

By: Representatives Mims, Eubanks, Dixon,
Hopkins, Henley, Crawford, Formby, Gipson

To: Public Health and Human
Services

HOUSE BILL NO. 519
(As Sent to Governor)

1 AN ACT TO BE KNOWN AS THE MISSISSIPPI UNBORN CHILD PROTECTION
2 FROM DISMEMBERMENT ABORTION ACT; TO DEFINE CERTAIN TERMS; TO
3 PROVIDE THAT IT IS UNLAWFUL FOR ANY PERSON TO PURPOSELY PERFORM OR
4 ATTEMPT TO PERFORM A DISMEMBERMENT ABORTION AND THEREBY KILL AN
5 UNBORN CHILD UNLESS NECESSARY TO PREVENT SERIOUS HEALTH RISK TO
6 THE UNBORN CHILD'S MOTHER; TO AUTHORIZE INJUNCTIONS TO PREVENT
7 DISMEMBERMENT ABORTIONS; TO AUTHORIZE A CAUSE OF ACTION FOR CIVIL
8 DAMAGES AGAINST PERSONS WHO HAVE PERFORMED DISMEMBERMENT
9 ABORTIONS; TO PROVIDE CRIMINAL PENALTIES FOR VIOLATIONS OF THIS
10 ACT; TO PROVIDE FOR THE PROTECTION OF PRIVACY IN COURT PROCEEDINGS
11 FOR WOMEN UPON WHOM AN ABORTION HAS BEEN PERFORMED; AND FOR
12 RELATED PURPOSES.

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

14 **SECTION 1. Short title.** This act may be cited as the
15 "Mississippi Unborn Child Protection from Dismemberment Abortion
16 Act."

17 **SECTION 2. Definitions.** For the purposes of this act, the
18 following terms shall be defined as provided in this section:

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

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



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

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

27 2. To remove a dead unborn child.

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

34 (i) Agreeing with an individual to perform an
35 abortion on that individual or on some other person, whether or
36 not the term "abortion" is used in the agreement, and whether or
37 not the agreement is contingent on another factor such as receipt
38 of payment or a determination of pregnancy; or

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

43 This definition shall not be construed to require that an
44 abortion procedure actually must be initiated for an attempt to
45 occur.

46 (c) "Dismemberment abortion" means, with the purpose of
47 causing the death of an unborn child, purposely to dismember a



48 living unborn child and extract him or her one piece at a time
49 from the uterus through use of clamps, grasping forceps, tongs,
50 scissors or similar instruments that, through the convergence of
51 two rigid levers, slice, crush, and/or grasp a portion of the
52 unborn child's body to cut or rip it off.

53 The term "dismemberment abortion" does not include an
54 abortion that uses suction to dismember the body of the unborn
55 child by sucking fetal parts into a collection container, although
56 it does include an abortion in which a dismemberment abortion is
57 used to cause the death of an unborn child but suction is
58 subsequently used to extract fetal parts after the death of the
59 unborn child.

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

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

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

68 (ii) If the element involves the attendant
69 circumstances, he is aware of the existence of those circumstances
70 or he believes or hopes that they exist.

71 (f) "Serious health risk to the unborn child's mother"
72 means that in reasonable medical judgment, she has a condition



73 that so complicates her medical condition that it necessitates the
74 abortion of her pregnancy to avert her death or to avert serious
75 risk of substantial and irreversible physical impairment of a
76 major bodily function, not including psychological or emotional
77 conditions. No such condition may be determined to exist if it is
78 based on a claim or diagnosis that the woman will engage in
79 conduct that she intends to result in her death or in substantial
80 and irreversible physical impairment of a major bodily function.

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

83 **SECTION 3. Dismemberment abortion prohibited.** (1)

84 Notwithstanding any other provision of law, it shall be unlawful
85 for any person to purposely perform or attempt to perform a
86 dismemberment abortion and thereby kill an unborn child unless
87 necessary to prevent serious health risk to the unborn child's
88 mother.

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



98 (3) No woman upon whom an abortion is performed or attempted
99 to be performed shall be thereby liable for performing or
100 attempting to perform a dismemberment abortion. No nurse,
101 technician, secretary, receptionist or other employee or agent who
102 is not a physician but who acts at the direction of a physician,
103 and no pharmacist or other individual who is not a physician but
104 who fills a prescription or provides instruments or materials used
105 in an abortion at the direction of or to a physician shall be
106 thereby liable for performing or attempting to perform a
107 dismemberment abortion.

108 (4) This act does not prevent abortion for any reason,
109 including rape and incest by any other method.

110 **SECTION 4. Remedies - Injunctions against dismemberment**
111 **abortions.** (1) Civil and criminal penalties for violations of
112 this act may be imposed under the following priority:

- 113 (a) Injunctive relief;
114 (b) Civil cause of action; and
115 (c) Criminal action.

116 (2) A cause of action for injunctive relief against a person
117 who has performed or attempted to perform a dismemberment abortion
118 in violation of Section 3 of this act may be maintained as a
119 priority action by:

- 120 (a) A woman upon whom such a dismemberment abortion was
121 performed or attempted to be performed;



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

126 (c) A prosecuting attorney with appropriate
127 jurisdiction.

128 (3) The injunction shall prevent the defendant from
129 performing or attempting to perform further dismemberment
130 abortions in violation of Section 3 of this act in this state.

131 **SECTION 5. Civil remedies.** (1) Only in the event a cause
132 of action for injunctive relief under Section 4 has been denied by
133 a court of competent jurisdiction, a cause of action for civil
134 damages against a person who has performed a dismemberment
135 abortion in violation of Section 3 of this act may be maintained
136 by:

137 (a) Any woman upon whom a dismemberment abortion has
138 been performed in violation of Section 3 of this act;

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

141 (c) If the woman had not attained the age of eighteen
142 (18) years at the time of the dismemberment abortion or has died
143 as a result of the abortion, the maternal grandparents of the
144 unborn child.

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



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

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

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

152 **SECTION 6. Attorney's fees.** (1) If judgment is rendered in
153 favor of the plaintiff in an action described in Section 4 or 5 of
154 this act, the court shall also render judgment for a reasonable
155 attorney's fee in favor of the plaintiff against the defendant.

156 (2) If judgment is rendered in favor of the defendant in an
157 action described in Section 4 or 5 of this act and the court finds
158 that the plaintiff's suit was frivolous and brought in bad faith,
159 the court shall render judgment for a reasonable attorney's fee in
160 favor of the defendant against the plaintiff.

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

165 **SECTION 7. Criminal penalty.** Only in the event a judgment
166 is rendered in favor of the defendant in an action described in
167 Section 4 or 5 of this act, a district attorney with jurisdiction
168 may bring an indictment for criminal punishment under this
169 section. Any person who violates Section 3 of this act is guilty
170 of a felony and, upon conviction, shall be punished by a fine not
171 more than Ten Thousand Dollars (\$10,000.00), or commitment to the



172 custody of the Department of Corrections for not more than two (2)
173 years, or both.

174 **SECTION 8.** **Protection of privacy in court proceedings.** In
175 every civil, criminal, or administrative proceeding or action
176 brought under this act, the court shall rule whether the anonymity
177 of any woman upon whom a dismemberment abortion has been performed
178 or attempted to be performed shall be preserved from public
179 disclosure if she does not give her consent to the disclosure.
180 The court, upon motion or sua sponte, shall make such a ruling
181 and, upon determining that her anonymity should be preserved,
182 shall issue orders to the parties, witnesses, and counsel and
183 shall direct the sealing of the record and exclusion of
184 individuals from courtrooms or hearing rooms to the extent
185 necessary to safeguard her identity from public disclosure. Each
186 such order shall be accompanied by specific written findings
187 explaining why the anonymity of the woman should be preserved from
188 public disclosure, why the order is essential to that end, how the
189 order is narrowly tailored to serve that interest, and why no
190 reasonable less restrictive alternative exists. In the absence of
191 written consent of the woman upon whom a dismemberment abortion
192 has been performed or attempted to be performed, anyone other than
193 a public official who brings an action under Section 4 or 5 of
194 this act shall do so under a pseudonym. This section may not be
195 construed to conceal the identity of the plaintiff or of witnesses
196 from the defendant or from attorneys for the defendant.



197 **SECTION 9.** **Construction.** Nothing in this act shall be
198 construed as creating or recognizing a right to abortion, nor a
199 right to a particular method of abortion.

200 **SECTION 10.** **Severability.** If any one or more provisions,
201 sections, subsections, sentences, clauses, phrases or words of
202 this act or the application thereof to any person or circumstance
203 is found to be unconstitutional, the same is declared to be
204 severable and the balance of this act shall remain effective
205 notwithstanding such unconstitutionality. The Legislature
206 declares that it would have passed this act, and each provision,
207 section, subsection, sentence, clause, phrase or word thereof,
208 irrespective of the fact that any one or more provisions,
209 sections, subsections, sentences, clauses, phrases or words be
210 declared unconstitutional.

211 **SECTION 11.** This act shall take effect and be in force from
212 and after July 1, 2016.

