

REFERENCE TITLE: DHS; reporting; abortions

State of Arizona
Senate
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Second Regular Session
2018

SB 1394

Introduced by

Senators Barto: Allen S, Burges, Fann, Farnsworth D, Gray, Griffin,
Kavanagh, Kerr, Petersen, Pratt, Smith, Yee; Representatives Allen J,
Barton, Campbell, Finchem, Grantham, Mesnard, Mosley, Norgaard, Nutt,
Payne, Thorpe, Toma

AN ACT

AMENDING SECTION 36-2161, ARIZONA REVISED STATUTES; AMENDING TITLE 36,
CHAPTER 20, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION
36-2162.01; AMENDING SECTION 36-2163, 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, but THE REPORT
12 must 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 ~~whether the abortion is~~
30 ~~elective or due to maternal or fetal health considerations~~ AT LEAST ONE OF
31 THE FOLLOWING:

32 (a) ECONOMIC REASONS.

33 (b) THE WOMAN DOES NOT WANT CHILDREN AT THIS TIME.

34 (c) THE WOMAN'S EMOTIONAL HEALTH IS AT STAKE.

35 (d) THE WOMAN'S PHYSICAL HEALTH IS AT STAKE.

36 (e) THE WOMAN WILL SUFFER SUBSTANTIAL IMPAIRMENT OF A MAJOR BODILY
37 FUNCTION IF THE PREGNANCY CONTINUES.

38 (f) THE PREGNANCY WAS THE RESULT OF RAPE.

39 (g) THE PREGNANCY WAS THE RESULT OF INCEST.

40 (h) THE PREGNANCY RESULTED IN FETAL ANOMALIES.

41 (i) RELATIONSHIP ISSUES, INCLUDING ABUSE, SEPARATION, DIVORCE AND
42 EXTRAMARITAL AFFAIRS.

43 (j) OTHER.

44 (k) UNKNOWN OR THE WOMAN REFUSED TO ANSWER.

1 13. The type of procedure performed or prescribed and the date of
2 the abortion.

3 14. Any preexisting medical conditions of the woman that would
4 complicate pregnancy. ~~and~~

5 15. Any known medical complication that resulted from the
6 abortion. ~~—~~ , INCLUDING AT LEAST ONE OF THE FOLLOWING:

- 7 (a) SHOCK.
- 8 (b) UTERINE PERFORATION.
- 9 (c) CERVICAL LACERATION REQUIRING SUTURE OR REPAIR.
- 10 (d) HEAVY BLEEDING OR HEMORRHAGE WITH ESTIMATED BLOOD LOSS OF AT
11 LEAST FIVE HUNDRED CUBIC CENTIMETERS.
- 12 (e) ASPIRATION OR ALLERGIC RESPONSE.
- 13 (f) POSTPROCEDURE INFECTION.
- 14 (g) SEPSIS.
- 15 (h) INCOMPLETE ABORTION RETAINING PART OF THE FETUS REQUIRING
16 RE-EVACUATION.
- 17 (i) DAMAGE TO THE UTERUS.
- 18 (j) FAILED TERMINATION OF PREGNANCY.
- 19 (k) DEATH OF THE PATIENT.
- 20 (l) OTHER.
- 21 (m) NONE.

22 ~~15.~~ 16. The basis for any medical judgment that a medical
23 emergency existed that excused the physician from compliance with the
24 requirements of this chapter.

25 ~~16.~~ 17. The physician's statement if required pursuant to section
26 36-2301.01.

27 ~~17.~~ 18. If applicable, the weight of the aborted fetus for any
28 abortion performed pursuant to section 36-2301.01.

29 ~~18.~~ 19. Whether a fetus or embryo was delivered alive as defined
30 in section 36-2301 during or immediately after an attempted abortion and
31 the efforts made to promote, preserve and maintain the life of the fetus
32 or embryo pursuant to section 36-2301.

33 ~~19.~~ 20. Statements by the physician and all clinical staff who
34 observed the fetus or embryo during or immediately after the abortion
35 certifying under penalty of perjury that, to the best of their knowledge,
36 the aborted fetus or embryo was not delivered alive as defined in section
37 36-2301.

38 21. THE MEDICAL SPECIALTY OF THE PHYSICIAN PERFORMING THE ABORTION,
39 INCLUDING ONE OF THE FOLLOWING:

- 40 (a) OBSTETRICS-GYNECOLOGY.
- 41 (b) GENERAL OR FAMILY PRACTICE.
- 42 (c) EMERGENCY MEDICINE.
- 43 (d) OTHER.

44 22. THE TYPE OF ADMISSION FOR THE PATIENT, INCLUDING WHETHER THE
45 ABORTION WAS PERFORMED:

1 (a) AS AN OUTPATIENT PROCEDURE IN AN ABORTION CLINIC.
2 (b) AS AN OUTPATIENT PROCEDURE AT A HOSPITAL.
3 (c) AS AN INPATIENT PROCEDURE AT A HOSPITAL.
4 (d) AS AN OUTPATIENT PROCEDURE AT A HEALTH CARE INSTITUTION OTHER
5 THAN AN ABORTION CLINIC OR HOSPITAL.
6 23. WHETHER ANESTHESIA WAS ADMINISTERED TO THE MOTHER.
7 24. WHETHER ANESTHESIA WAS ADMINISTERED TO THE UNBORN CHILD.
8 B. The report must be signed by the physician who performed the
9 abortion or, if a health professional other than a physician is authorized
10 by law to prescribe or administer abortion medication, the signature and
11 title of the person who prescribed or administered the abortion
12 medication. The form may be signed electronically and shall indicate that
13 the person who signs the report is attesting that the information in the
14 report is correct to the best of the person's knowledge. The hospital or
15 facility must transmit the report to the department within fifteen days
16 after the last day of each reporting month.
17 C. Any report filed pursuant to this section shall be filed
18 electronically at an internet website that is designated by the department
19 unless the person required to file the report applies for a waiver from
20 electronic reporting by submitting a written request to the department.
21 Sec. 2. Title 36, chapter 20, article 2, Arizona Revised Statutes,
22 is amended by adding section 36-2162.01, to read:
23 36-2162.01. Informed consent; reporting requirements
24 A. A PHYSICIAN IN THIS STATE WHO PROVIDES INFORMED CONSENT
25 INFORMATION REGARDING ABORTION PURSUANT TO SECTION 36-2153 OR PERFORMS
26 FETAL ULTRASOUND IMAGING AND AUSCULTATION OF FETAL HEART TONE SERVICES
27 PURSUANT TO SECTION 36-2156 OR WHO DELEGATES TO A PERSON AUTHORIZED BY
28 SECTION 36-2153 OR 36-2156 THE DUTY TO PROVIDE THE INFORMATION OR SERVICES
29 REQUIRED BY THOSE SECTIONS SHALL SUBMIT TO THE DEPARTMENT OF HEALTH
30 SERVICES ON A FORM PRESCRIBED BY THE DEPARTMENT A REPORT THAT INCLUDES THE
31 FOLLOWING INFORMATION:
32 1. THE NUMBER OF WOMEN TO WHOM THE PHYSICIAN PROVIDED THE
33 INFORMATION DESCRIBED IN SECTION 36-2153, SUBSECTION A, PARAGRAPH 1, AND,
34 OF THOSE WOMEN, THE NUMBER PROVIDED IN THE CAPACITY OF A REFERRING
35 PHYSICIAN AND THE NUMBER PROVIDED IN THE CAPACITY OF A PHYSICIAN WHO IS TO
36 PERFORM THE ABORTION.
37 2. THE NUMBER OF WOMEN TO WHOM THE PHYSICIAN, PHYSICIAN ASSISTANT,
38 NURSE, PSYCHOLOGIST OR LICENSED BEHAVIORAL HEALTH PROFESSIONAL PROVIDED
39 THE INFORMATION DESCRIBED IN SECTION 36-2153, SUBSECTION A, PARAGRAPH 2,
40 AND, OF THOSE WOMEN, THE NUMBER PROVIDED IN THE CAPACITY OF A REFERRING
41 PHYSICIAN AND THE NUMBER PROVIDED IN THE CAPACITY OF A PHYSICIAN WHO IS TO
42 PERFORM THE ABORTION, AND, OF EACH OF THOSE NUMBERS, THE NUMBER PROVIDED
43 BY THE PHYSICIAN AND THE NUMBER PROVIDED BY A PHYSICIAN ASSISTANT, NURSE,
44 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.

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.

1 B. The department of health services shall collect all abortion
2 reports, ~~and~~ complication reports AND INFORMED CONSENT REPORTS and prepare
3 a comprehensive annual statistical report based on the data gathered in
4 the reports. The statistical report shall include a breakdown of the
5 number of abortions by gestational age of the unborn child at the time of
6 the abortion and the type of procedure performed or prescribed. THE
7 STATISTICAL REPORT SHALL INCLUDE A BREAKDOWN BY MONTH OF THE REASONS FOR
8 ABORTIONS PURSUANT TO SECTION 36-2161 AND A BREAKDOWN BY MONTH OF THE
9 NUMBER OF ABORTIONS PERFORMED OR PRESCRIBED BY EACH HOSPITAL AND FACILITY
10 PURSUANT TO SECTION 36-2161. ALL DATA INCLUDED ON THE FORMS PURSUANT TO
11 SECTIONS 36-2161, 36-2162 AND 36-2162.01 SHALL BE INCLUDED IN THE
12 STATISTICAL REPORT, EXCEPT THAT THE DEPARTMENT SHALL CONFIDENTIALLY
13 MAINTAIN THE DATA THAT ALONE OR IN COMBINATION MAY CONSTITUTE INFORMATION
14 FROM WHICH AN INDIVIDUAL PERFORMING OR HAVING AN ABORTION MAY BE
15 IDENTIFIED USING EPIDEMIOLOGIC PRINCIPLES. The statistical report shall
16 not lead to the disclosure of the identity of any person filing a report
17 or about whom a report is filed. The department shall make the
18 statistical report available on its website and for public inspection and
19 copying.

20 C. The statistical report prepared by the department pursuant to
21 subsection B of this section shall include statistics from the
22 administrative office of the courts containing the following information:

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

25 2. Of the petitions filed pursuant to section 36-2152, subsection
26 B, the number in which the judge appointed a guardian ad litem or
27 court-appointed counsel for the minor pursuant to section 36-2152,
28 subsection D.

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

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

34 5. Of the petitions denied, the number appealed to the court of
35 appeals.

36 6. The number of those appeals that resulted in the denials being
37 affirmed.

38 7. The number of those appeals that resulted in the denial being
39 reversed.

40 D. THE STATISTICAL REPORT PREPARED BY THE DEPARTMENT PURSUANT TO
41 SUBSECTION B OF THIS SECTION SHALL INCLUDE STATISTICS FROM THE ARIZONA
42 HEALTH CARE COST CONTAINMENT SYSTEM CONTAINING THE FOLLOWING INFORMATION:

43 1. THE TOTAL NUMBER OF ABORTIONS PARTIALLY OR FULLY PAID FOR WITH
44 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.

~~D.~~ 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.

~~E.~~ 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.

~~F.~~ G. 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 AND F of this section or as otherwise authorized by law, is guilty of a class 3 misdemeanor.

~~G.~~ H. 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.~~ I. 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.~~ J. In addition to the penalties prescribed by subsections ~~F~~, G, ~~and H~~ AND I 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. Effective date

This act is effective from and after December 31, 2018.