

By: Representative Lott

To: Public Health and Human
Services; Judiciary B

HOUSE BILL NO. 1241

1 AN ACT TO AMEND SECTION 41-41-33, MISSISSIPPI CODE OF 1972,
2 TO DECLARE LEGISLATIVE INTENT RELATIVE TO THE TERMINATION OF THE
3 LIFE OF AN UNBORN CHILD AND THE PROTECTION OF THE HEALTH AND
4 RIGHTS OF WOMEN; TO PROHIBIT ABORTIONS IN THE STATE OF MISSISSIPPI
5 EXCEPT IN CERTAIN CASES; TO AMEND SECTION 41-41-39, MISSISSIPPI
6 CODE OF 1972, TO PRESCRIBE CRIMINAL PENALTIES FOR VIOLATIONS OF
7 THIS ACT; TO PROVIDE THAT IT IS THE INTENT OF THE LEGISLATURE THAT
8 THE STATE WILL BE RESPONSIBLE FOR THE MEDICAL AND EDUCATIONAL
9 NEEDS OF ANY CHILD BORN TO A CITIZEN OF THE STATE; AND FOR RELATED
10 PURPOSES.

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

12 **SECTION 1.** Section 41-41-33, Mississippi Code of 1972, is
13 amended as follows:

14 41-41-33. (1) The Legislature of the State of Mississippi
15 makes the following findings and determinations:

16 (a) There is an existing relationship between a
17 pregnant woman and her unborn child during the entire period of
18 gestation.

19 (b) Procedures terminating the life of an unborn child
20 impose risks to the life and health of the pregnant woman.

21 (c) Pregnant women contemplating an abortion procedure
22 are faced with making a profound decision, most often under stress
23 and pressures, and there exists a need for special protection of
24 the rights of such pregnant women, and that the State of
25 Mississippi has a compelling interest in providing such
26 protection.

27 (d) A pregnant mother possesses certain inherent rights
28 that are natural intrinsic rights which enjoy affirmative
29 protection under the Constitution of the United States, and under
30 the laws or Constitution of the State of Mississippi; that among
31 these rights are the fundamental rights of the pregnant mother to

32 her relationship with her child; her fundamental right to make
33 decisions that insure the well-being of her child; and her
34 interest in her own health and bodily integrity.

35 (e) A mother's unique relationship with her child
36 during pregnancy is one of the most intimate and important
37 relationships, and one most worthy of legal protection.

38 (f) An abortion is an unworkable method for a pregnant
39 mother to give up, surrender, or waive her fundamental right to
40 her relationship with her child.

41 (g) In most cases, there is no normal or traditional
42 physician-patient relationship or counseling between a pregnant
43 mother contemplating submitting to an abortion and the physician
44 who performs the abortion.

45 (h) Submitting to an abortion subjects the pregnant
46 woman to significant health risks; that the abortion procedure is
47 inherently dangerous to the psychological and physical health of
48 the woman; that an abortion places a woman at greater risk for
49 psychological distress, depression, suicidal ideation and suicide
50 than carrying her child to full term and giving birth.

51 (i) Every human being, including those in utero,
52 possesses a natural intrinsic right to live and has an interest in
53 life.

54 (j) The State of Mississippi possesses a duty to
55 protect, and it is a legitimate exercise of the state's power to
56 protect, the natural intrinsic rights and interests of a pregnant
57 mother in (i) her relationship with her child; (ii) her ability to
58 make decisions to protect the well-being of her child; and (iii)
59 her own health.

60 (k) The State of Mississippi possesses a duty to
61 protect, and it is a legitimate exercise of the state's power to
62 protect, the natural intrinsic rights of each human being within
63 its borders, including those human beings living in utero, to
64 live.

65 (l) It is not practical and not possible for the state
66 to simultaneously protect these fundamental rights and interests
67 of pregnant mothers and provide legal authority or protection for
68 a physician who terminates the lives of these mothers' unborn
69 children by an abortion; that protection of these rights of the
70 mothers are in conflict with protection of the act of the
71 physician which terminates these rights by terminating the life of
72 the unborn child.

73 (m) The right and duty of the state to protect and
74 preserve the life of the unborn child cannot co-exist with the
75 right or duty to destroy that life by the physician.

76 (n) It is now clear that the State of Mississippi can
77 either protect the mother's fundamental natural intrinsic rights,
78 or protect the physician's act that terminates and adversely
79 affects them, that the state cannot protect both; and that the
80 state's duty is to protect the natural and intrinsic rights of the
81 pregnant mother and her unborn child, and must, therefore,
82 prohibit physicians from terminating these rights and interest by
83 the performance of abortions, consistent with the provisions of
84 this section.

85 (2) No abortion shall be performed or induced except with
86 the voluntary and informed consent of the woman upon whom the
87 abortion is to be performed or induced. Except in the case of a
88 medical emergency, consent to an abortion is voluntary and
89 informed if and only if:

90 (a) The woman is told the following by the physician
91 who is to perform or induce the abortion or by the referring
92 physician, orally and in person, at least twenty-four (24) hours
93 before the abortion:

94 (i) The name of the physician who will perform or
95 induce the abortion;

96 (ii) The particular medical risks associated with
97 the particular abortion procedure to be employed including, when

98 medically accurate, the risks of infection, hemorrhage and breast
99 cancer, and the danger to subsequent pregnancies and infertility;

100 (iii) The probable gestational age of the unborn
101 child at the time the abortion is to be performed or induced; and

102 (iv) The medical risks associated with carrying
103 her child to term.

104 (b) The woman is informed, by the physician or his
105 agent, orally and in person, at least twenty-four (24) hours
106 before the abortion:

107 (i) That medical assistance benefits may be
108 available for prenatal care, childbirth and neonatal care;

109 (ii) That the father is liable to assist in the
110 support of her child, even in instances in which the father has
111 offered to pay for the abortion;

112 (iii) That there are available services provided
113 by public and private agencies which provide pregnancy prevention
114 counseling and medical referrals for obtaining pregnancy
115 prevention medications or devices; and

116 (iv) That she has the right to review the printed
117 materials described in Section 41-41-35(1)(a), (b) and (c). The
118 physician or his agent shall orally inform the woman that those
119 materials have been provided by the State of Mississippi and that
120 they describe the unborn child and list agencies that offer
121 alternatives to abortion. If the woman chooses to view those
122 materials, copies of them shall be furnished to her. The
123 physician or his agent may disassociate himself or themselves from
124 those materials, and may comment or refrain from comment on them
125 as he chooses. The physician or his agent shall provide the woman
126 with the printed materials described in Section 41-41-35(1)(d).

127 (c) The woman certifies in writing before the abortion
128 that the information described in paragraphs (a) and (b) of this
129 section has been furnished to her, and that she has been informed

130 of her opportunity to review the information referred to in
131 subparagraph (iv) of paragraph (b) of this section.

132 (d) Before the abortion is performed or induced, the
133 physician who is to perform or induce the abortion receives a copy
134 of the written certification prescribed by this section.

135 (3) (a) No person may knowingly use or employ any
136 instrument or procedure upon a pregnant woman with the specific
137 intent of causing or abetting the termination of the life of an
138 unborn human being except in the case of a reported rape or
139 incest; or the abortion is necessary to save the life of the
140 pregnant woman; or if there exists the presence of a
141 life-threatening medical condition in the mother that would be
142 worsened by continuing the pregnancy.

143 (b) When an abortion is performed under the provisions
144 of this section, the physician making the medical judgment should
145 document, in the patient's records, the conditions diagnosed, and
146 the reasons the abortion was necessary. No licensed physician in
147 the exercise of the appropriate and reasonable medical judgment
148 who performs a medical procedure, designed or intended to save the
149 life of a pregnant mother, is guilty of violating subsection
150 (3)(a). However, the physician shall make reasonable medical
151 efforts under the circumstances to preserve both the life of the
152 mother and the life of the unborn child in a manner consistent
153 with conventional medical practices. Medical treatment provided
154 to the mother by a licensed physician which results in the
155 accidental or unintentional injury or death to the unborn child is
156 not a violation of this statute.

157 (c) A licensed physician may perform an action that
158 would otherwise violate the provisions of subsection (3)(a) on the
159 basis that the pregnancy is the result of a reported rape or
160 incest if, and only if, the pregnant mother provides the physician
161 with evidence that she reported the rape or incest to an
162 appropriate law enforcement official, or a hospital or other

163 medical provider, or to a member of a clergy, within sixty (60)
164 days after the rape or incest. Such evidence shall have been
165 prepared and signed by the entity or person to whom the report was
166 made by the mother, which signature shall have been notarized for
167 authenticity.

168 (d) Nothing in subsection (3)(a) shall be construed to
169 prohibit the prescription, sale, use or administration of a
170 contraceptive medicine or drug or substance or device, if it is
171 prescribed, sold, used or administered prior to the time when a
172 pregnancy could be determined in that woman through conventional
173 medical testing, and if the contraceptive measure is prescribed,
174 sold, administered or used in accordance with manufacturer
175 instructions.

176 (4) The State Department of Health shall enforce the
177 provisions of Sections 41-41-31 through 41-41-39 at abortion
178 facilities, as defined in Section 41-75-1.

179 **SECTION 2.** Section 41-41-39, Mississippi Code of 1972, is
180 amended as follows:

181 41-41-39. (1) Anyone who purposefully, knowingly or
182 recklessly performs or attempts to perform or induce an abortion
183 without complying with Sections 41-41-31 through 41-41-37 shall,
184 upon conviction, be guilty of a misdemeanor and shall be punished
185 by a fine of Five Thousand Dollars (\$5,000.00), by imprisonment in
186 the county jail for a period of time not to exceed one (1) year,
187 or both such fine and imprisonment.

188 (2) Any person who violates Section 41-41-33(3)(a) shall,
189 upon conviction, be guilty of a felony punishable by imprisonment
190 in the State Penitentiary not less than one (1) year nor more than
191 ten (10) years, by a fine of up to Ten Thousand Dollars
192 (\$10,000.00), or both such fine and imprisonment.

193 (3) Nothing in this section may be construed to subject the
194 pregnant mother upon whom any abortion is performed or attempted
195 to any criminal conviction and penalty.

196 **SECTION 3.** It is the intent of the Legislature that the
197 State of Mississippi will be responsible for the medical and
198 educational needs of any child born to a citizen of this state.

199 **SECTION 4.** (1) If any provision of this act is found to be
200 unconstitutional, the provision is severable; and the other
201 provisions of this act remain effective, except as provided in
202 other sections of this act.

203 (2) Nothing in this act may be construed to repeal, by
204 implication or otherwise, any provision not explicitly repealed.

205 (3) If any provision of this act is ever declared
206 unconstitutional or its enforcement temporarily or permanently
207 restricted or enjoined by judicial order, the provisions of
208 Sections 41-41-31 through 41-41-91, Mississippi Code of 1972,
209 shall be enforced. However, if such temporary or permanent
210 restraining order or injunction is subsequently stayed or
211 dissolved or such declaration vacated or any similar court order
212 otherwise ceases to have effect, all provisions of this act that
213 are not declared unconstitutional or whose enforcement is not
214 restrained shall have full force and effect.

215 (4) Nothing in the provisions of Sections 41-41-31 through
216 41-41-91, Mississippi Code of 1972, shall be construed to permit
217 any action that is prohibited by Senate Bill No. 2795, 2007
218 Regular Session, and to the extent that any provision of Sections
219 41-41-31 through 41-41-91, Mississippi Code of 1972, would be so
220 construed, then the provisions of Senate Bill No. 2795, 2007
221 Regular Session, shall take precedence.

222 **SECTION 5.** This act shall take effect and be in force from
223 and after July 1, 2007.