

# Tennessee

*Memphis Ctr. for Reprod. Health v. Slatery*, No. 20-5969, 2022 U.S. App. LEXIS 17882, at \*5-6 (6th Cir. June 28, 2022) (vacating preliminary injunction of Tenn. Code § 39-15-216 & 217 [pre-viability heartbeat and gestational-age bans] and remanding).

\*Based on conflict of law provisions in §§ 215(k)(4), 216(i)(4), & 217(j)(4) (informed consent/ultrasound requirement, heartbeat and gestational age bans, and anti-discrimination ban), Tenn. Code § 39-15-213 (outright criminal abortion ban) is the controlling provision on abortion in Tennessee.

## ***Sec. 36. Abortion.***

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Nothing in this Constitution secures or protects a right to abortion or requires the funding of an abortion. The people retain the right through their elected state representatives and state senators to enact, amend, or repeal statutes regarding abortion, including, but not limited to, circumstances of pregnancy resulting from rape or incest or when necessary to save the life of the mother.

[Tenn. Const. Art. I, § 36](#)

### **Tenn. Code § 39-15-202. Consent of pregnant woman required prior to abortion — Information provided by doctor — Waiting period — Penalty for violation — Requirements inapplicable in certain cases.**

(a) Except in a medical emergency that prevents compliance with this subsection (a), no abortion shall be performed or induced upon a pregnant woman unless the woman has provided her informed written consent, given freely and without coercion. Such consent shall be treated as confidential.

(b) In order to ensure that a 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)-(5), no abortion shall be performed or induced upon a pregnant woman unless she 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 best judgment of her attending physician or referring physician she is pregnant;

(2)

(A) 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 time of her last menstrual period or after a history, physical examination, and appropriate laboratory tests;

(B) If an ultrasound is performed as part of the examination prior to performing the abortion, the person who performs the ultrasound shall offer the woman the opportunity to learn the results of the ultrasound. If the woman elects to learn the results of the ultrasound, the person who

performs the ultrasound or a qualified healthcare provider in the facility performing the ultrasound shall, in addition to any other information provided, inform the woman of the presence or absence of a fetal heartbeat and document the patient has been informed;

**(3)** That if twenty-four (24) or more weeks have elapsed from the first day of her last menstrual period or twenty-two (22) or more weeks have elapsed from the time of conception, her unborn child may be viable, that is, capable of sustained survival outside of the womb, with or without medical assistance, and that if a viable child is prematurely born alive in the course of an abortion, the physician performing the abortion 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 her attending physician or referring physician will provide her with a list of the agencies and the services available if she so requests; and

**(5)** The normal and reasonably foreseeable medical benefits, risks, or both of undergoing an abortion or continuing the pregnancy to term.

**(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)**

**(1)** Except in a medical emergency that prevents compliance with this subdivision (d)(1), no abortion shall be performed until a waiting period of forty-eight (48) hours has elapsed after the attending physician or referring physician has provided the information required by subsections

(b) and (c), including the day on which the information was provided. After the forty-eight (48) hours have elapsed and prior to the performance of the abortion, the patient shall sign the consent form required by subsection (b).

**(2)** If any court temporarily, preliminarily, or permanently enjoins enforcement of subdivision (d)(1) or declares it unconstitutional, then the waiting period imposed by subdivision (d)(1) shall be twenty-four (24) hours, subject to the same medical emergency exception. If the injunction or declaration is subsequently vacated or reversed, the waiting period shall revert to forty-eight (48) hours.

**(e)** 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 her.

**(f)**

**(1)** For purposes of subsections (a), (b), (c), (d), and (e), a medical emergency is a condition that, on the basis of the physician's good faith medical judgment, so complicates a medical condition of a pregnant woman as to necessitate an immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function.

**(2)** When a medical emergency compels the performance of an abortion, the physician shall inform the woman, prior to the abortion if possible, of the medical reasons supporting the physician's judgment that an abortion is necessary to avert her death or to avert substantial and irreversible impairment of major bodily function.

**(3)** 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.

**(g)** For purposes of this section, “the physician”, “the attending physician”, or “the referring physician” means any person who is licensed to practice medicine or osteopathy in this state.

**(h)**

**(1)** An intentional or knowing violation of subsection (a), (b), (c), or (d), or subdivision (f)(2) by a physician is a Class E felony.

**(2)** An intentional, knowing, or reckless violation of subsection (e) or subdivision (f)(3) by a physician is a Class A misdemeanor.

**(3)** In addition to subdivisions (h)(1) and (2), any physician who intentionally, knowingly, or recklessly violates this section is guilty of unprofessional conduct and such physician's license for the practice of medicine and surgery or osteopathy shall be subject to suspension or revocation in accordance with the procedures provided under title 63, chapters 6 and 9.

**(i)**

**(1)**

**(A)** Any private physician's office, ambulatory surgical treatment center, or other facility or clinic in which abortions, other than abortions necessary to prevent the death of the pregnant female, are performed shall conspicuously post a sign in a location defined in subdivision (i)(1)(C) so as to be clearly visible to patients, which reads:

Notice: It is against the law for anyone, regardless of the person's relationship to you, to coerce you into having or to force you to have an abortion. By law, we cannot perform an abortion on you unless we have your freely given and voluntary consent. It is against the law to perform an abortion on you against your will. You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened criminal offense to coerce an abortion.

**(B)** The sign required pursuant to subdivision (i)(1)(A) shall be printed in languages appropriate for the majority of clients of the facility with lettering that is legible and that is Arial font, at least 40-point bold-faced type.

**(C)** A facility in which abortions are performed that is a private physician's office or an ambulatory surgical treatment center shall post the required sign in each patient waiting room and patient consultation room used by patients on whom abortions are performed. A hospital or any other facility in which abortions are performed that is not a private physician's office or ambulatory surgical treatment center shall post the required sign in the admissions or registration department used by patients on whom abortions are performed.

**(2)**

**(A)** An ambulatory surgical treatment center or other licensed facility shall be assessed a civil penalty by the board for licensing health care facilities of two thousand five hundred dollars (\$2,500) for each day of violation in which:

**(i)** The sign required in subdivision (i)(1)(A) was not posted during business hours when patients or prospective patients were present; and

**(ii)** An abortion other than an abortion necessary to prevent the death of the pregnant female was performed in the ambulatory surgical treatment center or other licensed facility.

**(B)** A licensed physician shall be assessed a civil penalty by the physician's title 63 medical licensing board of one thousand dollars (\$1,000) for each day of violation in which:

**(i)** The sign required in subdivision (i)(1)(A) was not posted during business hours when patients or prospective patients were present at the private physician's office or clinic; and

**(ii)** The physician performed an abortion in the private physician's office.

**(3)** The penalty provided for in subdivision (i)(2) is in addition to any other remedies applicable under other law, and subdivision (i)(2) does not preclude prosecution and conviction under any applicable criminal law.

**(j)**

**(1)** A physician may not perform an abortion unless the physician has admitting privileges at a hospital licensed under title 68 that is located:

**(A)** In the county in which the abortion is performed; or

**(B)** In a county adjacent to the county in which the abortion is performed.

**(2)** The physician who performs an abortion or a healthcare provider licensed pursuant to title 63 under the supervision of the physician shall notify the patient of the location of the hospital at which the physician has privileges and where the patient may receive follow-up care by the physician if complications arise.

**Tenn. Code § 39-15-206. Rights to medical treatment of infant prematurely born alive during abortion — Penalty for violation — Limitation on wrongful death action.**

(a) The rights to medical treatment of an infant prematurely born alive in the course of an abortion are the same as the rights of an infant of similar medical status prematurely born spontaneously. Any person who performs or induces an abortion of an infant 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, except that if it can be determined, through amniocentesis or medical observation, that the fetus is severely malformed, the use of extraneous life support measures need not be attempted.

(b) Any person who violates this section commits a Class E felony.

(c) No cause of action for wrongful death shall be brought which 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 shall be civilly responsible for providing all reasonable and necessary care reasonable under the circumstances in the general vicinity in which the person in attendance practices.

**Tenn Code § 39-15-208. Research, photography, and experimentation upon aborted fetuses — Sale of aborted fetuses or aborted fetal tissue prohibited — Penalty for violation.**

(a) It is unlawful for any person, agency, corporation, partnership or association to engage in medical experiments, research, or the taking of photographs upon an aborted fetus without the prior knowledge and written consent of the mother; provided, however, that prior knowledge and consent of the mother shall not be required when a person is taking photographs of the aborted fetus for the purpose of capturing images that the person reasonably believes depict evidence of a violation of a state or federal law, rule, or regulation.

(b) No person, agency, corporation, partnership, or association shall offer money, or anything of value, for an aborted fetus or aborted fetal tissue; nor shall any person, agency, corporation, partnership, or association accept any money or anything of value for an aborted fetus or aborted fetal tissue, or offer or accept any reimbursement of any costs associated with the preparation, preservation, transfer, shipping, or handling of an aborted fetus or aborted fetal tissue.

(c) It is the express intent of the general assembly that nothing in this section shall be construed to grant to a fetus any legal right not possessed by a fetus prior to July 1, 1979.

(d) A violation of this section is punishable as a Class E felony.

**Tenn Code § 39-15-209. Partial birth abortions.**

(a) For purposes of this section, unless the context otherwise requires:

(1) “Partial-birth abortion” means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery; and

(2) “Vaginally delivers a living fetus before killing the fetus” means deliberately and intentionally delivers into the vagina a living fetus, or a substantial portion of a living fetus, for the purpose of performing a procedure the physician knows will kill the fetus, and kills the fetus.

(b) No person shall knowingly perform a partial-birth abortion.

(c) Subsection (b) shall not apply to a partial-birth abortion that is necessary to save the life of the mother whose life is endangered by a physical disorder, illness or injury.

(d)

(1) A defendant accused of an offense under this section may seek a hearing before the state medical board that licenses the physician, on 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.

(2) The findings on that issue are admissible on that issue at the trial of the defendant. Upon a motion of the defendant, the court shall delay the beginning of the trial for not more than thirty

(30) days to permit the hearing to take place.

(e)

(1) Performance of a partial-birth abortion in knowing or reckless violation of this section shall be a Class C felony.

(2) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section for violating this section or any of its provisions, or for conspiracy to violate this section or any of its provisions.

**Tenn. Code § 39-15-211. Abortion prohibited if fetus viable — Affirmative defense — Rebuttable presumption — Revocation of license.**

(a) As used in this section and in [§ 39-15-212](#):

(1) “Abortion” means the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a woman known to be pregnant with intent other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus;

(2) “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;

(3) “Medical emergency” means a condition that, in the physician's good faith medical judgment, based upon the facts known to the physician at the time, so complicates the woman's pregnancy as to necessitate the immediate performance or inducement of an abortion in order to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman that delay in the performance or inducement of the abortion would create;

(4) “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 to full gestation and childbirth;

(5) “Serious risk of the substantial and irreversible impairment of a major bodily function” means any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function. Such conditions include preeclampsia, inevitable abortion, and premature rupture of the membranes and, depending upon the circumstances, may also include, but are not limited to, diabetes and multiple sclerosis, but does not include any condition relating to the woman's mental health;

(6) “Unborn child” means an individual living member of the species, homo sapiens, throughout the entire embryonic and fetal stages of the unborn child from fertilization to full gestation and childbirth; and

(7) “Viable” and “viability” mean that stage of fetal development when the unborn child is capable of sustained survival outside of the womb, with or without medical assistance.

**(b)**

(1) No person shall purposely perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman when the unborn child is viable.

(2) It shall be an affirmative defense to any criminal prosecution brought under subdivision (b)(1) that the abortion was performed or induced, or attempted to be performed or induced, by a licensed physician and that the physician determined, in the physician's good faith medical judgment, based upon the facts known to the physician at the time, that either:

(A) The unborn child was not viable; or

(B) The abortion was necessary to prevent the death of the pregnant woman or to prevent serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman. No abortion shall be deemed authorized under this subdivision (b)(2)(B) if performed on the basis of a claim or a diagnosis that the woman will engage in conduct which would result in her death or substantial and irreversible impairment of a major bodily function or for any reason relating to her mental health.

(3) Except in a medical emergency that prevents compliance with the viability determination required by [§ 39-15-212](#), the affirmative defense set forth in subdivision (b)(2)(A) does not apply unless the physician who performs or induces, or attempts to perform or induce, the

abortion makes the viability determination required by [§ 39-15-212](#) and, based upon that determination, certifies in writing that, in such physician's good faith medical judgment, the unborn child is not viable.

**(4)** Except in a medical emergency that prevents compliance with one (1) or more of the following conditions, the affirmative defense set forth in subdivision (b)(2)(B) does not apply unless the physician who performs or induces, or attempts to perform or induce, the abortion complies with each of the following conditions:

**(A)** 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, the abortion is necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman;

**(B)** Another physician who is not associated in a practice with the physician who intends 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, the abortion is necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman;

**(C)** The physician performs or induces, or attempts to perform or induce, the abortion in a hospital that has appropriate neonatal services for premature infants. This requirement does not apply if there is no hospital within thirty (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;

**(D)** 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;

**(E)** The physician certifies in writing the available methods or techniques considered and the reasons for choosing the method or technique employed; and

**(F)** 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 (1) 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.

**(5)** For purposes of this section, there shall be a rebuttable presumption that an unborn child of at least twenty-four (24) weeks gestational age is viable.



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

(7) The applicable licensing board shall revoke the license of any person licensed to practice a healthcare profession in this state who violates subdivision (b)(1), in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, without regard to whether the person has been charged with or has been convicted of having violated subdivision (b)(1) in a criminal prosecution. In any proceeding brought by the board of medical examiners or the board of osteopathic examination to revoke the license of a physician for violating subdivision (b)(1), a physician who has not been convicted in a criminal prosecution of having violated subdivision (b)(1) may raise the affirmative defense set forth in subdivision (b)(2).

(8) A pregnant woman upon whom an abortion is performed or induced, or attempted to be performed or induced, in violation of subdivision (b)(1) is not guilty of violating subdivision (b)(1), or of attempting to commit or conspiring to commit a violation of subdivision (b)(1).

(c) Neither this section nor [§ 39-15-212](#) repeals or limits [§ 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.

### ***39-15-213. Criminal abortion — Affirmative defense.***

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(a) As used in this section:

(1) “Abortion” means the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a woman known to be pregnant with intent other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to terminate an ectopic or molar pregnancy, or to remove a dead fetus;

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

(3) “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; and

(4) “Unborn child” means an individual living member of the species, homo sapiens, throughout the entire embryonic and fetal stages of the unborn child from fertilization until birth.

(c)

(1) Notwithstanding subsection (b), a person who performs or attempts to perform an abortion does not commit the offense of criminal abortion if the abortion is performed or attempted by a licensed physician in a licensed hospital or ambulatory surgical treatment center and the following conditions are met:

(A) The physician determined, using reasonable medical judgment, based upon the facts known to the physician at the time, that the abortion was necessary to prevent the death of the pregnant woman or to prevent serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman; and

(B) The physician performs or attempts to perform the abortion in the manner which, using reasonable medical judgment, based upon the facts known to the physician at the time, provides the best opportunity for the unborn child to survive, unless using reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk of death to the pregnant woman or substantial and irreversible impairment of a major bodily function.

(2) An abortion is not authorized under subdivision (c)(1)(A) and a greater risk to the pregnant woman does not exist under subdivision (c)(1)(B) if either determination is based upon a claim or a diagnosis that the pregnant woman will engage in conduct that would result in her death or the substantial and irreversible impairment of a major bodily function or for any reason relating to the pregnant woman's mental health.

(b) A person who performs or attempts to perform an abortion commits the offense of criminal abortion. Criminal abortion is a Class C felony.

(d) Medical treatment provided to the pregnant woman by a licensed physician which results in the accidental death of or unintentional injury to or death of the unborn child shall not be a violation of this section.

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

(f) While this section is in effect, this section supersedes §§ 39-15-211, 39-15-212, 39-15-214, 39-15-215, 39-15-216, 39-15-217, and 39-15-218.

[Tenn. Code Ann. § 39-15-213](#)

**Tenn. Code § 39-15-215. Section definitions — Physician requirements prior to pregnant woman giving informed consent to have abortion — Obstetric ultrasound — Affirmative defense of medical emergency — Violations — Report to board of medical examiners — Severability — Intent.**

(a) As used in this section:

- (1) “Abortion” has the same meaning as defined in [§ 39-15-211](#);
- (2) “Auscultate” means to examine by listening for sounds made by internal organs of the fetus, including a fetal heartbeat, in accordance with standard medical practice utilizing current medical technology and methodology;
- (3) “Gestational age” or “gestation” has the same meaning as defined in [§ 39-15-211](#);
- (4) “Medical emergency” has the same meaning as defined in [§ 39-15-211](#); provided, that a medical emergency does not include a claim or diagnosis related to the woman's mental health or a claim or diagnosis that the woman will engage in conduct which would result in her death or substantial and irreversible impairment of a major bodily function;
- (5) “Obstetric ultrasound” or “ultrasound” means the use of ultrasonic waves for diagnostic or therapeutic purposes, specifically to monitor a developing fetus; and
- (6) “Ultrasound technician” means a person at least eighteen (18) years of age who:
  - (A) Has earned a technical certificate from a sonography program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) or Canadian Medical Association (CMA);
  - (B) Is currently certified by the American Registry for Diagnostic Medical Sonography (ARDMS) in the specialty in which the person is currently practicing;
  - (C) Is currently certified by the American Registry of Radiologic Technologists (ARRT) in sonography;
  - (D) Is in the process of applying for registration with the ARDMS, provided that the applicant satisfies the requirements for registration within ninety (90) days of becoming employed as a sonographer; or
  - (E) Is in the process of applying for registration with the ARRT, provided that the applicant satisfies the requirements for registration within ninety (90) days of becoming employed as a sonographer.

(b) Prior to a pregnant woman giving informed consent to having an abortion, as required by [§](#)

[39-15-202](#), the physician who is performing or inducing, or attempting to perform or induce, an abortion, shall:

- (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 under this subsection (b), 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 was 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 health and be retained in the woman's medical record.
- (c)
- (1) The physician who is to perform or induce, or attempt to perform or induce, an abortion may delegate the responsibility to perform the obstetric ultrasound to an ultrasound technician, provided that the ultrasound technician is qualified and permitted by law to perform an obstetric ultrasound that complies with the requirements of subsection (b). An ultrasound technician performing an obstetric ultrasound under this subdivision (c)(1) shall perform the obstetric ultrasound in a manner that complies with subsection (b), and the physician may rely on the signed certification obtained by the qualified technician under subdivision (b)(8) to establish that an ultrasound was performed in compliance with this section, unless the physician knows, or in the exercise of reasonable care should know, that an ultrasound was not performed in accordance with this section.
  - (2) The physician who is to perform or induce, or attempt to perform or induce, an abortion may accept a certification from a referring physician that the referring physician has performed an obstetric ultrasound that complies with the requirements of subsection (b). The

referring physician performing an obstetric ultrasound under this subdivision (c)(2) shall perform the obstetric ultrasound in a manner that complies with subsection (b), and the physician may rely on the signed certification obtained by the referring physician under subdivision (b)(8) to establish that an ultrasound was performed in compliance with this section, unless the physician knows, or in the exercise of reasonable care should know, that an ultrasound was not performed in accordance with this section.

**(d)** When the ultrasound images and heartbeat sounds are provided to and reviewed with the pregnant woman, this section shall not be construed to prevent the pregnant woman from averting her eyes from the ultrasound images or requesting the volume of the heartbeat be reduced or turned off if the heartbeat is audible. The physician or ultrasound technician performing the ultrasound shall be permitted to comply with the request of the pregnant woman. The physician, the ultrasound technician, and the pregnant woman shall not be subject to any penalty if the pregnant woman refuses to look at the displayed ultrasound images or to listen to the heartbeat if the heartbeat is audible.

**(e)**

**(1)** Subject to compliance with subdivision (e)(2), it is an affirmative defense to criminal prosecution for a violation of a provision of this section that, in the physician's reasonable medical judgment, a medical emergency prevented compliance with the provision.

**(2)** In order for the affirmative defense in subdivision (e)(1) to apply, a physician who performs or induces, or attempts to perform or induce, an abortion because of a medical emergency must comply with each of the following conditions unless the medical emergency also prevents compliance with the condition:

**(A)** The physician who performs or induces, or attempts to perform or induce, the abortion certifies in writing that, in the physician's good faith, reasonable medical judgment, based upon the facts known to the physician at the time, compliance with the provision was prevented by a medical emergency;

**(B)** The physician certifies in writing the available methods or techniques considered and the reasons for choosing the method or technique employed;

**(C)** If the unborn child is presumed to be viable under [§ 39-15-211](#) or determined to be viable under [§ 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 thirty (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;

**(D)** If the unborn child is presumed viable under [§ 39-15-211](#) or determined to be viable under [§ 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 the 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

**(E)** If the unborn child is presumed viable under [§ 39-15-211](#) or determined to be viable under [§ 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 (1) 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.

**(f)** Performing or inducing, or attempting to perform or induce, an abortion in violation of the requirements of this section is a Class C felony.

**(g)** A violation of subsection (c) by an ultrasound technician or referring physician whose performance of an ultrasound pursuant to subsection (c) is relied upon by a physician in performing or inducing, or attempting to perform or induce, an abortion is a Class E felony.

**(h)** A pregnant woman upon whom an abortion is performed or induced, or attempted to be performed or induced, in violation of this section is not guilty of violating this section or attempting to commit or conspiring to commit a violation of this section.

**(i)** When a physician is criminally charged with a violation of this section, the physician shall report the charge to the board of medical examiners in writing within seven (7) calendar days of acquiring knowledge of the charge. The report must include the jurisdiction in which the charge is pending, if known, and must also be accompanied by a copy of the charging documents, if available. A district attorney general shall promptly notify the board of medical examiners when a physician is charged with a violation of this section.

**(j)** If any provision or provisions of this section or the application thereof to any person, circumstance, or period of gestational age is found to be unenforceable, unconstitutional, or invalid by a court of competent jurisdiction, the same is hereby declared to be severable and the remainder of the section shall remain effective. The general assembly hereby declares that it would have enacted this section and each of its provisions, even if any provision of this section or the application thereof to any person, circumstance, or period of gestational age is later found to be unenforceable, unconstitutional, or invalid.

**(k)**

**(1)** It is the specific intent of the general assembly in this section to exercise to the greatest extent permitted by law the legitimate, substantial, and compelling state interest in protecting maternal health, and in preserving, promoting, and protecting life and potential life throughout pregnancy by enacting more protective requirements than provided for under this part as it existed prior to July 13, 2020.

**(2)** When this section is in direct conflict with this part as it existed prior to July 13, 2020, the more protective requirements of this section control over any less protective provision in this part. This section shall not be construed as a repeal, either express or implied, of any provision of this part as it existed prior to July 13, 2020.

**(3)** The general assembly specifically intends that this part as it existed prior to July 13, 2020, shall remain and be enforceable if, and for so long as, any provisions of this section,

or any part or parts thereof, are enjoined or otherwise barred by a court of competent jurisdiction.

(4) This section does not repeal or modify in any way [§ 39-15-213](#), as enacted by chapter 351 of the Public Acts of 2019, which shall control upon becoming effective. This section shall remain and be enforceable if, and for so long as, any provisions of [§ 39-15-213](#), or any part or parts thereof, are enjoined or otherwise barred by a court of competent jurisdiction.

**Tenn. Code § 39-15-216. Section definitions — Determination of gestational age — Fetal heartbeat — Unlawful abortions due to fetal heartbeat or gestational age — Affirmative defense of medical emergency — Report to board of medical examiners — Severability — Intent.**

(a) As used in this section:

- (1) “Abortion” has the same meaning as defined in [§ 39-15-211](#);
- (2) “Fetal heartbeat” means cardiac activity or the steady and repetitive rhythmic contraction of the heart of an unborn child;
- (3) “Gestational age” or “gestation” has the same meaning as defined in [§ 39-15-211](#);
- (4) “Medical emergency” has the same meaning as defined in [§ 39-15-211](#); provided, that a medical emergency does not include a claim or diagnosis related to the woman's mental health or a claim or diagnosis that the woman will engage in conduct which would result in her death or substantial and irreversible impairment of a major bodily function;
- (5) “Unborn child” has the same meaning as defined in [§ 39-15-211](#); and
- (6) “Viable” has the same meaning as defined in [§ 39-15-211](#).

(b)

- (1) Before performing or inducing, or attempting to perform or induce, an abortion, the physician shall determine the gestational age of the unborn child in accordance with generally accepted standards of medical practice.
- (2) A violation of subdivision (b)(1) is a Class C felony.

(c)

- (1) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child has a fetal heartbeat. A violation of this subdivision (c)(1) is a Class C felony.
- (2) A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is six (6) 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. In making the good faith medical determination, the physician shall utilize 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 the existence or non-existence of a fetal heartbeat. A violation of this subdivision (c)(2) is a Class C felony.

**(3)** A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is eight (8) weeks gestational age or older. A violation of this subdivision (c)(3) is a Class C felony.

**(4)** A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is ten (10) weeks gestational age or older. A violation of this subdivision (c)(4) is a Class C felony.

**(5)** A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is twelve (12) weeks gestational age or older. A violation of this subdivision (c)(5) is a Class C felony.

**(6)** A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is fifteen (15) weeks gestational age or older. A violation of this subdivision (c)(6) is a Class C felony.

**(7)** A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is eighteen (18) weeks gestational age or order. A violation of this subdivision (c)(7) is a Class C felony.

**(8)** A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is twenty (20) weeks gestational age or older. A violation of this subdivision (c)(8) is a Class C felony.

**(9)** A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is twenty-one (21) weeks gestational age or older. A violation of this subdivision (c)(9) is a Class C felony.

**(10)** A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is twenty-two (22) weeks gestational age or older. A violation of this subdivision (c)(10) is a Class C felony.

**(11)** A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is twenty-three (23) weeks gestational age or older. A violation of this subdivision (c)(11) is a Class C felony.

**(12)** A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman whose unborn child is twenty-four (24) weeks gestational age or older. A violation of this subdivision (c)(12) is a Class C felony.

**(d)**

**(1)** A person shall not be convicted of violating more than one (1) subdivision of subsection (c) for any one (1) abortion that the person performed, induced, or attempted to perform or induce.

**(2)** This section does not permit the abortion of a viable unborn child.

**(e)**

**(1)** Subject to compliance with subdivision (e)(2), it is an affirmative defense to criminal prosecution for a violation of a provision of this section that, in the physician's reasonable medical judgment, a medical emergency prevented compliance with the provision.

**(2)** In order for the affirmative defense in subdivision (e)(1) to apply, a physician who performs or induces, or attempts to perform or induce, an abortion because of a medical emergency must comply with each of the following conditions unless the medical emergency also prevents compliance with the condition:

**(A)** The physician who performs or induces, or attempts to perform or induce, the abortion certifies in writing that, in the physician's good faith, reasonable medical judgment, based upon the facts known to the physician at the time, compliance with the provision was prevented by a medical emergency;

**(B)** The physician certifies in writing the available methods or techniques considered and the reasons for choosing the method or technique employed;

**(C)** If the unborn child is presumed to be viable under [§ 39-15-211](#) or determined to be viable under [§ 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 thirty (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;

**(D)** If the unborn child is presumed viable under [§ 39-15-211](#) or determined to be viable under [§ 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 the 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

**(E)** If the unborn child is presumed viable under [§ 39-15-211](#) or determined to be viable under [§ 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 (1) 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.

**(f)** A pregnant woman upon whom an abortion is performed or induced, or attempted to be performed or induced, in violation of any provision of this section is not guilty of violating, or of attempting to commit or conspiring to commit a violation of, this section.

**(g)** When a physician is criminally charged with a violation of this section, the physician shall report the charge to the board of medical examiners in writing within seven (7) calendar days of acquiring knowledge of the charge. The report must include the jurisdiction in which the charge is pending, if known, and must also be accompanied by a copy of the charging documents, if available. A district attorney general shall promptly notify the board of medical examiners when a physician is charged with a violation of this section.



(h) If any provision or provisions of this section or the application thereof to any person, circumstance, or period of gestational age is found to be unenforceable, unconstitutional, or invalid by a court of competent jurisdiction, the same is hereby declared to be severable and the remainder of the section shall remain effective. The general assembly hereby declares that it would have enacted this section and each of its provisions, even if any provision of this section or the application thereof to any person, circumstance, or period of gestational age was later found to be unenforceable, unconstitutional, or invalid.

(i)

(1) It is the specific intent of the general assembly in this section to exercise to the greatest extent permitted by law the legitimate, substantial, and compelling state interest in protecting maternal health, and in preserving, promoting, and protecting life and potential life throughout pregnancy by enacting more protective requirements than provided for under this part as it existed prior to July 13, 2020.

(2) When this section is in direct conflict with this part as it existed prior to July 13, 2020, the more protective requirements of this section control over any less protective provision of this part. This section shall not be construed as a repeal, either express or implied, of any provision of this part as it existed prior to July 13, 2020.

(3) The general assembly specifically intends that this part as it existed prior to July 13, 2020, shall remain and be enforceable if, and for so long as, any provisions of this section, or any part or parts thereof, are enjoined or otherwise barred by a court of competent jurisdiction.

(4) This section does not repeal or modify in any way [§ 39-15-213](#), as enacted by chapter 351 of the Public Acts of 2019, which shall control upon becoming effective. This section shall remain and be enforceable if, and for so long as, any provisions of [§ 39-15-213](#), or any part or parts thereof, are enjoined or otherwise barred by a court of competent jurisdiction.

**Tenn. Code § 39-15-217. Section definitions — Unlawful abortions due to sex, race, or indication of Down syndrome — Affirmative defense of medical emergency — Violations — Report to board of medical examiners — Severability — Intent.**

(a) As used in this section:

(1) “Abortion” has the same meaning as defined in [§ 39-15-211](#);

(2) “Down syndrome” means a chromosome disorder associated either with an extra chromosome twenty-one or an effective trisomy for chromosome twenty-one;

(3) “Medical emergency” has the same meaning as defined in [§ 39-15-211](#); provided, that it does not include a claim or diagnosis related to the woman's mental health or a claim or diagnosis that the woman will engage in conduct which would result in her death or substantial and irreversible impairment of a major bodily function; and

(4) “Unborn child” has the same meaning as defined in [§ 39-15-211](#).

(b) A person shall not perform or induce, or attempt 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.

**(c)** A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman if the person knows that the woman is seeking the abortion because of the race of the unborn child.

**(d)** A person shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman if the person knows that the woman is seeking the abortion because of a prenatal diagnosis, test, or screening indicating Down syndrome or the potential for Down syndrome in the unborn child.

**(e)**

**(1)** Subject to compliance with subdivision (e)(2), it is an affirmative defense to criminal prosecution for a violation of a provision of this section that, in the physician's reasonable medical judgment, a medical emergency prevented compliance with the provision.

**(2)** In order for the affirmative defense in subdivision (e)(1) to apply, a physician who performs or induces, or attempts to perform or induce, an abortion because of a medical emergency must comply with each of the following conditions unless the medical emergency also prevents compliance with the condition:

**(A)** The physician who performs or induces, or attempts to perform or induce, the abortion certifies in writing that, in the physician's good faith, reasonable medical judgment, based upon the facts known to the physician at the time, compliance with the provision was prevented by a medical emergency;

**(B)** The physician certifies in writing the available methods or techniques considered and the reasons for choosing the method or technique employed;

**(C)** If the unborn child is presumed to be viable under [§ 39-15-211](#) or determined to be viable under [§ 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 thirty (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;

**(D)** If the unborn child is presumed viable under [§ 39-15-211](#) or determined to be viable under [§ 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 the 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

**(E)** If the unborn child is presumed viable under [§ 39-15-211](#) or determined to be viable under [§ 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 (1) 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.

**(f)** A violation of subsections (b)-(d) is a Class C felony.

**(g)** A pregnant woman upon whom an abortion is performed or induced, or attempted to be performed or induced, in violation of subsections (b)-(d), is not guilty of violating the subsections, or of attempting to commit or conspiring to commit a violation of the subsections.

**(h)** When a physician is criminally charged with a violation of this section, the physician shall report the charge to the board of medical examiners in writing within seven (7) calendar days of acquiring knowledge of the charge. The report must include the jurisdiction in which the charge is pending, if known, and must also be accompanied by a copy of the charging documents, if available. A district attorney general shall promptly notify the board of medical examiners when a physician is charged with a violation of this section.

**(i)** If any provision of this section or the application thereof to any person, circumstance, or period of gestational age is found to be unenforceable, unconstitutional, or invalid by a court of competent jurisdiction, the same is hereby declared to be severable and the remainder of this section shall remain effective. The general assembly hereby declares that it would have enacted this section and each of its provisions, even if any provision of this section or the application thereof to any person, circumstance, or period of gestational age was later found to be unenforceable, unconstitutional, or invalid.

**(j)**

**(1)** It is the specific intent of the general assembly in this section to exercise to the greatest extent permitted by law the legitimate, substantial, and compelling state interest in protecting maternal health, and in preserving, promoting, and protecting life and potential life throughout pregnancy by enacting more protective requirements than provided for under this part as it existed prior to July 13, 2020.

**(2)** When this section is in direct conflict with this part as it existed prior to July 13, 2020, the more protective requirements of this section control over any less protective provision in this part. This section shall not be construed as a repeal, either express or implied, of any provision of this part as it existed prior to July 13, 2020.

**(3)** The general assembly specifically intends that this part as it existed prior to July 13, 2020, shall remain and be enforceable if, and for so long as, any provisions of this section, or any part or parts thereof, are enjoined or otherwise barred by a court of competent jurisdiction.

**(4)** This section does not repeal or modify in any way [§ 39-15-213](#), as enacted by chapter 351 of the Public Acts of 2019, which shall control upon becoming effective. This section shall remain and be enforceable if, and for so long as, any provisions of [§ 39-15-213](#), or any part or parts thereof, are enjoined or otherwise barred by a court of competent jurisdiction.