

Status of Abortion Law in Arizona

Abortion has been illegal under Arizona law since statehood and was still in effect until January 22, 1973. This law states:

A person who provides, supplies or administers to a pregnant woman, or procures such woman to take any medicine, drugs or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless it is necessary to save her life, shall be punished by imprisonment in the state prison for not less than two years nor more than five years. A.R.S. § 13-3603

Here, the term intent to procure miscarriage means abortion.

The year before the U.S. Supreme Court decided *Roe v. Wade*, an Arizona state court upheld the abortion law as constitutional. However, when the U.S. Supreme Court handed down the *Roe* opinion in 1973, that same state court stopped enforcement of the abortion law based on *Roe*.

Thus, the day before the *Roe* decision, abortion was illegal in Arizona. The day after the *Roe* decision, abortion was legal.

Now that *Roe* is overturned, Arizona's pre-*Roe* abortion law should be the law of the state.

Arizona's abortion law has never been repealed even after *Roe* made it unenforceable. Over time, some lawmakers have filed bills and amendments to repeal it, but the Arizona Legislature has chosen to keep it time and time again. Just last year, the Legislature repealed a different pre-*Roe* law punishing a woman for getting an abortion, but kept the pre-*Roe* law above that punishes the abortionists. The Legislature's intent is clear—to stop abortion while supporting both the pregnant woman and her child.

Former Arizona Attorney General Mark Brnovich has publicly stated that the pre-*Roe* abortion ban is good law in Arizona and enforceable. On July 13, 2022, Attorney General Brnovich [filed](#) to have the 50-year injunction on the abortion law from 1973 lifted.

On September 23, 2022, Pima County Superior Court Judge Kellie Johnson issued a 7-page ruling in which she ordered the 1973 injunction of the law to be lifted. The abortion industry appealed Judge Johnson's ruling. On October 7, 2022, a three-judge panel on the Arizona Court of Appeals, Division Two blocked enforcement of the pre-*Roe*. On December 30, 2022, the Court ruled the pre-*Roe* law does not apply to physicians, effectively eviscerating the law pending further appeal. The court held that the Arizona law limiting abortion after 15 weeks is the governing law, and thus physicians can perform elective abortions on unborn children through 14 weeks gestational age. Read the opinion [here](#).

An appeal is likely. Alliance Defending Freedom (ADF) is already an intervenor in the case representing unborn infants. On January 27, 2023, the Arizona Supreme Court granted ADF's motion for extension of time to file a petition for review. ADF has until March 1, 2023, to file its appeal.

What about Arizona's law limiting abortion after 15 weeks? In 2022, the Arizona Legislature passed a bill, [SB 1164](#), prohibiting abortions after 15 weeks gestational age. It passed the law just in case the Supreme Court placed the abortion prohibition line at 15 weeks instead of overturning *Roe*. The 15-week law specifically and clearly states it does not repeal the pre-*Roe* abortion ban on abortion.

In the future, watch for the Arizona Supreme Court to review the appeals court ruling and decide whether to lift the injunction on the pre-*Roe* abortion law. Until the courts resolve the litigation over the pre-*Roe* law, the 15-week limit is in effect and enforceable.