HOUSE BILL 2706

AN ACT

AMENDING SECTION 36-402, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 4, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 10; AMENDING SECTION 36-2301.01, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 23, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-2301.02; PROVIDING FOR THE CONDITIONAL REPEAL OF SECTION 36-449.01, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT; PROVIDING FOR CONDITIONAL ENACTMENT; RELATING TO ABORTION FACILITIES.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 36-402, Arizona Revised Statutes, is amended to read:

36-402. Exemptions

Nothing in this chapter or the rules adopted by the director pursuant to the provisions of this chapter authorizes the licensure, supervision, regulation or control of:

1. The remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denomination.

2. Establishments, such as motels, hotels and boarding houses, which provide domiciliary and ancillary commercial services, but do not provide adaptive, medical, hospital, nursing, health-related or supervisory care services.

3. Private offices and clinics of health care providers licensed under title 32 unless:

(a) Patients are kept overnight as bed patients or treated otherwise under general anesthesia except where treatment by general anesthesia is regulated by title 32, chapter 11.
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(b) THE OFFICE OR CLINIC IS AN ABORTION CLINIC. FOR THE PURPOSES OF THIS SUBDIVISION, "ABORTION CLINIC" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-449.01.

4. Dispensaries and first aid stations located within business or industrial establishments maintained solely for the use of employees if the facility does not contain inpatient beds and is under the supervision of a physician.

5. The collection, processing or distribution of whole human blood, blood components, plasma, blood fractions or derivatives procured, processed or distributed by federally licensed and regulated blood banks.

6. Adult foster care homes certified by the county or the department pursuant to section 11-293.01 or 36-410.

7. Places where four or fewer adults not related to the administrator or owner receive adult day health services for compensation on a regular basis.

8. Places at which persons receive health related services only from relatives or from legal guardians or places that do not purport to be establishments that regularly provide health related services AND at which two-or-fewer ONE OR TWO persons receive health related services on a twenty-four hour basis.

9. The Arizona pioneers' home. However, the department of health services shall evaluate the health and sanitation conditions at the Arizona pioneers' home annually using the standards applicable to licensed nursing care institutions. THE DEPARTMENT SHALL PREPARE AND DISTRIBUTE reports of these visits shall be prepared and disseminated to the president of the senate, the speaker of the house of representatives and the governor within thirty days of such visits EACH VISIT. Reports shall include information as to the extent of compliance with applicable standards as compared to licensed nursing care institutions and recommendations for the improvement of care and services provided.

10. The personal residence of a terminally ill person, or the personal residence of that person's relative or guardian, where that person receives hospice services from a hospice service agency.

11. All medical and health related facilities and services that are provided to inmates who are confined in a state prison. The state department of corrections shall annually evaluate the medical and health related facilities and services that are provided to inmates to determine that the facilities and services meet the applicable standards that are adopted by the director of the department of health services. The state department of corrections shall report the results of its annual evaluation and the actual findings, including a plan of correction for any deficiencies, to the director of the department of health services. The department of health services shall conduct validation surveys on a percentage of the medical and
health related facilities, the number of which shall be determined by the state department of corrections and the department of health services. The director of the state department of corrections shall maintain the annual evaluation reports. This paragraph does not apply to licensed behavioral or mental health inpatient treatment facilities that the state department of corrections operates.

Sec. 2. Title 36, chapter 4, Arizona Revised Statutes, is amended by adding article 10, to read:

ARTICLE 10. ABORTION CLINICS

36-449. Definitions
A. IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE Requires:
1. "ABORTION" MEANS THE USE OF A SURGICAL INSTRUMENT OR A MACHINE WITH THE INTENT TO TERMINATE A WOMAN'S PREGNANCY FOR REASONS OTHER THAN TO INCREASE THE PROBABILITY OF A LIVE BIRTH, TO PRESERVE THE LIFE OR HEALTH OF THE CHILD AFTER A LIVE BIRTH, TO TERMINATE AN ECTOPIC PREGNANCY OR TO REMOVE A DEAD FETUS. ABORTION DOES NOT INCLUDE BIRTH CONTROL DEVICES OR ORAL CONTRACEPTIVES.
2. "ABORTION CLINIC" MEANS A FACILITY, OTHER THAN AN ACCREDITED HOSPITAL, IN WHICH FIRST, SECOND OR THIRD TRIMESTER ABORTIONS ARE PERFORMED.
3. "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES.
4. "VIABLE FETUS" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-2301.01.

36-449.01. Definitions
IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE Requires:
1. "ABORTION" MEANS THE USE OF A SURGICAL INSTRUMENT OR A MACHINE WITH THE INTENT TO TERMINATE A WOMAN'S PREGNANCY FOR REASONS OTHER THAN TO INCREASE THE PROBABILITY OF A LIVE BIRTH, TO PRESERVE THE LIFE OR HEALTH OF THE CHILD AFTER A LIVE BIRTH, TO TERMINATE AN ECTOPIC PREGNANCY OR TO REMOVE A DEAD FETUS. ABORTION DOES NOT INCLUDE BIRTH CONTROL DEVICES OR ORAL CONTRACEPTIVES.
2. "ABORTION CLINIC" MEANS A FACILITY, OTHER THAN AN ACCREDITED HOSPITAL, IN WHICH FIVE OR MORE FIRST TRIMESTER ABORTIONS IN ANY MONTH OR ANY SECOND OR THIRD TRIMESTER ABORTIONS ARE PERFORMED.
3. "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES.
4. "VIABLE FETUS" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-2301.01.

36-449.02. Abortion clinics; licensure requirements; rules
A. BEGINNING ON APRIL 1, 2000, AN ABORTION CLINIC SHALL MEET THE SAME LICENSURE REQUIREMENTS AS PRESCRIBED IN ARTICLE 2 OF THIS CHAPTER FOR HEALTH CARE INSTITUTIONS.
B. AN ABORTION CLINIC THAT HOLDS AN UNCLASSIFIED HEALTH CARE FACILITY LICENSE ISSUED BEFORE THE EFFECTIVE DATE OF THIS ARTICLE MAY RETAIN THAT...
CLASSIFICATION UNTIL APRIL 1, 2000 SUBJECT TO COMPLIANCE WITH ALL LAWS THAT
RELATE TO UNCLASSIFIED HEALTH CARE FACILITIES.

C. BEGINNING ON APRIL 1, 2000, ABORTION CLINICS SHALL COMPLY WITH
DEPARTMENT REQUIREMENTS FOR ABORTION CLINICS AND DEPARTMENT RULES THAT GOVERN
ABORTION CLINICS.

36-449.03. Abortion clinics; rules
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. POST-PROCEDURE 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 in those facilities that provide abortions after twelve weeks' gestation.

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 surgery 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 with admitting privileges at an accredited hospital in this state is available.

4. A registered nurse, nurse practitioner, licensed practical nurse or physician's assistant is present and remains at the clinic when abortions are performed to provide post-operative monitoring and care 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) For an abortion in which an ultrasound is not performed before the abortion procedure, 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 WHO ELECT TO HAVE AN
ABORTION AFTER TWELVE WEEKS’ GESTATION. THE RULES SHALL REQUIRE THAT A
PERSON WHO PERFORMS AN ULTRASOUND EXAMINATION 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 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.

F. THE DIRECTOR SHALL ADOPT RULES THAT PRESCRIBE MINIMUM RECOVERY ROOM
STANDARDS. AT A MINIMUM THESE RULES SHALL REQUIRE THAT:
1. IMMEDIATE POST-PROCEDURE CARE 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. A PHYSICIAN WITH ADMITTING PRIVILEGES AT AN ACCREDITED HOSPITAL IN
THIS STATE 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 Rh0(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 TELEPHONES THE PATIENT, WITH THE PATIENT'S CONSENT, WITHIN
TWENTY-FOUR HOURS AFTER SURGERY 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. A POST-ABORTION 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.

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.

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. NO PERSONALLY IDENTIFIABLE PATIENT OR PHYSICIAN INFORMATION SHALL BE RELEASED BY THE DEPARTMENT.

J. 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. 3. Section 36-2301.01, Arizona Revised Statutes, is amended to read:

36-2301.01. Abortion of viable fetus: requirements; definition

A. Before a physician performs an abortion of a viable fetus, the physician shall state in writing that the abortion is necessary to preserve the life or health of the woman, specifying the medical indications for and the probable health consequences of the abortion. The physician shall attach a copy of this statement to any fetal death report filed pursuant to section 11-593 or fetal death registration filed pursuant to section 36-329, SUBSECTION C.

B. A physician performing an abortion of a viable fetus shall use the available method or technique of abortion most likely to preserve the life and health of the fetus, unless the use of such method or technique would present a greater risk to the life or health of the woman than the use of another available method or technique. When a physician performs an abortion of a viable fetus, the physician shall state in writing the available methods or techniques considered, the method or technique used and the reasons for choosing that method or technique. The physician shall attach a copy of this statement to any fetal death report filed pursuant to section 11-593 or fetal death registration filed pursuant to section 36-329, SUBSECTION C.

C. A physician shall not perform an abortion of a viable fetus unless, in addition to the physician performing the abortion, there is another physician in attendance who shall take control of and provide immediate medical care for a living child born as a result of the abortion. During the performance of the abortion the physician performing the abortion shall take all reasonable steps, consistent with the procedure used and in keeping with good medical practice, to preserve the life and health of the fetus, if these steps do not pose an increased risk to the life or health of the woman on whom the abortion is performed.

D. THIS SECTION DOES NOT APPLY IF THERE IS A MEDICAL EMERGENCY.

D. E. As used in this section: 

I. "ABORTION" MEANS THE USE OF AN INSTRUMENT, MEDICINE OR DRUG OR OTHER SUBSTANCE OR DEVICE WITH THE INTENT TO TERMINATE A PREGNANCY FOR REASONS OTHER THAN TO INCREASE THE PROBABILITY OF A LIVE BIRTH, TO PRESERVE THE LIFE OR HEALTH OF THE CHILD AFTER LIVE BIRTH, TO TERMINATE AN ECTOPIC PREGNANCY OR TO REMOVE A DEAD FETUS. ABORTION DOES NOT INCLUDE BIRTH CONTROL DEVICES OR ORAL CONTRACEPTIVES.
2. "MEDICAL EMERGENCY" MEANS A CONDITION THAT, ON THE BASIS OF THE
PHYSICIAN'S GOOD FAITH CLINICAL JUDGMENT, SO COMPLICATES A PREGNANCY AS TO
NECESSITATE THE IMMEDIATE ABORTION OF THE PREGNANCY TO AVOID THE WOMAN'S
DEATH OR FOR WHICH A DELAY WILL CREATE SERIOUS RISK OF SUBSTANTIAL AND
IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION.

3. "Viable fetus" means the unborn offspring of human beings which 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.

Sec. 4. Title 36, chapter 23, article 1, Arizona Revised Statutes, is amended by adding section 36-2301.02, to read:

36-2301.02. **Pathological examination of fetal and embryonic tissues**

A. A person who performs an abortion shall estimate the gestational age of the fetus using obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rule.

B. A person who performs an abortion shall ensure that the fetal and embryonic tissues removed from a woman as a result of a second or third trimester abortion are sent to persons or corporations contracted pursuant to this section. The person performing the abortion shall ensure that each set of fetal remains is sent in a manner that it is distinguishable from, and not mixed with, any other set of remains and is accompanied with a copy of any report that notes the estimate of the fetus' gestational age that was made before the abortion.

C. The department of health services shall contract with qualified public or private persons or corporations for the delivery of pathology services. The department shall issue requests for proposals for the purpose of establishing contracts pursuant to this section. At a minimum, the contracts shall require the contractor to:

1. Perform a pathological examination of fetal and embryonic tissues to verify the accuracy of the estimate of the fetus' gestational age made before the abortion.

2. Perform a pathological examination of fetal and embryonic tissues to verify that the estimate of the fetus' gestational age made before the abortion was made in reasonable compliance with obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rule.

3. Make available additional evaluation of the fetal and embryonic tissues at the direction and cost of either the person who performed the abortion or the abortion clinic.

D. The contractor shall use a statistically valid method of sampling to conduct the pathological examination of fetal and embryonic tissues.
RESULTING FROM IMPLANTATION IN THE UTERUS FROM A WOMAN AS A RESULT OF A
SECOND TRIMESTER ABORTION OF A FETUS OF UP TO EIGHTEEN WEEKS' GESTATION. THE
CONTRACTOR SHALL CONDUCT A PATHOLOGICAL EXAMINATION OF ALL FETAL AND
EMBRYONIC TISSUES RESULTING FROM IMPLANTATION IN THE UTERUS FROM A WOMAN AS
A RESULT OF AN ABORTION OF A FETUS OF EIGHTEEN OR MORE WEEKS' GESTATION.

E. ON A MONTHLY BASIS, PERSONS OR CORPORATIONS PROVIDING PATHOLOGY
SERVICES TO THE DEPARTMENT PURSUANT TO THIS SECTION SHALL FILE A REPORT WITH
THE DIRECTOR REGARDING TEST RESULTS, NOTING:

1. ANY INSTANCES IN WHICH THE CONTRACTOR BELIEVES THERE WAS A
SIGNIFICANT INACCURACY IN THE AGE ESTIMATE MADE BEFORE THE ABORTION.

2. ANY CIRCUMSTANCES THAT, BASED ON THE CONTRACTOR’S PROFESSIONAL
JUDGMENT, MIGHT EXPLAIN A SIGNIFICANT INACCURACY REPORTED PURSUANT TO
PARAGRAPH 1 OF THIS SUBSECTION.

3. WHETHER THERE WAS REASONABLE COMPLIANCE PURSUANT TO SUBSECTION C,
PARAGRAPH 2 OF THIS SECTION.

4. WHETHER, BASED ON THE RESULTS OF THE PATHOLOGIST’S EXAMINATION, THE
DOCTOR SHOULD HAVE FILED A FETAL DEATH CERTIFICATE WITH THE DEPARTMENT OF
HEALTH SERVICES AS REQUIRED BY SECTION 36-329, SUBSECTION C.

F. THE DEPARTMENT OF HEALTH SERVICES SHALL FORWARD THE REPORT OR
PORTIONS OF THE REPORT WITHIN THIRTY WORKING DAYS TO THE APPROPRIATE
PROFESSIONAL REGULATORY BOARDS FOR THEIR REVIEW AND APPROPRIATE ACTION.

G. EXCEPT AS PROVIDED BY SUBSECTION F OF THIS SECTION, THE REPORTS
REQUIRED BY THIS SECTION ARE CONFIDENTIAL AND DISCLOSABLE BY THE DEPARTMENT
OR ITS CONTRACTOR ONLY IN AGGREGATE FORM FOR STATISTICAL OR RESEARCH
PURPOSES. EXCEPT AS PROVIDED BY SUBSECTION F OF THIS SECTION, INFORMATION
RELATING TO ANY PHYSICIAN, HOSPITAL, CLINIC OR OTHER INSTITUTION SHALL NOT
BE RELEASED. PERSONALLY IDENTIFIABLE PATIENT INFORMATION SHALL NOT BE
RELEASED BY THE DEPARTMENT OR ITS CONTRACTOR.

Sec. 5. Abortion clinics, rules; exemption for rule making;
effective date of rules

A. On or before December 31, 1999, the department of health services
shall adopt rules, in addition to any other applicable rules for health care
institutions, that at a minimum meet the requirements of title 36, chapter
4, article 10, Arizona Revised Statutes, as added by this act, relating to
abortion clinics’ physical facilities, supplies and equipment, personnel,
medical screening and evaluation, the abortion procedure, the recovery room
and the follow-up visit.

B. On or before March 31, 2000, the department of health services
shall adopt rules regarding the pathological examination of fetal and
embryonic tissues pursuant to section 36-2301.02, Arizona Revised Statutes,
as added by this act.

C. The department of health services is exempt from the provisions of
title 41, chapter 6, Arizona Revised Statutes, until March 31, 2000 with
respect to the adoption of rules required pursuant to title 36, chapter 4,
article 10, Arizona Revised Statutes, as added by this act and section 36-2301.02, Arizona Revised Statutes, as added by this act.

D. The department shall provide the public with an opportunity to comment on the proposed rules and shall hold at least one public hearing on the proposed rules.

E. Rules adopted pursuant to title 36, chapter 4, article 10, Arizona Revised Statutes, as added by this act, are effective from and after March 31, 2000.

F. Rules adopted pursuant to section 36-2301.02, Arizona Revised Statutes, as added by this act, are effective from and after June 30, 2000.

Sec. 6. Exemption from procurement code

The department of health services is exempt from the procurement code requirements of title 41, chapter 23, Arizona Revised Statutes, until April 1, 2000 to contract with qualified public or private persons or corporations for the delivery of pathology services for fetal and embryonic tissues.

Sec. 7. Pathology examination of fetal and embryonic tissues; auditor general report

By December 31, 2002, the auditor general shall evaluate the first two years' operation of the effectiveness of the pathological examination of fetal and embryonic tissues required by section 36-2301.02, Arizona Revised Statutes, in ensuring compliance with the provisions of section 36-2301.01, Arizona Revised Statutes. The auditor general's report shall be delivered to the governor, the president of the senate and the speaker of the house of representatives and a copy of this report shall be provided to the secretary of state and the director of the department of library, archives and public records.

Sec. 8. Report

On or before December 31, 1999, the department of health services shall submit a report to the governor, the president of the senate and the speaker of the house of representatives and shall provide a copy of this report to the secretary of state and the director of the department of library, archives and public records to make recommendations on whether any of the rules adopted for clinics performing surgical abortions should be extended to facilities performing abortions with medicine or drugs.

Sec. 9. Joint health committee of reference; offices and clinics of health care providers; review of exemption

The joint health committee of reference shall review the types of facilities that remain exempt from regulation by the department of health services pursuant to section 36-402, paragraph 3, Arizona Revised Statutes, after the legislature eliminated the exemptions for urgent care centers and abortion clinics during the first regular session of the forty-fourth legislature. The committee shall make recommendations by no later than December 31, 1999 to the governor, the speaker of the house of representatives and the president of the senate as to which classes of
exempt facilities should be regulated by the department of health services
to ensure the public health. The board of medical examiners and the
department of health services shall provide assistance to the committee as
requested by the committee chairmen.

Sec. 10. **Severability**
If a provision of this act is held invalid, the invalidity of that
specific provision does not affect the validity of any other section of this
act that is not specifically held to be invalid, and to this end the
provisions of this act are severable.

Sec. 11. **Delayed effective dates**
A. Section 36-402, Arizona Revised Statutes, as amended by this act,
is effective from and after March 31, 2000.
B. Section 36-2301.02, Arizona Revised Statutes, as added by this act,
is effective from and after June 30, 2000.

Sec. 12. **Conditional repeal**
Section 36-449.01, Arizona Revised Statutes, as added by this act, is
repealed only if, and on the date that, there is a final court ruling that
the definition of "abortion clinic" in section 36-449.01, Arizona Revised
Statutes, as added by this act, is unconstitutional.

Sec. 13. **Conditional enactment**
Section 36-449, Arizona Revised Statutes, as added by this act, does
not become effective unless, and on the date that, there is a final court
ruling that the definition of "abortion clinic" in section 36-449.01, Arizona
Revised Statutes, as added by this act, is unconstitutional.

Sec. 14. **Emergency**
This act is an emergency measure that is necessary to preserve the
public peace, health or safety and is operative immediately as provided by
law.