



ARIZONA STATE SENATE
Fifty-Third Legislature, First Regular Session

AMENDED
FACT SHEET FOR S.B. 1367

abortion; live delivery; report; definition

Purpose

Requires a physician performing an abortion to document and report the measures performed to maintain the life of the fetus or embryo if it was delivered alive.

Background

In current statute, 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 to see that all available means and medical skills are used to promote, preserve and maintain the life of such fetus or embryo ([A.R.S. § 36-2301](#)). A physician cannot knowingly perform an abortion of a viable fetus unless the physician uses 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. A *viable fetus* is defined as 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 ([A.R.S. § 36-2301.01](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Report Requirements

1. Requires that if the fetus or embryo is delivered alive the physician performing the abortion shall document and report to the Department of Health Services (DHS) the measures he or she took to maintain the life of the fetus or embryo.
2. States that action to enforce the duty to promote the life of a fetus or embryo delivered alive and the required reporting and documentation will be done so in the name of the state by the Attorney General or the County Attorney in the Superior Court of the county where the violation occurred.
3. Requires that all reports on each abortion performed in the state that are submitted to DHS include statements from the physician and staff present during the abortion certifying under penalty of perjury that the aborted fetus or embryo was not delivered alive.

4. Requires that the annual statistical report published by DHS include the following information in order of the gestational ages of the unborn children:
 - a) a breakdown of the number of abortions;
 - b) the time of the abortion; and
 - c) the type of procedure performed or prescribed.

Abortion Procedure

5. Requires that abortion clinics performing or inducing an abortion for a woman whose unborn child is the gestational age of 20 weeks or more meet the minimum equipment standards to assist the physician in complying with the duty to promote the life of a fetus or embryo delivered alive.
6. Requires that there be standards of care to satisfy the requirement that all available means and medical skills be used to promote the life of a fetus or embryo delivered alive.

Civil Action

7. Permits the following persons who have been effected by a physician's failure to comply with the duty to promote the life of a fetus or embryo delivered alive to file a civil action to obtain relief:
 - a) the mother or father of the human fetus or embryo delivered alive; and
 - b) the maternal grandparent of the human fetus or embryo delivered alive if the mother was not at least 18 years of age at the time of the abortion, unless the pregnancy resulted from the plaintiff's criminal conduct.
8. Requires that the civil action be brought in the superior court in the county where the woman the abortion was performed on resides.
9. Permits that the civil action can be based on the claim that the failure to comply with the duty to promote the life of a fetus or embryo delivered alive was a result of the following:
 - a) simple negligence;
 - b) gross negligence; or
 - c) wanton, willful or intentional misconduct.
10. Defines relief for a civil action as any of the following:
 - a) monetary damages for psychological, emotional, and physical injuries resulting from the violation;
 - b) statutory damages equal to \$5,000 or three times the cost of the abortion, whichever is greater; and
 - c) reasonable attorney fees and costs.
11. Requires the civil action be initiated within 10 years after the violation occurred.

Miscellaneous

12. Defines *delivered alive* as the complete expulsion or extraction from a 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 attached, shows any evidence of life, including one or more of the following:
 - a) breathing;
 - b) a heartbeat;
 - c) umbilical cord pulsation; and
 - d) definitive movement of voluntary muscles.
13. Makes technical changes.
14. Becomes effective on the general effective date.

Amendments Adopted by Committee

- Allows specified persons who have been effected by a physician's failure to comply with the duty to promote the life of a fetus or embryo delivered alive the right to file a civil action to obtain appropriate relief for the violation and outlines requirements of the civil action.

Senate Action

HHS 2/15/17 DPA 5-2-0

Prepared by Senate Research

February 16, 2017

EM/JA/jn