

By: Senator(s) Fillingane

To: Public Health and Welfare

SENATE BILL NO. 2905

1 AN ACT TO BE KNOWN AS THE GESTATIONAL AGE ACT; TO ENACT
2 DEFINITIONS; TO PROHIBIT ABORTIONS AFTER 15 WEEKS' GESTATION; TO
3 PROVIDE PENALTIES; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** (1) This section shall be known and cited as the
6 "Gestational Age Act."

7 (2) **Legislative findings and purpose.** (a) The Legislature
8 makes the following findings of fact and incorporates them herein
9 by reference:

10 (b) The United States is one (1) of only seven (7)
11 nations in the world that permits nontherapeutic or elective
12 abortion-on-demand after the twentieth (20th) week of gestation.
13 In fact, fully seventy-five percent (75%) of all nations do not
14 permit abortion after twelve (12) weeks' gestation, except (in
15 most instances) to save the life and to preserve the physical
16 health of the mother.

17 (c) (i) Medical and other authorities now know more
18 about human prenatal development than ever before including that:



19 1. Between five (5) and six (6) weeks'
20 gestation, an unborn human being's heart begins beating.

21 2. An unborn human being begins to move about
22 in the womb at approximately eight (8) weeks' gestation.

23 3. At nine (9) weeks' gestation, all basic
24 physiological functions are present. Teeth and eyes are present,
25 as well as external genitalia.

26 4. An unborn human being's vital organs begin
27 to function at ten (10) weeks' gestation. Hair, fingernails, and
28 toenails also begin to form.

29 5. At eleven (11) weeks' gestation, an unborn
30 human being's diaphragm is developing, and he or she may even
31 hiccup. He or she is beginning to move about freely in the womb.

32 6. At twelve (12) weeks' gestation, an unborn
33 human being can open and close his or her fingers, starts to make
34 sucking motions, and senses stimulation from the world outside the
35 womb. Importantly, he or she has taken on "the human form" in all
36 relevant aspects. *Gonzales v. Carhart*, 550 U.S. 124, 160 (2007).

37 7. The Supreme Court has long recognized that
38 the State of Mississippi has an "important and legitimate interest
39 in protecting the potentiality of human life," *Roe v. Wade*, 410
40 U.S. 113, 162 (1973), and specifically that "the state has an
41 interest in protecting the life of the unborn." *Planned*
42 *Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833,
43 873 (1992).



44 8. The majority of abortion procedures
45 performed after fifteen (15) weeks' gestation are dilation and
46 evacuation procedures which involve the use of surgical
47 instruments to crush and tear the unborn child apart before
48 removing the pieces of the dead child from the womb. The
49 Legislature finds that the intentional commitment of such acts for
50 nontherapeutic or elective reasons is a barbaric practice,
51 dangerous for the maternal patient, and demeaning to the medical
52 profession.

53 9. Most obstetricians and gynecologists
54 practicing in the State of Mississippi do not offer or perform
55 nontherapeutic or elective abortions. Even fewer offer or perform
56 the dilation and evacuation abortion procedure even though it is
57 within their scope of practice.

58 (ii) Abortion carries significant physical and
59 psychological risks to the maternal patient, and these physical
60 and psychological risks increase with gestational age.
61 Specifically, in abortions performed after eight (8) weeks'
62 gestation, the relative physical and psychological risks escalate
63 exponentially as gestational age increases. L. Bartlett et al.,
64 *Risk factors for legal induced abortion mortality in the United*
65 *States*, OBSTETRICS AND GYNECOLOGY 103(4):729 (2004).

66 (iii) Importantly, as the second trimester
67 progresses, in the vast majority of uncomplicated pregnancies, the



68 maternal health risks of undergoing an abortion are greater than
69 the risks of carrying a pregnancy to term.

70 (iv) Medical complications from dilation and
71 evacuation abortions include, but are not limited to: pelvic
72 infection; incomplete abortions (retained tissue); blood clots;
73 heavy bleeding or hemorrhage; laceration, tear, or other injury to
74 the cervix; puncture, laceration, tear, or other injury to the
75 uterus; injury to the bowel or bladder; depression; anxiety;
76 substance abuse; and other emotional or psychological problems.
77 Further, in abortions performed after fifteen (15) weeks'
78 gestation, there is a higher risk of requiring a hysterectomy,
79 other reparative surgery, or blood transfusion.

80 (v) The State of Mississippi also has "legitimate
81 interests from the outset of pregnancy in protecting the health of
82 women." *Planned Parenthood of Southeastern Pennsylvania v. Casey*,
83 505 U.S. 833, 847 (1992), as the "medical, emotional, and
84 psychological consequences of abortion are serious and can be
85 lasting ..." *H.L. v. Matheson*, 450 U.S. 398, 411 (1981).

86 (d) Based on the findings in paragraph (a) of this
87 subsection, it is the intent of the Legislature, through this act
88 and any regulations and policies promulgated hereunder, to
89 restrict the practice of nontherapeutic or elective abortion to
90 the period up to the fifteenth (15th) week of gestation.

91 (3) **Definitions.** As used in this section:



92 (a) "Abortion" means the use or prescription of an
93 instrument, medicine, drug, or other substance or device with the
94 intent to terminate a clinically diagnosable pregnancy for reasons
95 other than to increase the probability of a live birth, to
96 preserve the life or health of the unborn human being, to
97 terminate an ectopic pregnancy, or to remove a dead unborn human
98 being.

99 (b) "Attempt to perform or induce an abortion" means to
100 do or omit anything that, under the circumstances as the person
101 believes them to be, is an act or omission that constitutes a
102 substantial step in a course of conduct planned to culminate in
103 the performance or induction of an abortion in violation of this
104 section.

105 (c) "Conception" means the fusion of human spermatozoon
106 with a human ovum.

107 (d) "Department" means the Mississippi State Department
108 of Health.

109 (e) "Gestation" means the time that has elapsed since
110 the first day of the woman's last menstrual period.

111 (f) "Gestational age" or "probable gestation age" means
112 the age of an unborn human being as calculated from the first day
113 of the last menstrual period of the pregnant woman.

114 (g) "Human being" means an individual member of the
115 species *Homo sapiens*, from and after the point of conception.

116 (h) "Severe fetal abnormality" means a life-threatening



117 physical condition that, in reasonable medical judgment,
118 regardless of the provision of life-saving medical treatment, is
119 incompatible with life outside the womb.

120 (i) "Major bodily function" includes, but is not
121 limited to, functions of the immune system, normal cell growth,
122 and digestive, bowel, bladder, neurological, brain, respiratory,
123 circulatory, endocrine, and reproductive functions.

124 (j) "Medical emergency" means a condition in which, on
125 the basis of the physician's good faith clinical judgment, an
126 abortion is necessary to preserve the life of a pregnant woman
127 whose life is endangered by a physical disorder, physical illness,
128 or physical injury, including a life-endangering physical
129 condition arising from the pregnancy itself, or when the
130 continuation of the pregnancy will create a serious risk of
131 substantial and irreversible impairment of a major bodily
132 function.

133 (k) "Physician" or "referring physician" means a person
134 licensed to practice medicine in the State of Mississippi.

135 (4) **Abortion limited to fifteen (15) weeks' gestation except**
136 **in medical emergency and in cases of severe fetal abnormality.**

137 (a) Except in a medical emergency or in the case of a severe
138 fetal abnormality, a person shall not perform, induce, or attempt
139 to perform or induce an abortion unless the physician or the
140 referring physician has first made a determination of the probable
141 gestational age of the unborn human being and documented that



142 gestational age in the maternal patient's chart and, if required,
143 in a report to be filed with the department as set forth in
144 paragraph (c) of this subsection. The determination of probable
145 gestational age shall be made according to standard medical
146 practices and techniques used in the community.

147 (b) Except in a medical emergency or in the case of a
148 severe fetal abnormality, a person shall not intentionally or
149 knowingly perform, induce, or attempt to perform or induce an
150 abortion of an unborn human being if the probable gestational age
151 of the unborn human being has been determined to be greater than
152 fifteen (15) weeks.

153 (c) In every case in which a physician performs or
154 induces an abortion on an unborn human being whose gestational age
155 is greater than fifteen (15) weeks, the physician shall within
156 fifteen (15) days of the abortion cause to be filed with the
157 department, on a form supplied by the department, a report
158 containing the following information:

159 (i) Date the abortion was performed;

160 (ii) Specific method of abortion used;

161 (iii) The probable gestational age of the unborn
162 human being and the method used to calculate gestational age;

163 (iv) A statement declaring that the abortion was
164 necessary to preserve the life or physical health of the maternal
165 patient;



166 (v) Specific medical indications supporting the
167 abortion; and

168 (vi) Probable health consequences of the abortion
169 and specific abortion method used.

170 The physician shall sign the form as his or her attestation
171 under oath that the information stated thereon is true and correct
172 to the best of his or her knowledge.

173 (d) Reports required and submitted under subsection (4)
174 of this section shall not contain the name of the maternal patient
175 upon whom the abortion was performed or any other information or
176 identifiers that would make it possible to identify, in any manner
177 or under any circumstances, a woman who obtained or sought to
178 obtain an abortion.

179 (5) **Reporting forms.** The Department shall create the forms
180 required by this section within thirty (30) days after the
181 effective date of this act. No provision of this section
182 requiring the reporting of information on forms published by the
183 department shall be applicable until ten (10) days after the
184 requisite forms have been made available or the effective date of
185 this act, whichever is later.

186 (6) **Criminal Penalties.** (a) Any person who intentionally
187 or knowingly violates the prohibition in subsection (4) of this
188 section shall be guilty of a felony and shall, upon conviction, be
189 imprisoned in the custody of the Department of Corrections not
190 less than one (1) nor more than ten (10) years.



191 (b) A woman upon whom an abortion is performed,
192 induced, or attempted in violation of this section may not be
193 prosecuted for conspiracy to commit any violation of this section.

194 (7) **Professional sanctions and civil penalties.** (a) A
195 physician who intentionally or knowingly violates the prohibition
196 in subsection (4) of this section commits an act of unprofessional
197 conduct and his or her license to practice medicine in the State
198 of Mississippi shall be suspended or revoked pursuant to action by
199 the Mississippi State Board of Medical Licensure.

200 (b) A physician who knowingly or intentionally delivers
201 to the department any report required by subsection 4(c) of this
202 section and known by him or her to be false shall be subject to a
203 civil penalty or fine up to Five Hundred Dollars (\$500.00) per
204 violation imposed by the department.

205 (8) **Additional Enforcement.** The Attorney General shall have
206 authority to bring an action in law or equity to enforce the
207 provisions of this section on behalf of the Director of the
208 Mississippi State Department of Health or the Mississippi State
209 Board of Medical Licensure. The Mississippi State Board of
210 Medical Licensure shall also have authority to bring such action
211 on its own behalf.

212 (9) **Construction.** Nothing in this section shall be
213 construed as creating or recognizing a right to abortion or as
214 altering generally accepted medical standards. It is not the
215 intention of this section to make lawful an abortion that is



216 otherwise unlawful. An abortion that complies with this section,
217 but violates any other state law, is unlawful. An abortion that
218 complies with another state law, but violates this section is
219 unlawful.

220 (10) **Severability.** (a) It is the intent of the Legislature
221 that every provision of this Section shall operate with equal
222 force and shall be severable one from the other and that, in the
223 event that any provision of this section shall be held invalid or
224 unenforceable by a court of competent jurisdiction, said provision
225 shall be deemed severable and the remaining provisions of this act
226 deemed fully enforceable.

227 (b) In the event that any provision of this section
228 shall be held invalid or unenforceable by a court of competent
229 jurisdiction, Sections 41-41-131 through 41-41-145 shall remain in
230 effect. If some or all of the provisions of this section are ever
231 temporarily or permanently restrained or enjoined by judicial
232 order, all other provisions of Mississippi law regulating or
233 restricting abortion shall be enforced as though the restrained or
234 enjoined provisions had not been adopted; however, whenever the
235 temporary or permanent restraining order or injunction is stayed
236 or dissolved, or otherwise ceases to have effect, the provisions
237 of this section shall have full force and effect.

238 (c) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996),
239 regarding the context of determining the severability of a state
240 section of law regulating abortion, the U.S. Supreme Court held



241 that an explicit statement of legislative intent is controlling.
242 Accordingly, it is the intent of the Legislature that every
243 provision, section, subsection, paragraph, sentence, clause,
244 phrase or word in this section and every application of the
245 provisions in this section is severable from each other. If any
246 application of any provision in this section to any person, group
247 of persons, or circumstances is found by a competent court to be
248 invalid, the remaining applications of that provision to all other
249 persons and circumstances shall be severed and may not be
250 affected. All constitutionally valid applications of this section
251 shall be severed from any applications that a court finds to be
252 invalid, leaving the valid applications in force, because it is
253 the Legislature's intent and priority that the valid applications
254 be allowed to stand alone. Even if a reviewing court finds a
255 provision of this statute to impose an undue burden in a large or
256 substantial fraction of relevant cases, the applications that do
257 not represent an undue burden shall be severed from the remaining
258 provisions and shall remain in force, and shall be treated as if
259 the Legislature had enacted a section limited to the persons,
260 group of persons, or circumstances for which the section's
261 application does not present an undue burden. The Legislature
262 further declares that it would have passed this section and each
263 provision, section, subsection, paragraph, sentence, clause,
264 phrase or word, and all constitutional applications of this
265 section, without regard to the fact that any provision, section,



266 subsection, paragraph, sentence, clause, phrase or word, or
267 applications of this section, were to be declared unconstitutional
268 or to represent an undue burden.

269 (d) If this section is found by any competent court to
270 be invalid or to impose an undue burden as applied to any person,
271 group of persons, or circumstances, the prohibition shall apply to
272 that person or group of persons or circumstances on the earliest
273 date on which this section can be constitutionally applied.

274 (e) If any provisions of this section are found by a
275 competent court to be unconstitutionally vague, then the
276 applications of the provision that do not present constitutional
277 vagueness problems shall be severed and remain in force.

278 (11) **Right of Intervention.** The Legislature, through one or
279 more sponsors of this act duly appointed by resolution of their
280 respective chamber, may intervene as a matter of right in any case
281 in which the constitutionality of this section is challenged. The
282 Governor may also intervene as a matter of right in any case in
283 which the constitutionality of this section is challenged.

284 **SECTION 2.** This act shall take effect and be in force from
285 and after its passage.

