



FAMILY ISSUE FACT SHEET

No. 2012-12 (January 2012)

HB 2036 – WOMEN’S HEALTH & SAFETY ACT

EXECUTIVE SUMMARY

Arizona’s women must be provided the highest standard of care possible when facing a crisis pregnancy. HB 2036 strengthens Arizona law to address a number of key issues that present a clear risk to maternal health and allow for a woman to be coerced into having an abortion. The bill enacts safety standards to protect women from the dangerous abortion pill, prohibits abortion beyond twenty weeks gestation, and improves the regulations governing abortion clinics. The bill also enhances several components of informed consent by requiring that abortion clinics obtain parental consent on a form that provides parents with information about the risks of abortion for their daughters, offering information and support to women whose preborn babies have been diagnosed with a lethal or nonlethal condition, and creating a website with information on available medical assistance, benefits for prenatal care, childbirth, and neonatal care.

BACKGROUND

HB 2036 makes several important changes to protect the health and safety of women seeking an abortion in Arizona. The Women’s Health and Safety Act has two main components: abortion safety standards and informed consent provisions.

Abortion Safety Standards:

- **Prohibiting abortion after twenty weeks gestation except in a medical emergency.**

With any method of abortion, the risk of serious complications greatly increases after the first trimester. The most recent peer-reviewed medical data indicates that abortion becomes increasingly more dangerous than childbirth by twenty weeks gestation, with ever-increasing risk beyond twenty weeks.¹ Additionally, growing pools of international medical data is showing that the long-term risks of abortion further compound the immediate risk of death following an abortion.²

In deciding *Roe v. Wade*, the Supreme Court said that states, “have an important and legitimate interest in preserving and protecting the health of the pregnant woman,” and that this interest, “grows in substantiality as the woman approaches term, and, at a point during pregnancy... becomes compelling.”³ In light of current medical knowledge, Arizona’s interest in protecting women from the harms of abortion becomes compelling at the end of the first trimester, when the risks of abortion rise substantially.

Arizona has a strong and compelling interest in protecting women from unsafe practices and medical procedures. Regardless of method, abortion involves a group of serious and potentially fatal side effects that the state must act on to protect women. HB

2036 takes a major step to ensure women's health and safety by prohibiting abortion when it becomes most dangerous.

Arizona also has a strong interest in prohibiting abortion after twenty weeks based on the scientific evidence that the preborn baby can feel pain at that point.⁴ The government has a compelling interest in protecting these children from pain and in protecting the integrity and ethics of the medical profession.⁵

Finally, the state has a compelling interest in preventing "born alive" abortions where a child survives the abortion procedure and is subsequently murdered by the abortion provider. This awful scenario happened repeatedly at the clinic in Pennsylvania operated by Dr. Kermit Gosnell.⁶ Due to inherent difficulty in estimating gestational age with absolute certainty, abortions after twenty weeks greatly increase the risk that a viable baby will be born alive following an abortion procedure. Prohibiting abortions after twenty weeks minimizes the likelihood of the horrible atrocities that occurred in Pennsylvania happening here in Arizona.

Six states have enacted bans on abortions past twenty weeks similar to HB 2036.⁷ To date, none have been challenged in court.⁸

- **Distributors of the abortion pill must follow FDA protocol.**

Currently in Arizona, many abortion providers do not dispense the dangerous and deadly⁹ abortion pill in compliance with the protocol approved by the United States Food and Drug Administration. The abortion pill, also known as RU-486, Mifeprex, or mifepristone, was approved under a special section of the FDA's rules reserved for drugs that the FDA does not believe can be distributed safely without following certain restrictions.¹⁰ Thus, the FDA approved mifepristone only if it is dispensed following specific guidelines, which are contained in the drug's prescribing information and label.¹¹

Yet abortion providers ignore even these most basic safety requirements, cutting corners to cut costs at the expense of women's safety. The protocol approved by the FDA permits use of mifepristone up to 7 weeks gestational age (or 49 days after the woman's last menstrual period). However, Planned Parenthood openly admits – on their website¹² – that they dispense the abortion pill through 9 weeks gestational age (or 63 days after the woman's last menstrual period). Because the risks associated with the abortion pill increase with increasing gestational age, this departure from the protocol approved by the FDA places women in greater danger of facing a serious complication such as infection or hemorrhage.

HB 2036 requires abortion clinics to dispense any abortion medication in compliance with the protocol approved by the FDA.

- **Improvement to Clinic Regulations**

The possibility of immediate complications from abortion has been well-documented,¹³ and if a woman needs to be transported to the hospital, she will undoubtedly receive better, quicker care if the physician who performed the abortion is able to attend to her or,

at a minimum, communicate the nature of the complication to the hospital. HB 2036 requires that any physician performing a surgical abortion have admitting privileges at a hospital within 30 miles of the abortion clinic. HB 2036 also ensures that any incidents involving ambulance transport of a woman to a hospital are properly reported to DHS as required by the rules. The bill also makes other improvements to the clinic regulations to protect patient safety, particularly in how the regulations apply to clinics dispensing medication abortions.

Informed Consent Provisions:

HB 2036 also improves the provisions in Arizona law that ensure women are provided full and accurate information at least twenty-four hours before an abortion so that consent to an abortion is fully informed and voluntary.

- **Informed Consent Website.** HB 2036 requires publication of an informed consent website containing objective information and descriptions of the risks and alternatives to abortion. The website will be published by the Department of Health Services and must contain information on resources available to pregnant women and state that it is against the law for any person to coerce a woman to undergo an abortion.
- Information must also be provided to women who are considering abortion due to a lethal or non-lethal fetal condition. DHS will also create a website listing resources available to assist the woman and the child such as perinatal hospice, support services, hotlines, and organizations that arrange adoptions for children with special needs.
- **Ultrasound requirement.** The opportunity to view an ultrasound image of her preborn child must be provided to a woman at least twenty-four hours before an abortion (instead of the current requirement of one hour).
- **Anti-coercion signs** must be made visible at abortion clinics. Women should be informed about their right to make this life-changing choice free from pressure from anyone else.
- **Parents** must be informed about the risks of abortion before consenting to their minor child having an abortion.

Providing women with information about the abortion decision is critical. As the Supreme Court has explained, abortion is a decision fraught with consequences and “[i]t is self-evident that a mother who comes to regret her choice to abort must struggle with grief more anguished and sorrow more profound when she learns, only after the event, what she once did not know...”¹⁴

TALKING POINTS

- **Abortion after twenty weeks presents serious risks to the health and safety of women.** State and federal law, as well as the United States Supreme Court, have repeatedly recognized that states have a compelling interest in protecting women, and six states have enacted laws prohibiting abortions after twenty weeks.

- **Arizona’s women deserve better than the substandard medical practices of the abortion industry.** The abortion industry’s “quantity over quality” practice for performing abortion puts thousands of women at risk. This bill is another step in the right direction for the health and safety of women by preventing dangerous post-twenty week abortions and ensuring women have access to a nearby hospital if something goes wrong during an abortion.
- **Parents should be provided with the facts about any medically hazardous procedure before they give permission.** HB 2036 ensures that parental consent forms include information about the documented risks to undergoing an abortion.
- **Regardless of method, abortion is fraught with risks.** For more information on the dangers of abortion, see Center for Arizona Policy’s *Abortion Harms Women* and *The Abortion Pill* issue briefs at <http://www.azpolicypages.com/life/>.

CONCLUSION

Arizona must continue to recognize the risks of abortion to women and respond by enacting further protections for women with crisis pregnancies. HB 2036 takes an important step to provide greater protections for women considering an abortion.

¹ L. Bartlett, et al., *Risk Factors for legal induced abortion-related mortality in the United States*, 103 *Obstetrics & Gynecol* 729, (2004).

² John M. Thorp, et al., *Long-Term Physical and Psychological Health Consequences of Induced Abortion: Review of the Evidence*, 68 *Obstetrical and Gynecological Survey* 67, 70 (2002)

³ *Roe v. Wade*, 410 U.S. 113, at 162-63 (1973).

⁴ K. Anand, *Pain and its effects in the human neonate and fetus*, 317 *New England J. of Med.* 1321, (1987).

⁵ *Gonzales v. Carhart*, 550 U.S. 124 (2007); *Washington v. Glucksberg*, [521 U. S. 702, 731](#) (1997); see also *Barsky v. Board of Regents of Univ. of N. Y.*, [347 U. S. 442, 451](#) (1954) (indicating the State has 'legitimate concern for maintaining high standards of professional conduct' in the practice of medicine).

⁶ Philadelphia District Attorney, Investigation of Women’s Medical Society, Grand Jury Report (Jan. 19, 2011), available at http://www.phila.gov/districtattorney/grandjury_womensmedical.html.

⁷ Alabama, Idaho, Indiana, Kansas, Nebraska, and Oklahoma.

⁸ Idaho’s law was part of a lawsuit brought by a woman who was prosecuted for attempting to self-administer an abortion, but that part of the lawsuit was thrown out.

⁹ There have been fourteen deaths reported in the United States that are linked to the abortion pill. Mifepristone U.S. Postmarketing Adverse Events Summary through 04/30/2011, Food and Drug Administration, available at www.fda.gov/downloads/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/UCM263353.pdf.

¹⁰ This section is called “Subpart H” and is found at 21 C.F.R. § 314.520 (“Approval with restrictions to assure safe use”).

¹¹ See Mifeprex Medication Guide, Danco Laboratories (June 8, 2011), available at www.accessdata.fda.gov/drugsatfda_docs/label/2011/020687s014lbl.pdf; Mifeprex (mifepristone) Prescribing Information, Danco Laboratories (July 2005), available at www.accessdata.fda.gov/drugsatfda_docs/label/2005/020687s013lbl.pdf.

¹² Planned Parenthood, The Abortion Pill (Medication Abortion), <http://www.plannedparenthood.org/health-topics/abortion/abortion-pill-medication-abortion-4354.asp> (last visited Feb. 9, 2012).

¹³ Maarit Niinimäki, et. al., *Immediate Complications After Medical Compared With Surgical Termination of Pregnancy*, 114 *Obstetrics & Gynecology* 795, 799 (2009); *Possible Physical Side Effects*, American Pregnancy Association (September 2007), www.americanpregnancy.org/unplannedpregnancy/possiblesideeffects.html (last visited Feb. 9, 2012).

¹⁴ *Gonzales v. Carhart*, 550 U.S. 124, 159-60 (2007).