

Senate Amendments to House Bill No. 1038

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

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

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

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

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

64 (d) "Ambulatory surgery" means surgical procedures that
65 are more complex than office procedures performed under local
66 anesthesia, but less complex than major procedures requiring
67 prolonged postoperative monitoring and hospital care to ensure

68 safe recovery and desirable results. General anesthesia is used
69 in most cases. The patient must arrive at the facility and expect
70 to be discharged on the same day. Ambulatory surgery shall only
71 be performed by physicians or dentists licensed to practice in the
72 State of Mississippi.

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

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

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

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

100 (iii) The abortion facility holds itself out to
101 the public as an abortion provider by advertising by any public

102 means, such as newspaper, telephone directory, magazine or
103 electronic media, that it performs abortions.

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

106 (g) "Licensing agency" means the State Department of
107 Health.

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

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

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

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

1 AN ACT TO AMEND SECTION 41-75-1, MISSISSIPPI CODE OF 1972, TO
2 REDUCE FROM SIXTEEN WEEKS TO TWELVE 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.

SS26\HB1038A.J

John O. Gilbert
Secretary of the Senate