

REPORT OF CONFERENCE COMMITTEE

MADAM PRESIDENT AND MR. SPEAKER:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

S. B. No. 2619: Abortion Procedure Rights of Conscience Act; providers, institutions and payers not required to participate in abortion procedures.

We, therefore, respectfully submit the following report and recommendation:

1. That the House recede from its Amendment No. 1.
2. That the Senate and House adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

12 **SECTION 1. Title.**

13 This act may be known and cited as the "Mississippi Health
14 Care Rights of Conscience Act."

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

16 (a) "Health care service" means any phase of patient
17 medical care, treatment or procedure, including, but not limited
18 to, the following: patient referral, counseling, therapy,
19 testing, diagnosis or prognosis, research, instruction,
20 prescribing, dispensing or administering any device, drug, or
21 medication, surgery, or any other care or treatment rendered by
22 health care providers or health care institutions.

23 (b) "Health care provider" means any individual who may
24 be asked to participate in any way in a health care service,
25 including, but not limited to: a physician, physician's
26 assistant, nurse, nurses' aide, medical assistant, hospital
27 employee, clinic employee, nursing home employee, pharmacist,
28 pharmacy employee, researcher, medical or nursing school faculty,
29 student or employee, counselor, social worker or any professional,
30 paraprofessional, or any other person who furnishes, or assists in
31 the furnishing of, a health care procedure.

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

41 (d) "Health care payer" means any entity or employer
42 that contracts for, pays for, or arranges for the payment of, in
43 whole or in part, a health care service, including, but not
44 limited to, health maintenance organizations, health plans,
45 insurance companies or management services organizations.

46 (e) "Employer" means any individual or entity that pays
47 for or provides health benefits or health insurance coverage as a
48 benefit to its employees, whether through a third party, a health
49 maintenance organization, a program of self-insurance, or some
50 other means.

51 (f) "Participate" in a health care service means to
52 counsel, advise, provide, perform, assist in, refer for, admit for
53 purposes of providing, or participate in providing, any health
54 care service or any form of such service.

55 (g) "Pay" or "payment" means pay, contract for, or
56 otherwise arrange for the payment of, in whole or in part.

57 (h) "Conscience" means the religious, moral or ethical
58 principles held by a health care provider, the health care
59 institution or health care payer. For purposes of this act, a
60 health care institution or health care payer's conscience shall be
61 determined by reference to its existing or proposed religious,
62 moral or ethical guidelines, mission statement, constitution,

63 bylaws, articles of incorporation, regulations or other relevant
64 documents.

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

66 (1) **Rights of Conscience.** A health care provider has the
67 right not to participate, and no health care provider shall be
68 required to participate in a health care service that violates his
69 or her conscience. However, this subsection does not allow a
70 health care provider to refuse to participate in a health care
71 service regarding a patient because of the patient's race, color,
72 national origin, ethnicity, sex, religion, creed or sexual
73 orientation.

74 (2) **Immunity from Liability.** No health care provider shall
75 be civilly, criminally, or administratively liable for declining
76 to participate in a health care service that violates his or her
77 conscience. However, this subsection does not exempt a health
78 care provider from liability for refusing to participate in a
79 health care service regarding a patient because of the patient's
80 race, color, national origin, ethnicity, sex, religion, creed or
81 sexual orientation.

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

94 residency training opportunities, or any other penalty,
95 disciplinary or retaliatory action.

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

97 (1) **Rights of Conscience.** A health care institution has the
98 right not to participate, and no health care institution shall be
99 required to participate in a health care service that violates its
100 conscience. However, this subsection does not allow a health care
101 institution to refuse to participate in a health care service
102 regarding a patient because of the patient's race, color, national
103 origin, ethnicity, sex, religion, creed or sexual orientation.

104 (2) **Immunity from Liability.** A health care institution that
105 declines to provide or participate in a health care service that
106 violates its conscience shall not be civilly, criminally or
107 administratively liable if the institution provides a consent form
108 to be signed by a patient before admission to the institution
109 stating that it reserves the right to decline to provide or
110 participate in a health care service that violates its conscience.
111 However, this subsection does not exempt a health care institution
112 from liability for refusing to participate in a health care
113 service regarding a patient because of the patient's race, color,
114 national origin, ethnicity, sex, religion, creed or sexual
115 orientation.

116 (3) **Discrimination.** It shall be unlawful for any person,
117 public or private institution, or public official to discriminate
118 against any health care institution, or any person, association,
119 corporation, or other entity attempting to establish a new health
120 care institution or operating an existing health care institution,
121 in any manner, including, but not limited to, any denial,
122 deprivation or disqualification with respect to licensure, any aid
123 assistance, benefit or privilege, including staff privileges, or
124 any authorization, including authorization to create, expand,
125 improve, acquire, or affiliate or merge with any health care

126 institution, because such health care institution, or person,
127 association, or corporation planning, proposing, or operating a
128 health care institution, declines to participate in a health care
129 service which violates the health care institution's conscience.

130 (4) **Denial of Aid or Benefit.** It shall be unlawful for any
131 public official, agency, institution, or entity to deny any form
132 of aid, assistance, grants or benefits, or in any other manner to
133 coerce, disqualify or discriminate against any person,
134 association, corporation or other entity attempting to establish a
135 new health care institution or operating an existing health care
136 institution because the existing or proposed health care
137 institution declines to participate in a health care service
138 contrary to the health care institution's conscience.

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

140 (1) **Rights of Conscience.** A health care payer has the right
141 to decline to pay, and no health care payer shall be required to
142 pay for or arrange for the payment of a health care service that
143 violates its conscience. However, this subsection does not allow
144 a health care payer to decline to pay or arrange for the payment
145 of a health care service regarding a patient because of the
146 patient's race, color, national origin, ethnicity, sex, religion,
147 creed or sexual orientation.

148 (2) **Immunity from Liability.** No health care payer and no
149 person, association, corporation or other entity that owns,
150 operates, supervises or manages a health care payer shall be
151 civilly or criminally liable by reason of the health care payer's
152 declining to pay for or arrange for the payment of a health care
153 service that violates its conscience. However, this subsection
154 does not exempt from liability a health care payer, or the owner,
155 operator, supervisor or manager of a health care payer, for
156 declining to pay or arranging for the payment of a health care
157 service regarding a patient because of the patient's race, color,

158 national origin, ethnicity, sex, religion, creed or sexual
159 orientation.

160 (3) **Discrimination.** It shall be unlawful for any person,
161 public or private institution, or public official to discriminate
162 against any health care payer, or any person, association,
163 corporation, or other entity (a) attempting to establish a new
164 health care payer, or (b) operating an existing health care payer,
165 in any manner, including, but not limited to, any denial,
166 deprivation, or disqualification with respect to licensure, aid,
167 assistance, benefit, privilege or authorization, including, but
168 not limited to, any authorization to create, expand, improve,
169 acquire, affiliate or merge with any health care payer, because a
170 health care payer, or a person, association, corporation or other
171 entity planning, proposing or operating a health care payer
172 declines to pay for or arrange for the payment of any health care
173 service that violates its conscience.

174 (4) **Denial of Aid or Benefits.** It shall be unlawful for any
175 public official, agency, institution or entity to deny any form of
176 aid, assistance, grants, or benefits or in any other manner
177 coerce, disqualify or discriminate against any health care payer,
178 or any person, association, corporation or other entity attempting
179 to establish a new health care payer or operating an existing
180 health care payer because the existing or proposed health care
181 payer declines to pay for, or arrange for the payment of, any
182 health care service that is contrary to its conscience.

183 **SECTION 6. Civil Remedies.**

184 (1) A civil action for damages or injunctive relief, or
185 both, may be brought for the violation of any provision of this
186 act. It shall not be a defense to any claim arising out of the
187 violation of this act that such violation was necessary to prevent
188 additional burden or expense on any other health care provider,
189 health care institution, individual or patient.

190 (2) **Damage Remedies.** Any individual, association,
191 corporation, entity or health care institution injured by any
192 public or private individual, association, agency, entity or
193 corporation by reason of any conduct prohibited by this act may
194 commence a civil action. Upon finding a violation of this act,
195 the aggrieved party shall be entitled to recover threefold the
196 actual damages, including pain and suffering, sustained by such
197 individual, association, corporation, entity or health care
198 institution, the costs of the action, and reasonable attorney's
199 fees; but in no case shall recovery be less than Five Thousand
200 Dollars (\$5,000.00) for each violation in addition to costs of the
201 action and reasonable attorney's fees. These damage remedies
202 shall be cumulative, and not exclusive of other remedies afforded
203 under any other state or federal law.

204 (3) **Injunctive Remedies.** The court in such civil action may
205 award injunctive relief, including, but not limited to, ordering
206 reinstatement of a health care provider to his or her prior job
207 position.

208 **SECTION 7. Severability.**

209 The provisions of this act are declared to be severable, and
210 if any provision, word, phrase or clause of this act or the
211 application thereof to any person shall be held invalid, such
212 invalidity shall not affect the validity of the remaining portions
213 of this act.

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

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT ENTITLED THE "MISSISSIPPI HEALTH CARE 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 A HEALTH CARE SERVICE THAT VIOLATES HIS OR HER
5 CONSCIENCE; TO PROVIDE IMMUNITY FOR SUCH ACTION; TO PROHIBIT
6 DISCRIMINATION FOR SUCH ACTION; TO CLARIFY THAT THE PROVISIONS OF
7 THIS ACT SHALL NOT ALLOW DISCRIMINATION BY HEALTH CARE PROVIDERS;

8 TO PROHIBIT DENIAL OF ASSISTANCE PAYMENTS DUE TO SUCH ACTION; TO
9 PROVIDE CIVIL REMEDIES FOR VIOLATION OF THIS ACT; AND FOR RELATED
10 PURPOSES.

CONFEREES FOR THE SENATE

X (SIGNED)
Alan Nunnelee

X (SIGNED)
Cindy Hyde-Smith

X (SIGNED)
Hillman Terome Frazier

CONFEREES FOR THE HOUSE

X (SIGNED)
Jeffrey C. Smith

X (SIGNED)
Joey Fillingane

X (SIGNED)
Phillip Gunn