

117TH CONGRESS
2D SESSION

H. R. 8814

To amend title 18, United States Code, to protect pain-capable unborn children, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 2022

Mr. SMITH of New Jersey (for himself, Mrs. FISCHBACH, Mr. HARRIS, Mrs. CAMMACK, Ms. STEFANIK, Mr. KELLY of Pennsylvania, Mr. JORDAN, Mr. BANKS, Ms. FOXX, Mrs. HARTZLER, Mr. HUDSON, Mr. MOONEY, Mr. MANN, Mr. MULLIN, Mr. LONG, Mr. MCKINLEY, Mr. BUDD, Mr. ROGERS of Alabama, Mrs. MILLER-MEEKS, Mr. LAMALFA, Mr. CARTER of Georgia, Mr. BABIN, Mrs. MILLER of Illinois, Mr. FLEISCHMANN, Mr. BUCK, Mr. WEBER of Texas, Mr. AUSTIN SCOTT of Georgia, Mr. MOOLENAAR, Mr. JOHNSON of Louisiana, Mr. NORMAN, Mr. JACKSON, Mr. WALBERG, Mr. GROTHMAN, Mr. DUNN, Mr. RESCENTIALER, Mr. ADERHOLT, Mr. STAUBER, Mrs. HARSHBARGER, Mr. GIBBS, Mr. MOORE of Alabama, Mr. CLYDE, Mr. SMUCKER, Mr. WESTERMAN, Mr. RODNEY DAVIS of Illinois, Mr. CRENSHAW, Mr. LUETKEMEYER, Mr. KUSTOFF, Mr. LAHOOD, Mr. CLINE, Mr. FITZGERALD, Mr. BOST, Mr. RUTHERFORD, Mr. FEENSTRA, Mr. JOHNSON of South Dakota, Mr. COLE, Mr. GRAVES of Louisiana, Mr. LATTA, Mr. BACON, Mr. WENSTRUP, Mr. HILL, Mr. JACOBS of New York, Mr. MAST, Mrs. MCCLAIN, Mr. LATURNER, Mr. BERGMAN, Mr. LAMBORN, Mr. ROSE, Mr. LOUDERMILK, Mr. BUCSHON, Mr. CARTER of Texas, Mr. EMMER, Mr. DAVIDSON, Mr. HUIZENGA, Mr. HERN, Mr. HICE of Georgia, Mr. GUEST, Mr. POSEY, Mr. KELLER, Mr. CRAWFORD, Mr. BISHOP of North Carolina, Mr. WILLIAMS of Texas, Mr. C. SCOTT FRANKLIN of Florida, Mr. JOYCE of Pennsylvania, Mrs. MILLER of West Virginia, and Mrs. HINSON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to protect pain-capable unborn children, and for other purposes.

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 “Protecting Pain-Capa-
5 ble Unborn Children from Late-Term Abortions Act”.

6 **SEC. 2. LEGISLATIVE FINDINGS AND DECLARATION OF**
7 **CONSTITUTIONAL AUTHORITY FOR ENACT-**
8 **MENT.**

9 Congress finds and declares the following:

10 (1) Medical and other authorities now know
11 more about human prenatal development than ever
12 before including that—

13 (A) an unborn child begins to move about
14 in the womb and reacts to touch at approxi-
15 mately 8 weeks gestation;

16 (B) the eyes begin to form at 5 weeks ges-
17 tation and finish forming by 10 weeks gesta-
18 tion; eye movements can be detected by
19 ultrasound at 12 weeks gestation;

20 (C) by 8 to 9 weeks gestation, the unborn
21 child has detectable brain waves;

1 (D) at 9 weeks gestation, an unborn child's
2 diaphragm is developing, and he or she may
3 even hiccup, and he or she is beginning to move
4 about freely in the womb;

5 (E) at 9 to 11 weeks gestation, teeth as
6 well as external genitalia begin to form;

7 (F) by 10 weeks gestation all of an unborn
8 child's organ rudiments are formed and in
9 place, the digestive system and kidneys start to
10 function at this time, and the unborn child will
11 show a preference for either right handedness
12 or left handedness;

13 (G) at 12 weeks gestation, an unborn child
14 can open and close his or her fingers, starts to
15 make sucking motions, senses stimulation from
16 the world outside the womb, and fingernails and
17 fingerprints begin to form; and

18 (H) the Supreme Court has acknowledged
19 that, by at least 12 weeks gestation, an unborn
20 child has taken on "the human form" in all rel-
21 evant aspects (*Gonzales v. Carhart*, 550 U.S.
22 124, 160 (2007)).

23 (2) Pain receptors (nociceptors) begin forming
24 at 7 weeks gestational age. Nerves linking these pain
25 receptors to the brain's thalamus and subcortical

1 plate form between 12 and 20 weeks gestational age.
2 It is no later than 16 weeks gestational age that the
3 first contact occurs between the subcortical plate
4 and these forming fibers.

5 (3) In considering the use of anesthesia for
6 invasive medical procedures performed on the fetus,
7 evidence has concluded that from as early as 12
8 weeks, and certainly by 15 weeks gestational age on-
9 ward, the fetus is extremely sensitive to painful
10 stimuli, making it necessary to apply adequate anal-
11 gesia and anesthesia to prevent fetal suffering.

12 (4) Substantial evidence indicates that neural
13 elements, such as the thalamus and subcortical
14 plate, develop at specific times during the early de-
15 velopment of an unborn child, serve as pain-proc-
16 essing structures, and are different from the neural
17 elements used for pain processing by adults. Recent
18 evidence, particularly since 2016, demonstrates that
19 structures responsible for pain show signs of suffi-
20 cient maturation from 15 weeks of gestation and
21 thereafter.

22 (5) In the unborn child, application of such
23 painful stimuli is associated with significant in-
24 creases in stress hormones known as the stress re-
25 sponse.

1 (6) Subjection to such painful stimuli is associ-
2 ated with long-term harmful neurodevelopmental ef-
3 fects, such as altered pain sensitivity and, possibly,
4 emotional, behavioral, and learning disabilities later
5 in life.

6 (7) For the purposes of surgery on unborn chil-
7 dren, fetal anesthesia is routinely administered and
8 is associated with a decrease in stress hormones
9 compared to their level when painful stimuli are ap-
10 plied without such anesthesia.

11 (8) The assertion by some medical experts that
12 the unborn child is incapable of experiencing pain
13 until a point in pregnancy later than 24 weeks ges-
14 tational age predominately rests on the assumption
15 that the ability to experience pain depends on the
16 cerebral cortex and requires nerve connections be-
17 tween the thalamus and the cortex. However, recent
18 medical research and analysis, especially since 2007,
19 provides strong evidence for the conclusion that a
20 functioning cortex is not necessary to experience
21 pain.

22 (9) Substantial evidence indicates that children
23 born missing the bulk of the cerebral cortex, such as
24 those with hydranencephaly, nevertheless experience
25 pain.

1 (10) In adult humans and in animals, stimula-
2 tion or ablation of the cerebral cortex does not alter
3 pain perception, while stimulation or ablation of the
4 thalamus does.

5 (11) The assertion of some medical experts that
6 the unborn child remains in a coma-like sleep state
7 that precludes the unborn child from experiencing
8 pain is inconsistent with the documented reaction of
9 unborn children to painful stimuli and with the expe-
10 rience of fetal surgeons who have found it necessary
11 to sedate an unborn child with anesthesia and pro-
12 vide analgesia to prevent the unborn child from en-
13 gaging in vigorous movement in reaction to invasive
14 surgery.

15 (12) Consequently, there is substantial medical
16 evidence that an unborn child is capable of experi-
17 encing pain at least by 15 weeks gestational age, if
18 not earlier.

19 (13) Abortion carries significant physical and
20 psychological risks to the pregnant woman, and
21 these physical and psychological risks increase with
22 gestational age.

23 (14) The majority of abortion procedures per-
24 formed after 15 weeks gestation are dismemberment
25 abortion procedures which involve the use of surgical

1 instruments to crush and tear the unborn child
2 apart before removing the pieces of the dead child
3 from the womb.

4 (15) Medical complications from dismemberment abortions include, but are not limited to, pelvic
5 infection; incomplete abortions (retained tissue);
6 blood clots; heavy bleeding or hemorrhage; laceration, tear, or other injury to the cervix; puncture,
7 laceration, tear, or other injury to the uterus; injury
8 to the bowel or bladder; depression; anxiety; substance abuse; and other emotional or psychological
9 problems. Further, in abortions performed after 15
10 weeks gestation, there is a higher risk of requiring
11 a hysterectomy, other reparative surgery, or blood
12 transfusion.

13 (16) Subparagraphs (J) and (K) of section
14 2(14) of the Partial-Birth Abortion Ban Act of 2003
15 (Public Law 108–105; 117 Stat. 1202) find that a
16 late-term abortion, such as a dismemberment abortion,
17 “confuses the medical, legal, and ethical duties
18 of physicians to preserve and promote life, as the
19 physician acts directly against the physical life of a
20 child” and “undermines the public’s perception of
21 the appropriate role of a physician”.

1 (17) “The [United States Supreme] Court has
2 given state and federal legislatures wide discretion to
3 pass legislation in areas where there is medical and
4 scientific uncertainty” that “the law need not give
5 abortion doctors unfettered choice in the course of
6 their medical practice, nor should it elevate their
7 status above other physicians in the medical commu-
8 nity,” and that “medical uncertainty does not fore-
9 close the exercise of legislative power in the abortion
10 context any more than it does in other contexts,”
11 (Gonzales v. Carhart, 550 U.S. at 124).

12 (18) The Supreme Court has held that “It is
13 time to heed the Constitution and return the issue
14 of abortion to the people’s elected representatives”.
15 (Dobbs v. Jackson Women’s Health Organization,
16 142 S. Ct. 2228, 2243 (2022)).

17 (19) It is the purpose of the Congress to assert
18 a compelling governmental interest in protecting the
19 lives of unborn children from the stage at which sub-
20 stantial medical evidence indicates that they are ca-
21 pable of feeling pain.

22 (20) The Supreme Court has also held that “a
23 law regulating abortion, like other health and wel-
24 fare laws, is entitled to a ‘strong presumption of va-
25 lidity.’ . . . It must be sustained if there is a rational

1 basis on which the legislature could have thought
2 that it would serve legitimate state interests. . . .
3 These legitimate interests include respect for and
4 preservation of prenatal life at all stages of develop-
5 ment . . . ; the protection of maternal health and
6 safety; the elimination of particularly gruesome or
7 barbaric medical procedures; the preservation of the
8 integrity of the medical profession; the mitigation of
9 fetal pain; and the prevention of discrimination on
10 the basis of race, sex, or disability.” (Dobbs v. Jack-
11 son Women’s Health Organization, 142 S. Ct. at
12 2239).

13 (21) Congress has authority to extend protec-
14 tion to pain-capable unborn children under the Su-
15 preme Court’s Commerce Clause precedents and
16 under the Constitution’s grants of powers to Con-
17 gress under the Equal Protection, Due Process, and
18 Enforcement Clauses of the Fourteenth Amendment.

19 **SEC. 3. PAIN-CAPABLE UNBORN CHILD PROTECTION.**

20 (a) IN GENERAL.—Chapter 74 of title 18, United
21 States Code, is amended by inserting after section 1531
22 the following:

23 **“§ 1532. Pain-capable unborn child protection**

24 “(a) UNLAWFUL CONDUCT.—Subject to subsection
25 (g) and notwithstanding any other provision of law, it shall

1 be unlawful for any person to perform an abortion or at-
2 tempt to do so, unless in conformity with the requirements
3 set forth in subsection (b).

4 “(b) MINIMUM REQUIREMENTS FOR ABORTIONS.—

5 “(1) ASSESSMENT OF THE AGE OF THE UN-
6 BORN CHILD.—The physician performing or at-
7 tempting the abortion shall first make a determina-
8 tion of the gestational age of the unborn child or
9 reasonably rely upon such a determination made by
10 another physician. In making such a determination,
11 the physician shall make such inquiries of the preg-
12 nant woman and perform or cause to be performed
13 such medical examinations and tests as a reasonably
14 prudent physician, knowledgeable about the case and
15 the medical conditions involved, would consider nec-
16 essary to make an accurate determination of gesta-
17 tional age.

18 “(2) PROHIBITION ON PERFORMANCE OF CER-
19 TAIN ABORTIONS.—

20 “(A) GENERALLY FOR UNBORN CHILDREN
21 15 WEEKS OR OLDER.—Except as provided in
22 subparagraph (B), the abortion shall not be
23 performed or attempted, if the probable gesta-
24 tional age, as determined under paragraph (1),
25 of the unborn child is 15 weeks or greater.

1 “(B) EXCEPTIONS.—Subparagraph (A)
2 does not apply if—

3 “(i) in reasonable medical judgment,
4 the abortion is necessary to save the life of
5 a pregnant woman whose life is endan-
6 gered by a physical disorder, physical ill-
7 ness, or physical injury, including a life-en-
8 dangering physical condition caused by or
9 arising from the pregnancy itself, but not
10 including psychological or emotional condi-
11 tions;

12 “(ii) the pregnancy is the result of
13 rape against an adult woman, and at least
14 48 hours prior to the abortion—

15 “(I) she has obtained counseling
16 for the rape; or

17 “(II) she has obtained medical
18 treatment for the rape or an injury
19 related to the rape; or

20 “(iii) the pregnancy is a result of rape
21 against a minor or incest against a minor,
22 and the rape or incest has been reported at
23 any time prior to the abortion to either—

1 “(I) a government agency legally
2 authorized to act on reports of child
3 abuse; or

4 “(II) a law enforcement agency.

5 “(C) REQUIREMENT AS TO MANNER OF
6 PROCEDURE PERFORMED.—Notwithstanding
7 the definitions of ‘abortion’ and ‘attempt’ in
8 this section, a physician terminating or at-
9 tempting to terminate a pregnancy under an ex-
10 ception provided by subparagraph (B) may do
11 so only in the manner which, in reasonable
12 medical judgment, provides the best opportunity
13 for the unborn child to survive.

14 “(D) REQUIREMENT THAT A PHYSICIAN
15 TRAINED IN NEONATAL RESUSCITATION BE
16 PRESENT.—If, in reasonable medical judgment,
17 the pain-capable unborn child has the potential
18 to survive outside the womb, the physician who
19 performs or attempts an abortion under an ex-
20 ception provided by subparagraph (B) shall en-
21 sure a second physician trained in neonatal re-
22 suscitation is present and prepared to provide
23 care to the child consistent with the require-
24 ments of subparagraph (E).

1 “(E) CHILDREN BORN ALIVE AFTER AT-
2 TEMPTED ABORTIONS.—When a physician per-
3 forms or attempts an abortion in accordance
4 with this section, and the child is born alive, as
5 defined in section 8 of title 1 (commonly known
6 as the Born-Alive Infants Protection Act of
7 2002), the following shall apply:

8 “(i) DEGREE OF CARE REQUIRED.—
9 Any health care practitioner present at the
10 time shall humanely exercise the same de-
11 gree of professional skill, care, and dili-
12 gence to preserve the life and health of the
13 child as a reasonably diligent and conscien-
14 tious health care practitioner would render
15 to a child born alive at the same gesta-
16 tional age in the course of a natural birth.

17 “(ii) IMMEDIATE ADMISSION TO A
18 HOSPITAL.—Following the care required to
19 be rendered under clause (i), the child born
20 alive shall be immediately transported and
21 admitted to a hospital.

22 “(iii) MANDATORY REPORTING OF
23 VIOLATIONS.—A health care practitioner or
24 any employee of a hospital, a physician’s
25 office, or an abortion clinic who has knowl-

1 edge of a failure to comply with the re-
2 quirements of this subparagraph must im-
3 mediately report the failure to an appro-
4 priate State or Federal law enforcement
5 agency or both.

6 “(F) DOCUMENTATION REQUIREMENTS.—

7 “(i) DOCUMENTATION PERTAINING TO
8 ADULTS.—A physician who performs or at-
9 tempts to perform an abortion under an
10 exception provided by subparagraph (B)(ii)
11 shall, prior to the abortion, place in the pa-
12 tient medical file documentation from a
13 hospital licensed by the State or operated
14 under authority of a Federal agency, a
15 medical clinic licensed by the State or op-
16 erated under authority of a Federal agen-
17 cy, from a personal physician licensed by
18 the State, a counselor licensed by the
19 State, or a victim’s rights advocate pro-
20 vided by a law enforcement agency that the
21 adult woman seeking the abortion obtained
22 medical treatment or counseling for the
23 rape or an injury related to the rape.

24 “(ii) DOCUMENTATION PERTAINING
25 TO MINORS.—A physician who performs or

1 attempts to perform an abortion under an
2 exception provided by subparagraph
3 (B)(iii) shall, prior to the abortion, place in
4 the patient medical file documentation
5 from a government agency legally author-
6 ized to act on reports of child abuse that
7 the rape or incest was reported prior to the
8 abortion; or, as an alternative, documenta-
9 tion from a law enforcement agency that
10 the rape or incest was reported prior to the
11 abortion.

12 “(G) INFORMED CONSENT.—

13 “(i) CONSENT FORM REQUIRED.—The
14 physician who intends to perform or at-
15 tempt to perform an abortion under the
16 provisions of subparagraph (B) may not
17 perform any part of the abortion procedure
18 without first obtaining a signed Informed
19 Consent Authorization form in accordance
20 with this subparagraph.

21 “(ii) CONTENT OF CONSENT FORM.—
22 The Informed Consent Authorization form
23 shall be presented in person by the physi-
24 cian and shall consist of—

1 “(I) a statement by the physician
2 indicating the probable gestational age
3 of the pain-capable unborn child;

4 “(II) a statement that Federal
5 law allows abortion after 15 weeks
6 probable gestational age only if the
7 mother’s life is endangered by a phys-
8 ical disorder, physical illness, or phys-
9 ical injury, when the pregnancy was
10 the result of rape, or an act of incest
11 against a minor;

12 “(III) a statement that the preg-
13 nancy must be terminated by the
14 method most likely to allow the child
15 to be born alive unless this would
16 cause significant risk to the mother;

17 “(IV) a statement that in any
18 case in which an abortion procedure
19 results in a child born alive, Federal
20 law requires that child to be given
21 every form of medical assistance that
22 is provided to children spontaneously
23 born prematurely, including transpor-
24 tation and admittance to a hospital;

1 “(V) a statement that these re-
2 quirements are binding upon the phy-
3 sician and all other medical personnel
4 who are subject to criminal and civil
5 penalties and that a woman on whom
6 an abortion has been performed may
7 take civil action if these requirements
8 are not followed; and

9 “(VI) affirmation that each sign-
10 er has filled out the informed consent
11 form to the best of their knowledge
12 and understands the information con-
13 tained in the form.

14 “(iii) SIGNATORIES REQUIRED.—The
15 Informed Consent Authorization form shall
16 be signed in person by the woman seeking
17 the abortion, the physician performing or
18 attempting to perform the abortion, and a
19 witness.

20 “(iv) RETENTION OF CONSENT
21 FORM.—The physician performing or at-
22 tempting to perform an abortion must re-
23 tain the signed informed consent form in
24 the patient’s medical file.

1 “(H) REQUIREMENT FOR DATA RETEN-
2 TION.—Paragraph (j)(2) of section 164.530 of
3 title 45, Code of Federal Regulations, shall
4 apply to documentation required to be placed in
5 a patient’s medical file pursuant to subpara-
6 graph (F) of subsection (b)(2) and a consent
7 form required to be retained in a patient’s med-
8 ical file pursuant to subparagraph (G) of such
9 subsection in the same manner and to the same
10 extent as such paragraph applies to documenta-
11 tion required by paragraph (j)(1) of such sec-
12 tion.

13 “(I) ADDITIONAL EXCEPTIONS AND RE-
14 QUIREMENTS.—

15 “(i) IN CASES OF RISK OF DEATH OR
16 MAJOR INJURY TO THE MOTHER.—Sub-
17 paragraphs (C), (D), and (G) shall not
18 apply if, in reasonable medical judgment,
19 compliance with such paragraphs would
20 pose a greater risk of—

21 “(I) the death of the pregnant
22 woman; or

23 “(II) the substantial and irre-
24 versible physical impairment of a
25 major bodily function, not including

1 psychological or emotional conditions,
2 of the pregnant woman.

3 “(ii) EXCLUSION OF CERTAIN FACILI-
4 TIES.—Notwithstanding the definitions of
5 the terms ‘medical treatment’ and ‘coun-
6 seling’ in subsection (g), the counseling or
7 medical treatment described in subpara-
8 graph (B)(ii) may not be provided by a fa-
9 cility that performs abortions (unless that
10 facility is a hospital).

11 “(iii) RULE OF CONSTRUCTION IN
12 CASES OF REPORTS TO LAW ENFORCE-
13 MENT.—The requirements of subparagraph
14 (B)(ii) do not apply if the rape has been
15 reported at any time prior to the abortion
16 to a law enforcement agency or Depart-
17 ment of Defense victim assistance per-
18 sonnel.

19 “(c) CRIMINAL PENALTY.—Whoever violates sub-
20 section (a) shall be fined under this title or imprisoned
21 for not more than 5 years, or both.

22 “(d) BAR TO PROSECUTION.—A woman upon whom
23 an abortion in violation of subsection (a) is performed or
24 attempted may not be prosecuted under, or for a con-

1 spiracy to violate, subsection (a), or for an offense under
2 section 2, 3, or 4 of this title based on such a violation.

3 “(e) CIVIL REMEDIES.—

4 “(1) CIVIL ACTION BY A WOMAN ON WHOM AN
5 ABORTION IS PERFORMED.—A woman upon whom
6 an abortion has been performed or attempted in vio-
7 lation of any provision of this section may, in a civil
8 action against any person who committed the viola-
9 tion, obtain appropriate relief.

10 “(2) CIVIL ACTION BY A PARENT OF A MINOR
11 ON WHOM AN ABORTION IS PERFORMED.—A parent
12 of a minor upon whom an abortion has been per-
13 formed or attempted under an exception provided for
14 in subsection (b)(2)(B), and that was performed in
15 violation of any provision of this section may, in a
16 civil action against any person who committed the
17 violation obtain appropriate relief, unless the preg-
18 nancy resulted from the plaintiff’s criminal conduct.

19 “(3) APPROPRIATE RELIEF.—Appropriate relief
20 in a civil action under this subsection includes—

21 “(A) objectively verifiable money damages
22 for all injuries, psychological and physical, occa-
23 sioned by the violation;

24 “(B) statutory damages equal to three
25 times the cost of the abortion; and

1 “(C) punitive damages.

2 “(4) ATTORNEYS FEES FOR PLAINTIFF.—The
3 court shall award a reasonable attorney’s fee as part
4 of the costs to a prevailing plaintiff in a civil action
5 under this subsection.

6 “(5) ATTORNEYS FEES FOR DEFENDANT.—If a
7 defendant in a civil action under this subsection pre-
8 vails and the court finds that the plaintiff’s suit was
9 frivolous, the court shall award a reasonable attor-
10 ney’s fee in favor of the defendant against the plain-
11 tiff.

12 “(6) AWARDS AGAINST WOMAN.—Except under
13 paragraph (5), in a civil action under this sub-
14 section, no damages, attorney’s fee or other mone-
15 tary relief may be assessed against the woman upon
16 whom the abortion was performed or attempted.

17 “(f) DATA COLLECTION.—

18 “(1) DATA SUBMISSIONS.—Any physician who
19 performs or attempts an abortion described in sub-
20 section (b)(2)(B) shall annually submit a summary
21 of all such abortions to the National Center for
22 Health Statistics (hereinafter referred to as the
23 ‘Center’) not later than 60 days after the end of the
24 calendar year in which the abortion was performed
25 or attempted.

1 “(2) CONTENTS OF SUMMARY.—The summary
2 shall include the number of abortions performed or
3 attempted on an unborn child who had a gestational
4 age of 15 weeks or more and specify the following
5 for each abortion under subsection (b)(2)(B)—

6 “(A) the probable gestational age of the
7 unborn child;

8 “(B) the method used to carry out the
9 abortion;

10 “(C) the location where the abortion was
11 conducted;

12 “(D) the exception under subsection
13 (b)(2)(B) under which the abortion was con-
14 ducted; and

15 “(E) any incident of live birth resulting
16 from the abortion.

17 “(3) EXCLUSIONS FROM DATA SUBMISSIONS.—
18 A summary required under this subsection shall not
19 contain any information identifying the woman
20 whose pregnancy was terminated and shall be sub-
21 mitted consistent with the Health Insurance Port-
22 ability and Accountability Act of 1996 (42 U.S.C.
23 1320d–2 note).

24 “(4) PUBLIC REPORT.—The Center shall annu-
25 ally issue a public report providing statistics by

1 State for the previous year compiled from all of the
2 summaries made to the Center under this sub-
3 section. The Center shall take care to ensure that
4 none of the information included in the public re-
5 ports could reasonably lead to the identification of
6 any pregnant woman upon whom an abortion was
7 performed or attempted. The annual report shall be
8 issued by July 1 of the calendar year following the
9 year in which the abortions were performed or at-
10 tempted.

11 “(g) RULE OF CONSTRUCTION.—

12 “(1) GREATER PROTECTION.—Nothing in this
13 section may be construed to pre-empt or limit any
14 Federal, State, or local law that provides greater
15 protections for an unborn child than those provided
16 in this section.

17 “(2) CREATING OR RECOGNIZING RIGHT.—

18 Nothing in this section shall be construed as cre-
19 ating or recognizing a right to abortion nor shall it
20 make lawful an abortion that is unlawful on the date
21 of the enactment of such Act.

22 “(h) DEFINITIONS.—In this section the following
23 definitions apply:

1 “(1) ABORTION.—The term ‘abortion’ means
2 the use or prescription of any instrument, medicine,
3 drug, or any other substance or device—

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

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

9 “(i) after viability to produce a live
10 birth and preserve the life and health of
11 the child born alive; or

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

13 “(2) ATTEMPT.—The term ‘attempt’, with re-
14 spect to an abortion, means conduct that, under the
15 circumstances as the actor believes them to be, con-
16 stitutes a substantial step in a course of conduct
17 planned to culminate in performing an abortion.

18 “(3) COUNSELING.—The term ‘counseling’
19 means counseling provided by a counselor licensed
20 by the State, or a victims rights advocate provided
21 by a law enforcement agency.

22 “(4) FACILITY.—The term ‘facility’ means any
23 medical or counseling group, center or clinic and in-
24 cludes the entire legal entity, including any entity

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

3 “(5) FERTILIZATION.—The term ‘fertilization’
4 means the fusion of human spermatozoon with a
5 human ovum.

6 “(6) GESTATIONAL AGE.—The term ‘gesta-
7 tional age’ means the age of an unborn child as cal-
8 culated from the first day of the pregnant woman’s
9 last menstrual period.

10 “(7) MEDICAL TREATMENT.—The term ‘med-
11 ical treatment’ means treatment provided at a hos-
12 pital licensed by the State or operated under author-
13 ity of a Federal agency, at a medical clinic licensed
14 by the State or operated under authority of a Fed-
15 eral agency, or from a personal physician licensed by
16 the State.

17 “(8) MINOR.—The term ‘minor’ means an indi-
18 vidual who has not attained the age of 18 years.

19 “(9) PERFORM.—The term ‘perform’, with re-
20 spect to an abortion, includes inducing an abortion
21 through a medical or chemical intervention including
22 writing a prescription for a drug or device intended
23 to result in an abortion.

24 “(10) PHYSICIAN.—The term ‘physician’ means
25 a person licensed to practice medicine and surgery

1 or osteopathic medicine and surgery, or otherwise le-
2 gally authorized to perform an abortion.

3 “(11) PROBABLE GESTATIONAL AGE OF THE
4 UNBORN CHILD.—The term ‘probable gestational
5 age of the unborn child’ means what, in reasonable
6 medical judgment, will with reasonable probability be
7 the gestational age at the time the abortion is per-
8 formed or induced.

9 “(12) REASONABLE MEDICAL JUDGMENT.—The
10 term ‘reasonable medical judgment’ means a medical
11 judgment that would be made by a reasonably pru-
12 dent physician in the field of obstetrics, maternal
13 fetal medicine or neonatology who is knowledgeable
14 about the case and the treatment possibilities with
15 respect to the medical conditions involved.

16 “(13) STATE.—The term ‘State’ means any of
17 the several States, the District of Columbia, or any
18 territory or possession of the United States.

19 “(14) UNBORN CHILD.—The term ‘unborn
20 child’ means an individual organism of the species
21 homo sapiens, beginning at fertilization, until the
22 point of being born alive as defined in section 8(b)
23 of title 1.

1 “(15) WOMAN.—The term ‘woman’ means a fe-
2 male human being whether or not she has reached
3 the age of majority.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 at the beginning of chapter 74 of title 18, United States
6 Code, is amended by adding at the end the following new
7 item:

 “1532. Pain-capable unborn child protection.”.

8 (c) CHAPTER HEADING AMENDMENTS.—

9 (1) CHAPTER HEADING IN CHAPTER.—The
10 chapter heading for chapter 74 of title 18, United
11 States Code, is amended by striking “**Partial-**
12 **Birth Abortions**” and inserting “**Unborn**
13 **Children**”.

14 (2) TABLE OF CHAPTERS FOR PART I.—The
15 item relating to chapter 74 in the table of chapters
16 at the beginning of part I of title 18, United States
17 Code, is amended by striking “Partial-Birth Abor-
18 tions” and inserting “Unborn Children”.

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