

By: Representative Eubanks

To: Judiciary B

HOUSE BILL NO. 45

1 AN ACT TO AMEND SECTION 97-3-3, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT ANY PERSON WHO WILLFULLY CAUSES AN ABORTION SHALL BE
3 GUILTY OF A FELONY; TO AMEND SECTION 97-3-4, MISSISSIPPI CODE OF
4 1972, TO CLARIFY THAT IT SHALL BE UNLAWFUL FOR ANY PHYSICIAN TO
5 PERFORM AN ABORTION OR TO PERFORM AN ABORTION THAT RESULTS IN THE
6 DELIVERY OF A LIVING CHILD AND TO INTENTIONALLY ALLOW OR CAUSE THE
7 CHILD TO DIE; TO AMEND SECTION 97-3-5, MISSISSIPPI CODE OF 1972,
8 TO INCREASE THE PENALTY FOR A PERSON WHO ADVERTISES FOR MEDICINE
9 OR TOOLS THAT CAN BE USED IN AN UNLAWFUL ABORTION; TO AMEND
10 SECTIONS 41-41-39 AND 41-41-73, MISSISSIPPI CODE OF 1972, TO
11 PROVIDE THAT ANY PERSON WHO PERFORMS OR INDUCES ANY ABORTION SHALL
12 BE GUILTY OF MURDER; TO AMEND SECTION 41-41-91, MISSISSIPPI CODE
13 OF 1972, TO PROVIDE THAT NO PUBLIC FUNDS MAY BE PROVIDED TO ANY
14 FACILITY PERFORMING AN ABORTION; TO AMEND SECTION 41-41-99,
15 MISSISSIPPI CODE OF 1972, TO PROHIBIT ABORTION COVERAGE BY A
16 QUALIFIED HEALTH PLAN OFFERED THROUGH THE STATE HEALTH PLAN; TO
17 AMEND SECTION 41-41-107, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
18 ANY PERSON WHO KNOWINGLY GIVES ABORTION INDUCING DRUGS TO A
19 PREGNANT WOMAN SHALL BE GUILTY OF A FELONY; TO AMEND SECTIONS
20 97-3-37, 97-5-51, 41-41-113, 41-41-115, 41-75-1, 41-75-3, 41-75-5,
21 41-75-13 AND 73-25-29, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE
22 PRECEDING SECTIONS; TO REPEAL SECTIONS 41-41-31, 41-41-33,
23 41-41-34, 41-41-35, 41-41-37, 41-41-45, 41-41-51, 41-41-53,
24 41-41-55, 41-41-57, 41-41-59, 41-41-61, 41-41-63, 41-41-71,
25 41-41-80, 41-41-109, 41-41-111, 41-75-16, 41-75-18, 41-75-26 AND
26 41-75-29, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR LAWFUL
27 ABORTIONS, PARTIAL BIRTH ABORTIONS AND ABORTION FACILITIES; TO
28 BRING FORWARD SECTIONS 41-41-151, 41-41-153, 41-41-155, 41-41-157,
29 41-41-159, 41-41-161, 41-41-163, 41-41-165, 41-41-167 AND
30 41-41-169, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE
31 MISSISSIPPI UNBORN CHILD PROTECTION FROM DISMEMBERMENT ABORTION
32 ACT, FOR PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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



34 **SECTION 1.** Section 97-3-3, Mississippi Code of 1972, is
35 amended as follows:

36 97-3-3. * * * Any person * * * willfully and knowingly
37 causing, by means of any instrument, medicine, drug or other means
38 whatever, any woman pregnant with child to abort or miscarry, or
39 attempts to procure or produce an abortion or miscarriage shall be
40 guilty of a felony * * * and, upon conviction, be imprisoned for
41 not less than one (1) year nor more than ten (10) years in the
42 State Penitentiary and fined not more than Fifty Thousand Dollars
43 (\$50,000.00) but not less than Twenty-five Thousand Dollars
44 (\$25,000.00).

45 * * *

46 **SECTION 2.** Section 97-3-4, Mississippi Code of 1972, is
47 amended as follows:

48 97-3-4. (1) It shall be unlawful for any physician * * * to
49 perform an abortion or to perform an abortion that results in the
50 delivery of a living child and to intentionally allow or cause the
51 child to die.

52 (2) If the child is viable, such child shall be immediately
53 provided appropriate medical care and comfort care necessary to
54 sustain life. If the child is not viable, such child shall be
55 provided comfort care. The provision of this section shall
56 include, but not be limited to, a child born with physical or
57 mental handicapping conditions which, in the opinion of the
58 parent, the physician or other persons, diminishes the quality of



59 the child's life, a child born alive during the course of an
60 attempted abortion and a child not wanted by the parent.

61 (3) As used in this section, the term "child" includes every
62 infant member of the species homo sapiens who is born alive at any
63 stage of development.

64 (4) Any person who violates this section shall be guilty of
65 a felony and, upon conviction, be imprisoned for not less than one
66 (1) year nor more than ten (10) years in the State Penitentiary
67 and fined not more than Fifty Thousand Dollars (\$50,000.00) but
68 not less than Twenty-five Thousand Dollars (\$25,000.00).

69 **SECTION 3.** Section 97-3-5, Mississippi Code of 1972, is
70 amended as follows:

71 97-3-5. A person who sells, lends, gives away, or in any
72 manner exhibits, or offers to sell, lend, or give away, or has in
73 his possession with intent to sell, lend, or give away, or
74 advertises or offers for sale, loan or distribution any instrument
75 or article, or any drug or medicine, for causing unlawful
76 abortion; or who writes or prints, or causes to be written or
77 printed, a card, circular, pamphlet, advertisement, or notice of
78 any kind, or gives information orally, stating when, where, how,
79 of whom, or by what means such article or medicine can be
80 purchased or obtained, or who manufactures any such article or
81 medicine, is guilty of a * * * felony and, upon conviction, be
82 imprisoned for not less than one (1) year nor more than ten (10)
83 years in the State Penitentiary and fined not more than Fifty



84 Thousand Dollars (\$50,000.00) but not less than Twenty-five
85 Thousand Dollars (\$25,000.00).

86 **SECTION 4.** Section 41-41-39, Mississippi Code of 1972, is
87 amended as follows:

88 41-41-39. Anyone who purposefully, knowingly or recklessly
89 performs or attempts to perform or induce an abortion * * * shall
90 be guilty of murder and punished as provided by law for such
91 crime.

92 **SECTION 5.** Section 41-41-73, Mississippi Code of 1972, is
93 amended as follows:

94 41-41-73. * * * Any physician who knowingly performs a
95 partial-birth abortion and thereby kills a human fetus shall be
96 guilty * * * of murder.

97 * * *

98 **SECTION 6.** Section 41-41-91, Mississippi Code of 1972, is
99 amended as follows:

100 41-41-91. Notwithstanding any other provision of law to the
101 contrary, no public funds that are made available to any
102 institution, board, commission, department, agency, official, or
103 employee of the State of Mississippi, or of any local political
104 subdivision of the state, whether those funds are made available
105 by the government of the United States, the State of Mississippi,
106 or a local governmental subdivision, or from any other public
107 source, shall be used in any way for, to assist in, or to provide
108 facilities for abortion * * * .



109 * * *

110 **SECTION 7.** Section 41-41-99, Mississippi Code of 1972, is
111 amended as follows:

112 41-41-99. **Opt-Out.** * * * No abortion coverage may be
113 provided by a qualified health plan offered through an exchange
114 created pursuant to the federal Patient Protection and Affordable
115 Care Act within the State of Mississippi.

116 * * *

117 **SECTION 8.** Section 41-41-107, Mississippi Code of 1972, is
118 amended as follows:

119 41-41-107. * * * It shall be unlawful to knowingly give,
120 sell, dispense, administer or otherwise provide or prescribe any
121 abortion-inducing drug to a pregnant woman for the purpose of
122 inducing an abortion in that pregnant woman, or enabling another
123 person to induce an abortion in a pregnant woman * * *.

124 * * *

125 Any person who intentionally, knowingly or recklessly
126 violates any provision of this section shall be guilty of a felony
127 and, upon conviction, be imprisoned for not less than one (1) year
128 nor more than ten (10) years in the State Penitentiary and fined
129 not more than Fifty Thousand Dollars (\$50,000.00) but not less
130 than Twenty-five Thousand Dollars (\$25,000.00).

131 **SECTION 9.** Section 97-3-37, Mississippi Code of 1972, is
132 amended as follows:



133 97-3-37. (1) For purposes of the offenses enumerated in
134 this subsection (1), the term "human being" includes an unborn
135 child at every stage of gestation from conception until live birth
136 and the term "unborn child" means a member of the species homo
137 sapiens, at any stage of development, who is carried in the womb:

138 (a) Section 97-3-7, simple and aggravated assault and
139 domestic violence;

140 (b) Section 97-3-15, justifiable homicide;

141 (c) Section 97-3-17, excusable homicide;

142 (d) Section 97-3-19, murder, capital murder;

143 (e) Section 97-3-27, homicide while committing a
144 felony;

145 (f) Section 97-3-29, homicide while committing a
146 misdemeanor;

147 (g) Section 97-3-33, killing a trespasser
148 unnecessarily;

149 (h) Section 97-3-35, killing without malice in the heat
150 of passion;

151 (i) Section 97-3-45, homicide by means of a dangerous
152 animal;

153 (j) Section 97-3-47, all other homicides;

154 (k) Section 97-3-61, poisoning with intent to kill or
155 injure.

156 (2) A person who intentionally injures a pregnant woman is
157 guilty of a crime as follows:



158 (a) If the conduct results in a miscarriage or
159 stillbirth by that individual, a felony punishable by imprisonment
160 for not more than twenty (20) years or a fine of not more than
161 Seven Thousand Five Hundred Dollars (\$7,500.00), or both.

162 (b) If the conduct results in serious physical injury
163 to the embryo or fetus, a felony punishable by imprisonment for
164 not more than twenty (20) years or a fine of not more than Five
165 Thousand Dollars (\$5,000.00), or both.

166 (c) If the conduct results in minor physical injury to
167 the embryo or fetus, a misdemeanor punishable by imprisonment for
168 not more than six (6) months or a fine of not more than One
169 Thousand Dollars (\$1,000.00), or both.

170 (3) The provisions of this section shall not apply to any
171 legal medical procedure performed by a licensed physician or other
172 licensed medical professional * * *.

173 (4) Nothing contained in this section shall be construed to
174 prohibit prosecution of an offender pursuant to the provisions of
175 any other applicable statute.

176 **SECTION 10.** Section 97-5-51, Mississippi Code of 1972, is
177 amended as follows:

178 97-5-51. (1) **Definitions.** For the purposes of this
179 section:

180 (a) "Sex crime against a minor" means any offense under
181 at least one (1) of the following statutes when committed by an
182 adult against a minor who is under the age of sixteen (16):



183 (i) Section 97-3-65 relating to rape;
184 (ii) Section 97-3-71 relating to rape and assault
185 with intent to ravish;
186 (iii) Section 97-3-95 relating to sexual battery;
187 (iv) Section 97-5-23 relating to the touching of a
188 child, mentally defective or incapacitated person or physically
189 helpless person for lustful purposes;
190 (v) Section 97-5-41 relating to the carnal
191 knowledge of a stepchild, adopted child or child of a cohabiting
192 partner;
193 (vi) Section 97-5-33 relating to exploitation of
194 children;
195 (vii) Section 97-3-54.1(1)(c) relating to
196 procuring sexual servitude of a minor;
197 (viii) Section 43-47-18 relating to sexual abuse
198 of a vulnerable person;
199 (ix) Section 97-1-7 relating to the attempt to
200 commit any of the offenses listed in this subsection.

201 (b) "Mandatory reporter" means any of the following
202 individuals performing their occupational duties: health care
203 practitioner, clergy member, teaching or child care provider, law
204 enforcement officer, or commercial image processor.

205 (c) "Health care practitioner" means any individual who
206 provides health care services, including a physician, surgeon,
207 physical therapist, psychiatrist, psychologist, medical resident,



208 medical intern, hospital staff member, licensed nurse, midwife and
209 emergency medical technician or paramedic.

210 (d) "Clergy member" means any priest, rabbi or duly
211 ordained deacon or minister.

212 (e) "Teaching or child care provider" means anyone who
213 provides training or supervision of a minor under the age of
214 sixteen (16), including a teacher, teacher's aide, principal or
215 staff member of a public or private school, social worker,
216 probation officer, foster home parent, group home or other child
217 care institutional staff member, personnel of residential home
218 facilities, a licensed or unlicensed day care provider.

219 (f) "Commercial image processor" means any person who,
220 for compensation: (i) develops exposed photographic film into
221 negatives, slides or prints; (ii) makes prints from negatives or
222 slides; or (iii) processes or stores digital media or images from
223 any digital process, including, but not limited to, website
224 applications, photography, live streaming of video, posting,
225 creation of power points or any other means of intellectual
226 property communication or media including conversion or
227 manipulation of still shots or video into a digital show stored on
228 a photography site or a media storage site.

229 (g) "Caretaker" means any person legally obligated to
230 provide or secure adequate care for a minor under the age of
231 sixteen (16), including a parent, guardian, tutor, legal custodian
232 or foster home parent.



233 (2) (a) **Mandatory reporter requirement.** A mandatory
234 reporter shall make a report if it would be reasonable for the
235 mandatory reporter to suspect that a sex crime against a minor has
236 occurred.

237 (b) Failure to file a mandatory report shall be
238 punished as provided in this section.

239 (c) Reports made under this section and the identity of
240 the mandatory reporter are confidential except when the court
241 determines the testimony of the person reporting to be material to
242 a judicial proceeding or when the identity of the reporter is
243 released to law enforcement agencies and the appropriate
244 prosecutor. The identity of the reporting party shall not be
245 disclosed to anyone other than law enforcement or prosecutors
246 except under court order; violation of this requirement is a
247 misdemeanor. Reports made under this section are for the purpose
248 of criminal investigation and prosecution only and information
249 from these reports is not a public record. Disclosure of any
250 information by the prosecutor shall conform to the Mississippi
251 Uniform Rules of Circuit and County Court Procedure.

252 (d) Any mandatory reporter who makes a required report
253 under this section or participates in a judicial proceeding
254 resulting from a mandatory report shall be presumed to be acting
255 in good faith. Any person or institution reporting in good faith
256 shall be immune from any liability, civil or criminal, that might



257 otherwise be incurred or imposed, except any person performing or
258 attempting to perform an illegal abortion.

259 (3) (a) **Mandatory reporting procedure.** A report required
260 under subsection (2) must be made immediately to the law
261 enforcement agency in whose jurisdiction the reporter believes the
262 sex crime against the minor occurred. Except as otherwise
263 provided in this subsection (3), a mandatory reporter may not
264 delegate to any other person the responsibility to report, but
265 shall make the report personally.

266 (i) The reporting requirement under this
267 subsection (3) is satisfied if a mandatory reporter in good faith
268 reports a suspected sex crime against a minor to the Department of
269 Human Services under Section 43-21-353.

270 (ii) The reporting requirement under this
271 subsection (3) is satisfied if a mandatory reporter reports a
272 suspected sex crime against a minor by following a reporting
273 procedure that is imposed:

274 1. By state agency rule as part of licensure
275 of any person or entity holding a state license to provide
276 services that include the treatment or education of abused or
277 neglected children; or

278 2. By statute.

279 (b) **Contents of the report.** The report shall identify,
280 to the extent known to the reporter, the following:

281 (i) The name and address of the minor victim;



282 (ii) The name and address of the minor's
283 caretaker;
284 (iii) Any other pertinent information known to the
285 reporter.

286 (4) A law enforcement officer who receives a mandated report
287 under this section shall file an affidavit against the offender on
288 behalf of the State of Mississippi if there is probable cause to
289 believe that the offender has committed a sex crime against a
290 minor.

291 (5) **Collection of forensic samples.** (a) (i) When an
292 abortion is performed on a minor who is less than fourteen (14)
293 years of age at the time of the abortion procedure, fetal tissue
294 extracted during the abortion shall be collected in accordance
295 with rules and regulations adopted pursuant to this section if it
296 would be reasonable to suspect that the pregnancy being terminated
297 is the result of a sex crime against a minor.

298 (ii) When a minor who is under sixteen (16) years
299 of age gives birth to an infant, umbilical cord blood shall be
300 collected, if possible, in accordance with rules and regulations
301 adopted pursuant to this section if it would be reasonable to
302 suspect that the minor's pregnancy resulted from a sex crime
303 against a minor.

304 (iii) It shall be reasonable to suspect that a sex
305 crime against a minor has occurred if the mother of an infant was



306 less than sixteen (16) years of age at the time of conception and
307 at least one (1) of the following conditions also applies:

308 1. The mother of the infant will not identify
309 the father of the infant;

310 2. The mother of the infant lists the father
311 of the infant as unknown;

312 3. The person the mother identifies as the
313 father of the infant disputes his fatherhood;

314 4. The person the mother identifies as the
315 father of the infant is twenty-one (21) years of age or older; or

316 5. The person the mother identifies as the
317 father is deceased.

318 (b) The State Medical Examiner shall adopt rules and
319 regulations consistent with Section 99-49-1 that prescribe:

320 (i) The amount and type of fetal tissue or
321 umbilical cord blood to be collected pursuant to this section;

322 (ii) Procedures for the proper preservation of the
323 tissue or blood for the purpose of DNA testing and examination;

324 (iii) Procedures for documenting the chain of
325 custody of such tissue or blood for use as evidence;

326 (iv) Procedures for proper disposal of fetal
327 tissue or umbilical cord blood collected pursuant to this section;

328 (v) A uniform reporting instrument mandated to be
329 utilized, which shall include the complete residence address and



330 name of the parent or legal guardian of the minor who is the
331 subject of the report required under this subsection (5); and
332 (vi) Procedures for communication with law
333 enforcement agencies regarding evidence and information obtained
334 pursuant to this section.

335 (6) **Penalties.** (a) A person who is convicted of a first
336 offense under this section shall be guilty of a misdemeanor and
337 fined not more than Five Hundred Dollars (\$500.00).

338 (b) A person who is convicted of a second offense under
339 this section shall be guilty of a misdemeanor and fined not more
340 than One Thousand Dollars (\$1,000.00), or imprisoned for not more
341 than thirty (30) days, or both.

342 (c) A person who is convicted of a third or subsequent
343 offense under this section shall be guilty of a misdemeanor and
344 fined not more than Five Thousand Dollars (\$5,000.00), or
345 imprisoned for not more than one (1) year, or both.

346 (7) A health care practitioner or health care facility shall
347 be immune from any penalty, civil or criminal, for good-faith
348 compliance with any rules and regulations adopted pursuant to this
349 section.

350 **SECTION 11.** Section 41-41-113, Mississippi Code of 1972, is
351 amended as follows:

352 41-41-113. (1) All remedies under the statutory laws of
353 this state are available if there is failure to comply with the
354 requirements of Sections 41-41-101 through 41-41-117.



355 (2) No civil liability may be assessed against the pregnant
356 woman upon whom the drug-induced abortion is performed, except as
357 otherwise provided by law.

358 (3) In any legal action for failure to comply with the
359 requirements of Sections 41-41-101 through 41-41-117, the court,
360 when requested, shall allow a woman to proceed using solely her
361 initials or a pseudonym and may close any proceedings in the case
362 and enter other protective orders to preserve the privacy of the
363 woman upon whom the drug-induced abortion was performed.

364 **SECTION 12.** Section 41-41-115, Mississippi Code of 1972, is
365 amended as follows:

366 41-41-115. (1) Nothing in Sections 41-41-101 through
367 41-41-117 shall be construed as creating or recognizing a right to
368 abortion.

369 (2) It is not the intention of Sections 41-41-101 through
370 41-41-117 to make lawful * * * any abortion that is currently
371 unlawful.

372 **SECTION 13.** Section 41-75-1, Mississippi Code of 1972, is
373 amended as follows:

374 41-75-1. For the purpose of this chapter:

375 (a) "Ambulatory surgical facility" means a publicly or
376 privately owned institution that is primarily organized,
377 constructed, renovated or otherwise established for the purpose of
378 providing elective surgical treatment of "outpatients" whose
379 recovery, under normal and routine circumstances, will not require



380 "inpatient" care. The facility defined in this paragraph does not
381 include the offices of private physicians or dentists, whether
382 practicing individually or in groups, but does include
383 organizations or facilities primarily engaged in that outpatient
384 surgery, whether using the name "ambulatory surgical facility" or
385 a similar or different name. That organization or facility, if in
386 any manner considered to be operated or owned by a hospital or a
387 hospital holding, leasing or management company, either for profit
388 or not for profit, is required to comply with all licensing agency
389 ambulatory surgical licensure standards governing a "hospital
390 affiliated" facility as adopted under Section 41-9-1 et seq.,
391 provided that the organization or facility does not intend to seek
392 federal certification as an ambulatory surgical facility as
393 provided for at 42 CFR, Parts 405 and 416. If the organization or
394 facility is to be operated or owned by a hospital or a hospital
395 holding, leasing or management company and intends to seek federal
396 certification as an ambulatory facility, then the facility is
397 considered to be "freestanding" and must comply with all licensing
398 agency ambulatory surgical licensure standards governing a
399 "freestanding" facility.

400 If the organization or facility is to be owned or operated by
401 an entity or person other than a hospital or hospital holding,
402 leasing or management company, then the organization or facility
403 must comply with all licensing agency ambulatory surgical facility
404 standards governing a "freestanding" facility.



405 (b) "Hospital affiliated" ambulatory surgical facility
406 means a separate and distinct organized unit of a hospital or a
407 building owned, leased, rented or utilized by a hospital and
408 located in the same county in which the hospital is located, for
409 the primary purpose of performing ambulatory surgery procedures.
410 The facility is not required to be separately licensed under this
411 chapter and may operate under the hospital's license in compliance
412 with all applicable requirements of Section 41-9-1 et seq.

413 (c) "Freestanding" ambulatory surgical facility means a
414 separate and distinct facility or a separate and distinct
415 organized unit of a hospital owned, leased, rented or utilized by
416 a hospital or other persons for the primary purpose of performing
417 ambulatory surgery procedures. The facility must be separately
418 licensed as defined in this section and must comply with all
419 licensing standards promulgated by the licensing agency under this
420 chapter regarding a "freestanding" ambulatory surgical facility.
421 Further, the facility must be a separate, identifiable entity and
422 must be physically, administratively and financially independent
423 and distinct from other operations of any other health facility,
424 and shall maintain a separate organized medical and administrative
425 staff. Furthermore, once licensed as a "freestanding" ambulatory
426 surgical facility, the facility shall not become a component of
427 any other health facility without securing a certificate of need
428 to do that.



429 (d) "Ambulatory surgery" means surgical procedures that
430 are more complex than office procedures performed under local
431 anesthesia, but less complex than major procedures requiring
432 prolonged postoperative monitoring and hospital care to ensure
433 safe recovery and desirable results. General anesthesia is used
434 in most cases. The patient must arrive at the facility and expect
435 to be discharged on the same day. Ambulatory surgery shall only
436 be performed by physicians or dentists licensed to practice in the
437 State of Mississippi.

438 (e) "Abortion" means the use or prescription of any
439 instrument, medicine, drug or any other substances or device to
440 terminate the pregnancy of a woman known to be pregnant with an
441 intention other than to increase the probability of a live birth,
442 to preserve the life or health of the child after live birth or to
443 remove a dead fetus. * * *

444 (f) "Abortion facility" means a facility operating
445 substantially for the purpose of performing abortions and is a
446 separate identifiable legal entity from any other health care
447 facility. * * *

448 * * *

449 (g) "Licensing agency" means the State Department of
450 Health.

451 (h) "Operating" an abortion facility means that the
452 facility is open for any period of time during a day * * *.

453 * * *



454 (i) "Freestanding emergency room" is a facility open
455 twenty-four (24) hours a day for the treatment of urgent and
456 emergent medical conditions which is not located on a hospital
457 campus. In order to be eligible for licensure under this chapter,
458 the freestanding emergency room shall be located at least fifteen
459 (15) miles from the nearest hospital-based emergency room in any
460 rural community where the federal CMMS had previously designated a
461 rural hospital as a critical access hospital and that designation
462 has been revoked.

463 (j) "Post-acute residential brain injury rehabilitation
464 facility" is a facility containing no more than twelve (12) beds
465 providing medically directed long-term but nonacute rehabilitation
466 to patients who have acquired brain injury. In order to be
467 eligible for licensure under this chapter, the post-acute
468 residential brain injury rehabilitation facility shall be located
469 at least twenty-five (25) miles from the nearest acute care
470 rehabilitation hospital and at least five (5) miles from the
471 boundaries of any municipality having a population of ten thousand
472 (10,000) or more, according to the most recent federal decennial
473 census, at the time that facility is established.

474 **SECTION 14.** Section 41-75-3, Mississippi Code of 1972, is
475 amended as follows:

476 41-75-3. The purpose of this chapter is to protect and
477 promote the public welfare by providing for the development,
478 establishment and enforcement of certain standards in the



479 maintenance and operation of ambulatory surgical facilities * * *
480 and freestanding emergency rooms and post-acute residential brain
481 injury rehabilitation facilities, which will ensure safe,
482 sanitary, and reasonably adequate care of individuals in such
483 facilities.

484 **SECTION 15.** Section 41-75-5, Mississippi Code of 1972, is
485 amended as follows:

486 41-75-5. No person as defined in Section 41-7-173, acting
487 severally or jointly with any other person, shall establish,
488 conduct, operate or maintain an ambulatory surgical facility * * *
489 or a freestanding emergency room or a post-acute residential brain
490 injury rehabilitation facility in this state without a license
491 under this chapter.

492 In order to receive a license for a post-acute residential
493 brain injury rehabilitation facility under this chapter, the
494 recipient of the license must agree in writing that the facility
495 will not at any time participate in the Medicaid program (Section
496 43-13-101 et seq.) or admit or keep any patients in the facility
497 who are participating in the Medicaid program. This written
498 agreement by the recipient of the license shall be fully binding
499 on any later owner of the facility, if the ownership of the
500 facility is transferred at any time after the issuance of the
501 license. Agreement that the facility will not participate in the
502 Medicaid program shall be a condition of the issuance of a license
503 for a post-acute residential brain injury rehabilitation facility



504 to any person under this chapter, and if such facility at any time
505 after the issuance of the license, regardless of the ownership of
506 the facility, participates in the Medicaid program or admits or
507 keeps any patients in the facility who are participating in the
508 Medicaid program, the licensing agency shall revoke the license of
509 the facility, at the time that the department determines, after a
510 hearing complying with due process, that the facility has failed
511 to comply with any of the conditions upon which the license was
512 issued, as provided in this section and in the written agreement
513 by the recipient of the license.

514 **SECTION 16.** Section 41-75-13, Mississippi Code of 1972, is
515 amended as follows:

516 41-75-13. The licensing agency shall adopt, amend,
517 promulgate and enforce rules, regulations and standards, including
518 classifications, with respect to ambulatory surgical facilities
519 and * * * freestanding emergency rooms and post-acute residential
520 brain injury rehabilitation facilities licensed, or which may be
521 licensed, to further the accomplishment of the purpose of this
522 chapter in protecting and promoting the health, safety and welfare
523 of the public by ensuring adequate care of individuals receiving
524 services from such facilities. * * * The rules, regulations and
525 standards for freestanding emergency rooms shall include a patient
526 transfer policy under which the freestanding emergency room enters
527 into an agreement with a general hospital for a protocol for
528 patient transfers. * * * The rules, regulations and standards



529 shall be adopted and promulgated by the licensing agency in
530 accordance with the provisions of Section 25-43-1 et seq., and
531 shall be recorded and indexed in a book to be maintained by the
532 licensing agency in its main office in the State of Mississippi,
533 entitled "Rules and Regulations for Operation of Ambulatory
534 Surgical Facilities * * *, Freestanding Emergency Room Facilities
535 and Post-Acute Residential Brain Injury Rehabilitation
536 Facilities." The book shall be open and available to all
537 ambulatory surgical facilities and * * * freestanding emergency
538 rooms and post-acute residential brain injury rehabilitation
539 facilities and the public during regular business hours.

540 **SECTION 17.** Section 73-25-29, Mississippi Code of 1972, is
541 amended as follows:

542 73-25-29. The grounds for the nonissuance, suspension,
543 revocation or restriction of a license or the denial of
544 reinstatement or renewal of a license are:

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

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

550 (3) Administering, dispensing or prescribing any
551 narcotic drug, or any other drug having addiction-forming or
552 addiction-sustaining liability otherwise than in the course of
553 legitimate professional practice.



554 (4) Conviction of violation of any federal or state law
555 regulating the possession, distribution or use of any narcotic
556 drug or any drug considered a controlled substance under state or
557 federal law, a certified copy of the conviction order or judgment
558 rendered by the trial court being prima facie evidence thereof,
559 notwithstanding the pendency of any appeal.

560 (5) Procuring, or attempting to procure, or aiding in,
561 an abortion * * *.

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

566 (7) Obtaining or attempting to obtain a license by
567 fraud or deception.

568 (8) Unprofessional conduct, which includes, but is not
569 limited to:

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

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

574 (c) Making or willfully causing to be made any
575 flamboyant claims concerning the licensee's professional
576 excellence.

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



579 (e) Obtaining a fee as personal compensation or
580 gain from a person on fraudulent representation of a disease or
581 injury condition generally considered incurable by competent
582 medical authority in the light of current scientific knowledge and
583 practice can be cured or offering, undertaking, attempting or
584 agreeing to cure or treat the same by a secret method, which he
585 refuses to divulge to the board upon request.

586 (f) Use of any false, fraudulent or forged
587 statement or document, or the use of any fraudulent, deceitful,
588 dishonest or immoral practice in connection with any of the
589 licensing requirements, including the signing in his professional
590 capacity any certificate that is known to be false at the time he
591 makes or signs such certificate.

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

595 (9) The refusal of a licensing authority of another
596 state or jurisdiction to issue or renew a license, permit or
597 certificate to practice medicine in that jurisdiction or the
598 revocation, suspension or other restriction imposed on a license,
599 permit or certificate issued by such licensing authority which
600 prevents or restricts practice in that jurisdiction, a certified
601 copy of the disciplinary order or action taken by the other state
602 or jurisdiction being prima facie evidence thereof,
603 notwithstanding the pendency of any appeal.



604 (10) Surrender of a license or authorization to
605 practice medicine in another state or jurisdiction or surrender of
606 membership on any medical staff or in any medical or professional
607 association or society while under disciplinary investigation by
608 any of those authorities or bodies for acts or conduct similar to
609 acts or conduct which would constitute grounds for action as
610 defined in this section.

611 (11) Final sanctions imposed by the United States
612 Department of Health and Human Services, Office of Inspector
613 General or any successor federal agency or office, based upon a
614 finding of incompetency, gross misconduct or failure to meet
615 professionally recognized standards of health care; a certified
616 copy of the notice of final sanction being prima facie evidence
617 thereof. As used in this paragraph, the term "final sanction"
618 means the written notice to a physician from the United States
619 Department of Health and Human Services, Officer of Inspector
620 General or any successor federal agency or office, which
621 implements the exclusion.

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

624 (13) Violation of any provision(s) of the Medical
625 Practice Act or the rules and regulations of the board or of any
626 order, stipulation or agreement with the board.



627 (14) Violation(s) of the provisions of Sections
628 41-121-1 through 41-121-9 relating to deceptive advertisement by
629 health care practitioners.

630 (15) Performing or inducing an abortion on a
631 woman * * *.

632 In addition to the grounds specified above, the board shall
633 be authorized to suspend the license of any licensee for being out
634 of compliance with an order for support, as defined in Section
635 93-11-153. The procedure for suspension of a license for being
636 out of compliance with an order for support, and the procedure for
637 the reissuance or reinstatement of a license suspended for that
638 purpose, and the payment of any fees for the reissuance or
639 reinstatement of a license suspended for that purpose, shall be
640 governed by Section 93-11-157 or 93-11-163, as the case may be.
641 If there is any conflict between any provision of Section
642 93-11-157 or 93-11-163 and any provision of this chapter, the
643 provisions of Section 93-11-157 or 93-11-163, as the case may be,
644 shall control.

645 **SECTION 18.** Sections 41-41-31, 41-41-33, 41-41-34, 41-41-35,
646 41-41-37, 41-41-45, 41-41-51, 41-41-53, 41-41-55, 41-41-57,
647 41-41-59, 41-41-61, 41-41-63, 41-41-71, 41-41-80, 41-41-109,
648 41-41-111, 41-75-16, 41-75-18, 41-75-26 and 41-75-29, Mississippi
649 Code of 1972, which provide for lawful abortions, partial birth
650 abortions and abortion facilities are repealed.



651 **SECTION 19.** Section 41-41-151, Mississippi Code of 1972, is
652 brought forward as follows:

653 41-41-151. Sections 41-41-151 through 41-41-169 may be cited
654 as the "Mississippi Unborn Child Protection from Dismemberment
655 Abortion Act."

656 **SECTION 20.** Section 41-41-153, Mississippi Code of 1972, is
657 brought forward as follows:

658 41-41-153. For the purposes of Sections 41-41-151 through
659 41-41-169, the following terms shall be defined as provided in
660 this section:

661 (a) "Abortion" means the use or prescription of any
662 instrument, medicine, drug, or any other substance or device:

663 (i) To purposely kill the unborn child of a woman
664 known to be pregnant; or

665 (ii) To purposely terminate the pregnancy of a
666 woman known to be pregnant, with a purpose other than:

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

669 2. To remove a dead unborn child.

670 (b) "Attempt to perform an abortion" means to do or
671 omit to do anything that, under the circumstances as the actor
672 believes them to be, is an act or omission constituting a
673 substantial step in a course of conduct planned to culminate in
674 oneself performing an abortion. Such substantial steps include,
675 but are not limited to:



676 (i) Agreeing with an individual to perform an
677 abortion on that individual or on some other person, whether or
678 not the term "abortion" is used in the agreement, and whether or
679 not the agreement is contingent on another factor such as receipt
680 of payment or a determination of pregnancy; or

681 (ii) Scheduling or planning a time to perform an
682 abortion on an individual, whether or not the term "abortion" is
683 used, and whether or not the performance is contingent on another
684 factor such as receipt of payment or a determination of pregnancy.

685 This definition shall not be construed to require that an
686 abortion procedure actually must be initiated for an attempt to
687 occur.

688 (c) "Dismemberment abortion" means, with the purpose of
689 causing the death of an unborn child, purposely to dismember a
690 living unborn child and extract him or her one piece at a time
691 from the uterus through use of clamps, grasping forceps, tongs,
692 scissors or similar instruments that, through the convergence of
693 two rigid levers, slice, crush, and/or grasp a portion of the
694 unborn child's body to cut or rip it off.

695 The term "dismemberment abortion" does not include an
696 abortion that uses suction to dismember the body of the unborn
697 child by sucking fetal parts into a collection container, although
698 it does include an abortion in which a dismemberment abortion is
699 used to cause the death of an unborn child but suction is



700 subsequently used to extract fetal parts after the death of the
701 unborn child.

702 (d) "Physician" means a person licensed to practice
703 medicine and surgery or osteopathic medicine and surgery, or
704 otherwise legally authorized to perform an abortion.

705 (e) "Purposely" means the following: A person acts
706 purposely with respect to a material element of an offense when:

707 (i) If the element involves the nature of his
708 conduct or a result thereof, it is his conscious object to engage
709 in conduct of that nature or to cause such a result; and

710 (ii) If the element involves the attendant
711 circumstances, he is aware of the existence of those circumstances
712 or he believes or hopes that they exist.

713 (f) "Serious health risk to the unborn child's mother"
714 means that in reasonable medical judgment, she has a condition
715 that so complicates her medical condition that it necessitates the
716 abortion of her pregnancy to avert her death or to avert serious
717 risk of substantial and irreversible physical impairment of a
718 major bodily function, not including psychological or emotional
719 conditions. No such condition may be determined to exist if it is
720 based on a claim or diagnosis that the woman will engage in
721 conduct that she intends to result in her death or in substantial
722 and irreversible physical impairment of a major bodily function.

723 (g) "Woman" means a female human being whether or not
724 she has reached the age of majority.



725 **SECTION 21.** Section 41-41-155, Mississippi Code of 1972, is
726 brought forward as follows:

727 41-41-155. (1) Notwithstanding any other provision of law,
728 it shall be unlawful for any person to purposely perform or
729 attempt to perform a dismemberment abortion and thereby kill an
730 unborn child unless necessary to prevent serious health risk to
731 the unborn child's mother.

732 (2) A person accused in any proceeding of unlawful conduct
733 under subsection (1) of this section may seek a hearing before the
734 State Board of Medical Licensure on whether the dismemberment
735 abortion was necessary to prevent serious health risk to the
736 unborn child's mother. The board's findings are admissible on
737 that issue at any trial in which the unlawful conduct is alleged.
738 Upon a motion of the person accused, the court shall delay the
739 beginning of the trial for not more than thirty (30) days to
740 permit such a hearing to take place.

741 (3) No woman upon whom an abortion is performed or attempted
742 to be performed shall be thereby liable for performing or
743 attempting to perform a dismemberment abortion. No nurse,
744 technician, secretary, receptionist or other employee or agent who
745 is not a physician but who acts at the direction of a physician,
746 and no pharmacist or other individual who is not a physician but
747 who fills a prescription or provides instruments or materials used
748 in an abortion at the direction of or to a physician shall be



749 thereby liable for performing or attempting to perform a
750 dismemberment abortion.

751 (4) Sections 41-41-151 through 41-41-169 does not prevent
752 abortion for any reason, including rape and incest by any other
753 method.

754 **SECTION 22.** Section 41-41-157, Mississippi Code of 1972, is
755 brought forward as follows:

756 41-41-157. (1) Civil and criminal penalties for violations
757 of Sections 41-41-151 through 41-41-169 may be imposed under the
758 following priority:

- 759 (a) Injunctive relief;
760 (b) Civil cause of action; and
761 (c) Criminal action.

762 (2) A cause of action for injunctive relief against a person
763 who has performed or attempted to perform a dismemberment abortion
764 in violation of Section 41-41-155 may be maintained as a priority
765 action by:

- 766 (a) A woman upon whom such a dismemberment abortion was
767 performed or attempted to be performed;
768 (b) A person who is the spouse, parent or guardian of,
769 or a current or former licensed health care provider of, a woman
770 upon whom such a dismemberment abortion was performed or attempted
771 to be performed; or
772 (c) A prosecuting attorney with appropriate
773 jurisdiction.



774 (3) The injunction shall prevent the defendant from
775 performing or attempting to perform further dismemberment
776 abortions in violation of Section 41-41-155 in this state.

777 **SECTION 23.** Section 41-41-159, Mississippi Code of 1972, is
778 brought forward as follows:

779 41-41-159. (1) Only in the event a cause of action for
780 injunctive relief under Section 41-41-157 has been denied by a
781 court of competent jurisdiction, a cause of action for civil
782 damages against a person who has performed a dismemberment
783 abortion in violation of Section 41-41-155 may be maintained by:

784 (a) Any woman upon whom a dismemberment abortion has
785 been performed in violation of Section 41-41-155;

786 (b) The father of the unborn child, if married to the
787 woman at the time the dismemberment abortion was performed; or

788 (c) If the woman had not attained the age of eighteen
789 (18) years at the time of the dismemberment abortion or has died
790 as a result of the abortion, the maternal grandparents of the
791 unborn child.

792 (2) No damages may be awarded a plaintiff if the pregnancy
793 resulted from the plaintiff's criminal conduct.

794 (3) Damages awarded in such an action shall include:

795 (a) Money damages for all injuries, psychological and
796 physical, occasioned by the dismemberment abortion; and

797 (b) Statutory damages equal to three (3) times the cost
798 of the dismemberment abortion.



799 **SECTION 24.** Section 41-41-161, Mississippi Code of 1972, is
800 brought forward as follows:

801 41-41-161. (1) If judgment is rendered in favor of the
802 plaintiff in an action described in Section 41-41-157 or
803 41-41-159, the court shall also render judgment for a reasonable
804 attorney's fee in favor of the plaintiff against the defendant.

805 (2) If judgment is rendered in favor of the defendant in an
806 action described in Section 41-41-157 or 41-41-159 and the court
807 finds that the plaintiff's suit was frivolous and brought in bad
808 faith, the court shall render judgment for a reasonable attorney's
809 fee in favor of the defendant against the plaintiff.

810 (3) No attorney's fee may be assessed against the woman upon
811 whom a dismemberment abortion was performed or attempted to be
812 performed except in accordance with subsection (2) of this
813 section.

814 **SECTION 25.** Section 41-41-163, Mississippi Code of 1972, is
815 brought forward as follows:

816 41-41-163. Only in the event a judgment is rendered in favor
817 of the defendant in an action described in Section 41-41-157 or
818 41-41-159, a district attorney with jurisdiction may bring an
819 indictment for criminal punishment under this section. Any person
820 who violates Section 41-41-155 is guilty of a felony and, upon
821 conviction, shall be punished by a fine not more than Ten Thousand
822 Dollars (\$10,000.00), or commitment to the custody of the



823 Department of Corrections for not more than two (2) years, or
824 both.

825 **SECTION 26.** Section 41-41-165, Mississippi Code of 1972, is
826 brought forward as follows:

827 41-41-165. In every civil, criminal, or administrative
828 proceeding or action brought under Sections 41-41-151 through
829 41-41-169, the court shall rule whether the anonymity of any woman
830 upon whom a dismemberment abortion has been performed or attempted
831 to be performed shall be preserved from public disclosure if she
832 does not give her consent to the disclosure. The court, upon
833 motion or sua sponte, shall make such a ruling and, upon
834 determining that her anonymity should be preserved, shall issue
835 orders to the parties, witnesses, and counsel and shall direct the
836 sealing of the record and exclusion of individuals from courtrooms
837 or hearing rooms to the extent necessary to safeguard her identity
838 from public disclosure. Each such order shall be accompanied by
839 specific written findings explaining why the anonymity of the
840 woman should be preserved from public disclosure, why the order is
841 essential to that end, how the order is narrowly tailored to serve
842 that interest, and why no reasonable less restrictive alternative
843 exists. In the absence of written consent of the woman upon whom
844 a dismemberment abortion has been performed or attempted to be
845 performed, anyone other than a public official who brings an
846 action under Section 41-41-157 or 41-41-159 shall do so under a
847 pseudonym. This section may not be construed to conceal the



848 identity of the plaintiff or of witnesses from the defendant or
849 from attorneys for the defendant.

850 **SECTION 27.** Section 41-41-167, Mississippi Code of 1972, is
851 brought forward as follows:

852 41-41-167. Nothing in Sections 41-41-151 through 41-41-169
853 shall be construed as creating or recognizing a right to abortion,
854 nor a right to a particular method of abortion.

855 **SECTION 28.** Section 41-41-169, Mississippi Code of 1972, is
856 brought forward as follows:

857 41-41-169. If any one or more provisions, sections,
858 subsections, sentences, clauses, phrases or words of Sections
859 41-41-151 through 41-41-169 or the application thereof to any
860 person or circumstance is found to be unconstitutional, the same
861 is declared to be severable and the balance of Sections 41-41-151
862 through 41-41-169 shall remain effective notwithstanding such
863 unconstitutionality. The Legislature declares that it would have
864 passed Sections 41-41-151 through 41-41-169, and each provision,
865 section, subsection, sentence, clause, phrase or word thereof,
866 irrespective of the fact that any one or more provisions,
867 sections, subsections, sentences, clauses, phrases or words be
868 declared unconstitutional.

869 **SECTION 29.** This act shall take effect and be in force from
870 and after July 1, 2018.

