

By: Senator(s) Fillingane, Hewes, Kirby,  
Albritton, Burton, Carmichael, Chaney,  
Clarke, Davis, Flowers, Jackson (15th), King,  
Lee (35th), Little, Morgan, Nunnelee,  
Pickering, Ross, Walley

To: Public Health and  
Welfare

SENATE BILL NO. 2391  
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 41-41-55, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT IF A COURT GRANTS A WAIVER OF PARENTAL CONSENT TO  
3 A MINOR SEEKING AN ABORTION, THE COURT SHALL MAKE CERTAIN REQUIRED  
4 FINDINGS BY CLEAR AND CONVINCING EVIDENCE; TO PROHIBIT ABORTIONS  
5 IN THE STATE OF MISSISSIPPI, EXCEPT IN CASES WHERE NECESSARY FOR  
6 THE PRESERVATION OF THE MOTHER'S LIFE OR WHERE THE PREGNANCY WAS  
7 CAUSED BY RAPE; TO PROVIDE THAT THIS PROHIBITION SHALL BECOME  
8 EFFECTIVE ONLY UPON A DETERMINATION BY THE STATE ATTORNEY GENERAL  
9 THAT THE UNITED STATES SUPREME COURT HAS OVERRULED THE DECISION OF  
10 ROE V. WADE, WHICH HAS THE EFFECT OF HOLDING UNCONSTITUTIONAL ANY  
11 STATE LAW THAT SEEKS TO CREATE SUCH A PROHIBITION; TO REQUIRE THAT  
12 BEFORE THE PERFORMANCE OF AN ABORTION, THE PHYSICIAN SHALL PERFORM  
13 FETAL ULTRASOUND IMAGING AND AUSCULTATION OF FETAL HEART TONE  
14 SERVICES; TO REQUIRE THE PHYSICIAN TO OFFER THE PATIENT AN  
15 OPPORTUNITY TO VIEW THE ULTRASOUND IMAGE AND LISTEN TO THE  
16 HEARTBEAT OF THE UNBORN CHILD, IF THE HEARTBEAT IS AUDIBLE; TO  
17 REQUIRE THE PATIENT TO SIGN A CERTIFICATION FORM STATING THAT SHE  
18 HAS BEEN GIVEN THAT OPPORTUNITY; TO REQUIRE THE PHYSICIAN TO  
19 RETAIN A COPY OF THE SIGNED CERTIFICATION FORM IN THE PATIENT'S  
20 MEDICAL RECORD; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** Section 41-41-55, Mississippi Code of 1972, is  
23 amended as follows:

24 41-41-55. (1) The requirements and procedures under  
25 Sections 41-41-51 through 41-41-63 shall apply and are available  
26 to minors whether or not they are residents of this state.

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

31 (3) Court proceedings under this section shall be  
32 confidential and anonymous and shall be given such precedence over  
33 other pending matters as is necessary to insure that the court may  
34 reach a decision promptly, but in no case shall the court fail to  
35 rule within seventy-two (72) hours of the time the application is  
36 filed. If for any reason the court fails to rule within

37 seventy-two (72) hours of the time the application is filed, the  
38 minor may proceed as if the consent requirement of Section  
39 41-41-53 has been waived.

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

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

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

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

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

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

58 **SECTION 2.** (1) As used in this section, the term "abortion"  
59 means the use or prescription of any instrument, medicine, drug or  
60 any other substance or device to terminate the pregnancy of a  
61 woman known to be pregnant with an intention other than to  
62 increase the probability of a live birth, to preserve the life or  
63 health of the child after live birth or to remove a dead fetus.

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

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

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

78 **SECTION 3.** The provisions of this section shall be codified  
79 as Section 41-41-34, Mississippi Code of 1972:

80 41-41-34. (1) Before the performance of an abortion, as  
81 defined in Section 2 of this act, the physician who is to perform  
82 the abortion, or a qualified person assisting the physician,  
83 shall:

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

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

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

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

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

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

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

106 **SECTION 4.** At such time as the Attorney General of  
107 Mississippi determines that the United States Supreme Court has  
108 overruled the decision of Roe v. Wade, 410 U.S. 113 (1973), and  
109 that as a result, it is reasonably probable that Section 2 of this  
110 act would be upheld by the court as constitutional, the Attorney  
111 General shall publish his determination of that fact in the  
112 administrative bulletin published by the Secretary of State as  
113 provided in Section 25-43-2.101, Mississippi Code of 1972.

114 **SECTION 5.** (1) If any provision of this act is found to be  
115 unconstitutional, the provision is severable; and the other  
116 provisions of this act remain effective, except as provided in  
117 other sections of this act.

118 (2) Nothing in this act may be construed to repeal, by  
119 implication or otherwise, any provision not explicitly repealed.

120 (3) If any provision of this act is ever declared  
121 unconstitutional or its enforcement temporarily or permanently  
122 restricted or enjoined by judicial order, the provisions of  
123 Sections 41-41-31 through 41-41-91, Mississippi Code of 1972,  
124 shall be enforced. However, if such temporary or permanent  
125 restraining order or injunction is subsequently stayed or  
126 dissolved or such declaration vacated or any similar court order  
127 otherwise ceases to have effect, all provisions of this act that  
128 are not declared unconstitutional or whose enforcement is not  
129 restrained shall have full force and effect.

130 (4) Nothing in the provisions of Sections 41-41-31 through  
131 41-41-91, Mississippi Code of 1972, shall be construed to permit  
132 any action that is prohibited by Senate Bill No. 2391, 2007  
133 Regular Session, and to the extent that any provision of Sections

134 41-41-31 through 41-41-91, Mississippi Code of 1972, would be so  
135 construed, then the provisions of Senate Bill No. 2391, 2007  
136 Regular Session, shall take precedence.

137       **SECTION 6.** Sections 1, 3, 4 and 5 of this act shall take  
138 effect from and after July 1, 2007. Section 2 of this act shall  
139 take effect and be in force from and after ten (10) days following  
140 the date of publication by the Attorney General of Mississippi in  
141 the administrative bulletin published by the Secretary of State as  
142 provided in Section 25-43-2.101, Mississippi Code of 1972, that  
143 the Attorney General has determined that the United States Supreme  
144 Court has overruled the decision of Roe v. Wade, 410 U.S. 113  
145 (1973), and that it is reasonably probable that Section 2 of this  
146 act would be upheld by the court as constitutional.