

By: Representative Fillingane

To: Public Health and Welfare

HOUSE BILL NO. 1005

1 AN ACT TO AMEND SECTION 41-75-1, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT PHYSICIANS WHO PERFORM ABORTIONS IN ABORTION
3 FACILITIES MUST BE BOARD CERTIFIED IN OBSTETRICS AND GYNECOLOGY;
4 AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 41-75-1, Mississippi Code of 1972, is
7 amended as follows:

8 41-75-1. (a) "Ambulatory surgical facility" shall mean a
9 publicly or privately owned institution which is primarily
10 organized, constructed, renovated or otherwise established for the
11 purpose of providing elective surgical treatment of "outpatients"
12 whose recovery, under normal and routine circumstances, will not
13 require "inpatient" care. Such facility as herein defined does
14 not include the offices of private physicians or dentists whether
15 practicing individually or in groups, but does include
16 organizations or facilities primarily engaged in such outpatient
17 surgery whether using the name "ambulatory surgical facility" or a
18 similar or different name. Such organization or facility, if in
19 any manner considered to be operated or owned by a hospital or a
20 hospital holding, leasing or management company, either for profit
21 or not for profit, is required to comply with all licensing agency
22 ambulatory surgical licensure standards governing a "hospital
23 affiliated" facility as adopted under Section 41-9-1 et seq. ;
24 provided that such organization or facility does not intend to
25 seek federal certification as an ambulatory surgical facility as
26 provided for at 42 CFR, Parts 405 and 416. Further, if such
27 organization or facility is to be operated or owned by a hospital
28 or a hospital holding, leasing or management company and intends



29 to seek federal certification as an ambulatory facility, then such
30 facility is considered to be "freestanding" and must comply with
31 all licensing agency ambulatory surgical licensure standards
32 governing a "freestanding" facility.

33 If such organization or facility is to be owned or operated
34 by an entity or person other than a hospital or hospital holding,
35 leasing or management company, then such organization or facility
36 must comply with all licensing agency ambulatory surgical facility
37 standards governing a "freestanding" facility.

38 (b) "Hospital affiliated" ambulatory surgical facility shall
39 mean a separate and distinct organized unit of a hospital or a
40 building owned, leased, rented or utilized by a hospital and
41 located in the same county in which the hospital is located, for
42 the primary purpose of performing ambulatory surgery procedures.
43 Such facility is not required to be separately licensed under this
44 statute and may operate under the hospital's license in compliance
45 with all applicable requirements of Section 41-9-1 et seq.

46 (c) "Freestanding" ambulatory surgical facility shall mean a
47 separate and distinct facility or a separate and distinct
48 organized unit of a hospital owned, leased, rented or utilized by
49 a hospital or other persons for the primary purpose of performing
50 ambulatory surgery procedures. Such facility must be separately
51 licensed as herein defined and must comply with all licensing
52 standards promulgated by the licensing agency under this statute
53 regarding a "freestanding" ambulatory surgical facility. Further,
54 such facility must be a separate, identifiable entity and must be
55 physically, administratively and financially independent and
56 distinct from other operations of any other health facility, and
57 shall maintain a separate organized medical and administrative
58 staff. Furthermore, once licensed as a "freestanding" ambulatory
59 surgical facility, such facility shall not become a component of
60 any other health facility without securing a certificate of need
61 to do such.



62 (d) "Ambulatory surgery" shall mean surgical procedures that
63 are more complex than office procedures performed under local
64 anesthesia, but less complex than major procedures requiring
65 prolonged postoperative monitoring and hospital care to ensure
66 safe recovery and desirable results. General anesthesia is used
67 in most cases. The patient must arrive at the facility and expect
68 to be discharged on the same day. Ambulatory surgery shall only
69 be performed by physicians or dentists licensed to practice in the
70 State of Mississippi.

71 (e) "Abortion" means the use or prescription of any
72 instrument, medicine, drug or any other substances or device to
73 terminate the pregnancy of a woman known to be pregnant with an
74 intention other than to increase the probability of a live birth,
75 to preserve the life or health of the child after live birth or to
76 remove a dead fetus. Abortion procedures on a fetus aged sixteen
77 (16) weeks or more shall only be performed at an ambulatory
78 surgical facility or hospital licensed to perform such service.

79 (f) "Abortion facility" means a facility operating
80 substantially for the purpose of performing abortions and is a
81 separate identifiable legal entity from any other health care
82 facility. Abortions shall only be performed by physicians who are
83 board certified in obstetrics and gynecology and are licensed to
84 practice in the State of Mississippi. The term "abortion
85 facility" includes physicians' offices which are used
86 substantially for the purpose of performing abortions. An
87 abortion facility operates substantially for the purpose of
88 performing abortions if any of the following conditions are met:

89 (i) The abortion facility is a provider for performing
90 ten (10) or more abortion procedures per calendar month during any
91 month of a calendar year, or one hundred (100) or more in a
92 calendar year.

93 (ii) The abortion facility, if operating less than
94 twenty (20) days per calendar month, is a provider for performing



95 ten (10) or more abortion procedures, or performing a number of
96 abortion procedures which would be equivalent to ten (10)
97 procedures per month, if the facility were operating twenty (20)
98 or more days per calendar month, in any month of a calendar year.

99 (iii) The abortion facility holds itself out to the
100 public as an abortion provider by advertising by any public means,
101 such as newspaper, telephone directory, magazine or electronic
102 media, that it performs abortions.

103 (iv) The facility applies to the licensing agency for
104 licensure as an abortion facility.

105 (g) "Licensing agency" shall mean the State Department of
106 Health.

107 (h) "Operating" an abortion facility means that the facility
108 is open for any period of time during a day and has on site at the
109 facility or on call a physician licensed to practice in the State
110 of Mississippi available to provide abortions.

111 Any abortion facility that begins operation after June 30,
112 1996, shall not be located within fifteen hundred (1500) feet from
113 the property on which any church, school or kindergarten is
114 located. An abortion facility shall not be in violation of this
115 paragraph if it is in compliance with this paragraph on the date
116 it begins operation and the property on which a church, school or
117 kindergarten is located is subsequently within fifteen hundred
118 (1500) feet from the facility.

119 **SECTION 2.** This act shall take effect and be in force from
120 and after July 1, 2003.

