

HOUSE BILL 77

By Van Huss

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 15, Part 2 and Title 68, Chapter 11, Part 2, relative to abortion.

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

SECTION 1. Tennessee Code Annotated, Section 39-15-201(a), is amended by adding the following subdivisions:

() "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac;

() "Fetus" means the human offspring developing during pregnancy from the moment of conception and includes the embryonic stage of development;

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

() "Gestational sac" means the structure that comprises the extraembryonic membranes that envelop the fetus and that is typically visible by ultrasound after the fourth week of pregnancy;

SECTION 2. Tennessee Code Annotated, Section 39-15-201, is amended by deleting subsections (c) and (d) and substituting instead the following:

(c) A person is not guilty of a criminal abortion or an attempt to procure criminal miscarriage if the person performs an abortion or attempts to procure a miscarriage under the following circumstances:

(1) Except in a medical emergency, as described in § 39-15-202(f)(1), if prior to an abortion or attempt to procure a miscarriage pursuant to subdivision (c)(2), the person who intends to perform an abortion or attempt to procure a

miscarriage determines whether the fetus the woman is carrying has a detectable heartbeat, in accordance with subdivision (d)(1); and

(2)

(A) When the ultrasound does not reveal a fetal heartbeat, if the abortion or attempt to procure a miscarriage is performed with the pregnant woman's consent and pursuant to the medical judgment of the pregnant woman's attending physician who is licensed or certified under title 63, chapter 6 or 9;

(B) After the detection of a fetal heartbeat, but before viability of the fetus, if there is a medical emergency, as described in § 39-15-202(f)(1), and the abortion or attempt to procure a miscarriage is performed by a physician licensed or certified under title 63, chapter 6 or 9; or

(C) After the detection of a fetal heartbeat and during viability of the fetus, if there is a medical emergency, as described in § 39-15-202(f)(1), and the abortion or attempt to procure a miscarriage is performed by a physician licensed or certified under title 63, chapter 6 or 9, and performed in a hospital licensed pursuant to title 68, chapter 11, part 2.

(d)

(1) Except in a medical emergency, as described in § 39-15-202(f)(1), when ultrasound testing is consistent with standard medical practice and performed prior to a surgical or invasive intrauterine abortion, the presence or absence of a fetal heartbeat must be determined and documented. The person who determines the presence or absence of a fetal heartbeat shall:

(A) Record in the pregnant woman's medical record the estimated gestational age of the fetus, the ultrasound method used to test for a fetal

heartbeat, the date and time of the test, and the results of the test, including the presence or absence of a fetal heartbeat; and

(B) Offer to the pregnant woman, either in person or by telephone, the results of the ultrasound, including if a fetal heartbeat is detected.

(2) A woman who is not given the information required by subdivision (d)(1)(B) or who is given false information may file a civil action, and if the woman prevails in the action, the woman is entitled to:

(A) Damages in an amount determined by the trier of fact after consideration of the evidence; and

(B) Court costs and reasonable attorney's fees.

(e) The person who performs the ultrasound for the presence of a fetal heartbeat shall give the pregnant woman the option to view or hear the fetal heartbeat.

(f)

(1) A physician who performs an abortion or attempts to procure a miscarriage under the medical emergency exception referenced in subdivision (c)(2)(B) or (c)(2)(C) shall declare the following in a written statement to be placed in the woman's medical records:

(A) That the procedure is necessary, to the best of the physician's reasonable medical judgment, due to a medical emergency, as described in § 39-15-202(f)(1); and

(B) The specific condition that constitutes the medical emergency that the procedure is asserted to address, and the medical basis for the physician's conclusion that the procedure is necessary to address the medical emergency.

(2) A physician who performs an abortion or attempts to procure a miscarriage under the medical emergency exception referenced in subdivision (c)(1) shall note the following in the woman's medical records:

(A) The physician's belief that a medical emergency necessitating the procedure exists; and

(B) The condition of the pregnant woman that assertedly prevents compliance with subdivision (c)(1).

(g) Subsection (c) does not repeal or limit § 39-15-202, § 39-15-209, or any other law that restricts or regulates the performance of an abortion or attempt to procure a miscarriage.

SECTION 3. Tennessee Code Annotated, Section 39-15-211, is amended by deleting the section in its entirety.

SECTION 4. Tennessee Code Annotated, Section 39-15-212, is amended by deleting the section in its entirety.

SECTION 5. Tennessee Code Annotated, Section 39-15-202, is amended by deleting subdivision (b)(2)(B).

SECTION 6. If any provision of this act or its application to any person or circumstance is held invalid, then all provisions and applications of this act shall be invalid and void.

SECTION 7. This act shall take effect July 1, 2019, the public welfare requiring it.