

By: Senator(s) Yancey, Burton, Fillingane,  
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Watson

To: Public Health and  
Welfare

SENATE BILL NO. 2200

1 AN ACT TO AMEND SECTION 41-41-33, MISSISSIPPI CODE OF 1972,  
2 TO DECLARE LEGISLATIVE INTENT RELATIVE TO THE TERMINATION OF THE  
3 LIFE OF AN UNBORN CHILD AND THE PROTECTION OF THE HEALTH AND  
4 RIGHTS OF WOMEN; TO PROHIBIT ABORTIONS IN THE STATE OF MISSISSIPPI  
5 EXCEPT IN CERTAIN CASES; TO AMEND SECTION 41-41-39, MISSISSIPPI  
6 CODE OF 1972, TO PRESCRIBE CRIMINAL PENALTIES FOR VIOLATIONS OF  
7 THIS ACT; AND FOR RELATED PURPOSES.

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

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

11 41-41-33. (1) The Legislature of the State of Mississippi  
12 makes the following findings and determinations:

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

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

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

24 (d) A pregnant mother possesses certain inherent rights  
25 that are natural intrinsic rights which enjoy affirmative  
26 protection under the Constitution of the United States, and under  
27 the laws or Constitution of the State of Mississippi; that among  
28 these rights are the fundamental rights of the pregnant mother to  
29 her relationship with her child; her fundamental right to make



30 decisions that insure the well-being of her child; and her  
31 interest in her own health and bodily integrity.

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

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

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

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

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

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

57 (k) The State of Mississippi possesses a duty to  
58 protect, and it is a legitimate exercise of the state's power to  
59 protect, the natural intrinsic rights of each human being within  
60 its borders, including those human beings living in utero, to  
61 live.



62           (l) It is not practical and not possible for the state  
63 to simultaneously protect these fundamental rights and interests  
64 of pregnant mothers and provide legal authority or protection for  
65 a physician who terminates the lives of these mothers' unborn  
66 children by an abortion; that protection of these rights of the  
67 mothers are in conflict with protection of the act of the  
68 physician which terminates these rights by terminating the life of  
69 the unborn child.

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

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

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

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

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

93           (ii) The particular medical risks associated with  
94 the particular abortion procedure to be employed including, when



95 medically accurate, the risks of infection, hemorrhage and breast  
96 cancer, and the danger to subsequent pregnancies and infertility;

97 (iii) The probable gestational age of the unborn  
98 child at the time the abortion is to be performed or induced; and

99 (iv) The medical risks associated with carrying  
100 her child to term.

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

104 (i) That medical assistance benefits may be  
105 available for prenatal care, childbirth and neonatal care;

106 (ii) That the father is liable to assist in the  
107 support of her child, even in instances in which the father has  
108 offered to pay for the abortion;

109 (iii) That there are available services provided  
110 by public and private agencies which provide pregnancy prevention  
111 counseling and medical referrals for obtaining pregnancy  
112 prevention medications or devices; and

113 (iv) That she has the right to review the printed  
114 materials described in Section 41-41-35(1) (a), (b) and (c). The  
115 physician or his agent shall orally inform the woman that those  
116 materials have been provided by the State of Mississippi and that  
117 they describe the unborn child and list agencies that offer  
118 alternatives to abortion. If the woman chooses to view those  
119 materials, copies of them shall be furnished to her. The  
120 physician or his agent may disassociate himself or themselves from  
121 those materials, and may comment or refrain from comment on them  
122 as he chooses. The physician or his agent shall provide the woman  
123 with the printed materials described in Section 41-41-35(1) (d).

124 (c) The woman certifies in writing before the abortion  
125 that the information described in paragraphs (a) and (b) of this  
126 section has been furnished to her, and that she has been informed



127 of her opportunity to review the information referred to in  
128 subparagraph (iv) of paragraph (b) of this section.

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

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

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

154 (c) A licensed physician may perform an action that  
155 would otherwise violate the provisions of subsection (3) (a) on the  
156 basis that the pregnancy is the result of a reported rape or  
157 incest if, and only if, the pregnant woman provides the physician  
158 with evidence that she reported the rape or incest to an  
159 appropriate law enforcement official, or a hospital or other



160 medical provider, or to a member of a clergy, within sixty (60)  
161 days after the rape or incest. Such evidence shall have been  
162 prepared and signed by the entity or person to whom the report was  
163 made by the mother, which signature shall have been notarized for  
164 authenticity.

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

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

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

178 41-41-39. (1) Anyone who purposefully, knowingly or  
179 recklessly performs or attempts to perform or induce an abortion  
180 without complying with Sections 41-41-31 through 41-41-37 shall,  
181 upon conviction, be guilty of a misdemeanor and shall be punished  
182 by a fine of Five Thousand Dollars (\$5,000.00), by imprisonment in  
183 the county jail for a period of time not to exceed one (1) year,  
184 or both such fine and imprisonment.

185 (2) Any person who violates Section 41-41-33(3) (a) shall,  
186 upon conviction, be guilty of a felony punishable by imprisonment  
187 in the State Penitentiary not less than one (1) year nor more than  
188 ten (10) years, by a fine of up to Ten Thousand Dollars  
189 (\$10,000.00), or both such fine and imprisonment.

190 (3) Nothing in this section may be construed to subject the  
191 pregnant mother upon whom any abortion is performed or attempted  
192 to any criminal conviction and penalty.



193           **SECTION 3.** (1) If any provision of this act is found to be  
194 unconstitutional, the provision is severable; and the other  
195 provisions of this act remain effective, except as provided in  
196 other sections of this act.

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

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

209           (4) Nothing in the provisions of Sections 41-41-31 through  
210 41-41-91, Mississippi Code of 1972, shall be construed to permit  
211 any action that is prohibited by Senate Bill No. 2200, 2008  
212 Regular Session, and to the extent that any provision of Sections  
213 41-41-31 through 41-41-91, Mississippi Code of 1972, would be so  
214 construed, then the provisions of Senate Bill No. 2200, 2008  
215 Regular Session, shall take precedence.

216           **SECTION 4.** This act shall take effect and be in force from  
217 and after July 1, 2008.

