

SENATE BILL 828

By Bowling

AN ACT to amend Tennessee Code Annotated, Title 37, Chapter 10; Title 39; Title 62, Chapter 5 and Title 68, relative to abortion.

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

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 15, Part 2, is amended by adding the following as a new section:

39-15-219.

(a) As used in this section:

(1) "Abortion facility" means any of the following in which abortions are induced or performed:

(A) Ambulatory surgical treatment center, as defined in § 68-11-201;

(B) A private office; and

(C) Another facility, as defined in § 68-11-201, in which abortion is legally provided;

(2) "Cremation" means the heating process by which a human body or body parts are reduced to bone fragments through combustion and evaporation;

(3) "Crematory" has the same meaning as defined in § 62-5-101;

(4) "Fetal remains" means an aborted fetus or fetal tissue that results from an abortion of an unborn child;

(5) "Interment" means the burial or entombment of fetal remains;

(6) "Medical emergency" has the same meaning as defined in § 39-15-211; and

(7) "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.

(b)

(1) Final disposition of fetal remains from a surgical abortion at an abortion facility must be by cremation or interment.

(2) The cremation of fetal remains under subdivision (b)(1) must be in a licensed crematory facility.

(c)

(1) A pregnant woman who has a surgical abortion has the right to determine the following regarding the fetal remains:

(A) Whether the final disposition is by cremation or interment; and
(B) The location for the final disposition.

(2) A pregnant woman who has a surgical abortion must be provided with a notification form described in subdivision (m)(1).

(d)

(1) If a pregnant woman desires to exercise the rights under subdivision (c)(1), the woman must make the determination in writing using a form prescribed by the department of health under subdivision (m)(3). The determination must clearly indicate the following:

(A) Whether the final disposition will be by cremation or interment; and
(B) Whether the final disposition will be at a location other than the location provided by the abortion facility.

(2) If a pregnant woman does not desire to exercise the rights under subdivision (c)(1), then the abortion facility shall determine whether final disposition is by cremation or interment.

(3)

(A) A pregnant woman who is under eighteen (18) years of age, unmarried, and unemancipated shall obtain parental consent from one (1) of the pregnant woman's parents, guardian, or custodian to the final disposition determination she makes under subdivision (d)(1). The consent must be made in writing using a form prescribed by the department of health under subdivision (m)(2).

(B) The consent under subdivision (d)(3)(A) is not required for a pregnant woman exercising her rights under subdivision (c)(1) if an order authorizing the minor to consent, or the court to consent on behalf of the minor, to the abortion is issued by a court of competent jurisdiction.

(e)

(1) A pregnant woman who is carrying more than one (1) unborn child and who desires to exercise the rights under subdivision (c)(1), shall complete one (1) form under subdivision (d)(1) for each unborn child that will be aborted.

(2) A pregnant woman who obtains parental consent under subdivision (d)(3)(A) shall use one (1) consent form for each unborn child that will be aborted.

(f) A form used under subsection (d) that covers more than one (1) unborn child that will be aborted is invalid.

(g) An abortion facility shall not release fetal remains from a surgical abortion, or arrange for the cremation or interment of the fetal remains, until the facility obtains a final

disposition determination made, and if applicable, the consent made, under subsection (d) or subdivision (e)(1).

(h)

(1) Except as provided in subdivision (h)(2), an abortion facility shall pay for and provide for the cremation or interment of the fetal remains from a surgical abortion performed at that facility.

(2) If the disposition determination made under subsection (d) or subdivision (e)(1) identifies a location for final disposition other than a location provided by the abortion facility, then the pregnant woman is responsible for the costs related to the final disposition of the fetal remains at the chosen location.

(i) An abortion facility shall document in the pregnant woman's medical record the final disposition determination made, and if applicable, the consent made, under subsection (d) or subdivision (e)(1).

(j) An abortion facility shall maintain evidentiary documentation demonstrating the date and method of the disposition of fetal remains from surgical abortions performed or induced in the facility.

(k) An abortion facility shall have written policies and procedures regarding cremation or interment of fetal remains from surgical abortions performed or induced in the facility.

(l) An abortion facility shall develop and maintain a written list of locations at which the facility provides or arranges for the final disposition of fetal remains from surgical abortions.

(m) The commissioner of health shall promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as necessary to effectuate the purposes of this section, including rules that prescribe the following:

- (1) The notification form informing pregnant women who seek surgical abortions of the following:
 - (A) The right to determine final disposition of fetal remains under subdivision (c)(1); and
 - (B) The available options for locations and methods for the disposition of fetal remains;
- (2) The consent forms for purposes of subsection (d) and subdivision (e)(1);
- (3) A form that meets the following requirements:
 - (A) Indicates whether the pregnant woman has indicated a preference as to the method of disposition of the fetal remains and the preferred method selected;
 - (B) Indicates whether the pregnant woman has indicated a preference as to the location of disposition of the fetal remains;
 - (C) Provides for the signature of the physician who is to perform or induce the abortion; and
 - (D) Provides for a medical identification number for the pregnant woman but does not provide for the pregnant woman's printed name or signature; and
- (4) If a medical emergency prevents the pregnant woman from completing the form, procedures to complete that form within a reasonable time after the medical emergency has ended.

(n) A person who buries or cremates fetal remains from a surgical abortion is not liable for or subject to damages in a civil action, prosecution in a criminal proceeding, or

professional disciplinary action related to the disposal of fetal remains, if that person does the following:

- (1) Complies in good faith with this section and, if applicable, § 62-5-502;
- (2) Receives a copy of a properly executed form described in subdivision (m)(3); and
- (3) Acts in furtherance of the final disposition of the fetal remains.

(o) A conflicting law of this state or conflicting rule of an agency or board does not apply to a person who buries or cremates fetal remains in accordance with subsection (n).

(p) A pregnant woman who has a surgical abortion, the fetal remains from which are not disposed of in compliance with this chapter, is not guilty of committing, attempting to commit, complicity in the commission of, or conspiracy in the commission of a violation of subdivision (q).

(q) A violation of subsection (b), (g), (i), or (j) is a Class A misdemeanor.

SECTION 2. Tennessee Code Annotated, Title 62, Chapter 5, Part 5, is amended by adding the following as a new section:

62-5-502.

(a) An operator of a crematory facility shall not:

- (1) Cremate fetal remains without receiving a copy of a properly executed form described in § 39-15-219(m)(3);
- (2) Dispose of cremated fetal remains by a means other than one (1) of the following:

(A) Placing the cremated fetal remains in a grave, crypt, or niche;

- (B) Scattering the cremated fetal remains in a dignified manner, including in a memorial garden, at sea, by air, or at a lawful scattering ground;
- (C) Releasing the cremated fetal remains to the pregnant woman or a party designated by the pregnant woman; or
- (D) Any other lawful manner;

(3) Arrange for the disposal of cremated fetal remains by a means other than one described in subdivision (a)(2); or

(4) Arrange for the transfer of the cremated fetal remains for disposal by a means other than the means described in subdivision (a)(2).

(b) An operator of a crematory facility is not required to secure a death certificate, burial permit, transportation permit, or a cremation authorization form to cremate fetal remains.

SECTION 3. Tennessee Code Annotated, Section 39-15-203(c), is amended by deleting the subsection and substituting the following:

(c) The method of disposition of an aborted fetus or aborted fetal tissue must comply with § 39-15-219.

SECTION 4. Tennessee Code Annotated, Section 68-3-505(a), is amended by deleting the language "authorized by the rules of the board for licensing healthcare facilities" and substituting the language "authorized by § 39-15-219".

SECTION 5. Tennessee Code Annotated, Section 68-3-506(a), is amended by deleting the language "Prior to final disposition of a dead fetus" and substituting the language "Prior to final disposition of fetal remains in accordance with § 39-15-219".

SECTION 6. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that

can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 7. For the purpose of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect July 1, 2021, the public welfare requiring it, and applies to actions occurring on or after that date.

Amendment No. _____

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

Signature of Sponsor

AMEND Senate Bill No. 828*

House Bill No. 1181

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 15, Part 2, is amended by adding the following as a new section:

39-15-219.

(a) As used in this section:

(1) "Abortion facility":

(A) Means any of the following in which abortions are induced or performed:

(i) An ambulatory surgical treatment center, as defined in

§ 68-11-201;

(ii) A private office; and

(iii) Another facility, as defined in § 68-11-201, in which abortion is legally provided; and

(B) Does not include a hospital, as defined in § 68-11-201, that is licensed pursuant to title 68, as long as the hospital acts pursuant to hospital policies or regulations concerning the disposal of fetal remains that substantially comply with the requirements of this section;

(2) "Cremation" means the heating process by which a human body or body parts are reduced to bone fragments through combustion and evaporation;

(3) "Crematory" has the same meaning as defined in § 62-5-101;



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- (4) "Fetal remains" means an aborted fetus or fetal tissue that results from an abortion of an unborn child;
- (5) "Interment" means the burial or entombment of fetal remains;
- (6) "Medical emergency" has the same meaning as defined in § 39-15-211; and
- (7) "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.

(b)

- (1) A person shall not make a final disposition of fetal remains from a surgical abortion that occurs at an abortion facility except by cremation or interment.
- (2) The cremation of fetal remains under subdivision (b)(1) must be in a licensed crematory facility.

(c)

- (1) A pregnant woman who has a surgical abortion has the right to determine the following regarding the fetal remains:
 - (A) Whether the final disposition is by cremation or interment; and
 - (B) The location for the final disposition.
- (2) A pregnant woman who has a surgical abortion must be provided with a notification form described in subdivision (m)(1)(A).

(d)

- (1) If a pregnant woman desires to exercise the right described in subdivision (c)(1), then the woman must make the determination in writing using a form prescribed by the department of health under subdivision (m)(1)(C). The determination must clearly indicate the following:

(A) Whether the final disposition will be by cremation or interment; and

(B) Whether the final disposition will be at a location other than the location provided by the abortion facility.

(2) If a pregnant woman does not desire to exercise the right described in subdivision (c)(1), then the abortion facility shall determine whether final disposition is by cremation or interment.

(3)

(A) A pregnant woman who is under eighteen (18) years of age, unmarried, and unemancipated shall obtain parental consent from one (1) of the pregnant woman's parents, guardian, or custodian for the final disposition determination the woman makes under subdivision (d)(1). The consent must be made in writing using a form prescribed by the department of health under subdivision (m)(1)(B).

(B) The consent under subdivision (d)(3)(A) is not required for a pregnant woman exercising her rights under subdivision (c)(1) if an order authorizing the minor to consent, or the court to consent on behalf of the minor, to the abortion is issued by a court of competent jurisdiction.

(e)

(1) A pregnant woman who is carrying more than one (1) unborn child and who desires to exercise the right described in subdivision (c)(1), shall complete one (1) form under subdivision (d)(1) for each unborn child that will be aborted.

(2) A pregnant woman who obtains parental consent under subdivision (d)(3)(A) shall use one (1) consent form for each unborn child that will be aborted.

(f) A form used under subsection (d) that covers more than one (1) unborn child that will be aborted is invalid.

(g) If a pregnant woman desires to exercise the right described in subdivision (c)(1), then an abortion facility shall not release fetal remains from a surgical abortion, or arrange for the cremation or interment of the fetal remains, until the facility obtains a final disposition determination made, and if applicable, the consent made, under subsection (d) or subdivision (e)(1).

(h)

(1) Except as provided in subdivision (h)(2), an abortion facility shall pay for and provide for the cremation or interment of the fetal remains from a surgical abortion performed at that facility.

(2) If the disposition determination made under subsection (d) or subdivision (e)(1) identifies a location for final disposition other than a location provided by the abortion facility, then the pregnant woman is responsible for the costs related to the final disposition of the fetal remains at the chosen location.

(i) An abortion facility shall document in the pregnant woman's medical record the final disposition determination made, and if applicable, the consent made, under subsection (d) or subdivision (e)(1).

(j) An abortion facility shall maintain evidentiary documentation demonstrating the date and method of the disposition of fetal remains from surgical abortions performed or induced in the facility.

(k) An abortion facility shall have written policies and procedures regarding cremation or interment of fetal remains from surgical abortions performed or induced in the facility.

(l) An abortion facility shall develop and maintain a written list of locations at which the facility provides or arranges for the final disposition of fetal remains from surgical abortions.

(m)

(1) The commissioner of health shall promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as necessary to effectuate the purposes of this section, including rules that prescribe the following:

(A) The notification form informing pregnant women who seek surgical abortions of the following:

(i) The right to determine final disposition of fetal remains under subdivision (c)(1); and

(ii) The available options for locations and methods for the disposition of fetal remains;

(B) The consent forms for purposes of subsection (d) and subdivision (e)(1);

(C) A form that meets the following requirements:

(i) Indicates whether the pregnant woman has indicated a preference as to the method of disposition of the fetal remains and the preferred method selected;

(ii) Indicates whether the pregnant woman has indicated a preference as to the location of disposition of the fetal remains;

(iii) Provides for the signature of the physician who is to perform or induce the abortion; and

(iv) Provides for a medical identification number for the pregnant woman but does not provide for the pregnant woman's printed name or signature; and

(D) If a medical emergency prevents the pregnant woman from completing the form, procedures to complete that form within a reasonable time after the medical emergency has ended.

(2) The commissioner of health may consider the following when promulgating rules to effectuate the purposes of this section:

(A) The need to clearly state in rules that the only legal methods of disposition of fetal remains are by burial or cremation, and that fetal remains cannot be disposed of as infectious waste;

(B) Appropriate time limitations within which abortion providers and facilities must satisfy the requirements of this section; and

(C) The need to promulgate forms or establish other methods to ensure that the fetal remains of each unborn child are properly accounted for during transportation and delivery by and to persons and entities involved in the disposition of the fetal remains, and in a manner that does not disclose the protected healthcare information or identity of the pregnant woman on whom the abortion was performed.

(n) A person who buries or cremates fetal remains from a surgical abortion is not liable for or subject to damages in a civil action, prosecution in a criminal proceeding, or professional disciplinary action related to the disposal of fetal remains, if that person does the following:

(1) Complies in good faith with this section and, if applicable, § 62-5-502;

(2) Receives a copy of a properly executed form described in subdivision (m)(1)(C); and

(3) Acts in furtherance of the final disposition of the fetal remains.

(o) A conflicting law of this state or conflicting rule of an agency or board does not apply to a person who buries or cremates fetal remains in accordance with subsection (n).

(p) A pregnant woman who has a surgical abortion, the fetal remains from which are not disposed of in compliance with this chapter, is not guilty of committing,

attempting to commit, complicity in the commission of, or conspiracy in the commission of a violation of subdivision (q).

(q) A violation of subsection (b), (g), (i), or (j) is a Class A misdemeanor.

SECTION 2. Tennessee Code Annotated, Title 62, Chapter 5, Part 5, is amended by adding the following as a new section:

62-5-502.

(a) An operator of a crematory facility shall not:

- (1) Cremate fetal remains without receiving a copy of a properly executed form described in § 39-15-219(m)(1)(C);
- (2) Dispose of cremated fetal remains by a means other than one (1) of the following:
 - (A) Placing the cremated fetal remains in a grave, crypt, or niche;
 - (B) Scattering the cremated fetal remains in a dignified manner, including in a memorial garden, at sea, by air, or at a lawful scattering ground;
 - (C) Releasing the cremated fetal remains to the woman who obtained an abortion or a party designated by the woman; or
 - (D) Any other lawful manner;
- (3) Arrange for the disposal of cremated fetal remains by a means other than the methods described in subdivision (a)(2); or
- (4) Arrange for the transfer of the cremated fetal remains for disposal by a means other than the means described in subdivision (a)(2).

(b) An operator of a crematory facility is not required to secure a death certificate, burial permit, transportation permit, or a cremation authorization form to cremate fetal remains.

SECTION 3. Tennessee Code Annotated, Section 39-15-203(c), is amended by deleting the subsection and substituting the following:

(c) The method of disposition of an aborted fetus or aborted fetal tissue must comply with § 39-15-219.

SECTION 4. Tennessee Code Annotated, Section 68-3-505(a), is amended by deleting the language "authorized by the rules of the board for licensing healthcare facilities" and substituting the language "authorized by § 39-15-219".

SECTION 5. Tennessee Code Annotated, Section 68-3-506(a), is amended by deleting the language "Prior to final disposition of a dead fetus" and substituting the language "Prior to final disposition of fetal remains in accordance with § 39-15-219".

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

SECTION 7. For the purpose of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect July 1, 2021, the public welfare requiring it, and applies to actions occurring on or after that date.