Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 250

HOUSE BILL 2036

AN ACT

AMENDING SECTIONS 36-449.01, 36-449.03, 36-2151, 36-2152, 36-2153 AND 36-2156, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 20, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 36-2158 AND 36-2159; AMENDING SECTION 36-2163, ARIZONA REVISED STATUTES; RELATING TO ABORTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. 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 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 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. "MEDICATION ABORTION" MEANS THE USE OF ANY MEDICATION, DRUG OR OTHER SUBSTANCE THAT IS INTENDED TO CAUSE OR INDUCE AN ABORTION.

~~4.~~ 5. "Perform" includes the initial administration of any medication, drug or other substance intended to cause or induce an abortion.

6. "SURGICAL ABORTION" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-2151.

~~5.~~ 7. "Viable fetus" has the same meaning prescribed in section 36-2301.01.

Sec. 2. Section 36-449.03, Arizona Revised Statutes, is amended to read:

36-449.03. Abortion clinics; rules; civil penalties

A. The director shall adopt rules for an abortion clinic's physical facilities. At a minimum these rules shall prescribe standards for:

1. Adequate private space that is specifically designated for interviewing, counseling and medical evaluations.

2. Dressing rooms for staff and patients.

3. Appropriate lavatory areas.

4. Areas for preprocedure hand washing.

5. Private procedure rooms.

6. Adequate lighting and ventilation for abortion procedures.

7. Surgical or gynecologic examination tables and other fixed equipment.

8. Postprocedure recovery rooms that are supervised, staffed and equipped to meet the patients' needs.

9. Emergency exits to accommodate a stretcher or gurney.

10. Areas for cleaning and sterilizing instruments.

11. Adequate areas for the secure storage of medical records and necessary equipment and supplies.

12. The display in the abortion clinic, in a place that is conspicuous to all patients, of the clinic's current license issued by the department.

B. The director shall adopt rules to prescribe abortion clinic supplies and equipment standards, including supplies and equipment that are required to be immediately available for use or in an emergency. At a minimum these rules shall:

1. Prescribe required equipment and supplies, including medications, required for the conduct, in an appropriate fashion, of any abortion procedure that the medical staff of the clinic anticipates performing and for monitoring the progress of each patient throughout the procedure and recovery period.

2. Require that the number or amount of equipment and supplies at the clinic is adequate at all times to assure sufficient quantities of clean and sterilized durable equipment and supplies to meet the needs of each patient.

3. Prescribe required equipment, supplies and medications that shall be available and ready for immediate use in an emergency and requirements for written protocols and procedures to be followed by staff in an emergency, such as the loss of electrical power.

4. Prescribe required equipment and supplies for required laboratory tests and requirements for protocols to calibrate and maintain laboratory equipment at the abortion clinic or operated by clinic staff.

5. Require ultrasound equipment ~~in those facilities that provide abortions after twelve weeks' gestation~~.

6. Require that all equipment is safe for the patient and the staff, meets applicable federal standards and is checked annually to ensure safety and appropriate calibration.

C. The director shall adopt rules relating to abortion clinic personnel. At a minimum these rules shall require that:

1. The abortion clinic designate a medical director of the abortion clinic who is licensed pursuant to title 32, chapter 13, 17 or 29.

2. Physicians performing ~~surgery~~ ABORTIONS are licensed pursuant to title 32, chapter 13 or 17, demonstrate competence in the procedure involved and are acceptable to the medical director of the abortion clinic.

3. A physician ~~with admitting privileges at an accredited hospital in this state~~ is available: ~~.~~

(a) FOR A SURGICAL ABORTION WHO HAS ADMITTING PRIVILEGES AT A HEALTH CARE INSTITUTION THAT IS CLASSIFIED BY THE DIRECTOR AS A HOSPITAL PURSUANT TO SECTION 36-405, SUBSECTION B AND THAT IS WITHIN THIRTY MILES OF THE ABORTION CLINIC.

(b) FOR A MEDICATION ABORTION WHO HAS ADMITTING PRIVILEGES AT A HEALTH CARE INSTITUTION THAT IS CLASSIFIED BY THE DIRECTOR AS A HOSPITAL PURSUANT TO SECTION 36-405, SUBSECTION B.

4. If a physician is not present, a registered nurse, nurse practitioner, licensed practical nurse or ~~physician's~~ PHYSICIAN assistant is present and remains at the clinic when abortions are performed to provide postoperative monitoring and care, OR MONITORING AND CARE AFTER INDUCING A

MEDICATION ABORTION, until each patient who had an abortion that day is discharged.

5. Surgical assistants receive training in counseling, patient advocacy and the specific responsibilities of the services the surgical assistants provide.

6. Volunteers receive training in the specific responsibilities of the services the volunteers provide, including counseling and patient advocacy as provided in the rules adopted by the director for different types of volunteers based on their responsibilities.

D. The director shall adopt rules relating to the medical screening and evaluation of each abortion clinic patient. At a minimum these rules shall require:

1. A medical history, including the following:

(a) Reported allergies to medications, antiseptic solutions or latex.

(b) Obstetric and gynecologic history.

(c) Past surgeries.

2. A physical examination, including a bimanual examination estimating uterine size and palpation of the adnexa.

3. The appropriate laboratory tests, including:

(a) ~~For an abortion in which an ultrasound examination is not performed before the abortion procedure,~~ Urine or blood tests for pregnancy performed before the abortion procedure.

(b) A test for anemia.

(c) Rh typing, unless reliable written documentation of blood type is available.

(d) Other tests as indicated from the physical examination.

4. An ultrasound evaluation for all patients ~~who elect to have an abortion after twelve weeks' gestation~~. The rules shall require that if a person who is not a physician performs an ultrasound examination, that person shall have documented evidence that the person completed a course in the operation of ultrasound equipment as prescribed in rule. The physician or other health care professional shall review, at the request of the patient, the ultrasound evaluation results with the patient before the abortion procedure is performed, including the probable gestational age of the fetus.

5. That the physician is responsible for estimating the gestational age of the fetus based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rule and shall write the estimate in the patient's medical history. The physician shall keep original prints of each ultrasound examination of a patient in the patient's medical history file.

E. The director shall adopt rules relating to the abortion procedure. At a minimum these rules shall require:

1. That medical personnel is available to all patients throughout the abortion procedure.

2. Standards for the safe conduct of abortion procedures that conform to obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rule.

3. Appropriate use of local anesthesia, analgesia and sedation if ordered by the physician.

4. The use of appropriate precautions, such as the establishment of intravenous access at least for patients undergoing second or third trimester abortions.

5. The use of appropriate monitoring of the vital signs and other defined signs and markers of the patient's status throughout the abortion procedure and during the recovery period until the patient's condition is deemed to be stable in the recovery room.

6. THAT ANY MEDICATION, DRUG OR OTHER SUBSTANCE USED TO INDUCE AN ABORTION IS ADMINISTERED IN COMPLIANCE WITH THE PROTOCOL THAT IS AUTHORIZED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION AND THAT IS OUTLINED IN THE FINAL PRINTING LABELING INSTRUCTIONS FOR THAT MEDICATION, DRUG OR SUBSTANCE.

F. The director shall adopt rules that prescribe minimum recovery room standards. At a minimum these rules shall require that:

1. FOR A SURGICAL ABORTION, immediate postprocedure care, OR CARE PROVIDED AFTER INDUCING A MEDICATION ABORTION, consists of observation in a supervised recovery room for as long as the patient's condition warrants.

2. The clinic arrange hospitalization if any complication beyond the management capability of the staff occurs or is suspected.

3. A licensed health professional who is trained in the management of the recovery area and is capable of providing basic cardiopulmonary resuscitation and related emergency procedures remains on the premises of the abortion clinic until all patients are discharged.

4. FOR A SURGICAL ABORTION, a physician with admitting privileges at ~~an accredited hospital in this state~~ A HEALTH CARE INSTITUTION THAT IS CLASSIFIED BY THE DIRECTOR AS A HOSPITAL PURSUANT TO SECTION 36-405, SUBSECTION B AND THAT IS WITHIN THIRTY MILES OF THE ABORTION CLINIC remains on the premises of the abortion clinic until all patients are stable and are ready to leave the recovery room and to facilitate the transfer of emergency cases if hospitalization of the patient or viable fetus is necessary. A physician shall sign the discharge order and be readily accessible and available until the last patient is discharged.

5. A physician discusses RhO(d) immune globulin with each patient for whom it is indicated and assures it is offered to the patient in the immediate postoperative period or that it will be available to her within seventy-two hours after completion of the abortion procedure. If the patient refuses, a refusal form approved by the department shall be signed by the patient and a witness and included in the medical record.

6. Written instructions with regard to postabortion coitus, signs of possible problems and general aftercare are given to each patient. Each

patient shall have specific instructions regarding access to medical care for complications, including a telephone number to call for medical emergencies.

7. There is a specified minimum length of time that a patient remains in the recovery room by type of abortion procedure and duration of gestation.

8. The physician assures that a licensed health professional from the abortion clinic makes a good faith effort to contact the patient by telephone, with the patient's consent, within twenty-four hours after ~~surgery~~ A SURGICAL ABORTION to assess the patient's recovery.

9. Equipment and services are located in the recovery room to provide appropriate emergency resuscitative and life support procedures pending the transfer of the patient or viable fetus to the hospital.

G. The director shall adopt rules that prescribe standards for follow-up visits. At a minimum these rules shall require that:

1. FOR A SURGICAL ABORTION, a postabortion medical visit is offered and, if requested, scheduled for three weeks after the abortion, including a medical examination and a review of the results of all laboratory tests. FOR A MEDICATION ABORTION, THE RULES SHALL REQUIRE THAT A POSTABORTION MEDICAL VISIT IS SCHEDULED BETWEEN ONE WEEK AND THREE WEEKS AFTER THE INITIAL DOSE OF A MEDICATION ABORTION TO CONFIRM THE PREGNANCY IS COMPLETELY TERMINATED AND TO ASSESS THE DEGREE OF BLEEDING.

2. A urine pregnancy test is obtained at the time of the follow-up visit to rule out continuing pregnancy. If a continuing pregnancy is suspected, the patient shall be evaluated and a physician who performs abortions shall be consulted.

H. The director shall adopt rules to prescribe minimum abortion clinic incident reporting. At a minimum these rules shall require that:

1. The abortion clinic records each incident resulting in a patient's or viable fetus' serious injury occurring at an abortion clinic and shall report them in writing to the department within ten days after the incident. For the purposes of this paragraph, "serious injury" means an injury that occurs at an abortion clinic and that creates a serious risk of substantial impairment of a major body organ AND INCLUDES ANY INJURY OR CONDITION THAT REQUIRES AMBULANCE TRANSPORTATION OF THE PATIENT.

2. If a patient's death occurs, other than a fetal death properly reported pursuant to law, the abortion clinic reports it to the department not later than the next department work day.

3. Incident reports are filed with the department and appropriate professional regulatory boards.

I. THE DIRECTOR SHALL ADOPT RULES RELATING TO ENFORCEMENT OF THIS ARTICLE. AT A MINIMUM, THESE RULES SHALL REQUIRE THAT:

1. FOR AN ABORTION CLINIC THAT IS NOT IN SUBSTANTIAL COMPLIANCE WITH THIS ARTICLE AND THE RULES ADOPTED PURSUANT TO THIS ARTICLE OR THAT IS IN SUBSTANTIAL COMPLIANCE BUT REFUSES TO CARRY OUT A PLAN OF CORRECTION ACCEPTABLE TO THE DEPARTMENT OF ANY DEFICIENCIES THAT ARE LISTED ON THE DEPARTMENT'S STATE OF DEFICIENCY, THE DEPARTMENT MAY DO ANY OF THE FOLLOWING:

(a) ASSESS A CIVIL PENALTY PURSUANT TO SECTION 36-431.01.
(b) IMPOSE AN INTERMEDIATE SANCTION PURSUANT TO SECTION 36-427.
(c) SUSPEND OR REVOKE A LICENSE PURSUANT TO SECTION 36-427.
(d) DENY A LICENSE.
(e) BRING AN ACTION FOR AN INJUNCTION PURSUANT TO SECTION 36-430.

2. IN DETERMINING THE APPROPRIATE ENFORCEMENT ACTION, THE DEPARTMENT CONSIDERS THE THREAT OF THE HEALTH, SAFETY AND WELFARE OF THE ABORTION CLINIC'S PATIENTS OR THE GENERAL PUBLIC, INCLUDING:

(a) WHETHER THE ABORTION CLINIC HAS REPEATED VIOLATIONS OF STATUTES OR RULES.
(b) WHETHER THE ABORTION CLINIC HAS ENGAGED IN A PATTERN OF NONCOMPLIANCE.
(c) THE TYPE, SEVERITY AND NUMBER OF VIOLATIONS.

~~I.~~ J. The department shall not release personally identifiable patient or physician information.

~~J.~~ K. The rules adopted by the director pursuant to this section do not limit the ability of a physician or other health professional to advise a patient on any health issue.

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~~ SAVE THE LIFE OR PRESERVE THE HEALTH OF THE UNBORN CHILD, 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.

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

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.

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

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

7. "MEDICATION ABORTION" MEANS THE USE OF ANY MEDICATION, DRUG OR OTHER SUBSTANCE THAT IS INTENDED TO CAUSE OR INDUCE AN ABORTION.

~~7.~~ 8. "Physician" means a person who is licensed pursuant to title 32, chapter 13 or 17.

~~8.~~ 9. "Pregnant" or "pregnancy" means a female reproductive condition of having a developing unborn child in the body and that begins with conception.

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

~~10.~~ 11. "Surgical abortion" means the use of a surgical instrument or a machine 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. Surgical abortion does not include 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. Surgical abortion does not include patient care incidental to the procedure.

~~11.~~ 12. "Ultrasound" means the use of ultrasonic waves for diagnostic or therapeutic purposes to monitor a developing unborn child.

~~12.~~ 13. "Unborn child" means the offspring of human beings from conception until birth.

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

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

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

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

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

D. The pregnant minor may participate in the court proceedings on her own behalf. The court shall appoint a guardian ad litem for her. The court shall advise her that she has the right to court appointed counsel and, on her request, shall provide her with counsel unless she appears through private counsel or she knowingly and intelligently waives her right to counsel.

E. Proceedings in the court under this section are confidential and have precedence over other pending matters. Members of the public shall not inspect, obtain copies of or otherwise have access to records of court proceedings under this section unless authorized by law. A judge who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a confidential record of the evidence to be maintained, including the judge's own findings and conclusions. The minor may file the petition using a fictitious name. For purposes of this subsection, public does not include judges, clerks, administrators, professionals or other persons employed by or working under the supervision of the court or employees of other public agencies who are authorized by state or federal rule or law to inspect and copy closed court records.

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

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

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

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

2. The attending physician certifies in the pregnant minor's medical record that, on the basis of the physician's good faith clinical judgment, the pregnant minor has a condition that so complicates her medical condition 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 major bodily function.

I. A person who performs an abortion in violation of this section is guilty of a class 1 misdemeanor. A person is not subject to any liability under this section if the person establishes by written evidence that the person relied on evidence sufficient to convince a careful and prudent person that the representations of the pregnant minor regarding information necessary to comply with this section are true.

J. In addition to other remedies available under the common or statutory law of this state, one or both of the minor's parents or the minor's guardian may bring a civil action in the superior court in the county in which the parents or the guardian resides to obtain appropriate relief for a violation of this section, unless the pregnancy resulted from the criminal conduct of the parent or guardian. The civil action may be based on a claim that failure to obtain consent was a result of simple negligence, gross negligence, wantonness, wilfulness, intention or any other legal standard of care. THE CIVIL ACTION MAY BE BROUGHT AGAINST THE PERSON WHO PERFORMS THE ABORTION IN VIOLATION OF THIS SECTION AND ANY PERSON WHO CAUSES, AIDS OR ASSISTS A MINOR TO OBTAIN AN ABORTION WITHOUT MEETING THE REQUIREMENTS OF THIS SECTION. Relief pursuant to this subsection includes the following:

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

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

3. Reasonable attorney fees and costs.

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

L. THE CONSENT REQUIRED BY THIS SECTION MUST BE OBTAINED ON A FORM PRESCRIBED BY THE DEPARTMENT OF HEALTH SERVICES. AT A MINIMUM, THE FORM MUST:

1. LIST THE POSSIBLE MEDICAL RISKS THAT MAY OCCUR WITH ANY SURGICAL, MEDICAL OR DIAGNOSTIC PROCEDURE, INCLUDING THE POTENTIAL FOR INFECTION, BLOOD CLOTS, HEMORRHAGE, ALLERGIC REACTIONS AND DEATH.

2. LIST THE POSSIBLE MEDICAL RISKS THAT MAY OCCUR WITH A SURGICAL ABORTION, INCLUDING HEMORRHAGE, UTERINE PERFORATION, STERILITY, INJURY TO THE BOWEL OR BLADDER, A POSSIBLE HYSTERECTOMY AS A RESULT OF A COMPLICATION OR INJURY DURING THE PROCEDURE AND FAILURE TO REMOVE ALL PRODUCTS OF CONCEPTION THAT MAY RESULT IN AN ADDITIONAL PROCEDURE.

3. LIST THE POSSIBLE MEDICAL RISKS THAT MAY OCCUR WITH A MEDICATION ABORTION, INCLUDING HEMORRHAGE, INFECTION, FAILURE TO REMOVE ALL PRODUCTS OF CONCEPTION THAT MAY RESULT IN AN ADDITIONAL PROCEDURE, STERILITY AND THE POSSIBLE CONTINUATION OF THE PREGNANCY.

4. REQUIRE THE PREGNANT MINOR'S AND THE PREGNANT MINOR'S PARENT'S INITIALS ON EACH PAGE OF THE FORM AND A FULL SIGNATURE ON THE FINAL PAGE OF THE FORM.

5. INCLUDE A SPACE FOR THE NOTARY'S SIGNATURE AND SEAL ON THE FINAL PAGE OF THE FORM.

M. THE PHYSICIAN MUST MAINTAIN THE FORM IN THE PREGNANT MINOR'S RECORDS FOR SEVEN YEARS AFTER THE DATE OF THE PROCEDURE OR FIVE YEARS AFTER THE DATE OF THE MINOR'S MATURITY, WHICHEVER IS LONGER.

Sec. 5. Section 36-2153, Arizona Revised Statutes, is amended to read:

36-2153. <u>Informed consent; requirements; information; website; signs; violation; civil relief; statute of limitations</u>

A. An abortion shall not be performed or induced without the voluntary and informed consent of the woman on whom the abortion is to be performed or induced. Except in the case of a medical emergency AND IN ADDITION TO THE OTHER REQUIREMENTS OF THIS CHAPTER, consent to an abortion is voluntary and informed only if all of the following are true:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) THE DEPARTMENT OF HEALTH SERVICES MAINTAINS A WEBSITE THAT DESCRIBES THE UNBORN CHILD AND LISTS THE AGENCIES THAT OFFER ALTERNATIVES TO ABORTION.

(g) THE WOMAN HAS A RIGHT TO REVIEW THE WEBSITE AND THAT A PRINTED COPY OF THE MATERIALS ON THE WEBSITE WILL BE PROVIDED TO HER FREE OF CHARGE IF SHE CHOOSES TO REVIEW THESE MATERIALS.

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

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

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

C. THE DEPARTMENT OF HEALTH SERVICES SHALL ESTABLISH A WEBSITE WITHIN NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION AND SHALL ANNUALLY UPDATE THE WEBSITE. THE WEBSITE MUST INCLUDE A LINK TO A PRINTABLE VERSION OF ALL MATERIALS LISTED ON THE WEBSITE. THE MATERIALS MUST BE WRITTEN IN AN EASILY UNDERSTOOD MANNER AND PRINTED IN A TYPEFACE THAT IS LARGE ENOUGH TO BE CLEARLY LEGIBLE. THE WEBSITE MUST INCLUDE ALL OF THE FOLLOWING MATERIALS:

1. INFORMATION THAT IS ORGANIZED GEOGRAPHICALLY BY LOCATION AND THAT IS DESIGNED TO INFORM THE WOMAN ABOUT PUBLIC AND PRIVATE AGENCIES AND SERVICES THAT ARE AVAILABLE TO ASSIST A WOMAN THROUGH PREGNANCY, AT CHILDBIRTH AND WHILE HER CHILD IS DEPENDENT, INCLUDING ADOPTION AGENCIES. THE MATERIALS SHALL INCLUDE A COMPREHENSIVE LIST OF THE AGENCIES, A DESCRIPTION OF THE SERVICES THEY OFFER AND THE MANNER IN WHICH THESE AGENCIES MAY BE CONTACTED, INCLUDING THE AGENCIES' TELEPHONE NUMBERS AND WEBSITE ADDRESSES.

2. INFORMATION ON THE AVAILABILITY OF MEDICAL ASSISTANCE BENEFITS FOR PRENATAL CARE, CHILDBIRTH AND NEONATAL CARE.

3. A STATEMENT THAT IT IS UNLAWFUL FOR ANY PERSON TO COERCE A WOMAN TO UNDERGO AN ABORTION.

4. A STATEMENT THAT ANY PHYSICIAN WHO PERFORMS AN ABORTION ON A WOMAN WITHOUT OBTAINING THE WOMAN'S VOLUNTARY AND INFORMED CONSENT OR WITHOUT AFFORDING HER A PRIVATE MEDICAL CONSULTATION MAY BE LIABLE TO THE WOMAN FOR DAMAGES IN A CIVIL ACTION.

5. A STATEMENT THAT THE FATHER OF A CHILD IS LIABLE TO ASSIST IN THE SUPPORT OF THAT CHILD, EVEN IF THE FATHER HAS OFFERED TO PAY FOR AN ABORTION, AND THAT THE LAW ALLOWS ADOPTIVE PARENTS TO PAY COSTS OF PRENATAL CARE, CHILDBIRTH AND NEONATAL CARE.

6. INFORMATION THAT IS DESIGNED TO INFORM THE WOMAN OF THE PROBABLE ANATOMICAL AND PHYSIOLOGICAL CHARACTERISTICS OF THE UNBORN CHILD AT TWO-WEEK GESTATIONAL INCREMENTS FROM FERTILIZATION TO FULL TERM, INCLUDING PICTURES OR DRAWINGS REPRESENTING THE DEVELOPMENT OF UNBORN CHILDREN AT TWO-WEEK GESTATIONAL INCREMENTS AND ANY RELEVANT INFORMATION ON THE POSSIBILITY OF THE UNBORN CHILD'S SURVIVAL. THE PICTURES OR DRAWINGS MUST CONTAIN THE DIMENSIONS OF THE UNBORN CHILD AND MUST BE REALISTIC AND APPROPRIATE FOR EACH STAGE OF PREGNANCY. THE INFORMATION PROVIDED PURSUANT TO THIS PARAGRAPH MUST BE OBJECTIVE, NONJUDGMENTAL AND DESIGNED TO CONVEY ONLY ACCURATE SCIENTIFIC INFORMATION ABOUT THE UNBORN CHILD AT THE VARIOUS GESTATIONAL AGES.

7. OBJECTIVE INFORMATION THAT DESCRIBES THE METHODS OF ABORTION PROCEDURES COMMONLY EMPLOYED, THE MEDICAL RISKS COMMONLY ASSOCIATED WITH EACH PROCEDURE, THE POSSIBLE DETRIMENTAL PSYCHOLOGICAL EFFECTS OF ABORTION AND THE MEDICAL RISKS COMMONLY ASSOCIATED WITH CARRYING A CHILD TO TERM.

~~C.~~ D. An individual who is not a physician shall not perform a surgical abortion.

~~D.~~ E. A person shall not write or communicate a prescription for a drug or drugs to induce an abortion or require or obtain payment for a service provided to a patient who has inquired about an abortion or scheduled an abortion until the expiration of the twenty-four hour reflection period required by subsection A OF THIS SECTION.

~~E.~~ F. A person shall not intimidate or coerce in any way any person to obtain an abortion. A parent, A guardian or any other person shall not coerce a minor to obtain an abortion. If a minor is denied financial support by the minor's parents, guardians or custodian due to the minor's refusal to

have an abortion performed, the minor is deemed emancipated for the purposes of eligibility for public assistance benefits, except that the emancipated minor may not use these benefits to obtain an abortion.

G. AN ABORTION CLINIC AS DEFINED IN SECTION 36-449.01 SHALL CONSPICUOUSLY POST SIGNS THAT ARE VISIBLE TO ALL WHO ENTER THE ABORTION CLINIC, THAT ARE CLEARLY READABLE AND THAT STATE IT IS UNLAWFUL FOR ANY PERSON TO FORCE A WOMAN TO HAVE AN ABORTION AND A WOMAN WHO IS BEING FORCED TO HAVE AN ABORTION HAS THE RIGHT TO CONTACT ANY LOCAL OR STATE LAW ENFORCEMENT OR SOCIAL SERVICE AGENCY TO RECEIVE PROTECTION FROM ANY ACTUAL OR THREATENED PHYSICAL, EMOTIONAL OR PSYCHOLOGICAL ABUSE. THE SIGNS SHALL BE POSTED IN THE WAITING ROOM, CONSULTATION ROOMS AND PROCEDURE ROOMS.

H. A PERSON SHALL NOT REQUIRE A WOMAN TO OBTAIN AN ABORTION AS A PROVISION IN A CONTRACT OR AS A CONDITION OF EMPLOYMENT.

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

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

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

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

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

~~H.~~ K. A civil action filed pursuant to subsection ~~G~~ J OF THIS SECTION shall be brought in the superior court in the county in which the woman on whom the abortion was performed resides and may be based on a claim that failure to obtain informed consent was a result of simple negligence, gross negligence, wantonness, wilfulness, intention or any other legal standard of care. Relief pursuant to subsection ~~G~~ J OF THIS SECTION includes the following:

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

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

3. Reasonable attorney fees and costs.

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

Sec. 6. Section 36-2156, Arizona Revised Statutes, is amended to read:

36-2156. Informed consent; ultrasound required; violation; civil relief; statute of limitations

A. An abortion shall not be performed or induced without the voluntary and informed consent of the woman on whom the abortion is to be performed or induced. Except in the case of a medical emergency and in addition to the OTHER requirements of ~~section 36-2153~~ THIS CHAPTER, consent to an abortion is voluntary and informed only if both of the following are true:

1. At least ~~one hour~~ TWENTY-FOUR HOURS before the woman having any part of an abortion performed or induced, and before the administration of any anesthesia or medication in preparation for the abortion on the woman, the physician who is to perform the abortion, the referring physician or a qualified person working in conjunction with either physician shall:

(a) Perform fetal ultrasound imaging and auscultation of fetal heart tone services on the woman undergoing the abortion.

(b) Offer to provide the woman with an opportunity to view the active ultrasound image of the unborn child and hear the heartbeat of the unborn child if the heartbeat is audible. The active ultrasound image must be of a quality consistent with standard medical practice in the community, contain the dimensions of the unborn child and accurately portray the presence of external members and internal organs, if present or viewable, of the unborn child. The auscultation of fetal heart tone must be of a quality consistent with standard medical practice in the community.

(c) Offer to provide the woman with a simultaneous explanation of what the ultrasound is depicting, including the presence and location of the unborn child within the uterus, the number of unborn children depicted, the dimensions of the unborn child and the presence of any external members and internal organs, if present or viewable.

(d) Offer to provide the patient with a physical picture of the ultrasound image of the unborn child.

2. The woman certifies in writing before the abortion that she has been given the opportunity to view the active ultrasound image and hear the heartbeat of the unborn child if the heartbeat is audible and that she opted to view or not view the active ultrasound image and hear or not hear the heartbeat of the unborn child.

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

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

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

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

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

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

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

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

3. Reasonable attorney fees and costs.

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

Sec. 7. Title 36, chapter 20, article 1, Arizona Revised Statutes, is amended by adding sections 36-2158 and 36-2159, to read:

36-2158. <u>Informed consent; fetal condition; website; violation; civil relief; statute of limitations; definitions</u>

A. A PERSON SHALL NOT PERFORM OR INDUCE AN ABORTION WITHOUT FIRST OBTAINING THE VOLUNTARY AND INFORMED CONSENT OF THE WOMAN ON WHOM THE ABORTION IS TO BE PERFORMED OR INDUCED. EXCEPT IN THE CASE OF A MEDICAL EMERGENCY AND IN ADDITION TO THE OTHER REQUIREMENTS OF THIS CHAPTER, CONSENT TO AN ABORTION IS VOLUNTARY AND INFORMED ONLY IF ALL OF THE FOLLOWING OCCUR:

1. IN THE CASE OF A WOMAN SEEKING AN ABORTION OF HER UNBORN CHILD DIAGNOSED WITH A LETHAL FETAL CONDITION, AT LEAST TWENTY-FOUR HOURS BEFORE THE ABORTION THE PHYSICIAN WHO IS TO PERFORM THE ABORTION OR THE REFERRING PHYSICIAN HAS INFORMED THE WOMAN, ORALLY AND IN PERSON, THAT:

(a) PERINATAL HOSPICE SERVICES ARE AVAILABLE AND THE PHYSICIAN HAS OFFERED THIS CARE AS AN ALTERNATIVE TO ABORTION.

(b) THE DEPARTMENT OF HEALTH SERVICES MAINTAINS A WEBSITE THAT LISTS PERINATAL HOSPICE PROGRAMS THAT ARE AVAILABLE BOTH IN THIS STATE AND NATIONALLY AND THAT ARE ORGANIZED GEOGRAPHICALLY BY LOCATION.

(c) THE WOMAN HAS A RIGHT TO REVIEW THE WEBSITE AND THAT A PRINTED COPY OF THE MATERIALS ON THE WEBSITE WILL BE PROVIDED TO HER FREE OF CHARGE IF SHE CHOOSES TO REVIEW THESE MATERIALS.

2. IN THE CASE OF A WOMAN SEEKING AN ABORTION OF HER UNBORN CHILD DIAGNOSED WITH A NONLETHAL FETAL CONDITION, AT LEAST TWENTY-FOUR HOURS BEFORE THE ABORTION THE PHYSICIAN WHO IS TO PERFORM THE ABORTION OR THE REFERRING PHYSICIAN HAS INFORMED THE WOMAN, ORALLY AND IN PERSON:

(a) OF UP-TO-DATE, EVIDENCE-BASED INFORMATION CONCERNING THE RANGE OF OUTCOMES FOR INDIVIDUALS LIVING WITH THE DIAGNOSED CONDITION, INCLUDING PHYSICAL, DEVELOPMENTAL, EDUCATIONAL AND PSYCHOSOCIAL OUTCOMES.

(b) THAT THE DEPARTMENT OF HEALTH SERVICES MAINTAINS A WEBSITE THAT LISTS INFORMATION REGARDING SUPPORT SERVICES, HOTLINES, RESOURCE CENTERS OR CLEARINGHOUSES, NATIONAL AND LOCAL PEER SUPPORT GROUPS AND OTHER EDUCATION AND SUPPORT PROGRAMS AVAILABLE TO ASSIST THE WOMAN AND HER UNBORN CHILD, ANY NATIONAL OR LOCAL REGISTRIES OF FAMILIES WILLING TO ADOPT NEWBORNS WITH THE NONLETHAL FETAL CONDITION AND CONTACT INFORMATION FOR ADOPTION AGENCIES WILLING TO PLACE NEWBORNS WITH THE NONLETHAL FETAL CONDITION WITH FAMILIES WILLING TO ADOPT.

(c) THAT THE WOMAN HAS A RIGHT TO REVIEW THE WEBSITE AND THAT A PRINTED COPY OF THE MATERIALS ON THE WEBSITE WILL BE PROVIDED TO HER FREE OF CHARGE IF SHE CHOOSES TO REVIEW THESE MATERIALS.

3. THE WOMAN CERTIFIES IN WRITING BEFORE THE ABORTION THAT THE INFORMATION REQUIRED TO BE PROVIDED PURSUANT TO THIS SUBSECTION HAS BEEN PROVIDED.

B. THE DEPARTMENT OF HEALTH SERVICES SHALL ESTABLISH A WEBSITE WITHIN NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION AND SHALL ANNUALLY UPDATE THE WEBSITE. THE WEBSITE SHALL INCLUDE THE INFORMATION PRESCRIBED IN SUBSECTION A, PARAGRAPH 1, SUBDIVISION (b) AND PARAGRAPH 2, SUBDIVISION (b) OF THIS SECTION.

C. A PHYSICIAN WHO KNOWINGLY VIOLATES THIS SECTION COMMITS AN ACT OF UNPROFESSIONAL CONDUCT AND IS SUBJECT TO LICENSE SUSPENSION OR REVOCATION PURSUANT TO TITLE 32, CHAPTER 13 OR 17.

D. IN ADDITION TO OTHER REMEDIES AVAILABLE UNDER THE COMMON OR STATUTORY LAW OF THIS STATE, ANY OF THE FOLLOWING INDIVIDUALS MAY FILE A CIVIL ACTION TO OBTAIN APPROPRIATE RELIEF FOR A VIOLATION OF THIS SECTION:

1. A WOMAN ON WHOM AN ABORTION HAS BEEN PERFORMED WITHOUT HER INFORMED CONSENT AS REQUIRED BY THIS SECTION.

2. THE FATHER OF THE UNBORN CHILD IF THE FATHER IS MARRIED TO THE MOTHER AT THE TIME SHE RECEIVED THE ABORTION, UNLESS THE PREGNANCY RESULTED FROM THE FATHER'S CRIMINAL CONDUCT.

3. THE MATERNAL GRANDPARENTS OF THE UNBORN CHILD IF THE MOTHER WAS NOT AT LEAST EIGHTEEN YEARS OF AGE AT THE TIME OF THE ABORTION, UNLESS THE PREGNANCY RESULTED FROM EITHER OF THE MATERNAL GRANDPARENT'S CRIMINAL CONDUCT.

E. A CIVIL ACTION FILED PURSUANT TO SUBSECTION D OF THIS SECTION SHALL BE BROUGHT IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE WOMAN ON WHOM THE ABORTION WAS PERFORMED RESIDES AND MAY BE BASED ON A CLAIM THAT FAILURE TO OBTAIN INFORMED CONSENT WAS A RESULT OF SIMPLE NEGLIGENCE, GROSS NEGLIGENCE, WANTONNESS, WILFULNESS, INTENTION OR ANY OTHER LEGAL STANDARD OF CARE. RELIEF PURSUANT TO THIS SUBSECTION INCLUDES THE FOLLOWING:

1. MONEY DAMAGES FOR ALL PSYCHOLOGICAL, EMOTIONAL AND PHYSICAL INJURIES RESULTING FROM THE VIOLATION OF THIS SECTION.

2. STATUTORY DAMAGES IN AN AMOUNT EQUAL TO FIVE THOUSAND DOLLARS OR THREE TIMES THE COST OF THE ABORTION, WHICHEVER IS GREATER.

3. REASONABLE ATTORNEY FEES AND COSTS.

F. A CIVIL ACTION BROUGHT PURSUANT TO THIS SECTION MUST BE INITIATED WITHIN SIX YEARS AFTER THE VIOLATION OCCURRED.

G. FOR THE PURPOSES OF THIS SECTION:

1. "LETHAL FETAL CONDITION" MEANS A FETAL CONDITION THAT IS DIAGNOSED BEFORE BIRTH AND THAT WILL RESULT, WITH REASONABLE CERTAINTY, IN THE DEATH OF THE UNBORN CHILD WITHIN THREE MONTHS AFTER BIRTH.

2. "NONLETHAL FETAL CONDITION" MEANS A FETAL CONDITION THAT IS DIAGNOSED BEFORE BIRTH AND THAT WILL NOT RESULT IN THE DEATH OF THE UNBORN CHILD WITHIN THREE MONTHS AFTER BIRTH BUT MAY RESULT IN PHYSICAL OR MENTAL DISABILITY OR ABNORMALITY.

3. "PERINATAL HOSPICE" MEANS COMPREHENSIVE SUPPORT TO THE PREGNANT WOMAN AND HER FAMILY THAT INCLUDES SUPPORTIVE CARE FROM THE TIME OF DIAGNOSIS THROUGH THE TIME OF BIRTH AND DEATH OF THE INFANT AND THROUGH THE POSTPARTUM PERIOD. SUPPORTIVE CARE MAY INCLUDE COUNSELING AND MEDICAL CARE BY MATERNAL-FETAL MEDICAL SPECIALISTS, OBSTETRICIANS, NEONATOLOGISTS, ANESTHESIA SPECIALISTS, CLERGY, SOCIAL WORKERS AND SPECIALTY NURSES WHO ARE FOCUSED ON ALLEVIATING FEAR AND ENSURING THAT THE WOMAN AND HER FAMILY EXPERIENCE THE LIFE AND DEATH OF THE CHILD IN A COMFORTABLE AND SUPPORTIVE ENVIRONMENT.

36-2159. <u>Abortion; gestational age; violation; classification; statute of limitations</u>

A. EXCEPT IN A MEDICAL EMERGENCY, A PERSON SHALL 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 CHILD. IN MAKING THAT DETERMINATION, THE PHYSICIAN OR REFERRING PHYSICIAN SHALL MAKE ANY INQUIRIES OF THE PREGNANT WOMAN AND PERFORM OR CAUSE TO BE PERFORMED ALL MEDICAL EXAMINATIONS, IMAGING STUDIES AND TESTS AS A REASONABLY PRUDENT PHYSICIAN IN THE COMMUNITY, KNOWLEDGEABLE ABOUT THE MEDICAL FACTS AND CONDITIONS OF BOTH THE WOMAN AND THE UNBORN CHILD INVOLVED, WOULD CONSIDER NECESSARY TO PERFORM AND CONSIDER IN MAKING AN ACCURATE DIAGNOSIS WITH RESPECT TO GESTATIONAL AGE.

B. EXCEPT IN A MEDICAL EMERGENCY, A PERSON SHALL NOT KNOWINGLY PERFORM, INDUCE OR ATTEMPT TO PERFORM OR INDUCE AN ABORTION ON A PREGNANT WOMAN IF THE PROBABLE GESTATIONAL AGE OF HER UNBORN CHILD HAS BEEN DETERMINED TO BE AT LEAST TWENTY WEEKS.

C. A PERSON WHO KNOWINGLY VIOLATES THIS SECTION COMMITS A CLASS 1 MISDEMEANOR.

D. A PHYSICIAN WHO KNOWINGLY VIOLATES THIS SECTION COMMITS AN ACT OF UNPROFESSIONAL CONDUCT AND IS SUBJECT TO LICENSE SUSPENSION OR REVOCATION PURSUANT TO TITLE 32, CHAPTER 13 OR 17.

E. IN ADDITION TO OTHER REMEDIES AVAILABLE UNDER THE COMMON OR STATUTORY LAW OF THIS STATE, ANY OF THE FOLLOWING INDIVIDUALS MAY FILE A CIVIL ACTION TO OBTAIN APPROPRIATE RELIEF FOR A VIOLATION OF THIS SECTION:

1. A WOMAN ON WHOM AN ABORTION HAS BEEN PERFORMED IN VIOLATION OF THIS SECTION.

2. THE FATHER OF THE UNBORN CHILD IF THE FATHER IS MARRIED TO THE MOTHER AT THE TIME SHE RECEIVED THE ABORTION, UNLESS THE PREGNANCY RESULTED FROM THE FATHER'S CRIMINAL CONDUCT.

3. THE MATERNAL GRANDPARENTS OF THE UNBORN CHILD IF THE MOTHER WAS NOT AT LEAST EIGHTEEN YEARS OF AGE AT THE TIME OF THE ABORTION, UNLESS THE PREGNANCY RESULTED FROM EITHER OF THE MATERNAL GRANDPARENT'S CRIMINAL CONDUCT.

F. A CIVIL ACTION FILED PURSUANT TO SUBSECTION E OF THIS SECTION SHALL BE BROUGHT IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE WOMAN ON WHOM THE ABORTION WAS PERFORMED RESIDES. RELIEF PURSUANT TO THIS SUBSECTION INCLUDES THE FOLLOWING:

1. MONEY DAMAGES FOR ALL PSYCHOLOGICAL, EMOTIONAL AND PHYSICAL INJURIES RESULTING FROM THE VIOLATION OF THIS SECTION.

2. STATUTORY DAMAGES IN AN AMOUNT EQUAL TO FIVE THOUSAND DOLLARS OR THREE TIMES THE COST OF THE ABORTION, WHICHEVER IS GREATER.

3. REASONABLE ATTORNEY FEES AND COSTS.

G. A CIVIL ACTION BROUGHT PURSUANT TO THIS SECTION MUST BE INITIATED WITHIN SIX YEARS AFTER THE VIOLATION OCCURRED.

H. A WOMAN ON WHOM AN ABORTION IS PERFORMED OR INDUCED IN VIOLATION OF THIS SECTION MAY NOT BE PROSECUTED UNDER THIS SECTION OR FOR CONSPIRACY TO COMMIT A VIOLATION OF THIS SECTION.

Sec. 8. Section 36-2163, Arizona Revised Statutes, is amended to read:

36-2163. <u>Reports; confidentiality; annual statistical report; violations; classification; unprofessional conduct</u>

A. A report required by this article shall not contain the name of the woman, common identifiers such as the woman's social security number, driver license number or insurance carrier identification numbers or any other information or identifiers that would make it possible to identify in any manner or under any circumstances an individual who has obtained or seeks to obtain an abortion.

B. The department of health services shall collect all abortion reports and complication reports and prepare a comprehensive annual statistical report based on the data gathered in the reports. The statistical report shall not lead to the disclosure of the identity of any person filing a report or about whom a report is filed. The department shall make the statistical report available on its website and for public inspection and copying.

C. The report prepared by the department pursuant to subsection B of this section shall include statistics from the administrative office of the courts containing the following information:

1. The number of petitions filed pursuant to section 36-2152, subsection B.

2. Of the petitions filed pursuant to section 36-2152, subsection B, the number in which the judge appointed a guardian ad litem or court-appointed counsel for the minor pursuant to section 36-2152, subsection D.

3. Of the petitions filed pursuant to section 36-2152, subsection B, the number in which the judge issued an order authorizing an abortion without parental consent.

4. Of the petitions filed pursuant to section 36-2152, subsection B, the number in which the judge issued an order denying the petition.

5. Of the petitions denied, the number appealed to the court of appeals.

6. The number of those appeals that resulted in the denials being affirmed.

7. The number of those appeals that resulted in the denial being reversed.

D. Except for a statistical report as provided in subsection B of this section, a report filed pursuant to this article is not a public record and is not available for public inspection, except that disclosure may be made to law enforcement officials on an order of a court after application showing good cause. The court may condition disclosure of the information on any appropriate safeguards it may impose.

E. Original copies of all reports filed pursuant to sections 36-2161 and 36-2162 shall be available to the Arizona medical board and the Arizona board of osteopathic examiners in medicine and surgery for use in the performance of their official duties. The Arizona medical board and the Arizona board of osteopathic examiners in medicine and surgery shall maintain the confidentiality of any reports obtained pursuant to this subsection.

F. An employee, agent or contractor of the department who wilfully discloses any information obtained from reports filed pursuant to this article, other than disclosure authorized under subsections B, D and E of this section or as otherwise authorized by law, is guilty of a class 3 misdemeanor.

G. A person who is required by this article to file a report, keep any records or supply any information and who wilfully fails to file that report, keep records or supply information as required by law is guilty of unprofessional conduct and is subject to discipline, including license suspension or revocation.

H. A person who wilfully delivers or discloses to the department any report, record or information known by that person to be false commits a class 1 misdemeanor.

I. In addition to the penalties prescribed by subsections F, G and H of this section, an organization or facility that wilfully violates the reporting requirements of this article is subject to discipline by the department including the ~~same~~ civil penalties ~~as~~ prescribed in section ~~36-126~~ 36-431.01. IF AN ORGANIZATION OR FACILITY THAT IS LICENSED PURSUANT TO

CHAPTER 4, ARTICLE 10 OF THIS TITLE WILFULLY VIOLATES THE REPORTING REQUIREMENTS OF THIS ARTICLE, THE DEPARTMENT MAY ASSESS A CIVIL PENALTY PURSUANT TO SECTION 36-431.01, IMPOSE AN INTERMEDIATE SANCTION PURSUANT TO SECTION 36-427, SUSPEND OR REVOKE A LICENSE PURSUANT TO SECTION 36-427, DENY A LICENSE OR BRING AN ACTION FOR AN INJUNCTION PURSUANT TO SECTION 36-430.

Sec. 9. Findings and purposes

A. The legislature finds that:

1. Abortion can cause serious both short-term and long-term physical and psychological complications for women, including but not limited to uterine perforation, uterine scarring, cervical perforation or other injury, infection, bleeding, hemorrhage, blood clots, failure to actually terminate the pregnancy, incomplete abortion (retained tissue), pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, metabolic disorder, shock, embolism, coma, placenta previa in subsequent pregnancies, preterm delivery in subsequent pregnancies, free fluid in the abdomen, organ damage, adverse reactions to anesthesia and other drugs, psychological or emotional complications such as depression, anxiety or sleeping disorders and death. *See, e.g.*, P.K. Coleman, *Abortion and Mental Health: Quantitative Synthesis and Analysis of Research Published 1995-2009*, Brit. J. of Psychiatry 199:180-86 (2011); P. Shah et al., *Induced termination of pregnancy and low birth weight and preterm birth: a systematic review and meta-analysis*, B.J.O.G. 116(11):1425 (2009); H.M. Swingle et al., *Abortion and the Risk of Subsequent Preterm Birth: A Systematic Review and Meta-Analysis*, J. Reprod. Med. 54:95 (2009); R.H. van Oppenraaij et al., *Predicting adverse obstetric outcome after early pregnancy events and complications: a review*, Human Reprod. Update Advance Access 1:1 (Mar. 7, 2009); R.E. Behrman, Preterm Birth: Causes, Consequences, and Prevention 519 (2006); J.M. Thorp et al., *Long-Term Physical and Psychological Health Consequences of Induced Abortion: Review of the Evidence*, Obstet. & Gynecol. Survey 58[1]:67, 75 (2003) J.M. Barrett, *Induced Abortion: A Risk Factor for Placenta Previa*, Am. J. Obstet. & Gynecol. 141:7 (1981).

2. Abortion has a higher medical risk when the procedure is performed later in pregnancy. Compared to an abortion at eight weeks of gestation or earlier, the relative risk increases exponentially at higher gestations. L. Bartlett et al., Risk factors for legal induced abortion-related mortality in the United States, *Obstetrics & Gynecology* 103(4):729-737 (2004).

3. The incidence of major complications is highest after twenty weeks of gestation. J. Pregler & A. DeCherney, *Women's Health: Principles and Clinical Practice* 232 (2002).

4. The risk of death associated with abortion increases with the length of pregnancy, from one death for every one million abortions at or before eight weeks gestation to one per 29,000 abortions at sixteen to twenty weeks and one per 11,000 abortions at twenty-one or more weeks. L. Bartlett et al., Risk factors for legal induced abortion-related mortality in the United States, *Obstetrics & Gynecology* 103(4):729-737 (2004). After the

first trimester, the risk of hemorrhage from an abortion, in particular, is greater, and the resultant complications may require a hysterectomy, other reparative surgery or a blood transfusion.

5. The State of Arizona has a legitimate concern for the public's health and safety. *Williamson v. Lee Optical*, 348 U.S. 483, 486 (1985); *Cohen v. State*, 121 Ariz. 6, 10, 588 P.2d 299, 303 (1978).

6. The State of Arizona "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); *Planned Parenthood Arizona, Inc. v. American Ass'n of Pro-Life Obstetricians & Gynecologists*, 257 P.3d 181, 194 (Ariz. App. Div. 1, 2011). More specifically, Arizona "has a legitimate concern with the health of women who undergo abortions." *Akron v. Akron Ctr. for Reproductive Health, Inc.*, 462 U.S. 416, 428-29 (1983).

7. There is substantial and well-documented medical evidence that an unborn child by at least twenty weeks of gestation has the capacity to feel pain during an abortion. K. Anand, Pain and its effects in the human neonate and fetus, *New England Journal of Medicine*, 317:1321-29 (1987).

8. The United States Food and Drug Administration approved the drug mifepristone, a first-generation (selective) progesterone receptor modulator ([S]PRM), as an abortion-inducing drug with a specific gestation, dosage and administration protocol.

9. As approved by the United States Food and Drug Administration, and as outlined in the drug label, an abortion by mifepristone consists of three 200 mg tablets of mifepristone taken orally, followed by two 200 mcg tablets of misopristol taken orally, through forty-nine days LMP (a gestational measurement using the first day of the woman's "last menstrual period" as a marker). The patient is to return for a follow-up visit in order to confirm that a complete termination of pregnancy has occurred. *Mifeprex Prescribing Information*, Danco Laboratories (July 2005), available at http://www.accessdata.fda.gov/drugsatfda_docs/label/2005/020687s013lbl.pdf; *Mifeprex Medication Guide*, Danco Laboratories (June 8, 2011), available at www.accessdata.fda.gov/drugsatfda_docs/label/2011/020687s014lbl.pdf.

10. The aforementioned treatment requires three office visits by the patient, and the dosages may only be administered in a clinic, medical office or hospital and under supervision of a physician.

11. Court testimony demonstrates that some abortion providers fail to follow the mifepristone protocol as tested and approved by the United States Food and Drug Administration, and as outlined in the drug label. See, e.g., *Planned Parenthood v. Goddard*, CV2009-029110, Declaration of Beth Otterstein at 3 (Sept. 10, 2009); *Planned Parenthood v. Horne*, CV2010-030230, Declaration of Paul D. Blumenthal, M.D., M.P.H. (June 29, 2011); and *Planned Parenthood Cincinnati Region v. Taft*, 459 F. Supp. 2d 626, 630 n. 7 (S.D. Oh. 2006).

12. The use of mifepristone presents significant medical risks to women, including but not limited to C. sordellii bacterial infection, septic shock, toxic shock syndrome, adult respiratory distress syndrome from sepsis, Escheria coli sepsis, group B Streptococcus septicemia, disseminated intravascular coagulopathy (DIC) with heptic and renal failure, severe pelvic infection and massive hemorrhage.

13. Abortion-inducing drugs are associated with an increased risk of complications relative to surgical abortion. The risk of complications increases with increasing gestational age, and, in the instance of mifepristone, with failure to complete the two-step dosage process.

14. Medical studies have indicated that 1 to 2 out of every 1,000 women who undergo mifepristone abortions will require emergency blood transfusion for massive hemorrhage. By April 30, 2011, the United States Food and Drug Administration reported that at least 339 women required blood transfusions for massive bleeding after mifepristone abortions. A total of 612 United States women have been hospitalized due to complications, and fourteen women in the United States have died following administration of mifepristone. The majority of reported deaths in the United States were from fatal infection. Mifepristone U.S. Postmarketing Adverse Events Summary through 04/30/2011, United States Food and Drug Administration, available at www.fda.gov/downloads/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/UCM263353.pdf. This infection is atypical to the usual presentation of sepsis and may occur without the typical signs of infection, such as fever and tenderness. This atypical presentation requires that mifepristone be dispensed only in a closely supervised clinical setting under the direction of a licensed physician who has the direct ability to counsel the patient regarding the risks, and also to examine the patient prior to and after administration of mifepristone.

15. The absence of proper follow-up care after mifepristone abortions has resulted in at least 58 women having undetected ectopic pregnancies, including two deaths from ectopic rupture. Mifepristone U.S. Postmarketing Adverse Events Summary through 04/30/2011, United States Food and Drug Administration, available at www.fda.gov/downloads/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/UCM263353.pdf.

B. For these reasons, the legislature's purposes in promulgating this act include to:

1. Prohibit abortions at or after twenty weeks of gestation, except in cases of a medical emergency, based on the documented risks to women's health and the strong medical evidence that unborn children feel pain during an abortion at that gestational age.

2. Protect women from the dangerous and potentially deadly off-label use of abortion-inducing drugs, such as, for example, mifepristone.

3. Ensure that physicians abide by the protocol tested and approved by the United States Food and Drug Administration for such abortion-inducing drugs, as outlined in the drug labels.

Sec. 10. Exemption from rule making

For the purposes of this act, the department of health services is exempt from the rule making requirements of title 41, chapter 6, Arizona Revised Statutes, for two years after the effective date of this act.

Sec. 11. Construction

This act does not establish or recognize a right to an abortion and does not make lawful an abortion that is currently unlawful.

Sec. 12. 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.

APPROVED BY THE GOVERNOR APRIL 12, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 12, 2012.

Passed the House January 26, 2012

by the following vote: 55 Ayes,

0 Nays, 4 Not Voting

1 vacant with emergency

Speaker of the House

Chief Clerk of the House

Passed the Senate March 27, 2012

by the following vote: 20 Ayes,

10 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary to the Governor

Approved this _____day of

_____

at _____o'clock _____M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary of State

H.B. 2036

HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE

April 10, 2012,

by the following vote: 37 Ayes,

22 Nays, 1 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

10th day of April, 2012,

at 4:32 o'clock P M.

Secretary to the Governor

Approved this 12th day of

April, 2012,

at 11:30 o'clock A M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 12th day of April, 2012,

at 4:51 o'clock P M.

Secretary of State

H.B. 2036