

By: Senator(s) McDaniel

To: Public Health and
Welfare

SENATE BILL NO. 2790

1 AN ACT TO AMEND SECTION 41-41-33, MISSISSIPPI CODE OF 1972,
2 TO PROHIBIT THE ABORTION OF A HUMAN BEING BASED UPON A
3 DETERMINATION OF THE GENDER OR RACE OF THE HUMAN BEING; TO AMEND
4 SECTION 41-41-39, MISSISSIPPI CODE OF 1972, TO PRESCRIBE CRIMINAL
5 PENALTIES FOR VIOLATIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 41-41-33, Mississippi Code of 1972, is
8 amended as follows:

9 41-41-33. (1) No abortion shall be performed or induced
10 except with the voluntary and informed consent of the woman upon
11 whom the abortion is to be performed or induced. Except in the
12 case of a medical emergency, consent to an abortion is voluntary
13 and informed if and only if:

14 (a) The woman is told the following by the physician
15 who is to perform or induce the abortion or by the referring
16 physician, orally and in person, at least twenty-four (24) hours
17 before the abortion:

18 (i) The name of the physician who will perform or
19 induce the abortion;



20 (ii) The particular medical risks associated with
21 the particular abortion procedure to be employed including, when
22 medically accurate, the risks of infection, hemorrhage and breast
23 cancer, and the danger to subsequent pregnancies and infertility;

24 (iii) The probable gestational age of the unborn
25 child at the time the abortion is to be performed or induced; and

26 (iv) The medical risks associated with carrying
27 her child to term.

28 (b) The woman is informed, by the physician or his
29 agent, orally and in person, at least twenty-four (24) hours
30 before the abortion:

31 (i) That medical assistance benefits may be
32 available for prenatal care, childbirth and neonatal care;

33 (ii) That the father is liable to assist in the
34 support of her child, even in instances in which the father has
35 offered to pay for the abortion;

36 (iii) That there are available services provided
37 by public and private agencies which provide pregnancy prevention
38 counseling and medical referrals for obtaining pregnancy
39 prevention medications or devices; and

40 (iv) That she has the right to review the printed
41 materials described in Section 41-41-35(1) (a), (b) and (c). The
42 physician or his agent shall orally inform the woman that those
43 materials have been provided by the State of Mississippi and that
44 they describe the unborn child and list agencies that offer



45 alternatives to abortion. If the woman chooses to view those
46 materials, copies of them shall be furnished to her. The
47 physician or his agent may disassociate himself or themselves from
48 those materials, and may comment or refrain from comment on them
49 as he chooses. The physician or his agent shall provide the woman
50 with the printed materials described in Section 41-41-35(1)(d).

51 (c) The woman certifies in writing before the abortion
52 that the information described in paragraphs (a) and (b) of this
53 section has been furnished to her, and that she has been informed
54 of her opportunity to review the information referred to in
55 subparagraph (iv) of paragraph (b) of this section.

56 (d) Before the abortion is performed or induced, the
57 physician who is to perform or induce the abortion receives a copy
58 of the written certification prescribed by this section.

59 (2) The State Department of Health shall enforce the
60 provisions of Sections 41-41-31 through 41-41-39 at abortion
61 facilities, as defined in Section 41-75-1.

62 (3) No person may knowingly use or employ any instrument or
63 procedure upon a pregnant woman with the specific intent of
64 causing or abetting the termination of the life of an unborn human
65 being based upon a determination of the gender or race of the
66 unborn human being. No person may knowingly administer to,
67 prescribe for, or procure for, or sell to any pregnant woman any
68 medicine, drug or other substance with the specific intent of
69 causing or abetting the termination of the life of an unborn human



70 being based upon a determination of the gender or race of the
71 unborn human being. Any violation of this subsection shall be
72 prosecuted pursuant to 41-41-39 (2).

73 **SECTION 2.** Section 41-41-39, Mississippi Code of 1972, is
74 amended as follows:

75 41-41-39. (1) Anyone who purposefully, knowingly or
76 recklessly performs or attempts to perform or induce an abortion
77 without complying with Sections 41-41-31 through 41-41-37 shall,
78 upon conviction, be guilty of a misdemeanor and shall be punished
79 by a fine of * * * Five Thousand Dollars (\$5,000.00), by
80 imprisonment in the county jail for a period of time not to
81 exceed * * * one (1) year, or both such fine and imprisonment.

82 (2) Any person who violates Section 41-41-33(3) shall, upon
83 conviction, be guilty of a felony punishable by imprisonment in
84 the State Penitentiary not less than one (1) year nor more than
85 ten (10) years, by a fine of up to Ten Thousand Dollars
86 (\$10,000.00), or both such fine and imprisonment.

87 (3) Nothing in this section may be construed to subject the
88 pregnant mother upon whom any abortion is performed or attempted
89 to any criminal conviction and penalty.

90 **SECTION 3.** (1) If any provision of this act is found to be
91 unconstitutional, the provision is severable; and the other
92 provisions of this act remain effective, except as provided in
93 other sections of this act.



94 (2) Nothing in this act may be construed to repeal, by
95 implication or otherwise, any provision not explicitly repealed.

96 (3) If any provision of this act is ever declared
97 unconstitutional or its enforcement temporarily or permanently
98 restricted or enjoined by judicial order, the provisions of
99 Sections 41-41-31 through 41-41-91, Mississippi Code of 1972,
100 shall be enforced. However, if such temporary or permanent
101 restraining order or injunction is subsequently stayed or
102 dissolved or such declaration vacated or any similar court order
103 otherwise ceases to have effect, all provisions of this act that
104 are not declared unconstitutional or whose enforcement is not
105 restrained shall have full force and effect.

106 (4) Nothing in the provisions of Sections 41-41-31 through
107 41-41-91, Mississippi Code of 1972, shall be construed to permit
108 any action that is prohibited by Senate Bill No. 2297, 2008
109 Regular Session, and to the extent that any provision of Sections
110 41-41-31 through 41-41-91, Mississippi Code of 1972, would be so
111 construed, then the provisions of Senate Bill No. 2297, 2008
112 Regular Session, shall take precedence.

113 **SECTION 4.** This act shall take effect and be in force from
114 and after July 1, 2014.

