

# ARIZONA STATE SENATE

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TO: MEMBERS OF THE SENATE  
APPROPRIATIONS COMMITTEE

DATE: March 30, 2021

SUBJECT: Strike everything amendment to H.B. 2140, relating to infant health

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### Purpose

Classifies, as a class 3 felony, knowingly performing an abortion after determining that the baby has a detectable heartbeat.

### Background

Current statute prohibits the performance or induction of an abortion without the voluntary and informed consent of the woman. Consent to an abortion is considered voluntary and informed only if at least 24 hours before having any part of an abortion performed or induced, and before the administration of any anesthesia or medication, the physician: 1) performs fetal ultrasound imaging and auscultation of fetal heart tone services; 2) offers to provide the woman with an opportunity to view the ultrasound image of the unborn child and hear the heartbeat, if the heartbeat is audible; 3) offers to provide the woman with an explanation of what the ultrasound is depicting; and 4) offers to provide the patient with a physical picture of the ultrasound. Informed consent requirements additionally stipulate that a woman must certify that she has been given an opportunity to view the ultrasound image and hear the heartbeat of the unborn child, if audible, and indicate whether or not she opted to view the ultrasound or hear the heartbeat of the unborn child.

A physician who knowingly violates prescribed informed consent requirements commits an act of unprofessional conduct and is subject to license suspension or revocation ([A.R.S. § 36-2156](#)).

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

### Provisions

1. Establishes that any physician, or a person who assists a physician, who knowingly performs an abortion after determining that a baby has a detectable heartbeat kills a human being and is guilty of a class 3 felony.
2. Exempts a physician or a person who assists a physician in performing an abortion on a baby with a detectable heartbeat from prescribed penalties if the procedure is determined to be medically necessary to save the life of a mother whose life is endangered by:
  - a) a physical disorder;
  - b) a physical illness;
  - c) a physical injury; or
  - d) a life-endangering physical condition caused by or arising from the pregnancy.

3. Allows the father of the baby, if the mother is not at least 18 years old at the time of the detectable heartbeat abortion, to bring a civil action to obtain appropriate relief unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the detectable heartbeat abortion.
4. Specifies that relief includes:
  - a) money damages for all injuries, psychological and physical, resulting from a detectable heartbeat abortion; and
  - b) statutory damages in an amount equal to ten times the cost of the detectable heartbeat abortion.
5. Exempts a woman on whom a detectable heartbeat abortion is performed from any criminal prosecution or civil liability.
6. Allows a licensed physician, or a person who assists a physician, who is accused of performing a detectable heartbeat abortion to seek a hearing before the Arizona Medical Board (AMB) or the Arizona Board of Osteopathic Examiners in Medicine and Surgery (ABOE) to determine whether the physician's conduct was necessary to save the endangered life of the mother.
7. Authorizes the findings of an AMB or ABOE hearing to be admissible, at the court's discretion, at the defendant's trial.
8. Requires the court, at its discretion and on a motion of the defendant, to delay the beginning of a trial for not more than 30 days to allow for a hearing before the AMB or ABOE to take place.
9. Defines *detectable heartbeat abortion* and *physician*.
10. Becomes effective on the general effective date.