

By: Senator(s) Gandy

To: Public Health and Welfare

SENATE BILL NO. 2427

1 AN ACT TO PROHIBIT ABORTIONS IF THE PROBABLE
2 POST-FERTILIZATION AGE OF THE UNBORN CHILD IS 20 WEEKS OR GREATER;
3 TO PROVIDE CRIMINAL PENALTIES FOR VIOLATIONS OF THIS ACT; TO
4 PROVIDE CERTAIN EXCEPTIONS; TO AMEND SECTION 97-3-3, MISSISSIPPI
5 CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR
6 RELATED PURPOSES.

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

8 **SECTION 1.** This act may be cited as the "Pain-Capable Unborn
9 Child Protection Act."

10 **SECTION 2.** **Legislative findings and declaration of**
11 **constitutional authority for enactment.** The Mississippi
12 Legislature finds and declares the following:

13 (a) Pain receptors (nociceptors) are present throughout
14 the unborn child's entire body and nerves link these receptors to
15 the brain's thalamus and subcortical plate by no later than twenty
16 (20) weeks after fertilization.

17 (b) By eight (8) weeks after fertilization, the unborn
18 child reacts to touch. After twenty (20) weeks, the unborn child
19 reacts to stimuli that would be recognized as painful if applied
20 to an adult human, for example, by recoiling.



21 (c) In the unborn child, application of such painful
22 stimuli is associated with significant increases in stress
23 hormones known as the stress response.

24 (d) Subjection to such painful stimuli is associated
25 with long-term harmful neurodevelopmental effects, such as altered
26 pain sensitivity and, possibly, emotional, behavioral and learning
27 disabilities later in life.

28 (e) For the purposes of surgery on unborn children,
29 fetal anesthesia is routinely administered and is associated with
30 a decrease in stress hormones compared to their level when painful
31 stimuli are applied without such anesthesia. In the United
32 States, surgery of this type is being performed by twenty (20)
33 weeks after fertilization and earlier in specialized units
34 affiliated with children's hospitals.

35 (f) The position, asserted by some physicians, that the
36 unborn child is incapable of experiencing pain until a point later
37 in pregnancy than twenty (20) weeks after fertilization
38 predominately rests on the assumption that the ability to
39 experience pain depends on the cerebral cortex and requires nerve
40 connections between the thalamus and the cortex. However, recent
41 medical research and analysis, especially since 2007 provides
42 strong evidence for the conclusion that a functioning cortex is
43 not necessary to experience pain.



44 (g) Substantial evidence indicates that children born
45 missing the bulk of the cerebral cortex, and those with
46 hydranencephaly, nevertheless experience pain.

47 (h) In adult humans and in animals, stimulation or
48 ablation of the cerebral cortex does not alter pain perception,
49 while stimulation or ablation of the thalamus does.

50 (i) Substantial evidence indicates that structures used
51 for pain processing in early development differ from those of
52 adults, using different neural elements available at specific
53 times during development, such as the subcortical plate, to
54 fulfill the role of pain processing.

55 (j) The position, asserted by some commentators, that
56 the unborn child remains in a coma-like sleep state that precludes
57 the unborn child experiencing pain is inconsistent with the
58 documented reaction of unborn children to painful stimuli and with
59 the experience of fetal surgeons who have found it necessary to
60 sedate the unborn child with anesthesia to prevent the unborn
61 child from engaging in vigorous movement in reaction to invasive
62 surgery.

63 (k) Consequently, there is substantial medical evidence
64 that an unborn child is capable of experiencing pain at least by
65 twenty (20) weeks after fertilization, if not earlier.

66 (l) It is the purpose of the Mississippi Legislature to
67 assert a compelling governmental interest in protecting the lives



68 of unborn children from the stage at which substantial medical
69 evidence indicates that they are capable of feeling pain.

70 (m) The compelling governmental interest in protecting
71 the lives of unborn children from the stage at which substantial
72 medical evidence indicates that they are capable of feeling pain
73 is intended to be separate from and independent of the compelling
74 governmental interest in protecting the lives of unborn children
75 from the stage of viability, and neither governmental interest is
76 intended to replace the other.

77 (n) The Mississippi Legislature has authority to extend
78 protection to pain-capable unborn children under the Tenth
79 Amendment to the United States Constitution.

80 **SECTION 3. Pain-capable unborn child protection.** (1)

81 Unlawful conduct. Notwithstanding any other provision of law, it
82 shall be unlawful for any person to perform an abortion or attempt
83 to do so, unless in conformity with the requirements set forth in
84 subsection (2) of this section.

85 (2) Requirements for abortions. The physician performing or
86 attempting the abortion shall first make a determination of the
87 probable post-fertilization age of the unborn child or reasonably
88 rely upon such a determination made by another physician. In
89 making such a determination, the physician shall make such
90 inquiries of the pregnant woman and perform or cause to be
91 performed such medical examinations and tests as a reasonably
92 prudent physician, knowledgeable about the case and the medical



93 conditions involved, would consider necessary to make an accurate
94 determination of post-fertilization age.

95 (3) Except as provided in subsection (2) of this section,
96 the abortion shall not be performed or attempted, if the probable
97 post-fertilization age, as determined under subsection (2) of this
98 section, of the unborn child is twenty (20) weeks or greater.

99 (4) Subject to subsection (5) of this section, subsection
100 (3) of this section does not apply if:

101 (a) In reasonable medical judgment, the abortion is
102 necessary to save the life of a pregnant woman whose life is
103 endangered by a physical disorder, physical illness, or physical
104 injury, including a life-endangering physical condition caused by
105 or arising from the pregnancy itself, but not including
106 psychological or emotional conditions; or

107 (b) The pregnancy is the result of rape, or the result
108 of incest against a minor, if the rape has been reported at any
109 time prior to the abortion to an appropriate law enforcement
110 agency, or if the incest against a minor has been reported at any
111 time prior to the abortion to an appropriate law enforcement
112 agency or to a government agency legally authorized to act on
113 reports of child abuse or neglect.

114 (5) Notwithstanding the definitions of "abortion" and
115 "attempt an abortion" in this section, a physician terminating or
116 attempting to terminate a pregnancy under an exception provided by
117 subsection (4) of this section may do so only in the manner which,



118 in reasonable medical judgment, provides the best opportunity for
119 the unborn child to survive, unless, in reasonable medical
120 judgment, termination to the pregnancy in that manner would pose a
121 greater risk of:

122 (a) The death of a pregnant woman.

123 (b) The substantial and irreversible physical
124 impairment of a major bodily function, not including psychological
125 or emotional conditions, of the pregnant woman.

126 (6) **Criminal penalty.** Whoever violates subsection (1) of
127 this section shall be guilty of a felony and, upon conviction
128 thereof, shall be fined not more than Twenty-five Thousand Dollars
129 (\$25,000.00) or imprisoned for not more than five (5) years, or
130 both.

131 (7) **Bar to prosecution.** A woman, upon whom an abortion in
132 violation of subsection (1) of this section is performed or
133 attempted, may not be prosecuted under, or for a conspiracy to
134 violate, subsection (1) of this section.

135 (8) **Definitions.** In this section the following definitions
136 apply:

137 (a) The term "abortion" means the use or prescription
138 of any instrument, medicine, drug, or any other substance or
139 device:

140 (i) To intentionally kill the unborn child of a
141 woman known to be pregnant; or



142 (ii) To intentionally terminate the pregnancy of a
143 woman known to be pregnant, with an intention other than:

144 1. After viability to produce a live birth
145 and preserve the life and health of the child born alive; or

146 2. To remove a dead unborn child.

147 (b) The term "attempt," with respect to an abortion,
148 means conduct that, under the circumstances as the actor believes
149 them to be, constitutes a substantial step in a course of conduct
150 planned to culminate in performing an abortion.

151 (c) The term "fertilization" means the fusion of human
152 spermatozoon with a human ovum.

153 (d) The term "perform" with respect to an abortion,
154 includes induce an abortion through a medical or chemical
155 intervention including writing a prescription for a drug or device
156 intended to result in an abortion.

157 (e) The term "physician" means a person licensed to
158 practice medicine and surgery or osteopathic medicine and surgery,
159 or otherwise legally authorized to perform an abortion.

160 (f) The term "post-fertilization age" means the age of
161 the unborn child as calculated from the fusion of a human
162 spermatozoon with a human ovum.

163 (g) The term "probable post-fertilization age of the
164 unborn child" means what, in reasonable medical judgment, will
165 with reasonable probability be the post-fertilization age of the



166 unborn child at the time the abortion is planned to be performed
167 or induced.

168 (h) The term "reasonable medical judgment" means a
169 medical judgment that would be made by a reasonably prudent
170 physician, knowledgeable about the case and the treatment
171 possibilities with respect to the medical conditions involved.

172 (i) The term "unborn child" means an individual
173 organism of the species Homo sapiens, beginning at fertilization,
174 until the point of being born alive.

175 (j) The term "woman" means a female human being whether
176 or not she has reached the age of majority.

177 **SECTION 4.** Section 97-3-3, Mississippi Code of 1972, is
178 amended as follows:

179 97-3-3. (1) Any person wilfully and knowingly causing, by
180 means of any instrument, medicine, drug or other means whatever,
181 any woman pregnant with child to abort or miscarry, or attempts to
182 procure or produce an abortion or miscarriage shall be guilty of a
183 felony unless the same were done by a duly licensed, practicing
184 physician:

185 (a) Where necessary for the preservation of the
186 mother's life;

187 (b) Where pregnancy was caused by rape.

188 Said person shall, upon conviction, be imprisoned in the
189 State Penitentiary not less than one (1) year nor more than ten
190 (10) years; provided, however, if the death of the mother results



191 therefrom, the person procuring, causing or attempting to procure
192 or cause the illegal abortion or miscarriage shall be guilty of
193 murder.

194 (2) No act prohibited in subsection (1) of this section
195 shall be considered exempt under the provisions of subparagraph (a)
196 thereof unless performed upon the prior advice in writing, of two
197 (2) reputable licensed physicians.

198 (3) The license of any physician or nurse shall be
199 automatically revoked upon conviction under the provisions of this
200 section.

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

203 (5) Nothing in this section shall be construed as
204 conflicting with this act.

205 **SECTION 5.** If any provision, word, phrase or clause of this
206 act or the application thereof to any person or circumstance is
207 held invalid, such invalidity shall not affect the provision,
208 words, phrases, clauses or applications of this act that can be
209 given effect without the invalid provision, word, phrase, clause
210 or application and to this end, the provisions, words, phrases and
211 clauses of this act are declared to be severable.

212 **SECTION 6.** This act shall take effect and be in force from
213 and after July 1, 2014.

