

By: Representatives Eubanks, Williamson

To: Judiciary B

HOUSE BILL NO. 338

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 or her 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 (x) Section 97-29-51 relating to procuring sexual
202 services of a minor; and
203 (xi) Section 43-47-18 and Section 43-47-19
204 relating to sexual battery abuse of a vulnerable person who is a
205 minor.
206 (b) "Mandatory reporter" means any of the following
207 individuals performing their occupational duties: health care



208 practitioner, clergy member, teaching or child care provider, law
209 enforcement officer, or commercial image processor.

210 (c) "Health care practitioner" means any individual who
211 provides health care services, including a physician, surgeon,
212 physical therapist, psychiatrist, psychologist, medical resident,
213 medical intern, hospital staff member, licensed nurse, midwife and
214 emergency medical technician or paramedic.

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

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

224 (f) "Commercial image processor" means any person who,
225 for compensation: (i) develops exposed photographic film into
226 negatives, slides or prints; (ii) makes prints from negatives or
227 slides; or (iii) processes or stores digital media or images from
228 any digital process, including, but not limited to, website
229 applications, photography, live streaming of video, posting,
230 creation of power points or any other means of intellectual
231 property communication or media including conversion or



232 manipulation of still shots or video into a digital show stored on
233 a photography site or a media storage site.

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

238 (2) (a) **Mandatory reporter requirement.** A mandatory
239 reporter shall make a report if it would be reasonable for the
240 mandatory reporter to suspect that a sex crime against a minor has
241 occurred.

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

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



257 (d) Any mandatory reporter who makes a required report
258 under this section or participates in a judicial proceeding
259 resulting from a mandatory report shall be presumed to be acting
260 in good faith. Any person or institution reporting in good faith
261 shall be immune from any liability, civil or criminal, that might
262 otherwise be incurred or imposed, except any person performing or
263 attempting to perform an illegal abortion.

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

271 (i) The reporting requirement under this
272 subsection (3) is satisfied if a mandatory reporter in good faith
273 reports a suspected sex crime against a minor to the Department of
274 Child Protection Services under Section 43-21-353.

275 (ii) The reporting requirement under this
276 subsection (3) is satisfied if a mandatory reporter reports a
277 suspected sex crime against a minor by following a reporting
278 procedure that is imposed:

279 1. By state agency rule as part of licensure
280 of any person or entity holding a state license to provide



281 services that include the treatment or education of abused or
282 neglected children; or

283 2. By statute.

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

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

287 (ii) The name and address of the minor's
288 caretaker;

289 (iii) Any other pertinent information known to the
290 reporter.

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

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

303 (ii) When a minor who is under sixteen (16) years
304 of age gives birth to an infant, umbilical cord blood shall be
305 collected, if possible, in accordance with rules and regulations



306 adopted pursuant to this section if it would be reasonable to
307 suspect that the minor's pregnancy resulted from a sex crime
308 against a minor.

309 (iii) It shall be reasonable to suspect that a sex
310 crime against a minor has occurred if the mother of an infant was
311 less than sixteen (16) years of age at the time of conception and
312 at least one (1) of the following conditions also applies:

313 1. The mother of the infant will not identify
314 the father of the infant;

315 2. The mother of the infant lists the father
316 of the infant as unknown;

317 3. The person the mother identifies as the
318 father of the infant disputes his fatherhood;

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

321 5. The person the mother identifies as the
322 father is deceased.

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

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

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

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



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

333 (v) A uniform reporting instrument mandated to be
334 utilized, which shall include the complete residence address and
335 name of the parent or legal guardian of the minor who is the
336 subject of the report required under this subsection (5); and

337 (vi) Procedures for communication with law
338 enforcement agencies regarding evidence and information obtained
339 pursuant to this section.

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

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

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

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



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

357 41-41-113. (1) All remedies under the statutory laws of
358 this state are available if there is failure to comply with the
359 requirements of Sections 41-41-101 through 41-41-117.

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

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

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

371 41-41-115. (1) Nothing in Sections 41-41-101 through
372 41-41-117 shall be construed as creating or recognizing a right to
373 abortion.

374 (2) It is not the intention of Sections 41-41-101 through
375 41-41-117 to make lawful * * * any abortion that is currently
376 unlawful.

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

379 41-75-1. For the purpose of this chapter:



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



405 If the organization or facility is to be owned or operated by
406 an entity or person other than a hospital or hospital holding,
407 leasing or management company, then the organization or facility
408 must comply with all licensing agency ambulatory surgical facility
409 standards governing a "freestanding" facility.

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

418 (c) "Freestanding" ambulatory surgical facility means a
419 separate and distinct facility or a separate and distinct
420 organized unit of a hospital owned, leased, rented or utilized by
421 a hospital or other persons for the primary purpose of performing
422 ambulatory surgery procedures. The facility must be separately
423 licensed as defined in this section and must comply with all
424 licensing standards promulgated by the licensing agency under this
425 chapter regarding a "freestanding" ambulatory surgical facility.
426 Further, the facility must be a separate, identifiable entity and
427 must be physically, administratively and financially independent
428 and distinct from other operations of any other health facility,
429 and shall maintain a separate organized medical and administrative



430 staff. Furthermore, once licensed as a "freestanding" ambulatory
431 surgical facility, the facility shall not become a component of
432 any other health facility without securing a certificate of need
433 to do that.

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

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

449 (f) "Abortion facility" means a facility operating
450 substantially for the purpose of performing abortions and is a
451 separate identifiable legal entity from any other health care
452 facility. * * *

453 * * *



454 (g) "Licensing agency" means the State Department of
455 Health.

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

458 * * *

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

468 (j) "Post-acute residential brain injury rehabilitation
469 facility" is a facility containing no more than twelve (12) beds
470 providing medically directed long-term but nonacute rehabilitation
471 to patients who have acquired brain injury. In order to be
472 eligible for licensure under this chapter, the post-acute
473 residential brain injury rehabilitation facility shall be located
474 at least twenty-five (25) miles from the nearest acute care
475 rehabilitation hospital and at least five (5) miles from the
476 boundaries of any municipality having a population of ten thousand
477 (10,000) or more, according to the most recent federal decennial
478 census, at the time that facility is established.



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

481 41-75-3. The purpose of this chapter is to protect and
482 promote the public welfare by providing for the development,
483 establishment and enforcement of certain standards in the
484 maintenance and operation of ambulatory surgical facilities * * *
485 and freestanding emergency rooms and post-acute residential brain
486 injury rehabilitation facilities, which will ensure safe,
487 sanitary, and reasonably adequate care of individuals in such
488 facilities.

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

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

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



504 on any later owner of the facility, if the ownership of the
505 facility is transferred at any time after the issuance of the
506 license. Agreement that the facility will not participate in the
507 Medicaid program shall be a condition of the issuance of a license
508 for a post-acute residential brain injury rehabilitation facility
509 to any person under this chapter, and if such facility at any time
510 after the issuance of the license, regardless of the ownership of
511 the facility, participates in the Medicaid program or admits or
512 keeps any patients in the facility who are participating in the
513 Medicaid program, the licensing agency shall revoke the license of
514 the facility, at the time that the department determines, after a
515 hearing complying with due process, that the facility has failed
516 to comply with any of the conditions upon which the license was
517 issued, as provided in this section and in the written agreement
518 by the recipient of the license.

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

521 41-75-13. The licensing agency shall adopt, amend,
522 promulgate and enforce rules, regulations and standards, including
523 classifications, with respect to ambulatory surgical facilities
524 and * * * freestanding emergency rooms and post-acute residential
525 brain injury rehabilitation facilities licensed, or which may be
526 licensed, to further the accomplishment of the purpose of this
527 chapter in protecting and promoting the health, safety and welfare
528 of the public by ensuring adequate care of individuals receiving



529 services from such facilities. * * * The rules, regulations and
530 standards for freestanding emergency rooms shall include a patient
531 transfer policy under which the freestanding emergency room enters
532 into an agreement with a general hospital for a protocol for
533 patient transfers. * * * The rules, regulations and standards
534 shall be adopted and promulgated by the licensing agency in
535 accordance with the provisions of Section 25-43-1 et seq., and
536 shall be recorded and indexed in a book to be maintained by the
537 licensing agency in its main office in the State of Mississippi,
538 entitled "Rules and Regulations for Operation of Ambulatory
539 Surgical Facilities * * *, Freestanding Emergency Room Facilities
540 and Post-Acute Residential Brain Injury Rehabilitation
541 Facilities." The book shall be open and available to all
542 ambulatory surgical facilities and * * * freestanding emergency
543 rooms and post-acute residential brain injury rehabilitation
544 facilities and the public during regular business hours.

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

547 73-25-29. The grounds for the nonissuance, suspension,
548 revocation or restriction of a license or the denial of
549 reinstatement or renewal of a license are:

550 (1) Habitual personal use of narcotic drugs, or any
551 other drug having addiction-forming or addiction-sustaining
552 liability.



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

555 (3) Administering, dispensing or prescribing any
556 narcotic drug, or any other drug having addiction-forming or
557 addiction-sustaining liability otherwise than in the course of
558 legitimate professional practice.

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

565 (5) Procuring, or attempting to procure, or aiding in,
566 an abortion * * *.

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

571 (7) Obtaining or attempting to obtain a license by
572 fraud or deception.

573 (8) Unprofessional conduct, which includes, but is not
574 limited to:

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



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

579 (c) Making or willfully causing to be made any
580 flamboyant claims concerning the licensee's professional
581 excellence.

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

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

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

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

600 (9) The refusal of a licensing authority of another
601 state or jurisdiction to issue or renew a license, permit or



602 certificate to practice medicine in that jurisdiction or the
603 revocation, suspension or other restriction imposed on a license,
604 permit or certificate issued by such licensing authority which
605 prevents or restricts practice in that jurisdiction, a certified
606 copy of the disciplinary order or action taken by the other state
607 or jurisdiction being prima facie evidence thereof,
608 notwithstanding the pendency of any appeal.

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

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



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

629 (13) Violation of any provision(s) of the Medical
630 Practice Act or the rules and regulations of the board or of any
631 order, stipulation or agreement with the board.

632 (14) Violation(s) of the provisions of Sections
633 41-121-1 through 41-121-9 relating to deceptive advertisement by
634 health care practitioners.

635 (15) Performing or inducing an abortion on a
636 woman * * *.

637 (16) Performing an abortion on a pregnant woman after
638 determining that the unborn human individual that the pregnant
639 woman is carrying has a detectable fetal heartbeat as provided in
640 Section 41-41-34.1.

641 In addition to the grounds specified above, the board shall
642 be authorized to suspend the license of any licensee for being out
643 of compliance with an order for support, as defined in Section
644 93-11-153. The procedure for suspension of a license for being
645 out of compliance with an order for support, and the procedure for
646 the reissuance or reinstatement of a license suspended for that
647 purpose, and the payment of any fees for the reissuance or
648 reinstatement of a license suspended for that purpose, shall be
649 governed by Section 93-11-157 or 93-11-163, as the case may be.
650 If there is any conflict between any provision of Section
651 93-11-157 or 93-11-163 and any provision of this chapter, the



652 provisions of Section 93-11-157 or 93-11-163, as the case may be,
653 shall control.

654 **SECTION 18.** Sections 41-41-31, 41-41-33, 41-41-34, 41-41-35,
655 41-41-37, 41-41-45, 41-41-51, 41-41-53, 41-41-55, 41-41-57,
656 41-41-59, 41-41-61, 41-41-63, 41-41-71, 41-41-80, 41-41-109,
657 41-41-111, 41-75-16, 41-75-18, 41-75-26 and 41-75-29, Mississippi
658 Code of 1972, which provide for lawful abortions, partial birth
659 abortions and abortion facilities are repealed.

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

662 41-41-151. Sections 41-41-151 through 41-41-169 may be cited
663 as the "Mississippi Unborn Child Protection from Dismemberment
664 Abortion Act."

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

667 41-41-153. For the purposes of Sections 41-41-151 through
668 41-41-169, the following terms shall be defined as provided in
669 this section:

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

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

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



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

678 2. To remove a dead unborn child.

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

685 (i) Agreeing with an individual to perform an
686 abortion on that individual or on some other person, whether or
687 not the term "abortion" is used in the agreement, and whether or
688 not the agreement is contingent on another factor such as receipt
689 of payment or a determination of pregnancy; or

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

694 This definition shall not be construed to require that an
695 abortion procedure actually must be initiated for an attempt to
696 occur.

697 (c) "Dismemberment abortion" means, with the purpose of
698 causing the death of an unborn child, purposely to dismember a
699 living unborn child and extract him or her one piece at a time
700 from the uterus through use of clamps, grasping forceps, tongs,



701 scissors or similar instruments that, through the convergence of
702 two rigid levers, slice, crush, and/or grasp a portion of the
703 unborn child's body to cut or rip it off.

704 The term "dismemberment abortion" does not include an
705 abortion that uses suction to dismember the body of the unborn
706 child by sucking fetal parts into a collection container, although
707 it does include an abortion in which a dismemberment abortion is
708 used to cause the death of an unborn child but suction is
709 subsequently used to extract fetal parts after the death of the
710 unborn child.

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

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

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

719 (ii) If the element involves the attendant
720 circumstances, he is aware of the existence of those circumstances
721 or he believes or hopes that they exist.

722 (f) "Serious health risk to the unborn child's mother"
723 means that in reasonable medical judgment, she has a condition
724 that so complicates her medical condition that it necessitates the
725 abortion of her pregnancy to avert her death or to avert serious



726 risk of substantial and irreversible physical impairment of a
727 major bodily function, not including psychological or emotional
728 conditions. No such condition may be determined to exist if it is
729 based on a claim or diagnosis that the woman will engage in
730 conduct that she intends to result in her death or in substantial
731 and irreversible physical impairment of a major bodily function.

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

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

736 41-41-155. (1) Notwithstanding any other provision of law,
737 it shall be unlawful for any person to purposely perform or
738 attempt to perform a dismemberment abortion and thereby kill an
739 unborn child unless necessary to prevent serious health risk to
740 the unborn child's mother.

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



750 (3) No woman upon whom an abortion is performed or attempted
751 to be performed shall be thereby liable for performing or
752 attempting to perform a dismemberment abortion. No nurse,
753 technician, secretary, receptionist or other employee or agent who
754 is not a physician but who acts at the direction of a physician,
755 and no pharmacist or other individual who is not a physician but
756 who fills a prescription or provides instruments or materials used
757 in an abortion at the direction of or to a physician shall be
758 thereby liable for performing or attempting to perform a
759 dismemberment abortion.

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

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

765 41-41-157. (1) Civil and criminal penalties for violations
766 of Sections 41-41-151 through 41-41-169 may be imposed under the
767 following priority:

- 768 (a) Injunctive relief;
769 (b) Civil cause of action; and
770 (c) Criminal action.

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



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

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

781 (c) A prosecuting attorney with appropriate
782 jurisdiction.

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

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

788 41-41-159. (1) Only in the event a cause of action for
789 injunctive relief under Section 41-41-157 has been denied by a
790 court of competent jurisdiction, a cause of action for civil
791 damages against a person who has performed a dismemberment
792 abortion in violation of Section 41-41-155 may be maintained by:

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

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

797 (c) If the woman had not attained the age of eighteen
798 (18) years at the time of the dismemberment abortion or has died



799 as a result of the abortion, the maternal grandparents of the
800 unborn child.

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

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

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

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

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

810 41-41-161. (1) If judgment is rendered in favor of the
811 plaintiff in an action described in Section 41-41-157 or
812 41-41-159, the court shall also render judgment for a reasonable
813 attorney's fee in favor of the plaintiff against the defendant.

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

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



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

825 41-41-163. Only in the event a judgment is rendered in favor
826 of the defendant in an action described in Section 41-41-157 or
827 41-41-159, a district attorney with jurisdiction may bring an
828 indictment for criminal punishment under this section. Any person
829 who violates Section 41-41-155 is guilty of a felony and, upon
830 conviction, shall be punished by a fine not more than Ten Thousand
831 Dollars (\$10,000.00), or commitment to the custody of the
832 Department of Corrections for not more than two (2) years, or
833 both.

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

836 41-41-165. In every civil, criminal, or administrative
837 proceeding or action brought under Sections 41-41-151 through
838 41-41-169, the court shall rule whether the anonymity of any woman
839 upon whom a dismemberment abortion has been performed or attempted
840 to be performed shall be preserved from public disclosure if she
841 does not give her consent to the disclosure. The court, upon
842 motion or sua sponte, shall make such a ruling and, upon
843 determining that her anonymity should be preserved, shall issue
844 orders to the parties, witnesses, and counsel and shall direct the
845 sealing of the record and exclusion of individuals from courtrooms
846 or hearing rooms to the extent necessary to safeguard her identity
847 from public disclosure. Each such order shall be accompanied by



848 specific written findings explaining why the anonymity of the
849 woman should be preserved from public disclosure, why the order is
850 essential to that end, how the order is narrowly tailored to serve
851 that interest, and why no reasonable less restrictive alternative
852 exists. In the absence of written consent of the woman upon whom
853 a dismemberment abortion has been performed or attempted to be
854 performed, anyone other than a public official who brings an
855 action under Section 41-41-157 or 41-41-159 shall do so under a
856 pseudonym. This section may not be construed to conceal the
857 identity of the plaintiff or of witnesses from the defendant or
858 from attorneys for the defendant.

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

861 41-41-167. Nothing in Sections 41-41-151 through 41-41-169
862 shall be construed as creating or recognizing a right to abortion,
863 nor a right to a particular method of abortion.

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

866 41-41-169. If any one or more provisions, sections,
867 subsections, sentences, clauses, phrases or words of Sections
868 41-41-151 through 41-41-169 or the application thereof to any
869 person or circumstance is found to be unconstitutional, the same
870 is declared to be severable and the balance of Sections 41-41-151
871 through 41-41-169 shall remain effective notwithstanding such
872 unconstitutionality. The Legislature declares that it would have



873 passed Sections 41-41-151 through 41-41-169, and each provision,
874 section, subsection, sentence, clause, phrase or word thereof,
875 irrespective of the fact that any one or more provisions,
876 sections, subsections, sentences, clauses, phrases or words be
877 declared unconstitutional.

878 **SECTION 29.** This act shall take effect and be in force from
879 and after July 1, 2021.

