

By: Representative Summers

To: Public Health and Human Services; Judiciary B

HOUSE BILL NO. 1154

1 AN ACT TO CREATE THE RIGHT TO CONTRACEPTION ACT; TO PROVIDE  
 2 THAT THE RIGHT TO CONTRACEPTION IS A FUNDAMENTAL RIGHT, CENTRAL TO  
 3 A PERSON'S PRIVACY, HEALTH, WELL-BEING, DIGNITY, LIBERTY,  
 4 EQUALITY, AND ABILITY TO PARTICIPATE IN THE SOCIAL AND ECONOMIC  
 5 LIFE OF THE STATE; TO PROVIDE DEFINITIONS FOR THIS ACT; TO PROVIDE  
 6 A STATUTORY RIGHT UNDER THIS ACT TO OBTAIN CONTRACEPTIVES AND TO  
 7 ENGAGE IN CONTRACEPTION; TO PROVIDE THAT A HEALTH CARE PROVIDER  
 8 HAS A CORRESPONDING RIGHT TO PROVIDE CONTRACEPTIVES,  
 9 CONTRACEPTION, AND CONTRACEPTION-RELATED INFORMATION; TO AUTHORIZE  
 10 A PERSON TO COMMENCE A CIVIL ACTION IF THEY ARE ADVERSELY AFFECTED  
 11 BY A VIOLATION OF THIS ACT; TO AUTHORIZE ANY INDIVIDUAL OR ENTITY,  
 12 INCLUDING ANY HEALTH CARE PROVIDER OR PATIENT, ADVERSELY AFFECTED  
 13 BY AN ALLEGED VIOLATION OF THIS SECTION, MAY COMMENCE A CIVIL  
 14 ACTION AGAINST ANY PERSON THAT VIOLATES OR IMPLEMENTS OR ENFORCES  
 15 A LIMITATION OR REQUIREMENT THAT VIOLATES THIS SECTION; TO BRING  
 16 FORWARD SECTIONS 41-42-5 AND 41-42-7, MISSISSIPPI CODE OF 1972,  
 17 WHICH AUTHORIZE PHYSICIANS TO PROVIDE CONTRACEPTIVES, FOR PURPOSES  
 18 OF AMENDMENT; AND FOR RELATED PURPOSES.

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

20 **SECTION 1.** This act shall be known and cited as the "Right  
 21 to Contraception Act."

22 **SECTION 2.** The Legislature finds the following:

23 (a) The right to contraception is a fundamental right,  
 24 central to a person's privacy, health, well-being, dignity,  
 25 liberty, equality, and ability to participate in the  
 26 social and economic life of the state.



27           (b) The right to contraceptives is protected by  
28 Mississippi law.

29           (c) The right to contraception has been repeatedly  
30 recognized internationally as a human right. The United Nations  
31 Population Fund has published several reports outlining family  
32 planning as a basic human right that advances women's health,  
33 economic empowerment, and equality.

34           (d) Access to contraceptives is internationally  
35 recognized by the World Health Organization as advancing other  
36 human rights such as the right to life, liberty, expression,  
37 health, work, and education.

38           (e) Contraception is safe, essential health care, and  
39 access to contraceptive products and services is central to  
40 people's ability to participate equally in economic and social  
41 life. Contraception allows people to make decisions about their  
42 families and their lives.

43           (f) Contraception is key to sexual and reproductive  
44 health. Contraception is critical to preventing unintended  
45 pregnancy, and many contraceptives are highly effective in  
46 preventing and treating a wide array of often severe medical  
47 conditions and decrease the risk of certain cancers.

48           (g) Family planning improves health outcomes for women,  
49 their families, and their communities and reduces rates of  
50 maternal and infant mortality and morbidity.



51 (h) Policies governing pharmaceutical and insurance  
52 policies affect the accessibility of contraceptives and the  
53 settings in which contraception services are delivered.

54 **SECTION 3.** The following words and phrases shall have the  
55 meanings described in this act:

56 (a) "Contraception" means an action taken to prevent  
57 pregnancy, including the use of contraceptives or  
58 fertility-awareness-based methods and sterilization procedures and  
59 includes "contraceptive procedures" as defined in Section 41-42-3.

60 (b) "Contraceptive" means any drug, device, or  
61 biological product intended for use in the prevention of  
62 pregnancy, whether specifically intended to prevent pregnancy or  
63 for other health needs, that is legally marketed under the federal  
64 Food, Drug, and Cosmetic Act, such as oral contraceptives, long  
65 acting reversible contraceptives, emergency contraceptives,  
66 internal and external condoms, injectables, vaginal barrier  
67 methods, transdermal patches, and vaginal rings, or other  
68 contraceptives.

69 (c) "Health care provider" means any physician, nurse,  
70 or nurse practitioner licensed in the State of Mississippi.

71 (d) "Political subdivision" means a city, village,  
72 town, or county.

73 **SECTION 4.** (1) A person has a statutory right under this  
74 act to obtain contraceptives and to engage in contraception, and a  
75 health care provider has a corresponding right to provide



76 contraceptives, contraception, and contraception-related  
77 information.

78 (2) The statutory rights specified in this act shall not be  
79 limited or otherwise infringed through any limitation or  
80 requirement that does all of the following:

81 (a) Expressly, effectively, implicitly, or as  
82 implemented singles out the provision of contraceptives,  
83 contraception, or contraception-related information; health care  
84 providers who provide contraceptives, contraception, or  
85 contraception-related information; or facilities in which  
86 contraceptives, contraception, or contraception-related  
87 information is provided.

88 (b) Impedes access to contraceptives, contraception, or  
89 contraception-related information.

90 (3) To defend against a claim that a limitation or  
91 requirement violates a health care provider's or patient's  
92 statutory rights under paragraph (b), a party must establish, by  
93 clear and convincing evidence, all of the following:

94 (a) The limitation or requirement significantly  
95 advances the safety of contraceptives, contraception, and  
96 contraception-related information.

97 (b) The safety of contraceptives, contraception, and  
98 contraception related information or the health of patients cannot  
99 be advanced by a less restrictive alternative measure or action.



100           (4)   (a)   Neither the state nor any political subdivision of  
101 the state may administer, implement, or enforce any law, rule,  
102 regulation, standard, or other provision having the force and  
103 effect of law in a manner that does any of the following:

104                   (i)   Prohibits or restricts the sale, provision, or  
105 use of any contraceptives that have been approved by the federal  
106 Food and Drug Administration for contraceptive purposes.

107                   (ii)   Prohibits or restricts any person from aiding  
108 another person in obtaining any contraceptives approved by the  
109 federal Food and Drug Administration or contraceptive methods.

110                   (iii)   Exempts any contraceptives approved by the  
111 federal Food and Drug Administration from any other generally  
112 applicable law in a way that would make it more difficult to sell,  
113 provide, obtain, or use those contraceptives or contraceptive  
114 methods.

115           (b)   This section does not supersede or otherwise affect  
116 any provision relating to coverage under group health plans or  
117 group or individual health insurance coverage and may not be  
118 construed as requiring the provision of specific benefits under  
119 these plans or coverage.

120           (c)   An individual or entity who is subject to a  
121 limitation or requirement that violates this section may raise  
122 this section as a defense to any cause of action against the  
123 individual or entity.



124 (5) (a) This act shall be liberally construed to effectuate  
125 its purposes.

126 (b) Nothing in this section may be construed to do any  
127 of the following:

128 (i) Authorize any government to interfere with a  
129 health care provider's ability to provide contraceptives or  
130 contraception-related information or a person's ability to obtain  
131 contraceptives or to engage in contraception.

132 (ii) Permit or sanction the conduct of any  
133 sterilization procedure without the patient's voluntary and  
134 informed consent.

135 (6) (a) The Attorney General may commence a civil action on  
136 behalf of the state against any person that violates or enforces a  
137 limitation or requirement that violates this section. In any  
138 civil action brought under this paragraph, the Attorney General  
139 may compromise and settle the action as the Attorney General  
140 determines to be in the best interest of the state.

141 (b) Any individual or entity, including any health care  
142 provider or patient, adversely affected by an alleged violation of  
143 this section may commence a civil action against any person that  
144 violates or implements or enforces a limitation or requirement  
145 that violates this section.

146 (c) A health care provider may commence an action for  
147 relief on its own behalf, on behalf of the provider's staff, and



148 on behalf of the provider's patients who are or may be adversely  
149 affected by an alleged violation of this section.

150 (d) If a court finds that there has been a violation of  
151 this section, the court shall hold unlawful and set aside the  
152 limitation or requirement. In any action under this section, the  
153 court may award appropriate equitable relief, including temporary,  
154 preliminary, or permanent injunctive relief.

155 (e) In any action under this section, the court shall  
156 award to any prevailing plaintiff costs and reasonable attorney's  
157 fees. Unless a court determines an action is frivolous, the court  
158 may not hold a plaintiff liable to a defendant for costs and  
159 attorney's fees in an action under this section.

160 **SECTION 5.** Section 41-42-5, Mississippi Code of 1972, is  
161 brought forward as follows:

162 41-42-5. The State Board of Health is authorized to receive  
163 and disburse such funds as may become available to it for family  
164 planning programs to any organization, public or private, engaged  
165 in providing contraceptive procedures, supplies, and information.  
166 Any family planning program administered by the board may be  
167 developed in consultation and coordination with other family  
168 planning agencies in this state.

169 The board is hereby authorized to adopt and promulgate rules  
170 and regulations to implement the provisions of this chapter.

171 The board may provide for the dissemination of medically  
172 acceptable contraceptive information and supplies by duly



173 authorized persons in state and county health and welfare  
174 departments and in medical facilities at institutions of higher  
175 learning.

176         **SECTION 6.** Section 41-42-7, Mississippi Code of 1972, is  
177 brought forward as follows:

178         41-42-7. Contraceptive supplies and information may be  
179 furnished by physicians to any minor who is a parent, or who is  
180 married, or who has the consent of his or her parent or legal  
181 guardian, or who has been referred for such service by another  
182 physician, a clergyman, a family planning clinic, a school or  
183 institution of higher learning, or any agency or instrumentality  
184 of this state or any subdivision thereof.

185         **SECTION 7.** This act shall take effect and be in force from  
186 and after its passage.

