

CENTER FOR ARIZONA POLICY

POLICY PAGES

Arizona Abortion Laws

January 2023

OVERVIEW

Arizona is nationally recognized as a leading pro-life state. After an analysis of each state's legal protections for human life from conception to natural death, Americans United for Life ranked Arizona the most pro-life state in 2018 and 2019.¹ Since 1995, Center for Arizona policy (CAP) has supported over 72 pro-life bills that have been signed into law. Protecting both the life and health of a preborn baby and that of the baby's mother is a top priority for CAP.

Update: On June 24, 2022, the United States Supreme Court held in [*Dobbs v. Jackson Women's Health Organization*](#) that the U.S. Constitution contains no right to abortion. The Court returned the issue of abortion policy to the states. Arizona law has banned abortion since before statehood and a version of that law was in effect in 1973 when the Court handed down *Roe v. Wade*. Based on *Roe*, an Arizona court enjoined enforcement of the Arizona law banning abortion. On July 13, 2022, Attorney General Mark Brnovich filed a motion for relief from that injunction because the pre-*Roe* abortion ban is the valid law of the state under *Dobbs*. The trial court judge lifted the injunction and for a brief period of time abortion was illegal in Arizona. However, months later, the Arizona Court of Appeals all but repealed the abortion ban and ruled Arizona's 15-weeks ban the law of the state.

However, the story is not over. The Court of Appeals ruling may only temporarily limit Arizona's pre-*Roe* abortion ban. An appeal would give the Arizona Supreme Court the final say. For more information about status of Arizona's abortion prohibition, read:

Status of Abortion Law in Arizona

ADEQUATE CONSENT

ENSURING

Parental Consent for Minor ([A.R.S. § 36-2152](#)): Requires parental consent for minors seeking abortions, but allows for judicial bypass. Requires the parental consent to be obtained on a form to ensure that parents are informed of all of the medical risks of abortion before giving consent. Requires parental consent to be notarized. Allows parents to sue (1) an abortion provider who



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performs an abortion on their minor daughter without parental consent or (2) any person who assists a minor in obtaining an abortion without parental consent.

- **Informed Consent** ([A.R.S. § 36-2153](#)): Information must be provided 24 hours in advance to a woman seeking an abortion about the immediate and long-term risks and alternatives of the procedure, the probable gestational age and physiological characteristics of the preborn child, and the services available from public and private agencies to assist during pregnancy and after birth. 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, the staff must inform her that mifepristone alone to end a pregnancy is not always effective and that she should immediately consult a physician if she would like more information. Requires that the information is provided at an in-person, private consultation with a doctor. Allows a woman to file a lawsuit against an abortion provider who fails to obtain informed consent. Requires the Department of Health Services (DHS) to create and maintain a website providing unbiased information, including fetal development, the risks of abortion, alternatives to abortion, and information about the efficacy of mifepristone taken alone and to immediately contact a physician if a woman questions her decision to end the pregnancy.
- **Informed Consent for Lethal Condition** ([A.R.S. § 36-2158](#)): If a woman seeks an abortion because her child was diagnosed with a lethal fetal condition, information must be provided 24 hours in advance of the abortion about the support that is available to her, including perinatal hospice. Requires DHS to create and maintain a website providing unbiased information about perinatal hospice and assistance available for children with special needs.
- **Opportunity to View Ultrasound** ([A.R.S. § 36-2156](#)): Requires an ultrasound to be performed at least 24 hours before every abortion, and a woman seeking abortion must be offered the opportunity to view the ultrasound and hear the baby's heartbeat, if audible.
- **Coercion Prohibited** ([A.R.S. § 36-2153](#)): Prohibits a person from intimidating or coercing another person into having an abortion and allows minors to obtain public assistance benefits if parents cut off financial support because the minor refuses to have an abortion. Requires that all abortion clinics conspicuously post signs that state it is unlawful for any person to intimidate or coerce another person into having an abortion.

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- **Foster Parents** ([A.R.S. § 8-514.05](#)): Foster parents may not consent to abortion for a foster child.
- **Fiduciaries** ([Arizona Code of Jud. Admin. § 7-202](#)): Fiduciaries may not consent to abortion for a ward without a court order.

PROHIBITING THE MOST INHUMANE PRACTICES

- **Pre-Roe Abortion Ban** ([A.R.S. § 13-3603](#)): Prohibits all abortions unless necessary to save life of the mother. The law was in effect until 1973 when it became unenforceable due to *Roe v. Wade*, 410 U.S. 113 (1973). However, when *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ____ (2022) overturned *Roe*, the law presumably becomes enforceable. However, it is currently tied up in litigation.
- **Partial-Birth Abortion Ban** ([A.R.S. § 13-3603.01](#)): Outlaws the gruesome partial-birth abortion procedure; mirrors the federal law upheld by the U.S. Supreme Court.
- **Prohibiting Abortions After 15 Weeks Gestation** (A.R.S. §§ [36-2321](#), [-2322](#), [-2323](#), [-2324](#), [-2325](#), [-2326](#)): Prohibits a physician from intentionally or knowingly performing an abortion on an unborn child past 15 weeks gestation except in a medical emergency. A physician who violates the law is guilty of a class 6 felony, unprofessional conduct, and could lose or have suspended their license to practice medicine in Arizona. Before performing an abortion, a physician must determine the probable gestational age of the unborn baby and document it. If performing an abortion in the case of a medical emergency, a physician must follow a reporting protocol and attest under oath to the emergency that justifies the abortion. Failure to file a report or filing a report containing false statements subjects a physician to a civil penalty of up to \$10,000. The law empowers the attorney general to enforce the law. When the Supreme Court overturned *Roe*, the pre-*Roe* ban on abortion, A.R.S. § 13-3603 should have superseded the 15 weeks law by its own text.² However, the Arizona Court of Appeals decided in the Fall of 2022 that the 15-weeks law was the law governing abortions performed by physicians, not the pre-*Roe* ban.
- **Prohibition On Abortions Due to Genetic Abnormalities Such as Down Syndrome** ([A.R.S. § 13-3603.02](#)): Prohibits abortions based solely on the diagnosis of a genetic abnormality.
- **Prohibiting Abortions on Viable Fetus** ([A.R.S. § 36-2301.01](#)): An abortion may not be performed on a viable fetus, unless “necessary to preserve the life or health” of the mother. Viable 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.”

- **Duty to Promote Life of Baby Delivered Alive** ([A.R.S. § 36-2301](#)): If an abortion is performed and the baby is delivered alive, the physician performing the abortion is required to see that all available means and medical skills are used to promote, preserve, and maintain the life of the child.
- **Prohibiting Race and Sex Selection Abortions** ([A.R.S. § 13-3603.02](#)): Prohibits abortions based on the race or sex of the preborn child.
- **Prohibiting Trafficking of Aborted Babies and Their Body Parts** ([A.R.S. § 36-2302](#)): Prohibits the research, experimentation, and trafficking of aborted babies or their body parts.

ENFORCING BASIC SAFETY STANDARDS

- **Abortion Clinic Regulations** ([A.R.S. §§ 36-449.01, -449.02, -449.03](#)): Requires abortion clinics to be licensed medical facilities that meet basic health and safety standards, including clinics that administer only medication abortions. Limits performance of surgical abortions to licensed physicians. Establishes standards for follow-up visits, minimum abortion clinic incident reporting, and ensures confidentiality of patients. Requires doctors that perform surgical abortions to have admitting privileges at a hospital within 30 miles of the abortion clinic. Requires abortion clinics to provide proof of meeting the admitting privileges requirements upon initial licensure and subsequent renewal. Requires abortion clinics to be subject to the same inspection standards as all other health care institutions. Requires a follow-up visit within one to three weeks after administering a medication abortion. Requires abortion clinics to report to DHS any injury or condition that requires ambulance transportation of a patient. Permits DHS to assess civil penalties, impose sanctions, and suspend, revoke, or deny licenses for violations of these rules.
- **Prohibiting Telemedicine for Abortion** ([A.R.S. § 36-3604](#)): Abortion providers may not use webcam technology as a substitute for an in-person meeting with a doctor.
- **Prohibiting All Non-Physicians from Performing Surgical Abortions** ([A.R.S. §§ 36-2153\(E\), -2155](#)): Bans all non-doctors from performing surgical abortions.
- **Prohibiting Physician Assistants from Performing Abortions** ([A.R.S. §§ 32-2501\(11\), -2531, -2532](#)): Prohibits physician assistants from performing surgical abortions and prescribing abortion drugs.
- **Prohibiting Nurse Practitioners from Performing Abortions** ([A.R.S. § 32-1606](#)):

The Board of Nursing does not have authority to allow nurse practitioners to perform abortions.

- **Victim of a Crime** ([A.R.S. § 36-2161\(C\)](#)): If a woman discloses she is seeking an abortion as a result of criminal acts against her, the facility must inform her that she has the right to report the crime to law enforcement and must provide her with resources available for assistance and services, including a national human trafficking resource hotline.
- **Prohibiting the Dissemination of the Abortion Pill Through the Mail** ([A.R.S. § 36-2160](#)): Abortion-inducing drugs cannot be sent through the mail or via courier.

PROTECTING RIGHTS OF CONSCIENCE

- **Right to Refuse to Participate in Abortion** ([A.R.S. § 36-2154](#)): No hospital or healthcare worker may be required to perform abortions. Protects all healthcare workers to uphold their religious beliefs about abortion, abortion medication, and emergency contraception without compromising their jobs.

COLLECTING ACCURATE DATA

- **Abortion Reporting** ([A.R.S. §§ 36-2161, -2163, -2301\(B\)](#)): Requires abortion clinics to report to DHS monthly on how many abortions they performed, the reason for the procedure, the type of procedure, demographical information of their patients, excluding any personal identifiers, whether an infant was born alive after a botched abortion and the efforts made to save the infant's life, the medical specialty of the physician that performed the abortion, whether anesthesia was administered to the mother or unborn child, and any known medical complications. If an abortion is performed and a baby with a lethal fetal condition is delivered alive, the physician performing the abortion shall document and report to DHS the specific lethal fetal condition that was diagnosed before and confirmed by an examination after the baby was delivered alive. Allows DHS to take disciplinary action against an abortion clinic's license for failure to report.
- **Abortion Complications Reporting** ([A.R.S. § 36-2162](#)): Requires all healthcare providers to report to DHS about any women treated for abortion complications, the nature of the complication, and expected permanent effects of the complication, excluding any personal identifiers.
- **Abortion Informed Consent Reporting** ([A.R.S. § 36-2162.01](#)): Requires physicians that provide informed consent information to report to DHS monthly regarding the

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number of women to whom the physician provided the required information, the number of women to whom the physician or other qualified person provided additional required information, the number of women for whom the physician or qualified person working with the physician performed fetal ultrasound imaging and auscultation of fetal heart services as required, and the number of abortions the physicians performed without the required informed consent information because of a medical emergency.

- **Annual DHS Abortion Report** ([A.R.S. § 36-2163](#)): DHS must prepare an annual statistical report with information from all abortion reports, complication reports, and informed consent reports; breakdown of the number of abortions by gestational age and the type of procedure used; breakdown by month of the reasons for the abortion; breakdown by month of the number of abortions performed by each hospital and abortion clinic; the number of judicial bypass petitions filed and the number granted and denied; total number of abortions partially or fully paid for with state monies through AHCCCS; total amount of state monies used to pay for the abortions and expenses incidental to the abortions; and total number of abortions paid for with state monies and performed out of state.

ELIMINATING PUBLIC SUBSIDIES AND BENEFITS

- **Prohibition on Use of Public Funds** ([A.R.S. § 35-196.02](#)): State taxpayer funds may not be used to pay for an abortion except to save the life of the mother. However, an Arizona Supreme Court decision, *Simat v. AHCCCS*, requires an exception for indigent women seeking a “medically necessary” abortion. Federal taxpayer funds may be used when the pregnancy is the result of rape or incest. Public funds may not be used for abortion training.
- **Abortion at State Universities Prohibited** ([A.R.S. § 15-1630](#)): No abortion shall be performed at any facility under the jurisdiction of the board of regents unless “necessary to save the life of the woman having the abortion.”
- **Public Facilities** ([A.R.S. § 48-2212](#)): County health service district facilities may not provide abortions or contract with an outside provider to perform abortions.
- **Charitable Tax Credits** ([A.R.S. § 43-1088](#)): Abortion providers are disqualified from Arizona’s Charitable Tax Credit.
- **Health Insurance Exchanges** ([A.R.S. § 20-121](#)): Plans that provide abortion coverage will not be included in any health insurance exchange created under the Patient Protection and Affordable Care Act. Includes exceptions when “necessary to save the life” of the woman, “necessary to avert substantial and irreversible impairment

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of a major bodily function” of the woman, or “the pregnancy is the result of rape or incest.”

- **Title X Family Planning Grants** ([A.R.S. § 36-145](#)): DHS must apply for Title X funds and distribute any received funds as prescribed by ([A.R.S. § 35-196.05\(A\)](#)), which precludes distribution to abortion providers.
- **Prohibiting Public Universities from Promoting Abortion** ([A.R.S. § 15-115.01](#)): Public universities may not perform or refer abortions, unless it is necessary to save the life of the woman.
- **Prohibiting the Use of Taxpayer Money for Research on Fetal Remains** ([A.R.S. § 35-196.04](#)): Tax dollars cannot be used for research on fetal remains from an abortion.

POLICY PROMOTING LIFE

- **Preference for Childbirth and Adoption in Schools** ([A.R.S. § 15-115](#)): No public school may endorse or provide support to any program or presentation that does not present childbirth and adoption as preferred options to abortion.
- **Accessible Adoption Information** ([A.R.S. § 36-2153.01](#)): Requires comprehensive adoption information to be prominently displayed on the Arizona Department of Health Services (DHS) website.
- **Adoption Original Birth Certificate** ([A.R.S. § 36-340](#)): Allows an adult adoptee access to an original birth certificate while still protecting a birth parent’s right to anonymity.
- **Prohibiting Wrongful Life/Birth Lawsuits** ([A.R.S. § 12-719](#)): Prohibits parents from suing doctors and claiming that they would have aborted their child if they knew the child would have a disability.
- **Changing Statutory Language to Reflect the Humanity of Unborn Children** ([A.R.S. §§ 36-301, -326, -329, -2152](#)): All references to aborted remains in Arizona law are changed from “products of conception” to “unborn child.”
- **Requiring Burial or Cremation of Aborted Remains** ([A.R.S. § 36-449.03](#)): The remains of an aborted baby resulting from a surgical abortion will be cremated or buried.
- **Promoting Life Over Abortion** ([FY 2022 Budget Bills – Final Engrossed](#)): The Family Health Pilot program meets needs of abortion-minded pregnant women so they can choose life.

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- **Promoting Life Over Abortion by Providing for Homeless Pregnant Women** ([FY 2022 Budget Bills – Final Engrossed](#)): Providing for pregnant homeless women so they can choose life.
- **Prohibition to Contract on Abortion** ([A.R.S. § 36-2153\(I\)](#)): Prohibits a person from requiring a woman to obtain an abortion as a provision in a contract or as a condition of employment.

UNENFORCEABLE LAWS DUE TO JUDICIAL ACTION

- **A Woman May Not Seek an Abortion** (A.R.S. § 13-3604, repealed): A woman may not seek an abortion “unless it is necessary to preserve her life.” Repealed while unenforceable due to [Roe v. Wade, 410 U.S. 113 \(1973\)](#).
- **No Advertising for Abortions** ([A.R.S. § 13-3605](#)): Prohibits advertising for abortion services. Unenforceable due to [Roe v. Wade, 410 U.S. 113 \(1973\)](#).
- **Review of Ultrasound Results** ([A.R.S. § 36-2301.02](#)): Requires DHS to contract with a private company to review ultrasounds for abortions performed after 12 weeks to confirm gestational age. Unenforceable due to [Tucson Woman’s Clinic v. Eden, 379 F.3d 531 \(9th Cir. 2004\)](#).
- **Prohibiting Abortions Past 20 Weeks of Pregnancy** ([A.R.S. § 36-2159](#)): Prohibits abortions past 20 weeks gestation, except in the case of a medical emergency. Unenforceable due to [Isaacson v. Horne, 716 F.3d 1213 \(9th Cir. 2013\)](#).
- **Prohibition on Backdoor Funding of Abortion Providers** ([A.R.S. § 35-196.05\(B\)](#)): Prohibits federal tax dollars that pass through the state from going to abortion providers. Unenforceable due to [Planned Parenthood Ariz. v. Betlach, 727 F.3d 960 \(9th Cir. 2013\)](#).
- **Arizona Laws Value All Human Life** ([A.R.S. § 1-219](#)): Arizona laws are interpreted to value human life at all stages of life subject only to the U.S. Constitution and U.S. Supreme Court Rulings. Temporarily unenforceable due to an injunction issued by Judge Douglas Rayes, July 2022.

TALKING POINTS

- **Arizona abortion laws recognize the importance of protecting the lives of unborn babies and vulnerable women.** Laws requiring consent or that regulate clinics help safeguard women against the dangerous practices of the abortion industry.

- **Abortion is not healthcare, and Americans agree that taxpayers should not be forced to pay for them.** Arizona law prohibits direct taxpayer-funded abortion, with very limited exceptions.
- **Abortion is a loss for everyone except for those in the abortion business who profit financially by selling abortions. That is why, in part, state legislatures have the authority to regulate the abortion industry.** Arizona’s Legislature has established public policy that will protect both the life and health of an unborn child and that of the child’s mother.
- **Abortion ends a life and harms the mother, sometimes physically, and often emotionally. The abortion industry has shown time and time again that women’s safety is not its first priority. So, it is incumbent upon the state to regulate the abortion industry.**

CONCLUSION

Arizona has a strong pro-life record and continues to be a pro-life leader in the nation. While there is still much work to be done protecting the sanctity of human life from its very beginning, Center for Arizona Policy remains committed to seeing this battle through to the end.

¹ Americans United for Life <https://aul.org/> (last viewed October 2021)

²“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.” Senate Bill 1164, 55th Legislature – Second Regular Session (2022), *available at* <https://www.azleg.gov/legtext/55leg/2R/laws/0105.pdf> (last viewed: January 2023).