

111TH CONGRESS
2D SESSION

H. R. 5276

To ensure that women seeking an abortion are fully informed regarding the pain experienced by their unborn child.

IN THE HOUSE OF REPRESENTATIVES

MAY 11, 2010

Mr. SMITH of New Jersey (for himself, Mr. ADERHOLT, Mr. AKIN, Mr. ALEXANDER, Mrs. BACHMANN, Mr. BARTLETT, Mr. BACHUS, Mr. BARRETT of South Carolina, Mr. BILBRAY, Mr. BILIRAKIS, Mr. BISHOP of Utah, Mrs. BLACKBURN, Mr. BLUNT, Mr. BOEHNER, Mr. BOOZMAN, Mr. BURTON of Indiana, Mr. CARTER, Mr. CANTOR, Mr. CAO, Mr. CHAFFETZ, Mr. CONAWAY, Mr. COSTELLO, Mr. DAVIS of Kentucky, Mr. DUNCAN, Mr. FLEMING, Mr. FORTENBERRY, Ms. FOXX, Mr. FRANKS of Arizona, Mr. GOHMERT, Mr. GOODLATTE, Mr. GRIFFITH, Mr. HENSARLING, Mr. HERGER, Mr. HOEKSTRA, Mr. HUNTER, Mr. INGLIS, Mr. JOHNSON of Illinois, Mr. JONES, Mr. JORDAN of Ohio, Mr. KING of Iowa, Mr. LAMBORN, Mr. LATTA, Mr. LIPINSKI, Mr. DANIEL E. LUNGREN of California, Mr. MANZULLO, Mr. MARCHANT, Mr. MCCAUL, Mr. MCCOTTER, Mrs. McMORRIS RODGERS, Mrs. MILLER of Michigan, Mr. GARY G. MILLER of California, Mr. NEUGEBAUER, Mr. OLSON, Mr. PENCE, Mr. PITTS, Mr. POE of Texas, Mr. RADANOVICH, Mr. RAHALL, Mr. ROE of Tennessee, Mr. ROGERS of Kentucky, Mr. ROGERS of Alabama, Ms. ROSLEHTINEN, Mr. RYAN of Wisconsin, Mr. SCALISE, Mrs. SCHMIDT, Mr. SENSENBRENNER, Mr. SHADEGG, Mr. SHIMKUS, Mr. SHUSTER, Mr. SOUDER, Mr. THOMPSON of Pennsylvania, Mr. TIAHRT, Mr. WILSON of South Carolina, and Mr. BROUN of Georgia) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To ensure that women seeking an abortion are fully informed regarding the pain experienced by their unborn child.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Unborn Child Pain
5 Awareness Act of 2010”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) At least by 20 weeks after fertilization, an
9 unborn child has the physical structures necessary to
10 experience pain.

11 (2) There is substantial evidence that by 20
12 weeks after fertilization, unborn children draw away
13 from certain stimuli in a manner which in an infant
14 or an adult would be interpreted as a response to
15 pain.

16 (3) Anesthesia is routinely administered to un-
17 born children who have developed 20 weeks or more
18 after fertilization who undergo prenatal surgery.

19 (4) There is substantial evidence that the abor-
20 tion methods most commonly used 20 weeks or more
21 after fertilization cause substantial pain to an un-
22 born child, whether by dismemberment, poisoning,
23 penetrating or crushing the skull, or other methods.
24 Examples of abortion methods used 20 weeks or

1 more after fertilization include, but are not limited
2 to the following:

3 (A) The dilation and evacuation (D and E)
4 method of abortion is commonly performed in
5 the second trimester of pregnancy. In a dilation
6 and evacuation abortion, the unborn child's
7 body parts are grasped with a long-toothed
8 clamp. The fetal body parts are then torn from
9 the body and pulled out of the vaginal canal.
10 The remaining body parts are grasped and
11 pulled out until only the head remains. The
12 head is then grasped and crushed in order to
13 remove it from the vaginal canal.

14 (B) Partial-birth abortion is an abortion in
15 which the abortion practitioner delivers an un-
16 born child's body until only the head remains
17 inside the womb, punctures the back of the
18 child's skull with a sharp instrument, and sucks
19 the child's brains out before completing the de-
20 livery of the dead infant, and as further defined
21 in section 1531 of title 18, United States Code.

22 (5) Expert testimony confirms that by 20 weeks
23 after fertilization an unborn child may experience
24 substantial pain even if the woman herself has re-
25 ceived local analgesic or general anesthesia.

1 (6) Medical science is capable of reducing such
2 pain through the administration of anesthesia or
3 other pain-reducing drugs directly to the unborn
4 child.

5 (7) There is a valid Federal Government inter-
6 est in preventing or reducing the infliction of pain
7 on sentient creatures. Examples of this are laws gov-
8 erning the use of laboratory animals and requiring
9 pain-free methods of slaughtering livestock, which
10 include, but are not limited to the following:

11 (A) Section 2 of the Act commonly known
12 as the Humane Slaughter Act of 1958 (Public
13 Law 85–765; 7 U.S.C. 1902) states, “No meth-
14 od of slaughter or handling in connection with
15 slaughtering shall be deemed to comply with the
16 public policy of the United States unless it is
17 humane. Either of the following two methods of
18 slaughtering and handling are hereby found to
19 be humane—

20 “(i) in the case of cattle, calves,
21 horses, mules, sheep, swine, and other live-
22 stock, all animals are rendered insensible
23 to pain by a single blow or gunshot or an
24 electrical, chemical or other means that is

1 rapid and effective, before being shackled,
2 hoisted, thrown, cast, or cut; or

3 “(ii) by slaughtering in accordance
4 with the ritual requirements of the Jewish
5 faith or any other religious faith that pre-
6 scribes a method of slaughter whereby the
7 animal suffers loss of consciousness by
8 anemia of the brain caused by the simulta-
9 neous and instantaneous severance of the
10 carotid arteries with a sharp instrument
11 and handling in connection with such
12 slaughtering.”.

13 (B) Section 13(a)(3) of the Animal Wel-
14 fare Act (7 U.S.C. 2143(a)(3)) sets the stand-
15 ards and certification process for the humane
16 handling, care, treatment, and transportation of
17 animals. This includes having standards with
18 respect to animals in research facilities that in-
19 clude requirements—

20 (i) for animal care, treatment, and
21 practices in experimental procedures to en-
22 sure that animal pain and distress are
23 minimized, including adequate veterinary
24 care with the appropriate use of anesthetic,

1 analgesic, tranquilizing drugs, or eutha-
2 nasia;

3 (ii) that the principal investigator con-
4 siders alternatives to any procedure likely
5 to produce pain to or distress in an experi-
6 mental animal; and

7 (iii) in any practice which could cause
8 pain to animals—

9 (I) that a doctor of veterinary
10 medicine is consulted in the planning
11 of such procedures;

12 (II) for the use of tranquilizers,
13 analgesics, and anesthetics;

14 (III) for pre-surgical and post-
15 surgical care by laboratory workers, in
16 accordance with established veterinary
17 medical and nursing procedures;

18 (IV) against the use of paralytics
19 without anesthesia; and

20 (V) that the withholding of tran-
21 quilizers, anesthesia, analgesia, or eu-
22 thanasia when scientifically necessary
23 shall continue for only the necessary
24 period of time.

1 (C) Section 495 of the Public Health Serv-
2 ice Act (42 U.S.C. 289d) directs the Secretary
3 of Health and Human Services, acting through
4 the Director of the National Institutes of
5 Health, to establish guidelines for research fa-
6 cilities as to the proper care and treatment of
7 animals, including the appropriate use of tran-
8 quilizers, analgesics, and other drugs, except
9 that such guidelines may not prescribe methods
10 of research. Entities that conduct biomedical
11 and behavioral research with National Insti-
12 tutes of Health funds must establish animal
13 care committees which must conduct reviews at
14 least semiannually and report to the Director of
15 such Institutes at least annually. If the Director
16 determines that an entity has not been fol-
17 lowing the guidelines, the Director must give
18 the entity an opportunity to take corrective ac-
19 tion, and, if the entity does not, the Director
20 must suspend or revoke the grant or contract
21 involved.

22 (8) There is a valid Federal Government inter-
23 est in preventing harm to developing human life at
24 all stages. Examples of this include regulations pro-
25 tecting fetal human subjects from risks of “harm or

1 discomfort” in federally funded biomedical research,
2 45 C.F.R. 102(i) and 45 C.F.R. 46.201 et seq.

3 **SEC. 3. AMENDMENT TO THE PUBLIC HEALTH SERVICE**
4 **ACT.**

5 The Public Health Service Act (42 U.S.C. 201 et
6 seq.) is amended by adding at the end the following:

7 **“TITLE XXXIII—UNBORN CHILD**
8 **PAIN AWARENESS**

9 **“SEC. 3301. DEFINITIONS.**

10 “In this title:

11 “(1) ABORTION.—The term ‘abortion’ means
12 the intentional use or prescription of any instru-
13 ment, medicine, drug, or any other substance or de-
14 vice or method to terminate the life of an unborn
15 child, or to terminate the pregnancy of a woman
16 known to be pregnant with an intention other
17 than—

18 “(A) to produce a live birth and preserve
19 the life and health of the child after live birth;
20 or

21 “(B) to remove an ectopic pregnancy, or to
22 remove a dead unborn child who died as the re-
23 sult of a spontaneous abortion, accidental trau-
24 ma or a criminal assault on the pregnant fe-
25 male or her unborn child.

1 “(2) ABORTION PROVIDER.—The term ‘abortion
2 provider’ means any person legally qualified to per-
3 form an abortion under applicable Federal and State
4 laws.

5 “(3) PAIN-CAPABLE UNBORN CHILD.—

6 “(A) IN GENERAL.—The term ‘pain-capable
7 unborn child’ means an unborn child who
8 has reached a probable stage of development of
9 20 weeks or more after fertilization.

10 “(B) RULE OF CONSTRUCTION.—Nothing
11 in subparagraph (A) shall be construed as a de-
12 termination or finding by Congress that pain
13 may not in fact be experienced by an unborn
14 child at stages of development prior to 20 weeks
15 or more after fertilization.

16 “(4) PROBABLE AGE OF DEVELOPMENT.—The
17 term ‘probable age of development’ means the dura-
18 tion of development after fertilization of the unborn
19 child at the time an abortion is performed, as deter-
20 mined in the good faith judgment of the abortion
21 provider using generally accepted medical criteria
22 and information obtained by interviewing the preg-
23 nant woman.

1 “(5) UNBORN CHILD.—The term ‘unborn child’
2 means a member of the species homo sapiens, at any
3 stage of development, who is carried in the womb.

4 “(6) WOMAN.—The term ‘woman’ means a fe-
5 male human being whether or not she has reached
6 the age of majority.

7 “(7) UNEMANCIPATED MINOR.—The term
8 ‘unemancipated minor’ means an individual who is
9 not older than 18 years and who is not emancipated
10 under State law.

11 **“SEC. 3302. REQUIREMENT OF INFORMED CONSENT.**

12 “(a) REQUIREMENT OF COMPLIANCE BY PRO-
13 VIDERS.—Any abortion provider in or affecting interstate
14 or foreign commerce, who knowingly performs any abor-
15 tion of a pain-capable unborn child, shall comply with the
16 requirements of this title.

17 “(b) PROVISION OF CONSENT.—

18 “(1) IN GENERAL.—Before any part of an abor-
19 tion involving a pain-capable unborn child begins,
20 the abortion provider or his or her agent shall pro-
21 vide the pregnant woman involved, by telephone or
22 in person, with the information described in para-
23 graph (2). It may not be provided by a tape record-
24 ing, but must be provided in a fashion that permits
25 the woman to ask questions of and receive answers

1 from the abortion provider or his agent. (In the case
2 of the Unborn Child Pain Awareness Brochure, it
3 may be provided pursuant to subsection (c)(2) or
4 (c)(3)).

5 “(2) REQUIRED INFORMATION.—

6 “(A) IN GENERAL.—An abortion provider
7 or the provider’s agent to whom paragraph (1)
8 applies shall provide the following information
9 to the pregnant woman (or in the case of a deaf
10 or non-English speaking woman, provide the
11 statement in a manner that she can easily un-
12 derstand):

13 “(i) AGE OF UNBORN BABY.—The
14 probable age of development of the unborn
15 baby based on the number of weeks since
16 fertilization.

17 “(ii) UNBORN CHILD PAIN AWARE-
18 NESS BROCHURE.—An abortion provider to
19 whom paragraph (1) applies must provide
20 the pregnant woman with the Unborn
21 Child Pain Awareness Brochure (referred
22 to in this section as the ‘Brochure’) to be
23 developed by the Department of Health
24 and Human Services under subsection (c)
25 or with the information described in sub-

1 section (c)(2) relating to accessing such
2 Brochure.

3 “(iii) USE OF PAIN-PREVENTING
4 DRUGS.—Drugs administered to the moth-
5 er may not prevent the unborn child from
6 feeling pain, but in some cases, anesthesia
7 or other pain-reducing drug or drugs can
8 be administered directly to the unborn
9 child.

10 “(iv) DESCRIPTION OF RISKS.—After
11 providing the information required under
12 clauses (i), (ii), and (iii) the abortion pro-
13 vider shall provide the woman involved
14 with his or her best medical judgment on
15 the risks, if any, of administering such an-
16 esthesia or analgesic, and the costs associ-
17 ated therewith.

18 “(v) ADMINISTRATION OF ANES-
19 THESIA.—If the abortion provider is not
20 qualified or willing to administer the anes-
21 thesia or other pain-reducing drug to an
22 unborn child in response to a request from
23 a pregnant women, the provider shall—

1 “(I) arrange for a qualified spe-
2 cialist to administer such anesthesia
3 or drug; or

4 “(II) advise the pregnant
5 woman—

6 “(aa) where she may obtain
7 such anesthesia or other pain re-
8 ducing drugs for the unborn child
9 in the course of an abortion; or

10 “(bb) that the abortion pro-
11 vider is unable to perform the
12 abortion if the woman requires
13 that she receive anesthesia or
14 other pain-reducing drug for her
15 unborn child.

16 “(vi) UNBORN CHILD PAIN AWARE-
17 NESS DECISION FORM.—An abortion pro-
18 vider to which paragraph (1) applies shall
19 provide the pregnant woman with the Un-
20 born Child Pain Awareness Decision Form
21 (provided for under subsection (d)) and ob-
22 tain the appropriate signature of the
23 woman on such form.

24 “(vii) RULE OF CONSTRUCTION.—
25 Nothing in this section may be construed

1 to impede an abortion provider or the
2 abortion provider’s agent from offering
3 their own evaluation on the capacity of the
4 unborn child to experience pain, the advis-
5 ability of administering pain-reducing
6 drugs to the unborn child, or any other
7 matter, as long as such provider or agent
8 provides the required information, obtains
9 the woman’s signature on the decision
10 form, and otherwise complies with the af-
11 firmative requirements of the law.

12 “(B) UNBORN CHILD PAIN AWARENESS
13 BROCHURE.—An abortion provider to whom
14 paragraph (1) applies shall provide the preg-
15 nant woman with the Unborn Child Pain
16 Awareness Brochure (referred to in this section
17 as the ‘Brochure’) to be developed by the De-
18 partment of Health and Human Services under
19 subsection (c) or with the information described
20 in subsection (c)(2) relating to accessing such
21 Brochure.

22 “(C) UNBORN CHILD PAIN AWARENESS
23 DECISION FORM.—An abortion provider to
24 which paragraph (1) applies shall provide the
25 pregnant woman with the Unborn Child Pain

1 Awareness Decision Form (provided for under
2 subsection (d)) and obtain the appropriate sig-
3 nature of the woman on such form.

4 “(c) UNBORN CHILD PAIN AWARENESS BRO-
5 CHURE.—

6 “(1) DEVELOPMENT.—Not later than 90 days
7 after the date of enactment of this title, the Sec-
8 retary shall develop an Unborn Child Pain Aware-
9 ness Brochure. Such Brochure shall—

10 “(A) be written in English and Spanish;

11 “(B) Contain the following text: ‘Your doc-
12 tor has determined that, in his or her best me-
13 dial judgment, your unborn child is at least 20
14 weeks old. There is a significant body of evi-
15 dence that unborn children at 20 weeks after
16 fertilization have the physical structures nec-
17 essary to experience pain. There is substantial
18 evidence that at least by this point, unborn chil-
19 dren draw away from surgical instruments in a
20 manner which in an infant or an adult would be
21 interpreted as a response to pain. There is sub-
22 stantial evidence that the process of being killed
23 in an abortion will cause the unborn child pain,
24 even though you receive a pain-reducing drug or
25 drugs. Under the Federal Unborn Child Pain

1 Awareness Act of 2010, you have a right to
2 know that there is evidence that the process of
3 being killed in an abortion will cause your un-
4 born child pain. You may request that anes-
5 thesia or other pain-reducing drug or drugs are
6 administered directly to the pain-capable un-
7 born child if you so desire. The purpose of ad-
8 ministering such drug or drugs would be to re-
9 duce or eliminate the capacity of the unborn
10 child to experience pain during the abortion
11 procedure. In some cases, there may be some
12 additional risk to you associated with admin-
13 istering such a drug.’;

14 “(C) contain greater detail on her option
15 of having a pain-reducing drug or drugs admin-
16 istered to the unborn child to reduce the experi-
17 ence of pain by the unborn child during the
18 abortion;

19 “(D) be written in an objective and
20 nonjudgmental manner and be printed in a
21 typeface large enough to be clearly legible; and

22 “(E) be made available by the Secretary at
23 no cost to any abortion provider.

24 “(2) INTERNET INFORMATION.—The Brochure
25 under this section shall be available on the Internet

1 website of the Department of Health and Human
2 Services at a minimum resolution of 70 DPI (dots
3 per inch). All pictures appearing on the website shall
4 be a minimum of 200x300 pixels. All letters on the
5 website shall be a minimum of 12 point font. All
6 such information and pictures shall be accessible
7 with an industry standard browser, requiring no ad-
8 ditional plug-ins.

9 “(3) PRESENTATION OF BROCHURE.—An abor-
10 tion provider or his or her agent must provide a
11 pregnant woman with the Brochure, developed under
12 paragraph (1), before any part of an abortion of a
13 pain-capable child begins. The brochure may be pro-
14 vided—

15 “(A) through an in-person visit by the
16 pregnant woman;

17 “(B) through an e-mail attachment, from
18 the abortion provider or his or her agent; or

19 “(C) by certified mail, mailed to the
20 woman at least 72 hours before any part of the
21 abortion begins.

22 “(4) WAIVER.—After the abortion provider or
23 his or her agent offers to provide a pregnant woman
24 the brochure, a pregnant woman may waive receipt
25 of the brochure under this subsection by signing the

1 waiver form contained in the Unborn Child Pain
2 Awareness Decision Form.

3 “(d) UNBORN CHILD PAIN AWARENESS DECISION
4 FORM.—Not later than 30 days after the date of enact-
5 ment of this title, the Secretary shall develop an Unborn
6 Child Pain Awareness Decision Form. To be valid, such
7 form shall—

8 “(1) with respect to the pregnant woman—

9 “(A) contain a statement that affirms that
10 the woman has received or been offered all of
11 the information required in subsection (b);

12 “(B) affirm that the woman has read the
13 following statement: ‘You are considering hav-
14 ing an abortion of an unborn child who will
15 have developed, at the time of the abortion, ap-
16 proximately _____ weeks after fertilization.
17 There is a significant body of evidence that un-
18 born children at 20 weeks after fertilization
19 have the physical structures necessary to expe-
20 rience pain. There is substantial evidence that
21 at least by this point, unborn children draw
22 away from surgical instruments in a manner
23 which in an infant or an adult would be inter-
24 preted as a response to pain. There is substan-
25 tial evidence that the process of being killed in

1 an abortion will cause the unborn child pain,
2 even though you receive a pain-reducing drug or
3 drugs. Under the Federal Unborn Child Pain
4 Awareness Act of 2010, you have a right to
5 know that there is evidence that the process of
6 being killed in an abortion will cause your un-
7 born child pain. You may request that anes-
8 thesia or other pain-reducing drug or drugs are
9 administered directly to the pain-capable un-
10 born child if you so desire. The purpose of ad-
11 ministering such drug or drugs would be to re-
12 duce or eliminate the capacity of the unborn
13 child to experience pain during the abortion
14 procedure. In some cases, there may be some
15 additional risk to you associated with admin-
16 istering such a drug.’;

17 “(C) require the woman to explicitly either
18 request or refuse the administration of pain-re-
19 ducing drugs to the unborn child; and

20 “(D) be signed by a pregnant woman prior
21 to the performance of an abortion involving a
22 pain-capable unborn child; and

23 “(2) with respect to the abortion provider—

1 “(A) contain a statement that the provider
2 has provided the woman with all of the informa-
3 tion required under subsection (b);

4 “(B) if applicable, contain a certification
5 by the provider that an exception described in
6 section 3303 applies and the detailed reasons
7 for such certification; and

8 “(C) be signed by the provider prior to the
9 performance of the abortion procedure.

10 “(e) MAINTENANCE OF RECORDS.—The Secretary
11 shall promulgate regulations relating to the period of time
12 during which copies of forms under subsection (d) shall
13 be maintained by abortion providers.

14 **“SEC. 3303. EXCEPTION TO SAVE THE LIFE OF THE MOTH-**
15 **ER.**

16 “The provisions of section 3302 shall not apply to
17 an abortion provider in the case that the abortion is nec-
18 essary to save the life of a mother whose life is endangered
19 by a physical disorder, physical illness, or physical injury,
20 including a life-endangering physical condition caused by
21 or arising from the pregnancy itself.

22 **“SEC. 3304. PENALTIES FOR FAILURE TO COMPLY.**

23 “(a) IN GENERAL.—An abortion provider who will-
24 fully fails to comply with the provisions of this title shall

1 be subject to civil penalties in accordance with this section
2 in an appropriate Federal court.

3 “(b) COMMENCEMENT OF ACTION.—The Attorney
4 General of the United States may commence a civil action
5 under this section.

6 “(c) FIRST OFFENSE.—Upon a finding by a court
7 that a respondent in an action commenced under this sec-
8 tion has knowingly violated a provision of this title, the
9 court shall notify the appropriate State medical licensing
10 authority and shall assess a civil penalty against the re-
11 spondent in an amount not to exceed \$100,000.

12 “(d) SECOND AND SUBSEQUENT OFFENSES.—Upon
13 a finding by a court that the respondent in an action com-
14 menced under this section has knowingly violated a provi-
15 sion of this title and the respondent has been found to
16 have knowingly violated a provision of this title on a prior
17 occasion, the court shall notify the appropriate State med-
18 ical licensing authority and shall assess a civil penalty
19 against the respondent in an amount not to exceed
20 \$250,000.

21 “(e) PRIVATE RIGHT OF ACTION.—A pregnant
22 woman upon whom an abortion has been performed in vio-
23 lation of this title, or the parent or legal guardian of such
24 a woman if she is an unemancipated minor, may com-
25 mence a civil action against the abortion provider for any

1 knowing or reckless violation of this title for actual and
2 punitive damages.”.

3 **SEC. 4. PREEMPTION.**

4 Nothing in this Act or the amendments made by this
5 Act shall be construed to preempt any provision of State
6 law to the extent that such State law establishes, imple-
7 ments, or continues in effect greater protections for un-
8 born children from pain than the protections provided
9 under this Act and the amendments made by this Act.

10 **SEC. 5. SEVERABILITY.**

11 The provisions of this Act shall be severable. If any
12 provision of this Act, or any application thereof, is found
13 unconstitutional, that finding shall not affect any provi-
14 sion or application of the Act not so adjudicated.

○