

By: Representatives Brown, Foster, Horne, Shirley, Willis, Carpenter, Lamar, Arnold, Hopkins, Criswell, Eubanks, Ford, Shanks, Baker, White, Boyd, McLeod, Crawford, Ladner, Byrd, Kinkade, Henley, Barnett, Corley

To: Public Health and Human Services

HOUSE BILL NO. 732

1 AN ACT TO CREATE NEW SECTION 41-41-34.1, MISSISSIPPI CODE OF
2 1972, TO PROHIBIT AN ABORTION OF AN UNBORN HUMAN INDIVIDUAL WITH A
3 DETECTABLE FETAL HEARTBEAT EXCEPT WHEN A MEDICAL EMERGENCY
4 NECESSITATES; TO AUTHORIZE AND DIRECT THE STATE BOARD OF HEALTH TO
5 PROMULGATE REGULATIONS FOR THE APPROPRIATE METHODS OF PERFORMING
6 AN EXAMINATION FOR THE PRESENCE OF A FETAL HEARTBEAT; TO AMEND
7 SECTION 73-25-29, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A
8 PHYSICIAN PERFORMING AN ABORTION ON A PREGNANT WOMAN BEFORE
9 DETERMINING IF THE UNBORN HUMAN INDIVIDUAL HAS A DETECTABLE FETAL
10 HEARTBEAT IS SUBJECT TO LICENSE REVOCATION OR DISCIPLINARY ACTION;
11 TO BRING FORWARD SECTIONS 41-41-151, 41-41-153, 41-41-155,
12 41-41-157, 41-41-159, 41-41-161, 41-41-163, 41-41-165, 41-41-167
13 AND 41-41-169, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE
14 MISSISSIPPI UNBORN CHILD PROTECTION FROM DISMEMBERMENT ABORTION
15 ACT, FOR PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** The following provision shall be codified as
18 Section 41-41-34.1, Mississippi Code of 1972:

19 41-41-34.1. (1) The Legislature declares that it finds,
20 according to contemporary medical research, all of the following:

21 (a) As many as thirty percent (30%) of natural
22 pregnancies end in spontaneous miscarriage;



23 (b) Less than five percent (5%) of all natural
24 pregnancies end in spontaneous miscarriage after detection of
25 fetal cardiac activity;

26 (c) Over ninety percent (90%) of in vitro pregnancies
27 survive the first trimester if cardiac activity is detected in the
28 gestational sac;

29 (d) Nearly ninety percent (90%) of in vitro pregnancies
30 do not survive the first trimester where cardiac activity is not
31 detected in the gestational sac;

32 (e) Fetal heartbeat, therefore, has become a key,
33 medical predictor that an unborn human individual will reach
34 viability and live birth;

35 (f) Cardiac activity begins at a biologically
36 identifiable moment in time, normally when the fetal heart is
37 formed in the gestational sac.

38 (2) As used in this section:

39 (a) "Contraceptive" means a device, drug, or chemical
40 that prevents conception.

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

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



47 (d) "Gestational age" means the age of an unborn human
48 individual as calculated from the first day of the last menstrual
49 period of a pregnant woman.

50 (e) "Gestational sac" comprises the extra embryonic
51 membranes that envelop the fetus and that is typically visible by
52 ultrasound after the fourth week of pregnancy.

53 (f) "Medical emergency" means a condition that in the
54 physician's good-faith medical judgment, based upon the facts
55 known to the physician at that time, so endangers the life of the
56 pregnant woman or a major bodily function of the pregnant woman as
57 to necessitate the immediate performance or inducement of an
58 abortion.

59 (g) "Physician" means a person licensed to practice
60 medicine under Section 73-25-1 et seq.

61 (h) "Pregnancy" means the human female reproductive
62 condition that begins with fertilization, when the woman is
63 carrying the developing human offspring, and that is calculated
64 from the first day of the last menstrual period of the woman.

65 (i) "Spontaneous miscarriage" means the natural or
66 accidental termination of a pregnancy and the expulsion of the
67 fetus, typically caused by genetic defects in the fetus or
68 physical abnormalities in the pregnant woman.

69 (j) "Unborn human individual" means an individual
70 organism of the species homo sapiens from fertilization until live
71 birth.



72 (3) (a) Except when a medical emergency exists that
73 prevents compliance with this section, no person shall perform an
74 abortion on a pregnant woman before determining if the unborn
75 human individual that the pregnant woman is carrying has a
76 detectable fetal heartbeat. Any person who performs an abortion
77 on a pregnant woman based on the exception in this section shall
78 note in the pregnant woman's medical records that a medical
79 emergency necessitating the abortion existed.

80 (b) A person who intends to perform an abortion on a
81 pregnant woman shall determine if there is the presence of a fetal
82 heartbeat of the unborn human individual that the pregnant woman
83 is carrying according to standard medical practice. A person
84 shall comply with this paragraph (b) regardless of whether or not
85 the State Board of Health has promulgated rules under paragraph
86 (c) of this subsection (3).

87 (c) The State Board of Health may promulgate rules for
88 the appropriate methods of performing an examination for the
89 presence of a fetal heartbeat of an unborn human individual based
90 on standard medical practice.

91 (d) If a physician performs an abortion on a pregnant
92 woman before determining if the unborn human individual that the
93 pregnant woman is carrying has a detectable fetal heartbeat, that
94 physician is subject to disciplinary action under Section
95 73-25-29(14).



96 (4) (a) This subsection (4) applies to all abortions that
97 are not prohibited under law, except when a medical emergency
98 exists that prevents compliance with this section.

99 (b) If the person who intends to perform an abortion on
100 a pregnant woman detects a fetal heartbeat in the unborn human
101 individual that the pregnant woman is carrying, no later than
102 twenty-four (24) hours before the performance of the intended
103 abortion, both of the following apply:

104 (i) The person intending to perform the abortion
105 shall inform the pregnant woman in writing that the unborn human
106 individual that she is carrying has a fetal heartbeat and shall
107 inform the pregnant woman, to the best of the person's knowledge,
108 of the statistical probability of bringing the unborn human
109 individual to term based on the gestational age of the unborn
110 human individual possessing a detectable fetal heartbeat. A
111 person shall comply with this paragraph (i) regardless of whether
112 or not the State Board of Health promulgated rules under paragraph
113 (c) of this subsection (4).

114 (ii) The pregnant woman shall sign a form
115 acknowledging that she has received information from the person
116 intending to perform the abortion that the unborn human individual
117 that she is carrying has a fetal heartbeat and that she is aware
118 of the statistical probability of bringing the unborn human
119 individual that she is carrying to term.



120 (c) The State Board of Health may define and promulgate
121 by rules adopted and based upon available medical evidence the
122 statistical probability of bringing an unborn human individual to
123 term based on the gestational age of an unborn human individual
124 who possesses a detectable fetal heartbeat.

125 (d) This subsection (4) does not repeal any other
126 provision of the Mississippi Code relating to informed consent for
127 an abortion.

128 (5) (a) Except as provided in paragraph (b) or (c) of this
129 subsection (5), no person shall knowingly perform an abortion on a
130 pregnant woman with the specific intent of causing or abetting the
131 termination of the life of the unborn human individual that the
132 pregnant woman is carrying and whose fetal heartbeat has been
133 detected according to the requirements of subsection (3) of this
134 section. Any person who acts based on the exception in paragraph
135 (b) or (c) of this subsection (5) shall so note in the pregnant
136 woman's medical records and shall specify in the pregnant woman's
137 medical records which of the exceptions the person invoked.

138 (b) (i) A person is not in violation of paragraph (a)
139 of this subsection (5) if that person performs a medical procedure
140 designed to or intended, in that person's reasonable medical
141 judgment, to prevent the death of a pregnant woman or to prevent a
142 serious risk of the substantial and irreversible impairment of a
143 major bodily function of the pregnant woman.



144 (ii) Any person who performs a medical procedure
145 as described in paragraph (b) (i) of this subsection (5) shall
146 declare in writing, under penalty of perjury, that the medical
147 procedure was necessary, to the best of that person's reasonable
148 medical judgment, to prevent the death of the pregnant woman or to
149 prevent a serious risk of the substantial and irreversible
150 impairment of a major bodily function of the pregnant woman. That
151 person shall also provide in that written document, under penalty
152 of perjury, the medical condition of that pregnant woman that the
153 medical procedure performed as described in paragraph (b) (i) of
154 this subsection (5) will assertedly address, and the medical
155 rationale for the conclusion that the medical procedure was
156 necessary to prevent the death of the pregnant woman or to prevent
157 a serious risk of the substantial and irreversible impairment of a
158 major bodily function of the pregnant woman.

159 (iii) The person who performs a medical procedure
160 as described in paragraph (b) (i) of this subsection (5) shall
161 place the written documentation required under paragraph (b) (ii)
162 of this subsection (5) in the pregnant woman's medical records,
163 and shall maintain a copy of the written documentation in the
164 person's own records for at least seven (7) years.

165 (c) A person is not in violation of paragraph (a) of
166 this subsection (5) if that person has performed an examination
167 for the presence of a fetal heartbeat in the unborn human
168 individual using standard medical practice and that examination



169 does not reveal a fetal heartbeat or the person has been informed
170 by a physician who has performed the examination for a fetal
171 heartbeat that the examination did not reveal a fetal heartbeat.

172 (d) This subsection (5) does not repeal any other
173 provision of the Mississippi Code that restricts or regulates the
174 performance of an abortion by a particular method or during a
175 particular stage of a pregnancy.

176 (e) Any person who violates this subsection (5) is
177 guilty of performing an abortion after the detection of a fetal
178 heartbeat, a violation punishable as provided in Section 41-41-39.

179 (6) Any person performing an abortion on a pregnant woman
180 carrying an unborn human individual whose heartbeat has been
181 detected under the requirements of subsection (3) of this section
182 to preserve the health of the pregnant woman shall set forth in a
183 separate document, under penalty of perjury, the medical condition
184 that the abortion will assertedly address and the medical
185 rationale for the conclusion that the abortion is necessary to
186 address that condition. The person shall place this written
187 documentation in the pregnant woman's medical records and shall
188 maintain a copy in the person's own records for at least seven (7)
189 years. This documentation requirement is independent of the
190 provisions in subsection (5) of this section.

191 (7) A pregnant woman on whom an abortion is performed in
192 violation of subsection (3) or (5) of this section is not guilty
193 of violating subsection (3) or (5) of this section or of



194 attempting to commit, conspiring to commit, or complicity in
195 committing a violation of subsection (3) or (5) of this section
196 and is not subject to a penalty based on that violation.

197 (8) Nothing in this section prohibits the sale, use,
198 prescription, or administration of a measure, drug, or chemical
199 designed for contraceptive purposes.

200 (9) If a state or federal court of competent jurisdiction
201 finds that a provision of this section is unconstitutional, the
202 effective date of that provision is tolled until either of the
203 following occur:

204 (a) An appellate court finds that provision to be
205 constitutional.

206 (b) The Attorney General certifies in an opinion to the
207 Governor that, due to a later decision or decisions by the Supreme
208 Court of the United States, it is reasonably probable that the
209 provision would be upheld as constitutional by a court of
210 competent jurisdiction.

211 (10) If a provision of this section is found constitutional
212 by an appellate court or the Attorney General issues an opinion as
213 described in subsection (9) (b) of this section, the provision
214 shall be prospective.

215 (11) If any provisions of this section or its application to
216 any person or circumstance is held invalid, the invalidity does
217 not affect other provisions or applications of this section that



218 can be given effect without the invalid provision or application,
219 and to this end the provisions of this section are severable.

220 **SECTION 2.** Section 73-25-29, Mississippi Code of 1972, is
221 amended as follows:

222 73-25-29. The grounds for the nonissuance, suspension,
223 revocation or restriction of a license or the denial of
224 reinstatement or renewal of a license are:

225 (1) Habitual personal use of narcotic drugs, or any
226 other drug having addiction-forming or addiction-sustaining
227 liability.

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

230 (3) Administering, dispensing or prescribing any
231 narcotic drug, or any other drug having addiction-forming or
232 addiction-sustaining liability otherwise than in the course of
233 legitimate professional practice.

234 (4) Conviction of violation of any federal or state law
235 regulating the possession, distribution or use of any narcotic
236 drug or any drug considered a controlled substance under state or
237 federal law, a certified copy of the conviction order or judgment
238 rendered by the trial court being prima facie evidence thereof,
239 notwithstanding the pendency of any appeal.

240 (5) Procuring, or attempting to procure, or aiding in,
241 an abortion that is not medically indicated.



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

246 (7) Obtaining or attempting to obtain a license by
247 fraud or deception.

248 (8) Unprofessional conduct, which includes, but is not
249 limited to:

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

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

254 (c) Making or willfully causing to be made any
255 flamboyant claims concerning the licensee's professional
256 excellence.

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

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



266 (f) Use of any false, fraudulent or forged
267 statement or document, or the use of any fraudulent, deceitful,
268 dishonest or immoral practice in connection with any of the
269 licensing requirements, including the signing in his professional
270 capacity any certificate that is known to be false at the time he
271 makes or signs such certificate.

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

275 (9) The refusal of a licensing authority of another
276 state or jurisdiction to issue or renew a license, permit or
277 certificate to practice medicine in that jurisdiction or the
278 revocation, suspension or other restriction imposed on a license,
279 permit or certificate issued by such licensing authority which
280 prevents or restricts practice in that jurisdiction, a certified
281 copy of the disciplinary order or action taken by the other state
282 or jurisdiction being prima facie evidence thereof,
283 notwithstanding the pendency of any appeal.

284 (10) Surrender of a license or authorization to
285 practice medicine in another state or jurisdiction or surrender of
286 membership on any medical staff or in any medical or professional
287 association or society while under disciplinary investigation by
288 any of those authorities or bodies for acts or conduct similar to
289 acts or conduct which would constitute grounds for action as
290 defined in this section.



291 (11) Final sanctions imposed by the United States
292 Department of Health and Human Services, Office of Inspector
293 General or any successor federal agency or office, based upon a
294 finding of incompetency, gross misconduct or failure to meet
295 professionally recognized standards of health care; a certified
296 copy of the notice of final sanction being prima facie evidence
297 thereof. As used in this paragraph, the term "final sanction"
298 means the written notice to a physician from the United States
299 Department of Health and Human Services, Officer of Inspector
300 General or any successor federal agency or office, which
301 implements the exclusion.

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

304 (13) Violation of any provision(s) of the Medical
305 Practice Act or the rules and regulations of the board or of any
306 order, stipulation or agreement with the board.

307 (14) Violation(s) of the provisions of Sections
308 41-121-1 through 41-121-9 relating to deceptive advertisement by
309 health care practitioners.

310 (15) Performing or inducing an abortion on a woman in
311 violation of any provision of Sections 41-41-131 through
312 41-41-145.

313 (16) Performing an abortion on a pregnant woman before
314 determining if the unborn human individual that the pregnant woman



315 is carrying has a detectable fetal heartbeat as provided in
316 Section 41-41-34.1.

317 In addition to the grounds specified above, the board shall
318 be authorized to suspend the license of any licensee for being out
319 of compliance with an order for support, as defined in Section
320 93-11-153. The procedure for suspension of a license for being
321 out of compliance with an order for support, and the procedure for
322 the reissuance or reinstatement of a license suspended for that
323 purpose, and the payment of any fees for the reissuance or
324 reinstatement of a license suspended for that purpose, shall be
325 governed by Section 93-11-157 or 93-11-163, as the case may be.
326 If there is any conflict between any provision of Section
327 93-11-157 or 93-11-163 and any provision of this chapter, the
328 provisions of Section 93-11-157 or 93-11-163, as the case may be,
329 shall control.

330 **SECTION 3.** Section 41-41-151, Mississippi Code of 1972, is
331 brought forward as follows:

332 41-41-151. Sections 41-41-151 through 41-41-169 may be cited
333 as the "Mississippi Unborn Child Protection from Dismemberment
334 Abortion Act."

335 **SECTION 4.** Section 41-41-153, Mississippi Code of 1972, is
336 brought forward as follows:

337 41-41-153. For the purposes of Sections 41-41-151 through
338 41-41-169, the following terms shall be defined as provided in
339 this section:



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

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

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

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

348 2. To remove a dead unborn child.

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

355 (i) Agreeing with an individual to perform an
356 abortion on that individual or on some other person, whether or
357 not the term "abortion" is used in the agreement, and whether or
358 not the agreement is contingent on another factor such as receipt
359 of payment or a determination of pregnancy; or

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



364 This definition shall not be construed to require that an
365 abortion procedure actually must be initiated for an attempt to
366 occur.

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

374 The term "dismemberment abortion" does not include an
375 abortion that uses suction to dismember the body of the unborn
376 child by sucking fetal parts into a collection container, although
377 it does include an abortion in which a dismemberment abortion is
378 used to cause the death of an unborn child but suction is
379 subsequently used to extract fetal parts after the death of the
380 unborn child.

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

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

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



389 (ii) If the element involves the attendant
390 circumstances, he is aware of the existence of those circumstances
391 or he believes or hopes that they exist.

392 (f) "Serious health risk to the unborn child's mother"
393 means that in reasonable medical judgment, she has a condition
394 that so complicates her medical condition that it necessitates the
395 abortion of her pregnancy to avert her death or to avert serious
396 risk of substantial and irreversible physical impairment of a
397 major bodily function, not including psychological or emotional
398 conditions. No such condition may be determined to exist if it is
399 based on a claim or diagnosis that the woman will engage in
400 conduct that she intends to result in her death or in substantial
401 and irreversible physical impairment of a major bodily function.

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

404 **SECTION 5.** Section 41-41-155, Mississippi Code of 1972, is
405 brought forward as follows:

406 41-41-155. (1) Notwithstanding any other provision of law,
407 it shall be unlawful for any person to purposely perform or
408 attempt to perform a dismemberment abortion and thereby kill an
409 unborn child unless necessary to prevent serious health risk to
410 the unborn child's mother.

411 (2) A person accused in any proceeding of unlawful conduct
412 under subsection (1) of this section may seek a hearing before the
413 State Board of Medical Licensure on whether the dismemberment



414 abortion was necessary to prevent serious health risk to the
415 unborn child's mother. The board's findings are admissible on
416 that issue at any trial in which the unlawful conduct is alleged.
417 Upon a motion of the person accused, the court shall delay the
418 beginning of the trial for not more than thirty (30) days to
419 permit such a hearing to take place.

420 (3) No woman upon whom an abortion is performed or attempted
421 to be performed shall be thereby liable for performing or
422 attempting to perform a dismemberment abortion. No nurse,
423 technician, secretary, receptionist or other employee or agent who
424 is not a physician but who acts at the direction of a physician,
425 and no pharmacist or other individual who is not a physician but
426 who fills a prescription or provides instruments or materials used
427 in an abortion at the direction of or to a physician shall be
428 thereby liable for performing or attempting to perform a
429 dismemberment abortion.

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

433 **SECTION 6.** Section 41-41-157, Mississippi Code of 1972, is
434 brought forward as follows:

435 41-41-157. (1) Civil and criminal penalties for violations
436 of Sections 41-41-151 through 41-41-169 may be imposed under the
437 following priority:

438 (a) Injunctive relief;



439 (b) Civil cause of action; and

440 (c) Criminal action.

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

445 (a) A woman upon whom such a dismemberment abortion was
446 performed or attempted to be performed;

447 (b) A person who is the spouse, parent or guardian of,
448 or a current or former licensed health care provider of, a woman
449 upon whom such a dismemberment abortion was performed or attempted
450 to be performed; or

451 (c) A prosecuting attorney with appropriate
452 jurisdiction.

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

456 **SECTION 7.** Section 41-41-159, Mississippi Code of 1972, is
457 brought forward as follows:

458 41-41-159. (1) Only in the event a cause of action for
459 injunctive relief under Section 41-41-157 has been denied by a
460 court of competent jurisdiction, a cause of action for civil
461 damages against a person who has performed a dismemberment
462 abortion in violation of Section 41-41-155 may be maintained by:



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

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

467 (c) If the woman had not attained the age of eighteen
468 (18) years at the time of the dismemberment abortion or has died
469 as a result of the abortion, the maternal grandparents of the
470 unborn child.

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

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

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

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

478 **SECTION 8.** Section 41-41-161, Mississippi Code of 1972, is
479 brought forward as follows:

480 41-41-161. (1) If judgment is rendered in favor of the
481 plaintiff in an action described in Section 41-41-157 or
482 41-41-159, the court shall also render judgment for a reasonable
483 attorney's fee in favor of the plaintiff against the defendant.

484 (2) If judgment is rendered in favor of the defendant in an
485 action described in Section 41-41-157 or 41-41-159 and the court
486 finds that the plaintiff's suit was frivolous and brought in bad



487 faith, the court shall render judgment for a reasonable attorney's
488 fee in favor of the defendant against the plaintiff.

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

493 **SECTION 9.** Section 41-41-163, Mississippi Code of 1972, is
494 brought forward as follows:

495 41-41-163. Only in the event a judgment is rendered in favor
496 of the defendant in an action described in Section 41-41-157 or
497 41-41-159, a district attorney with jurisdiction may bring an
498 indictment for criminal punishment under this section. Any person
499 who violates Section 41-41-155 is guilty of a felony and, upon
500 conviction, shall be punished by a fine not more than Ten Thousand
501 Dollars (\$10,000.00), or commitment to the custody of the
502 Department of Corrections for not more than two (2) years, or
503 both.

504 **SECTION 10.** Section 41-41-165, Mississippi Code of 1972, is
505 brought forward as follows:

506 41-41-165. In every civil, criminal, or administrative
507 proceeding or action brought under Sections 41-41-151 through
508 41-41-169, the court shall rule whether the anonymity of any woman
509 upon whom a dismemberment abortion has been performed or attempted
510 to be performed shall be preserved from public disclosure if she
511 does not give her consent to the disclosure. The court, upon



512 motion or sua sponte, shall make such a ruling and, upon
513 determining that her anonymity should be preserved, shall issue
514 orders to the parties, witnesses, and counsel and shall direct the
515 sealing of the record and exclusion of individuals from courtrooms
516 or hearing rooms to the extent necessary to safeguard her identity
517 from public disclosure. Each such order shall be accompanied by
518 specific written findings explaining why the anonymity of the
519 woman should be preserved from public disclosure, why the order is
520 essential to that end, how the order is narrowly tailored to serve
521 that interest, and why no reasonable less restrictive alternative
522 exists. In the absence of written consent of the woman upon whom
523 a dismemberment abortion has been performed or attempted to be
524 performed, anyone other than a public official who brings an
525 action under Section 41-41-157 or 41-41-159 shall do so under a
526 pseudonym. This section may not be construed to conceal the
527 identity of the plaintiff or of witnesses from the defendant or
528 from attorneys for the defendant.

529 **SECTION 11.** Section 41-41-167, Mississippi Code of 1972, is
530 brought forward as follows:

531 41-41-167. Nothing in Sections 41-41-151 through 41-41-169
532 shall be construed as creating or recognizing a right to abortion,
533 nor a right to a particular method of abortion.

534 **SECTION 12.** Section 41-41-169, Mississippi Code of 1972, is
535 brought forward as follows:



536 41-41-169. If any one or more provisions, sections,
537 subsections, sentences, clauses, phrases or words of Sections
538 41-41-151 through 41-41-169 or the application thereof to any
539 person or circumstance is found to be unconstitutional, the same
540 is declared to be severable and the balance of Sections 41-41-151
541 through 41-41-169 shall remain effective notwithstanding such
542 unconstitutionality. The Legislature declares that it would have
543 passed Sections 41-41-151 through 41-41-169, and each provision,
544 section, subsection, sentence, clause, phrase or word thereof,
545 irrespective of the fact that any one or more provisions,
546 sections, subsections, sentences, clauses, phrases or words be
547 declared unconstitutional.

548 **SECTION 13.** This act shall take effect and be in force from
549 and after July 1, 2019.

