MISSISSIPPI

Miss. Code Ann. § 41-41-33. Consent; written certification.

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

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

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

(ii) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage and breast cancer, and the danger to subsequent pregnancies and infertility;

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

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

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

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

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

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

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

(c) The woman certifies in writing before the abortion that the information described in paragraphs (a) and (b) of this section has been furnished to her, and that she has been informed of her opportunity to review the information referred to in subparagraph (iv) of paragraph (b) of this section.

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

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

Miss. Code Ann. § 41-41-34. Performance of fetal ultrasound imaging and auscultation of fetal heart tone services required before abortion; patient to be offered opportunity to view ultrasound image and hear heartbeat; patient to sign certification form acknowledging being given that opportunity; physician to retain copy of signed certification form.

(1) Before the performance of an abortion, as defined in Section 41-41-45, the physician who is to perform the abortion, or a qualified person assisting the physician, shall:

(a) Perform fetal ultrasound imaging and auscultation of fetal heart tone services on the patient undergoing the abortion;

(b) Offer to provide the patient with an opportunity to view the active ultrasound image of the unborn child and hear the heartbeat of the unborn child if the heartbeat is audible;

(c) Offer to provide the patient with a physical picture of the ultrasound image of the unborn child;

(d) Obtain the patient's signature on a certification form stating that the patient has been given the opportunity to view the active ultrasound image and hear the heartbeat of the unborn child if the heartbeat is audible, and that she has been offered a physical picture of the ultrasound image; and

(e) Retain a copy of the signed certification form in the patient's medical record.

(2) The State Department of Health shall enforce the requirements of this section.

(3) An ultrasound image must be of a quality consistent with standard medical practice in the community, shall contain the dimensions of the unborn child and shall accurately portray the presence of external members and internal organs, if present or viewable, of the unborn child.

Miss. Code Ann. § 41-41-34.1. Performance of abortion of unborn human individual with a detectable heartbeat prohibited; exceptions.

(1) As used in this section:

(a) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(b) "Physician" means a person licensed to practice medicine under Section 73-25-1 et seq.

(c) "Unborn human individual" means an individual organism of the species homo sapiens from fertilization until live birth.

(2)

(a) Except as provided in paragraph (b) or (c) of this subsection (2), no person shall knowingly perform an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn human individual that the pregnant woman is carrying and whose fetal heartbeat has been detected. Any person who acts based on the exception in paragraph (b) or (c) of this subsection (2) shall so note in the pregnant woman's medical records and shall specify in the pregnant woman's medical records which of the exceptions the person invoked.

(b)

(i) A person is not in violation of paragraph (a) of this subsection (2) if that person performs a medical procedure designed to or intended, in that person's reasonable medical judgment, to prevent the death of a pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

(ii) Any person who performs a medical procedure as described in paragraph (b)(i) of this subsection (2) shall declare in writing, under penalty of perjury, that the medical procedure was necessary, to the best of that person's reasonable medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. That person shall also provide in that written document, under penalty of perjury, the medical condition of that pregnant woman that the medical procedure performed as described in paragraph (b)(i) of this subsection (2) will assertedly address, and the medical rationale for the conclusion that the medical procedure was necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

(iii) The person who performs a medical procedure as described in paragraph (b)(i) of this subsection (2) shall place the written documentation required under paragraph (b)(ii) of this subsection (2) in the pregnant woman's medical records, and shall maintain a copy of the written documentation in the person's own records for at least seven (7) years.

(c) A person is not in violation of paragraph (a) of this subsection (2) if that person has performed an examination for the presence of a fetal heartbeat in the unborn human individual using standard medical practice and that examination does not reveal a fetal heartbeat or the person has been informed by a physician who has performed the examination for a fetal heartbeat that the examination did not reveal a fetal heartbeat.

(d) This subsection (2) does not repeal any other provision of the Mississippi Code that restricts or regulates the performance of an abortion by a particular method or during a particular stage of a pregnancy.

(e) Any person who violates this subsection (2) is guilty of performing an abortion after the detection of a fetal heartbeat, a violation punishable as provided in Section 41-41-39.

Miss. Code Ann. § 41-41-37. Physician to inform woman of medical emergency.

When a medical emergency compels the performance or induction of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting his judgment that an abortion is necessary to avert her death or for which a twenty-four-hour delay will create grave peril of immediate and irreversible loss of major bodily function.

Miss. Code Ann. § 41-41-39. Violation of provisions as misdemeanor.

Anyone who purposefully, knowingly or recklessly performs or attempts to perform or induce an abortion without complying with Sections 41-41-31 through 41-41-37 shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of One Thousand Dollars ($1,000.00), by imprisonment in the county jail for a period of time not to exceed six (6) months or both such fine and imprisonment.

Miss. Code Ann. § 41-41-45. Abortion prohibited; exceptions.

(1) As used in this section, the term "abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead fetus.

(2) No abortion shall be performed or induced in the State of Mississippi, except in the case where necessary for the preservation of the mother's life or where the pregnancy was caused by rape.

(3) For the purposes of this section, rape shall be an exception to the prohibition for an abortion only if a formal charge of rape has been filed with an appropriate law enforcement official.

(4) Any person, except the pregnant woman, who purposefully, knowingly or recklessly performs or attempts to perform or induce an abortion in the State of Mississippi, except in the case where necessary for the preservation of the mother's life or where the pregnancy was caused by rape, upon conviction, shall be punished by imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than ten (10) years.

Miss. Code Ann. § 41-41-53. Requirement of written consent; petition for waiver.

(1) Except as otherwise provided in subsections (2) and (3) of this section, no person shall perform an abortion upon an unemancipated minor unless he or his agent first obtains the written consent of both parents or the legal guardian of the minor.

(2)

(a) If the minor's parents are divorced or otherwise unmarried and living separate and apart, then the written consent of the parent with primary custody, care and control of such minor shall be sufficient.

(b) If the minor's parents are married and one (1) parent is not available to the person performing the abortion in a reasonable time and manner, then the written consent of the parent who is available shall be sufficient.

(c) If the minor's pregnancy was caused by sexual intercourse with the minor's natural father, adoptive father or stepfather, then the written consent of the minor's mother shall be sufficient.

(3) A minor who elects not to seek or does not obtain consent from her parents or legal guardian under this section may petition, on her own behalf or by next friend, the chancery court in the county in which the minor resides or in the county in which the abortion is to be performed for a waiver of the consent requirement of this section pursuant to the procedures of Section 41-41-55.

Miss. Code Ann. § 41-41-55. Applicability of provisions; court proceedings; standards for waiver of consent requirement.

(1) The requirements and procedures under Sections 41-41-51 through 41-41-63 shall apply and are available to minors whether or not they are residents of this state.

(2) The minor may participate in proceedings in the court on her own behalf. The court shall advise her that she has a right to court-appointed counsel and shall provide her with such counsel upon her request or if she is not already adequately represented.

(3) Court proceedings under this section shall be confidential and anonymous and shall be given such precedence over other pending matters as is necessary to insure that the court may reach a decision promptly, but in no case shall the court fail to rule within seventy-two (72) hours of the time the application is filed. If for any reason the court fails to rule within seventy-two (72) hours of the time the application is filed, the minor may proceed as if the consent requirement of Section 41-41-53 has been waived.

(4) Consent shall be waived if the court finds by clear and convincing evidence either:

(a) That the minor is mature and well-informed enough to make the abortion decision on her own; or

(b) That performance of the abortion would be in the best interests of the minor.

(5) A court that conducts proceedings under this section shall issue written and specific factual findings and legal conclusions supporting its decision and shall order that a confidential record of the evidence be maintained.

(6) An expedited confidential and anonymous appeal shall be available to any minor to whom the court denies a waiver of consent. The Mississippi Supreme Court shall issue promptly such rules and regulations as are necessary to insure that proceedings under Sections 41-41-51 through 41-41-63 are handled in an expeditious, confidential and anonymous manner.

(7) No filing fees shall be required of any minor who avails herself of the procedures provided by this section.

Miss. Code Ann. § 41-41-57. Exception for medical emergency.

Sections 41-41-51 through 41-41-63 shall not apply when, in the best clinical judgment of the physician on the facts of the case before him, a medical emergency exists that so complicates the pregnancy as to require an immediate abortion. A physician who does not comply with Sections 41-41-53 and 41-41-55 by reason of this exception shall state in the medical record of the abortion the medical indications on which his judgment was based.

Miss. Code Ann. § 41-41-73. Partial-birth abortions prohibited; penalties for violations.

(1) Any physician who knowingly performs a partial-birth abortion and thereby kills a human fetus shall be guilty of a felony and, upon conviction thereof, shall be fined not more than Twenty-five Thousand Dollars ($25,000.00) or imprisoned in the State Penitentiary for not more than two (2) years, or both. This subsection shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury if no other medical procedure would suffice for that purpose.

(2)

(a) As used in this section, "partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

(b) As used in this section, "physician" means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State of Mississippi. However, any individual who is not a physician but who nevertheless directly performs a partial-birth abortion shall be subject to the provisions of this section.

(3)

(a) The husband of a mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of eighteen (18) years at the time of the abortion, the mother's parents may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

(b) Such relief shall include:

(i) Money damages for all injuries, psychological and physical, occasioned by the violation of this section; and

(ii) Statutory damages equal to three (3) times the cost of the partial-birth abortion.

(4) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section for a conspiracy to violate this section.

Miss. Code Ann. § 41-41-77. Physicians to file regular reports to state on patients treated or dying in abortion procedures; confidentiality; sanctions for breach of confidentiality.

(1) A physician shall file a written report with the State Department of Health regarding each patient who comes under the physician's professional care and requires medical treatment or suffers death that the attending physician has a reasonable basis to believe is a primary, secondary, or tertiary result of an induced abortion.

(2) These reports shall be submitted within thirty (30) days of the discharge or death of the patient treated for the complication.

(3) The department shall summarize aggregate data from the reports required under this section for purposes of inclusion into the annual Vital Statistics Report.

(4) The department shall develop and distribute or make available online in a downloadable format a standardized form for the report required under this section.

(5) The department shall communicate this reporting requirement to all medical professional organizations, licensed physicians, hospitals, emergency rooms, abortion facilities, Department of Health clinics and ambulatory surgical facilities operating in the state.

(6) The department shall destroy each individual report required by this section and each copy of the report after retaining the report for five (5) years after the date the report is received.

(7) The report required under this section shall not contain the name of the woman, common identifiers such as her social security number or motor vehicle operator's license number or other information or identifiers that would make it possible to identify in any manner or under any circumstances an individual who has obtained or seeks to obtain an abortion. A state agency shall not compare data in an electronic or other information system file with data in another electronic or other information system that would result in identifying in any manner or under any circumstances an individual obtaining or seeking to obtain an abortion. Statistical information that may reveal the identity of a woman obtaining or seeking to obtain an abortion shall not be maintained.

(8) The department or an employee of the department shall not disclose to a person or entity outside the department the reports or the contents of the reports required under this section in a

manner or fashion as to permit the person or entity to whom the report is disclosed to identify in any way the person who is the subject of the report.

(9) Disclosure of confidential identifying information in violation of this section shall constitute a felony which, upon conviction, shall be punished by imprisonment in the State Penitentiary for not more than three (3) years, or a fine of not more than Five Thousand Dollars ($5,000.00), or both.

Miss. Code Ann. § 41-41-79. Liability.

Willful violation of the provisions of Sections 41-41-75 through 41-41-80 shall constitute a misdemeanor and shall be punishable as provided for by law, except that disclosure of confidential identifying information shall constitute a felony as provided in subsection (9) of Section 41-41-77. No physician or hospital, its officers, employees or medical and nursing personnel practicing in the hospital shall be civilly liable for violation of the provisions of Sections 41-41-75 through 41-41-80, except to the extent of liability for actual damages in a civil action for willful or reckless and wanton acts or omissions constituting that violation. However, that liability shall be subject to any immunities or limitations of liability or damages provided by law.

Miss. Code Ann. § 41-41-107. Providing or prescribing abortion-inducing drug prohibited unless provided or prescribed by physician; requirements for physicians.

(1) It shall be unlawful to knowingly give, sell, dispense, administer or otherwise provide or prescribe any abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion in that pregnant woman, or enabling another person to induce an abortion in a pregnant woman, unless the person who gives, sells, dispenses, administers or otherwise provides or prescribes the abortion-inducing drug is a physician, and the provision or prescription of the abortion-inducing drug satisfies the standard of care.

(2) Because the failure and complications from medical abortion increase with increasing gestational age, because the physical symptoms of medical abortion can be identical to the symptoms of ectopic pregnancy, and because abortion-inducing drugs do not treat ectopic pregnancies but rather are contraindicated in ectopic pregnancies, the physician giving, selling, dispensing, administering or otherwise providing or prescribing the abortion-inducing drug must first physically examine the woman and document in the woman's medical chart the gestational age and intrauterine location of the pregnancy before giving, selling, dispensing, administering or otherwise providing or prescribing the abortion-inducing drug.

(3) When any drug or chemical is used for the purpose of inducing an abortion, the drug or chemical must be administered in the same room and in the physical presence of the physician who gave, sold, dispensed or otherwise provided or prescribed the drug or chemical to the patient.

(4) Every pregnant woman to whom a physician gives, sells, dispenses, administers or otherwise provides or prescribes any abortion-inducing drug shall be provided with a copy of the drug's final printed label or FPL.

(5) If the physician giving, selling, dispensing, administering or otherwise providing or prescribing any abortion-inducing drug is unable to provide follow-up care, the physician must have a signed contract with a physician who agrees to provide follow-up care and produce that signed contract if requested by the patient or by the department. The contract shall include the name and contact information of the follow-up physician. The contract follow-up physician must have active hospital admitting privileges and gynecological/surgical privileges.

(6) The physician giving, selling, dispensing, administering or otherwise providing or prescribing any abortion-inducing drug, or an agent of the physician, must schedule a follow-up visit for the woman at approximately fourteen (14) days after administration of the abortion-inducing drug to provide treatment that meets the standard of care.

Miss. Code Ann. § 41-41-109. Physician report of provision of abortion-inducing drug; report of adverse event.

(1) If a physician provides an abortion-inducing drug to another for the purpose of inducing an abortion as authorized in Section 41-41-107:

> **(a)** The physician shall report that action to the department; and
>
> **(b)** If the physician knows that the woman who uses the abortion-inducing drug for the purpose of inducing an abortion experiences, during or after the use, an adverse event, the physician shall provide a written report of the serious event to the FDA via the Medwatch Reporting System.

(2) For the purposes of this section, "adverse event" shall be defined according to the FDA criteria given in the Medwatch Reporting System.

Miss. Code Ann. § 41-41-111. Penalties for violation.

(1) A person who intentionally, knowingly or recklessly violates any provision of Sections 41-41-101 through 41-41-117 is guilty of a misdemeanor.

(2) No criminal penalty may be assessed against the pregnant woman upon whom the drug-induced abortion is performed.

Miss. Code Ann. § 41-41-115. Limitations of Sections 41-41-101 through 41-41-117.

(1) Nothing in Sections 41-41-101 through 41-41-117 shall be construed as creating or recognizing a right to abortion.

(2) It is not the intention of Sections 41-41-101 through 41-41-117 to make lawful an abortion that is currently unlawful.

Miss. Code Ann. § 41-41-135. Performing or inducing or attempting to perform or induce abortion before physician determines probable gestational age prohibited.

Except as otherwise provided by Section 41-41-141, a physician may not perform, or induce or attempt to perform or induce an abortion without, before the procedure:

(a) Making a determination of the probable gestational age of the unborn child; or

(b) Possessing and relying on a determination of the probable gestational age of the unborn child made by another physician. The physician making such a determination must do so in accordance with reasonable medical judgment.

Miss. Code Ann. § 41-41-137. Performing or inducing or attempting to perform or induce abortion if probable gestational age is determined to be twenty or more weeks prohibited.

Except as otherwise provided by Section 41-41-141, a person may not perform or induce or attempt to perform or induce an abortion on a woman if it has been determined, by the physician performing, inducing, or attempting to perform or induce the abortion or by another physician on whose determination that physician relies, that the probable gestational age of the unborn child is twenty (20) or more weeks.

Miss. Code Ann. § 41-41-139. Abortion to preserve the life of the pregnant woman when probable gestational age of unborn child is twenty or more weeks to be done in manner to provide best opportunity for survival of unborn child.

(1) This section applies only to an abortion authorized under Section 41-41-141(1) in which:

(a) The probable gestational age of the unborn child is twenty (20) or more weeks; or

(b) The probable gestational age of the unborn child has not been determined but could reasonably be twenty (20) or more weeks.

(2) A physician performing or inducing an abortion under subsection (1) of this section shall terminate the pregnancy in the manner that, in the physician's reasonable medical judgment, provides the best opportunity for the unborn child to survive.

Miss. Code Ann. § 41-41-141. Exceptions for preservation of life of pregnant woman; exceptions for severe fetal abnormality.

(1) The prohibitions and requirements under Sections 41-41-135, 41-41-137 and 41-41-139(2) do not apply if there exists a condition in which an abortion is necessary to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function (as specifically defined in paragraph (d) of Section 41-41-133) of the pregnant woman.

(2) The prohibitions and requirements under Sections 41-41-135, 41-41-137 and 41-41-139(2) do not apply to an abortion performed or induced on an unborn child who has a severe fetal abnormality if the mother is informed twenty-four (24) hours before the abortion that supportive care, including, but not limited to, counseling and medical care by maternal-fetal medical specialists, obstetricians, neonatologists, anesthesia specialists, clergy, social workers, and specialty nurses focused on alleviating fear and ensuring that the woman and her family experience the life and death of their child in a comfortable and supportive environment, is available should she choose to carry her pregnancy to term.

Miss. Code Ann. § 41-41-143. Protection of privacy of woman on whom abortion was performed or induced or attempted to be performed or induced in civil or criminal proceedings.

(1) Except as otherwise provided by this section, in a civil or criminal proceeding or action involving an act prohibited under Sections 41-41-131 through 41-41-145, the identity of the woman on whom an abortion has been performed or induced or attempted to be performed or induced is not subject to public disclosure if the woman does not give consent to disclosure.

(2) Unless the court makes a ruling under subsection (3) of this section to allow disclosure of the woman's identity, the court shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to protect the woman's identity from public disclosure.

(3) A court may order the disclosure of information that is confidential under this section if:

- **(a)** A motion is filed with the court requesting release of the information and a hearing on that request; and
- **(b)** Notice of the hearing is served on each interested party.

(4) If the conditions specified in subsection (3) of this section are fulfilled, then after an in camera hearing, for each order issued under subsection (2) of this section that is challenged by a motion under subsection (3) of this section, the court shall either vacate the order or issue specific written findings explaining why the anonymity of the woman should be preserved from

public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists.

Miss. Code Ann. § 41-41-145. Construction; constitutional challenge.

(1) Sections 41-41-131 through 41-41-145 shall be construed, as a matter of state law, to be enforceable up to but no further than the maximum possible extent consistent with federal constitutional requirements, even if that construction is not readily apparent, as such constructions are authorized only to the extent necessary to save Sections 41-41-131 through 41-41-145 from judicial invalidation. Judicial reformation of statutory language is explicitly authorized only to the extent necessary to save the statutory provision from invalidity.

(2) If any court determines that a provision of Sections 41-41-131 through 41-41-145 is unconstitutionally vague, the court shall interpret the provision, as a matter of state law, to avoid the vagueness problem and shall enforce the provision to the maximum possible extent. If a federal court finds any provision of Sections 41-41-131 through 41-41-145 or its application to any person, group of persons, or circumstances to be unconstitutionally vague and declines to impose the saving construction described by this subsection, the Mississippi Supreme Court shall provide an authoritative construction of the objectionable statutory provisions that avoids the constitutional problems while enforcing the statute's restrictions to the maximum possible extent, and shall agree to answer any question certified from a federal appellate court regarding the statute.

(3) State executive or administrative officials may not decline to enforce Sections 41-41-131 through 41-41-145, or adopt a construction of Sections 41-41-131 through 41-41-145 in a way that narrows their applicability, based on the official's own beliefs about what the state or federal constitution requires, unless the official is enjoined by a state or federal court from enforcing Sections 41-41-131 through 41-41-145.

(4) Sections 41-41-131 through 41-41-145 may not be construed to authorize the prosecution of or a cause of action to be brought against a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of Sections 41-41-131 through 41-41-145.

Miss. Code Ann. § 41-41-147. Relation to other Mississippi laws regulating or restricting abortions.

Sections 41-41-131 through 41-41-145 may not be construed to repeal, by implication or otherwise, any other provision of Mississippi law regulating or restricting abortion not specifically addressed by Sections 41-41-131 through 41-41-145. An abortion that complies with Sections 41-41-131 through 41-41-145 but violates any other law is unlawful. An abortion that complies with another state law but violates Sections 41-41-131 through 41-41-145 is unlawful as provided in Sections 41-41-131 through 41-41-145.

Miss. Code Ann. § 41-41-155. Dismemberment abortion prohibited.

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

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

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

(4) Sections 41-41-151 through 41-41-169 do not prevent abortion for any reason, including rape and incest by any other method.

Miss. Code Ann. § 41-41-157. Remedies — Injunctions against dismemberment abortions.

(1) Civil and criminal penalties for violations of Sections 41-41-151 through 41-41-169 may be imposed under the following priority:

(a) Injunctive relief;
(b) Civil cause of action; and
(c) Criminal action.

(2) A cause of action for injunctive relief against a person who has performed or attempted to perform a dismemberment abortion in violation of Section 41-41-155 may be maintained as a priority action by:

(a) A woman upon whom such a dismemberment abortion was performed or attempted to be performed;
(b) A person who is the spouse, parent or guardian of, or a current or former licensed health care provider of, a woman upon whom such a dismemberment abortion was performed or attempted to be performed; or
(c) A prosecuting attorney with appropriate jurisdiction.

(3) The injunction shall prevent the defendant from performing or attempting to perform further dismemberment abortions in violation of Section 41-41-155 in this state.

Miss. Code Ann. § 41-41-163. Criminal penalty.

Only in the event a judgment is rendered in favor of the defendant in an action described in Section 41-41-157 or 41-41-159, a district attorney with jurisdiction may bring an indictment for criminal punishment under this section. Any person who violates Section 41-41-155 is guilty of a felony and, upon conviction, shall be punished by a fine not more than Ten Thousand Dollars ($10,000.00), or commitment to the custody of the Department of Corrections for not more than two (2) years, or both.

Miss. Code Ann. § 41-41-191. Gestational Age Act; legislative findings and purpose; definitions; abortion limited to fifteen weeks' gestation; exceptions; requisite report; reporting forms; professional sanctions; civil penalties; additional enforcement; construction; severability; right to intervene if constitutionality challenged.

(1) This section shall be known and cited as the "Gestational Age Act."

(2) Legislative findings and purpose. The Legislature makes the following findings of fact and incorporates them herein by reference:

> **(a)** The United States is one (1) of only seven (7) nations in the world that permits nontherapeutic or elective abortion-on-demand after the twentieth week of gestation. In fact, fully seventy-five percent (75%) of all nations do not permit abortion after twelve (12) weeks' gestation, except (in most instances) to save the life and to preserve the physical health of the mother.
>
> **(b)**
>
> > **(i)** Medical and other authorities now know more about human prenatal development than ever before including that:
> >
> > > **1.** Between five (5) and six (6) weeks' gestation, an unborn human being's heart begins beating.
> > >
> > > **2.** An unborn human being begins to move about in the womb at approximately eight (8) weeks' gestation.
> > >
> > > **3.** At nine (9) weeks' gestation, all basic physiological functions are present. Teeth and eyes are present, as well as external genitalia.
> > >
> > > **4.** An unborn human being's vital organs begin to function at ten (10) weeks' gestation. Hair, fingernails, and toenails also begin to form.
> > >
> > > **5.** At eleven (11) weeks' gestation, an unborn human being's diaphragm is developing, and he or she may even hiccup. He or she is beginning to move about freely in the womb.
> > >
> > > **6.** At twelve (12) weeks' gestation, an unborn human being can open and close his or her fingers, starts to make sucking motions, and senses stimulation from the world outside the womb. Importantly, he or she has

taken on "the human form" in all relevant aspects. *Gonzales v. Carhart,* 550 U.S. 124, 160 (2007).

7. The Supreme Court has long recognized that the State of Mississippi has an "important and legitimate interest in protecting the potentiality of human life," *Roe v. Wade,* 410 U.S. 113, 162 (1973), and specifically that "the state has an interest in protecting the life of the unborn." *Planned Parenthood of Southeastern Pennsylvania v. Casey,* 505 U.S. 833, 873 (1992).

8. The majority of abortion procedures performed after fifteen (15) weeks' gestation are dilation and evacuation procedures which involve the use of surgical instruments to crush and tear the unborn child apart before removing the pieces of the dead child from the womb. The Legislature finds that the intentional commitment of such acts for nontherapeutic or elective reasons is a barbaric practice, dangerous for the maternal patient, and demeaning to the medical profession.

9. Most obstetricians and gynecologists practicing in the State of Mississippi do not offer or perform nontherapeutic or elective abortions. Even fewer offer or perform the dilation and evacuation abortion procedure even though it is within their scope of practice.

(ii) Abortion carries significant physical and psychological risks to the maternal patient, and these physical and psychological risks increase with gestational age. Specifically, in abortions performed after eight (8) weeks' gestation, the relative physical and psychological risks escalate exponentially as gestational age increases. L. Bartlett et al., *Risk factors for legal induced abortion mortality in the United States,* Obstetrics and Gynecology 103(4):729 (2004).

(iii) Importantly, as the second trimester progresses, in the vast majority of uncomplicated pregnancies, the maternal health risks of undergoing an abortion are greater than the risks of carrying a pregnancy to term.

(iv) Medical complications from dilation and evacuation abortions include, but are not limited to: pelvic infection; incomplete abortions (retained tissue); blood clots; heavy bleeding or hemorrhage; laceration, tear, or other injury to the cervix; puncture, laceration, tear, or other injury to the uterus; injury to the bowel or bladder; depression; anxiety; substance abuse; and other emotional or psychological problems. Further, in abortions performed after fifteen (15) weeks' gestation, there is a higher risk of requiring a hysterectomy, other reparative surgery, or blood transfusion.

(v) The State of Mississippi also has "legitimate interests from the outset of pregnancy in protecting the health of women." *Planned Parenthood of Southeastern Pennsylvania v. Casey,* 505 U.S. 833, 847 (1992), as the "medical, emotional, and psychological consequences of abortion are serious and can be lasting …" *H.L. v. Matheson,* 450 U.S. 398, 411 (1981).

(c) Based on the findings in paragraph (a) of this subsection, it is the intent of the Legislature, through this section and any regulations and policies promulgated hereunder,

to restrict the practice of nontherapeutic or elective abortion to the period up to the fifteenth week of gestation.

(3) Definitions. As used in this section:

(a) "Abortion" means the use or prescription of an instrument, medicine, drug, or other substance or device with the intent to terminate a clinically diagnosable pregnancy for reasons other than to increase the probability of a live birth, to preserve the life or health of the unborn human being, to terminate an ectopic pregnancy, or to remove a dead unborn human being.

(b) "Attempt to perform or induce an abortion" means to do or omit anything that, under the circumstances as the person believes them to be, is an act or omission that constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in violation of this section.

(c) "Conception" means the fusion of human spermatozoon with a human ovum.

(d) "Department" means the Mississippi State Department of Health.

(e) "Gestation" means the time that has elapsed since the first day of the woman's last menstrual period.

(f) "Gestational age" or "probable gestation age" means the age of an unborn human being as calculated from the first day of the last menstrual period of the pregnant woman.

(g) "Human being" means an individual member of the species Homo sapiens, from and after the point of conception.

(h) "Severe fetal abnormality" means a life-threatening physical condition that, in reasonable medical judgment, regardless of the provision of life-saving medical treatment, is incompatible with life outside the womb.

(i) "Major bodily function" includes, but is not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(j) "Medical emergency" means a condition in which, on the basis of the physician's good faith clinical judgment, an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition arising from the pregnancy itself, or when the continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function.

(k) "Physician" or "referring physician" means a person licensed to practice medicine in the State of Mississippi.

(4) Abortion limited to fifteen (15) weeks' gestation except in medical emergency and in cases of severe fetal abnormality.

(a) Except in a medical emergency or in the case of a severe fetal abnormality, a person shall not perform, induce, or attempt to perform or induce an abortion unless the physician or the referring physician has first made a determination of the probable gestational age of the unborn human being and documented that gestational age in the maternal patient's chart and, if required, in a report to be filed with the department as set

forth in paragraph (c) of this subsection. The determination of probable gestational age shall be made according to standard medical practices and techniques used in the community.

(b) Except in a medical emergency or in the case of a severe fetal abnormality, a person shall not intentionally or knowingly perform, induce, or attempt to perform or induce an abortion of an unborn human being if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks.

(c) In every case in which a physician performs or induces an abortion on an unborn human being whose gestational age is greater than fifteen (15) weeks, the physician shall within fifteen (15) days of the abortion cause to be filed with the department, on a form supplied by the department, a report containing the following information:

(i) Date the abortion was performed;

(ii) Specific method of abortion used;

(iii) The probable gestational age of the unborn human being and the method used to calculate gestational age;

(iv) A statement declaring that the abortion was necessary to preserve the life or physical health of the maternal patient;

(v) Specific medical indications supporting the abortion; and

(vi) Probable health consequences of the abortion and specific abortion method used.The physician shall sign the form as his or her attestation under oath that the information stated thereon is true and correct to the best of his or her knowledge.

(d) Reports required and submitted under this subsection (4) shall not contain the name of the maternal patient upon whom the abortion was performed or any other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a woman who obtained or sought to obtain an abortion.

(5) Reporting forms. The department shall create the forms required by this section within thirty (30) days after March 19, 2018. No provision of this section requiring the reporting of information on forms published by the department shall be applicable until ten (10) days after the requisite forms have been made available or March 19, 2018, whichever is later.

(6) Professional sanctions and civil penalties.

(a) A physician who intentionally or knowingly violates the prohibition in subsection (4) of this section commits an act of unprofessional conduct and his or her license to practice medicine in the State of Mississippi shall be suspended or revoked pursuant to action by the Mississippi State Board of Medical Licensure.

(b) A physician who knowingly or intentionally delivers to the department any report required by subsection (4)(c) of this section and known by him or her to be false shall be subject to a civil penalty or fine up to Five Hundred Dollars ($500.00) per violation imposed by the department.

(7) Additional enforcement. The Attorney General shall have authority to bring an action in law or equity to enforce the provisions of this section on behalf of the Director of the Mississippi

State Department of Health or the Mississippi State Board of Medical Licensure. The Mississippi State Board of Medical Licensure shall also have authority to bring such action on its own behalf.

(8) Construction. Nothing in this section shall be construed as creating or recognizing a right to abortion or as altering generally accepted medical standards. It is not the intention of this section to make lawful an abortion that is otherwise unlawful. An abortion that complies with this section, but violates any other state law, is unlawful. An abortion that complies with another state law, but violates this section is unlawful.

(9) Severability.

(a) It is the intent of the Legislature that every provision of this section shall operate with equal force and shall be severable one from the other and that, in the event that any provision of this section shall be held invalid or unenforceable by a court of competent jurisdiction, said provision shall be deemed severable and the remaining provisions of this section deemed fully enforceable.

(b) In the event that any provision of this section shall be held invalid or unenforceable by a court of competent jurisdiction, Sections 41-41-131 through 41-41-145 shall remain in effect. If some or all of the provisions of this section are ever temporarily or permanently restrained or enjoined by judicial order, all other provisions of Mississippi law regulating or restricting abortion shall be enforced as though the restrained or enjoined provisions had not been adopted; however, whenever the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, the provisions of this section shall have full force and effect.

(c) Mindful of *Leavitt v. Jane L.,* 518 U.S. 137 (1996), regarding the context of determining the severability of a state section of law regulating abortion, the United States Supreme Court held that an explicit statement of legislative intent is controlling. Accordingly, it is the intent of the Legislature that every provision, section, subsection, paragraph, sentence, clause, phrase or word in this section and every application of the provisions in this section is severable from each other. If any application of any provision in this section to any person, group of persons, or circumstances is found by a competent court to be invalid, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this section shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the Legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this statute to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not represent an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the Legislature had enacted a section limited to the persons, group of persons, or circumstances for which the section's application does not present an undue burden. The Legislature further declares that it would have passed this section and each provision, section, subsection, paragraph, sentence, clause, phrase or word, and all constitutional

applications of this section, without regard to the fact that any provision, section, subsection, paragraph, sentence, clause, phrase or word, or applications of this section, were to be declared unconstitutional or to represent an undue burden.

(d) If this section is found by any competent court to be invalid or to impose an undue burden as applied to any person, group of persons, or circumstances, the prohibition shall apply to that person or group of persons or circumstances on the earliest date on which this section can be constitutionally applied.

(e) If any provisions of this section are found by a competent court to be unconstitutionally vague, then the applications of the provision that do not present constitutional vagueness problems shall be severed and remain in force.

(10) Right of intervention. The Legislature, through one or more sponsors of this section duly appointed by resolution of their respective chamber, may intervene as a matter of right in any case in which the constitutionality of this section is challenged. The Governor may also intervene as a matter of right in any case in which the constitutionality of this section is challenged.

Miss. Code Ann. § 41-41-407. Abortion may not be performed because of race, sex, or genetic abnormality except in a medical emergency.

(1) Except in a medical emergency as defined in paragraph (j) of Section 41-41-405, a person shall not perform, induce or attempt to perform or induce an abortion unless the physician who is to perform or induce the abortion has first confirmed that the abortion is not being sought because of the race or sex of the unborn human being or because of the presence or presumed presence of a genetic abnormality and documented these facts in the maternal patient's chart, as well as in the report to be filed with the department as set forth in subsection (4) of this section.

(2) Except in a medical emergency as defined in paragraph (j) of Section 41-41-405, a person shall not intentionally or knowingly perform, induce or attempt to perform or induce an abortion of an unborn human being if the abortion is being sought because of the actual or presumed race or sex of the unborn human being or because of the presence or presumed presence of a genetic abnormality.

(3) In every case in which a physician performs or induces an abortion on an unborn human being, the physician shall within fifteen (15) days of the procedure cause to be filed with the department, on a form supplied by the department, a report containing the following information:

(a) Date the abortion was performed;

(b) Specific method of abortion used;

(c) Whether the race of, sex of, or the presence or presumed presence of any genetic abnormality in the unborn human being had been detected at the time of the abortion by genetic testing (such as by maternal serum tests) or ultrasound (such as by nuchal translucency screening (NT)), or by other forms of testing;

(d) A statement confirming that the reason for the abortion, as stated by the maternal patient, was not because of the unborn human being's actual or presumed race or sex or the presence or presumed presence of any genetic abnormality; and
(e) Probable health consequences of the abortion and specific abortion method used.
The physician shall sign the form as his or her attestation under oath that the information stated thereon is true and correct to the best of his or her knowledge.

(4) Reports required and submitted under subsection (3) of this section shall not contain the name of the maternal patient upon whom the abortion was performed or any other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a woman who obtained or sought to obtain an abortion.

Miss. Code Ann. § 41-41-411. Criminal penalties.

(1) Any person who intentionally or knowingly violates the prohibitions in Section 41-41-407(1) and/or (2) shall be guilty of a felony and shall, upon conviction, be imprisoned in the custody of the Department of Corrections not less than one (1) nor more than ten (10) years.

(2) A woman upon whom an abortion is performed, induced, or attempted in violation of this section shall not be prosecuted for conspiracy to commit any violation of this section.

Miss. Code Ann. § 97-3-3. Abortion; causing abortion or miscarriage.

(1) Any person wilfully and knowingly causing, by means of any instrument, medicine, drug or other means whatever, any woman pregnant with child to abort or miscarry, or attempts to procure or produce an abortion or miscarriage shall be guilty of a felony unless the same were done by a duly licensed, practicing physician:
(a) Where necessary for the preservation of the mother's life;
(b) Where pregnancy was caused by rape.
Said person shall, upon conviction, be imprisoned in the State Penitentiary not less than one (1) year nor more than ten (10) years; provided, however, if the death of the mother results therefrom, the person procuring, causing or attempting to procure or cause the illegal abortion or miscarriage shall be guilty of murder.

(2) No act prohibited in subsection (1) of this section shall be considered exempt under the provisions of paragraph (a) thereof unless performed upon the prior advice in writing, of two (2) reputable licensed physicians.

(3) The license of any physician or nurse shall be automatically revoked upon conviction under the provisions of this section.

(4) Nothing in this section shall be construed as conflicting with Section 41-41-73.

Miss. Code Ann. § 97-3-4. Failed abortion; unlawful for physician to intentionally allow or cause living child to die; care of living child mandated; penalties.

(1) It shall be unlawful for any physician performing an abortion that results in the delivery of a living child to intentionally allow or cause the child to die.

(2) If the child is viable, such child shall be immediately provided appropriate medical care and comfort care necessary to sustain life. If the child is not viable, such child shall be provided comfort care. The provision of this section shall include, but not be limited to, a child born with physical or mental handicapping conditions which, in the opinion of the parent, the physician or other persons, diminishes the quality of the child's life, a child born alive during the course of an attempted abortion and a child not wanted by the parent.

(3) As used in this section the term "child" includes every infant member of the species homo sapiens who is born alive at any stage of development.

(4) Any person who violates this section shall be guilty of a felony and, upon conviction, be imprisoned for not less than one (1) year nor more than ten (10) years in the State Penitentiary and fined not more than Fifty Thousand Dollars ($50,000.00) but not less than Twenty-five Thousand Dollars ($25,000.00).

Miss. Code Ann. § 97-3-5. Abortion; advertisement, sale or gift of drugs or instruments.

A person who sells, lends, gives away, or in any manner exhibits, or offers to sell, lend, or give away, or has in his possession with intent to sell, lend, or give away, or advertises or offers for sale, loan or distribution any instrument or article, or any drug or medicine, for causing unlawful abortion; or who writes or prints, or causes to be written or printed, a card, circular, pamphlet, advertisement, or notice of any kind, or gives information orally, stating when, where, how, of whom, or by what means such article or medicine can be purchased or obtained, or who manufactures any such article or medicine, is guilty of a misdemeanor, and, on conviction, shall be punished by fine not less than twenty-five dollars ($25.00) nor more than two hundred dollars ($200.00), and by imprisonment in the county jail not exceeding three (3) months.