

By: Representatives Wells-Smith, Chism,  
Nicholson, Martinson

To: Public Health and  
Welfare

HOUSE BILL NO. 361

1 AN ACT TO PROHIBIT THE USE OF PUBLIC FUNDS FOR STEM CELL  
2 RESEARCH, HUMAN CLONING, CHEMICAL ABORTIONS AND SURGICAL ABORTIONS  
3 WITH LIMITED EXCEPTIONS; TO PROVIDE THAT CERTAIN PROVISIONS OF THE  
4 ACT WILL SUPERSEDE OTHER PROVISIONS OF THE ACT IF CERTAIN  
5 CONTINGENCIES OCCUR; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** (1) Notwithstanding any other provision of law  
8 to the contrary, no public funds that are made available to any  
9 institution, board, commission, department, agency, official, or  
10 employee of the State of Mississippi, or of any local political  
11 subdivision of the state, whether those funds are made available  
12 by the government of the United States, the State of Mississippi,  
13 or a local governmental subdivision, or from any other public  
14 source, shall be used in any way for, to assist in, or to provide  
15 facilities for any of the following: stem cell research that uses  
16 cells from human embryos; human cloning; a chemical abortion; or a  
17 surgical abortion, except when the abortion is medically necessary  
18 to prevent the death of the mother.

19 (2) Notwithstanding any other provision of law to the  
20 contrary, no public funds that are made available to any  
21 institution, board, commission, department, agency, official, or  
22 employee of the State of Mississippi, or of any local political  
23 subdivision of the state, whether those funds are made available  
24 by the government of the United States, the State of Mississippi,  
25 or a local governmental subdivision, or from any other public  
26 source, shall be used in any way for, to assist in, or to provide  
27 facilities for any of the following: stem cell research that uses



28 cells from human embryos; human cloning; a chemical abortion; or a  
29 surgical abortion, except for any of the following:

30 (a) Whenever the abortion is necessary to save the life  
31 of the mother.

32 (b) Whenever the abortion is being sought to terminate  
33 a pregnancy resulting from an alleged act of rape and all of the  
34 requirements of subsection (6) of this section are met.

35 (c) Whenever the abortion is being sought to terminate  
36 a pregnancy resulting from an alleged act of incest and all of the  
37 requirements of subsection (6) of this section are met.

38 (3) The State Board of Health and the Executive Director of  
39 the Division of Medicaid shall promulgate rules and regulations to  
40 insure that no funding of any abortion will be made based upon a  
41 claim of rape or incest until the applicable requirements of  
42 subsection (6) of this section have been complied with and written  
43 verification has been obtained from the physician performing the  
44 abortion and from the law enforcement official to whom the report  
45 is made, if applicable.

46 (4) Subsection (1) of this section shall be superseded and  
47 subsections (2), (3) and (6) of this section shall become  
48 effective only when the circumstances described in subparagraph  
49 (a)(i) or subparagraph (b)(i) occur.

50 (a) (i) A decision or order of a court of competent  
51 jurisdiction is rendered declaring the provisions of subsection  
52 (1) of this section unconstitutional, inconsistent with federal  
53 law, or otherwise unenforceable based on inconsistency with the  
54 Hyde Amendment, or enjoins the state or any of its officials from  
55 enforcing subsection (1) of this section while at the same time  
56 accepting federal funds under Title XIX, as modified by the Hyde  
57 Amendment, and then only if and when a stay pending all appeals of  
58 the decision or order is denied, or, if a stay is granted, the  
59 stay expires or is no longer effective.



60 (ii) If such a decision or order is rendered, the  
61 state Attorney General, on behalf of the state, shall vigorously  
62 and expeditiously pursue judicial remedies seeking to obtain a  
63 stay pending all appeals of the decision or order and seeking its  
64 reversal.

65 (b) (i) An order or decision of a court of competent  
66 jurisdiction is rendered affirming a finding of the administrator  
67 of the Health Care Financing Administration or the Centers for  
68 Medicare and Medicaid Services of the United States Department of  
69 Health and Human Services that subsection (1) of this section  
70 fails to substantially comply with the Hyde Amendment, or denying  
71 a stay of the funding of the administrator, and then only if and  
72 when the state receives formal notification from the administrator  
73 that Medicaid funds, including, but not limited to, the federal  
74 percentage of Medicaid assistance payments under 42 USCS 1396 et  
75 seq. allocated to the state from the United States government,  
76 will be withheld or terminated on a specified date.

77 (ii) If the administrator finds that the state is  
78 in noncompliance with the Hyde Amendment as it relates to funding  
79 certain abortions, the Governor, the Attorney General, the State  
80 Department of Health and the Division of Medicaid, on behalf of  
81 the state, shall vigorously and expeditiously pursue  
82 administrative and judicial remedies to obtain a stay of the  
83 finding and its reversal.

84 (iii) If such a decision or order is rendered by a  
85 court, the Attorney General, on behalf of the state, shall  
86 vigorously and expeditiously pursue judicial remedies seeking to  
87 obtain a stay of the decision or order and seeking its reversal.

88 (5) If subsections (2), (3) and (6) of this section become  
89 effective, and subsequently the federal requirement for acceptance  
90 of Medicaid funds, that public funds be made available for  
91 abortions resulting from pregnancy due to rape or incest, is no  
92 longer applicable to the State of Mississippi, then on that same



93 day, the provisions of subsections (2), (3) and (6) of this  
94 section shall be superseded, and the provisions of subsection (1)  
95 of this section shall be effective to the fullest extent allowed  
96 by law.

97 (6) (a) Whenever an abortion is being sought to terminate a  
98 pregnancy resulting from an alleged act of rape, before the  
99 abortion may be performed, all of the following requirements shall  
100 be met:

101 (i) The rape victim shall report the rape to a law  
102 enforcement official, unless the treating physician certifies in  
103 writing that in the physician's professional opinion, the victim  
104 was too physically and psychologically incapacitated to report the  
105 rape.

106 (ii) The victim certifies that the pregnancy is  
107 the result of rape, which certificate shall be witnessed by the  
108 treating physician.

109 (b) Whenever an abortion is being sought to terminate a  
110 pregnancy resulting from an alleged act of incest, before the  
111 abortion may be performed, all of the following requirements shall  
112 be met:

113 (i) The victim of incest shall report the act of  
114 incest to a law enforcement official, unless the treating  
115 physician certifies in writing that in the physician's  
116 professional opinion the victim was too physically or  
117 psychologically incapacitated to report the incest.

118 (ii) The victim certifies that the pregnancy is  
119 the result of incest, which certificate shall be witnessed by the  
120 treating physician.

121 (c) The failure of the victim to comply with paragraph  
122 (a) or (b), as applicable, shall not subject the victim to  
123 penalties.

124 (d) Whenever an abortion is being sought to terminate a  
125 pregnancy resulting from an alleged act of rape or incest, the



126 victim may receive spiritual counseling before the performance of  
127 the abortion.

128         **SECTION 2.** This act shall take effect and be in force from  
129 and after July 1, 2002.

