MISSISSIPPI LEGISLATURE
REGULAR SESSION 2012

By: Representatives Gipson, Arnold, Bain, Brown (20th), Aldridge, Baker, Bennett, Eure

To: Judiciary B; Public Health and Human Services

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1196

AN ACT TO CODIFY NEW SECTION 41-41-34.1, MISSISSIPPI CODE OF 1972, TO PROHIBIT AN ABORTION OF AN UNBORN HUMAN INDIVIDUAL WITH A DETECTABLE FETAL HEARTBEAT EXCEPT WHEN A MEDICAL EMERGENCY NECESSITATES; TO AUTHORIZE AND DIRECT THE STATE BOARD OF HEALTH TO PROMULGATE REGULATIONS FOR THE APPROPRIATE METHODS OF PERFORMING AN EXAMINATION FOR THE PRESENCE OF A FETAL HEARTBEAT; TO AMEND SECTION 73-25-29, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A PHYSICIAN PERFORMING AN ABORTION ON A PREGNANT WOMAN BEFORE DETERMINING IF THE UNBORN HUMAN INDIVIDUAL HAS A DETECTABLE FETAL HEARTBEAT IS SUBJECT TO LICENSE REVOCATION OR DISCIPLINARY ACTION; AND FOR RELATED PURPOSES.

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

SECTION 1. The following provision shall be codified as Section 41-41-34.1, Mississippi Code of 1972:

41-41-34.1. (1) The Legislature declares that it finds, according to contemporary medical research, all of the following:

(a) As many as thirty percent (30%) of natural pregnancies end in spontaneous miscarriage;

(b) Less than five percent (5%) of all natural pregnancies end in spontaneous miscarriage after detection of fetal cardiac activity;

(c) Over ninety percent (90%) of in vitro pregnancies survive the first trimester if cardiac activity is detected in the gestational sac;

(d) Nearly ninety percent (90%) of in vitro pregnancies do not survive the first trimester where cardiac activity is not detected in the gestational sac;

(e) Fetal heartbeat, therefore, has become a key, medical predictor that an unborn human individual will reach viability and live birth;
(f) Cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac.

(2) As used in this section:

(a) "Contraceptive" means a device, drug, or chemical that prevents conception.

(b) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(c) "Fetus" means the human offspring developing during pregnancy from the moment of conception and includes the embryonic stage of development.

(d) "Gestational age" means the age of an unborn human individual as calculated from the first day of the last menstrual period of a pregnant woman.

(e) "Gestational sac" comprises the extra embryonic membranes that envelop the fetus and that is typically visible by ultrasound after the fourth week of pregnancy.

(f) "Medical emergency" means a condition that in the physician's good-faith medical judgment, based upon the facts known to the physician at that time, so endangers the life of the pregnant woman or a major bodily function of the pregnant woman as to necessitate the immediate performance or inducement of an abortion.

(g) "Physician" means a person licensed to practice medicine under Section 73-25-1 et seq.

(h) "Pregnancy" means the human female reproductive condition that begins with fertilization, when the woman is carrying the developing human offspring, and that is calculated from the first day of the last menstrual period of the woman.

(i) "Spontaneous miscarriage" means the natural or accidental termination of a pregnancy and the expulsion of the
fetus, typically caused by genetic defects in the fetus or physical abnormalities in the pregnant woman.

(j) "Unborn human individual" means an individual organism of the species homo sapiens from fertilization until live birth.

(3) (a) Except when a medical emergency exists that prevents compliance with this section, no person shall perform an abortion on a pregnant woman before determining if the unborn human individual that the pregnant woman is carrying has a detectable fetal heartbeat. Any person who performs an abortion on a pregnant woman based on the exception in this section shall note in the pregnant woman's medical records that a medical emergency necessitating the abortion existed.

(b) A person who intends to perform an abortion on a pregnant woman shall determine if there is the presence of a fetal heartbeat of the unborn human individual that the pregnant woman is carrying according to standard medical practice. A person shall comply with this paragraph (b) regardless of whether or not the State Board of Health has promulgated rules under paragraph (c) of this subsection (3).

(c) The State Board of Health may promulgate rules for the appropriate methods of performing an examination for the presence of a fetal heartbeat of an unborn human individual based on standard medical practice.

(d) If a physician performs an abortion on a pregnant woman before determining if the unborn human individual that the pregnant woman is carrying has a detectable fetal heartbeat, that physician is subject to disciplinary action under Section 73-25-29(14).

(4) (a) This subsection (4) applies to all abortions that are not prohibited under law, except when a medical emergency exists that prevents compliance with this section.
(b) If the person who intends to perform an abortion on a pregnant woman detects a fetal heartbeat in the unborn human individual that the pregnant woman is carrying, no later than twenty-four (24) hours before the performance of the intended abortion, both of the following apply:

(i) The person intending to perform the abortion shall inform the pregnant woman in writing that the unborn human individual that she is carrying has a fetal heartbeat and shall inform the pregnant woman, to the best of the person's knowledge, of the statistical probability of bringing the unborn human individual to term based on the gestational age of the unborn human individual possessing a detectable fetal heartbeat. A person shall comply with this paragraph (i) regardless of whether or not the State Board of Health promulgated rules under paragraph (c) of this subsection (4).

(ii) The pregnant woman shall sign a form acknowledging that she has received information from the person intending to perform the abortion that the unborn human individual that she is carrying has a fetal heartbeat and that she is aware of the statistical probability of bringing the unborn human individual that she is carrying to term.

(c) The State Board of Health may define and promulgate by rules adopted and based upon available medical evidence the statistical probability of bringing an unborn human individual to term based on the gestational age of an unborn human individual who possesses a detectable fetal heartbeat.

(d) This subsection (4) does not repeal any other provision of the Mississippi Code relating to informed consent for an abortion.

(5) (a) Except as provided in paragraph (b) or (c) of this subsection (5), no person shall knowingly perform an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn human individual that the
pregnant woman is carrying and whose fetal heartbeat has been detected according to the requirements of subsection (3) of this section. Any person who acts based on the exception in paragraph (b) or (c) of this subsection (5) shall so note in the pregnant woman's medical records and shall specify in the pregnant woman's medical records which of the exceptions the person invoked.

(b) (i) A person is not in violation of paragraph (a) of this subsection (5) if that person performs a medical procedure designed to or intended, in that person's reasonable medical judgment, to prevent the death of a pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

(ii) Any person who performs a medical procedure as described in paragraph (b)(i) of this subsection (5) shall declare in writing, under penalty of perjury, that the medical procedure was necessary, to the best of that person's reasonable medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. That person shall also provide in that written document, under penalty of perjury, the medical condition of that pregnant woman that the medical procedure performed as described in paragraph (b)(i) of this subsection (5) will assertedly address, and the medical rationale for the conclusion that the medical procedure was necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

(iii) The person who performs a medical procedure as described in paragraph (b)(i) of this subsection (5) shall place the written documentation required under paragraph (b)(ii) of this subsection (5) in the pregnant woman's medical records, and shall maintain a copy of the written documentation in the person's own records for at least seven (7) years.
(c) A person is not in violation of paragraph (a) of this subsection (5) if that person has performed an examination for the presence of a fetal heartbeat in the unborn human individual using standard medical practice and that examination does not reveal a fetal heartbeat or the person has been informed by a physician who has performed the examination for a fetal heartbeat that the examination did not reveal a fetal heartbeat.

(d) This subsection (5) does not repeal any other provision of the Mississippi Code that restricts or regulates the performance of an abortion by a particular method or during a particular stage of a pregnancy.

(e) Any person who violates this subsection (5) is guilty of performing an abortion after the detection of a fetal heartbeat, a violation punishable as provided in Section 41-41-39.

(6) Any person performing an abortion on a pregnant woman carrying an unborn human individual whose heartbeat has been detected under the requirements of subsection (3) of this section to preserve the health of the pregnant woman shall set forth in a separate document, under penalty of perjury, the medical condition that the abortion will assertedly address and the medical rationale for the conclusion that the abortion is necessary to address that condition. The person shall place this written documentation in the pregnant woman's medical records and shall maintain a copy in the person's own records for at least seven (7) years. This documentation requirement is independent of the provisions in subsection (5) of this section.

(7) A pregnant woman on whom an abortion is performed in violation of subsection (3) or (5) of this section is not guilty of violating subsection (3) or (5) of this section or of attempting to commit, conspiring to commit, or complicity in committing a violation of subsection (3) or (5) of this section and is not subject to a penalty based on that violation.
(8) Nothing in this section prohibits the sale, use, prescription, or administration of a measure, drug, or chemical designed for contraceptive purposes.

(9) If a state or federal court of competent jurisdiction finds that a provision of this section is unconstitutional, the effective date of that provision is tolled until either of the following occur:

(a) An appellate court finds that provision to be constitutional.

(b) The Attorney General certifies in an opinion to the Governor that, due to a later decision or decisions by the Supreme Court of the United States, it is reasonably probable that the provision would be upheld as constitutional by a court of competent jurisdiction.

(10) If a provision of this section is found constitutional by an appellate court or the Attorney General issues an opinion as described in subsection (9)(b) of this section, the provision shall be prospective.

(11) If any provisions of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

SECTION 2. Section 73-25-29, Mississippi Code of 1972, is amended as follows:

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

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

(2) Habitual use of intoxicating liquors, or any beverage, to an extent which affects professional competency.
(3) Administering, dispensing or prescribing any narcotic
drug, or any other drug having addiction-forming or
addiction-sustaining liability otherwise than in the course of
legitimate professional practice.

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

(5) Procuring, or attempting to procure, or aiding in, an
abortion that is not medically indicated.

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

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

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

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

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

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

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

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

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

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

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

(10) Surrender of a license or authorization to practice medicine in another state or jurisdiction or surrender of membership on any medical staff or in any medical or professional association or society while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct which would constitute grounds for action as defined in this section.

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

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

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

(14) Performing an abortion on a pregnant woman before determining if the unborn human individual that the pregnant woman is carrying has a detectable fetal heartbeat, as provided in Section 41-41-34.1.

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

SECTION 3. This act shall take effect and be in force from and after July 1, 2012.