

REPORT OF CONFERENCE COMMITTEE

MR. SPEAKER AND MR. PRESIDENT:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

H. B. No. 1542: Intestate succession; child conceived by assisted reproduction after decedent's death is deemed to be living at the time of death.

We, therefore, respectfully submit the following report and recommendation:

1. That the Senate recede from its Amendment No. 1.
2. That the House and Senate adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

42 **SECTION 1.** (1) This section shall be known and may be cited
43 as the "Chris McDill Law."

44 (2) For purposes of this section, the following words shall
45 have the meaning herein ascribed unless the context clearly
46 requires otherwise:

47 (a) "Assisted reproductive technology" means a method
48 of preserving fertility or attempting pregnancy through means
49 other than by sexual intercourse, including, but not limited to,
50 the following:

51 (i) Intrauterine, intracervical, or vaginal
52 insemination;

53 (ii) Donation of gametes;

54 (iii) Donation of embryos;



- 55 (iv) Receiving of gametes;
- 56 (v) Receiving of embryos;
- 57 (vi) In vitro fertilization;
- 58 (vii) Embryo transfer; and
- 59 (viii) Intracytoplasmic sperm injection.

60 (b) "Personal property" means goods and chattels or
61 personal estate.

62 (3) When any person shall die possessed of personal property
63 not bequeathed before the start of a pregnancy by assisted
64 reproductive technology resulting in the birth of an individual
65 who lives at least one hundred twenty (120) hours after birth,
66 that individual is deemed to be living at the time of the
67 decedent's death and shall be entitled to a child's part of the
68 decedent's personal property as provided in this section if the
69 decedent's personal representative and the court, not later than
70 six (6) months after the decedent's death, received notice or had
71 actual knowledge of an intent to use the decedent's genetic
72 material in the assisted reproduction; and

73 (a) The embryo was in utero not later than thirty-six
74 (36) months after the decedent's death; or

75 (b) The individual was born not later than forty-five
76 (45) months after the decedent's death.

77 (4) (a) This section shall only be applicable if there is a
78 record signed by the decedent and the person who intends to use
79 the decedent's genetic material in the assisted reproductive



80 technology that the decedent consented to the use of the
81 decedent's genetic material in assisted reproductive technology
82 after the death of the decedent.

83 (b) There shall be a rebuttable presumption that the
84 decedent did not consent to the use of the decedent's genetic
85 material in the assisted reproductive technology if the decedent
86 was divorced or legally separated at the time of the decedent's
87 death from the person who wishes to use the decedent's genetic
88 material in the assisted reproductive technology.

89 (5) An individual deemed to be living at the time of the
90 decedent's death under subsection (3) of this section shall be
91 entitled to a child's part of the decedent's personal property, or
92 the equivalent value thereof. If more than one (1) individual is
93 deemed to be living at the time of the decedent's death under
94 subsection (3) of this section, each individual shall be entitled
95 to an equal share of a child's part of the decedent's personal
96 property, or the equivalent value thereof.

97 (6) (a) Upon receipt of notice or the actual knowledge
98 required under subsection (3) of this section, the court shall:

99 (i) Set aside a child's part of the decedent's
100 personal property, or the equivalent value thereof, for
101 distribution to an individual deemed to be living at the time of
102 the decedent's death under subsection (3) of this section;

103 (ii) Distribute the remainder of the decedent's
104 estate, except for the set-aside child's part of the decedent's



105 personal property, or the equivalent value thereof, according to
106 the statutes of descent and distribution; and

107 (iii) Enter an order closing the estate for all
108 purposes except the distribution of the set-aside part of the
109 decedent's personal property or the equivalent value thereof.

110 (b) If an individual is deemed to be living at the time
111 of the decedent's death under subsection (3) of this section, the
112 court shall distribute the set-aside portion of the decedent's
113 personal estate according to subsection (5) of this section. If
114 no individual is deemed living at the time of the decedent's death
115 under subsection (3) of this section, the court shall distribute
116 the set aside portion of the decedent's personal estate as is
117 otherwise provided according to the statutes of descent and
118 distribution.

119 (7) It is the intent of the Legislature that an individual
120 deemed to be living at the time of the decedent's death under
121 subsection (3) of this section shall be eligible for federal
122 benefits under subchapter II of Chapter 7 of Title 41 of the
123 United States Code.

124 **SECTION 2.** Section 91-1-11, Mississippi Code of 1972, is
125 amended as follows:

126 91-1-11. (1) Except as provided in subsection (2) of this
127 section, when any person shall die possessed of goods and chattels
128 or personal estate not bequeathed, the same shall descend to and



129 be distributed among his or her heirs in the same manner that real
130 estate not devised descends.

131 (2) When any person shall die possessed of goods and
132 chattels or personal estate not bequeathed, the provisions of
133 Section 1 of this act are applicable in determining whether a
134 child of a decedent is living at the time of the decedent's death.

135 **SECTION 3.** Section 91-1-7, Mississippi Code of 1972, is
136 amended as follows:

137 91-1-7. (1) If a husband dies intestate and * * * does not
138 leave children or descendants of children, his widow shall be
139 entitled to his entire estate, real and personal, in fee simple,
140 after payment of his debts; but where the deceased husband * * *
141 leaves a child or children by that or a former marriage, or
142 descendants of such child or children, his widow shall have a
143 child's part of his estate, in either case in fee simple. If a
144 married woman dies owning any real or personal estate not disposed
145 of, it shall descend to her husband and her children or their
146 descendants if she * * * has any surviving her, either by a former
147 husband or by the surviving husband, in equal parts, according to
148 the rules of descent. If she * * * has children and there
149 also * * * are descendants of other children who have died before
150 the mother, the descendants shall inherit the share to which the
151 parent would have been entitled if living, as coheirs with the
152 surviving children. If she * * * has no children or descendants
153 of them, then the husband shall inherit all of her property.



154 (2) The provisions of Section 1 of this act are applicable
155 in determining whether a child of a decedent is living at the time
156 of the decedent's death.

157 **SECTION 4.** (1) Notwithstanding any other provision of law:

158 (a) No criminal prosecution for the damage to or death
159 of an unimplanted embryo shall be brought or maintained against
160 any patient, individual, entity or manufacturer when providing or
161 receiving products and/or services related to assisted
162 reproductive technology as defined in Section 5(a) of this act.

163 (b) No civil cause of action shall be brought or
164 maintained against any patient, individual or entity when
165 receiving products or providing or receiving services related to
166 assisted reproductive technology as defined in Section 5(a) of
167 this act unless such individual or entity has breached the
168 relevant standard of care.

169 (c) In any civil action or suit brought or maintained
170 against any manufacturer, individual or entity providing products
171 and/or services related to assisted reproductive technology,
172 damages shall be limited to economic damages only, calculated as
173 the price paid for the impacted service.

174 (2) This section shall apply retroactively to any act,
175 omission, or course of services rendered on or before the
176 effective date of this act.



177 **SECTION 5.** For purposes of Sections 5 through 9 of this act,
178 the following terms shall have the meanings ascribed herein unless
179 the context clearly requires otherwise:

180 (a) "Assisted reproductive technology" means a method
181 of preserving fertility or attempting pregnancy through means
182 other than by sexual intercourse including, but not limited to the
183 following:

184 (i) Intrauterine, intracervical, or vaginal
185 insemination;

186 (ii) Donation of gametes;

187 (iii) Donation of embryos;

188 (iv) Receiving of gametes;

189 (v) Receiving of embryos;

190 (vi) In vitro fertilization;

191 (vii) Embryo transfer; and

192 (viii) Intracytoplasmic sperm injection.

193 (b) "Child" means an individual born from a pregnancy
194 achieved by means of medically assisted fertility treatment in
195 furtherance of a collaborative reproduction agreement.

196 (c) "Egg" means the unfertilized female reproductive
197 cell.

198 (d) "Sperm" means the male reproductive cell.

199 (e) "Gamete" means a male sperm or a female egg.

200 (f) "Fertilization" means the initial union of an egg
201 and sperm.



202 (g) "Gestational carrier" means a woman who is at least
203 twenty-one (21) years of age and who voluntarily contracts to
204 become pregnant by means of assisted reproductive technology
205 without the use of her egg and who agrees to terminate her
206 parental rights and responsibilities to a resulting child in favor
207 of the intended parent(s). As it relates to the termination of
208 parental rights and the determination of parentage under Section 9
209 of this act, the term "gestational carrier" includes the woman's
210 spouse if applicable. The term "gestational carrier" does not
211 include a woman who agrees to become pregnant through providing
212 her own egg and is also the person carrying the embryo.

213 (h) "Intended parent" means an individual or
214 individuals who, as evidenced by a gestational carrier agreement,
215 intend to assert parental rights and responsibilities for a child
216 conceived by assisted reproduction, regardless of whether the
217 child is biologically related to the intended parent.

218 (i) "Embryo transfer" means the transfer of an embryo
219 that is fertilized by means of assisted reproductive technology to
220 an individual's uterus.

221 (j) "Embryo" means the product of fertilization of an
222 egg by a sperm.

223 (k) "Gestational carrier agreement" means a written
224 agreement between a gestational carrier and one or more intended
225 parents that specifies the intent of the parties as to their



226 rights and responsibilities in the gestational carrier
227 arrangement, consistent with the provisions of this act.

228 **SECTION 6.** The donor of any egg, sperm, or embryo, upon
229 written evidence of intent to donate, or in the absence of written
230 evidence, upon clear and convincing evidence of intent to donate,
231 shall relinquish all parental rights and obligations with respect
232 to the donation or any resulting child or children. Reasonable
233 compensation directly related to the donation of eggs, sperm, and
234 embryos shall be permitted.

235 **SECTION 7.** (1) Individuals may enter into a gestational
236 carrier agreement as specified in this section. A gestational
237 carrier agreement shall include, at a minimum, the following
238 terms:

239 (a) That the gestational carrier agrees to become
240 pregnant by means of assisted reproductive technology, to bear a
241 child or children, and to terminate any parental rights and
242 responsibilities to the resulting child or children through a
243 pre-birth legal proceeding determining parentage in the intended
244 parent rather than the gestational carrier, pursuant to Section 9
245 of this act;

246 (b) That the gestational carrier agrees to submit to
247 reasonable medical evaluation and treatment and to adhere to
248 reasonable medical instructions about her prenatal health;

249 (c) That the intended parent agree to accept custody of
250 and to assert full parental rights and responsibilities for the



251 child or children immediately upon birth, regardless of any
252 impairment of the child or children;

253 (d) That the intended parent shall be the sole source
254 of consent with respect to medical decisions regarding the child
255 or children carried by gestational carrier, with due consideration
256 to the health of the gestational carrier;

257 (e) That the intended parent shall be consulted with
258 during all aspects of the pregnancy with the gestational carrier's
259 treating physician or medical provider;

260 (f) That the gestational carrier shall be the sole
261 source of consent with regard to medical decisions which affect
262 her health, whether related to the pregnancy or otherwise, as long
263 as any decision to terminate the pregnancy shall only be made
264 where necessary for the preservation of the gestational carrier's
265 life;

266 (g) That the gestational carrier agrees to relinquish
267 any parental rights and to proceed with pre-birth judicial
268 proceedings prescribed under Section 9 of this act; and

269 (h) That the gestational carrier agreement may be
270 terminated at any time by any of the parties upon medical
271 confirmation that the gestational carrier is not pregnant at the
272 time of termination.

273 (2) A gestational carrier agreement may not affect final
274 determination of parentage of a child. Final determination of
275 parentage shall be made in accordance with Section 9 of this act.



276 **SECTION 8.** (1) An intended parent and a gestational carrier
277 shall be represented by separate and independent counsel in any
278 matter relating to a gestational carrier agreement or judicial
279 determination of parental rights pursuant to Section 9 of this
280 act.

281 (2) Doctors, psychologists, attorneys and other
282 professionals may receive compensation for their professional
283 services, such as providing medical services and procedures, legal
284 advice in structuring and negotiating a gestational carrier
285 agreement, determination of parentage through a court proceeding,
286 or counseling.

287 (3) Compensation may be paid to a person acting as the
288 gestational carrier as compensation for medical risks, physical
289 discomfort, inconvenience, reimbursement of actual costs and
290 living expenses, and the responsibilities she is undertaking in
291 connection with her participation in the gestational carrier
292 agreement.

293 (4) Compensation paid to a person acting as the gestational
294 carrier shall not exceed the duration of the pregnancy and
295 recuperative period of up to eight (8) weeks after the birth of
296 any resulting children or upon release of the gestational carrier
297 from medical care by her treating physician, whichever is later.

298 (5) The provisions Sections 5 through 9 of this act shall
299 not be construed to authorize any abortion procedure or allow or
300 require access for any person to obtain an abortion.



301 **SECTION 9.** (1) Before the birth of a child conceived by
302 assisted reproductive technology under a gestational carrier
303 agreement, a party to the agreement may commence a proceeding in
304 chancery court for an order or judgment:

305 (a) Declaring that each intended parent is a legal
306 parent of the child and ordering that parental rights and duties
307 vest immediately upon the birth of the child exclusively in each
308 intended parent;

309 (b) Declaring that the gestational carrier and the
310 gestational carrier's spouse, if applicable, are not the legal
311 parents of the child;

312 (c) Authorizing the Mississippi State Department of
313 Health to issue a birth certificate for the child or children upon
314 birth; and

315 (d) Including other relief the court determines
316 necessary and proper.

317 (2) All parties to the gestational carrier agreement must
318 join in such proceeding.

319 (3) Venue for judicial determination of parentage under this
320 section shall be proper in the chancery court of the county of the
321 birth of the child or children, county of the gestational
322 carrier's residence or the county of the residence of the intended
323 parent.



324 (4) All judicial proceedings under Section 5 through 9 of
325 this act shall be confidential and shall be held in closed court
326 as is provided for adoptions in Section 93-17-25.

327 **SECTION 10.** (1) As used in this section, the following
328 terms shall have the meaning herein ascribed unless the context
329 clearly requires otherwise:

330 (a) "Health care provider" means any entity or
331 individual, including, but not limited to, any physician, advanced
332 practice registered nurse, physician assistant, pharmacist, health
333 care support personnel, and any other individual that is:

334 (i) Engaged or seeks to engage in the delivery of
335 assisted reproductive technology treatments, procedures or
336 services, including through the provision of evidence-based
337 information, counseling, referrals or items and services that
338 relate to, aid in or provide fertility treatment; and

339 (ii) Licensed, certified or otherwise authorized
340 to engage in the delivery of such assisted reproductive technology
341 treatments, procedures or services, if such licensure,
342 certification or other authorization is required by state law.

343 (b) "Assisted reproductive technology" means a method
344 of preserving fertility or attempting pregnancy through means
345 other than by sexual intercourse including, but not limited to the
346 following:

347 (i) Intrauterine, intracervical, or vaginal
348 insemination;



- 349 (ii) Donation of gametes;
- 350 (iii) Donation of embryos;
- 351 (iv) Receiving of gametes;
- 352 (v) Receiving of embryos;
- 353 (vi) In vitro fertilization;
- 354 (vii) Embryo transfer; and
- 355 (viii) Intracytoplasmic sperm injection.

356 (c) "Patient" means any individual who receives or
357 seeks to receive assisted reproductive technology treatments,
358 procedures or services and evidence based information, counseling,
359 referrals or items and services that relate to, aid in or provide
360 fertility treatment.

361 (2) It is the purpose of this section to permit health care
362 providers to provide, and for patients to receive, assisted
363 reproductive technology treatments, procedures or services without
364 limitations or requirements that:

365 (a) Are more burdensome than limitations or
366 requirements imposed on medically comparable treatments,
367 procedures or services;

368 (b) Do not significantly advance reproductive health or
369 the safety of such treatments, procedures or services; or

370 (c) Unduly restrict access to such treatments,
371 procedures or services.

372 (3) (a) An individual has a right under this section to:



373 (i) Access assisted reproductive technology
374 treatments, procedures or services;
375 (ii) Continue or complete an ongoing assisted
376 reproductive technology treatment or procedure pursuant to a
377 written plan or agreement with a health care provider; and
378 (iii) Retain all rights regarding the individual's
379 reproductive genetic materials.

380 (b) A health care provider has a right under this
381 section to:

382 (i) Perform or assist with the performance of
383 assisted reproductive technology treatments or procedures; and

384 (ii) Provide or assist with the provision of
385 evidence-based information related to assisted reproductive
386 technology treatments, procedures or services.

387 (c) A health insurance provider has a right under this
388 section to cover assisted reproductive technology treatments or
389 procedures.

390 (4) (a) Any individual or entity adversely affected by an
391 alleged violation of subsection (3) of this section may commence a
392 civil action against any state or local government official that
393 enacts, implements or enforces a limitation or requirement that
394 violates subsection (3) of this section.

395 (b) A health care provider may commence an action for
396 relief on its own behalf, on behalf of the provider's staff, or on
397 behalf of the provider's patients who are or may be adversely



398 affected by an alleged violation of subsection (3) of this
399 section. The court shall hold unlawful and enjoin the limitation
400 or requirement if it is in violation of subsection (3) of this
401 section.

402 (5) In any action under this section:

403 (a) The court may award appropriate equitable relief,
404 including temporary, preliminary or permanent injunctive relief;
405 and

406 (b) The court shall award costs of litigation, as well
407 as reasonable attorney's fees, to any prevailing plaintiff. A
408 plaintiff shall not be liable to a defendant for costs or
409 attorney's fees in any nonfrivolous action under this section.

410 (6) In any cause of action against an individual or entity
411 who is subject to a limitation or requirement that violates this
412 section, in addition to the remedies specified in this section,
413 this section shall also apply to, and may be raised as a defense
414 by, such an individual or entity.

415 (7) Nothing in this section shall be construed to:

416 (a) Require any state or governmental entity, public or
417 private health benefits plan, or private health insurance policy
418 to pay for or cover assisted reproductive technology treatments,
419 procedures or services nor require any health care provider to
420 provide assisted reproductive technology treatments, procedures or
421 services;



422 (b) Authorize any abortion procedure or allow or
423 require access for any person to obtain an abortion;

424 (c) Supersede any provision of Section 11-61-1 which is
425 the Mississippi Religious Freedom Restoration Act;

426 (d) Authorize or allow human cloning, gene-editing
427 designer babies, or creation of human-animal hybrids;

428 (e) Authorize or allow buying, selling, destroying or
429 otherwise disposing of any human embryos created from assisted
430 reproductive technology treatments or procedures; or

431 (f) Authorize legal actions to be brought against the
432 Mississippi Legislature or any member of the Legislature.

433 (8) For purposes of this section, a health care provider
434 shall be presumed to be acting in good faith.

435 **SECTION 11.** This act shall take effect and be in force from
436 and after its passage.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO ENACT THE CHRIS MCDILL LAW; TO PROVIDE THAT FOR THE
2 PURPOSES OF INTTESTATE SUCCESSION, IF THE DECEDENT DIES BEFORE THE
3 START OF A PREGNANCY BY ASSISTED REPRODUCTION RESULTING IN THE
4 BIRTH OF AN INDIVIDUAL WHO LIVES AT LEAST 120 HOURS AFTER BIRTH,
5 THAT INDIVIDUAL IS DEEMED TO BE LIVING AT THE TIME OF THE
6 DECEDENT'S DEATH UNDER CERTAIN CONDITIONS; TO PROVIDE A PROCEDURE
7 FOR THE DESCENT AND DISTRIBUTION OF THE DECEDENT'S ESTATE; TO
8 AMEND SECTIONS 91-1-11 AND 91-1-7, MISSISSIPPI CODE OF 1972, TO
9 CONFORM; TO PROVIDE CRIMINAL IMMUNITY FOR THE DAMAGE TO OR DEATH
10 OF AN EGG, SPERM, OR EMBRYO WHEN PROVIDING OR RECEIVING PRODUCTS
11 AND OR SERVICES RELATED TO ASSISTED REPRODUCTIVE TECHNOLOGY; TO
12 PROHIBIT A CIVIL ACTION WHEN RECEIVING PRODUCTS OR PROVIDING OR
13 RECEIVING SERVICES RELATED TO ASSISTED REPRODUCTIVE TECHNOLOGY
14 UNLESS AN INDIVIDUAL OR ENTITY HAS BREACHED THE RELEVANT STANDARD



15 OF CARE; TO LIMIT DAMAGES IN ANY CIVIL ACTION OR SUIT BROUGHT OR
16 MAINTAINED AGAINST ANY MANUFACTURER, INDIVIDUAL OR ENTITY
17 PROVIDING PRODUCTS AND/OR SERVICES RELATED TO ASSISTED
18 REPRODUCTIVE TECHNOLOGY; TO PROVIDE THAT SUCH CRIMINAL IMMUNITY
19 AND CIVIL LIMITATIONS SHALL BE RETROACTIVELY; TO DEFINE TERMS
20 RELATED TO GESTATIONAL CARRIERS; TO PROVIDE FOR CERTAIN
21 REQUIREMENTS RELATED TO THE DONATION OF GAMETES OR EMBRYOS; TO
22 ESTABLISH THE REQUIREMENTS FOR GESTATIONAL CARRIER AGREEMENTS; TO
23 AUTHORIZE CERTAIN COMPENSATION TO BE PAID TO GESTATIONAL CARRIERS;
24 TO PROVIDE FOR A JUDICIAL PROCEDURE FOR DETERMINING THE PARENTAL
25 STATUS OF CHILDREN BORN TO GESTATIONAL CARRIERS; TO PROVIDE A
26 RIGHT FOR INDIVIDUALS TO ACCESS ASSISTED REPRODUCTIVE TECHNOLOGY
27 TREATMENTS, PROCEDURES OR SERVICES, CONTINUE OR COMPLETE AN
28 ONGOING ASSISTED REPRODUCTIVE TECHNOLOGY TREATMENT OR PROCEDURE,
29 AND RETAIN ALL RIGHTS REGARDING THE INDIVIDUAL'S REPRODUCTIVE
30 GENETIC MATERIALS; TO PROVIDE A RIGHT FOR HEALTH CARE PROVIDERS TO
31 PERFORM OR ASSIST WITH THE PERFORMANCE OF ASSISTED REPRODUCTIVE
32 TECHNOLOGY TREATMENTS OR PROCEDURES, AND TO PROVIDE OR ASSIST WITH
33 THE PROVISION OF EVIDENCE-BASED INFORMATION RELATED TO ASSISTED
34 REPRODUCTIVE TECHNOLOGY TREATMENTS, PROCEDURES OR SERVICES; TO
35 PROVIDE A RIGHT TO HEALTH INSURANCE PROVIDERS TO COVER ASSISTED
36 REPRODUCTIVE TECHNOLOGY TREATMENTS OR PROCEDURES; TO AUTHORIZE
37 INDIVIDUALS, ENTITIES AND HEALTH CARE PROVIDERS WHO ARE ADVERSELY
38 AFFECTED BY ALLEGED VIOLATIONS OF THIS ACT TO ENFORCE THEIR RIGHTS
39 IN COURT; TO PROVIDE EXCEPTIONS TO THE RIGHTS PROVIDED IN THIS
40 ACT; AND FOR RELATED PURPOSES.

CONFEREES FOR THE HOUSE

CONFEREES FOR THE SENATE

X (SIGNED)
Hood

X (SIGNED)
Wiggins

X (SIGNED)
Yates

X (SIGNED)
McCaughn

X (SIGNED)
McLean

X (SIGNED)
Fillingane

