

REFERENCE TITLE: **abortion; fetal heartbeat; civil action**

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1339

Introduced by
Senator Rogers

AN ACT

AMENDING TITLE 12, CHAPTER 3, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-353; AMENDING TITLE 12, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 20; AMENDING SECTION 36-2161, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 20, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-2161.01; AMENDING TITLE 36, CHAPTER 23, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 3; 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. Title 12, chapter 3, article 5, Arizona Revised
3 Statutes, is amended by adding section 12-353, to read:

4 12-353. Award of attorney fees and costs in abortion law
5 challenges

6 A. NOTWITHSTANDING ANY OTHER LAW, A PERSON, INCLUDING AN ENTITY,
7 ATTORNEY OR LAW FIRM, THAT SEEKS DECLARATORY OR INJUNCTIVE RELIEF TO
8 PREVENT THIS STATE, A POLITICAL SUBDIVISION, ANY GOVERNMENTAL ENTITY OR
9 PUBLIC OFFICIAL IN THIS STATE OR ANY PERSON IN THIS STATE FROM ENFORCING
10 ANY STATUTE, ORDINANCE, RULE, REGULATION OR OTHER TYPE OF LAW THAT
11 REGULATES OR RESTRICTS ABORTION OR THAT LIMITS TAXPAYER FUNDING FOR
12 INDIVIDUALS OR ENTITIES THAT PERFORM OR PROMOTE ABORTIONS, IN ANY STATE OR
13 FEDERAL COURT, OR THAT REPRESENTS ANY LITIGANT SEEKING SUCH RELIEF IN ANY
14 STATE OR FEDERAL COURT, IS JOINTLY AND SEVERALLY LIABLE TO PAY THE COSTS
15 AND ATTORNEY FEES OF THE PREVAILING PARTY.

16 B. FOR THE PURPOSES OF THIS SECTION, A PARTY IS CONSIDERED A
17 PREVAILING PARTY IF A STATE OR FEDERAL COURT DOES EITHER OF THE FOLLOWING:

18 1. DISMISSES ANY CLAIM OR CAUSE OF ACTION BROUGHT AGAINST THE PARTY
19 THAT SEEKS THE DECLARATORY OR INJUNCTIVE RELIEF DESCRIBED BY SUBSECTION A
20 OF THIS SECTION, REGARDLESS OF THE REASON FOR THE DISMISSAL.

21 2. ENTERS JUDGMENT IN THE PARTY'S FAVOR ON ANY SUCH CLAIM OR CAUSE
22 OF ACTION.

23 C. REGARDLESS OF WHETHER A PREVAILING PARTY SOUGHT TO RECOVER COSTS
24 OR ATTORNEY FEES IN THE UNDERLYING ACTION, A PREVAILING PARTY UNDER THIS
25 SECTION MAY BRING A CIVIL ACTION TO RECOVER COSTS AND ATTORNEY FEES
26 AGAINST A PERSON, INCLUDING AN ENTITY, ATTORNEY OR LAW FIRM, THAT SOUGHT
27 DECLARATORY OR INJUNCTIVE RELIEF DESCRIBED BY SUBSECTION A OF THIS SECTION
28 NOT LATER THAN THE THIRD ANNIVERSARY AFTER THE DATE ON WHICH EITHER OF THE
29 FOLLOWING OCCURS, AS APPLICABLE:

30 1. THE DISMISSAL OR JUDGMENT DESCRIBED BY SUBSECTION B OF THIS
31 SECTION BECOMES FINAL ON THE CONCLUSION OF APPELLATE REVIEW.

32 2. THE TIME FOR SEEKING APPELLATE REVIEW EXPIRES.

33 D. IT IS NOT A DEFENSE TO AN ACTION BROUGHT UNDER SUBSECTION C OF
34 THIS SECTION THAT ANY OF THE FOLLOWING OCCURS:

35 1. A PREVAILING PARTY UNDER THIS SECTION FAILED TO SEEK RECOVERY OF
36 COSTS OR ATTORNEY FEES IN THE UNDERLYING ACTION.

37 2. THE COURT IN THE UNDERLYING ACTION DECLINED TO RECOGNIZE OR
38 ENFORCE THE REQUIREMENTS OF THIS SECTION.

39 3. THE COURT IN THE UNDERLYING ACTION HELD THAT ANY PROVISIONS OF
40 THIS SECTION ARE INVALID, UNCONSTITUTIONAL OR PREEMPTED BY FEDERAL LAW,
41 NOTWITHSTANDING THE DOCTRINES OF ISSUE OR CLAIM PRECLUSION.

1 Sec. 2. Title 12, chapter 6, Arizona Revised Statutes, is amended
2 by adding article 20, to read:

3 ARTICLE 20. CIVIL LIABILITY FOR AIDING
4 OR ABETTING PROHIBITED ABORTIONS

5 12-783. Civil liability; aiding or abetting prohibited
6 abortion

7 A. A PERSON, EXCEPT A PERSON WHO IS AN OFFICER OR EMPLOYEE OF THIS
8 STATE OR A COUNTY, CITY OR TOWN OF THIS STATE, MAY BRING A CIVIL ACTION
9 AGAINST A PERSON WHO DOES ANY OF THE FOLLOWING:

10 1. PERFORMS OR INDUCES AN ABORTION IN VIOLATION OF TITLE 36,
11 CHAPTER 23, ARTICLE 3.

12 2. KNOWINGLY ENGAGES IN CONDUCT THAT AIDS OR ABETS PERFORMING OR
13 INDUCING AN ABORTION, INCLUDING PAYING FOR OR REIMBURSING THE COSTS OF AN
14 ABORTION THROUGH INSURANCE OR OTHERWISE, IF THE ABORTION IS PERFORMED OR
15 INDUCED IN VIOLATION OF TITLE 36, CHAPTER 23, ARTICLE 3, REGARDLESS OF
16 WHETHER THE PERSON KNEW OR SHOULD HAVE KNOWN THAT THE ABORTION WOULD BE
17 PERFORMED OR INDUCED IN VIOLATION OF TITLE 36, CHAPTER 23, ARTICLE 3.

18 3. INTENDS TO ENGAGE IN THE CONDUCT THAT IS DESCRIBED IN PARAGRAPH
19 1 OR 2 OF THIS SUBSECTION.

20 B. THE COURT SHALL AWARD ALL OF THE FOLLOWING TO A PERSON WHO
21 PREVAILS IN AN ACTION COMMENCED PURSUANT TO THIS SECTION:

22 1. INJUNCTIVE RELIEF THAT IS SUFFICIENT TO PREVENT THE DEFENDANT
23 FROM VIOLATING TITLE 36, CHAPTER 23, ARTICLE 3 OR ENGAGING IN ACTS THAT
24 AID OR ABET A VIOLATION OF TITLE 36, CHAPTER 23, ARTICLE 3.

25 2. STATUTORY DAMAGES IN AN AMOUNT OF \$10,000 OR MORE FOR EACH
26 ABORTION THAT THE DEFENDANT PERFORMED OR INDUCED IN VIOLATION OF TITLE 36,
27 CHAPTER 23, ARTICLE 3 AND FOR EACH ABORTION PERFORMED OR INDUCED IN
28 VIOLATION OF TITLE 36, CHAPTER 23, ARTICLE 3 IN WHICH THE DEFENDANT AIDED
29 OR ABETTED.

30 3. ATTORNEY FEES AND COSTS. THIS PARAGRAPH DOES NOT APPLY TO THE
31 DEFENDANT.

32 C. NOTWITHSTANDING SUBSECTION B OF THIS SECTION, A COURT MAY NOT
33 AWARD RELIEF PURSUANT TO THIS SECTION IN RESPONSE TO A VIOLATION OF
34 SUBSECTION A, PARAGRAPH 1 OR 2 OF THIS SECTION IF THE DEFENDANT
35 DEMONSTRATES THAT THE DEFENDANT PREVIOUSLY PAID THE FULL AMOUNT OF
36 STATUTORY DAMAGES UNDER SUBSECTION B, PARAGRAPH 2 OF THIS SECTION IN A
37 PREVIOUS ACTION FOR THAT PARTICULAR ABORTION PERFORMED OR INDUCED IN
38 VIOLATION OF TITLE 36, CHAPTER 23, ARTICLE 3 OR FOR THE PARTICULAR CONDUCT
39 THAT AIDED OR ABETTED AN ABORTION PERFORMED OR INDUCED IN VIOLATION OF
40 TITLE 36, CHAPTER 23, ARTICLE 3.

41 D. NOTWITHSTANDING ANY OTHER LAW, A PERSON MAY BRING AN ACTION
42 PURSUANT TO THIS SECTION NOT LATER THAN THE FOURTH ANNIVERSARY AFTER THE
43 DATE THE CAUSE OF ACTION ACCRUES.

44 E. NOTWITHSTANDING ANY OTHER LAW, THE FOLLOWING ARE NOT A DEFENSE
45 TO AN ACTION BROUGHT PURSUANT TO THIS SECTION:

1 1. IGNORANCE OR MISTAKE OF LAW.
2 2. A DEFENDANT'S BELIEF THAT THE REQUIREMENTS OF TITLE 36, CHAPTER
3 23, ARTICLE 3 ARE UNCONSTITUTIONAL OR WERE UNCONSTITUTIONAL.
4 3. A DEFENDANT'S RELIANCE ON ANY COURT DECISION THAT HAS BEEN
5 OVERRULED ON APPEAL OR BY A SUBSEQUENT COURT, EVEN IF THAT COURT DECISION
6 HAD NOT BEEN OVERRULED WHEN THE DEFENDANT ENGAGED IN CONDUCT THAT VIOLATES
7 TITLE 36, CHAPTER 23, ARTICLE 3.
8 4. A DEFENDANT'S RELIANCE ON ANY STATE OR FEDERAL COURT DECISION
9 THAT IS NOT BINDING ON THE COURT IN WHICH THE ACTION HAS BEEN BROUGHT.
10 5. NONMUTUAL ISSUE PRECLUSION OR NONMUTUAL CLAIM PRECLUSION.
11 6. THE CONSENT OF THE UNBORN CHILD'S MOTHER TO THE ABORTION.
12 7. ANY CLAIM THAT THE ENFORCEMENT OF TITLE 36, CHAPTER 23, ARTICLE
13 3 OR THE IMPOSITION OF CIVIL LIABILITY AGAINST THE DEFENDANT WILL VIOLATE
14 THE CONSTITUTIONAL RIGHTS OF THIRD PARTIES EXCEPT AS PROVIDED BY SECTION
15 12-783.01.
16 F. IT IS AN AFFIRMATIVE DEFENSE IF:
17 1. THE PERSON WHO SUED UNDER SUBSECTION A, PARAGRAPH 2 OF THIS
18 SECTION REASONABLY BELIEVED, AFTER CONDUCTING A REASONABLE INVESTIGATION,
19 THAT THE PHYSICIAN PERFORMING OR INDUCING THE ABORTION HAD COMPLIED OR
20 WOULD HAVE COMPLIED WITH TITLE 36, CHAPTER 23, ARTICLE 3.
21 2. THE PERSON WHO SUED UNDER SUBSECTION A, PARAGRAPH 3 OF THIS
22 SECTION REASONABLY BELIEVED, AFTER CONDUCTING A REASONABLE INVESTIGATION,
23 THAT THE PHYSICIAN PERFORMING OR INDUCING THE ABORTION WILL COMPLY WITH
24 TITLE 36, CHAPTER 23, ARTICLE 3.
25 G. THE DEFENDANT HAS THE BURDEN OF PROVING AN AFFIRMATIVE DEFENSE
26 UNDER SUBSECTION F OF THIS SECTION BY A PREPONDERANCE OF THE EVIDENCE.
27 H. THIS SECTION DOES NOT IMPOSE LIABILITY ON ANY SPEECH OR CONDUCT
28 THAT IS PROTECTED BY THE FIRST AMENDMENT OF THE UNITED STATES
29 CONSTITUTION, AS MADE APPLICABLE TO THE STATES THROUGH THE UNITED STATES
30 SUPREME COURT'S INTERPRETATION OF THE FOURTEENTH AMENDMENT OF THE UNITED
31 STATES CONSTITUTION OR BY ARTICLE II, SECTION 6, CONSTITUTION OF ARIZONA.
32 I. NOTWITHSTANDING ANY OTHER LAW, A CIVIL ACTION UNDER THIS SECTION
33 MAY NOT BE BROUGHT BY A PERSON WHO IMPREGNATED THE ABORTION PATIENT
34 THROUGH AN ACT OF SEXUAL ASSAULT OR INCEST OR ANY OTHER ACT IN VIOLATION
35 OF SECTION 13-1204 OR 13-1405.
36 12-783.01. Undue burden defense limitations
37 A. A DEFENDANT AGAINST WHOM AN ACTION IS BROUGHT UNDER SECTION
38 12-783 DOES NOT HAVE STANDING TO ASSERT THE RIGHTS OF WOMEN SEEKING AN
39 ABORTION AS A DEFENSE TO LIABILITY UNDER THAT SECTION UNLESS EITHER OF THE
40 FOLLOWING OCCURS:
41 1. THE UNITED STATES SUPREME COURT HOLDS THAT THE COURTS OF THIS
42 STATE MUST CONFER STANDING ON THAT DEFENDANT TO ASSERT THE THIRD-PARTY
43 RIGHTS OF WOMEN SEEKING AN ABORTION IN STATE COURT AS A MATTER OF FEDERAL
44 CONSTITUTIONAL LAW.

1 2. THE DEFENDANT HAS STANDING TO ASSERT THE RIGHTS OF WOMEN SEEKING
2 AN ABORTION UNDER THE TESTS FOR THIRD-PARTY STANDING ESTABLISHED BY THE
3 UNITED STATES SUPREME COURT.

4 B. A DEFENDANT IN AN ACTION BROUGHT UNDER SECTION 12-783 MAY ASSERT
5 AN AFFIRMATIVE DEFENSE TO LIABILITY UNDER THIS SECTION IF BOTH OF THE
6 FOLLOWING APPLY:

7 1. THE DEFENDANT HAS STANDING TO ASSERT THE THIRD-PARTY RIGHTS OF A
8 WOMAN OR GROUP OF WOMEN SEEKING AN ABORTION IN ACCORDANCE WITH SUBSECTION
9 A OF THIS SECTION.

10 2. THE DEFENDANT DEMONSTRATES THAT THE RELIEF SOUGHT BY THE
11 CLAIMANT WILL IMPOSE AN UNDUE BURDEN ON THAT WOMAN OR THAT GROUP OF WOMEN
12 SEEKING AN ABORTION.

13 C. A COURT MAY NOT FIND AN UNDUE BURDEN UNDER SUBSECTION B OF THIS
14 SECTION UNLESS THE DEFENDANT INTRODUCES EVIDENCE PROVING EITHER OF THE
15 FOLLOWING:

16 1. AN AWARD OF RELIEF WILL PREVENT A WOMAN OR A GROUP OF WOMEN FROM
17 OBTAINING AN ABORTION.

18 2. AN AWARD OF RELIEF WILL PLACE A SUBSTANTIAL OBSTACLE IN THE PATH
19 OF A WOMAN OR A GROUP OF WOMEN WHO ARE SEEKING AN ABORTION.

20 D. A DEFENDANT MAY NOT ESTABLISH AN UNDUE BURDEN UNDER THIS SECTION
21 BY EITHER OF THE FOLLOWING:

22 1. MERELY DEMONSTRATING THAT AN AWARD OF RELIEF WILL PREVENT A
23 WOMAN OR A GROUP OF WOMEN FROM OBTAINING SUPPORT OR ASSISTANCE, FINANCIAL
24 OR OTHERWISE, FROM OTHERS IN THEIR EFFORT TO OBTAIN AN ABORTION.

25 2. ARGUING OR ATTEMPTING TO DEMONSTRATE THAT AN AWARD OF RELIEF
26 AGAINST OTHER DEFENDANTS OR OTHER POTENTIAL DEFENDANTS WILL IMPOSE AN
27 UNDUE BURDEN ON A WOMAN OR A GROUP OF WOMEN SEEKING AN ABORTION.

28 E. THE AFFIRMATIVE DEFENSE UNDER SUBSECTION B OF THIS SECTION IS
29 NOT AVAILABLE IF THE UNITED STATES SUPREME COURT OVERRULES ROE V. WADE,
30 410 U.S. 113 (1973) OR PLANNED PARENTHOOD V. CASEY, 505 U.S. 833 (1992),
31 REGARDLESS OF WHETHER THE CONDUCT ON WHICH THE CAUSE OF ACTION IS BASED
32 UNDER SECTION 12-783 OCCURRED BEFORE THE SUPREME COURT OVERRULED EITHER OF
33 THOSE DECISIONS.

34 F. THIS SECTION DOES NOT LIMIT OR PRECLUDE A DEFENDANT FROM
35 ASSERTING THE DEFENDANT'S PERSONAL CONSTITUTIONAL RIGHTS AS A DEFENSE TO
36 LIABILITY UNDER SECTION 12-783, AND A COURT MAY NOT AWARD RELIEF UNDER
37 SECTION 12-783 IF THE CONDUCT FOR WHICH THE DEFENDANT HAS BEEN SUED WAS AN
38 EXERCISE OF STATE OR FEDERAL CONSTITUTIONAL RIGHTS THAT PERSONALLY BELONG
39 TO THE DEFENDANT.

40 12-783.02. Venue

41 A. NOTWITHSTANDING ANY OTHER LAW, A CIVIL ACTION THAT IS BROUGHT
42 PURSUANT TO SECTION 12-783 SHALL BE BROUGHT IN ANY OF THE FOLLOWING
43 COUNTIES:

44 1. THE COUNTY IN WHICH ALL OR A SUBSTANTIAL PART OF THE EVENTS OR
45 OMISSIONS GIVING RISE TO THE CLAIM OCCURRED.

1 2. THE COUNTY OF RESIDENCE FOR ANY ONE OF THE NATURAL PERSON
2 DEFENDANTS AT THE TIME THE CAUSE OF ACTION ACCRUED.

3 3. THE COUNTY OF THE PRINCIPAL OFFICE IN THIS STATE OF ANY ONE OF
4 THE DEFENDANTS THAT IS NOT A NATURAL PERSON.

5 4. THE COUNTY OF RESIDENCE FOR THE CLAIMANT IF THE CLAIMANT IS A
6 NATURAL PERSON RESIDING IN THIS STATE.

7 B. IF A CIVIL ACTION IS BROUGHT UNDER SECTION 12-783 IN ANY ONE OF
8 THE VENUES DESCRIBED IN SUBSECTION A OF THIS SECTION, THE ACTION MAY NOT
9 BE TRANSFERRED TO A DIFFERENT VENUE WITHOUT THE WRITTEN CONSENT OF ALL
10 PARTIES.

11 12-783.03. Immunity

12 A. THIS ARTICLE PREVAILS OVER ANY CONFLICTING LAW, INCLUDING
13 CHAPTER 10, ARTICLE 2 OF THIS TITLE.

14 B. THIS STATE HAS SOVEREIGN IMMUNITY, A POLITICAL SUBDIVISION OF
15 THIS STATE HAS GOVERNMENTAL IMMUNITY AND EACH OFFICER AND EMPLOYEE OF THIS
16 STATE OR A POLITICAL SUBDIVISION OF THIS STATE HAS OFFICIAL IMMUNITY IN
17 ANY ACTION, CLAIM OR COUNTERCLAIM OR ANY TYPE OF LEGAL OR EQUITABLE ACTION
18 THAT CHALLENGES THE VALIDITY OF ANY PROVISION OR APPLICATION OF TITLE 36,
19 CHAPTER 23, ARTICLE 3 ON CONSTITUTIONAL GROUNDS OR OTHERWISE.

20 C. A PROVISION OF STATE LAW DOES NOT WAIVE OR ABROGATE AN IMMUNITY
21 DESCRIBED BY SUBSECTION B OF THIS SECTION UNLESS IT EXPRESSLY WAIVES
22 IMMUNITY UNDER THIS SECTION.

23 Sec. 3. Section 36-2161, Arizona Revised Statutes, is amended to
24 read:

25 36-2161. Abortions; reporting requirements

26 A. A hospital or facility in this state where abortions are
27 performed must submit to the department of health services on a form
28 prescribed by the department a report of each abortion performed in the
29 hospital or facility. The report shall not identify the individual
30 patient by name or include any other information or identifier that would
31 make it possible to identify, in any manner or under any circumstances, a
32 woman who has obtained or sought to obtain an abortion. The report must
33 include the following information:

34 1. The name and address of the facility where the abortion was
35 performed.

36 2. The type of facility where the abortion was performed.

37 3. The county where the abortion was performed.

38 4. The woman's age.

39 5. The woman's educational background by highest grade completed
40 and, if applicable, level of college completed.

41 6. The county and state in which the woman resides.

42 7. The woman's race and ethnicity.

43 8. The woman's marital status.

44 9. The number of prior pregnancies and prior abortions of the
45 woman.

1 10. The number of previous spontaneous terminations of pregnancy of
2 the woman.

3 11. The gestational age of the unborn child at the time of the
4 abortion.

5 12. The reason for the abortion, including at least one of the
6 following:

7 (a) The abortion is elective.

8 (b) The abortion is due to maternal health considerations,
9 including one of the following:

10 (i) A premature rupture of membranes.

11 (ii) An anatomical abnormality.

12 (iii) Chorioamnionitis.

13 (iv) Preeclampsia.

14 (v) Other.

15 (c) The abortion is due to fetal health considerations, including
16 the fetus being diagnosed with at least one of the following:

17 (i) A lethal anomaly.

18 (ii) A central nervous system anomaly.

19 (iii) Other.

20 (d) The pregnancy is the result of a sexual assault.

21 (e) The pregnancy is the result of incest.

22 (f) The woman is being coerced into obtaining an abortion.

23 (g) The woman is a victim of sex trafficking.

24 (h) The woman is a victim of domestic violence.

25 (i) Other.

26 (j) The woman declined to answer.

27 13. The type of procedure performed or prescribed and the date of
28 the abortion.

29 14. Any preexisting medical conditions of the woman that would
30 complicate pregnancy.

31 15. Any known medical complication that resulted from the abortion,
32 including at least one of the following:

33 (a) Shock.

34 (b) Uterine perforation.

35 (c) Cervical laceration requiring suture or repair.

36 (d) Heavy bleeding or hemorrhage with estimated blood loss of at
37 least five hundred cubic centimeters.

38 (e) Aspiration or allergic response.

39 (f) Postprocedure infection.

40 (g) Sepsis.

41 (h) Incomplete abortion retaining part of the fetus requiring
42 reevacuation.

43 (i) Damage to the uterus.

44 (j) Failed termination of pregnancy.

45 (k) Death of the patient.

1 (l) Other.

2 (m) None.

3 16. The basis for any medical judgment that a medical emergency
4 existed that excused the physician from compliance with the requirements
5 of this chapter OR CHAPTER 23, ARTICLE 3 OF THIS TITLE.

6 17. The physician's statement if required pursuant to section
7 36-2301.01.

8 18. If applicable, the weight of the aborted fetus for any abortion
9 performed pursuant to section 36-2301.01.

10 19. Whether a fetus or embryo was delivered alive as defined in
11 section 36-2301 during or immediately after an attempted abortion and the
12 efforts made to promote, preserve and maintain the life of the fetus or
13 embryo pursuant to section 36-2301.

14 20. Statements by the physician and all clinical staff who observed
15 the fetus or embryo during or immediately after the abortion certifying
16 under penalty of perjury that, to the best of their knowledge, the aborted
17 fetus or embryo was not delivered alive as defined in section 36-2301.

18 21. The medical specialty of the physician performing the abortion,
19 including one of the following:

20 (a) Obstetrics-gynecology.

21 (b) General or family practice.

22 (c) Emergency medicine.

23 (d) Other.

24 22. The type of admission for the patient, including whether the
25 abortion was performed:

26 (a) As an outpatient procedure in an abortion clinic.

27 (b) As an outpatient procedure at a hospital.

28 (c) As an inpatient procedure at a hospital.

29 (d) As an outpatient procedure at a health care institution other
30 than an abortion clinic or hospital.

31 23. Whether anesthesia was administered to the mother.

32 24. Whether anesthesia was administered to the unborn child.

33 25. Whether any genetic abnormality of the unborn child was
34 detected at or before the time of the abortion by genetic testing, such as
35 maternal serum tests, or by ultrasound, such as nuchal translucency
36 screening, or by other forms of testing.

37 26. If a surgical abortion was performed, the method of final
38 disposition of bodily remains and whether the woman exercised her right to
39 choose the final disposition of bodily remains.

40 B. The hospital or facility shall request the information specified
41 in subsection A, paragraph 12 of this section at the same time the
42 information pursuant to section 36-2153 is provided to the woman
43 individually and in a private room to protect the woman's privacy. The
44 information requested pursuant to subsection A, paragraph 12 of this
45 section may be obtained on a medical form provided to the woman to

complete if the woman completes the form individually and in a private room.

C. If the woman who is seeking the abortion discloses that the abortion is being sought because of a reason described in subsection A, paragraph 12, subdivision (d), (e), (f), (g) or (h) of this section, the hospital or facility shall provide the woman with information regarding the woman's right to report a crime to law enforcement and resources available for assistance and services, including a national human trafficking resource hotline.

D. The report must be signed by the physician who performed the abortion or, if a health professional other than a physician is authorized by law to prescribe or administer abortion medication, the signature and title of the person who prescribed or administered the abortion medication. The form may be signed electronically and shall indicate that the person who signs the report is attesting that the information in the report is correct to the best of the person's knowledge. The hospital or facility must transmit the report to the department within fifteen days after the last day of each reporting month.

E. Any report filed pursuant to this section shall be filed electronically at an internet website that is designated by the department unless the person required to file the report applies for a waiver from electronic reporting by submitting a written request to the department.

Sec. 4. Title 36, chapter 20, article 2, Arizona Revised Statutes, is amended by adding section 36-2161.01, to read:

36-2161.01. Medical emergency; required documentation

A. IN ADDITION TO ANY OTHER REPORTING REQUIREMENT IN THIS CHAPTER OR CHAPTER 23 OF THIS TITLE, IF AN ABORTION IS PERFORMED OR INDUCED ON A PREGNANT WOMAN BECAUSE OF A MEDICAL EMERGENCY, THE PHYSICIAN WHO PERFORMS OR INDUCES THE ABORTION SHALL EXECUTE A WRITTEN DOCUMENT THAT CERTIFIES THE ABORTION IS NECESSARY DUE TO A MEDICAL EMERGENCY AND THAT SPECIFIES THE WOMAN'S MEDICAL CONDITION REQUIRING THE ABORTION.

B. THE PHYSICIAN SHALL DO BOTH OF THE FOLLOWING:

1. PLACE THE DOCUMENT DESCRIBED IN SUBSECTION A OF THIS SECTION IN THE PREGNANT WOMAN'S MEDICAL RECORD.

2. MAINTAIN A COPY OF THE DOCUMENT DESCRIBED IN SUBSECTION A OF THIS SECTION IN THE PHYSICIAN'S PRACTICE RECORDS.

C. A PHYSICIAN WHO PERFORMS OR INDUCES AN ABORTION ON A PREGNANT WOMAN SHALL EITHER:

1. IF THE ABORTION IS PERFORMED OR INDUCED TO PRESERVE THE HEALTH OF THE PREGNANT WOMAN, EXECUTE A WRITTEN DOCUMENT THAT BOTH:

(a) SPECIFIES THE MEDICAL CONDITION THE ABORTION IS ASSERTED TO ADDRESS.

(b) PROVIDES THE MEDICAL RATIONALE FOR THE PHYSICIAN'S CONCLUSION THAT THE ABORTION IS NECESSARY TO ADDRESS THE MEDICAL CONDITION.

1 2. FOR AN ABORTION OTHER THAN AN ABORTION DESCRIBED BY PARAGRAPH 1
2 OF THIS SUBSECTION, SPECIFY IN A WRITTEN DOCUMENT THAT MATERNAL HEALTH IS
3 NOT A PURPOSE OF THE ABORTION.

4 D. THE PHYSICIAN SHALL MAINTAIN A COPY OF THE DOCUMENT DESCRIBED BY
5 SUBSECTION C OF THIS SECTION IN THE PHYSICIAN'S PRACTICE RECORDS.

6 Sec. 5. Title 36, chapter 23, Arizona Revised Statutes, is amended
7 by adding article 3, to read:

8 ARTICLE 3. DETECTION OF FETAL HEARTBEAT

9 36-2321. Definitions

10 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

11 1. "FETAL HEARTBEAT" MEANS CARDIAC ACTIVITY OR THE STEADY AND
12 REPETITIVE RHYTHMIC CONTRACTION OF THE FETAL HEART WITHIN THE GESTATIONAL
13 SAC.

14 2. "GESTATIONAL AGE" MEANS THE AMOUNT OF TIME THAT HAS ELAPSED FROM
15 THE FIRST DAY OF A WOMAN'S LAST MENSTRUAL PERIOD.

16 3. "GESTATIONAL SAC" MEANS THE STRUCTURE THAT IS COMPOSED OF THE
17 EXTRAEMBRYONIC MEMBRANES THAT ENVELOP THE UNBORN CHILD AND THAT IS
18 TYPICALLY VISIBLE BY ULTRASOUND AFTER THE FOURTH WEEK OF PREGNANCY.

19 4. "PHYSICIAN" MEANS AN INDIVIDUAL WHO IS LICENSED TO PRACTICE
20 MEDICINE IN THIS STATE PURSUANT TO TITLE 32, CHAPTER 13 OR 17.

21 5. "PREGNANCY" MEANS THE HUMAN FEMALE REPRODUCTIVE CONDITION THAT:

22 (a) BEGINS WITH FERTILIZATION.

23 (b) OCCURS WHEN A WOMAN IS CARRYING A DEVELOPING HUMAN OFFSPRING.

24 (c) IS CALCULATED FROM THE FIRST DAY OF THE WOMAN'S LAST MENSTRUAL
25 PERIOD.

26 6. "STANDARD MEDICAL PRACTICE" MEANS THE DEGREE OF SKILL, CARE AND
27 DILIGENCE THAT AN OBSTETRICIAN OF ORDINARY JUDGMENT, LEARNING AND SKILL
28 WOULD EMPLOY IN LIKE CIRCUMSTANCES.

29 7. "UNBORN CHILD" MEANS A HUMAN FETUS OR EMBRYO IN ANY STAGE OF
30 GESTATION FROM FERTILIZATION UNTIL BIRTH.

31 36-2322. Determining presence of fetal heartbeat:
32 requirements; record; definition

33 A. EXCEPT AS PROVIDED BY SECTION 36-2324, A PHYSICIAN MAY NOT
34 KNOWINGLY PERFORM OR INDUCE AN ABORTION ON A PREGNANT WOMAN UNLESS THE
35 PHYSICIAN DETERMINES, IN ACCORDANCE WITH THIS SECTION, WHETHER THE WOMAN'S
36 UNBORN CHILD HAS A DETECTABLE FETAL HEARTBEAT.

37 B. IN MAKING A DETERMINATION UNDER SUBSECTION A OF THIS SECTION,
38 THE PHYSICIAN MUST USE A TEST THAT IS BOTH:

39 1. CONSISTENT WITH THE PHYSICIAN'S GOOD FAITH AND REASONABLE
40 UNDERSTANDING OF STANDARD MEDICAL PRACTICE.

41 2. APPROPRIATE FOR THE ESTIMATED GESTATIONAL AGE OF THE UNBORN
42 CHILD AND THE CONDITION OF THE PREGNANT WOMAN AND HER PREGNANCY.

1 C. A PHYSICIAN WHO MAKES A DETERMINATION UNDER SUBSECTION A OF THIS
2 SECTION SHALL RECORD IN THE PREGNANT WOMAN'S MEDICAL RECORD ALL OF THE
3 FOLLOWING:

- 4 1. THE ESTIMATED GESTATIONAL AGE OF THE UNBORN CHILD.
- 5 2. THE METHOD USED TO ESTIMATE THE GESTATIONAL AGE.
- 6 3. THE TEST USED FOR DETECTING A FETAL HEARTBEAT, INCLUDING THE
7 DATE, TIME AND RESULTS OF THE TEST.

8 D. FOR THE PURPOSES OF DETERMINING THE PRESENCE OF A FETAL
9 HEARTBEAT UNDER THIS SECTION, "STANDARD MEDICAL PRACTICE" INCLUDES
10 EMPLOYING THE APPROPRIATE MEANS OF DETECTING THE HEARTBEAT BASED ON THE
11 ESTIMATED GESTATIONAL AGE OF THE UNBORN CHILD AND THE CONDITION OF THE
12 WOMAN AND HER PREGNANCY.

13 36-2323. Abortion of unborn child with detectable fetal
14 heartbeat; prohibition; effect

15 A. EXCEPT AS PROVIDED BY SECTION 36-2324, A PHYSICIAN MAY NOT
16 KNOWINGLY PERFORM OR INDUCE AN ABORTION ON A PREGNANT WOMAN IF THE
17 PHYSICIAN DETECTS A FETAL HEARTBEAT FOR THE UNBORN CHILD AS REQUIRED BY
18 SECTION 36-2322 OR FAILS TO PERFORM A TEST TO DETECT A FETAL HEARTBEAT.

19 B. A PHYSICIAN DOES NOT VIOLATE THIS SECTION IF THE PHYSICIAN
20 PERFORMS A TEST FOR A FETAL HEARTBEAT AS REQUIRED BY SECTION 36-2322 AND
21 DOES NOT DETECT A FETAL HEARTBEAT.

22 C. THIS SECTION DOES NOT AFFECT EITHER:

- 23 1. THE PROVISIONS OF CHAPTER 20 OF THIS TITLE OR THIS CHAPTER THAT
24 RESTRICT OR REGULATE AN ABORTION BY A PARTICULAR METHOD OR DURING A
25 PARTICULAR STAGE OF PREGNANCY.
- 26 2. ANY OTHER PROVISION OF STATE LAW THAT REGULATES OR PROHIBITS
27 ABORTION.

28 36-2324. Medical emergency exception; records

29 A. SECTIONS 36-2322 AND 36-2323 DO NOT APPLY IF A PHYSICIAN
30 BELIEVES A MEDICAL EMERGENCY EXISTS THAT PREVENTS COMPLYING WITH THIS
31 ARTICLE.

32 B. A PHYSICIAN WHO PERFORMS OR INDUCES AN ABORTION UNDER
33 CIRCUMSTANCES DESCRIBED BY SUBSECTION A OF THIS SECTION SHALL MAKE WRITTEN
34 NOTATIONS IN THE PREGNANT WOMAN'S MEDICAL RECORD OF BOTH:

- 35 1. THE PHYSICIAN'S BELIEF THAT A MEDICAL EMERGENCY NECESSITATED THE
36 ABORTION.
- 37 2. THE MEDICAL CONDITION OF THE PREGNANT WOMAN THAT PREVENTED
38 COMPLYING WITH THIS ARTICLE.

39 C. A PHYSICIAN WHO PERFORMS OR INDUCES AN ABORTION UNDER THIS
40 SECTION SHALL MAINTAIN IN THE PHYSICIAN'S PRACTICE RECORDS A COPY OF THE
41 NOTATIONS MADE UNDER SUBSECTION B OF THIS SECTION.

36-2325. Construction of article

A. THIS ARTICLE DOES NOT ESTABLISH OR RECOGNIZE A RIGHT TO ABORTION BEFORE A FETAL HEARTBEAT IS DETECTED.

B. THIS ARTICLE DOES NOT DO ANY OF THE FOLLOWING:

1. AUTHORIZE THE INITIATION OF A CAUSE OF ACTION AGAINST OR THE PROSECUTION OF A WOMAN ON WHOM AN ABORTION IS PERFORMED OR INDUCED OR ATTEMPTED TO BE PERFORMED OR INDUCED IN VIOLATION OF THIS ARTICLE.

2. WHOLLY OR PARTLY REPEAL, EITHER EXPRESSLY OR BY IMPLICATION, ANY OTHER STATUTE THAT REGULATES OR PROHIBITS ABORTION.

3. RESTRICT A POLITICAL SUBDIVISION OF THIS STATE FROM REGULATING OR PROHIBITING ABORTION IN A MANNER THAT IS AT LEAST AS STRINGENT AS THE LAWS OF THIS STATE.

36-2326. Statutory construction of abortion statutes

A. A STATUTE THAT REGULATES OR PROHIBITS ABORTION DOES NOT REPEAL ANY OTHER STATUTE THAT REGULATES OR PROHIBITS ABORTION, EITHER WHOLLY OR PARTLY, UNLESS THE REPEALING STATUTE EXPLICITLY STATES THAT IT IS REPEALING THE OTHER STATUTE.

B. A STATUTE DOES NOT RESTRICT A POLITICAL SUBDIVISION OF THIS STATE FROM REGULATING OR PROHIBITING ABORTION IN A MANNER THAT IS AT LEAST AS STRINGENT AS THE LAWS OF THIS STATE UNLESS THE STATUTE EXPLICITLY STATES THAT POLITICAL SUBDIVISIONS OF THIS STATE ARE PROHIBITED FROM REGULATING OR PROHIBITING ABORTION IN THE MANNER DESCRIBED BY THE STATUTE.

C. EVERY STATUTE THAT REGULATES OR PROHIBITS ABORTION IS SEVERABLE IN EACH OF ITS APPLICATIONS TO EVERY PERSON AND CIRCUMSTANCE. IF ANY STATUTE THAT REGULATES OR PROHIBITS ABORTION IS FOUND BY ANY COURT TO BE UNCONSTITUTIONAL, EITHER ON ITS FACE OR AS APPLIED, ALL APPLICATIONS OF THAT STATUTE THAT DO NOT VIOLATE THE UNITED STATES CONSTITUTION AND ARIZONA CONSTITUTION SHALL BE SEVERED FROM THE UNCONSTITUTIONAL APPLICATIONS AND SHALL REMAIN ENFORCEABLE, NOTWITHSTANDING ANY OTHER LAW, AND THE STATUTE SHALL BE INTERPRETED AS IF CONTAINING LANGUAGE LIMITING THE STATUTE'S APPLICATION TO THE PERSONS, GROUP OF PERSONS OR CIRCUMSTANCES FOR WHICH THE STATUTE'S APPLICATION WILL NOT VIOLATE THE UNITED STATES CONSTITUTION AND ARIZONA CONSTITUTION.

36-2327. Limits on public enforcement

A. NOTWITHSTANDING ANY OTHER LAW, THE REQUIREMENTS OF THIS ARTICLE SHALL BE ENFORCED EXCLUSIVELY THROUGH PRIVATE CIVIL ACTIONS PURSUANT TO TITLE 12, CHAPTER 6, ARTICLE 20. ENFORCEMENT OF THIS ARTICLE AND ENFORCEMENT OF TITLE 13, CHAPTERS 11 AND 12 IN RESPONSE TO VIOLATIONS OF THIS ARTICLE MAY NOT BE TAKEN OR THREATENED BY THIS STATE, A POLITICAL SUBDIVISION OF THIS STATE, A COUNTY ATTORNEY OR AN EXECUTIVE OR ADMINISTRATIVE OFFICER OR EMPLOYEE OF THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE AGAINST ANY PERSON, EXCEPT AS PROVIDED IN SECTION 12-783.

B. SUBSECTION A OF THIS SECTION DOES NOT:

1. LEGALIZE THE CONDUCT PROHIBITED BY THIS ARTICLE.

1 2. LIMIT IN ANY WAY OR AFFECT THE AVAILABILITY OF A REMEDY
2 ESTABLISHED BY SECTION 12-783.

3 3. LIMIT THE ENFORCEABILITY OF ANY OTHER LAWS THAT REGULATE OR
4 PROHIBIT ABORTION.

5 Sec. 6. Legislative findings; intent

6 A. The legislature finds, according to contemporary medical
7 research, that:

8 1. Fetal heartbeat has become a key medical predictor that an
9 unborn child will reach live birth.

10 2. Cardiac activity begins at a biologically identifiable moment in
11 time, normally when the fetal heart is formed in the gestational sac.

12 3. Arizona has compelling interests from the outset of a woman's
13 pregnancy in protecting the health of the woman and the life of the unborn
14 child.

15 4. To make an informed choice about whether to continue her
16 pregnancy, the pregnant woman has a compelling interest in knowing the
17 likelihood of her unborn child surviving to full-term birth based on the
18 presence of cardiac activity.

19 B. The legislature finds that the state of Arizona never repealed,
20 either expressly or by implication, the state statutes enacted before the
21 ruling in Roe v. Wade, 410 U.S. 113 (1973) that prohibit and criminalize
22 abortion unless the mother's life is in danger.

23 Sec. 7. Applicability

24 This act applies only to abortions that are performed or induced on
25 or after the effective date of this act.

26 Sec. 8. Severability

27 A. Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in which, in
28 the context of determining the severability of a state statute regulating
29 abortion, the United States Supreme Court held that an explicit statement
30 of legislative intent is controlling, it is the intent of the legislature
31 that every provision, section, subsection, sentence, clause, phrase or
32 word in this act and every application of the provisions in this act are
33 severable from each other.

34 B. If a court finds any application of any provision in this act to
35 any person, group of persons or circumstances to be invalid or
36 unconstitutional, the remaining applications of that provision to all
37 other persons and circumstances shall be severed and may not be affected.
38 All constitutionally valid applications of this act shall be severed from
39 any applications that a court finds to be invalid, leaving the valid
40 applications in force, because it is the legislature's intent and priority
41 that the valid applications be allowed to stand alone. Even if a
42 reviewing court finds a provision of this act to impose an undue burden in
43 a large or substantial fraction of relevant cases, the applications that
44 do not present an undue burden shall be severed from the remaining
45 applications, shall remain in force and shall be treated as if the

1 legislature had enacted a statute limited to the persons, group of persons
2 or circumstances for which the statute's application does not present an
3 undue burden.

4 C. If a court declares or finds a provision of this act facially
5 unconstitutional, when discrete applications of that provision can be
6 enforced against a person, group of persons or circumstances without
7 violating the United States Constitution and Constitution of Arizona,
8 those applications shall be severed from all remaining applications of the
9 provision, and the provision shall be interpreted as if the legislature
10 had enacted a provision limited to the persons, group of persons or
11 circumstances for which the provision's application will not violate the
12 United States Constitution and Constitution of Arizona.

13 D. The legislature further declares that it would have enacted this
14 act, and each provision, section, subsection, article, sentence, clause,
15 phrase or word, and all constitutional applications of this act,
16 irrespective of the fact that any provision, section, subsection,
17 sentence, article, clause, phrase or word, or applications of this act,
18 were to be declared unconstitutional or to represent an undue burden.

19 E. If a court finds any provision of this act to be
20 unconstitutionally vague, the applications of that provision that do not
21 present constitutional vagueness problems shall be severed and remain in
22 force.

23 F. A court may not decline to enforce the severability requirements
24 of subsections A, B, C, D and E of this section on the ground that
25 severance would rewrite the statute or involve the court in legislative or
26 lawmaking activity. A court that declines to enforce or enjoins a state
27 official from enforcing a statutory provision does not rewrite a statute,
28 as the statute continues to contain the same words as before the court's
29 decision. A judicial injunction or declaration of unconstitutionality:

30 1. Is nothing more than an edict prohibiting enforcement that may
31 subsequently be vacated by a later court if that court has a different
32 understanding of the requirements of the Constitution of Arizona or United
33 States Constitution.

34 2. Is not a formal amendment of the language in a statute.

35 3. No more rewrites a statute than a decision by the executive not
36 to enforce a duly enacted statute in a limited and defined set of
37 circumstances.

38 Sec. 9. Short title

39 This act may be cited as the "Arizona Heartbeat Act".