

SENATE BILL 1794

By Herron

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 15, Part 2, to require informed consent prior to an abortion, to require a twenty-four-hour period of reflection prior to an abortion, to provide for an exception to such requirements to protect the life or health of the mother, and to clarify that abortions performed during viability of the fetus must be performed in a hospital.

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

SECTION 1. It is the intention of the general assembly in enacting this act to provide for reasonable regulation to promote the state's interest in protecting maternal health and life, potential life, and the health, safety and welfare of its citizens. This act requires that the informed written consent of the woman be obtained prior to an abortion; it provides for a short, twenty-four-hour period of reflection after the woman receives the information required for an informed consent; it provides exceptions to the informed consent and period of reflection requirements to protect the life or health of the mother; and it complies with current requirements of the Constitution of Tennessee, the United States Constitution and current judicial interpretations of such constitutions and federal and state statutes.

SECTION 2. Tennessee Code Annotated, Section 39-15-201, is amended by deleting the language "and in a hospital as defined in § 68-11-201, licensed by the state department of health, or a hospital operated by the state of Tennessee or a branch of the federal government," from subdivision (c)(2).

SECTION 3. Tennessee Code Annotated, Section 39-15-201, is further amended by deleting the following language from subdivision (c)(3):

During viability of the fetus, if the abortion or attempt to procure a miscarriage is performed with the pregnant woman's consent and by the pregnant woman's attending

physician, who is licensed or certified under title 63, chapter 6 or 9; and, if all the circumstances and provisions required for a lawful abortion or lawful attempt to procure a miscarriage during the period set out in subdivision (c)(2) are adhered to and by substituting instead the following:

During viability of the fetus, if the abortion or attempt to procure a miscarriage is performed with the pregnant woman's consent, performed in a hospital, as defined in § 68-11-201, licensed by the state department of health, or a hospital operated by the state of Tennessee or a branch of the federal government, and performed by the pregnant woman's attending physician, who is licensed or certified under title 63, chapter 6 or 9

SECTION 4. Tennessee Code Annotated, Section 39-15-202, is amended by deleting such section in its entirety and by substituting instead the following:

(a) An abortion otherwise permitted by law shall be performed or induced only with the informed written consent of the pregnant woman, given freely and without coercion.

(b) In order to ensure that a consent for an abortion is truly informed consent, an abortion shall be performed or induced upon a pregnant woman only after she has been informed by her attending physician or other appropriate health care professional of the following:

(1) That according to the best judgment of the attending physician or other health care professional she is pregnant, based on information provided by the woman;

(2) The number of weeks elapsed from the probable time of the conception of her unborn child, based upon the information provided by her as to

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

(3) That if more than twenty-four (24) weeks have elapsed from the time of conception, her child may be viable, that is, capable of surviving outside of the womb, and that if such child is prematurely born alive in the course of an abortion her attending physician has a legal obligation to take steps to preserve the life and health of the child;

(4) That numerous public and private agencies and services are available to assist her during her pregnancy and after the birth of her child, if she chooses not to have the abortion, whether she wishes to keep her child or place the child for adoption, and that she will be provided with a list of such agencies and the services available if she so requests; and

(5) Numerous benefits and risks are attendant either to continued pregnancy and childbirth or to abortion depending upon the circumstances in which the patient might find herself. These benefits and risks shall be explained to the best of such physician's or health care professional's ability and knowledge of the circumstances involved.

(c) At the same time the woman is given the information required by subsection (b), the physician or other health care professional shall also inform the pregnant woman of the particular risks associated with her pregnancy and childbirth and the abortion or child delivery technique to be employed, including providing her with at least a general description of the medical instructions to be followed subsequent to the abortion or childbirth in order to ensure her safe recovery.

(d) The pregnant woman shall sign a consent form acknowledging that she has been informed as required in subsections (b) and (c). This consent form shall be signed

at any time after the information required by subsections (b) and (c) has been provided and prior to the performance of the procedure. The physician performing or inducing the abortion shall provide the pregnant woman with a duplicate copy of the consent form signed by her.

(e) The information required to be given to the pregnant woman by subsections (b) and (c) shall be based on both facts supplied by the woman and other relevant information that is reasonably available to the physician or health care professional. If any of the information in subsection (b) or (c) is provided by telephone, the physician or health care professional shall note on the consent form to be signed by the pregnant woman pursuant to subsection (d) the name of the woman, the name of the physician or health care professional who provided the information, the date and time of the telephone conversation, the woman's driver license or social security number, and the woman's birth date.

(f) If a physical examination, medical history, test, or other new information subsequently indicates, in the medical judgment of the physician, the need for a revision of the information previously supplied to the woman, the revised information shall be communicated to the woman at any time prior to the performance of the procedure, noted on the written consent form and initialed by the woman.

(g)

(1) No abortion shall be performed until twenty-four (24) hours after the physician or other health care professional provides the information required in subsections (b) and (c) to the pregnant woman. Any revision of information pursuant to subsection (f) shall not require any additional waiting period.

(2) A violation of this subsection (g) by a physician, except as provided in subsection (h), is a Class E felony.

(h) Subsections (a)-(g) shall not apply in those situations where an abortion is certified by a licensed physician as necessary to preserve the life or health of the pregnant woman.

(i) The consent form and any information provided by a pregnant woman pursuant to this section shall be treated as confidential and shall not be subject to title 10, chapter 7.

SECTION 5. Tennessee Code Annotated, Section 39-15-201(a), is amended by adding the following language as new, appropriately designated subdivisions:

() "Health care professional" means a nurse licensed pursuant to title 63, chapter 7, a physician assistant licensed pursuant to title 63, chapter 19, a midwife certified pursuant to title 63, chapter 29, a psychologist licensed pursuant to title 63, chapter 11, a licensed master social worker pursuant to § 63-23-103, or a licensed advanced practice social worker pursuant to § 63-23-104;

() "Physician" means a person licensed pursuant to title 63, chapter 6 or 9;

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 7. This act shall take effect July 1, 2009, the public welfare requiring it.