

By: Ketchings

To: Public Health and
Welfare;
Appropriations

HOUSE BILL NO. 1513

1 AN ACT ENTITLED THE PROTECTION FROM HIGH RISK AND COERCIVE
2 ABORTION ACT; TO PROVIDE DEFINITIONS; TO DEFINE THE APPLICABLE
3 STANDARD OF CARE FOR ABORTIONS; TO PROVIDE SCREENING OF RISK
4 FACTORS FOR ALL ABORTIONS EXCEPT IN THE CASE OF A MEDICAL
5 EMERGENCY; TO REQUIRE THE STATE DEPARTMENT OF HEALTH TO MAINTAIN
6 AN ABORTION INFORMATION DEPOSITORY; TO REQUIRE ABORTION PROVIDERS
7 TO REGISTER PROOF OF INSURANCE WITH THE STATE DEPARTMENT OF
8 HEALTH; TO PROVIDE CIVIL CAUSES OF ACTION AND CIVIL REMEDIES FOR
9 THE FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ACT; TO PROVIDE
10 FOR THE RIGHT OF INTERVENTION IN ANY CONSTITUTIONAL ACTION AGAINST
11 THE ENFORCEMENT OF THIS ACT; AND FOR RELATED PURPOSES.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

13 SECTION 1. **Short title.** This act may be cited as the
14 "Protection From High Risk and Coercive Abortion Act."

15 SECTION 2. **Definitions.** The following words and phrases
16 shall have the meanings ascribed in this section unless the
17 context clearly indicates otherwise:

18 (a) "Abortion" means the use or prescription of any
19 instrument, medicine, drug or any other substance or device to
20 terminate the pregnancy of a woman known to be pregnant with an
21 intention other than to increase the probability of a live birth,
22 to preserve the life or health of the child after live birth or to
23 remove a dead fetus.

24 (b) "Medical emergency" means that condition which, on
25 the basis of the physician's best clinical judgment, so
26 complicates a pregnancy as to necessitate an immediate abortion to
27 avert the death of the mother or for which a twenty-four-hour
28 delay will create grave peril of immediate and irreversible loss
29 of major bodily function.

30 (c) "Abortion providers" means any physician or entity

31 that performs or provides abortions. For purposes of this act
32 abortion providers shall also include any entity that refers for
33 abortions as a normal part of their business at least ten (10)
34 times per year.

35 (d) "Risk factor" means any physical, psychological,
36 behavioral or situational factor which may predispose an
37 individual woman to experience, or increase the risk of an
38 individual woman experiencing, one or more adverse emotional or
39 physical reactions to the abortion, in either the short or long
40 term, compared to a woman who does not possess this risk factor.

41 (e) "High risk patient" means any patient for whom one
42 or more risk factors exist.

43 (f) "Self-induced abortion" means any abortion or
44 menstrual extraction attempted or completed by a woman on her own
45 body.

46 (g) "Qualified person" means a licensed physician or an
47 agent of the abortion practitioner who is a licensed psychologist,
48 licensed social worker, licensed professional counselor, or
49 licensed registered nurse.

50 SECTION 3. Screening requirements. Except in the case of a
51 medical emergency, in addition to whatever requirements exist
52 under the common or statutory law of this state consent to
53 abortion is informed, voluntary and free from negligent and
54 unnecessary exposure to risks if and only if all of the following
55 are true:

56 (a) Before the physician recommends or performs an
57 abortion, a qualified person has evaluated the woman to identify
58 the presence of any known or suspected risk factors and informed
59 her and the physician, in writing, of the results of this
60 evaluation. This screening for risk factors shall normally
61 include, but not be limited to, the following: gonorrhoea or
62 chlamydia infection; a family history of breast cancer; prior
63 history of gestational trophoblastic tumor; history of caesarean

64 section; a history of prior abortion; adolescence; feelings of
65 being pressured to have the abortion; feelings of emotional
66 attachment to the unborn child; a history of prior psychological
67 illness or emotional instability; lack of support from the partner
68 or parents; moral or religious convictions against abortion; a
69 second or third-trimester pregnancy; low expectations of coping
70 well.

71 (b) In the event that any risk factors were identified,
72 the patient has been fully informed by a qualified person which
73 risk factors exist, why these risk factors may lead to adverse
74 reactions, and a detailed explanation of what adverse reactions
75 may occur. This explanation shall include quantifiable risk rates
76 whenever relevant data exists in the detail that a reasonable
77 patient would consider material to the decision of whether or not
78 to undergo the abortion.

79 (c) In the event that any risk factors were identified,
80 the qualified person who has provided the screening and counseling
81 provided a written statement to the patient and the physician
82 certifying, to the best of the qualified person's knowledge, that
83 the patient fully understands and appreciates the significance of
84 the risk factors discussed and her increased exposure to the
85 related adverse reactions. The risk factors and related reactions
86 shall be listed in this certificate.

87 **SECTION 4. Abortion Information Depository.** (1) The State
88 Department of Health shall maintain receipt-date stamped files
89 containing the following:

90 (a) Proof of insurance certificates filed by abortion
91 providers.

92 (b) At least one (1) copy of each edition of any
93 document submitted by any individual, organization or other entity
94 regarding:

95 (i) Known or claimed adverse effects of abortion;
96 (ii) Predisposing risk factors to post-abortion

97 sequelae;

98 (iii) Alternative management techniques for crisis
99 pregnancies;

100 (iv) Reports of monetary awards and settlements in
101 civil actions against abortion providers which shall be used as a
102 basis for the determination of adequate proof of insurance;

103 (v) Any other information which would be relevant
104 to a reasonable patient or to the standard of care offered by
105 abortion providers.

106 (2) The State Department of Health shall maintain an index
107 of the documents placed into the Abortion Information Depository,
108 including the date of submission.

109 (3) All the documents described in this section shall be
110 available for public inspection during normal business hours.

111 (4) Copies of any document filed in the Abortion Information
112 Depository shall be made available to the public at actual cost
113 and in accordance with copyright laws.

114 SECTION 5. Insurance requirements. (a) Physicians who
115 perform abortions must have admitting privileges at a hospital
116 which, in the event of a medical emergency, is reasonably
117 accessible to the site at which the abortion is performed.

118 (b) All professional corporations and freestanding clinics
119 which provide more than ten (10) abortions per year must register
120 with the Department of Public Health proof of insurance covering
121 all employees, contract workers, and volunteers who have contact
122 with abortion patients in an amount of not less than Two Million
123 Dollars (\$2,000,000.00).

124 SECTION 6. Civil remedies. (1) In addition to whatever
125 remedies are available under the common or statutory laws of this
126 state, the failure to comply with the requirements of this act and
127 Section 41-41-33 shall provide a basis for the following:

128 (a) A civil action by any person suffering damages as a
129 result of a failure to provide care under the standards of care

130 defined in this act. Any intentional or negligent violation of
131 this act shall be admissible in a civil suit as prima facie
132 evidence of a failure to obtain a voluntary and informed consent
133 and shall entitle the woman or her survivors to actual damages or
134 Ten Thousand Dollars (\$10,000.00) for each violation, at her
135 option, plus punitive damages and reasonable attorney's fees and
136 costs.

137 (b) Recovery for the woman for the death of her unborn
138 child under the Wrongful Death Act, whether or not the unborn
139 child was viable at the time of the abortion and whether or not
140 the child was born alive, upon proving by the preponderance of
141 evidence that the abortion provider knew or should have known that
142 patient's consent to the abortion was either not informed and or
143 not voluntary.

144 (2) Any action for civil remedies based on a failure to
145 comply with the requirements of this act and Section 41-41-33 must
146 be brought within four (4) years after the date at which the woman
147 becomes, or should have been, aware that the abortion was the
148 probable or contributory cause of a physical or emotional
149 complication and has recovered from any psychological complication
150 which may impede the patient's ability adequately to pursue a
151 civil remedy.

152 (3) Notwithstanding the provisions of subsection (2) of this
153 section, in the case of a woman who has died, any action under
154 this act shall be brought within four (4) years of her death.

155 (4) No abortion provider shall be held liable for any claim
156 of injury based on the premise that too much information was
157 provided to the patient, provided said information was accurate or
158 reasonably assumed to be accurate.

159 (5) If the physician provided a minor patient with an
160 abortion without the informed consent of the minor's legal
161 guardian the burden of proving that the minor woman was capable of
162 maturely and independently evaluating the information given to her

163 in the disclosure process, that the minor woman was capable of
164 making a voluntary and informed choice, and that all aspects of
165 the screening and disclosure were adequate shall fall upon the
166 abortion providers.

167 (6) If the physician provided the patient with less than
168 twenty-four (24) hours for reflection time to comprehend and
169 consider all the information this act requires, the burden of
170 proving that the woman had sufficient reflection time, given her
171 age, level of maturity, emotional state, and mental capacity shall
172 fall upon the abortion providers.

173 (7) In a civil action involving this act and Section
174 41-41-33:

175 (a) In determining liability, the absence of voluntary
176 and fully informed consent shall create the presumption that the
177 plaintiff would not have undertaken the recommended abortion.

178 (b) The fact that a physician does not perform elective
179 abortions, or has not in the past, shall not automatically
180 disqualify that physician from being an expert witness. A
181 licensed obstetrician or family practitioner who regularly helps
182 women in resolving pregnancy related medical matters shall
183 presumptively be qualified to testify as an expert.

184 (c) Any abortion provider that makes referrals to a
185 physician whose practice is inside or outside this state shall be
186 liable for ensuring that the party to whom the abortion provider
187 refers the patient provides a standard of care equal to or better
188 than the standard defined by this act.

189 (8) In addition to whatever remedies are available under the
190 common or statutory laws of this state, a woman, or her survivors,
191 who attempted or completed a self-abortion, except as legally
192 prescribed by a physician, will have a cause of action for
193 reckless endangerment against any person, who provided,
194 distributed or sold medical advice to her with the intent to
195 assist or encourage her in performing a self-induced abortion.

196 Upon establishing as a finding of fact or by a preponderance of
197 evidence that a defendant who is not a physician provided,
198 distributed or sold medical advice with the intent to assist
199 others to perform illegal or self-induced abortions, plaintiff
200 shall be awarded not less than Four Hundred Thousand Dollars
201 (\$400,000.00) for reckless endangerment. Proof of injury shall
202 not be required to recover an award for reckless endangerment
203 under this statute.

204 (9) In addition to whatever remedies are available under the
205 common or statutory laws of this state and in the event that an
206 abortion is attempted or completed by a person who is not a
207 licensed physician, the woman upon whom the abortion was attempted
208 or completed, or her survivors, will have a cause of action
209 against said person. Upon establishing by the preponderance of
210 evidence that said person was not a licensed physician and
211 attempted or completed an abortion on the woman, the plaintiff
212 shall be awarded not less than Eight Hundred Thousand Dollars
213 (\$800,000.00) for reckless endangerment. Proof of injury shall
214 not be required to recover an award for reckless endangerment
215 under this statute.

216 SECTION 7. Severability. If any one or more provision,
217 section, subsection, sentence, clause, phrase or word of this act
218 or the application thereof to any person or circumstance is found
219 to be unconstitutional, the same is hereby declared to be
220 severable and the balance of this act shall remain effective
221 notwithstanding such unconstitutionality. The Legislature hereby
222 declares that it would have passed this act, and each provision,
223 section, subsection, sentence, clause, phrase or word thereof,
224 irrespective of the fact that any one or more provision, section,
225 subsection, sentence, clause, phrase, or word be declared
226 unconstitutional.

227 SECTION 8. Construction. (1) Nothing in this act shall be
228 construed as creating or recognizing a right to abortion.

229 (2) It is not the intention of this law to make lawful an
230 abortion that is currently unlawful.

231 SECTION 9. Right of intervention. The Legislature, by joint
232 resolution, may appoint one (1) of its members who sponsored or
233 cosponsored this act in his official capacity to intervene as a
234 matter of right in any case in which the constitutionality of this
235 law is challenged.

236 SECTION 10. **Effective date.** (1) This act shall take effect
237 and be in force ninety (90) days after becoming law.

238 (2) In the event that any portion of this act is enjoined
239 and subsequently upheld, the running of the statute of limitations
240 for filing civil suit under the provisions of this statute shall
241 be tolled during the pendency of the injunction and for four (4)
242 years thereafter.