

By: Senator(s) Fillingane

To: Public Health and Welfare

SENATE BILL NO. 2074

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 AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 41-75-1, Mississippi Code of 1972, is
7 amended as follows:

8 41-75-1. For the purpose of this chapter:

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



29 holding, leasing or management company and intends to seek federal
30 certification as an ambulatory facility, then the facility is
31 considered to be "freestanding" and must comply with all licensing
32 agency ambulatory surgical licensure standards governing a
33 "freestanding" facility.

34 If the organization or facility is to be owned or operated by
35 an entity or person other than a hospital or hospital holding,
36 leasing or management company, then the organization or facility
37 must comply with all licensing agency ambulatory surgical facility
38 standards governing a "freestanding" facility.

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

47 (c) "Freestanding" ambulatory surgical facility means a
48 separate and distinct facility or a separate and distinct
49 organized unit of a hospital owned, leased, rented or utilized by
50 a hospital or other persons for the primary purpose of performing
51 ambulatory surgery procedures. The facility must be separately
52 licensed as defined in this section and must comply with all
53 licensing standards promulgated by the licensing agency under this
54 chapter regarding a "freestanding" ambulatory surgical facility.
55 Further, the facility must be a separate, identifiable entity and
56 must be physically, administratively and financially independent
57 and distinct from other operations of any other health facility,
58 and shall maintain a separate organized medical and administrative
59 staff. Furthermore, once licensed as a "freestanding" ambulatory
60 surgical facility, the facility shall not become a component of



61 any other health facility without securing a certificate of need
62 to do that.

63 (d) "Ambulatory surgery" means surgical procedures that
64 are more complex than office procedures performed under local
65 anesthesia, but less complex than major procedures requiring
66 prolonged postoperative monitoring and hospital care to ensure
67 safe recovery and desirable results. General anesthesia is used
68 in most cases. The patient must arrive at the facility and expect
69 to be discharged on the same day. Ambulatory surgery shall only
70 be performed by physicians or dentists licensed to practice in the
71 State of Mississippi.

72 (e) "Abortion" means the use or prescription of any
73 instrument, medicine, drug or any other substances or device to
74 terminate the pregnancy of a woman known to be pregnant with an
75 intention other than to increase the probability of a live birth,
76 to preserve the life or health of the child after live birth or to
77 remove a dead fetus. Abortion procedures after the first
78 trimester shall only be performed at a Level I abortion facility
79 or an ambulatory surgical facility or hospital licensed to perform
80 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 who are
85 board certified in obstetrics and gynecology and are licensed to
86 practice in the State of Mississippi. The term "abortion
87 facility" includes physicians' offices that are used substantially
88 for the purpose of performing abortions. An abortion facility
89 operates substantially for the purpose of performing abortions if
90 any of the following conditions are met:

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



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

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

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

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

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

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

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

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



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

129 **SECTION 2.** This act shall take effect and be in force from
130 and after July 1, 2008.

