

By: Senator(s) Watson

To: Public Health and Welfare

SENATE BILL NO. 2688

1 AN ACT TO CODIFY 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 AND FOR RELATED PURPOSES.

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

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

15 41-41-34.1. (1) The Legislature declares that it finds,  
 16 according to contemporary medical research, all of the following:

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

19 (b) Less than five percent (5%) of all natural  
 20 pregnancies end in spontaneous miscarriage after detection of  
 21 fetal cardiac activity;



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

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

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

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

34 (2) As used in this section:

35 (a) "Contraceptive" means a device, drug, or chemical  
36 that prevents conception.

37 (b) "Fetal heartbeat" means cardiac activity or the  
38 steady and repetitive rhythmic contraction of the fetal heart  
39 within the gestational sac.

40 (c) "Fetus" means the human offspring developing during  
41 pregnancy from the moment of conception and includes the embryonic  
42 stage of development.

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



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

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

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

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

61 (i) "Spontaneous miscarriage" means the natural or  
62 accidental termination of a pregnancy and the expulsion of the  
63 fetus, typically caused by genetic defects in the fetus or  
64 physical abnormalities in the pregnant woman.

65 (j) "Unborn human individual" means an individual  
66 organism of the species homo sapiens from fertilization until live  
67 birth.

68 (3) (a) Except when a medical emergency exists that  
69 prevents compliance with this section, no person shall perform an  
70 abortion on a pregnant woman before determining if the unborn



71 human individual that the pregnant woman is carrying has a  
72 detectable fetal heartbeat. Any person who performs an abortion  
73 on a pregnant woman based on the exception in this section shall  
74 note in the pregnant woman's medical records that a medical  
75 emergency necessitating the abortion existed.

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

83 (c) The State Board of Health may promulgate rules for  
84 the appropriate methods of performing an examination for the  
85 presence of a fetal heartbeat of an unborn human individual based  
86 on standard medical practice.

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

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



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

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

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

116 (c) The State Board of Health may define and promulgate  
117 by rules adopted and based upon available medical evidence the  
118 statistical probability of bringing an unborn human individual to



119 term based on the gestational age of an unborn human individual  
120 who possesses a detectable fetal heartbeat.

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

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

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

140 (ii) Any person who performs a medical procedure  
141 as described in paragraph (b) (i) of this subsection (5) shall  
142 declare in writing, under penalty of perjury, that the medical  
143 procedure was necessary, to the best of that person's reasonable



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

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

161 (c) A person is not in violation of paragraph (a) of  
162 this subsection (5) if that person has performed an examination  
163 for the presence of a fetal heartbeat in the unborn human  
164 individual using standard medical practice and that examination  
165 does not reveal a fetal heartbeat or the person has been informed  
166 by a physician who has performed the examination for a fetal  
167 heartbeat that the examination did not reveal a fetal heartbeat.



168 (d) This subsection (5) does not repeal any other  
169 provision of the Mississippi Code that restricts or regulates the  
170 performance of an abortion by a particular method or during a  
171 particular stage of a pregnancy.

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

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

187 (7) A pregnant woman on whom an abortion is performed in  
188 violation of subsection (3) or (5) of this section is not guilty  
189 of violating subsection (3) or (5) of this section or of  
190 attempting to commit, conspiring to commit, or complicity in  
191 committing a violation of subsection (3) or (5) of this section  
192 and is not subject to a penalty based on that violation.





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

196           (9) If a state or federal court of competent jurisdiction  
197 finds that a provision of this section is unconstitutional, the  
198 effective date of that provision is tolled until either of the  
199 following occur:

200                 (a) An appellate court finds that provision to be  
201 constitutional.

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

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

211           (11) If any provisions of this section or its application to  
212 any person or circumstance is held invalid, the invalidity does  
213 not affect other provisions or applications of this section that  
214 can be given effect without the invalid provision or application,  
215 and to this end the provisions of this section are severable.

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



218           73-25-29. The grounds for the nonissuance, suspension,  
219 revocation or restriction of a license or the denial of  
220 reinstatement or renewal of a license are:

221           (1) Habitual personal use of narcotic drugs, or any  
222 other drug having addiction-forming or addiction-sustaining  
223 liability.

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

226           (3) Administering, dispensing or prescribing any  
227 narcotic drug, or any other drug having addiction-forming or  
228 addiction-sustaining liability otherwise than in the course of  
229 legitimate professional practice.

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

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

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



242 (7) Obtaining or attempting to obtain a license by  
243 fraud or deception.

244 (8) Unprofessional conduct, which includes, but is not  
245 limited to:

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

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

250 (c) Making or willfully causing to be made any  
251 flamboyant claims concerning the licensee's professional  
252 excellence.

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

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

262 (f) Use of any false, fraudulent or forged  
263 statement or document, or the use of any fraudulent, deceitful,  
264 dishonest or immoral practice in connection with any of the  
265 licensing requirements, including the signing in his professional



266 capacity any certificate that is known to be false at the time he  
267 makes or signs such certificate.

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

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

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

287 (11) Final sanctions imposed by the United States  
288 Department of Health and Human Services, Office of Inspector  
289 General or any successor federal agency or office, based upon a  
290 finding of incompetency, gross misconduct or failure to meet



291 professionally recognized standards of health care; a certified  
292 copy of the notice of final sanction being prima facie evidence  
293 thereof. As used in this paragraph, the term "final sanction"  
294 means the written notice to a physician from the United States  
295 Department of Health and Human Services, Officer of Inspector  
296 General or any successor federal agency or office, which  
297 implements the exclusion.

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

300 (13) Violation of any provision(s) of the Medical  
301 Practice Act or the rules and regulations of the board or of any  
302 order, stipulation or agreement with the board.

303 (14) Violation(s) of the provisions of Sections  
304 41-121-1 through 41-121-9 relating to deceptive advertisement by  
305 health care practitioners.

306 (15) Performing or inducing an abortion on a woman in  
307 violation of any provision of Sections 41-41-131 through  
308 41-41-145.

309 (16) Performing an abortion on a pregnant woman before  
310 determining if the unborn human individual that the pregnant woman  
311 is carrying has a detectable fetal heartbeat, as provided in  
312 Section 41-41-34.1.

313 In addition to the grounds specified above, the board shall  
314 be authorized to suspend the license of any licensee for being out  
315 of compliance with an order for support, as defined in Section



316 93-11-153. The procedure for suspension of a license for being  
317 out of compliance with an order for support, and the procedure for  
318 the reissuance or reinstatement of a license suspended for that  
319 purpose, and the payment of any fees for the reissuance or  
320 reinstatement of a license suspended for that purpose, shall be  
321 governed by Section 93-11-157 or 93-11-163, as the case may be.  
322 If there is any conflict between any provision of Section  
323 93-11-157 or 93-11-163 and any provision of this chapter, the  
324 provisions of Section 93-11-157 or 93-11-163, as the case may be,  
325 shall control.

326         **SECTION 3.** This act shall take effect and be in force from  
327 and after July 1, 2019.

