

SENATE BILL 1769

By Beavers

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 15; Title 63, Chapter 6; Title 63, Chapter 9 and Title 68, Chapter 11, relative to the performance of an ultrasound prior to the performance of an abortion.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 15, Part 2, is amended by adding the following language as a new, appropriately designated section:

(a) This section shall be known and may be cited as the “Woman’s Ultrasound Right to Know Act”.

(b) The general assembly finds and declares:

(1) It is standard procedure and practice to administer an ultrasound to a pregnant woman before an abortion is performed;

(2) Ultrasound requirements serve an essential medical purpose in confirming the presence, location, number of fetuses, and gestational age of a pregnancy;

(3) Ultrasound requirements also serve an essential medical purpose in diagnosing ectopic pregnancies, which, if left undiagnosed, can result in infertility or even fatal blood loss;

(4) It is critical to the psychological and physical well-being of a woman considering an abortion that she receives complete and accurate information on the reality and status of her pregnancy and of her unborn child;

(5) The decision to abort “is an important, and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences.” *Planned Parenthood v. Danforth*, 428 U.S. 52, 67 (1976); and

(6) The knowledgeable exercise of a woman’s decision to have an abortion depends on the extent to which the woman receives sufficient information to make an informed choice between two alternatives: giving birth or having an abortion.

(c) Based on the findings in subsection (b), the purposes of this section are to:

(1) Protect the physical health and welfare of every woman considering an abortion;

(2) Ensure that every woman considering an abortion receives complete information on the reality and status of her pregnancy and of her unborn child and that every woman submitting to an abortion does so only after giving her voluntary and informed consent to the abortion procedure;

(3) Protect the unborn child from a woman’s uninformed decision to have an abortion;

(4) Reduce “the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed.” *Planned Parenthood v. Casey*, 505 U.S. 833, 882 (1992); and

(5) Adopt the construction of the term “medical emergency” accepted by the U.S. Supreme Court in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

(d) As used in this section and for the purposes of this section only:

(1) “Abortion” means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of

the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:

(A) Save the life or preserve the health of the unborn child;

(B) Remove a dead unborn child caused by spontaneous abortion; or

(C) Remove an ectopic pregnancy;

(2) "Auscultation" means the act of listening for sounds made by internal organs of the fetus, specifically for a fetal heartbeat, utilizing an ultrasound transducer and fetal heart rate (FHR) monitor;

(3) "Department" means the department of health;

(4) "Facility" or "medical facility" means any public or private hospital, clinic, center, medical school, medical training institution, healthcare facility, physician's office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location wherein medical care is provided to any person;

(5) "Medical emergency" means that condition which, 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 termination 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 any person licensed to practice under title 63, chapter 6 or 9, in this state. "Physician" includes medical doctors and doctors of osteopathy;

(7) "Pregnant" or "pregnancy" means that female reproductive condition of having an unborn child in the woman's uterus;

(8) “Qualified person” means an agent of the physician who is a psychologist, licensed social worker, licensed professional counselor, registered nurse, or physician;

(9) “Unborn child” means the offspring of human beings from conception until birth; and

(10) “Ultrasound” means the use of ultrasonic waves for diagnostic or therapeutic purposes, specifically to monitor a developing fetus.

(e) Except in the case of a medical emergency, at the beginning of the applicable waiting period imposed by § 39-15-202(d), the physician who is to perform the abortion on the pregnant woman, the referring physician, or a qualified person assisting the physician shall perform fetal ultrasound imaging and auscultation of fetal heart tone services on the patient undergoing the abortion.

(f) No abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, in addition to the requirements of § 39-15-202, consent to an abortion is voluntary and informed, if and only if:

(1) At the beginning of the applicable waiting period imposed by § 39-15-202(d), the physician who is to perform the abortion on the pregnant woman, the referring physician, or a qualified person assisting the physician offers the woman, orally and in person, the opportunity to:

(A) View the active ultrasound image of the unborn child and hear the heartbeat of the unborn child, if the heartbeat is audible; and

(B) Receive a physical picture of the ultrasound image of the unborn child;

(2) At the woman's request, the physician or qualified person assisting the physician, at the beginning of the applicable waiting period imposed by § 39-15-202(d) prior to the performance of the abortion:

(A) Provides the active ultrasound image to the pregnant woman for her to view and auscultation of fetal heart tone for her to hear; and

(B) Provides a physical picture of the ultrasound image of the unborn child;

(3) Except in a medical emergency that prevents compliance with § 39-15-202(d), before performing an abortion, a physician or qualified person assisting the physician shall obtain the woman's signature on a certificate form stating the following:

(A) That she has been offered the opportunity to view the active ultrasound image of the unborn child and to hear the heartbeat of the unborn child, if the heartbeat is audible;

(B) That she has been offered the opportunity to receive the physical picture of the ultrasound image of the unborn child; and

(C) That the woman either:

(i) Requested to view the active ultrasound imaging and hear auscultation of fetal heart tone and receive the physical picture of the ultrasound image; or

(ii) That the woman opted not to view the active ultrasound imaging and hear auscultation of fetal heart tone and receive the physical picture of the ultrasound image; and

(4) Before the abortion is performed or induced, the physician who is to perform or induce the abortion receives a copy of the written certification required

by subdivision (f)(3). The physician shall retain a copy of the signed certification form in the woman's medical record.

(g)

(1) The active ultrasound image shall be of a quality consistent with standard medical practice in the community, shall contain the dimensions of the unborn child, and shall accurately portray the presence of external members and internal organs of the unborn child, if present or viewable.

(2) The auscultation of fetal heart tone shall be of a quality consistent with standard medical practice in the community.

(3) If, in the medical opinion of the ultrasound provider in accordance with the applicable medical guidelines of the American College of Obstetrics and Gynecology (ACOG), a transabdominal ultrasound is not feasible for obtaining a quality image due to the body habitus of the woman or the early first trimester age of the unborn child, then a transvaginal ultrasound shall not be required.

(h) When 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 immediate abortion is necessary to avert her death or that a delay as imposed by § 39-15-202(d) will cause substantial and irreversible impairment of a major bodily function.

(i) Any person who intentionally, knowingly, or recklessly performs or attempts to perform or induce an abortion without complying with this section shall be held accountable in accordance with §§ 63-6-213, 63-6-214, 63-6-216, 63-6-217, 63-9-110, and 63-9-111.

(j)

(1) In addition to any and all remedies available under the common or statutory law of this state, failure to comply with this section shall:

(A) Provide a basis for a civil healthcare liability action for actual and punitive damages. Any intentional violation of this section shall be admissible in a civil suit as *prima facie* evidence of a failure to obtain informed consent, which, except in the case of a medical emergency, constitutes medical malpractice;

(B) Provide a basis for a professional disciplinary action under §§ 63-6-213, 63-6-214, 63-6-216, 63-6-217, 63-9-110, 63-9-111, and 39-15-206; and

(C) Provide a basis for recovery for the woman for the wrongful death of her unborn child under § 29-26-119 whether or not the unborn child was born alive or was viable at the time the abortion was performed.

(2) When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the abortion was performed.

(3) If judgment is rendered in favor of the plaintiff, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant.

(4) If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney's fee in favor of the defendant against the plaintiff.

(k)

(1) The department of health shall enforce this section at all facilities and medical facilities that provide abortion services.

(2) The department of health shall approve a certificate format as required by this section.

(l) Nothing in the section shall be construed as creating or recognizing a right to abortion.

(m) Any provision of this section held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable here from and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

SECTION 2. This act shall take effect upon becoming law, the public welfare requiring it.