SENATE BILL NO. 2795

AN ACT TO AMEND SECTION 41-41-33, MISSISSIPPI CODE OF 1972, TO DECLARE LEGISLATIVE INTENT RELATIVE TO THE TERMINATION OF THE LIFE OF AN UNBORN CHILD AND THE PROTECTION OF THE HEALTH AND RIGHTS OF WOMEN; TO PROHIBIT ABORTIONS IN THE STATE OF MISSISSIPPI EXCEPT IN CERTAIN CASES; TO AMEND SECTION 41-41-39, MISSISSIPPI CODE OF 1972, TO PRESCRIBE CRIMINAL PENALTIES FOR VIOLATIONS OF THIS ACT; TO PROVIDE THAT IT IS THE INTENT OF THE LEGISLATURE THAT THE STATE WILL BE RESPONSIBLE FOR THE MEDICAL AND EDUCATIONAL NEEDS OF ANY CHILD BORN TO A CITIZEN OF THE STATE; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 41-41-33, Mississippi Code of 1972, is amended as follows:

41-41-33. (1) The Legislature of the State of Mississippi makes the following findings and determinations:

(a) There is an existing relationship between a pregnant woman and her unborn child during the entire period of gestation.

(b) Procedures terminating the life of an unborn child impose risks to the life and health of the pregnant woman.

(c) Pregnant women contemplating an abortion procedure are faced with making a profound decision, most often under stress and pressures, and there exists a need for special protection of the rights of such pregnant women, and that the State of Mississippi has a compelling interest in providing such protection.

(d) A pregnant mother possesses certain inherent rights that are natural intrinsic rights which enjoy affirmative protection under the Constitution of the United States, and under the laws or Constitution of the State of Mississippi; that among these rights are the fundamental rights of the pregnant mother to...
her relationship with her child; her fundamental right to make
decisions that insure the well-being of her child; and her
interest in her own health and bodily integrity.

(e) A mother's unique relationship with her child
during pregnancy is one of the most intimate and important
relationships, and one most worthy of legal protection.

(f) An abortion is an unworkable method for a pregnant
mother to give up, surrender, or waive her fundamental right to
her relationship with her child.

(g) In most cases, there is no normal or traditional
physician-patient relationship or counseling between a pregnant
mother contemplating submitting to an abortion and the physician
who performs the abortion.

(h) Submitting to an abortion subjects the pregnant
woman to significant health risks; that the abortion procedure is
inherently dangerous to the psychological and physical health of
the woman; that an abortion places a woman at greater risk for
psychological distress, depression, suicidal ideation and suicide
than carrying her child to full term and giving birth.

(i) Every human being, including those in utero,
possesses a natural intrinsic right to live and has an interest in
life.

(j) The State of Mississippi possesses a duty to
protect, and it is a legitimate exercise of the state's power to
protect, the natural intrinsic rights and interests of a pregnant
mother in (i) her relationship with her child; (ii) her ability to
make decisions to protect the well-being of her child; and (iii)
her own health.

(k) The State of Mississippi possesses a duty to
protect, and it is a legitimate exercise of the state's power to
protect, the natural intrinsic rights of each human being within
its borders, including those human beings living in utero, to
live.
(l) It is not practical and not possible for the state to simultaneously protect these fundamental rights and interests of pregnant mothers and provide legal authority or protection for a physician who terminates the lives of these mothers' unborn children by an abortion; that protection of these rights of the mothers are in conflict with protection of the act of the physician which terminates these rights by terminating the life of the unborn child.

(m) The right and duty of the state to protect and preserve the life of the unborn child cannot co-exist with the right or duty to destroy that life by the physician.

(n) It is now clear that the State of Mississippi can either protect the mother's fundamental natural intrinsic rights, or protect the physician's act that terminates and adversely affects them, that the state cannot protect both; and that the state's duty is to protect the natural and intrinsic rights of the pregnant mother and her unborn child, and must, therefore, prohibit physicians from terminating these rights and interest by the performance of abortions, consistent with the provisions of this section.

(2) No abortion shall be performed or induced except with the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

(a) The woman is told the following by the physician who is to perform or induce the abortion or by the referring physician, orally and in person, at least twenty-four (24) hours before the abortion:

(i) The name of the physician who will perform or induce the abortion;

(ii) The particular medical risks associated with the particular abortion procedure to be employed including, when
medically accurate, the risks of infection, hemorrhage and breast
cancer, and the danger to subsequent pregnancies and infertility;

(iii) The probable gestational age of the unborn
child at the time the abortion is to be performed or induced; and
(iv) The medical risks associated with carrying
her child to term.

(b) The woman is informed, by the physician or his
agent, orally and in person, at least twenty-four (24) hours
before the abortion:

(i) That medical assistance benefits may be
available for prenatal care, childbirth and neonatal care;
(ii) That the father is liable to assist in the
support of her child, even in instances in which the father has
offered to pay for the abortion;
(iii) That there are available services provided
by public and private agencies which provide pregnancy prevention
counseling and medical referrals for obtaining pregnancy
prevention medications or devices; and
(iv) That she has the right to review the printed
materials described in Section 41-41-35(1)(a), (b) and (c). The
physician or his agent shall orally inform the woman that those
materials have been provided by the State of Mississippi and that
they describe the unborn child and list agencies that offer
alternatives to abortion. If the woman chooses to view those
materials, copies of them shall be furnished to her. The
physician or his agent may disassociate himself or themselves from
those materials, and may comment or refrain from comment on them
as he chooses. The physician or his agent shall provide the woman
with the printed materials described in Section 41-41-35(1)(d).

(c) The woman certifies in writing before the abortion
that the information described in paragraphs (a) and (b) of this
section has been furnished to her, and that she has been informed
of her opportunity to review the information referred to in
subparagraph (iv) of paragraph (b) of this section.

(d) Before the abortion is performed or induced, the
physician who is to perform or induce the abortion receives a copy
of the written certification prescribed by this section.

(3) (a) No person may knowingly use or employ any
instrument or procedure upon a pregnant woman with the specific
intent of causing or abetting the termination of the life of an
unborn human being except in the case of a reported rape or
incest; or the abortion is necessary to save the life of the
pregnant woman; or if there exists the presence of a
life-threatening medical condition in the mother that would be
worsened by continuing the pregnancy.

(b) When an abortion is performed under the provisions
of this section, the physician making the medical judgment should
document, in the patient's records, the conditions diagnosed, and
the reasons the abortion was necessary. No licensed physician in
the exercise of the appropriate and reasonable medical judgment
who performs a medical procedure, designed or intended to save the
life of a pregnant mother, is guilty of violating subsection
(3)(a). However, the physician shall make reasonable medical
efforts under the circumstances to preserve both the life of the
mother and the life of the unborn child in a manner consistent
with conventional medical practices. Medical treatment provided
to the mother by a licensed physician which results in the
accidental or unintentional injury or death to the unborn child is
not a violation of this statute.

(c) A licensed physician may perform an action that
would otherwise violate the provisions of subsection (3)(a) on the
basis that the pregnancy is the result of a reported rape or
incest if, and only if, the pregnant mother provides the physician
with evidence that she reported the rape or incest to an
appropriate law enforcement official, or a hospital or other
medical provider, or to a member of a clergy, within sixty (60) days after the rape or incest. Such evidence shall have been prepared and signed by the entity or person to whom the report was made by the mother, which signature shall have been notarized for authenticity.

(d) Nothing in subsection (3)(a) shall be construed to prohibit the prescription, sale, use or administration of a contraceptive medicine or drug or substance or device, if it is prescribed, sold, used or administered prior to the time when a pregnancy could be determined in that woman through conventional medical testing, and if the contraceptive measure is prescribed, sold, administered or used in accordance with manufacturer instructions.

(4) The State Department of Health shall enforce the provisions of Sections 41-41-31 through 41-41-39 at abortion facilities, as defined in Section 41-75-1.

SECTION 2. Section 41-41-39, Mississippi Code of 1972, is amended as follows:

41-41-39. (1) Anyone who purposefully, knowingly or recklessly performs or attempts to perform or induce an abortion without complying with Sections 41-41-31 through 41-41-37 shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of Five Thousand Dollars ($5,000.00), by imprisonment in the county jail for a period of time not to exceed one (1) year, or both such fine and imprisonment.

(2) Any person who violates Section 41-41-33(3)(a) shall, upon conviction, be guilty of a felony punishable by imprisonment in the State Penitentiary not less than one (1) year nor more than ten (10) years, by a fine of up to Ten Thousand Dollars ($10,000.00), or both such fine and imprisonment.

(3) Nothing in this section may be construed to subject the pregnant mother upon whom any abortion is performed or attempted to any criminal conviction and penalty.
SECTION 3. It is the intent of the Legislature that the State of Mississippi will be responsible for the medical and educational needs of any child born to a citizen of this state.

SECTION 4. (1) If any provision of this act is found to be unconstitutional, the provision is severable; and the other provisions of this act remain effective, except as provided in other sections of this act.

(2) Nothing in this act may be construed to repeal, by implication or otherwise, any provision not explicitly repealed.

(3) If any provision of this act is ever declared unconstitutional or its enforcement temporarily or permanently restricted or enjoined by judicial order, the provisions of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, shall be enforced. However, if such temporary or permanent restraining order or injunction is subsequently stayed or dissolved or such declaration vacated or any similar court order otherwise ceases to have effect, all provisions of this act that are not declared unconstitutional or whose enforcement is not restrained shall have full force and effect.

(4) Nothing in the provisions of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, shall be construed to permit any action that is prohibited by Senate Bill No. 2795, 2007 Regular Session, and to the extent that any provision of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, would be so construed, then the provisions of Senate Bill No. 2795, 2007 Regular Session, shall take precedence.

SECTION 5. This act shall take effect and be in force from and after July 1, 2007.