

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HOUSE BILL 2263

AN ACT

AMENDING SECTION 36-2152, 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 36-2152, Arizona Revised Statutes, is amended to
3 read:

4 36-2152. Parental consent; exception; hearings; time limits;
5 violation; classification; definitions

6 A. A person shall not knowingly perform an abortion on a pregnant
7 unemancipated minor unless the attending physician has secured the written
8 consent from one of the minor's parents or the minor's guardian or
9 conservator or unless a judge of the superior court authorizes the physician
10 to perform the abortion pursuant to subsection B OF THIS SECTION.

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

21 C. AT A PROCEEDING HELD PURSUANT TO SUBSECTION B OF THIS SECTION, THE
22 PREGNANT MINOR MUST PROVE BY CLEAR AND CONVINCING EVIDENCE THAT SHE IS
23 SUFFICIENTLY MATURE AND CAPABLE OF GIVING INFORMED CONSENT WITHOUT CONSULTING
24 HER PARENT OR LEGAL GUARDIAN BASED ON HER EXPERIENCE LEVEL, PERSPECTIVE AND
25 JUDGMENT. IN ASSESSING THE PREGNANT MINOR'S EXPERIENCE LEVEL, THE COURT MAY
26 CONSIDER, AMONG OTHER RELEVANT FACTORS, THE MINOR'S AGE AND EXPERIENCES
27 WORKING OUTSIDE THE HOME, LIVING AWAY FROM HOME, TRAVELING ON HER OWN,
28 HANDLING PERSONAL FINANCES AND MAKING OTHER SIGNIFICANT DECISIONS. IN
29 ASSESSING THE PREGNANT MINOR'S PERSPECTIVE, THE COURT MAY CONSIDER, AMONG
30 OTHER RELEVANT FACTORS, WHAT STEPS THE MINOR TOOK TO EXPLORE HER OPTIONS AND
31 THE EXTENT TO WHICH SHE CONSIDERED AND WEIGHED THE POTENTIAL CONSEQUENCES OF
32 EACH OPTION. IN ASSESSING THE PREGNANT MINOR'S JUDGMENT, THE COURT MAY
33 CONSIDER, AMONG OTHER RELEVANT FACTORS, THE MINOR'S CONDUCT SINCE LEARNING OF
34 HER PREGNANCY AND HER INTELLECTUAL ABILITY TO UNDERSTAND HER OPTIONS AND TO
35 MAKE AN INFORMED DECISION.

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

42 ~~D.~~ E. Proceedings in the court under this section are confidential
43 and have precedence over other pending matters. Members of the public shall
44 not inspect, obtain copies of or otherwise have access to records of court
45 proceedings under this section unless authorized by law. A judge who

1 conducts proceedings under this section shall make in writing specific
2 factual findings and legal conclusions supporting the decision and shall
3 order a confidential record of the evidence to be maintained including the
4 judge's own findings and conclusions. The minor may file the petition using
5 a fictitious name. For THE purposes of this subsection, public does not
6 include judges, clerks, administrators, professionals or other persons
7 employed by or working under the supervision of the court or employees of
8 other public agencies who are authorized by state or federal rule or law to
9 inspect and copy closed court records.

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

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

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

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

31 2. The attending physician certifies in the pregnant minor's medical
32 record that, on the basis of the physician's good faith clinical judgment,
33 the pregnant minor has a condition that so complicates her medical condition
34 as to necessitate the immediate abortion of her pregnancy to avert her death
35 or for which a delay will create serious risk of substantial and irreversible
36 impairment of major bodily function.

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

43 ~~I.~~ J. For THE purposes of this section:

1 1. "Abortion" means the use of an instrument, medicine or drug or
2 other substance or device with the intent to terminate a pregnancy for
3 reasons other than to increase the probability of a live birth, to preserve
4 the life or health of the child after a live birth, to terminate an ectopic
5 pregnancy or to remove a dead fetus. Abortion does not include birth control
6 devices or oral contraceptives that inhibit or prevent ovulation,
7 fertilization or the implantation of a fertilized ovum within the uterus.
8 2. "Fetus" means any individual human organism from fertilization
9 until birth.