

118TH CONGRESS
1ST SESSION

S. 1102

To protect the dignity of fetal remains, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 30, 2023

Mr. BRAUN (for himself, Mr. LANKFORD, Mr. MARSHALL, Mr. RUBIO, Mr. TILLIS, Mr. SCOTT of Florida, Mr. WICKER, and Mr. RISCH) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To protect the dignity of fetal remains, 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 “Dignity for Aborted
5 Children Act”.

6 **SEC. 2. CONSTITUTIONAL AUTHORITY.**

7 Congress enacts the following pursuant to Congress’
8 power under—

9 (1) the Interstate Commerce Clause of section
10 8 of article I of the Constitution;

1 (2) section 5 of the 14th Amendment to the
2 Constitution of the United States, including the
3 power to enforce the prohibition on government ac-
4 tion denying equal protection of the laws; and

5 (3) section 8 of article I of the Constitution of
6 the United States to make all laws necessary and
7 proper for the carrying into execution of powers
8 vested by the Constitution in the Government of the
9 United States.

10 **SEC. 3. PROTECTION OF FETAL REMAINS.**

11 (a) IN GENERAL.—Part H of title IV of the Public
12 Health Service Act (42 U.S.C. 289 et seq.) is amended
13 by adding at the end the following:

14 **“SEC. 498F. PROTECTION OF FETAL REMAINS.**

15 “(a) CONSENT REQUIREMENT.—

16 “(1) IN GENERAL.—Any abortion provider,
17 after performing an abortion, shall provide the pa-
18 tient with an informed consent form, offering the
19 patient the following options for disposal of the
20 human fetal tissue from the abortion:

21 “(A) The patient may take possession of
22 the human fetal tissue and may choose to
23 transfer the tissue to an entity providing inter-
24 ment or cremation services.

1 “(B) The patient may elect to release the
2 human fetal tissue to the abortion provider,
3 who shall be subject to the requirements of sub-
4 section (b).

5 “(2) CONSENT REQUIREMENTS.—An abortion
6 provider described in paragraph (1) shall—

7 “(A) obtain a patient signature on each
8 consent form required under paragraph (1);
9 and

10 “(B) retain each such form in the patient’s
11 file.

12 “(b) PROVIDER DISPOSAL REQUIREMENT.—It shall
13 be unlawful for any abortion provider who, after per-
14 forming an abortion in which the woman on whom the
15 abortion was performed elects, pursuant to subsection
16 (a)(1)(B), to release the human fetal tissue to the abortion
17 provider, to fail to provide for the final disposition of the
18 human fetal tissue through interment or cremation, con-
19 sistent with State law regarding the disposal of human
20 remains, not later than 7 days after the date on which
21 the abortion procedure was performed. Such final disposi-
22 tion of human fetal tissue may be carried out through in-
23 terment or cremation of tissue from more than one abor-
24 tion procedure collectively.

25 “(c) PENALTIES.—

1 “(1) INFORMED CONSENT VIOLATIONS.—An
2 abortion provider who fails to maintain the docu-
3 mentation required under subsection (a)(2)(B) shall
4 be subject to civil monetary penalties in an amount
5 not to exceed \$50,000.

6 “(2) DISPOSAL VIOLATIONS.—Any abortion
7 provider who violates subsection (b) shall be fined in
8 accordance with title 18, United States Code, im-
9 prisoned not more than 5 years, or both.

10 “(3) BAR TO PROSECUTION.—A patient upon
11 whom an abortion in violation of subsection (b) is
12 performed or attempted may not be prosecuted
13 under, or for a conspiracy to violate, paragraph (1),
14 or for an offense under section 2, 3, or 4 of title 18,
15 United States Code, based on such a violation.

16 “(d) REPORTING.—Each abortion provider described
17 in subsection (a)(1) shall submit annual reports to the
18 Secretary indicating, with respect to the reporting pe-
19 riod—

20 “(1) the aggregate number of abortion proce-
21 dures performed by such abortion provider;

22 “(2) the gestational age at the time of each
23 such procedure; and

24 “(3) for abortions carried out using an abortion
25 method other than chemical abortion, the aggregate

1 number of fetal remains transferred for interment or
2 cremation and the number released to patients.

3 “(e) ANNUAL REPORTS BY THE SECRETARY.—The
4 Secretary shall submit to Congress an annual report on
5 the number of abortions by State, procedure type, and
6 method of disposal of human fetal tissue.

7 “(f) NON-PREEMPTION.—Nothing in this section
8 shall preempt any State requirement that, at a minimum,
9 requires interment or cremation in the same manner that
10 other human remains are required to be treated in such
11 State.

12 “(g) DEFINITIONS.—In this section—

13 “(1) the term ‘abortion’ means the use or pre-
14 scription of any instrument, medicine, drug, or any
15 other substance or device—

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

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

21 “(i) after viability to produce a live
22 birth and preserve the life and health of
23 the child born alive; or

24 “(ii) to remove a dead unborn child;

1 “(2) the term ‘abortion provider’ means an in-
2 dividual or entity that performs abortions; and

3 “(3) the term ‘human fetal tissue’ has the
4 meaning given the term in section 498A(g).”.

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