



In bill text the following has special meaning

green underline denotes added text

~~red struck out text denotes deleted text~~

**2009 AZ H 2564**

**AUTHOR:** Barto

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State of Arizona  
House of Representatives  
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HOUSE BILL 2564

AN ACT

RENUMBERING SECTION 36-2151, ARIZONA REVISED STATUTES, AS SECTION 36-2154; AMENDING TITLE 36, CHAPTER 20, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 36-2151; AMENDING SECTION 36-2152, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 20, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-2153; AMENDING SECTION 36-2154, ARIZONA REVISED STATUTES, AS RENUMBERED BY THIS ACT; RELATING TO ABORTION.

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

Section 1. Renumber

Section 36-2151, Arizona Revised Statutes, is renumbered as section 36-2154.

Sec. 2. Title 36, chapter 20, article 1, Arizona Revised Statutes, is amended by adding a new section 36-2151, to read:

36-2151. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ABORTION" MEANS THE USE OF ANY MEANS TO TERMINATE THE CLINICALLY DIAGNOSABLE PREGNANCY OF A WOMAN WITH KNOWLEDGE THAT THE TERMINATION BY THOSE MEANS WILL CAUSE, WITH REASONABLE LIKELIHOOD, THE DEATH OF THE UNBORN CHILD. ABORTION DOES NOT INCLUDE BIRTH CONTROL DEVICES, ORAL CONTRACEPTIVES USED TO INHIBIT OR PREVENT OVULATION, CONCEPTION OR THE IMPLANTATION OF A FERTILIZED OVUM IN THE UTERUS OR THE USE OF ANY MEANS 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.

2. "CONCEPTION" MEANS THE FUSION OF A HUMAN SPERMATOZOON WITH A HUMAN OVUM.

3. "GESTATIONAL AGE" MEANS THE AGE OF THE UNBORN CHILD AS CALCULATED FROM THE FIRST DAY OF THE LAST MENSTRUAL PERIOD OF THE PREGNANT WOMAN.

4. "HEALTH PROFESSIONAL" HAS THE SAME MEANING PRESCRIBED IN SECTION 32-3201.

5. "MEDICAL EMERGENCY" MEANS A CONDITION THAT, ON THE BASIS OF THE PHYSICIAN'S GOOD FAITH CLINICAL JUDGMENT, SO COMPLICATES THE MEDICAL CONDITION OF A PREGNANT WOMAN AS TO NECESSITATE

THE IMMEDIATE ABORTION OF HER PREGNANCY TO AVERT HER DEATH OR FOR WHICH A DELAY WILL CREATE SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION.

6. "PHYSICIAN" MEANS A PERSON WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17.

7. "PREGNANT" OR "PREGNANCY" MEANS A FEMALE REPRODUCTIVE CONDITION OF HAVING A DEVELOPING UNBORN CHILD IN THE BODY AND THAT BEGINS WITH CONCEPTION.

8. "PROBABLE GESTATIONAL AGE" MEANS THE GESTATIONAL AGE OF THE UNBORN CHILD AT THE TIME THE ABORTION IS PLANNED TO BE PERFORMED AND AS DETERMINED WITH REASONABLE PROBABILITY BY THE ATTENDING PHYSICIAN.

9. "SURGICAL ABORTION" MEANS THE USE OF A SURGICAL INSTRUMENT OR A MACHINE TO TERMINATE THE CLINICALLY DIAGNOSABLE PREGNANCY OF A WOMAN WITH KNOWLEDGE THAT THE TERMINATION BY THOSE MEANS WILL CAUSE, WITH REASONABLE LIKELIHOOD, THE DEATH OF THE UNBORN CHILD. SURGICAL ABORTION DOES NOT INCLUDE THE USE OF ANY MEANS 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. SURGICAL ABORTION DOES NOT INCLUDE PATIENT CARE INCIDENTAL TO THE PROCEDURE.

10. "UNBORN CHILD" MEANS THE OFFSPRING OF HUMAN BEINGS FROM CONCEPTION UNTIL BIRTH.

Sec. 3. Section 36-2152, Arizona Revised Statutes, is amended to read:

36-2152. Parental consent; exception; hearings; time limits; violation; classification; civil relief; statute of limitations

A. IN ADDITION TO THE REQUIREMENTS OF SECTION 36-2153, a person shall not knowingly perform an abortion on a pregnant unemancipated minor unless the attending physician has secured the written AND NOTARIZED consent from one of the minor's parents or the minor's guardian or conservator or unless a judge of the superior court authorizes the physician to perform the abortion pursuant to subsection B OF THIS SECTION. NOTWITHSTANDING SECTION 41-319, THE NOTARIZED STATEMENT OF PARENTAL CONSENT AND THE DESCRIPTION OF THE DOCUMENT OR NOTARIAL ACT RECORDED IN THE NOTARY JOURNAL ARE CONFIDENTIAL AND ARE NOT PUBLIC RECORDS.

B. A judge of the superior court ~~shall~~, on petition or motion, and after an appropriate hearing, SHALL authorize a physician to perform the abortion if the judge determines that the pregnant minor is mature and capable of giving informed consent to the proposed abortion. If the judge determines that the pregnant minor is not mature or if the pregnant minor does not claim to be mature, the judge shall determine whether the performance of an abortion on her without the consent from one of her parents or her guardian or conservator would be in her best interests and shall authorize a physician to perform the abortion without consent if the judge concludes that the pregnant minor's best interests would be served.

C. IF THE PREGNANT MINOR CLAIMS TO BE MATURE AT A PROCEEDING HELD PURSUANT TO SUBSECTION B OF THIS SECTION, THE MINOR MUST PROVE BY CLEAR AND CONVINCING EVIDENCE THAT SHE IS SUFFICIENTLY MATURE AND CAPABLE OF GIVING INFORMED CONSENT WITHOUT CONSULTING HER PARENT OR LEGAL GUARDIAN BASED ON HER EXPERIENCE LEVEL, PERSPECTIVE AND JUDGMENT. IN ASSESSING THE PREGNANT MINOR'S EXPERIENCE LEVEL, THE COURT MAY CONSIDER, AMONG OTHER RELEVANT FACTORS, THE MINOR'S AGE AND EXPERIENCES WORKING OUTSIDE THE HOME, LIVING AWAY FROM HOME, TRAVELING ON HER OWN, HANDLING PERSONAL FINANCES AND MAKING OTHER SIGNIFICANT DECISIONS. IN ASSESSING THE PREGNANT MINOR'S PERSPECTIVE, THE COURT MAY CONSIDER, AMONG OTHER RELEVANT FACTORS, WHAT STEPS THE MINOR TOOK TO EXPLORE HER OPTIONS AND THE EXTENT TO WHICH SHE CONSIDERED AND WEIGHED THE POTENTIAL CONSEQUENCES OF EACH OPTION. IN ASSESSING THE PREGNANT MINOR'S JUDGMENT, THE COURT MAY CONSIDER, AMONG OTHER RELEVANT FACTORS, THE MINOR'S CONDUCT SINCE LEARNING OF HER PREGNANCY AND HER INTELLECTUAL ABILITY TO UNDERSTAND HER OPTIONS AND TO MAKE AN INFORMED DECISION.

~~C.~~D. The pregnant minor may participate in the court proceedings on her own behalf. The court may appoint a guardian ad litem for her. The court shall advise her that she has the right to court appointed counsel and ~~shall~~, on her request, SHALL provide her with counsel unless she appears through private counsel or she knowingly and intelligently waives her right to counsel.

~~D.~~E. Proceedings in the court under this section are confidential and have precedence over other pending matters. Members of the public shall not inspect, obtain copies of or otherwise have access to records of court proceedings under this section unless authorized by law. A judge who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a confidential record of the evidence to be maintained including the judge's own findings and conclusions. The minor may file the

petition using a fictitious name. For purposes of this subsection, public does not include judges, clerks, administrators, professionals or other persons employed by or working under the supervision of the court or employees of other public agencies who are authorized by state or federal rule or law to inspect and copy closed court records.

~~E-F.~~ The court shall hold the hearing and shall issue a ruling within forty-eight hours, excluding weekends and holidays, after the petition is filed. If the court fails to issue a ruling within this time period, the petition is deemed to have been granted and the consent requirement is waived.

~~F-G.~~ An expedited confidential appeal is available to a pregnant minor for whom the court denies an order authorizing an abortion without parental consent. The appellate court shall hold the hearing and issue a ruling within forty-eight hours, excluding weekends and holidays, after the petition for appellate review is filed. Filing fees are not required of the pregnant minor at either the trial or the appellate level.

~~G-H.~~ Parental consent or judicial authorization is not required under this section if either:

1. The pregnant minor certifies to the attending physician that the pregnancy resulted from sexual conduct with a minor by the minor's parent, stepparent, uncle, grandparent, sibling, adoptive parent, legal guardian or foster parent or by a person who lives in the same household with the minor and the minor's mother. The physician performing the abortion shall report the sexual conduct with a minor to the proper law enforcement officials pursuant to section 13-3620 and shall preserve and forward a sample of the fetal tissue to these officials for use in a criminal investigation.

2. The attending physician certifies in the pregnant minor's medical record that, on the basis of the physician's good faith clinical judgment, the pregnant minor has a condition that so complicates her medical condition as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function.

~~H-I.~~ A person who performs an abortion in violation of this section is guilty of a class 1 misdemeanor. A person is not subject to any liability under this section if the person establishes by written evidence that the person relied on evidence sufficient to convince a careful and prudent person that the representations of the pregnant minor regarding information necessary to comply with this section are true.

~~I.~~ For purposes of this section:

~~1. "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 a live birth, to terminate an ectopic pregnancy or to remove a dead fetus. Abortion does not include birth control devices or oral contraceptives that inhibit or prevent ovulation, fertilization or the implantation of a fertilized ovum within the uterus.~~

~~2. "Fetus" means any individual human organism from fertilization until birth.~~

J. IN ADDITION TO OTHER REMEDIES AVAILABLE UNDER THE COMMON OR STATUTORY LAW OF THIS STATE, ONE OR BOTH OF THE MINOR'S PARENTS OR THE MINOR'S GUARDIAN MAY BRING A CIVIL ACTION IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE PARENTS OR THE GUARDIAN RESIDES TO OBTAIN APPROPRIATE RELIEF FOR A VIOLATION OF THIS SECTION, UNLESS THE PREGNANCY RESULTED FROM THE CRIMINAL CONDUCT OF THE PARENT OR GUARDIAN. THE CIVIL ACTION MAY BE BASED ON A CLAIM THAT FAILURE TO OBTAIN CONSENT WAS A RESULT OF SIMPLE NEGLIGENCE, GROSS NEGLIGENCE, WANTONNESS, WILFULNESS, INTENTION OR ANY OTHER LEGAL STANDARD OF CARE. RELIEF PURSUANT TO THIS SUBSECTION INCLUDES THE FOLLOWING:

1. MONEY DAMAGES FOR ALL PSYCHOLOGICAL, EMOTIONAL AND PHYSICAL INJURIES THAT RESULT FROM THE VIOLATION OF THIS SECTION.

2. STATUTORY DAMAGES IN AN AMOUNT EQUAL TO FIVE THOUSAND DOLLARS OR THREE TIMES THE COST OF THE ABORTION, WHICHEVER IS GREATER.

3. REASONABLE ATTORNEY FEES AND COSTS.

K. A CIVIL ACTION BROUGHT PURSUANT TO THIS SECTION MUST BE INITIATED WITHIN SIX YEARS AFTER THE VIOLATION OCCURRED.

Sec. 4. Title 36, chapter 20, article 1, Arizona Revised Statutes, is amended by adding section 36-2153, to read:

36-2153. Informed consent; requirements; information; violation; civil relief; statute of limitations

A. AN ABORTION SHALL NOT BE PERFORMED OR INDUCED WITHOUT THE VOLUNTARY AND INFORMED CONSENT OF THE WOMAN ON WHOM THE ABORTION IS TO BE PERFORMED OR INDUCED. EXCEPT IN THE CASE OF A MEDICAL EMERGENCY, CONSENT TO AN ABORTION IS VOLUNTARY AND INFORMED ONLY IF ALL OF THE FOLLOWING ARE TRUE:

1. AT LEAST TWENTY-FOUR HOURS BEFORE THE ABORTION, THE PHYSICIAN WHO IS TO PERFORM THE ABORTION OR THE REFERRING PHYSICIAN HAS INFORMED THE WOMAN, ORALLY AND IN PERSON, OF:

(a) THE NAME OF THE PHYSICIAN WHO WILL PERFORM THE ABORTION.

(b) THE NATURE OF THE PROPOSED PROCEDURE OR TREATMENT.

(c) THE IMMEDIATE AND LONG-TERM MEDICAL RISKS ASSOCIATED WITH THE PROCEDURE THAT A REASONABLE PATIENT WOULD CONSIDER MATERIAL TO THE DECISION OF WHETHER OR NOT TO UNDERGO THE ABORTION.

(d) ALTERNATIVES TO THE PROCEDURE OR TREATMENT THAT A REASONABLE PATIENT WOULD CONSIDER MATERIAL TO THE DECISION OF WHETHER OR NOT TO UNDERGO THE ABORTION.

(e) THE PROBABLE GESTATIONAL AGE OF THE UNBORN CHILD AT THE TIME THE ABORTION IS TO BE PERFORMED.

(f) THE PROBABLE ANATOMICAL AND PHYSIOLOGICAL CHARACTERISTICS OF THE UNBORN CHILD AT THE TIME THE ABORTION IS TO BE PERFORMED.

(g) THE MEDICAL RISKS ASSOCIATED WITH CARRYING THE CHILD TO TERM.

2. AT LEAST TWENTY-FOUR HOURS BEFORE THE ABORTION, THE PHYSICIAN WHO IS TO PERFORM THE ABORTION, THE REFERRING PHYSICIAN OR A QUALIFIED PHYSICIAN, PHYSICIAN ASSISTANT, NURSE, PSYCHOLOGIST OR LICENSED BEHAVIORAL HEALTH PROFESSIONAL TO WHOM THE RESPONSIBILITY HAS BEEN DELEGATED BY EITHER PHYSICIAN HAS INFORMED THE WOMAN, ORALLY AND IN PERSON, THAT:

(a) MEDICAL ASSISTANCE BENEFITS MAY BE AVAILABLE FOR PRENATAL CARE, CHILDBIRTH AND NEONATAL CARE.

(b) THE FATHER OF THE UNBORN CHILD IS LIABLE TO ASSIST IN THE SUPPORT OF THE CHILD, EVEN IF HE HAS OFFERED TO PAY FOR THE ABORTION. IN THE CASE OF RAPE OR INCEST, THIS INFORMATION MAY BE OMITTED.

(c) PUBLIC AND PRIVATE AGENCIES AND SERVICES ARE AVAILABLE TO ASSIST THE WOMAN DURING HER PREGNANCY AND AFTER THE BIRTH OF HER CHILD IF SHE CHOOSES NOT TO HAVE AN ABORTION, WHETHER SHE CHOOSES TO KEEP THE CHILD OR PLACE THE CHILD FOR ADOPTION.

(d) IT IS UNLAWFUL FOR ANY PERSON TO COERCE A WOMAN TO UNDERGO AN ABORTION.

(e) THE WOMAN IS FREE TO WITHHOLD OR WITHDRAW HER CONSENT TO THE ABORTION AT ANY TIME WITHOUT AFFECTING HER RIGHT TO FUTURE CARE OR TREATMENT AND WITHOUT THE LOSS OF ANY STATE OR FEDERALLY FUNDED BENEFITS TO WHICH SHE MIGHT OTHERWISE BE ENTITLED.

3. THE INFORMATION IN PARAGRAPHS 1 AND 2 OF THIS SUBSECTION IS PROVIDED TO THE WOMAN INDIVIDUALLY AND IN A PRIVATE ROOM TO PROTECT HER PRIVACY AND TO ENSURE THAT THE INFORMATION FOCUSES ON HER INDIVIDUAL CIRCUMSTANCES AND THAT SHE HAS ADEQUATE OPPORTUNITY TO ASK QUESTIONS.

4. THE WOMAN CERTIFIES IN WRITING BEFORE THE ABORTION THAT THE INFORMATION REQUIRED TO BE PROVIDED PURSUANT TO PARAGRAPHS 1 AND 2 OF THIS SUBSECTION HAS BEEN PROVIDED.

B. IF A MEDICAL EMERGENCY COMPELS THE PERFORMANCE OF AN ABORTION, THE PHYSICIAN SHALL INFORM THE WOMAN, BEFORE THE ABORTION IF POSSIBLE, OF THE MEDICAL INDICATIONS SUPPORTING THE PHYSICIAN'S JUDGMENT THAT AN ABORTION IS NECESSARY TO AVERT THE WOMAN'S DEATH OR TO AVERT SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION.

C. AN INDIVIDUAL WHO IS NOT A PHYSICIAN SHALL NOT PERFORM A SURGICAL ABORTION.

D. A PERSON SHALL NOT WRITE OR COMMUNICATE A PRESCRIPTION FOR A DRUG OR DRUGS TO INDUCE AN

ABORTION OR REQUIRE OR OBTAIN PAYMENT FOR A SERVICE PROVIDED TO A PATIENT WHO HAS INQUIRED ABOUT AN ABORTION OR SCHEDULED AN ABORTION UNTIL THE EXPIRATION OF THE TWENTY-FOUR HOUR REFLECTION PERIOD REQUIRED BY SUBSECTION A.

E. A PERSON SHALL NOT INTIMIDATE OR COERCE IN ANY WAY ANY PERSON TO OBTAIN AN ABORTION. A PARENT, GUARDIAN OR ANY OTHER PERSON SHALL NOT COERCE A MINOR TO OBTAIN AN ABORTION. IF A MINOR IS DENIED FINANCIAL SUPPORT BY THE MINOR'S PARENTS, GUARDIANS OR CUSTODIAN DUE TO THE MINOR'S REFUSAL TO HAVE AN ABORTION PERFORMED, THE MINOR IS DEEMED EMANCIPATED FOR THE PURPOSES OF ELIGIBILITY FOR PUBLIC ASSISTANCE BENEFITS, EXCEPT THAT THE EMANCIPATED MINOR MAY NOT USE THESE BENEFITS TO OBTAIN AN ABORTION.

F. A PHYSICIAN WHO KNOWINGLY VIOLATES THIS SECTION COMMITS AN ACT OF UNPROFESSIONAL CONDUCT AND IS SUBJECT TO LICENSE SUSPENSION OR REVOCATION PURSUANT TO TITLE 32, CHAPTER 13 OR 17.

G. IN ADDITION TO OTHER REMEDIES AVAILABLE UNDER THE COMMON OR STATUTORY LAW OF THIS STATE, ANY OF THE FOLLOWING MAY FILE A CIVIL ACTION TO OBTAIN APPROPRIATE RELIEF FOR A VIOLATION OF THIS SECTION:

1. A WOMAN ON WHOM AN ABORTION HAS BEEN PERFORMED WITHOUT HER INFORMED CONSENT AS REQUIRED BY THIS SECTION.

2. THE FATHER OF THE UNBORN CHILD IF MARRIED TO THE MOTHER AT THE TIME SHE RECEIVED THE ABORTION, UNLESS THE PREGNANCY RESULTED FROM THE PLAINTIFF'S CRIMINAL CONDUCT.

3. THE MATERNAL GRANDPARENTS OF THE UNBORN CHILD IF THE MOTHER WAS NOT AT LEAST EIGHTEEN YEARS OF AGE AT THE TIME OF THE ABORTION, UNLESS THE PREGNANCY RESULTED FROM THE PLAINTIFF'S CRIMINAL CONDUCT.

H. A CIVIL ACTION FILED PURSUANT TO SUBSECTION G SHALL BE BROUGHT IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE WOMAN ON WHOM THE ABORTION WAS PERFORMED RESIDES AND MAY BE BASED ON A CLAIM THAT FAILURE TO OBTAIN INFORMED CONSENT WAS A RESULT OF SIMPLE NEGLIGENCE, GROSS NEGLIGENCE, WANTONNESS, WILFULNESS, INTENTION OR ANY OTHER LEGAL STANDARD OF CARE. RELIEF PURSUANT TO SUBSECTION G INCLUDES THE FOLLOWING:

1. MONEY DAMAGES FOR ALL PSYCHOLOGICAL, EMOTIONAL AND PHYSICAL INJURIES RESULTING FROM THE VIOLATION OF THIS SECTION.

2. STATUTORY DAMAGES IN AN AMOUNT EQUAL TO FIVE THOUSAND DOLLARS OR THREE TIMES THE COST OF THE ABORTION, WHICHEVER IS GREATER.

3. REASONABLE ATTORNEY FEES AND COSTS.

I. A CIVIL ACTION BROUGHT PURSUANT TO THIS SECTION MUST BE INITIATED WITHIN SIX YEARS AFTER THE VIOLATION OCCURRED.

Sec. 5. Section 36-2154, Arizona Revised Statutes, as renumbered by this act, is amended to read:

36-2154. Right to refuse to participate in abortion; abortion medication or emergency contraception

A. ~~No~~ A hospital is NOT required to admit any patient for the purpose of performing an abortion. A physician, or any other person who is a member of or associated with the staff of a hospital, or any employee of a hospital, doctor, clinic or other medical or surgical facility in which an abortion has been authorized, who ~~shall state~~ STATES in writing an objection to ~~such~~ THE abortion on moral or religious grounds ~~shall~~ IS not ~~be~~ required to ~~FACILITATE OR~~ participate in the medical or surgical procedures ~~which~~ THAT will result in the abortion.

B. A PHARMACY, HOSPITAL OR HEALTH PROFESSIONAL, OR ANY EMPLOYEE OF A PHARMACY, HOSPITAL OR HEALTH PROFESSIONAL, WHO STATES IN WRITING AN OBJECTION TO ABORTION, ABORTION MEDICATION, EMERGENCY CONTRACEPTION OR ANY MEDICATION OR DEVICE INTENDED TO INHIBIT OR PREVENT IMPLANTATION OF A FERTILIZED OVUM ON MORAL OR RELIGIOUS GROUNDS IS NOT REQUIRED TO FACILITATE OR PARTICIPATE IN THE PROVISION OF AN ABORTION, ABORTION MEDICATION, EMERGENCY CONTRACEPTION OR ANY MEDICATION OR DEVICE INTENDED TO INHIBIT OR PREVENT IMPLANTATION OF A FERTILIZED OVUM. THE PHARMACY, HOSPITAL OR HEALTH PROFESSIONAL, OR AN EMPLOYEE OF THE PHARMACY, HOSPITAL OR HEALTH PROFESSIONAL, SHALL RETURN TO THE PATIENT THE PATIENT'S WRITTEN PRESCRIPTION ORDER.

Sec. 6. Construction

This act does not create or recognize a right to an abortion and does not make lawful an abortion that is currently unlawful.

#### Sec. 7. Severability

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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