~court-appointed~~
36 **COURT-APPOINTED** counsel and, on her request, shall provide her with
37 counsel unless she appears through private counsel or she knowingly and
38 intelligently waives her right to counsel.

39 E. Proceedings in the court under this section are confidential and
40 have precedence over other pending matters. Members of the public shall
41 not inspect, obtain copies of or otherwise have access to records of court
42 proceedings under this section unless authorized by law. A judge who
43 conducts proceedings under this section shall make in writing specific
44 factual findings and legal conclusions supporting the decision and shall
45 order a confidential record of the evidence to be maintained, including

1 the judge's own findings and conclusions. The minor may file the petition
2 using a fictitious name. For THE purposes of this subsection, public does
3 not include judges, clerks, administrators, professionals or other persons
4 employed by or working under the supervision of the court or employees of
5 other public agencies who are authorized by state or federal rule or law
6 to inspect and copy closed court records.

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

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

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

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

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

35 I. A person who performs an abortion in violation of this section
36 is guilty of a class 1 misdemeanor. A person who intentionally causes,
37 aids or assists a minor in obtaining an abortion in violation of this
38 section is guilty of a class 1 misdemeanor. A person is not subject to
39 any liability under this section if the person establishes by written
40 evidence that the person relied on evidence sufficient to convince a
41 careful and prudent person that the representations of the pregnant minor
42 regarding information necessary to comply with this section are true.

43 J. In addition to other remedies available under the common or
44 statutory law of this state, one or both of the minor's parents or the
45 minor's guardian may bring a civil action in the superior court in the

1 county in which the parents or the guardian resides to obtain appropriate
2 relief for a violation of this section, unless the pregnancy resulted from
3 the criminal conduct of the parent or guardian. The civil action may be
4 based on a claim that failure to obtain consent was a result of simple
5 negligence, gross negligence, wantonness, wilfulness, intention or any
6 other legal standard of care. The civil action may be brought against the
7 person who performs the abortion in violation of this section and any
8 person who causes, aids or assists a minor to obtain an abortion without
9 meeting the requirements of this section. Relief pursuant to this
10 subsection includes the following:

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

13 2. Statutory damages in an amount equal to ~~five thousand dollars~~
14 \$5,000 or three times the cost of the abortion, whichever is greater.

15 3. Reasonable attorney fees and costs.

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

18 L. The consent required by this section must be obtained on a form
19 prescribed by the department of health services. At a minimum, the form
20 must:

21 1. List the possible medical risks that may occur with any
22 surgical, medical or diagnostic procedure, including the potential for
23 infection, blood clots, hemorrhage, allergic reactions and death.

24 2. List the possible medical risks that may occur with a surgical
25 abortion, including hemorrhage, uterine perforation, sterility, injury to
26 the bowel or bladder, a possible hysterectomy as a result of a
27 complication or injury during the procedure and failure to remove ~~all~~
28 ~~products of conception~~ THE UNBORN CHILD that may result in an additional
29 procedure.

30 3. List the possible medical risks that may occur with a medication
31 abortion, including hemorrhage, infection, failure to remove ~~all products~~
32 ~~of conception~~ THE UNBORN CHILD that may result in an additional procedure,
33 sterility and the possible continuation of the pregnancy.

34 4. Require the pregnant minor's and the pregnant minor's parent's
35 initials on each page of the form and a full signature on the final page
36 of the form.

37 5. Include a space for the notary's signature and seal on the final
38 page of the form.

39 M. The physician must maintain the form in the pregnant minor's
40 records for seven years after the date of the procedure or five years
41 after the date of the minor's maturity, whichever is longer.