



March 3, 2020

SUMMARY OF ORIGINAL BILL: Extends, from 30 days to 60 days, the period of time in which a physician accused of performing a partial birth abortion can delay the beginning of the trial in order to allow the state medical board to determine whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, illness or injury.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (015853): Deletes all language after the enacting clause. Requires a physician who is performing or inducing, or attempting to perform or induce, an abortion to:

- 1) Determine the gestational age of the unborn child in accordance with generally accepted standards of medical practice;
- 2) Inform the pregnant woman the gestational age of the unborn child;
- 3) Perform an obstetric ultrasound in accordance with generally accepted standards of medical practice using current medical technology and methodology applicable to the gestational age of the unborn child and reasonably calculated to determine whether a fetal heartbeat exists;
- 4) Auscultate the fetal heartbeat of the unborn child, if any, so that the pregnant woman may hear the heartbeat if the heartbeat is audible;
- 5) Provide a simultaneous explanation of what the ultrasound is depicting, which must include the presence and location of the unborn child within the uterus, the dimensions of the unborn child, the presence of external members and internal organs if present and viewable, the number of unborn children depicted, and, if the ultrasound image indicates that fetal demise has occurred, inform the woman of that fact;
- 6) Display the ultrasound images so that the pregnant woman may view the images;
- 7) Record in the pregnant woman's medical record the presence or absence of a fetal heartbeat, the method used to test for the fetal heartbeat, the date and time of the test, and the estimated gestational age of the unborn child; and
- 8) Obtain from the pregnant woman prior to performing or inducing, or attempting to perform or induce, an abortion, a signed certification that the pregnant woman was presented with the information required to be provided, that the pregnant woman viewed the ultrasound images or declined to do so, and that the pregnant woman listened to the heartbeat if the heartbeat is audible or declined to do so. The signed certification must be in addition to any other documentation requirements under this part and must be on a

form prescribed by the Commissioner of the Department of Health (DOH) and be retained in the woman's medical record.

Prohibits a person from performing or inducing, or attempting to perform or induce an abortion upon a pregnant woman whose unborn child has a fetal heartbeat or is six weeks gestational age or older unless, prior to performing or inducing the abortion, or attempting to perform or induce the abortion, the physician affirmatively determines and records in the pregnant woman's medical record that, in the physician's good faith medical judgment, the unborn child does not have a fetal heartbeat at the time of the abortion. Any violation is a Class C felony.

Prohibits a person from performing or inducing, or attempting to perform or induce an abortion upon a pregnant woman if the person knows that the woman is seeking the abortion because of the sex of the unborn child, race of the unborn child, or a prenatal diagnosis, test, or screening indicating Down syndrome or the potential for Down syndrome in an unborn child. Any violation is a Class C felony.

Declares it is an affirmative defense to criminal prosecution for a violation of a provision of this section if a medical emergency prevents compliance with the following:

- 1) The physician who performs or induces, or attempts to perform or induce, the abortion certifies in writing that, in such physician's good faith medical judgment, based upon the facts known to the physician at the time, compliance with the provision was prevented by a medical emergency;
- 2) The physician certifies in writing the available methods or techniques considered and the reasons for choosing the method or technique employed;
- 3) If the unborn child is presumed to be viable under Tenn. Code Ann. § 39-15-211, or determined to be viable under Tenn. Code Ann. § 39-15-212, the physician performs or induces, or attempts to perform or induce, the abortion in a hospital. The hospital must have appropriate neonatal services for premature infants unless there is no hospital within 30 miles with neonatal services and the physician who intends to perform or induce the abortion has admitting privileges at the hospital where the abortion is to be performed or induced;
- 4) If the unborn child is presumed viable under Tenn. Code Ann. § 39-15-211, or determined to be viable under Tenn. Code Ann. § 39-15-212, the physician who performs or induces, or attempts to perform or induce, the abortion terminates or attempts to terminate the pregnancy in the manner that provides the best opportunity for the unborn child to survive, unless that physician determines, in such physician's good faith medical judgment, based upon the facts known to the physician at the time, that the termination of the pregnancy in that manner poses a significantly greater risk of the death of the pregnant woman or a significantly greater risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman than would other available methods of abortion; and
- 5) If the unborn child is presumed viable under Tenn. Code Ann. § 39-15-211, or determined to be viable under Tenn. Code Ann. § 39-15-212, the physician who performs or induces, or attempts to perform or induce, the abortion has arranged for the attendance in the same room in which the abortion is to be performed or induced, or attempted to be performed or induced, at least one other physician who is to take control

of, provide immediate medical care for, and take all reasonable steps necessary to preserve the life and health of the unborn child immediately upon the child's complete expulsion or extraction from the pregnant woman.

Requires a physician who is criminally charged with an offense to report the charge to the Board of Medical Examiners (BME) in writing within seven calendar days of acquiring knowledge of the charge.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- No new prosecutions will occur or penalties will be issued from the restatement of the current Class C felony in the proposed legislation. Therefore, any impact to incarcerations is considered not significant.
- Based on information previously provided by the Department of Finance and Administration, Division of Benefits Administration (Benefits Administration), the proposed legislation may result in an increase in ultrasounds; however, it is assumed they will meet Benefits Administration's carrier's medical necessity requirement and will not significantly impact any managed-care plans for employees of state government, local government, or local education agencies.
- Based on information previously provided by the Division of TennCare (Division), abortions are only covered under emergent circumstances; therefore, any fiscal impact to the Division is estimated to be not significant.
- The DOH can create and distribute the required form utilizing existing resources; therefore, any fiscal impact is estimated to be not significant.
- 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.
- Based on information previously provided by the Administrative Office of the Courts, the proposed legislation will not result in a significant increase in caseloads for the state and local courts. Any increase in expenditures will be absorbed within existing state and local resources.
- Pursuant to Tenn. Code Ann. § 4-29-121, all health related boards are required to be self-supporting over a two-year period. The Board of Medical Examiners had an annual deficit of \$231,445 in FY17-18, an annual deficit of \$346,206 in FY18-19, and a cumulative reserve balance of \$1,962,320 on June 30, 2019.

CERTIFICATION:

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



Krista Lee Carsner, Executive Director

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