To: Public Health and Welfare

MISSISSIPPI LEGISLATURE

By: Representatives Wells-Smith, Chism, Nicholson, Martinson

To: Public Health and Welfare

HOUSE BILL NO. 361

AN ACT TO PROHIBIT THE USE OF PUBLIC FUNDS FOR STEM CELL
RESEARCH, HUMAN CLONING, CHEMICAL ABORTIONS AND SURGICAL ABORTIONS
WITH LIMITED EXCEPTIONS; TO PROVIDE THAT CERTAIN PROVISIONS OF THE
ACT WILL SUPERSEDE OTHER PROVISIONS OF THE ACT IF CERTAIN
CONTINGENCIES OCCUR; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) Notwithstanding any other provision of law
to the contrary, no public funds that are made available to any
institution, board, commission, department, agency, official, or
employee of the State of Mississippi, or of any local political
subdivision of the state, whether those funds are made available
by the government of the United States, the State of Mississippi,
or a local governmental subdivision, or from any other public
source, shall be used in any way for, to assist in, or to provide
facilities for any of the following: stem cell research that uses
cells from human embryos; human cloning; a chemical abortion; or a
surgical abortion, except when the abortion is medically necessary
to prevent the death of the mother.

(2) Notwithstanding any other provision of law to the
contrary, no public funds that are made available to any
institution, board, commission, department, agency, official, or
employee of the State of Mississippi, or of any local political
subdivision of the state, whether those funds are made available
by the government of the United States, the State of Mississippi,
or a local governmental subdivision, or from any other public
source, shall be used in any way for, to assist in, or to provide
facilities for any of the following: stem cell research that uses
cells from human embryos; human cloning; a chemical abortion; or a
surgical abortion, except for any of the following:

(a) Whenever the abortion is necessary to save the life
of the mother.

(b) Whenever the abortion is being sought to terminate
a pregnancy resulting from an alleged act of rape and all of the
requirements of subsection (6) of this section are met.

(c) Whenever the abortion is being sought to terminate
a pregnancy resulting from an alleged act of incest and all of the
requirements of subsection (6) of this section are met.

(3) The State Board of Health and the Executive Director of
the Division of Medicaid shall promulgate rules and regulations to
insure that no funding of any abortion will be made based upon a
claim of rape or incest until the applicable requirements of
subsection (6) of this section have been complied with and written
verification has been obtained from the physician performing the
abortion and from the law enforcement official to whom the report
is made, if applicable.

(4) Subsection (1) of this section shall be superseded and
subsections (2), (3) and (6) of this section shall become
effective only when the circumstances described in subparagraph
(a)(1) or subparagraph (b)(1) occur.

(a) (i) A decision or order of a court of competent
jurisdiction is rendered declaring the provisions of subsection
(1) of this section unconstitutional, inconsistent with federal
law, or otherwise unenforceable based on inconsistency with the
Hyde Amendment, or enjoins the state or any of its officials from
enforcing subsection (1) of this section while at the same time
accepting federal funds under Title XIX, as modified by the Hyde
Amendment, and then only if and when a stay pending all appeals of
the decision or order is denied, or, if a stay is granted, the
stay expires or is no longer effective.
(ii) If such a decision or order is rendered, the state Attorney General, on behalf of the state, shall vigorously and expeditiously pursue judicial remedies seeking to obtain a stay pending all appeals of the decision or order and seeking its reversal.

(b) (i) An order or decision of a court of competent jurisdiction is rendered affirming a finding of the administrator of the Health Care Financing Administration or the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services that subsection (1) of this section fails to substantially comply with the Hyde Amendment, or denying a stay of the funding of the administrator, and then only if and when the state receives formal notification from the administrator that Medicaid funds, including, but not limited to, the federal percentage of Medicaid assistance payments under 42 USCS 1396 et seq. allocated to the state from the United States government, will be withheld or terminated on a specified date.

(ii) If the administrator finds that the state is in noncompliance with the Hyde Amendment as it relates to funding certain abortions, the Governor, the Attorney General, the State Department of Health and the Division of Medicaid, on behalf of the state, shall vigorously and expeditiously pursue administrative and judicial remedies to obtain a stay of the finding and its reversal.

(iii) If such a decision or order is rendered by a court, the Attorney General, on behalf of the state, shall vigorously and expeditiously pursue judicial remedies seeking to obtain a stay of the decision or order and seeking its reversal.

(5) If subsections (2), (3) and (6) of this section become effective, and subsequently the federal requirement for acceptance of Medicaid funds, that public funds be made available for abortions resulting from pregnancy due to rape or incest, is no longer applicable to the State of Mississippi, then on that same
day, the provisions of subsections (2), (3) and (6) of this
section shall be superseded, and the provisions of subsection (1)
of this section shall be effective to the fullest extent allowed
by law.

(6) (a) Whenever an abortion is being sought to terminate a
pregnancy resulting from an alleged act of rape, before the
abortion may be performed, all of the following requirements shall
be met:

(i) The rape victim shall report the rape to a law
enforcement official, unless the treating physician certifies in
writing that in the physician's professional opinion, the victim
was too physically and psychologically incapacitated to report the
rape.

(ii) The victim certifies that the pregnancy is
the result of rape, which certificate shall be witnessed by the
treating physician.

(b) Whenever an abortion is being sought to terminate a
pregnancy resulting from an alleged act of incest, before the
abortion may be performed, all of the following requirements shall
be met:

(i) The victim of incest shall report the act of
incest to a law enforcement official, unless the treating
physician certifies in writing that in the physician's
professional opinion the victim was too physically or
psychologically incapacitated to report the incest.

(ii) The victim certifies that the pregnancy is
the result of incest, which certificate shall be witnessed by the
treating physician.

(c) The failure of the victim to comply with paragraph
(a) or (b), as applicable, shall not subject the victim to
penalties.

(d) Whenever an abortion is being sought to terminate a
pregnancy resulting from an alleged act of rape or incest, the
SECTION 2. This act shall take effect and be in force from and after July 1, 2002.