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To: Judiciary B; Public
Health and Human Services

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1196

1 AN ACT TO CODIFY NEW SECTION 41-41-34.1, MISSISSIPPI CODE OF
2 1972, TO PROHIBIT AN ABORTION OF AN UNBORN HUMAN INDIVIDUAL WITH A
3 DETECTABLE FETAL HEARTBEAT EXCEPT WHEN A MEDICAL EMERGENCY
4 NECESSITATES; TO AUTHORIZE AND DIRECT THE STATE BOARD OF HEALTH TO
5 PROMULGATE REGULATIONS FOR THE APPROPRIATE METHODS OF PERFORMING
6 AN EXAMINATION FOR THE PRESENCE OF A FETAL HEARTBEAT; TO AMEND
7 SECTION 73-25-29, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A
8 PHYSICIAN PERFORMING AN ABORTION ON A PREGNANT WOMAN BEFORE
9 DETERMINING IF THE UNBORN HUMAN INDIVIDUAL HAS A DETECTABLE FETAL
10 HEARTBEAT IS SUBJECT TO LICENSE REVOCATION OR DISCIPLINARY ACTION;
11 AND FOR RELATED PURPOSES.

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

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

15 41-41-34.1. (1) The Legislature declares that it finds,
16 according to contemporary medical research, all of the following:

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

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

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

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

28 (e) Fetal heartbeat, therefore, has become a key,
29 medical predictor that an unborn human individual will reach
30 viability and live birth;



31 (f) Cardiac activity begins at a biologically
32 identifiable moment in time, normally when the fetal heart is
33 formed in the gestational sac.

34 (2) As used in this section:

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

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

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

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

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

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

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

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

61 (i) "Spontaneous miscarriage" means the natural or
62 accidental termination of a pregnancy and the expulsion of the



63 fetus, typically caused by genetic defects in the fetus or
64 physical abnormalities in the pregnant woman.

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

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

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

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

87 (d) If a physician performs an abortion on a pregnant
88 woman before determining if the unborn human individual that the
89 pregnant woman is carrying has a detectable fetal heartbeat, that
90 physician is subject to disciplinary action under Section
91 73-25-29(14).

92 (4) (a) This subsection (4) applies to all abortions that
93 are not prohibited under law, except when a medical emergency
94 exists that prevents compliance with this section.



95 (b) If the person who intends to perform an abortion on
96 a pregnant woman detects a fetal heartbeat in the unborn human
97 individual that the pregnant woman is carrying, no later than
98 twenty-four (24) hours before the performance of the intended
99 abortion, both of the following apply:

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

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

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

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

124 (5) (a) Except as provided in paragraph (b) or (c) of this
125 subsection (5), no person shall knowingly perform an abortion on a
126 pregnant woman with the specific intent of causing or abetting the
127 termination of the life of the unborn human individual that the



128 pregnant woman is carrying and whose fetal heartbeat has been
129 detected according to the requirements of subsection (3) of this
130 section. Any person who acts based on the exception in paragraph
131 (b) or (c) of this subsection (5) shall so note in the pregnant
132 woman's medical records and shall specify in the pregnant woman's
133 medical records which of the exceptions the person invoked.

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

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

155 (iii) The person who performs a medical procedure
156 as described in paragraph (b) (i) of this subsection (5) shall
157 place the written documentation required under paragraph (b) (ii)
158 of this subsection (5) in the pregnant woman's medical records,
159 and shall maintain a copy of the written documentation in the
160 person's own records for at least seven (7) years.



161 (c) A person is not in violation of paragraph (a) of
162 this subsection (5) if that person has performed an examination
163 for the presence of a fetal heartbeat in the unborn human
164 individual using standard medical practice and that examination
165 does not reveal a fetal heartbeat or the person has been informed
166 by a physician who has performed the examination for a fetal
167 heartbeat that the examination did not reveal a fetal heartbeat.

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

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

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

187 (7) A pregnant woman on whom an abortion is performed in
188 violation of subsection (3) or (5) of this section is not guilty
189 of violating subsection (3) or (5) of this section or of
190 attempting to commit, conspiring to commit, or complicity in
191 committing a violation of subsection (3) or (5) of this section
192 and is not subject to a penalty based on that violation.



193 (8) Nothing in this section prohibits the sale, use,
194 prescription, or administration of a measure, drug, or chemical
195 designed for contraceptive purposes.

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

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

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

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

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

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

218 73-25-29. The grounds for the nonissuance, suspension,
219 revocation or restriction of a license or the denial of
220 reinstatement or renewal of a license are:

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

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



225 (3) Administering, dispensing or prescribing any narcotic
226 drug, or any other drug having addiction-forming or
227 addiction-sustaining liability otherwise than in the course of
228 legitimate professional practice.

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

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

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

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

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

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

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

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

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

254 (e) Obtaining a fee as personal compensation or gain
255 from a person on fraudulent representation of a disease or injury
256 condition generally considered incurable by competent medical
257 authority in the light of current scientific knowledge and



258 practice can be cured or offering, undertaking, attempting or
259 agreeing to cure or treat the same by a secret method, which he
260 refuses to divulge to the board upon request.

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

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

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

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

286 (11) Final sanctions imposed by the United States Department
287 of Health and Human Services, Office of Inspector General or any
288 successor federal agency or office, based upon a finding of
289 incompetency, gross misconduct or failure to meet professionally
290 recognized standards of health care; a certified copy of the



291 notice of final sanction being prima facie evidence thereof. As
292 used in this paragraph, the term "final sanction" means the
293 written notice to a physician from the United States Department of
294 Health and Human Services, Officer of Inspector General or any
295 successor federal agency or office, which implements the
296 exclusion.

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

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

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

306 In addition to the grounds specified above, the board shall
307 be authorized to suspend the license of any licensee for being out
308 of compliance with an order for support, as defined in Section
309 93-11-153. The procedure for suspension of a license for being
310 out of compliance with an order for support, and the procedure for
311 the reissuance or reinstatement of a license suspended for that
312 purpose, and the payment of any fees for the reissuance or
313 reinstatement of a license suspended for that purpose, shall be
314 governed by Section 93-11-157 or 93-11-163, as the case may be.
315 If there is any conflict between any provision of Section
316 93-11-157 or 93-11-163 and any provision of this chapter, the
317 provisions of Section 93-11-157 or 93-11-163, as the case may be,
318 shall control.

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

