

REFERENCE TITLE: **infants; born alive; requirements**

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SB 1600

Introduced by

Senators Shamp: Bennett, Borrelli, Carroll, Farnsworth, Gowan, Hoffman,
Kaiser, Kavanagh, Kern, Kerr, Mesnard, Petersen, Rogers, Shope, Wadsack;
Representatives Biasiucci, Bliss, Carbone, Carter, Cook, Diaz, Gillette,
Grantham, Gress, Griffin, Harris, Livingston, Martinez, Montenegro,
Nguyen, Peña, Smith, Toma

AN ACT

**AMENDING SECTIONS 36-2161 AND 36-2301, ARIZONA REVISED STATUTES; RELATING
TO ABORTION.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 36-2161. Abortions; reporting requirements

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

- 13 1. The name and address of the facility where the abortion was
14 performed.
- 15 2. The type of facility where the abortion was performed.
- 16 3. The county where the abortion was performed.
- 17 4. The woman's age.
- 18 5. The woman's educational background by highest grade completed
19 and, if applicable, level of college completed.
- 20 6. The county and state in which the woman resides.
- 21 7. The woman's race and ethnicity.
- 22 8. The woman's marital status.
- 23 9. The number of prior pregnancies and prior abortions of the
24 woman.
- 25 10. The number of previous spontaneous terminations of pregnancy of
26 the woman.
- 27 11. The gestational age of the unborn child at the time of the
28 abortion.
- 29 12. The reason for the abortion, including at least one of the
30 following:
 - 31 (a) The abortion is elective.
 - 32 (b) The abortion is due to maternal health considerations,
33 including one of the following:
 - 34 (i) A premature rupture of membranes.
 - 35 (ii) An anatomical abnormality.
 - 36 (iii) Chorioamnionitis.
 - 37 (iv) Preeclampsia.
 - 38 (v) Other.
 - 39 (c) The abortion is due to fetal health considerations, including
40 the fetus being diagnosed with at least one of the following:
 - 41 (i) A lethal anomaly.
 - 42 (ii) A central nervous system anomaly.
 - 43 (iii) Other.

- 1 (d) The pregnancy is the result of a sexual assault.
2 (e) The pregnancy is the result of incest.
3 (f) The woman is being coerced into obtaining an abortion.
4 (g) The woman is a victim of sex trafficking.
5 (h) The woman is a victim of domestic violence.
6 (i) Other.
7 (j) The woman declined to answer.
- 8 13. The type of procedure performed or prescribed and the date of
9 the abortion.
- 10 14. Any preexisting medical conditions of the woman that would
11 complicate pregnancy.
- 12 15. Any known medical complication that resulted from the abortion,
13 including at least one of the following:
- 14 (a) Shock.
15 (b) Uterine perforation.
16 (c) Cervical laceration requiring suture or repair.
17 (d) Heavy bleeding or hemorrhage with estimated blood loss of at
18 least five hundred cubic centimeters.
19 (e) Aspiration or allergic response.
20 (f) Postprocedure infection.
21 (g) Sepsis.
22 (h) Incomplete abortion retaining part of the fetus requiring
23 reevacuation.
24 (i) Damage to the uterus.
25 (j) Failed termination of pregnancy.
26 (k) Death of the patient.
27 (l) Other.
28 (m) None.
- 29 16. The basis for any medical judgment that a medical emergency
30 existed that excused the physician from compliance with the requirements
31 of this chapter.
- 32 17. The physician's statement if required pursuant to section
33 36-2301.01.
- 34 18. If applicable, the weight of the aborted fetus for any abortion
35 performed pursuant to section 36-2301.01.
- 36 19. Whether a fetus or embryo was ~~delivered~~ BORN alive as defined
37 in section 36-2301 during or immediately after an attempted abortion and
38 the efforts made to promote, preserve and maintain the life of the ~~fetus~~
39 ~~or embryo~~ INFANT BORN ALIVE pursuant to section 36-2301.
- 40 20. Statements by the physician and all clinical staff who observed
41 the fetus or embryo during or immediately after the abortion certifying
42 under penalty of perjury that, to the best of their knowledge, the aborted
43 fetus or embryo was not ~~delivered~~ BORN alive as defined in section
44 36-2301.

- 1 21. The medical specialty of the physician performing the abortion,
2 including one of the following:
- 3 (a) Obstetrics-gynecology.
 - 4 (b) General or family practice.
 - 5 (c) Emergency medicine.
 - 6 (d) Other.
- 7 22. The type of admission for the patient, including whether the
8 abortion was performed:
- 9 (a) As an outpatient procedure in an abortion clinic.
 - 10 (b) As an outpatient procedure at a hospital.
 - 11 (c) As an inpatient procedure at a hospital.
 - 12 (d) As an outpatient procedure at a health care institution other
13 than an abortion clinic or hospital.
- 14 23. Whether anesthesia was administered to the mother.
- 15 24. Whether anesthesia was administered to the unborn child.
- 16 25. Whether any genetic abnormality of the unborn child was
17 detected at or before the time of the abortion by genetic testing, such as
18 maternal serum tests, or by ultrasound, such as nuchal translucency
19 screening, or by other forms of testing.
- 20 26. If a surgical abortion was performed, the method of final
21 disposition of bodily remains and whether the woman exercised her right to
22 choose the final disposition of bodily remains.
- 23 B. The hospital or facility shall request the information specified
24 in subsection A, paragraph 12 of this section at the same time the
25 information pursuant to section 36-2153 is provided to the woman
26 individually and in a private room to protect the woman's privacy. The
27 information requested pursuant to subsection A, paragraph 12 of this
28 section may be obtained on a medical form provided to the woman to
29 complete if the woman completes the form individually and in a private
30 room.
- 31 C. If the woman who is seeking the abortion discloses that the
32 abortion is being sought because of a reason described in subsection A,
33 paragraph 12, subdivision (d), (e), (f), (g) or (h) of this section, the
34 hospital or facility shall provide the woman with information regarding
35 the woman's right to report a crime to law enforcement and resources
36 available for assistance and services, including a national human
37 trafficking resource hotline.
- 38 D. The report must be signed by the physician who performed the
39 abortion or, if a health professional other than a physician is authorized
40 by law to prescribe or administer abortion medication, the signature and
41 title of the person who prescribed or administered the abortion
42 medication. The form may be signed electronically and shall indicate that
43 the person who signs the report is attesting that the information in the
44 report is correct to the best of the person's knowledge. The hospital or

1 facility must transmit the report to the department within fifteen days
2 after the last day of each reporting month.

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

7 Sec. 2. Section 36-2301, Arizona Revised Statutes, is amended to
8 read:

9 36-2301. Duty to promote life of an infant who is born alive;
10 rules; judicial enforcement; civil action;
11 damages; civil penalty; definitions

12 ~~A. If an abortion is performed and a human fetus or embryo is~~
13 ~~delivered alive, it is the duty of any physician performing such an~~
14 ~~abortion and any additional physician in attendance as required by section~~
15 ~~36-2301.01 to see that all available means and medical skills are used to~~
16 ~~promote, preserve and maintain the life of such a fetus or embryo.~~

17 A. ANY INFANT WHO IS BORN ALIVE, INCLUDING ONE BORN DURING THE
18 COURSE OF AN ABORTION, SHALL BE TREATED AS A LEGAL PERSON UNDER THE LAWS
19 OF THIS STATE AND SHALL HAVE THE SAME RIGHTS TO MEDICALLY APPROPRIATE AND
20 REASONABLE CARE AND TREATMENT. BIRTH AND DEATH CERTIFICATES SHALL BE
21 ISSUED FOR THE INFANT, AS APPROPRIATE.

22 B. ANY HEALTH PROFESSIONAL WHO IS PRESENT AT THE TIME AN INFANT IS
23 BORN ALIVE SHALL TAKE ALL MEDICALLY APPROPRIATE AND REASONABLE ACTIONS TO
24 PRESERVE THE LIFE AND HEALTH OF THE INFANT WHO IS BORN ALIVE.

25 C. A HEALTH PROFESSIONAL MAY NOT DEPRIVE ANY INFANT WHO IS BORN
26 ALIVE, WHETHER OR NOT THE INFANT IS LIKELY TO SURVIVE, OF MEDICALLY
27 APPROPRIATE AND REASONABLE MEDICAL CARE OR TREATMENT.

28 D. ANY HEALTH PROFESSIONAL, HOSPITAL, ABORTION CLINIC OR EMPLOYEE
29 OR VOLUNTEER OF A HOSPITAL OR ABORTION CLINIC THAT HAS KNOWLEDGE OF A
30 FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION SHALL IMMEDIATELY
31 REPORT THE FAILURE TO LAW ENFORCEMENT.

32 E. THE REQUIREMENTS OF THIS SECTION DO NOT PREVENT AN INFANT'S
33 PARENT OR GUARDIAN FROM REFUSING TO GIVE CONSENT TO MEDICAL TREATMENT OR
34 SURGICAL CARE THAT IS NOT MEDICALLY NECESSARY OR REASONABLE, INCLUDING
35 CARE OR TREATMENT THAT MEETS ANY OF THE FOLLOWING:

36 1. IS NOT NECESSARY TO SAVE THE LIFE OF THE INFANT.

37 2. HAS POTENTIAL RISK TO THE INFANT'S LIFE OR HEALTH THAT OUTWEIGHS
38 THE POTENTIAL BENEFIT TO THE INFANT OF THE CARE OR TREATMENT.

39 3. WILL DO NOT MORE THAN TEMPORARILY PROLONG THE ACT OF DYING WHEN
40 DEATH IS IMMINENT.

41 F. IN ADDITION TO THE REQUIREMENTS OF SUBSECTIONS A, B, C, D AND E
42 OF THIS SECTION:

43 ~~B.~~ 1. If an abortion is performed and a human fetus or embryo is
44 ~~delivered~~ BORN alive, the physician performing the abortion shall document
45 and report to the department of health services the measures the physician

1 performed to maintain the life of the ~~fetus or embryo~~ INFANT WHO IS BORN
 2 ALIVE. If an abortion is performed and a human fetus or embryo with a
 3 lethal fetal condition is ~~delivered~~ BORN alive, the physician performing
 4 the abortion shall also document and report to the department of health
 5 services the specific lethal fetal condition that was diagnosed before the
 6 performance of the abortion and that was confirmed by an examination
 7 performed after the ~~human embryo or fetus~~ INFANT was ~~delivered~~ BORN alive.

8 ~~C.~~ 2. Before an abortion of a human fetus or embryo diagnosed with
 9 a lethal fetal condition, the physician performing the abortion must
 10 comply with the requirements of section 36-2158, subsection A and shall
 11 also inform the woman, orally and in person, that if the fetus or embryo
 12 is ~~delivered~~ BORN alive, the diagnosis must be confirmed after the
 13 delivery and the standard of care required in ~~subsection D of this section~~
 14 PARAGRAPH 3 OF THIS SUBSECTION must be given.

15 ~~D.~~ 3. The director of the department of health services shall
 16 prescribe rules requiring an abortion clinic or a hospital that performs
 17 or induces an abortion at or after twenty weeks' gestational age as
 18 defined in section 36-2151 to establish, document and implement policies
 19 and procedures to ensure compliance with this section. At a minimum,
 20 these policies and procedures shall require that:

21 ~~1.~~ (a) In the case of an abortion clinic, a person is designated
 22 to contact emergency services immediately at the birth of a fetus or
 23 embryo ~~delivered~~ BORN alive to arrange transfer to a hospital.

24 ~~2.~~ (b) At least one person who is trained in neonatal
 25 resuscitation is present in the room where the abortion takes place for
 26 any abortion performed or induced at or after twenty weeks' gestational
 27 age.

28 ~~3.~~ (c) Establish a protocol for rapid neonatal resuscitation of ~~a~~
 29 ~~fetus or embryo delivered~~ AN INFANT WHO IS BORN alive, including assessing
 30 respiration and heart rate, clearing secretions, positioning the airway,
 31 providing warmth, drying and administering oxygen as needed.

32 ~~E.~~ 4. If an abortion is performed and ~~a human fetus or embryo~~ AN
 33 INFANT with a lethal fetal condition is ~~delivered~~ BORN alive, and the
 34 protocol for rapid neonatal resuscitation of ~~a fetus or embryo~~ AN INFANT
 35 WHO IS BORN ALIVE pursuant to ~~subsection D of this section~~ PARAGRAPH 3 OF
 36 THIS SUBSECTION is complied with and any further treatment beyond what is
 37 prescribed pursuant to ~~subsection D of this section~~ PARAGRAPH 3 OF THIS
 38 SUBSECTION will do no more than temporarily prolong the act of dying when
 39 death is imminent, no further treatment is required by this section.

40 ~~F.~~ 5. AN ABORTION CLINIC OR A hospital that is not in substantial
 41 compliance with the rules or policies and procedures adopted pursuant to
 42 this section may be subject to the penalties and sanctions specified in
 43 sections 36-427 and 36-431.01.

1 G. ANY HEALTH PROFESSIONAL WHO INTENTIONALLY OR KNOWINGLY VIOLATES
2 SUBSECTION A, B OR C OF THIS SECTION IS GUILTY OF A CLASS 6 FELONY.

3 H. ANY PHYSICIAN, NURSE OR OTHER LICENSED HEALTH PROFESSIONAL WHO
4 INTENTIONALLY OR KNOWINGLY VIOLATES THE PROHIBITION IN SUBSECTION A, B, C,
5 OR D OF THIS SECTION COMMITS AN ACT OF UNPROFESSIONAL CONDUCT AND THE
6 PERSON'S LICENSE OR CERTIFICATION TO PRACTICE THE PERSON'S HEALTH
7 PROFESSION IN THIS STATE SHALL BE SUSPENDED OR REVOKED PURSUANT TO TITLE
8 32, CHAPTER 13, 15, 17, 25, 28, 32 OR 35, AS APPLICABLE.

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

12 ~~H.~~ J. In addition to other remedies available under the common or
13 statutory law of this state, FAILURE TO COMPLY WITH THE REQUIREMENTS OF
14 THIS SECTION SHALL PROVIDE A BASIS FOR A CIVIL ACTION THAT any of the
15 following persons may file ~~a civil action to obtain appropriate relief for~~
16 ~~a violation of this section:~~

17 1. The mother of the ~~human fetus or embryo delivered~~ INFANT WHO IS
18 BORN alive.

19 2. The father of the ~~human fetus or embryo delivered~~ INFANT WHO IS
20 BORN alive, unless the pregnancy resulted from the plaintiff's criminal
21 conduct.

22 3. A ~~maternal grandparent of the human fetus or embryo delivered~~
23 ~~alive~~ PARENT OR LEGAL GUARDIAN OF THE MOTHER OF THE INFANT WHO IS BORN
24 ALIVE if the mother was not at least eighteen years of age at the time ~~of~~
25 ~~the abortion~~ THE INFANT WAS BORN ALIVE, unless the pregnancy resulted from
26 the plaintiff's criminal conduct.

27 ~~I.~~ K. A civil action filed pursuant to subsection ~~H.~~ J of this
28 section shall be brought in the superior court in the county in which the
29 ~~woman on whom the abortion was performed~~ MOTHER OF THE INFANT WHO WAS BORN
30 ALIVE resides ~~and may be based on a claim that the failure to see that all~~
31 ~~available means and medical skills were used to promote, preserve and~~
32 ~~maintain the life of the human fetus or embryo was a result of simple~~
33 ~~negligence, gross negligence or wanton, wilful or intentional misconduct~~
34 ~~or any other legal standard of care.~~ Relief for a civil action filed
35 pursuant to subsection ~~H.~~ J of this section may include any of the
36 following:

37 1. ~~Monetary damages for psychological, emotional and physical~~
38 ~~injuries resulting from the violation of this section.~~

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

41 1. ACTUAL DAMAGES AND PUNITIVE DAMAGES.

42 2. A CIVIL PENALTY OF NOT LESS THAN \$5,000 PER VIOLATION.

43 3. Reasonable attorney fees and costs.

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

3 M. THIS SECTION SHALL NOT BE CONSTRUED AS ANY INDICATION THAT OTHER
4 STATE LAWS PROTECTING CHILDREN WHO ARE BORN ARE NOT APPLICABLE TO CHILDREN
5 WHO ARE BORN ALIVE DURING AN ABORTION.

6 ~~K.~~ N. For the purposes of this section:

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

8 2. "~~Delivered~~ BORN alive" means the complete expulsion or
9 extraction from the mother of ~~a fetus or embryo, regardless of the state~~
10 ~~of gestational development,~~ AN INFANT AT ANY STAGE OF DEVELOPMENT who,
11 after expulsion or extraction, REGARDLESS OF whether ~~or not~~ the umbilical
12 cord has been cut or the placenta is attached AND REGARDLESS OF WHETHER
13 THE EXPULSION OR EXTRACTION OCCURS AS A RESULT OF NATURAL OR INDUCED
14 LABOR, CESAREAN SECTION, INDUCED ABORTION OR ANY OTHER METHOD, shows any
15 evidence of life, including one or more of the following:

16 (a) Breathing.

17 (b) A heartbeat.

18 (c) Umbilical cord pulsation.

19 (d) Definite movement of voluntary muscles.

20 3. "HEALTH PROFESSIONAL" HAS THE SAME MEANING PRESCRIBED IN SECTION
21 32-3201 AND INCLUDES ANY INDIVIDUAL WHO MAY BE ASKED TO PARTICIPATE IN ANY
22 WAY IN A HEALTH CARE SERVICE OR PROCEDURE.

23 4. "HOSPITAL" MEANS ANY PUBLIC OR PRIVATE HOSPITAL, CLINIC, CENTER,
24 MEDICAL SCHOOL, MEDICAL TRAINING INSTITUTE, HEALTH CARE FACILITY,
25 PHYSICIAN'S OFFICE, INFIRMARY, DISPENSARY, AMBULATORY SURGICAL TREATMENT
26 CENTER OR OTHER INSTITUTION OR LOCATION WHERE MEDICAL CARE OR TREATMENT IS
27 PROVIDED TO ANY PERSON.

28 5. "INFANT" MEANS A CHILD OF THE SPECIES HOMO SAPIENS WHO HAS BEEN
29 COMPLETELY EXPULSED OR EXTRACTED FROM THE CHILD'S MOTHER, REGARDLESS OF
30 THE STAGE OF GESTATIONAL DEVELOPMENT, UNTIL THE AGE OF THIRTY DAYS POST
31 BIRTH.

32 ~~S.~~ 6. "Lethal fetal condition" has the same meaning prescribed in
33 section 36-2158.

34 Sec. 3. Legislative intent; intervention; findings

35 A. This legislature intends that every provision of section
36 36-2301, Arizona Revised Statutes, as amended by this act, operates with
37 equal force and is severable one from the other and that, if any provision
38 of section 36-2301, Arizona Revised Statutes, as amended by this act, is
39 held invalid or unenforceable by a court of competent jurisdiction, that
40 provision shall be deemed severable and the remaining provisions of the
41 section deemed fully enforceable.

42 B. The legislature may appoint one or more of its members to
43 intervene as a matter of right in any case in which the constitutionality
44 or enforceability of section 36-2301, Arizona Revised Statutes, as amended
45 by this act, is challenged.

1 C. The legislature finds that:

2 1. It has a compelling interest in protecting the life of any
3 infant who is born alive.

4 2. Any infant who is born alive is a legal person for all purposes
5 under the laws of this state and is entitled to all the protections of
6 such laws, including the right to appropriate and reasonable medical care
7 and treatment.

8 3. In the absence of proper legal protections, newly born infants
9 have been denied appropriate and reasonable medical care and treatment,
10 including life-saving, life-sustaining or comfort care and have been left
11 to die.