SENATE BILL NO. 2383

AN ACT ENTITLED THE "PROTECTION FROM HIGH RISK AND COERCIVE ABORTION ACT"; TO PROVIDE DEFINITIONS; TO PROVIDE SCREENING REQUIREMENTS FOR ALL ABORTIONS EXCEPT IN THE CASE OF A MEDICAL EMERGENCY AND TO PRESCRIBE RISK FACTORS TO BE EVALUATED BY AN ABORTION PRACTITIONER; TO REQUIRE THE STATE DEPARTMENT OF HEALTH TO MAINTAIN AN ABORTION INFORMATION DEPOSITORY; TO REQUIRE THE STATE DEPARTMENT OF HEALTH TO ISSUE CERTAIN SUPPLEMENTARY DOCUMENTS FOR DISCLOSURE TO A PATIENT PRIOR TO ANY ABORTION PROCEDURE; TO REQUIRE ABORTION PROVIDERS TO REGISTER PROOF OF INSURANCE WITH THE STATE DEPARTMENT OF HEALTH; TO PRESCRIBE CRIMINAL PENALTIES FOR KNOWINGLY PERFORMING AN ABORTION WITHOUT CONSENT AND FOR ASSISTING IN A SELF-INDUCED ABORTION; TO PROVIDE CIVIL REMEDIES FOR THE FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ACT; TO EXEMPT A MEDICAL EMERGENCY FROM THE REQUIREMENTS OF THIS ACT; TO PROVIDE FOR THE RIGHT OF INTERVENTION IN ANY CONSTITUTIONAL ACTION AGAINST THE ENFORCEMENT OF THIS ACT; AND FOR RELATED PURPOSES.

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

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

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

(a) "Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention 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.

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

(c) "Probable gestational age of the unborn child"
means what, in the judgment of the attending physician, will with
reasonable probability be the gestational age of the unborn child
at the time the abortion is planned to be performed.

(d) "Abortion providers" means and includes the
physician performing the abortion, and any individuals or
corporations acting as agents of the physician who have contact
with the patient and provide counseling, screening, referrals, or
directly assist with the abortion procedure itself, and any
corporation or owner or partner of a business or corporation that
employs or contracts with the physician to perform abortions, and
any physician, referral service, business, agency or corporation
that makes referrals to abortion providers.

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

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

(g) "Reasonable patient" means a patient who is capable
of thoughtfully considering and weighing both technical and
summary information to determine its relevancy to that patient's
choices in order to arrive at a free and informed choice either to
follow or reject a medical recommendation.

(h) "Risks" and "complications" means any physical and
psychological sequelae which a reasonable patient, upon review of
all the available information, is likely to consider to be either
an established risk of abortion, a likely risk of abortion, or a
possible risk of abortion.

S. B. No. 2383  
01/SS02/R215  
PAGE 2
(i) "Self-induced abortion" means any abortion or menstrual extraction attempted or completed by a woman on her own body.

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

(k) "Abortion practitioner" means the licensed physician who induces an abortion.

(l) "Vulnerable person" means any person who is submitting to an unwanted abortion due to pressure from others or due to psychological instability.

SECTION 3. Screening requirements. (1) Except in the case of a medical emergency, no abortion shall be performed or induced without prior screening of the patient for risk factors, including screening for evidence of coercion of a vulnerable person. Risk factors shall include, but not be limited to, the following: gonorrhea or chlamydia infection; a family history of breast cancer; prior history of gestational trophoblastic tumor; history of caesarean section; a history of prior abortion; adolescence; feelings of being pressured to have the abortion; feelings of attachment to the unborn child; a history of prior psychological illness or emotional instability; lack of support from the partner or parents; strong religious convictions against abortion; a second- or third-trimester pregnancy; low expectations of coping well.

(2) Except in the case of a medical emergency, consent to abortion is free from unnecessary exposure to risks and coercion only if all of the following are true:

(a) Before the abortion practitioner recommends or performs an abortion, the abortion practitioner must insure that a qualified person has evaluated the woman to identify the presence of any known or suspected risk factors and informed her and the
abortion practitioner, in writing, of the results of this evaluation. In the event that risk factors are identified:

(i) The woman shall be fully informed by a qualified person which risk factors exist, why these risk factors may lead to adverse reactions, and a detailed explanation of what adverse reactions may occur. This explanation of relevant risks must be in greater detail than would normally be provided to a woman who does not have the risk factor, and it shall include quantifiable risk rates whenever relevant data exists. The woman shall be given the information in all the detail that a reasonable patient may find relevant to her decision, plus any additional information the individual patient may request.

(ii) The woman shall be counseled by a qualified person, to assist her to address and reduce, if possible, the risk factors which place her at increased risk of sequelae.

(iii) Prior to the high risk patient's consent to an abortion, the qualified person who has provided the screening and counseling shall provide a written statement to the patient and the abortion practitioner certifying, to the best of that person's knowledge, that the patient fully understands and appreciates the significance of the risk factors discussed and her increased exposure to the related adverse reactions. The risk factors and related reactions shall be listed in this certificate.

(b) Prior to the abortion practitioner's recommendation for an abortion, a qualified person has privately evaluated the woman to determine if she is a vulnerable person, and in particular if she is seeking an abortion under pressure to do so from other persons.

(i) Evaluation of the woman to identify if she may be a vulnerable person shall include investigation of her moral views about abortion and any possible emotional attachment which she may have developed with her unborn child. If she describes a negative moral view toward abortion, or an emotional attachment to
her unborn child, or otherwise indicates that the abortion is unwanted, is her "only choice," or is being sought to satisfy some other person's desires which are contrary to her own, the presumption shall exist that she is a vulnerable person.

(ii) This evaluation of the woman shall be done individually, in a private room in the absence of third parties, such as parents, spouse or others to protect her privacy and increase her opportunity to express herself freely.

(iii) If a woman is identified as a vulnerable person she must be informed of this evaluation, and continue to receive nondirective counseling by a qualified person or be referred to counselors at other sources of assistance or counseling that may be deemed appropriate by the qualified person until she is able to make a fully free decision, either to have an abortion or to carry the pregnancy to term, with respect to her own views, needs and desires.

(iv) If, upon evaluation the qualified person concludes that the woman seeking an abortion may be a vulnerable person seeking abortion against her own self interests because of pressure or coercion from a third party, the qualified person shall assist her in finding resources to mitigate the pressure or protect her from the coercion. This assistance may include, with the consent of the woman, and shall include, at the request of the woman, disclosure of information to the pressuring parties as to the negative impact a coerced abortion may have on a vulnerable person and referrals for intervention aid in the form of family counseling, marital counseling, legal aid, or other appropriate measures.

(v) If, after having received said additional counseling and interventive assistance on her behalf, the patient identified as a vulnerable person persists in her request for an induced abortion, and if the qualified person has made the reasonable judgment that the patient has freely and voluntarily
decided to continue her request for an abortion in accordance with her own autonomous views, needs and desires, the qualified person shall provide a written statement to the abortion practitioner certifying to the best of that qualified person's knowledge that the patient's request for an abortion is freely and voluntarily made and is consistent with the patient's own autonomous views, needs and desires. No abortion may be performed upon a person previously identified as a vulnerable person in the absence of this certification by a qualified person that the patient's request for an abortion is freely made and is consistent with the patient's own autonomous views, needs and desires.

(3) Whenever the patient seeking an abortion is under eighteen (18) years of age, a qualified person shall interview the woman to determine if her pregnancy is the result of a criminal act, including acts of incest, rape or statutory rape. If the qualified person determines that a criminal act was or is likely to have occurred, written notice will be given to the abortion practitioner, the proper law enforcement officials and the child protection authorities.

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

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

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

(i) Known or claimed adverse effects of abortion;

(ii) Predisposing risk factors to post-abortion sequelae;

(iii) Alternative management techniques for crisis pregnancies;
(iv) Reports of monetary awards and settlements in civil actions against abortion providers which shall be used as a basis for the determination of adequate proof of insurance;

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

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

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

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

SECTION 5. Supplementary document for disclosure. (1) The State Department of Health shall cause printed materials to be published in English within ninety (90) days after this act becomes law, and shall update them on an annual basis. These supplementary materials shall include the following information in easily comprehensible form: On the front cover shall be printed in large type "YOUR CHOICE - YOUR RIGHTS" followed by "IMPORTANT DOCUMENT - READ AND KEEP IN YOUR PERMANENT RECORDS." A space on the front cover shall be provided for clearly typing or imprinting the name of the physician and the facility or hospital at which the procedure is performed.

(2) The text of this supplementary document shall include, but not be limited to, the following statements arranged in an easily understandable format:

"Only a physician who possesses adequate insurance coverage to protect your interests may perform an abortion."

"It is your physician's duty to ensure that your consent is freely and voluntarily given. In the event that you may feel pressured into undergoing an unwanted abortion by other
persons or circumstances, it is the duty of your physician to assist you in identifying these pressures and, if possible, reducing them."

"It is your physician's duty to ensure that an abortion is likely to be safe and beneficial in your unique case. You have the option of following his recommendation regarding an abortion. You also have a legal right to be fully informed of the nature of abortion, of any physical or psychological risks which may be associated with abortion, and of alternative ways of coping with your crisis. This information is your right, and it must be given to you so that your final decision to accept or reject your doctor's recommendation is a fully informed one."

"It is your physician's duty to screen you for physical or emotional factors which place you at risk of suffering negative reactions after the abortion. It is also the physician's duty to ensure that you are given and understand information about all the physical and psychological complications which may be associated with abortion. You should be told about potential after-affects about which there may still be uncertainty. This uncertainty may involve how often these complications occur. Or there may be uncertainty about whether these problems actually result from abortion or from some other cause. In cases where a reported risk has not been firmly established, you may ask your physician to help you to examine the evidence for and against these possible risks and make your decision accordingly."

"After examining your case, including your unique situation and health needs, your physician should make a recommendation. This may be a recommendation for abortion, or it may be a recommendation to use other ways to solve your present problems. Your physician has the right and the duty
to refuse to perform an abortion that in your case may be
dangerous or contra-indicated."

"If you are a patient who is at risk of abortion-related
complications, abortion may not be the best medical
recommendation. If your reasons for seeking an abortion are
mainly social or economic, your needs may be best served by
social or economic help. Your physician should discuss
nonsurgical ways of dealing with the social or economic
problems which have turned your pregnancy into a crisis.
Such alternatives may include referral for family counseling,
marital counseling, legal counseling, financial aid, job
relocation services, career or education counseling services,
adoption counseling or residency in a maternity home. Many
of these alternatives are available at no cost."

"Your physician may recommend a nonabortion alternative
especially if you are feeling pressured to seek an abortion
because it is your 'only choice.' These pressures may be
coming from emotional, social, financial, career or family
problems. In such cases, an abortion may only make your
problems worse, especially if you would otherwise wish to
continue this pregnancy. If this is the case, your physician
should refer you to private or public agencies which can help
you to deal with these problems. These referral agencies may
have resources to help you sort through and cope with these
people or circumstances which are making you feel pressured
into undergoing an unwanted abortion. Only after these
pressures are addressed can a decision to abort be properly
made. Otherwise, your choice may not truly be a free one."

(3) This supplementary document shall include under the
title "CHARACTERISTICS WHICH MAY PLACE YOU AT HIGHER RISK" a
listing of risk factors reported in peer review medical,
psychological and other academic journals.
(4) These supplementary materials shall be prepared and regularly updated by the State Department of Health to satisfy the interests of a reasonable patient.

(5) The supplementary materials shall be printed in a typeface large enough to be clearly legible.

(6) Before the abortion practitioner recommends or performs an abortion, each woman seeking an abortion must be given a copy of this supplementary document by a qualified person except in those instances described in Section 8(5)(f)(ii).

(7) Violation of Section 5(6) is itself injurious and a violation of the individual's civil rights, and shall be compensated by an award of not less than Fifty Thousand Dollars ($50,000.00) and not more than Two Million Dollars ($2,000,000.00).

SECTION 6. Insurance requirements. (1) All abortion providers shall register proof of insurance with the State Department of Health. Said insurance coverage must cover liability for all requirements and provisions of this act in an amount of not less than the larger of One Million Dollars ($1,000,000.00) or one-third (1/3) of the largest reported court order award for abortion-related injuries registered with the State Department of Health.

(2) Physicians performing abortions must register proof of insurance with the State Department of Health. Said insurance coverage must cover liability for all requirements and provisions of this act in an amount of not less than the larger of Three Million Dollars ($3,000,000.00) or two-thirds (2/3) of the largest reported court ordered award or settlement for abortion-related injuries registered with the State Department of Health.

SECTION 7. Criminal penalties. (1) Except in the case of a medical emergency, no physician shall knowingly perform an abortion on a woman who has not consented to the abortion, who has revoked her consent, or who has consented under the coercion or
duress of another person. Said person shall, upon conviction, be
imprisoned in the state penitentiary not less than one (1) year
nor more than ten (10) years.

(2) Any person who encourages or assists a woman in a
self-induced abortion is guilty of a felony. Said person shall,
upon conviction, be imprisoned in the state penitentiary not less
than one (1) year nor more than ten (10) years.

(3) Any person who sells or distributes materials or drugs
with the intent that they be used for a criminal or self-induced
abortion is guilty of a felony. Said person shall, upon
conviction, be imprisoned in the state penitentiary not less than
one (1) year nor more than ten (10) years.

SECTION 8. Civil remedies. (1) In addition to whatever
remedies are available under the common or statutory laws of this
state, the failure to comply with the requirements of this act
shall provide a basis for the following:

(a) A civil action under statutes or in common law
relating to malpractice, negligence, fraud, extortion, battery,
violation of conscience, and a violation of the individual's civil
rights. Any intentional violation of this act shall be admissible
in a civil suit as prima facie evidence of a failure to obtain a
voluntary and informed consent.

(b) Recovery of the woman for the death of her unborn
child under the Wrongful Death Act, whether or not the unborn
child was viable at the time of the abortion and whether or not
the child was born alive.

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

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

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

(5) In a civil action involving this act:

(a) The jury may request a copy of this legislation, or shall be presented with a copy of this legislation upon the demand of counsel for either party.

(b) In determining liability, the absence of voluntary and fully informed consent shall create the presumption that the plaintiff would not have undertaken the recommended abortion. This burden can be overcome by a preponderance of evidence showing that the woman would have acceded to the recommendation even if the information had been disclosed.

(c) In allowing the testimony of expert witnesses, the technical-medical aspect of induced abortion shall be a separate issue from the screening, counseling, disclosure and recommendation process.

(i) With regard to proper procedures for screening, counseling and the recommendation of alternative forms of crisis resolution, the testimony of physicians or persons who care for women in crisis pregnancies shall be allowed as expert testimony.

(ii) With regard to the technical-medical process used for the induced abortion, the testimony of any physician skilled in D&C, D&E, evacuation techniques, instillation, prescription of labor inducing drugs, or other medical procedures such as would be employed following a miscarriage, wherein said
procedures or techniques are substantially similar to the method
employed for the induced abortion at issue, shall be allowed as
expert testimony. The testimony of a board certified
obstetrician-gynecologist shall normally be allowed as expert
testimony.

(d) It shall be conclusively presumed that the abortion
provider has, or should have had, knowledge of all information
regarding potential risks, predisposing risk factors, and crisis
pregnancy management alternatives that was deposited in the State
Department of Health Abortion Information Depository three (3)
months prior to the date of the abortion at issue. The abortion
provider shall not be presumed to have knowledge of information
that was not in the Abortion Information Depository three (3)
months prior to the abortion, but that presumption can be rebutted
by the preponderance of evidence that the abortion provider had or
should have had knowledge of additional information.

(e) Any abortion provider that makes referrals to an
abortion practitioner whose practice is inside or outside this
state shall be fully responsible for ensuring that all provisions
of this act, in particular those relating to screening, disclosure
and voluntary consent, are satisfied. In the absence of adequate
screening, full disclosure and voluntary consent, the referring
abortion provider shall be liable for all injuries sustained.

(f) It shall be an affirmative defense to allegations
of inadequate disclosure or of a failure to provide all
information that a reasonable patient may find relevant to a
decision to forego a recommended abortion that the defendants
omitted the contested information because:

(i) Statistically-validated surveys of the general
population of women of reproductive age conducted within three (3)
years before or after the contested abortion demonstrate that less
than five percent (5%) of women would consider the information in
question to be relevant to an abortion decision; or
(ii) In the expert opinion of a psychiatrist who examined the patient prior to the abortion, disclosure of the contested information would most likely have been the immediate and direct cause of a severely adverse effect on the physical or mental health of the patient. The risk that providing the information may have caused the patient to choose to refuse the abortion and would subsequently suffer adverse reactions as a result of that birth shall not be deemed sufficient grounds for withholding the information.

(g) The failure to record an accurate medical and psychosocial history of the patient in making the recommendation to abort shall be presumptive evidence of gross negligence. The burden of proving by a preponderance of evidence the adequacy of the medical and psychosocial history shall fall upon the abortion provider.

(h) The failure to provide adequate guarantees for the delivery of post-procedural evaluation, treatment and counseling shall be presumptive evidence of gross negligence. The burden of proving the adequacy of the post-procedural evaluation, treatment and counseling shall fall upon the abortion provider.

(i) The determination of whether any particular information contained in documents deposited in the Abortion Information Depository was credible and should have been used by the abortion providers for the proper screening of risk factors, or for proper disclosure of information to the woman in all the detail that a reasonable patient may find relevant to her decision, is a question of fact to be answered by the jury.

(j) The determination of whether the information regarding risks was given to the woman in all the detail that a reasonable patient may find relevant to her decision is a question of fact to be answered by the jury.

(6) In addition to whatever remedies are available under the common or statutory laws of this state, a woman who attempted or
completed a self-abortion, or her survivors, will have a cause of action against any person, agency or corporation which provided, distributed or sold medical advice to her with the intent to assist or encourage her in performing a self-induced abortion.

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

(7) In addition to whatever remedies are available under the common or statutory laws of this state, in the event that an abortion is attempted or completed by a person who is not a licensed physician, the woman upon whom the abortion was attempted or completed, or her survivors, will have a cause of action against said person and any individual, agency, corporation or referral service who referred her to said person. Upon establishing by the preponderance of evidence that said person was not a licensed physician and attempted or completed an abortion on the woman, the plaintiff shall be awarded not less than Eight Hundred Thousand Dollars ($800,000.00) for reckless endangerment. Liability for referral may only be imposed after the further proof, by a preponderance of the evidence, that the referring party intended, knew or recklessly disregarded the possibility that the person to whom the referral was made would attempt or complete an abortion upon the woman. Proof of injury shall not be required to recover an award for reckless endangerment under this statute.

SECTION 9. Emergency. If a medical emergency compels the performance of an abortion, the abortion practitioner shall inform the woman, before the abortion if possible, of the medical indications supporting his or her judgment that an abortion is
necessary to avert her death or to avert substantial and irreversible impairment of a major bodily function. In such an event, the requirements of this act shall not apply.

SECTION 10. Severability. If any provisions of this act or its application to any person or circumstance is held invalid, the invalidity of that provision or application does not affect other provisions or applications of the act that can be given effect without the invalid provisions or application.

SECTION 11. Construction. (1) Nothing in this act shall be construed as creating or recognizing a right to abortion.

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

SECTION 12. Right of intervention. The Legislature, by joint resolution, may appoint one (1) of its members who sponsored or co-sponsored this act in his official capacity to intervene as a matter of right in any case in which the constitutionality of this law is challenged.

SECTION 13. Effective date. (1) This act shall take effect and be in force ninety (90) days after becoming law.

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