

118TH CONGRESS
1ST SESSION

H. R. 175

To amend title 18, United States Code, to prohibit abortion in cases where a fetal heartbeat is detectable.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2023

Mr. KELLY of Pennsylvania (for himself, Mr. SMITH of New Jersey, Mrs. CAMMACK, Mr. WILLIAMS of Texas, Mr. MOONEY, Mr. GROTHMAN, Mr. DUNCAN, Mr. BANKS, Mr. CARL, Mr. HUDSON, Mr. LAHOOD, Mr. FLEISCHMANN, Mr. LAMBORN, Mr. MOORE of Alabama, Mr. JOHNSON of Ohio, Mr. TIFFANY, Mrs. BOEBERT, Mr. MAST, Mr. THOMPSON of Pennsylvania, Mr. FEENSTRA, Mr. GRIFFITH, Mr. ALLEN, Mr. JOYCE of Pennsylvania, Mr. GRAVES of Louisiana, Mr. WALBERG, Mr. BURCHETT, Mr. CLINE, Mr. WEBER of Texas, Mr. ADERHOLT, Mr. ESTES, Mr. BABIN, Mr. BERGMAN, Mr. ROSE, Mr. ARRINGTON, Mr. WEBSTER of Florida, Mr. KELLY of Mississippi, Mr. POSEY, Mr. KUSTOFF, Mr. BIGGS, Mr. JACKSON of Texas, Mr. MOOLENAAR, Mrs. HARSHBARGER, Mr. LUETKEMEYER, Mr. FITZGERALD, Mr. AUSTIN SCOTT of Georgia, Mr. RESCHENTHALER, Mr. CRAWFORD, Mr. FALLON, Mr. DUNN of Florida, Mr. CLYDE, Mr. JOHNSON of South Dakota, Mr. HARRIS, Mr. GOOD of Virginia, Mr. SIMPSON, Mr. LANGWORTHY, Mr. WENSTRUP, Mr. BAIRD, Mrs. FISCHBACH, Mrs. LESKO, Mrs. MILLER of West Virginia, Mr. SMUCKER, Mr. GUTHRIE, and Mr. LATTA) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to prohibit abortion in cases where a fetal heartbeat is detectable.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Heartbeat Protection
3 Act of 2023”.

4 **SEC. 2. ABORTIONS PROHIBITED WITHOUT A CHECK FOR**
5 **FETAL HEARTBEAT, OR IF A FETAL HEART-**
6 **BEAT IS DETECTABLE.**

7 (a) ABORTIONS PROHIBITED WITHOUT A CHECK
8 FOR FETAL HEARTBEAT, OR IF A FETAL HEARTBEAT IS
9 DETECTABLE.—Chapter 74 of title 18, United States
10 Code, is amended—

11 (1) in the chapter heading, by striking “**PAR-**
12 **TIAL-BIRTH**”;

13 (2) by inserting after section 1531 the fol-
14 lowing:

15 “**§ 1532. Abortions prohibited without a check for**
16 **fetal heartbeat, or if a fetal heartbeat is**
17 **detectable**

18 “(a) OFFENSE.—Any physician who knowingly per-
19 forms an abortion and thereby kills a human unborn
20 child—

21 “(1) without determining, according to stand-
22 ard medical practice, whether the unborn child has
23 a detectable heartbeat;

24 “(2) without informing the mother of the re-
25 sults of that determination; or

1 “(3) after determining, according to standard
2 medical practice, that the unborn child has a detect-
3 able heartbeat,
4 shall be fined under this title or imprisoned not more than
5 5 years, or both. This subsection does not apply to an
6 abortion that is necessary to save the life of a mother
7 whose life is endangered by a physical disorder, physical
8 illness, or physical injury, including a life-endangering
9 physical condition caused by or arising from the pregnancy
10 itself, but not including psychological or emotional condi-
11 tions.

12 “(b) EXCEPTIONS.—Subsection (a) shall not apply
13 if—

14 “(1) in reasonable medical judgment, the abor-
15 tion is necessary to save the life of a pregnant
16 woman whose life is endangered by a physical dis-
17 order, physical illness, or physical injury, including
18 a life-endangering physical condition caused by or
19 arising from the pregnancy itself, but not including
20 psychological or emotional conditions;

21 “(2) the pregnancy is the result of rape against
22 an adult woman, and at least 48 hours prior to the
23 abortion—

24 “(A) she has obtained counseling for the
25 rape; or

1 “(B) she has obtained medical treatment
2 for the rape or an injury related to the rape; or

3 “(3) the pregnancy is a result of rape against
4 a minor or incest against a minor, and the rape or
5 incest has been reported at any time prior to the
6 abortion to either—

7 “(A) a government agency legally author-
8 ized to act on reports of child abuse; or

9 “(B) a law enforcement agency.

10 “(c) DOCUMENTATION REQUIREMENTS.—

11 “(1) DOCUMENTATION PERTAINING TO
12 ADULTS.—A physician who performs or attempts to
13 perform an abortion under an exception provided by
14 subsection (b)(2) shall, prior to performing the abor-
15 tion, place in the patient medical file documentation
16 from a hospital licensed by the State or operated
17 under authority of a Federal agency, a medical clinic
18 licensed by the State or operated under authority of
19 a Federal agency, from a personal physician licensed
20 by the State, a counselor licensed by the State, or
21 a victim’s rights advocate provided by a law enforce-
22 ment agency that the adult woman seeking the abor-
23 tion obtained medical treatment or counseling for
24 the rape or an injury related to the rape.

1 “(2) DOCUMENTATION PERTAINING TO MI-
2 NORS.—A physician who performs or attempts to
3 perform an abortion under an exception provided by
4 subsection (b)(3) shall, prior to performing the abor-
5 tion, place in the patient medical file documentation
6 from a government agency legally authorized to act
7 on reports of child abuse that the rape or incest was
8 reported prior to the abortion; or, as an alternative,
9 documentation from a law enforcement agency that
10 the rape or incest was reported prior to the abortion.

11 “(d) REQUIREMENT FOR DATA RETENTION.—Para-
12 graph (j)(2) of section 164.530 of title 45, Code of Federal
13 Regulations, shall apply to documentation required to be
14 placed in a patient’s medical file pursuant to paragraph
15 (6) of such section and a consent form required to be re-
16 tained in a patient’s medical file pursuant to paragraph
17 (7) of such section in the same manner and to the same
18 extent as such paragraph applies to documentation re-
19 quired by paragraph (j)(1) of such section.

20 “(e) ADDITIONAL EXCEPTIONS AND REQUIRE-
21 MENTS.—

22 “(1) EXCLUSION OF CERTAIN FACILITIES.—
23 Notwithstanding the definitions set forth in sub-
24 section (j), the counseling described in subsection
25 (b)(2)(A) and subsection (c)(1) or medical treatment

1 may not be provided by a facility that performs
2 abortions (unless that facility is a hospital).

3 “(2) RULE OF CONSTRUCTION IN CASES OF RE-
4 PORTS TO LAW ENFORCEMENT.—The requirements
5 of subsection (b)(2) do not apply if the rape has
6 been reported at any time prior to the abortion to
7 a law enforcement agency or Department of Defense
8 victim assistance personnel.

9 “(f) DEFENDANT MAY SEEK HEARING.—A defend-
10 ant indicted for an offense under this section may seek
11 a hearing before the State Medical Board on whether the
12 physician’s conduct was necessary to save the life of the
13 mother whose life was endangered by a physical disorder,
14 physical illness, or physical injury, including a life-endan-
15 gering physical condition caused by or arising from the
16 pregnancy itself, but not including psychological or emo-
17 tional conditions. The findings on that issue are admissible
18 on that issue at the trial of the defendant. Upon a motion
19 of the defendant, the court shall delay the beginning of
20 the trial for not more than 30 days to permit such a hear-
21 ing to take place.

22 “(g) NO LIABILITY FOR THE MOTHER ON WHOM
23 ABORTION IS PERFORMED.—A mother upon whom an
24 abortion is performed may not be prosecuted under this
25 section, for a conspiracy to violate this section, or for an

1 offense under section 2, 3, or 4 of this title based on a
2 violation of this section.

3 “(h) REQUIREMENT FOR DATA RETENTION.—The
4 physician shall include in the medical file of the mother
5 documentation of the determination, according to stand-
6 ard medical practice, of whether the unborn child has a
7 detectable heartbeat, the results of that determination, no-
8 tification of the mother of those results, and any informa-
9 tion entered into evidence in any proceedings under sub-
10 section (b). Paragraph (j)(2) of section 164.530 of title
11 45, Code of Federal Regulations, shall apply to such docu-
12 mentation.

13 “(i) SEVERABILITY.—If any provision of this section
14 or the application of such provision to any person or cir-
15 cumstance is held to be invalid, the remainder of this sec-
16 tion and the application of the provisions of the remainder
17 to any person or circumstance shall not be affected there-
18 by.

19 “(j) DEFINITIONS.—In this section:

20 “(1) The term ‘counseling’ means counseling
21 provided by a counselor licensed by the State, or a
22 victims rights advocate provided by a law enforce-
23 ment agency.

24 “(2) The term ‘medical treatment’ means treat-
25 ment provided at a hospital licensed by the State or

1 operated under authority of a Federal agency, at a
2 medical clinic licensed by the State or operated
3 under authority of a Federal agency, or from a per-
4 sonal physician licensed by the State.

5 “(3) The term ‘abortion’ means the use or pre-
6 scription of any instrument, medicine, drug, or any
7 other substance or device—

8 “(A) to intentionally kill the unborn child
9 of a woman known to be pregnant; or

10 “(B) to intentionally terminate the preg-
11 nancy of a woman known to be pregnant, with
12 an intention other than—

13 “(i) after viability to produce a live
14 birth and preserve the life and health of
15 the child born alive; or

16 “(ii) to remove a dead unborn child.

17 “(4) The term ‘attempt’, with respect to an
18 abortion, means conduct that, under the cir-
19 cumstances as the actor believes them to be, con-
20 stitutes a substantial step in a course of conduct
21 planned to culminate in performing an abortion.

22 “(5) The term ‘facility’ means any medical or
23 counseling group, center or clinic and includes the
24 entire legal entity, including any entity that controls,

1 is controlled by, or is under common control with
2 such facility.

3 “(6) The term ‘perform’, with respect to an
4 abortion, includes inducing an abortion through a
5 medical or chemical intervention including writing a
6 prescription for a drug or device intended to result
7 in an abortion.

8 “(7) The term ‘physician’ means a person li-
9 censed to practice medicine and surgery or osteo-
10 pathic medicine and surgery, or otherwise legally au-
11 thorized to perform an abortion.

12 “(8) The term ‘reasonable medical judgment’
13 means a medical judgment that would be made by
14 a reasonably prudent physician, knowledgeable about
15 the case and the treatment possibilities with respect
16 to the medical conditions involved.

17 “(9) The term ‘unborn child’ means an indi-
18 vidual organism of the species homo sapiens, begin-
19 ning at fertilization, until the point of being born
20 alive as defined in section 8(b) of title 1.

21 “(10) The term ‘woman’ means a female
22 human being whether or not she has reached the age
23 of majority.

24 “(k) RULES OF CONSTRUCTION.—

1 “(1) GREATER PROTECTIONS.—Nothing in this
2 section may be construed to pre-empt or limit any
3 Federal, State, or local law that provides greater
4 protections for an unborn child than those provided
5 in this section.

6 “(2) CREATION OF RECOGNITION OF RIGHT.—
7 Nothing in this section may be construed to create
8 or recognize a right to abortion or to make lawful
9 an abortion that is unlawful on the effective date of
10 this section.”; and

11 (3) in the table of sections, by inserting after
12 the item pertaining to section 1841 the following:

“1532. Abortions prohibited without a check for fetal heartbeat, or if a fetal
heartbeat is detectable.”.

13 (b) CLERICAL AMENDMENT.—The table of chapters
14 for part I of title 18, United States Code, is amended,
15 in the item relating to chapter 74, to read as follows:

“74. Abortions 1531”.

