

By: Representatives Smith (39th), Reeves,  
Martinson

To: Public Health and Human  
Services; Appropriations

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1038

1 AN ACT TO AMEND SECTION 41-75-1, MISSISSIPPI CODE OF 1972, TO  
2 REDUCE FROM SIXTEEN WEEKS TO THIRTEEN WEEKS THE MINIMUM AGE OF A  
3 FETUS FOR WHICH AN ABORTION PROCEDURE MUST BE PERFORMED ONLY AT AN  
4 AMBULATORY SURGICAL FACILITY OR HOSPITAL LICENSED TO PERFORM THAT  
5 SERVICE; AND FOR RELATED PURPOSES.

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

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

9 41-75-1. For the purpose of this chapter:

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

29     \* \* \* If the organization or facility is to be operated or owned  
30     by a hospital or a hospital holding, leasing or management company  
31     and intends to seek federal certification as an ambulatory  
32     facility, then the facility is considered to be "freestanding" and  
33     must comply with all licensing agency ambulatory surgical  
34     licensure standards governing a "freestanding" facility.

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

40             (b) "Hospital affiliated" ambulatory surgical  
41     facility \* \* \* means a separate and distinct organized unit of a  
42     hospital or a building owned, leased, rented or utilized by a  
43     hospital and located in the same county in which the hospital is  
44     located, for the primary purpose of performing ambulatory surgery  
45     procedures. The facility is not required to be separately  
46     licensed under this chapter and may operate under the hospital's  
47     license in compliance with all applicable requirements of Section  
48     41-9-1 et seq.

49             (c) "Freestanding" ambulatory surgical facility \* \* \*  
50     means a separate and distinct facility or a separate and distinct  
51     organized unit of a hospital owned, leased, rented or utilized by  
52     a hospital or other persons for the primary purpose of performing  
53     ambulatory surgery procedures. The facility must be separately  
54     licensed as \* \* \* defined in this section and must comply with all  
55     licensing standards promulgated by the licensing agency under this  
56     chapter regarding a "freestanding" ambulatory surgical facility.  
57     Further, the facility must be a separate, identifiable entity and  
58     must be physically, administratively and financially independent  
59     and distinct from other operations of any other health facility,  
60     and shall maintain a separate organized medical and administrative  
61     staff. Furthermore, once licensed as a "freestanding" ambulatory

62 surgical facility, the facility shall not become a component of  
63 any other health facility without securing a certificate of need  
64 to do that.

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

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

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

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

(ii) The abortion facility, if operating less than twenty (20) days per calendar month, is a provider for performing ten (10) or more abortion procedures, or performing a number of abortion procedures that would be equivalent to ten (10) procedures per month, if the facility were operating twenty (20) or more days per calendar month, in any month of a calendar year.

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

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

(g) "Licensing agency" \* \* \* means the State Department of Health.

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

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

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2004.