

By: Senator(s) Jackson (15th), Albritton, Burton, Clarke, Davis (1st), Fillingane, Flowers, Hewes, King, Kirby, Nunnelee, Ward, Yancey

To: Public Health and Welfare

SENATE BILL NO. 2201

1 AN ACT TO AMEND SECTIONS 97-3-3 and 97-3-4, MISSISSIPPI CODE
2 OF 1972, TO PROVIDE THAT NO ABORTION SHALL BE PERFORMED OR INDUCED
3 BY A PHYSICIAN UNLESS HE HAS STAFF PRIVILEGES AT A LICENSED
4 HOSPITAL IN THE STATE OF MISSISSIPPI; TO AMEND SECTIONS 41-41-33,
5 41-41-35, 41-41-57, 41-41-59 AND 41-75-1, MISSISSIPPI CODE OF
6 1972, IN CONFORMITY THERETO; TO AMEND SECTION 73-25-29,
7 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE PERFORMANCE OF AN
8 ABORTION BY A PHYSICIAN SHALL BE GROUNDS FOR DISCIPLINARY ACTION
9 UNLESS THE PHYSICIAN HAS STAFF PRIVILEGES AT A LICENSED HOSPITAL
10 IN THE STATE OF MISSISSIPPI; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** Section 97-3-3, Mississippi Code of 1972, is
13 amended as follows:

14 97-3-3. (1) Any person willfully and knowingly causing, by
15 means of any instrument, medicine, drug or other means whatever,
16 any woman pregnant with child to abort or miscarry, or attempts to
17 procure or produce an abortion or miscarriage shall be guilty of a
18 felony unless the same were done by a duly licensed, practicing
19 physician who currently has staff privileges at a licensed
20 hospital in the State of Mississippi:

21 (a) Where necessary for the preservation of the
22 mother's life;

23 (b) Where pregnancy was caused by rape. Said person
24 shall, upon conviction, be imprisoned in the Mississippi State
25 Penitentiary, not less than one (1) year nor more than ten (10)
26 years; provided, however, if the death of the mother results
27 therefrom, the person procuring, causing or attempting to procure
28 or cause the illegal abortion or miscarriage shall be guilty of
29 murder.

30 (2) No act prohibited in subsection (1) of this section
31 shall be considered exempt under the provisions of subparagraph



32 (a) thereof unless performed upon the prior advice in writing, of
33 two (2) reputable licensed physicians who currently have staff
34 privileges at a licensed hospital in the State of Mississippi.

35 (3) The license of any physician or nurse shall be
36 automatically revoked upon conviction under the provisions of this
37 section.

38 (4) Nothing in this section shall be construed as
39 conflicting with Section 41-41-73.

40 **SECTION 2.** Section 97-3-4, Mississippi Code of 1972, is
41 amended as follows:

42 97-3-4. (1) It shall be unlawful for any physician
43 performing an abortion that results in the delivery of a living
44 child to intentionally allow or cause the child to die.

45 (2) If the child is viable, such child shall be immediately
46 provided appropriate medical care and comfort care necessary to
47 sustain life. If the child is not viable, such child shall be
48 provided comfort care. The provision of this section shall
49 include, but not be limited to, a child born with physical or
50 mental handicapping conditions which, in the opinion of the
51 parent, the physician or other persons, diminishes the quality of
52 the child's life, a child born alive during the course of an
53 attempted abortion and a child not wanted by the parent.

54 (3) It shall be unlawful for any physician to perform or
55 induce an abortion unless the physician currently has staff
56 privileges at a licensed hospital in the State of Mississippi.

57 (4) As used in this section the term "child" includes every
58 infant member of the species homo sapiens who is born alive at any
59 stage of development.

60 (5) Any person who violates this section shall be guilty of
61 a felony and, upon conviction, be imprisoned for not less than one
62 (1) year nor more than ten (10) years in the Mississippi State
63 Penitentiary and fined not more than Fifty Thousand Dollars



64 (\$50,000.00) but not less than Twenty-five Thousand Dollars
65 (\$25,000.00).

66 **SECTION 3.** Section 41-41-33, Mississippi Code of 1972, is
67 amended as follows:

68 41-41-33. (1) No abortion shall be performed or induced
69 except with the voluntary and informed consent of the woman upon
70 whom the abortion is to be performed or induced. Except in the
71 case of a medical emergency, consent to an abortion is voluntary
72 and informed if and only if:

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

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

79 (ii) The name of the licensed hospital in the
80 State of Mississippi at which the physician has staff privileges;

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

85 (iv) The probable gestational age of the unborn
86 child at the time the abortion is to be performed or induced; and

87 (v) The medical risks associated with carrying her
88 child to term.

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

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

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



97 (iii) That there are available services provided
98 by public and private agencies which provide pregnancy prevention
99 counseling and medical referrals for obtaining pregnancy
100 prevention medications or devices; and

101 (iv) That she has the right to review the printed
102 materials described in Section 41-41-35(1) (a), (b) and (c). The
103 physician or his agent shall orally inform the woman that those
104 materials have been provided by the State of Mississippi, and that
105 they describe the unborn child and list agencies that offer
106 alternatives to abortion. If the woman chooses to view those
107 materials, copies of them shall be furnished to her. The
108 physician or his agent may disassociate himself or themselves from
109 those materials, and may comment or refrain from comment on them
110 as he chooses. The physician or his agent shall provide the woman
111 with the printed materials described in Section 41-41-35(1) (d).

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

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

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

123 **SECTION 4.** Section 41-41-35, Mississippi Code of 1972, is
124 amended as follows:

125 41-41-35. (1) The State Department of Health shall cause to
126 be published in English within sixty (60) days after the effective
127 date of this act, the following easily comprehensible printed
128 materials:



129 (a) Geographically indexed materials designed to inform
130 the woman of public and private agencies and services available to
131 assist a woman through pregnancy, upon childbirth and while the
132 child is dependent, including adoption agencies, which shall
133 include a comprehensive list of the agencies available, a
134 description of the services they offer and a description of the
135 manner, including telephone numbers, in which they might be
136 contacted, or, at the option of the Department of Health, printed
137 materials including a toll-free, twenty-four-hour-a-day telephone
138 number which may be called to obtain, orally, such a list and
139 description of agencies in the locality of the caller and of the
140 services they offer.

141 (b) Materials designed to inform the woman of the
142 probable anatomical and physiological characteristics of the
143 unborn child at two-week gestational increments from the time when
144 a woman can be known to be pregnant to full term, including any
145 relevant information on the possibility of the unborn child's
146 survival. The materials shall include color pictures representing
147 the development of the child at two-week gestational increments.
148 These pictures must contain the dimensions of the unborn child and
149 must be realistic. The materials shall be objective,
150 nonjudgmental and designed to convey only accurate scientific
151 information about the unborn child at the various gestational
152 ages.

153 (c) Materials that include the information described in
154 subparagraphs (ii) and (iv) of paragraph (1)(a) of Section
155 41-41-33 and in subparagraphs (i), (ii) and (iii) of paragraph
156 (1)(b) of Section 41-41-33.

157 (d) Materials designed to inform the woman of pregnancy
158 prevention methods for females and males, which materials shall
159 describe each method in detail and include pictures or diagrams
160 that illustrate the proper usage of each method.



161 (e) Materials designed to inform the woman that the
162 abortion shall only be performed by a physician with staff
163 privileges at a licensed hospital in the State of Mississippi.

164 (2) The materials shall be printed in a typeface large
165 enough to be clearly legible.

166 (3) The materials required under this section shall be
167 available at no cost from the Department of Health upon request
168 and in appropriate number to any person, facility or hospital.

169 (4) The Department of Health shall review the printed
170 materials required by subsection (1) of this section on an annual
171 basis in order to determine if any changes are needed to be made
172 to the contents of the materials, and shall promulgate any rules
173 and regulations necessary for considering and making such changes.

174 **SECTION 5.** Section 41-41-57, Mississippi Code of 1972, is
175 amended as follows:

176 41-41-57. Sections 41-41-51 through 41-41-63 shall not apply
177 when, in the best clinical judgment of the physician on the facts
178 of the case before him, a medical emergency exists that so
179 complicates the pregnancy as to require an immediate abortion.
180 Such medical emergency shall only be declared by a physician who
181 currently has staff privileges at a licensed hospital located in
182 the State of Mississippi. A physician who does not comply with
183 Sections 41-41-53 and 41-41-55 by reason of this exception shall
184 state in the medical record of the abortion the medical
185 indications on which his judgment was based.

186 **SECTION 6.** Section 41-41-59, Mississippi Code of 1972, is
187 amended as follows:

188 41-41-59. If a physician performs an abortion in violation
189 of the provisions of Sections 41-41-51 through 41-41-63 or fails
190 to conform to any requirement of Sections 41-41-51 through
191 41-41-63, specifically including the requirement that the
192 physician shall currently have staff privileges at a licensed
193 hospital in the State of Mississippi, then his action shall be



194 prima facie evidence of unprofessional conduct, subjecting him to
195 action by the State Board of Medical Licensure.

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

198 41-75-1. For the purpose of this chapter:

199 (a) "Ambulatory surgical facility" means a publicly or
200 privately owned institution that is primarily organized,
201 constructed, renovated or otherwise established for the purpose of
202 providing elective surgical treatment of "outpatients" whose
203 recovery, under normal and routine circumstances, will not require
204 "inpatient" care. The facility defined in this paragraph does not
205 include the offices of private physicians or dentists, whether
206 practicing individually or in groups, but does include
207 organizations or facilities primarily engaged in that outpatient
208 surgery, whether using the name "ambulatory surgical facility" or
209 a similar or different name. That organization or facility, if in
210 any manner considered to be operated or owned by a hospital or a
211 hospital holding, leasing or management company, either for profit
212 or not for profit, is required to comply with all licensing agency
213 ambulatory surgical licensure standards governing a "hospital
214 affiliated" facility as adopted under Section 41-9-1 et seq.,
215 provided that the organization or facility does not intend to seek
216 federal certification as an ambulatory surgical facility as
217 provided for at 42 CFR, Parts 405 and 416. If the organization or
218 facility is to be operated or owned by a hospital or a hospital
219 holding, leasing or management company and intends to seek federal
220 certification as an ambulatory facility, then the facility is
221 considered to be "freestanding" and must comply with all licensing
222 agency ambulatory surgical licensure standards governing a
223 "freestanding" facility.

224 If the organization or facility is to be owned or operated by
225 an entity or person other than a hospital or hospital holding,
226 leasing or management company, then the organization or facility



227 must comply with all licensing agency ambulatory surgical facility
228 standards governing a "freestanding" facility.

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

237 (c) "Freestanding" ambulatory surgical facility means a
238 separate and distinct facility or a separate and distinct
239 organized unit of a hospital owned, leased, rented or utilized by
240 a hospital or other persons for the primary purpose of performing
241 ambulatory surgery procedures. The facility must be separately
242 licensed as defined in this section and must comply with all
243 licensing standards promulgated by the licensing agency under this
244 chapter regarding a "freestanding" ambulatory surgical facility.
245 Further, the facility must be a separate, identifiable entity and
246 must be physically, administratively and financially independent
247 and distinct from other operations of any other health facility,
248 and shall maintain a separate organized medical and administrative
249 staff. Furthermore, once licensed as a "freestanding" ambulatory
250 surgical facility, the facility shall not become a component of
251 any other health facility without securing a certificate of need
252 to do that.

253 (d) "Ambulatory surgery" means surgical procedures that
254 are more complex than office procedures performed under local
255 anesthesia, but less complex than major procedures requiring
256 prolonged postoperative monitoring and hospital care to ensure
257 safe recovery and desirable results. General anesthesia is used
258 in most cases. The patient must arrive at the facility and expect
259 to be discharged on the same day. Ambulatory surgery shall only



260 be performed by physicians or dentists licensed to practice in the
261 State of Mississippi.

262 (e) "Abortion" means the use or prescription of any
263 instrument, medicine, drug or any other substances or device to
264 terminate the pregnancy of a woman known to be pregnant with an
265 intention other than to increase the probability of a live birth,
266 to preserve the life or health of the child after live birth or to
267 remove a dead fetus. Abortion procedures after the first
268 trimester shall only be performed at a Level I abortion facility
269 or an ambulatory surgical facility or hospital licensed to perform
270 that service.

271 (f) "Abortion facility" means a facility operating
272 substantially for the purpose of performing abortions and is a
273 separate identifiable legal entity from any other health care
274 facility. Abortions shall only be performed by physicians
275 licensed to practice in the State of Mississippi who currently
276 have staff privileges at a licensed hospital located in the State
277 of Mississippi. The term "abortion facility" includes physicians'
278 offices that are used substantially for the purpose of performing
279 abortions. An abortion facility operates substantially for the
280 purpose of performing abortions if any of the following conditions
281 are met:

282 (i) The abortion facility is a provider for
283 performing ten (10) or more abortion procedures per calendar month
284 during any month of a calendar year, or one hundred (100) or more
285 in a calendar year.

286 (ii) The abortion facility, if operating less than
287 twenty (20) days per calendar month, is a provider for performing
288 ten (10) or more abortion procedures, or performing a number of
289 abortion procedures that would be equivalent to ten (10)
290 procedures per month, if the facility were operating twenty (20)
291 or more days per calendar month, in any month of a calendar year.



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

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

298 (g) "Licensing agency" means the State Department of
299 Health.

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

304 An abortion facility may apply to be licensed as a Level I
305 facility or a Level II facility by the licensing agency. Level II
306 abortion facilities shall be required to meet minimum standards
307 for abortion facilities as established by the licensing agency.
308 Level I abortion facilities shall be required to meet minimum
309 standards for abortion facilities and minimum standards for
310 ambulatory surgical facilities as established by the licensing
311 agency.

312 Any abortion facility that begins operation after June 30,
313 1996, shall not be located within fifteen hundred (1500) feet from
314 the property on which any church, school or kindergarden is
315 located. An abortion facility shall not be in violation of this
316 paragraph if it is in compliance with this paragraph on the date
317 it begins operation and the property on which a church, school or
318 kindergarden is located is later within fifteen hundred (1500)
319 feet from the facility.

320 **SECTION 8.** Section 73-25-29, Mississippi Code of 1972, is
321 amended as follows:

322 73-25-29. The grounds for the nonissuance, suspension,
323 revocation or restriction of a license or the denial of
324 reinstatement or renewal of a license are:



325 (1) Habitual personal use of narcotic drugs, or any other
326 drug having addiction-forming or addiction-sustaining liability.

327 (2) Habitual use of intoxicating liquors, or any beverage,
328 to an extent which affects professional competency.

329 (3) Administering, dispensing or prescribing any narcotic
330 drug, or any other drug having addiction-forming or
331 addiction-sustaining liability otherwise than in the course of
332 legitimate professional practice.

333 (4) Conviction of violation of any federal or state law
334 regulating the possession, distribution or use of any narcotic
335 drug or any drug considered a controlled substance under state or
336 federal law, a certified copy of the conviction order or judgment
337 rendered by the trial court being prima facie evidence thereof,
338 notwithstanding the pendency of any appeal.

339 (5) Procuring, or attempting to procure, or aiding in, an
340 abortion that is not medically indicated, or performing or
341 inducing an abortion unless the physician has staff privileges at
342 a licensed hospital located in the State of Mississippi.

343 (6) Conviction of a felony or misdemeanor involving moral
344 turpitude, a certified copy of the conviction order or judgment
345 rendered by the trial court being prima facie evidence thereof,
346 notwithstanding the pendency of any appeal.

347 (7) Obtaining or attempting to obtain a license by fraud or
348 deception.

349 (8) Unprofessional conduct, which includes, but is not
350 limited to:

351 (a) Practicing medicine under a false or assumed name
352 or impersonating another practitioner, living or dead.

353 (b) Knowingly performing any act which in any way
354 assists an unlicensed person to practice medicine.

355 (c) Making or willfully causing to be made any
356 flamboyant claims concerning the licensee's professional
357 excellence.



358 (d) Being guilty of any dishonorable or unethical
359 conduct likely to deceive, defraud or harm the public.

360 (e) Obtaining a fee as personal compensation or gain
361 from a person on fraudulent representation a disease or injury
362 condition generally considered incurable by competent medical
363 authority in the light of current scientific knowledge and
364 practice can be cured or offering, undertaking, attempting or
365 agreeing to cure or treat the same by a secret method, which he
366 refuses to divulge to the board upon request.

367 (f) Use of any false, fraudulent or forged statement or
368 document, or the use of any fraudulent, deceitful, dishonest or
369 immoral practice in connection with any of the licensing
370 requirements, including the signing in his professional capacity
371 any certificate that is known to be false at the time he makes or
372 signs such certificate.

373 (g) Failing to identify a physician's school of
374 practice in all professional uses of his name by use of his earned
375 degree or a description of his school of practice.

376 (9) The refusal of a licensing authority of another state or
377 jurisdiction to issue or renew a license, permit or certificate to
378 practice medicine in that jurisdiction or the revocation,
379 suspension or other restriction imposed on a license, permit or
380 certificate issued by such licensing authority which prevents or
381 restricts practice in that jurisdiction, a certified copy of the
382 disciplinary order or action taken by the other state or
383 jurisdiction being prima facie evidence thereof, notwithstanding
384 the pendency of any appeal.

385 (10) Surrender of a license or authorization to practice
386 medicine in another state or jurisdiction or surrender of
387 membership on any medical staff or in any medical or professional
388 association or society while under disciplinary investigation by
389 any of those authorities or bodies for acts or conduct similar to



390 acts or conduct which would constitute grounds for action as
391 defined in this section.

392 (11) Final sanctions imposed by the United States Department
393 of Health and Human Services, Office of Inspector General or any
394 successor federal agency or office, based upon a finding of
395 incompetency, gross misconduct or failure to meet professionally
396 recognized standards of health care; a certified copy of the
397 notice of final sanction being prima facie evidence thereof. As
398 used in this paragraph, the term "final sanction" means the
399 written notice to a physician from the United States Department of
400 Health and Human Services, Officer of Inspector General or any
401 successor federal agency or office, which implements the
402 exclusion.

403 (12) Failure to furnish the board, its investigators or
404 representatives information legally requested by the board.

405 (13) Violation of any provision(s) of the Medical Practice
406 Act or the rules and regulations of the board or of any order,
407 stipulation or agreement with the board.

408 In addition to the grounds specified above, the board shall
409 be authorized to suspend the license of any licensee for being out
410 of compliance with an order for support, as defined in Section
411 93-11-153. The procedure for suspension of a license for being
412 out of compliance with an order for support, and the procedure for
413 the reissuance or reinstatement of a license suspended for that
414 purpose, and the payment of any fees for the reissuance or
415 reinstatement of a license suspended for that purpose, shall be
416 governed by Section 93-11-157 or 93-11-163, as the case may be.
417 If there is any conflict between any provision of Section
418 93-11-157 or 93-11-163 and any provision of this chapter, the
419 provisions of Section 93-11-157 or 93-11-163, as the case may be,
420 shall control.

421 **SECTION 9.** This act shall take effect and be in force from
422 and after July 1, 2008.

