

By: Representatives Foster, Tullos, Barnett

To: Judiciary B

HOUSE BILL NO. 226

1 AN ACT TO AMEND SECTION 41-41-131, MISSISSIPPI CODE OF 1972,
2 TO CHANGE THE NAME OF THE WOMEN'S HEALTH PROTECTION AND PREBORN
3 PAIN ACT TO THE WOMEN'S HEALTH PROTECTION AND FETAL HEARTBEAT ACT;
4 TO AMEND SECTION 41-41-133, MISSISSIPPI CODE OF 1972, TO ADD
5 SEVERAL NEW DEFINITIONS TO THE ACT; TO AMEND SECTION 41-41-135,
6 MISSISSIPPI CODE OF 1972, TO PROHIBIT PHYSICIANS FROM PERFORMING
7 OR INDUCING AN ABORTION WITHOUT FIRST MAKING A DETERMINATION BY
8 USING AN ABDOMINAL ULTRASOUND IMAGING PROCEDURE IF THE UNBORN
9 HUMAN INDIVIDUAL THAT THE PREGNANT WOMAN IS CARRYING HAS A
10 DETECTABLE FETAL HEARTBEAT; TO AMEND SECTION 41-41-137,
11 MISSISSIPPI CODE OF 1972, TO PROHIBIT PHYSICIANS FROM PERFORMING
12 OR INDUCING AN ABORTION IF IT HAS BEEN DETERMINED THAT THE UNBORN
13 HUMAN INDIVIDUAL THAT THE PREGNANT WOMAN IS CARRYING HAS A
14 DETECTABLE FETAL HEARTBEAT; TO CREATE NEW SECTION 41-41-138,
15 MISSISSIPPI CODE OF 1972, TO PROVIDE CRIMINAL PENALTIES FOR
16 PHYSICIANS WHO KNOWINGLY PERFORM OR INDUCE AN ABORTION IN
17 VIOLATION OF SECTION 41-41-135 OR 41-41-137; TO PROVIDE THAT A
18 PREGNANT WOMAN ON WHOM AN ABORTION IS PERFORMED OR INDUCED IN
19 VIOLATION OF SECTION 41-41-135 OR 41-41-137 IS NOT GUILTY OF
20 VIOLATING OR ATTEMPTING TO VIOLATE EITHER OF THOSE SECTIONS AND IS
21 NOT SUBJECT TO A CRIMINAL PENALTY BASED ON THAT VIOLATION; TO
22 AMEND SECTION 41-41-139, MISSISSIPPI CODE OF 1972, TO CONFORM TO
23 THE PRECEDING PROVISIONS; TO AMEND SECTION 41-41-141, MISSISSIPPI
24 CODE OF 1972, TO LIMIT THE EXEMPTION FROM THE PROHIBITIONS IN THIS
25 ACT ONLY TO CASES WHERE THERE EXISTS A CONDITION IN WHICH AN
26 ABORTION IS NECESSARY TO PRESERVE THE LIFE OF THE PREGNANT WOMAN
27 AND TO REMOVE THE OTHER EXEMPTIONS; AND FOR RELATED PURPOSES.

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

29 **SECTION 1.** Section 41-41-131, Mississippi Code of 1972, is
30 amended as follows:



31 41-41-131. Sections 41-41-131 through 41-41-145 may be cited
32 as the Women's Health Protection and * * * Fetal Heartbeat Act.

33 **SECTION 2.** Section 41-41-133, Mississippi Code of 1972, is
34 amended as follows:

35 41-41-133. As used in Sections 41-41-131 through 41-41-145:

36 (a) "Abortion" means the use or prescription of any
37 instrument, medicine, drug or any other substance or device to
38 terminate the pregnancy of a woman known to be pregnant with an
39 intention other than to increase the probability of a live birth,
40 to preserve the life or health of the child after live birth or to
41 remove a dead fetus.

42 (b) * * * "Fetal heartbeat" means cardiac activity or
43 the steady and repetitive rhythmic contraction of the fetal heart
44 within the gestational sac.

45 (c) * * * "Fetus" means the human offspring developing
46 during pregnancy from the moment of conception and includes the
47 embryonic stage of development.

48 (d) * * * "Physician" means a person licensed to
49 practice medicine under Section 73-25-1 et seq.

50 (e) "Pregnancy" means the human female reproductive
51 condition that begins with fertilization, when the woman is
52 carrying the developing human offspring, and that is calculated
53 from the first day of the last menstrual period of the woman.



54 (f) "Unborn human individual" means an individual
55 organism of the species homo sapiens from fertilization until live
56 birth.

57 **SECTION 3.** Section 41-41-135, Mississippi Code of 1972, is
58 amended as follows:

59 41-41-135. Except as otherwise provided by Section
60 41-41-141, a physician may not perform * * * or induce or attempt
61 to perform or induce an abortion without, before the
62 procedure * * *,

63 (a) Making a determination * * * by using an abdominal
64 ultrasound imaging procedure if the unborn human individual that
65 the pregnant woman is carrying has a detectable fetal heartbeat;
66 or

67 (b) Possessing and relying on a determination * * *
68 made by another physician using an abdominal ultrasound imaging
69 procedure if the unborn human individual that the pregnant woman
70 is carrying has a detectable fetal heartbeat. * * *

71 **SECTION 4.** Section 41-41-137, Mississippi Code of 1972, is
72 amended as follows:

73 41-41-137. Except as otherwise provided by Section
74 41-41-141, a * * * physician may not perform or induce or attempt
75 to perform or induce an abortion * * * if it has been determined,
76 by the physician performing, inducing, or attempting to perform or
77 induce the abortion or by another physician on whose determination



78 that physician relies, that the * * * unborn human individual that
79 the pregnant woman is carrying has a detectable fetal heartbeat.

80 **SECTION 5.** The following shall be codified as Section
81 41-41-138, Mississippi Code of 1972:

82 41-41-138. (1) A physician who (a) knowingly performs or
83 induces or attempts to perform or induce an abortion without first
84 determining, or possessing a determination by another physician on
85 whose determination that physician relies, if the unborn human
86 individual that the pregnant woman is carrying has a detectable
87 fetal heartbeat, in violation of Section 41-41-135; or (b)
88 knowingly performs or induces or attempts to perform or induce an
89 abortion after determining, or possessing a determination by
90 another physician on whose determination that physician relies,
91 that the unborn human individual that the pregnant woman is
92 carrying has a detectable fetal heartbeat, in violation of Section
93 41-41-137, is guilty of a felony and, upon conviction thereof,
94 shall be fined not more than Twenty-five Thousand Dollars
95 (\$25,000.00) or sentenced to the custody of the State Department
96 of Corrections for not more than two (2) years, or both. In
97 addition, the physician shall be subject to disciplinary action
98 under Section 73-25-29(15).

99 (2) A pregnant woman on whom an abortion is performed or
100 induced in violation of Section 41-41-135 or 41-41-137 is not
101 guilty of violating or attempting to violate either of those



102 sections, and is not subject to a penalty under this section based
103 on that violation.

104 **SECTION 6.** Section 41-41-139, Mississippi Code of 1972, is
105 amended as follows:

106 41-41-139. (1) This section applies only to an abortion
107 authorized under Section 41-41-141(1) in which * * * the unborn
108 human individual that the pregnant woman is carrying has a
109 detectable fetal heartbeat.

110 (2) A physician performing or inducing an abortion under
111 subsection (1) of this section shall terminate the pregnancy in
112 the manner that, in the physician's reasonable medical judgment,
113 provides the best opportunity for the unborn child to survive.

114 **SECTION 7.** Section 41-41-141, Mississippi Code of 1972, is
115 amended as follows:

116 41-41-141. * * * The prohibitions and requirements under
117 Sections 41-41-135, 41-41-137 and 41-41-139(2) do not apply if
118 there exists a condition in which an abortion is necessary to
119 preserve the life of the pregnant woman whose life is endangered
120 by a physical disorder, physical illness or physical injury,
121 including a life-endangering physical condition caused by or
122 arising from the pregnancy itself * * *.

123 * * *

124 **SECTION 8.** This act shall take effect and be in force from
125 and after July 1, 2018.

