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Chapter No. 393
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HOUSE BILL NO. 1510

Originated in House _____ Clerk

HOUSE BILL NO. 1510

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

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

SECTION 1. (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 act 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 subsection (4) 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.

(5) **Reporting forms.** The department shall create the forms required by this section within thirty (30) days after the effective date of this act. 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 the effective date of this act, 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 act 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 act 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.

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

PASSED BY THE HOUSE OF REPRESENTATIVES
February 2, 2018

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 6, 2018

Tate Reeves

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

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