

State of Arizona
Senate
Fifty-third Legislature
First Regular Session
2017

SENATE BILL 1367

AN ACT

AMENDING SECTIONS 36-449.03, 36-2161, 36-2163, 36-2301 AND 36-2301.01,
ARIZONA REVISED STATUTES; 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. Section 36-449.03, Arizona Revised Statutes, is amended
3 to read:

4 36-449.03. Abortion clinics; rules; civil penalties

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

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

9 2. Dressing rooms for staff and patients.

10 3. Appropriate lavatory areas.

11 4. Areas for preprocedure hand washing.

12 5. Private procedure rooms.

13 6. Adequate lighting and ventilation for abortion procedures.

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

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

18 9. Emergency exits to accommodate a stretcher or gurney.

19 10. Areas for cleaning and sterilizing instruments.

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

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

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

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

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

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

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

45 5. Require ultrasound equipment.

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

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

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

8 2. Physicians performing abortions are licensed pursuant to title
9 32, chapter 13 or 17, demonstrate competence in the procedure involved and
10 are acceptable to the medical director of the abortion clinic.

11 3. A physician is available:

12 (a) For a surgical abortion who has admitting privileges at a
13 health care institution that is classified by the director as a hospital
14 pursuant to section 36-405, subsection B and that is within thirty miles
15 of the abortion clinic.

16 (b) For a medication abortion who has admitting privileges at a
17 health care institution that is classified by the director as a hospital
18 pursuant to section 36-405, subsection B.

19 4. If a physician is not present, a registered nurse, nurse
20 practitioner, licensed practical nurse or physician assistant is present
21 and remains at the clinic when abortions are performed to provide
22 postoperative monitoring and care, or monitoring and care after inducing a
23 medication abortion, until each patient who had an abortion that day is
24 discharged.

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

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

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

35 1. A medical history, including the following:

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

38 (b) Obstetric and gynecologic history.

39 (c) Past surgeries.

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

42 3. The appropriate laboratory tests, including:

43 (a) Urine or blood tests for pregnancy performed before the
44 abortion procedure.

45 (b) A test for anemia.

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

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

4 4. An ultrasound evaluation for all patients. The rules shall
5 require that if a person who is not a physician performs an ultrasound
6 examination, that person shall have documented evidence that the person
7 completed a course in the operation of ultrasound equipment as prescribed
8 in rule. The physician or other health care professional shall review, at
9 the request of the patient, the ultrasound evaluation results with the
10 patient before the abortion procedure is performed, including the probable
11 gestational age of the fetus.

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

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

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

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

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

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

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

35 6. FOR ABORTION CLINICS PERFORMING OR INDUCING AN ABORTION FOR A
36 WOMAN WHOSE UNBORN CHILD IS THE GESTATIONAL AGE OF TWENTY WEEKS OR MORE,
37 MINIMUM EQUIPMENT STANDARDS TO ASSIST THE PHYSICIAN IN COMPLYING WITH
38 SECTION 36-2301. FOR THE PURPOSES OF THIS PARAGRAPH, "ABORTION" AND
39 "GESTATIONAL AGE" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 36-2151.

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

42 1. For a surgical abortion, immediate postprocedure care, or care
43 provided after inducing a medication abortion, consists of observation in
44 a supervised recovery room for as long as the patient's condition
45 warrants.

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

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

7 4. For a surgical abortion, a physician with admitting privileges
8 at a health care institution that is classified by the director as a
9 hospital pursuant to section 36-405, subsection B and that is within
10 thirty miles of the abortion clinic remains on the premises of the
11 abortion clinic until all patients are stable and are ready to leave the
12 recovery room and to facilitate the transfer of emergency cases if
13 hospitalization of the patient or viable fetus is necessary. A physician
14 shall sign the discharge order and be readily accessible and available
15 until the last patient is discharged.

16 5. A physician discusses Rh0(d) immune globulin with each patient
17 for whom it is indicated and assures it is offered to the patient in the
18 immediate postoperative period or that it will be available to her within
19 seventy-two hours after completion of the abortion procedure. If the
20 patient refuses, a refusal form approved by the department shall be signed
21 by the patient and a witness and included in the medical record.

22 6. Written instructions with regard to postabortion coitus, signs
23 of possible problems and general aftercare are given to each patient.
24 Each patient shall have specific instructions regarding access to medical
25 care for complications, including a telephone number to call for medical
26 emergencies.

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

30 8. The physician assures that a licensed health professional from
31 the abortion clinic makes a good faith effort to contact the patient by
32 telephone, with the patient's consent, within twenty-four hours after a
33 surgical abortion to assess the patient's recovery.

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

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

39 1. For a surgical abortion, a postabortion medical visit is offered
40 and, if requested, scheduled for three weeks after the abortion, including
41 a medical examination and a review of the results of all laboratory tests.
42 For a medication abortion, the rules shall require that a postabortion
43 medical visit is scheduled between one week and three weeks after the
44 initial dose for a medication abortion to confirm the pregnancy is
45 completely terminated and to assess the degree of bleeding.

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

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

7 1. The abortion clinic records each incident resulting in a
8 patient's or viable fetus' serious injury occurring at an abortion clinic
9 and shall report them in writing to the department within ten days after
10 the incident. For the purposes of this paragraph, "serious injury" means
11 an injury that occurs at an abortion clinic and that creates a serious
12 risk of substantial impairment of a major body organ and includes any
13 injury or condition that requires ambulance transportation of the patient.

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

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

19 I. The director shall adopt rules relating to enforcement of this
20 article. At a minimum, these rules shall require that:

21 1. For an abortion clinic that is not in substantial compliance
22 with this article and the rules adopted pursuant to this article [AND](#)
23 [SECTION 36-2301](#) or that is in substantial compliance but refuses to carry
24 out a plan of correction acceptable to the department of any deficiencies
25 that are listed on the department's statement of deficiency, the
26 department may do any of the following:

- 27 (a) Assess a civil penalty pursuant to section 36-431.01.
- 28 (b) Impose an intermediate sanction pursuant to section 36-427.
- 29 (c) Suspend or revoke a license pursuant to section 36-427.
- 30 (d) Deny a license.
- 31 (e) Bring an action for an injunction pursuant to section 36-430.

32 2. In determining the appropriate enforcement action, the
33 department consider the threat to the health, safety and welfare of the
34 abortion clinic's patients or the general public, including:

- 35 (a) Whether the abortion clinic has repeated violations of statutes
36 or rules.
- 37 (b) Whether the abortion clinic has engaged in a pattern of
38 noncompliance.
- 39 (c) The type, severity and number of violations.

40 J. The department shall not release personally identifiable patient
41 or physician information.

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

1 Sec. 2. Section 36-2161, Arizona Revised Statutes, is amended to
2 read:

3 36-2161. Abortions; reporting requirements

4 A. A hospital or facility in this state where abortions are
5 performed must submit to the department of health services on a form
6 prescribed by the department a report of each abortion performed in the
7 hospital or facility. The report shall not identify the individual
8 patient by name but must include the following information:

9 1. The name and address of the facility where the abortion was
10 performed.

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

12 3. The county where the abortion was performed.

13 4. The woman's age.

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

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

17 7. The woman's race and ethnicity.

18 8. The woman's marital status.

19 9. The number of prior pregnancies and prior abortions of the
20 woman.

21 10. The number of previous spontaneous terminations of pregnancy of
22 the woman.

23 11. The gestational age of the unborn child at the time of the
24 abortion.

25 12. The reason for the abortion, including whether the abortion is
26 elective or due to maternal or fetal health considerations.

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 and any known medical complication that resulted from
31 the abortion.

32 15. The basis for any medical judgment that a medical emergency
33 existed that excused the physician from compliance with the requirements
34 of this chapter.

35 16. The physician's statement if required pursuant to section
36 36-2301.01.

37 17. If applicable, the weight of the aborted fetus for any abortion
38 performed pursuant to section 36-2301.01.

39 18. Whether ~~an infant~~ A FETUS OR EMBRYO was ~~born~~ DELIVERED alive AS
40 DEFINED IN SECTION 36-2301 during or immediately after an attempted
41 abortion and the efforts made to promote, preserve and maintain the life
42 of the ~~infant~~ FETUS OR EMBRYO pursuant to section 36-2301.

43 19. STATEMENTS BY THE PHYSICIAN AND ALL CLINICAL STAFF WHO OBSERVED
44 THE FETUS OR EMBRYO DURING OR IMMEDIATELY AFTER THE ABORTION CERTIFYING

1 UNDER PENALTY OF PERJURY THAT, TO THE BEST OF THEIR KNOWLEDGE, THE ABORTED
2 FETUS OR EMBRYO WAS NOT DELIVERED ALIVE AS DEFINED IN SECTION 36-2301.

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

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

16 Sec. 3. Section 36-2163, Arizona Revised Statutes, is amended to
17 read:

18 36-2163. Reports; confidentiality; annual statistical report;
19 violations; classification; unprofessional
20 conduct; penalties

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

27 B. The department of health services shall collect all abortion
28 reports and complication reports and prepare a comprehensive annual
29 statistical report based on the data gathered in the reports. **THE**
30 **STATISTICAL REPORT SHALL INCLUDE A BREAKDOWN OF THE NUMBER OF ABORTIONS BY**
31 **GESTATIONAL AGE OF THE UNBORN CHILD AT THE TIME OF THE ABORTION AND THE**
32 **TYPE OF PROCEDURE PERFORMED OR PRESCRIBED.** The statistical report shall
33 not lead to the disclosure of the identity of any person filing a report
34 or about whom a report is filed. The department shall make the
35 statistical report available on its website and for public inspection and
36 copying.

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

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

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

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

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

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

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

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

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

18 E. Original copies of all reports filed pursuant to sections
19 36-2161 and 36-2162 shall be available to the Arizona medical board and
20 the Arizona board of osteopathic examiners in medicine and surgery for use
21 in the performance of their official duties. The Arizona medical board
22 and the Arizona board of osteopathic examiners in medicine and surgery
23 shall maintain the confidentiality of any reports obtained pursuant to
24 this subsection.

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

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

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

38 I. In addition to the penalties prescribed by subsections F, G and
39 H of this section, an organization or facility that wilfully violates the
40 reporting requirements of this article is subject to discipline by the
41 department, including the civil penalties prescribed in section 36-431.01.
42 If an organization or facility that is licensed pursuant to chapter 4,
43 article 10 of this title wilfully violates the reporting requirements of
44 this article, the department may assess a civil penalty pursuant to
45 section 36-431.01, impose an intermediate sanction pursuant to section

1 36-427, suspend or revoke a license pursuant to section 36-427, deny a
2 license or bring an action for an injunction pursuant to section 36-430.

3 Sec. 4. Section 36-2301, Arizona Revised Statutes, is amended to
4 read:

5 36-2301. Duty to promote life of fetus or embryo delivered
6 alive; rules; judicial enforcement; civil action;
7 damages; definitions

8 A. If an abortion is performed and a human fetus or embryo is
9 delivered alive, it is the duty of any physician performing such AN
10 abortion and any additional physician in attendance as required by section
11 36-2301.01 to see that all available means and medical skills are used to
12 promote, preserve and maintain the life of such A fetus or embryo.

13 B. IF AN ABORTION IS PERFORMED AND A HUMAN FETUS OR EMBRYO IS
14 DELIVERED ALIVE, THE PHYSICIAN PERFORMING THE ABORTION SHALL DOCUMENT AND
15 REPORT TO THE DEPARTMENT OF HEALTH SERVICES THE MEASURES THE PHYSICIAN
16 PERFORMED TO MAINTAIN THE LIFE OF THE FETUS OR EMBRYO. IF AN ABORTION IS
17 PERFORMED AND A HUMAN FETUS OR EMBRYO WITH A LETHAL FETAL CONDITION IS
18 DELIVERED ALIVE, THE PHYSICIAN PERFORMING THE ABORTION SHALL ALSO DOCUMENT
19 AND REPORT TO THE DEPARTMENT OF HEALTH SERVICES THE SPECIFIC LETHAL FETAL
20 CONDITION THAT WAS DIAGNOSED BEFORE THE PERFORMANCE OF THE ABORTION AND
21 THAT WAS CONFIRMED BY AN EXAMINATION PERFORMED AFTER THE HUMAN EMBRYO OR
22 FETUS WAS DELIVERED ALIVE.

23 C. BEFORE AN ABORTION OF A HUMAN FETUS OR EMBRYO DIAGNOSED WITH A
24 LETHAL FETAL CONDITION, THE PHYSICIAN PERFORMING THE ABORTION MUST COMPLY
25 WITH THE REQUIREMENTS OF SECTION 36-2158, SUBSECTION A AND SHALL ALSO
26 INFORM THE WOMAN, ORALLY AND IN PERSON, THAT IF THE FETUS OR EMBRYO IS
27 DELIVERED ALIVE, THE DIAGNOSIS MUST BE CONFIRMED AFTER THE DELIVERY AND
28 THE STANDARD OF CARE REQUIRED IN SUBSECTION D OF THIS SECTION MUST BE
29 GIVEN.

30 D. THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL
31 PRESCRIBE RULES REQUIRING AN ABORTION CLINIC OR A HOSPITAL THAT PERFORMS
32 OR INDUCES AN ABORTION AT OR AFTER TWENTY WEEKS' GESTATIONAL AGE AS
33 DEFINED IN SECTION 36-2151 TO ESTABLISH, DOCUMENT AND IMPLEMENT POLICIES
34 AND PROCEDURES TO ENSURE COMPLIANCE WITH THIS SECTION. AT A MINIMUM,
35 THESE POLICIES AND PROCEDURES SHALL REQUIRE THAT:

36 1. IN THE CASE OF AN ABORTION CLINIC, A PERSON IS DESIGNATED TO
37 CONTACT EMERGENCY SERVICES IMMEDIATELY AT THE BIRTH OF A FETUS OR EMBRYO
38 DELIVERED ALIVE TO ARRANGE TRANSFER TO A HOSPITAL.

39 2. AT LEAST ONE PERSON WHO IS TRAINED IN NEONATAL RESUSCITATION IS
40 PRESENT IN THE ROOM WHERE THE ABORTION TAKES PLACE FOR ANY ABORTION
41 PERFORMED OR INDUCED AT OR AFTER TWENTY WEEKS' GESTATIONAL AGE.

42 3. ESTABLISH A PROTOCOL FOR RAPID NEONATAL RESUSCITATION OF A FETUS
43 OR EMBRYO DELIVERED ALIVE, INCLUDING ASSESSING RESPIRATION AND HEART RATE,
44 CLEARING SECRETIONS, POSITIONING THE AIRWAY, PROVIDING WARMTH, DRYING AND
45 ADMINISTERING OXYGEN AS NEEDED.

1 E. IF AN ABORTION IS PERFORMED AND A HUMAN FETUS OR EMBRYO WITH A
2 LETHAL FETAL CONDITION IS DELIVERED ALIVE, AND THE PROTOCOL FOR RAPID
3 NEONATAL RESUSCITATION OF A FETUS OR EMBRYO PURSUANT TO SUBSECTION D OF
4 THIS SECTION IS COMPLIED WITH AND ANY FURTHER TREATMENT BEYOND WHAT IS
5 PRESCRIBED PURSUANT TO SUBSECTION D OF THIS SECTION WILL DO NO MORE THAN
6 TEMPORARILY PROLONG THE ACT OF DYING WHEN DEATH IS IMMINENT, NO FURTHER
7 TREATMENT IS REQUIRED BY THIS SECTION.

8 F. A HOSPITAL THAT IS NOT IN SUBSTANTIAL COMPLIANCE WITH THE RULES
9 OR POLICIES AND PROCEDURES ADOPTED PURSUANT TO THIS SECTION MAY BE SUBJECT
10 TO THE PENALTIES AND SANCTIONS SPECIFIED IN SECTIONS 36-427 AND 36-431.01.

11 G. AN ACTION TO ENFORCE THIS SECTION SHALL BE BROUGHT IN THE NAME
12 OF THE STATE BY THE ATTORNEY GENERAL OR THE COUNTY ATTORNEY IN THE
13 SUPERIOR COURT IN THE COUNTY IN WHICH THE VIOLATION OCCURRED.

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

- 17 1. THE MOTHER OF THE HUMAN FETUS OR EMBRYO DELIVERED ALIVE.
- 18 2. THE FATHER OF THE HUMAN FETUS OR EMBRYO DELIVERED ALIVE, UNLESS
19 THE PREGNANCY RESULTED FROM THE PLAINTIFF'S CRIMINAL CONDUCT.

20 3. A MATERNAL GRANDPARENT OF THE HUMAN FETUS OR EMBRYO DELIVERED
21 ALIVE IF THE MOTHER WAS NOT AT LEAST EIGHTEEN YEARS OF AGE AT THE TIME OF
22 THE ABORTION, UNLESS THE PREGNANCY RESULTED FROM THE PLAINTIFF'S CRIMINAL
23 CONDUCT.

24 I. A CIVIL ACTION FILED PURSUANT TO SUBSECTION H OF THIS SECTION
25 SHALL BE BROUGHT IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE WOMAN ON
26 WHOM THE ABORTION WAS PERFORMED RESIDES AND MAY BE BASED ON A CLAIM THAT
27 THE FAILURE TO SEE THAT ALL AVAILABLE MEANS AND MEDICAL SKILLS WERE USED
28 TO PROMOTE, PRESERVE AND MAINTAIN THE LIFE OF THE HUMAN FETUS OR EMBRYO
29 WAS A RESULT OF SIMPLE NEGLIGENCE, GROSS NEGLIGENCE OR WANTON, WILFUL OR
30 INTENTIONAL MISCONDUCT OR ANY OTHER LEGAL STANDARD OF CARE. RELIEF FOR A
31 CIVIL ACTION FILED PURSUANT TO SUBSECTION H OF THIS SECTION MAY INCLUDE
32 ANY OF THE FOLLOWING:

- 33 1. MONETARY DAMAGES FOR PSYCHOLOGICAL, EMOTIONAL AND PHYSICAL
34 INJURIES RESULTING FROM THE VIOLATION OF THIS SECTION.
- 35 2. STATUTORY DAMAGES IN AN AMOUNT EQUAL TO FIVE THOUSAND DOLLARS OR
36 THREE TIMES THE COST OF THE ABORTION, WHICHEVER IS GREATER.
- 37 3. REASONABLE ATTORNEY FEES AND COSTS.

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

- 40 K. FOR THE PURPOSES OF THIS SECTION:
- 41 1. "ABORTION" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-2151.
 - 42 2. "DELIVERED ALIVE" MEANS THE COMPLETE EXPULSION OR EXTRACTION
43 FROM THE MOTHER OF A FETUS OR EMBRYO, REGARDLESS OF THE STATE OF
44 GESTATIONAL DEVELOPMENT, WHO, AFTER EXPULSION OR EXTRACTION, WHETHER OR

1 NOT THE UMBILICAL CORD HAS BEEN CUT OR THE PLACENTA IS ATTACHED, SHOWS ANY
2 EVIDENCE OF LIFE, INCLUDING ONE OR MORE OF THE FOLLOWING:

- 3 (a) BREATHING.
- 4 (b) A HEARTBEAT.
- 5 (c) UMBILICAL CORD PULSATION.
- 6 (d) DEFINITE MOVEMENT OF VOLUNTARY MUSCLES.

7 3. "LETHAL FETAL CONDITION" HAS THE SAME MEANING PRESCRIBED IN
8 SECTION 36-2158.

9 Sec. 5. Section 36-2301.01, Arizona Revised Statutes, is amended to
10 read:

11 36-2301.01. Abortion of viable fetus; requirements;
12 definitions

13 A. A physician shall not knowingly perform an abortion of a viable
14 fetus unless:

15 1. The physician states in writing before the abortion is performed
16 that the abortion is necessary to preserve the life or health of the
17 woman, specifying the medical indications for and the probable health
18 consequences of the abortion. The physician shall attach a copy of this
19 statement to any fetal death report filed pursuant to section 11-593 or
20 fetal death registration filed pursuant to section 36-329, ~~subsection C~~.

21 2. The physician uses the available method or technique of abortion
22 most likely to preserve the life and health of the fetus, unless the use
23 of such method or technique would present a greater risk to the life or
24 health of the woman than the use of another available method or technique.

25 3. The physician states in writing the available methods or
26 techniques considered, the method or technique used and the reasons for
27 choosing that method or technique. The physician shall attach a copy of
28 this statement to any fetal death report filed pursuant to section 11-593
29 or fetal death registration filed pursuant to section
30 36-329, ~~subsection C~~.

31 4. In addition to the physician performing the abortion, there is
32 another physician in attendance who shall take control of and provide
33 immediate medical care for a living child born as a result of the
34 abortion.

35 5. The physician takes all reasonable steps during the performance
36 of the abortion, consistent with the procedure used and in keeping with
37 good medical practice, to preserve the life and health of the fetus, if
38 these steps do not pose an increased risk to the life or health of the
39 woman on whom the abortion is performed.

40 B. This section does not apply if there is a medical emergency.

41 C. ~~As used in~~ FOR THE PURPOSES OF this section and section
42 36-2301.02:

43 1. "Abortion" ~~means the use of an instrument, medicine or drug or~~
44 ~~other substance or device with the intent to terminate a pregnancy for~~
45 ~~reasons other than to increase the probability of a live birth, to~~

1 ~~preserve the life or health of the child after live birth, to terminate an~~
2 ~~ectopic pregnancy or to remove a dead fetus. Abortion does not include~~
3 ~~birth control devices or oral contraceptives~~ HAS THE SAME MEANING
4 PRESCRIBED IN SECTION 36-2151.

5 2. "Medical emergency" means a condition that, on the basis of the
6 physician's good faith clinical judgment, so complicates a pregnancy as to
7 necessitate the immediate abortion of the pregnancy to avoid the woman's
8 death or for which a delay will create serious risk of substantial and
9 irreversible impairment of a major bodily function.

10 ~~4.~~ 3. "Physician" means any person licensed under title 32,
11 chapter 13 or 17.

12 ~~3.~~ 4. "Viable fetus" means the unborn offspring of human beings
13 that has reached a stage of fetal development so that, in the judgment of
14 the attending physician on the particular facts of the case, there is a
15 reasonable probability of the fetus' sustained survival outside the
16 uterus, with or without artificial support.

17 Sec. 6. Legislative findings and purpose

18 A. The legislature finds that:

19 1. This state has a paramount interest in protecting all human
20 life.

21 2. If an attempted abortion results in the live delivery of an
22 infant, the infant is a person for all purposes under the laws of this
23 state.

24 3. It is not an infringement on the right to abortion articulated
25 by the United States supreme court for this state to assert its interest
26 in protecting an infant whose live delivery occurred as the result of an
27 attempted abortion.

28 4. Due to advances in neonatal care, the gestational age at which
29 an infant may survive if delivered alive continues to decrease.

30 5. Two recent reports of incidents in this state demonstrate that
31 some doctors are not using all available means to promote, preserve and
32 maintain the lives of infants delivered alive as required by section
33 36-2301, Arizona Revised Statutes, as amended by this act. *See 911 tapes;*
34 *Aborted fetus was breathing*, 12NEWS.COM,
35 [http://www.12news.com/mb/news/local/valley/911-tapes-aborted-fetus-was-](http://www.12news.com/mb/news/local/valley/911-tapes-aborted-fetus-was-breathing/208414143)
36 [breathing/208414143](http://www.12news.com/mb/news/local/valley/911-tapes-aborted-fetus-was-breathing/208414143) (last visited Jan. 20, 2017); Gary Grado, *FBI agent's*
37 *description raises question about whether aborted baby was born alive*,
38 ARIZ. CAP. TIMES (June 5, 2015, 4:58 AM)
39 [http://azcapitoltimes.com/news/2015/06/05/fbi-agents-description-raises-](http://azcapitoltimes.com/news/2015/06/05/fbi-agents-description-raises-question-about-whether-aborted-baby-was-born-alive/)
40 [question-about-whether-aborted-baby-was-born-alive/](http://azcapitoltimes.com/news/2015/06/05/fbi-agents-description-raises-question-about-whether-aborted-baby-was-born-alive/).

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

43 1. Ensure the protection and promotion of the health and well-being
44 of all infants delivered alive in this state.

1 2. Require providers to document the life-saving and
2 life-sustaining medical care and treatment given to all infants delivered
3 alive as a result of an attempted abortion.

4 Sec. 7. Construction

5 This act does not create or recognize a right to abortion. It is
6 not the intention of this act to make lawful an abortion that is currently
7 unlawful.

8 Sec. 8. 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.