

By: Senator(s) Nunnelee

To: Public Health and Welfare

SENATE BILL NO. 2747

1 AN ACT TO PROHIBIT THE USE OF PUBLIC FUNDS FOR STEM CELL
2 RESEARCH, HUMAN CLONING, CHEMICAL ABORTION OR SURGICAL ABORTION;
3 TO AUTHORIZE AND DIRECT THE STATE BOARD OF HEALTH TO PROMULGATE
4 RULES RELATING TO THE USE OF PUBLIC FUNDS FOR AN ABORTION BASED
5 UPON A CLAIM OF RAPE OR INCEST AND TO PRESCRIBE REPORTING
6 REQUIREMENTS IN SUCH CASES; TO AMEND SECTION 97-3-3, MISSISSIPPI
7 CODE OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

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

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

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



30 human cloning, a chemical abortion or a surgical abortion except
31 for any of the following:

32 (a) Whenever the abortion is necessary to save the life
33 of the mother.

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

37 (c) Whenever the abortion is being sought to terminate
38 a pregnancy result from an alleged act of incest and all of the
39 requirements of subsection (6) are met.

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

47 (4) Subsection (1) of this section shall be superseded and
48 subsections (2), (3) and (6) shall become effective only when the
49 circumstances in paragraph (a)(i) or in paragraph (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) unconstitutional, inconsistent with federal law, or otherwise
53 unenforceable based on inconsistency with the Hyde Amendment, or
54 enjoins the state or any of its officials from enforcing
55 subsection (1) while at the same time accepting federal funds
56 pursuant to Title XIX, as modified by the Hyde Amendment, and then
57 only if, as and when a stay pending all appeals of the decision or
58 order is denied, or, if a stay is granted, such stay expires or is
59 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 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 of the United States
68 Department of Health and Human Services that subsection (1) fails
69 to substantially comply with they Hyde Amendment or denying a stay
70 of the funding of the administrator and then only if, as and when
71 the state receives formal notification from the administrator that
72 Medicaid funds, including, but not limited to, the federal
73 percentage of Medicaid assistance payments pursuant to 42 USC 1396
74 et seq. allocated to the state from the United States government,
75 will be withheld or terminated on a specified date.

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

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

86 (5) If subsections 2, 3 and 6 become effective and
87 subsequently the federal requirement for acceptance of Medicaid
88 funds, that public funds be made available for abortions resulting
89 from pregnancy due to rape or incest, is no longer applicable to
90 the State of Mississippi, then on that same day, the provisions of
91 subsections (2), (3) and (6) shall be superseded and the
92 provisions of subsection (1) shall be effective to the fullest
93 extent allowed by law.



94 (6) (a) Whenever an abortion is being sought to terminate a
95 pregnancy resulting from an alleged act of rape, prior to the
96 abortion all of the following requirements shall be met:

97 (i) The rape victim shall report the rape to a law
98 enforcement official unless the treating physician certifies in
99 writing that in the physician's professional opinion, the victim
100 was too physically or psychologically incapacitated to report the
101 rape.

102 (ii) The victim certifies that the pregnancy is
103 the result of rape, which certificate shall be witnessed by the
104 treating physician.

105 (b) Whenever an abortion is being sought to terminate a
106 pregnancy resulting from an alleged act of incest, prior to the
107 abortion all of the following requirements shall be met:

108 (i) The victim of incest shall report the act of
109 incest to a law enforcement official unless the treating physician
110 certifies in writing that in the physician's professional opinion
111 the victim was too physically or psychologically incapacitated to
112 report the incest.

113 (ii) The victim certifies that the pregnancy is
114 the result of incest, which certificate shall be witnessed by the
115 treating physician.

116 (c) The failure of the victim to comply with paragraph
117 (a) or (b) as applicable shall not subject the victim to
118 penalties.

119 (d) Whenever an abortion is being sought to terminate a
120 pregnancy resulting from an alleged act of rape or incest, the
121 victim may receive spiritual counseling prior to the performance
122 of the abortion.

123 **SECTION 2.** Section 97-3-3, Mississippi Code of 1972, is
124 amended as follows:

125 97-3-3. (1) Any person willfully and knowingly causing, by
126 means of any instrument, medicine, drug or other means whatever,



127 any woman pregnant with child to abort or miscarry, or attempts to
128 procure or produce an abortion or miscarriage shall be guilty of a
129 felony unless the same were done by a duly licensed, practicing
130 physician:

131 (a) Where necessary for the preservation of the
132 mother's life;

133 (b) Where pregnancy was caused by rape.

134 Said person shall, upon conviction, be imprisoned in the
135 State Penitentiary not less than one (1) year nor more than ten
136 (10) years; provided, however, if the death of the mother results
137 therefrom, the person procuring, causing or attempting to procure
138 or cause the illegal abortion or miscarriage shall be guilty of
139 murder.

140 (2) No act prohibited in subsection (1) of this section
141 shall be considered exempt under the provisions of subparagraph
142 (a) thereof unless performed upon the prior advice in writing, of
143 two (2) reputable licensed physicians.

144 (3) The license of any physician or nurse shall be
145 automatically revoked upon conviction under the provisions of this
146 section.

147 (4) Nothing in this section shall be construed as
148 conflicting with Section 41-41-73.

149 (5) Nothing in this section shall be construed as
150 conflicting with Section 1 of Senate Bill No. 2747, 2002 Regular
151 Session.

152 **SECTION 3.** This act shall take effect and be in force from
153 and after July 1, 2002.

