

By: Senator(s) Fillingane

To: Public Health and Welfare

SENATE BILL NO. 2536

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 TO EXTEND THE DATE OF THE REPEALER ON THIS SECTION; AND FOR
5 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 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 does not
16 include the offices of private physicians or dentists, whether
17 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 organization or

29 facility is to be operated or owned by a hospital or a hospital
30 holding, leasing or management company and intends to seek federal
31 certification as an ambulatory facility, then the facility is
32 considered to be "freestanding" and must comply with all licensing
33 agency ambulatory surgical licensure standards governing a
34 "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 after the first
79 trimester shall only be performed at a Level I abortion facility
80 or an ambulatory surgical facility or hospital licensed to perform
81 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 who are
86 board certified in obstetrics and gynecology and are licensed to
87 practice in the State of Mississippi. The term "abortion
88 facility" includes physicians' offices that are used substantially
89 for the purpose of performing abortions. An abortion facility
90 operates substantially for the purpose of performing abortions if
91 any of the following conditions are met:

92 (i) The abortion facility is a provider for
93 performing ten (10) or more abortion procedures per calendar month

94 during any month of a calendar year, or one hundred (100) or more
95 in a calendar year.

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

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

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

108 (g) "Licensing agency" means the State Department of
109 Health.

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

114 An abortion facility may apply to be licensed as a Level I
115 facility or a Level II facility by the licensing agency. Level II
116 abortion facilities shall be required to meet minimum standards
117 for abortion facilities as established by the licensing agency.
118 Level I abortion facilities shall be required to meet minimum
119 standards for abortion facilities and minimum standards for
120 ambulatory surgical facilities as established by the licensing
121 agency.

122 Any abortion facility that begins operation after June 30,
123 1996, shall not be located within fifteen hundred (1500) feet from
124 the property on which any church, school or kindergarden is
125 located. An abortion facility shall not be in violation of this
126 paragraph if it is in compliance with this paragraph on the date

127 it begins operation and the property on which a church, school or
128 kindergarten is located is later within fifteen hundred (1500)
129 feet from the facility.

130 **SECTION 2.** This act shall take effect and be in force from
131 and after July 1, 2007.