

By: Representatives Smith (39th), Reeves,
Martinson

To: Public Health and Human
Services; Appropriations

HOUSE BILL NO. 1038
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 41-75-1, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT ABORTION PROCEDURES AFTER THE FIRST TRIMESTER SHALL
3 BE PERFORMED ONLY AT AN AMBULATORY SURGICAL FACILITY OR HOSPITAL
4 LICENSED TO PERFORM THAT SERVICE; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 41-75-1, Mississippi Code of 1972, is
7 amended as follows:

8 41-75-1. For the purpose of this chapter:

9 (a) "Ambulatory surgical facility" * * * means a
10 publicly or privately owned institution that is primarily
11 organized, constructed, renovated or otherwise established for the
12 purpose of providing elective surgical treatment of "outpatients"
13 whose recovery, under normal and routine circumstances, will not
14 require "inpatient" care. The facility * * * defined in this
15 paragraph does not include the offices of private physicians or
16 dentists, whether practicing individually or in groups, but does
17 include organizations or facilities primarily engaged in that
18 outpatient surgery, whether using the name "ambulatory surgical
19 facility" or a similar or different name. That organization or
20 facility, if in any manner considered to be operated or owned by a
21 hospital or a hospital holding, leasing or management company,
22 either for profit or not for profit, is required to comply with
23 all licensing agency ambulatory surgical licensure standards
24 governing a "hospital affiliated" facility as adopted under
25 Section 41-9-1 et seq., provided that the organization or facility
26 does not intend to seek federal certification as an ambulatory
27 surgical facility as provided for at 42 CFR, Parts 405 and
28 416. * * * If the organization or facility is to be operated or

29 owned by a hospital or a hospital holding, leasing or management
30 company and intends to seek federal certification as an ambulatory
31 facility, then the facility is considered to be "freestanding" and
32 must comply with all licensing agency ambulatory surgical
33 licensure standards governing a "freestanding" facility.

34 If the organization or facility is to be owned or operated by
35 an entity or person other than a hospital or hospital holding,
36 leasing or management company, then the organization or facility
37 must comply with all licensing agency ambulatory surgical facility
38 standards governing a "freestanding" facility.

39 (b) "Hospital affiliated" ambulatory surgical
40 facility * * * means a separate and distinct organized unit of a
41 hospital or a building owned, leased, rented or utilized by a
42 hospital and located in the same county in which the hospital is
43 located, for the primary purpose of performing ambulatory surgery
44 procedures. The facility is not required to be separately
45 licensed under this chapter and may operate under the hospital's
46 license in compliance with all applicable requirements of Section
47 41-9-1 et seq.

48 (c) "Freestanding" ambulatory surgical facility * * *
49 means a separate and distinct facility or a separate and distinct
50 organized unit of a hospital owned, leased, rented or utilized by
51 a hospital or other persons for the primary purpose of performing
52 ambulatory surgery procedures. The facility must be separately
53 licensed as * * * defined in this section and must comply with all
54 licensing standards promulgated by the licensing agency under this
55 chapter regarding a "freestanding" ambulatory surgical facility.
56 Further, the facility must be a separate, identifiable entity and
57 must be physically, administratively and financially independent
58 and distinct from other operations of any other health facility,
59 and shall maintain a separate organized medical and administrative
60 staff. Furthermore, once licensed as a "freestanding" ambulatory
61 surgical facility, the facility shall not become a component of

62 any other health facility without securing a certificate of need
63 to do that.

64 (d) "Ambulatory surgery" * * * means surgical
65 procedures that are more complex than office procedures performed
66 under local anesthesia, but less complex than major procedures
67 requiring prolonged postoperative monitoring and hospital care to
68 ensure safe recovery and desirable results. General anesthesia is
69 used in most cases. The patient must arrive at the facility and
70 expect to be discharged on the same day. Ambulatory surgery shall
71 only be performed by physicians or dentists licensed to practice
72 in the State of Mississippi.

73 (e) "Abortion" means the use or prescription of any
74 instrument, medicine, drug or any other substances or device to
75 terminate the pregnancy of a woman known to be pregnant with an
76 intention other than to increase the probability of a live birth,
77 to preserve the life or health of the child after live birth or to
78 remove a dead fetus. Abortion procedures after the first
79 trimester shall only be performed at an ambulatory surgical
80 facility or hospital licensed to perform that service.

81 (f) "Abortion facility" means a facility operating
82 substantially for the purpose of performing abortions and is a
83 separate identifiable legal entity from any other health care
84 facility. Abortions shall only be performed by physicians
85 licensed to practice in the State of Mississippi. The term
86 "abortion facility" includes physicians' offices that are used
87 substantially for the purpose of performing abortions. An
88 abortion facility operates substantially for the purpose of
89 performing abortions if any of the following conditions are met:

90 (i) The abortion facility is a provider for
91 performing ten (10) or more abortion procedures per calendar month
92 during any month of a calendar year, or one hundred (100) or more
93 in a calendar year.

94 (ii) The abortion facility, if operating less than
95 twenty (20) days per calendar month, is a provider for performing
96 ten (10) or more abortion procedures, or performing a number of
97 abortion procedures that would be equivalent to ten (10)
98 procedures per month, if the facility were operating twenty (20)
99 or more days per calendar month, in any month of a calendar year.

100 (iii) The abortion facility holds itself out to
101 the public as an abortion provider by advertising by any public
102 means, such as newspaper, telephone directory, magazine or
103 electronic media, that it performs abortions.

104 (iv) The facility applies to the licensing agency
105 for licensure as an abortion facility.

106 (g) "Licensing agency" * * * means the State Department
107 of Health.

108 (h) "Operating" an abortion facility means that the
109 facility is open for any period of time during a day and has on
110 site at the facility or on call a physician licensed to practice
111 in the State of Mississippi available to provide abortions.

112 Any abortion facility that begins operation after June 30,
113 1996, shall not be located within fifteen hundred (1500) feet from
114 the property on which any church, school or kindergarten is
115 located. An abortion facility shall not be in violation of this
116 paragraph if it is in compliance with this paragraph on the date
117 it begins operation and the property on which a church, school or
118 kindergarten is located is later within fifteen hundred (1500)
119 feet from the facility.

120 **SECTION 2.** This act shall take effect and be in force from
121 and after July 1, 2004.