SENATE BILL 1164

AN ACT

AMENDING TITLE 36, CHAPTER 23, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 3; RELATING TO ABORTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 36, chapter 23, Arizona Revised Statutes, is amended by adding article 3, to read:

ARTICLE 3. GESTATIONAL LIMIT ON ABORTION

36-2321. Definitions
IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:
1. "ABORTION" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-2151.
2. "ATTEMPT TO PERFORM OR INDUCE AN ABORTION" MEANS TO DO OR TO OMIT DOING ANYTHING THAT, UNDER THE CIRCUMSTANCES AS THE PHYSICIAN BELIEVES THEM TO BE, IS AN ACT OR OMISSION THAT CONSTITUTES A SUBSTANTIAL STEP IN A COURSE OF CONDUCT PLANNED TO CULMINATE IN THE PERFORMANCE OR INDUCTION OF AN ABORTION IN VIOLATION OF THIS ARTICLE.
3. "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH SERVICES.
5. "HUMAN BEING" MEANS AN INDIVIDUAL MEMBER OF THE SPECIES HOMO SAPIENS, FROM AND AFTER THE POINT OF CONCEPTION.
6. "MAJOR BODILY FUNCTION" INCLUDES FUNCTIONS OF THE IMMUNE SYSTEM, NORMAL CELL GROWTH, AND DIGESTIVE, BOWEL, BLADDER, NEUROLOGICAL, BRAIN, RESPIRATORY, CIRCULATORY, ENDOCRINE AND REPRODUCTIVE FUNCTIONS.
7. "MEDICAL EMERGENCY" MEANS A CONDITION THAT, ON THE BASIS OF THE PHYSICIAN'S GOOD FAITH CLINICAL JUDGMENT, SO COMPLICATIONS 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.
8. "PHYSICIAN" MEANS A PERSON WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17.

36-2322. Gestational limit on abortion; medical emergency exception; physician reports; confidentiality
A. EXCEPT IN A MEDICAL EMERGENCY, A PHYSICIAN MAY NOT PERFORM, INDUCE OR ATTEMPT TO PERFORM OR INDUCE AN ABORTION UNLESS THE PHYSICIAN OR THE REFERRING PHYSICIAN HAS FIRST MADE A DETERMINATION OF THE PROBABLE GESTATIONAL AGE OF THE UNBORN HUMAN BEING AND DOCUMENTED THAT GESTATIONAL AGE IN THE MATERNAL PATIENT'S CHART AND, IF REQUIRED, IN A REPORT REQUIRED TO BE FILED WITH THE DEPARTMENT AS SET FORTH IN SUBSECTION C OF THIS SECTION. THE DETERMINATION OF PROBABLE GESTATIONAL AGE SHALL BE MADE ACCORDING TO STANDARD MEDICAL PRACTICES AND TECHNIQUES USED IN THE MEDICAL COMMUNITY.

B. EXCEPT IN A MEDICAL EMERGENCY, A PHYSICIAN MAY NOT INTENTIONALLY OR KNOWINGLY PERFORM, INDUCE OR ATTEMPT TO PERFORM OR INDUCE AN ABORTION IF THE PROBABLE GESTATIONAL AGE OF THE UNBORN HUMAN BEING HAS BEEN DETERMINED TO BE GREATER THAN FIFTEEN WEEKS.
C. IN EVERY CASE IN WHICH A PHYSICIAN PERFORMS OR INDUCES AN  
ABORTION ON AN UNBORN HUMAN BEING WHOSE GESTATIONAL AGE IS GREATER THAN  
FIFTEEN WEEKS, THE PHYSICIAN, WITHIN FIFTEEN DAYS AFTER THE ABORTION,  
SHALL FILE WITH THE DEPARTMENT, ON A FORM SUPPLIED BY THE DEPARTMENT, A  
REPORT CONTAINING ALL OF THE FOLLOWING:  
1. THE DATE THE ABORTION WAS PERFORMED.  
2. SPECIFIC METHOD OF ABORTION USED.  
METHOD USED TO CALCULATE GESTATIONAL AGE.  
4. A STATEMENT THAT THE ABORTION WAS NECESSARY BECAUSE OF A MEDICAL  
EMERGENCY.  
5. THE SPECIFIC MEDICAL INDICATIONS SUPPORTING THE DETERMINATION  
THAT A MEDICAL EMERGENCY EXISTED.  
6. THE PROBABLE HEALTH CONSEQUENCES OF THE ABORTION.  
7. THE PHYSICIAN'S SIGNATURE AS THE PHYSICIAN'S ATTESTATION UNDER  
OATH THAT THE INFORMATION STATED IS TRUE AND CORRECT TO THE BEST OF THE  
PHYSICIAN'S KNOWLEDGE.  
D. REPORTS REQUIRED AND SUBMITTED PURSUANT TO SUBSECTION C OF THIS  
SECTION MAY NOT CONTAIN THE NAME OF THE MATERNAL PATIENT ON WHOM THE  
ABORTION WAS PERFORMED OR ANY OTHER INFORMATION OR IDENTIFIERS THAT WOULD  
MAKE IT POSSIBLE TO IDENTIFY, IN ANY MANNER OR UNDER ANY CIRCUMSTANCES, A  
WOMAN WHO OBTAINED OR SOUGHT TO OBTAIN AN ABORTION.  
36-2323. Department; forms  
THE DEPARTMENT SHALL CREATE THE FORMS REQUIRED BY SECTION 36-2322  
WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION. THE  
REPORTING REQUIREMENTS OF SECTION 36-2322 ON FORMS PUBLISHED BY THE  
DEPARTMENT DO NOT APPLY UNTIL TEN DAYS AFTER THE REQUISITE FORMS HAVE BEEN  
MADE AVAILABLE OR THE EFFECTIVE DATE OF THIS SECTION, WHICHERSOEVER IS LATER.  
36-2324. Violation; classification; exclusion from  
prosecution  
A. ANY PHYSICIAN WHO INTENTIONALLY OR KNOWINGLY VIOLATES THE  
PROHIBITION IN SECTION 36-2322, SUBSECTION B IS GUILTY OF A CLASS 6  
FELONY.  
B. A PREGNANT WOMAN ON WHOM AN ABORTION IS PERFORMED, INDUCED OR  
ATTEMPTED IN VIOLATION OF SECTION 36-2322 MAY NOT BE PROSECUTED FOR  
CONSPIRACY TO COMMIT ANY VIOLATION OF THIS ARTICLE.  
36-2325. Unprofessional conduct; civil penalties  
A. A PHYSICIAN WHO INTENTIONALLY OR KNOWINGLY VIOLATES THE  
PROHIBITION IN SECTION 36-2322, SUBSECTION B COMMENTS AN ACT OF  
UNPROFESSIONAL CONDUCT AND THE PHYSICIAN'S LICENSE TO PRACTICE MEDICINE IN  
THIS STATE SHALL BE SUSPENDED OR REVOKED PURSUANT TO TITLE 32, CHAPTER 13  
OR 17, AS APPLICABLE.
B. A PHYSICIAN WHO KNOWINGLY OR INTENTIONALLY DELIVERS TO THE
DEPARTMENT ANY REPORT REQUIRED BY SECTION 36-2322, SUBSECTION C THAT
CONTAINS A FALSE STATEMENT IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN
$10,000 IMPOSED BY THE DEPARTMENT.

C. A PHYSICIAN WHO KNOWINGLY OR INTENTIONALLY FAILS TO FILE WITH
THE DEPARTMENT ANY REPORT REQUIRED BY SECTION 36-2322, SUBSECTION C IS
SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN $10,000 IMPOSED BY THE
DEPARTMENT.

36-2326. Enforcement; attorney general

THE ATTORNEY GENERAL MAY BRING AN ACTION IN LAW OR EQUITY TO ENFORCE
THIS ARTICLE ON BEHALF OF THE DIRECTOR OF THE DEPARTMENT, THE ARIZONA
MEDICAL BOARD OR THE BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND
SURGERY.

Sec. 2. Construction

1. This act does not:

   a. Create or recognize a right to abortion or alter generally
      accepted medical standards. The Legislature does not intend this act to
      make lawful an abortion that is currently unlawful.

   b. Repeal, by implication or otherwise, section 13-3603, Arizona
      Revised Statutes, or any other applicable state law regulating or
      restricting abortion.

Sec. 3. Legislative intent

A. The Legislature makes the following findings of fact and
incorporates them herein by reference:

   a. The United States is one of only six nations in the world that
      allows nontherapeutic or elective abortion-on-demand after the twentieth
      week of gestation. In fact, fully seventy-five percent of all nations do
      not allow abortion after twelve weeks' gestation, except in most instances
      to save the life or to preserve the physical health of the mother.

   b. Medical and other authorities now know more about human prenatal
      development than ever before, including that:

      (a) Between five and six weeks' gestation, an unborn human being's
          heart begins beating.

      (b) An unborn human being begins to move about in the womb at
          approximately eight weeks' gestation.

      (c) At nine weeks' gestation, all basic physiological functions are
          present. Teeth and eyes are present, as well as external genitalia.

      (d) An unborn human being's vital organs begin to function at ten
          weeks' gestation. Hair, fingernails and toenails also begin to form.

      (e) At eleven weeks' gestation, an unborn human being's diaphragm
          is developing, and he or she may even hiccup. The unborn human being is
          beginning to move about freely in the womb.

      (f) At twelve weeks' gestation, an unborn human being can open and
          close his or her fingers, starts to make sucking motions and senses
          stimulation from the world outside the womb. Importantly, the unborn

The United States Supreme Court has long recognized that this state has an "important and legitimate interest in protecting the potentiality of human life," Roe v. Wade, 410 U.S. 113, 162 (1973), and specifically that this state "has an interest in protecting the life of the unborn." Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 873 (1992).

The majority of abortion procedures performed after fifteen weeks' gestation are dilation and evacuation procedures that involve the use of surgical instruments to crush and tear the unborn human being apart before removing the pieces of the dead human being from the womb. The Legislature finds that the intentional commission of such acts for nontherapeutic or elective reasons is a barbaric practice, dangerous for the maternal patient and demeaning to the medical profession.

Most obstetricians and gynecologists practicing in this state do not offer or perform nontherapeutic or elective abortions. Even fewer offer or perform the dilation and evacuation abortion procedure even though it is within their scope of practice.

This state also has "legitimate interests from the outset of pregnancy in protecting the health of women." Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 847 (1992), as the "medical, emotional, and psychological consequences of abortion are serious and can be lasting...." H.L. v. Matheson, 450 U.S. 398, 411 (1981).

Abortion carries significant physical and psychological risks to the maternal patient and these physical and psychological risks increase with gestational age. Specifically, in abortions performed after eight weeks' gestation, the relative physical and psychological risks escalate exponentially as gestational age increases. L. Bartlett et al., Risk factors for legal induced abortion mortality in the United States, OBSTETRICS AND GYNECOLOGY 103(4):729 (2004).

Importantly, as the second trimester progresses, in the vast majority of uncomplicated pregnancies, the maternal health risks of undergoing an abortion are greater than the risks of carrying a pregnancy to term.

Medical complications from dilation and evacuation abortions include pelvic infection, incomplete abortions (retained tissue), blood clots, heavy bleeding or hemorrhage, laceration, tear or other injury to the cervix, puncture, laceration, tear or other injury to the uterus, injury to the bowel or bladder, depression, anxiety, substance abuse and other emotional or psychological problems. Further, in abortions performed after fifteen weeks' gestation, there is a higher risk of requiring a hysterectomy, other reparative surgery or blood transfusion.
B. This Legislature intends through this act and any rules and policies adopted hereunder, to restrict the practice of nontherapeutic or elective abortion to the period up to fifteen weeks of gestation.

Sec. 4. Right of intervention
The Legislature may appoint one or more of its members to intervene as a matter of right in any case in which the constitutionality or enforceability of this act is challenged.

Sec. 5. 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.