

REFERENCE TITLE: **abortion; gestational age; limit**

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

SB 1164

Introduced by
Senators Barto: Boyer, Gowan, Kerr, Livingston, Mesnard, Petersen, Shope;
Representatives Bolick, Burges, Diaz, Fillmore, Griffin, Kavanagh, Nguyen,
Toma, Udall

AN ACT

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

4 ARTICLE 3. GESTATIONAL LIMIT ON ABORTION

5 36-2321. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "ABORTION" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-2151.

8 2. "ATTEMPT TO PERFORM OR INDUCE AN ABORTION" MEANS TO DO OR TO
9 OMIT DOING ANYTHING THAT, UNDER THE CIRCUMSTANCES AS THE PHYSICIAN
10 BELIEVES THEM TO BE, IS AN ACT OR OMISSION THAT CONSTITUTES A SUBSTANTIAL
11 STEP IN A COURSE OF CONDUCT PLANNED TO CULMINATE IN THE PERFORMANCE OR
12 INDUCTION OF AN ABORTION IN VIOLATION OF THIS ARTICLE.

13 3. "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH SERVICES.

14 4. "GESTATIONAL AGE" OR "PROBABLE GESTATIONAL AGE" MEANS THE AGE OF
15 AN UNBORN HUMAN BEING AS CALCULATED FROM THE FIRST DAY OF THE LAST
16 MENSTRUAL PERIOD OF THE PREGNANT WOMAN.

17 5. "HUMAN BEING" MEANS AN INDIVIDUAL MEMBER OF THE SPECIES HOMO
18 SAPIENS, FROM AND AFTER THE POINT OF CONCEPTION.

19 6. "MAJOR BODILY FUNCTION" INCLUDES FUNCTIONS OF THE IMMUNE SYSTEM,
20 NORMAL CELL GROWTH, AND DIGESTIVE, BOWEL, BLADDER, NEUROLOGICAL, BRAIN,
21 RESPIRATORY, CIRCULATORY, ENDOCRINE AND REPRODUCTIVE FUNCTIONS.

22 7. "MEDICAL EMERGENCY" MEANS A CONDITION THAT, ON THE BASIS OF THE
23 PHYSICIAN'S GOOD FAITH CLINICAL JUDGMENT, SO COMPLICATES THE MEDICAL
24 CONDITION OF A PREGNANT WOMAN AS TO NECESSITATE THE IMMEDIATE ABORTION OF
25 HER PREGNANCY TO AVERT HER DEATH OR FOR WHICH A DELAY WILL CREATE SERIOUS
26 RISK OF SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY
27 FUNCTION.

28 8. "PHYSICIAN" MEANS A PERSON WHO IS LICENSED PURSUANT TO TITLE 32,
29 CHAPTER 13 OR 17.

30 36-2322. Gestational limit on abortion; medical emergency
31 exception; physician reports; confidentiality

32 A. EXCEPT IN A MEDICAL EMERGENCY, A PHYSICIAN MAY NOT PERFORM,
33 INDUCE OR ATTEMPT TO PERFORM OR INDUCE AN ABORTION UNLESS THE PHYSICIAN OR
34 THE REFERRING PHYSICIAN HAS FIRST MADE A DETERMINATION OF THE PROBABLE
35 GESTATIONAL AGE OF THE UNBORN HUMAN BEING AND DOCUMENTED THAT GESTATIONAL
36 AGE IN THE MATERNAL PATIENT'S CHART AND, IF REQUIRED, IN A REPORT REQUIRED
37 TO BE FILED WITH THE DEPARTMENT AS SET FORTH IN SUBSECTION C OF THIS
38 SECTION. THE DETERMINATION OF PROBABLE GESTATIONAL AGE SHALL BE MADE
39 ACCORDING TO STANDARD MEDICAL PRACTICES AND TECHNIQUES USED IN THE MEDICAL
40 COMMUNITY.

41 B. EXCEPT IN A MEDICAL EMERGENCY, A PHYSICIAN MAY NOT INTENTIONALLY
42 OR KNOWINGLY PERFORM, INDUCE OR ATTEMPT TO PERFORM OR INDUCE AN ABORTION
43 IF THE PROBABLE GESTATIONAL AGE OF THE UNBORN HUMAN BEING HAS BEEN
44 DETERMINED TO BE GREATER THAN FIFTEEN WEEKS.

1 C. IN EVERY CASE IN WHICH A PHYSICIAN PERFORMS OR INDUCES AN
2 ABORTION ON AN UNBORN HUMAN BEING WHOSE GESTATIONAL AGE IS GREATER THAN
3 FIFTEEN WEEKS, THE PHYSICIAN, WITHIN FIFTEEN DAYS AFTER THE ABORTION,
4 SHALL FILE WITH THE DEPARTMENT, ON A FORM SUPPLIED BY THE DEPARTMENT, A
5 REPORT CONTAINING ALL OF THE FOLLOWING:

- 6 1. THE DATE THE ABORTION WAS PERFORMED.
- 7 2. SPECIFIC METHOD OF ABORTION USED.
- 8 3. THE PROBABLE GESTATIONAL AGE OF THE UNBORN HUMAN BEING AND THE
9 METHOD USED TO CALCULATE GESTATIONAL AGE.
- 10 4. A STATEMENT THAT THE ABORTION WAS NECESSARY BECAUSE OF A MEDICAL
11 EMERGENCY.
- 12 5. THE SPECIFIC MEDICAL INDICATIONS SUPPORTING THE DETERMINATION
13 THAT A MEDICAL EMERGENCY EXISTED.
- 14 6. THE PROBABLE HEALTH CONSEQUENCES OF THE ABORTION.
- 15 7. THE PHYSICIAN'S SIGNATURE AS THE PHYSICIAN'S ATTESTATION UNDER
16 OATH THAT THE INFORMATION STATED IS TRUE AND CORRECT TO THE BEST OF THE
17 PHYSICIAN'S KNOWLEDGE.

18 D. REPORTS REQUIRED AND SUBMITTED PURSUANT TO SUBSECTION C OF THIS
19 SECTION MAY NOT CONTAIN THE NAME OF THE MATERNAL PATIENT ON WHOM THE
20 ABORTION WAS PERFORMED OR ANY OTHER INFORMATION OR IDENTIFIERS THAT WOULD
21 MAKE IT POSSIBLE TO IDENTIFY, IN ANY MANNER OR UNDER ANY CIRCUMSTANCES, A
22 WOMAN WHO OBTAINED OR SOUGHT TO OBTAIN AN ABORTION.

23 36-2323. Department; forms

24 THE DEPARTMENT SHALL CREATE THE FORMS REQUIRED BY SECTION 36-2322
25 WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION. THE
26 REPORTING REQUIREMENTS OF SECTION 36-2322 ON FORMS PUBLISHED BY THE
27 DEPARTMENT DO NOT APPLY UNTIL TEN DAYS AFTER THE REQUISITE FORMS HAVE BEEN
28 MADE AVAILABLE OR THE EFFECTIVE DATE OF THIS SECTION, WHICHEVER IS LATER.

29 36-2324. Violation; classification; exclusion from
30 prosecution

31 A. ANY PHYSICIAN WHO INTENTIONALLY OR KNOWINGLY VIOLATES THE
32 PROHIBITION IN SECTION 36-2322, SUBSECTION B IS GUILTY OF A CLASS 6
33 FELONY.

34 B. A PREGNANT WOMAN ON WHOM AN ABORTION IS PERFORMED, INDUCED OR
35 ATTEMPTED IN VIOLATION OF SECTION 36-2322 MAY NOT BE PROSECUTED FOR
36 CONSPIRACY TO COMMIT ANY VIOLATION OF THIS ARTICLE.

37 36-2325. Unprofessional conduct; civil penalties

38 A. A PHYSICIAN WHO INTENTIONALLY OR KNOWINGLY VIOLATES THE
39 PROHIBITION IN SECTION 36-2322, SUBSECTION B COMMITS AN ACT OF
40 UNPROFESSIONAL CONDUCT AND THE PHYSICIAN'S LICENSE TO PRACTICE MEDICINE IN
41 THIS STATE SHALL BE SUSPENDED OR REVOKED PURSUANT TO TITLE 32, CHAPTER 13
42 OR 17, AS APPLICABLE.

1 B. A PHYSICIAN WHO KNOWINGLY OR INTENTIONALLY DELIVERS TO THE
2 DEPARTMENT ANY REPORT REQUIRED BY SECTION 36-2322, SUBSECTION C THAT
3 CONTAINS A FALSE STATEMENT IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN
4 \$10,000 IMPOSED BY THE DEPARTMENT.

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

9 36-2326. Enforcement; attorney general

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

14 Sec. 2. Construction

15 This act does not:

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

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

22 Sec. 3. Legislative intent

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

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

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

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

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

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

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

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

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

1 human being has taken on "the human form" in all relevant aspects.
2 Gonzales v. Carhart, 550 U.S. 124, 160 (2007).

3 3. The United States Supreme Court has long recognized that this
4 state has an "important and legitimate interest in protecting the
5 potentiality of human life," Roe v. Wade, 410 U.S. 113, 162 (1973), and
6 specifically that this state "has an interest in protecting the life of
7 the unborn." Planned Parenthood of Southeastern Pennsylvania v. Casey,
8 505 U.S. 833, 873 (1992).

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

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

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

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

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

36 9. Medical complications from dilation and evacuation abortions
37 include pelvic infection, incomplete abortions (retained tissue), blood
38 clots, heavy bleeding or hemorrhage, laceration, tear or other injury to
39 the cervix, puncture, laceration, tear or other injury to the uterus,
40 injury to the bowel or bladder, depression, anxiety, substance abuse and
41 other emotional or psychological problems. Further, in abortions
42 performed after fifteen weeks' gestation, there is a higher risk of
43 requiring a hysterectomy, other reparative surgery or blood transfusion.

1 B. This Legislature intends through this act and any rules and
2 policies adopted hereunder, to restrict the practice of nontherapeutic or
3 elective abortion to the period up to fifteen weeks of gestation.

4 Sec. 4. Right of intervention

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

8 Sec. 5. Severability

9 If a provision of this act or its application to any person or
10 circumstance is held invalid, the invalidity does not affect other
11 provisions or applications of the act that can be given effect without the
12 invalid provision or application, and to this end the provisions of this
13 act are severable.