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

SENATE BILL 1367

AN ACT
AMENDING SECTIONS 36-449.03, 36-2161, 36-2163 AND 36-2301, ARIZONA REVISED STATUTES; RELATING TO ABORTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:
Section 1. Section 36-449.03, Arizona Revised Statutes, is amended to read:

36-449.03. Abortion clinics; rules; civil penalties
A. The director shall adopt rules for an abortion clinic's physical facilities. At a minimum these rules shall prescribe standards for:
1. Adequate private space that is specifically designated for interviewing, counseling and medical evaluations.
2. Dressing rooms for staff and patients.
3. Appropriate lavatory areas.
4. Areas for preprocedure hand washing.
5. Private procedure rooms.
6. Adequate lighting and ventilation for abortion procedures.
7. Surgical or gynecologic examination tables and other fixed equipment.
8. Postprocedure recovery rooms that are supervised, staffed and equipped to meet the patients' needs.
9. Emergency exits to accommodate a stretcher or gurney.
10. Areas for cleaning and sterilizing instruments.
11. Adequate areas for the secure storage of medical records and necessary equipment and supplies.
12. The display in the abortion clinic, in a place that is conspicuous to all patients, of the clinic's current license issued by the department.
B. The director shall adopt rules to prescribe abortion clinic supplies and equipment standards, including supplies and equipment that are required to be immediately available for use or in an emergency. At a minimum these rules shall:
1. Prescribe required equipment and supplies, including medications, required for the conduct, in an appropriate fashion, of any abortion procedure that the medical staff of the clinic anticipates performing and for monitoring the progress of each patient throughout the procedure and recovery period.
2. Require that the number or amount of equipment and supplies at the clinic is adequate at all times to assure sufficient quantities of clean and sterilized durable equipment and supplies to meet the needs of each patient.
3. Prescribe required equipment, supplies and medications that shall be available and ready for immediate use in an emergency and requirements for written protocols and procedures to be followed by staff in an emergency, such as the loss of electrical power.
4. Prescribe required equipment and supplies for required laboratory tests and requirements for protocols to calibrate and maintain laboratory equipment at the abortion clinic or operated by clinic staff.
5. Require ultrasound equipment.
6. Require that all equipment is safe for the patient and the staff, meets applicable federal standards and is checked annually to ensure safety and appropriate calibration.

C. The director shall adopt rules relating to abortion clinic personnel. At a minimum these rules shall require that:
1. The abortion clinic designate a medical director of the abortion clinic who is licensed pursuant to title 32, chapter 13, 17 or 29.
2. Physicians performing abortions are licensed pursuant to title 32, chapter 13 or 17, demonstrate competence in the procedure involved and are acceptable to the medical director of the abortion clinic.
3. A physician is available:
   (a) For a surgical abortion who has admitting privileges at a health care institution that is classified by the director as a hospital pursuant to section 36-405, subsection B and that is within thirty miles of the abortion clinic.
   (b) For a medication abortion who has admitting privileges at a health care institution that is classified by the director as a hospital pursuant to section 36-405, subsection B.
4. If a physician is not present, a registered nurse, nurse practitioner, licensed practical nurse or physician assistant is present and remains at the clinic when abortions are performed to provide postoperative monitoring and care, or monitoring and care after inducing a medication abortion, until each patient who had an abortion that day is discharged.
5. Surgical assistants receive training in counseling, patient advocacy and the specific responsibilities of the services the surgical assistants provide.
6. Volunteers receive training in the specific responsibilities of the services the volunteers provide, including counseling and patient advocacy as provided in the rules adopted by the director for different types of volunteers based on their responsibilities.

D. The director shall adopt rules relating to the medical screening and evaluation of each abortion clinic patient. At a minimum these rules shall require:
1. A medical history, including the following:
   (a) Reported allergies to medications, antiseptic solutions or latex.
   (b) Obstetric and gynecologic history.
   (c) Past surgeries.
2. A physical examination, including a bimanual examination estimating uterine size and palpation of the adnexa.
3. The appropriate laboratory tests, including:
   (a) Urine or blood tests for pregnancy performed before the abortion procedure.
   (b) A test for anemia.
(c) Rh typing, unless reliable written documentation of blood type is available.

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

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

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

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

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

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

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

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

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

6. FOR ABORTION CLINICS PERFORMING OR INDUCING AN ABORTION FOR A WOMAN WHOSE UNBORN CHILD IS THE GESTATIONAL AGE AS DEFINED IN SECTION 36-2151 OF TWENTY WEEKS OR MORE, MINIMUM EQUIPMENT STANDARDS TO ASSIST THE PHYSICIAN IN COMPLYING WITH SECTION 36-2301.

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

1. For a surgical abortion, immediate postprocedure care, or care provided after inducing a medication abortion, consists of observation in a supervised recovery room for as long as the patient's condition warrants.
2. The clinic arrange hospitalization if any complication beyond the management capability of the staff occurs or is suspected.

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

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

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

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

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

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

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

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

1. For a surgical abortion, a postabortion medical visit is offered and, if requested, scheduled for three weeks after the abortion, including a medical examination and a review of the results of all laboratory tests. For a medication abortion, the rules shall require that a postabortion medical visit is scheduled between one week and three weeks after the initial dose for a medication abortion to confirm the pregnancy is completely terminated and to assess the degree of bleeding.
2. A urine pregnancy test is obtained at the time of the follow-up visit to rule out continuing pregnancy. If a continuing pregnancy is suspected, the patient shall be evaluated and a physician who performs abortions shall be consulted.

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

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

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

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

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

1. For an abortion clinic that is not in substantial compliance with this article and the rules adopted pursuant to this article AND SECTION 36-2301 or that is in substantial compliance but refuses to carry out a plan of correction acceptable to the department of any deficiencies that are listed on the department's statement of deficiency, the department may do any of the following:
   (a) Assess a civil penalty pursuant to section 36-431.01.
   (b) Impose an intermediate sanction pursuant to section 36-427.
   (c) Suspend or revoke a license pursuant to section 36-427.
   (d) Deny a license.
   (e) Bring an action for an injunction pursuant to section 36-430.

2. In determining the appropriate enforcement action, the department consider the threat to the health, safety and welfare of the abortion clinic's patients or the general public, including:
   (a) Whether the abortion clinic has repeated violations of statutes or rules.
   (b) Whether the abortion clinic has engaged in a pattern of noncompliance.
   (c) The type, severity and number of violations.

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

K. The rules adopted by the director pursuant to this section do not limit the ability of a physician or other health professional to advise a patient on any health issue.
Sec. 2. Section 36-2161, Arizona Revised Statutes, is amended to read:

36-2161. Abortions; reporting requirements
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 but 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 whether the abortion is elective or due to maternal or fetal health considerations.
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 and any known medical complication that resulted from the abortion.
15. The basis for any medical judgment that a medical emergency existed that excused the physician from compliance with the requirements of this chapter.
16. The physician's statement if required pursuant to section 36-2301.01.
17. If applicable, the weight of the aborted fetus for any abortion performed pursuant to section 36-2301.01.
18. Whether an infant A FETUS OR EMBRYO was born 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 infant FETUS OR EMBRYO pursuant to section 36-2301.
19. STATEMENTS BY THE PHYSICIAN AND ALL STAFF PRESENT DURING THE ABORTION CERTIFYING UNDER PENALTY OF PERJURY THAT THE ABORTED FETUS OR EMBRYO WAS NOT DELIVERED ALIVE AS DEFINED IN SECTION 36-2301.
B. 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.

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.

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

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

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 and complication 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 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. 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.

E. 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.

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

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

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

I. In addition to the penalties prescribed by subsections F, G and H of this section, an organization or facility that wilfully 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 wilfully 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.

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

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

A. If an abortion is performed and a human fetus or embryo is delivered alive, it is the duty of any physician performing such 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 a human fetus or embryo is delivered alive, the physician performing the abortion shall document and report to the department the measures the physician performed to maintain the life of the fetus or embryo.

C. The director 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.

D. 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.

E. 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.

F. 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.

G. A CIVIL ACTION FILED PURSUANT TO SUBSECTION F 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 F 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, WHICHER IS GREATER.
3. REASONABLE ATTORNEY FEES AND COSTS.

H. A CIVIL ACTION BROUGHT PURSUANT TO THIS SECTION MUST BE INITIATED WITHIN TEN YEARS AFTER THE VIOLATION OCCURRED.

I. FOR THE PURPOSES OF THIS SECTION, "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:

1. BREATHING.
2. A HEARTBEAT.
3. UMBILICAL CORD PULSATION.
4. DEFINITE MOVEMENT OF VOLUNTARY MUSCLES.

Sec. 5. Legislative findings and purpose

A. The legislature finds that:

1. This state has a paramount interest in protecting all human life.
2. If an attempted abortion results in the live delivery of an infant, the infant is a person for all purposes under the laws of this state.
3. It is not an infringement on the right to abortion articulated by the United States supreme court for this state to assert its interest in protecting an infant whose live delivery occurred as the result of an attempted abortion.
4. Due to advances in neonatal care, the gestational age at which an infant may survive if delivered alive continues to decrease.
5. Two recent reports of incidents in this state demonstrate that some doctors are not using all available means to promote, preserve and maintain the lives of infants delivered alive as required by section 36-2301, Arizona Revised Statutes, as amended by this act. See 911 tapes; Aborted fetus was breathing, 12NEWS.COM, http://www.12news.com/m #news/local/valley/911-tapes-aborted-fetus-was-breathing/208414143 (last visited Jan. 20, 2017); Gary Grado, FBI agent's description raises question about whether aborted baby was born alive, ARIZ. CAP. TIMES (June 5, 2015, 4:58 AM) http://azcapitoltimes.com/news/2015/06/05/fbi-agents-description-raises-question-about-whether-aborted-baby-was-born-alive/.

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

1. Ensure the protection and promotion of the health and well-being of all infants delivered alive in this state.
2. Require providers to document the life-saving and life-sustaining medical care and treatment given to all infants delivered alive as a result of an attempted abortion.

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

Sec. 7. 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.