

By: Representatives Currie, Eubanks, Gipson, Ford, Carpenter, Bain, Scoggin, Arnold, Brown, Weathersby, Rogers (61st), Foster, Wilkes, Hopkins, Crawford, Henley To: Judiciary B

HOUSE BILL NO. 1510

1 AN ACT TO BE KNOWN AS THE GESTATIONAL AGE ACT; TO ENACT
2 DEFINITIONS; TO PROHIBIT ABORTIONS AFTER 15 WEEKS' GESTATION; TO
3 PROVIDE PENALTIES; AND FOR RELATED PURPOSES.

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

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

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

10 (a) The United States is one (1) of only seven (7)
11 nations in the world that permits nontherapeutic or elective
12 abortion-on-demand after the twentieth week of gestation. In
13 fact, fully seventy-five percent (75%) of all nations do not
14 permit abortion after twelve (12) weeks' gestation, except (in
15 most instances) to save the life and to preserve the physical
16 health of the mother.

17 (b) (i) Medical and other authorities now know more
18 about human prenatal development than ever before including that:



19                   1. Between five (5) and six (6) weeks'  
20 gestation, an unborn human being's heart begins beating.

21                   2. An unborn human being begins to move about  
22 in the womb at approximately eight (8) weeks' gestation.

23                   3. At nine (9) weeks' gestation, all basic  
24 physiological functions are present. Teeth and eyes are present,  
25 as well as external genitalia.

26                   4. An unborn human being's vital organs begin  
27 to function at ten (10) weeks' gestation. Hair, fingernails, and  
28 toenails also begin to form.

29                   5. At eleven (11) weeks' gestation, an unborn  
30 human being's diaphragm is developing, and he or she may even  
31 hiccup. He or she is beginning to move about freely in the womb.

32                   6. At twelve (12) weeks' gestation, an unborn  
33 human being can open and close his or her fingers, starts to make  
34 sucking motions, and senses stimulation from the world outside the  
35 womb. Importantly, he or she has taken on "the human form" in all  
36 relevant aspects. *Gonzales v. Carhart*, 550 U.S. 124, 160 (2007).

37                   7. The Supreme Court has long recognized that  
38 the State of Mississippi has an "important and legitimate interest  
39 in protecting the potentiality of human life," *Roe v. Wade*, 410  
40 U.S. 113, 162 (1973), and specifically that "the state has an  
41 interest in protecting the life of the unborn." *Planned  
42 Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833,  
43 873 (1992).



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

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

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

66                   (iii) Importantly, as the second trimester  
67 progresses, in the vast majority of uncomplicated pregnancies, the



68 maternal health risks of undergoing an abortion are greater than  
69 the risks of carrying a pregnancy to term.

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

80 (v) The State of Mississippi also has "legitimate  
81 interests from the outset of pregnancy in protecting the health of  
82 women." *Planned Parenthood of Southeastern Pennsylvania v. Casey*,  
83 505 U.S. 833, 847 (1992), as the "medical, emotional, and  
84 psychological consequences of abortion are serious and can be  
85 lasting ..." *H.L. v. Matheson*, 450 U.S. 398, 411 (1981).

86 (c) Based on the findings in paragraph (a) of this  
87 subsection, it is the intent of the Legislature, through this act  
88 and any regulations and policies promulgated hereunder, to  
89 restrict the practice of nontherapeutic or elective abortion to  
90 the period up to the fifteenth week of gestation.

91 (3) **Definitions.** As used in this section:



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

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

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

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

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

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

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

116 (h) "Severe fetal abnormality" means a life-threatening



117 physical condition that, in reasonable medical judgment,  
118 regardless of the provision of life-saving medical treatment, is  
119 incompatible with life outside the womb.

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

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

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

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

137 (a) Except in a medical emergency or in the case of a severe  
138 fetal abnormality, a person shall not perform, induce, or attempt  
139 to perform or induce an abortion unless the physician or the  
140 referring physician has first made a determination of the probable  
141 gestational age of the unborn human being and documented that



142 gestational age in the maternal patient's chart and, if required,  
143 in a report to be filed with the department as set forth in  
144 paragraph (c) of this subsection. The determination of probable  
145 gestational age shall be made according to standard medical  
146 practices and techniques used in the community.

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

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

159 (i) Date the abortion was performed;

160 (ii) Specific method of abortion used;

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

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



166 (v) Specific medical indications supporting the  
167 abortion; and

168 (vi) Probable health consequences of the abortion  
169 and specific abortion method used.

170 The physician shall sign the form as his or her attestation  
171 under oath that the information stated thereon is true and correct  
172 to the best of his or her knowledge.

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

179 (5) **Reporting forms.** The department shall create the forms  
180 required by this section within thirty (30) days after the  
181 effective date of this act. No provision of this section  
182 requiring the reporting of information on forms published by the  
183 department shall be applicable until ten (10) days after the  
184 requisite forms have been made available or the effective date of  
185 this act, whichever is later.

186 (6) **Criminal penalties.** (a) Any person who intentionally  
187 or knowingly violates the prohibition in subsection (4) of this  
188 section shall be guilty of a felony and shall, upon conviction, be  
189 imprisoned in the custody of the Department of Corrections not  
190 less than one (1) nor more than ten (10) years.



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

194 (7) **Professional sanctions and civil penalties.** (a) A  
195 physician who intentionally or knowingly violates the prohibition  
196 in subsection (4) of this section commits an act of unprofessional  
197 conduct and his or her license to practice medicine in the State  
198 of Mississippi shall be suspended or revoked pursuant to action by  
199 the Mississippi State Board of Medical Licensure.

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

205 (8) **Additional enforcement.** The Attorney General shall have  
206 authority to bring an action in law or equity to enforce the  
207 provisions of this section on behalf of the Director of the  
208 Mississippi State Department of Health or the Mississippi State  
209 Board of Medical Licensure. The Mississippi State Board of  
210 Medical Licensure shall also have authority to bring such action  
211 on its own behalf.

212 (9) **Construction.** Nothing in this section shall be  
213 construed as creating or recognizing a right to abortion or as  
214 altering generally accepted medical standards. It is not the  
215 intention of this section to make lawful an abortion that is



216 otherwise unlawful. An abortion that complies with this section,  
217 but violates any other state law, is unlawful. An abortion that  
218 complies with another state law, but violates this section is  
219 unlawful.

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

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

238 (c) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996),  
239 regarding the context of determining the severability of a state  
240 section of law regulating abortion, the United States Supreme



241 Court held that an explicit statement of legislative intent is  
242 controlling. Accordingly, it is the intent of the Legislature that  
243 every provision, section, subsection, paragraph, sentence, clause,  
244 phrase or word in this section and every application of the  
245 provisions in this section is severable from each other. If any  
246 application of any provision in this section to any person, group  
247 of persons, or circumstances is found by a competent court to be  
248 invalid, the remaining applications of that provision to all other  
249 persons and circumstances shall be severed and may not be  
250 affected. All constitutionally valid applications of this section  
251 shall be severed from any applications that a court finds to be  
252 invalid, leaving the valid applications in force, because it is  
253 the Legislature's intent and priority that the valid applications  
254 be allowed to stand alone. Even if a reviewing court finds a  
255 provision of this statute to impose an undue burden in a large or  
256 substantial fraction of relevant cases, the applications that do  
257 not represent an undue burden shall be severed from the remaining  
258 provisions and shall remain in force, and shall be treated as if  
259 the Legislature had enacted a section limited to the persons,  
260 group of persons, or circumstances for which the section's  
261 application does not present an undue burden. The Legislature  
262 further declares that it would have passed this section and each  
263 provision, section, subsection, paragraph, sentence, clause,  
264 phrase or word, and all constitutional applications of this  
265 section, without regard to the fact that any provision, section,



266 subsection, paragraph, sentence, clause, phrase or word, or  
267 applications of this section, were to be declared unconstitutional  
268 or to represent an undue burden.

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

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

278 (11) **Right of intervention.** The Legislature, through one or  
279 more sponsors of this act duly appointed by resolution of their  
280 respective chamber, may intervene as a matter of right in any case  
281 in which the constitutionality of this section is challenged. The  
282 Governor may also intervene as a matter of right in any case in  
283 which the constitutionality of this section is challenged.

284 **SECTION 2.** This act shall take effect and be in force from  
285 and after its passage.

