

## ARIZONA

**H.B 2677 repealed § 13-3603** (1864 abortion ban in all cases except to save the life of the woman), Arizona Revised Statutes, Relating to Family Offenses (May 2, 2024) but does not go into effect until 90 days after legislature adjourns.

**But see**, *Planned Parenthood Ariz. v. Mayes and Hazelrigg*, CV -23-0005, Attorney General's Motion to Stay Issuance of Mandate, requesting 90 days to stay issuance of Court's mandate (enforcement of the 1864 abortion ban, § 13-3603), allowed. (May 13, 2024). The stay is in effect through and including August 12, 2024.

**See also**, *Isaacson v. State*, No. CV 2022-013091 (Maricopa Cnty. Super. Ct.), prohibits enforcement of § 13-3603 until 45 days after the Arizona Supreme Court's mandate in *Planned Parenthood Ariz. v. Mayes and Hazelrigg*, No. CV-23-0005-PR (below).

*Planned Parenthood Ariz. V. Mayes and Hazelrigg*, No. CV-23-0005-PR (April 9, 2024), Arizona Supreme Court vacated Appeals Court judgement (354 Ariz. 401, 2022). The Arizona Supreme Court held that § 36-2322 (preventing a physician from performing an abortion after 15 weeks gestation) does not provide authority to repeal or restrict § 13-3603 (1864 abortion ban in all cases except to save the life of the woman. "...physicians are now on notice that all abortions, except those necessary to save a woman's life, are illegal, see § 13-3603, and that additional criminal and regulatory sanctions may apply to abortions performed after fifteen weeks' gestation, see §§ 36-2322, -2324, -2325. Physicians are tasked with otherwise comporting their conduct with Title 36's requirements..." (Opinion at p.23). Enforcement of § 13-3603 is stayed for fourteen calendar days from filing date of the opinion.

*Planned Parenthood Ariz., Inc. v. Brnovich*, No. 2 CA-CV 2022-0116, 2022 Ariz. App. LEXIS 390 (App. Dec. 30, 2022)( "a licensed physician who performs an elective abortion in conformity with more recent statutes in Title 36 is not subject to prosecution under Ariz. Rev. Stat. § 13-3603....". Arizona's recent abortion law bans abortion performed by a physician beyond 15 weeks gestation absent a medical emergency.  
§ 22(B). But see *Planned Parenthood Ariz. V. Mayes and Hazelrigg*, No. CV-23-0005-PR above.

*Planned Parenthood center of Tucson, Inc. v/ Brnovich*, No. 27867, (Az. Sup. Ct., Pima Cty., September 22, 2022, (1864 abortion ban is enforceable),  
<https://www.azag.gov/media/interest/ruling-planned-parenthood-v-brnovich>

*Isaacson v. Horne*, 716 F.3d 1213 , 2013 U.S. App. LEXIS 10187 (9th Cir. 2013) cert den sub nom *Horne v. Isaacson*, \_\_\_ U.S. \_\_\_, 134 S. Ct. 905, 187 L.Ed. 2d 778 (2014), (A section of Arizona statute that prevented a woman from obtaining an abortion before the fetus was viable was held unconstitutional given the then existing United States Supreme Court precedent).

*Planned Parenthood Ariz., Inc. v. Am. Ass'n of Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, 2011 Ariz. App. LEXIS 148 \*\*\* (Ct. App. 2011)

(Arizona Constitution affords no greater protection than the federal standards around abortion rights).

*Simat Corp. v. Ariz. Health Care Cost Containment Sys.*, 203 Ariz. 454, 2002 Ariz. LEXIS 180 \*\*\* (2002)

(The ruling in this case recognized that Arizona must be even-handed with its health care policies. The Court stressed that its opinion was not about whether the Arizona Constitution provided a more expansive abortion choice than the federal constitution. The Court stated that Arizona citizens enjoy a fundamental right to choose abortion as settled by the United States Supreme Court under the federal constitution).

*Planned Parenthood of S. Ariz., Inc. v. Woods*, 982 F. Supp. 1369, 1997 U.S. Dist. LEXIS 17226 \*\* (D. Ariz. 1997)

(This case held unconstitutional Arizona's statute banning partial birth abortion for burdening a woman's right to terminate a nonviable fetus, and for impermissibly creating spousal and parental consent mandates. The statute was also unconstitutionally vague in the conduct it sought to prevent).

*Roe v. Ariz. Bd. of Regents*, 23 Ariz. App. 477, 1975 Ariz. App. LEXIS 591 \*\* (1975)

(holding that Arizona statute Ariz. Rev. Stat. § 36-2151, permitting providers the right to refuse to perform abortion is unconstitutional as applied to public hospitals)

## **Executive Order 2023-11**

...NOW, THEREFORE, I, Katie Hobbs, Governor of the State of Arizona, by virtue of the power vested in me by the Arizona Constitution and the laws of this State, hereby order and direct as follows:

1. **Centralizing Authority over Abortion-Related Criminal Prosecutions.** To the extent permissible under Arizona law, the Attorney General shall assume all duties with regard to any criminal prosecution of a medical provider or other entity or individual that is pending or brought in the future by the county attorney of any county in this State for violation of any State law restricting or prohibiting abortion care including, without limitation, A.R.S. § 13-3603 and provisions in Title 36, Chapter 23.
2. **Restrictions on Investigative Assistance.** Unless required pursuant to a court order or Arizona or federal law, no State Agency shall provide information, data, or investigative assistance or otherwise use any State resources in furtherance of an investigation or proceeding initiated in or by another state that seeks to impose criminal or civil liability or professional sanction upon a person or entity for conduct related to providing, assisting, seeking, or obtaining reproductive healthcare that would not be punishable under Arizona law.

1. Notwithstanding this provision, a State Agency may provide information or assistance or otherwise use State resources in connection with such an

investigation or proceeding in response to a written request from the subject of the investigation or proceeding.

3. Restrictions on Extraditions. To the extent permissible under Arizona and federal law, my Administration shall decline any request from the executive authority of another state for the arrest, surrender, or extradition of any person charged with a criminal violation of a law where the alleged violation relates to the provision of, assistance with, securing of, or receipt of reproductive healthcare, unless the acts forming the basis of the prosecution of the crime charged would also be punishable as a criminal offense under Arizona law.
4. Advisory Council on Protecting Reproductive Freedom. The Governor's Advisory Council on Protecting Reproductive Freedom (the "Council") is created to make recommendations that expand access to sexual and reproductive health care in Arizona. The Council should consider, but is not limited to, expanding access to family planning and reproductive health resources, analyzing the existing regulatory and enforcement framework to suggest improvements, and addressing disparities to improve the health of Arizona's communities.
  1. The Council Chair and members shall be appointed by the Governor and shall serve without compensation at the pleasure of the Governor. Membership shall be representative of the medical, social service, public health, and advocacy communities, and composition should reflect the diversity of Arizona's communities, including Indigenous, rural, and LGBTQ communities.
5. For the purposes of this Executive Order, the term "State Agency" shall include, without limitation, all executive departments, agencies, offices, and all State boards and commissions and any employee, officer, or other person acting on their behalf, except for: (a) any State agency that is headed by a single elected State official; (b) the Corporation Commission; and (c) any board or commission established by ballot measure during or after the November 1998 general election.
6. This Executive Order shall not confer any legal rights or remedies upon any person and shall not be used as a basis for legal challenges to any action or inaction of a State Agency, officer, employee, or agent thereof.
7. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision or application of this Executive Order which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.
8. This Executive Order shall take effect immediately upon signature, and shall remain in effect until repealed, replaced, or rescinded by future Executive Order. This Executive Order shall be reviewed no later than June 24, 2024 to determine appropriate action for its continuance, modification, or elimination.

## **SB 1164 - Signed into Law on March 24, 2022**

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

Be it enacted by the Legislature of the State of Arizona:  
Section 1. Title 36, chapter 23, Arizona Revised Statutes, is  
amended by adding article 3, to read:

#### **ARTICLE 3. GESTATIONAL LIMIT ON ABORTION**

36-2321. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ABORTION" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-2151.
2. "ATTEMPT TO PERFORM OR INDUCE AN ABORTION" MEANS TO DO OR TO OMIT DOING ANYTHING THAT, UNDER THE CIRCUMSTANCES AS THE PHYSICIAN BELIEVES THEM TO BE, IS AN ACT OR OMISSION THAT CONSTITUTES A SUBSTANTIAL STEP IN A COURSE OF CONDUCT PLANNED TO CULMINATE IN THE PERFORMANCE OR INDUCTION OF AN ABORTION IN VIOLATION OF THIS ARTICLE.
3. "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH SERVICES.
4. "GESTATIONAL AGE" OR "PROBABLE GESTATIONAL AGE" MEANS THE AGE OF AN UNBORN HUMAN BEING AS CALCULATED FROM THE FIRST DAY OF THE LAST MENSTRUAL PERIOD OF THE PREGNANT WOMAN.
5. "HUMAN BEING" MEANS AN INDIVIDUAL MEMBER OF THE SPECIES HOMO SAPIENS, FROM AND AFTER THE POINT OF CONCEPTION.
6. "MAJOR BODILY FUNCTION" INCLUDES FUNCTIONS OF THE IMMUNE SYSTEM, NORMAL CELL GROWTH, AND DIGESTIVE, BOWEL, BLADDER, NEUROLOGICAL, BRAIN, RESPIRATORY, CIRCULATORY, ENDOCRINE AND REPRODUCTIVE FUNCTIONS.
7. "MEDICAL EMERGENCY" MEANS A CONDITION THAT, ON THE BASIS OF THE PHYSICIAN'S GOOD FAITH CLINICAL JUDGMENT, SO 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.

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

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

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

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

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

1. THE DATE THE ABORTION WAS PERFORMED.
2. SPECIFIC METHOD OF ABORTION USED.
3. THE PROBABLE GESTATIONAL AGE OF THE UNBORN HUMAN BEING AND THE

METHOD USED TO CALCULATE GESTATIONAL AGE.

4. A STATEMENT THAT THE ABORTION WAS NECESSARY BECAUSE OF A MEDICAL EMERGENCY.

5. THE SPECIFIC MEDICAL INDICATIONS SUPPORTING THE DETERMINATION THAT A MEDICAL EMERGENCY EXISTED.

6. THE PROBABLE HEALTH CONSEQUENCES OF THE ABORTION.

7. THE PHYSICIAN'S SIGNATURE AS THE PHYSICIAN'S ATTESTATION UNDER

OATH THAT THE INFORMATION STATED IS TRUE AND CORRECT TO THE BEST OF THE PHYSICIAN'S KNOWLEDGE.

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

**36-2323. Department; forms**

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

**36-2324. Violation; classification; exclusion from prosecution**

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

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

**36-2325. Unprofessional conduct; civil penalties**

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

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

C. A PHYSICIAN WHO KNOWINGLY OR INTENTIONALLY FAILS TO FILE WITH THE DEPARTMENT ANY REPORT REQUIRED BY SECTION 36-2322, SUBSECTION C IS

SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN \$10,000 IMPOSED BY THE DEPARTMENT.

**36-2326. Enforcement; attorney general**

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

## **Sec. 2. Construction**

This act does not:

1. Create or recognize a right to abortion or alter generally accepted medical standards. The Legislature does not intend this act to make lawful an abortion that is currently unlawful.
2. Repeal, by implication or otherwise, section 13-3603, Arizona Revised Statutes, or any other applicable state law regulating or restricting abortion.

## **Sec. 3. Legislative intent**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Sec. 4. Right of intervention**



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

## **Sec. 5. Severability**

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

## **Title 13 Criminal Codes**

### **Chapter 36 Family Offenses (§§ 13-3601 -13-3625)**

#### **13-3603.01. Partial-birth abortions; classification; civil action; definitions**

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A. Any physician who knowingly performs a partial-birth abortion and thereby kills a human fetus is guilty of a class 6 felony and shall be fined under this title or imprisoned not more than two years, or both.

B. This section does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

C. The father of the fetus if married to the mother at the time she receives a partial-birth abortion procedure and the maternal grandparents of the fetus if the mother is not at least eighteen years of age at the time of the partial-birth abortion may bring a civil action to obtain appropriate relief unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the partial-birth abortion. Relief pursuant to this subsection includes the following:

1. Money damages for all injuries, psychological and physical, resulting from the violation of this section.
2. Statutory damages in an amount equal to three times the cost of the partial-birth abortion.

D. This section shall not subject a woman upon whom a partial-birth abortion is performed to any criminal prosecution or civil liability.

E. A defendant who is accused of an offense under this section may seek a hearing before the Arizona medical board if the defendant is licensed pursuant to title 32, chapter 13 or the Arizona board of osteopathic examiners in medicine and surgery if the defendant is licensed pursuant to

title 32, chapter 17 on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself. The findings on that issue are admissible, in the court's discretion, on that issue at the trial of the defendant. On a motion of the defendant, the court shall, in its discretion, delay the beginning of the trial for not more than thirty days to permit a hearing to take place.

F. For the purposes of this section:

1. “Partial-birth abortion” means an abortion in which the person performing the abortion does both of the following:

(a) Deliberately and intentionally vaginally delivers a living fetus until, in the case of a headfirst presentation, the entire fetal head is outside the body of the mother or, in the case of breech presentation, any part of the fetal trunk past the naval is outside the body of the mother for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus.

(b) Performs the overt act, other than completion of delivery, that kills the partially delivered living fetus.

2. “Physician” means a doctor of medicine or a doctor of osteopathy who is licensed pursuant to title 32, chapter 13 or 17 or any other individual legally authorized by this state to perform abortions. Any individual who is not a physician or who is not otherwise legally authorized by this state to perform abortions but who nevertheless directly performs a partial-birth abortion shall be subject to this section.

### **A.R.S. § 13-3603.01**

#### **13-3603.02. Abortion; sex and race selection; genetic abnormality; injunctive and civil relief; failure to report; definitions**

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A. Except in a medical emergency, a person who knowingly does any of the following is guilty of a class 6 felony:

1. Performs an abortion knowing that the abortion is sought based on the sex or race of the child or the race of a parent of that child.
2. Performs an abortion knowing that the abortion is sought solely because of a genetic abnormality of the child.

B. A person who knowingly does either of the following is guilty of a class 3 felony:

1. Uses force or the threat of force to intentionally injure or intimidate any person for the purpose of coercing a sex-selection or race-selection abortion or an abortion because of a genetic abnormality of the child.
2. Solicits or accepts monies to finance a sex-selection or race-selection abortion or an abortion because of a genetic abnormality of the child.

C. The attorney general or the county attorney may bring an action in superior court to enjoin the activity described in subsection A or B of this section.

D. The father of the unborn child who is married to the mother at the time she receives a sex-selection or race-selection abortion or an abortion because of a genetic abnormality of the child, or, if the mother has not attained eighteen years of age at the time of the abortion, a maternal grandparent of the unborn child, may bring a civil action on behalf of the unborn child to obtain appropriate relief with respect to a violation of subsection A or B of this section. The court may award reasonable attorney fees as part of the costs in an action brought pursuant to this subsection. For the purposes of this subsection, “appropriate relief” includes monetary damages

for all injuries, whether psychological, physical or financial, including loss of companionship and support, resulting from the violation of subsection A or B of this section.

E. A physician, physician's assistant, nurse, counselor or other medical or mental health professional who knowingly does not report known violations of this section to appropriate law enforcement authorities shall be subject to a civil fine of not more than \$10,000.

F. A woman on whom a sex-selection or race-selection abortion or an abortion because of a child's genetic abnormality is performed is not subject to criminal prosecution or civil liability for any violation of this section or for a conspiracy to violate this section.

G. For the purposes of this section:

1. "Abortion" has the same meaning prescribed in section 36-2151.

2. "Genetic abnormality":

(a) Means the presence or presumed presence of an abnormal gene expression in an unborn child, including a chromosomal disorder or morphological malformation occurring as the result of abnormal gene expression.

(b) Does not include a lethal fetal condition. For the purposes of this subdivision, "lethal fetal condition" has the same meaning prescribed in section 36-2158.

3. "Medical emergency" has the same meaning prescribed in section 36-2151.

### **13-3605. Advertising to produce abortion or prevent conception; punishment**

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A person who willfully writes, composes or publishes a notice or advertisement of any medicine or means for producing or facilitating a miscarriage or abortion, or for prevention of conception, or who offers his services by a notice, advertisement or otherwise, to assist in the accomplishment of any such purposes, is guilty of a misdemeanor.

## **A.R.S. § 13-3605**

### **Title 36 Public Health and Safety Chapter 20 Abortion (Arts. 1 — 2)**

#### **Article 1. General Provisions (§§ 36-2151 — 36-2160)**

##### 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 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. “Bodily remains” means the physical remains, corpse or body parts of an unborn child who has been expelled or extracted from his or her mother through abortion.
4. “Conception” means the fusion of a human spermatozoon with a human ovum.
5. “Final disposition” has the same meaning prescribed in section 36-301.
6. “Genetic abnormality” has the same meaning prescribed in section 13-3603.02.
7. “Gestational age” means the age of the unborn child as calculated from the first day of the last menstrual period of the pregnant woman.
8. “Health professional” has the same meaning prescribed in section 32-3201.
9. “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.
10. “Medication abortion” means the use of any medication, drug or other substance that is intended to cause or induce an abortion.
11. “Physician” means a person who is licensed pursuant to title 32, chapter 13 or 17.
12. “Pregnant” or “pregnancy” means a female reproductive condition of having a developing unborn child in the body and that begins with conception.
13. “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.
14. “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.
15. “Ultrasound” means the use of ultrasonic waves for diagnostic or therapeutic purposes to monitor a developing unborn child.
16. “Unborn child” means the offspring of human beings from conception until birth.

**Ariz. Rev. Stat. § 36-2151 (LexisNexis, Lexis Advance through all 2022 legislation, including the 55<sup>th</sup> Legislature’s 2<sup>nd</sup> Regular session)**

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

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A. In addition to the other requirements of 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 the 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 who intentionally causes, aids or assists a minor in obtaining 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 \$5,000 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 the unborn child 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 the unborn child 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.

**Ariz. Rev. Stat. § 36-2152 (LexisNexis, Lexis Advance through all 2022 legislation, including the 55th Legislature's 2nd Regular session)**

**36-2153. Informed consent; requirements; information; website; signage; violation; civil relief; statute of limitations**

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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 the 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.
- (h) In the case of a surgical abortion, the woman has the right to determine final disposition of bodily remains and to be informed of the available options for locations and methods for disposition of bodily remains.

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.



5. In the case of a surgical abortion, if the woman desires to exercise her right to determine final disposition of bodily remains, the woman indicates in writing her choice for the location and method of final disposition of bodily remains

B. If a woman has taken mifepristone as part of a two-drug regimen to terminate her pregnancy, has not yet taken the second drug and consults an abortion clinic questioning her decision to terminate her pregnancy or seeking information regarding the health of her fetus or the efficacy of mifepristone alone to terminate a pregnancy, the abortion clinic staff shall inform the woman that the use of mifepristone alone to end a pregnancy is not always effective and that she should immediately consult a physician if she would like more information.

C. 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.

D. The department of health services shall establish and shall annually update a website that includes 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.

8. Information explaining the efficacy of mifepristone taken alone, without a follow-up drug as part of a two-drug regimen, to terminate a pregnancy and advising a woman to immediately contact a physician if the woman has taken only mifepristone and questions her decision to terminate her pregnancy or seeks information regarding the health of her fetus.

E. An individual who is not a physician shall not perform a surgical abortion.

F. 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 twenty-four-hour reflection period required by subsection A of this section expires.

G. 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.

H. 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.

I. A person shall not require a woman to obtain an abortion as a provision in a contract or as a condition of employment.

J. 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.

K. 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 the father was married to the mother at the time she received the abortion, unless the pregnancy resulted from the plaintiff's criminal conduct.
3. A maternal grandparent 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.

L. A civil action filed pursuant to subsection K 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 K 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 \$5,000 or three times the cost of the abortion, whichever is greater.
3. Reasonable attorney fees and costs.

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

**Ariz. Rev. Stat. § 36-2153 (LexisNexis, Lexis Advance through all 2022 legislation, including the 55<sup>th</sup> Legislature's 2<sup>nd</sup> Regular session)**

**36-2153.01. Website information; agencies providing support for pregnant women; adoption information**

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A. On or before February 1, 2022, the department of health services shall provide on the department's public website home page a conspicuous link that directs an individual to the following easily comprehensible information, in both English and Spanish:

1. A list of public and private agencies and services available to assist a woman through pregnancy, on childbirth and while her child is dependent. Any agency that counsels, refers, performs, induces, prescribes or provides any means for abortion may not be included on the list.
2. Each agency's services, physical address, telephone number and website address, if available.
3. Information on and a link to a separate featured webpage that is accessible by redirecting from the domain name adoptionoption.az.gov and that lists all of the following:

- (a) Public and nonprofit adoption agencies that are not affiliated with an abortion provider and that are arranged geographically. The link shall include the information specified in paragraph 2 of this subsection.
- (b) Easily comprehensible first steps to assist a pregnant woman seeking to confidentially explore the option of placing her child for adoption.
- (c) Whether the adoption agency allows the woman to choose the adoptive parents.
- (d) Agencies that offer obstetric ultrasounds free of charge.
- (e) Agencies that offer confidential counseling free of charge to a woman considering placing her child for adoption.

B. All information provided pursuant to subsection A of this section shall be available in an easily downloadable printed format.

Ariz. Rev. Stat. § 36-2153.01 (LexisNexis, Lexis Advance through all 2022 legislation, including the 55th Legislature's 2nd Regular session)

### **36-2154. Right to refuse to participate in abortion; abortion medication or emergency contraception**

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A. A hospital is not required to admit any patient for the purpose of performing an abortion. A physician, or any other person who is a member of or associated with the staff of a hospital, or any employee of a hospital, doctor, clinic or other medical or surgical facility in which an abortion has been authorized, who states in writing an objection to the abortion on moral or religious grounds is not required to facilitate or participate in the medical or surgical procedures that will result in the abortion.

**36.** A pharmacy, hospital or health professional, or any employee of a pharmacy, hospital or health professional, who states in writing an objection to abortion, abortion medication, emergency contraception or any medication or device intended to inhibit or prevent implantation of a fertilized ovum on moral or religious grounds is not required to facilitate or participate in the provision of an abortion, abortion medication, emergency contraception or any medication or device intended to inhibit or prevent implantation of a fertilized ovum.

The pharmacy, hospital or health professional, or an employee of the pharmacy, hospital or health professional, shall return to the patient the patient's written prescription order.

Ariz. Rev. Stat. § 36-2154 (LexisNexis, Lexis Advance through all 2022 legislation, including the 55<sup>th</sup> Legislature's 2<sup>nd</sup> Regular session)

### **36-2155. Performance of an abortion by individual who is not a physician; prohibition; definitions**

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A. An individual who is not a physician shall not perform a surgical abortion.

B. For the purposes of this section:

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

2. “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.

**Ariz. Rev. Stat. § 36-2155 (LexisNexis, Lexis Advance through all 2022 legislation, including the 55th Legislature's 2nd Regular session)**

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

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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 both of the following are true:

1. At least 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.

3. 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.

- 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 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.
  - E. 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, willfulness, 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.

**Ariz. Rev. Stat. § 36-2156 (LexisNexis, Lexis Advance through all 2022 legislation, including the 55th Legislature's 2nd Regular session)**

### **36-2157. Affidavit**

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A person shall not knowingly perform or induce an abortion before that person completes an affidavit that:

1. States that the person making the affidavit is not aborting the child because of the child's sex or race or because of a genetic abnormality of the child and has no knowledge that the child to be aborted is being aborted because of the child's sex or race or because of a genetic abnormality of the child.

2. Is signed by the person performing or inducing the abortion.

**Ariz. Rev. Stat. § 36-2157 (LexisNexis, Lexis Advance through all 2022 legislation, including the 55<sup>th</sup> Legislature's 2<sup>nd</sup> Regular session)**

**36-2158. Informed consent; fetal condition; website; unprofessional conduct; civil relief; statute of limitations; definitions**

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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.

(d) That section 13-3603.02 prohibits abortion because of the unborn child's sex or race or because of a genetic abnormality.

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 and annually update a website that includes 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 was married to the mother at the time she received the abortion, unless the pregnancy resulted from the father's criminal conduct.

3. A maternal grandparent 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 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 \$5,000 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.

**36.** “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.

**Ariz. Rev. Stat. § 36-2158 (LexisNexis, Lexis Advance through all 2022 legislation, including the 55<sup>th</sup> Legislature’s 2<sup>nd</sup> Regular session)**

**36-2159. Abortion; gestational age; violation; classification; unprofessional conduct; civil relief; statute of limitations**

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- 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.
3. 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.
4. 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.

G. 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.

**Ariz. Rev. Stat. § 36-2159 (LexisNexis, Lexis Advance through all 2022 legislation, including the 55th Legislature's 2nd Regular session)**

### **36-2160. Abortion-inducing drugs; definition**

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A. An abortion-inducing drug may be provided only by a qualified physician in accordance with the requirements of this chapter.

B. A manufacturer, supplier or physician or any other person is prohibited from providing an abortion-inducing drug via courier, delivery or mail service.

C. This section does not apply to drugs that may be known to cause an abortion but that are prescribed for other medical indications.

D. For the purposes of this section, "abortion-inducing drug" means a medicine or drug or any other substance used for a medication abortion.

**Ariz. Rev. Stat. § 36-2160 (LexisNexis, Lexis Advance through all 2022 legislation, including the 55th Legislature's 2nd Regular session)**

**Chapter 20 Abortion (Arts. 1 — 2)**

**Article 2. Abortion Reporting Requirements (§§ 36-2161 — 36-2164)**

**36-2161. Abortions; reporting requirements**

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

1. The name and address of the facility where the abortion was performed.
2. The type of facility where the abortion was performed.
3. The county where the abortion was performed.
4. The woman's age.
5. The woman's educational background by highest grade completed and, if applicable, level of college completed.
6. The county and state in which the woman resides.
7. The woman's race and ethnicity.
8. The woman's marital status.
9. The number of prior pregnancies and prior abortions of the woman.
10. The number of previous spontaneous terminations of pregnancy of the woman.
11. The gestational age of the unborn child at the time of the abortion.
12. The reason for the abortion, including at least one of the following:
  - (a) The abortion is elective.
  - (b) The abortion is due to maternal health considerations, including one of the following:
    - (i) A premature rupture of membranes.
    - (ii) An anatomical abnormality.
    - (iii) Chorioamnionitis.
    - (iv) Preeclampsia.
    - (v) Other.
  - (c) The abortion is due to fetal health considerations, including the fetus being diagnosed with at least one of the following:
    - (i) A lethal anomaly.
    - (ii) A central nervous system anomaly.
    - (iii) Other.
  - (d) The pregnancy is the result of a sexual assault.
  - (e) The pregnancy is the result of incest.
  - (f) The woman is being coerced into obtaining an abortion.
  - (g) The woman is a victim of sex trafficking.
  - (h) The woman is a victim of domestic violence.
  - (i) Other.

- (j) The woman declined to answer.
- 13. The type of procedure performed or prescribed and the date of the abortion.
- 14. Any preexisting medical conditions of the woman that would complicate pregnancy.
- 15. Any known medical complication that resulted from the abortion, including at least one of the following:
  - (a) Shock.
  - (b) Uterine perforation.
  - (c) Cervical laceration requiring suture or repair.
  - (d) Heavy bleeding or hemorrhage with estimated blood loss of at least five hundred cubic centimeters.
  - (e) Aspiration or allergic response.
  - (f) Postprocedure infection.
  - (g) Sepsis.
  - (h) Incomplete abortion retaining part of the fetus requiring reevacuation.
  - (i) Damage to the uterus.
  - (j) Failed termination of pregnancy.
  - (k) Death of the patient.
  - (l) Other.
  - (m) None.
- 16. The basis for any medical judgment that a medical emergency existed that excused the physician from compliance with the requirements of this chapter.
- 17. The physician's statement if required pursuant to section 36-2301.01.
- 18. If applicable, the weight of the aborted fetus for any abortion performed pursuant to section 36-2301.01.
- 19. Whether a fetus or embryo was delivered alive as defined in section 36-2301 during or immediately after an attempted abortion and the efforts made to promote, preserve and maintain the life of the fetus or embryo pursuant to section 36-2301.
- 20. Statements by the physician and all clinical staff who observed the fetus or embryo during or immediately after the abortion certifying under penalty of perjury that, to the best of their knowledge, the aborted fetus or embryo was not delivered alive as defined in section 36-2301.
- 21. The medical specialty of the physician performing the abortion, including one of the following:
  - (a) Obstetrics-gynecology.
  - (b) General or family practice.
  - (c) Emergency medicine.
  - (d) Other.
- 22. The type of admission for the patient, including whether the abortion was performed:
  - (a) As an outpatient procedure in an abortion clinic.

- (b) As an outpatient procedure at a hospital.
- (c) As an inpatient procedure at a hospital.

- (e) As an outpatient procedure at a health care institution other than an abortion clinic or hospital.

23. Whether anesthesia was administered to the mother.

24. Whether anesthesia was administered to the unborn child.

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

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

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

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

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

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

**Ariz. Rev. Stat. § 36-2161 (LexisNexis, Lexis Advance through all 2022 legislation, including the 55<sup>th</sup> Legislature's 2<sup>nd</sup> Regular session)**

### **36-2162. Complications; reporting requirements**

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A. A health professional who provides medical care or treatment to a woman who, in the good faith judgment of the health professional, is in need of medical care because of a complication or complications resulting from having undergone an abortion or attempted abortion must file a report with the department of health services on a form prescribed by the department. The report shall not identify the individual patient by name but must contain the following information and other information as the department may require:

1. The date of the abortion.
2. The woman's age.
3. The number of pregnancies the woman may have had before the abortion.
4. The number and type of abortions the woman may have had before this abortion.
5. The name and address of the facility where the abortion was performed.
6. The gestational age of the unborn child at the time of the abortion, if known.
7. The type of abortion performed, if known.
8. The nature of the complication or complications, including at least one of the following:
  - (a) Shock.
  - (b) Uterine perforation.
  - (c) Cervical laceration requiring suture or repair.
  - (d) Heavy bleeding or hemorrhage with estimated blood loss of at least five hundred cubic centimeters.
  - (e) Aspiration or allergic response.
  - (f) Postprocedure infection.
  - (g) Sepsis.
  - (h) Incomplete abortion retaining part of the fetus requiring reevacuation.
  - (i) Damage to the uterus.
  - (j) Failed termination of pregnancy.
  - (k) Death of the patient.
  - (l) Other.
9. The medical treatment given.
10. The nature and extent, if known, of any permanent condition caused by the complication.

B. The hospital or facility shall complete the complication report, which may be signed electronically and shall indicate that the person who signs the report is attesting that the information in the report is correct to the best of that person's knowledge. The hospital or facility must transmit the report to the department within fifteen days after the last day of each reporting month.

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

**Ariz. Rev. Stat. § 36-2162 (LexisNexis, Lexis Advance through all 2022 legislation, including the 55th Legislature's 2nd Regular session)**

**36-2162.01. Informed consent; reporting requirements**

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A. A physician in this state who provides informed consent information regarding abortion pursuant to section 36-2153 or performs fetal ultrasound imaging and auscultation of fetal heart tone services pursuant to section 36-2156 or who delegates to a person authorized by section 36-2153 or 36-2156 the duty to provide the information or services required by those sections shall submit to the department of health services on a form prescribed by the department a report that includes the following information:

1. The number of women to whom the physician provided the information described in section 36-2153, subsection A, paragraph 1, and, of those women, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion.
2. The number of women to whom the physician, physician assistant, nurse, psychologist or licensed behavioral health professional provided the information described in section 36-2153, subsection A, paragraph 2, and, of those women, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion, and, of each of those numbers, the number provided by the physician and the number provided by a physician assistant, nurse, psychologist or licensed behavioral health professional.
3. The number of women for whom the physician or qualified person working in conjunction with the physician performed fetal ultrasound imaging and auscultation of fetal heart tone services described in section 36-2156, subsection A, paragraph 1, and, of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion, and, of each of those numbers, the number provided by the physician and the number provided by a qualified person working in conjunction with the physician.
4. The number of abortions performed by the physician in which information required by sections 36-2153 and 36-2156 to be provided at least twenty-four hours before the abortion was not provided because a medical emergency compelled the performance of an abortion to avert the woman's death and the number of abortions in which this required information was not provided because a medical emergency compelled the performance of an abortion to avert substantial and irreversible impairment of a major bodily function of the woman.

B. The report may not identify the individual patient by name or include any other information or identifier that would make it possible to identify, in any manner or under any circumstances, a woman who has obtained or sought to obtain an abortion.

C. The report shall be signed by the physician who provided to the woman the information required by section 36-2153, subsection A, paragraph 1 or the physician who delegated the duty to another person authorized by law to provide to the woman the information required by section 36-2153, subsection A, paragraph 2 or section 36-2156, subsection A, paragraph 1. The form may be signed electronically and shall indicate that the physician who signs the report is attesting that the information in the report is correct to the best of the physician's knowledge. The physician must transmit the report to the department within fifteen days after the last day of each reporting month.

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

**Ariz. Rev. Stat. § 36-2162.01 (LexisNexis, Lexis Advance through all 2022 legislation, including the 55th Legislature's 2nd Regular session)**

**36-2163. Reports; confidentiality; annual statistical report; violations; classification; unprofessional conduct; penalties**

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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, complication reports and informed consent reports and prepare a comprehensive annual statistical report based on the data gathered in the reports. The statistical report shall include a breakdown of the number of abortions by gestational age of the unborn child at the time of the abortion and the type of procedure performed or prescribed. The statistical report shall include a breakdown by month of the reasons for abortions pursuant to section 36-2161 and a breakdown by month of the number of abortions performed or prescribed by each hospital and facility pursuant to section 36-2161. All data included on the forms pursuant to sections 36-2161, 36-2162 and 36-2162.01 shall be included in the statistical report, except that the department shall confidentially maintain the data that alone or in combination may constitute information from which an individual performing or having an abortion may be identified using epidemiologic principles. 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 statistical 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. The statistical report prepared by the department pursuant to subsection B of this section shall include statistics from the Arizona health care cost containment system containing the following information:

1. The total number of abortions partially or fully paid for with state monies through the Arizona health care cost containment system.
2. The total amount of state monies used to pay for the abortions and expenses incidental to the abortions.
3. The total number of abortions, if any, paid for with state monies and performed out of state.

E. 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.

F. 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.

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

H. A person who is required by this article to file a report, keep any records or supply any information and who willfully 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.

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

J. In addition to the penalties prescribed by subsections G, H and I of this section, an organization or facility that willfully violates the reporting requirements of this article is subject to discipline by the department, including the civil penalties prescribed in section 36-431.01. If an organization or facility that is licensed pursuant to chapter 4, article 10 of this title willfully 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.

**Ariz. Rev. Stat. § 36-2163 (LexisNexis, Lexis Advance through all 2022 legislation, including the 55th Legislature's 2nd Regular session)**

**36-2164. Construction of article**

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

**Ariz. Rev. Stat. § 36-2164 (LexisNexis, Lexis Advance through all 2022 legislation, including the 55th Legislature's 2nd Regular session)**

**Title 36 Public Health and Safety (Chs. 1 — 41), Chapter 23 Protection of Fetus or Embryo (Arts. 1 — 3), Article 3. Gestational Limit on Abortion (§§ 36-2321 — 36-2326)**

**Article 1. General Provisions**

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

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

B. If an abortion is performed and a human fetus or embryo is delivered alive, the physician performing the abortion shall document and report to the department of health services the measures the physician performed to maintain the life of the fetus or embryo. If an abortion is performed and a human fetus or embryo with a lethal fetal condition is delivered alive, the physician performing the abortion shall also document and report to the department of health services the specific lethal fetal condition that was diagnosed before the performance of the abortion and that was confirmed by an examination performed after the human embryo or fetus was delivered alive.

C. Before an abortion of a human fetus or embryo diagnosed with a lethal fetal condition, the physician performing the abortion must comply with the requirements of section 36-2158, subsection A and shall also inform the woman, orally and in person, that if the fetus or embryo is

delivered alive, the diagnosis must be confirmed after the delivery and the standard of care required in subsection D of this section must be given.

D. The director of the department of health services shall prescribe rules requiring an abortion clinic or a hospital that performs or induces an abortion at or after twenty weeks' gestational age as defined in section 36-2151 to establish, document and implement policies and procedures to ensure compliance with this section. At a minimum, these policies and procedures shall require that:

1. In the case of an abortion clinic, a person is designated to contact emergency services immediately at the birth of a fetus or embryo delivered alive to arrange transfer to a hospital.
2. At least one person who is trained in neonatal resuscitation is present in the room where the abortion takes place for any abortion performed or induced at or after twenty weeks' gestational age.
3. Establish a protocol for rapid neonatal resuscitation of a fetus or embryo delivered alive, including assessing respiration and heart rate, clearing secretions, positioning the airway, providing warmth, drying and administering oxygen as needed.

E. If an abortion is performed and a human fetus or embryo with a lethal fetal condition is delivered alive, and the protocol for rapid neonatal resuscitation of a fetus or embryo pursuant to subsection D of this section is complied with and any further treatment beyond what is prescribed pursuant to subsection D of this section will do no more than temporarily prolong the act of dying when death is imminent, no further treatment is required by this section.

F. A hospital that is not in substantial compliance with the rules or policies and procedures adopted pursuant to this section may be subject to the penalties and sanctions specified in sections 36-427 and 36-431.01.

G. An action to enforce this section shall be brought in the name of the state by the attorney general or the county attorney in the superior court in the county in which the violation occurred.

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

1. The mother of the human fetus or embryo delivered alive.
2. The father of the human fetus or embryo delivered alive, unless the pregnancy resulted from the plaintiff's criminal conduct.
3. A maternal grandparent of the human fetus or embryo delivered alive 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.

I. A civil action filed pursuant to subsection H 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 the failure to see that all available means and medical skills were used to promote, preserve and maintain the life of the human fetus or embryo was a result of simple negligence, gross negligence or wanton, wilful or intentional misconduct or any other legal

standard of care. Relief for a civil action filed pursuant to subsection H of this section may include any of the following:

1. Monetary damages for 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.

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

K. For the purposes of this section:

1. "Abortion" has the same meaning prescribed in section 36-2151.
2. "Delivered alive" means the complete expulsion or extraction from the mother of a fetus or embryo, regardless of the state of gestational development, who, after expulsion or extraction, whether or not the umbilical cord has been cut or the placenta is attached, shows any evidence of life, including one or more of the following:
  - (a) Breathing.
  - (b) A heartbeat.
  - (c) Umbilical cord pulsation.
  - (d) Definite movement of voluntary muscles.
3. "Lethal fetal condition" has the same meaning prescribed in section 36-2158.

## **A.R.S. § 36-2301**

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### **36-2301.01. Abortion of viable fetus; requirements; definitions**

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

1. The physician states in writing before the abortion is performed that the abortion is necessary to preserve the life or health of the woman, specifying the medical indications for and the probable health consequences of the abortion. The physician shall attach a copy of this statement to any fetal death report filed pursuant to section 11-593 or fetal death registration filed pursuant to section 36-329.
2. The physician uses the available method or technique of abortion most likely to preserve the life and health of the fetus, unless the use of such method or technique would present a greater risk to the life or health of the woman than the use of another available method or technique.
3. The physician states in writing the available methods or techniques considered, the method or technique used and the reasons for choosing that method or technique. The physician shall attach a copy of this statement to any fetal death report filed pursuant to section 11-593 or fetal death registration filed pursuant to section 36-329.

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

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

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

C. For the purposes of this section and section 36-2301.02:

1. "Abortion" has the same meaning prescribed in section 36-2151.

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

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

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

## **A.R.S. § 36-2301.01**

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### **36-2301.02. Review of ultrasound results**

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A. Beginning on January 1, 2001, a person shall not knowingly perform an abortion after twelve weeks' gestation unless the person estimates the gestational age of the fetus based on biparietal diameter and femur length according to the Hadlock measurement system or other equivalent measurement systems using ultrasound examination as provided in rule.

B. Beginning on January 1, 2001, a person shall not knowingly perform an abortion after twelve weeks' gestation unless the person ensures that a copy of each ultrasound result taken of a fetus of a woman as a result of a second or third trimester abortion is sent to persons or corporations contracted pursuant to this section. The person performing the abortion shall ensure that the ultrasound result or results from the woman is sent in a manner that is distinguishable from, and not mixed with, any other set of ultrasound results and is accompanied with a copy of any report that notes the estimate of the fetus' gestational age that was made before the abortion.

C. The department of health services shall contract with qualified public or private persons or corporations for review of ultrasound results to determine compliance with this section. The department shall issue requests for proposals for the purpose of establishing contracts pursuant to this section. At a minimum, the contracts shall require the contractor to review ultrasound results

to verify the accuracy of the fetus' estimated gestational age made before the abortion and to verify that the estimate was made in reasonable compliance with the Hadlok measurement system or another equivalent measurement system as provided in rule.

D. The contractor shall use a statistically valid method of sampling to conduct the review of ultrasound results from a woman as a result of a second trimester abortion of a fetus of up to eighteen weeks' gestation. The contractor shall conduct a review of all ultrasound results from a woman as a result of an abortion of a fetus of eighteen or more weeks' gestation.

E. Beginning on January 1, 2001, on a monthly basis, persons or corporations providing ultrasound review services to the department pursuant to this section shall file a report with the director regarding ultrasound results, noting:

1. Any instances in which the contractor believes there was a significant inaccuracy in the estimated gestational age of the fetus made before the abortion.
2. Any circumstances that, based on the contractor's professional judgment, might explain a significant inaccuracy reported pursuant to paragraph 1 of this subsection.
3. Whether there was reasonable compliance pursuant to subsection C of this section.
4. Whether, based on the results of the review of each ultrasound, the physician should have filed a fetal death certificate with the department of health services as required by section 36-329, subsection C.

F. The department of health services shall forward the report or portions of the report within thirty working days to the appropriate professional regulatory boards for their review and appropriate action.

G. Except as provided by subsection F of this section, the reports required by this section are confidential and disclosable by the department or its contractor only in aggregate form for statistical or research purposes. Except as provided by subsection F of this section, information relating to any physician, hospital, clinic or other institution shall not be released. Personally identifiable patient information shall not be released by the department or its contractor.

### **A.R.S. § 36-2301.02**

#### **36-2302. Human fetus or embryo; prohibitions; physician-patient privilege inapplicable; definitions**

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A. A person may not use a human fetus or embryo or any part, organ or fluid of the fetus or embryo resulting from an abortion in animal or human research, experimentation or study or for transplantation, except for either of the following:

1. Diagnostic or remedial procedures for the purpose of determining the life or health of the human fetus or embryo or the mother or for preserving the life or health of the human fetus or embryo or the mother.
2. A pathological study.

B. A person may not experiment on a human fetus or embryo who is intended to be aborted.

C. A person may not perform or offer to perform an abortion for which part or all of the justification or reason is that the human fetus or embryo or any part, organ or fluid of the human fetus or embryo may be used for animal or human research, experimentation or study or for transplantation.

D. A person may not knowingly sell, transfer, distribute, give away, accept, use or attempt to use any human fetus or embryo or any part, organ or fluid of the human fetus or embryo resulting from an abortion in violation of this section.

E. A person may not aid or abet the sale, transfer, distribution, other unlawful disposition, acceptance, use or attempted use of a human fetus or embryo or any part, organ or fluid of the human fetus or embryo resulting from an abortion in violation of this section.

F. The physician-patient privilege as provided in section 13-4062, paragraph 4 does not prevent the production of documents or records relevant to an investigation arising under this section. All documents or records produced in an action brought pursuant to this section shall be inspected by the court in camera, and, before the documents or records are released to the requesting party, the

court shall remove the names and other identifying information, if any, of the patients and substitute pseudonyms.

G. For the purposes of this section:

1. "Abortion" has the same meaning as prescribed in section 36-2151.

2. "Experimentation" means the use of a human fetus or embryo or any part, organ or fluid of the human fetus or embryo resulting from an abortion in any trial, test, procedure or observation carried out with the goal of verifying, refuting or establishing the validity of a hypothesis. Experimentation does not include a pathological study or a diagnostic or remedial test, procedure or observation that has the purpose of determining the life or health of the human fetus or embryo or preserving the life or health of the human fetus or embryo or the mother.

3. "Pathological study" means the examination of body tissue for diagnostic or forensic purposes

### **A.R.S. § 36-2302**

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#### **36-2303. Violation; classification**

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Any person who violates any provision of this article is guilty of a class 5 felony.

### **A.R.S. § 36-2303**

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