

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

To: Public Health and Human
Services

HOUSE BILL NO. 519

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

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

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

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

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

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



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

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

27 2. To remove a dead unborn child.

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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



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

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

110 **SECTION 4. Injunctions against dismemberment abortions.** (1)

111 A cause of action for injunctive relief against a person who has
112 performed or attempted to perform a dismemberment abortion in
113 violation of Section 3 of this act may be maintained by:

114 (a) A woman upon whom such a dismemberment abortion was
115 performed or attempted to be performed;

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

120 (c) A prosecuting attorney with appropriate
121 jurisdiction.



122 (2) The injunction shall prevent the defendant from
123 performing or attempting to perform further dismemberment
124 abortions in violation of Section 3 of this act in this state.

125 **SECTION 5. Civil remedies.** (1) A cause of action for civil
126 damages against a person who has performed a dismemberment
127 abortion in violation of Section 3 of this act may be maintained
128 by:

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

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

133 (c) If the woman had not attained the age of eighteen
134 (18) years at the time of the dismemberment abortion or has died
135 as a result of the abortion, the maternal grandparents of the
136 unborn child.

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

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

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

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

144 **SECTION 6. Attorney's fees.** (1) If judgment is rendered in
145 favor of the plaintiff in an action described in Section 4 or 5 of



146 this act, the court shall also render judgment for a reasonable
147 attorney's fee in favor of the plaintiff against the defendant.

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

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

157 **SECTION 7. Criminal penalty.** Any person who violates
158 Section 3 of this act is guilty of a felony and, upon conviction,
159 shall be punished by a fine not more than Ten Thousand Dollars
160 (\$10,000.00), or commitment to the custody of the Department of
161 Corrections for not more than two (2) years, or both.

162 **SECTION 8. Protection of privacy in court proceedings.** In
163 every civil, criminal, or administrative proceeding or action
164 brought under this act, the court shall rule whether the anonymity
165 of any woman upon whom a dismemberment abortion has been performed
166 or attempted to be performed shall be preserved from public
167 disclosure if she does not give her consent to the disclosure.
168 The court, upon motion or sua sponte, shall make such a ruling
169 and, upon determining that her anonymity should be preserved,
170 shall issue orders to the parties, witnesses, and counsel and



171 shall direct the sealing of the record and exclusion of
172 individuals from courtrooms or hearing rooms to the extent
173 necessary to safeguard her identity from public disclosure. Each
174 such order shall be accompanied by specific written findings
175 explaining why the anonymity of the woman should be preserved from
176 public disclosure, why the order is essential to that end, how the
177 order is narrowly tailored to serve that interest, and why no
178 reasonable less restrictive alternative exists. In the absence of
179 written consent of the woman upon whom a dismemberment abortion
180 has been performed or attempted to be performed, anyone other than
181 a public official who brings an action under Section 4 or 5 of
182 this act shall do so under a pseudonym. This section may not be
183 construed to conceal the identity of the plaintiff or of witnesses
184 from the defendant or from attorneys for the defendant.

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

188 **SECTION 10. Severability.** If any one or more provisions,
189 sections, subsections, sentences, clauses, phrases or words of
190 this act or the application thereof to any person or circumstance
191 is found to be unconstitutional, the same is declared to be
192 severable and the balance of this act shall remain effective
193 notwithstanding such unconstitutionality. The Legislature
194 declares that it would have passed this act, and each provision,
195 section, subsection, sentence, clause, phrase or word thereof,



196 irrespective of the fact that any one or more provisions,
197 sections, subsections, sentences, clauses, phrases or words be
198 declared unconstitutional.

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

