

By: Senator(s) Nunnelee

To: Insurance

SENATE BILL NO. 2298

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 COVERED BY A MEDICAL MALPRACTICE INSURANCE  
4 POLICY ISSUED BY AN INSURANCE COMPANY LICENSED TO DO BUSINESS IN  
5 MISSISSIPPI; AND FOR 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  
86 licensed to practice in the State of Mississippi and whose actions  
87 are currently covered by a medical malpractice insurance policy  
88 issued by an insurance company licensed to do business in the  
89 State of Mississippi. The term "abortion facility" includes  
90 physicians' offices that are used substantially for the purpose of  
91 performing abortions. An abortion facility operates substantially  
92 for the purpose of performing abortions if any of the following  
93 conditions are met:



94 (i) The abortion facility is a provider for  
95 performing ten (10) or more abortion procedures per calendar month  
96 during any month of a calendar year, or one hundred (100) or more  
97 in a calendar year.

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

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

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

110 (g) "Licensing agency" means the State Department of  
111 Health.

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

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

124 Any abortion facility that begins operation after June 30,  
125 1996, shall not be located within fifteen hundred (1500) feet from  
126 the property on which any church, school or kindergarden is



127 located. An abortion facility shall not be in violation of this  
128 paragraph if it is in compliance with this paragraph on the date  
129 it begins operation and the property on which a church, school or  
130 kindergarten is located is later within fifteen hundred (1500)  
131 feet from the facility.

132 **SECTION 2.** This act shall take effect and be in force from  
133 and after July 1, 2010.

