

Life-of-Mother Exemption Policy Brief

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The Issue

Tennessee's Human Life Protection Act (aka Trigger Law) places women in harm's way during their pregnancies. Under the current law, every abortion is a Class C Felony. Even during especially difficult times of emergency pregnancy complications when medical care is needed to save the mother's life, the current law stipulates that this is still an abortion and that physicians and providers can be criminally prosecuted for actions taken to save the mother's life or prevent very damaging, irreversible health conditions.

The most common cause of "life-of-mother" medical procedures is the removal of an ectopic or tubal pregnancy. The March of Dimes estimates that one in every 50 pregnancies are ectopic, a condition in which the fetus cannot survive. Unfortunately, there are other pregnancy complications necessitating the need to end a pregnancy such as severe cardiac disease, end-stage renal disease (kidney disease), lupus nephritis, cancers requiring immediate treatment, severe pulmonary hypertension, and other conditions that, in the presence of pregnancy, would likely lead to death or permanent, irreversible injury to the mother.

Today, Tennessee's medical providers and hospitals are asking the Tennessee General Assembly to preserve the original intent of this 2019 Law, which was to prevent elective abortions, but preserve "life-of-mother" protection procedures.

We should remove the law "affirmative defense" clause used here, which causes confusion and places good medical practice in jeopardy. At best, this ambiguity delays needed care for women whose lives are at risk while legal clarification is sought. At worst, the current law could place physicians at risk of a felony conviction, loss of hospital privileges, prison time, etc., for protecting lives.

How We Got Here

From 1989 to 2021 numerous laws that address abortion were passed and signed into law in Tennessee.

During the 111th General Assembly, Tennessee passed the Human Life Protection Act that supersedes previous abortion legislation and punishes providers who attempt to terminate pregnancies based on medical necessity. The law attempts to protect providers through the availability of an "affirmative defense" for physicians who terminate a pregnancy to save the life or health of the mother. The challenge is that affirmative defense can only be invoked after a physician is charged with a criminal abortion, which, if convicted, subjects the doctor to a 15-year prison sentence. After a felony charge, the damage to the doctor's career is likely irreversible. Upon booking, a mug shot is taken with the high likelihood that it will be splayed in the hometown newspaper. Hospital privileges will be revoked, as will the ability to participate in patients' health insurance networks, leading to potential job loss.

Who would want to begin to practice medicine in Tennessee under these risky conditions? The biggest losers are the patients when communities lose doctors who take care of prenatal care, perform deliveries, and manage complicated pregnancies. Besides the loss of doctors who leave the state because of inadequate legal protection, new doctors and potential trainees are reluctant to come to Tennessee.

What is affirmative defense and why is it shaky ground?

An affirmative defense is an excuse from a crime written into law. Typically, in a criminal case, the state has the burden of proof to show the defendant violated the law. However, an affirmative defense flips that burden and forces the accused criminal (the physician, in this case) invoking it to prove that his or her actions met every element of the affirmative defense—with a preponderance of evidence. If the jury finds that the defendant has met the burden of proof, it must acquit the defendant.

The Solution

SB745/HB883 removes the law's affirmative defense and makes a clear exception for pregnancy terminations done to prevent death or irreversible impairment of major bodily function of the mother. It provides certainty and clarity for the physician needing to take appropriate medical actions to save the life of a mother. The bill also:

- clarifies that commonly performed medically necessary procedures, such as ectopic pregnancy removals, are not criminal abortions;
- authorizes the doctor to petition the Tennessee Board of Medical Examiners to hold a hearing to determine the medical necessity of the abortion before a criminal trial is held;
- allows for termination of a pregnancy when a non-survivable fetal anomaly is diagnosed;
- provides immunity for pharmacists for dispensing drugs that can be used to induce abortion, but have other recognized non-abortion indications such as cancer and lupus;
- removes from Tennessee Code confusing or conflicting laws and language that were superseded by the Trigger Law;
- is consistent with guidance from the Tennessee Attorney General who believes this bill is stronger and better to defend in court than the Trigger Law; and
- is an example of the legislative process in action—of the reality of ensuring that good policy is put into practice.

HB 883 / SB 745 is Pro Life legislation. It only confirms that doctors can protect the life of the mother in a medical emergency.

The original intent of the Human Life Protection Act passed in 2019 remains: to protect babies and to protect mothers in medical emergencies.

This bill is an example of the legislative process in action—of the reality of ensuring that good policy is put into practice.

SB745/HB883 Supporting Organizations

