

By: Senator(s) Watson

To: Public Health and Welfare

SENATE BILL NO. 2326

1 AN ACT TO AMEND SECTION 41-41-91, MISSISSIPPI CODE OF 1972,
2 TO SPECIFICALLY PROHIBIT THE USE OF PUBLIC FUNDS, WHETHER BY
3 DIRECT APPROPRIATION BY THE LEGISLATURE, BY GRANT FUNDING, BY
4 STUDENT TUITION OR FEES, OR BY THE USE OF PUBLIC FACILITIES, FOR
5 AN ABORTION OR FOR TRAINING TO PERFORM AN ABORTION OR FOR FAMILY
6 PLANNING SERVICES; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 41-41-91, Mississippi Code of 1972, is
9 amended as follows:

10 41-41-91. (1) Notwithstanding any other provision of law to
11 the contrary, no public funds that are made available to any
12 institution, board, commission, department, agency, official, or
13 employee of the State of Mississippi, or of any local political
14 subdivision of the state, whether those funds are made available
15 by the government of the United States, the State of Mississippi,
16 or a local governmental subdivision, or from any other public
17 source, shall be used in any way for, to assist in, or to provide
18 facilities for abortion, except:

19 (a) When the abortion is medically necessary to prevent
20 the death of the mother; or



21 (b) When the abortion is being sought to terminate a
22 pregnancy resulting from an alleged act of rape or incest; or

23 (c) When there is a fetal malformation that is
24 incompatible with the baby being born alive.

25 (2) (a) **Title.** This subsection (2) may be known and cited
26 as the "Defunding the Abortion Industry Act."

27 (b) **Legislative findings and purposes.**

28 (i) The Legislature of the State of Mississippi
29 finds that:

30 1. The State of Mississippi voluntarily
31 participates in several federal programs that provide funds for
32 family planning services. Among these programs are Title X of the
33 Public Health Service Act which provides project grants to public
34 and private agencies for family planning services and Title XX of
35 the Social Security Act which provides block grants to the states
36 for social services, including family planning.

37 2. Title X specifies that funds may not be
38 used to finance abortions or abortion-related activity.
39 Specifically, Title X provides that "none of the funds
40 appropriated...shall be used in programs where abortion is a
41 method of family planning" (42 USC Section 300a-6).

42 3. Title XX funds may not be used for the
43 provision of medical care. Moreover, any Title XX funds used to
44 match Title X funds may not be used to finance abortions or
45 abortion-related activity.



46 4. In addition to federal family planning
47 funds, the State of Mississippi does not provide state-originated
48 funds for family planning.

49 5. Section 41-41-91 prohibits the use of
50 public funds for abortions performed in cases not involving
51 threats to the life of the mother.

52 6. Left unrestricted or unregulated, federal
53 and any state funds for family planning services can, in some
54 cases, effectively and indirectly subsidize contractors,
55 individuals, organizations, or entities performing or inducing
56 abortions, referring for abortions, or counseling in favor of
57 abortions through shared administrative costs, overhead, employee
58 salaries, rent, utilities, and various other expenses.

59 7. When the federal or a state government
60 appropriates public funds to establish a program, it is entitled
61 to define the limits of that program. *Rust v. Sullivan*, 500 U.S.
62 173, 194 (1991).

63 8. The decision not to fund abortion places
64 no governmental obstacle in the path of a woman who chooses to
65 terminate her pregnancy. *Rust v. Sullivan*, 500 U.S. 173, 201
66 (1991).

67 9. The government may rationally distinguish
68 between abortion and other medical procedures because "no other
69 procedure involves the purposeful termination of a potential
70 life." *Harris v. McRae*, 448 U.S. 297, 325 (1980).



71 10. It is permissible for the State of
72 Mississippi to engage in unequal subsidization of abortion and
73 other medical services to encourage alternative activity deemed in
74 the public interest. Rust v. Sullivan, 500 U.S. 173, 201 (1991).

75 11. Requiring abortion-related activity to be
76 completely separate from other activities that receive federal
77 and/or state funding in no way denies any right to engage in
78 abortion-related activities. Rust v. Sullivan, 500 U.S. 173, 198
79 (1991).

80 12. Women are best served by family planning
81 providers who can address their comprehensive health care needs.
82 Some family planning providers are not equipped to address these
83 needs. For example, Planned Parenthood's internal surveys show
84 that approximately seventy percent (70%) of women who visit their
85 clinics do not follow up with referrals to other medical
86 facilities to have important health needs addressed.

87 (ii) Based on the findings in subparagraph (i) of
88 this paragraph, the purposes of this subsection (2) are to:

89 1. Advance the state's policy that normal
90 childbirth is in the best interests of the well-being and common
91 good of Mississippi's citizens and should be given preference,
92 encouragement and support by law and state action;

93 2. Ensure that public funds are not used to
94 subsidize abortions directly or indirectly;



95 3. Ensure that no federal family planning
96 funds appropriated or dispersed by the state are used to pay the
97 direct or indirect costs (including, but not limited to,
98 administrative costs or expenses, overhead, employee salaries,
99 rent, and telephone and other utilities) of abortion procedures,
100 abortion referrals, or abortion counseling provided by family
101 planning contractors;

102 4. Ensure recipients of federal family
103 planning funds that, as permitted by current law, affiliate with
104 an independent, unsubsidized entity that performs or provides
105 abortions, abortion referrals, or abortion counseling, do not use
106 public funds to subsidize, either directly or indirectly, the
107 provision of abortions, abortion counseling, or abortion
108 referrals; and

109 5. Guarantee that no state family planning
110 funds shall be appropriated or dispersed to individuals,
111 organizations, entities, or affiliates of individuals,
112 organizations, or entities that perform, induce, refer for, or
113 counsel on behalf of elective abortions.

114 (c) **Definitions.** As used in this subsection (2) only:

115 (i) "Abortion" means the act of using or
116 prescribing any instrument, medicine, drug, or any other
117 substance, device, or means with the intent to terminate the
118 clinically diagnosable pregnancy of a woman with the knowledge
119 that the termination by those means will with reasonable



120 likelihood cause the death of the unborn child. Such use,
121 prescription, or means is not an abortion if done with the intent
122 to:

123 1. Save the life or preserve the health of
124 the unborn child;

125 2. Remove a dead unborn child caused by
126 spontaneous abortion; or

127 3. Remove an ectopic pregnancy.

128 (ii) "Affiliate" means an organization that owns
129 or controls or is owned or controlled, in whole or in part, by the
130 other; related by shareholdings or other means of control; or a
131 subsidiary, parent, or sibling corporation.

132 (iii) "Facility" or "medical facility" means any
133 public or private hospital, clinic, center, medical school,
134 medical training institution, health care facility, physician's
135 office, infirmary, dispensary, ambulatory surgical treatment
136 center, or other institution or location wherein medical care is
137 provided to any person.

138 (iv) "Family planning contractor" and "contractor"
139 mean an individual, organization, or entity that enters into a
140 contract or agreement with the Mississippi Department of Health or
141 other responsible department or agency to receive funds for and to
142 provide family planning services.

143 (v) "Family planning services" means a range of
144 acceptable methods to prevent, delay, space, or otherwise time



145 pregnancy, including, but not limited to, natural family planning
146 methods and infertility services. Family planning services do not
147 include abortion, abortion referrals, or counseling in favor of
148 abortion.

149 (vi) "Federal family planning funds" means any
150 federal money appropriated or dispersed by any state official,
151 branch, department or agency, in whole or in part, for family
152 planning services, including, but not limited to, funds under
153 Title X and Title XX or other federal money accepted by the state,
154 in whole or in part, for family planning services.

155 (vii) "Human cloning" means human asexual
156 reproduction accomplished by 1. introducing the genetic material
157 from one or more human somatic or embryonic cells into a
158 fertilized or unfertilized oocyte whose nuclear material has been
159 removed or inactivated before or after introduction, so as to
160 produce an organism at any stage of development with a human or
161 predominantly human genetic constitution; 2. artificially
162 subdividing a human embryo at any time from the two-cell stage
163 onward, such that more than one (1) human organism results; or 3.
164 introducing pluripotent cells from any source into a human embryo,
165 nonhuman embryo, or artificially manufactured human embryo or
166 trophoblast, under conditions where the introduced cells generate
167 all or most of the body tissues of the developing organism.

168 (viii) "Physician" means a doctor of medicine or
169 osteopathy legally authorized to practice medicine and surgery by



170 the state in which the doctor performs such activity or any other
171 individual legally authorized by the state to perform abortions.

172 (ix) "Prohibited human research" means:

173 1. Any medical procedures, scientific or
174 laboratory research, or other kinds of investigation that kill or
175 injure the human subject, at any stage of development, of such
176 research; or

177 2. Any scientific or laboratory research or
178 other kinds of investigation conducted on fetal tissue obtained
179 from an abortion, unless the research is done to obtain evidence
180 in a rape or incest investigation.

181 "Prohibited human research" does not include:

182 a. In vitro fertilization and
183 accompanying embryo transfer to a woman's body;

184 b. Research in the use of nuclear
185 transfer or other cloning techniques to produce molecules;
186 deoxyribonucleic acid; or cells other than human embryos, tissues,
187 organs, plants, or animals other than humans; or

188 c. Any diagnostic procedure that
189 benefits the human subject to such tests.

190 (x) "Unborn child" means the offspring of human
191 beings from conception until birth.

192 (d) **Comprehensive prohibition on the use of public**
193 **funds.**



194 (i) Notwithstanding any other provision of law to
195 the contrary, no public funds made available to any institution,
196 board, commission, department, agency, official, or employee of
197 the State of Mississippi, or of any local political subdivision
198 thereof, whether such funds are made available by the government
199 of the United States, the State of Mississippi, or a local
200 governmental subdivision or are from any other public source, or
201 monies paid by students as part of tuition or fees to a state
202 university or a community college shall be used in any way for, to
203 assist in, or to provide facilities for an abortion or for
204 training to perform an abortion.

205 (ii) It shall be unlawful for any person employed
206 by the state or any agency or political subdivision thereof,
207 within the scope of the person's employment, to perform or assist
208 in an abortion.

209 (iii) No fund or committee authorized by the state
210 or any agency thereof for the special protection of women or
211 children shall be authorized to use or distribute public funds for
212 the payment of abortions, abortion referrals, abortion counseling,
213 or abortion-related services.

214 (iv) No organization that receives funds
215 authorized or appropriated by the state may use those funds to
216 perform or promote abortions, provide counseling in favor of
217 abortion, or to make referrals for abortions.



218 (v) The limitations in subparagraphs (i) through
219 (iv) of this paragraph shall not apply to an abortion performed
220 when the life of the mother is endangered by a physical disorder,
221 physical illness, or physical injury, including a life-endangering
222 physical condition caused by or arising from the pregnancy itself.

223 (e) Use of public facilities prohibited.

224 (i) It shall be unlawful for any public
225 institution, public facility, public equipment, or other physical
226 asset owned, leased, or controlled by the state or any agency or
227 political subdivision thereof to be used for the purpose of
228 performing or assisting an abortion. This limitation shall not
229 apply to an abortion performed when the life of the mother is
230 endangered by a physical disorder, physical illness, or physical
231 injury, including a life-endangering physical condition caused by
232 or arising from the pregnancy itself.

233 (ii) It shall be unlawful for any public
234 institution or facility to lease or sell its facilities to or
235 property or permit the subleasing of its facilities or property to
236 any physician or health facility for use in the provision or
237 performance of abortion. This limitation shall not apply to an
238 abortion performed when the life of the mother is endangered by a
239 physical disorder, physical illness, or physical injury, including
240 a life-endangering physical condition caused by or arising from
241 the pregnancy itself.



242 (f) Use of education-related fees prohibited. No
243 applicant, student, teacher or employee of any public school or
244 university shall be required to pay any fees that would, in whole
245 or in part, fund an abortion or insurance coverage for an abortion
246 for any other applicant, student, teacher or employee of that
247 school.

248 (g) Contracts with abortion providers
249 prohibited/restricted. No hospital, clinic, or other health
250 facility owned or operated by the state, a county, a city, or
251 other governmental entity shall enter into any contract with any
252 physician or health facility under the terms of which such
253 physician or health facility agrees to provide or perform
254 abortions, except when the life of the mother is endangered by a
255 physical disorder, physical illness, or physical injury, including
256 a life-endangering physical condition caused by or arising from
257 the pregnancy itself.

258 (h) Research grants restricted.

259 (i) Public funds shall not be expended, paid, or
260 granted to or on behalf of an existing or proposed research
261 project that involves the performance of abortion, human cloning,
262 or prohibited human research.

263 (ii) No monies derived from an award of public
264 funds shall be passed through to any other research project,
265 person, or entity involved with the provision or performance of
266 abortion, human cloning, or prohibited human research.



267 (iii) A research project that receives an award of
268 public funds shall maintain financial records that demonstrate
269 strict compliance with this subsection (2).

270 (iv) Any audit conducted pursuant to any grant or
271 contract awarding public funds shall also certify whether there is
272 compliance with this subsection (2) and shall note any
273 noncompliance as a material audit finding.

274 (i) **School-based health clinics.**

275 (i) No facility operated on public school property
276 or operated by a public school district and no employee of any
277 such facility acting within the scope of such employee's
278 employment shall provide any of the following services to public
279 school students:

- 280 1. Provision or performance of an abortion;
281 2. Counseling in favor of an abortion;
282 3. Referral for an abortion; or
283 4. Dispensing drugs classified as "emergency
284 contraception" by the federal Food and Drug Administration (FDA).

285 (ii) The State Department of Education and local
286 school districts are prohibited from utilizing state funds for the
287 procurement of abortions or distribution of drugs classified as
288 "emergency contraception" by the federal Food and Drug
289 Administration (FDA).

290 (j) **Legal funds restricted.** No federal or any state
291 funds which are appropriated by the state for the provision of



292 legal services by private agencies, as authorized by statute
293 previously or subsequently enacted, may be used, directly or
294 indirectly, to:

295 (i) Advocate for a legal "right" to abortion;

296 (ii) Provide legal assistance with respect to any
297 proceeding or litigation which seeks to procure any abortion, or
298 to procure public funding for any abortion; or

299 (iii) Provide legal assistance with respect to any
300 proceeding or litigation which seeks to compel the performance or
301 assistance in the performance of any abortion, or the provision of
302 facilities for the performance of any abortion.

303 (k) **IOLTA accounts restricted.** No Interest on Lawyer
304 Trust Accounts (IOLTA) funds may be used, directly or indirectly,
305 to do any of the following:

306 (i) Advocate for a legal "right" to abortion;

307 (ii) Provide legal assistance with respect to any
308 proceeding or litigation which seeks to procure or procure public
309 funding for any abortion.

310 (iii) Provide legal assistance with respect to any
311 proceeding or litigation which seeks to compel the performance or
312 assistance in the performance of any abortion or the provision of
313 facilities for the performance of any abortion.

314 (l) **Prohibitions on use of contract funds.**

315 (i) No federal or state family planning funds
316 shall be used by contractors of the Department of Health or other



317 department or agency to pay the direct or indirect costs,
318 including, but not limited to, administrative costs and expenses,
319 overhead, employee salaries, rent, and telephone and other
320 utilities of performing, inducing, referring for, or counseling in
321 favor of abortions.

322 (ii) No state family planning funds shall be
323 granted, appropriated, or distributed to individuals or
324 organizations that perform, induce, refer for abortion, or counsel
325 in favor of abortions, or that have affiliates that perform,
326 induce, refer for, or counsel in favor of abortions.

327 (iii) A family planning contractor, individual,
328 organization, or entity applying for federal family planning funds
329 administered or distributed by the Department of Health or other
330 appropriate department or agency must certify in writing on forms
331 provided by the Department of Health or other appropriate
332 department or agency that it will not, directly or indirectly, use
333 the funds to perform, induce, refer for abortion, or counsel in
334 favor of abortions. Recipients of federal family planning funds
335 administered or distributed through the Department of Health or
336 other appropriate department or agency will annually submit a
337 written certification of continued compliance. Funds shall not be
338 granted to any family planning contractor, individual,
339 organization, or entity until the required certification has been
340 received.



341 (iv) A family planning contractor, individual,
342 organization, or entity applying for state family planning funds
343 must certify in writing on forms provided by the Department of
344 Health or other appropriate department or agency that it will not
345 perform, induce, refer for, or counsel in favor of abortions, and
346 that it does not have affiliates that perform, induce, refer for,
347 or counsel in favor of abortions. Recipients of state family
348 planning funds through the Department of Health or other
349 appropriate department or agency will submit an annual written
350 certification of continued compliance. Funds shall not be granted
351 to any family planning contractor, individual, organization, or
352 entity until required certification has been received.

353 (v) The Department of Health or other appropriate
354 department or agency shall include in its financial audit a review
355 of the use of appropriated federal and any state family planning
356 funds to ensure compliance with this subsection (2).

357 (m) **Failure to comply, recoupment of funds, and civil**
358 **penalties.**

359 (i) A family planning contractor that receives any
360 federal and/or state family planning funds and is found not to be
361 in compliance with the requirements of this subsection (2) will be
362 enjoined from receiving any future federal and/or state family
363 planning funds and will be liable to return to the state the full
364 amount of federal and/or state family planning funds received
365 within thirty (30) days.



366 (ii) Any violation of this subsection (2) may
367 subject the family planning contractor to a civil penalty or fine
368 up to One Thousand Dollars (\$1,000.00) per day imposed by the
369 Department of Health or other appropriate department or agency.

370 (iii) Both the Office of the Attorney General and
371 the Office of the District Attorney for the county in which the
372 violation occurred may institute legal action to enforce:

373 1. Recoupment, collection or reimbursement of
374 federal and/or state family planning funds; and

375 2. Collection of civil penalties or fines.

376 (n) **Construction.**

377 (i) Nothing in this subsection (2) shall be
378 construed as creating or recognizing a right to abortion.

379 (ii) Nothing in this subsection (2) shall be
380 construed as creating or recognizing a right to federal and/or
381 state funds for family planning services.

382 **SECTION 2.** This act shall take effect and be in force from
383 and after July 1, 2016.

