

Amendment No. _____

Signature of Sponsor

AMEND Senate Bill No. 745*

House Bill No. 883

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Section 39-15-201, is amended by deleting the section and substituting instead:

(a) For purposes of this part:

(1) "Abortion" means the use or attempted use of an instrument, medicine, drug, other substance, or device with intent to terminate the intrauterine pregnancy of a woman known to be pregnant;

(2) "Criminal abortion":

(A) Means an abortion performed with intent other than to increase the probability of a live birth, to preserve the life or health of a child after live birth, or to remove a dead fetus; and

(B) Does not include a termination of a pregnancy of a woman known to be pregnant that is performed by a physician to:

(i) Remove a medically futile pregnancy;

(ii) Remove an ectopic or molar pregnancy;

(iii) Dispose of an unimplanted fertilized egg;

(iv) Address a lethal fetal anomaly; or

(v)

(a) Prevent or treat a medical emergency; and

(b)



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(1) If the gestational age of the unborn child is less than twenty (20) weeks, provide the best opportunity for an unborn child to survive, unless in the physician's good faith medical judgment, compliance with this subdivision (a)(2)(B)(v)(b)(1) would pose a greater risk of the death of the pregnant woman or serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman; or

(2) If the gestational age of the unborn child is twenty (20) weeks or more, provide the best opportunity for the unborn child to survive by attempting to deliver the unborn child, unless in the physician's good faith medical judgment, compliance with this subdivision (a)(2)(B)(v)(b)(2) would cause the death of the pregnant woman or pose a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman;

(3) "Fertilization" means that point in time when a male human sperm penetrates the zona pellucida of a female human ovum;

(4) "Gestational age" or "gestation" means the age of an unborn child as calculated from the first day of the last menstrual period of a pregnant woman;

(5) "Lethal fetal anomaly" means a fetal condition diagnosed before birth that, in the physician's good faith medical judgment, is incompatible with life outside the womb and for which medical intervention would be futile;

(6) "Medical emergency" means a medical condition that, in the physician's good faith medical judgment, is such that the failure to perform an abortion would result in the death of the pregnant woman, create a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman, or result in serious dysfunction of a bodily organ or part of the pregnant woman;

(7) "Medically futile pregnancy" means a pregnancy that, in the physician's good faith medical judgment, despite medical intervention will not develop further and involves an unborn child who will not survive outside the womb;

(8) "Physician," "the attending physician," or "the referring physician" means a person who is licensed to practice medicine or osteopathy in this state, including a physician qualified pursuant to § 63-6-207(d) or § 63-9-104(d);

(9) "Pregnant" means the human female reproductive condition of having a living unborn child within her body throughout the entire embryonic and fetal stages of the unborn child from fertilization until birth;

(10) "Serious risk of the substantial and irreversible impairment of a major bodily function" means a medically diagnosed condition that, in the physician's good faith medical judgment, so complicates the pregnancy of a woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function; such medically diagnosed conditions may include previable preeclampsia, previable placenta accrete spectrum, cesarean scar ectopic pregnancy, inevitable abortion, or previable premature rupture of the membranes, but does not include any condition that:

(A) Is based on a claim or diagnosis that the woman will engage in conduct that would result in her death or the substantial and irreversible impairment of a major bodily function; or

(B) Relates primarily to the pregnant woman's mental health; and

(11) "Unborn child" means an individual living member of the species, homo sapiens, throughout the entire embryonic and fetal stages of the unborn child, from the point in time when a male human sperm penetrates the zona pellucida of a female human ovum until birth, but does not include the creation or destruction of fertilized embryos outside the body of a woman.

(b)

(1) It is an offense to perform or attempt to perform a criminal abortion.

(2) It is an offense to compel, coerce, or unlawfully force another person in order to obtain or procure a criminal abortion.

(3)

(A) A violation of subdivision (b)(1) is a Class C felony.

(B) A violation of subdivision (b)(2) is a Class A misdemeanor.

(c) This section does not subject the pregnant woman upon whom an abortion is performed or attempted to criminal liability.

(d)

(1) This section does not apply to medical treatment provided by a physician to a pregnant woman that results in the accidental death of, or unintentional injury to, an unborn child. This subdivision (d)(1) includes dispensing and administering medications that can be used to induce an abortion but are being used in good faith for the primary purpose of treating other medical conditions and without intent to terminate the pregnancy of a woman known to be pregnant.

(2) A person authorized to provide healthcare services pursuant to title 63 or 68 who participates in performing or attempting to perform an abortion lawfully performed pursuant to subdivision (a)(2)(B) does not commit the offense of criminal abortion.

(3) A pharmacist or prescriber acting in good faith in the provision of abortifacient medications with multiple indications does not commit the offense of criminal abortion if the pharmacist or prescriber either:

(A) Does not intend to terminate the pregnancy of a woman known to be pregnant; or

(B) Confirms with the woman's physician before providing the medications to the physician that, in the physician's good faith medical judgment, the medications are prescribed to perform a lawful abortion pursuant to subdivision (a)(2)(B).

SECTION 2. Tennessee Code Annotated, Section 39-15-202, is amended by deleting the section and substituting instead:

(a) Except in a medical emergency that prevents compliance with this subsection (a), an abortion shall not be performed or induced upon a pregnant woman unless the woman has provided her informed written consent, given freely and without coercion. Consent given by a woman pursuant to this subsection (a) is confidential pursuant to 45 CFR Part 160 and Subparts A and E of Part 164.

(b) In order to ensure that consent for an abortion is truly informed consent, except in a medical emergency that prevents compliance with this subsection (b) or any of the requirements of subdivisions (b)(1)-(4), an abortion shall not be performed or induced upon a pregnant woman unless the woman has first been informed orally and in person by the attending physician who is to perform the abortion, or by the referring physician, of the following facts and has signed a consent form acknowledging that she has been informed as follows:

(1) That according to the good faith medical judgment of her attending or referring physician she is pregnant;

(2) The probable gestational age of the unborn child at the time the abortion is to be performed, based upon the information provided by her as to the

date of her last menstrual period or after a history, physical examination, and appropriate laboratory tests;

(3) That if a child is prematurely born alive in the course of an abortion, then the physician performing the abortion has a legal obligation to take steps to preserve the life and health of the child; and

(4) That the physician determined, in the physician's good faith medical judgment, that the abortion is medically necessary pursuant to § 39-15-201(a)(2)(B) and the reason for the medical necessity.

(c) Except in a medical emergency that prevents compliance with this subsection (c), at the same time the attending physician or referring physician provides the information required by subsection (b), that physician shall inform the pregnant woman of the particular risks associated with her pregnancy and continuing the pregnancy to term, based upon the information known to the physician, as well as the risks of undergoing an abortion, along with a general description of the method of abortion to be used and the medical instructions to be followed subsequent to the abortion.

(d) When a medical emergency compels the performance or inducement of an abortion, the physician shall inform the woman, prior to the abortion or inducement of an abortion if possible, of the medical reasons supporting the physician's judgment that an abortion or inducement of an abortion is medically necessary pursuant to § 39-15-201(a)(2)(B).

(e) In any case in which a physician has determined that a medical emergency exists that excuses compliance with subsection (a), (b), (c), or (d), the physician shall state in the pregnant woman's medical records the basis for such determination.

(f) Except in a medical emergency that prevents compliance with subsection (b), the physician performing or inducing the abortion shall provide the pregnant woman with a duplicate copy of the consent form signed by the pregnant woman.

SECTION 3. Tennessee Code Annotated, Section 39-15-203, is amended by adding the following new subsection:

(e) A record filed pursuant to this part may be admissible in a court proceeding but must not be used by any state or local agency for the purpose of initiating a law enforcement investigation into a violation of this part without additional supporting evidence that a violation of this part may have occurred.

SECTION 4. Tennessee Code Annotated, Section 39-15-206, is amended by deleting the section and substituting instead:

(a) The rights to medical treatment of an infant prematurely born alive in the course of an abortion or criminal abortion are the same as the rights of any other infant. A person who performs or induces an abortion shall exercise that degree of professional skill, care, and diligence in accordance with good medical practice necessary to preserve the life and health of an infant prematurely born alive in the course of an abortion.

(b) A cause of action for wrongful death shall not be brought that arises out of the death of a fetus or infant during the course of a lawful abortion, whether the fetus or infant is quick or not, so long as the abortion is performed in accordance with this part; however, once an infant is born alive, any person in attendance is civilly responsible for providing all care that is reasonable and necessary under the circumstances and in the general vicinity in which the person in attendance practices.

(c) A person who violates subsection (a) commits a Class E felony.

SECTION 5. Tennessee Code Annotated, Section 39-15-207, is amended by deleting the language "a voluntary abortion" and substituting instead the language "a criminal abortion".

SECTION 6. Tennessee Code Annotated, Section 39-15-208(c), is amended by deleting the subsection.

SECTION 7. Tennessee Code Annotated, Section 39-15-210(b), is amended by deleting the subsection and substituting instead:

When a physician has reasonable cause to report the sexual abuse of a minor pursuant to § 37-1-605 because the physician has been requested to perform an abortion on a minor, the physician shall, at the time of the report, also notify the official to whom the report is made of the date and time of the scheduled abortion and that a sample of the embryonic or fetal tissue extracted during the abortion will be preserved and available to be turned over to the appropriate law enforcement officer conducting the investigation into the rape of the minor.

SECTION 8. Tennessee Code Annotated, Section 39-15-211, is amended by deleting the section and substituting instead:

(a) A physician accused of an offense under § 39-15-201 may seek a hearing before the state medical board that licenses the physician on whether the physician's conduct constitutes criminal abortion. The medical board's findings pursuant to this section are admissible at any trial of the defendant. Upon a motion of the defendant, the court shall delay the beginning of the trial to permit the hearing to take place.

(b) This section does not impede or limit a physician's rights under the United States Constitution or in any way adversely affect the burden of proof required in a criminal trial of an accused physician.

SECTION 9. Tennessee Code Annotated, Sections 39-15-212 through 39-15-218, are amended by deleting the sections.

SECTION 10. Tennessee Code Annotated, Section 39-15-219, is amended by deleting subdivisions (a)(6) and (a)(7).

SECTION 11. Tennessee Code Annotated, Section 29-34-212(c), is amended by deleting the language "§ 39-15-213" and substituting instead the language "§ 39-15-201".

SECTION 12. Tennessee Code Annotated, Section 37-10-307(b), is amended by deleting the subsection.

SECTION 13. Tennessee Code Annotated, Section 37-10-302(1), is amended by deleting the subdivision and substituting instead:

(1) "Abortion" has the same meaning as defined in § 39-15-201(a)(1);

SECTION 14. Tennessee Code Annotated, Section 40-32-101(g)(1)(B)(xiv), is amended by deleting the language "(b)(3)" and substituting instead the language "(b)(2)".

SECTION 15. Tennessee Code Annotated, Section 56-26-134, is amended by deleting the last sentence and substituting instead:

For purposes of this section, "abortion" has the same meaning as "criminal abortion" as defined in § 39-15-201.

SECTION 16. Tennessee Code Annotated, Section 71-5-157, is amended by deleting the section.

SECTION 17. This act takes effect upon becoming a law, the public welfare requiring it.