

SENATE BILL 1257

By Gresham

AN ACT to amend Tennessee Code Annotated, Section 9-4-5116; Title 37, Chapter 10, Part 3; Title 39, Chapter 13, Part 2; Title 39, Chapter 15, Part 2; Title 39, Chapter 13, Part 1; Title 63, Chapter 9; Title 63, Chapter 6; Title 68 and Title 71, Chapter 5, relative to abortion.

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

SECTION 1. This act shall be known and may be cited as the "Human Life Protection Act."

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 15, Part 2, is amended by adding the following as a new section:

(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, 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.

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

(c) It is an affirmative defense to prosecution under subsection (b), which must be proven by a preponderance of the evidence, that:

(1) The abortion was performed or attempted by a licensed physician;

(2) The physician determined, in the physician's good faith 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. No abortion shall be deemed authorized under this subdivision (c)(2) if performed on the basis of a claim or a diagnosis that the woman will engage in conduct that would result in her death or substantial and irreversible impairment of a major bodily function or for any reason relating to her mental health; and

(3) The physician performs or attempts to perform the abortion in the manner which, in the physician's good faith medical judgment, based upon the facts known to the physician at the time, provides the best opportunity for the unborn child to survive, unless in the physician's good faith medical judgment, termination of the pregnancy in that manner would pose a greater risk of the death of the pregnant woman or substantial and irreversible impairment of a major bodily function. No such greater risk shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct that would result in her death or substantial and irreversible impairment of a major bodily function or for any reason relating to her mental health.

(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.

SECTION 3. Notwithstanding any other provision of law, this act shall become effective, and to the extent permitted, on the thirtieth day following the occurrence of either of the following circumstances:

(1) The issuance of the judgment in any decision of the United States Supreme Court which overrules, in whole or in part, *Roe v. Wade*, 410 U.S. 113 (1973), as modified by *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), thereby restoring to the states their authority to prohibit abortion; or

(2) Adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states their authority to prohibit abortion.