

By: Representative Wells-Smith

To: Judiciary B

HOUSE BILL NO. 1624

1 AN ACT ENTITLED THE MISSISSIPPI ABORTION PROCEDURE RIGHTS OF
2 CONSCIENCE ACT; TO PROVIDE THAT A HEALTH CARE PROVIDER OR HEALTH
3 CARE INSTITUTION OR HEALTH CARE PAYER SHALL NOT BE REQUIRED TO
4 PARTICIPATE IN AN ABORTION PROCEDURE THAT VIOLATES HIS OR HER
5 CONSCIENCE; TO PROVIDE IMMUNITY FOR THAT ACTION; TO PROHIBIT
6 DISCRIMINATION FOR THAT ACTION; TO PROHIBIT DENIAL OF ASSISTANCE
7 PAYMENTS DUE TO THAT ACTION; TO PROVIDE CIVIL REMEDIES FOR
8 VIOLATION OF THIS ACT; AND FOR RELATED PURPOSES.

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

10 **SECTION 1. Title.**

11 This act may be known and cited as the Mississippi Abortion
12 Procedure Rights of Conscience Act.

13 **SECTION 2. Definitions.** As used in this act:

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

20 (b) "Abortion procedures" means any phase of patient
21 medical care, treatment or procedure relating to performing an
22 abortion, including, but not limited to, the following: patient
23 referral, counseling, therapy, testing, diagnosis or prognosis,
24 research, instruction, prescribing, dispensing or administering
25 any device, drug, or medication, surgery or any other care or
26 treatment rendered by health care providers or health care
27 institutions.

28 (c) "Health care provider" means any individual who may
29 be asked to participate in any way in an abortion procedure,
30 including, but not limited to: a physician, physician's

31 assistant, nurse, nurses' aide, medical assistant, hospital
32 employee, clinic employee, nursing home employee, pharmacist,
33 pharmacy employee, researcher, medical or nursing school faculty,
34 student or employee, counselor, social worker or any professional,
35 paraprofessional, or any other person who furnishes, or assists in
36 the furnishing of, an abortion procedure.

37 (d) "Health care institution" means any public or
38 private organization, corporation, partnership, sole
39 proprietorship, association, agency, network, joint venture, or
40 other entity that is involved in providing health care services,
41 including, but not limited to: hospitals, clinics, medical
42 centers, ambulatory surgical centers, private physician's offices,
43 pharmacies, nursing homes, university medical schools and nursing
44 schools, medical training facilities, or other institutions or
45 locations where abortion procedures are provided to any person.

46 (e) "Health care payer" means any entity or employer
47 that contracts for, pays for, or arranges for the payment of, in
48 whole or in part, any abortion procedure, including, but not
49 limited to, health maintenance organizations, health plans,
50 insurance companies or management services organizations.

51 (f) "Employer" means any individual or entity that pays
52 for or provides health benefits or health insurance coverage as a
53 benefit to its employees, whether through a third party, a health
54 maintenance organization, a program of self-insurance, or some
55 other means.

56 (g) "Participate" in an abortion procedure means to
57 counsel, advise, provide, perform, assist in, refer for, admit for
58 purposes of providing, or participate in providing, any abortion
59 procedure or any form of such service.

60 (h) "Pay" or "payment" means to pay, contract for, or
61 otherwise arrange for the payment of, in whole or in part.

62 (i) "Conscience" means the religious, moral or ethical
63 principles held by a health care provider, the health care

64 institution or health care payer. For purposes of this act, a
65 health care institution or health care payer's conscience shall be
66 determined by reference to its existing or proposed religious,
67 moral or ethical guidelines, mission statement, constitution,
68 bylaws, articles of incorporation, regulations or other relevant
69 documents.

70 **SECTION 3. Rights of Conscience of Health Care Providers.**

71 (1) **Rights of Conscience.** A health care provider has the
72 right not to participate, and no health care provider shall be
73 required to participate in an abortion procedure that violates his
74 or her conscience.

75 (2) **Immunity from Liability.** No health care provider shall
76 be civilly, criminally, or administratively liable for declining
77 to participate in an abortion procedure that violates his or her
78 conscience.

79 (3) **Discrimination.** It shall be unlawful for any person,
80 health care provider, health care institution, public or private
81 institution, public official, or any board which certifies
82 competency in medical specialties to discriminate against any
83 health care provider in any manner based on his or her declining
84 to participate in an abortion procedure that violates his or her
85 conscience. For purposes of this act, discrimination includes,
86 but is not limited to: termination, transfer, refusal of staff
87 privileges, refusal of board certification, adverse administrative
88 action, demotion, loss of career specialty, reassignment to a
89 different shift, reduction of wages or benefits, refusal to award
90 any grant, contract, or other program, refusal to provide
91 residency training opportunities, or any other penalty,
92 disciplinary or retaliatory action.

93 **SECTION 4. Rights of Conscience of Health Care Institutions.**

94 (1) **Rights of Conscience.** A health care institution has the
95 right not to participate, and no health care institution shall be

96 required to participate in an abortion procedure that violates its
97 conscience.

98 (2) **Immunity from Liability.** A health care institution that
99 declines to provide or participate in an abortion procedure that
100 violates its conscience shall not be civilly, criminally or
101 administratively liable if the institution provides a consent form
102 to be signed by a patient before admission to the institution
103 stating that it reserves the right to decline to provide or
104 participate in an abortion procedure that violates its conscience.

105 (3) **Discrimination.** It shall be unlawful for any person,
106 public or private institution, or public official to discriminate
107 against any health care institution, or any person, association,
108 corporation, or other entity attempting to establish a new health
109 care institution or operating an existing health care institution,
110 in any manner, including, but not limited to, any denial,
111 deprivation or disqualification with respect to licensure, any aid
112 assistance, benefit or privilege, including staff privileges, or
113 any authorization, including authorization to create, expand,
114 improve, acquire, or affiliate or merge with any health care
115 institution, because the health care institution, or person,
116 association, or corporation planning, proposing, or operating a
117 health care institution, declines to participate in an abortion
118 procedure that violates the health care institution's conscience.

119 (4) **Denial of Aid or Benefit.** It shall be unlawful for any
120 public official, agency, institution, or entity to deny any form
121 of aid, assistance, grants or benefits, or in any other manner to
122 coerce, disqualify or discriminate against any person,
123 association, corporation or other entity attempting to establish a
124 new health care institution or operating an existing health care
125 institution because the existing or proposed health care
126 institution declines to participate in an abortion procedure
127 contrary to the health care institution's conscience.

128 **SECTION 5.** **Rights of Conscience of Health Care Payers.**

129 (1) **Rights of Conscience.** A health care payer has the right
130 to decline to pay, and no health care payer shall be required to
131 pay for or arrange for the payment of an abortion procedure that
132 violates its conscience.

133 (2) **Immunity from Liability.** No health care payer and no
134 person, association, corporation or other entity that owns,
135 operates, supervises or manages a health care payer shall be
136 civilly or criminally liable by reason of the health care payer's
137 declining to pay for or arrange for the payment of an abortion
138 procedure that violates its conscience.

139 (3) **Discrimination.** It shall be unlawful for any person,
140 public or private institution, or public official to discriminate
141 against any health care payer, or any person, association,
142 corporation, or other entity (a) attempting to establish a new
143 health care payer, or (b) operating an existing health care payer,
144 in any manner, including, but not limited to, any denial,
145 deprivation, or disqualification with respect to licensure, aid,
146 assistance, benefit, privilege or authorization, including, but
147 not limited to, any authorization to create, expand, improve,
148 acquire, affiliate or merge with any health care payer, because a
149 health care payer, or a person, association, corporation or other
150 entity planning, proposing or operating a health care payer
151 declines to pay for or arrange for the payment of any abortion
152 procedure that violates its conscience.

153 (4) **Denial of Aid or Benefits.** It shall be unlawful for any
154 public official, agency, institution or entity to deny any form of
155 aid, assistance, grants, or benefits or in any other manner
156 coerce, disqualify or discriminate against any health care payer,
157 or any person, association, corporation or other entity attempting
158 to establish a new health care payer or operating an existing
159 health care payer because the existing or proposed health care
160 payer declines to pay for, or arrange for the payment of, any
161 abortion procedure that is contrary to its conscience.

162 **SECTION 6. Civil Remedies.**

163 (1) A civil action for damages or injunctive relief, or
164 both, may be brought for the violation of any provision of this
165 act. It shall not be a defense to any claim arising out of the
166 violation of this act that the violation was necessary to prevent
167 additional burden or expense on any other health care provider,
168 health care institution, individual or patient.

169 (2) **Damage Remedies.** Any individual, association,
170 corporation, entity or health care institution injured by any
171 public or private individual, association, agency, entity or
172 corporation by reason of any conduct prohibited by this act may
173 commence a civil action. Upon finding a violation of this act,
174 the aggrieved party shall be entitled to recover triple the actual
175 damages, including pain and suffering, sustained by the
176 individual, association, corporation, entity or health care
177 institution, the costs of the action, and reasonable attorney's
178 fees; but in no case shall recovery be less than Five Thousand
179 Dollars (\$5,000.00) for each violation in addition to costs of the
180 action and reasonable attorney's fees. These damage remedies
181 shall be cumulative, and not exclusive of other remedies afforded
182 under any other state or federal law.

183 (3) **Injunctive Remedies.** The court in the civil action may
184 award injunctive relief, including, but not limited to, ordering
185 reinstatement of a health care provider to his or her prior job
186 position.

187 **SECTION 7. Severability.**

188 The provisions of this act are declared to be severable, and
189 if any provision, word, phrase or clause of this act or the
190 application thereof to any person shall be held invalid, that
191 invalidity shall not affect the validity of the remaining portions
192 of this act.

193 **SECTION 8.** This act shall take effect and be in force from
194 and after July 1, 2004.