

By: Senator(s) Jackson (15th)

To: Public Health and
Welfare; Judiciary, Division
A

SENATE BILL NO. 2664

1 AN ACT TO CREATE SECTION 41-41-50, MISSISSIPPI CODE OF 1972,
2 TO ESTABLISH THE "PARENTAL INVOLVEMENT ENHANCEMENT ACT"; TO CREATE
3 SECTION 41-41-50.1, MISSISSIPPI CODE OF 1972, TO EXPRESS THE
4 LEGISLATURE'S INTENT TO STRENGTHEN A PARENT'S OR LEGAL GUARDIAN'S
5 INVOLVEMENT IN A MINOR'S DECISION TO HAVE AN ABORTION; TO AMEND
6 SECTION 41-41-51, MISSISSIPPI CODE OF 1972, TO DEFINE ADDITIONAL
7 TERMS RELEVANT TO THIS ACT; TO AMEND SECTION 41-41-53, MISSISSIPPI
8 CODE OF 1972, TO PROHIBIT THE PERFORMING OF AN ABORTION UPON A
9 WOMAN UNDER THE AGE OF 18 OR A WOMAN WITH AN INTELLECTUAL
10 DISABILITY WITHOUT THE NOTARIZED WRITTEN CONSENT OF THE WOMAN'S
11 PARENTS OR LEGAL GUARDIAN; TO RESTRICT THE VENUE WHEREIN A MINOR
12 OR INTELLECTUALLY DISABLED WOMAN MAY SEEK A JUDICIAL WAIVER TO THE
13 REQUISITE CONSENT; TO CREATE SECTION 41-41-54, MISSISSIPPI CODE OF
14 1972, TO REQUIRE THE PHYSICIAN TO VERIFY A PERSON'S IDENTITY AND
15 RELATIONSHIP TO THE MINOR OR INTELLECTUALLY DISABLED WOMAN BEFORE
16 ACCEPTING THE PERSON'S CONSENT TO THE WOMAN'S ABORTION; TO AMEND
17 SECTION 41-41-55, MISSISSIPPI CODE OF 1972, TO AUTHORIZE A MENTAL
18 HEALTH EVALUATION OF THE MINOR OR INTELLECTUALLY DISABLED WOMAN
19 PRIOR TO DECIDING HER REQUEST TO WAIVE THE REQUISITE CONSENT; TO
20 AMEND SECTION 41-41-57, MISSISSIPPI CODE OF 1972, TO REQUIRE A
21 PHYSICIAN TO INFORM CERTAIN PERSONS FOLLOWING THE PERFORMING OF A
22 MEDICAL EMERGENCY ABORTION UPON THE MINOR OR INTELLECTUALLY
23 DISABLED WOMAN; TO AMEND SECTION 41-41-63, MISSISSIPPI CODE OF
24 1972, TO PROVIDE HOW THIS ACT SHALL BE CONSTRUED AND TO PROVIDE
25 FOR THE LEGISLATURE'S RIGHT TO DEFEND A CHALLENGE TO THIS ACT; AND
26 FOR RELATED PURPOSES.

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

28 **SECTION 1.** The following shall be codified as Section
29 41-41-50, Mississippi Code of 1972:

30 41-41-50. This act may be cited as the "Parental Involvement
31 Enhancement Act."

32 **SECTION 2.** The following shall be codified as Section
33 41-41-50.1, Mississippi Code of 1972:

34 41-41-50.1. **Legislative findings and purposes.** (1) The
35 Legislature of the State of Mississippi finds that:

36 (a) Immature minors often lack the ability to make
37 fully informed choices that take into account both immediate and
38 long-range consequences.



39 (b) The medical, emotional and psychological
40 consequences of abortion are sometimes serious and can be lasting,
41 particularly when the patient is immature.

42 (c) The capacity to become pregnant and the capacity
43 for mature judgment concerning the wisdom of an abortion are not
44 necessarily related.

45 (d) Parents ordinarily possess information essential to
46 a physician's exercise of his or her best medical judgment
47 concerning the child.

48 (e) Parents who are aware that their minor daughter has
49 had an abortion may better ensure that she receives adequate
50 medical attention after her abortion.

51 (f) Parental consultation is usually desirable and in
52 the best interests of the minor.

53 (2) The Legislature's purposes in enacting this enhancement
54 to the State of Mississippi's parental consent law are to further
55 the important and compelling state interests of:

56 (a) Protecting minors against their own immaturity.

57 (b) Fostering family unity and preserving the family as
58 a viable social unit.

59 (c) Protecting the constitutional rights of parents to
60 rear children who are members of their household.

61 (d) Reducing teenage pregnancy and abortion.

62 (e) In light of the foregoing statements of purpose,
63 allowing for judicial bypasses of the parental consent requirement
64 to be made only in exceptional or rare circumstances.

65 **SECTION 3.** Section 41-41-51, Mississippi Code of 1972, is
66 amended as follows:

67 41-41-51. For purposes of Sections 41-41-50 through
68 41-41-63, the following definitions shall apply:

69 * * *

70 (a) "Abortion" means the use of any instrument,
71 medicine, drug or any other substance or device with intent to



72 terminate the pregnancy of a woman known to be pregnant, with
73 intent other than to increase the probability of a live birth, to
74 preserve the life or health of the child after live birth, or to
75 remove a dead fetus.

76 (b) "Consent" means, in the case of a pregnant woman
77 who is less than eighteen (18) years of age, a notarized written
78 statement signed by the pregnant woman and her mother, father or
79 legal guardian declaring that the pregnant woman intends to seek
80 an abortion and that her mother, father or legal guardian consents
81 to the abortion; or, in the case of a pregnant woman who is an
82 intellectually disabled person, a notarized written statement
83 signed by the pregnant woman's guardian declaring that the
84 guardian consents to the performance of an abortion upon the
85 pregnant woman.

86 (c) "Emancipated minor" means any minor who is or has
87 been married or has by court order or otherwise been freed from
88 the care, custody and control of her parents;

89 (d) "Intellectually disabled" means a "person with
90 mental illness" or a "person with an intellectual disability" as
91 defined in Section 41-41-61 and who has had a guardian appointed
92 for her under Section 93-13-111.

93 (e) "Medical emergency" means a condition that, on the
94 basis of the physician's good-faith clinical judgment, so
95 complicates the medical condition of a pregnant woman as to
96 necessitate the immediate abortion of her pregnancy to avert her
97 death or for which a delay will create serious risk of substantial
98 and irreversible impairment of a major bodily function.

99 (f) "Minor" means any person under the age of eighteen
100 (18) years;

101 (g) "Neglect" means the failure of a parent or legal
102 guardian to supply a minor with necessary food, clothing, shelter
103 or medical care when reasonably able to do so or the failure to
104 protect a minor from conditions or actions that imminently and



105 seriously endanger the minor's physical or mental health when
106 reasonably able to do so.

107 (h) "Physical abuse" means any physical injury
108 intentionally inflicted by a parent or legal guardian on a minor.

109 (i) "Physician," "attending physician" or "referring
110 physician" means any person licensed to practice medicine in this
111 state. The term includes medical doctors and doctors of
112 osteopathy.

113 (j) "Pregnant woman" means a woman who is pregnant and
114 is less than eighteen (18) years of age and not emancipated, or
115 who has been adjudged a "person with mental illness" or a "person
116 with an intellectual disability" as defined in Section 41-41-61
117 and who has had a guardian appointed for her under Section
118 93-13-111.

119 (k) "Sexual abuse" means any sexual conduct or sexual
120 penetration as defined in Section 97-3-97 and committed against a
121 minor by a parent or legal guardian.

122 **SECTION 4.** Section 41-41-53, Mississippi Code of 1972, is
123 amended as follows:

124 41-41-53. (1) Except as otherwise provided in subsections
125 (2) and (4) of this section, no person shall perform an abortion
126 upon an unemancipated minor unless he or his agent first obtains
127 the notarized written consent of the unemancipated minor and
128 either both parents or the legal guardian of the minor. In the
129 case of a pregnant woman who is an intellectually disabled person,
130 a person shall first obtain the notarized written consent of her
131 legal guardian.

132 (2) (a) If the minor's parents are divorced or otherwise
133 unmarried and living separate and apart, then the notarized
134 written consent of the unemancipated minor and the parent with
135 primary custody, care and control of such minor shall be
136 sufficient.



137 (b) If the minor's parents are married and one (1)
138 parent is not available to the person performing the abortion in a
139 reasonable time and manner, then the notarized written consent of
140 the unemancipated minor and the parent who is available shall be
141 sufficient.

142 (c) If the minor's pregnancy was caused by sexual
143 intercourse with the minor's natural father, adoptive father or
144 stepfather, then the notarized written consent of the
145 unemancipated minor and the minor's mother shall be sufficient.

146 (3) The physician shall keep the notarized written consent
147 of the parent or legal guardian in the medical file of the
148 pregnant woman for five (5) years past the majority of the
149 pregnant woman, but in no event less than seven (7) years.

150 (4) A minor who elects not to seek or does not obtain
151 consent from her parents or legal guardian under this section may
152 petition, on her own behalf or by next friend, the chancery court
153 in the county in which the minor resides * * * for a waiver of the
154 consent requirement of this section pursuant to the procedures of
155 Section 41-41-55.

156 **SECTION 5.** The following shall be codified as Section
157 41-41-54, Mississippi Code of 1972:

158 41-41-54. Proof of identification and relationship to a
159 **pregnant woman.** (1) The physician shall obtain from the parent
160 or legal guardian entitled to consent:

161 (a) Government-issued proof of the identity of the
162 parent or legal guardian; and

163 (b) Written documentation that establishes that the
164 parent or legal guardian is the lawful parent or legal guardian of
165 the pregnant woman.

166 (2) The physician shall keep a copy of the proof of
167 identification of the parent or legal guardian and the written
168 documentation that establishes the relationship of the parent or
169 legal guardian to the pregnant woman in the medical file of the



170 pregnant woman for five (5) years past the majority of the
171 pregnant woman, but in no event less than seven (7) years.

172 (3) A physician receiving parental consent under this
173 section shall execute for inclusion in the medical record of the
174 pregnant woman an affidavit stating: "I, (insert name of
175 physician), certify that according to my best information and
176 belief, a reasonable person under similar circumstances would rely
177 on the information presented by both the pregnant woman and her
178 parent or legal guardian as sufficient evidence of identity and
179 relationship."

180 **SECTION 6.** Section 41-41-55, Mississippi Code of 1972, is
181 amended as follows:

182 41-41-55. (1) The requirements and procedures under
183 Sections 41-41-50 through 41-41-63 shall apply and are available
184 to pregnant women whether or not they are residents of this state.

185 (2) **Mental health evaluation.** Prior to court proceedings
186 addressing a petition for judicial waiver, the court may require
187 the pregnant woman to participate in an evaluation and counseling
188 session with a mental health professional from the State
189 Department of Health or a staff member from the State Department
190 of Mental Health, or both. Such evaluation shall be confidential
191 and scheduled expeditiously.

192 (a) Such evaluation and counseling session shall be for
193 the purpose of developing trustworthy and reliable expert opinion
194 concerning the pregnant woman's sufficiency of knowledge, insight,
195 judgment and maturity with regard to her abortion decision in
196 order to aid the court in its decision and to make the state's
197 resources available to the court for this purpose. Persons
198 conducting such sessions may employ the information and printed
199 materials referred to in Section 41-41-35 in examining how well
200 the pregnant woman is informed about pregnancy, fetal development,
201 abortion risks and consequences, and abortion alternatives, and
202 should also endeavor to verify that the pregnant woman is seeking



203 an abortion of her own free will and is not acting under coercion,
204 intimidation, threats, abuse, undue pressure, or extortion by any
205 other persons.

206 (b) The results of such evaluation and counseling shall
207 be reported to the court by the most expeditious means,
208 commensurate with security and confidentiality, to assure receipt
209 by the court prior to a hearing on the pregnant woman's petition.

210 (3) The pregnant woman may participate in proceedings in the
211 court on her own behalf. The court shall advise her that she has
212 a right to court-appointed counsel and shall provide her with such
213 counsel upon her request or if she is not already adequately
214 represented. The court shall appoint a guardian ad litem for her.
215 Any guardian ad litem appointed under this section shall act to
216 maintain the confidentiality of the proceedings.

217 (4) Court proceedings under this section shall be
218 confidential and anonymous and shall be given such precedence over
219 other pending matters as is necessary to insure that the court may
220 reach a decision promptly, but in no case shall the court fail to
221 rule within seventy-two (72) hours of the time the application is
222 filed. If for any reason the court fails to rule within
223 seventy-two (72) hours of the time the application is filed, the
224 minor may proceed as if the consent requirement of Section
225 41-41-53 has been waived.

226 (5) Consent shall be waived if the court finds by clear and
227 convincing evidence either:

228 (a) That the minor or intellectually disabled pregnant
229 woman is mature and well-informed enough to make the abortion
230 decision on her own; or

231 (b) That performance of the abortion would be in the
232 best interests of the minor or intellectually disabled woman.

233 (6) A court that conducts proceedings under this section
234 shall issue written and specific factual findings and legal



235 conclusions supporting its decision and shall order that a
236 confidential record of the evidence be maintained.

237 (7) An expedited confidential and anonymous appeal shall be
238 available to any minor or intellectually disabled woman to whom
239 the court denies a waiver of consent. The Mississippi Supreme
240 Court shall issue promptly such rules and regulations as are
241 necessary to insure that proceedings under Sections 41-41-50
242 through 41-41-63 are handled in an expeditious, confidential and
243 anonymous manner.

244 (8) No filing fees shall be required of any minor or
245 intellectually disabled woman who avails herself of the procedures
246 provided by this section.

247 **SECTION 7.** Section 41-41-57, Mississippi Code of 1972, is
248 amended as follows:

249 41-41-57. (1) Sections 41-41-50 through 41-41-63 shall not
250 apply when, in the best clinical judgment of the physician on the
251 facts of the case before him, a medical emergency exists that so
252 complicates the pregnancy as to require an immediate abortion. A
253 physician who does not comply with Sections 41-41-53 and 41-41-55
254 by reason of this exception shall state in the medical record of
255 the abortion the medical indications on which his judgment was
256 based. However, the attending physician shall, within twenty-four
257 (24) hours after completion of the abortion, notify one of the
258 parents or the legal guardian of the minor or intellectually
259 disabled woman in the manner provided in this section that a
260 medical emergency abortion was performed on the minor or
261 intellectually disabled woman and of the circumstances that
262 warranted invocation of this section.

263 (2) Unless the minor or intellectually disabled woman gives
264 notice of her intent to seek a judicial waiver pursuant to Section
265 41-41-55, the attending physician shall verbally inform the parent
266 or legal guardian of the minor or intellectually disabled woman
267 within twenty-four (24) hours after the performance of a medical



268 emergency abortion that an abortion was performed on the minor or
269 intellectually disabled woman. The attending physician shall also
270 inform the parent or legal guardian of the basis for the
271 certification of the physician required under subsection (1) of
272 this section, and provide details regarding any additional risks
273 to the minor or intellectually disabled woman. The attending
274 physician shall also send a written notice of the performed
275 abortion by certified mail to the last-known address of the parent
276 or legal guardian, restricted delivery, return receipt requested.

277 (3) If the minor or intellectually disabled woman gives
278 notice to the attending physician of her intent to seek a judicial
279 waiver pursuant to Section 41-41-55, the physician shall file a
280 notice with any judge of a court of competent jurisdiction that
281 the minor has given such notice and shall provide the information
282 the physician would have been required to provide the parent under
283 subsection (2) of this section if the minor or intellectually
284 disabled woman had not given notice of her intent to seek a
285 judicial waiver.

286 (4) The court shall expeditiously schedule a confidential
287 conference with notice to the minor or intellectually disabled
288 woman and the physician. If the minor or intellectually disabled
289 woman is able to participate in the proceedings, the court shall
290 advise her that she has the right to court-appointed counsel and
291 shall, upon her request, provide the minor or intellectually
292 disabled woman with such counsel. If the minor or intellectually
293 disabled woman is unable to participate, the court shall appoint
294 counsel on her behalf.

295 (5) After an appropriate hearing, the court, taking into
296 account the medical condition of the minor or intellectually
297 disabled woman, shall set a deadline by which she must file a
298 petition or motion pursuant to Section 41-41-55. The court may
299 subsequently extend the deadline in light of the pregnant woman's
300 medical condition or other equitable considerations. If the minor



301 or intellectually disabled woman does not file a petition or
302 motion by the deadline, either in that court or in another court
303 of competent jurisdiction with a copy filed in that court, the
304 court shall direct that the court clerk provide the notice to a
305 parent or legal guardian.

306 **SECTION 8.** Section 41-41-63, Mississippi Code of 1972, is
307 amended as follows:

308 41-41-63. (1) If any provision, word, phrase or clause of
309 Sections 41-41-50 through 41-41-63 or the application thereof to
310 any person or circumstance shall be held invalid, such invalidity
311 shall not affect the provisions, words, phrases, clauses or
312 application of Sections 41-41-50 through 41-41-63 which can be
313 given effect without the invalid provision, word, phrase, clause
314 or application, and to this end the provisions, words, phrases and
315 clauses of Sections 41-41-51 through 41-41-63 are declared to be
316 severable.

317 (2) Nothing in this act shall be construed as creating or
318 recognizing a right to abortion. It is not the intention of this
319 law to make lawful an abortion that is unlawful as of June 30,
320 2012.

321 (3) The Legislature, by joint resolution, may appoint one or
322 more of its members who sponsored or co-sponsored this act, as a
323 matter of right and in his or her official capacity, to intervene
324 to defend this law in any case in which its constitutionality is
325 challenged.

326 **SECTION 9.** This act shall take effect and be in force from
327 and after July 1, 2012.

