

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 1459 - SB 1769

January 27, 2016

SUMMARY OF BILL: Establishes the *Women's Ultrasound Right to Know Act*. Within 48 hours prior to performing an abortion, the physician who is to perform the abortion, the referring physician, or a qualified person assisting the physician is required to orally and in person offer the pregnant woman the opportunity to view the active ultrasound image of the unborn child and hear the heartbeat of the unborn child, if audible, and receive a physical picture of the ultrasound image of the unborn child. The appropriate healthcare provider must obtain the signature of the pregnant woman certifying that she has been provided the opportunity to hear the heartbeat of the unborn child, receive the physical picture of the ultrasound image of the unborn child, and whether or not the woman requested to view the active ultrasound imaging and hear auscultation of fetal heart tone and receive the physical picture of the ultrasound image. The physician must retain a copy of the signed certification in the woman's medical record. Specifies that the ultrasound image and auscultation of the fetal heart tone be of a quality consistent with standard medical practice in the community. Specifies that if, in the medical opinion of the ultrasound provider, a transabdominal ultrasound is not feasible for obtaining a quality image due the body habitus of the woman or the early first trimester age of the unborn child, then a transabdominal ultrasound shall not be required. Requires the Department of Health (DOH) to approve a certificate format.

When a medical emergency compels the performance of an abortion, the physician is required to inform the woman prior to the abortion of the medical reasons supporting the physician's judgment that an immediate abortion is necessary to avert her death and that a 24-hour delay will cause substantial and irreversible impairment of a major bodily function.

Any person who purposefully, knowingly, or recklessly performs or attempts to perform or induce an abortion without complying with any provision of this legislation shall be held accountable in accordance with Tenn. Code Ann. §§ 63-6-213 (investigation and prosecution), 63-6-214 (grounds for license denial, suspension, or revocation), 63-6-216 (disciplinary proceedings governed by UAPA), and 63-6-217 (no longer may practice medicine or surgery in this state).

Establishes that, in addition to any and all remedies available under the common or statutory law of this state, failure to comply with these provisions shall:

- Provide a basis for a civil healthcare liability action for actual and punitive damages. Any intentional violation of these provisions 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;
- Provide a basis for professional disciplinary action under Tenn. Code Ann. §§ 63-6-213, 63-6-214, 63-6-216, 63-6-217, and 39-15-206 (Class E felony); and

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- Provide a basis for recovery for the woman for the wrongful death of her unborn child under Tenn. Code Ann. § 29-26-119.

Any judgment rendered shall reward the prevailing party for reasonable attorney's fees.

Requires DOH to enforce these provisions at all facilities and medical facilities that provide abortion services and approve a certificate format for confirmation of the aforementioned requirements.

ESTIMATED FISCAL IMPACT:

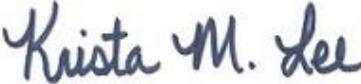
NOT SIGNIFICANT

Assumptions:

- Based on information provided by the Department of Finance and Administration, Division of Benefits Administration, this will not significantly impact any managed-care plans administered by the Division for employees of state government, local government or local education agencies.
- Based on information provided by the Bureau of TennCare, transabdominal ultrasounds are currently covered through its managed care organizations (MCOs); therefore, this legislation will have no fiscal impact on current cost reimbursements.
- Any necessary rule changes by boards under the Division of Health Related Boards can be accommodated within the appropriate board's regularly scheduled meetings at no additional cost.
- The Department of Health and the Board for Licensing Health Care Facilities may receive additional complaints as a result of this legislation, but can handle any additional complaints with existing staff.
- Pursuant to Tenn. Code Ann. § 68-11-216(b)(1)-(2), the Board is required to collect fees in an amount sufficient to pay the costs of operating the Board. All fees collected by the Board are deposited by the Department of Health with the State Treasurer to the credit of the General Fund and shall be expended by the Department and included in the appropriation made for the Board in the *General Appropriations Act*.
- If the Board fails to collect sufficient fees to pay the costs of operating the Board for a period of two consecutive years, the Board shall be reviewed by the Joint Evaluation Committees and shall be subject to a revised termination date of June 30 of the fiscal year immediately following the second consecutive fiscal year during which the Board operated at a deficit.
- The Board had net surpluses of \$386,355 in FY13-14 and \$401,492 in FY14-15.
- There will be no significant number of violations under this chapter, as it is assumed that physicians and physician's staff will comply with the provisions of this bill; therefore, no significant increase in license suspensions, revocations, or renewal denials, or court cases or felony convictions are estimated as a result of this legislation.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

/jdb